



## AGENDA

**CITY COUNCIL MEETING**  
**Tuesday, December 17, 2013 – 7:00 p.m.**  
**City Council Chambers**

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

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini  
Councilmember Jan Bridges

Councilmember Mark Friedman  
Councilmember Greg Lyman

### **ROLL CALL**

**7:00 p.m.**

### **CONVENE CITY COUNCIL MEETING**

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

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

### **3. ORAL COMMUNICATIONS FROM THE PUBLIC**

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

### **4. PRESENTATIONS**

**A. Update on Crime Trends in El Cerrito** – Presentation by Sylvia Moir, Police Chief.

**B. Pacific Gas & Electric Company Update on Natural Gas Pipeline Testing in El Cerrito and the El Cerrito Substation Rebuild Project** – Presentation by Roxanne Cruz, Public Affairs, Pacific Gas & Electric Company.

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

**A. Minutes for Approval**

Approve the December 3, 2013 Special City Council Closed Session and Regular City Council meeting minutes.

**B. Amendment of El Cerrito Municipal Code Chapter 11.64 - Bicycles**

Adopt by title and waive any further reading of an ordinance amending specified sections within El Cerrito Municipal Code Chapter 11.64. Sections pertaining to the licensing and inspection of bicycles have been repealed. Rules of the Road have been updated. Sections requiring the wearing of helmets have been repealed as this is appropriately covered under State Law. *Exempt from CEQA. First reading November 19, 2013. Vote with amendments: Unanimous.*

**C. Pool Heaters Replacement**

Adopt a resolution authorizing the City Manager to enter into an agreement with Knorr Systems in an amount not to exceed \$120,000 (with contingencies) to purchase and install one Lochinvar Aquas Model XPN1520 heater and one Lochinvar Aquas Model XPN801 heater to replace the existing heaters on each pool at the El Cerrito Swim Center.

**D. Extension of Eden Exclusive Negotiating Rights Agreement**

Adopt a resolution authorizing the City Manager to extend the Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing, Inc. (Developer) for negotiation of a Disposition and Development Agreement (DDA) of an affordable housing project at 10848-10860 San Pablo Avenue to July 1, 2014. *Extension of the ENRA is not a project under CEQA; an Environmental Impact Report has been prepared for the Eden Housing project and will be considered by the Planning Commission on December 18, 2013.*

**E. Extension of Current Terms of Members of the Planning Commission and Design Review Board**

Adopt a resolution interpreting Section 2.04.220 of the El Cerrito Municipal Code to permit the extension of the terms of members of the Planning Commission and Design Review Board to maintain the full membership of those bodies during a gap period that will occur as a result of recent amendments to the Municipal Code. The resolution would also extend the terms of specific members of the Planning Commission and Design Review Board.

**6. PUBLIC HEARINGS – None**

**7. POLICY MATTERS**

**Fiscal Year 2013–14 Budget Update**

Receive a presentation that will provide the City Council and the public with: 1) An update on preliminary year-end actuals for Fiscal Year 2012–13 that ended on June 30, 2013; 2) An update on city revenues and expenditures for the first quarter of Fiscal Year 2013–14; and 3) An overview and discussion of next steps related to the city budget.

**8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS –  
*Held over from the meeting of December 3, 2013.***

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

**9. ADJOURN REGULAR CITY COUNCIL MEETING**

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

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

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT-Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at [www.el-cerrito.org](http://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](mailto:cmorse@ci.el-cerrito.ca.us)
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

# EL CERRITO CITY COUNCIL

## MINUTES

### **SPECIAL CITY COUNCIL MEETING – CLOSED SESSION**

**Tuesday, December 3, 2013 – 6:00 p.m.**

**Hillside Conference Room**

### **CITY COUNCIL MEETING**

**Tuesday, December 3, 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 7:00 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 regular City Council meeting at 7:04 p.m.

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

**2. COUNCIL / STAFF COMMUNICATIONS**

Mayor Lyman reported that the City Council had concluded the performance evaluation of the City Manager during the preceding closed session. Mayor Lyman also highlighted the importance of Automatic External Defibrillator (AED) devices in saving lives. Individuals can call 911 to locate where AEDs are located in the County and also noted that an AED is available in the El Cerrito City Hall lobby. On December 18, 2013 from 10:00 a.m. to 7:00 p.m. at City Hall the El Cerrito Historical Society invites the community to join them in recognizing the Chung Mei home. A reception will be held from 5:30 to 7:30 p.m. in the City Hall lobby.

**3. ORAL COMMUNICATIONS FROM THE PUBLIC**

*Mayor Lyman re-organized the agenda by presenting the proclamation honoring Dr. Schekman prior to public comment (Agenda Item No. 4(A)).*

Kim Coles, American Cancer Society – Relay for Life, spoke about the importance of the Relay for Life Event, the fight against cancer and the celebration of cancer survivors. The next event is July 26-27, 2014 at Cerrito Vista Park. More information is available at [www.relayforlife.elcerrito.org](http://www.relayforlife.elcerrito.org). Ms. Coles also noted that the American Medical Association also supports the work of Dr. Schekman and the other Nobel Prize winners.

Karen Zien, Point Richmond, encouraged all city staff and the City of El Cerrito to become more involved in Relay for Life. Ms. Zien noted that El Cerrito shows civic pride by honoring Nobel Prize winners, by fixing sidewalks to prevent falls, and by allowing police officers and firefighters to participate in Relay for Life. Three thousand dollars has been raised in the past three years. Ms. Zien asked the City Council to honor Relay for Life with a proclamation and to encourage partnership with all employees to participate in the event and help with marketing and signs.

Patricia Durham, El Cerrito, stated that she is Chair of the citywide January 2014 Martin Luther King, Jr. Celebration in El Cerrito. This is the event's Silver Anniversary. Ms. Durham thanked the City Council for its leadership, for being part of the event for the past 25 years and provided a T-shirt commemorating the event to each councilmember.

Judd Goodman, El Cerrito, stated that he just moved to the city and looks forward to raising a family in El Cerrito. Mr. Goodman stated that he likes his neighbors and the City's walkability and open space. As a resident of Rockaway Avenue, Mr. Goodman expressed concerns with construction at El Cerrito High and frustration with the West Contra Costa County School District. There have been multiple efforts and meetings to get a clear understanding of impacts associated with construction at the high school.

Sherry Drobner, El Cerrito, expressed concerns with the El Cerrito High School Stadium Project. Ms. Drobner reported that speaking with the School District has been frustrating and asked how communications with the School District can be improved and asked the City to think about ways the city can be an advocate for the neighbors.

#### 4. PRESENTATIONS

##### A. Proclamation Recognizing Dr. Randy Schekman upon the Award of the 2013 Nobel Prize in Physiology or Medicine

Celebrating and commending Dr. Randy Schekman for the award of the 2013 Nobel Prize in Physiology or Medicine for his role in revealing the machinery that regulates the transport and secretion of proteins in cells and declaring December 10, 2013, Randy Schekman Day in the City of El Cerrito on which date King Carl XVI Gustaf of Sweden will confer the Nobel Medal, Diploma and Prize on Dr. Schekman.

**Action:** Proclamation presented.

**B. El Cerrito Police Department Explorer Program – Presented by Lieutenant Robert De La Campa.**

**Action:** Received presentation.

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

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

##### A. Minutes for Approval

Approve the November 19, 2013 Special City Council Closed Session and Regular City Council meeting minutes.

**Action:** Approved minutes.

##### B. Ordinance Amending Commission Rules and Repealing the Economic Development Board

Approve by title, waive further reading and adopt Ordinance 2013–06 amending Section 2.04.220 of the El Cerrito Municipal Code – Boards, Commissions and Committees and Repealing Section 2.04.290 Economic Development Board. *First reading November 5, 2013. Ayes – Councilmembers Abelson, Benassini, Bridges, Friedman and Mayor Lyman; Noes – None; Absent – None.*

**Action:** Adopted Ordinance No. 2013–06. *Effective January 2, 2014.*

##### C. Federal Emergency Management Grant for the Purchase of Automatic Cardiac Compression Devices

Adopt a resolution which takes the following actions: 1) Authorizes the participation of the Fire Department in a Federal Emergency Management Agency (FEMA) grant for the purchase of three automatic compression devices (ACCD); 2) Approves the use of \$7,205 in matching funds which will come from the Fire Department budget; and 3) Authorizes payment of \$7,205 to purchase three ACCD's from Physio-Control, Inc.

**Action:** Adopted Resolution No. 2013–69.

##### D. First Quarter Investment Report

Receive and file the City's Quarterly Investment Report for the period ending September 30, 2013.

**Action:** Received and filed.

#### 6. PUBLIC HEARINGS - None

#### 7. POLICY MATTERS

##### A. City Council Reorganization

Annual election of City Council Officers.

Mayor Lyman thanked the City Council, residents, board, commission and committee

members, volunteers, community members and staff of El Cerrito for their professionalism and contributions to the City of El Cerrito.

Mayor Lyman noted that as a team, the City Council accomplished many things including two redevelopment agency lawsuits, one which successfully preserved \$1.75 million of the City's general fund and another, filed in October 2013 aimed at protecting \$2 million of the City's general fund, 5 significant right-of-way projects which will make the City safer for bicyclists and pedestrians, 6 awards, both national and regional, 8 grants totaling \$4.423 million, including 90% funding for a new fire truck. The City Council issued 18 proclamations including, but not limited to, recognition of the centennial of the Stege Sanitary District and the Library, recognition of resident Dr. Schekman upon the receipt of his Nobel Prize, Volunteer Day, Earth Hour, Earth Day, Bike to Work Day, Affordable Housing Week, Fall Prevention Awareness Week, Asian-Pacific Islander Month, Lesbian, Gay, Bi-Sexual and Transgender Pride Month, and Arts and Humanities Month. Twenty-four City Council meetings were convened to conduct the city's business for not only routine matters but also to finalize the City's first Strategic Plan, adopt the Climate Action Plan, rejuvenate the San Pablo Avenue Specific Plan, initiate the Urban Greening Plan, work with Trust for Public Land to acquire seven acres of the Hillside open space, enter into an Exclusive Negotiating Rights Agreement with Build, Inc. for development of three acres located near Del Norte BART, started the weekly Off the Grid Food Truck event, ban single-use plastic bags and styrofoam food-ware containers, update policies regarding Boards, Commissions and Committees, and complete an evaluation of the City Manager that was long overdue. Mayor Lyman concluded by stating that he attended many meetings and workshops over the past year, attended ribbon cuttings and other ceremonial events and at each function, it was a real privilege to represent such a progressive community and the exceptional staff of the City of El Cerrito. Mayor Lyman noted that he could not have performed his role as Mayor without the support of the team of residents, volunteers, staff, city management and City Council. Mayor Lyman expressed appreciation for the support of his family, especially his wife, Mary.

Mayor Pro Tem Abelson stated that the City Council enjoyed having Mayor Lyman as the City Council's leader. The Council was an effective working group, really got things done and accomplished a lot as a team despite all of the financial pressures that came from outside the City. The Strategic Plan, in particular, provided a forum for the City to define who it is and who it wants to be and to also recognize that the Councilmembers have a lot in common. Mayor Pro Tem Abelson stated that Mayor Lyman was a very hard and thorough worker and that she looks forward to continuing to work with him, thanked Mayor Lyman for his service as Mayor during 2012–2013 and presented him with a commemorative plaque.

Councilmember Bridges noted that Mayor Lyman is very detail oriented and improved agenda bills by catching grammar and spelling errors. He also initiated a new form for city manager evaluations and performed a re-write of commission policies. There are many things that have Mayor Lyman's imprint on them. All the meetings were well run. Councilmember Bridges said she appreciated Mayor Lyman's knack for summation.

Councilmember Friedman recognized Mayor Lyman for being balanced, respectful and extremely gracious; for representing the City so well and for setting an exemplary tone when interacting with the public and within city and regional government.

Councilmember Benassini stated that she enjoyed how Mayor Lyman kept the City Council informed about the local and regional meetings he attended. Councilmember Benassini also expressed appreciation for Mayor Lyman's initiative in addressing issues that have not been discussed in awhile and require periodic evaluation and thanked Mayor Lyman for his hard work.

## SELECTION OF THE MAYOR

Mayor Lyman called for reorganization of the City Council.

Cheryl Morse, City Clerk, declared the offices of Mayor and Mayor Pro Tempore vacant and called for nominations for the Office of Mayor.

Councilmember Friedman nominated Mayor Pro Tem Abelson for Mayor.

Cheryl Morse, City Clerk, called for further nominations for which there were none.

Moved, seconded (Benassini/Lyman) and carried unanimously to close nominations.

**Action:** The City Council, by unanimous vote, elected Mayor Pro Tem Abelson Mayor.

## SELECTION OF THE MAYOR PRO TEMPORE

Mayor Abelson called for nominations for the Office of Mayor Pro Tem.

Councilmember Lyman nominated Councilmember Benassini for Mayor Pro Tem.

Mayor Abelson called for further nominations for which there were none.

Moved, seconded (Bridges/Lyman) and carried unanimously to close nominations.

**Action:** The City Council, by unanimous vote, elected Councilmember Benassini Mayor Pro Tem.

Mayor Abelson stated that the City Council will build on steps taken in the past year and will also be building for the future. There are a number of planning processes underway which will conclude next year and begin being implemented. This will result in a new look on San Pablo Avenue, with vibrant new projects and vacant storefronts that will be occupied with vibrant new businesses. It will be a year of building despite difficult economic times. Mayor Abelson said that she measures how well the Council is doing not by how well everyone gets along with each other but also how the Council handles disagreement. Mayor Abelson stated that she looks forward to working with the Council and the community including acknowledging any disagreement and moving forward in a positive way. Free speech is not about how you treat someone that agrees with you but more about how you treat the person that doesn't agree with you. If someone with an unpopular position is listened to and treated with respect then one can move forward in a positive way. Mayor Abelson thanked all of the Council for being part of a team and for making her experience of being part of the team so enjoyable.

**Speakers:** John Gioia, Contra Costa County Supervisor, stated that he is proud to represent El Cerrito on the Board of Supervisors. Supervisor Gioia acknowledged the leadership of outgoing Mayor Lyman and incoming Mayor Abelson. The El Cerrito City Council is a good example of good governance and each member acts a role model in the community. Supervisor Gioia stated that he had opportunity to serve with Mayor Lyman at the West County Mayors and Supervisors Association meetings and noted how Mayor Lyman kept track of all the various appointments made by the Contra Costa Mayors Conference to important regional bodies. So many appointments come from Central Contra Costa County that Mayor Lyman advocated for the West County Mayors and Supervisors Association to take a more active role in getting support county-wide for West Contra Costa representation. Mayor Lyman understood how important it is for West Contra Costa County to have a voice on important regional bodies. Additionally, Mayor Lyman was usually the most thoughtful and prepared member of the West County Integrated Waste Management Joint Powers Authority. Mayor Lyman represented the City Council and city residents very well.

Supervisor Gioia also acknowledged Mayor Abelson's leadership over the years not only as Mayor but also as Chair of the Contra Costa Transportation Advisory Commission (CCTA) and other regional bodies. The City is well represented by Mayor Abelson's leadership on transportation issues. Supervisor Gioia concluded by expressing how much he appreciates and values the County's partnership and teamwork with El Cerrito and how much the City welcomes the involvement of city commissions.

Al Miller, El Cerrito, noted that over the past year the West County Times featured negative articles and reports regarding neighboring cities or its Council. Fortunately, there have only been positive articles about El Cerrito's accomplishments. Mr. Miller thanked the Council for making the West County Times a pleasurable experience because it only says good things about the City.

LaTreesa Alford, Senior Representative, Office of Congressman George Miller, read congratulations and remarks from Congressman Miller, who was in Washington D.C. Congressman Miller congratulated outgoing Mayor Lyman, incoming Mayor Abelson and the entire City Council on its reorganization and also joined in congratulating Dr. Randy Schekman for his 2013 Nobel Prize.

Mayor Abelson concluded the City Council meeting by thanking friends and family members present and also expressed her hope in working together with everyone to make this a good year for El Cerrito.

**8. COUNCIL ASSIGNMENTS/LIAISON REPORTS** *(Held over to December 17, 2013 City Council meeting.)*

**SUPPLEMENTAL REPORTS AND COMMUNICATIONS**

**Item No. 7(A) City Council Reorganization**

1. Letter congratulating the City Council upon its reorganization – *Submitted by LaTreesa Alford on behalf of Congressman George Miller.*

**Other:**

2. Saving Lives and Building Hope in Every Community – *Submitted by Kim Coles, American Cancer Society.*
3. Where to Turn When You Have Cancer – *Submitted by Kim Coles, American Cancer Society.*

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



## AGENDA BILL

### Agenda Item No. 5(B)

**Date:** December 17, 2013  
**To:** El Cerrito City Council  
**From:** Sylvia M. Moir, Chief of Police  
**Subject:** Amend El Cerrito Municipal Code Chapter 11.64 - Bicycles

---

Adopt by title, waive any further reading and adopt an ordinance amending specified sections within El Cerrito Municipal Code Chapter 11.64. Sections pertaining to the licensing and inspection of bicycles have been repealed. Rules of the road have been updated. Sections requiring the wearing of helmets have been repealed as this is appropriately covered under State Law. *Exempt from CEQA. First reading November 19, 2013. Vote with amendments: Unanimous.*

#### **BACKGROUND**

On November 19, 2013 the police chief introduced an ordinance which updated El Cerrito Municipal Code Chapter 11.64 related to bicycles. During the City Council's discussion of the ordinance, questions were raised regarding the age of juveniles permitted to ride on sidewalks and whether the El Cerrito Mountain Bike Team, when practicing or racing would be considered in violation of the Trick riding section. The response to these issues is addressed in the Analysis section of this Agenda Bill.

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**

In response to the two sections requested for additional review – Section 11.64.040 – Rules of the road Sections A. B. and E. staff conducted further analysis.

- Section 11.64.040 A. Riding on Sidewalks was modified to include language consistent with language from other cities to permit peace officers riding on sidewalks. Once approved, the section will read:

No person shall ride or operate a bicycle on any sidewalk in the city except as herein specifically permitted and peace officers who determine in good faith that riding or operating a bicycle on the sidewalk is

necessary to perform official duties and juveniles as specifically permitted herein.

- Section 11.64.040 B. Juveniles Riding on Sidewalks was modified to reduce the permitted age from 18 to 16. This change reflects efforts to give younger bicyclists the option to ride on the sidewalk except those specifically prohibited. The change is intended to enhance safety and is not grossly outside the variety of age ranges permitted in other cities. Once approved, the section will read:

Juveniles under the age of ~~eighteen~~ sixteen 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.

- Section 11.64.040 E. Trick Riding is intended to keep those cyclists who engage in acrobatic, fancy or stunt riding on lands that are not travelled by pedestrians or vehicles where the blending of routine transportation and acrobatic, fancy or stunt riding would mix and increase the potential of collisions. Teams such as the El Cerrito High School Mountain Bike team do not engage in acrobatic, fancy or stunt riding as part of their training or racing so staff did not support specific permission outlined in this ordinance.

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.

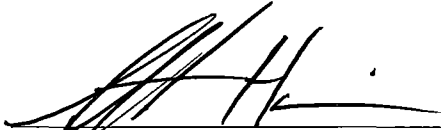
## **LEGAL CONSIDERATIONS**

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

**Agenda Item No. 5(B)**

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 'SH', is written over a horizontal line.

**Scott Hanin, City Manager**

**Attachments:**

1. Ordinance

ORDINANCE 2013-07

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 and~~ peace officers who determine in good faith that riding or operating a bicycle on the sidewalk is necessary to

perform official duties and juveniles as specifically permitted herein.

- B. Juveniles Riding on Sidewalks. Juveniles under the age of ~~eighteen~~ sixteen 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 intended 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 and 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.~~**

~~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 19, 2013 and passed by the following vote:

**Agenda Item No. 5(B)**  
**Attachment 1**

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

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. 5(C)

**Date:** December 17, 2013  
**To:** El Cerrito City Council  
**From:** Chris Jones, Recreation Director  
Bridget Cooney, Recreation Supervisor, Aquatics  
Jay Showalter, Aquatics Coordinator  
**Subject:** Pool Heaters Replacement

---

#### **ACTION REQUESTED**

Adopt a resolution authorizing the City Manager to enter into an agreement with Knorr Systems in an amount not to exceed \$120,000 (with contingencies) to purchase and install one Lochinvar Aquas Model XPN1520 heater and one Lochinvar Aquas Model XPN801 heater to replace the existing heaters on each pool at the El Cerrito Swim Center.

#### **BACKGROUND AND ANALYSIS**

Since the re-opening of the pool in 2004, the Swim Center has experienced multiple problems with its pool heaters, including lack of durability. The heat exchangers for the current pool heaters have failed consistently approximately every 18 – 24 months. When staff relayed the amount of time between heater failures to colleagues at a recent meeting of the Bay Area Public Pool Maintenance Operators (a gathering of maintenance operators from over twenty Bay Area Pools) it was clear that this timeframe was significantly below what others have experienced at their pools. Heater warranties generally range from five to ten years which is another indication that the 18-24 month lifespan of our heat exchangers is not typical. Our current heat exchangers fail by bowing in the middle after exposure to the high heat produced by the heater. This causes the heat exchanger to pull apart from the cast iron heads resulting in the eventual catastrophic failure of the heat exchanger. Other internal portions of the heater are also affected by the resulting water leaks.

The cost of replacement and installation each time a heat exchanger fails is approximately \$8,000 to \$15,000. To date, the City has spent approximately \$80,000 since 2006 for the purchase and installation of new heat exchangers. In addition, the pool closures caused by the failed heat exchangers result in lost revenue to the Swim Center in pool visits and refunds provided to customers for cancelled classes and programs.

Staff consulted with various experts and pool operators in the Bay Area with similar issues to determine the best course of action for remediating the issue of failed heat exchangers. Based on their advice and the fact that the heat exchanger failure is likely due to multiple issues, staff believes that the best course of action is to replace the City's

## Agenda Item No. 5(C)

current pool heaters with ones that utilize an external heat exchanger. This heater technology, which is relatively new, will eliminate many factors that can cause early heat exchange failure as explained in greater detail below.

In California, there are two main distributors of commercial pool heaters, Knorr Systems and Lincoln Aquatics. Through an informal bid process that complies with the Uniform Public Construction Cost Accounting Act, staff solicited bids for heaters with external heat exchangers from these two companies as well as San Jose Boiler Works. The results of this bid process are identified in Table 1 below.

**Table 1 – Pool Heater Types and Costs**

| <b>Vendor</b>         | <b>Type of Heater</b>        | <b>Cost of Heater &amp; Installation</b> |
|-----------------------|------------------------------|------------------------------------------|
| Knorr Systems         | Lochinvar Aquas XPN          | \$99,223.38                              |
| Lincoln Aquatics      | Raypak XTherm Boiler         | \$75,242.61                              |
| San Jose Boiler Works | RBI Fusion Condensing Boiler | \$149,958.00                             |

The bid from San Jose Boiler Works was eliminated from consideration due to its high cost. However, staff is proposing to accept Knorr System's bid rather than the less expensive bid from Lincoln Aquatics because the Aquas XPN heaters will deliver the best value to the City in terms of durability. As staff discovered during the informal bid process, the Aquas XPN series of heaters by Lochivar is currently the only pool heater with a true external heat exchanger and, in California, Knorr Systems is the sole vendor of this heater.

The Raypak XTherm Boiler, proposed by Lincoln Aquatics, does have an external heat exchanger, however, it is a secondary heat exchanger designed to capture wasted heat from the primary internal heat exchanger. The external heat exchanger on this model exists primarily for heater efficiency purposes, not for durability. The primary heat exchanger, which is also cupro-nickel remains exposed to direct fire similar to the current heaters. The fact that the Raypak XTherm Boiler's primary exchanger is internal leaves this heater more vulnerable to the issues affecting the City's current heaters, leaving the Lochinvar Aquas XPN heaters as the best choice.

As a general rule, properly maintained, chemically treated pool water is extremely hazardous to boiler systems. The advantage of the proposed heaters, the Lochinvar Aquas XPN, is that these heaters have primary external heat exchangers. This means that the heat exchanger keeps the pool water separated from the direct fired heat. Isolating pool water from the internal areas of the heaters eliminates the chemical-heat reaction problems that plague most boiler systems. The Lochinvar Aquas XPN also comes with titanium heat exchangers, a much more durable metal than the cupro-nickel exchangers found in the other bid heaters as well as the City's current pool heaters. The durability of the titanium and the removal of the heat exchangers from the direct heat

## **Agenda Item No. 5(C)**

will make them less likely to fail as the current heat exchangers do and will also better protect the other internal portions of the heater from leaking water. The installation of new heaters will also address a concern that the current heaters may not have been properly bonded or grounded to protect the heaters from stray currents or electrolysis.

On June 18, 2012, the City Council adopted the Fiscal Year 2013-14 Budget. Included in this approval was Capital Improvement Project C5030 with funding for capital upgrades or enhancements at the El Cerrito Swim Center. There are sufficient funds in this year's budget for this project.

### **ENVIRONMENTAL CONSIDERATIONS**

The current pool heaters at the El Cerrito Swim Center have an energy efficiency rating of 85% to 89% efficiency for gas going directly toward heating the pool water. The remaining 11% - 15% of energy used results in higher gas usage and therefore higher cost.

The proposed new pool heaters, the Lochinvar Aquas XPN, operate at an energy efficiency rating of 97%. This means that 97% of the gas used goes directly towards heating the pool water with only 3% of the energy wasted.

Additionally, greater energy efficiencies may be possible with the Variable Speed Drive that regulates the pool water flow in an energy saving manner. The current heater set-up precluded additional energy efficiency enhancements that have been implemented at other public pools.

Approval of the agreement is exempt from the California Environmental Quality Act ("CEQA") 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. (14 Cal. Code Regs. ("CEQA Guidelines") § 15061(b)(3).) Additionally, it is categorically exempt under CEQA Guidelines section 15301, because the work includes maintenance, repair, and minor alterations of existing facilities.

### **STRATEGIC PLAN CONSIDERATIONS**

Approval of the proposed purchase and installation of the Lochinvar Aquas XPN pool heaters would help fulfill the following City of El Cerrito Strategic Plan Goals:

Goal B: Long-term financial sustainability will be increased by significantly reducing the amount of money spent on pool heater maintenance and repairs. Great heater efficiency will also result in decreased utility costs.

Goal D: Ongoing maintenance of the pool heaters will decrease significantly.

Goal F: Environmental sustainability is increased with greater energy efficiency.

**FINANCIAL CONSIDERATIONS**

The current heaters at the El Cerrito Swim Center are rated at an energy efficiency of 89%. The proposed Lochinvar Aquas XPN heaters are rated at an energy efficiency of 97%. The anticipated average energy savings is approximately \$15,000 per year for the competition pool and \$5,000 per year for the recreation pool. Additional savings of approximately \$5,000 per year will also be seen as a result of the lower servicing requirements of the Lochinvar Aquas XPN heaters compared to the Swim Center's current heaters. Total annual savings as a result of installing the proposed heaters is approximately \$25,000 per year.

Staff is proposing the authorization of an approximately 20% contingency fund, bringing the total authorized amount to \$120,000. There may be unforeseen repairs, adjustments, and/or additional parts needed once the current heaters are removed.

Capital Improvement Project C3050 is funded by the Measure A Parcel Tax approved by voters in 2000. The City Council has approved surplus funds generated by Measure A to be used on Swim Center capital projects.

**LEGAL CONSIDERATIONS**

The City Attorney has reviewed proposed actions and found that legal considerations have been addressed. Sole source procurement is authorized for the pool heater replacement project pursuant to Public Contract Code § 3400 (c)(3), which permits the procurement of particular materials or products where available only from one vendor. Here, the Lochinvar Aquas heaters are available only from Knorr Systems.

**Reviewed by:**



**Scott Hanin, City Manager**

**Attachments:**

1. Resolution
2. Informal Bid Proposals
3. Sole Source Letter from Lochinvar
4. Industry Testimonials for Lochinvar Aquas Heaters

RESOLUTION 2013-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ENTER INTO AN AGREEMENT WITH KNORR SYSTEMS FOR THE PURCHASE AND INSTALLATION OF ONE LOCHINVAR AQUAS XPN1520 HEATER AND ONE LOCHINVAR AQUAS XPN801 HEATER FOR AN AMOUNT NOT TO EXCEED \$120,000.00

WHEREAS, the current pool heaters at the El Cerrito Swim Center have, on average, failed every 18-24 months since the Swim Center's opening in 2004; and

WHEREAS, this failure rate is well below the industry standard and comes at considerable cost to the City; and

WHEREAS, staff, in consultation with various pool experts and operators have determined that the best course of action would be to purchase more durable heaters with external heat exchangers; and

WHEREAS, the City is subject to the to the Uniform Public Construction Cost Accounting Act, Public Contract Code § 22000, 22032(b), which authorizes the City Council the use of an informal bid process for projects that do not exceed \$175,000; and

WHEREAS, this project is also exempt from the competitive bidding requirements pursuant to the established common-law doctrine articulated in the case of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App. 3d 631 because the purchase of this equipment is determined to be necessary to serve the best interests of the City; and

WHEREAS, staff received three proposals in an informal bid process for new pool heaters and staff finds Knorr System's bid as the most qualified company to provide these items; and

WHEREAS, sole source procurement is authorized for the pool heater replacement project pursuant to Public Contract Code § 3400 (c)(3), which permits the procurement of particular materials or products where available only from one vendor; and.

WHEREAS, the Lochinvar Aquas heaters are available only from Knorr Systems; 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 15301 (maintenance, repair, and minor alterations of existing facilities).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby authorizes the City Manager or his designee to enter into an agreement with Knorr Systems for the purchase and installation of one Lochinvar Aquas Model XPN1520 and one Lochinvar Aquas Model XPN801 not to exceed \$120,000 which amount is the total of Knorr System's bid of \$99,223.38 plus an additional \$20,776.62 contingency fund for unforeseen repairs and/or parts to facilitate the installation of the new heaters.

I CERTIFY that at the regular meeting on December 17, 2013, the El Cerrito City Council passed this resolution by the following vote:

|          |                 |
|----------|-----------------|
| AYES:    | COUNCILMEMBERS: |
| NOES:    | COUNCILMEMBERS: |
| ABSENT:  | COUNCILMEMBERS: |
| ABSTAIN: | COUNCILMEMBERS: |

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

---

Cheryl Morse, City Clerk

APPROVED:

---

Janet Abelson, Mayor



FACTORY REPRESENTATIVES - STOCKING DISTRIBUTORS - SINCE 1922

Contractors License # 307847

Date: 12/13/11

Quotation #GE-121311-E

City of El Cerrito

Attn: Jay

E-mail: jshowalter@ci.el-cerrito.ca.us

Re: Pool boiler replacement

As we discussed, the best option for this kind of installation is a copper fin boiler and a separate plate & frame heat exchanger. Although you lose a little in heat transfer efficiency, keeping the pool water separated from the boiler will extend the life of the boiler. While titanium plates are recommended by the manufacturer for pool applications, we have used standard stainless steel plates with good results. You expressed interest in high efficiency condensing boilers which won't really have an effect on the "life-span" issue, but will change the sizing of the heat exchanger and may result in reduced fuel usage. I have quoted all these options and will try to keep them from getting too confusing.

**Competition pool**

Condensing boiler: RBI Fusion CP2000 with SS plate and frame heat exchanger.

Total for materials and labor.....**\$82,916.00**

(for titanium plates, add.....\$4,000.00)

Non-Condensing boiler: RBI Futera II-2000 with SS plate and frame heat exchanger.

Total for materials and labor.....**\$67,718.00**

(for titanium plates, add.....\$1,700.00)

**Instruction pool**

Condensing boiler: RBI Fusion CP1000 with SS plate and frame heat exchanger.

Total for materials and labor.....**\$67,042.00**

(for titanium plates, add.....\$1,500.00)

Non-Condensing boiler: RBI Futera II-1000 with SS plate and frame heat exchanger.

Total for materials and labor.....**\$58,934.00**

(for titanium plates, add.....\$1,300.00)

We would do as much pre-piping here in the shop as possible to limit down-time, but we're still probably looking at 10 working days to complete the installation.

**610 Stockton Avenue San Jose, CA 95126 Phone (408) 295-5235 Fax (408) 295-6365**



---

FACTORY REPRESENTATIVES - STOCKING DISTRIBUTORS - SINCE 1922

---

Work to be performed during normal working hours (M-F/7:30AM-4:00PM) unless otherwise agreed. Please let me know if you have any questions.

Notes: Prices are good for 30 days from the date of this quotation. Beyond that, please call to confirm pricing. Prices do not include installation of equipment, unless otherwise noted. Prices do not include sales tax, unless otherwise noted. If there is any suspicion of asbestos in the area in which we will be working, it must be abated by a certified abatement company before we begin any work. SJBW does not provide pipe and or tank insulating services as part of our installations or repair work. However we can offer a number of companies that perform this type of work in order to save the end user (customer) money and avoid the unnecessary sub contract mark up. Please feel free to contact our office for a list of insulating contractors. Any required permits are not included and are the responsibility of others, unless stated otherwise in this quotation. Payment terms: Net 30 days on approved credit. First-time and large dollar amounts will require 50% or 100% payment prior to release of order, per factory standard policy.

Sincerely,

Garen Edwards

Accepted By: \_\_\_\_\_

Please Print: \_\_\_\_\_

Purchase Order # \_\_\_\_\_

|                                                                                       |
|---------------------------------------------------------------------------------------|
| <b>610 Stockton Avenue San Jose, CA 95126 Phone (408) 295-5235 Fax (408) 295-6365</b> |
|---------------------------------------------------------------------------------------|

Lincoln Equipment, Inc.  
2051 Commerce Avenue  
Concord, CA 94520  
Phone: 800-223-5450  
Fax: 888-680-2825



**Agenda Item No. 5(C)**  
**Attachment 2(b)**

## SALES QUOTE

Sales Quote Number: WQ48123  
Sales Quote Date: 12/5/13  
Page: 1

Sold To: El Cerrito, City of  
Bridget Cooney  
10940 San Pablo Avenue  
El Cerrito, CA 94530

Ship To: El Cerrito, City of  
Bridget Cooney  
10940 San Pablo Avenue  
El Cerrito, CA 94530

Ship Via UPS GRD  
Ship Method FOBO  
Terms NET30  
Sales Person Craig Powell/209/527-3566

Customer ID ECC10  
Cust Phone 510/215-4310  
Cust Fax 510/215-4319

| Item No.  | Description                                                                  | Unit | Quantity | Unit Price  | Total Price |
|-----------|------------------------------------------------------------------------------|------|----------|-------------|-------------|
| 21-670    | Raypak XTherm 2,000,000 BTU heater, natural                                  | EACH | 1        | \$29,595.00 | \$29,595.00 |
| 21-000    | CAI Code Equipment                                                           | EACH | 1        | \$265.00    | \$265.00    |
| 21-000    | PVC Venting                                                                  | EACH | 1        | \$365.00    | \$365.00    |
| 21-650    | Raypak XTherm 1,000,000 BTU heater, natural                                  | EACH | 1        | \$21,930.00 | \$21,930.00 |
| 21-000    | CAI Code Equipment                                                           | EACH | 1        | \$265.00    | \$265.00    |
| 21-000    | PVC Venting                                                                  | EACH | 1        | \$365.00    | \$365.00    |
| NAS-LABOR | NAS-Labor Installation complete with demolition and removal of old equipment |      | 1        | \$16,975.00 | \$16,975.00 |
| ACTUAL    | Actual Freight                                                               |      | 1        | \$600.00    | \$600.00    |

**To approve or review this quote, please contact your sales rep at the number shown above.**  
**You can also phone us at: 800-223-5450**

To expedite orders, please include Quote Number with purchase order.  
Orders placed after the expiration date may be re-quoted. Freight quotes good for 30 days.

**Submitted By:** \_\_\_\_\_ **Accepted By:** \_\_\_\_\_

Amount Subject to  
Sales Tax  
52,785.00

Amount Exempt  
from Sales Tax  
17,575.00

Subtotal: 70,360.00  
Invoice Discount: 0.00  
Total Sales Tax: 4,882.61

Total: 75,242.61

## EQUIPMENT QUOTATION

Date: November 6, 2013  
 To: Jay Showalter  
 City of El Cerrito, El Cerrito Swim Center  
 (510) 559-7008 [jshowalter@ci.el-cerrito.ca.us](mailto:jshowalter@ci.el-cerrito.ca.us)  
 From: George A. Olinger  
 Project: El Cerrito Swim Center Aquas 97% Efficient Indirect Heating System Proposal



| SECTION                                 | QTY | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | PRICE EACH         | EXTENDED TOTAL     |
|-----------------------------------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------|
| Lap Pool Indirect Heating System        | 1   | Lochinvar AQUAS model XPN1520 natural gas 97% efficient indirect swimming pool heating system, each system includes: skid mounted 1.5 million Btu boiler with Smart System touch screen controls, 2.0 million Btu Titanium heat exchanger with 5 year warranty and CPVC connections, two (2) primary boiler water circulating pumps, and each system is factory tested and certified ASME constructed. Complete package includes installation diagram and support, factory system commissioning and operator training by certified Lochinvar technician from Knorr Systems. | 49,168.00          | 49,168.00          |
| Recreation Pool Indirect Heating System | 1   | Lochinvar XLP Pool Heater Package model XPN801 (800,000 BTU input each), with; Condensing Boiler design with ASME construction, external Titanium heat exchanger with 5 year warranty, up to 97% thermal efficiency, low NOx operation, adjustable high limit w/ manual reset, flowswitch, relief valve, temperature and pressure gauge, and factory supplied sidewall vent termination. Includes factory start up and operator training.                                                                                                                                   | 24,236.00          | 24,236.00          |
| Installation Labor                      | 1   | Installation of two (2) Aquas Indirect Heating Systems. Removal and disposal of existing heating systems. Modification of existing recirculation system plumbing to match external heat exchanger plumbing. Modify heating system loops. Installation of new PVC venting systems and terminate through the existing roof penetration. Modify existing gas lines to new point of connections. Install domestic water lines for hydronic loop fill.                                                                                                                           | 9,600.00           | 9,600.00           |
| Installation Materials                  | 1   | Installation materials to install two (2) Aquas Indirect Heating Systems. Provide all plumbing materials including pipe, fittings, and valves. Modify existing electrical feeds to the new equipment. Provide factory authorized start-up and training for a complete turnkey system.                                                                                                                                                                                                                                                                                       | 6,800.00           | 6,800.00           |
|                                         |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Subtotal           | \$80,204.00        |
|                                         |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Sales Tax          | \$7,619.38         |
|                                         |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Installation Labor | \$9,600.00         |
|                                         |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Freight            | \$1,800.00         |
|                                         |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>Total</b>       | <b>\$99,223.38</b> |

## Terms and Conditions

**Payment Terms:** Net 30 days after date of invoice, subject to credit approval  
**Interest:** 18% APR is charged on all past due invoices.  
**Freight:** FOB equipment ship point, see above for estimated freight charges.  
**Sales Tax:** Subject to sales tax rate as noted above.  
**Notes:** ***Pricing is valid until February 4, 2014***  
***Pricing excludes plan check and Health Department permit fees.***  
***Pricing excludes Bid / Payment / Performance bond fees.***  
**Start-Up:** ***Mechanical equipment start-up (as noted on each equipment item)***  
***is provided at no charge by KSI's Service Department.***

Please review the quote for accuracy. If acceptable, please sign and provide a purchase order number, if applicable, and return via fax, (925) 273-0726, or email, georgio@knorrsystems.com.  
Thanks, George Olinger

---

PRINT NAME

---

DATE

---

APPROVED BY

---

PO #

---

Corporate Office:  
2221 Standard Avenue  
Santa Ana, CA 92707  
Phone: (714) 754-4044  
Fax: (714) 754-1405

Northern California:  
2021 Las Positas Court, Suite 143  
Livermore, CA 94551  
Phone: (925) 273-0722  
Fax: (925) 273-0726

Washington:  
303 91st Ave., Suite E502 PMB104  
Lake Stevens, WA 98258  
Phone: (206) 501-1270  
Fax: (425) 610-4040

South Central:  
P.O. Box 703567  
Dallas, TX 75370-3567  
Phone: (972) 732-0306  
Fax: (972) 732-0305



November 6, 2013

Mr. Jay Showalter  
CITY OF EL CERRITO  
VIA EMAIL: [jshowalter@ci-el-cerrito.ca.us](mailto:jshowalter@ci-el-cerrito.ca.us)

Re: AQUAS™ Pool Heating Systems

Dear Mr. Showalter:

Lochinvar Corporation is the sole manufacturer of the AQUAS™ pool heating system. For your review, I've attached our written technical specifications outlining the complete AQUAS™ system and components.

It has been and will continue to be Lochinvar's policy to utilize factory trained and certified representation to promote, sell and service our line of heaters.

Lochinvar places significant importance on selecting the most qualified aquatic pool professionals in each marketplace to represent our pool heaters. All of our selected distributors must meet our education and training standards.

This letter will serve to confirm our master swimming pool heater distributor, Knorr Systems, Inc. for the State of California. We have chosen this company due to their expertise, knowledge and excellent reputation in the industry. We acknowledge that Knorr Systems technicians have been trained and certified in all aspects of the AQUAS™ pool heater systems.

If you have further questions or need additional information, please don't hesitate to contact me.

Sincerely,

*Rich Murphy*

Rich Murphy  
National Sales Manager, Pool Division

RM:blc

***Industry Testimonials***

**Mills College Trefethan Aquatics Center - Oakland, CA**

**From:** Carol Berendsen [carolb@mills.edu]  
**Sent:** Thursday, September 12, 2013 1:15 PM  
**To:** Jay Showalter  
**Subject:** Re: Pool Heater Questions

Our heaters are GREAT! The first year we reduced our gas costs by 50%. It's better now that we have replaced/repared all of our pool covers. Approval came because we were running on one of three boilers for about 6 months and our water temperature was all over the place with swings of up to 7-8 degrees in 24 hours. We have a VP of Campus Facilities who determines what the priorities are and makes the decisions on the product. I think Knorr may have swayed her toward the Lochinvar.

Best,  
Carol

**New Port-Mesa USD, Costa Mesa High School Pool – Costa Mesa, CA**

**From:** Jeff Amend [jamend@nmusd.us]  
**Sent:** Monday, September 16, 2013 8:27 AM  
**To:** Jay Showalter  
**Subject:** RE: Pool Heater Questions

Good morning Jay,

I need to answer your last question first. We were the first to receive these heaters; we were a BETA test site for them so we received a significant discount for that. Also we have been working with Knorr and Lochinvar for at least 20 years; they are both a reputable companies and have taken very good care of us. That should answer your last two questions. With that said with the exception of some minor bugs in the beginning the heaters have been flawless and in my estimate about 20% more efficient than our old Lochinvar heaters. I love the new heaters.

Lochinvar and Knorr have both been out several times to check and inspect them and their service has been excellent. When AQMD comes out to inspect all of our boilers all they do is stick their head in the door and when they see the Lochinvars they just move on to the next boiler room. We have 3 other 50 meter pools that have the older CPN boilers and when it comes time to replace them I plan to install the new Lochinvars there as well, they are good boilers and if you decide to go with Knorr and Lochinvar you won't be disappointed. You may think that just because we received a discount that I say this but not true, we took a huge risk being a beta test site and when I tell you that they are good boilers my reputation is on the line

### ***Industry Testimonials***

and have nothing to gain by telling you otherwise. If you have any other questions or would like some pictures or would even like to visit our site and talk to my pool man please feel free, you can call my cell any time.

Sincerely,  
Jeff Amend



**JEFF AMEND**  
*MAINTENANCE & OPERATIONS MANAGER*  
*NEWPORT-MESA UNIFIED SCHOOL DISTRICT*  
*PHONE: (714) 424-7538*  
*FAX: (714) 424-7503*  
*CELL: (714) 936-0244*

### **Pepperdine University, Raleigh Runnels Memorial Pool - Malibu, CA**

**From:** Perez, Raul  
**Sent:** Friday, September 13, 2013 9:39 AM  
**To:** Jay Showalter; Perez, Raul  
**Subject:** Re: Pool Heater Questions

Jay, I am out of office until Monday. I scanned through your email and at first blush can tell you that we hired a pool systems engineering firm- Greg at Rowley International; this after a Request for Qualifications was sent out to potential firms. From the responses we solicited bids from 3 pool engineering firms. Greg submitted two options for us, Raypak being one. After comparing both models and interviewing different contractors, we went with the Aquas. They stacked up as far more superior in efficiency with easy access to heat exchanger. We repeated our process to select a contractor- Horizon Mechanical. They did an excellent job. Reason for project was had been experiencing early heat exchanger failures with previous boiler models. I recommend reaching out to Greg at Rowley if you'd like to know more. I can connect with mechanical staff when I get back to see what there take is on it.

***Industry Testimonials***

Cheers

Raul

Sent from my Samsung Infuse



## AGENDA BILL

### Agenda Item No. 5(D)

**Date:** December 17, 2013

**To:** El Cerrito City Council

**From:** Hilde Myall, Housing Program Manager  
Melanie Mintz, Interim Community Development Director

**Subject:** Approval of an Extension to the Exclusive Negotiating Rights Agreement with Eden Housing Inc. for City Housing Property at 10848 and 10860 San Pablo Avenue

---

### ACTION REQUESTED

Adopt a resolution (Attachment 1) authorizing the City Manager to extend the Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing, Inc. (Developer) for negotiation of a Disposition and Development Agreement (DDA) of an affordable housing project (Project) at 10848-10860 San Pablo Avenue to July 1, 2014. *Extension of the ENRA is not a project under CEQA; an Environmental Impact Report has been prepared for the Eden Housing and will be considered by the Planning Commission on December 18, 2013.*

### BACKGROUND

Through a developer solicitation process, on October 18, 2010 the former El Cerrito Redevelopment Agency Board (Agency Board) selected Eden Housing, Inc. as Developer for the property at 10848 and 10860 San Pablo Avenue (Property) and authorized the Executive Director to negotiate an ENRA. The Property was originally purchased, pursuant to Agency Board Resolution No. 576, in 2009 for the purpose of increasing, improving and preserving the community's supply of affordable housing.

On February 22, 2011, the Agency Board adopted Resolution No. 605 authorizing the Agency's Executive Director to execute the ENRA with Eden Housing, Inc. for the negotiation of a DDA for the development of an affordable residential mixed-use project on the Property. The ENRA was executed on March 8, 2011 and is included as Attachment 2.

On March 7, 2011, the Agency Board adopted Resolution No. 606 authorizing the execution of a predevelopment loan agreement for \$350,000 from the Low and Moderate Income Housing Fund with Eden Housing Inc. for the Project (Housing Loan).

On March 22, 2011, pursuant to Agency Board Resolution No. 613 and City Council Resolution No. 2011-24, the Property was conveyed to the City through a Property Conveyance Agreement. The ENRA was assigned to the City through the Property Conveyance Agreement.

## **Agenda Item No. 5(D)**

On January 17, 2012, the City Council adopted Resolution No. 2012-04 to retain the housing assets and functions previously performed by the Redevelopment Agency and becoming the housing successor to the El Cerrito Redevelopment Agency. Pursuant to Assembly Bill x1 26 (Dissolution Act), the Redevelopment Agency was dissolved as of February 1, 2012. Upon dissolution, all housing assets, less the unencumbered housing balance, and obligations of the former Agency were transferred to the City as housing successor.

In March 2012, as permitted pursuant to Section 1.2 of the ENRA, the City Manager extended the negotiating period of the ENRA by 90 days.

On May 15, 2012, the City Council adopted Resolution No. 2012-35 extending the Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing through June 8, 2013. Extension of the ENRA allowed the City time to resolve the property asset transfer issues related to the dissolution of the former Redevelopment Agency. Pursuant to the Dissolution Act, the City of El Cerrito submitted a Housing Assets Transfer Form to the California Department of Finance (DOF). In September 2012, the City received a letter from the DOF indicating that they had reviewed the Housing Assets Transfer Form and did not object to any assets or transfers of assets. Relying upon that approval and discussions with reputable title companies, the Developer has proceeded with entitlements work for the project.

On May 21, 2013, the City Council adopted Resolution No. 2013-26 extending the ENRA with Eden Housing through January 8, 2014.

### **ANALYSIS**

The ENRA establishes procedures and standards for the negotiation of the DDA including achievement of certain predevelopment tasks to determine the feasibility of the development. The ENRA does not obligate either party to acquire or convey any property, grant the developer the right, entitlement or environmental approvals to develop the property, or obligate the parties to undertake any activities or costs, except for the preliminary analysis and negotiations contemplated in the ENRA. Negotiation of an ENRA does not commit the City to award funds nor to pay any cost incurred by the developer in preparing the submittal or in negotiating the ENRA.

### ***Current Development Proposal***

The project proposal is for a mixed-use residential development consisting of approximately 63 rental units (62 affordable units for seniors and 1 manager's unit), approximately 1,900 square feet of commercial space for the Samuel Merritt College Clinic, approximately 1,150 square feet of retail space, and retaining as a historic cultural resource the Contra Costa Florist Shop, which is the small stone-faced structure facing San Pablo Avenue.

### ***Financing***

The total loan amount of the City's Housing Loan with Eden is \$350,000. A total of \$100,000 of the loan commitment has been disbursed to the project. The outstanding balance of \$250,000 is an enforceable obligation of the Successor Agency and has been

## **Agenda Item No. 5(D)**

listed on the Recognized Obligations Schedule for the January through June 2014 period. Pursuant to the terms of the Housing Loan, no funds in excess of \$100,000 can be disbursed until Eden has executed a DDA with the City for the subject property.

In addition to the City's loan commitment of \$350,000, Eden proposes to pursue a combination of County HOME/CDBG funds, County Housing Authority Project-based Section 8 funds and 9% Low Income Housing Tax Credits (LIHTC), which are allocated through competitive processes. If successful in obtaining County housing funds, the developer would anticipate submitting an application to the State Tax Credit Allocation Committee (TCAC) for 9% LIHTC in the March 2014 round.

### ***Entitlements and Environmental Review***

Eden Housing submitted a revised planning application for the project in mid-November which responded to public comments, refined certain elements and provided significant design and content development of the historical interpretive display. The project is scheduled to come before the Planning Commission for consideration of the California Environmental Quality Act (CEQA) environmental review document and land use approvals on December 18<sup>th</sup>.

The City has prepared and circulated for public comment a Draft Environmental Impact Report (EIR) for the project. The Draft EIR was published in late August and is available on the Community Development Department's webpage and at City Hall. The circulation and public comment period for the Draft EIR closed on October 10th. During that time, staff scheduled several opportunities for public review and comment, including a community meeting on historic features on September 11th; Planning Commission CEQA Scoping and Study Session on September 18th; and a Design Review Board Conceptual Review on October 2nd. The Final EIR, which includes all comments received on the Draft EIR and responses to those comments is available at City Hall and on the Community Development Department's webpage.

As discussed in the EIR and presented at public meetings, Eden Housing is proposing to address the impacts of the project on the Mabuchi residence and Contra Costa Florist Shop through a combination of measures including retaining and rehabilitating the Contra Costa Florist Shop, documenting the historic resource through a historic building survey, incorporating Japanese-inspired landscaping and commissioning an interpretive display to commemorate the history of the site.

Eden has involved key stakeholders from the El Cerrito Historical Society and the Contra Costa Japanese American Citizens League and hired a professional exhibit design firm to design and develop the content of the interpretive display commemorating the history of the Contra Costa Florist Shop and the Japanese-American cut-flower industry in Western Contra Costa County.

### ***Requested ENRA Extension***

Staff and the developer are in negotiations for terms of the potential development agreement and land transfer including the development financing plan, business terms with the Samuel Merritt Clinic, retail terms, and overall timeframe for development. Staff has engaged the services of Keyser Marston to assist in developer negotiations and

## **Agenda Item No. 5(D)**

the preparation of the Summary Report that is required to be prepared pursuant to Health and Safety Code Section 33433. Staff will update City Council as appropriate as real estate negotiations progress.

Staff anticipates bringing the DDA to City Council for consideration in February 2014 after completion of CEQA and entitlement approvals.

The developer has been proactive in resuming entitlements and environmental review work for the project. Staff recommends that Eden Housing has made satisfactory progress under the ENRA to merit an extension. The extension would be in the form of a letter agreement, a draft of which is included as Attachment 3.

### **ENVIRONMENTAL REVIEW**

The extension of the ENRA does not constitute a project pursuant to the California Environmental Quality Act (CEQA) and does not commit the City to proceed with the development at this phase.

### **FINANCIAL CONSIDERATIONS**

The financial impact of this item is neutral as the proposed City Council action does not commit funds nor obligate the City to commit funds in the future.

### **LEGAL CONSIDERATIONS**

The Counsel to the City as housing successor has reviewed this report and the attachments.

**Reviewed by:**

  
\_\_\_\_\_  
**Scott Hanin, City Manager**

**Attachments:**

1. Resolution Authorizing the Extension of the Exclusion Negotiating Rights Agreement
2. Exclusive Negotiating Rights Agreement between the Agency and Eden Housing, Inc.
3. Draft Letter Agreement Extending the Exclusive Negotiating Rights Agreement

RESOLUTION NO. 2013-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AS HOUSING SUCCESSOR TO THE EL CERRITO REDEVELOPMENT AGENCY (THE “CITY”) AUTHORIZING THE CITY MANAGER TO EXTEND THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH EDEN HOUSING, INC. FOR NEGOTIATION OF A DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE PROPERTY AT 10860 AND 10848 SAN PABLO AVENUE

WHEREAS, the former El Cerrito Redevelopment Agency (the “Agency”) and City of El Cerrito have encouraged redevelopment in specific portions of the El Cerrito Redevelopment Project Area in accordance with the goals and objectives of the City of El Cerrito Redevelopment Plan as amended; and

WHEREAS, the Agency acquired 10860 and 10848 San Pablo Avenue (the “Property”) for the purposes of increasing, improving and preserving the community’s supply of low- and moderate-income housing and, in part, used Housing Fund monies to purchase the Property pursuant to California Health and Safety Code §33334.2; and

WHEREAS, the Agency issued a request for qualifications and proposals from developers to solicit interest in redeveloping the Property as a residential mixed-use development including affordable housing consistent with California Health and Safety Code §33334.2 and the City of El Cerrito General Plan; and

WHEREAS, the Agency Board, after reviewing the submitted proposals determined that Eden Housing, Inc.'s proposal most closely met the Agency's goals for development of the Property and is the most qualified developer of those who submitted proposals; and

WHEREAS, the Agency Board adopted Resolution No. 600 on October 18, 2010 designating Eden Housing, Inc. as the selected developer (the “Developer”) for the Property with the goal of negotiating a Disposition and Development Agreement (the “DDA”) for the development of the Property; and

WHEREAS, the Agency Board adopted Resolution No. 605 on February 22, 2011 authorizing the Executive Director to execute an Exclusive Negotiating Rights Agreement with the Developer for negotiation of a DDA (the “ENRA”); and

WHEREAS, the Agency executed an ENRA with the Developer on March 8, 2011; and

WHEREAS, the Developer seeks to acquire the Property and develop a mixed-use residential development consisting of approximately 63 rental units affordable to very low- and low-income households including commercial space for the Samuel Merritt College Clinic, a retail space and preservation of the historic florist shop located on the Property (Development); and

**Agenda Item No. 5(D)**  
**Attachment 1**

WHEREAS, the Agency provided a loan (Loan) from the Low and Moderate Income Housing Fund to the Developer for predevelopment expenses related to the Development for the purposes of increasing, improving and preserving the community's supply of low- and moderate-income housing pursuant to California Health and Safety Code §33334.2; and

WHEREAS, the Agency and the City have entered into a Property Conveyance Agreement conveying the Property to the City and wherein the City assumed the Agency's rights and obligations under the ENRA to cause development of the Property consistent with the Redevelopment Plan and the Property's intended use for the purposes of developing affordable housing units; and

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

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

WHEREAS, the City adopted Resolution No. 2012-35 extending the negotiating period of the Exclusive Negotiating Rights Agreement to June 8, 2013; and

WHEREAS, the City adopted Resolution No. 2013-26 extending the negotiation period of the Exclusive Negotiating Rights Agreement to January 8, 2014; and

WHEREAS, the City Council desires to extend the negotiating period of the Exclusive Negotiating Rights Agreement to July 1, 2014 subject to the Developer's written consent to such extension; and whereas an extension of the ENRA also extends the Right of Entry between the Developer and the City dated March 8, 2011 for the Property.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council finds that the above recitals are accurate.
2. The City Council hereby authorizes and directs the City Manager to prepare and execute an extension of the Exclusive Negotiating Rights Agreement to July 1, 2014 on behalf of the City as housing successor, and related documents and to take such other actions as are appropriate to effectuate the purposes of this Resolution.
3. Nothing in this Resolution shall affect the City's policy discretion in granting or denying any potentially necessary Planning Approvals or other entitlements.
4. This Resolution shall become effective immediately upon its adoption.

**Agenda Item No. 5(D)**  
**Attachment 1**

I CERTIFY that at the regular meeting on December 17, 2013, the City Council of the City of El Cerrito passed this resolution by the following vote:

|          |                  |
|----------|------------------|
| AYES:    | COUNCIL MEMBERS: |
| NOES:    | COUNCIL MEMBERS: |
| ABSTAIN: | COUNCIL MEMBERS: |
| ABSENT:  | COUNCIL MEMBERS: |

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

\_\_\_\_\_  
Cheryl Morse, City Clerk

Approved:

\_\_\_\_\_  
Janet Abelson, Mayor

## EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This Exclusive Negotiating Rights Agreement (this "Agreement") is entered into as of this 8 day of March, 2011 (the "Effective Date"), by and between the El Cerrito Redevelopment Agency (the "Agency"), and Eden Housing, Inc., a California nonprofit public benefit corporation ("Developer").

### RECITALS

A. The Agency is responsible for the implementation of the El Cerrito Redevelopment Plan (the "Redevelopment Plan") to redevelop the El Cerrito Redevelopment Project Area (the "Project Area") consistent with the policies and standards of the General Plan of the City of El Cerrito (the "City"). The goals of the Redevelopment Plan include, but are not limited to, the alleviation of blighting conditions, the stimulation of economic development, the creation of job opportunities and the creation of housing opportunities that serve the full spectrum of households in the City in the Project Area. Amongst the goals of the Redevelopment Plan is the revitalization of the Civic Center/Midtown area which is located within the Project Area. Revitalization of the Civic Center/Midtown area entails the provision of affordable housing, meeting the community's housing needs, supporting mixed-use development appropriate to the area's Transit Oriented Mixed-Use zoning and the incorporation of a civic or community-serving use such as a senior center.

B. The Agency acquired 10860 and 10848 San Pablo Avenue (the "Property") located in the Civic Center/Midtown area for the purposes of increasing, improving and preserving the community's supply of low and moderate income housing and, in part, used Housing Fund monies to purchase the Property pursuant to California Health and Safety Code Section 33334.2.

C. The Agency issued a request for qualification and proposals (RFQ/P) from housing developers to solicit interest in redeveloping the Property as a residential mixed-use development including affordable housing consistent with California Health and Safety Code Section 33334.2 and the City of El Cerrito General Plan.

D. In connection with the RFQ/P, the Developer submitted a response dated June 21, 2010 (the "Developer Response"), setting forth a development proposal described in Exhibit A. The Developer Response includes sixty-four (64) rental units to be developed by Developer. The rental units proposed in the Developer Response consist of two (2) studio apartments, sixty (60) one-bedroom apartments and two (2) two-bedroom apartments, one (1) of which will be utilized as a management unit. The Developer Response also provides for up to four thousand six hundred fifty (4,650) square feet of commercial space. The Developer Response proposes using two thousand four hundred (2,400) square feet of the commercial space for a health clinic. The remaining two thousand two hundred fifty (2,250) square feet are proposed as neighborhood-serving retail or professional office flex space.

E. The Agency, after reviewing all the submitted proposals, determined that the Developer's proposal most closely meets the Agency's goals for development of the property, and the Developer is the most qualified developer of those who submitted proposals.

F. Based on a review of the Developer's Proposal, the Agency directed Agency staff to negotiate with the Developer to achieve the completion of the Development.

G. The Agency and the Developer desire to seek to negotiate the terms of a Disposition and Development Agreement ("DDA") which would provide for the development of a project consistent with Developer Response ("Development").

H. Completion of the Development will assist in ameliorating blighting influences in the El Cerrito Redevelopment Project Area, will serve as a catalyst for redevelopment throughout the Project Area and will provide necessary, affordable housing for seniors at affordable housing costs pursuant to California Health and Safety Code Section 33334.2.

I. The purpose of this Agreement is to establish procedures and standards for the negotiation by the Agency and the Developer of the DDA. As more fully set forth in Section 3.1 below, the parties acknowledge and agree that this Agreement in itself does not obligate either party to acquire or convey any property, does not grant the Developer the right to develop the Development, and does not obligate the parties to undertake any activities or costs, except for the preliminary analysis and negotiations contemplated by this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

### ARTICLE 1. EXCLUSIVE NEGOTIATIONS RIGHT

Section 1.1 Good Faith Negotiations. The Agency and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, the terms of the DDA. The RFP and the Developer Response shall serve as a guide in the negotiation of the DDA, although the parties acknowledge that review of additional information and further discussion may lead to refinement and revision of the development concepts and business terms set forth in the RFP, and the Developer Response. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory DDA.

Among the issues to be addressed in the negotiations are: the terms of any Agency financial assistance; preconditions for conveyance of Property; the development schedule for the

Development; financing of the Development by the Developer; management of the Development; design and aesthetic considerations of the Development; and similar matters.

Section 1.2 Negotiating Period. The negotiating period (the "Negotiating Period") under this Agreement shall be one (1) year, commencing on the Effective Date, subject to extension by mutual agreement of the parties in writing. The Negotiating Period may be extended on the Agency's behalf for up to ninety (90) days by the Executive Director of the Agency if, in the Executive Director's judgment, sufficient progress toward a mutually acceptable DDA has been made during the initial one (1) year negotiating period to merit such extension. If, pursuant to Section 2.8, the City determines that a Environmental Impact Report is required, the Negotiating Period shall be automatically extended for an additional one hundred eighty (180) days beyond the initial one year period.

If the DDA has not been executed by the Agency and the Developer by the expiration of the Negotiating Period (as the Negotiating Period may be extended by operation of the preceding paragraph), then this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement. If the DDA is executed by the Agency and the Developer, then upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed DDA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of Section 1.2), the Agency shall not negotiate with any entity, other than the Developer, regarding the development of the Property.

Section 1.4 Good Faith Deposit. In consideration for this Agreement, the Developer has, prior to execution of this Agreement by the Agency, provided to the Agency a cash deposit of Twenty Five Thousand Dollars (\$25,000) (the "Good Faith Deposit"). During the term of this Agreement, the Agency may (but shall not be required to) invest the Good Faith Deposit for purposes of earning interest thereon. The Good Faith Deposit is in addition to any fees the Developer may be required to pay the City or the Agency for processing of applications including the fees required for the preparation of CEQA documents.

The Agency may from time to time deduct funds from the Good Faith Deposit to pay the costs and consulting fees actually and reasonably incurred and documented by the Agency in connection with preparing and implementing this Agreement. Within fifteen (15) days after deducting funds from the Good Faith Deposit for such purposes, the Agency shall deliver to the Developer a statement describing the amount deducted and the costs and expenses being paid with such amount.

If this Agreement is terminated without execution of a DDA for any reason other than the Developer's breach of its obligations pursuant to this Agreement, then the Good Faith Deposit and any interest earned thereon shall be refunded promptly to the Developer, except that the Agency may retain the amount of costs and consulting fees actually and reasonably incurred and documented by the Agency in connection with preparing and implementing this Agreement.

If this Agreement is terminated by the Agency due to a breach of the Developer's obligations pursuant to this Agreement, the Good Faith Deposit and any interest earned thereon shall be retained by the Agency, as more fully provided in Section 3.7.

If performance of this Agreement results in execution of a DDA, the disposition of the Good Faith Deposit and any interest earned thereon shall be as set forth in the DDA.

Section 1.5 Identification of Developer Representative. The Developer's representatives to negotiate the DDA with the Agency are Linda Mandolini, Andrea Papanastassiou and Katie Lamont. Communications from the Agency to the Developer under this Agreement shall be transmitted in accordance with the provisions of Section 3.2.

## ARTICLE 2. NEGOTIATION TASKS

Section 2.1 Overview. To facilitate negotiation of the DDA, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period.

Section 2.2 Site and Architectural Plans. No later than sixty (60) days after the execution of this Agreement, the Developer shall prepare and submit to the Agency a proposed site plan and architectural drawings identifying the location, general configuration, and proposed design characteristics of the Development to the extent such site plan has changed since the Developer submitted the Developer Proposal. Thereafter, the parties shall consider appropriate refinements and modifications to such site plan and drawings, and for that purpose shall: (a) participate in a process which is mutually developed and agreed to by the Agency, the City and the Developer, to obtain and consider community input regarding the design of the Development; and (b) conduct discussions with appropriate City representatives regarding the site plan and drawings and the procedures for submittal and processing of an application for land use entitlements for the Development should a DDA be executed and become effective.

Section 2.3 Financing and Costs of Development. No later than ninety (90) days after the execution of this Agreement, the Developer shall provide the Agency with a detailed financial analysis for the Development containing, among other matters, a sources and uses for the Development, development budget and operating proforma setting forth the costs and revenues associated with developing and operating the Development. In the event that the sources and uses indicate that there is a gap in the available sources, the Developer shall identify the amount of the gap. Upon submission of the financial analysis, the Agency and the Developer shall meet to discuss possible options for filling any identified gap.

Section 2.4 Schedule of Performance. No later than ninety (90) days after execution of this Agreement, the Developer shall provide the Agency with a proposed detailed schedule of performance for the Development which shall include, but not be limited to: (a) the dates for obtaining land use entitlements and financing commitments for the Development, (b) the date for

the submittal of construction plans to the City, (c) the date for obtaining financing commitments; (d) the date for satisfaction of all preconditions to conveyance, (e) the date for close of escrow on the Development Site, and (f) the dates for the commencement and completion of construction of the Development.

Section 2.5 Due Diligence Regarding Physical Condition and Title. During the Negotiating Period, the Developer and the Agency shall conduct any and all investigations they deem necessary to negotiate the terms to be contained in the DDA.

Section 2.6 Reports. Unless otherwise waived by the receiving party, each party shall provide the other with copies of all reports, studies, analyses, correspondence and similar documents (but excluding detailed property appraisals, summary appraisals only need to be provided, and confidential or proprietary information) prepared or commissioned by each party with respect to this Agreement and the Development, promptly upon their completion.

Section 2.7 Organizational Documents. Prior to the execution of a DDA, if the Developer intends to form a limited partnership or other entity to undertake the development of the Property, the Developer shall provide the Agency with copies of articles of incorporation, operating agreements or other organizational documents for any such entity.

Section 2.8 Entitlements and Environmental Review. The Developer shall be required to apply for any permits and approvals necessary for the Development in accordance with the City's standard application process and shall be subject to all of the City's normal fees for any required approvals. Upon receipt of the necessary applications for the required entitlements, the City or the Agency shall initiate the preparation of any environmental documentation required by the California Environmental Quality Act ("CEQA") for consideration of approval of the entitlements and DDA; provided, that nothing in this Agreement shall be construed to compel the Agency or the City to approve or make any particular findings with respect to such CEQA documentation or the entitlements. The Developer shall pay the City or the Agency for all costs associated with the preparation of the CEQA document. The Developer shall provide such information about the Development as may be required to enable the Agency or the City to prepare or cause preparation and consideration of any CEQA-required document, and shall otherwise generally cooperate with the Agency to complete this task. In addition, the Developer shall pay to the City or the Agency, as applicable, the standard City CEQA processing fee.

Section 2.9 Section 33433 Report. The Agency shall prepare the necessary documentation pursuant to Section 33433(a)(2)(B) of the California Health and Safety Code to be submitted to the Agency Board and the City Council of the City of El Cerrito in conjunction with the Agency's and the City's consideration of any DDA that is prepared under this Agreement.

Section 2.10 Progress Reports. From time to time as reasonably agreed upon by the parties, each party shall make written progress reports via electronic mail, facsimile or regular mail advising the other party on studies being made and matters being evaluated by the reporting party with respect to this Agreement and the Development.

ARTICLE 3.  
GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate either the Agency or the Developer to enter into the DDA. By execution of this Agreement, the Agency is not committing itself to or agreeing to undertake acquisition, disposition, or exercise of control over any property. Execution of this Agreement by the Agency is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Agency and City Council action the final discretion and approval regarding the execution of any DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the Agency Board and, if required by law, the City Council of the City, following conduct of all legally required procedures, and executed by duly authorized representatives of the Agency and the Developer. Until and unless the DDA is signed by the Developer, approved by the Agency Board, and executed by the Agency, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into the DDA or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document.

Section 3.2 Notices. Formal notices, demands and communications between the Agency and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

Agency: El Cerrito Redevelopment Agency  
10890 San Pablo Avenue  
El Cerrito, CA 94530-2323  
Attention: Executive Director

Developer: Eden Housing, Inc.  
22645 Grand Street  
Hayward, CA 94541  
Attention: Executive Director

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Costs and Expenses. Each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

Section 3.4 No Commissions. Neither party shall be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA resulting from

this Agreement. The parties represent and warrant that they have not engaged any brokers, agents or finders in connection with this transaction. The Developer shall defend and hold the Agency harmless from any claims by any broker, agent or finder retained by the Developer. The Agency shall defend and hold the Developer harmless from any claims by any broker, agent or finder retained by the Agency.

Section 3.5 Defaults and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement or to deliver any documents or information in a timely manner as required in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured ten (10) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by a party, the non-defaulting party's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any further right, remedy or obligation under this Agreement, except as set forth in Section 3.4, except that if the default is the result of a Developer default, the Agency shall be entitled to retain the Good Faith Deposit.

Section 3.6 Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other party.

Section 3.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 3.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

Section 3.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.10 Assignment. Neither party shall transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the other party, which consent shall be granted or withheld in the other party's good faith discretion, and any such attempted transfer or assignment without the prior written consent of Agency shall be void.

Section 3.11 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the Agency and the Developer and no other person shall have any right of action under or by reason of this Agreement.

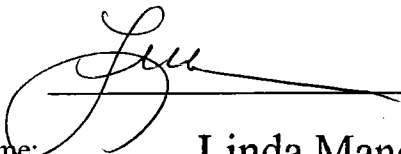
Section 3.12 Actions By The Agency. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the Agency, the approval, consent,

authorization, or waiver of the Agency Executive Director shall constitute the approval, consent, authorization or waiver of the Agency without further action of the Agency Board.

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the parties on the date first above written.

DEVELOPER:

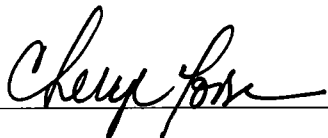
EDEN HOUSING, INC., a California nonprofit  
public benefit corporation

By:   
Name: Linda Mandolini  
Its: Executive Director

AGENCY:

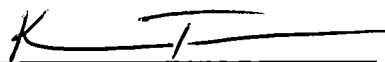
EL CERRITO REDEVELOPMENT AGENCY, a  
public body, corporate and politic

ATTEST:

By: 

By:   
Name: Scott Hanin  
Its: Executive Director

APPROVED AS TO FORM:

By:   
Agency Special Counsel



December \_\_, 2013

Ms. Linda Mandolini  
President  
Eden Housing, Inc.  
22645 Grand Street  
Hayward, CA 94541

Re: Extension of Exclusive Negotiating Rights Agreement ("ENRA") for 10848 & 10860 San Pablo Avenue, El Cerrito

Dear Ms. Mandolini:

This letter agreement ("ENRA Letter Agreement") is entered into by mutual consent the Term of the Exclusive Negotiating Rights Agreement (the "Agreement") dated March 8, 2011 between Eden Housing, Inc. and the City of El Cerrito, as successor to the El Cerrito Redevelopment Agency, for the proposed development located at 10848 and 10860 San Pablo Avenue, El Cerrito (the "Development"). Pursuant to the Agreement, the parties may alter the terms of the Agreement by providing written consent. The City of El Cerrito hereby agrees, subject to the written consent provided herein by the President of Eden Housing, Inc., to extend the Term of the Agreement to July 1, 2014.

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the parties on the date first above written.

EDEN HOUSING, INC., a California nonprofit  
public benefit corporation

CITY OF EL CERRITO, a public body,  
corporate and politic

By: \_\_\_\_\_  
Linda Mandolini  
President

By: \_\_\_\_\_  
Scott Hanin  
City Manager

Cc: Hilde Myall, City of El Cerrito  
Karen Tiedemann, Goldfarb & Lipman  
Woody Karp, Eden Housing, Inc.



## AGENDA BILL

### Agenda Item No. 5(E)

**Date:** December 17, 2013  
**To:** El Cerrito City Council  
**From:** Sky Woodruff, City Attorney  
**Subject:** Extension of Current Terms of Members of the Planning Commission and Design Review Board

---

#### **ACTION REQUESTED**

Adopt a resolution interpreting Section 2.04.220 of the El Cerrito Municipal Code to permit the extension of the terms of members of the Planning Commission and Design Review Board to maintain the full membership of those bodies during a gap period that will occur as a result of recent amendments to the Municipal Code. The resolution would also extend the terms of specific members of the Planning Commission and Design Review Board.

#### **BACKGROUND**

On December 3, 2013, the City Council adopted Ordinance No. 2013-06, which among other things, changed the beginning of terms for members of boards and commissions from January 1 to March 1. Those amendments will not go into effect until 30 days after adoption of the ordinance. At the time that the Council was considering the ordinance, it was anticipated that, as a result of some members' terms expire on January 1, 2014, there would be a one-time gap before their or their successors' new terms began on March 1, 2014. It has since come to staff's attention that some development projects will be ready for review by the Planning Commission and Design Review Board during that gap period. Staff believes that the review process would benefit from full and experienced membership on both bodies.

#### **ANALYSIS**

Under Section 2.04.220 of the Municipal Code, in its current form, members of boards and commissions serve four-year terms starting on January 1. The Code outlines the process for appointing members of boards and commissions and their qualifications, among other things, and specifically notes that members serve at the pleasure of the City Council, which alludes to the power of the City Council to appoint and remove members. The Code does not expressly prohibit the Council from extending terms, and the City Attorney believes that it is within the Council's authority to extend the term of a sitting member of a board or commission, particularly under the circumstances outlined above. It would nevertheless be appropriate for the Council to adopt a resolution stating its interpretation of the Code for the record.

## **Agenda Item No. 5(E)**

The proposed resolution also states that the extension would be counted as part of the current term of the effected members of the Planning Commission and Design Review Board. Members of boards and commissions are limited to no more than two consecutive full terms under Section 2.04.220(B)(2) of the Municipal Code. Thus, the extensions would have no effect on the ability of a member to seek appointment to another term.

### **STRATEGIC PLAN CONSIDERATIONS**

Extension of the terms of the specified members of the Planning Commission and Design Review Board would further Goal A of the Strategic Plan ("Deliver exemplary government services") by ensuring the Planning Commission and Design Review Board have full membership during consideration of important development applications.

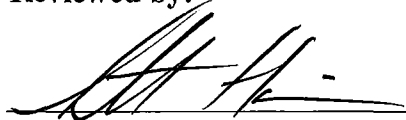
### **FINANCIAL CONSIDERATIONS**

The proposed resolution has no financial impacts.

### **LEGAL CONSIDERATIONS**

As noted above, the City Attorney believes that the proposed interpretation and extension of the terms of the specified members of the Planning Commission and Design Review Board is allowable under the Municipal Code.

**Reviewed by:**

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

**Scott Hanin, City Manager**

**Attachments:**

1. Resolution

**RESOLUTION 2013--XX**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO INTERPRETING SECTION 2.04.220 OF THE EL CERRITO MUNICIPAL CODE TO PERMIT THE EXTENSION OF THE TERMS OF MEMBERS OF THE PLANNING COMMISSION AND DESIGN REVIEW BOARD TO MAINTAIN THE FULL MEMBERSHIP OF THOSE BODIES DURING A GAP PERIOD THAT WILL OCCUR AS A RESULT OF RECENT AMENDMENTS TO THE MUNICIPAL CODE

WHEREAS, on December 3, 2013, the City Council adopted Ordinance No. 2013-06, which among other things, changed the beginning of terms for members of boards and commissions from January 1 to March 1. Those amendments will not go into effect until 30 days after adoption of the ordinance; and

WHEREAS, at the time that the Council was considering the ordinance, it was anticipated that, as a result of some members' terms expiring on January 1, 2014, there would be a one-time gap before their or their successors' new terms began on March 1, 2014. It has since come to the Council's attention that some development projects will be ready for review by the Planning Commission and Design Review Board during that gap period. The Council believes that the review process would benefit from full and experienced membership on both bodies; and

WHEREAS, under Section 2.04.220 of the Municipal Code, in its current form, members of boards and commissions serve four-year terms starting on January 1. The Municipal Code outlines the process for appointing members of boards and commissions and their qualifications, among other things, and specifically notes that members serve at the pleasure of the City Council, which alludes to the power of the City Council to appoint and remove members; and

WHEREAS, the Municipal Code does not expressly prohibit the City Council from extending terms, and the City Council believes that it is within the Council's authority to extend the term of a sitting member of a board or commission, particularly under the circumstances outlined herein. The City Council therefore adopts this resolution stating its interpretation of the Code for the record.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby interprets Section 2.04.220 of the Municipal Code to permit the short-term extension of the term of a sitting member of a board or commission ("advisory body") under unusual circumstances to ensure the full membership of an advisory body during a period when an advisory body otherwise would not have full membership and is likely to consider significant matters.

BE IT FURTHER RESOLVED, that the terms of Planning Commissioners Ken Hirano and Lisa Motoyama and Design Review Board Members Cassandra Adams and Maggie Leighly, which would otherwise expire on January 1, 2014, are hereby extended until March 1, 2014. The approved extensions shall be counted as part of their current

**Agenda Item No. 5(E)**

**Attachment 1**

terms, such that their ability to serve additional terms under Section 2.04.220(B)(2) of the Municipal Code shall not be affected.

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

I CERTIFY that at a regular meeting on December 18, 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 December\_\_\_\_\_, 2013.

\_\_\_\_\_  
Cheryl Morse, City Clerk

APPROVED:

\_\_\_\_\_  
Janet Abelson, Mayor



## AGENDA BILL

### Agenda Item No. 7(A)

**Date:** December 17, 2013  
**To:** El Cerrito City Council  
**From:** Lisa Malek-Zadeh, Finance Director/City Treasurer  
**Subject:** FY 2013-14 Budget Update

---

### ACTION REQUESTED

Receive a presentation that will provide the City Council and the public with:

1. An update on preliminary year-end results for Fiscal Year 2012–13 that ended on June 30, 2013
2. An update on city revenues and expenditures for the first quarter of Fiscal Year 2013–14
3. An overview and discussion of next steps related to the City budget.

### ANALYSIS

#### Fiscal Year 2012-13 Year-End Results

*Overview:* Beginning in October, the City’s external auditors Maze and Associates began their review on the City’s financials for FY 2012-13. As in previous years, results of their findings will be presented before the end of the calendar year to staff and the Financial Advisory Board. Staff is working closely with Maze and Associates in providing all necessary financial information as well as developing the Comprehensive Annual Financial Report (CAFR), Memorandum of Internal Controls and the Management Discussion & Analysis. At this time, staff does not anticipate any significant findings but concerns raised by the auditors will likely focus on the use of reserves and the negative balances in certain restricted funds. Staff will be discussing strategies associated with these findings in the coming months.

Table 1 shows the FY 2012-13 likely year-end results. Personnel savings were achieved through vacancies, the two-year service credit program and utilization of special funds when appropriate to offset losses in General Fund revenues. Although recurring annual expenses were in line with the budget, increases in revenues were well below what was projected for the year-end with the largest decline related to City’s largest tax revenues including Property Taxes, Utility Users Tax (UUT), and Sales Taxes. As a result of these significant losses in the City’s major revenue streams, staff anticipates that General Fund reserves declined from roughly 10% to approximately 8%.

Table 1  
Fiscal Year 2012-13 Year-End Results

| General Fund Summary Revenues + Expenditures  | FY 2011-12<br>Actuals | FY 2012-13<br>Adopted | FY 2012-13<br>Amended | FY 2012-13<br>Projected | FY 2012-13<br>Actuals |
|-----------------------------------------------|-----------------------|-----------------------|-----------------------|-------------------------|-----------------------|
| Beginning Restricted Balance                  |                       | \$598,957             | \$598,957             | \$598,957               | \$598,957             |
| Beginning Unassigned Balance                  | \$6,434,405           | \$2,690,745           | \$2,690,745           | \$2,608,745             | \$2,608,745           |
| <b>Total Revenues</b>                         | <b>\$29,298,213</b>   | <b>\$29,192,110</b>   | <b>\$29,392,110</b>   | <b>\$29,396,433</b>     | <b>\$29,366,108</b>   |
| <b>Total Expenses</b>                         | <b>\$32,524,916</b>   | <b>\$29,020,023</b>   | <b>\$29,955,116</b>   | <b>\$29,095,626</b>     | <b>\$29,161,850</b>   |
| Personnel                                     | \$22,619,755          | \$22,759,903          | \$22,959,903          | \$22,954,537            | \$22,699,721          |
| Non-Personnel                                 | \$9,905,161           | \$6,260,120           | \$6,995,213           | \$6,141,089             | \$6,462,129           |
| <b>Annual Balance/Shortfall</b>               | <b>(\$3,226,703)</b>  | <b>\$172,087</b>      | <b>(\$563,006)</b>    | <b>\$300,807</b>        | <b>\$204,258</b>      |
| Transfer Out- Grants Fund                     |                       |                       |                       | \$598,957               | \$0                   |
| Transfer Out - Solar CIP                      |                       |                       |                       |                         | \$1,157,184           |
| <b>Total Transfer out of Restricted Funds</b> |                       |                       |                       | <b>\$598,957</b>        | <b>\$1,157,184</b>    |
| <b>Ending Fund Balance/Deficit</b>            | <b>\$3,207,702</b>    | <b>\$3,461,789</b>    | <b>\$2,726,696</b>    | <b>\$2,909,552</b>      | <b>\$2,254,776</b>    |
| Restricted Fund Balance (CIP Solar 301)       |                       |                       |                       |                         | \$460,715             |
| Restricted Fund Balance( Grants Fund 221)     |                       |                       |                       | \$598,957               | \$598,957             |
| <b>Ending Unassigned Fund Balance/Deficit</b> |                       |                       |                       | <b>\$2,310,595</b>      | <b>\$1,195,104</b>    |
| <b>Ending Unassigned Reserve Percent</b>      | <b>10%</b>            | <b>12%</b>            | <b>9%</b>             | <b>10%</b>              | <b>8%</b>             |

*Property Taxes:* Projected Property tax revenues did not increase as anticipated with the shortfall largely related to the Proposition 8 assessed value reductions made by the County Assessor, which has resulted in many properties in El Cerrito not subject to Proposition 13 being assessed at well below market value. These reductions offset any increase in values of the remaining properties. Although home prices are very strong, the number of homes on the market lags well below the levels seen before the economic collapse of the market.

*Utility Users Tax:* The original UUT projection was based on actual receipts and the final inclusion of all EBMUD collections into revenues last fiscal year. Based on actual collections, staff chose not to revise its FY 2012-13 end-of-year projections and based the current year projections on these amounts. Although current projections remain as budgeted, actual receipts for the end-of-year close for FY 2012-13 appear to have fallen short of projections by over \$400,000, or approximately 1.3% of reserves. Staff has yet to determine the reason, and is currently analyzing the data as well as considering engaging an outside firm with expertise in auditing receipts and vendors subject to the UUT. There is also some concern that certain vendors are not participating and/or some payments were not remitted as required, including many large and small cell phone providers in numerous iterations. Based on the actual receipts for the UUT in the first four months of this fiscal year, it appears that collections have returned to initially anticipated levels and are reflected in the current year-end projections for FY 2013-14. However, it is important to closely monitor UUT revenues. Staff will keep the Council apprised of this issue.

*Sales Taxes:* Sales tax projections for FY 2012-13 were budgeted at \$5.5 million. Actual revenues received totaled \$5.1 million, about \$400,000 less than the projected budget. While revenues were on track throughout the year, an adjustment by the state Board of Equalization

(BOE) regarding Home Depot made at the end of the fiscal year reduced the revenue the City had anticipated receiving. The allocation of sales tax between the City of El Cerrito and the City of Richmond has been a long-standing issue and has been under review by the BOE for the last four years. A decision was reached toward the end of the fiscal year and BOE implemented the new distribution in the final quarter of FY 2012-13. Further details are provided later in this report.

### Fiscal Year 2013-14 Analysis and Projections

*Overview:* As previously discussed, the General Fund will begin the year with reduced reserves. While staff is projecting a year-end surplus based on current projected revenues and expenses, a further decrease in the ending fund balance is anticipated as shown in the chart below. With the one-time use of Municipal Service Corporation (MSC) Grants as well as the close-out of the solar procurement project, the unrestricted reserves will likely drop to around six percent.

Table 2  
Fiscal Year 2013-14 Projections

| General Fund Summary Revenues + Expenditures  | FY 2012-13<br>Actuals | FY 2013-14<br>Adopted | FY 2013-14<br>Amended | FY 2013-14<br>Projected |
|-----------------------------------------------|-----------------------|-----------------------|-----------------------|-------------------------|
| Beginning Restricted Balance                  | \$598,957             |                       |                       | \$1,059,672             |
| Beginning Unassigned Balance                  | \$2,608,745           | \$2,909,552           | \$2,909,552           | \$1,195,104             |
| <br>Total Revenues                            | <br>\$29,366,108      | <br>\$28,479,079      | <br>\$28,451,079      | <br>\$28,456,546        |
| <br>Total Expenses                            | <br>\$29,161,850      | <br>\$28,453,592      | <br>\$28,588,150      | <br>\$28,011,612        |
| Personnel                                     | \$22,699,721          | \$22,182,379          | \$22,182,379          | \$21,887,454            |
| Non-Personnel                                 | \$6,462,129           | \$6,271,213           | \$6,405,771           | \$6,124,158             |
| <b>Annual Balance/Shortfall</b>               | <b>\$204,258</b>      | <b>\$25,487</b>       | <b>(\$137,071)</b>    | <b>\$444,934</b>        |
| Transfer Out- Grants Fund                     | \$0                   |                       |                       | \$598,957               |
| Transfer Out - Solar CIP                      | \$1,157,184           |                       |                       | \$460,715               |
| <b>Total Transfer out of Restricted Funds</b> | <b>\$1,157,184</b>    | <b>\$0</b>            | <b>\$0</b>            | <b>\$1,059,672</b>      |
| <b>Ending Fund Balance/Deficit</b>            | <b>\$2,254,776</b>    | <b>\$2,935,039</b>    | <b>\$2,772,481</b>    | <b>\$1,640,037</b>      |
| <br>Restricted Fund Balance (CIP Solar 301)   | <br>\$460,715         |                       |                       |                         |
| Restricted Fund Balance( Grants Fund 221)     | \$598,957             |                       |                       |                         |
| <b>Ending Unassigned Fund Balance/Deficit</b> | <b>\$1,195,104</b>    | <b>\$2,935,039</b>    | <b>\$2,772,481</b>    | <b>\$1,640,037</b>      |
| <b>Ending Unassigned Reserve Percent</b>      | <b>8%</b>             | <b>10%</b>            | <b>10%</b>            | <b>6%</b>               |

### General Fund Revenues

Although many years of historical data exists, projecting revenues can still be quite challenging, particularly with the recent economic downturn that impacted most cities. In addition, the uncertainty and loss of revenue associated with the elimination of Redevelopment and now the ambiguity associated with splitting Home Depot sales tax revenues with the City of Richmond, estimating revenues becomes even more difficult. The revenue assumptions in Table 3 reflect the information staff currently knows and what is anticipated to occur within FY 2013-14. As was also shown in Table 2, loan proceeds for the Solar Procurement Project artificially inflated revenues in FY 2012-13 due to these one-time receipts.

Table 3  
Fiscal Year 2013-14 General Fund Revenues

| General Fund Revenues       | FY 2012-13<br>Actuals | FY 2013-14<br>Adopted | FY 2013-14<br>Projected |
|-----------------------------|-----------------------|-----------------------|-------------------------|
| Property Taxes              | \$5,564,453           | \$6,407,213           | \$6,025,472             |
| Sales Taxes                 | \$5,109,397           | \$4,593,750           | \$4,737,154             |
| Utility Users Taxes         | \$3,066,580           | \$3,605,000           | \$3,605,000             |
| Other Taxes                 | \$1,911,739           | \$2,128,400           | \$2,138,400             |
| <b>Total Taxes</b>          | <b>\$15,652,169</b>   | <b>\$16,734,363</b>   | <b>\$16,506,026</b>     |
| Licenses & Permits          | \$516,703             | \$606,000             | \$636,000               |
| Fines & Forfeitures         | \$277,222             | \$290,000             | \$290,000               |
| Intergovernmental Revenues  | \$5,027,113           | \$4,900,128           | \$5,018,788             |
| Charges for services        | \$5,255,702           | \$4,942,062           | \$4,993,931             |
| Other Revenues              | \$289,671             | \$202,147             | \$177,147               |
| Loan Proceeds, Transfers    | \$2,347,528           | \$804,379             | \$834,654               |
| <b>Total Other Revenues</b> | <b>\$13,713,939</b>   | <b>\$11,744,716</b>   | <b>\$11,950,520</b>     |
| <b>Total Revenues</b>       | <b>\$29,366,108</b>   | <b>\$28,479,079</b>   | <b>\$28,456,546</b>     |

*Property Taxes:* Based on actual property tax receipts last fiscal year, it now appears that the projected property tax revenues for FY 2013-14 did not take into account all of the adjustments that occur after the revisions to assessed values are applied to the tax base, most notably the Proposition 8 assessed value reductions that have occurred during the past five years. As a result, the projection assumed in the adopted budget for FY 2013-14 was based on gross assessed values as opposed to net assessed values.

Staff has revised FY 2013-14 property tax projections based on net assessed values, which is more consistent with the prior three year actuals. Although staff is now confident in the revised projection, actual revenues have not yet been received and may require a true-up of the projection in the next few months.

*Sales Taxes:* The FY 2013-14 adopted budget for General Fund sales tax revenue is composed of four different sources:

- One percent local share of sales tax collected in the City (\$2 million)
- The City's share of a half cent tax for public safety adopted by California voters through Proposition 172 and administered by the County (\$277,000)
- Reimbursement with property taxes by the County of a prior year 25% State deduction of local sales tax, also known as the Triple Flip (\$766,000) and
- Half-cent sales tax adopted by El Cerrito voters for general operations through Measure R (\$1.6 million).

Other sales tax revenues collected by the City (such as Measure A-Streets) are accounted for in separate, restricted funds.

Fortunately, current forecasts from the City's sales tax consultant for revenues are optimistic, despite the closure of several retailers in El Cerrito. Although the City has not recovered the significant decreases from the loss of Target and the Guitar Center, overall sales taxes continue

## **Agenda Item No. 7(A)**

to increase at a solid level. Staff is hopeful that the recent loss of OSH will simply redistribute the revenues to other competitors within the City. However, the impact of Home Depot reallocations will have some effect on current year revenues and likely an even larger impact in the coming years.

*Home Depot:* Because of the confidential nature of individual store sales tax distributions, staff cannot provide actual Home Depot sales tax numbers because information could be extrapolated to determine actual sales figures for the store. However, it is important to provide as much information as possible to understand the situation.

Pursuant to the long standing agreement with the City of Richmond, the FY 2013-14 adopted budget for the one percent local share of sales tax included a reduction from the prior year's budget, anticipating the need to reimburse the City of Richmond for sales tax misallocated to El Cerrito by Home Depot for its store straddling the El Cerrito-Richmond border. El Cerrito and Richmond staff have been working together to determine how much El Cerrito owes Richmond, in order to comply with the revenue sharing agreement entered into by the two cities in 1990 which splits the sales tax from Home Depot, 70% for Richmond and 30% for El Cerrito, based on the approximate proportion of land in each jurisdiction.

Subsequent to the adoption of the FY 2013-14 budget, the State Board of Equalization (BOE) notified El Cerrito staff that it is not willing to apply the 70/30 revenue split contained in that agreement, and intends to make a retroactive adjustment of nearly \$2.5 million to account for Home Depot's misallocation back to 2005, based on a methodology involving the distribution of cash registers within the store between the two cities. This adjustment does not acknowledge the approximately \$1.8 million already distributed to Richmond by El Cerrito or the impact associated with the apparent fact that Home Depot has been misallocating the two half-cent sales taxes, Measure A and Measure R. These adjustments accounted for a portion of the shortfall in revenue in FY 2012-13. Making matters more confusing, it is not yet clear how Richmond's Measure Q will be handled.

To make this issue even more complicated is how the allocations (and subsequent changes in allocation) impact the State and County shares of the sales tax distributions as well as the Triple Flip collections. These changes could impact collections all the way back to 1991.

El Cerrito has requested and received 90 days to review BOE's methodology and determine whether to appeal its determination. The ultimate amount and timing of any adjustments by BOE are unknown, but could potentially occur over between one and eight quarters (or potentially more) starting as early as March 2014. While BOE is not willing to implement the revenue sharing agreement, Richmond staff has so far agreed that any adjustments by BOE will subsequently be addressed with a reimbursement, in keeping with the 70/30 split in the agreement. BOE has indicated it might recognize a new tax sharing agreement between the two cities; so, staff and the City Attorney are also evaluating that option.

*Utility Users Tax:* Based on initial receipts, budget projections have not been revised in this update. However, it is important to proceed with caution as more time is needed to have a greater degree of certainty that actual UUT revenues will be achieved. A decline in UUT revenue from the current projections will require balancing measures to maintain a budget that

is balanced based on current year revenues. Without these changes, a further decline in reserves will be required to offset this loss in revenue.

*Other General Fund Revenues:* Projections for the remaining revenues within the General Fund remain fairly consistent with the adopted budget. A minor increase of approximately \$200,000 has been included based on some anticipated changes in licenses and permits as well state reimbursements.

### ***General Fund Expenditures***

Based on expenses through November 2013, the expenditure budget in the General Fund remains roughly on track to meet or exceed the adopted budget. Since adoption of the budget in July 2013, the City Council has increased expenditures by \$102,000 (most of which consists of the grant match for a ladder fire truck) with no offsetting revenues yet identified. In order to balance the budget this fiscal year, approximately \$1.5 million in salary savings was assumed. Current estimates indicate that these savings will be reached and perhaps exceeded. Staff is continually looking for opportunities to reduce other expenses in addition to identifying new sources of funds. Table 4 describes General Fund expenditures.

**Table 4**  
**Fiscal Year 2013-14 General Fund Expenditures**

| <b>General Fund Expenditures</b>            | <b>FY 2012-13<br/>Actuals</b> | <b>FY 2013-14<br/>Adopted</b> | <b>FY 2013-14<br/>Projected</b> |
|---------------------------------------------|-------------------------------|-------------------------------|---------------------------------|
| <b>Personnel</b>                            | <b>\$22,699,721</b>           | <b>\$22,182,379</b>           | <b>\$21,887,454</b>             |
| <b>Non-Personnel</b>                        |                               |                               |                                 |
| Purchased Professional & Technical Services | \$2,339,754                   | \$2,299,700                   | \$2,189,700                     |
| Property Services/Other Services            | \$2,214,040                   | \$2,006,850                   | \$1,969,795                     |
| Supplies                                    | \$662,994                     | \$640,150                     | \$640,150                       |
| Property & Capital                          | \$355,657                     | \$375,032                     | \$375,032                       |
| Financing Costs                             | \$777,427                     | \$814,381                     | \$814,381                       |
| Transfers Out                               | \$1,269,441                   | \$135,100                     | \$135,100                       |
| <b>Total Non-Personnel</b>                  | <b>\$7,619,313</b>            | <b>\$6,271,213</b>            | <b>\$6,124,158</b>              |
| <b>Total Expenditures</b>                   | <b>\$30,319,034</b>           | <b>\$28,453,592</b>           | <b>\$28,011,612</b>             |

### **Reserves**

As discussed previously, staff anticipates that General Fund reserves declined from 10% to approximately 8% during FY 2012-13. Further, it appears that reserves will likely decrease by a similar amount by the end of FY 2013-14 due to less than anticipated revenues, the use of one-time restricted reserves to offset economic development activities and completion of the solar building improvements project.

Although the City's Comprehensive Financial Policy and City Council discussions take into account the use of reserves for unanticipated events such as the Home Depot reallocation by the BOE and fiscal emergencies such as the recession and its impacts (which are still not behind us), it is essential that we address the causes of this decline and deal with any structural deficits that can continue depleting reserves. Developing a plan to restore reserves to an amount equal to or preferably exceeding the 10% goal is recommended over the next two fiscal years (FY 2014-15 and FY 2015-16) even though the Policy says this increase could occur over five years.

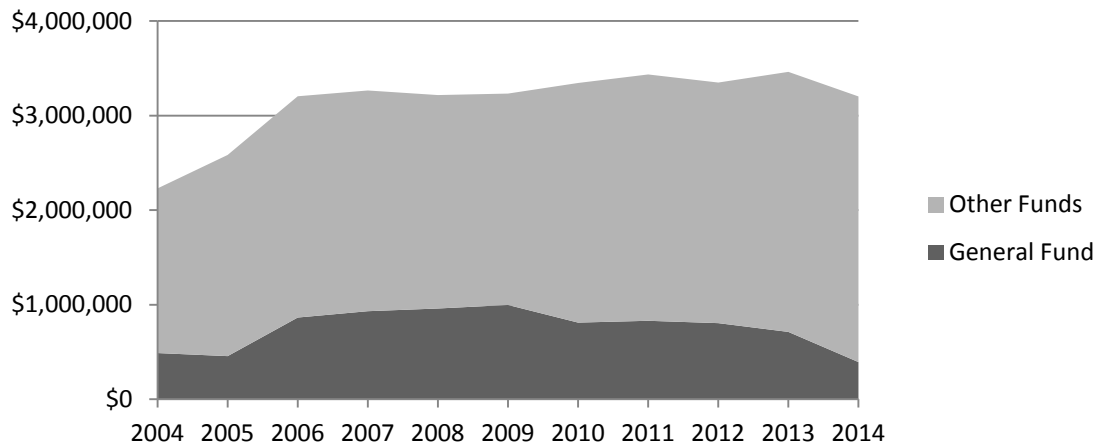
The issue of the proper amount of reserves and their purpose was discussed by the City Council during last year's budget process. The Financial Advisory Board is currently analyzing the issue with staff as well. It is staff's expectation to bring this matter to the City Council in early 2014 for discussion and possible direction on the appropriate amount and use of reserves and an approach for increasing the amount above current levels over the coming fiscal years.

### Special Revenue Funds

Approximately 30% of the City's budget is supported by Special Revenue Funds with the largest percentage allocated to Public Works programs. As the pressure on the General Fund has increased since the Great Recession began and Redevelopment was eliminated, Special Revenue Funds have become an increasingly important source of funding, particularly for Public Works functions.

Historically, the General Fund contributed a fair amount of funding to the overall budget for Public Works. In 2004, the General Fund contributed 22% of Public Works funding, rising to 31% in 2009. By 2013, the General Fund's contribution had decreased by more than \$200,000, or 21%. The FY 2013-14 adopted budget for Public Works reduced the General Fund contribution to 12%, even though overall budgeted expenditures are decreasing.

**Table 5**  
**General Fund Contribution to Public Works Expenditures**  
**FY 2003-04 - FY 2013-14**



Public Works has continued to reduce its reliance upon the General Fund and instead use Special Revenue Funds for eligible expenses (such as for street improvements, storm drain repairs, transportation improvements, and other similar costs), in an effort to retain service levels since there is limited or no ability for the City to increase revenues in other areas such as Police or Fire. While this decision has in fact helped maintain City services, a number of these Funds, as described in the FY 2013-14 budget document, are expected to spend more than they receive and will need at least one more fiscal year to recover.

This increasing reliance on Special Revenue Funds is not sustainable, as those revenues are limited to specified uses and those functions need increased attention. As a greater percentage of these funds are utilized to support areas that were previously paid for by General Fund revenues, it is becoming increasingly difficult to optimize the specific activities in which these Special Revenue Funds should be targeted.

Staff has implemented a plan to increase certain revenues (e.g., franchise fees), shift certain expenses (e.g., street sweeping) and reduce other expenses in an effort to get these funds in balance by the end of next fiscal year. However, that assumes staffing remains at currently reduced levels. Unless General Fund revenues are returned to prior levels or new revenues are identified, these funds will likely be underfunded after next fiscal year. Staff will be presenting these issues to the Council in more detail in early 2014.

### **NEXT STEPS**

The Great Recession, loss of Redevelopment, and outside reductions in key revenue streams have all served to have an impact on the City's ability to obtain adequate funding to maintain the current level of services that the City provides. The City has been able to support ongoing operations through the use of one-time measures, personnel savings, and approved use of reserves, however these methods are unsustainable. As previously discussed, staff plans to take several actions to address these issues, including examining the policy on reserves and working to address the Special Revenue Funds. Moreover, should the City prevail in its lawsuit with the state Department of Finance around the dissolution of the Redevelopment Agency, the City's revenue projections would improve and would prevent reductions in economic development activities and programs.

City staff will present its formal mid-year budget review to the City Council in late February or early March. Additionally, staff intends to work internally and with the public to address the City's resources with respect to community priorities for the upcoming fiscal year budget process.

*Implementation Action Plan:* Since its adoption in April 2013, the Strategic Plan has been serving as the road map for how City staff oversees the direction of the City organization, particularly with respect to resource allocation. In the FY 2013-14 budget document, staff began the process of implementing the Strategic Plan to serve as a method of benchmarking and informing the development of future departmental budget requests. As staff moves forward with a detailed Citywide Implementation Action Plan (IAP), data is being gathered and used to develop quantifiable measures for determining how efficiently and effectively the City is meeting its mission, goals, and strategies in the Strategic Plan. Resource allocation and prioritization will occur by aligning programs and services to the Strategic Plan goals.

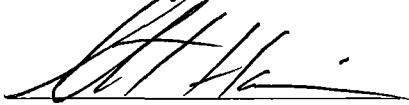
The IAP will serve as a comprehensive review of the entire organization, identifying programs offered by the City, identifying the costs of those programs, evaluating the relevance of programs offered on the basis of the community's priorities, and ultimately guiding the City Council and staff to the policy questions to be answered with the information gained from the budgeting process. Alignment to the Strategic Plan and development of priority-based budgeting concepts will continue to be refined with an eye toward financial sustainability and

## **Agenda Item No. 7(A)**

the implementation of data-driven performance measures. The IAP will be reflected in the upcoming FY 2014-15 budget process.

*Community Engagement:* To complement and inform the City's IAP efforts, staff will be implementing a series of public engagement budgeting activities that will also serve to fulfill the City's identified value of Transparency and Open Communication. During late winter and early spring 2014, staff will be leading community forums, both in-person and online, to involve the public in refining the strategies developed within the Strategic Plan with an eye toward resource allocation and setting priorities. Staff will also take advantage of the public forum afforded by our Financial Advisory Board by using its expertise to help involve and educate residents on the budget process. Engaging our residents and other stakeholders in the budget process is intended to increase understanding, create better and more sustainable decisions, improve customer satisfaction with our services, and build trust and a more cohesive community.

**Reviewed by:**

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

**Scott Hanin**  
**City Manager**