



AGENDA

REGULAR CITY COUNCIL MEETING

December 1, 2020 – 7:00 p.m.

Members:

Mayor Gregory B. Lyman

Mayor Pro Tem Paul Fadelli · Councilmember Janet Abelson
Councilmember Rochelle Pardue-Okimoto · Councilmember Gabriel Quinto

Join Via WebEx:

<https://elcerrito.webex.com/elcerrito/onstage/g.php?MTID=ec3c8b69ae87ebb5e5e05d89a9586b3d9>

Event Number: 146 864 3302

Event Password: Join1201

or

Dial In: 1-408-418-9388

Access Code: 146 864 3302

Pursuant to Executive Orders N-25-20 and N-29-20, Teleconference Restrictions of the Brown Act Have Been Suspended, as Well as the Requirement to Provide a Physical Location for Members of the Public to Participate in the Meeting.

Members of the public can watch or listen to City Council meetings as follows:

1. Cable T.V. Broadcast on KCRT Channel 28
2. Radio Broadcast on FM 88.1 Or 97.7
3. Livestream Online at www.el-cerrito.org/CouncilMeetingMaterials
4. Via WebEx using the meeting information listed above.

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1. Via WebEx using the “[Raise Hand](#)” feature to request to speak. Each period of public comment will be announced.

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2. Via email to cityclerk@ci.el-cerrito.ca.us. Email must contain in the subject line **Public Comments – Not on the Agenda** or **Public Comments – agenda item #**.

To ensure that the City Council receives your written comments prior to taking action, they must be received by **4:00 p.m. the day of the meeting**. All written comments received by this deadline will be provided to the City Council and posted online in advance of the meeting.

Written comments received after the deadline will be provided to the City Council and included with supplemental materials after the meeting. **No written comments will be read into the record.**

7:00 P.M. ROLL CALL – CONVENE REGULAR CITY COUNCIL MEETING

1. TELECONFERENCE AND PUBLIC COMMENT INSTRUCTIONS

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 and staff.

3. COMMUNICATIONS FROM THE PUBLIC

Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers and may limit the total time for public comment to facilitate the completion of business on the agenda. 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 will be heard prior to the City Council taking action on each item.

4. ADOPTION OF THE CONSENT CALENDAR

All items on the consent calendar shall be acted upon in one motion, unless a member of the City Council or staff request separate consideration.

A. Approval of Minutes for 10/6/2020 and 10/20/2020

Action Proposed: Pass a motion to approve the City Council meeting minutes for October 6 and October 20, 2020.

Contact: Holly M. Charléty, City Clerk, City Management

B. Approve the 2021 Regular Meeting Schedule for City Council

Action Proposed: Pass a motion to approve the regular meeting schedule for 2021, which includes reducing to the third Tuesday only for the month of January, July, August and September.

Contact: Holly Charléty, City Clerk, City Management

C. United Against Hate Week Proclamation

Action Proposed: Pass a motion to approve a proclamation designating November 29, 2020 – December 6, 2020 as "United Against Hate Week".

Contact: Kristen Cunningham, Human Resources Manager, City Management

D. Approval of an Application(s) for Proposition 68 Per Capita Grant Funds related to Parks & Recreation Facilities

Action Proposed: Adopt a resolution authorizing the City Manager and/or her designee to submit an application(s) to the State of California Department of Parks and Recreation for \$192,876 of Proposition 68, the Parks, Environment, and Water Bond Act of 2018, Per Capita funds.

Contact: Christopher Jones, Recreation Director, Recreation Department; Yvetteh Ortiz, Public Works Director, Public Works Department

5. PRESENTATIONS

A. Proclamation upon Retirement of Lieutenant Stephen Bonini

Action Proposed: Pass a motion to approve a proclamation honoring Lieutenant Stephen Bonini's many years of service to the City of El Cerrito.

Contact: Paul Keith, Police Chief, Police Department

B. Proclamation upon Retirement of Captain Robert De La Campa

Action Proposed: Pass a motion to approve a proclamation honoring Captain Robert De La Campa for his many years of service to the City of El Cerrito.

Contact: Paul Keith, Police Chief, Police Department

6. PUBLIC HEARINGS

A. Cost Hearing Regarding Fire Hazard Abatement of a Public Nuisance for Properties Identified and pursuant to El Cerrito Municipal Code Chapter 16.26

Notice published on 11/21/2020

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

Contact: David R. Gibson, Fire Marshal; Michael Pigoni, Fire Chief, Fire Department

B. Proposed East Bay Sanitary Garbage & Green Waste Collection and Post-Collection Rates and Integrated Waste Management Fees -- Effective January 1, 2021

Notice published on 11/21/2020 and 11/27/2020

Action Proposed: 1) Conduct a public hearing and upon conclusion adopt a resolution establishing maximum allowable East Bay Sanitary (EBS) garbage and green waste collection, processing and disposal rates, effective January 1, 2021; and 2) Conduct a public hearing and upon conclusion adopt a resolution fixing and setting Integrated Waste Management (IWM) Fees, effective January 1, 2021.

Contact: Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department

7. POLICY MATTERS

A. City Council Policy Subcommittee Report and Recommendations

Action Proposed: Continue the study session from November 17th on proposed City Council Administrative Policies and Rules of Order and Procedure and 2) adopt resolutions to approve the proposed policies or provide staff direction to return with revisions.

Contact: Mayor Lyman and Mayor Pro Tem Fadelli, City Council Policy Subcommittee; Holly M. Charléty, City Clerk, City Management

B. City Manager Employment Agreement

Action Proposed: Adopt a resolution approving a First Amended Employment Agreement for City Manager services between the City of El Cerrito and Karen Pinkos.

Contact: Sky Woodruff, City Attorney, City Management

8. CITY COUNCIL LOCAL & REGIONAL LIAISON ASSIGNMENTS

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

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, December 15, 2020 at 7:00 p.m. via teleconference.

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. 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/CouncilMeetingMaterials> and is streamed with closed caption. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, 510-215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 510-215-4305, email cityclerk@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 DRAFT MINUTES

CONCURRENT SPECIAL MEETING OF THE EL CERRITO PUBLIC FINANCING AUTHORITY, EMPLOYEE PENSION TRUST BOARD AND REGULAR CITY COUNCIL MEETING

October 6, 2020 – 7:00 p.m.

Members:

Mayor Gregory B. Lyman

Mayor Pro Tem Paul Fadelli · Councilmember Janet Abelson Councilmember
Rochelle Pardue-Okimoto · Councilmember Gabriel Quinto

Join Via WebEx:

<https://elcerrito.webex.com/elcerrito/onstage/g.php?MTID=ecfcc64e68e9da7b23437e90471fc652d>

Event Number: 146 189 1746

Event Password: Join1006

or

Dial In: 1-408-418-9388

Access Code: 146 189 1746

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7:00 P.M. ROLL CALL – CONVENE REGULAR CITY COUNCIL MEETING
Mayor Lyman called the meeting to order at 7:11 PM.
Present: Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto
Absent: None

1. TELECONFERENCE AND PUBLIC COMMENT INSTRUCTIONS

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 and staff.
City Manager Pinkos - provided an update on the State Auditor beginning the city's audit.

Fire Chief Pigoni - provided an update on statewide fires and a fire in the Hillside Natural Area, upcoming presentation to City Council on fire prevention.

Mayor Lyman - reported attendance with Councilmember Fadelli at the West County Mayors, and the Contra Costa Mayor's Conference with Councilmember Quinto.

Councilmember Quinto - announced opening for the Contra Costa County representative on the Association for Bay Area Governments (ABAG) Board.

3. COMMUNICATIONS FROM THE PUBLIC

Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers and may limit the total time for public comment to facilitate the completion of business on the agenda. 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 will be heard prior to the City Council taking action on each item.

All written comments submitted prior to and during the meeting were posted online as supplemental materials and incorporated into the official meeting record. Written public comments for matters not on the agenda were received from Cordell Hindler, Sherry Drobner and Denise Sangster; and item 5A from Ira Sharenow, Daniel Schulman, and Cathy Hanville.

Oral Public Comments: Sherry Drobner - spoke about the Human Relations Commission's Black Lives Matter Flag Raising event.

Isis Bastet - spoke about the Human Relations Commission's Black Lives Matter Flag Raising event and the city's response to racism.

4. ADOPTION OF THE CONSENT CALENDAR

All items on the consent calendar shall be acted upon in one motion, unless a member of the City Council or staff request separate consideration.

Moved/Seconded: Councilmember Pardue-Okimoto/Mayor Pro Tem Fadelli **Action:** Approved item A, B, and D on the consent calendar as indicated below. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

A. National Arts and Humanities Month Proclamation

Action Proposed: Approve a proclamation in support and recognition of October 2020 as National Arts and Humanities Month in El Cerrito. **Contact:** Maya Williams, Assistant to the City Manager, City Management
Action: Approved proclamation.

B. Authorize Correspondence in Support of Plan Bay Area 2050

Action Proposed: At the request of Mayor Lyman, pass a motion authorizing the Mayor to sign and send correspondence in support of the 'Plan Bay Area 2050' Housing Allocation Methodology, in line with the Contra Costa Mayors Conference recommendations.
Contact: Holly M. Charlety, City Clerk, City Management
Action: Approved correspondence.

C. Approval of League of California Cities 2020 Annual Conference Resolutions Packet

Action Proposed: Pass a motion to authorize and provide direction to the annual conference voting delegate to vote in favor of the proposed resolutions packet for 2020.

Contact: Holly M. Charlety, City Clerk, City Management

Moved/Seconded: Councilmember Pardue-Okimoto/
Councilmember Abelson **Action:** Pulled from consent by
Councilmember Pardue- Okimoto, passed a motion directing the
voting delegate to vote against the proposed resolutions packet for
2020. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember
Abelson, Councilmember Pardue- Okimoto, Councilmember Quinto
Noes: None

D. Committee on Aging Appointments

Action Proposed: Approve the Committee on Aging recommendation and appoint Bruce Yow and Pamela Wagner to the Committee, effective October 7, 2020.

Contact: Bridget Cooney, Recreation Supervisor, Recreation Department

Action: Approved appointments.

5. PRESENTATIONS

A. Presentation on Contra Costa County Measure X

Action Proposed: Receive and file a presentation on Contra Costa County Measure X on the November 3rd ballot, Imposing a Transaction and Use Tax to Be Administered by the California Department of Tax and Fee Administration.

Contact: John Gioia, Contra Costa County Supervisor

Presentation and Discussion: Presenters and staff responded to comments and questions raised by members of the council regarding return to source funding, displacement, homeless, non-police mental health programs, increasing library hours, and annual needs assessment.

Moved/Seconded: Councilmember Quinto/Councilmember Abelson

Action: Passed a motion for the City Council to endorse Yes on Measure X. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

B. Citizens Street Oversight Committee Annual Report

Action Proposed: Receive and file the Citizens Street Oversight Committee annual report for FY 2018/19 to City Council and Citizens of El Cerrito.

Contact: Matthew Kelly, Committee Member, Citizens Street Oversight Committee; Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department

Moved/Seconded: Councilmember Quinto/Councilmember Abelson

Action: Received and filed. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

C. Annual Sundar Shadi Garden Club Awards

Action Proposed: Receive and file a brief presentation and acknowledgement of contest winners.

Contact: Martha Jackson, El Cerrito Garden Club President

Action: No formal action taken, presentation received and filed.

6. PUBLIC HEARINGS

A. Public Hearing for Fire Hazard Abatement

Notice published on 9/26/2020

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

Contact: David R. Gibson, Fire Marshal; Michael Pigoni, Fire Chief, Fire Department

Presentation and Discussion: Presenters and staff responded to comments and questions raised by members of the council regarding timing of notifications, contact with owners, effectiveness of new rules, status of camp Herms, Elm St. cleanup, and citations for Juniper.

Moved/Seconded: Councilmember Quinto/Councilmember Abelson

Action: Approved Resolution 2020-49 (Declaring Public Nuisance).

Ayes: Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

Public Hearing: Mayor Lyman opened the public hearing.

Public Comments:

All written comments submitted prior to and during the meeting were posted online as supplemental materials and incorporated into the official meeting record. Written public comments for this item was received from Nick Zamorano.

Moved/Seconded: Councilmember Quinto/Councilmember Abelson

Action: Approved the close of the public hearing. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

Moved/Seconded: Councilmember Quinto/Councilmember Abelson

Action: Approved Resolution 2020-50 (Overriding Objections). **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

B. Cost Hearing Regarding Fire Hazard Abatement of a Public Nuisance for Properties Identified and pursuant to El Cerrito Municipal Code Chapter 16.26

Notice published on 9/26/2020

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

Contact: David R. Gibson, Fire Marshal; Michael Pigoni, Fire Chief, Fire Department

Presentation and Discussion: Presenters and staff responded to comments and questions raised by members of the council regarding total cost of abatement, process for Kensington, and photos before and after abatement.

Public Hearing: Mayor Lyman opened the public hearing.

Oral Public Comments:

Isis Bastet - requested clarification on the list of public nuisance properties.

Moved/Seconded: Councilmember Quinto/Mayor Pro Tem Fadelli

Action: Approved the close of the public hearing. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

Moved/Seconded: Councilmember Pardue-Okimoto/Councilmember

Abelson **Action:** Approved Resolution 2020-51. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

7. POLICY MATTERS

A. CITY COUNCIL/PUBLIC FINANCING AUTHORITY/EMPLOYEE PENSION TRUST BOARD

Approval of the City's Fiscal Year 2020-21 Amended Budget and Spending Authority by Fund for the City, Employee Pension Board and Public Financing Authority and Approval of the FY 2020-21 Annual Gann Appropriation Limit.

Action Proposed: Staff requests that the City Council 1) Adopt a resolution authorizing Fiscal Year 2020-21 spending authority by fund for the City of El Cerrito; 2) Adopt a resolution authorizing Fiscal Year 2020-21 spending authority by fund for the El Cerrito Public Financing Authority; 3) Adopt a resolution authorizing Fiscal Year 2020-21 spending authority by fund for the El Cerrito Employee Pension Board; and 4) Adopt a resolution approving the calculation and establishing the FY 2020-21 annual Gann Appropriation Limit.

Contact: Karen Pinkos, City Manager, City Management
Mark R Rasiah, Finance Director/City Treasurer, Finance Department

Presentation and Discussion: Presenters and staff responded to comments and questions raised by members of the council regarding timing for position reductions, fire department staffing levels, unfunded liabilities, pension payment methods, structural changes in public safety, monthly budget reports, public arts fund, bond rating, economic development fund, city LMI housing fund, modifications to financing costs and other financing uses.

Moved/Seconded: Councilmember Abelson/Mayor Pro Tem Fadelli
Action: Motion to extend the meeting until 11:00 p.m. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

Public Comments:

All written comments submitted prior to and during the meeting were posted online as supplemental materials and incorporated into the official meeting record. Written public comments for this item were received from Kimberly, David and Pablo Almeida, Maddie Lew, Claire Lavery, Ira Sharenow, Tomi Nagai-Rothe, Greg and Amy deHart, Cynthia Williams, Sarah Klauer, Debra Saunders, Daniel Schulman, Sherry Drobner, Cathy Hanville, Diane Straus, Marlene George, Nick Zamorano, Leslie D. Adams, Rhea Ewing, Justin Rodriguez, Sue Duncan, Miguel Gravelle, and Denise Sangster.

Moved/Seconded: Councilmember Abelson/Councilmember Quinto
Action: Motion to extend the meeting until 11:10 p.m. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

Moved/Seconded: Councilmember Abelson/Councilmember Quinto
Action: Passed a motion to approve the budget as presented, understanding that the budget is a living breathing document, to frequently examine the need to change it to ensure expenses are covered, and continue increasing reserves. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Quinto **Noes:** Councilmember Pardue-Okimoto

Moved/Seconded: Councilmember Quinto/Mayor Pro Tem Fadelli
Action: Approved City Resolution 2020-52 (Amended Budget Spending Authority). **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Quinto **Noes:** Councilmember Pardue-Okimoto

Moved/Seconded: Councilmember Pardue-Okimoto/Councilmember Quinto
Action: Approved Public Financing Authority Resolution 2020-02. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

Moved/Seconded: Councilmember Abelson/Councilmember Pardue-Okimoto **Action:** Approved Pension Board Resolution 2020-02. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

Moved/Seconded: Councilmember Pardue-Okimoto/Councilmember Abelson **Action:** Approved City Resolution 2020-53 (GANN Limit). **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto **Noes:** None

8. **CITY COUNCIL LOCAL & REGIONAL LIAISON ASSIGNMENTS** *Mayor and City Council communications regarding local and regional liaison assignments and committee reports.*

None

9. **ADJOURN REGULAR CITY COUNCIL MEETING IN MEMORY OF CHIZU IYAMA**

The next regularly scheduled City Council meeting is Tuesday, October 20, 2020 at 7:00 p.m. via teleconference.

The regular meeting adjourned at 11:07 PM.

Gregory B. Lyman, Mayor

This is to certify that the foregoing is a true and correct copy of the minutes of the Regular City Council meeting of October 6, 2020 as approved by the El Cerrito City Council.

Holly M. Charl  ty, MMC, City Clerk

EL CERRITO CITY COUNCIL DRAFT MINUTES

SPECIAL CITY COUNCIL MEETING OCTOBER 20, 2020 – 5:30 p.m.

Members:

Mayor Gregory B. Lyman

Mayor Pro Tem Paul Fadelli · Councilmember Janet Abelson
Councilmember Rochelle Pardue-Okimoto · Councilmember Gabriel Quinto

Join Via WebEx:

<https://elcerrito.webex.com/elcerrito/onstage/g.php?MTID=e95faf122c4a5b776003a06b255de279f>

Event Number: 146 731 8737

Event Password: Join1020

or

Dial In: 1-408-418-9388

Access Code: 146 731 8737

Pursuant to Executive Orders N-25-20 and N-29-20, Teleconference Restrictions of the Brown Act Have Been Suspended, as Well as the Requirement to Provide a Physical Location for Members of the Public to Participate in the Meeting.

This meeting will not be broadcast or live-streamed online. Members of the public can view the live meeting via WebEx using the meeting information listed above. Public Comments may be submitted one of two ways, **and are limited to items on the special meeting agenda only:**

1. Via WebEx using the “[Raise Hand](#)” feature to request to speak. Each period of public comment will be announced.

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2. Via email to cityclerk@ci.el-cerrito.ca.us. Email must contain in the subject line **public comments – agenda item #**.

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5:30 P.M. ROLL CALL - CONVENE SPECIAL CITY COUNCIL MEETING

Mayor Lyman called the meeting to order at 5:37 PM.

Present: Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Abelson, Councilmember Pardue-Okimoto, Councilmember Quinto

Absent: None

1. ORAL COMMUNICATIONS FROM THE PUBLIC

Remarks are typically limited to 3 minutes per person and to items on the special meeting agenda only.

None

2. CLOSED SESSION CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency Designated Representatives: Karen Pinkos, City Manager; Glenn Berkheimer, Labor Negotiator; Sky Woodruff, City Attorney; and Kristen Cunningham, Human Resources Manager.

Employee Organizations: Service Employees International Union (SEIU) Local 1021; El Cerrito Police Employees Association; United Professional Firefighters Local 1230; Public Safety Management Association - Battalion Chief, Fire Chief, Police Chief, and Police Management; and Management and Confidential Employees.

Contact: Sky Woodruff, City Attorney, City Management

City Council convened to closed session at 5:38 PM. No reportable action.

3. COMMISSION INTERVIEWS, STATUS, AND APPOINTMENTS

Action Proposed: Staff requests that City Council conduct interviews and, at the conclusion of interviews, confer with staff regarding the ongoing recruitments, any remaining vacancies, and the scheduling of further special meetings to conduct interviews (if applicable). Council may decide to make appointments at the conclusion of the meeting.

Contact: Holly M. Charl  ty, City Clerk, City Management

Action: The City Council conducted three interviews; no appointments were made.

4. ADJOURN SPECIAL CITY COUNCIL MEETING

The special meeting adjourned at 7:00 PM.

Gregory B. Lyman, Mayor

This is to certify that the foregoing is a true and correct copy of the minutes of the Special City Council meeting of October 20, 2020 as approved by the El Cerrito City Council.

Holly M. Charl  ty, MMC, City Clerk

EL CERRITO CITY COUNCIL DRAFT MINUTES

REGULAR CITY COUNCIL MEETING

October 20, 2020 – 7:00 p.m.

Members:

Mayor Gregory B. Lyman

Mayor Pro Tem Paul Fadelli · Councilmember Janet Abelson
Councilmember Rochelle Pardue-Okimoto · Councilmember Gabriel Quinto

Join Via WebEx:

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7:00 P.M. ROLL CALL – CONVENE REGULAR CITY COUNCIL MEETING

Mayor Lyman called the meeting to order at 7:09 PM.

Present: Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Pardue-Okimoto, Councilmember Quinto **Absent:** Councilmember Abelson

1. TELECONFERENCE AND PUBLIC COMMENT INSTRUCTIONS

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 and staff.

Mayor Lyman - provided reminder of election day on Tuesday, November 3, 2020, red flag warning, and mentioned the importance of vegetation management.

3. COMMUNICATIONS FROM THE PUBLIC

Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers and may limit the total time for public comment to facilitate the completion of business on the agenda. 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 will be heard prior to the City Council taking action on each item.

All written comments submitted prior to and during the meeting were posted online as supplemental materials and incorporated into the official meeting record. Written public comments for matters not on the agenda were received from Cordell Hindler, Virginia Velasquez-Cruz, Kevin D. Hall, Eilen Spitalnik, Helen Dickey, Allen T. Cain, Gary Prost, Michael B. Freeman, Cathy Hanville, Sherry Drobner, Daniel Schulman, Joe Getsy, Tomi Nagai-Rothe; and consent item 5A from Sue and Paul Duncan, and Denise Sangster.

Oral Public Comments:

Sherry Drobner - spoke regarding community conversation on the future of policing.

4. ADOPTION OF THE CONSENT CALENDAR

All items on the consent calendar shall be acted upon in one motion, unless a member of the City Council or staff request separate consideration.

Moved/Seconded: Councilmember Quinto/Mayor Pro Tem Fadelli

Action: Approved the consent calendar as indicated below. **Ayes:** Mayor Lyman, Mayor Pro Tem Fadelli, Councilmember Pardue- Okimoto, Councilmember Quinto **Noes:** None **Absent:** Councilmember Abelson

A. Approval of Minutes for 7/21/2020, 8/01/2020, 8/11/2020, 9/01/2020, 9/08/2020 and 9/15/2020

Action Proposed: Pass a motion to approve the City Council meeting minutes for July 21, August 1, August 11, September 1, September 8, and September 15, 2020.

Contact: Holly M. Charl  ty, City Clerk, City Management

Action: Approved minutes.

B. Shelter-in-Place Education Day Proclamation

Action Proposed: Pass a motion to approve a proclamation proclaiming November 4, 2020 as “Shelter-in-Place Education Day”.

Contact: Holly M. Charl  ty, City Clerk, City Management

Action: Approved proclamation.

C. FY 2020-21 First Quarter Cash and Investment Report

Action Proposed: Receive and file the City’s Quarterly Investment Report for the Quarter ending September 30, 2020.

Contact: Mark R. Rasiah, Finance Director/Treasurer, Finance Department

Action: Received and filed.

D. Amendment to Agreement with Rubicon Enterprises, Inc. for Parks and Landscape Maintenance Services

Action Proposed: Adopt a resolution authorizing the City Manager to execute an Amendment to the Agreement (Attachment 2) with Rubicon Enterprises, Inc. for parks and landscape maintenance services, extending the agreement term from October 15, 2020 to June 30, 2021 for an additional amount of \$98,836 bringing the total annual compensation to a not to exceed amount of \$131,781 in Fiscal Year 2020-21.

Contact: Will Provost, Acting Operations & Environmental Services Division Manager; Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department

Action: Approved Resolution 2020-54.

5. PRESENTATIONS

A. Wildfire Education 2020

Action Proposed: Receive and file a presentation from the El Cerrito Fire Department with information on wildfires, including threats, impacts, prevention, and safety.

Contact: Michael Pigoni, Fire Chief, Fire Department
Joseph Grupalo, Battalion Chief, Fire Department

Presentation and Discussion: Presenters and staff responded to comments and questions regarding attic vents, work with Cal-Fire on recent California fires, planned evacuation drill and proposed Joint Powers Authority (JPA) for regional fire management of open space areas.

Action: Received and filed, no formal action.

6. PUBLIC HEARINGS

7. POLICY MATTERS

A. FY 2020-21 General Fund Budget Update for July through September 2020

Action Proposed: Receive and file an update on City General Fund revenues and expenses for the first quarter of FY 2020-21.

Contact: Mark R. Rasiah, Finance Director/City Treasurer, Finance Department

Presentation and Discussion: Presenters and staff responded to comments and question raised by members of the City Council regarding recreation revenues, variance between anticipated and actual revenues, COVID-19 impacts, anticipated property taxes, sales taxes, Real Property Transfer Tax, payroll expenses, cash flow actuals vs. forecast, Tax and Revenue Anticipation Notes (TRAN), and format of budget information.

Public Comments:

All written comments submitted prior to and during the meeting were posted online as supplemental materials and incorporated into the official meeting record. Written public comments for this item were received from Ira Sharenow, Sue and Paul Duncan, and Cathy Hanville.

Action: Received and filed, no formal action.

8. CITY COUNCIL LOCAL & REGIONAL LIAISON ASSIGNMENTS

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

Councilmember Quinto - reported attendance at the Crime Prevention Committee, the League of California Cities Policy Committee, API Caucus and LGBT Caucus.

Councilmember Pardue-Okimoto - announced Save Alta Bates meeting postponed until next month.

Mayor Lyman - reported attendance at West County Waste Management meeting and noted that rates will be going up in 2021.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The regular meeting adjourned at 9:20 PM in memory of 31 lives lost to Fire in California in 2020, including one firefighter.

Gregory B. Lyman, Mayor

This is to certify that the foregoing is a true and correct copy of the minutes of the Regular City Council meeting of October 20, 2020 as approved by the El Cerrito City Council.

Holly M. Charléty, MMC, City Clerk



2021 Regular Meeting Schedule for City Council

Agenda Item No. 4.B.

City Holiday/Closed

Council Meeting

Regular start time at 7:00 p.m.

Via Teleconference OR

City Hall Council Chambers

10890 San Pablo Avenue

JANUARY 2021

Sun	Mon	Tue	Wed	Thur	Fri	Sat
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10	11	12	13	14	15	16
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31						

FEBRUARY 2021

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28						

MARCH 2021

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APRIL 2021

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MAY 2021

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JUNE 2021

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JULY 2021

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AUGUST 2021

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SEPTEMBER 2021

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OCTOBER 2021

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NOVEMBER 2021

Sun	Mon	Tue	Wed	Thur	Fri	Sat
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DECEMBER 2021

Sun	Mon	Tue	Wed	Thur	Fri	Sat
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EL CERRITO CITY COUNCIL PROCLAMATION
Designating November 29, 2020 – December 6, 2020 as
“United Against Hate Week”

WHEREAS, the United States is a nation of immigrants, whose strength comes from its diversity; and

WHEREAS, the Constitution enshrines equality on all individuals, regardless of race, gender, orientation, religion, or political views; and

WHEREAS, recent federal policies and rhetoric have generated a toxic environment that encourages the propagation of racist, xenophobic, sexist, homophobic, Islamophobic, and other bigoted views by emboldened hate groups and individuals; and

WHEREAS, deep divisions within our country allow for the festering of extreme ideology, further strengthening a cycle of mistrust and suspicion fueled by fear, anxiety, and insecurity; and

WHEREAS, the number of hate crimes across the United States has increased dramatically over the past couple of years; and

WHEREAS, white nationalist groups have held violent rallies in cities across the country, instilling fear across many diverse communities; and

WHEREAS, the City of El Cerrito is deeply committed to inclusivity; and

WHEREAS, the City of El Cerrito was declared a Sanctuary City on March 21, 2017 further affirming the City's commitment to the values of dignity, inclusivity, and respect for all individuals regardless of ethnic or national origin, gender identity, race, religious affiliation, sexual orientation, age, disability, or immigration status; and

WHEREAS, the community launched a Stop Hate Together campaign to further state our shared values and reiterate our commitment to inclusivity; and

WHEREAS, education, compassion, and cooperation are key to understanding and embracing differences between people; and

WHEREAS, sponsoring a United Against Hate Week is an important step in bridging divisions and healing communities.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby declares the week of November 29, 2020 through December 6, 2020 as United Against Hate Week in the City of El Cerrito.

Dated: December 1, 2020

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 4.D.

Date: December 1, 2020
To: El Cerrito City Council
From: Christopher Jones, Recreation Director, Recreation Department; Yvetteh Ortiz, Public Works Director, Public Works Department
Subject: Approval of an Application(s) for Proposition 68 Per Capita Grant Funds related to Parks & Recreation Facilities

ACTION PROPOSED

Adopt a resolution authorizing the City Manager and/or her designee to submit an application(s) to the State of California Department of Parks and Recreation for \$192,876 of Proposition 68, the Parks, Environment, and Water Bond Act of 2018, Per Capita funds.

BACKGROUND/ANALYSIS

Proposition 68, the \$4 billion "Parks, Environment, and Water Bond Act of 2018", was passed by California voters on June 5, 2018. The proposition provides funding relating to drought, water, parks, climate, coastal protection, and the outdoor access for all program. The Per Capita Grant Program is a non-competitive component of Proposition 68 with a statewide allocation of \$185 million to be divided among California's Counties, Regional Parks Districts, Special Parks & Recreation Districts, and Cities using a population-based formula. El Cerrito's share of these funds is \$177,952. Additionally, entities with populations of under 200,000 in heavily urbanized counties qualify for the Urban County Per Capita Program. El Cerrito's share in this program is \$14,924. The total funding that El Cerrito is entitled to is \$192,876.

Under the terms of Proposition 68, eligible projects must be capital outlay for recreational purposes, either acquisition or development. Funds cannot be used for maintenance or repairs. They also cannot be used to supplant funding for programs that have already been approved with identified funding sources. Projects funded by this program must be completed by December 2023.

City Council approval is needed to authorize, in advance, staff to file project application(s) for Per Capita Program Grant project(s). The project applications themselves, including the actual selection of projects, are not due to the State until December 2021. The approval, as specified in the attached resolution, certifies that the City agrees to the terms of the grant contract including that:

- The City has or will have available, prior to the commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s)
- The City has or will have sufficient funds to operate and maintain the project(s)

- All projects proposed are consistent with the park and recreation element of El Cerrito's general or recreational plan

Per the City's Capital Improvement Program (CIP), and as recommended by the Park and Recreation Commission, these funds will be used at one of the City's most heavily used parks, Arlington Park, to renovate the Clubhouse and Picnic Sites. These projects received the highest prioritization score in the El Cerrito Parks and Recreation Facilities Master Plan. Additionally, the resulting renovated facilities will eliminate current deferred maintenance issues and make them easier, and more cost effective, to maintain in the future. A public design process will occur to identify the specific renovations at the park.

Please note that the California Department of Parks and Recreation has provided a template for the attached resolution. They have provided direction that the resolution should not be amended in any way other than formatting.

STRATEGIC PLAN CONSIDERATIONS

Renovations to the Arlington Park Clubhouse and picnic sites will help fulfill the following City of El Cerrito Strategic Plan's Goals and Identified Strategies:

Goal A: Delivering Exemplary Public Services and the following objectives:

- Maintain emphasis on providing excellent customer service

Goal B: Achieve long-term financial sustainability:

- Continue to pursue and support opportunities for new funding, including outside grants and ballot measures
- Develop a financial plan to address ongoing and deferred maintenance of facilities and infrastructure

Goal C: Deepen a sense of place and community identity:

- Identify, promote, and/or develop entertainment, recreational and leisure activities for people of all ages and demographics

Goal D: Develop and rehabilitate public facilities as community focal points

ENVIRONMENTAL CONSIDERATIONS

This proposed action will not have a significant effect on the environment because mitigation measures outlined in the Parks and Recreation Facilities Master Plan, Initial Study/Mitigated Negative Declaration (2019) will be implemented as part of the project to reduce any potentially significant impacts to insignificant levels.

FINANCIAL CONSIDERATIONS

In order to ensure that the City has sufficient funds to complete the project(s), the project budget will not exceed the total amount of the Per Capita Grant Program allocations plus available funding from Measure H as identified in the City's Capital Improvement Program. Measure H must minimally contribute the required 20% matching funds for the identified project(s); however, other sources may be available as well including Park-In-Lieu Fees. Additionally, the renovation of the clubhouse and picnic sites at Arlington Park have the potential of increasing rental revenue by providing more desirable spaces for parties and community gatherings.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the attached resolution and found that legal considerations have been addressed.

Reviewed by:

A handwritten signature in blue ink, appearing to read 'Karen Pinkos', is written over a faint, light blue rectangular background.

Karen Pinkos, City Manager

Attachments:

1. Resolution

RESOLUTION 2020-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING APPLICATION(S) FOR PER CAPITA GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing application(s); and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the grantee's Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State; and

WHEREAS, the grantee will enter into a contract(s) with the State of California to complete project(s);

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

1. Approves the filing of project application(s) for Per Capita program grant project(s); and
2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and
3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s), and
4. Certifies that all projects proposed will be consistent with the park and recreation element of the City of El Cerrito's general or recreation plan (PRC §80063(a)), and
5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and
6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code, and
7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," dated January 12, 2017, the City of El Cerrito will consider a range of actions that include, but are not limited to, the following:

(A) Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.

(B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.

(C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.

(D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.

(E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.

(F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.

(G) Identifying possible staff liaisons to diverse populations.

8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor and job opportunities for disadvantaged communities (PRC §80001(b)(5)).
9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. (PRC §80062(d)).
10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and
11. Delegates the authority to the City Manager, or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and
12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

Approved and adopted the XX day of XX, 20XX.

I, the undersigned, hereby certify that the foregoing Resolution Number 2020-XX was duly adopted by the City Council of the City of El Cerrito following a roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on December _____, 2020.

Holly M. Charléty, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

EL CERRITO CITY COUNCIL PROCLAMATION
Commending and Congratulating Lieutenant Stephen Bonini on his retirement
from the El Cerrito Police Department

WHEREAS, Stephen Bonini attended the Contra Costa County Police Academy, graduating in December 1997; and

WHEREAS, Stephen Bonini was hired as an El Cerrito Police Officer in December 1997; and

WHEREAS, Stephen Bonini was the ECPD Officer of the Year in 2001 and

WHEREAS, Stephen Bonini earned the Mothers Against Drunk Drivers Award in 2002; and

WHEREAS, Stephen Bonini was selected for the Detective Unit assignment in December 2002 where he investigated crimes against persons; and

WHEREAS, Stephen Bonini was promoted to the rank of Corporal and assigned to the Field Operations Division in May 2003; and

WHEREAS, Stephen Bonini earned the California Highway Patrol "10851 Award" ten times between 1999 and 2006, for his efforts in stolen vehicle recovery; and

WHEREAS, Stephen Bonini was promoted to the rank of Sergeant in May 2005 and was assigned to the Traffic Division in December 2005, where he proudly served as the supervisor of the motor unit; and

WHEREAS, Stephen Bonini was promoted to the rank of Lieutenant and was assigned to the Field Operations Division; and

WHEREAS, Stephen Bonini became involved with the Northern California Special Olympics and helped develop the "Bike to Bridges" event; he was awarded the Department Distinguished Service Award for his countless volunteer hours to the Northern California Special Olympics.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby commend Lieutenant Stephen Bonini on the occasion of his honorable retirement. The City Council extends sincere appreciation to Lieutenant Stephen Bonini for his service to the El Cerrito community and contributions to the success of the El Cerrito Police Department.

Dated: December 1, 2020

Gregory B. Lyman, Mayor

EL CERRITO CITY COUNCIL PROCLAMATION
Commending and Congratulating Captain Robert De La Campa on his retirement
from the El Cerrito Police Department

WHEREAS, Robert De La Campa started his law enforcement career as a Police Explorer with the Pinole Police Department in 1987; and he first became a Police Officer with Burlingame PD in 1993 and returned to the Pinole Police Department as an officer in 1996; and

WHEREAS, Robert De La Campa started his career with the El Cerrito Police Department as an Officer in January 1998; and

WHEREAS, Robert De La Campa was selected as a detective in January 2000 and spent the next two years investigating property crimes and homicides; and

WHEREAS, Robert De La Campa was selected as the El Cerrito Police Department Officer of the Year in 2002; and

WHEREAS, Robert De La Campa became a Sergeant in 2002 and held assignments as patrol sergeant and administrative sergeant; and

WHEREAS, Robert De La Campa received the “10851 Award” in 2004 for his efforts in locating stolen vehicles; and

WHEREAS, Robert De La Campa was promoted to Lieutenant and focused on cutting edge training and increased community engagement and involvement; and

WHEREAS, Robert De La Campa was awarded the Distinguished Service Award for his work in developing and implementing a Community Police Academy and Volunteers in Policing program; and

WHEREAS, Robert De La Campa was promoted to Captain in 2018; and

WHEREAS, Robert De La Campa’s legacy as an administrator is best represented by the diverse agency that he helped hire, support and train after spending considerable time supporting officers in their careers and encouraging them to challenge the status quo in policing.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby commend Captain Robert De La Campa on the occasion of his honorable retirement. The City Council extends sincere appreciation to Captain Robert De La Campa for his service to the El Cerrito Community and contributions to the success of the El Cerrito Police Department.

Dated: December 1, 2020

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 6.A.

Date: December 1, 2020
To: El Cerrito City Council
From: David R. Gibson, Fire Marshal; Michael Pigoni, Fire Chief, Fire Department
Subject: Cost Hearing Regarding Fire Hazard Abatement of a Public Nuisance for Properties Identified and pursuant to El Cerrito Municipal Code Chapter 16.26

ACTION PROPOSED

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

BACKGROUND

In May and June of this year, the Fire Department conducted Citywide fire hazard inspections of all properties. The initial inspections began May 1st and were conducted through June 23, 2020. Additionally, subsequent inspections were conducted after June 23, 2020 on properties that were brought to the attention of the Fire Department through our Citizen Complaint Program that were not part of the initial inspection process. Property owners identified in Exhibit A were informed in a letter from the Fire Marshal that their property was in violation of the El Cerrito Vegetation Management Standards, and they were to bring the property into compliance within 14 days of the letter date at which time their property would be re-inspected. Once it was determined that the property was remained in non-compliance the property was sent the 2nd Letter from the Fire Marshal informing them that their property remained in non-compliance with the El Cerrito Vegetation Management Standards and that they were to bring the property into compliance within 7 days of the letter date at which time their property would be re-inspected. On September 21, 2020, those properties included in Exhibit A – List of Real Property Constituting Public Nuisances were sent a Letter from the Fire Marshal dated September 21, 2020 notifying the property owner of the October 6, 2020 Council meeting where their properties would be declared a public nuisance and abatement would be ordered. To date, the property owners of the properties included in Exhibit A – List of Real Property Constituting Public Nuisances Property owners have not contacted the El Cerrito Fire Department Fire Prevention Office to enter into Work Agreement or complete the necessary measures to bring their property into compliance.

The property owner identified in Exhibit A did not appear before the City Council at the October 6, 2020 Declaration Hearing to object to the City's plan to abate these conditions. On October 9, 2020 the property owner identified in Exhibit A was notified

that their property was declared a public nuisance informing them that the City would perform abatement through its own staff or through private contract sometime after October 25, 2020 should the hazardous conditions on their property not be removed or the City would be required to do so. On November 7, 2020 the property identified in Exhibit A was abated by private contract at a cost of \$5,682.50 including administrative fees based on the severe nuisance conditions found at the time of abatement.

ANALYSIS

The fire hazard abatement procedure provides ample due process for the affected property owner, well beyond the minimum procedure statutorily required. The most important part of the procedure is that the property owner listed in Exhibit A was given the opportunity to contest whether their property constituted a public nuisance and a fire hazard at a public hearing before the City Council. The property owners did not contest the designation, nor did the property owners voluntarily abate the nuisance conditions. The City Council therefore directed City staff to abate said conditions.

This matter appears before the City Council for the sole purpose of confirming the abatement costs already incurred by the City for the properties identified in Exhibit A. At this hearing, the City Council should review the reasonableness of the costs of abatement as specified, and then determine the abatement costs to be assessed. The proposed resolution provides for confirmation of the report of abatement costs, and the attached Exhibit B specifies the administrative costs associated with the abatement of each property. Once confirmed by the City Council, the costs of abating the nuisance will be forwarded to the County Auditor no later August 10, 2021 for assessment to the individual property and a lien will be recorded with the County Recorder.

OPTION ANALYSIS

At the conclusion of the hearing, the City Council may:

Option No. 1: Adopt the proposed resolution, with Exhibit A as presented.

Option No. 2: Adopt the proposed resolution, with Exhibit A as amended.

Option No. 3: Not adopt a resolution, thereby not confirming the report of the cost of abatement, not forwarding the costs of abatement to the County for collection, and causing the City of El Cerrito to absorb the full cost of abating the hazardous conditions of the subject properties.

STRATEGIC PLAN CONSIDERATIONS

This action fulfills Strategic Plan Goal E: Ensure the public's health and safety.

ENVIRONMENTAL CONSIDERATIONS

This section is not applicable to this agenda item.

FINANCIAL CONSIDERATIONS

The abatement work has been completed by contract labor and the City is obligated to pay the contractor a total of \$5,000.00 for the work. The administrative costs for the abatement is \$682.50 and have been added, bringing the total abatement cost to \$5,682.50. Administrative costs of \$682.50 may include Fire Department initial inspection and notice, re-inspection, office work and attendance at City Council hearings, additional notices, vendor bid inspection, posting of property, writing of inspection/abatement warrants, court appearances for signing and filing of warrants, vendor observation/inspection, and submittal of records/liens to Contra Costa County. In order for the City to fully recover the direct and indirect costs of \$5,682.50 already incurred for the abatement work performed, the City Council should confirm the staff report on the costs of abatement at this time so that these costs can be forwarded to the County for collection from the property owner.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved the process.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Karen Pinkos".

Karen Pinkos, City Manager

Attachments:

1. Resolution
2. Exhibit A to Resolution
3. Exhibit B to Resolution

RESOLUTION NO. 2020–XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CONFIRMING THE REPORT OF THE COSTS OF ABATEMENT OF PUBLIC NUISANCE CONDITIONS RESULTING FROM THE PRESENCE OF WEEDS, RUBBISH, LITTER OR OTHER FLAMMABLE MATERIAL ON THE PRIVATE PROPERTY DESIGNATED HEREIN UNDER THE AUTHORITY CONTAINED IN EL CERRITO MUNICIPAL CODE SECTION 16.26

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

WHEREAS, pursuant to El Cerrito Municipal Code Section 16.26 the El Cerrito City Council declared, through Resolution No. 2020-49, that the property identified herein in Exhibit A constitute a public nuisance because the presence of weeds, rubbish, litter or other flammable material on the properties created a fire hazard, a menace to the public health, or were otherwise noxious or dangerous; and

WHEREAS, through Resolution No. 2020-50 the City Council directed, under the further authority of El Cerrito Municipal Code Section 16.26, that notice be provided to the owner of the property identified in Exhibit A informing the owner that if they did not abate the nuisance conditions, that these conditions would be abated by the City, and that upon confirmation, the abatement costs would constitute a lien upon the properties until paid; and

WHEREAS, through Resolution No. 2020-49 the City Council further directed that a public hearing be scheduled at which time the owner of the property identified in Exhibit A could present objections to the designation of their property as a public nuisance and objections to the abatement of these public nuisance conditions by the City; and

WHEREAS, notice designating the properties identified in Exhibit A as a public nuisance and informing the owner of the property of the right to object to such designation and proposed abatement by the City was provided to the owners of the properties as required by Government Code Sections 39560 through 39588; and

WHEREAS, the owner of the property identified in Exhibit A did not appear at the October 6, 2020 public hearing to contest the public nuisance designation or to object to the abatement of the public nuisance conditions by the City; and

WHEREAS, at the conclusion of the October 6, 2020 public hearing, the City Council, by Resolution No. 2020-50 for Exhibit A as amended, directed the City Manager or designee to abate those public nuisance conditions as provided for by El Cerrito Municipal Code Section 16.26 and Government Code Section 39560 through 39588.

WHEREAS, the City Council further directed that the City Manager or

designee to keep an account of the cost of abatement for each property on which work was performed and that a report be prepared and presented to the City Council so that, after notice and hearing, these abatement costs could be confirmed as a special assessment against the property; and

WHEREAS, after the adoption of Resolution No. 2020-50 a second notice was mailed to the owner of the property identified in that resolution again informing the property owner that if they did not abate the public nuisance conditions on the properties, that the City would abate these nuisance conditions and assess the abatement costs against the properties; and

WHEREAS, as required by El Cerrito Municipal Code Section 16.26 the El Cerrito City Council conducted a hearing on December 1, 2020 at which an opportunity was given to voice objections regarding the report and the assessment of the abatement costs for the properties identified in Exhibit A of this Resolution. Notice of the hearing was provided to the owner of the property; and

WHEREAS, at the December 1, 2020 hearing, the property owner was given the opportunity to object and protest the report and the abatement costs assessed. The property owner was also given the opportunity to present evidence in support of their arguments; and

WHEREAS, such testimony provided at the public hearing included a description of the public nuisance conditions which existed at the property prior to the abatement, a description of the services required to abate those conditions, the cost to the City in abating those conditions and such other matters deemed relevant by the City Council; and

WHEREAS, the City Council does hereby conclude that the abatement costs as contained in Exhibit B, as such costs may have been modified by the City Council after a review of the evidence, are fair and reasonable. This determination is based on the evidence submitted by the property owner, the evidence submitted by City staff, the evidence concerning the nuisance conditions which existed at the property prior to abatement, the evidence concerning the scope of services required to abate those conditions, and such other matters deemed relevant by the City Council.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito does hereby confirm the report of the costs of abatement as contained in Exhibit B of this Resolution.

BE IT FURTHER RESOLVED that the costs of abatement shall be levied as a special assessment against the property and that these costs shall be certified to the auditor of Contra Costa County so that the costs of abatement shall be collected at the same time and in the same manner as ordinary municipal taxes.

BE IT FURTHER RESOLVED that a certified copy of this Resolution confirming the abatement costs for the properties identified in Exhibit A of this Resolution shall be filed with the County Auditor on or before August 10, 2021.

BE IT FURTHER RESOLVED that the City Manager or designee shall take

such action as may be necessary to record the abatement costs for the properties identified in Exhibits A and B of this Resolution with the County Recorder as a lien against the properties as provided for in El Cerrito Municipal Code Section 16.26

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

I CERTIFY that at a regular meeting on December 1, 2020 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 1, 2020.

Holly M. Charl  ty, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

EXHIBIT A

City of El Cerrito List of Real Property Constituting Public Nuisances

<u>APN</u>	<u>Street Address</u>
505-383-026-0	1325 Devonshire Court

Exhibit B

CITY OF EL CERRITO ADMINISTRATIVE COST WORK SHEET

1325 Devonshire Ct. APN# 505-383-026-0

07/21/2020 - Initial inspection and notice..... 15 min @ 195.00/hr.....	\$48.75
09/21/2020 – Re-inspection15 min @ 195.00/hr.....	\$52.75
10/05/2020 - Office work and attend City Council meeting Abatement Hearing.....30 min@ 195.00/hr.....	\$97.50
10/07/2020 – Second notice.....15 min @ 195.00/hr.....	\$48.75
11/4/2020 – Posting of Property..... 15 min @ 195.00/hr.....	\$52.75
10/2/2020 - Re-inspection..... 15 min @ 195.00/hr.....	\$48.75
11/2/2020 - Vendor bid inspection..... 30 min @ 195.00/hr.....	\$97.50
11/04/2020 – Contra Costa Superior Court... 30 min @ 195.00/hr.....	\$ 97.50
11/05/2020 - Vendor observation/inspection 15 min @ 195.00/hr.....	\$52.75
12/01/2020- Office work and attend City Council Meeting Cost Hearing.....30 min @ 195.00/hr.....	\$97.50
6/30/2021 - County Record Abatement.....30 min @ 195.00/hr.....	\$97.50
TOTAL ADMINISTRATIVE COST.....	\$682.50
TOTAL CONTRACTOR’S INVOICE	<u>\$5000.00</u>

TOTAL COST OF ABATEMENT \$5682.50

FIRE SAFETY CLEARING

510-541-2130

Nov 9, 2020

Work done: Sat. Nov.7, 2020

Invoice # 45050-3

**To: El Cerrito Fire Dept.
1325 Devonshire Ct.
El Cerrito, CA. 94530**

- Weed abatement, brush control**
- 30 Ft. Firebreak**
- Blackberry brambles**
- Limb up trees**
- Remove old growth**

Total due.....\$5000.00

Please make check to:

**-Teo Carlone
1224 Masonic Ave.
Berkeley, CA. 94706.**

Thanks for the work. It was much appreciated.



AGENDA BILL

Agenda Item No. 6.B.

Date: December 1, 2020
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department
Subject: Proposed East Bay Sanitary Garbage & Green Waste Collection and Post-Collection Rates and Integrated Waste Management Fees -- Effective January 1, 2021

ACTION PROPOSED

1) Conduct a public hearing and upon conclusion adopt a resolution establishing maximum allowable East Bay Sanitary (EBS) garbage and green waste collection, processing and disposal rates, effective January 1, 2021; and 2) Conduct a public hearing and upon conclusion adopt a resolution fixing and setting Integrated Waste Management (IWM) Fees, effective January 1, 2021.

BACKGROUND

Each year the City Council approves the maximum allowable rates and fees charged to ratepayers in the City of El Cerrito for solid waste collection and post-collection (processing and disposal). These consist of three components as follows:

- A per service rate for the collection of garbage and green waste by the City's franchised waste hauler, East Bay Sanitary Company (EBS);
- A per ton rate by Republic Services for the processing and disposal of solid waste, green waste, household hazardous waste (HHW), and other waste types through the services and facilities of the Golden Bear Transfer Station, Keller Canyon Landfill, West Contra Costa Sanitary Landfill, and West County Resource Recovery; and
- An IWM fee which funds unlimited curbside recycling collection for El Cerrito residents and businesses, the daily operations and waste reduction and recycling services of the El Cerrito Recycling + Environmental Resource Center (RERC), and other solid waste collection, source reduction and integrated waste management services.

The rates and fees for these three components are based on the annual revenue required to run the operations that provide these services. Residential and commercial customers pay these rates on either a per cart (based on the size of their garbage container) or per bin (based on the cubic yards of a weekly service) basis. Industrial customers (those using debris boxes) pay on a per ton basis.

ANALYSIS

East Bay Sanitary Garbage and Green Waste Collection Rates

EBS sets and charges the rates for garbage and green waste collection (EBS Collection Rates) based upon maximum rates authorized by the City Council, pursuant to City of El Cerrito Municipal Code Chapter 8.12. In 2012, the City and EBS completed a Rate and Operations Review that culminated in the City Council adopting a Fifth Amendment to the East Bay Sanitary Franchise Agreement (Resolution 2012-89). Among other changes, the Amendment resulted in the development of an annual adjustment to EBS's annual rates via a Refuse Rate Index (RRI). The RRI is based upon a proscribed formula in which inflation indices for seven operational cost categories (e.g., fuel and labor) are weighted and calculated to provide an annual percentage adjustment to the revenue requirement. The RRI is lower than the Consumer Price Index (CPI) for the Bay Area.

The Fifth Amendment also established a Revenue Balancing Account, which provides for adjustments in the revenue requirement to account for any difference between the projected rate revenues and the actual rate revenues received in prior calendar years. The Revenue Balancing Account ensures that any over- or under-collection of revenues is captured in future years' rates meaning that EBS is fairly compensated when revenues are lower than required by the agreement. Conversely, when revenues are higher than required, any over-collection of revenues is used to offset future rate adjustments.

Since 2016, the balancing account has shown a surplus and has thus been used to offset rates, including for this current rate setting. This over-collection is primarily a result of revenue coming from debris box orders, which are seasonal and for the most part due to increased demolition and construction activity in the City. An amount of \$228,961 in balancing account funds (from 2019) will be applied to offset rates in 2021.

EBS has calculated and proposed a 2021 RRI revenue adjustment of 1.64% over their 2020 revenue requirement. This results in a 2021 revenue requirement of \$4,946,936 for collection operations, an increase of \$79,821, which is offset by \$228,961 in the balancing account, for a total revenue requirement to be collected via the rates of \$4,717,975. With the assistance of R3 Consulting Group, a consulting firm that specializes in solid waste management, City staff has reviewed the RRI adjustment figures and the proposed 2021 collection revenue requirement and found it accurate, consistent, and reasonable. The proposed 2021 EBS Collection Rates necessary to meet the revenue requirement are included in Attachment 3 (2021 Solid Waste Collection, Processing and Disposal Rates).

East Bay Sanitary Post-Collection (Processing and Disposal) Rates

The City Council also sets the maximum allowable Post-Collection Rates (Resolution 2013-64) to cover expenses for processing and disposal of waste. Effective January 1, 2014, the City Council approved a Post-Collection Agreement between the City and Republic Services for processing and disposal services (Resolution 2013-54) through the services and facilities of the Golden Bear Transfer Station, Keller Canyon Landfill, West Contra Costa Sanitary Landfill, and West County Resource Recovery.

Per the methodology set forth in the terms of the Post-Collection Agreement (PCA), Republic Services has calculated and proposed a 2021 Blended Rate of \$113.11 per ton

of garbage, green waste, construction and demolition debris and commercial dry waste delivered by EBS to Republic's facilities. This per ton rate also includes funding of El Cerrito's participation in the West Contra Costa Integrated Waste Management Authority (RecycleMore), the regional agency which oversees the HHW budget and post-collection revenue requirement in West County, and also includes funding of State law compliance activities undertaken by RecycleMore on behalf of its member agencies. RecycleMore assists the City with compliance with the following State laws: AB 939 California Integrated Waste Management Act reporting, AB 1826 Mandatory Commercial Organics Recycling and SB 1383 Short-Lived Climate Pollutants: Organic Waste Methane Emissions Reductions. The RecycleMore funding was previously included in the IWM fees, as described below, but in 2020 was incorporated into the Post-Collection Rates (as is done by the other RecycleMore member agencies). This was done to limit expenses in the IWM Fund to those related to services directly operated or managed by the City.

The 2021 Blended Rate per ton also covers costs to provide Household Hazardous Waste (HHW) disposal services for El Cerrito residents both through Republic's satellite program on Tuesdays at the RERC and through the regional HHW Facility in Richmond. With the assistance of R3 Consulting Group and RecycleMore, City staff has reviewed the proposed 2021 Blended Rates and found them accurate, consistent, and reasonable. These disposal, processing, RecycleMore and HHW costs are paid by EBS to Republic Services as part of their disposal costs and are included in the rates that EBS collects. The proposed 2021 EBS Post-Collection Rates necessary to meet the revenue requirement for the 2021 Blended Rate per ton (\$1,443,435 calculated based on the per ton rate of \$113.11 times a projected 12,761 tons) are included in Attachment 3.

Integrated Waste Management Fees

In 1990, the City of El Cerrito established IWM Fees to cover integrated waste management services provided by the City including curbside collection of recyclable materials, operations of the El Cerrito Recycling + Environmental Resource Center (RERC), and other waste collection, reduction, recycling and related environmental programs operated by the City (such as illegal dumping abatement, technical assistance for businesses that must comply with state mandated recycling and composting laws, and collection of materials banned from landfills including electronics, batteries, and medical sharps).

The budget for the IWM Fund is approved as part of the City's budget setting process for each fiscal year, while the IWM Fees are approved as part of the solid waste rates on a calendar year basis. Thus, the IWM Fees considered as part of this public hearing provide IWM revenue for the last half of Fiscal Year (FY) 2020-21 (January through June) and the first half of FY 2021-22 (July through December).

IWM Fees have been increased in recent years due to the unprecedented and continued declines in recycling revenues, increases in recyclables processing costs, and the immediate need to plan for and implement actions necessary for compliance with State Laws AB 341, AB 1826 and SB 1383. IWM Fees were also increased in 2020 in order to

reverse a negative Unrestricted Fund Balance, which was largely the result of accounting adjustments related to capital asset and liabilities and led to a substantial amount due to the General Fund at the end of FY 2018-19. Based on the unaudited revenues and expenditures for FY 2019-20, the IWM Fees are estimated to have fully repaid the General Fund.

City staff has estimated that IWM Fees revenue of \$3,788,316 is needed in the 2021 calendar year to maintain existing programs and services, address the issues noted above, and build a fund balance of approximately 20% for cash flow and contingency purposes including impacts of COVID-19 as discussed below. The following are expenditures, which were not previously included in the Amended FY 2020-21 and will be brought forward for City Council consideration as part of the mid-year budget update:

- In early 2021, additional consultant services for evaluation of recycling collection operations and potential for outsourcing (a strategy recommended for further study as part of the Fiscal Response Plan)
- In spring 2021, need to replace a forklift vehicle

The proposed 2021 IWM Fees necessary to generate the needed IWM revenue are included in Attachment 3.

Overall Rate Changes

All residential solid waste services are priced based on the garbage container size, regardless of how much a customer's reduction in garbage is shifted to recycling and green waste. Commercial customers also receive unlimited recycling service based on the garbage container size. To a great extent, this has historically resulted in customers downsizing their garbage container, which is a testament to the success of El Cerrito's recycling and green waste programs. However, though customers save money by reducing their garbage subscriptions, the overall cost of service does not change as a result of such migration. This is due to the largely fixed costs of providing these services: recycling and organics services cost as much as (or sometimes more than) garbage service and solid waste operating costs do not scale incrementally with changing behaviors because operational cost changers are "per route", not per household.

The long-term trend in El Cerrito has been a "migration" from larger (higher revenue) subscription levels to smaller (lower revenue) subscription levels. El Cerrito's rate structure accounts for migration impacts to revenues by calculating rates based on current subscription information and the overall operational revenue need. Consequently, percentage rate increases are generally higher than the percentage increase in revenue generation, with migration impacts spread over the existing pool of customers. These trends have been exacerbated by the impacts of COVID-19. Subscription losses in the commercial and industrial sectors are likely to result in under-collection of rate revenues in 2021, and proposed rates and fees for 2021 are modestly adjusted in order to maintain revenues to meet the annual revenue requirements.

As shown in the table below, the revenue requirement for the entire suite of solid waste

services will increase by 0.18% (compared to January 1, 2020) for a total rate revenue requirement of \$9,949,726. Overall, solid waste rates and fees are proposed to be 1.82% above the 0.18% increase in the revenue requirement, for a total of 2.00% increase in the rates (with some variations as described below). This increase meets the 2021 revenue requirement for the City's solid waste system and also includes aforementioned migration and COVID-19 adjustments for anticipated revenue.

Table 1: 2021 Revenue Requirements

	2020	2021	\$ Change	% Change (Each)	% Change (Overall)
EBS Collection Revenue Requirement	\$ 4,867,115	\$ 4,946,936	\$ 79,821	1.64%	0.80%
EBS Balancing Account	\$ (102,763)	\$ (228,961)	\$ (126,198)	122.80%	-1.27%
EBS Post-Collection Revenue Requirement	\$ 1,450,187	\$ 1,443,435	\$ (6,752)	-0.47%	-0.07%
IWM Revenue Requirement	\$ 3,717,545	\$ 3,788,316	\$ 70,771	1.90%	0.71%
Total Revenue Requirement	\$ 9,932,084	\$ 9,949,726	\$ 17,642	0.18%	0.18%
Migration to smaller garbage cans and bins, and subscription losses.					1.82%
Average Rate Increase					2.00%

If the current COVID-19 crisis resolves in 2021, and prior commercial activity resumes such that surplus revenues are generated, then those surplus revenues may offset the need for future rate increases. For EBS, any over-collection of revenues compared to the revenue requirement will carry forward via the balancing account. The balancing account is calculated based on EBS's annual financial statements, which are available after each "rate year", meaning that the 2021 balancing account will be known in 2022 and applied to the rates in 2023. 2021 IWM Fee revenues will be captured in the IWM fund balance, with any greater-than-anticipated revenues being available to offset rate increases in the 2022 calendar year.

Adoption of the combined fees will result in total monthly cost increases (over rates adopted January 1, 2020) of 2%, amounting to \$0.88 for 20-gallon customers (44% of cart subscriptions), \$1.17 for 35-gallon customers (51% of cart subscriptions), and \$2.33 for 64-gallon customers (5% of cart subscriptions). Bulk commercial collection rates will increase by an average of 1.8%, lower than the 2% overall rate adjustment because commercial container rental charges are proposed to remain flat. The proposed EBS Collection and Post-Collection Rates and IWM Fees are included in Attachment 3.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the combined EBS Rates and IWM Fees help fulfill the following City of El Cerrito Strategic Plan goals and objectives:

- Goal A: Deliver Exemplary Government Services by maintaining an emphasis on providing excellent customer service.
- Goal B: Achieve long-term financial sustainability by ensuring the IWM Fund has balanced revenues and expenses and a fund balance for cash flow and contingency purposes.
- Goal F: Foster Environmental Sustainability Citywide (Implement the City's Climate Action Plan, including reducing the amount of waste generated in El Cerrito). Specifically, the proposed rates and fees will support high waste diversion rates.

ENVIRONMENTAL CONSIDERATIONS

All jurisdictions in California are required by law to provide recycling and organics recycling services for its residents and businesses through mandates established in AB 989, AB 341, and AB 1826. Recent legislation, SB 1383, mandates higher recycling and composting compliance rates by the year 2022. Reliable and proper disposal, processing, and diversion of solid waste is necessary to protect the health and welfare of the community and environment. The services being funded by the proposed 2021 EBS Collection Rates and Post-Collection Rates and IWM Fees not only ensure compliance with State law and reliable solid waste collection, they also enable El Cerrito to reduce its environmental impact through strong solid waste diversion and HHW programs, while responding to the dramatic downturn in the recycling markets precipitated by the Chinese "National Sword" policy.

FINANCIAL CONSIDERATIONS

Adoption of the 2021 EBS Rates and IWM Fees, as proposed, supports the revenue requirements of the entities that provide solid waste services in El Cerrito. The proposed IWM Fees will result in slightly higher revenues from \$3,674,784 included in the Amended FY 2020-21 Budget to \$ 3,717,910 to reflect slightly higher expenses to conduct an evaluation of recycling operations and potential for outsourcing, replace a forklift vehicle, and build a fund balance for cash flow needs and contingencies including the impacts of COVID-19.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed actions and found that legal considerations have been addressed. The public hearing notices were publicly posted on November 17, 2020 and published in the November 21 and November 27, 2020 editions of the West County Times.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Karen Pinkos".

Karen Pinkos, City Manager

Attachments:

1. Resolution (EBS Rates)
2. Resolution (IWM Fees)
3. 2021 Solid Waste Collection, Processing and Disposal Rates

RESOLUTION 2020-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ESTABLISHING MAXIMUM ALLOWABLE RATES FOR THE COLLECTION, PROCESSING AND DISPOSAL OF GARBAGE AND GREEN WASTE, EFFECTIVE JANUARY 1, 2021

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

WHEREAS, the Company has submitted a request for rate increases to be effective January 1, 2021, and such increases were calculated pursuant to the methodology established in the Fifth Amendment to the Franchise Agreement, dated December 14, 2012; and

WHEREAS, the rate adjustments submitted to the City have been reviewed for accuracy, consistency with the adjustment methodology, and reasonableness.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the maximum monthly rates, unless otherwise noted, that East Bay Sanitary Company may charge, effective January 1, 2021 are as follows:

Garbage Container Size	EBS Collection Rate (\$)	Post-Collection Rate (\$)
20 Gallon Cart	20.77	5.22
35 Gallon Cart	29.17	9.16
64 Gallon Cart	58.36	18.32
One Cubic Yard	198.21	53.00
Two Cubic Yards	380.19	105.99
One Cubic Yard Green Waste	183.21	53.00
35 Gallon Green Waste	29.54	0.00
64 Gallon Green Waste	56.96	0.00
Compacted Rates (per yard)	76.66	24.45
Roll-off (per ton)	NA – Market Rate	NA – Market Rate

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

I CERTIFY that at a regular meeting on December 1, 2020 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on December ____, 2020.

Holly M. Charl  ty, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

RESOLUTION 2020-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO FIXING AND
SETTING THE INTEGRATED WASTE MANAGEMENT FEES,
EFFECTIVE JANUARY 1, 2021

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

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

WHEREAS, major shifts in the recyclable materials marketplace arising from China's "National Sword" policy have changed the economics of processing recyclables from a net revenue generating activity to a net expense, wherein the cost of processing exceeds the revenue from the sale of recyclable materials; and

WHEREAS, the City has reviewed and considered financial information as a part of the regular budget process as well as more recent financial information to determine whether increases to IWM Fees are warranted and justified; and

WHEREAS, the City Council intends to adopt IWM Fees to be effective January 1, 2021, thus keeping the City's Integrated Waste Management Services as an on-going concern.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito that the fees for each IWM service, which are monthly rates unless otherwise noted, shall be as follows, effective January 1, 2021:

Garbage Container Size	IWM Fee (\$)
20 Gallon Cart	19.61
35 Gallon Cart	21.44
64 Gallon Cart	42.02
One Cubic Yard	151.49
Two Cubic Yards	302.94
One Cubic Yard Green Waste	34.97
35 Gallon Green Waste	7.15
64 Gallon Green Waste	14.00
Compacted (per yard)	34.96
Roll-off (per load)	110.69

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

I CERTIFY that at a regular meeting on December 1, 2020 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on December ____, 2020.

Holly M. Charléty, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

The City of El Cerrito



2021 Solid Waste Collection, Processing and Disposal Rates Effective January 1, 2021

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

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

Weekly Collection of Recycling, Green Waste, and Garbage						
<i>Monthly Cost based on garbage container size</i>						
Container Size	Collection	Post-Collection	IWM Fee	January 2021 Total Monthly Cost	January 2020 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon Cart	\$ 20.77	\$ 5.22	\$ 19.61	\$ 45.60	\$ 44.72	\$ 0.88
35 Gallon Cart	\$ 29.17	\$ 9.16	\$ 21.44	\$ 59.77	\$ 58.60	\$ 1.17
64 Gallon Cart	\$ 58.36	\$ 18.32	\$ 42.02	\$ 118.70	\$ 116.37	\$ 2.33
Weekly Collection of Additional Green Waste Containers (one 64 gallon container serviced weekly included in above rates)						
<i>Monthly Cost based on size of additional green waste container(s)</i>						
Container Size	Collection	Post-Collection	IWM Fee	January 2021 Total Monthly Cost	January 2020 Total Monthly Cost	\$ Change in Monthly Cost
35 Gallon Cart	\$ 29.54	Included	\$ 7.15	\$ 36.69	\$ 35.97	\$ 0.72
64 Gallon Cart	\$ 56.96	Included	\$ 14.00	\$ 70.96	\$ 69.57	\$ 1.39

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

The City of El Cerrito

2020 Solid Waste Collection, Processing and Disposal Rates Effective January 1, 2021



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

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

Once Weekly Collection of Garbage						
Monthly Cost based on garbage container size						
Container Size	Collection	Post-Collection	IWM Fee	January 2021 Total Monthly Cost	January 2020 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon Cart	\$ 20.77	\$ 5.22	\$ 19.61	\$ 45.60	\$ 44.72	\$ 0.88
35 Gallon Cart	\$ 29.17	\$ 9.16	\$ 21.44	\$ 59.77	\$ 58.60	\$ 1.17
64 Gallon Cart	\$ 58.36	\$ 18.32	\$ 42.02	\$ 118.70	\$ 116.37	\$ 2.33
One Cubic Yard	\$ 198.21	\$ 53.00	\$ 151.49	\$ 402.70	\$ 395.42	\$ 7.28
Two Cubic Yards	\$ 380.19	\$ 105.99	\$ 302.94	\$ 789.12	\$ 774.61	\$ 14.51
One Cubic Yard Green Waste	\$ 183.21	\$ 53.00	\$ 34.97	\$ 271.18	\$ 266.50	\$ 4.68
Additional Green Waste:						
35 Gallon Cart	\$ 29.54	Included	\$ 7.15	\$ 36.69	\$ 35.97	\$ 0.72
64 Gallon Cart	\$ 56.96	Included	\$ 14.00	\$ 70.96	\$ 69.57	\$ 1.39
Multiple Weekly Collections of Garbage						
Monthly Cost based on garbage container size and number of pickups per week						
Container Size	Pickups per week					
	1	2	3	4	5	6
20 Gallon Cart	\$ 45.60	\$ 91.20	\$ 136.80	\$ 182.40	\$ 228.00	\$ 273.60
35 Gallon Cart	\$ 59.77	\$ 119.54	\$ 179.31	\$ 239.08	\$ 298.85	\$ 358.62
64 Gallon Cart	\$ 118.70	\$ 237.40	\$ 356.10	\$ 474.80	\$ 593.50	\$ 712.20
One Cubic Yard	\$ 402.70	\$ 773.28	\$ 1,143.87	\$ 1,514.46	\$ 1,885.04	\$ 2,255.63
Two Cubic Yards	\$ 789.13	\$ 1,530.26	\$ 2,271.39	\$ 3,012.52	\$ 3,753.65	\$ 4,494.78
Monthly Cost based on green waste container size and number of pickups per week						
Container Size	Pickups per week					
	1	2	3	4	5	
35 Gallon Cart	\$ 36.69	\$ 73.38	\$ 110.07	\$ 146.76	\$ 183.45	
64 Gallon Cart	\$ 70.96	\$ 141.92	\$ 212.88	\$ 283.84	\$ 354.80	
One Cubic Yard	\$ 271.18	\$ 510.25	\$ 749.32	\$ 988.39	\$ 1,227.46	
On-Call Bulk Collection (Debris Boxes and Compactors)						
Rates listed are per pickup, and are not inclusive of all charges for these services. Please call East Bay Sanitary for complete rates and fees at 510-237-4321.						
Container Type	Collection	Post-Collection	IWM Fee	Total		
Compacted Rates (per yard)	\$ 76.66	\$ 24.45	\$ 34.96	\$ 136.07		
Roll-off (Debris Box)	Market Rate (per load)	Market Rate (per ton)	\$ 110.69 (per load)	Varies - Call East Bay Sanitary at 510-237-4321 for price quote.		

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



AGENDA BILL

Agenda Item No. 7.A.

Date: December 1, 2020
To: El Cerrito City Council
From: Mayor Lyman and Mayor Pro Tem Fadelli, City Council Policy Subcommittee; Holly M. Charl  ty, City Clerk, City Management
Subject: City Council Policy Subcommittee Report and Recommendations

ACTION PROPOSED

Continue the study session from November 17th on proposed City Council Administrative Policies and Rules of Order and Procedure and 2) adopt resolutions to approve the proposed policies or provide staff direction to return with revisions.

BACKGROUND/ANALYSIS

On February 18, 2020, at the request of Mayor Lyman, the City Council appointed Mayor Lyman and Mayor Pro Tem Fadelli to a subcommittee for the purpose of discussing and developing City Council policies for consideration. Over the last several months, the subcommittee has met with City staff to review, discuss and provide direction on the proposed rules of order, ethics, administrative, and travel policies.

The proposed policies before the City Council for discussion include Administrative Policies and Rules of Order and Procedure, an Ordinance to Amend the City's Municipal Code regarding Rules of Order, and revisions to the Expense Reimbursement and Use of Public Resources Policy.

Administrative Policies and Rules of Order and Procedure

On November 3, 1997 the City Council adopted Resolution 1997-99 regarding Council Meeting Rules and Procedures. This policy provided general meeting rules and procedures including meeting time and location, order of business, oral communication, hearing procedures, order and decorum, and adjournment.

These rules have remained generally unchanged for over 20 years, and while the rules and procedures are still largely followed, the document is outdated and in need of additional details in several areas related to City Council meetings.

Additionally, the City Council has not recently adopted administrative policies in areas such as code of conduct, Council reorganization, and communication with members of the public. The intent of the proposed Administrative Policies and Rules of Order and Procedure (Policy Document) is to provide a more comprehensive, standalone policy document that will provide direction to the City Council regarding conduct of its members, as well as establish overall conduct and procedure for facilitation of City Council meetings. The proposed Administrative Policies and Rules of Order and Procedure would supersede Resolution 1997-99.

Council Code of Conduct

The Policy subcommittee put an emphasis on the importance of creating a Code of Conduct for City Councilmembers. An article from Western City Magazine, a publication of the League of California Cities, titled *Beyond Ethics: Establishing a Code of Conduct to Guide Your Council* initiated discussion and is included as Attachment 1.

The City Council Code of Conduct policy section is drafted to ensure that fair and equitable decisions are made, and that Councilmembers refrain from making negative comments against any individual or group particularly with respect to race, ethnicity, gender, or any other protected category. The Code of Conduct also includes mention of requirements by Councilmembers to complete ethics and sexual harassment prevention training every two years.

Finally, emphasis is put on ensuring that Councilmembers include in any comments or statements they make that they are representing the official position of the City or a personal viewpoint, particularly the Councilmember in the role of the Mayor.

Selection of City Council Officers

The proposed process for selection of the Mayor and Mayor Pro Tempore is largely unchanged from the City Council's current practice. One addition indicates that in the rotation and selection of Mayor Pro Tem, that preference will be given to those who have not previously served as Mayor. Language has also been added that at any time a majority vote can agendize consideration of removing a member from their appointed position. Removal would require a super majority to pass. In the case of any removal, the City Council would select a new member to complete the remaining term of appointment.

Communication with the Public

The policy section regarding Communication with the Public is intended to encourage Councilmembers to communicate efficiently and give feedback on their ideas, treat all individuals and groups fairly, and be encouraging and constructive. It is also intended to further clarify that Councilmembers should be clear in social media that they are expressing personal opinions, and not the official position of the City. This policy section reiterates that the Councilmember appointed to the role of the Mayor shall be clear in statements that they are either representing personal viewpoints or--upon approval of a majority of the City Council--the viewpoint of the full City Council. The Mayor is also expected to report to the Council about any public statements made which represent the viewpoint of the full City Council.

City Council Expenditures

The City Council Expenditures policy section sets expectations on use of available funds in the City Council budget. It clarifies that while local liaison appointment costs are typically covered, if a Councilmember makes the decision to represent the City Council in other capacities, related expenses are not expressly authorized for reimbursement. Annually the City Council will allocate the amount of discretionary

funds that each member has for the purposes of participating in travel and training for that fiscal year. Reimbursement shall be in compliance with the separate Expense Reimbursement and Use of Public Resources Policy.

Rules of Order and Procedure

This proposed section of the Policy Document adds detailed information in the following areas:

- Duties and roles of Mayor, Mayor Pro Tem, and Councilmembers.
- Details related to procedures for bringing items before City Council and placement on the agenda. This addresses items such as public hearings, proclamations, presentations, and formal City Council positions.
- Information regarding agenda and meeting material preparation and posting, and order of business.
- Meeting conduct including interaction between the City Council and members of the public, public hearing processes, study sessions, public discussions, and time constraints and protocol for public speakers.
- Procedural matters such as seating placement in the Council Chamber; decorum of City Council, staff and members of the public, as well as enforcement of decorum.
- Parliamentary procedures related to motions, rules of debate, and voting.
- Adjournment, which has been modified to require a motion to extend the meeting if the meeting is to continue past 11:00 p.m.
- Use of City Council Chambers.

Violations

Currently there is no process or course of action with regard to violation of a City Council policy. The Policy Subcommittee, in conjunction with City staff and legal counsel, gave careful consideration to this section to ensure that a process was created to encourage the opportunity to resolve any issues privately. The policy section also includes recourse for a Councilmember to file a complaint for a more formal process involving action by the full City Council. This process includes the following components:

- Review and discussion by the full City Council of a complaint and any written response from an accused Councilmember.
- Action may include an investigation, public admonishment, no action, censure in the form of a formal statement or other actions including a reprimand, disapproval of reimbursement requests, removal from local liaison or other intergovernmental assignments, or other remedies deemed appropriate by the City Council and allowed by law.

The proposed process states that neither the Councilmember who filed the complaint or the Councilmember who is the subject of the complaint shall preside over the matter. If a complaint is filed naming more than one Councilmember, each Councilmember

named will be processed as a separate complaint. All Councilmembers may participate in consideration of and vote upon a complaint. Any action taken by City Council to impose censure shall be taken by written resolution.

Ordinance to Amend the City Municipal Code regarding Rules of Order

While there are several codes related to parliamentary procedure, the most common are *Robert's Rules of Order*, the *Standard Code of Parliamentary Procedure* (formerly *Sturgis Standard Code of Parliamentary Procedure*), and *Rosenberg's Rules of Order*.

Robert's Rules of Order is a very detailed, and an often complex set of rules used widely for a diverse range of public and private organizations. The *Standard Code*, while more simplistic and streamlined, is still often more complex than is required for a local municipality. *Rosenberg's Rules of Order*, included as Attachment 2, provides a simplified version of rules for parliamentary procedure that is relevant for a typical five-member body of a local government agency. Hundreds of local municipalities have adopted *Rosenberg's* because they have found them practical, logical, simple, easy to learn, and user friendly.

Currently language in the City's Municipal Code states in case of conflict over parliamentary procedure, that *Sturgis Standard Code of Parliamentary Procedure* would govern. In reviewing best practices and policies for other California municipalities, as well as the standard of actions used by the City Council, staff proposed to align the rules of parliamentary procedure with *Rosenberg's Rules of Order*.

The proposed Administrative Policies and Rules of Order is based on *Rosenberg's Rules of Order*. If adopted, staff will initiate the ordinance process to modify the language in the City's Municipal Code to align with the adopted policy.

Expense Reimbursement and Use of Public Resources Policy

On April 17, 2006 the City Council adopted Resolution 2006-63 regarding a Policy for Expense Reimbursement and Use of Public Resources (Expense Policy). This policy was adopted in response to satisfying certain requirements of California Government Code pertaining to compensation. This policy outlines authorized expenses for reimbursement, when prior approval is required, and procedures to ensure expenses are the most economical and reasonable costs available.

City staff and the Policy subcommittee reviewed the Expense Policy and propose minor modifications to the content as follows:

- Clarification on the definition and intent to establish policy for the City Council, and not other appointed City Officials, who are governed by City Administrative Policies.
- Clarification on what circumstances require approval **prior** to incurring expenses. Inclusion of language to encourage collaboration with the City Clerk or their designee, to arrange and pre-pay for eligible expenses to assist in cost

controls.

- Providing additional details on determining the most economical transportation and lodging arrangements, as well as clarification of meals reimbursed up to the maximum per diem rates set by the US General Services Administration.
- Inclusion of an expense report for use by Councilmembers when submitting a request for reimbursement.

STRATEGIC PLAN CONSIDERATIONS

Reviewing and adopting these policies is consistent with Strategic Plan Goal A: Deliver Exemplary Government Services.

ENVIRONMENTAL CONSIDERATIONS

This section is not applicable to this agenda item.

FINANCIAL CONSIDERATIONS

This section is not applicable to this agenda item.

LEGAL CONSIDERATIONS

The City Attorney has reviewed all documents and found them to be in compliance with applicable laws.

Reviewed by:



Karen Pinkos, City Manager

Attachments:

1. Beyond Ethics
2. Rosenberg's Rules of Order
3. Resolution
4. Exhibit A to Resolution (Administrative Policies and Rules of Order)
5. Ordinance
6. Resolution (Expense Reimbursement)
7. Exhibit A to Resolution (Expense Report)

Beyond Ethics: Establishing a Code of Conduct to Guide Your Council - Western City Magazine

Rod Gould is vice chair of the board of the Institute for Local Government, the League's nonprofit training and education affiliate, and a senior partner at Management Partners. Gould previously served as city manager in four California cities and is a past president of the League's City Managers' Department. He can be reached at rodgould17@gmail.com.

It is often said that ethics is the foundation of public service and essential for public trust and confidence in public officials. This is true, but ethics alone is not enough.

A 2019 study conducted by the Pew Research Center reports that public trust in government remains near historic lows. The current dearth of public confidence in government requires elected and appointed officials to lead by example even more than in the past. This means conducting themselves with the highest levels of civility and decorum, thereby giving residents a reason to reconsider negative stereotypes of government leaders and to modulate their own behavior when engaging with government officials.

Many observers lament the coarsening of civic dialogue in the United States and note its creeping effects in council chambers. Sometimes this manifests in a few shrill advocates and critics who spew vitriol and discord to disrupt the public process. At other times, council members themselves display an appalling lack of respect for each other, staff and/or the public they serve. Invariably, the council's example sets the tone. Disrespectful conduct on the council's part normalizes such behavior by the public attending the meeting or watching it on television or online. The cycle then repeats — for the worse.

Elected officials' lack of civility impedes governance in many ways, such as stalling the decisionmaking process, undermining employee retention and recruitment, fueling political apathy and discouraging public participation. Over time, the standard set for acceptable behavior becomes increasingly lower.

Although cities periodically conduct ethics training for officials as required by state law (AB 1234, Chapter 700, Statutes of 2005), most don't take the time to discuss *how* they govern. This is puzzling because local government can be seen as the ultimate team sport, where everyone must play their roles well for civic progress to occur.

Fostering Focused and Productive Dialogue

How often do councils and senior staff take time to discuss what is working and what can be improved in the ways they interact and carry out their duties? What benchmarks do they use to measure their behavior? Most importantly, how do they hold themselves and each other accountable?

Many cities have adopted codes of ethics for their organizations and/or city councils, which is positive and appropriate. Some are taking the additional step of defining how the elected leaders and staff are to behave in carrying out their duties. These policies are typically called codes of conduct or council guidelines or norms. In such policies, the local government leadership sets the rules and expectations for how they govern their cities — defining a civil and respectful governing culture consistent with best practices.

How to Develop a Code of Conduct

Whether the city council members are experienced or fairly new, each member articulates their vision of the organizational culture and values for the governing body when the council spends time developing a code of conduct. This also sets the tone for future councils.

This type of exercise should be conducted as an off-site workshop rather than as part of a council meeting with a packed agenda. Welcome the public and media to attend this open workshop but make it clear that the council will focus on the process of governing, not on addressing local issues.

When developing a code of conduct, consider these tips for a successful session:

- Create an informal atmosphere with seating arranged so that everyone can see each other, rather than using auditorium-style seating;
- Engage a neutral facilitator so that everyone may participate freely;
- Provide food, beverages and breaks; and
- Encourage the use of humor.

Use the theme of commitment to community to get things started. This can be accomplished through a team-building conversation that allows the council members to express why they ran for office, what they hope to accomplish, their greatest satisfaction in serving in elected office and the legacy they hope to create.



[Sshepard](#)

A discussion about the habits of highly effective councils can help clarify the roles of the key local government players before developing the code of conduct or civility. To support such a discussion, the Institute for Local Government website (www.ca-ilg.org) offers useful resources that include the articles “Attributes of Exceptional Councils” and “A Key Ingredient for Success: An Effective City Council-City Manager Relationship.” The first offers best practices and the second explores roles and how they function in complementary ways for greatest effectiveness. This information sets the stage for an in-depth discussion of the norms of conduct that the council wishes to embrace.

Some councils may find it useful to see codes or policies developed by other cities and borrow specific guidelines that best fit their current situation. Other councils may wish to begin “from scratch” by brainstorming the principles, standards and behaviors that they expect — and draft the code of conduct after the session. Either way is acceptable.

Don't attempt to edit the document to perfection in the group setting. After the session, have your best writer polish the draft and bring it back for formal adoption at the next regularly scheduled council meeting. This gives the community a better chance to weigh in and take note of how the council is committing to carry out the public's business.

Code of Conduct Models and Examples

Avoid attempting to address every eventuality. If the document is too dense, it will be ignored. Keep it general, in the council's words and in terms that everyone can easily grasp. The following examples offer some typical elements, but this list is not intended to suggest that a code of conduct would include all of these elements.

- Demonstrate honesty and integrity in every action and statement;
- Inspire public confidence in our city government;
- Work for the common good, not personal interest;
- Respect the proper roles of elected officials and city staff in ensuring open and effective government;
- Disagree agreeably and professionally (use appropriate language, tone, nonverbal gestures, etc.);
- Share information and avoid surprises;
- Approach the business of governing in a professional manner — conduct business in a way that brings honor to the institution of government;
- Praise in public, criticize in private;

- Work together as a body, modeling teamwork and civility for our community;
- Communicate through the city manager;
- Prepare in advance of council meetings, be familiar with issues on the agenda and ask questions of the city manager before the meetings so everyone can be fully prepared when the meeting occurs;
- Fully participate in city council meetings and other public forums while demonstrating respect, consideration and courtesy to others;
- Participate in scheduled activities to increase council effectiveness;
- Share information with other council members about committee meetings attended;
- Work for win-win — strive for consensus and seek common ground; and
- Honor “discussion” before “decisions” — delay making formal motions until initial discussions have taken place.

Commitment and Accountability

The council’s determination of how it will enforce the code of conduct — informally and/or formally — is just as important as the principles expressed in the code of conduct.

Enforcing the code can take the form of a personal pledge to behave consistently with its policies and to gently remind one’s peers if they are straying from the joint commitments in the code. It may also involve more formal actions like censure under prescribed rules. Regardless of the enforcement method, council members should not expect the city manager or city attorney to do it for them; imposing this expectation on staff is unreasonable.

Annual Self-Assessment: Reflection, Learning and Continuous Improvement

It is absolutely essential that the council meet at least once a year to take stock and evaluate how it is performing with respect to the code of conduct. This process provides a chance to discuss what is working well, identify areas for improvement, examine what should be emphasized and clarify what needs to stop if the council is to function for the greatest community good — and build trust and confidence in the city. It may be useful to consider recent successes and how they were achieved. Conversely, clear-eyed diagnosis of setbacks — without devolving into blaming and finger-pointing — is important. Skilled neutral facilitation is key to making this happen. Again, in such discussions, a little team building can go a long way.

The follow-up meeting is also the time to consider amendments to the code of conduct as needs arise or understandings evolve. Debrief afterward to improve the next session; these governance tuneups should become easier and more meaningful over time. This annual exercise should be considered as important as the evaluation of the city manager. It is critical governance hygiene.

The Bottom Line

Ethics is the bedrock on which strong cultures are built. A code of conduct can help shape a civil and effective governance culture.

Related Resources

[The “Front Page” Test: An Easy Ethics Standard](#)

[#MeToo 2.0: A Guide to Help Navigate New Workplace Harassment Laws](#)

[It Starts With Civility: Elected Officials’ Role in Attracting and Retaining Employees](#)

[Transitioning to Districts and Sustaining Effective Governance as a Council](#)

This article appears in the December 2019 issue of Western City

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Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.

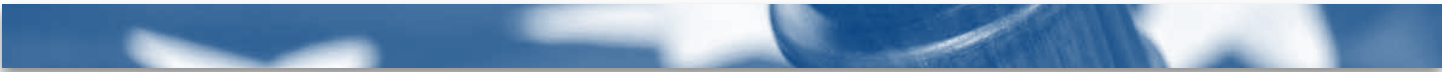


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INTRODUCTION

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:



First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move ...”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”



The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.



Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in



California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

How does this work in practice?

Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.



Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

Order. The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.



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RESOLUTION 2020-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ADOPTING
ADMINISTRATIVE POLICIES AND RULES OF ORDER AND PROCEDURE AND
SUPERSEDING RESOLUTION 1997-99

WHEREAS, on November 3, 1997 the City Council adopted Resolution 1997-99 regarding Council Meeting Rules and Procedures; and

WHEREAS, on February 18, 2020, at the request of Mayor Lyman, the City Council appointed Mayor Lyman and Mayor Pro Tem Fadelli to a subcommittee for the purpose of discussing and developing City Council policies for consideration; and

WHEREAS, the City Council Policy Subcommittee submitted a report and recommendations to the City Council on November 17, 2020; and

WHEREAS, it is the City Council's desire to adopt the Administrative Policies and Rules of Order and Procedure incorporated and attached hereto as Exhibit A;

WHEREAS, Exhibit A adopts Administrative Policies for City Council Code of Conduct, Selection of City Council Officers, Communication with City Administration, Communication with the Public, and City Council Expenditures; and

WHEREAS, Exhibit A adopts Rules of Order and Procedure for the conduct and facilitation of City Council meetings; and

WHEREAS, Rules of Order and procedure are adopted in alignment with *Rosenberg's Rules of Order*.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito adopts the attached Administrative Policies and Rules of Order and Procedure.

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

I CERTIFY that at a regular meeting on November 17, 2020 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on December_____, 2020.

Holly M. Charl  ty, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



El Cerrito City Council Administrative Policies and Rules of Order and Procedure

*Last Revised
November 2020*

El Cerrito City Council Administrative Policies and Rules of Order & Procedure

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SECTION ONE: PREAMBLE

I. CITY COUNCIL AUTHORITY

The purpose for establishing City Council Administrative Policies and Protocols is to provide an effective environment for the City Council to provide leadership. This document may be amended by a majority vote of the City Council and should be reviewed on a regular basis to ensure that the document remains helpful to the Council in providing a framework for effective leadership. For the purpose of this document, a “Policy” is the protocol, principle or rule that guides City business and serves as a framework for the City Council to use. Until such time as they are amended or new rules are adopted by resolution, these rules shall prevail to govern the order and conduct of business of the City Council and other legislative bodies that meet concurrently with the City Council. The rules and procedures set forth herein are not exclusive and do not limit the inherent power and general legal authority of the City Council, or of its Mayor, to govern the conduct of City Council meetings as may be considered appropriate from time to time or in particular circumstances for purposes of orderly and effective conduct of the affairs of the City. A majority of the City Council present at a City Council meeting shall have the authority to waive provisions of the policy and procedures unless otherwise required by law.

SECTION TWO: ADMINISTRATIVE POLICIES

II. CITY COUNCIL CODE OF CONDUCT

Members of City Council shall abide by the following code of conduct. Members shall:

- 1) Work for the common good of the people of El Cerrito and not for any private or personal interest.
- 2) Endeavor to treat all members of the public and issues before them in a fair and equitable manner.
- 3) Make impartial decisions, free of bribes, unlawful gifts, narrow political interests and financial or other personal interests that impair independence of judgment or action.
- 4) Decisions will be fair, objective, made in public (unless allowed or required to be made in closed session), and understandable.
- 5) Fully participate in their meetings and other public forums while demonstrating respect and courtesy to others, practicing civility and decorum in discussions and debate, listening courteously and attentively, and engaging in effective communication. Members of City Council are expected to contact the City Manager or the City Clerk if they cannot attend a scheduled meeting.

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- 6) Act in an efficient manner, making decisions based upon research and facts in accordance with the Brown Act to allow full and equal participation in the public process.
- 7) Refrain from abusive conduct, personal charges or verbal attacks upon the character, motives, ethics or morals of other members, staff or members of the public. Refrain from negative comments regarding any person or group based on their race, ethnicity, sex, gender, sexual orientation, national origin, immigration status, religion, disability, age, marital status, or membership in any other protected category.
- 8) Respect and preserve the confidentiality of information provided to them concerning confidential matters of the City, and refrain from disclosing any information received confidentially without proper legal authorization nor use such information to advance the personal, financial, or private interests of themselves or others.
- 9) Use their title only when conducting official City business, for informational purposes, or as an indication of background and expertise, carefully considering whether they are exceeding or appearing to exceed their authority.
- 10) Respect established channels of communication with City staff, treat staff members professionally, and not attempt to pressure or influence discussions, recommendations, workloads, schedules or department priorities without the approval of a majority of the City Council providing direction directly to the City Manager.
- 11) In unofficial settings, members of City Council shall be clear in representing to the public, other agencies, and the media whether their comments or statements represent the official position of the City or a personal viewpoint.

In addition, the Councilmember appointed to the role of Mayor shall be clear in making oral or written public statements that they represent their personal viewpoint as the Mayor, or upon approval of a majority of the City Council, represent the viewpoint of the full City Council. The Mayor shall report out at a City Council Meeting, any statements made representing the viewpoint of the full City Council.
- 12) Complete 2 hours of Ethics Training in compliance with AB1234 every two years for the duration of their term.
- 13) Complete 2 hours of Sexual Harassment Prevention Training in compliance with AB1661 every two years for the duration of their term.

III. SELECTION OF CITY COUNCIL OFFICERS

At the first regular City Council Meeting in December of each year or when appropriate, the City Council shall select from among its members a Mayor and a Mayor Pro Tempore (Mayor Pro Tem) to serve for the following year in accordance with the following process:

A newly elected Councilmember, who is not an incumbent, will serve a minimum of one year on the City Council before qualifying to serve as Mayor.

Mayor Pro Tem will replace the outgoing Mayor.

Mayor Pro Tem will be the Councilmember who has received the highest number of votes, compared to the other Councilmembers elected at the same time. Preference will be given to those who have not yet served as Mayor. This process continues until all Councilmembers elected in the same year have served as mayor.

An appointed Councilmember shall join the rotation only after first being elected.

Newly elected and re-elected Councilmembers are added onto the existing order of rotation in the order of the number of votes received, from the highest number of votes to the lowest.

A Councilmember may decline to serve as Mayor or Mayor Pro Tem. This will drop the Councilmember back one position in the rotation.

This format will be followed unless altered by a majority vote of the City Council. The City Council has the ultimate discretion to elect or not elect any Councilmember for any office.

The new Mayor and Mayor Pro Tem shall take office upon a majority vote of the Council. The term of office for the Mayor and Mayor Pro Tem shall be for one calendar year or until the next rotation occurs.

At any time during the term of office for a Mayor or Mayor Pro Tem, an agenda item may be requested by vote of a majority of the City Council to consider removal of a Mayor or Mayor Pro Tem from their appointed role. Subsequently, the formal action of removing a member from their appointed role shall require the vote of a super majority. In the case of removal, the City Council shall select a new member to complete the remaining term of office in place of the removed member.

IV. COMMUNICATION WITH CITY ADMINISTRATION

Except for the purpose of inquiry, the City Council shall deal with City employees, solely through the City Manager. When a Councilmember requires information involving more than a simple answer, the request shall be referred to the City Manager. No individual City Councilmember shall give orders to any subordinates of the City Manager either publicly or privately or discuss the performance of any City employee with any person other than the City Manager.

V. COMMUNICATION WITH THE PUBLIC

Public service is the first duty of all City Officials, and the public is best served when it is treated well. Councilmembers should always clearly demonstrate their respect for members of the public, both in word and in action. This means keeping communication flowing smoothly and efficiently, giving members of the public feedback on their ideas, treating all sides fairly, understanding there may be something to learn from the public, and always being as encouraging and constructive as possible.

When using social media, Councilmembers must clearly disclose that they are expressing their own personal opinion, and not an official position of the City. When appropriate, posting a disclaimer to this effect is advised.

Councilmembers must also use caution when communicating on social media in that it does not become a conduit to communicate with fellow Councilmembers regarding City business.

No member of the City Council shall issue any press release or formal statement on behalf of the City without the express approval of the City Manager. The Councilmember appointed to the role of Mayor shall be clear in making oral or written public statements that they represent their personal viewpoint as the Mayor, or upon approval of a majority of the City Council, represent the viewpoint of the full City Council. The Mayor shall report out at a City Council Meeting, any statements made representing the viewpoint of the full City Council.

VI. CITY COUNCIL EXPENDITURES

The City Council recognizes the value and benefits to the City when Councilmembers attend meetings and functions for the purpose of advancing knowledge and information relating to municipal government. The City Council also recognizes the obligation to be accountable to the public when attending functions at City expense as set forth by the Policy Regarding Reimbursement and Use of Public Resources (Reimbursement Policy), adopted by Resolution.

Expenses related to local liaison appointments are typically covered in the City Council budget. However, if a Councilmember makes the decision to represent the City Council in other capacities, related expenses are not expressly authorized for reimbursement.

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During the budget setting process, the City Council shall review the budget allocated for travel & training, as well as events & field trips and make a determination as to the amount of money allocated to each Councilmember for reimbursement of such activities. Each Councilmember will then have the discretion to determine how to use their allocation of funds, in compliance with the Reimbursement Policy.

Whenever a Councilmember, at City expense, participates in any travel for City business or for City-related educational purposes, he or she shall provide a brief oral or written report (including the purpose of the trip and any observations that may be of value to the City) at the next regular City Council meeting. If any Councilmember fails to adhere to this Section, a majority of the City Council may, after discussion at an open session of the City Council:

- 1) Order that the City withhold any and all unpaid expense reimbursements related to the trip until such time as the report is properly filed and accepted by a majority of the City Council; and
- 2) Limit or prohibit the expenditure of City funds for said Councilmember to travel or attend any function of any kind, whether within the state or out-of-state, for a term to be determined by a majority of the City Council in each instance.

A Councilmember may request a City issued device for the purpose of conducting official City business. In general, no one Councilmember shall be issued more than one device. Any additional requests for issuance of a device shall require prior approval by the City Council.

SECTION THREE: RULES OF ORDER AND PROCEDURE

VII. DUTIES

A. Duties of Mayor and Mayor Pro Tempore

The Mayor is recognized as the official head of the City for all ceremonial purposes and shall preside at the meetings of the City Council and preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council. The Mayor shall announce the decision of the City Council on all subjects, and decide all questions of order and subject, however, to an appeal to the Council, in which event a majority vote of the City Council shall govern and conclusively determine such question of order. When a motion is made, it shall be stated by the Mayor or the City Clerk before debate.

The Mayor, unless unavailable, shall sign all ordinances, resolutions, proclamations and any other documents that have been adopted by the City Council and require an official signature, except when the City Manager has been authorized by City Council action to sign documents. In the event the Mayor is unavailable, the Mayor Pro Tem's signature may be used. The Mayor Pro Tem shall perform the duties of the Mayor during the Mayor's absence. In the event the Mayor and Mayor Pro Tem are absent, the Councilmember with the longest years of City Council service will serve as Mayor Pro Tem.

The City Council seating order shall be at the discretion of the Mayor. The Mayor Pro Tem is traditionally seated immediately to the left.

City Council liaison assignments are traditionally made at the second meeting in December by the Mayor. The City Clerk will maintain and keep on file a list of Standing Committees, Ad Hoc Committees, regional agencies and organizations, and joint powers agencies to which Councilmembers are appointed.

B. Duties of Councilmembers

Promptly at the time established by ordinance on the date of each regular meeting, members of the City Council shall take their regular stations in the Council Chambers and the business of the City Council shall be taken up for consideration and disposition.

C. Decorum by Councilmembers

While the City Council is in session, Councilmembers must respect the Mayor's authority to conduct each meeting and preserve order and decorum. A member shall not, by conversation or otherwise, delay or interrupt the proceedings or the peace of the City Council nor disturb any member while speaking, nor refuse to obey the orders of the Council, or the Mayor, except as otherwise herein provided. Members shall make the

public feel welcome, value each other's time and respect each other's opportunity to speak while attempting to build consensus on an item through an opportunity for dialogue; but when this is not possible, the majority vote shall prevail and the majority shall show respect for the opinion of the minority.

D. Voting Disqualification

Any Councilmember shall not vote upon any matter on which the member is disqualified due to a conflict of interest, or any quasi-judicial action regarding that in which the Councilmember is biased. No member of the City Council who is disqualified shall vote upon the matter on which he or she is disqualified. Any member shall openly state or have the Mayor announce the fact and nature of such disqualification in the open meeting and shall not be subject to further inquiry. A member who is disqualified by conflict of interest shall leave the dais during the debate and must not vote on such matter. This shall not prohibit the member from remaining in the Chamber as a member of the public to hear other testimony and to provide their own testimony to the City Council as a member of the public. The member may remain on the dais for Consent Calendar items if the member states that they are abstaining from the vote due to the described conflict of interest before the Consent Calendar is voted on in one motion.

E. Requests for Technical Assistance and/or Reports

A majority vote of the City Council shall be required to direct the City Manager to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual Councilmember.

VIII. MEETINGS

F. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Mayor Pro Tem, shall take the chair precisely at the hour as stated on the agenda and shall immediately call the meeting to order, unless a preceding meeting runs past the stated start time of the meeting. Upon the arrival of the Mayor, the Mayor Pro Tem shall immediately relinquish the chair at the conclusion of the business presently before the Council. In the absence of the two officers specified in this section, the Councilmember present with the longest period of City Council service shall preside.

G. Roll Call

A majority of the members of the City Council in office shall constitute a quorum. Before the City Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

H. Quorum Call

During the course of the meeting, should the Mayor note a City Council quorum is lacking, the Mayor shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within three minutes of a quorum call, the meeting shall be deemed automatically adjourned.

I. Council Meeting Schedule

Regular meetings of the City Council as established by ordinance, shall be held generally on the first and third Tuesday of each month taking into consideration holidays and election dates as specified in El Cerrito Municipal Code Section 2.04.010 and 2.04.040.

Regular City Council meetings, in accordance with the time established by ordinance, shall commence at 7:00 p.m. City Council meetings may be scheduled and noticed concurrently with meetings of the El Cerrito Municipal Services Corporation, El Cerrito Public Financing Authority and/or the El Cerrito Employees' Pension Trust Board.

The agenda for the regular business meetings shall include the following: Pledge of Allegiance, Ceremonial Items (as needed); City Council and City Staff Communications; Oral Communications from the Public; Presentations, Consent Calendar (including Information Reports); Public Hearings; and Policy Matters (Appeals, Old Business, New Business). Workshops and Study Sessions may be included as part of the Presentation or Policy Matter Calendar or scheduled and noticed as separate special meetings. Upon request by the Mayor or any Councilmember, any item may be removed from the Consent Calendar. At the discretion of the Mayor, any item removed from the Consent Calendar may be discussed and voted on prior to or immediately after voting on the Consent Calendar.

Any item not considered or withdrawn from the agenda will automatically be carried over as Old Business to the next regular business meeting unless another date is set by the Council.

Public Hearings may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Council, in conjunction with the City Manager and their staff, may schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Special meetings may be called by the Mayor at any time or by a majority of members at a duly noticed meeting of the Council. Written notice must be given to the City Council and to the media 24 hours prior to a special meeting. Notice requirements of the Brown Act shall be complied with for all meetings.

Closed sessions may be held at any time authorized by law, to consider or hear any matter which is authorized by law. The Mayor or any three Councilmembers may call a closed session.

J. Adjournment

No City Council meeting shall continue past 11:00 p.m. unless a majority of the City Council votes to suspend this rule and extend the meeting to discuss specified items. If a City Council meeting is continued past 11:00 p.m., the Mayor should ensure that the meeting is adjourned no later than midnight.

Any items not completed at a regularly scheduled City Council meeting shall be continued to the next regular business meeting, or by a majority vote of the City Council to an adjourned regular meeting.

K. City Council Recess Periods

A recess period is defined as a period of time longer than 21 days without a regular or special meeting of the City Council.

During any recess period, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the City Council by the Municipal Code, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; and the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

IX. AGENDA

L. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon by the City Council at its meeting without being

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published on the agenda of the meeting and posted in accordance with this section. Exceptions to this rule are limited to emergency matters and items carried over, as defined in Section M.

M. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

"Agenda Item" means an item placed on the agenda for a vote of the City Council by the Mayor, the City Manager, or any board/commission/committee created by the City Council, or any Report for Information which may be acted upon if approved by the Mayor. For purposes of this section, appeals shall be considered action items. All information from the City Manager or Department Director concerning any item to be acted upon by the City Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney-client communication concerning a litigation matter or any other matter deemed a closed session matter as allowed under the Brown Act.

Agenda items shall contain all relevant documentation, including the following as applicable:

- 1) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
- 2) Whether the matter is to be presented on the Consent Calendar, Presentations, Public Hearings or Policy Matters;
- 3) Recommendations of the City Manager or their staff, if applicable containing the recommended action to be taken by the City Council with respect to that particular item, and the rationale for the recommendation;
- 4) Fiscal impacts of the recommendation;
- 5) A description of the current situation and its effects;
- 6) Background information as needed;
- 7) Alternative actions considered (if applicable);
- 8) For awards of contracts; the abstract of bids in those cases where such is required;

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"Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section P.

"Packet" means the agenda plus all its corresponding agenda reports and attachments.

"Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the City Council determines that:

- 1) a work stoppage or other activity which severely impairs public health, safety, or both;
- 2) a crippling disaster which severely impairs public health, safety or both.

Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

"Old Business" Items carried over from a prior agenda of a meeting as uncompleted items.

N. Procedure for Bringing Matters before City Council

1) Requesting Matters for Placement on the Agenda

Matters for the agenda may be requested by any member of the City Council and requires approval of the Mayor for placement on the agenda. Matters requested by City staff are approved by the City Manager.

Items Authored by the City Staff.

Agenda reports shall be reviewed by the City Manager. The City Manager can recommend that the matter be referred to a commission or back to the originating department for adherence to required form, additional analysis, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions. The City Manager in consultation with the Mayor determines placement and timing of items on the Agenda.

Items Submitted by Boards and Commissions.

Recommendations submitted by boards, commissions and committees are submitted through the staff liaison and must follow procedures and timelines for submittal of reports as established by resolution or administrative procedure. The City Manager may, at their discretion, prepare a companion report and analysis of a board

or commission's recommendation.

2) Emergency and Non-Agendized Items.

Emergency and non-agendized items may be added to an agenda only in accordance with state law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies that severely impair the public health and/or safety qualify for emergency meetings. Adding an emergency item requires a four-fifths vote of the Council. Emergency items are very rare. More likely, after the agenda is posted, an item arises that the City Council would like to act on. Non-agendized items may be added to the agenda only if the City Council makes findings that 1) the need to consider the item arose after the posting of the agenda; and 2) there is a need to take immediate action at this meeting of the City Council. These findings must be approved by a four-fifths vote; if less than five members of City Council are present, the findings require a unanimous vote of those present.

3) Scheduling Public Hearings Mandated by State, Federal, or Local Statute

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

4) Submission of Agenda Items

Except for Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager. The City Manager has set a deadline of 12:00 p.m. on Monday eight days prior to the regular City Council Meeting at which the item is to be presented. If Monday falls on a holiday, the agenda item shall be submitted to the City Clerk on the preceding Thursday, twelve days before a meeting.

5) Proclamations

Ceremonial proclamations are often requested of the City in recognition of an event or individual. Proclamations are not statements of policy but a manner in which the City can make special recognition of an event (e.g., Earth Day) or individual. The Mayor, without formal action of the City Council, may review such requests and make the determine as to whether any recognition will be given and what form that recognition will take (for example, Certificate of Appreciation, Certificate of Recognition, Certificate of Commendation, Proclamation, or Resolution). Individual

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Councilmembers do not have the authority to issue proclamations. Certificates and Proclamations may be sent directly to the requestor or presented at a City Council meeting as arranged with the requesting body and at the Mayor's discretion.

6) Formal City Council Positions

Formal support or opposition by the City Council for any form of a legislative platform, specific legislation or other matters shall be approved by a majority of the City Council. Any individual Councilmember may request the Mayor for approval to add an item to the agenda for consideration. The Mayor shall report out at a City Council Meeting, any statements made representing the viewpoint of the full City Council.

The City Council shall not take action on any matter that has no direct effect on the local affairs of the City of El Cerrito and over which the City, as a California municipal corporation, has no jurisdiction. The requesting Councilmember shall furnish with the request, proposed language in the form of a letter, resolution, or other documentation that provides a direct connection or effect on the City El Cerrito.

7) Scheduling a Presentation

Any request for a presentation to the City Council will be submitted as an agenda item and follow the timelines for submittal of agenda reports. Presentations are also scheduled as necessary to recognize persons or groups, or to promote events. Ceremonial requests are reviewed by the Mayor.

Any request for a presentation should include general information regarding the purpose and content of the presentation; information on the presenters; contact information; and the length of the presentation. The City Manager will review the request and recommend a presentation date and allotted time based on the Council's schedule.

The City Clerk will notify City staff responsible for the presentation or the presenters themselves of the date and time of the presentation and will coordinate use of any presentation equipment and the receipt of additional electronic or written material for transmittal with the agenda packet.

O. Packet Preparation and Posting

1) Preparation of the Packet

Not later than the Thursday prior to the City Council Meeting, the City Clerk shall prepare the agenda packet, which shall include the agenda plus all of its corresponding agenda reports and

attachments. No item shall be considered if not included in the packet, except that a correction or supplement to an item already included in the packet may be considered. Reports carried over as Old Business shall be reproduced again at the City Manager's discretion.

2) Distribution and Posting of Agenda

The City Clerk shall post each agenda for a City Council regular meeting no less than 72 hours in advance of the meeting and shall post each agenda for a special meeting no less than 24 hours in advance of the meeting online and in the official bulletin board and at any other locations specified by ordinance or resolution. The City Clerk shall maintain an affidavit indicating the location, date and time of posting for each agenda.

The City Clerk shall also post agenda packets, minutes and all legal notices for City Council meetings on the City's website.

Not later than the third day prior to said meeting, copies of the agenda shall be sent by the City Clerk to any resident of the City of El Cerrito who so requests in writing. Copies shall also be available free of charge in the City Clerk's Office.

3) Distribution of the Packet

Not later than the third day prior to said meeting, the City Clerk shall distribute the packet to each member of the City Council and place a packet for public review at the El Cerrito Library. The agenda packet will also be made available to members of the press upon request and will be posted on the City's website.

Any supplemental materials distributed to members of the City Council after the posting of the agenda will be available for public review in the City Clerk's Office and at the City Council meeting. If supplemental materials are made available to the members of the City Council at the meeting, a copy will be available for public review in the City Council Chambers. All supplemental materials shall be posted online after the meeting.

4) Failure to Meet Deadlines

The City Clerk shall not accept any agenda item or revised agenda item after established deadlines unless authorized by the City Manager.

Matters not included on the published agenda may not be discussed and acted upon unless otherwise authorized by State law or providing the City Council finds one of the following conditions is met:

- a) Four-fifths of the City Council determines that the subject meets the criteria of "Emergency" as defined in Section M.
- b) Four-fifths of the City Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.

P. Agenda Sequence and Order of Business

The Mayor or City Manager may re-order the agenda prior to its publication in the interests of accommodating public comment or public hearing testimony, the appearance of elected officials, or the conservation of resources. The City Council agenda for a regular business meeting shall generally be arranged in the following order:

- 1) Roll Call
- 2) Pledge of Allegiance
- 3) Preliminary Matters: (Ceremonial, Reports of Closed Session, City Council and City Staff Communications)
- 4) Oral Communications (General public comment and comments relating to the Consent Calendar and items which do not otherwise appear on the Agenda. Public Comments relating to items on the action calendar are presented at the time the City Council discusses each action item.)
- 5) Presentations (May include Proclamations, Awards, Workshops and Study Sessions.)
- 6) Consent Calendar (including Minutes, Proclamations, Routine Matters without controversy and Information Reports)
- 7) Public Hearings
- 8) Policy Matters (including Old Business, New Business, and work sessions which require City Council direction)
- 9) City Council Assignments / Liaison Reports
- 10) Adjournment

A duly noticed closed session may be held at any time during a meeting consistent with applicable law.

X. CONDUCT OF MEETING

Q. Comments from the Public

An oral communication period is convened at the beginning of each City Council meeting to provide an opportunity for members of the public to address the City Council on items of interest to the public which are within the subject matter jurisdiction of the Council but not on the agenda, items placed on the Consent Calendar, and Presentation items. Each speaker shall limit their remarks to no more than three minutes.

Public Comment shall be limited to matters on the agenda only for all

special meetings.

In order to increase the number of persons who can be heard by the City Council when there are a large number of persons who wish to be heard on one or more matters, the Mayor may make adjustments to these rules, for example, by increasing or shortening the amount of time per speaker, increasing or shortening the total time allotted for public comment or for a subject and/or require the pooling of time per side on a subject.

Speakers are asked to give their names and the city of their residence prior to making their public comments. To expedite the public comment period, the City Clerk will announce the name of the speaker and the city of residence if provided on the speaker card.

Councilmembers may ask questions, but the City Council shall not discuss or act in connection with a speaker's comments if the subject is not on the agenda for action. A Councilmember may, however, refer a subject to the City Manager or other resources for factual information or for action, if appropriate.

R. Consent Calendar

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, and the City Manager deem to be routine and of such nature that no debate or inquiry will be necessary at the City Council meetings. Typical consent calendar items include the final adoption of ordinances, non-policy items, resolutions approving agreements, awards of contracts, minor budgetary adjustments, meeting minutes, status reports, confirmation of committee appointments, proclamations and reports of routine City operations.

City Council Minutes shall be submitted for approval on the Consent Calendar. The primary purpose of the City Council Meeting Minutes shall be to record start and end time, City Council attendance, and the actions taken by the City Council.

It is the policy of the City Council that Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the City Manager prior to the City Council meeting so that the need for discussion of consent calendar items can be minimized. This practice allows the City Manager time to notify staff that a presentation of the item may be required.

Upon motion of any member of the Council, all items on the Consent Calendar shall be acted upon together and, if the motion is approved, adopted, or accepted, each item shall be deemed to have received the action recommended.

There will be no separate discussion of matters on the Consent Calendar.

A Councilmember may vote "no" or may abstain on any consent calendar item without comment or discussion. Upon request by any Councilmember, any item may be removed from the Consent Calendar. Requests by a member of the public to remove an item from the Consent Calendar shall only be honored if subsequently sponsored by a Councilmember. At the discretion of the Mayor, any item removed from the Consent Calendar may be discussed and voted on prior to or immediately after voting on the Consent Calendar.

S. Information Reports Called Up for Discussion

Reports for Information designated for discussion at the request of any Councilmember shall be added to the appropriate section of the agenda and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn.

T. Communications

Members of the public are encouraged to present written comments to the City Clerk in advance of the meeting, as a way to fully communicate their thoughts on agenda or non-agenda items. This provides the City Council with a greater opportunity to review and consider issues and/or concerns expressed in written communications prior to a meeting. Letters from the public will not appear on the City Council agenda as individual matters for discussion but will be distributed as part of the City Council packet with the exception that communications regarding appeals will be listed on the agenda with the appeal.

All communications regarding an appeal must have been received by the City Clerk no later than the Monday eight days prior to the meeting in order to be included in the agenda packet.

All communications shall be simply deemed received without any formal action by the Council. A Councilmember may refer a communication to the City Manager for action, if appropriate, or request that a consent or action item be prepared for placement on a future agenda.

U. Public Hearings

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to presentations by the public. Notices of Public Hearings will be posted, published and mailed as required by law. When the Public Hearing is called, staff will summarize the application/project/appeal/matter as contained in the staff report. The City Council may ask questions for clarification. Public Hearings relating to land use and zoning matters or appeals include formal presentations by applicants and appellants.

Anyone desiring to speak to the City Council on the subject of the public hearing are asked to submit a written request to the City Clerk at the meeting at which the public hearing is held. In the conduct of the public

hearing, the Mayor may request that those making presentations avoid repetition in order to permit maximum information to be provided to the City Council within the time allotted to the hearing.

Speakers may testify on public hearing matters only during the designated public hearing and not as part of Public Comment. The City Clerk will call out speaker names in the same order as speaker cards are received. The City Council may allow the elderly, disabled and those with childcare needs to speak early during public hearings.

When all parties have been heard and there are no additional requests to speak, the Mayor shall ask for a motion to close the Public Hearing. Any member of the City Council may make a motion to: a) Continue the Public Hearing to a date certain or uncertain to allow for further study and discussion; or b) Close the Public Hearing and do one of the following: 1) approve the application/project/matter as submitted; 2) conditionally approve the application/project/ matter with certain revisions or added conditions; 3) remand a land use matter back to the Planning Commission; 4) remand a design matter back to the Design Review Board; or 4) deny the application/project/matter. When more than one public hearing is scheduled, the Mayor may call a City Council recess between the hearings.

V. Work Sessions and Public Discussions

The City Council may from time to time, schedule a matter for general City Council discussion and direction to staff. Official/Formal action on a work session item will take place at the conclusion of the work session or be scheduled on a subsequent City Council agenda. In general, public comment at City Council work sessions will be heard after the staff presentation. At the time the work session discussion is scheduled, the City Council may seek comment from others if they so determine as appropriate.

W. Time Limitations

Each speaker shall be limited to three minutes with the exception that one representative for an appellant or applicant of an appeal shall be allowed fifteen minutes each for an initial presentation during the public hearing and ten minutes each for rebuttal following the other comments on the matter. No person may speak without first being recognized by the Mayor. The Mayor, subject to alteration by the Council, may establish overall time limits for applicants, appellants and other speakers at public hearings and set up such other procedures that may facilitate the orderly and efficient conduct of such hearings.

Persons who believe they cannot adequately present their testimony or evidence within the time limits provided herein are encouraged to submit their comments in writing to the City Clerk for distribution to the Council. To ensure that these written comments are distributed to the City Council with the agenda staff report and supporting written materials, the City

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Clerk must receive the written comments by the Monday eight days prior to the City Council meeting at which the hearing is scheduled. If that is not possible, then the written comments should be submitted to the City Clerk at the earliest feasible time prior to the meeting.

X. Public Speaker Protocol

Each person addressing the City Council shall first give their name and city of residence in an audible tone of voice, or through other means as a reasonable accommodation, for the record. All remarks shall be addressed to the City Council as a body and not to any member thereof. No one other than the City Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Mayor. No question shall be asked of a Councilmember except through the Mayor. Groups and organizations are encouraged to designate a spokesperson whenever possible.

XI. PROCEDURAL MATTERS

Y. Persons Authorized to Sit at Presentation Tables

No person, except City officials, their representatives and representatives of boards and commissions and those recognized by the Mayor shall be permitted to sit at the tables in the front of the City Council Dais without the express consent of the Council, or if prearranged with the City Manager as a reasonable accommodation.

Z. Decorum

Councilmembers and staff shall conduct the business of the City of El Cerrito recognizing that stewardship of the public interest must be of primary concern. Working for the common good of the people of the City of El Cerrito assuring fair and equal treatment of all persons and issues which come before the City Council and work earnestly to preserve appropriate order and decorum during all meetings. No person shall disrupt the orderly conduct of the City Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, approaching the City Council dais or speaker podium without consent, or refusing to obey the orders of the Mayor or Council. Any message to or contact with any member of the City Council while the City Council is in session shall be through the City Clerk. Neither Councilmembers nor any persons addressing the City Council shall make personal, slanderous, or profane remarks to any member of the Council, staff or the general public.

Noise emanating from the audience within the City Council Chamber or lobby area which disrupts meetings shall not be permitted. All cellular

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phones and other consumer devices shall be muted while in the Chamber. Refusal shall be grounds for removal.

AA. Enforcement of Decorum

The Mayor may call a recess if a speaker or group of speakers become unruly and/or interferes with the orderly conduct of the meeting. Any law enforcement officers on duty or whose services are commanded by the Mayor shall be Sergeant-at-Arms of the City Council meetings. They shall carry out all orders and instructions given by the Mayor for the purpose of maintaining order and decorum at the City Council meetings. Upon instructions of the Mayor or a majority of the City Council, it shall be the duty of the Sergeant-of-Arms, or any officer present, to escort outside or place under arrest any person who violates the order and decorum of the meeting, and cause them as necessary, to be prosecuted under the provisions of applicable law.

BB. Rosenberg's Rules of Order

Rosenburg's Rules of Order shall apply in all cases except that the Council shall normally attempt to arrive at consensus through discussion before a motion is made.

CC. Motions and Precedence of Motions

When a motion is made, the Mayor should determine if any member of the body wishes to second the motion. In general, the Mayor should not make or second a motion unless they are convinced that no other member of the body will do so. While it is good practice for a motion to require a second, it is not an absolute requirement, and the Mayor can proceed with consideration and vote on a motion with no second. This is a matter left to the discretion of the Mayor.

No more than three motions shall be on the floor at any given time. When there are two or three motions to consider at the same time, the vote shall first be on the most recent motion made. The three basic motions are as follows:

The Basic Motion. One that puts forward a decision for the body's consideration.

The Motion to Amend. A motion to amend takes the basic motion that is before the body and seeks to change it in some way. A motion to amend seeks to retain the basic motion on the floor but modify it in some way.

The Substitute Motion. If a member wants to completely do away with the basic motion that is before the body, they would move a substitute motion. A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion to replace it.

DD. Rules of Debate

The basic rule of motions is that they are subject to discussion and debate. The Mayor is free to participate in the debate, however should strive to be the last to speak. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the Mayor that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. A motion to adjourn, motion to recess, motion to table or motion to limit debate are not debatable (that is, when the following motions are made and seconded, the Mayor must immediately call for a vote of the body without debate on the motion).

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote. If all items of business have concluded, the Mayor may adjourn the meeting without a motion.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the Mayor determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific date/time in which the item can come back to the body or no specific time, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting.

Motion to limit debate.

As a practical matter, when a member calls out “I move the previous question” or “I move the question” or “I call the question”, the Mayor can treat it as a “request” rather than as a formal motion. The Mayor can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the Mayor can go right to the pending motion that is on the floor.

However, if even one person wishes to discuss the pending motion further, then the Mayor should treat the call for the “question” as a formal motion and should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

EE. Voting

It is the policy of the City Council that all members present at a meeting fully participate in the discussion of a matter and shall vote for or against a motion, unless disqualified by conflict of interest or other legal reason. Votes are counted for “those present”, therefore if a Councilmember abstains from voting, their vote shall be counted as a “No” vote for the purpose of determining if the motion passes. Failure of a seated member to orally express a vote constitutes an affirmative vote. No ordinance, resolution, recommendation or motion shall be passed or become

effective without an affirmative vote by the majority with a quorum present.

If the vote is a voice vote, the Mayor shall declare the result for the record. The Mayor may also request a vote by roll call. Vote by roll call is required for any meeting in which any member is participating via teleconference. Regardless of the manner of voting, the results reflecting all yes and no votes and the Councilmembers who cast them must be clearly set forth for the record. To be adopted, a motion requires the yes vote of a majority of the quorum present, unless the vote of four or five Councilmembers is required by statute, ordinance, or resolution.

If a member is disqualified, the member shall not participate in the consideration of the matter, shall not be counted for the purpose of the quorum, and shall leave the dais during the consideration of the matter; provided, however that if the matter is being considered on the Consent Calendar and has not been removed, from the Consent Calendar, the Councilmember may remain on the dais and disclose the reason for disqualification.

A tie vote is equivalent to a motion that has failed and means no action has been taken. Should a tie vote occur, the City Council may make additional motions until an action receives three affirmative votes. If no motions are made, then the tie vote shall be treated as no action and the Mayor may treat the matter as concluded and move on to the next item on the agenda. If the matter involves an appeal, and an affirmative vote does not occur, the result is that the decision appealed stands as decided by the decision-making person or body from which the appeal was taken.

FF. Addressing the Council

The purpose of addressing the City Council is to communicate formally regarding matters that relate to City Council business or citizen concerns within the subject matter jurisdiction of the City Council. Any person desiring to address the City Council shall first secure the permission of the Mayor to do so. Comment and testimony are to be directed to the Mayor and Council. Dialogue between and inquiries from citizens at the lectern and individual Councilmembers, members of staff, or the seated audience is not permitted. Under the following headings of business, unless the Mayor rules otherwise, any qualified and interested person shall have the right to address the City Council in accordance with the following conditions and upon obtaining recognition by the Mayor:

- 1) **Written Communications.** Interested parties or their authorized representatives may address the City Council by written communications in regard to matters of concern to them. Communications received by the City Clerk prior to close of business on the day of a City Council meeting shall be duplicated and submitted to the City Council at the meeting if related to an item

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which is on the agenda for that meeting. Written materials brought to the meeting for distribution to the City Council shall be provided with no less than 7 copies to the City Clerk who will retain an original copy for the record. Parties that display models and large exhibits may withdraw them. The City Clerk can request that substitute photographs be submitted as part of the record.

- 2) **Public Hearings.** Interested persons or their authorized representatives may address the City Council by reading protests, petitions, or communications relating to matters then under consideration. Once the public hearing has been closed, no member of the public shall be permitted to address the City Council or the staff from the audience, except at the discretion of the Mayor.
- 3) **Oral Communications.** Members of the public wishing to speak to the City Council are requested to complete, and turn into the City Clerk prior to the item being called, a speaker slip indicating the agenda item or subject matter on which they wish to speak. Public comment relating to presentation items, consent calendar items, or City business that is not otherwise listed on the agenda are heard at the beginning of the meeting. Public comment relating to any other item listed on the agenda are received at the time that item is taken up for consideration by the Council. No person shall address the City Council without first being recognized by the Mayor. Any person wishing to address the City Council is requested to complete a speaker card with their name, city of residence and/or organization and submit to the City Clerk before the Mayor calls for Oral Communications or calls for public comment on a particular agenda item.

If a member of the public desires to present written communications to the City Council during the City Council meeting, the communication shall be submitted to the City Clerk. Members of the public are requested to provide 7 copies of each written communication so that sufficient copies are available for review during the meeting by the City Council, City Staff, and members of the public.

Videos, PowerPoint or similar presentations may accompany in-person testimony but are subject to the discretion of the Mayor and the same speaking time limits. Prior notice of at least 72 hours and coordination with the City Clerk is required and the Mayor reserves the privilege to limit such requests as necessary for the effective conduct of the meeting.

State law prohibits the City Council from taking action on any item not listed on the Agenda unless the City Council makes a determination that an emergency exists or that the need to take immediate action on the item arose subsequent to the final posting of the agenda.

- 4) **Speaker Decorum.** Speakers are to address their comments to the City Council from the podium. Each person addressing the City Council shall do so in an orderly manner and shall not engage in conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of the City Council meeting. Staff shall only respond to public comment or inquiry if requested to do so by the Mayor. Any person, who so disrupts the meeting shall, at the discretion of the Mayor or a majority of the Council, be subject to removal from that meeting. Any speaker who violates the rules of order and decorum or who fails to heed a warning from the Mayor or law enforcement official will be escorted out of the City Council Chambers and may be placed under arrest.
- 5) **Time Limit.** While the City Council encourages and embraces the need for and right of public participation, it acknowledges that public comments must be limited in the interest of fairness to other persons wishing to speak and to other individuals or groups having business before the City Council. Each speaker shall limit comments to three minutes. If a large number of people wish to speak, this time may be shortened by the Mayor so that the number of persons wishing to speak may be accommodated within the time available. Two opportunities for the public to speak on the same issue will not be permitted unless mandated by state or local law.
- 6) **Yielding of Time.** It is understood that a person making a request to speak does so on their own behalf. For this reason and to guarantee all persons an ample opportunity to be heard, all speakers will be recognized for the same amount of time. No speaker will be allowed to yield all or part of their time to another, and no speaker will be credited with time requested but not used by another.
- 7) **Addressing the City Council after Motion Made**
When a motion is pending before the Council, no person other than a Councilmember shall address the City Council without first securing the permission of the Mayor or City Council to do so.

GG. Adjournment

In order to allow for thoughtful, clear-headed consideration of City business, all City Council meetings shall adjourn no later than 11:00 p.m. If a City Council meeting is continued past 11:00 p.m., the Mayor should ensure that the meeting is adjourned no later than midnight. Extension of a meeting to finish on-going business shall require a motion to suspend City Council policy to a time certain and vote by a majority vote of the City Council.

If the Council has pending business at the time of adjournment, the City Council may adjourn to a convenient, additional session to complete work

on the agenda, or the unfinished business may be allowed to carry over to the next regular meeting.

XII. FACILITIES

II. Use of City Council Chambers

City staff is responsible for maintaining a calendar on the use of the City Council Chamber and all requests for reservations shall be cleared through the City Manager's Office. Use of the City Council Chamber by the City Council shall take precedence over any other use. Service of food or drink within the Council Chamber shall not be allowed.

JJ. City Council Chamber Capacity

City Council Chamber attendance shall be limited to the posted seating capacity thereof. Entrance to City Hall will be appropriately regulated by the City Manager on occasions when the City Council Chamber capacity is likely to be exceeded. While the City Council is in session, members of the public shall not remain standing in the City Council Chamber except to address the City Council and sitting on the floor shall not be permitted. The City Council proceedings may be conveyed by live television broadcast in the City Council Chamber Vestibule, City Hall Lobby, Hillside Conference Room or by loudspeaker to those who have been unable to enter the Council Chambers.

KK. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a City Council meeting be held at a facility other than the City Council Chambers.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the City Council Chambers and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the Mayor authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the City Council Chambers.

SECTION FOUR: ENFORCEMENT OF POLICIES AND PENALTIES FOR OTHER MISCONDUCT BY MEMBERS

The City Council acknowledges that members will not always agree on matters of public policy and that they will have different styles of communicating with each other and the public. Those kinds of differences can result in tensions between members. The City Council values a respectful working relationship among the members. When tensions between members occur, the City Council strongly encourages members to speak directly to each other in an effort to resolve the matter to maintain the ability of the City Council to work collectively for the public benefit. The process described below is intended to address violations of the City Council policies and other forms of misconduct, and not to be a method of resolving disagreements between members of the City Council.

The City Council also acknowledges that members retain the constitutional rights to free speech, and that as elected officials, they have an obligation to speak publicly about matters of concern to constituents. The procedures are not intended to limit the rights and obligations of Councilmembers. They are not intended to penalize legitimate disagreements about matters of public policy. They are intended to apply to the speech and actions of Councilmembers only to the extent that a Councilmember's speech or actions violate these policies or constitute misconduct.

The procedures in this section shall apply in the following three situations: (1) When any member of the City Council reasonably believes that another member of the City Council has acted in violation of this policy. (2) When a member of the City Council has been convicted of a crime. (3) When a decision maker with competent jurisdiction has issued a final determination that a member of the City Council has violated a law related to the conduct of public business.

Examples of laws related to the conduct of public business include, without limitation, the Brown Act; the Political Reform Act and related Fair Political Practices Commission regulations; Government Code section 1090 and related provisions of the Government Code; and other California laws establishing requirements for or limitations on the activities of local government elected officials. The procedures in this section shall apply to (2) and (3) only after the exhaustion or expiration of all available appeals. For the purposes of this section, "misconduct" refers to either (2) or (3), or both.

The process described in this section is applicable only to assertions made by one member of the City Council against another. It does not apply to a complaint against a member of the City Council by a member of the public or by an employee or official of the City. Complaints against a member of the City Council by a member of the public or an employee or official of the City will be handled through other processes, as required by law or other City policy.

Any Councilmember may request the City Attorney to deliver a general reminder to the entire City Council that a particular type of behavior is a violation of this policy, and that violations, could cause a member to be subject to the penalties described in this section.

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Any Councilmember may privately admonish another Councilmember if they believe a violation has occurred.

Any Councilmember who believes that another Councilmember has violated these policies or committed misconduct may file a written complaint with the City Manager and/or the City Attorney. For the purposes of this section, any complaint which names more than one Councilmember shall be considered a separate complaint for each named Councilmember. Once a formal complaint has been filed, the following process shall be followed:

1. Within 10 days of receipt, the City Attorney shall provide written notice to the accused Councilmember, providing the opportunity to respond to the complaint in writing.
2. The accused Councilmember shall have 10 days from receipt of written notice to respond to the complaint in writing.
3. The written complaint and response shall be presented to the full City Council at the next available meeting under Policy Items.
4. The City Council shall review each complaint, the response, and any information provided in support of each Councilmember's position. If the subject of the complaint is the Mayor, the Mayor Pro Tempore shall preside over the matter. The Councilmember who filed the complaint shall not preside over the matter. All members of the City Council may participate in consideration of and vote upon a complaint. The interest of the Councilmember who filed the complaint and the Councilmember who is the subject of the complaint shall not be treated as disqualifying. Any action on a complaint shall require a majority vote of those participating. The City Council may take the following actions on a complaint:
 - a. No action.
 - b. Public admonishment orally or in writing.
 - c. Determine that additional information is necessary to make a decision.
 - i. In this case, the City Council may direct the City Manager and City Attorney to assist them in retaining an appropriate investigator to gather more information and evaluate the information obtained.
 - ii. Prior to a final investigation report being presented to the City Council the accused Councilmember and the Councilmember who filed the complaint shall have 10 days from receipt of a draft report to respond in writing.
 - iii. The City Council shall resume its deliberations on a complaint at a meeting scheduled after a final investigation report is submitted.
 - d. Censure:
 - i. Censure is the most severe form of action. Censure is a formal statement of the City Council officially reprimanding one of its members. It is a punitive action, which serves as a penalty, but it carries no fine or suspension of the rights provided by California and Federal law to the member as an elected official. Censure cannot be used to remove a member of the City Council from elected office.

- ii. In addition to a public reprimand, censure can also include such actions as the disapproval of expense reimbursement requests; de-authorization of attendance at conferences, seminars and other activities at the City's expense; removal of the member from local liaison or other intergovernmental meeting assignments; removal of a member from the role of Mayor or Mayor Pro Tempore; and other such remedies as may be deemed appropriate by the City Council and are allowed by California law.
- iii. Censure may be imposed without an investigation; however, any action taken by the City Council to impose censure shall be taken by written resolution.

SECTION FIVE: HISTORY

November 03, 1997	Adopted, Resolution No. 1997-99
November XX, 2020	Revised, Resolution No. 2020-XX

ORDINANCE NO. 2020-XX

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING SECTION 2.04.050 REGARDING RULES OF ORDER

WHEREAS, on February 18, 2020 the City Council formed a subcommittee consisting of Mayor Lyman and Mayor Pro Tem Fadelli to review Council policy; and

WHEREAS, the subcommittee discussed and reviewed the most commonly used rules of parliamentary procedure; and

WHEREAS, Rosenberg's Rules of Order are the most aligned with the needs of a local legislative body and is aligned with the City Council's common practices in conducting public meetings; and

WHEREAS, the subcommittee agreed that the guidance for boards, commissions, and committees should align with the procedures used by City Council.

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

Section 1: Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.

Section 2: Section 2.04.050 (Rules of Order) of the El Cerrito Municipal Code is hereby amended as follows (additions show in *italics* and deletions show in ~~strikethrough~~):

In case of conflict over parliamentary procedure, the council shall be governed by ~~Sturgis Standard Code of Parliamentary Procedure~~ *Rosenburg's Rules of Order*. No ordinance, resolution, proceeding or other action of the council shall be invalidated, or the legality thereof affected, by the failure or omission to observe or follow said guide.

Section 3: Section 2.04.220(B)(7) (Conduct of Business) of the El Cerrito Municipal Code is hereby amended as follows (additions show in *italics* and deletions show in ~~strikethrough~~):

The conduct of board or commission business shall be by ~~Sturgis Standard Code of Parliamentary Procedure~~ *Rosenburg's Rules of Order*, or by rules of procedure adopted by the board or commission. Failure to follow the applicable rules of procedure shall not invalidate an otherwise valid action of a board or commission.

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

Section 5: Effective Date. This Ordinance shall take effect and be enforced thirty days after the date of its adoption. 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 (Month, DD, YYYY) and passed by the following vote:

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

ADOPTED AND ORDERED published at a regular meeting of the City Council held on (Month, DD, YYYY) and passed by the following vote:

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

APPROVED:

Gregory B. Lyman, Mayor

ATTEST:

Holly M. Charléty, City Clerk

ORDINANCE CERTIFICATION

I, Holly M. Charléty, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. (2020-XX) of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the (DD day of Month, 2020); and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ____
_____ day of (Month), 2020.

Holly M. Charléty, City Clerk

RESOLUTION 2020-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REVISING A
POLICY REGARDING EXPENSE REIMBURSEMENT AND USE OF PUBLIC
RESOURCES AND SUPERSEDING RESOLUTION 2006-23

WHEREAS, the City of El Cerrito and the El Cerrito City Council take stewardship over the use of limited public resources seriously; and

WHEREAS, public resources should only be used for travel and reimbursing the expenses of public officials when there is a substantial benefit to the City; and

WHEREAS, the benefits to the City of reimbursing actual and necessary expenses include: 1) the opportunity to discuss the community's concerns with state and federal officials; 2) participating in regional, state and national organizations whose activities benefit and affect the City; 3) attending educational seminars designed to improve officials' skills and information levels through continuing education and information sharing with other public officials; and 4) promoting public service and morale by recognizing such service; and

WHEREAS, 1) legislative and other regional, state and federal agency business is frequently conducted over meals; 2) sharing a meal with regional, state and federal officials is frequently the best opportunity for a more extensive, focused and uninterrupted communication about the City's policy concerns; and 3) each meal expenditure must comply with the limits and reporting requirements of local, state and federal law; and

WHEREAS, this policy applies to members of the City's "legislative body", as that term is defined by the Brown Act in Government Code section 54952; and

_____ WHEREAS, this policy provides guidance ~~to elected and appointed officials~~ on the appropriate use and expenditure of City resources, as well as the standards against which those expenditures will be measured; and

WHEREAS, this policy satisfies the requirements of Government Code sections 53232.2 and 532323.3; and

WHEREAS, this policy supplements the definition of actual and necessary expenses for purposes of applicable State laws relating to permissible uses of public resources; and

WHEREAS, this policy also supplements the definition of necessary and reasonable expenses for purposes of federal and state income tax laws.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito adopts the following provisions governing the reimbursement of expenses and the use of City resources for elected and appointed officials.

A. Authorized Expenses

City funds, equipment, supplies (including letterhead), titles, and staff time ~~must~~ shall only be used for authorized business of the City of El Cerrito. Expenses incurred by public officials in connection with the following types of activities generally constitute authorized expenses, and may be reimbursed by the City as long as the other requirements of this policy and any implementing procedures are met:

1. Serving the needs of the residents, businesses and visitors of the City of El Cerrito;
- 2.
2. Communicating with constituents in compliance with applicable laws;
- 3.
3. Communicating with representatives of regional, state and national government on City policy positions;
- 4.
4. Attending educational seminars designed to improve public officials' skills, knowledge, and information levels;
- 5.
5. Participating in regional, state and national organizations whose activities benefit or affect the City's interests;
- 6.
6. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration or award of nominal value and cost);
- 7.
7. Attending City, community, regional and other events;
- 8.
8. Gathering facts and information regarding City projects, issues and priorities in other jurisdictions; and
- 9.
9. Implementing a City-initiated strategy for attracting or retaining businesses to the City.

~~The reimbursement of an expense in excess of \$50 (fifty dollars) for any purpose other than those listed above shall require prior approval by the City Council.~~

The following expenditures ~~also~~ require prior City Council approval:

1. Reimbursement for any expense in excess of \$50 (fifty dollars) for any purpose other than those listed above.
2. Payments for international travel; ~~and~~
- 3.
3. Reimbursement for any ~~E~~ expenses which exceed any annual limits established for each office holder. Annual limits can be obtained by contacting the City Clerk.

Examples of personal expenses that the City will not reimburse include, but are not limited to:

1. The personal portion of any trip;
2. Political or charitable contributions;
3. Family expenses, including partner's expenses when accompanying official on City-related business, as well as children ~~_~~ or pet-related expenses;
- 4.
4. Entertainment expenses, including theater, movies (either in-room or at the theater), recreational events not related to City business (including gym or massage expenses), or cultural events not related to City business;
5. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline;
6. Personal losses incurred while on City business; and
- 7.
7. ~~Personal~~ Any alcohol or bar expenses.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

B. Cost Control

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines, unless such excess amounts have been approved in advance by the City Council. Nothing in this policy will be construed to limit reimbursement of expenses in excess of stated amounts needed in order to accommodate a disability.

To the extent possible, officials shall work with the City Clerk or their designee to arrange and pre-pay expenses such as conference registration, airfare and hotel. This will allow staff to assist in selecting the most cost-efficient option in compliance with this policy. This does not preclude an official from arranging their own travel and requesting reimbursement.

C. Transportation

The most economical mode and class of transportation reasonably consistent with scheduling needs, the public official's time constraints, and cargo space requirements ~~must~~ shall be ~~used~~ selected, using the most direct and time-efficient route. ~~Charges for rental vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of~~

~~such other forms of transportation.~~ Government and group rates must be used when available. The City Council recognizes and acknowledges that some public officials are part-time volunteers, and that personal, employment and other commitments may impact the economy of available travel arrangements.

1. Airfare. ~~Airfares that are equal or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities (www.cacities.org/travel), the California State Association of Counties (<http://www.csac.counties.org/default.asp?id=635>) and the State of California shall be, in most normal circumstances, presumed to be shall be booked at coach or economy class rates; booked at least fourteen (14) in advance whenever possible; and be the~~ most economical and reasonable airfare available for purposes of reimbursement under this policy. The City Council recognizes and acknowledges that such airfares are not always practicable or available in certain limited circumstances and finds that higher airfares may be appropriate in individual cases.

2. Automobile. Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect (~~see <https://www.irs.gov/tax-professionals/standard-mileage-rates>~~). ~~For 2006, the rate is 44.5 cents per mile.~~ These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.

3. Car Rental. ~~Charges for rental vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and if it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelsmart.com/default.htm>) shall be considered the most economical and reasonable~~ available for purposes of reimbursement under this policy.

4. Taxis/Shuttles. Taxis or shuttle fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

D. Lodging

Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay.

1. Conferences/Meetings. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking. If the group rate is not available, see next section.

2. Other Lodging. ~~Lodging rates shall be booked in connection with conference rates whenever possible. If unavailable, comparable lodging with government rates shall be considered the most economical and reasonable for purposes of reimbursement under this policy. Travelers must request government lodging rates, when available. A listing of hotels offering government rates in different areas is available at <http://www.catravelsmart.com/lodguideframes.htm>. Lodging rates that are equal or less to government rates are presumed to be reasonable and hence reimbursable for purposes of this policy.~~ In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the median retail price for lodging for that area listed on websites such as www.hotels.com, www.expedia.com or an equivalent service shall be considered reasonable and hence reimbursable if, given the circumstances of the travel, such comparable rates can be found. In unique circumstances, the City Manager may approve the reimbursement of reasonable lodging costs that exceed the two standards above, if necessary under the particular circumstances.

E. Meals

Public officials shall, when available, take meals that are provided as part of a seminar or conference registration fee. Reimbursable meal expenses and associated gratuities shall not exceed the current per diem rates of the U.S. General Services Administration. ~~following rates per person:~~

Breakfast \$15

Lunch \$25

Dinner \$40

~~Such amounts will be annually adjusted without further action by the City Council to reflect changes in the cost of living in accordance with statistics published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, all urban consumers for the San Francisco/Oakland/San Jose Metropolitan Area. (The annual adjustment will be based on this area whether travel is within the area or not.)~~ The City will not reimburse ~~personal~~ any alcohol or bar expenses.

F. Telephone/Fax

Officials will be reimbursed for all actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business.

G. Airport and Other Parking Charges

The City will reimburse parking costs based on actual costs or the equivalent of long-term parking rates used for travel exceeding 24-hours.

H. Other

Baggage handling fees and reasonable gratuities will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

I. Expense Report Content and Submission Deadline

All expense reimbursement requests must be submitted on an expense report form provided by the City similar to the form attached as Exhibit A to this resolution. This The City Manager is authorized to modify the form, however the form shall include the following advisory:

All expenses reported on this form must comply with the City's policies relating to expenses and use of public resources. The information submitted on this form is a public record. Penalties for misusing public resources and violating the City's policies may include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability.

Expense reports must document that the expense in question met the requirements of this policy.

Except as required sooner by this policy, public officials must submit their expense reports within thirty (30) calendar days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. The inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

J. Verification of Expense Reports

All expenses are subject to verification that they comply with this policy. The City Council and/or the Director of Finance or his/her designee may request additional documentation or explanation of individual expenditures for which reimbursement is requested by a public official.

K. Reports ~~t~~To the Public

At a subsequent City Council meeting, each public official shall briefly report, orally or in writing, on meetings attended at City expense. If multiple officials attended an event, a joint report or individual report on behalf of all attendees may be made.

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

I CERTIFY that at a regular meeting on (Month, DD, YYYY) the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on (Month) _____, 2020.

Holly M. Charléty, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

CITY OF EL CERRITO

City Council Expense Report

(Attach all receipts)

Pursuant to Resolution 2020-XX, all expenses reported on this form must comply with the City's policies relating to expenses and use of public resources. The information submitted on this form is a public record. Penalties for misusing public resources and violating the City's policies may include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability.

NAME: _____ DATE: _____

POSITION: Council Member

DESCRIPTION OF TRAVEL: _____

DATES OF TRAVEL: _____ - _____

	SUN	MON	TUES	WED	THUR	FRI	SAT	TOTALS
REGISTRATION								\$ -
AIRFARE								\$ -
BAGGAGE FEES								\$ -
AIRPORT PARKING								\$ -
HOTEL								\$ -
CAR RENTAL								\$ -
RENTAL CAR GAS								\$ -
PARKING								\$ -
TAXI/SHUTTLE								\$ -
PUBLIC TRANSIT								\$ -
MEALS	Daily Maximums set by GSA (https://www.gsa.gov/travel/plan-book/per-diem-rates)							
BREAKFAST								\$ -
LUNCH								\$ -
DINNER								\$ -
AUTO MILEAGE								0.00
Current IRS Rate (.575)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOLLS								\$ -
TIPS/GRATUITIES								\$ -
INCIDENTALS								\$ -
								\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

I hereby certify that the above expenditures represent cash spent for legitimate City business, and that all expenses are authorized under the City's Expense Reimbursement and Use of Public Resources Policy (Resolution 2020-XX)

Signed: _____

Staff Use Only	Department/Division	Account Code	Amount
	City Council		



AGENDA BILL

Agenda Item No. 7.B.

Date: December 1, 2020
To: El Cerrito City Council
From: Sky Woodruff, City Attorney, City Management
Subject: City Manager Employment Agreement

ACTION PROPOSED

Adopt a resolution approving a First Amended Employment Agreement for City Manager services between the City of El Cerrito and Karen Pinkos.

BACKGROUND/ANALYSIS

Ms. Pinkos has an employment agreement with the City that expires in December 2021. In light of the City's current financial situation, Ms. Pinkos has proposed amending her employment agreement with the City to a) reduce her current base salary by 3%, b) remove provisions for cost of living increases unless provided to unrepresented management employees, c) remove payment for an automobile allowance, d) incorporate her previously volunteered additional contribution to CalPERS, and e) extend the term of the contract by two years.

The City Council appointed an Ad Hoc Committee of Mayor Lyman and Councilmember Quinto to meet with Ms. Pinkos to negotiate amendments to the employment agreement. As a result of these contract negotiations, the Ad Hoc Committee recommended approval of a First Amended Employment Agreement (Attachment 2, shown with tracked changes) to the City Council that includes the proposed amendments.

STRATEGIC PLAN CONSIDERATIONS

This resolution is consistent with Goal A: Deliver exemplary government services and Goal B: Achieve long-term financial sustainability.

ENVIRONMENTAL CONSIDERATIONS

This section is not applicable to this agenda item.

FINANCIAL CONSIDERATIONS

The City Manager's salary would be reduced to \$230,000 per year. This salary would be in the bottom quartile of City Managers in Contra Costa County. The City Manager has received one cost of living adjustment in July 2019 of 3%, resulting in an annual salary savings of \$6,900, in addition to the furlough of one unpaid day per pay period through the end of FY 2020-21. The City Manager has also been contributing an additional 3% to the City's employer contribution to CalPERS and has not received an

automobile allowance as of this fiscal year, both of which would be memorialized in the contract for the duration of the agreement.

LEGAL CONSIDERATIONS

The City Attorney prepared the employment agreement and this report.

Reviewed by:

A handwritten signature in blue ink, appearing to read 'S Woodruff', is positioned above the name of the signatory.

Sky Woodruff, City Attorney

Attachments:

1. Resolution - City Manager Employment Agreement 2020
2. Draft CM First Amended Employment Agreement 2020

RESOLUTION 2020–XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING AMENDMENTS TO THE EMPLOYMENT AGREEMENT WITH KAREN PINKOS TO SERVE AS CITY MANAGER

WHEREAS, on November 20, 2018, the City Council approved by resolution an Employment Agreement between the City and Karen Pinkos for services as the City Manager of El Cerrito. Karen Pinkos has served as City Manager since December 26, 2018; and

WHEREAS, on June 2, 2020, the City Council by resolution approved Addendum No. 1 to the Employment Agreement to reflect that Ms. Pinkos voluntarily agreed to reimburse the City an additional three percent (3.0%) of the Employer's retirement contribution required by the California Public Employees Retirement System (CalPERS); and

WHEREAS, Ms. Pinkos has proposed amending her Employment Agreement with the City to a) reduce her current base salary by 3%, b) remove provisions for cost of living increases unless approved for unrepresented management employees, c) remove payment for automobile allowance, d) incorporate her previously volunteered additional contribution to CalPERS, and (e) extend the term of the Employment Agreement by two years; and

WHEREAS, the City Council appointed an Ad Hoc Committee of Mayor Lyman and Councilmember Quinto to meet with Ms. Pinkos to negotiate amendments to the Employment Agreement. As a result of these contract negotiations, the Ad Hoc Committee recommended a First Amended Employment Agreement to the City Council that includes the proposed amendments.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it approves the First Amended Employment Agreement between the City and Karen Pinkos, attached as Exhibit A.

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

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

I CERTIFY that at a regular meeting on December 1, 2020, 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_____, 2020.

Holly Charléty, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

3633436.1

CITY OF EL CERRITO
FIRST AMENDED EMPLOYMENT AGREEMENT
KAREN PINKOS

INTRODUCTION

~~This Employment Agreement (this “Agreement”) is made and entered into this ___ day of ___, 202018, by and between~~ The CITY OF EL CERRITO, a municipal corporation, (“Employer” or “City”) and **KAREN PINKOS**, an individual (“Employee” or “City Manager” or “Pinkos”) ~~entered into an Employment Agreement effective December 26, 2018. The Agreement was amended by Addendum No. 1 on June 24, 2020, to reflect Pinkos voluntarily agreeing to reimburse City for an additional three percent (3.0%) of the Employer's retirement contribution required by the California Public Employees Retirement System (CalPERS) (“Addendum No. 1”). City and Pinkos now desire to further amend the Agreement as reflected in this First Amended Employment Agreement (this “First Amended Agreement”).~~ City and Pinkos may be referred to in this First Amended Agreement individually as a “Party” or collectively as the “Parties.” The Parties agree as follows:

SECTION 1 EMPLOYMENT AND TERM

- A. City agrees to employ Pinkos as City Manager of the City, and Pinkos agrees to accept such employment.
- B. The term of this ~~Agreement~~First Amended Agreement shall be through December 31, 202123.

SECTION 2 DUTIES AND AUTHORITY

Pinkos agrees to perform the functions and duties of the City Manager specified in the El Cerrito Charter, the El Cerrito Municipal Code, and the California Government Code, and to perform other legally permissible and proper duties and functions.

SECTION 3 COMPENSATION

- A. Base Salary: Employer agrees to pay Employee a monthly Base Salary of \$19,166.67. Employee’s Base Salary had previously been increased to reflect cost of living adjustments made to the base salary of the unrepresented management employees. Effective the first pay period of January 2021, Employee’s Base Salary shall be decreased to the amount stated previously in this paragraph.
- B. Employee’s Base Salary shall be increased annually by the same cost of living factor as is applied to the base salary of the unrepresented management employees, effective the first pay period of each July. If the unrepresented management employees do not receive a

cost of living adjustment in any given year, Employee's Base Salary will also not receive an adjustment. -

Upon satisfactory performance, to be determined by the City Council, effective the first pay period in January 2020, Employee's Base Salary may be increased by up to 4%.

Upon satisfactory performance, to be determined by the City Council, effective the first pay period in January 2021, Employee's Base Salary may be increased by up to 4%.

- C. The City Council's determination of satisfactory performance and related adjustments of Employee's Base Salary, if any, shall be made as part of an annual performance evaluation, including but not limited to an assessment of Employee's achievement of any goals or performance objectives.

SECTION 4 HEALTH, LONG TERM DISABILITY AND LIFE INSURANCE BENEFITS

Employer agrees to provide health, vision, dental, long term disability and comprehensive medical insurance coverage for Employee and her dependents equal to that which is provided to all other unrepresented management employees of the City, as established by resolution of the City Council. Employer's contribution toward the premiums for said coverage shall be equal to that which Employer contributes to other unrepresented management employees.

SECTION 5 VACATION, SICK, BEREAVEMENT, AND MANAGEMENT/EXECUTIVE LEAVE AND HOLIDAYS

The parties recognize the importance of taking regular time off. Accordingly, Employee is encouraged to take regular vacations and to utilize her management/executive leave on an annual basis.

- A. Employee shall accrue sick leave on the same basis and at the same rate as provided to management employees, as established by resolution of the City Council. Upon assuming office, Employee shall be allowed to retain all the sick leave that she had previously accrued in her employment with Employer. Employee is permitted to use sick leave in connection with the birth or adoption of a child, as well as for other sick leave eligible uses (i.e., serious illness or medical condition of the employee; serious illness or medical condition of a family member who requires the employee's assistance).
- B. Employee shall accrue vacation leave on the same basis and at the same rate as provided to management employees, as established by resolution of the City Council. Upon assuming office, Employee shall be allowed to retain all the vacation leave that she had previously accrued in her employment with Employer.
- C. Employee shall on July 1 of each calendar year be credited with 75 hours of executive/administrative leave. Upon assuming office, Employee will be credited with

37.5 hours of executive/administrative leave or may retain all executive/administrative leave that she had previously accrued in her employment with Employer, whichever is greater. In the event of termination or resignation from employment, Employee shall be entitled to compensation for one hundred percent of accumulated and unused administrative leave days, up to the maximum that may be accumulated.

- D. In the event Employee's employment is terminated, either voluntarily or involuntarily, Employee shall be compensated for all accrued vacation, sick., and holiday leave at Employee's then-current monthly salary rate, in accordance with the policy established by City Council resolution for management employees. Alternatively, if allowed by CalPERS, Employee may apply those accrued leave balances toward service credit for retirement purposes.
- E. Employee shall receive the same paid holidays, floating holidays, and birthday holiday and shall be entitled to the same bereavement leave as management employees, as established by resolution of the City Council.

SECTION 6 AUTOMOBILE ALLOWANCE

For the duration of this First Amended Agreement, Employee shall not be provided a monthly automobile allowance, ~~of \$350 in exchange for making a vehicle available for the City Manager's own use and for City-related business and/or functions during, before, and after normal work hours. By the City Manager making the City Manager's personal automobile available for use,~~ The City Manager is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

SECTION 7 RETIREMENT

- A. Employer agrees to enroll Employee into the California Public Employees Retirement System ("CalPERS") in accordance with applicable CalPERS law and the City's contract with CalPERS.
- B. Under Government Code Section 20636(c), the City has elected to report the value of employer-paid member contributions ("EPMC") to CalPERS as additional compensation.
- C. This First Amended Agreement incorporates Addendum No. 1 to the Agreement. Consistent with Addendum No. 1, Employee shall reimburse the City an additional three percent (3.0%) of the Employer's retirement contribution required by CalPERS.
- D. For the purposes of reporting to CalPERS reporting, to the extent permitted by CalPERS, the City shall incorporate into the reported base pay as compensation earnable all payments to the City Manager for the following: Base Salary, pay for performance, incentive payments, cafeteria plan contributions, City-paid employee portion of payments to CalPERS, and deferred compensation.

SECTION 8 GENERAL BUSINESS EXPENSES.

- A. Employer appreciates the importance of Employee's participation and leadership in leading professional organizations. In its discretion, Employer shall budget for and pay travel and subsistence expenses of Employee for professional and official travel, meetings, courses, institutes and seminars to continue her professional development and to adequately pursue necessary official and other functions on behalf of Employer, including but not limited to, the annual conference of the League of California Cities, the International City/County Management Association ("ICMA"), California City Management Foundation, and such other regional, state, and local governmental groups and committees. The City supports Pinkos's contribution to her profession through her service to ICMA and acknowledges the benefits to the City.
- B. Employer acknowledges the value of having Employee, at Employer's discretion, participate and be directly involved in local or regional clubs, associations and organizations necessary and desirable for Employee's continued professional participation, growth and advancement, and for the good of Employer. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable Employee to become an active member in local civic clubs or organizations.
- C.. The City shall pay the premium on any bond that Employee is required to provide pursuant to California law and the El Cerrito Municipal Code.

SECTION 9 TERMINATION AND NON-RENEWAL OF ~~AGREEMENT~~FIRST AMENDED AGREEMENT

- A. Employee is an at-will employee who shall serve at the pleasure of the City Council. The City Council may terminate Employee's employment at any time, subject to any restrictions in the City Charter, with or without cause. Nothing in this ~~Agreement~~First Amended Agreement is intended to, or does, confer upon Employee any right to any property interest in continued employment or any due process rights of any kind.
- B. For the purpose of this ~~Agreement~~First Amended Agreement, termination shall occur when the majority of the governing body votes to terminate the Employee at a duly authorized closed or open meeting.
- C. Employee's employment shall not be terminated during the 90-day period preceding or following any City election for membership on the City Council; during the 90-day period following the appointment of incumbent members of the City Council in lieu of an election; or during the 90-day period following any change in membership of the City Council.

SECTION 10 SEVERANCE

- A. Employee shall be entitled to severance pay of a lump sum payment equal to twelve (12) months' Base Salary in the event that City either terminates Employee's employment without cause or provides notice of nonrenewal of this ~~Agreement~~First Amended Agreement, consistent with the provisions of Section 9. In the event that the Parties

mutually agree that Employee will thereafter continue employment as City Manager, the severance payment to Employee shall be reduced as provided for in Section 9. The severance under this ~~Agreement~~First Amended Agreement shall be subject to the restrictions set forth in Government Code section 53260. Said payment of severance pay shall be conditioned upon Employee signing a waiver and release agreement forever releasing and waiving any and all claims against the City in a form acceptable to the City. Employee shall receive the severance payment in a lump sum payment minus all applicable deductions fifteen (15) business days after execution of the waiver and release agreement. Employee shall not receive any severance payments if she resigns, is terminated for cause, or if a waiver and release agreement is not executed by the parties.

- B. In the event City terminates Employee's employment without cause, Employer shall extend to Employee the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"). Employer agrees to pay Employee's COBRA coverage for the same number of months for which the Employee is entitled to severance pay under this Section, or until the Employee either secures full-time employment or obtains other health insurance, whichever of these three events first occurs. Employee shall notify Employer within five days of securing new full-time employment or insurance.
- C. This Section does not confer any property rights on Employee, as she remains an at-will employee. If Employer terminates Employee's employment for cause (also terminating this ~~Agreement~~First Amended Agreement), Employee shall not be entitled to any additional compensation or payment, including severance, but shall be entitled only to accrued base salary and vacation pay, and any other accrued and unused benefit allowances according to their terms. The phrase "termination for cause" only pertains to Employee's eligibility for severance as described in this Section. A "termination for cause" for purposes of severance includes only the following:
 - 1. Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Employee's reputation.
 - 2. Proven failure of the Employee to observe or perform any of her duties and obligations, if that failure continues for a period of thirty (30) business days from the date of receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure.
 - 3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4.
 - 4. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act compliant meeting.
 - 5. Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of City or its organizational

units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures.

6. Repeated and protracted unexcused absences from the City Manager's office and duties.
- D. Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this ~~Agreement~~First Amended Agreement received by Employee from Employer shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.
- E. In the event City terminates City Manager for cause, City and City Manager agree that neither Party shall make any written or oral statements to members of the public or the press concerning City Manager's termination except in the form of a joint press release which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party. Additionally, either Party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.

SECTION 11 RESIGNATION AND RETIREMENT

- A. In the event that Employee voluntarily resigns her position with Employer or retires from her position, Employee shall provide a minimum of ninety (90) days' advance written notice unless the parties agree otherwise.
- B. In the event that the City Council, by majority vote in open or closed session, asks Employee to resign, Employee shall be entitled to resign and still receive the severance benefits provided in Section 10 above.

SECTION 12 PERFORMANCE EVALUATION

Annual performance evaluations are an important way for the City Council and the City Manager to ensure effective communications about expectations and performance. City Council and Employee shall meet at least annually before the end of each calendar year but no later than the succeeding January, unless the parties agree to a different schedule. The City Council, in consultation with the Employee, may define goals and performance objective for the position of City Manager as the City Council determines are necessary for the proper operation of the City. If either City Council or the City Manager requests it, a professional facilitator may be hired to assist in the performance evaluation process. The City Council and Employee may establish a relative priority among the goals and performance objectives. The City Council may consider the goals and performance objectives in making compensation decisions for Employee, taking into account available time, annual operating budgets, and appropriations.

SECTION 13 HOURS OF WORK

It is recognized that Employee must devote a great deal of time outside the normal office hours on business for Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

SECTION 14 OUTSIDE ACTIVITIES

- A. The employment provided for by this ~~Agreement~~First Amended Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to Employer and the community, Employee may elect, with the prior written approval of the Mayor, and written notification to the full City Council, to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with her responsibilities under this ~~Agreement~~First Amended Agreement.
- B. The Parties acknowledge that Pinkos is a member of ICMA. The Parties mutually desire that Pinkos be subject to and comply with the ICMA Code of Ethics. A copy of the current version of the ICMA Code of Ethics is attached to this ~~Agreement~~First Amended Agreement as **Attachment A**. The City and the City Council agree that neither the City Council nor any of its members will give Pinkos any order, direction, or request that would require her to violate the ICMA Code of Ethics, as they exist as of the Effective Date of this ~~Agreement~~First Amended Agreement or as they may be amended in the future.

SECTION 15 INDEMNIFICATION

City shall defend, hold harmless, and indemnify Employee, using legal counsel of City's choosing, in any action or proceeding alleging an act or omission within the scope of Employee's employment. The defense provided by City under this section shall extend until a final determination of all issues in the action or proceeding. In the event that there is a conflict of interest between City and Employee, such that independent counsel is required for Employee, Employee may engage her own legal counsel, and City shall indemnify Employee, including direct payment of all reasonable fees and costs of Employee's legal counsel. Notwithstanding anything to the contrary in this ~~Agreement~~First Amended Agreement, in accordance with California Government Code section 825(a), Employer reserves the right to not pay any judgment, compromise, or settlement subject to that section if it is established that the action or proceeding arose out of an act or omission that did not occur within the scope of Employee's employment pursuant to this ~~Agreement~~First Amended Agreement. Further, notwithstanding anything to the contrary in this ~~Agreement~~First Amended Agreement, Employer reserves the right to refuse to provide for the defense of Employee for the reasons set forth in California Government Code section 995.2 or other applicable provisions of law. Any City funds provided for the legal criminal defense of Employee shall be fully reimbursed in accordance with California Government Code section 53243.1 if Employee is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.

SECTION 16 ABUSE OF OFFICE

Government Code sections 53243, 53243.1, 53243.2, and 53243.3 are incorporated by this reference as if fully set forth herein.

SECTION 17 OTHER TERMS AND CONDITIONS OF EMPLOYMENT

Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this ~~Agreement~~First Amended Agreement, the El Cerrito Charter or any other law.

SECTION 18 NOTICES

Any notice to either Party shall be in writing and given by delivering the same to such Party in person; by sending the same by registered mail, return receipt requested, with postage prepaid; or by email, to the following addresses:

EMPLOYER: City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
ATTN:
Email:

EMPLOYEE: Karen Pinkos
[TO BE FILLED IN BUT REDACTED IN PUBLIC VERSION]

Either Party may change its mailing address at any time by giving 10 days' written notice to the other party. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the United States Postal Service. Notice by email transmission shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day.

SECTION 19 GENERAL PROVISIONS

- A. Integration. This ~~Agreement~~First Amended Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this ~~Agreement~~First Amended Agreement. The parties by mutual written agreement may amend any provisions of this ~~Agreement~~First Amended Agreement during the life of this ~~Agreement~~First Amended Agreement. Such amendments shall be incorporated and made a part of this ~~Agreement~~First Amended Agreement.
- B. Binding Effect. This ~~Agreement~~First Amended Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

- C. Effective Date. This ~~Agreement~~First Amended Agreement shall become effective on December 1, 2020 (the “**Effective Date**”).
- D. Severability. The invalidity or partial invalidity of any portion of this ~~Agreement~~First Amended Agreement will not affect the validity of any other provision. In the event that any provision of this ~~Agreement~~First Amended Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties.
- E. Survivability. Any provision of this ~~Agreement~~First Amended Agreement that imposes an obligation after termination or expiration of this ~~Agreement~~First Amended Agreement shall survive such termination or expiration and be binding on the Parties.
- F. Amendments. This ~~Agreement~~First Amended Agreement may be amended at any time by mutual agreement of the City and Pinkos. An amendment shall not constitute termination of Pinkos or of this ~~Agreement~~First Amended Agreement. Any amendments must be in writing and approved by the City Council.

IN WITNESS WHEREOF the CITY OF EL CERRITO, a municipal corporation, has authorized the execution of this ~~Agreement~~First Amended Agreement in duplicate by its Mayor and attestation by its City Clerk under authority of Resolution No 2020- adopted by the Council of the City of EL CERRITO on the ___ day of December, 2020, and EMPLOYEE has caused this ~~Agreement~~First Amended Agreement to be duly executed.

CITY OF EL CERRITO,
a municipal corporation

EMPLOYEE

By: Gregory B. Lyman, Mayor

By: Karen Pinkos

ATTEST:

By: Holly Charl  ty, City Clerk

APPROVED AS TO FORM:

By: Sky Woodruff, City Attorney

3633429.1



SUPPLEMENTAL AGENDA MATERIALS

CITY COUNCIL MEETING

December 1, 2020

(Revised December 2, 2020)

PUBLIC COMMENT INDEX

1. Public Comments received by 4:00 p.m. December 1, 2020
2. **Public Comments received after 4:00 p.m.**

AGENDA ITEM 6B – Proposed East Bay Sanitary Garbage & Green Waste Collection and Post-Collection and Integrated Waste Management Fees -- Effective January 1, 2021

1. Presentation



**PUBLIC COMMENT INDEX
REGULAR CITY COUNCIL MEETING
December 1, 2020**

The following Public Comments were **received by 4:00 p.m. 12/1/2020**, were provided directly to City Councilmembers in advance of the meeting, and were posted online as supplemental materials at www.el-cerrito.org/CouncilMeetingMaterials

Public Comments – Items Not on the Agenda

1. Cordell Hindler
2. Ira Sharenow
3. Cathy Hanville
4. Robin Mitchell
5. Amy Dertz
6. Allen Ling
7. Amy and Greg deHart
8. Ruby MacDonald

Agenda Item 5A & B – Proclamations upon Retirement of Lieutenant Stephen Bonini and Captain Robert De La Campa

1. Donald S. Honigman

Agenda Item 7A – City Council Policy Subcommittee Report and Recommendations

1. Cordell Hindler

Agenda Item 7B – City Manager Employment Agreement

1. Cordell Hindler
2. Jan Woo
3. Kathy Umali
4. Pearson Miller
5. Sherry Drobner
6. Donald Simon
7. Cathy Hanville
8. Susan Ruiz
9. Ernestine Warren
10. Daniel Schulman
11. Dianne Brenner
12. Corinne Gustafson
13. Arthur Yee
14. Karin Rosman
15. Abby Dawkins
16. Andrea McGrath

From: [Cordell Hindler](#)
To: [Holly Charléty](#)
Subject: oral communications from the public
Date: Sunday, November 29, 2020 9:45:59 AM

hello Holly, i have a couple of comments for the record

1. to have the general manager to provide an update on the completion of the del norte bart station
2. also to have the public to return to hear what the council has to say

sincerely
Cordell

From: [Ira Sharenow](#)
To: [Greg Lyman](#); [Rochelle Pardue-Okimoto](#); [Gabe Quinto](#); [Janet Abelson](#); [Paul Fadelli](#); [City Clerk](#)
Cc: [Mike Cunningham](#); [Cathy Hanville](#); [Ira Sharenow](#)
Subject: Re: public comments –agenda item 3 items not on the agenda
Date: Sunday, November 29, 2020 1:20:50 PM

Council members,

You have been slow to make decisions that cannot wait. When making decisions that can wait, please take into account the fact that the state auditor's report is due in February.

<http://www.auditor.ca.gov/bsa/aip>

Please also provide us updated information on the proposed El Cerrito Plaza Towers construction project.

Ira Sharenow

From: [Cathy Hanville](#)
To: [City Clerk](#)
Subject: Comment not on the agenda
Date: Monday, November 30, 2020 8:13:22 PM

Since you don't have finances on the agenda I want to comment on that.

January 2021 is when the police are due for their next COLA. The most recent budget shows a 10 million dollar payroll so a 2% COLA would be \$200,000 and a 3% COLA would be \$300,000. That is money the city simply does not have. So either those COLAs need to be renegotiated or there needs to be a police layoff(s) for the equivalent amount of money.

To give COLAS at the same time you are cutting services that help our most vulnerable (rec services like senior meals and the pool) is an affront to the community.

I also hope you give the community some warning as to the proposed recreation cuts before making them. I think it would behoove the Council to do a quick survey as to what the community wants cut. We know tough choices need to be made. But the community can and should be part of the decision making. I also think each cut going forward should be evaluated both for its fiscal effect and for its social effect.

Not all cuts are equal as far as their effects on the community. I believe cuts should be made. I also think they need to be made in the most compassionate way possible and have as little effect on our most vulnerable populations. I know much of council is loath to cut public safety but that is the largest part of our budget. The Fire Department was already called out by the state auditor. I expect we will hear much more when their report is completed.

I have repeatedly heard you say all things are on the table, things are serious, and we need austerity measures, but as of yet none of your actions have proven that you mean what you say.

Cathy Hanville
El Cerrito

From: [Robin Mitchell](#)
To: [City Clerk](#)
Subject: Public Comments -- Not on the Agenda -- City Committee Term Limits
Date: Monday, November 30, 2020 9:21:40 PM

Request:

I request that the City Council adopt an emergency resolution at the last meeting of this year to temporarily halt all terms limits until December 2021 for all city committees due to the pandemic, and additionally, revisit this topic in a formal way in 2021 to update the rules regarding term limits, to only have term limits if there is not full membership.

Background:

I do not understand why city committees need to have term limits. Why would the city turn away a knowledgeable resident who wants to participate in their local government by being a member of a city committee?

I am thinking in particular about the Urban Forest Committee of which I am a member. We have lost several key members in the past few years and we are about to lose another at the end of this year. All of these members have technical expertise critical to the proper functioning of the committee, and it will be very difficult to find new members with their knowledge of trees and forestry.

Additionally, with the loss of the latest person to be termed out at the end of this year, we will only have 4 members on the committee. And during this time of the pandemic, it is extremely difficult to recruit new members.

I can understand having term limits if a committee has a completely full membership, but the Urban Forest Committee certainly doesn't. And I believe other committees are in the same situation

Also, regarding having term limits on boards and commissions, I think generally it may be a good idea, but one example where it has resulted in a significant reduction in expertise has been the fact that I believe Maggie Leighly, a landscape architect, termed out of the Design Review Board a few years ago. She always had good comments to contribute about the landscaping on projects that came to the DRB. Since she left, there has not been a replacement for the landscape architect perspective, which I think is a problem, given that most of the projects coming in seem to do the minimum in terms of landscaping. I know that Stephen Pree reviews the landscaping for those projects, but if there was a competent landscape architect on the DRB he might not have to do that.

Thank you

Robin Mitchell
El Cerrito Resident

From: [Amy Dertz](#)
To: [City Clerk](#)
Subject: Public comments - not on the agenda
Date: Tuesday, December 1, 2020 9:33:19 AM

Dear members of the City Council,

I am writing to urge you to reconsider the laying off of Stephen Dunkle from the Recreation department. He has managed the swim center and the Gators swim team and is a huge asset to our community. Our swim center is a destination pool in the East Bay - people come from all over to swim

In our beautiful facilities and I credit Stephen's leadership for that. More importantly, his management of the Gators swim team has provided many, many kids in this town with an incredible opportunity to swim on an organized team. My daughter looks forward to her daily swim. It is the one thing that has really been a bright spot in her distance learning life since the pool reopened in July. I worry that the 140 some kids who are members of the Gators swim team will not have this important activity if Stephen is laid off. Please, please, please find the money in the budget to save his budget. This community needs him and the services he provides!

Amy Dertz

Elm Street, El Cerrito

Sent from my Yahoo account

From: [Allen Ling](#)
To: [City Clerk](#)
Subject: Public Comment for upcoming council meeting
Date: Tuesday, December 1, 2020 12:29:51 PM

Dear Mayor Lyman and Members of the El Cerrito City Council

I am writing you as a concerned citizen, long time resident of El Cerrito, and medical service business owner.

I was alerted by a friend as well as social media about the multitude of housing units that are going to be built at the El Cerrito Plaza BART station parking lot. I have a business which is less than two blocks away from the El Cerrito BART station and already parking is a huge issue for my business and I'm not sure this is going to help the issue of parking problems around that area at all. We barely have recovered from the COVID-19 pandemic economic fall out, and now soon we are to be challenged by accessibility issues to our clinic. We have exhausted our PPP loan 2 months ago bringing back all our staff's careers and I feel this project isn't going to help us with our long term sustainability.

It's my understanding that there will be up to 750 dwellings and no accessory parking available for BART passengers nor the folks who live at the new construction. I'm all for progress and supportive of urbanization, but with the addition of what could be a minimum of 750 or more El Cerrito Residents and another 750 vehicles or more within a couple of blocks radius, shouldn't there be a new parking structure not just for BART passengers but also a minimum of 750 additional parking spaces for the new tenants to avoid what can be a catastrophic glut of cars.

Even if none of the residents have their own cars, hundreds of other BART passenger cars will be displaced. It's still going to be disastrous.

If we convert all the surrounding streets on 4 hour or one hour parking for non residents that helps the businesses but not the parking situation.

Do you have any plan to address the parking issue? And please don't consider that people should park at the Plaza parking itself. The plaza parking is already very crowded.

El Cerrito also had a height limit of 55' feet or so at one time. It looks as if the new buildings being proposed will be up to 85' in height. My only hope is that it will be an architecturally aesthetic design, and not something gaudy and monolithic. The view for many hill dwellers will be altered forever once this construction is completed.

I have been a resident of El Cerrito since I was 6 and a business owner since 1989. I have always supported the city in many ways besides paying my taxes, but I do not support the way this project is being forced upon us without proper due diligence.

Would the El Cerrito Chamber of Commerce join in a request for a Town Hall Meeting ? As it turns out when I speak to my patients and neighbors, many of them don't know that any project is planned at Plaza BART.

Thank you for your consideration.

Allen Ling, PT,OCS
Executive Director
Physical Therapy Innovations


Sent from my iPhone

From: [Gregory and Amy de Hart](#)
To: [City Clerk](#)
Subject: Public comments - not on the agenda
Date: Tuesday, December 1, 2020 3:04:45 PM

Hello City Council members,

As you consider how to address the city's budget shortfall, we would suggest you look first at the extremely high salaries for the size of our city of the top administrative positions. Ms. Pinkos is one of the highest paid city managers for a similarly sized city in our area, and the fact that you are considering extending her contract for an additional two years when our city is in one of the worst financial shape in the state is outrageous.

We have a very top-heavy administrative structure, and it appears that salaries have crept up to extraordinary levels during good years, and that is now a real source of the problem that we are facing in a lean year. One very striking and egregious example is in the Recreation department, where you are considering severe cuts. According to transparentcalifornia.com, the Recreation Director makes \$175K, which seems very out of line with the job in a city of 30K residents. Meanwhile, our very wonderful and dedicated Assistant Aquatics Director, Stephen Dunkle, with a salary of \$64K, is facing being laid off in one month. ALL of the upper administrative positions that are making in the top at least 10% of salaries should be required to take a significant pay cut in order to avoid this unfair lay off. By having the top salary earners take a 10% pay cut for the next fiscal year, you would be able to not only save jobs, but also avoid some cuts to services that you are considering.

Sincerely,
Amy and Greg deHart

From: [Ruby I MacDonald](#)
To: [City Clerk](#)
Subject: Public Comments - Not on the agenda
Date: Tuesday, December 1, 2020 4:00:48 PM

Dear City Council,

An El Cerrito resident for 14 years, I am still flabbergasted and dismayed to realize that our budget is as overspent as it apparently is. I am also even more flabbergasted and dismayed that this horrendous problem is not on the Agenda tonight. If we homeowners showed such irresponsibility as shown by the El Cerrito City Council in this matter, serious legal consequences would befall us.

Since nothing is to be gained by bemoaning our situation, we might at least consider alternatives to the current apparent inaction: First, all city employees could take a progressive pay cut – the most highly paid suffering the largest cut and the least suffering the smallest cut. Second, numbers of staff and their pay could be brought into line with those of other cities of comparable size, rather than El Cerritos paying unnecessarily for a bloated government. Third, the strategy of borrowing money to pay off part of our debt is really benefiting the lenders and hurting the residents stuck with repaying the loan, albeit over a 30 year period. It would be far less painful and more fair to raise taxes according to the ability to pay off at least some of our debt. Whatever strategies or combinations thereof are deemed best, they must be considered and decided on now instead of allowing our situation to worsen.

Thank you for your attention,

Ruby MacDonald

From: [Don Honigman](#)
To: [City Clerk](#)
Subject: Public Comments-Agenda Item Five Police Retirements
Date: Tuesday, December 1, 2020 2:31:29 PM

To the Council

I am unable to attend tonight's meeting but did want to pass on my Congratulations to Lt. Bonini and Capt. De La Campa on reaching their well-deserved Retirements. We are lucky in El Cerrito to have a very enlightened Police Leadership and Law Enforcement.

As a Twenty Four Year Resident I have been able to witness a very professional, courteous and responsive Law Enforcement Department. Within the past few years I volunteered for CERT training through the equally excellent ECFD. A few years ago I signed up for the ECPD Community Police Academy and made the acquaintance of many of the dedicated ECPD Employees, Officers and Leadership. We saw how the ECPD conducts traffic enforcement, had a demonstration of the K9 Unit, Use of Force, Dispatch (the head of the Richmond Dispatch was very complimentary to our Team), did Ride Alongs, Crime Scene

Processing Etc. All of these Police Functions required considerable Training of the personnel. The Chief and the ECPD Leadership, including Lt. Bonini and Capt. De La Campa were always available for the considerable Training Activities. As a result of witnessing the transparency of the ECPD, I signed up to be a Volunteer in Policing and we participated in various non Law Enforcement Activities. That program is in hiatus until we all get vaccinated but the ECPD Leadership has kept in touch with us via E Mails and occasional Zoom Meetings.

I hope the City Council will continue to look for ways to provide resources for Law Enforcement Activities. One way is to separate the Social Work functions from the Policing functions as a benefit to all. The attitude of the ECPD Officers I run into occasionally, all masked, is excellent considering the demands and pressures put on them under the current economic and health environment. These excellent policemen will be sorely missed, but they deserve to move on to the next stage of their lives.

Respectfully
Donald S. Honigman

From: [Cordell Hindler](#)
To: [Holly Charléty](#)
Subject: policy matters
Date: Sunday, November 29, 2020 9:55:29 AM

hello Holly, i have looked at the sub committee report, and here is my recommendation to approve it as presented

sincerely
Cordell

From: [Cordell Hindler](#)
To: [Holly Charléty](#)
Subject: 7 B policy Matters
Date: Sunday, November 29, 2020 9:59:15 AM

hello Holly, i would like if the council to approve the city manager's contract as presented

sincerely
Cordell

From: [Jan Woo](#)
To: [City Clerk](#)
Subject: Item 7B for 12/1/20
Date: Saturday, November 28, 2020 12:26:34 PM

Dear current City Council,

I urge you to hold off renewing the two-year contract for the City Manager until the newly elected Council members have been seated and been given opportunity to review and provide input. The rush to approve this contract seems much like the very undemocratic confirmation of Amy Coney Barrett days before an election. But in this case, new City Council members have already been elected. Please allow them to have a say in this matter and its financial consequences for our city.

Sincerely,
Jan Woo



From: [Katherine Thomson Umali](#)
To: [Paul Fadelli](#); [Janet Abelson](#); [Gabe Quinto](#); [Greg Lyman](#); [Rochelle Pardue-Okimoto](#); [City Clerk](#)
Subject: City Manager's contract premature
Date: Sunday, November 29, 2020 1:26:56 PM

Dear Council,

I am concerned about the rush to replace the City manager's contract in a way that will tie the hands of the newly elected council that will have two new members.

I realize that the contract would roll back her salary, but \$230,000 is still higher than the average managers' salaries at nearby **comparable** Contra Costa cities. Comparable in labor relations usually means those agencies of similar size, complexity, and funding sources. I would not find Richmond, Concord, Walnut Creek, Antioch or a few others comparable. Of those comparable Contra Costa County bayside cities, the average is closer to \$226,000.

In addition, the total compensation is really what should be considered. I have not yet been able to figure out what the city manager currently pays for her pension contribution. There are several potential problems:

-Where is addendum 1 to the contract? I could not find it in the agenda packet online or on the City compensation website. It is my understanding that it **should be posted several days in advance**.

-The city manager should not be receiving an EPMC if rank and file are not. If they are paying 8% contributions, she should also.

- Any provision that boosts pensionable compensation without being labeled salary is suspect from a transparency perspective. El Cerrito residents need to be able to understand her total compensation, and they don't need to pay any higher pension costs hidden by sleight of hand maneuvers.

In general, this city manager has been in the city management while this budget problem was developing. She was assistant city manager. She should not be faring better than the rank and file who had no control over city finances. I hope that it is not cozy relations between a long-term employee and council members that is motivating this rush to contractually limit the options of the newly elected council.

I urge you to delay voting on her contract.

Kathy Umali

From: [Pearson Miller](#)
To: [City Clerk](#)
Subject: City Council Meeting 12/1/2020: Public Comments Agenda Item 7B
Date: Sunday, November 29, 2020 2:47:21 PM
Attachments: [California State Auditor's Office AUDIT SCOPE AND OBJECTIVES Local High Risk—City of El Cerrito.pdf](#)

Dear City Council :

I am writing to urge you to delay consideration of the 2 year extension of the City Manager's contract. The current contract runs through December. The city is in a budgetary crisis. This crisis began long before the current pandemic, indeed long before the current City Manager was promoted from her long career as assistant city manager to her current position. Our two most recent audits have identified "going concern" issues, indicating problems with city management and processes. It is vitally important to recognize those and address them as part of our efforts to stabilize our finances. I appreciate all the hard work of the City Council and City Staff at this difficult time. However we do not have all of the information we need to evaluate the city manager's performance. The State of California will be completing an audit soon (February 2021, <https://www.auditor.ca.gov/bsa/aip>). That will give the council invaluable information about the performance of the CM. In addition, the results identified at the end of the Fiscal year in June will also give information. Both of these events occur long before the CM contract is up. It would be a disservice to both the CM and the citizens to evaluate her contract prior to having this information. It may reveal an outstanding job done by the CM which should be rewarded. It may also show mismanagement by the CM which needs to be addressed. And if they get something wrong the CM will have an opportunity to address it prior to her extension which will put her continuing management on solid ground. Delaying the extension while we receive additional information will build both transparency and trust with the community and will set a good example of management by the city council. It will also allow the two new council members to weigh in on this important decision. I have attached the one page list of what the State of CA will be looking at (<https://www.auditor.ca.gov/pdfs/analyses/2020-803.pdf>). It underscores just how valuable that audit will be.

Thank you for your time and consideration.

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[Pearson Miller](#)



[Please add attachment to comments](#)

2020-803 AUDIT SCOPE AND OBJECTIVES

Local High Risk—City of El Cerrito

The audit by the California State Auditor will provide independently developed and verified information related to the city of El Cerrito (El Cerrito). The audit's scope will include, but not be limited to, the following activities:

1. Review and evaluate the laws, rules, and regulations significant to the audit objectives.
2. Evaluate El Cerrito's current financial condition and ability to meet its short-term and long-term financial obligations while continuing to provide services to its residents.
3. Identify the causes of El Cerrito's financial challenges, and determine whether the city has developed an adequate plan for addressing those challenges, including the following:
 - a) Assess the city's efforts to improve its financial condition by increasing revenue and reducing expenses.
 - b) Evaluate the city's use of short-term and long-term loans to fund its operations, and identify other viable options for improving its cash flow.
4. Determine whether El Cerrito's budgeting processes comply with best practices. Evaluate the city's procedures and underlying assumptions for projecting future revenue and expenditures, and determine whether they result in balanced budgets and accurate financial forecasts.
5. Review the costs of El Cerrito's existing programs and services. Identify which programs are self-sustaining; evaluate options for potential revenue from new or increased fees; evaluate potential cost savings from reduced spending on programs that rely on the general fund to operate.
6. Evaluate the financial viability of El Cerrito's fire department, including the following:
 - a) Evaluate the city's demand for emergency fire services, and assess the appropriateness of its fire department's staffing and size.
 - b) Evaluate the cost and benefit of El Cerrito's use of staff overtime rather than filling vacancies in its fire department.
 - c) Determine whether El Cerrito can charge fees to offset the costs of its fire department providing primary response to emergency medical calls, and estimate the potential revenue it could receive from doing so.
7. Evaluate the impact of deferred maintenance and delayed equipment and capital replacement, including the city's need for a new public safety building, on El Cerrito's long-term costs and ability to provide services.
8. Review and assess any other issues significant to the audit.

From: [Sherry Drobner](#)
To: [City Clerk](#)
Subject: Public Comment- City Managers Contract Extension
Date: Monday, November 30, 2020 8:06:10 AM

Dear Mayor and City Council Members,

I urge you to refrain from extending the contract for the City Manager, Karen Pinkos. Although I welcome her concessions, they are far too little, and they should be stand alone, not contingent on the extension of her tenure with the city.

Clearly many voices in the community are concerned about her performance. In reviewing comments from the public criticisms included:

- She failed to veer from the longstanding practices of the previous City Manager and continued to recommend spending and ignore continued budget shortfalls.
- She has not always been forthcoming with the information needed for the City Council to make fully informed decisions.

-She is highly overcompensated for the size of the city and the scope of the work. Council members, including Quinto have bitterly complained about how some votes were taken without having full knowledge of the facts. For example, did the City Council know that reserves were used to pay for Fire Department overtime?

Given the background, awarding a contract extension at this moment seems counter-intuitive and not in the best interest of the City.

The State Auditor's findings should be released in February 2021. Let's look at those findings and then make some decisions about the City Manager. Ask for her concessions now-without a contract extension.

Respectfully submitted.
Sherry Drobner

From: [Shakti Das](#)
To: [City Clerk](#)
Subject: public comments - agenda item #7B
Date: Monday, November 30, 2020 2:42:47 PM

Public Comments for the Dec 1, 2020 City Council Meeting

Dear Mayor and City Council

I urge the City Council **not** to grant the City Manager's request for an unprecedented two-year contract extension until after the State Auditor's Report is issued, analyzed, and action items are identified and acted upon.

The City Manager's request for an extension comes at a critical time when city management is undergoing tight scrutiny by the State. Conditions have causes and actions have consequences.

It is common knowledge that since September 2018 the CAFR identified a deficit despite record revenues. In September of 2019, the City was found to seventh most financially at-risk City in the entire state by the California State Auditor. This year's report has moved El Cerrito up to the sixth most financially at-risk city. Everyone wants to know why and how this occurred after leaving the City with negative reserve funds, a huge pension liability, and a BBB-minus bond rating. Without adequate funds many new and old needed services that the community needs will die.

Until the cause of this financial mismanagement situation is identified, it is an inopportune time to extend the present City Manager's contract to December 31, 2023, but which is currently set to expire on December 31, 2021.

From the State Auditor's Office issued 02/26/2020-803

AUDIT SCOPE AND OBJECTIVES Local High Risk—City of El Cerrito

The State Auditor's report will identify the causes of El Cerrito's financial challenges, and determine whether the city has developed an adequate plan for addressing those challenges, including the following:

- a) Assess the city's efforts to improve its financial condition by increasing revenue and reducing expenses.
- b) Evaluate the city's use of short-term and long-term loans to fund its operations and identify other viable options for improving its cash flow.

Determine whether El Cerrito's budgeting processes comply with best practices. Evaluate the city's procedures and underlying assumptions for projecting future revenue and expenditures, and determine whether they result in balanced budgets and accurate financial forecasts.

Review the costs of El Cerrito's existing programs and services. Identify which programs are self-sustaining; evaluate options for potential revenue from new or increased fees; evaluate potential cost savings from reduced spending on programs that rely on the general fund to operate.

Thank you,

Donald Simon,
El Cerrito Resident

From: [Cathy Hanville](#)
To: [City Clerk](#)
Subject: Public Comment Agenda item 7B
Date: Monday, November 30, 2020 8:13:25 PM

I would like to urge you to hold off on extending the city manager's contract until after the state audit is completed.

I understand that your reasoning for extending the contract quickly is that it will save the city money if we do not have to hire another city manager. Nice to see you are thinking about that. However, this contract does not even look like there was any negotiation in it. It appears to me the City Manager offered to take a 3% cut (in addition to already agreed upon cuts) and the "negotiation committee" said thanks yes that's great. At a time the city is on the verge of bankruptcy a 3% pay-cut is not enough. And to extend the contract of a person who is at least partially responsible for the city being in this position is negligent. The independent auditor said in 2018 as the City Manager was taking over that the city might not be able to continue as a going concern. But the City Manager ignored that and kept telling the council that things were okay. And you all believed her. If action had been taken then our situation would be less dire now.

I find it interesting that you are rushing this through while the information on the Recreation Department Cuts you asked for at the last meeting is not on the agenda this time. So we have no way of knowing what cuts will happen as we extend the city managers contract with a minor pay cut. I believe that while we are asking other city employees to take cuts the City Manager should lead by example. And the City Council should show that they are even capable of making tough decisions by actually negotiating a contract rather than taking what was given. You oversee the City Manager not the other way around.

In addition, the neither the CAFR or the state audit results have been released. Both of them are highly indicative of the City Manager's performance And while I understand it would be an expensive endeavor to get a new City Manager I also do not think we should extend a contract without all of the information available. What if the CAFR or state audit show something negative about the City Manager's performance? What actions can the Council then take? And if her performance is found to be okay than the contract can be extended then. Two months from now. The rushed nature also does not allow the new council to make the decision. That is the council that will have to live with the consequences of this extension and they should vote on this.

But to rush through such a contract at a time you are also considering serious service cuts is a betrayal of this community.

Cathy Hanville
El Cerrito

From: [Susan Ruiz](#)
To: [City Clerk](#)
Subject: public comment item 7A
Date: Monday, November 30, 2020 8:39:05 PM

I oppose extending the City Manager's contract an additional two years, well before its current expiration and notably before the State Auditor's report is released. This action is premature and undercuts the ability of the City Council to consider the audit findings when renegotiating the City Manager contract. Once audit recommendations to put the city on sound financial footing are released, related performance objectives should be negotiated and included in the City Manager's new contract.

Anything less does not appear to be in El Cerrito's financial interest. If it is in the city's best interest, that reasoning has not been adequately explained.

Thank you,
Susan Ruiz

From: [Hotdb8momma](#)
To: [City Clerk](#)
Subject: Council Meeting Agenda Item 7B Extending the City Manager's Contract
Date: Monday, November 30, 2020 11:43:02 PM

Dear Mayor & Council Members,

I don't understand the rush to extend the City Manger's contract that expires in December 2021. The newly elected Council Members should be able to take part in this discussion. For me it reminds me of President Trump, Mitch McConnell, and the Republican Senate rushing to get Amy Coney Barrett elected to the Supreme Court while people were voting. It is also irresponsible for you to extend her contract before getting the state audit results next year!

Sincerely,
Ernestine Warren

Sent from my iPhone

From: [Dan Schulman](#)
To: [City Clerk](#)
Subject: Public Comments - Agenda Item #7B
Date: Tuesday, December 1, 2020 9:03:13 AM

Dear Council,

In the city manager's contract, I noticed it stipulates that she cannot be terminated during a period of 90 days surrounding an election or other change in membership of City Council. Given that we are about to have a change in Council Membership, why are you extending her contract now? Shouldn't the new council get to make that decision?

Additionally, if the city goes bankrupt, does that qualify for termination for cause? If not, perhaps that language should be inserted?

Lastly, if the state auditor finds that our city has been poorly managed, are we sure we want to be locked into this contract for 2 more years? Why not wait for the auditor's findings?

I see very little reason not to wait and revisit this issue in a few months. If in a few months we learn that our finances are looking better, and the auditor believes we are on the road to recovery, and the new council wants to extend the contract, let's do it then! That would be great! I'm not understanding the rush to do it now.

Sincerely,

Daniel Schulman
El Cerrito

From: [DIANNE BRENNER](#)
To: [City Clerk](#)
Cc: [Greg Lyman](#); [Paul Fadelli](#); [Rochelle Pardue-Okimoto](#); [Janet Abelson](#); [Gabe Quinto](#)
Subject: Comment on Agenda Item 7B
Date: Tuesday, December 1, 2020 11:59:16 AM

I am writing to express my objection to the extension of the City Manager's employment contract at this time.

My main objections to extending the contract now are the following:

- The City Manager's **contract doesn't expire until December 2021**. There is still a year to go on it. Why the hurry?
- The composition of the **City Council will change next month**, in January 2021. At that point, there will **still be nearly a year remaining** on the City Manager's contract. The new members of the Council, not the outgoing ones, should have the opportunity to negotiate a renewed employment contract for the City Manager. If they start that process in January, they have nearly a year to negotiate the new contract. Again, why the hurry?
- **State Audit findings are expected in February 2021**. These findings should inform any new contract for the CM, especially the performance criteria and consequences. Why the hurry?
- What the City Manager is characterizing as **concessions** in order to push for a new contract now are not significant enough to compel a new contract now. Why the hurry?

Other reasons for you to be more deliberative about a new contract for the City Manager include her performance regarding: 1) the ever-increasing and increasingly expensive annual TRAN loans; 2) the lack of reserve funds; 3) the climb UP the statewide, ranked list of cities at financial risk, and 4) the sinking bond rating, all of which have occurred and/or continued under the watch of the current City Manager. I can see no logical reason or benefit to the city or our citizens for renewing this contract at this point in time and preventing the new Council from handling it next year. If there are any such reasons, I invite you City Council members to tell the public your reasons for doing this now.

Thank you,
Dianne Brenner

From: [Corinne Gustafson](#)
To: [City Clerk](#)
Subject: Public comment agenda item 7b
Date: Tuesday, December 1, 2020 2:54:47 PM

There should be no extension of the city manager's contract. After many years with the city she is too close to city employees and acted too slowly during the crisis. We should have the assistant manager take over temporarily and hire a new person, at a more reasonable salary, to make difficult decisions to reduce city employees and spending. There are many good people out there.

Respectfully submitted,
Corinne Gustafson

Sent from my iPad

From: [Corinne Gustafson](#)
To: [City Clerk](#)
Subject: Public comment agenda item 7b
Date: Tuesday, December 1, 2020 3:09:10 PM

Addendum to my earlier message. I understand that there is no longer an assistant city manager. I still recommend NO renewal of the current city manager's contract and the hiring of a new manager, at a more reasonable salary to make the difficult decisions El Cerrito needs to make.

Respectfully submitted,
Corinne Gustafson

Sent from my iPad

From: [Arthur Yee](#)
To: [City Clerk](#)
Subject: 7B - No on El Cerrito City Manager contract extension
Date: Tuesday, December 1, 2020 3:01:29 PM

I am suggesting that the city council votes no on the El Cerrito City Manager contract extension. My reasoning is that the current city manager has been a city employee for 17 Years and has acted too slow on our city finical criss. The city manager considers her staff as her family and unable to to reduce city spending and reduce city employees when we most need it. In result the deficit has grown. I think the city should new City Manager to fill the position as City Manager/Finance Director. 2 for one.

We are small town... we need reduce city spending and think this would be a great solution to continue providing services to our residents.

Arthur Yee
El Cerrito resident

From: [Karin Rosman](#)
To: [City Clerk](#)
Subject: Public Comment Agenda Item 7B
Date: Tuesday, December 1, 2020 3:04:56 PM

Good Afternoon,

I'm a 17+-year resident and homeowner in El Cerrito. I'm writing to register my public comment for Item 7B in tonight's meeting, as follows:

I urge a vote of no contract extension for the City Manager. Our city is in a state of dire financial crisis and this is not the time to reflexively preserve the status quo, and particularly not to preemptively extend a contract of this kind.

This is the time to pause, think carefully and creatively about the best way forward, and prepare to make big changes if needed. A contract extension for this employee at this time will remove our options to do this.

No extension. Thank you.

Sincerely,

Karin Rosman

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Karin Rosman

From: [REDACTED]
To: [City Clerk](#)
Subject: Public Comments - Agenda item 7b
Date: Tuesday, December 1, 2020 4:24:54 PM

Given the city's poor financial shape, the fact that the makeup of the council will change in January, and that the city manager's current contract will not end for another year, I do not understand the urgency to extend the city manager's contract at this time. Given that the new council will need to make significant financial cuts this seems to tie their hands to some extent. We should give the new council as much leeway as possible to consider creative measures to resolve our city's financial issues.

Abby Dawkins
20 year resident of El Cerrito

From: [andrea.mcgrath](#)
To: [City Clerk](#)
Subject: Public comment agenda item 7b
Date: Tuesday, December 1, 2020 4:36:39 PM

Hi!

Please do not make a decision on extending the City Manager's contract extension today. There is no advantage in rushing, except that you may inadvertently help rile up even more citizens ready for change.

Thank you,

A concerned citizen of El Cerrito

Sent from my iPhone



**PUBLIC COMMENT INDEX
REGULAR CITY COUNCIL MEETING
December 1, 2020**

The following Public Comments were **received after 4:00 p.m. 12/1/2020**, were forwarded to City Council when received.

Agenda Item 7B – City Manager Employment Agreement

1. Rick Kaplan
2. Ira Sharenow
3. Thomas Schaaf
4. Catherine Gomez
5. Barbara Chan

From: [RICK KAPLAN](#)
To: [City Clerk](#)
Subject: public comment agenda line item 7B
Date: Tuesday, December 1, 2020 5:02:24 PM

To Whom It May Concern:

I strongly recommend that the El Cerrito city manager's employment contract NOT be renewed. Especially not by a city council that will have two new members soon. The new council should have a right to have a say here. Seems to me that getting the city manager's contract renewed like this reminds me a little of how our most recent US Supreme Court justice was installed. The city manager must bear significant responsibility for the desperate financial condition that El Cerrito is in. New blood is required. And do we really need a city manager AND an assistant city manager? Seems like overkill in a city of our size. I would suggest terminating the current city manager, making the asst. city manager the interim city manager and then conducting a search for a new city manager that hasn't worked here for 17 years and can make the hard decisions that need to be made, without the influence of longstanding relationships that may stand in the way of fiscal responsibility. Things need to change. This seems like a very good place to start.

Rick Kaplan

From: [Ira Sharenow](#)
To: [City Clerk](#)
Cc: [Mike Cunningham](#); [Cathy Hanville](#); [Greg Lyman](#); [Rochelle Pardue-Okimoto](#); [Paul Fadelli](#); [Gabe Quinto](#); [Janet Abelson](#); [Ira Sharenow](#)
Subject: public comments –agenda item #7b
Date: Tuesday, December 1, 2020 5:21:25 PM

Council members,

The current contract has the following language. Given that language, I do not think the council should hastily extend the contract especially since the independent auditor's report and the state auditor's report are due within the next couple of months.

Ira Sharenow
El Cerrito, CA
<http://el-cerrito.org/DocumentCenter/View/10751/112018-7a>

Employee's employment shall not be terminated during the 90-day period preceding or following any City election for membership on the City Council; during the 90-day period following the appointment of incumbent members of the City Council in lieu of an election; or during the 90-day period following any change in membership of the City Council.

From: [Thomas Schaaf](#)
To: [City Clerk](#)
Subject: Agenda item 7B, renewal of city manager's contract
Date: Tuesday, December 1, 2020 8:39:08 PM

I am a resident of El Cerrito. I oppose the renewal of the current city manager's contract. El Cerrito is facing a fiscal crisis. Let the new City Council take time to actually negotiate a contract.



Virus-free. www.avast.com

From: [Catherine Gomez](#)
To: [City Clerk](#)
Subject: Renewal of city manager's contract
Date: Tuesday, December 1, 2020 9:58:08 PM

As a city resident, I feel that the rush to extend this contract is unacceptable. We do not need a city manager who is paid so much while we lay off lower paid staff who actually provide vital city services. I will say it again, please do not extend this contract.

Catherine Gomez

From: [Barbara Chan CMC](#)
To: [City Clerk](#)
Cc: [Paul Fadelli](#); [Greg Lyman](#); [Rochelle Pardue-Okimoto](#); [Janet Abelson](#); [Gabe Quinto](#)
Subject: CPublic Comments - Item 7B City Council Meeting 12/1/2020
Date: Tuesday, December 1, 2020 11:40:38 PM

I am writing to express my objection to the extension of the City Manager's employment contract.

- The City Manager's **contract doesn't expire until December 2021**. There is still a year to go on it. An extension, if any, should not be approved until 2021.
- A lame duck council should not decide this matter. It should be held over for the new council to discuss, debate, and decide in 2021.
- **State Audit findings are expected in February 2021**. These findings should inform any new contract for the CM, especially the performance criteria and consequences.
- What the City Manager is characterizing as **concessions** in order to push for a new contract now do not merit negotiating a new contract now.

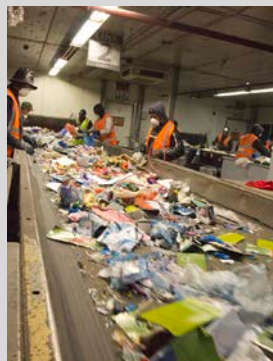
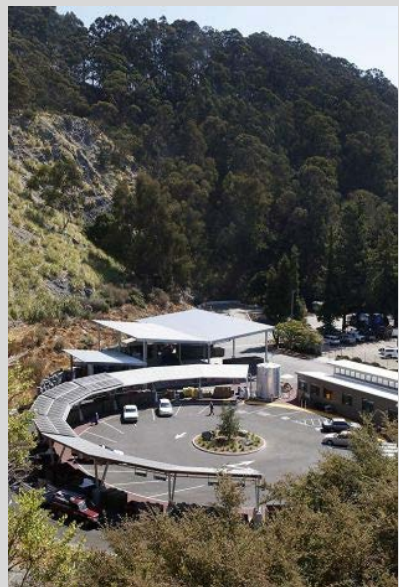
More reasons for you to be more deliberative about a new contract for the City Manager include: 1) the ever-increasing and increasingly expensive annual TRAN loans; 2) the lack of reserve funds; 3) the climb UP the statewide, ranked list of cities at financial risk, and 4) the sinking bond rating, all of which have occurred and/or continued under the watch of the current City Manager.

The residents and taxpayers of El Cerrito deserve transparency and a say in this matter, for it is under the watch of the current City Manager that our city's finances slid into a catastrophic fiscal abyss. It hardly seems prudent to grant a 2 year extension, essentially giving guaranteed employment for another 3 years, to a manager who has mismanaged our money!

If you want to regain some measure of trust from the people who elected you, I implore you to make everything transparent and to delay considering the City Manager's request.

Respectfully,
Barbara Chan


El Cerrito, CA 94530



Public Hearings: Proposed EBS Rates & IWM Fees Effective January 1, 2021

Presentation to City Council
December 1, 2020

R3
CONSULTING
GROUP, INC.



El Cerrito's Solid Waste Services

Integrated Waste Management: Curbside Recycling, Recycling Center & Other Waste Services



East Bay Sanitary: Garbage and Green Waste Collection

RecycleMore and Republic: Post-Collection Services



EBS Collection Rate Adjustment

- EBS receives compensation for Garbage and Green Waste Collection Services exclusively from rates charged to residents and businesses
- Compensation is set at an annual rate revenue amount
- EBS annual rate revenue is adjusted via RRI (Refuse Rate Index) per the Franchise Agreement (2012 Amendment)
- For 2021, the RRI calculates a 1.64% increase to EBS's compensation
- Proposed 2021 customer rates set to cover EBS's 2021 compensation

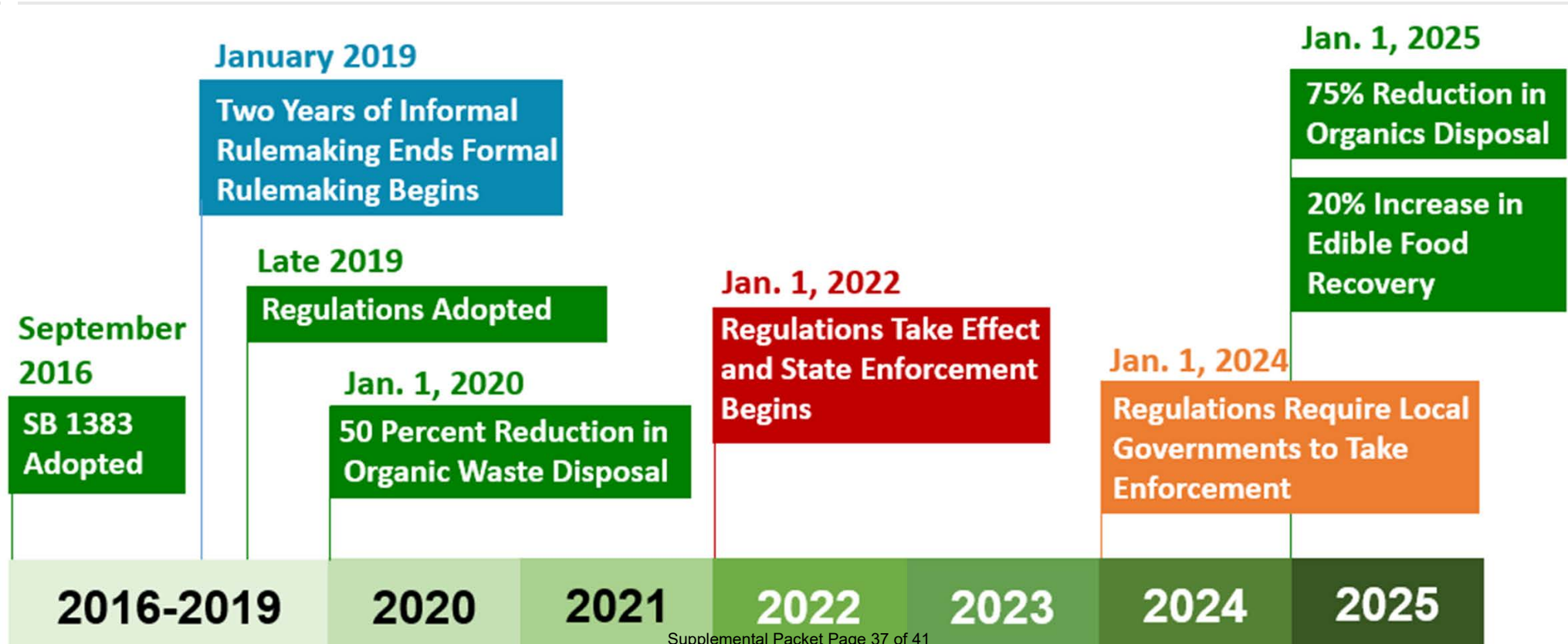
EBS Post-Collection Rate Adjustment

- EBS pays for “post-collection” pass-through costs to Republic Services per Post-Collection Agreement (PCA) set at \$113.11/ton for 2021
- Post-collection costs are adjusted annually per PCA and include the City’s costs for Household Hazardous Waste (HWW) services, and the City’s costs for membership in the RecycleMore JPA
- Post-collection costs also include City’s costs for RecycleMore JPA compliance with State Laws (AB 1826 and SB 1383)
- Proposed 2021 customer rates set to compensate EBS for these post-collection pass-through costs

Integrated Waste Management Fee (IWM) Adjustment

- City's IWM Fees fund City costs for recycling collection (including processing and marketing), operations of the Recycling + Environmental Resource Center and other solid waste services
- City also responsible for current and future compliance with unfunded mandates via State Law (AB 341, AB 1826 and SB 1383)
- Additional consulting services and equipment replacement needs
- IWM Fees adjustments maintain current recycling programs and services, comply with increasing State mandates, and build fund balance

SB 1383 (Short-Lived Climate Pollutants: Organic Waste Methane Emissions Reductions)



Proposed January 1, 2021 Total Customer Rates

Container Size	EBS Collection (2021)	Post- Collection (2021)	IWM Fee (2021)	TOTAL Monthly 2021	TOTAL Monthly 2020	Monthly Change
20 Gallon Cart	20.77	5.22	19.61	45.60	44.72	0.88
35 Gallon Cart	29.17	9.16	21.44	59.77	58.60	1.17
64 Gallon Cart	58.36	18.32	42.02	118.70	116.37	2.33
One Cubic Yard	198.21	53.00	151.49	402.70	395.42	7.28
Two Cubic Yards	380.19	105.99	302.94	789.12	774.61	14.51
One Cubic Yard (Green Waste)	183.21	53.00	34.97	271.18	266.50	4.68

2021 Solid Waste Rate Revenues and COVID-19 Impacts

- Overall El Cerrito Solid Waste Rate Revenue Requirement up by 0.18% in 2021
- However, ongoing “migration” to smaller containers and reductions in commercial and debris box subscriptions due to COVID-10 are impacting revenue collection
- Rates in 2021 are proposed to increase by up to 2% to meet revenue requirement given anticipated revenue reductions
- Any surplus revenues compared to revenue requirement may offset need for rate increases in future years

Preview of Coming Attractions in 2021

- Action for Compliance with SB 1383 (El Cerrito and RecycleMore)
- Evaluation of Recycling Collection Operations / Potential Outsourcing
- Solid Waste Systems Contracting and Planning
 - SB 1383 (2022 – 2025)
 - Long-Term Recyclables Processing Solutions (2021+)
 - EBS Franchise Agreement (Expires 2025)
 - Republic Post-Collection Agreement (Expires 2025)
- City should make decisions on compliance and long-term contracting approach in 2021

Requested Actions

- Conduct a public hearing and upon conclusion adopt a resolution establishing maximum allowable East Bay Sanitary (EBS) garbage and green waste collection, processing and disposal rates, effective January 1, 2021; and
- Conduct a public hearing and upon conclusion adopt a resolution fixing and setting Integrated Waste Management (IWM) Fees, effective January 1, 2021.

Questions?