



CITY of CLOVIS

AGENDA • CITY COUNCIL MEETING

Council Chamber, 1033 Fifth Street, Clovis, CA 93612 (559) 324-2060
www.cityofclovis.com

September 20, 2021

6:00 PM

Council Chamber

In compliance with the Americans with Disabilities Act, if you need special assistance to access the City Council Chamber to participate at this meeting, please contact the City Clerk or General Services Director at (559) 324-2060 (TTY – 711). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Council Chamber.

The Clovis City Council meetings are open to the public at the physical address listed above. There are numerous ways to participate in the City Council meetings: you are able to attend in person; you may submit written comments as described below; you may participate by calling in by phone (see “Verbal Comments” below); and you may view the meeting which is webcast and accessed at www.cityofclovis.com/agendas.

Written Comments

- Members of the public are encouraged to submit written comments at: www.cityofclovis.com/agendas at least two (2) hours before the meeting (4:00 p.m.). You will be prompted to provide:

- Council Meeting Date
- Item Number
- Name
- Email
- Comment



- Please submit a separate form for each item you are commenting on.
- A copy of your written comment will be provided to the City Council noting the item number. If you wish to make a verbal comment, please see instructions below.
- Please be aware that any written comments received that do not specify a particular agenda item will be marked for the general public comment portion of the agenda.
- If a written comment is received after 4:00 p.m. on the day of the meeting, efforts will be made to provide the comment to the City Council during the meeting. However, staff cannot guarantee that written comments received after 4:00 p.m. will be provided to City Council during the meeting. All written comments received prior to the end of the meeting will be made part of the record of proceedings.

Verbal Comments

- If you wish to speak to the Council on an item by telephone, you should contact the City Clerk at (559) 324-2060 no later than 4:00 p.m. the day of the meeting.
- You will be asked to provide your name, phone number, and your email. You will be emailed instructions to log into Webex to participate in the meeting. Staff recommends participants log into the Webex at 5:30 p.m. the day of the meeting to perform an audio check.
- All callers will be placed on mute, and at the appropriate time for your comment your microphone will be unmuted.
- You will be able to speak to the Council for up to five (5) minutes.

Webex Participation

- Reasonable efforts will be made to allow written and verbal comment from a participant communicating with the host of the virtual meeting. To do so, a participant will need to chat with the host and request to make a written or verbal comment. The host will make reasonable efforts to make written and verbal comments available to the City Council. Due to the new untested format of these meetings, the City cannot guarantee that these written and verbal comments initiated via chat will occur. Participants desiring to make a verbal comment via chat will need to ensure that they accessed the meeting with audio transmission capabilities.

CALL TO ORDER

FLAG SALUTE - Councilmember Mouanoutoua

ROLL CALL

PRESENTATIONS/PROCLAMATIONS

1. Presentation - Recognizing City of Clovis Fire Chief John Binaski for his selection as Fire Chief of the Year at the California Fire Chiefs Association annual conference.

PUBLIC COMMENTS - This is an opportunity for the members of the public to address the City Council on any matter within the City Council's jurisdiction that is not listed on the Agenda. In order for everyone to be heard, please limit your comments to 5 minutes or less, or 10 minutes per topic. Anyone wishing to be placed on the Agenda for a specific topic should contact the City Manager's office and submit correspondence at least 10 days before the desired date of appearance.

ORDINANCES AND RESOLUTIONS - With respect to the approval of resolutions and ordinances, the reading of the title shall be deemed a motion to waive a reading of the complete resolution or ordinance and unless there is a request by a Councilmember that the resolution or ordinance be read in full, further reading of the resolution or ordinance shall be deemed waived by unanimous consent of the Council.

CONSENT CALENDAR - Items considered routine in nature are to be placed upon the Consent Calendar. They will all be considered and voted upon in one vote as one item unless a Councilmember requests individual consideration. A Councilmember's vote in favor of the Consent Calendar is considered and recorded as a separate affirmative vote in favor of each action listed. Motions in favor of adoption of the Consent Calendar are deemed to include a motion to waive the reading of any ordinance or resolution on the Consent Calendar. For adoption of ordinances, only those that have received a unanimous vote upon introduction are considered Consent items.

- [2.](#) Administration - Approval - Minutes from the September 13, 2021 Council Meeting.
- [3.](#) Administration - Approval – Closure of City Administrative Offices for In-Service Day on Columbus Day.
- [4.](#) Administration - Approval – Agreement between City of Clovis and the Business Organization of Old Town for Fiscal Year 2021-2022.
- [5.](#) Administration - Receive and File – Business Organization of Old Town (BOOT) Fourth Quarter Report, April through June 2021.
- [6.](#) General Services – Approval – Res. 21-____, Amending the City's Classification and Compensation Plan by adding the City Surveyor Classification.
- [7.](#) General Services – Approval – Res. 21-____, Renewing Medical Plan Options for Eligible Retirees and Restating the Eligibility Requirements for Participation in the Plan.
- [8.](#) Planning and Development Services – Approval – Res. 21-____, Final Map Tract 6329, located at the northwest corner of Shepherd and Clovis Avenues (6050 Enterprises, LP (Wilson Homes)).
- [9.](#) Planning and Development Services – Approval – Res. 21-____, Annexation of Proposed Tract 6329, located at the northwest corner of Shepherd and Clovis Avenues to the Landscape Maintenance District No. 1 of the City of Clovis (6050 Enterprises, LP (Wilson Homes)).
- [10.](#) Planning and Development Services – Approval – Bid Award for CIP 21-04 Loma Vista Village Green Offsite Improvements; and Authorize the City Manager to Execute the Contract on behalf of the City.
- [11.](#) Public Utilities – Approval – Authorize the City Manager to Execute a First Amendment and Memorandum of First Amendment to License Agreement with Crown Castle to Amend and Extend Their Current Cell Tower License at Well 30, Located at 1124 N. Sunnyside Avenue.
- [12.](#) Public Utilities – Approval – Waive Formal Bidding Requirements and Authorize Entering into a Contract with Golden Bell Products, Inc. for Insect Control in Sanitary Sewer Manholes.

PUBLIC HEARINGS - A public hearing is an open consideration within a regular or special meeting of the City Council, for which special notice has been given and may be required. When a public hearing is continued, noticing of the adjourned item is required as per Government Code 54955.1.

- [13.](#) Consider Approval – Res. 21-____, A request to approve a planned development permit to allow deviations from the R-1-7500 (Single-Family Residential - 7,500 Sq. Ft.) Zone District residential development standards associated with TM6367 on approximately 2 acres of land located in the southeast area of N. Armstrong and Nees Avenues. Carolyn G. Prieto, Darlene J. Storm, Kent R. Jura and Vincent J. Jura Jr., property owners; Gary McDonald Homes/Gleneagles Homes, applicant; Harbour & Associates, representative.

Staff: Emily Lane, Assistant Planner

Recommendation: Approve

14. Consider Items Associated with the Sales Tax Participation Agreement between the City of Clovis and Anlin Industries, Inc.
- a. Conduct Public Hearing and Accept the Economic Development Subsidy Report for the Sales Tax Participation Agreement with Anlin Industries, Inc.
 - b. Consider Approval - First Amendment to the Sales Tax Participation Agreement with Anlin Industries, Inc. and Authorize City Manager to execute the First Amendment.

Staff: Andrew Haussler, Community and Economic Development Director
Recommendation: Approve

ADMINISTRATIVE ITEMS - Administrative Items are matters on the regular City Council Agenda other than Public Hearings.

15. Consider Various Items Associated with the Introduction of the new Clovis Household Hazardous Waste (HHW) Antifreeze, Batteries and Bulbs, Oil, and Paint (ABOP) Drop-Off Site:
- a. Consider Approval – Res. 21-____, Adding One Utility Worker Position to Staff the HHW Site; and
 - b. Consider Approval – Res. 21-____, Approving a Budget Amendment for the New Position and the HHW ABOP Site.

Staff: Ivette Rodriguez, Solid Waste Manager
Recommendation: Approve

16. Consider Approval – Report and Recommendation and Set Public Hearing to Increase Street Sweeping Charges.

Staff: Glenn Eastes, Assistant Public Utilities Director
Recommendation: Approve

COUNCIL ITEMS

17. Consider the League of California Cities' Annual Resolutions and Proposed Bylaws Amendments set for Consideration at the Annual Conference on September 22 – 24, 2021.

Staff: Luke Serpa, City Manager
Recommendation: Discuss and direct voting delegate

18. Consider Approval - Confirmation of City Manager's Appointment of City Clerk.

Staff: Luke Serpa, City Manager
Recommendation: Confirm Appointment

CITY MANAGER COMMENTS

COUNCIL COMMENTS

ADJOURNMENT

MEETINGS AND KEY ISSUES

Regular City Council Meetings are held at 6:00 P.M. in the Council Chamber. The following are future meeting dates:

- Oct. 4, 2021 (Mon.)
- Oct. 11, 2021 (Mon.) (Joint Meeting with CUSD)
- Oct. 18, 2021 (Mon.)
- Nov. 1, 2021 (Mon.)
- Nov. 8, 2021 (Mon.)
- Nov. 15, 2021 (Mon.)

CLOVIS CITY COUNCIL MEETING

September 13, 2021

6:00 P.M.

Council Chamber

Meeting called to order by Mayor Flores
Flag Salute led by the Sons of the American Revolution

Roll Call: Present: Councilmembers Ashbeck, Bessinger, Mouanoutoua, Whalen
Mayor Flores
Absent: None

PRESENTATION

6:03 ITEM 1 - PRESENTATION OF A CERTIFICATE OF APPRECIATION TO THE CLOVIS CITY COUNCIL FROM SONS OF THE AMERICAN REVOLUTION IN SUPPORT OF THE STRONG SUPPORT THE CITY COUNCIL HAS PROVIDED FOR OUR VETERANS GROUPS, MILITARY AND AMERICAN VALUES.

The flag salute was led by the Sons of the American Revolution.

Representatives of the Sons of the American Revolution presented Certificates of Appreciation to the City Council in support of the strong support the Council has provided for Veterans Groups, Military and American Values.

CONSENT CALENDAR – 6:13

Motion by Councilmember Ashbeck, seconded by Councilmember Whalen, that the items on the Consent Calendar be approved. Motion carried by unanimous vote.

- 2. Administration - Approved - Minutes from the September 7, 2021 Council Meeting.
- 3. Fire – Approved – **Res. 21-100**, A Resolution Outlining Fire Department personnel compensation reimbursement for participating in Mutual Aid activities to outside agencies.
- 4. Public Utilities – Approved – Waive Formal Bidding Requirements and Authorize the Purchase of a Water Truck for Landfill Operations Off of the Sourcewell Purchasing Contract from Gibbs International, Inc.; and Approved – **Res. 21-101**, Amending the 2021-2022 Public Utilities Department Community Sanitation Budget to Allocate Funds for Purchase of the Water Truck.
- 5. Public Utilities – Approved – Bid Award for CIP 21-09 SWTP, 2.5 MG Water Storage Reservoir Coating Project, and Authorize the City Manager to Execute the Contract on Behalf of the City.
- 6. Public Utilities – Approved – Proposal Award for Residential Refuse, Recycling, and Organics Carts; and Approval – Authorize the City Manager to Execute the Contract on Behalf of the City.

6:14 – ITEM 7 - APPROVED – **RES. 21-102**, A RESOLUTION AMENDING PLAN CHECK, INSPECTION SERVICES, ENCROACHMENT PERMITS AND COMMUNITY INVESTMENT PROGRAM RATES.

Motion by Councilmember Ashbeck, seconded by Councilmember Mouanoutoua, for the Council to approve a resolution amending Plan Check, Inspection Services, Encroachment Permits and Community Investment Program Rates. Motion carried by unanimous vote.

6:21 – ITEM 8 - APPROVED - **RES. 21-103**, A RESOLUTION APPROVING THE 2021 CITY OF CLOVIS PLANNING DIVISION FEE SCHEDULE.

Motion by Councilmember Whalen, seconded by Councilmember Mouanoutoua, for the Council to approve a resolution approving the 2021 City of Clovis Planning Division Fee Schedule. Motion carried 4-1 with Councilmember Ashbeck voting no.

CITY MANAGER COMMENTS – 6:37

COUNCIL COMMENTS – 6:42

Mayor Flores adjourned the meeting of the Council to September 20, 2021

Meeting adjourned: 6:45 p.m.

Mayor

City Clerk



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 20, 2021

SUBJECT: Administration - Approval – Closure of City Administrative Offices for In-Service Day on Columbus Day.

ATTACHMENTS: None.

CONFLICT OF INTEREST

None.

RECOMMENDATION

Authorize the closure of certain City administrative offices on Columbus Day for the years 2021 – 2023 for an in-service day for purposes of annual clean-up and catch-up on filing, file closures, and preparation of records to be retained in storage.

EXECUTIVE SUMMARY

As in past years, staff is recommending certain offices be closed to the public to allow for clean-up on Columbus Day for the years 2021 – 2023. The actual dates are as follows: October 11, 2021, October 10, 2022, and October 9, 2023.

BACKGROUND

The City does not recognize Columbus Day as a City holiday. However, some other governmental agencies close on that day. For the past several years, the City has utilized this day as an in-service day to clean and catch-up by closing certain City administrative offices to public access and requiring employees to use the time to organize and reduce office files, catch-up on records destruction schedules, and devote uninterrupted time to backlogged projects.

FISCAL IMPACT

None.

REASON FOR RECOMMENDATION

The closure of City administrative offices to the public one day a year for the purposes of eliminating excess paper and obsolete files has proven to be a productive use of staff time.

ACTIONS FOLLOWING APPROVAL

Notices will be posted indicating that certain City offices will be closed to the public on Columbus Day. Telephone service will be routed to voicemail. All emergency services will be operational and will function as normal. The proposed office closure will only affect City Hall campus administrative office operations and the Public Utilities' corporation yard.

Prepared by: Jacquie Pronovost, Executive Assistant

Reviewed by: City Manager *JH*



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 20, 2021

SUBJECT: Administration - Approval – Agreement Between City of Clovis and the Business Organization of Old Town for Fiscal Year 2021-2022.

ATTACHMENTS: 1. Proposed Agreement Between the City of Clovis and Business Organization of Old Town for Fiscal Year 2021-2022

CONFLICT OF INTEREST

None

RECOMMENDATION

That the City Council approve the request to enter into an agreement between the City of Clovis and Business Organization of Old Town (BOOT).

EXECUTIVE SUMMARY

This agreement will serve as a mechanism for the City of Clovis to process payments to BOOT. This will enable BOOT to continue marketing Old Town as a destination for shopping, dining and community events.

The amount requested for funding is \$60,000 which is reflected in the 2021-2022 budget.

BACKGROUND

Although many shopping areas exist in the City of Clovis, Old Town showcases as a turn-of-the century Central Business District, which reflects the unique diversity and positive image of our community. BOOT represents business owners and operators within Old Town Clovis. The City of Clovis and the former Clovis Community Development Agency has invested a great deal of financial assistance in regard to development, sustainability and marketability of Old Town. In 1992, the Agency expanded its promotion of Old Town by entering into annual contracts with BOOT for the following:

- Old Town attractions (Farmer's Market, Antiques and Collectibles Fairs, Old Town Christmas activities, etc.).
- Multi-media advertising (print, radio and television) for special events.
- Participation on the Tourism Committee regarding activities and opportunities in Old Town related to the patronage of retail and restaurants.

Attached is the proposed Agreement between the City of Clovis and Business Organization of Old Town for Fiscal Year 2021-2022. For performance of services described in Section 1, paragraphs (a) through (d), the City of Clovis, subject to the terms and conditions of this agreement, wishes to support BOOT by payment of a sum of \$60,000 during the fiscal year 2021-2022. Payment shall be made as follows: \$15,000 on September 30, 2021, \$15,000 on December 31, 2021, \$15,000 on March 31, 2022, and \$15,000 on June 30, 2022.

FISCAL IMPACT

This funding is included in the City of Clovis 2021-2022 budget.

REASON FOR RECOMMENDATION

Approval of this Agreement will allow the City of Clovis to continue its coordinated approach to promote Clovis as an ideal place to conduct business, reside, and promote tourism.

ACTIONS FOLLOWING APPROVAL

After approval, the City Manager will execute the agreement and it will be administered by staff.

Prepared by: Shawn Miller, Business Development Manager

Reviewed by: City Manager *SM*

**AGREEMENT BETWEEN THE CITY OF CLOVIS
AND THE BUSINESS ORGANIZATION OF OLD TOWN
2021 – 2022 FISCAL YEAR
(JULY 1, 2021 THROUGH JUNE 30, 2022)**

WHEREAS, THE CITY OF CLOVIS recognizes the significant role Old Town Clovis has played in creating a favorable image for THE CITY OF CLOVIS; and

WHEREAS, THE CITY OF CLOVIS is committed to advancing economic growth with Old Town Clovis as a priority to ensure the future and well-being of the entire City of Clovis; and

WHEREAS, THE CITY OF CLOVIS has invested considerable time and effort to encourage new business to locate and expand in Old Town Clovis, thereby continuing the economic vitality of the Central Trading district; and

WHEREAS, THE CITY OF CLOVIS recognizes the success of Old Town Clovis is dependent on both private and public sector; and

WHEREAS, the Business Organization of Old Town Clovis (B.O.O.T.) represents many business owners and operators within the Central Business District who will be effected directly or indirectly by future business promotion efforts; and

WHEREAS, THE CITY OF CLOVIS seeks' to strengthen its support of B.O.O.T.'S promotion of Old Town Clovis, thereby assuring its continued influence on economic growth in both Old Town Clovis and *he City at large.

NOW THEREFORE, THE CITY OF CLOVIS and B.O.O.T. agree as follows:

1. B.O.O.T. agrees to assist THE CITY OF CLOVIS in promoting economic expansion in Clovis by providing the following services to THE CITY OF CLOVIS:
 - (a) Maintain a viable organization with membership reflective of the diversity of Old Town Clovis.
 - (b) Maintain Old Town Clovis promotional activity including, but not limited to the following:
 1. Farmers Markets (end of April through last Friday in October)
 - a. Commodity party nights (i.e. Peach Party, Pistachio Party, etc.), North American Pole Vault Championships, Military Night, Art Hop and other special events built into the Farmers Market footprint.
 2. Year-Round Saturday Morning Farmers Market
 3. Three Antiques Fairs (March, May and October)
 4. Old Town Christmas Activities
 5. One Enchanted Evening
 6. Two Wine Walks (May and October)
 7. One Craft Beer Crawls (March)
 8. Two Glorious Junk Days (May and October)
 9. Car Show (April)
 10. One Farm to Table (October)
 - (c) Maintain marketing strategies and advertising techniques to position the image of Clovis through Old Town Clovis' unique character.
 - (1) Promote and provide information to merchants of Old Town on activities that are conducted both within Old Town as well as outside of the Old Town area. Information on such activities shall be provided by the Tourism Committee.

- (2) Participate on the Tourism Committee.
 - (3) Advertising and promotion of event activity in Old Town Clovis through a variety of mediums.
 - (4) Create additional events and participate on committees as requested, (examples of these additional events include, but are not limited to, the Local Organizing Committee for the Amgen Tour of California and the Centennial Planning Committee, Taking it to the Streets etc.).
- (d) Submit quarterly status reports to THE CITY OF CLOVIS, no later than 15 days prior to payment, detailing the progress of B.O.O.T.'s promotional and marketing activities.
2. B.O.O.T. is required to obtain a yearly business license.
 3. For performance of services described in Section 1, paragraphs (a) through (d), THE CITY OF CLOVIS, subject to the terms and conditions of this agreement, wishes to support B.O.O.T. by payment of a sum of \$60,000 during the fiscal year 2021-2022. Payment shall be made as follows: \$15,000 on September 30, 2021, \$15,000 on December 31, 2021, \$15,000 on March 31, 2022, and \$15,000 on June 30, 2022.
 4. To assure collection of business license fees for businesses within the PBIA, THE CITY OF CLOVIS and B.O.O.T. will work toward full compliance of business license issues. B.O.O.T. will notify THE CITY OF CLOVIS when a new business moves into Old Town to determine if the business applied for a proper license. Likewise, THE CITY OF CLOVIS will alert B.O.O.T. of a new business applying for a license so that B.O.O.T. can send a welcome package to the new business and explain the PBIA and benefits of being in Old Town Clovis.
 5. THE CITY OF CLOVIS Business Licensing Division will share reports regarding collection of business license fees for the PBIA.
 6. B.O.O.T. agrees to obey all laws and adhere to all rules, regulations, policies, and procedures during day-to-day operations as well as during special event planning, management, and execution. This includes, but is not limited to, request(s) for street closure, set-up and breakdown of special events, and use of maintenance of CITY OF CLOVIS equipment, utilities and resources.
 7. B.O.O.T. agrees to work towards informing and educating PBIA businesses about parking. This should include providing information about the importance of business owners and employees parking in designated areas, freeing up "prime" parking areas for customers.
 8. B.O.O.T. agrees to repair damage to landscape, hardscape, hardware and other city-owned property that occurs as a result from B.O.O.T. owned special events.
 9. It is understood and agreed that in the performance of this agreement, B.O.O.T. is an independent contractor. B.O.O.T. shall take out and maintain Workers Compensation, State Disability, and other insurance coverage as required by law and shall in all other respects comply with applicable provisions of Federal, State, and local laws, rules, and regulations.

10. B.O.O.T. shall indemnify, hold harmless and defend THE CITY OF CLOVIS, its officers, agent, or employees from all claims for money, damages or other relief arising in any way from the performance of this agreement by B.O.O.T., its officers, agents, members, or employees. B.O.O.T. shall take out and maintain for the full term of this agreement liability insurance providing protection for personal injury, wrongful death, and property damage; such insurance to be in amounts and issued by carriers acceptable to THE CITY OF CLOVIS. B.O.O.T. shall provide THE CITY OF CLOVIS with Certificates of Insurance evidencing such coverage naming THE CITY OF CLOVIS as "additional insured". In respect to "special events" undertaken pursuant to this agreement, B.O.O.T. shall provide THE CITY OF CLOVIS with additional Certificates of Insurance showing THE CITY OF CLOVIS, its officers, agents, and employees as additional named insured under the "special events" policy (ie's) of insurance. All certificates shall show cross liability endorsements. All certificates shall expressly state that the policy (ie's) may not be terminated, cancelled, or modified without (30) days prior written notice received by THE CITY OF CLOVIS at its regular address, 1033 Fifth Street, Clovis, California 93612.

11. The funds provided B.O.O.T. by THE CITY OF CLOVIS pursuant to this agreement shall not be directly or indirectly used for any political purpose whatsoever. This prohibition includes, but is not limited to, campaigns, events, promotions, literature, lobbying or other activities for, against or on behalf of any state, local or federal legislation, issue, candidate(s) or action, whether partisan in nature or not.

12. As part of the annual financial audit of the books and records of B.O.O.T. by B.O.O.T.'s independent auditor, the audit shall include tests for compliance with this Agreement. The tests shall be performed in conformance with the generally accepted auditing standards. The auditor shall prepare a separate written report on the compliance with the provisions of this agreement. THE CITY OF CLOVIS reserves the right to review, during normal business hours, the books and records of B.O.O.T.'s expenditures which are related to the programs required by the provisions of this agreement.

DATED: _____

DATED: 8/24/21 _____

THE CITY OF CLOVIS

BUSINESS ORGANIZATION OF OLD TOWN

_____ J. J. [Signature]

APPROVED AS TO FORM:

(CLOVIS CITY ATTORNEY)



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 20, 2021

SUBJECT: Administration - Receive and File – Business Organization of Old Town (BOOT) Fourth Quarter Report, April through June 2021.

ATTACHMENTS: 1. Business Organization of Old Town (BOOT) Fourth Quarter Report, April through June 2021

CONFLICT OF INTEREST

None

RECOMMENDATION

That the City Council receive and file the Business Organization of Old Town (BOOT) Fourth Quarter Report, April through June 2021.

EXECUTIVE SUMMARY

According to the 2020–2021 agreement between the City of Clovis and BOOT, BOOT is to submit quarterly reports to the City Manager and City Council. The amount to be funded is \$15,000.

BACKGROUND

According to the 2020-2021 agreement between the City of Clovis and BOOT, BOOT is to submit quarterly reports to the City Manager and City Council detailing progress of BOOT's promotional and marketing activities. Attached as Attachment "1" is the Fourth Quarter Report covering April through June 2021 activities. The amount to be funded is \$15,000.

FISCAL IMPACT

The amount to be funded is \$15,000 which is stated in the 2020-2021 Budget.

REASON FOR RECOMMENDATION

The attached report meets the requirements established in the 2020-2021 agreement between the City of Clovis and BOOT.

ACTIONS FOLLOWING APPROVAL

Staff will process payment to BOOT.

Prepared by: Shawn Miller, Business Development Manager

Reviewed by: City Manager *SM*

Boot Quarterly Report: Quarter 4 (April 1st – June 30th 2021)

In accordance with the Agreement between City of Clovis/community & Economic Development Department and the Business Organization of Old Town Clovis for the fiscal year 2020-2021, the following items have been accomplished to date.

Goal #1:

Maintain a viable organization with membership reflective of the diversity of Old Town Clovis.

Objective:

- To maintain current level of membership and seek new members each year.
- To unite the merchants of Old Town as a group of businesses working together for the betterment of the whole downtown district.

Strategy:

- Provide information on the website about B.O.O.T., B.O.O.T. membership, benefits of membership and application forms year-round.
- Personal visits to businesses in the PBIA to recruit and retain memberships.
- Contact with businesses outside the PBIA to recruit and retain Associate Memberships, AKA "Friends of B.O.O.T."
- Allow members to pay dues monthly, quarterly, or semi-annually based on their finances.
- Create a benefits package to attract both regular and associate members.
- Design benefits that will be exclusive to B.O.O.T. membership.
- Provide information to merchants of Old Town regarding activities conducted in and around Old Town through the BOOT social media accounts & email blasts.
- Communicate information to merchants on activities at the monthly B.O.O.T. membership meetings and through E-Blasts. Post events for all organizations in Clovis on B.O.O.T. Website and ensure that if someone searches for an event, B.O.O.T.'s website is in the top results.
- Plan and post meeting notices via email for monthly B.O.O.T. membership meetings.
- Advertise frequently to promote Old Town Clovis on behalf of all merchants.
- Enhance existing programs to draw more people to Old Town Clovis.

Results:

- A membership and organization characteristic of Old Town Clovis.
- Members are sought throughout the year and new businesses are invited to join.
- The 2021 campaign started in November 2020. Members meet at a local restaurant on the 4th Wednesday of each month, & during COVID-19 we offered Zoom as an alternative to attending in person. As of 6/30/2021 we have 120+ members, which is up more than 25% from 2020.
- Board of Directors meet monthly at Noon, on the 4th Wednesday of each month to discuss issues pertinent to

- Create and pay for multi-media advertising campaigns for general advertising such as generic "Shop Local in Old Town Clovis." As we continue to navigate through Covid-19, this has been limited, however, with the state opening back up that is allowing more opportunities for events, income, and additional marketing campaigns.
- Continue to evolve events so they continue to attract new people.
- Staff changes have taken place this year. In August, we laid off our Director and Office Manager due to Covid-19 restrictions and lack of events, and in March, our farmer's market coordinator left to pursue other employment. In addition, we have hired a well-connected and Clovis native as our new executive director who started on May 3, 2021 and an Administrative Assistant, Channing Gibson who started on June 29, 2021.

Results

- This quarters events included the Year-Round Saturday Morning Farmers Market, and The Vintage Market & Antiques and Friday Night Farmers Market. We were unable to move forward with the Spring Wine Walk and Craft Beer Crawl due to Covid-19 restrictions. However, we are planning our Fall Wine Walk on October 30, 2021.

Goal #3

Maintain marketing strategies, including safety and appearance and advertising techniques to position the Image of Clovis through Old Town Clovis' unique character.

Objective:

- Create a broad awareness of Old Town Clovis.
- Establish Old Town Clovis as an immediate, intermediate and end destination.
- Retain the established customer base.
- Reach out to Central California so that more people become aware of what Clovis offers.
- Work with City Officials to maintain a safe, crime free area where people feel safe and like bringing their families to Old Town Clovis.

Strategy:

- Secure multi-media advertising campaigns to promote Old Town Clovis along with event generated promotions - This remains to be limited due to Covid-19.
- Submit calendar of events to community and online calendars – Due to the state opening we are finalizing dates and will be producing an event calendar for the remainder of the year.
- Use Website, Instagram, Pinterest, Facebook to promote Old Town Clovis in general, as well as merchant businesses and specific events.
- Contribute to the cost of the Clovis Appliance/General Electric ABC/30 Skycam at 5th and Pollasky when B.O.O.T. has sufficient funds (co-op advertising).
- Advertise antique events in focused publications that are regional and national in scope for our annual antique events.
- Ongoing outreach to businesses to locate to Old Town Clovis.

- B.O.O.T. works directly with the Visitors Center to be sure they have current event information, including Event Cards with all street events listed.

Goal #5:

Obtain and maintain Workers Compensation, State Disability and Directors and Officers Policy as well as any other insurance coverage as required by law.

Objective:

- Qualify for Workers Compensation, State Disability coverage, General Liability, and all required Insurances.

Strategy:

- To meet all requirements of renewal; indemnify, hold harmless and defend the City of Clovis, Community and Economic Development Department, its officers, agents or employees.
- Submit for renewal Directors and Officers Insurance Policy through Philadelphia Insurance.
- Complete and submit for renewal the State Fund Compensation Insurance Fund policy information update to Valley Regional Insurance Services, Agent Ron Petersen.
- Submit for approval General Liability Insurance through Charity First an "A" rated insurance company through Agent Ron Petersen, Valley Regional Insurance Services.

Results:

- Obtained General Liability Policy coverage period April 21, 2021 to April 21, 2022.
- State Fund Compensation Policy renewed for period April 1, 2021 to March 31, 2022.
- Directors and Officers Policy will renew for period August 4, 2020 to August 4, 2021.
- Certificates of Insurance with Endorsements provided to the City of Clovis.

Goal #6:

Annual Compliance Audit

Objective

- To successfully complete a compliance audit conducted by an independent auditor - We will be providing a quarterly P&L statement and an annual complete P&L report prepared by Krikorian & Company, 1715 N. Fine Avenue, Fresno, CA 93727.

Strategy:

- Efficiently maintain and preserve all records needed to demonstrate full compliance.

Results:

Financial Status:

- See Q4 Balance Sheet Attached as prepared by CPA Firm Krikorian & Co.

April through
June 2021

	TOTAL
Ordinary Income/Expense	
Income	
City of Clovis / PBI A Funding	15,000.00
Event Income	21,309.00
Farmer's Market	24,292.48
FM Annual Membership	8,861.00
Membership	2,175.00
Sponsorships	17,525.00
Total Income	89,162.48
Gross Profit	89,162.48
Expense	
Advertising - General	700.00
Bank Fees	251.59
Business License & Taxes	10.00
Dues & Subscriptions	1,048.19
Entertainment	1,050.00
Equipment Rentals	2,950.06
Fee Refunds	100.00
Insurance	1,803.68
Interest Expense	272.15
Legal & Professional Fees	1,500.00
Merchant Fees	19.58
Office Supplies	683.18
Outside Services	16,854.50
Payroll Expenses	6,562.83
Payroll Fees	245.90
Payroll Taxes	-565.41
Penalties	3,500.02
Printing	715.65
Rent	1,225.00
Repairs & Maintenance	865.30
Security	1,125.00
Supplies	193.78
Utilities	869.50
Web Site Maintenance	9,000.00
Total Expense	50,980.50
Net Ordinary Income	38,181.98
Other Income/Expense	
Other Expense	
Other Expense	301.96
Total Other Expense	301.96
Net Other Income	-301.96
Net Income	<u>37,880.02</u>



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services Department

DATE: September 20, 2021

SUBJECT: General Services – Approval – Res. 21-___, Amending the City's Classification and Compensation Plan by adding the City Surveyor Classification.

ATTACHMENTS: 1. Resolution Classification Addition

CONFLICT OF INTEREST

None

RECOMMENDATION

For City Council to Approve Resolution 21-___ Amending the City's Classification and Compensation Plan by adding the City Surveyor Classification.

EXECUTIVE SUMMARY

Following the evaluation of work assignments within the Planning and Development Services Department, a City Surveyor position was added to the FY 21-22 budget during the budget process. The City Surveyor classification now needs to be added to the City's Classification and Compensation Plan so recruitment for the position may occur. Modification of the City's Classification and Compensation Plan requires the City Council's approval.

BACKGROUND

During the FY 21-22 budget process, the Planning and Development Services Department determined the need to create a separate City Surveyor classification. One City Surveyor position was added to the Planning and Development Services Department FY 21-22 Position Allocation Plan but now requires a classification in order to recruit for and fill the position.

Staff is proposing that the City Surveyor classification be added to reflect the responsibilities and job duties that are required in the Planning and Development Services Department. This position will perform the more difficult and complex land surveying, drafting and mapping services within the department and requires a Land Surveyor license. At the present time the

City only has one employee who possesses this license. This new position will allow for succession planning, add an additional staff member with the Land Surveyor license, and will assist the City Engineer with mapping services.

The recommended salary range for the City Surveyor will be \$8,116 to \$9,865. The City Surveyor will be assigned to the Clovis Professional and Technical Association (CPTA) bargaining unit for employee representation. The impact of this new classification has been reviewed with the Clovis Professional and Technical Association unit representatives and they are in agreement with adding the new classification.

FISCAL IMPACT

The salary and related benefit costs of this proposed classification for the remainder of the fiscal year would be approximately an additional \$70,800.00. The additional costs were budgeted in the FY 21-22 Planning and Development Services budget.

REASON FOR RECOMMENDATION

The addition of the City Surveyor classification to the City's Classification and Compensation Plan provides a detailed classification description and allows for the recruitment of the new position. Modification of the City's Classification and Compensation Plan requires the City Council's approval.

ACTIONS FOLLOWING APPROVAL

Personnel staff will update the City's Classification and Compensation Plans with the addition of the City Surveyor classification.

Prepared by: Lori Shively, Personnel/Risk Manager

Reviewed by: City Manager *JS*

RESOLUTION 21-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS APPROVING AMENDMENTS TO THE CITY’S CLASSIFICATION AND COMPENSATION PLANS BY ADOPTING A CITY SURVEYOR CLASSIFICATION

The City Council of the City of Clovis resolves as follows:

WHEREAS, it has been determined that the City has a need for a City Surveyor classification to provide the necessary technical support; and,

WHEREAS, it has been determined that the appropriate salary range for the City Surveyor classification is \$8,116 to \$9,865 per month; and,

WHEREAS, it has been determined that it is appropriate to assign City Surveyor classification to the Clovis Professional and Technical Association.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Clovis that the City’s FY 21-22 Classification and Compensation Plans shall be modified to include the City Surveyor classification (Attachment A) with a monthly salary range of \$8,116 to \$9,865 per month.

* * * * *

The foregoing Resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 20, 2021 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dated: September 20, 2021

Mayor

City Clerk

ATTACHMENT 1

**City of Clovis
CITY SURVEYOR**

\$8,116.00 - \$9,865.00 Monthly

DEFINITION

Under supervision, perform difficult and complex land surveying, drafting and mapping services; provide administrative and technical leadership to survey staff; and perform related work as required.

CLASS CHARACTERISTICS:

The City Surveyor class perform advanced professional journey-level land surveying and engineering work; provide project planning and coordination for paraprofessional; and provide technical staff training. Incumbents perform work which has some variation and allows or requires a moderate range of choice in the application of defined methods or procedures. Incumbents receive minimal instructions when tasks are assigned and have some latitude in selecting work methods. Work is generally reviewed upon completion and incumbents are expected to refer to their supervisor for instruction on matters that do not fit a clear pattern.

EXAMPLES OF DUTIES:

Prepare maps, legal descriptions, field surveys, construction surveying, engineering plans and specifications for a variety of projects; review project plans and inspect construction sites to determine the scope and complexity of required survey work; coordinate the work of survey crews to ensure schedules are met; review parcel maps, tentative and final maps, lot line adjustment/lot mergers, certificates of correction, acquisitions, dedication of easements, rights-of-way and parcels; resolve difficult survey issues; certify final subdivision maps and related documents; sign and seal all documents in accordance with state law; statistically analyze data, prepare exhibits and write reports; compose agreements and staff reports; communicate with the public at the counter and over the telephone; consult with contractors, developers, engineering consultants and the public on public works standards, fees, civil engineering design problems and other related items; review, investigate and make recommendations regarding complaints from citizens; calculate project cost estimates, curb, gutter and street grades and traverses; copy, file and update maps and plans; check plans; check bids and billings for accuracy; participate fully in the work of the engineering staff; train and assign the work of subordinate staff on engineering projects; instruct assigned staff in work methods; check and correct work in progress and upon completion; check, establish and maintain a system of horizontal and vertical control monumentation; operate City vehicles; operate a personal computer; and perform related work as required.

**TYPICAL QUALIFICATIONS:
LICENSE REQUIRED**

- Possession of a valid California Driver's License and a good driving record;

Attachment A of Attachment 1

- Possession of a valid Land Surveyor license issued by the State of California Department of Consumer Affairs Board for Professional Engineers, Land Surveyors, and Geologists.

EDUCATION AND EXPERIENCE

Education:

- Graduation from an accredited college or university with a Bachelor's Degree in Geodetic Engineering, Civil Engineering or a closely related field.

Experience:

- A minimum of five (5) years of work experience in land surveying such as roads, construction surveying, rights-of-way and preparing legal descriptions.

QUALIFICATIONS

Knowledge of:

- Professional Surveyor Act and the Subdivision Map Act;
- Principles and practices of land surveying including boundary establishment and property description;
- Principles and practices of land surveying as applied to the design and construction of public works facilities, technical inspection services, design review and other areas;
- Principles of subdivision design and standards;
- Pertinent laws and regulatory codes dealing with development, construction, surveying and real estate;
- Applicable principles and practices of engineering as related to survey work;
- Prepare and review preliminary studies, final maps and plans, detailed calculations, cost estimates and specifications;
- Operation and use of mapping equipment relating to land and photogrammetric surveying;
- Construction plans, specifications, parcel maps, subdivision maps and construction drawings;
- General operation of automated equipment and standard application software related to surveying functions;
- Principles of algebra, geometry and trigonometry as applied to technical engineering and surveying calculations;
- Engineer maps and records;
- Proper inspection methods and procedures;
- Record keeping and survey data collection methods;
- Techniques and general principles of training and lead supervision;
- Appropriate safety precautions and procedures.

Ability to:

- Organize, implement and direct survey related operations and activities;
- Perform a wide scope of professional surveying work in the preparation of maps, plans, designs and specification for public works and City facility development, construction and maintenance;
- Understand and interpret legal descriptions, record survey maps and engineering plans, diagram and notes;
- Gather, organize, analyze and present a variety of technical engineering, land surveying and statistical data;
- Perform construction project administration, ensuring compliance with plans, specifications and contracts;
- Use and care of surveying instruments and equipment;
- Prepare and maintain accurate survey records;
- Establish and maintain effective relationships with those contacted in the course of work;
- Prepare accurate and concise reports;
- Utilize Computer Assisted Drafting (CAD) software
- Communicate clearly orally and in writing;
- Read, understand and apply moderately difficult;
- Understand and carry out oral and written instructions;
- Operate a vehicle observing legal and defensive driving practices;
- Operate a personal computer accurately and efficiently.

SUPPLEMENTAL INFORMATION:

PHYSICAL DEMANDS AND WORKING CONDITIONS

- Strength: Ability to perform moderately heavy work with frequent lifting, carrying and/or pushing of objects weighing twenty-five (25) pounds and occasionally objects weighing up to fifty (50) pounds;
- Environment: Perform job functions in an office or outdoor site and may be required to work in all weather conditions;
- Other: May be required to attend occasional evening meetings.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: General Services

DATE: September 20, 2021

SUBJECT: General Services – Approval – Res. 21-____, Renewing Medical Plan Options for Eligible Retirees and Restating the Eligibility Requirements for Participation in the Plan.

ATTACHMENTS: 1. Resolution Retiree Medical

CONFLICT OF INTEREST

None

RECOMMENDATION

For City Council to approve Resolution 21-____; renewing the City's Retiree Medical Plan options for eligible retirees and restating eligibility requirements for participation in the plan.

EXECUTIVE SUMMARY

The City has sponsored a group retiree medical plan for retirees who meet certain eligibility requirements for many years. Approval of the attached Resolution renews the retiree medical plan for the 2022 plan year.

BACKGROUND

For many years, the City has offered employees who retire from City service the option of purchasing the same medical and prescription drug benefit package offered to full-time, regular employees. The retiree medical plan option is renewed annually at the discretion of the Council. This option provides qualifying retirees (those with a minimum of five (5) years of full-time City service immediately preceding retirement) with the opportunity to continue participation in the City's medical/prescription plans. Eligibility requirements for participation in the plan and rate information are listed in the attached (Attachment A of Attachment 1).

FISCAL IMPACT

The retiree medical plan option is rated separately from the active City employee medical plan. In addition, monthly premiums are paid entirely by the retirees. Consequently, there is not a fiscal impact to the City for offering this program.

REASON FOR RECOMMENDATION

Council action is necessary to renew the retiree medical plan option for eligible retirees for the 2022 plan year.

ACTIONS FOLLOWING APPROVAL

Upon approval, the program renewal will become effective with the 2022 plan year, i.e., January 1, 2022. Eligible retirees will be provided with an open enrollment period (i.e. October 18 through November 12, 2021). Additionally, employees who retire and become eligible during the 2022 plan year will be provided with a similar notice at the time of retirement.

Prepared by: Lori Shively/Personnel Risk Manager

Reviewed by: City Manager *JA*

RESOLUTION 21-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
RENEWING THE RETIREE MEDICAL PLAN OPTION FOR ELIGIBLE
RETIREES AND RESTATING THE ELIGIBILITY REQUIREMENTS
FOR PARTICIPATION IN THE PLAN**

The City Council of the City of Clovis resolves as follows:

WHEREAS, the City offers a retiree health plan that allows retirees to purchase medical and prescription coverage; and,

WHEREAS, the City has established eligibility requirements for participation in the plan listed in the attached Attachment A of Attachment 1; and,

WHEREAS, continued offering of the retiree health plan is determined on an annual basis at the discretion of the Council.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Clovis, hereby renews the Retiree Medical Plan Option and rates effective January 1, 2022, as summarized in the Attachment A of Attachment 1.

* * * * *

The foregoing Resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 20, 2021, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dated: September 20, 2021

Mayor

City Clerk

Retiree Medical/Prescription Plan Summary For the 2022 Plan Year

Retiree Benefits

Effective January 1, 2022, retirees of the City of Clovis will be allowed to continue in a City sponsored Retiree Medical/Prescription Plan at their own expense, provided they meet the plan eligibility requirements. Enrolled retirees will participate in the annual open enrollment for the medical/prescription plans.

Eligibility Requirements

To be eligible for the Retiree Medical/Prescription Plan, a retired/retiring employee must meet the following eligibility requirements:

1. Been continuously covered in the medical/prescription portion of the City's health plan through December 31, 2021, as a full-time regular employee or a retired enrollee; or, was continuously covered by a City-approved group medical/prescription plan as a full-time regular City employee immediately preceding retirement from the City.
2. Be eligible to retire in accordance with CalPERS age and service requirements, including disability retirement.
3. Have a minimum of five (5) years of service with the City of Clovis as a full-time regular employee immediately preceding employment separation with the City of Clovis.
4. Retired employees and their dependents are eligible for City coverage ***until they become eligible for Medicare***. Retired employees and/or their dependents that become eligible for Medicare are no longer eligible to remain on the City's retiree plans. They have the option of enrolling in Medicare and may seek supplemental coverage other than through the City's plan.
 - a. If a retired employee becomes Medicare eligible, and has a spouse who is not Medicare eligible or a dependent child under the age of 26, the spouse and child may continue City coverage even after the retired employee becomes Medicare eligible and enrolls in Medicare and a supplemental plan.
 - b. A spouse who becomes Medicare eligible, or a dependent child who reaches the age of 26, will not be eligible to continue in the City's Retiree Medical/Prescription Plan.

5. An eligible employee who plans on retiring must enroll in the Retiree Medical/Prescription Plan within thirty (30) calendar days of the effective date of employment separation. If an eligible employee fails to enroll, or waives enrollment, they shall not be eligible to enroll in the plan at a future date. A dependent who enrolls or has been enrolled in an alternative insurance plan for a period of time, may be added to the retiree's plan upon loss of other coverage or during open enrollment if the retiree has maintained continuous coverage with the City under this plan.
6. Eligibility for dependents normally extends through the retiree. Dependents may only be enrolled for coverage if the retiree is concurrently enrolled (except as provided for in 4-a. above). Dependents of a retiree lose eligibility for coverage under the Retiree Medical/Prescription Plan when a non-Medicare eligible retiree elects to discontinue coverage. Upon the death of a covered retiree or the death of a covered employee who was eligible to retire, a spouse or covered child may continue coverage until the spouse is Medicare eligible and the child reaches the age of 26 respectively.
7. A retiree or eligible dependent that enrolls in the Retiree Medical/Prescription Plan shall not be allowed to re-enroll in the plan if they drop coverage in the plan or fail to make their monthly premium payment within thirty (30) days of the due date.
8. Continued enrollment in the Retiree Medical/Prescription Plan is also subject to terms and conditions set forth in the Evidence of Coverage/Disclosure Document of the medical plan in which the retiree and dependents are enrolled.

A Retiree who returns to work for the City and enrolls in an active plan because of reinstatement from retirement or who has returned as an elected official, will again be eligible for retiree coverage upon retiring subject to the normal retiree requirements.

Dental and Vision Coverage

Dental and/or Vision Coverage is not available to retirees through the City of Clovis Retiree Medical/Prescription Plan.

**Pre 65 Retiree Health Plan Monthly Rates charged by Vendor
for the 2022 Program Year**

	<u>Anthem HMO 15</u>	<u>Kaiser HMO 15</u>
Retiree Only	\$ 949.00	\$ 827.00
Retiree & Spouse	\$1,962.00	\$1,713.00
Retiree & Child(ren)	\$1,704.00	\$1,472.00
Retiree & Family	\$2,839.00	\$2,440.00

Anthem PPO 80

Retiree Only	\$ 914.00
Retiree & Spouse	\$1,917.00
Retiree & Child(ren)	\$1,646.00
Retiree & Family	\$2,737.00

Anthem HDHP

	<u>Anthem HDHP</u>	<u>Kaiser HDHP</u>
Retiree Only	\$ 657.00	\$ 646.00
Retiree & Spouse	\$1,376.00	\$1,336.00
Retiree & Child(ren)	\$1,202.00	\$1,148.00
Retiree & Family	\$1,966.00	\$1,904.00



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: September 20, 2021

SUBJECT: Planning and Development Services – Approval – Res. 21-____, Final Map Tract 6329, located at the northwest corner of Shepherd and Clovis Avenues (6050 Enterprises, LP (Wilson Homes)).

ATTACHMENTS: 1. Res. 21-____
2. Vicinity Map
3. Copy of Final Map

CONFLICT OF INTEREST

None

RECOMMENDATION

For the City Council to approve Res. 21-____, which will:

1. Accept the offer of dedication of parcels and public utility easement within Tract 6329, and;
2. Authorize recording of the final map.

EXECUTIVE SUMMARY

The owner, 6050 Enterprises, LP (Wilson Homes), acting as the subdivider, has submitted a final map. The improvement plans are being processed by City staff. The improvements to be installed include curb, gutter, sidewalk, street lights, fire hydrants, street paving, sanitary sewer, water mains, landscaping, a Trail (i.e. bollard lighting, landscape and irrigation, benches, trash receptacles, and enriched crossing across Clovis Avenue) and corner Gateway Features. The subject tract is located on the northwest corner of Shepherd and Clovis Avenues. It contains approximately 7.99 acres and consists of 95 planned residential units, zoned R-1-PRD. The subject tract is gated and will consist of private streets onsite.

FISCAL IMPACT

The subdivider will be installing curb, gutter, sidewalk, fire hydrants, street paving, sanitary sewer, water mains, landscaping, a Trail, and corner Gateway Features. The fire hydrants, sanitary sewer and water mains will be perpetually maintained by the City of Clovis. The onsite streets will be privately maintained by the Home Owners Association (HOA).

REASON FOR RECOMMENDATION

The subdivision agreement has been executed by the subdivider and all development fees paid or deferred in accordance with Municipal Code. The agreement provides for the developer to complete a technically correct map and improvement plans and to complete all required improvements in compliance with the conditions of approval. The improvements are adequately secured.

ACTIONS FOLLOWING APPROVAL

The final map will be filed with the Fresno County Recorder's office for recording.

Prepared by: Christian Esquivias, Engineer II

Reviewed by: City Manager JEH

RESOLUTION 21-__**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING FINAL SUBDIVISION MAP FOR TRACT NO. 6329**

WHEREAS, a final map has been presented to the City Council of the City of Clovis for Tract 6329, by The City of Clovis, a Municipal Corporation, and

WHEREAS, said final tract conforms to the requirements of Chapter 2, Part 2, of Division 4 of the Business and Professions Code and to local ordinances;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Clovis as follows:

1. The final map of Tract 6329, consisting of two (2) sheets, a copy of which is on file with the City Clerk, be and the same is hereby approved.

2. Approval of the Subdivision improvement plans for said tract are being completed by City Staff.

3. The preliminary Engineer's Cost Estimate of development cost of said tract, a copy of which is on file with the City Clerk, be and the same is hereby approved and adopted as the estimated cost of improvements for said subdivision in the sum of \$4,142,259.50.

4. The offer and dedication for public use of the parcels and easements specified on said map are accepted by the City of Clovis and the City Clerk is authorized and directed to execute said subdivision map.

5. This Council finds that the proposed subdivision, together with the provisions for its design and improvement, are consistent with applicable general and specific plans of the City of Clovis.

6. Improvement Security, as provided hereunder and in said Subdivision Agreement, is fixed at one hundred percent (100%) of the remaining improvements to be constructed or the sum of \$3,939,000.00 for guaranteeing specific performance of said agreement and fifty percent (50%) of the remaining improvements or the sum of \$1,970,000.00 for payment of labor and materials furnished by contractors, subcontractors, laborers and materialmen in connection with the improvements required to be made or constructed by said subdivider in conformity with said subdivision map or said agreement.

7. Subdivider shall furnish a bond in the sum of \$414,200.00 being the amount determined by the City Council of the City as necessary for the guarantee and warranty of the work for a period of one year following the completion and acceptance of the tract against any defective work or labor done, or defective materials furnished. Said bond is required to be furnished prior to acceptance of the tract by the City Council.

ATTACHMENT 1

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 20, 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

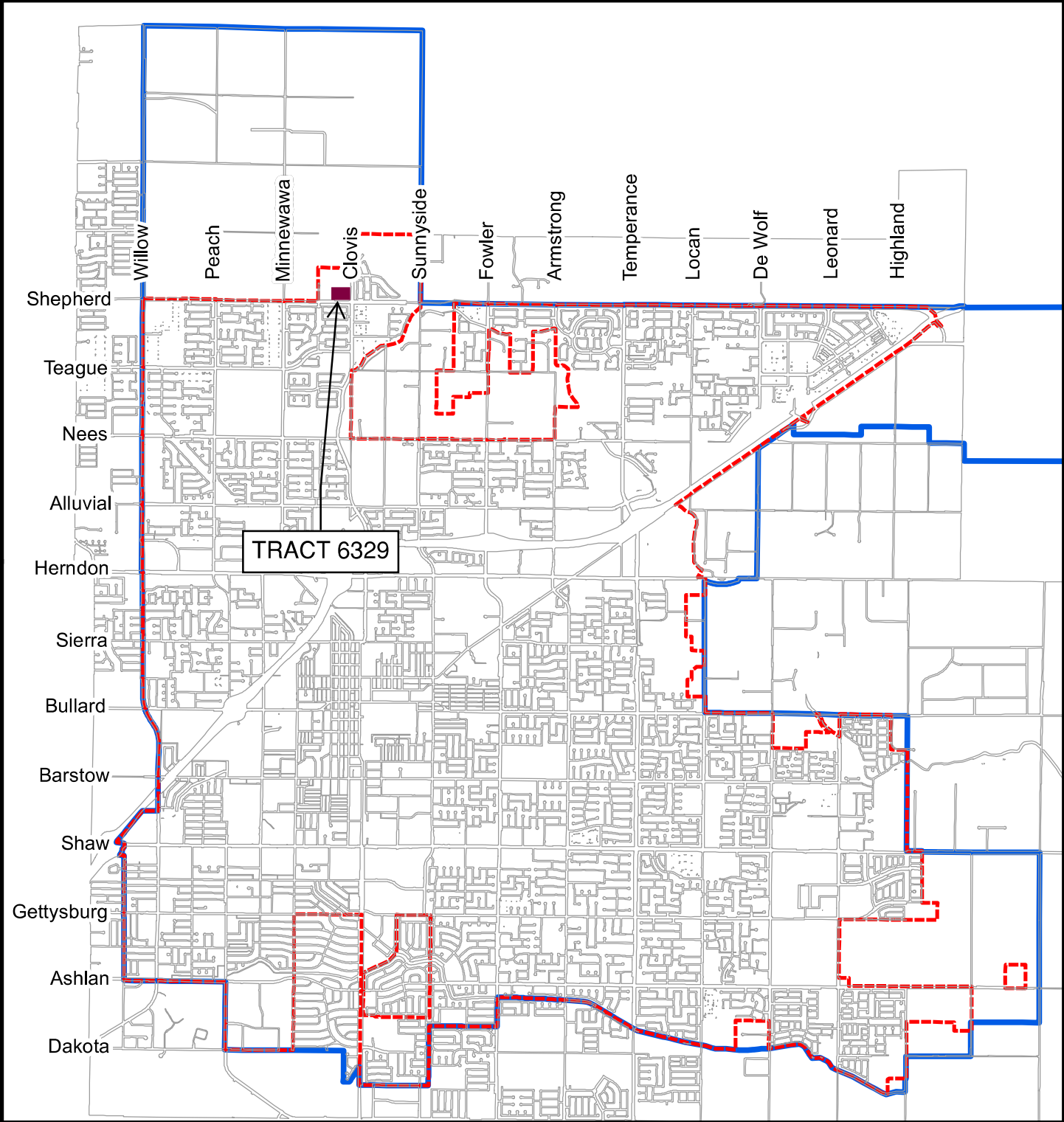
DATED:

Mayor

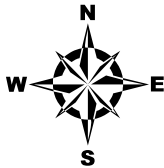
City Clerk

VICINITY MAP

Project - Tract 6329 (6050 Enterprises, LP(Wilson Homes))



ATTACHMENT 2



SUBDIVISION MAP OF TRACT NO. 6329

IN THE CITY OF CLOVIS, COUNTY OF FRESNO, STATE OF CALIFORNIA,
SURVEYED AND PLATTED IN FEBRUARY, 2021 BY HARBOUR &
ASSOCIATES
CONSISTING OF 2 SHEETS
SHEET 1 OF 2

OWNER'S STATEMENT

THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THIS SUBDIVISION, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND OFFER FOR DEDICATION FOR PUBLIC USE THE PARCELS AND EASEMENTS SPECIFIED ON SAID MAP AS INTENDED FOR PUBLIC USE FOR THE PURPOSES SPECIFIED THEREIN.

6050 ENTERPRISES, LP, A CALIFORNIA LIMITED PARTNERSHIP

BY: WILDEV, INC.
A CALIFORNIA CORPORATION,
ITS GENERAL PARTNER

BY: TWC
TODD A. WILSON
VICE-PRESIDENT

U.S. BANK NATIONAL ASSOCIATION
d/b/a/ HOUSING CAPITAL COMPANY
AS BENEFICIARY

BY: _____
JENNY D. SAUBERT
VICE-PRESIDENT

NOTARY ACKNOWLEDGEMENTS

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF Fresno)

ON Sept. 3rd, 2021, BEFORE ME Melanie Ing Yeg Teh, NOTARY PUBLIC, PERSONALLY APPEARED TODD A. WILSON, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/IT/HEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT, WITNESS MY HAND.

NAME Melanie Ing Yeg Teh SIGNATURE Melanie Ing Yeg Teh
MY COMMISSION EXPIRES 7-16-2027 COUNTY OF Fresno
COMMISSION NUMBER 2250257

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
COUNTY OF _____)

ON _____, 202____, BEFORE ME _____, NOTARY PUBLIC, PERSONALLY APPEARED JENNY D. SAUBERT, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/IT/HEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT, WITNESS MY HAND.

NAME _____ SIGNATURE _____
MY COMMISSION EXPIRES _____ COUNTY OF _____
COMMISSION NUMBER _____

LEGAL DESCRIPTION

OUTLOT 0 OF TRACT NO. 6328, ACCORDING TO THE MAP THEREOF FILED FOR RECORD DECEMBER 22, 2020 IN VOLUME 90 OF PLATS, AT PAGES 40 THROUGH 42, FRESNO COUNTY RECORDS.



SURVEYOR'S STATEMENT

THE SURVEY FOR THIS MAP WAS MADE BY ME OR UNDER MY DIRECTION AND IS TRUE AND COMPLETE AS SHOWN.

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF 6050 ENTERPRISES, LP, ON FEBRUARY 1, 2021. I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE ONE YEAR AFTER THE DATE THIS MAP IS RECORDED, OR ANY TIME EXTENSION APPROVED BY THE CITY ENGINEER, THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

Aaron D. Spray 9-3-21
AARON D. SPRAY, PLS 9484 DATE



CITY ENGINEER'S STATEMENT

I, MICHAEL J. HARRISON, CITY ENGINEER OF THE CITY OF CLOVIS, HEREBY STATE THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH, AND THAT I AM SATISFIED THAT THE MAP IS TECHNICALLY CORRECT.

MICHAEL J. HARRISON, P.L.S. 8088 DATE _____
CITY ENGINEER

CITY CLERK'S STATEMENT

I, JOHN HOLT, HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF CLOVIS, BY RESOLUTION ADOPTED _____, APPROVED THE WITHIN MAP AND ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC, ANY REAL PROPERTY AND EASEMENTS OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION. THIS ALSO INCLUDES APPROVAL OF WRITTEN NOTATIONS OF ALL ABANDONED EASEMENTS CONTAINED WITHIN THIS MAP.

DATED _____ JOHN HOLT, CITY CLERK

THIS LAND IS SUBJECT TO THE FOLLOWING:

1. SAID LAND LIES WITHIN THE FRESNO METROPOLITAN FLOOD CONTROL DISTRICT AND IS SUBJECT TO DRAINAGE FEES AND/OR REQUIREMENTS TO CONSTRUCT PLANNED LOCAL DRAINAGE FACILITIES, AS DISCLOSED BY INSTRUMENT ENTITLED "RESOLUTION NO. 1816 - THE BOARD OF DIRECTORS OF THE FRESNO METROPOLITAN FLOOD CONTROL DISTRICT", RECORDED JULY 31, 1995 AS SERIES NUMBER 8092128, O.R.F.C.
2. ANY SPECIAL TAX WHICH IS NOW A LIEN AND THAT MAY BE LEVIED WITHIN THE COMMUNITY FACILITIES DISTRICT NO. 2004-1, A NOTICE OF WHICH WAS RECORDED AS FOLLOWS: INSTRUMENT ENTITLED "AMENDED NOTICE OF SPECIAL TAX LIEN, CITY OF CLOVIS COMMUNITY FACILITIES DISTRICT NO. 2004-1 (POLICE AND FIRE SERVICES) ANNEXATION NO. 65, RECORDED DECEMBER 9, 2020, UNDER RECORDER'S SERIAL NUMBER 2020-0177489, O.R.F.C.

RECORDER'S CERTIFICATE

DOCUMENT NO. _____ FEE PAID \$ _____
FILED THIS DAY OF _____, 20____, AT _____ M. IN VOLUME _____
OF PLATS, AT PAGE(S) _____, FRESNO COUNTY RECORDS, AT THE REQUEST
OF OLD REPUBLIC TITLE COMPANY.
PAUL A. DICTOS, CPA
FRESNO COUNTY ASSESSOR-RECORDER
BY: _____
DEPUTY



Harbour & Associates
Civil Engineers
388 Clovis Avenue, Suite 300 • Clovis, California 93612
(569) 325-7676 • Fax (569) 325-7699

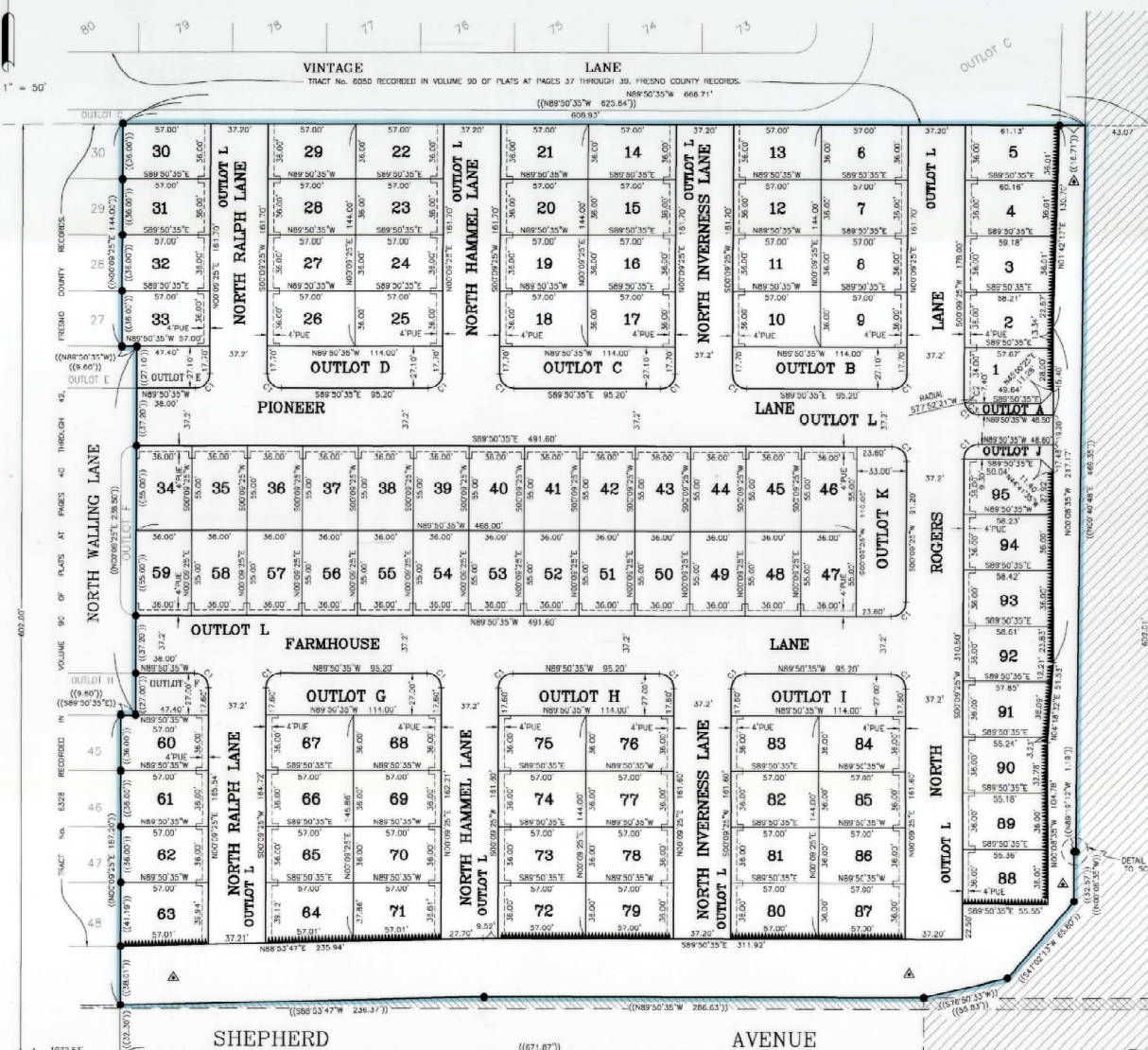
W.G. #20-019

TRACT NO. 6329

IN THE CITY OF CLOVIS, COUNTY OF FRESNO, STATE OF CALIFORNIA, SURVEYED AND PLATTED IN FEBRUARY, 2021 BY HARBOUR AND ASSOCIATES CONSISTING OF 2 SHEETS SHEET 2 OF 2

IN ACCORDANCE WITH SECTION 66434(G) OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA, THE FILING OF THIS FINAL MAP CONSTITUTES ABANDONMENT OF THAT WATER LINE EASEMENT NOT SHOWN ON THIS MAP, BUT IDENTIFIED AS WATER LINE EASEMENT RECORDED DECEMBER 22, 2020 AS DOCUMENT NO. 2020-0184871, OFFICIAL RECORDS OF FRESNO COUNTY.

SCALE: 1" = 50'



LEGEND:

- ◆ FOUND AND ACCEPTED SECTION QUARTER CORNER AS NOTED.
- FOUND AND ACCEPTED 3/4" IRON PIPE, DOWN 6", TAGGED LS 9484.
- () RECORD DATA PER RECORD OF SURVEY RECORDED IN BOOK 53 OF RECORD OF SURVEYS AT PAGE 68, FRESNO COUNTY RECORDS.
- [] RECORD DATA PER RECORD OF SURVEY RECORDED IN BOOK 23 OF RECORD OF SURVEYS AT PAGE 39, FRESNO COUNTY RECORDS.
- < > RECORD DATA PER TRACT No. 6200 RECORDED IN VOLUME 89 OF PLATS AT PAGES 39 THROUGH 45, FRESNO COUNTY RECORDS.
- (()) MEASURED AND RECORD DATA, OR CALCULATED FROM, TRACT No. 6050 RECORDED IN VOLUME 90 OF PLATS AT PAGES 37 THROUGH 39 OR TRACT No. 6328 RECORDED IN VOLUME 90 OF PLATS AT PAGES 40 THROUGH 42, BOTH OF FRESNO COUNTY RECORDS.
- [] GRANT DEED RECORDED DECEMBER 26, 2019 AS DOCUMENT No. 2019-0156442, OFFICIAL RECORDS OF FRESNO COUNTY.
- [] GRANT DEED RECORDED MARCH 3, 2006 AS DOCUMENT No. 2006-0045937, OFFICIAL RECORDS OF FRESNO COUNTY.
- [] RELINQUISHMENT OF DIRECT ACCESS RIGHTS.
- [] THE BLUE BORDER INDICATES THE LIMITS OF THIS SUBDIVISION.
- [] PUE INDICATES AREA OFFERED FOR PUBLIC UTILITY EASEMENT ON ALL LOT FRONTS. SEE PUE DETAILS "A" AND "B" BELOW.

BASIS OF BEARINGS:

THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN WAS TAKEN TO BE SOUTH 89°50'35" EAST, AS SHOWN ON TRACT NO. 5146 RECORDED IN VOLUME 72 OF PLATS AT PAGES 7 THROUGH 10, FRESNO COUNTY RECORDS.

NOTES:

1. 3/4" X 30" IRON PIPE, DOWN 6", TAGGED LS 9484 SET AT ALL LOT CORNERS, BLOCK CORNERS AND BEGINNING AND ENDING OF ALL CURVES, OR WILL BE SET WITHIN ONE YEAR OR ANY APPROVED EXTENSION THEREOF.
2. DISTANCES NOT MONUMENTED ARE CALCULATED.

OUTLOT SCHEDULE:

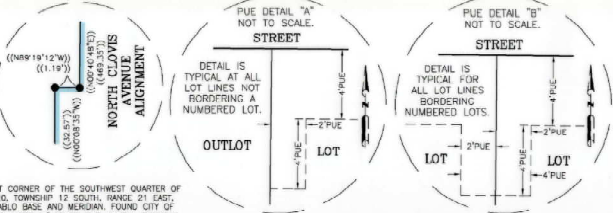
- OUTLOT A: FOR PRIVATE LANDSCAPING AND PUBLIC UTILITY EASEMENT PURPOSES.
- OUTLOTS B,D,I,&G: FOR PRIVATE LANDSCAPING, PUBLIC UTILITY EASEMENTS, PRIVATE PEDESTRIAN PURPOSES, PRIVATE PARKING PURPOSES AND PRIVATE TRASH PURPOSES.
- OUTLOTS C,E,F,H,K: FOR PRIVATE LANDSCAPING, PUBLIC UTILITY EASEMENTS, PRIVATE PEDESTRIAN EASEMENTS AND PRIVATE PARKING PURPOSES.
- OUTLOT J: FOR PRIVATE LANDSCAPING, PUBLIC UTILITY EASEMENTS AND PRIVATE PEDESTRIAN PURPOSES.
- OUTLOT L: FOR PRIVATE STREET AND PUBLIC UTILITY EASEMENT PURPOSES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE FOR PUBLIC PURPOSES:

▲ PUBLIC STREET AND UTILITY PURPOSES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

■ PUE PUBLIC UTILITY EASEMENT NOW OFFERED FOR DEDICATION.



CURVE DATA:

CURVE NUMBER	DELTA	RADIUS	ARC LENGTH	CHORD LENGTH
C1	90°00'00"	9.40'	14.77'	13.29'
C2	12°17'04"	9.40'	2.02'	2.01'
C3	174°2'56"	9.40'	12.75'	11.78'

Harbour & Associates
Civil Engineers
388 CLOVIS AVENUE # 300 • Clovis, California 93612
(509) 325-7878 • Fax (509) 325-7868 • www.ha-engineers.com



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: September 20, 2021

SUBJECT: Planning and Development Services – Approval – Res. 21-____, Annexation of Proposed Tract 6329, located at the northwest corner of Shepherd and Clovis Avenues to the Landscape Maintenance District No. 1 of the City of Clovis (6050 Enterprises, LP (Wilson Homes)).

ATTACHMENTS: 1. Res. 21-____

CONFLICT OF INTEREST

None

RECOMMENDATION

For the City Council to approve Res. 21-____, that will annex proposed Tract 6329, located at the northwest corner of Shepherd and Clovis Avenues, to the Landscape Maintenance District No. 1 of the City of Clovis.

EXECUTIVE SUMMARY

The owner, 6050 Enterprises, LP (Wilson Homes), acting as the subdivider, has requested to be annexed to the Landscape Maintenance District No. 1 of the City of Clovis as set forth by the Conditions of Approval for Vesting Tentative Tract Map 6050 of which Tract 6329 is a part of.

BACKGROUND

6050 Enterprises, LP (Wilson Homes), the developer of Tract 6329, has executed a covenant that this development be annexed to the City of Clovis LMD No. 1. An executed copy can be provided on request. Council formed the original District on July 15, 1985, for the purpose of funding the maintenance of landscaped areas and parks.

Under the provisions of the Landscaping and Lighting Act of 1972 and in accordance with Article XIII C and Article XIII D of Proposition 218, all the owners of property proposed for annexation have provided a written request and consent to annexation and have executed a covenant (petition) indicating acceptance of the annual assessment.

FISCAL IMPACT

This project will add landscaping to the Landscape Maintenance District No. 1 of the City of Clovis shown as follows:

	<u>Tract 6329</u>	<u>Year to Date</u>
LMD Landscaping added:	0.648 acres	2.121 acres
Resource needs added:	0.0648 persons	0.212 persons

The resource needs estimate is based on 1 person per 10 acres of landscaped area.

REASON FOR RECOMMENDATION

The property owners for the subject tract and parcel map have requested annexation into the City of Clovis LMD No. 1.

ACTIONS FOLLOWING APPROVAL

Tract 6329 shall become a part of City of Clovis LMD No. 1 and will be assessed next year for maintenance costs.

Prepared by: Christian Esquivias, Engineer II

Reviewed by: City Manager *JA*

RESOLUTION 21-__

**RESOLUTION OF THE COUNCIL OF THE CITY OF CLOVIS, CALIFORNIA,
APPROVING ANNEXATION TO LANDSCAPING MAINTENANCE DISTRICT NO. 1
OF THE CITY OF CLOVIS**

WHEREAS, City of Clovis Landscape Maintenance District No. 1 ("District") was formed by Resolution No. 85-78, adopted July 15, 1985, pursuant to Part 2 of Division 15 of the Streets and Highways Code (Landscape and Lighting Act of 1972), herein the "Act"; and

WHEREAS, all of the owners of property proposed to be annexed to the District consisting of proposed Tract No. 6329, as described in Attachment "A" attached hereto and incorporated herein by reference, have consented to said annexation and such annexation may be ordered without notice and hearing or filing of engineer's report, or both.

NOW, THEREFORE, IT IS RESOLVED AND ORDERED, as follows:

1. That the public interest and convenience require that certain property described in Attachment "A" attached hereto and by reference incorporated herein be annexed into Landscape Maintenance District No. 1 of the City of Clovis for the maintenance and servicing of landscaping facilities.
2. The City Clerk shall receive and file the maps showing the boundaries of the areas annexed as set forth in Attachment "A" which boundaries shall be used for assessment proceedings until and unless a change of organization is approved pursuant to the Act.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 20, 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

Mayor

City Clerk

ATTACHMENT 1

ATTACHMENT “A”

Legal Description

Lots 1 through 95, inclusive, of Tract Map 6329 recorded in Volume _____ of Plats at Pages _____ through _____, Fresno County Records.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services Department

DATE: September 20, 2021

SUBJECT: Planning and Development Services – Approval – Bid Award for CIP 21-04 Loma Vista Village Green Offsite Improvements; and Authorize the City Manager to Execute the Contract on behalf of the City.

ATTACHMENTS: 1. Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

1. For the City Council to award a contract for CIP 21-04, Loma Vista Village Green Offsite Improvements to Avison Construction Inc. in the amount \$1,321,088.00; and
2. For the City Council to authorize the City Manager to execute the contract on behalf of the City.

EXECUTIVE SUMMARY

Staff is recommending that City Council authorize the City Manager to award and execute the contract to Avison Construction Inc. who was the lowest responsible bidder from a bid opening that took place on September 7, 2021.

The project consists of clearing and grubbing, grading, placement of aggregate base, asphalt concrete pavement, construction of valley gutters, curb and gutters, installation of signage and striping, water mains, sewer mains and storm drain facilities on Loma Vista Parkway, Encino Avenue, Person Ranch Avenue, and Rialto Avenue west surrounding and encompassing the Loma Vista Village Green site.

BACKGROUND

The following is a summary of the bid results of September 7, 2021:

BIDDERS**BASE BIDS**

Avison Construction, Inc.	\$1,321,088.00
Agee Construction Corporation	\$1,329,495.78
A.J. Excavation, Inc.	\$1,437,681.00
Dave Christian Construction Co., Inc.	\$1,522,492.50
Emmett's Excavation, Inc.	(Non-responsive)

ENGINEER'S ESTIMATE**\$1,197,130.00**

All bids were examined and the bid from Emmett's Excavation, Inc. was found to be incomplete. All other bidder's submittals were found to be in order with Avison Construction Inc. as the lowest responsible bidder. Staff has validated the lowest bidder's contractor-license status.

FISCAL IMPACT

This project was budgeted in the 2021-2022 fiscal year budget. The project is supported by reimbursements from adjacent developments, flood control fees and Parks fees.

REASON FOR RECOMMENDATION

Avison Construction Inc. is the lowest responsible bidder. There are sufficient funds available for the anticipated cost of this project.

ACTIONS FOLLOWING APPROVAL

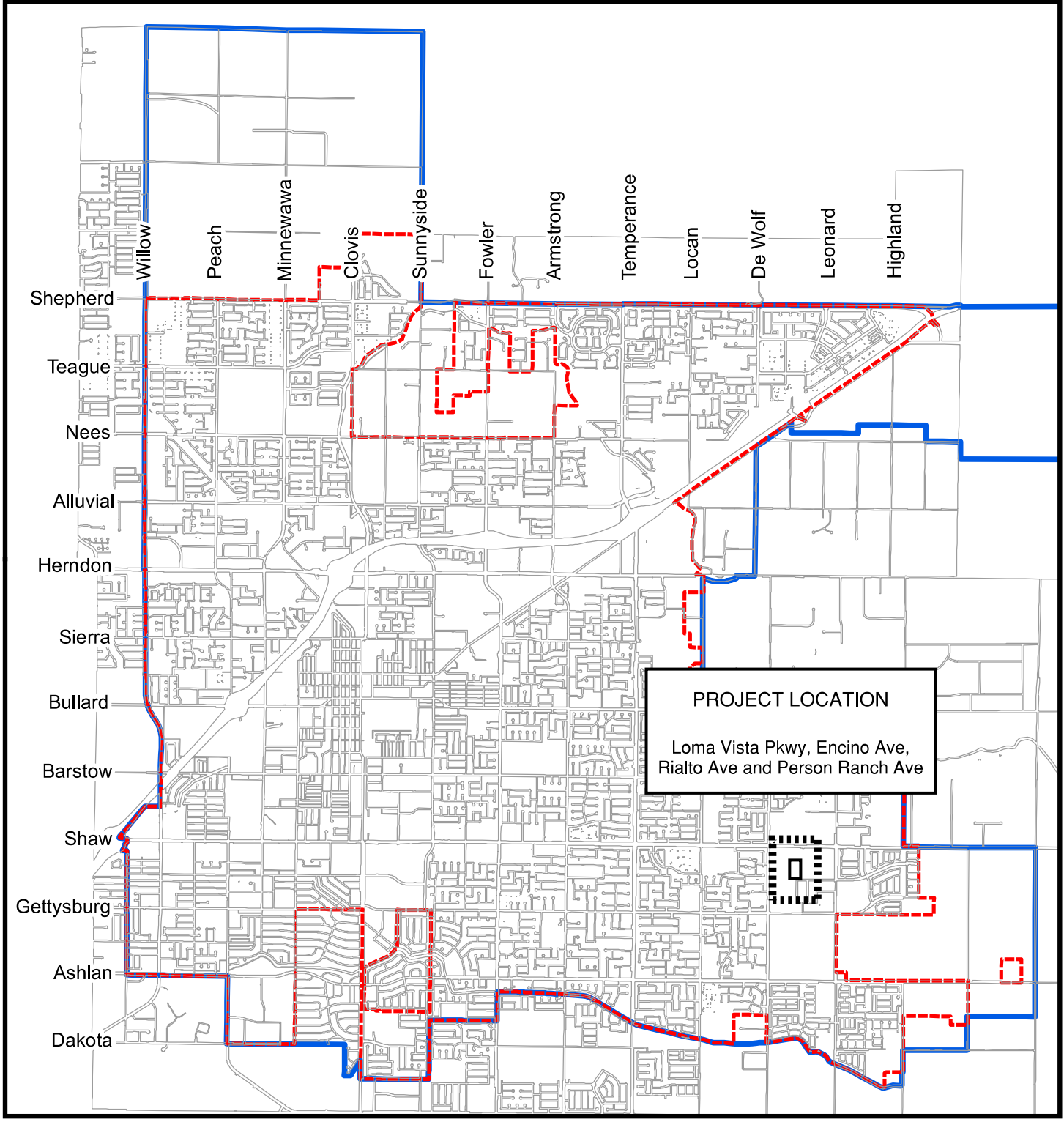
1. The contract will be prepared and executed, subject to the Contractor providing performance security that is satisfactory to the City.
2. Construction will begin approximately two (2) weeks after contract execution and be completed in sixty (60) working days thereafter.

Prepared by: Jose Sandoval, Project Engineer

Reviewed by: City Manager JS

VICINITY MAP

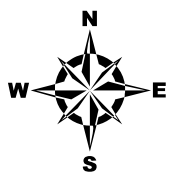
CIP 21-04 Loma Vista Village Green Offsite Improvements



PROJECT LOCATION
 Loma Vista Pkwy, Encino Ave,
 Rialto Ave and Person Ranch Ave



ATTACHMENT 1





CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: September 20, 2021

SUBJECT: Public Utilities – Approval – Authorize the City Manager to Execute a First Amendment and Memorandum of First Amendment to License Agreement with Crown Castle to Amend and Extend Their Current Cell Tower License at Well 30, Located at 1124 N. Sunnyside Avenue.

ATTACHMENTS:

1. Vicinity Map
2. First Amendment to License Agreement
3. Memorandum of First Amendment to License Agreement

CONFLICT OF INTEREST

None

RECOMMENDATION

For the City Council to authorize the City Manager to execute a First Amendment and Memorandum of First Amendment to License Agreement with Crown Castle to amend and extend their current cell tower license adjacent to Well 30, located at 1124 N. Sunnyside Avenue.

EXECUTIVE SUMMARY

The City owns property located on the west side of Sunnyside Avenue, south of Nees Avenue, just north of the Marion Recharge Basins. There is an existing municipal well site, Well 30, located on this property. Adjacent to the well site is an existing palm tree style cell tower located on 720 square feet of area owned by the City and licensed to the Crown Castle entity, CCATT. Crown Castle has proposed to extend the existing license agreement by ten years to 2043 and increase the licensed area by 48 square feet with an option for an additional 168 square feet. Staff has worked with City legal counsel in review and preparation of the first amendment.

BACKGROUND

The original license agreement was executed in July 2008, with an initial term of 5 years and 4 allowable 5-year term extensions. The license was extended in 2013 and again in 2018, and has an existing term through 2023 with two 5-year term extensions remaining. The proposed first amendment will extend the license for an additional term of 10 years through 2043. The license agreement includes an annual escalator of 4% and a \$5,000 one-time payment to the City for extending the license term.

FISCAL IMPACT

The current annual license fee is approximately \$22,000 per year and will be deposited into the water enterprise revenue account. Since the beginning of the license agreement term in 2008, the City has collected over \$240,000 in license fees.

The proposed contract extension will generate over \$800,000 of revenue to be deposited in the water enterprise account.

REASON FOR RECOMMENDATION

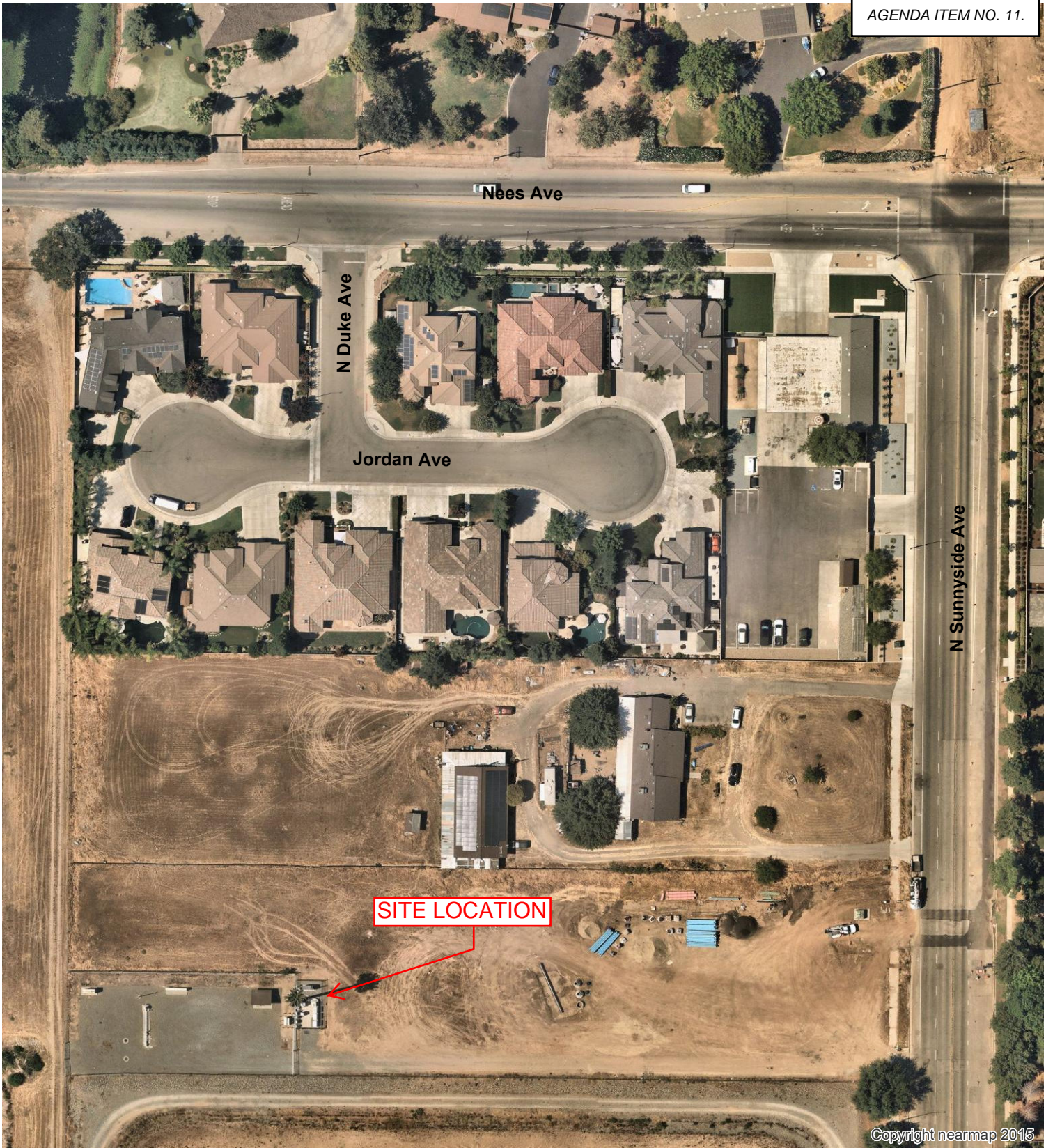
The original license agreement dates back to 2008 and the licensee has been in good standing with the City during this period of time. An administrative use permit and site plan review for the added area was reviewed and approved in July 2021.

ACTIONS FOLLOWING APPROVAL

The First Amendment to License Agreement and the Memorandum of First Amendment to License Agreement will be finalized and executed by the City Manager.

Prepared by: Paul Armendariz, Assistant Public Utilities Director

Reviewed by: City Manager *PA*



Copyright nearmap 2015



9/9/2021

VICINITY MAP

ATTACHMENT 1



1" = 10' 49

FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT (the “First Amendment”) is made effective this ____ day of _____, 2021 (“Effective Date”), by and between CITY OF CLOVIS, a municipal corporation (hereinafter referred to as “Licensor”) and NCWPCS MPL 34 - YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through its Attorney In Fact, CCATT LLC, a Delaware limited liability company (hereinafter referred to as “Licensee”).

RECITALS

WHEREAS, Licensor and New Cingular Wireless PCS, LLC, a Delaware limited liability company, doing business as AT&T Mobility Corporation (“Original Licensee”) entered into a License Agreement dated July 2, 2008 (the “Agreement”), whereby Original Licensee licensed certain real property, together with access and utility easements, located in Fresno County, California from Licensor (the “Premises”), all located within certain real property owned by Licensor (“Licensor’s Property”); and

WHEREAS, NCWPCS MPL 34 - Year Sites Tower Holdings LLC is currently the Licensee under the Agreement as successor in interest to the Original Licensee; and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the Agreement had an initial five-year term that commenced on July 2, 2008. The Agreement provides for four (4) extensions of five (5) years each, two (2) of which were timely exercised by Licensee, with the first extension to July 1, 2018 and the current extension set to expire on July 1, 2023; and

WHEREAS, Licensor and Licensee desire to amend the Agreement on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. All references in the Agreement to the capitalized term “City” shall be replaced with “Licensor”.

2. Term. Section 1.02 of the Agreement, which is erroneously labeled as Section 2.02 Extension, is hereby deleted in its entirety and the following inserted in its place:

ATTACHMENT 2

3. At the conclusion of the Initial Term, Licensee shall be entitled to six (6) extensions of five (5) years each (each extension is referred to as an “Extension Term”). The Initial Term and any Extension Term shall be collectively referred to as the “License Term”. The License Term shall automatically be extended for each successive Extension Term unless Licensee notifies Licensor of its intention not to renew at least ninety (90) days prior to the expiration of the then current five-year term.

Licensor and Licensee hereby acknowledge that Licensee has exercised two (2) Extension Terms, leaving a balance of four (4) Extension Terms. If all Extension Terms are exercised, the final Extension Term will expire on July 1, 2043.

4. Consent to Sublicense. Licensor hereby acknowledges and agrees to the sublicense of a portion of the Premises, including the First Additional License Area referenced in section 5 herein, to Dish Network Corporation or an affiliate or subsidiary (the “Dish Sublicensee”) for purposes of installation, maintenance and replacement of equipment, antennas, cables, fiber, and related accessories on the Premises for the operation of a wireless communications facility thereon. Sublicensing of any portion of the Premises not already addressed in Section 8.01 of the Agreement or by this Section of the First Amendment shall require the consent of the Licensor which shall not be unreasonably withheld. Request for consent must be submitted in writing and shall serve as notice for the Additional Fee.

5. Sublicensee Additional Fee. In addition to the license fee referenced in Section 2.01 of the Agreement, as further consideration for the right to use the Premises or any of the additional areas referenced herein, if, after full execution of this First Amendment, Licensee sublicenses the Premises to an unaffiliated third party not already a sublicensee on the Premises (each a “Future Sublicensee”), Licensee agrees to pay to Licensor twenty-five percent (25%) of the license fee or similar payments actually received by Licensee from such Future Sublicensee (excluding any reimbursement of taxes, construction costs, installation costs, or revenue share reimbursement) (the “Additional Fee”) within thirty (30) days after receipt of said payments by Licensee. Licensee’s payment of Additional Fee shall begin upon the commencement of any sublicensing, or equivalent, agreement for a Future Sublicensee. Licensee shall have no obligation for payment to Licensor of such share of license or similar payments if not actually received by Licensee. Non-payment of such license or other similar payment by a Future Sublicensee shall not be an event of default under the Agreement. Licensee shall have sole discretion as to whether, and on what terms, to license or otherwise allow occupancy of the Premises. There shall be no express or implied obligation for Licensee to license or otherwise allow occupancy of the Premises. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from sublicensees and any successors and/or assignees of such sublicensee who commenced use and/or sublicense of the Premises prior to execution of this First Amendment shall be expressly excluded from the Additional Fee and Licensor shall have no right to receive any portion of such revenue.

6. First Additional License Area. The existing Premises is hereby expanded in size to include additional space, which consists of a 6’ x 8’ or forty-eight (48) square foot parcel of real property adjacent to the existing Premises at a location more particularly described on Exhibit A-1 attached hereto and shown on the Site Plan attached hereto as Exhibit B (the “First Additional License Area”). The Premises, as expanded, is described on Exhibit A-2 attached hereto.

Notwithstanding anything to the contrary in this First Amendment, Licensee is not relinquishing any rights to any license area, access easements, and/or utility easements that it possesses prior to the date of this First Amendment. In the event the location of any of Licensee's or its sublicensees' existing improvements, utilities, and/or access routes are not depicted or described on the Site Plan and/or legal descriptions, Licensee's license rights and access and utility easement rights over such areas shall remain in full force and effect and the Premises shall be deemed to include such areas.

7. First Additional License Area Fee. In consideration of the license of the First Additional License Area, Licensee shall pay to Licensor the same fee per square foot for the First Additional License Area as the fee paid per square foot by Licensee for the existing Premises ("First Additional License Area Fee"), beginning upon the commencement of installation of improvements within the First Additional License Area and continuing thereafter until the earlier of (i) the expiration of the License Term; or (ii) the "Return of the First Additional License Area" as set forth below. Calculation of the First Additional License Area Fee rate shall be the rate of Premises fee on the day of installation including all annual increases divided by Premises area square footage and then multiplied by forty-eight (48) to equal the total First Additional License Area Fee. The First Additional License Area Fee shall be due and payable concurrently with and shall escalate upon the same terms and at the same time as the monthly Fee set forth in the Agreement, as amended, for so long as such First Additional License Area Fee is payable to Licensor as set forth herein. The First Additional License Area shall become part of the Premises and subject to all terms and conditions of the Agreement.

8. Right to Return the First Additional License Area. Licensee shall have the option, upon thirty (30) days prior written notice to Licensor, in its sole and absolute discretion, to return the First Additional License Area to the Licensor and to terminate the lease of the same by removing all improvements from the First Additional License Area and returning same to its condition as of the Effective Date, ordinary wear and tear excepted (the "Return of the First Additional License Area"). Effective upon removal of all improvements from the First Additional License Area, the First Additional License Area Fee shall cease and will no longer be due or payable.

9. Expansion Option. During the License Term, Licensee shall have an irrevocable option ("Option"), exercisable at any time, and from time to time, to license up to a maximum of one hundred sixty-eight (168) square feet of real property adjacent to the existing Premises at a location described in Exhibit A-3 and generally depicted on Exhibit B ("Second Additional License Area") on the same terms and conditions set forth in the Agreement. If Licensee elects to exercise the Option, Licensee shall pay the same fee per square foot for the Second Additional License Area as the fee paid per square foot by Licensee for the existing Premises at the time Licensee exercises the Option ("Second Additional License Area Fee"). Calculation of the Second Additional License Area Fee rate shall be the rate of Premises fee on the day of installation including all annual increases divided by Premises area square footage and then multiplied by the square footage of the Option area exercised to equal the total Second Additional License Area Fee. The Second Additional License Area Fee shall be due and payable on the first (1st) day of the second (2nd) full month following commencement of construction activities within the Second Additional License Area and shall be subject to the same terms and the same due date as the Fee set forth in the Agreement. Licensee may exercise the Option for the entire Second Additional License Area in a single exercise, or may exercise the Option multiple times in increments, by

providing written notice to Licensor at any time (each a “Notice of Exercise”); provided, however, that following Licensee’s delivery of the Notice of Exercise to Licensor, Licensee may at any time prior to commencement of construction activities within the Second Additional License Area withdraw its election to exercise the Option if Licensee discovers or obtains any information of any nature regarding the Second Additional License Area which Licensee determines to be unfavorable in its sole discretion. Licensee shall also have the right to record a Notice of Exercise, to be prepared on Licensee’s standard form, without Licensor’s signature to provide record notice of the exercise of the Option. The Second Additional License Area, or such portion as identified in the Notice of Exercise, shall become part of the Premises and subject to all terms and conditions of the Agreement, as it may have been amended, effective as of the date of the Notice of Exercise (the “Expansion Date”), whether or not the Notice of Exercise is recorded. Effective upon the Expansion Date, the Agreement shall automatically be amended to include the Second Additional License Area and Second Additional License Area Fee without the need for any further documentation.

10. Right of First Refusal. If Licensor receives an offer that it intends to accept from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Licensor’s interest in the Agreement) to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensor’s interest in the Agreement, or an option for any of the foregoing, Licensor shall provide written notice to Licensee of said offer, and Licensee shall have a right of first refusal to acquire such interest, including all of Licensor’s right, title and interest in the Agreement, on the same terms and conditions in the offer, excluding any terms or conditions which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Licensee’s possessory or economic interest in the Premises. Licensor’s notice shall include the prospective buyer’s name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, and the proposed closing date. If the Licensor’s notice shall provide for a due diligence period of less than sixty (60) days, then the due diligence period shall be extended to be sixty (60) days from exercise of the right of first refusal and closing shall occur no earlier than fifteen (15) days thereafter. If Licensee does not exercise its right of first refusal by written notice to Licensor given within thirty (30) days, Licensor may convey the property as described in the Licensor’s notice. If Licensee declines to exercise its right of first refusal, then the Agreement shall continue in full force and effect and Licensee’s right of first refusal shall survive any such conveyance. Licensee shall have the right, at its sole discretion, to assign the right of first refusal to any person or entity, either separate from an assignment of the Agreement or as part of an assignment of the Agreement. Such assignment may occur either prior to or after Licensee’s receipt of Licensor’s notice and the assignment shall be effective upon written notice to Licensor.

11. Survey. Licensee reserves the right, at its discretion and at its sole cost, to obtain a survey (“Survey”) specifically describing the Premises and any access and utility easements associated therewith. Licensee shall be permitted to attach the Survey as an exhibit to this First Amendment and any related memorandum for recording, which shall update and replace the existing description, at any time prior to or after closing of this First Amendment.

12. Conditional Signing Bonus. Licensee will pay to Licensor a one-time amount of Five Thousand and 00/100 Dollars (\$5,000.00) for the full execution of this First Amendment, payable within sixty (60) days of the full execution of this First Amendment (“Conditional Signing

Bonus”). In the event that this First Amendment (and any applicable memorandum of Agreement and/or amendment) is not fully executed by both Licensor and Licensee for any reason, Licensee shall have no obligation to pay the Conditional Signing Bonus to Licensor.

13. Representations, Warranties and Covenants of Licensor. Licensor represents, warrants and covenants to Licensee as follows:

a) Licensor is duly authorized to and has the full power and authority to enter into this First Amendment and to perform all of Licensor’s obligations under the Agreement as amended hereby.

b) Licensee is not currently in default under the Agreement, and to Licensor’s knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Licensee under the Agreement.

c) Licensor agrees to provide such further assurances as may be requested to carry out and evidence the full intent of the parties under the Agreement as amended hereby.

d) Licensor acknowledges that the Premises, as defined, shall include any portion of Licensor’s Property on which communications facilities or other Licensee improvements exist on the date of this First Amendment.

14. Notices. Licensee’s notice address as stated in Section 10.02 of the Agreement is amended as follows:

If to Licensee:

NCWPCS MPL 34 - Year Sites Tower Holdings LLC
 Legal Department
 Attn: Network Legal
 208 S. Akard Street
 Dallas, TX 75202-4206

With a copy to:

CCATT LLC
 Attn: Legal – Real Estate Department
 2000 Corporate Drive
 Canonsburg, PA 15317

15. IRS Form W-9. Licensor agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Licensee. In the event the Licensor’s Property is transferred, the succeeding Licensor shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paperwork to effect a transfer in the fee to the new Licensor. Licensor’s failure to provide the IRS Form W-9 within thirty (30) days after Licensee’s request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from fee payments.

16. Counterparts. This First Amendment may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

17. Remainder of Agreement Unaffected. In all other respects, the remainder of the Agreement shall remain in full force and effect. Any portion of the Agreement that is inconsistent with this First Amendment is hereby amended to be consistent.

18. Recordation. Licensee, at its cost and expense, shall have the right to record a memorandum of this First Amendment in the official records of Fresno County, California at any time following the execution of this First Amendment by all parties hereto. In addition, Licensee shall have the right in its discretion, to record a notice of license, affidavit or other form to be determined by Licensee without Licensor's signature in form and content substantially similar to the Memorandum, to provide record notice of the terms of this First Amendment.

[Signature pages follow]

Licensors and Licensee have caused this First Amendment to be duly executed on the day and year first written above.

LICENSOR:
CITY OF CLOVIS, a municipal corporation

By: _____

Print Name: _____

Title: _____

[Licensee Execution Page Follows]

This First Amendment is executed by Licensee as of the date first written above.

LICENSEE:
NCWPCS MPL 34 - YEAR SITES TOWER
HOLDINGS LLC, a Delaware limited
liability company

By: CCATT LLC, a Delaware limited
liability company
Its: Attorney In Fact

By: _____

Print Name: _____

Title: _____

Exhibit A-1
(Legal Description of First Additional License Area)

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET;
 THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET;
 THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET;
 THENCE NORTH 00° 38' 23" EAST, 36.00 FEET;
 THENCE SOUTH 89° 21' 37" EAST, 20.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89° 21' 37" EAST, 6.00 FEET
 THENCE SOUTH 00° 38' 23" WEST, 8.00 FEET;
 THENCE NORTH 89° 21' 37" WEST, 6.00 FEET;
 THENCE NORTH 00° 38' 23" EAST, 8.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 48 SQ. FT. OR 0.001 ACRES, MORE OR LESS.

Exhibit A-2
(Legal Description of Premises, as Expanded)

EXISTING PREMISES (referred to in Exhibit B as "Existing License Area")

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET;
THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET;
THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00° 38' 23" EAST, 36.00 FEET;
THENCE SOUTH 89° 21' 37" EAST, 20.00 FEET;
THENCE SOUTH 00° 38' 23" WEST, 36.00 FEET;
THENCE NORTH 89° 21' 37" WEST, 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 720 SQ. FT. OR 0.017 ACRES, MORE OR LESS.

FIRST ADDITIONAL LICENSE AREA

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET;
THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET;

THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET;
 THENCE NORTH 00° 38' 23" EAST, 36.00 FEET;
 THENCE SOUTH 89° 21' 37" EAST, 20.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89° 21' 37" EAST, 6.00 FEET
 THENCE SOUTH 00° 38' 23" WEST, 8.00 FEET;
 THENCE NORTH 89° 21' 37" WEST, 6.00 FEET;
 THENCE NORTH 00° 38' 23" EAST, 8.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 48 SQ. FT. OR 0.001 ACRES, MORE OR LESS.

ACCESS AND UTILITY EASEMENT

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING A STRIP OF LAND 12.00 FEET WIDE, 6.00 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET;
 THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET;
 THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET;
 THENCE SOUTH 89° 21' 37" EAST, 10.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 00° 38' 23" WEST, 25.27 FEET;
 THENCE SOUTH 89° 41' 05" EAST, 419.24 FEET MORE OR LESS TO A POINT ON THE WESTERLY RIGHT OF WAY OF SUNNYSIDE AVENUE AND THE POINT OF TERMINUS.

THE SIDELINES OF SAID STRIP OF LAND ARE TO INTERSECT AT ALL ANGLE POINTS TO PROVIDE THE SPECIFIED WIDTH THROUGHOUT AND ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE ON SAID WEST LINE OF SUNNYSIDE AVENUE.

CONTAINING 5,334 SQ. FT. OR 0.122 ACRES, MORE OR LESS.

UTILITY EASEMENT

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD

AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING A STRIP OF LAND 5.00 FEET WIDE, 2.50 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET; THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET; THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET; THENCE SOUTH 89° 21' 37" EAST, 16.00 FEET; THENCE SOUTH 00° 38' 23" WEST, 2.51 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 83° 44' 03" EAST, 52.10 FEET;
THENCE SOUTH 89° 36' 15" EAST, 361.36 FEET MORE OR LESS TO A POINT ON THE WESTERLY RIGHT OF WAY OF SUNNYSIDE AVENUE AND THE POINT OF TERMINUS.

THE SIDELINES OF SAID STRIP OF LAND ARE TO INTERSECT AT ALL ANGLE POINTS TO PROVIDE THE SPECIFIED WIDTH THROUGHOUT AND ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE ON SAID WEST LINE OF SUNNYSIDE AVENUE.

CONTAINING 2,067 SQ. FT. OR 0.047 ACRES, MORE OR LESS.

Exhibit A-3
(Legal Description of Second Additional License Area)

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET;
 THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET;
 THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET;
 THENCE NORTH 00° 38' 23" EAST, 36.00 FEET;
 THENCE SOUTH 89° 21' 37" EAST, 26.00 FEET;
 THENCE SOUTH 00° 38' 23" WEST, 8.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 00° 38' 23" WEST, 28.00 FEET;
 THENCE NORTH 89° 21' 37" WEST, 6.00 FEET;
 THENCE NORTH 00° 38' 23" EAST, 28.00 FEET
 THENCE SOUTH 89° 21' 37" EAST, 6.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 168 SQ. FT. OR 0.004 ACRES, MORE OR LESS.

EXHIBIT B
(Site Plan)

[See attached]

PREPARED BY AND RECORDING
REQUESTED BY:

Weiss Brown, PLLC
6263 N. Scottsdale Rd., Suite 340
Scottsdale, AZ 85250

WHEN RECORDED MAIL TO:

NCWPCS MPL 34 - Year Sites Tower Holdings LLC
c/o Post Closing – Recording
8020 Katy Freeway
Houston, TX 77024

Space above this line for Recorder’s Use

A.P.N. 562-010-23

Prior recorded document(s) in Fresno County, California:
Original License Unrecorded

MEMORANDUM OF FIRST AMENDMENT TO
LICENSE AGREEMENT

This document is exempt from the \$75 Building Homes and Jobs Act Fee (per Government Code §27388.1) because:

- Document is a transfer of real property subject to the imposition of transfer tax
- Document is a transfer of real property that is a residential dwelling to an owner-occupier
- Document is recorded in connection with an exempt transfer of real property (i.e., subject to transfer tax or owner-occupied). If not recorded concurrently, provide recording date and document number of related transfer document:
Recording date _____ Document Number _____
- The \$225 per transaction cap is reached
- Document is not related to real property

Site Name: Shepherd & Sunnyside
Business Unit #: 857285

Page 1

Documentary Transfer Tax \$ _____ _____ Computed on full value of property _____ Computed on full value less liens and encumbrances remaining at time of sale _____ Computed on full value of lease surpassing the 35 year term limit _____ _____ Computed on leased area of the property City of _____ Unincorporated ____ _____ Signature of Declarant or agent – Firm Name
--

This Memorandum of First Amendment to License Agreement is made effective this _____ day of _____, 2021 by and between CITY OF CLOVIS, a municipal corporation (hereinafter referred to as “Licensor”) and NCWPCS MPL 34 - YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through its Attorney In Fact, CCATT LLC, a Delaware limited liability company (hereinafter referred to as “Licensee”).

1. Licensor and New Cingular Wireless PCS, LLC, a Delaware limited liability company, doing business as AT&T Mobility Corporation (“Original Licensee”) entered into a License Agreement dated July 2, 2008 (the “Agreement”), whereby Original Licensee licensed certain real property, together with access and utility easements, located in Fresno County, California from Licensor (the “Premises”), all located within certain real property owned by Licensor (“Licensor’s Property”). Licensor’s Property, of which the Premises is a part, is more particularly described on Exhibit A attached hereto.

2. NCWPCS MPL 34 - Year Sites Tower Holdings LLC is currently the Licensee under the Agreement as successor in interest to the Original Licensee.

3. The Agreement had an initial five-year term that commenced on July 2, 2008. The Agreement provides for four (4) extensions of five (5) years each, two (2) of which were timely exercised by Licensee, with the first extension to July 1, 2018 and the current extension set to expire on July 1, 2023.

4. Licensor and Licensee have entered into a First Amendment to License Agreement (the “First Amendment”), of which this is a Memorandum, providing for two (2) additional Extension Terms of five (5) years each. Pursuant to the First Amendment, the final Extension Term expires on July 1, 2043.

5. By the First Amendment, Licensor granted to Licensee the right of first refusal to purchase a portion of the Licensor’s Property, under the following terms:

If Licensor receives an offer that it intends to accept from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Licensor’s interest in the Agreement) to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensor’s interest in the Agreement, or an option for any of the foregoing, Licensor shall provide written notice to Licensee of said offer, and Licensee shall have a right of first refusal to acquire such interest, including all of Licensor’s right, title and interest in the Agreement, on the same terms and conditions in the offer, excluding any terms or conditions which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Licensee’s possessory or economic interest in the Premises. Licensor’s notice shall include the prospective buyer’s name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, and the proposed closing date. If the Licensor’s notice shall provide for a due diligence period of less than sixty (60) days, then the due diligence period shall be extended to be sixty (60) days from exercise of the right of first refusal and closing shall occur no earlier than fifteen (15) days thereafter. If Licensee does not exercise its right of first refusal by written

notice to Licensor given within thirty (30) days, Licensor may convey the property as described in the Licensor's notice. If Licensee declines to exercise its right of first refusal, then the Agreement shall continue in full force and effect and Licensee's right of first refusal shall survive any such conveyance. Licensee shall have the right, at its sole discretion, to assign the right of first refusal to any person or entity, either separate from an assignment of the Agreement or as part of an assignment of the Agreement. Such assignment may occur either prior to or after Licensee's receipt of Licensor's notice and the assignment shall be effective upon written notice to Licensor.

6. By the First Amendment, the Premises was expanded by an additional forty-eight (48) square feet (the "First Additional License Area"). The Premises, as expanded, is more particularly described in Exhibit B attached hereto.

7. Additionally, by the First Amendment, Licensor granted to Licensee the option to expand the Premises by up to an additional one hundred sixty-eight (168) square feet adjacent to the Premises. Additional details of the foregoing expansion are set forth in the First Amendment.

8. The terms, covenants and provisions of the First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Licensor and Licensee.

9. This Memorandum does not contain the social security number of any person.

10. A copy of the First Amendment is on file with Licensor and Licensee.

[Execution Pages Follow]

IN WITNESS WHEREOF, hereunto and to duplicates hereof, Licensor and Licensee have caused this Memorandum to be duly executed on the day and year first written above.

LICENSOR:
CITY OF CLOVIS, a municipal corporation

By: _____

Print Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
) ss:
COUNTY OF _____)

On _____, 2021 before me, _____ (insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

LICENSEE:
NCWPCS MPL 34 - YEAR SITES TOWER
HOLDINGS LLC, a Delaware limited liability
company

By: CCATT LLC, a Delaware limited
liability company
Its: Attorney In Fact

By: _____

Print Name: _____

Title: _____

A notary public or other officer completing this certificate
verifies only the identity of the individual who signed the
document to which this certificate is attached, and not the
truthfulness, accuracy, or validity of that document.

STATE OF _____)

) ss:

COUNTY OF _____)

On _____, 2021 before me, _____ (insert
name and title of the officer), personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

EXHIBIT A
(Legal Description of Licensor's Property)

The following described real property in the County of Fresno, State of California:
The South 157.93 feet of the East half of Lot 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, in the County of Fresno, State of California, according to the map recorded in Book 2 Page 10 of Record of Surveys, Fresno County Records.

Parcel ID#: 562-010-23 (formerly 16T)

This being the same property conveyed to City of Clovis from Jeffrey D. Clason and Ellen J. Clason, husband and wife, in a deed dated February 7, 1992 and recorded February 10, 1992, in Instrument No. 1992-016035, Fresno County, California.

EXHIBIT B
(Legal Description of Premises, as Expanded)

EXISTING PREMISES

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET;
THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET;
THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00° 38' 23" EAST, 36.00 FEET;
THENCE SOUTH 89° 21' 37" EAST, 20.00 FEET;
THENCE SOUTH 00° 38' 23" WEST, 36.00 FEET;
THENCE NORTH 89° 21' 37" WEST, 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 720 SQ. FT. OR 0.017 ACRES, MORE OR LESS.

FIRST ADDITIONAL LICENSE AREA

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

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THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET;
THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET;

THENCE NORTH 00° 38' 23" EAST, 36.00 FEET;
 THENCE SOUTH 89° 21' 37" EAST, 20.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89° 21' 37" EAST, 6.00 FEET
 THENCE SOUTH 00° 38' 23" WEST, 8.00 FEET;
 THENCE NORTH 89° 21' 37" WEST, 6.00 FEET;
 THENCE NORTH 00° 38' 23" EAST, 8.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 48 SQ. FT. OR 0.001 ACRES, MORE OR LESS.

ACCESS AND UTILITY EASEMENT

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING A STRIP OF LAND 12.00 FEET WIDE, 6.00 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET;
 THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET;
 THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET;
 THENCE SOUTH 89° 21' 37" EAST, 10.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 00° 38' 23" WEST, 25.27 FEET;
 THENCE SOUTH 89° 41' 05" EAST, 419.24 FEET MORE OR LESS TO A POINT ON THE WESTERLY RIGHT OF WAY OF SUNNYSIDE AVENUE AND THE POINT OF TERMINUS.

THE SIDELINES OF SAID STRIP OF LAND ARE TO INTERSECT AT ALL ANGLE POINTS TO PROVIDE THE SPECIFIED WIDTH THROUGHOUT AND ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE ON SAID WEST LINE OF SUNNYSIDE AVENUE.

CONTAINING 5,334 SQ. FT. OR 0.122 ACRES, MORE OR LESS.

UTILITY EASEMENT

A PORTION OF THE SOUTH 157.93 FEET OF THE EAST HALF OF LOT 28, SHEPHERD AND TEAGUE ALLUVIAL TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 2 PAGE 10 OF

RECORD OF SURVEYS, FRESNO COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING A STRIP OF LAND 5.00 FEET WIDE, 2.50 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

NOTE: ALL BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA FOUR STATE PLANE COORDINATE ZONE GRID. TO DERIVE GROUND DISTANCES DIVIDE BY 0.99993603

COMMENCING AT A REBAR WITH CAP (ILLEGIBLE) AT THE NORTH QUARTER CORNER OF SAID SECTION 32, FROM WHICH AN IRON PIPE AT THE CENTER QUARTER OF SAID SECTION BEARS SOUTH 00° 29' 42" WEST, 2649.84 FEET; THENCE FROM SAID POINT OF COMMENCEMENT SOUTH 00° 29' 42" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION, 634.98 FEET; THENCE DEPARTING SAID SECTION LINE SOUTH 89° 30' 18" EAST, 2153.66 FEET; THENCE SOUTH 89° 21' 37" EAST, 16.00 FEET; THENCE SOUTH 00° 38' 23" WEST, 2.51 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 83° 44' 03" EAST, 52.10 FEET;
THENCE SOUTH 89° 36' 15" EAST, 361.36 FEET MORE OR LESS TO A POINT ON THE WESTERLY RIGHT OF WAY OF SUNNYSIDE AVENUE AND THE POINT OF TERMINUS.

THE SIDELINES OF SAID STRIP OF LAND ARE TO INTERSECT AT ALL ANGLE POINTS TO PROVIDE THE SPECIFIED WIDTH THROUGHOUT AND ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE ON SAID WEST LINE OF SUNNYSIDE AVENUE.

CONTAINING 2,067 SQ. FT. OR 0.047 ACRES, MORE OR LESS.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: September 20, 2021

SUBJECT: Public Utilities – Approval – Waive Formal Bidding Requirements and Authorize Entering into a Contract with Golden Bell Products, Inc. for Insect Control in Sanitary Sewer Manholes.

ATTACHMENTS: None

CONFLICT OF INTEREST

None

RECOMMENDATION

For the City Council to waive the City's formal bidding procedures and authorize entering into a two-year contract services agreement totaling \$174,850.00 with Golden Bell Products, Inc. to apply insect control treatment to sanitary sewer manholes within the City of Clovis.

EXECUTIVE SUMMARY

Golden Bell Products has the sole source right for distribution and application of Insecta, an EPA-approved and registered product, within the State of California. The application of Insecta is guaranteed for two (2) full years from the date of treatment. The City is currently on a two-year treatment rotation, with one half of the City receiving treatment one year and the remaining half receiving treatment the following year. This fall, approximately 3,600 sanitary sewer manholes in the area east of Sunnyside and south of Nees will be treated. In fall of 2022, the remaining approximately 3,800 manholes in the area west of Sunnyside and north of Nees will be treated.

BACKGROUND

Wastewater maintenance staff have noticed an increase in cockroach population in the City's sanitary sewer system over the last several years. Insect activity is detected during routine sewer line cleaning and in response to resident complaints. Wastewater staff actively treats isolated infested sections; however, the treatment provided by Golden Bell Products is system-wide and has a longer lasting residual in comparison to any product used historically by City staff.

FISCAL IMPACT

Sufficient funds were included in this year's 2021-22 Wastewater operations and maintenance budget. The cost to provide insect control in roughly half of the sanitary sewer manholes within the City this year is expected to be \$84,600.00. The following 2022-23 fiscal year budget will include sufficient funds (approximately \$90,250.00) for treatment of the remaining half of the sewer manholes within the City.

REASON FOR RECOMMENDATION

Insecta is the product which Golden Bell Products, Inc. applies to sewer manholes for insect control. Insecta is the only registered product of its type and active ingredient labeled for use in sewer manholes. The product is a formulated product that is produced in an EPA-approved establishment. The product comes ready to use and since it is a polymerized product, there is no field mixing required, which is not the case with any additive type product. Golden Bell Products has used Insecta in approximately 85 other cities and sanitation agencies in California. Golden Bell Products holds a Qualified Applicator License and is licensed by the California Agricultural Department of Pesticide Regulation. Public Utilities Wastewater staff has experience working with Golden Bell Products, Inc., and has experienced the superior performance of Insecta.

ACTIONS FOLLOWING APPROVAL

1. A contract services agreement will be prepared and executed by the City Manager, subject to receiving performance security that is satisfactory to the City.
2. Approximately half of the sewer manholes in the City will receive insect control treatment in October 2021 and the remaining half will receive treatment in October 2022.

Prepared by: Paul Armendariz, Assistant Public Utilities Director

Reviewed by: City Manager PA



CITY of CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Planning and Development Services

DATE: September 20, 2021

SUBJECT: Consider Approval – Res. 21-____, A request to approve a planned development permit to allow deviations from the R-1-7500 (Single-Family Residential - 7,500 Sq. Ft.) Zone District residential development standards associated with TM6367 on approximately 2 acres of land located in the southeast area of N. Armstrong and Nees Avenues. Carolyn G. Prieto, Darlene J. Storm, Kent R. Jura and Vincent J. Jura Jr., property owners; Gary McDonald Homes/Gleneagles Homes, applicant; Harbour & Associates, representative.

Staff: Emily Lane, Assistant Planner

Recommendation: Approve

ATTACHMENTS:

1. Draft Resolution PDP2021-002
- 1A. Conditions of Approval – PDP2021-002
2. Vesting Tentative Tract Map TM6367
3. Proposed Development Standards
4. Correspondence from Agencies and Departments
5. Public Comments

CONFLICT OF INTEREST

None.

RECOMMENDATION

Planning Commission and staff recommend that the City Council approve Planned Development Permit PDP2021-002, subject to the conditions of approval included as **Attachment 1A**.

EXECUTIVE SUMMARY

Gary McDonald Homes/Gleneagles Homes (applicant) is requesting a Planned Development Permit (PDP) to modify the development standards for property east of Armstrong Avenue, and south of Nees Avenue as shown in **Figure 1**, for an 8-lot, non-gated single-family residential subdivision. If approved, the PDP will allow the Project to deviate from R-1-7500 development standards, including reduced setbacks and increased lot coverage, for Tract

Map TM6367 (**Attachment 2**) which was approved by the Planning Commission on August 26, 2021 in a 4-0-1 vote (Commissioner Bedsted absent). Additional details summarizing the Planning Commission meeting are provided below under the “Planning Commission Comments” section.

The Planning Commission is the approving body for tract maps, unless appealed or requested for consideration by City Council. Because the August 26, 2021 approval of TM6367 was not appealed, nor was a request made for Council to consider TM6367, the associated tract map need not be considered by the City Council. Therefore, PDP2021-002 is the only entitlement for consideration.

FIGURE 1
Project Location Map



BACKGROUND

- General Plan Designation: Low Density Residential (2.1 – 4.0 units per acre)
- Specific Plan Designation: Herndon-Shepherd Specific Plan (Low Density)
- Existing Zoning: R-1-7500 (Single-Family Residential – 7,500 Sq. Ft.)
- Lot Size: ±2.00 acres
- Current Land Use: Rural Residential
- Adjacent Land Uses:
 - North: Single-Family Residential and School
 - South: Single-Family Residential
 - East: Rural Residential
 - West: Single-Family Residential

PROPOSAL AND ANALYSIS

The applicant is seeking approval of a PDP for deviations to the R-1-7500 Zone District standards associated with previously approved TM6367. The purpose of PDPs is to provide a method whereby land may be designed and developed by taking advantage of modern site planning techniques thereby resulting in more efficient use of land and a better living environment than is otherwise possible through strict application of the development standards. The applicant is requesting approval of a PDP for reduced setbacks and increased lot coverage.

Lot Sizes and Development Standards

The Project is located within the R-1-7500 (Single-Family Residential) (1 Unit/ 7,500 Sq. Ft.) Zone District, which requires a minimum lot size of 7,500 square feet, minimum parcel width of 60 feet, minimum corner parcel width of 65 feet, and a minimum parcel depth of 100 feet. Other development standards of the R-1-7500 Zone District include a 20-foot minimum front yard setback, 5-foot minimum side yard setback and a 20-foot rear yard setback.

The Project includes 8-lots ranging from approximately 7,743 square feet to 8,935 square feet with an average lot size of 8,396 square feet, which exceeds the minimum 7,500 square foot lot size required under the R-1-7500 Zone District. Lot widths meet or exceed the minimum 60-foot lot width and 65-foot lot width for corner lots. The proposed lot depths also meet or exceed the required 100-foot depth.

While the minimum lot sizes and dimensions conform to current standards, the Project proposes an increase in the maximum lot coverage and a reduction in the minimum front, rear, and side setbacks of the R-1-7500 Zone District. Consequently, a PDP has been requested by the applicant to accommodate the Project. The deviations from the Zone District standards will be accompanied by an appropriate amenity, as further described below.

The Development Code, through the PDP process, permits the applicant to request deviations from the development standards otherwise applicable within a given zone district, such as setbacks and lot coverage. The applicant has provided a list of proposed standards, as follows, which are also provided in **Attachment 3**.

As shown in the table below, many of the standards meet or exceed those typical of the R-1-7500 Zone District with the exception of proposed deviations in lot coverage and setbacks.

TM6367 Planned Residential Development Standards		
	Existing Standard	Proposed Standard
Minimum Lot Area	7,500 sq. ft.	7,500 sq. ft.
Minimum Lot Width	60 ft.	60 ft.
Minimum Lot Depth	100 ft.	100 ft.
Maximum Lot Coverage	40%	55%
Maximum Building Height	35 ft.	35 ft.
Minimum Front Setback (to living space, porch, projections, or side loaded garage)	20 ft.	10 ft.
Minimum Front Setback (back of sidewalk to garage)	20 ft.	20 ft.
Minimum Side Setback	5 ft.	5 ft. minimum on garage side, 4 ft. minimum on opposite side
Minimum Street Side Setback	10 ft.	5 ft.
Minimum Rear Yard Setback	20 ft.	15 ft.

Proposed Amenities

Chapter 9.66 of the Clovis Municipal Code provides for flexibility in development standards as a mechanism to accommodate new types of projects that may not otherwise comply with strict adherence to typical development standards. As part of that request, PDPs are required to provide amenities in proportion to the request.

In return for the reduced setbacks, and increased lot coverage, the applicant has agreed to provide an enhanced entryway in addition to the required 6 foot high masonry wall along East Nees Avenue. The masonry wall will be accentuated with pilasters. The applicant has also proposed a new trash can and dog waste station along the nearby Enterprise Canal Trail. The enhanced masonry wall and improvement to the Enterprise Canal Trail provide public value in the form of elevating the visual character of the subdivision and providing access to a service.

Review and Comments from Agencies

The Project was distributed to all City Divisions as well as outside agencies, including Caltrans, Clovis Unified School District, Fresno Irrigation District, Fresno Metropolitan Flood Control District, AT&T, PG&E, San Joaquin Valley Air Pollution Control District, and the State Department of Fish and Wildlife.

Comments received are attached (**Attachment 4**) only if the agency has provided concerns, conditions, or mitigation measures. Routine responses and comment letters are placed in the administrative record and provided to the applicant for their records.

Public Comments

A public notice was sent to area residents within 600 feet of the property boundaries. Two comments were collected prior to the August 26th Planning Commission meeting, and no additional comments were received at the time of preparation of this staff report. Correspondence received at the time of preparation of this staff report is provided as **Attachment 5**.

Planning Commission Comments

The Planning Commission considered this Project on Thursday, August 26, 2021. The Commission recommended approval of the Project by a vote 4-0-1 (Commissioner Bedsted absent). There were no issues or concerns raised by the Planning Commission or the public, other than those in the comment letters. In addition, the only member of the public to speak in regards to the Project was the applicant.

Consistency with General Plan Goals and Policies

Staff has evaluated the Project in light of the General Plan Land Use goals and policies. The following goals and policies reflect Clovis' desire to maintain Clovis' tradition of responsible planning and well managed growth to preserve the quality of life in existing neighborhoods and ensure the development of new neighborhoods with an equal quality of life.

Goal 6: A city that grows and develops in a manner that implements its vision, sustains the integrity of its guiding principles, and requires few and infrequent amendments to the General Plan.

Policy 6.2: **Smart growth.** The city is committed to the following smart growth goals.

- Create a range of housing opportunities and choices.
- Create walkable neighborhoods.
- Foster distinctive, attractive communities with a strong sense of place.
- Mix land uses.
- Strengthen and direct development toward existing communities.
- Take advantage of compact building design.

Consistency with Herndon-Shepherd Specific Plan

The overall concept of the Herndon-Shepherd Specific Plan is to encourage development in the plan area that will meet the needs of existing and future residents, integrating that need

over time with the larger context of the City of Clovis. The following objectives would be achieved with the Project.

3.2.1 Land Use Objectives - Residential

- Provide a mix of residential, commercial, industrial, and public uses consistent with the capabilities of the City and other agencies to provide services.
- Provide an attractive, quality residential environment to accommodate a variety of lifestyles.

3.2.2 Land Use Objectives - Housing

- Promote diverse high quality housing products, types and price ranges organized to create harmonious and compatible neighborhoods.

California Environmental Quality Act

The City has determined that this Project is exempt from CEQA pursuant to CEQA Guidelines Section 15332 (Class 32 – Infill Development Projects) and that applicable exceptions to the exemption under CEQA Guidelines Section 15300.2 (cumulative impacts and unusual circumstances) would not be triggered as a result of the project.

A Class 32 categorical exemption is appropriate for projects that: (a) are consistent with the applicable land use designation, General Plan policies, and zoning; (b) are within city limits on a project site of no more than five acres substantially surrounded with urban uses; (c) are located on sites with no value as habitat for endangered, rare, or threatened species; (d) would not result in significant effects relating to traffic, noise, air quality, and water quality; and (e) is located on a site that can be adequately served by all utilities.

Based on staff review, the Class 32 criteria are met and there are no significant cumulative effects or unusual circumstances with the Project rendering the exemption unavailable. Therefore, a Notice of Exemption has been completed. Staff will file the notice with the County Clerk if the Project is approved.

The City published notice of this public hearing in The Business Journal on September 3, 2021.

FISCAL IMPACT

None.

REASON FOR RECOMMENDATION

The Project would meet the 2014 Clovis General Plan goals and policies, by redeveloping an existing residential property. The project also provides an opportunity to enhance public amenities within the immediate vicinity of the Project site. These improvements would help to improve the visual character of the neighborhood and provide additional public services to the community.

In addition to meeting the goals and policies of the General Plan, the required findings for the PDP can also be made, as describe below. For these reasons, the Planning Commission

and staff recommend that the City Council approve PDP 2021-002, subject to conditions of approval **Attachment 1A**.

Planned Development Permit PDP2021-002

The findings to consider when making a recommendation of approval on a planned development permit application include:

1. The planned development permit would:

- a. Be allowed within the subject base zoning district.

*The proposed PDP is allowed within the existing R-1-7500 Zone District within the Project boundaries. The underlying zone districts allow for the development of the subdivision per the proposed development standards attached as **Attachment 4**.*

- b. Be consistent with the purpose, intent, goals, policies, actions, and land use designations of the General Plan and any applicable specific plan.

The proposed PDP is consistent with several goals, and policies of the 2014 Clovis General Plan, including those identified above under the section of this staff report titled "Consistency with General Plan Goals and Policies." Furthermore, as described throughout this staff report, the Project is consistent with the existing General Plan land use designations of Low Density Residential.

- c. Be generally in compliance with all of the applicable provisions of this Development Code relating to both on- and off-site improvements that are necessary to accommodate flexibility in site planning and property development and to carry out the purpose, intent, and requirements of this chapter and the subject base zoning district, including prescribed development standards and applicable design guidelines.

*The proposed PDP is in compliance with the development standards attached as **Attachment 4**. The project will comply with on- and off-site improvements as required and directed by the City Engineer to ensure compliance with the City's Development Code.*

- d. Ensure compatibility of property uses within the zoning district and general neighborhood of the proposed development.

As indicated above, the proposed PDP is compatible with the R-1-7500 Zone District. The vicinity uses surrounding the proposed Project include single-family residential development and a public school. The proposed development is compatible with the general neighborhood and their associated zoning districts.

2. The proposed project would produce a comprehensive development of superior quality (e.g., appropriate variety of structure placement and orientation

opportunities, appropriate mix of structure sizes, high quality architectural design, increased amounts of landscaping and open space, improved solutions to the design and placement of parking facilities, incorporation of a program of enhanced amenities, etc.) than which might otherwise occur from more traditional development applications.

The Project will provide amenities associated with the PDP. These amenities include a neighborhood masonry wall along East Nees Avenue, improvements along the Enterprise Canal Trail, including a dog waste station and trash receptacle. The Project will entail high quality architectural designs for homes built within the Project's boundary.

3. Proper standards and conditions have been imposed to ensure the protection of the public health, safety, and welfare.

The proposed PDP will adhere to the Fire Department standards, Clovis Development Code and Building Code regulations for public health and safety compliance.

4. Proper on-site traffic circulation and control is designed into the development to ensure protection for fire suppression and police surveillance equal to or better than what would normally be created by compliance with the minimum setback and parcel width standards identified in Division 2 of this title (Zoning Districts, Allowable Land Uses, and Zone-Specific Standards).

The proposed PDP will comply with the Fire Department standards and City Engineer requirements regarding fire suppression and traffic circulation improvements associated with TM6367.

5. The subject parcel is adequate in terms of size, shape, topography, and circumstances to accommodate the proposed development.

The proposed Tentative Tract Map affects approximately two acres of land with a density of 4 units per acre. The average lot size within TM6367 will be 8,396 square feet. Therefore, the site is physically suitable to accommodate the proposed development.

6. The design, location, operating characteristics, and size of the proposed development would be compatible with the existing and future land uses in the vicinity, in terms of aesthetic values, character, scale, and view protection.

As indicated above, the proposed PDP is compatible with the existing land uses in the vicinity of the subject site. The proposed development will process a Residential

Site Plan Review application where aesthetics and design will be evaluation in compliance with the Development Code. The Project will deviate from setback and lot coverage requirements stipulated in R-1-7500 Zone District development standards. However, the project will comply with the remaining underlying development standards for the R-1-7500 Zone District. The project will be required to provide enhanced features such as a masonry wall along East Nees Avenue and amenities along Enterprise Creek Trail. These features shall be compatible with the existing aesthetic value, character, scale and view protection of the properties within the project's vicinity.

ACTIONS FOLLOWING APPROVAL

None.

Prepared by: Emily Lane, Assistant Planner

Reviewed by: City Manager *EL*

RESOLUTION 21-__**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS RECOMMENDING APPROVAL OF A PLANNED DEVELOPMENT PERMIT FOR VESTING TENTATIVE TRACT MAP 6367 LOCATED NEAR THE SOUTHEAST CORNER OF ARMSTRONG AND EAST NEES AVENUES AND FINDING THE PROJECT IS EXEMPT FROM CEQA PURSUANT TO PUBLIC RESOURCES CODE SECTION 15332 (CLASS 32 – INFILL DEVELOPMENT)**

WHEREAS, Gary McDonald Homes/Gleneagles Homes, 11861 N Alicante Drive Fresno, CA 93730, has applied for a Planned Development Permit (2021-002) to deviate from the R-1-7500 Zone District development standards associated with Vesting Tentative Tract Map TM6367 for an 8-lot single-family subdivision (“Project”) on approximately 2.00 acres of property located near the southeast corner of Armstrong and East Nees Avenues (“Property”); and

WHEREAS, the proposed Planned Development Permit is in keeping with the intent and purpose of the Zoning Ordinance; and

WHEREAS, the City published notice of the public hearing in the Fresno Business Journal on September 3, 2021, mailed public notices to property owners within 600 feet of the Property ten (10) days prior to said City Council hearing, and otherwise posted notice of the Public Hearing according to applicable law; and

WHEREAS, a duly noticed public hearing was held on September 20, 2021; and

WHEREAS, the City Council considered the CEQA analysis outlined in the staff report and elsewhere in the Administrative Record which determines that the Project meets the requirements of a Class 32 (Infill Development) Categorical Exemption pursuant to CEQA Guidelines section 15332 and will not have a significant effect on the environment; and

WHEREAS, the City Council has had an opportunity to review and consider the entire Administrative Record relating to the Project, which is on file with the Department, and reviewed and considered those portions of the Administrative Record determined to be necessary to make an informed decision, including, but not necessarily limited to, the staff report, the written materials submitted with the request, and the verbal and written testimony and other evidence presented during the public hearing.

NOW, THEREFORE, BASED UPON THE ENTIRE RECORD OF THE PROCEEDINGS, THE CITY COUNCIL RESOLVES AND FINDS AS FOLLOWS:

1. The City Council hereby approves PDP2021-002 subject to the conditions of approval set forth in **Attachment A** of this Resolution.
2. The Project satisfies the required findings for approval of a Planned Development Permit, as follows:
 - a. The Project is allowed within the subject base zoning district;
 - b. The Project is consistent with the purpose, intent, goals, policies, actions, and land use designations of the General Plan and any applicable specific plan;

ATTACHMENT 1

- c. The Project is generally in compliance with all of the applicable provisions of this Development Code relating to both on- and off-site improvements that are necessary to accommodate flexibility in site planning and property development and to carry out the purpose, intent, and requirements of this chapter and the subject base zoning district, including prescribed development standards and applicable design guidelines;
 - d. The Project ensures compatibility of property uses within the zoning district and general neighborhood of the proposed development;
 - e. The Project would produce a comprehensive development of superior quality (e.g., appropriate variety of structure placement and orientation opportunities, appropriate mix of structure sizes, high quality architectural design, increased amounts of landscaping and open space, improved solutions to the design and placement of parking facilities, incorporation of a program of enhanced amenities, etc.) than which might otherwise occur from more traditional development applications;
 - f. Proper standards and conditions have been imposed to ensure the protection of the public health, safety, and welfare;
 - g. Proper on-site traffic circulation and control is designed into the development to ensure protection for fire suppression and police surveillance equal to or better than what would normally be created by compliance with the minimum setback and parcel width standards identified in Division 2 of this title (Zoning Districts, Allowable Land Uses, and Zone-Specific Standards);
 - h. The subject parcel is adequate in terms of size, shape, topography, and circumstances to accommodate the proposed development; and
 - i. The design, location, operating characteristics, and size of the proposed development would be compatible with the existing and future land uses in the vicinity, in terms of aesthetic values, character, scale, and view protection.
3. The City Council could not make the findings necessary for approval of PDP2021-002 without the conditions of approval set forth in **Attachment A** to this Resolution.
 4. The City Council finds that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15332 (Class 32 – Infill Development) and will not have a significant effect on the environment.
 5. The basis for the findings is detailed in the September 20, 2021, staff report, which is hereby incorporated by reference, the entire Administrative Record, as well as the evidence and comments presented during the public hearing.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 20, 2021, by the following vote, to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

DATED: September 20, 2021

Mayor

City Clerk

**Conditions of Approval – PDP2021-002
Planning Division Comments**

(Emily Lane, Assistant Planner - (559) 324-2316)

1. This Project is subject to the development standards of the Herndon-Shepherd Specific Plan.
2. As an amenity, the developer shall provide: an enhanced block wall along East Nees Avenue; and a trash can and dog waste station along Enterprise Canal Trail.
3. No more than two of the same unit type (floor layout and exterior materials package) shall be repeated side by side. When two of the same units are repeated side by side, they shall be different colors. These identical provisions may be waived by the City Planner on a specific lot basis within the project when the size or configuration of a lot would otherwise prevent compliance with the above requirements of any other siting or setback/yard requirements established under this application. If such a waiver is requested, the developer and City Planner shall work together to ensure that any sitings of units not in compliance with the above requirements shall be of different materials and elevations in order to minimize any adverse visual impacts that may result.
4. Setbacks shall be measured to the exterior face of the framing of the structure. Exceptions to the setbacks are identified in §9.24.100, of the Clovis Municipal Code.
5. Maximum lot coverage for all lots within PDP2021-002 is 55% unless specifically approved through a residential site plan review or variance.
6. Maximum building (main structure) height shall not exceed thirty-five (35) feet.
7. Planned Development Permit PDP2021-002 standards for lots 1 through 8 of TM6367 shall be as follows:

Lot Coverage:	55% Max
Maximum Height:	2-stories not to exceed 35 feet
Minimum Lot Size:	7,500 square feet
Minimum Parcel Width:	60 feet
Minimum Front Yard Setback to Living Space:	10 feet
Minimum Front Yard Setback to Side Loaded Garage:	10 feet
Minimum Front Yard Setback to Garage:	20 feet
Minimum Parcel Depth:	100 feet
Minimum Side Yard Setback on Garage Side:	5 feet
Minimum Side Yard Setback (opposite from garage):	4 feet
Minimum Rear Yard Setback:	15 feet
Garages:	20'x22' interior dimension (2-car)

8. Landscape plans shall be reviewed and approved separately by the landscape review committee for tree and landscape type and location.

9. Prior to the submittal of civil plan review, the applicant shall submit a tree plan showing all existing trees with their variety. A tree removal/protection plan shall be reviewed and approved by the Director. Trees shall not be removed without approval from the Director.
10. All lighting shall be screened from direct view from the public right-of-way and adjacent residential properties.
11. All landscaping (open space and private yards) shall conform to the City of Clovis Water Efficient Landscape Ordinance.
12. The developer shall construct a minimum six-foot high solid masonry wall along the East Nees Avenue frontage.
13. The applicant shall provide an all-weather surface for the placement and storage of trash receptacles leading from the 5-foot side yard to the front of the property.
14. This Project requires the submittal and approval of a residential site plan review entitlement. Specific color and materials of the models, walls, amenities, landscaping, and fencing will be evaluated.

Fire Department Conditions

(Rick Fultz, Fire Department Representative – (559) 324-2214)

Water Systems

15. **Residential Fire Hydrant:** The applicant shall install ___1___ 4 ½” x 2 ½” approved Residential Type fire hydrant(s) and “Blue Dot” hydrant locators, paint fire hydrant(s) yellow with blue top and caps, and paint the curb red as specified by the adopted Clovis Fire Department Standard #1.4. Plans shall be submitted to the Clovis Fire Department for review and approval prior to installation. The hydrant(s) shall be charged and in operation prior to any framing or combustible material being brought onto the site. Hydrants curb markings and blue dots to be completed prior to occupancy of any homes.

Engineering / Utilities / Solid Waste Division Conditions

(Sean Smith, Engineering Division Representative – 324-2363)

(Paul Armendariz, Department Representative – 324-2649)

Maps and Plans

16. The applicant shall have a final tract map prepared, in the form prescribed by the Subdivision Map Act and City of Clovis Municipal Code. The final tract map shall be submitted to the City of Clovis Engineering Division, and should include, but not be

limited to, final tract map, the current filing fee, closure calculations, current preliminary title report, legal descriptions and drawings of required dedications.

17. The applicant shall submit separately to the City of Clovis Engineering Division, a set of construction plans on 24" x 36" sheets with City standard title block for all required improvements and a current preliminary title report. These plans shall be prepared by a registered civil engineer, and shall include a grading plan, landscape plan, a site plan showing trash enclosure locations and an overall site utility plan showing locations and sizes of sewer, water, storm drain, and irrigation mains, laterals, manholes, meters, valves, hydrants, fire sprinkler services, other facilities, etc. Plan check and inspection fees per City of Clovis Resolution No. 18-61 shall be paid with the first submittal of said plans. All plans shall be submitted at or before the time the building plans are submitted to the Building Division and shall be approved by the City and all other involved agencies prior to the release of any development permits.
18. Prior to the initial submittal of the improvement plans, the applicant shall contact Sean Smith at (559) 324-2363 to setup a coordination meeting (Pre-submittal Meeting).
19. Upon approval of improvement plans, the applicant shall provide the City with the appropriate number of copies. After all improvements have been constructed and accepted by the City, the applicant shall submit to the City of Clovis Engineering Division (1) digital copy to the City in PDF format of the approved set of construction plans revised to accurately reflect all field conditions and revisions and marked "AS-BUILT" for review and approval. Upon approval of the AS-BUILTs by the City, and prior to granting of final occupancy or final acceptance, the applicant shall provide (1) digital copy to the City in PDF format.

General Provisions

20. The applicant shall pay all applicable development fees at the rate in effect at the time of payment and prior to final map approval by Council or have the fees payable directly to the City through a separate escrow account at the time of recordation of the map.
21. The applicant is advised that, pursuant to California Government Code, Section 66020, any party may protest the imposition of fees, dedications, reservations, or other exactions imposed on a development project by a local agency. Protests shall be filed in accordance with the provisions of the California Government Code and shall be filed within 90 days after conditional approval of this application is granted. The 90 day protest period for this project shall begin on the "date of approval" as indicated on the "Acknowledgment of Acceptance of Conditions" form.
22. All reimbursement requests shall be prepared and submitted in accordance with the requirements of the current version of the "Developer Reimbursement Procedures" a copy of which may be obtained at the City Engineer's Office.

23. The applicant shall install all improvements within public right-of-way and easements in accordance with the City of Clovis standards, specifications, master plans, and record drawings in effect at the time of improvement plan approval.
24. The applicant shall address all conditions, and be responsible for obtaining encroachment permits from the City of Clovis for all work performed within the City's right-of-way and easements.
25. The applicant shall submit a soils report or a waiver of soils report to the City of Clovis Engineering Division for approval by the City Engineer.
26. The applicant shall provide and pay for all geotechnical services per City policy.
27. The applicant shall comply with the requirements of the local utility, telephone, and cable companies. The City shall not accept first submittals without proof that the applicant has provided the improvement plans and documents showing all proposed work to the utility, telephone, and cable companies. All utility vaults in which lids cannot be sloped to match proposed finished grading, local utilities have 5% max slope, shall be located in sidewalk areas with pedestrian lids so the lid slope matches sidewalk cross slope.
28. All new utility facilities located on-site or within the street right-of-way along the streets adjacent to this tract shall be undergrounded unless otherwise approved by the City Engineer.
29. The applicant shall contact and address all requirements of the United States Postal Service Clovis Office for the location and type of mailboxes to be installed. The location of the facilities shall be approved by the City Engineer prior to approval of improvement plans or any construction.
30. The applicant shall contact and address Caltrans requirements. The applicant shall be required to mitigate impacts to State Highway facilities as determined by the City Engineer.

Dedications and Street Improvements

31. The applicant shall provide right-of-way acquisition or dedicate free and clear of all encumbrances and/or improve the following streets to City standards. The street improvements shall be in accordance with the City's specific plans and shall match existing improvements. The applicant's engineer shall be responsible for verifying the type, location, and grades of existing improvements.
 - a. Nees Avenue – Along frontage, all existing driveways shall be replaced with curb, gutter and sidewalk per City standards. The existing landscaping and irrigation system shall be modified to include the unfinished area between the

existing sidewalk and right-of-way line. The existing street lights shall be relocated outside the proposed curb returns and per City standards.

- b. Interior Street – Dedicate to provide for 50' or 54' of right-of-way in conformance with the City policy on street widths, and improve with curb, gutter, 5' sidewalk adjacent to the curb, drive approaches, curb return ramps, streetlights, permanent paving, and all transitional paving as needed.
 - c. Cul-De-Sacs - dedicate to provide for 52' radius and improve with curb, gutter, sidewalk, street lights, 43' permanent paving and all transitional paving as needed.
 - d. The applicant shall relinquish all vehicular access to Nees Avenue for all lots that side onto this street.
32. The applicant shall provide a dedication for a 10' public utility easement, where applicable, along all frontages or alternate widths approved by the utilities companies.
33. For new onsite ADA paths of travel that connect to the City sidewalk, the applicant shall replace enough sidewalk to provide a compliant landing with appropriate transitions to existing sidewalk grades.
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35. The applicant shall not install any fences, temporary or permanent in public right-of-way.
36. The applicant shall obtain "R Value" tests in quantity sufficient to represent all street areas, and have street structural sections designed by a registered civil engineer based on these "R Value" tests.

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37. The applicant shall identify and abandon all septic systems to City standards.
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- a. Interior Streets – install 8" mains.

39. The applicant shall install one (1) 4" sewer service house branch to each lot within the tentative tract.
40. All existing sewer services along the development street frontage that will not be used with this development shall be abandoned by cutting and capping the service at the right-of-way line.

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41. The applicant shall identify and abandon all water wells to City standards.
42. The applicant shall install water mains of the sizes and in the locations indicated below, and provide an adequately looped water system prior to occupancy. The water improvements shall be in accordance with the City's master plans and shall match existing improvements. The applicant's engineer shall be responsible for verifying the size, location, and elevations of existing improvements. Any alternative routing of the mains shall require approval of the City Engineer and shall be supported by appropriate calculations.
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43. The applicant shall provide dedication of 15-foot wide utility easements for all on-site water mains, hydrants, and water meters not located in otherwise dedicated rights-of-way.
44. The applicant shall install a City standard water service to each lot of the proposed subdivision. Water services shall be grouped at property lines to accommodate automatic meter reading system, including installation of connecting conduit. The water meter shall be placed in the sidewalk and not in planters or driveways.
45. All existing water services along the development street frontage that will not be used with this development shall be abandoned by closing the service's corporation stop and creating a physical separation between the corporation stop and the service.
46. Prior to recording a final map of any phase, the applicant shall demonstrate to the satisfaction of the City Fire Chief and City Engineer that there is adequate water pressure to serve the units to be constructed. The applicant shall work with the City Engineer to determine the adequacy of water supply/pressure for the proposed development.

Grading and Drainage

47. The applicant shall contact the Fresno Metropolitan Flood Control District (FMFCD) and address all requirements, pay all applicable fees required, obtain any required NPDES permit, and implement Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology to reduce or eliminate storm

water pollution. Plans for these requirements shall be included in the previously required set of construction plans, and shall be submitted to and approved by FMFCD prior to the release of any development permits.

48. Grade differentials between lots and adjacent properties shall be adequately shown on the grading plan and shall be treated in a manner in conformance with City of Clovis Standard Drawing No. M-4 as modified by the City Council. Any retaining walls required on-site or in public right of way shall be masonry construction. All retaining walls shall be designed by a registered civil engineer.

Irrigation and Landscaping Facilities

49. The owner shall request annexation to and provide a covenant for the Landscape Maintenance District. The property owner acknowledges and agrees that such request serves as a petition pursuant to California State Proposition 218 and no further election shall be required for the establishment of the initial assessment. The assessment for each lot shall be obtained from the City for the tax year following the recordation of the final map. The estimated annual assessment per average sized lot is \$197.26, which is subject to change prior to issuance of building permit or final tract map approval and is subject to an annual change in the range of the assessment in the amount of the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI Index), plus two percent (2%). The owner/developer shall notify all potential lot buyers before they actually purchase a lot that this tract is a part of a Landscape Maintenance District and shall inform potential buyers of the assessment amount. Said notification shall be in a manner approved by the City. The owner/developer shall supply all pertinent materials for the Landscape Maintenance District.
50. The applicant shall comply with the City of Clovis Water Efficient Landscape Requirements Ordinance.
51. The applicant shall contact and address all requirements of the Fresno Irrigation District (FID). This may include dedicating easements, piping or relocating any existing FID canals and ditches, replacing any existing irrigation piping, concrete lining or improving any existing canals, construction or reconstruction of any canals, culverts, and bridge crossings. Plans for these requirements and improvements shall be included as in the previously required set of construction plans, and shall be submitted to and approved by FID prior to the release of any development permits or recording of the final tract map. If a FID or private irrigation line is to be abandoned, the applicant shall provide waivers from all downstream users.
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53. The applicant shall apply to the Fresno Irrigation District (FID) for transfer of irrigation water rights to the City of Clovis, if the property has not already been removed from FID and transferred to the City. The applicant shall execute a "Request for Change of Relative Value" that can be obtained and processed through FID. The applicant shall provide a copy of the completed form to the City.
54. All existing agricultural irrigation systems either on-site or in public right of way, whether FID or privately owned, shall be identified prior to any construction activity on the site. Service to all downstream users of irrigation water shall be maintained at all times through preservation of existing facilities or, if the existing facilities are required to be relocated, the relocation and replacement of the existing facilities. It is the intent that downstream users not bear any burden as a result of development of the site. Therefore, the applicant shall pay all costs related to modification, relocation, or repair of any existing irrigation facilities resulting from or necessitated by the development of the site. The applicant shall identify on site plans and construction plans, all existing irrigation systems and their disposition (abandonment, repair, relocation, and/or piping). The applicant shall consult with the Fresno Irrigation District for any additional requirements for lines to be abandoned, relocated, or piped. The applicant shall provide waivers from all users **in order to abandon or modify any irrigation pipelines or for any service interruptions resulting from development activities.**
55. The applicant shall provide a perimeter wall perpetual maintenance covenant on all properties that have a perimeter wall that is installed on private property. A recordable covenant shall be submitted to and approved by the City of Clovis City Engineer prior to final map approval.

Miscellaneous

56. The applicant shall install two (2) street lights per the attached street light exhibit. Street lights along the major streets shall be installed on metal poles to local utility provider's standards at the locations designated by the City Engineer. Street light locations shall be shown on the utility plans submitted with the final map for approval. The applicant may install thematic lighting, as approved by the City Engineer. If the applicant chooses to install thematic lighting, the applicant shall provide a conceptual lighting plan identifying adjacent properties that may be incorporated with thematic lights to create a neighborhood effect. Thematic lighting owned by the City shall be maintained by an additional landscape maintenance assessment.
57. The applicant shall install all major street monumentation and section corner monumentation within the limits of the project work in accordance with City Standard ST-32 prior to final acceptance of the project. Monumentation shall include all section corners, all street centerline intersection points, angle points and beginning and end of curves (E.C.'s & B.C.'s). The applicant/contractor shall furnish brass caps. Any existing section corner or property corner monuments damaged by this development shall be reset to the satisfaction of the City Engineer. A licensed land surveyor or civil engineer licensed to perform land surveying shall certify the placement of all required

monumentation prior to final acceptance. Brass caps required for installation of new monuments or replacement of existing monuments shall be provided by the contractor/the applicant and approved by City prior to installation. Within five days after the final setting of all monuments has been completed, the engineer or surveyor shall give written notice to the City Engineer that the final monuments have been set. Upon payment to the engineer or surveyor for setting the final monuments, the applicant shall present to the City Engineer evidence of the payment and receipt thereof by the engineer or surveyor.

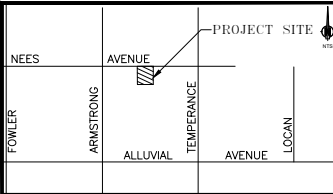
58. A deferment, modification, or waiver of any engineering conditions shall require the express written approval of the City Engineer.

59. The conditions given herein are for the entire development. Additional requirements for individual phases may be necessary pending review by the City Engineer.

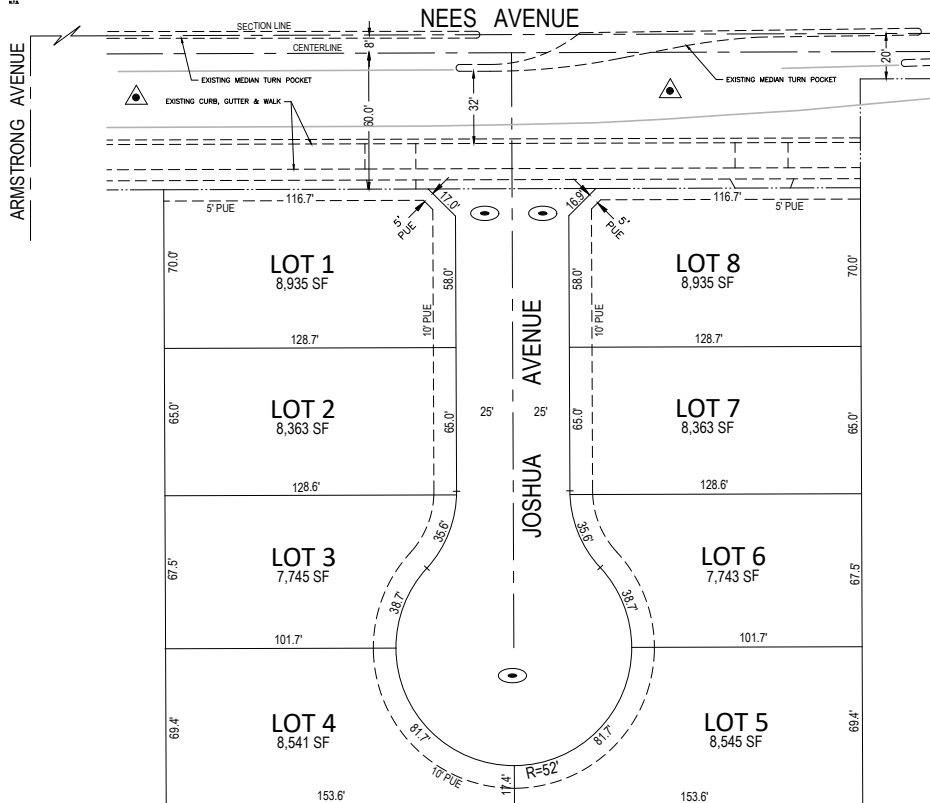
California Department of Transportation Conditions

(David Padilla, California Department of Transportation Representative – (559) 488-4057)

60. The applicant shall refer to the attached California Department of Transportation correspondence. If the list is not attached, please contact the California Department of Transportation for the requirements.



VESTING
TENTATIVE SUBDIVISION MAP
TRACT NO. 6367
A PLANNED DEVELOPMENT
IN THE CITY OF CLOVIS
FRESNO COUNTY, CALIFORNIA



LEGAL DESCRIPTION:

THE LAND REFERRED TO IS SITUATED IN THE COUNTY OF FRESNO, CITY OF CLOVIS, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THE NORTH 320 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT Diablo BLADE AND METERS, IN THE CITY OF CLOVIS, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE EAST 380.00 FEET.

ALSO EXCEPTING THEREFROM THE SOUTH 40 FEET OF THE NORTH 40 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT Diablo BLADE AND METERS.

ALSO EXCEPTING THEREFROM THE WEST 30 FEET.

ALSO EXCEPTING THEREFROM LOTS 1-14 INCLUSIVE OF TRACT 5360, BEING FURTHER DESCRIBED AS THE REMAINDER OF C/D 536 TRACT 5360.

NOTES:

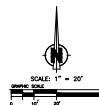
- THIS AREA IS SUBJECT TO FLOODING X (UNSHADDED).
- ALL IMPROVEMENTS SHALL BE AS REQUIRED BY THE CITY OF CLOVIS TO CITY STANDARDS, AND SHALL INCLUDE BUT NOT BE LIMITED TO: WATER, WASTEWATER, POWER, TELEPHONE, GAS, CONCRETE CURBS, CEMENT, SIDEWALKS, FENCING, STREET LIGHTS, ETC.
- THERE SHALL BE NO GRADE DIFFERENTIALS OF CONCRETE THAN 6" WITHIN 200 FEET OF THE CURB UNLESS APPROVED BY THE CITY OF CLOVIS DEVELOPMENT DEPARTMENT.
- ALL EXISTING ON-SITE IMPROVEMENTS/STRUCTURES ARE TO BE REMOVED.
- ALL EXISTING ON-SITE TREES TO BE REMOVED WITH IMPROVEMENT PLANS BY TREE REMOVAL PERMIT.

EXISTING BUILDINGS
EXISTING BRANCHED TO BE REMOVED
EXISTING TREES
EXISTING UTILITIES TO BE REMOVED
EXISTING ZONING
PROPOSED ZONING
PROPOSED USE
SOURCE OF WATER
CITY OF CLOVIS
SOURCE OF SEWAGE DISPOSAL
CITY OF CLOVIS
SOURCE OF WASTE DISPOSAL
CITY OF CLOVIS
SOURCE OF ELECTRICITY

SOURCE OF GAS
POLE
SOURCE OF CABLE T.V.
POLE
SOURCE OF TELEPHONE
POLE
ASSESSOR'S PARCEL NUMBER
544-080-17
SITE AREA
2,007 AC. (GROSS)
NUMBER OF LOTS
8
DENSITY
K-10 UNITS PER ACRE
AVERAGE LOT SIZE
746 SF

LEGEND:

- INDICATES STREETS PREVIOUSLY DEDICATED FOR PUBLIC USE
- PUBLIC STREET EASEMENT NOW OFFERED FOR DEDICATION FOR PUBLIC USE
- PUBLIC UTILITY EASEMENT NOW OFFERED FOR DEDICATION FOR PUBLIC USE



OWNERS:
Carlyn G. Prieto
Bert R. Juro
Dorlene J. Storm
Vincent J. Juro, Jr.
2390 WETA AVENUE
CLOVIS, CALIFORNIA 93611

TENTATIVE SUBDIVISION MAP
Gary McDonald
96

Herzog & Associates
Civil Engineers
3200 Delta Park Blvd., Clovis, California 93225
503.325.1178 • Fax: 503.325.7800 • herzogandassociates.com

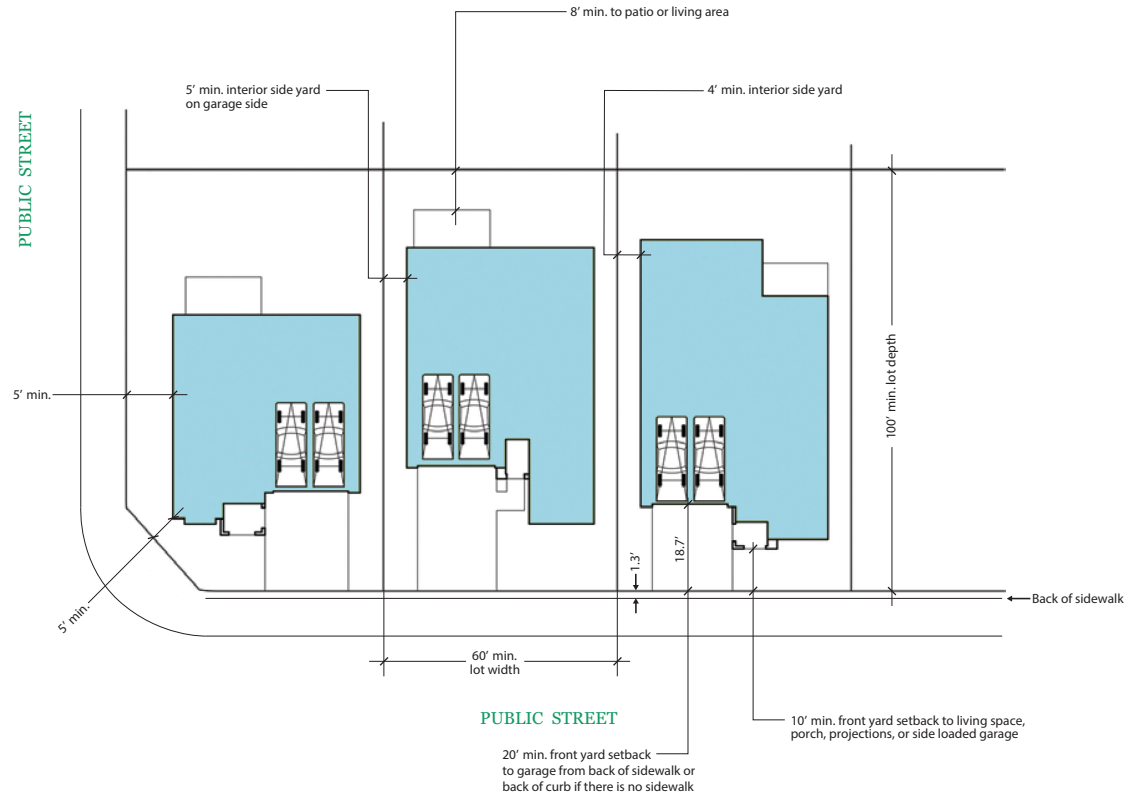
SHEET NO. 1 OF 1

DATE: 4-7-22 SCALE: PG-22 DRAWN BY: JRM

Residential Land Use Development Standards

TRACT 6367 – NEES AVE EAST OF ARMSTRONG AVE

LAND USE	DEVELOPMENT STANDARDS		
	EXISTING STANDARD	PROPOSED STANDARD	NOTES
SINGLE-FAMILY RESIDENTIAL			
DESIGNATION			
Zone District	R-1-7500	R-1-7500	
GP Density Range	2.1 - 4.0 du/ac	2.1 - 4.0 du/ac	Low Density Residential
Dwelling Units	8	8	
BUILDING INTENSITY			
Minimum Lot Area	7,500 sqft	7,500 sqft	
Minimum Lot Width	60'	60'	
Minimum Lot Depth	100'	100'	
Maximum Height	35'	35'	
Curved/Cul-de-sac	50' min	50' min	Frontage
Corner Lot	65' min	65' min	Lot width
Lot Coverage	40% max	55% max	
BUILDING SETBACKS			
All setbacks measured from PL.			
Front Yard	20' min	10' min	To living space, porch, projections, or side loaded garage
	20' min	20' min	Back of sidewalk to garage
Side Yard	5' min	5' & 4' min	5' min on garage side, 4' min on opposite side
Street Side	10' min	5' min	
Rear Yard	20' min	5' min	
Corner Cut-Off	5' min	5' min	
GARAGES/STREETS/PARKING			
Garages	2 covered parking spaces per unit minimum		
Streets	Public	Public	
On-Street Parking	Yes	Yes	



The imagery conveys samples of the architectural character intended for these neighborhoods.

NOT TO SCALE

ATTACHMENT 3

CONDITIONS OF APPROVAL

01-14-19 REV

Entitlement: TM 6367
 Description: 8-Lot SFR PUD
 Applicant: Gary McDonald Homs
 Property Location: 2350 Nees Avenue, SEA North Armstrong Avenue
 APN: 564-080-17

ENGINEERING / PUBLIC UTILITIES CONDITIONS OF APPROVAL:

** (see attached estimated fees) **

(Sean Smith, Engineering Representative - 324-2363)
(Paul Armendariz, Public Utilities Representative – 324-2649)

Maps and Plans

1. The applicant shall have a final tract map prepared, in the form prescribed by the Subdivision Map Act and City of Clovis Municipal Code. The final tract map shall be submitted to the City of Clovis Engineering Division, and should include, but not be limited to, final tract map, the current filing fee, closure calculations, current preliminary title report, legal descriptions and drawings of required dedications.
2. The applicant shall submit separately to the City of Clovis Engineering Division, a set of construction plans on 24" x 36" sheets with City standard title block for all required improvements and a current preliminary title report. These plans shall be prepared by a registered civil engineer, and shall include a grading plan, landscape plan, a site plan showing trash enclosure locations and an overall site utility plan showing locations and sizes of sewer, water, storm drain, and irrigation mains, laterals, manholes, meters, valves, hydrants, fire sprinkler services, other facilities, etc. Plan check and inspection fees per City of Clovis Resolution No. 18-61 shall be paid with the first submittal of said plans. All plans shall be submitted at or before the time the building plans are submitted to the Building Division and shall be approved by the City and all other involved agencies prior to the release of any development permits.
3. Prior to the initial submittal of the improvement plans, the applicant shall contact Sean Smith at (559) 324-2363 to setup a coordination meeting (Pre-submittal Meeting).
4. Upon approval of improvement plans, the applicant shall provide the City with the appropriate number of copies. After all improvements have been constructed and accepted by the City, the applicant shall submit to the City of Clovis Engineering Division (1) digital copy to the City in PDF format of the approved set of construction plans revised to accurately reflect all field conditions and revisions and marked "AS-BUILT" for review and approval. Upon approval of the AS-

BUILTs by the City, and prior to granting of final occupancy or final acceptance, the applicant shall provide (1) digital copy to the City in PDF format.

General Provisions

5. The applicant shall pay all applicable development fees at the rate in effect at the time of payment and prior to final map approval by Council or have the fees payable directly to the City through a separate escrow account at the time of recordation of the map.
6. The applicant is advised that, pursuant to California Government Code, Section 66020, any party may protest the imposition of fees, dedications, reservations, or other exactions imposed on a development project by a local agency. Protests shall be filed in accordance with the provisions of the California Government Code and shall be filed within 90 days after conditional approval of this application is granted. The 90 day protest period for this project shall begin on the “date of approval” as indicated on the “Acknowledgment of Acceptance of Conditions” form.
7. All reimbursement requests shall be prepared and submitted in accordance with the requirements of the current version of the “Developer Reimbursement Procedures” a copy of which may be obtained at the City Engineer’s Office.
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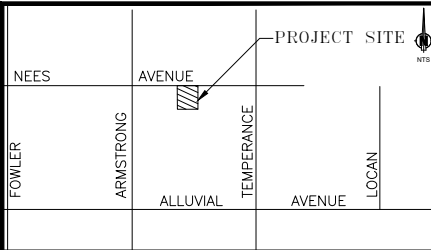
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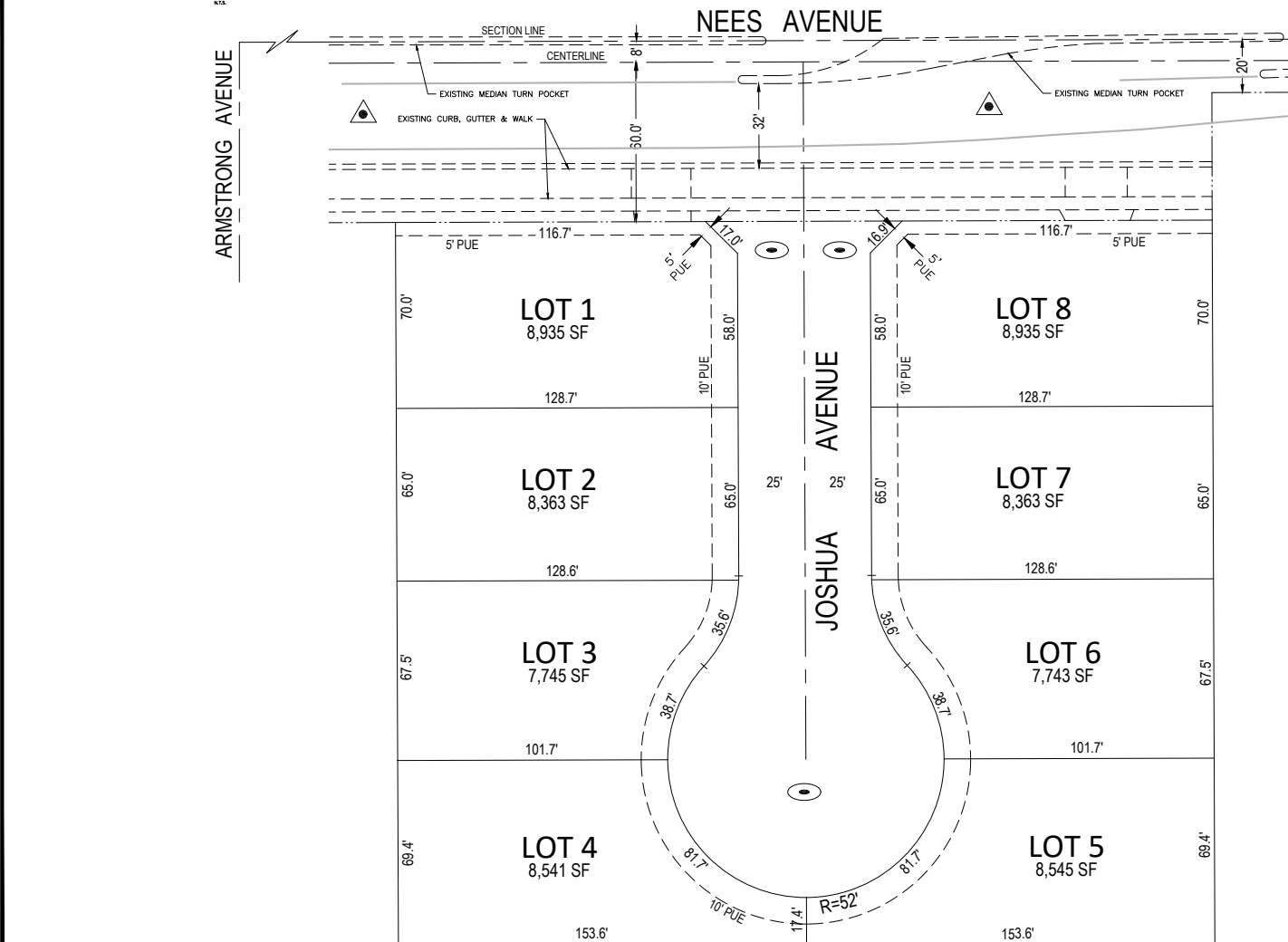
Miscellaneous

41. The applicant shall install two (2) street lights per the attached street light exhibit. Street lights along the major streets shall be installed on metal poles to local utility provider's standards at the locations designated by the City Engineer. Street light locations shall be shown on the utility plans submitted with the final map for approval. The applicant may install thematic lighting, as approved by the City Engineer. If the applicant chooses to install thematic lighting, the applicant shall provide a conceptual lighting plan identifying adjacent properties that may be incorporated with thematic lights to create a neighborhood effect. Thematic lighting owned by the City shall be maintained by an additional landscape maintenance assessment.
42. The applicant shall install all major street monumentation and section corner monumentation within the limits of the project work in accordance with City Standard ST-32 prior to final acceptance of the project. Monumentation shall include all section corners, all street centerline intersection points, angle points and beginning and end of curves (E.C.'s & B.C.'s). The applicant/contractor shall furnish brass caps. Any existing section corner or property corner monuments damaged by this development shall be reset to the satisfaction of the City Engineer. A licensed land surveyor or civil engineer licensed to perform land surveying shall certify the placement of all required monumentation prior to final acceptance. Brass caps required for installation of new monuments or replacement of existing monuments shall be provided by the contractor/the applicant and approved by City prior to installation. Within five days after the final setting of all monuments has been completed, the engineer or surveyor shall give written notice to the City Engineer that the final monuments have been set. Upon payment to the engineer or surveyor for setting the final monuments, the applicant shall present to the City Engineer evidence of the payment and receipt thereof by the engineer or surveyor.
43. A deferment, modification, or waiver of any engineering conditions shall require the express written approval of the City Engineer.

44. The conditions given herein are for the entire development. Additional requirements for individual phases may be necessary pending review by the City Engineer.



VESTING
TENTATIVE SUBDIVISION MAP
OF
TRACT NO. 6367
A PLANNED DEVELOPMENT
IN THE CITY OF CLOVIS
FRESNO COUNTY, CALIFORNIA



LEGAL DESCRIPTION:

THE LAND REFERRED TO IS SITUATED IN THE COUNTY OF FRESNO, CITY OF CLOVIS, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THE NORTH 340 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT Diablo BASE AND MERIDIAN, IN THE CITY OF CLOVIS, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE EAST 380.00 FEET.

ALSO EXCEPTING THEREFROM THE SOUTH 48 FEET OF THE NORTH 48 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 12 SOUTH, RANGE 21 EAST, MOUNT Diablo BASE AND MERIDIAN.

ALSO EXCEPTING THEREFROM THE WEST 20 FEET.

ALSO EXCEPTING THEREFROM LOTS 1-16 INCLUSIVE OF TRACT 5360, BEING FURTHER DESCRIBED AS THE REMAINDER LOT OF SAID TRACT 5360.

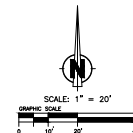
NOTES:

1. THIS AREA IS SUBJECT TO FLOODZONE X (UNSHADED).
2. ALL IMPROVEMENTS SHALL BE AS REQUIRED BY THE CITY OF CLOVIS TO CITY STANDARDS, AND SHALL INCLUDE SANITARY SEWER, DOMESTIC WATER, UNDERGROUND POWER, TELEPHONE, GAS, CONCRETE CURBS, GUTTERS, SIDEWALKS, PERMANENT STREET PAVEMENT STREET LIGHTS, ETC.
3. THERE SHALL BE NO GRADE DIFFERENTIALS OF GREATER THAN 4" WITHIN 200 FEET OF THE SITE UNLESS APPROVED BY THE CITY OF CLOVIS DEVELOPMENT DEPARTMENT.
4. ALL EXISTING ON-SITE IMPROVEMENTS/STRUCTURES ARE TO BE REMOVED.
5. ALL EXISTING ON-SITE TREES TO BE REMOVED WITH IMPROVEMENT PLANS BY TREE REMOVAL PERMIT.

EXISTING BUILDINGS	EXISTING BUILDINGS TO BE REMOVED	SOURCE OF GAS	POLE
EXISTING TREES	EXISTING TREES TO BE REMOVED	SOURCE OF CABLE T.V.	COMCAST
EXISTING USE	SINGLE FAMILY RESIDENTIAL HOME	SOURCE OF TELEPHONE	ATT&T
EXISTING ZONING	R-1-7500	ASSESSOR'S PARCEL NUMBER	544-080-17
PROPOSED ZONING	R-1-7500	SITE AREA	2,000 AC. (29055)
PROPOSED USE	SINGLE FAMILY RESIDENTIAL SUBDIVISION	NUMBER OF LOTS	8
SOURCE OF WATER	CITY OF CLOVIS	DENSITY	4.00 UNITS PER ACRE
SOURCE OF SEWAGE DISPOSAL	CITY OF CLOVIS	AVERAGE LOT SIZE	7,660 SF
SOURCE OF WASTE DISPOSAL	CITY OF CLOVIS	SOURCE OF ELECTRICITY	POLE

LEGEND:

- INDICATES STREETS PREVIOUSLY DEDICATED FOR PUBLIC USE
- PUBLIC STREET EASEMENT NOW OFFERED FOR DEDICATION FOR PUBLIC USE
- PUE PUBLIC UTILITY EASEMENT NOW OFFERED FOR DEDICATION FOR PUBLIC USE



OWNERS:
Carolyn G. Prieto
Kent R. Jara
Dorlene J. Storm
Vincent J. Jara, Jr.
2350 NEES AVENUE
CLOVIS, CALIFORNIA 93611

TENTATIVE SUBDIVISION MAP

106

OWNERS:
Gary McDonald Home

Harbour & Associates
Civil Engineers
1801 S. Alameda Street
Fresno, CA 93701
(559) 252-7878 • fax (559) 252-7888 • e-mail: info@harbourandassociates.com

DATE: 6-7-21 SCALE: 1" = 20' DRAWN BY: NPA

106

1 OF 1



CITY OF CLOVIS FIRE DEPARTMENT

1233 Fifth Street, Clovis, CA 93612 · (559) 324-2200

AGENDA ITEM NO. 13.



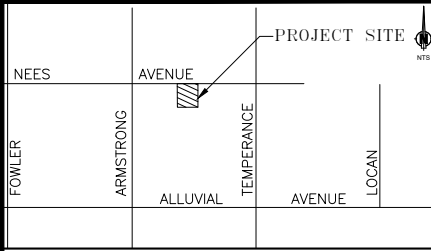
TM 6367 COMMENTD

Water Systems

Residential Fire Hydrant: The applicant shall install ___1___ 4 ½” x 2 ½” approved Residential Type fire hydrant(s) and “Blue Dot” hydrant locators, paint fire hydrant(s) yellow with blue top and caps, and paint the curb red as specified by the adopted Clovis Fire Department Standard #1.4. Plans shall be submitted to the Clovis Fire Department for review and approval prior to installation. The hydrant(s) shall be charged and in operation prior to any framing or combustible material being brought onto the site. Hydrants curb markings and blue dots to be completed prior to occupancy of any homes.

Plan Check Comments by:

Rick Fultz
Fire and Life Safety Analyst
(559) 324-2214
rickf@cityofclovis.com



VESTING
TENTATIVE SUBDIVISION MAP
OF
TRACT NO. 6367
A PLANNED DEVELOPMENT
IN THE CITY OF CLOVIS
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ALSO EXCEPTING THEREFROM THE WEST 20 FEET.

ALSO EXCEPTING THEREFROM LOTS 1-16 INCLUSIVE OF TRACT 5360, BEING FURTHER DESCRIBED AS THE REMAINDER LOT OF SAID TRACT 5360.

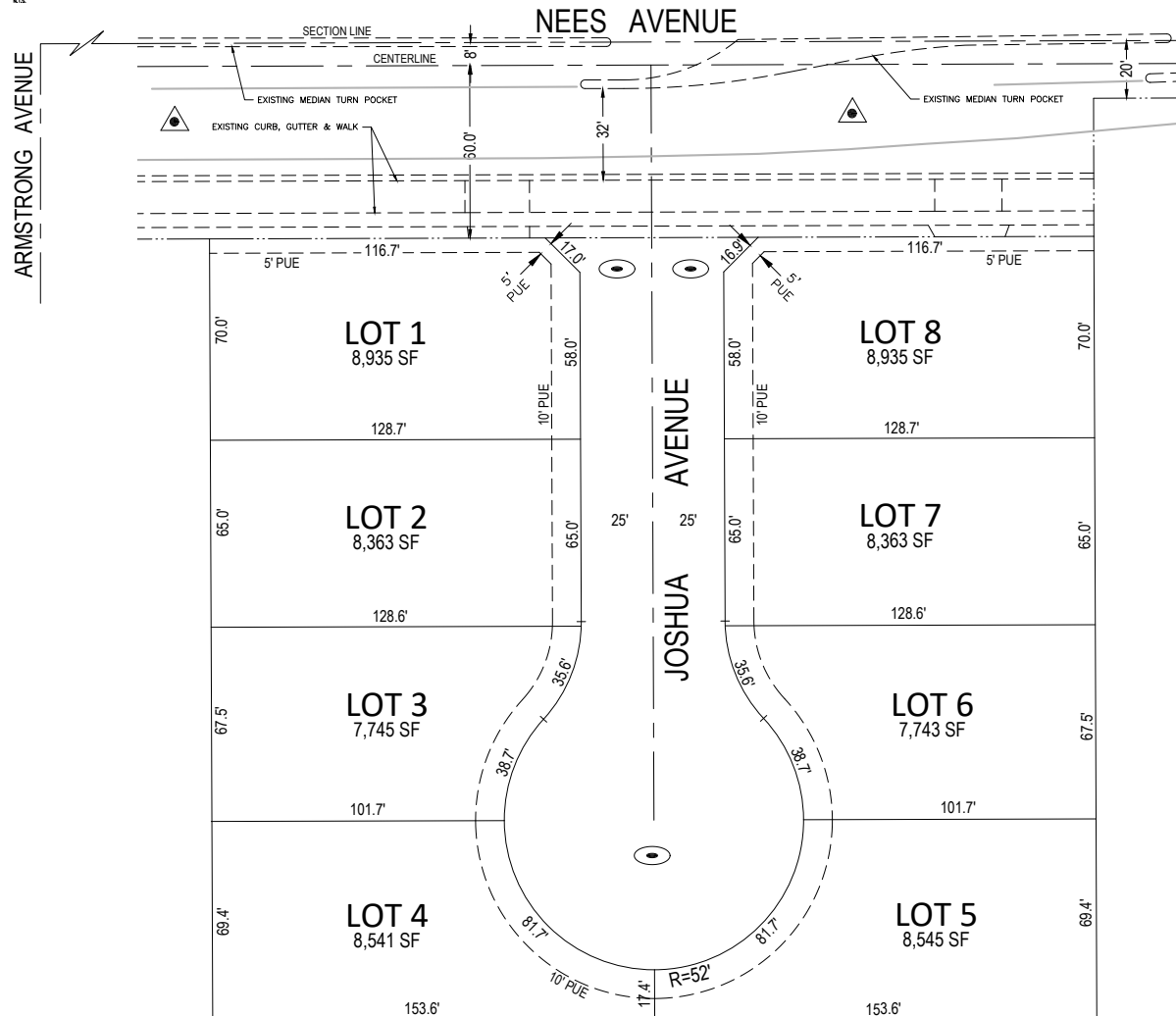
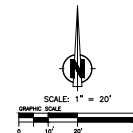
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EXISTING ZONING R-1-7500	ASSESSOR'S PARCEL NUMBER 544-080-17
PROPOSED ZONING R-1-7500	SITE AREA 2,000 AC. (GR055)
PROPOSED USE SINGLE FAMILY RESIDENTIAL SUBDIVISION	NUMBER OF LOTS 8
SOURCE OF WATER CITY OF CLOVIS	DENSITY 4.00 UNITS PER ACRE
SOURCE OF SEWAGE DISPOSAL CITY OF CLOVIS	AVERAGE LOT SIZE 7,660 SF
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LEGEND:

- INDICATES STREETS PREVIOUSLY DEDICATED FOR PUBLIC USE
- PUBLIC STREET EASEMENT NOW OFFERED FOR DEDICATION FOR PUBLIC USE
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OWNERS:
Carolyn G. Prieto
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Vincent J. Jara, Jr.
2350 NEES AVENUE
CLOVIS, CALIFORNIA 93611

TENTATIVE SUBDIVISION MAP

PREPARED BY
Gary McDonald Home

11818 N. ALVARADO STREET
FRESNO, CA 93727
(559) 432-7070

DESIGNED BY
Harbour & Associates
Civil Engineers
180 China Mountain, Suite 300 • Clovis, California 93612
(559) 325-7070 • FAX (559) 325-7084 • info@harbourandassociates.com

108

DATE: 6-7-21 SCALE: 1" = 20' DRAWN BY: NPA

1 OF 1

RD: #2-04 D-1005

California Department of Transportation

DISTRICT 6 OFFICE

1352 WEST OLIVE AVENUE | P.O. BOX 12616 | FRESNO, CA 93778-2616

(559) 488-4057 | FAX (559) 488-4195 | TTY 711

www.dot.ca.gov



July 7, 2021

06-FRE-168-PM R8.758

Application for STP-Site Plan Review

TM6367 and PDP2021-002 8-lot single-family residential

[GTS: 8-lot single-family residential](#)

Joyce Roach
Planning Assistant
City of Clovis
Planning & Development Department
1033 Fifth Street
Clovis, CA 93612

Dear Joyce Roach:

Thank you for the opportunity to review Planning Application for the proposed 8-lot single-family residential development located on the southside of Nees Avenue just east of Armstrong Avenue in the City of Clovis. This development is located approximately 1.0-mile northwest of the State Route 168 / Temperance Avenue interchange.

Utilizing the ITE Trip Generation Manual (Land Use Code 210, 0.99 trips per dwelling unit), it is estimated this development would generate less than 10 vehicle trips during PM peak hour traffic. Caltrans projected the trips generated by this development would *not* have a significant traffic safety impact to the State Highway System. **Nevertheless, the City of Clovis should determine if a VMT analysis should be performed by the project proponent for this development.**

If you have any further questions, contact Christopher Nicholas at (916) 698-0146 or Christopher.nicholas@dot.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Padilla'.

DAVID PADILLA, Branch Chief
Transportation Planning - North

From: Tim Cox <timocox@gmail.com>
Sent: Tuesday, August 24, 2021 9:59 PM
To: David Merchen <davidm@ci.clovis.ca.us>
Subject: [External] Proposed building site Nees at Armstrong

I have several concerns about the proposed TM6367 for 8 building sites off Nees Road.

1. Why approve the site for eight lots with an exemption on size and setbacks when seven lots could have been used with no exemptions?
2. This 2-acre property already has a house with a pool, landscaping and outbuildings. This lot could have been sold as is. Now, all will be stripped from the lot so a builder can make more homes.
3. I have a home at 2329 Houston Ave. directly behind this property and proposed building site. Presently, I have a one story house with a nice home behind me. The proposal will remove everything behind me ... the house, pool, outbuildings, trees and landscaping to put a 2 story house only 4-5 feet from the fence.
4. Why is this a good thing for the neighborhood and Clovis?
5. Lastly, if this must go ahead, I would like some input as to the size and type of home, including the setback backing up to my property, as well as the removal of trees on the property line.

This proposal will greatly impact my property and its value as well as the disruption caused during the building phase.

Sincerely,
Timothy Cox
2329 Houston Ave.

From: PC Public Comments <email@cityofclovis.com>
Sent: Thursday, August 26, 2021 3:59 PM
To: David Merchen <davidm@ci.clovis.ca.us>
Subject: [External] Planning Commission Public Comments

Planning Commission Meeting Date: 2021-08-26

Item Number: 1

Name: Franklin Spees

Email: fspees@gmail.com

Comment: I am the owner of the 3 acre property immediately to the east of the proposed housing tract (TM6367). I am in favor of the development but wanted to make sure the staff report and publicly available documentation clarified the following:

- 1) Interface with adjacent property to the east (proposed wall type/height, landscaping buffer, are they single or two story homes, and where will homes be sited specifically
- 2) Confirm that an accurate survey was performed and that all improvements including the adjoining fence will be consistent with the existing property line.
- 3) Will there be any other improvements or changes to the right of way on Nees beyond the frontage of the proposed tract?
- 4) What are all the requested deviations from the zone district.

Much of this will likely be addressed in the staff presentation but I have not had a chance to review in detail. Thank you for your consideration.

Thank you,

Franklin Spees
1157 N. McKelvy Ave.
Clovis, CA 93611
559-270-6776
Supporting Files (2 Max.):

Date: August 26, 2021
Time: 3:58 pm
Remote IP: 73.220.66.252



CITY of CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Community and Economic Development

DATE: September 20, 2021

SUBJECT: Consider Items Associated with the Sales Tax Participation Agreement between the City of Clovis and Anlin Industries, Inc.

a. Conduct Public Hearing and Accept the Economic Development Subsidy Report for the Sales Tax Participation Agreement with Anlin Industries, Inc.

b. Consider Approval - First Amendment to the Sales Tax Participation Agreement with Anlin Industries, Inc. and Authorize City Manager to execute the First Amendment

Staff: Andrew Haussler, Community and Economic Development Director

Recommendation: Approve

ATTACHMENTS:

1. Government Code Section 53083 Public Notice
2. Government Code Section 53083 Economic Development Subsidy Report for the Anlin Industries Sales Tax Participation Agreement
3. Anlin Industries Sales Tax Participation Agreement
4. Anlin Two-Year Extension Request
5. Proposed First Amendment to Anlin Industries Sales Tax Participation Agreement

CONFLICT OF INTEREST

None

RECOMMENDATION

1. Conduct a Public Hearing and consider any comments on the information contained in the Economic Development Subsidy Report prepared for the Sales Tax Participation Agreement with Anlin Industries, Inc. in accordance with Government Code Section 53083, and accept the Economic Development Subsidy Report.

2. Approve the First Amendment to the Anlin Industries Sales Tax Participation Agreement including a two-year extension to the term of the agreement.

EXECUTIVE SUMMARY

In September of 2017, City Council approved entering into a Sales Tax Participation Agreement under Government Code Section 53083 with Anlin Industries (Attachment 3). The terms of the agreement include the City of Clovis ("City") rebating back to Anlin 50% of the growth in sales tax beyond the 2016-17 fiscal year (\$524,602) up to \$500,000 over a ten-year period, whichever comes first, if Anlin purchases the adjacent Builders Concrete parcel and demolishes the structures on the site in an expansion effort.

Anlin completed the purchase and demolition of the adjacent parcel but it took two years longer than was planned due to unexpected environmental and remediation challenges on the site. Anlin has requested to extend the agreement by two years to accommodate this request (Attachment 4) and staff is in support of amending the agreement. The proposed amendment is included as Attachment 5.

Additionally, Government Code Section 53083 requires the City to prepare an economic development subsidy report within five years of providing an economic subsidy such as the Sales Tax Participation Agreement with Anlin. The report must contain certain information and be made available to the public, and a public hearing must be conducted to consider any comments on the information contained in the report. This agreement was approved four years ago and the required Economic Development Subsidy Report for the Anlin Industries Sales Tax Participation Agreement has been prepared and made available to the public and is included as Attachment 2. To date, Anlin has not produced enough sales tax to share in proceeds beyond the base year, but it is expected that a rebate will be achieved in the near future based on current sales tax projections.

BACKGROUND

In 1996, the City of Clovis and Clovis Community Development Agency ("CCDA") began discussions with Anlin to find a suitable location in order to keep Anlin in the Fresno/Clovis metropolitan area. Anlin, a window manufacturer, had considered several other locations in the Fresno/Clovis metropolitan area and outside the State of California. In 1997, the CCDA Board approved the sale of 6.34 acres of real property located at 1665 Tollhouse Road to Anlin Industries for \$1 (a \$350,000 value). In return, Anlin built an 85,000-square foot facility on the property with ancillary public improvements valued at \$4.5 million. As part of the original Agreement, the Agency also granted Anlin a Right of First Refusal for an additional 6.1-acre property (Phase 2) located adjacent to the original property for their future expansion. In February 2001, Anlin purchased the adjacent Phase 2 property from the Agency for \$290,000, and an additional 6 acres of adjacent property from a private party. Anlin worked with the City to develop plans for an expansion of its facility that included a 101,000 sq. ft. building, a 300 space parking lot for employees and delivery trucks, and decorative fencing for the perimeter and landscape. CCDA also provided assistance for \$350,000 in off-site improvements during the 2001 expansion.

Anlin has set up its point-of-sale to be its facility in Clovis. This is unique in that many manufacturers do not collect sales tax, rather they have the retailer or distributor collect the sales tax in a jurisdiction other than the factory. This has produced significant sales tax revenue to the City and as Anlin grows, so does the revenues. Over \$450,000 in sales tax was produced for the City's 2019-20 fiscal year. Anlin is also a major employer, adding over 130 employees since 2017, and is a major property tax contributor as well.

In 2017, Anlin was running out of space and projected that the factory will be out of production capacity in 2-3 years. Anlin reached out to staff at that time to explore expansion possibilities and after review of multiple options, Anlin determined the best option was to pursue purchasing an adjacent site or consider locations outside of California. To assist in this effort, the City and Anlin entered into the Sales Tax Participation Agreement in September 2017 whereby Anlin could receive a rebate of a portion of the City's share of the growth in Anlin's sales taxes based on certain conditions. The full agreement is included as Attachment 3, and the primary terms are as follows:

Original Sales Tax Participation Agreement Terms

City will rebate back to Anlin 50% of the growth in sales tax beyond the 2016-17 fiscal year (\$524,602) up to \$500,000 over a ten year period, whichever comes first, if Anlin purchases the adjacent Builders Concrete parcel and demolishes the structures on the site in an expansion effort.

Anlin, with assistance from the Sales Tax Participation Agreement, purchased the adjacent site that was owned and rarely used by Builders Concrete. Anlin demolished the structures on the site and is readying expansion plans for the factory and is utilizing the site for its operations. Due to the delay in acquiring the adjacent property and conducting demolition due to environmental and remediation challenges, Anlin has asked (Attachment 4) for a two-year extension of the term of the agreement. The overall cap on the amount shared would not change. The proposed terms are below and the proposed amendment is included as Attachment 5.

Proposed Sales Tax Participation Agreement Terms

City will rebate back to Anlin 50% of the growth in sales tax beyond the 2016-17 fiscal year (\$524,602) up to \$500,000 over a ~~ten~~ twelve year period, whichever comes first, if Anlin purchases the adjacent Builders Concrete parcel and demolishes the structures on the site in an expansion effort.

Additionally, under Government Code Section 53083, the City must issue an Economic Development Subsidy Report for the Sales Tax Participation Agreement and conduct a public hearing on the report within five years after approving the subsidy. This agreement was approved four years ago and an Economic Development Subsidy Report for the Anlin Industries Sales Tax Participation Agreement is included as Attachment 2 in order to comply with state law. To date, Anlin has not produced enough sales tax to share in proceeds beyond the base year, but it is expected a rebate will be achieved in the near future based on current sales tax projections.

FISCAL IMPACT

Based on sales revenue projections provided by Anlin, it is expected that the \$500,000 cap will be reached in the remaining years if the First Amendment to the Agreement is approved. Based on projections, Anlin sales tax revenues will continue increasing and will result in a significant sales tax revenue increase for the City over the long-term.

REASON FOR RECOMMENDATION

Amending the Agreement encourages and enables Anlin to continue growing in Clovis. This will allow revenues to grow over the long term and does not increase the cap on the sales tax the City will be sharing with Anlin. The City will only share growth in sales tax revenues, so if Anlin's sales tax revenue does not grow, the City will not lose any current revenues. This agreement supports over 400 jobs and will help create more jobs into the future. The proposed First Amendment to Sales Tax Participation Agreement leverages past investments made by the City in this unique, tax producing manufacturer.

ACTIONS FOLLOWING APPROVAL

The City Manager will execute the proposed amendment.

Prepared by: Andrew Haussler, Community and Economic Development Director

Reviewed by: City Manager 

Notice of Public Hearing on Economic Development Subsidy Report

NOTICE IS HEREBY GIVEN that the City of Clovis will hold a public hearing in the City of Clovis Council Chambers, 1033 Fifth Street on Monday September 20, 2021, at 6:00 p.m. to consider the following items:

1. Review and Accept an Economic Development Subsidy Report for the 2017 Sales Tax Participation Agreement with Anlin Industries, Inc.
2. Consider a First Amendment to the 2017 Sales Tax Participation Agreement with Anlin Industries, Inc. including a two year extension of the agreement term.

The public hearing is required by Government Code Section 53083, and the Economic Development Subsidy Report is available to the public by contacting Andrew Haussler, Community & Economic Development Director, 1033 Fifth Street, Clovis, CA 93612 or by telephone: (559) 324-2095. The Report will be available on the City's website beginning on Friday, September 17, 2021, as part of the September 20, 2021, City Council Meeting Agenda Packet.

All interested persons are invited to attend this hearing and provide written or oral comments on the items listed above. Any written comments or materials should be submitted to the City Clerk at least twenty-four (24) hours prior to the hearing, City of Clovis, 1033 Fifth Street, Clovis, CA 93611.

**Government Code 53083
Economic Development Subsidy Status Report**

NOTICE IS HEREBY GIVEN that the City of Clovis will hold a public hearing in the City of Clovis Council Chambers, 1033 Fifth Street on Monday, September 20, 2021 at 6:00 p.m. to consider the following item:

Agreement: Sales Tax Participation Agreement with Anlin Industries
 Project Location: 1665 Tollhouse Rd., Clovis, CA 93611
 Participant: Anlin Industries, Inc. John Maloney, CEO

Background:

In September of 2017, the City of Clovis and Anlin Industries, Inc. entered into an agreement that encourages Anlin Industries, Inc. to retain its headquarters and manufacturing facility within Clovis. The Agreement provided financial incentives in the form of an economic development subsidy to Anlin Industries. Pursuant to Section 53083 of the California Government Code (AB 562), the following information will be posted on the City's Website.

- 1) The name and address of all corporations, or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

Anlin Industries, Inc., a California corporation, 1665 Tollhouse Rd., Clovis, CA 93611

- 2) The start and end dates and schedule, if applicable, for the economic development subsidy.

Commencing approximately October 1, 2017 for ten years, the current agreement is for ten years.

- 3) A description of the economic development subsidy, including the estimated total amount of expenditure of public funds, or of revenue lost to, the local agency, as a result of the economic development subsidy.

City will rebate back to Anlin 50% of the growth in sales tax generated by Anlin Industries in the City of Clovis beyond the 2016-17 fiscal year (\$524,602) up to \$500,000 over a twelve year period, whichever comes first. To receive the subsidy, Anlin must purchase the adjacent parcel and demolish the structures on the site in an expansion effort.

Anlin has completed the purchasing of the adjacent parcel and the demolition of the structures but has not exceeded the 2016-17 base year in revenue to generate sales tax sharing through the 2019-20 fiscal year. However, it is expected that revenues will rise in the 2020-21 fiscal year to trigger a sales tax sharing between the participants.

- 4) A statement of the public purposes for the economic development subsidy.

To continue to expand and enhance economic opportunities for businesses in the City, continue to expand the City's employment base, and continue to generate additional sales tax that the City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs.

- 5) Projected tax revenue to the local agency as a result of the economic development subsidy.

The City of Clovis will receive approximately \$525,000 per year in sales tax revenue by keeping Anlin in the City of Clovis. Additionally, the City will receive 50% of any sales tax revenue generated by Anlin beyond the 2016-17 base year. After the maximum \$500,000 reimbursement provided or ten years, whichever is first, the City will receive 100% of the sales tax generated by Anlin Industries.

- 6) Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time and temporary positions.

The City and Anlin Industries have estimated that the Agreement preserves 300 full time jobs in the City and it is estimated 100 full-time jobs would be created. Since the agreement has been entered into, the participant has added over 130 jobs.

All interested persons are invited to attend this hearing and express opinions upon the items listed above. The Staff Report is available for review at City of Clovis City Hall starting September 20, 2021.

Any written comments or materials should be submitted to the City Clerk at least twenty-four (24) hours prior to the hearing, City of Clovis, 1033 Fifth Street, Clovis, CA 93611.

Further information on these items may be obtained at the City of Clovis, Attn: Andrew Haussler, Community & Economic Development Director, 1033 Fifth Street, Clovis, CA 93612 or by telephone: (559) 324-2095.

POSTED AT CITY HALL AND ON CITY WEBSITE: September 15, 2021

LEGAL NOTICE PUBLISHED IN THE FRESNO BUSINESS JOURNAL: September 15, 2021

SALES TAX PARTICIPATION AGREEMENT

This **SALES TAX PARTICIPATION AGREEMENT** ("**Agreement**") is entered into and is effective as of September 7, 2017, by and between the CITY OF CLOVIS, a municipal corporation (the "**City**"), and ANLIN INDUSTRIES INC., a California Corporation ("**Participant**").

RECITALS

A. Participant is the current owner of certain real property and improvements located in the City of Clovis, State of California, commonly known as "ANLIN SITE" (referred to herein as the "**Site**"). The Site is shown on the Site Plan attached hereto as **Attachment "A"** and legally described on **Attachment "B"** attached hereto.

B. Anlin has developed the Site with approximately 186,000 square feet of building space and operated it as a window manufacturing facility since 1996. Anlin has added over 300 jobs to the Clovis economy. The Site is an important component of manufacturing activity within the City of Clovis. Anlin collects sales tax based on its Clovis manufacturing location as the point-of-sale. Anlin has produced significant sales tax revenues to the City with the fiscal year 2016-17 revenues totaling over \$500,000.

C. Anlin desires to expand its facility and production capacity. Anlin has determined two feasible options for expansion; the first is to purchase the adjacent Builders Concrete parcel noted on the Attachment A and demolish the existing structures, the second is to move outside of California.

D. This Agreement will aid in the retention of Anlin and expansion of the Site, and the fulfillment generally of this Agreement, is in the best economic interest of the City, and will help maintain and promote the health, safety, morals and welfare of the City's residents.

E. By retaining existing manufacturing jobs, generating additional sales tax and enhancing the long-term economic viability of the Site as a point-of-sale manufacturing location, this Agreement will further effectuate the City of Clovis Economic Development Strategy.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Participant, and the City agree as follows.

AGREEMENT

1. DEFINITIONS

1.1 **Capitalized Terms.** All capitalized terms used herein, including, without limitation, those used in the Recitals above, are defined where first used in this Agreement and/or as set forth in this Article 1. Capitalized terms used in an Attachment attached hereto and not defined therein shall have the meanings set forth in this Article 1.

"**Agreement**" means this Participation Agreement.

"**Base Year**" shall mean the 2016-2017 Fiscal Year commencing July 1, 2016, and ending June 30, 2017.

"**Business Days**" means any Monday, Tuesday, Wednesday, Thursday or Friday on which the City Hall of the City is open for public business.

"**City**" has the meaning set forth in the opening paragraph of this Agreement.

"**City Manager**" means the City Manager of the City or designee thereof.

"**City Tax Sharing**" has the meaning set forth in Section 4.1(b).

"**Claim Documents**" has the meaning set forth in Section 4.2(b).

"**Claim for City Tax Sharing**" has the meaning set forth in Section 4.2(b) and in Attachment "C" attached hereto.

"**Conditions to City's Obligations**" has same meaning as Conditions Precedent to Payment.

"**Conditions Precedent to Payment**" means: (a) Participant acquisition of Builders Concrete parcel and demolition of existing structures on the parcel; (b) the absence of uncured Breaches or Events of Defaults by Participant under this Agreement (including without limitation the payment in full of property taxes and assessments); and (c) the delivery to the City Manager of a "Participant Certificate" pertaining to the period for which a "Claim for City Tax Sharing" is being presented and certifying as to the accuracy of matters therein set forth as of the date of such Certificate.

"**Effective Date**" means the date first set forth above in the opening paragraph of this Agreement.

"**Encumbrance**" has the meaning set forth in Section 5.1.1.

"**Event of Default by Participant**" has the meaning set forth in Section 7.1.

"**Event of Default by City**" has the meaning set forth in Section 7.2.

"**Governmental Requirements**" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the state, the county, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, Participant or the Site.

"**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (a) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely

hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (b) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (e) petroleum, (f) asbestos, (g) polychlorinated biphenyls, (h) listed under Article 9 or defined as "hazardous"; or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (i) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (k) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 9601), (l) Methyl-tert Butyl Ether, or (m) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment.

"Maintenance Standards" has the meaning set forth in Section 3.6.

"Net Sales Taxes" shall mean, for a given year, that portion of the Sales Taxes, if any, levied upon taxable sales and uses originating from the Site, which Sales Taxes, when collected, are allocated and paid to, and actually received by, the City. Net Sales Taxes shall not include Penalty Assessments or any Sales Taxes collected for or allocated by law to the State of California, the County of Fresno, a district or any other entity and any expenses related to collecting Sales Tax revenues originating from the Site.

"Net Sales Tax Increment" shall mean, for a given year, one hundred percent (100%) of the positive difference between the Net Sales Taxes less the Net Sales Taxes received by the City for the Base Year.

"Obligations" means the duties, obligations, responsibilities and other burdens of this Agreement.

"Official Records" has the meaning set forth in Recital A.

"Participant" has the meaning set forth in the first paragraph of this Agreement.

"Participant Certificate" means a certificate to include certification that: (a) there are no uncured Participant defaults under this Agreement; (b) all current property taxes and assessments have been paid and no protests have been made or are pending (except as may be expressly permitted hereunder); (c) all applicable conditions precedent have been satisfied (namely, the Conditions to City's Obligations provided for pursuant to Section 4.2; and as to payments by the City, the Conditions Precedent to Payment); and (d) Participant has not received

any notice from any governmental agency or authority alleging that the Site is currently in violation of any law, ordinance, rule, regulation, or requirement applicable to its use and operation.

"**Party**" means Participant or the City and their respective nominees, assignees and successors-in-interest as described in Article 2.

"**Payment Termination Date**" means the date of the termination of this Agreement.

"**Permitted Transfers**" has the meaning set forth in Section 5.1.2.

"**Person**" means any natural person, corporation, firm, partnership, association, joint venture, governmental or political subdivision or agency or any similar entity.

"**Project**" has the meaning set forth in Section 3.1.

"**Record Owner**" means: (a) Participant or, (b) any person believed by the City Manager in good faith to be an assignee owner of record of the Site. Payment to any person satisfying (a) or (b) shall be deemed to discharge the corresponding obligation of the City to make payments pursuant to this Agreement.

"**Recorded Covenants**" means those covenants affecting the Site as imposed by in the Official Records of the County Recorder of the County of Fresno.

"**Sales Tax**" means all taxes levied under the authority of the California Sales and Use Tax Law, Part 1 of Division 2 of the California Revenue and Taxation Code commencing at Section 6001, or any successor law thereto or tax in lieu thereof.

"**Site**" has the meaning set forth in Recital A.

"**Transfer**" means to sell, assign, convey, lease, sublease, mortgage, hypothecate or otherwise alienate.

1.2 **Singular and Plural Terms.** Any defined term used in the plural in this Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 **References and Other Terms.** References herein to Articles, Sections and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The terms "including" and "include" mean "including (include) without limitation."

2. PARTIES

2.1 **The City.** The City is the City of Clovis, a municipal corporation. The principal offices of the City are located at 1033 Fifth Street, Clovis, California 93612.

2.2 **Participant.** Participant is ANLIN INDUSTRIES, INC. The principal offices of Participant are located at 1665 Tollhouse Road, Clovis, CA 93611. Wherever the term "Participant" is used herein, such term shall include any permitted nominee, assignee or successor-in-interest as herein provided.

3. THE SITE

3.1 **The Site.** Site includes the existing window manufacturing facility along with the adjacent Builders Concrete parcel. Participant will acquire the Builders Concrete parcel and demolish existing structures on the parcel to expand the Site (the "**Project**"). Participant shall be responsible for all costs related to the Project.

3.2 **City and Other Governmental Agency Permits.** Before any construction or development of any buildings, structures, improvements, or other work of improvement upon the Site, any and all building and similar ministerial construction permits which may be required by the City or any other governmental entity with jurisdiction over such construction, development or work (the "**Building Permits**") shall be obtained without cost to the City.

3.3 **Local, State and Federal Law.** Participant shall carry out, or seek to cause to be carried out, the demolition, construction and operation of any improvements in conformity with all applicable laws and Governmental Requirements, including all applicable federal and state labor standards.

3.4 **Taxes, Assessments, Encumbrances and Liens.**

a) Participant shall pay, or cause to be paid, when due all real estate taxes and assessments assessed and levied on the Site or any portion thereof.

b) Nothing contained in this Agreement shall restrict, limit or prohibit Participant from placing or allowing to be placed on the Site any mortgage, trust deed, encumbrance or lien.

3.5 **Use of the Site; Condition of the Site.**

a) Participant covenants that the Site shall be used solely for the manufacturing purposes and uses set forth in this Agreement and this undertaking shall be binding upon its successors and assigns.

b) Participant shall be solely responsible for the suitability of the Site for the uses proposed under this Agreement.

3.6 **Maintenance Covenants.** Participant shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with all applicable provisions of the City of Clovis Municipal Code. Participant shall maintain in accordance with the Maintenance Standards, as hereinafter defined, the improvements and landscaping on the Site. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements

identifying the Site and any and all other improvements on the Site over which Participant exercises management and control. To accomplish the maintenance, Participant shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Participant and its maintenance staff, contractors or subcontractors shall perform such activities such that all improvements to the Site shall be maintained in conformance and in compliance with reasonable manufacturing maintenance standards for similar manufacturing facilities in California (the "**Maintenance Standards**").

4. CITY TAX SHARING FOR PROJECT

4.1 Financing Plan.

a) This Agreement constitutes, in part, a financing plan in connection with the Project. Accordingly, this Agreement constitutes a contract, obligation and evidence of indebtedness within the meaning of Section 53511 of the California Government Code.

b) In order to provide Participant with the tax sharing that Participant and the City have determined necessary to make the Project economically feasible, and, subject to the prior satisfaction of the Conditions Precedent to Payment, the City shall share sales tax growth with Participant (the "City Tax Sharing") of fifty percent (50%) of annual Net Sales Tax Increment from the Site only, up to \$500,000 or ten (10) years (which is after the completion of the City's 2026-27 fiscal year), whichever occurs first.

4.2 **Conditions to City's Obligations.** The City's obligation to share Sales Tax revenue shall be subject to satisfaction of the following conditions (the "Conditions to City's Obligations"):

a) Participant shall acquire the adjacent Builders Concrete parcel and demolish existing structures to expand the manufacturing and related uses on the Site in a manner to increase production capacity and increase sales tax revenue.

b) For each annual Claim for City Tax Sharing made by Participant hereunder, Participant shall deliver to the City a Participant Certificate and proof of acquisition of the Builders Concrete parcel and demolition of existing structures.

c) Nothing contained in this Section 4.2 is intended to prevent Participant from submitting Claims for City Assistance after curing any Events of Default hereunder.

4.3 Amount of Payment.

a) Separate Claims. Following the end of each Fiscal Year and City receipt of quarterly Sales Tax data, payment from the State Board of Equalization and written satisfaction of the Conditions Precedent to Payment, Participant may make an annual Claim for City Tax Sharing by submitting Claim Documents.

b) **Percentage of Net Sales Tax Increment.** The percentage of the Net Sales Tax Increment to be paid annually to Participant shall be fifty percent (50%) of the Net Sales Tax Increment up to maximum of \$500,000 or ten (10) years (which is after the completion of the City's 2026-27 fiscal year), whichever occurs first.

4.4 **Time of Payment.** Provided that the Conditions Precedent to Payment have been satisfied, the City shall make each payment of City Tax Sharing within thirty (30) calendar days after receipt of all Claim Documents for the subject Claim.

4.5 **Form of Payment.** The City shall make each check for City Tax Sharing payable to the Record Owner or the Record Owner's designee, and each such check shall be mailed to the address designated for payment in the Claim for City Assistance submitted by Participant.

4.6 **Modification of Claims and/or Payment Procedure.** The City Manager and the Record Owner may, at any time, agree in writing to modify the claims and payment procedures described in Sections 4.2, 4.3, 4.4 and 4.5, but no modification of the Conditions Precedent to Payment or Net Sales Tax Increment amounts provided in Section 4.3 will be effective unless approved by the City Council.

4.6.1 **Limitation Upon Time to Cure.** In the event a payment is not made by the City because there is an uncured default by Participant, then, upon satisfaction of the applicable Conditions Precedent to Payment, such payment shall be made upon the completion of the cure up to the first anniversary of the Payment Termination Date (after which no payments whatever shall be made by the City).

5. TRANSFERS AND ASSIGNMENT

5.1 Transfers of Interest in Site or Agreement.

5.1.1 **Prohibition.** The qualifications and identity of Participant is of particular concern to the City. It is because of those unique qualifications and identity that the City has entered into this Agreement with Participant. For the period commencing upon the Effective Date and terminating upon the Payment Termination Date, (a) no voluntary or involuntary successor in interest of Participant shall acquire any rights or powers under this Agreement, except in connection with a "Permitted Transfer" of the Site as described in Section 5.1.2 below, and (b) except for Permitted Transfers, Participant shall not encumber all or any portion of the Site or the improvements thereon by a deed of trust or other similar security instrument (an "**Encumbrance**"), or make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing (other than a refinancing by an "institutional lender", as provided in Section 5.1.2, below) or lease of the whole or any part of the Site or the improvements thereon (collectively, a "**Transfer**"), without the prior written approval of the City. Any Encumbrance or Transfer without the prior written approval of the City will entitle the parties to terminate this Agreement.

Notwithstanding the foregoing portion of this Section 5.1.1, the City shall exercise its reasonable judgment concerning a proposed transfer of the Site in considering any proposed transferee that has experience or has contracted for another entity experienced in the development and ownership of manufacturing facilities comparable to the Site.

This Section 5.1.1, as well as Sections and 5.1.2, shall cease to be of effect upon the Payment Termination Date.

5.1.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of a Encumbrance or Transfer shall not be required in connection with any of the following (collectively, "Permitted Transfers"):

a) Any Transfers to an entity or entities in which Participant or an affiliate of Participant retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

b) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction on the Site.

c) The granting of an Encumbrance in connection with any financing or refinancing of the Site, or any portion thereof, by any of the following, whether acting in its own interest and capacity or in a fiduciary capacity: a bank, insurance company, trust company, governmental agency, real estate investment trust, an employees' welfare, benefit, pension or retirement fund or system, an investment banking or a merchant banking or brokerage firm or in connection with securitized financing.

d) The sale of the stock and/or assets of Participant or Participant's parent corporation, or the Transfer of the Site to any corporation, limited liability company or other entity into or with which Participant is merged or consolidated or to which all or substantially all of Participant's assets are transferred, provided that either (i) Participant retains management and control of the operation of the Site or (ii) the resulting entity responsible for the management and control of the operation of the Site has prior experience in pursuing and completing the Project Improvements.

e) The leasing of all or any part of the Site for comparable use and occupancy by tenants of Participant.

In the event of a Permitted Transfer under any of subparagraphs (a) through (d), inclusive, above, Participant nevertheless agrees that at least twenty (20) days prior to such Permitted Transfer it shall give written notice to City of such Permitted Transfer, and, in the case of Transfers pursuant to subparagraphs 5.1.2(a) and 5.1.2(d) above, or to a transferee (if any) as may be otherwise approved by the City, Participant shall furnish to the City, promptly following the Transfer, evidence reasonably satisfactory to City that the transferee has assumed Participant's obligations under this Agreement.

5.2 Covenants Run with the Land: Binding Effect. Subject to the terms, conditions and exceptions set forth in this Article 5 and elsewhere in this Agreement, the Parties will record a Summary of Agreement Terms which shall run with the land, and shall be binding upon and inure to the benefit of the parties' respective successors and assigns (including, without limitation, all transferees).

6. TERM OF AGREEMENT

6.1 **Effective Date.** This Agreement shall be effective among Participant and the City upon the Effective Date.

6.2 **Termination Date.** Option to Extend the Agreement. This Agreement shall expire after ten (10) years.

7. DEFAULTS AND REMEDIES

7.1 **Event of Default by Participant.** The failure by Participant to perform any obligation under this Agreement, if the failure continues for a period of thirty (30) days after the City demands in writing that Participant cure the failure, shall constitute a breach of this Agreement by Participant ("Breach") and, after the expiration of any applicable cure period, shall constitute an "Event of Default by Participant": If, however, by its nature the failure cannot reasonably be cured within thirty (30) days Participant may have such longer period of time as is reasonably necessary to cure the failure so long as Participant shall commence said cure within said thirty (30) day period and thereafter diligently prosecute said cure to completion.

7.2 **Event of Default by City.** Any of the following events or occurrences shall constitute a breach of this Agreement by the City and, after the expiration of any applicable cure period, shall constitute an "Event of Default by City":

a) The failure by the City to pay any amount in full when it is due under this Agreement, if the failure has continued for a period of ten (10) days after Participant demands in writing that the City cure the failure.

b) The failure by the City to perform any obligation under this Agreement, if the failure has continued for a period of thirty (30) days after Participant demands in writing that the City cure the failure. If, however, by its nature the failure cannot reasonably be cured within thirty (30) days the City may have such longer period of time as is reasonably necessary to cure the failure so long as the City shall commence said cure within said thirty (30) day period and thereafter diligently prosecute said cure to completion.

7.3 **Legal and Equitable Relief.** Each Party shall have the right to prosecute any proceedings at law or in equity against the other, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, in order to prevent the violating or defaulting Party or any such Person from violating or attempting to violate or defaulting upon the provisions of this Agreement and to recover damages for any such violation or default. The remedies available under this Section 7.3 shall include, by way of illustration but not limitation, ex-parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement. Neither the City nor Participant shall be liable for consequential, special or punitive damages pursuant to this Agreement.

7.4 **Termination by City.** This Agreement may be terminated by the City in the event of the occurrence of an Event of Default by Participant which has not been cured by the applicable cure period.

7.5 No Waiver: Remedies Cumulative. No waiver by either Party of any default under this Agreement shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement. All of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

8. INDEMNITY AND DEFENSE

8.1 Indemnification. Participant shall be solely responsible for design, construction, operation and maintenance of the Site. Participant shall protect, defend, indemnify, and hold the City harmless from and against all claims, loss, damage, injury, actions, costs, expenses (including but not limited to attorneys' fees and court costs), causes of action, and liability in connection with the design, construction, operation and maintenance of the Site.

In addition, Participant shall indemnify, defend and hold the City and its officers, employees, agents, representatives and volunteers harmless from and against any claim, action, suit, proceeding, damage, liability, deficiency, fine, penalty, or punitive damage (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. Participant hereby represents that it is not aware of and has not received any notice or communication from any government agency having jurisdiction over the Site notifying the City of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Site, or any portion thereof.

8.2 Non-liability of Employees and Agency Officials. It is understood and agreed that no member, official or employee of the City shall be personally liable to Participant, and no employee of Participant shall be personally liable to the City, or any successor in interest in connection with this Agreement or in the event of any default or breach of this Agreement by the City or Participant or for any amount which may become due to Participant or any Obligations under the terms of this Agreement.

8.3 Defense of Claims. The City shall give prompt notice to Participant with respect to any suit or claim initiated or threatened against the City (and in no event later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving notification of the filing of such suit or the assertion of such claim) which the City has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to Participant, then Participant's liability hereunder shall not terminate or be affected as to the matter for which such notice is not given, unless such failure to notify substantially prejudices

Participant and then only to the extent of such prejudice. Participant shall, at its option but subject to the reasonable consent and approval of the City, be entitled to control the defense, compromise or settlement of any such matter through counsel of Participant's own choice; provided, however, that in all cases the City shall be entitled to participate in such defense, compromise or settlement at its own expense. If Participant shall fail, however, within a reasonable time following notice from the City alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the City shall have the right promptly to hire counsel at Participant's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the City upon receipt by Participant of an invoice therefor.

9. MISCELLANEOUS PROVISIONS

9.1 **Incorporation of Attachments and Recitals.** All recitals, exhibits, and attachments to this Agreement are incorporated herein and made a part hereof by reference as if set forth in full.

9.2 **Notices.** Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received upon personal delivery or, if sent by mail, three (3) Business Days following its deposit in the United States mail, postage prepaid, certified mail, return receipt requested, or, if sent by Federal Express or other reliable overnight air courier, on the next business day following dispatch, and in any of such events addressed to the City or Participant, as the case may be, at the principal offices of the City as set forth in Article 2 above (or such other address as a Party may specify by notice given pursuant to this Section 9.2). As to Participant all notices regarding Breach shall be sent to the address set forth in Article 2 and all other notices shall be sent to the asset manager for the Project as designated by notice from Participant to the City.

9.3 **Time of Essence.** Time is of the essence in the performance of all the terms and conditions of this Agreement.

9.4 **Conflicts of Interest.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

9.5 **Inspection of Books and Records.**

a) The City has the right, upon not less than seventy-two (72) hours' notice, at **all** reasonable times, to inspect the books and records of Participant pertaining to the Site as pertinent to the purposes of this Agreement. In addition, Participant **shall** provide **to** the City such information as may from time to time become available to Participant concerning the sales tax generated at the Site.

b) Participant also has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of the City pertaining to the Site as pertinent to the purposes of this Agreement.

9.6 **Headings.** Any titles of the several parts and sections of this Agreement and inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. "Paragraph" and "Section" may be used interchangeably.

9.7 **Successors and Assigns.** Subject to Article 5 herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Participant.

9.8 **Counterparts/Formal Amendment Required.** This Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Any modification or waiver of any provision of this Agreement or any amendment thereto must be in writing and signed by a Person having authority to do so, on behalf of both the City and Participant.

9.9 **Authority and Enforceability.** Each Party hereby represents and warrants to the other that this Agreement and all documents delivered by such Party to the other pursuant hereto, have been or will be duly authorized by all necessary action; do not require the consent of any other parties; and will not conflict with, result in any violation of, or constitute a default under, any provision of any agreement or other instrument binding upon or applicable to such Party.

9.10 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any legal action concerning this Agreement will be Fresno County, California. Both Parties irrevocably consent to the personal jurisdiction of the Fresno County Superior Court.

9.11 **Approvals and Consents.** Unless otherwise herein provided, whenever approval, consent or satisfaction is required of a party pursuant to this Agreement, it shall not be unreasonably withheld, conditioned or delayed; provided that the foregoing shall not apply to amendments or interpretations as to material provisions of this Agreement (including without limitation the Attachments hereto). The reasons for disapproval of consent shall be stated in reasonable detail in writing. Approval by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. The requirements for approvals under this Agreement shall extend to and bind the partners, officers, directors, shareholders, trustees, beneficiaries, agents, elective or appointive boards, commissions, employees and other authorized representatives of each party, and each such Person shall make or enter into, or take any action in connection with, any approval in accordance with these requirements.

9.12 **No Gift or Dedication.** Except as otherwise specified in this Agreement, this Agreement shall not be deemed to be a gift or dedication of any portion of the Site to the general public, for the general public, or for any public use or purpose whatsoever. Participant shall have the right to prevent or prohibit the use of any portion of the Site by any persons for any purpose inconsistent with the operation of a manufacturing facility.

9.13 **Severability.** Except as otherwise specifically provided for in this Agreement, invalidation of any provision of this Agreement, or of its application to any person, by judgment or court order shall not affect any other provision of this Agreement or its application to any other person or circumstances, and the remaining portion of this Agreement shall continue in full force

and effect, unless enforcement of this Agreement as invalidated would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.14 **Entire Agreement.** This Agreement contains all the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of the Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or other Person and no court or other body shall consider those drafts in interpreting this Agreement.

Where this Agreement includes an attachment and the form for such attachments is not complete, the form of such attachment shall be as reasonably determined by the City Manager.

This Agreement shall control over any prior agreements related to the Site that present any inconsistencies.

9.15 **No Party Drafter: Captions.** Although certain provisions of this Agreement were drawn by the City and certain provisions were drawn by Participant, the provisions of this Agreement are the result of the combined efforts of the parties, and this Agreement shall be construed as a whole according to their common meaning and not strictly for or against either party in order to achieve the objectives and purposes of the parties.

9.16 **Represented by Counsel.** Each party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of the party's choice in connection with the rights and remedies of and waivers by it contained in this Agreement and after such advice and consultation has presently and actually intended, with full knowledge of the party's rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent specified in this Agreement, and to rely solely on the remedies provided for in this Agreement with respect to any breach of this Agreement by the other party, or any other right that such party seeks to exercise.

Participant is a sophisticated party with substantial experience in manufacturing, the operation of such facilities, and agreements with public entities. Participant has received no advice or representations from the City concerning any implications of this Agreement relating to income tax, and has relied upon advice by counsel of its choosing regarding these and all other matters.

9.17 **Waiver of Jury Trial.** Participant and the City hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other or their successors in respect of any matter arising in connection with this Agreement, the relationship of Participant and the City, and/or any claim for injury or damage or any emergency or statutory remedy.

9.18 **No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed on its behalf, and Participant, has signed or caused this Agreement to be signed by a duly authorized person, all as of the day first above written.

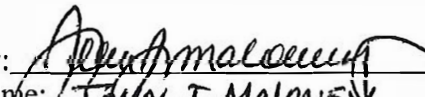
CITY:
CITY OF CLOVIS, a municipal corporation

By: 
Name: LUKE SERPA
Title: City Manager

ATTEST:

By: 
Title: City Clerk

OWNER:
ANLIN INDUSTRIES, INC., a California Corporation

By: 
Name: JOHN J. MALONEY
Title: PRESIDENT / CEO

J:\wdocs\00604\041\agt\00533143.DOCX

ATTACHMENT A

SITE PLAN

**(SITE PLAN TO BE ATTACHED SHOULD INCLUDE THE EXISTING ANLIN
FACILITY AND THE ADJACENT BUILDERS CONCRETE PORTION
HIGHLIGHTED)**

Attachment A
(Page 1 of 1)



CUSD's Campus Club

Los Altos Ave

Los Altos Ave

N Fowler Ave

White Consultation

Anlin Windows & Doors

Ewing Irrigation & Landscape Supply
Landscaping supply store

Stanford Ave

o Ave

Menlo Ave

Gloss Technique | Ceramic Coating |...

Stanford Ave

J M & H Automotive

Stanford Ave

My Gym
Temporarily closed

N & N Boats

Clovis Stone
Masonry supply store

Tollhouse Rd

Tollhouse Rd

Tollhouse Rd

N Fowler Ave

Tollhouse Crossing

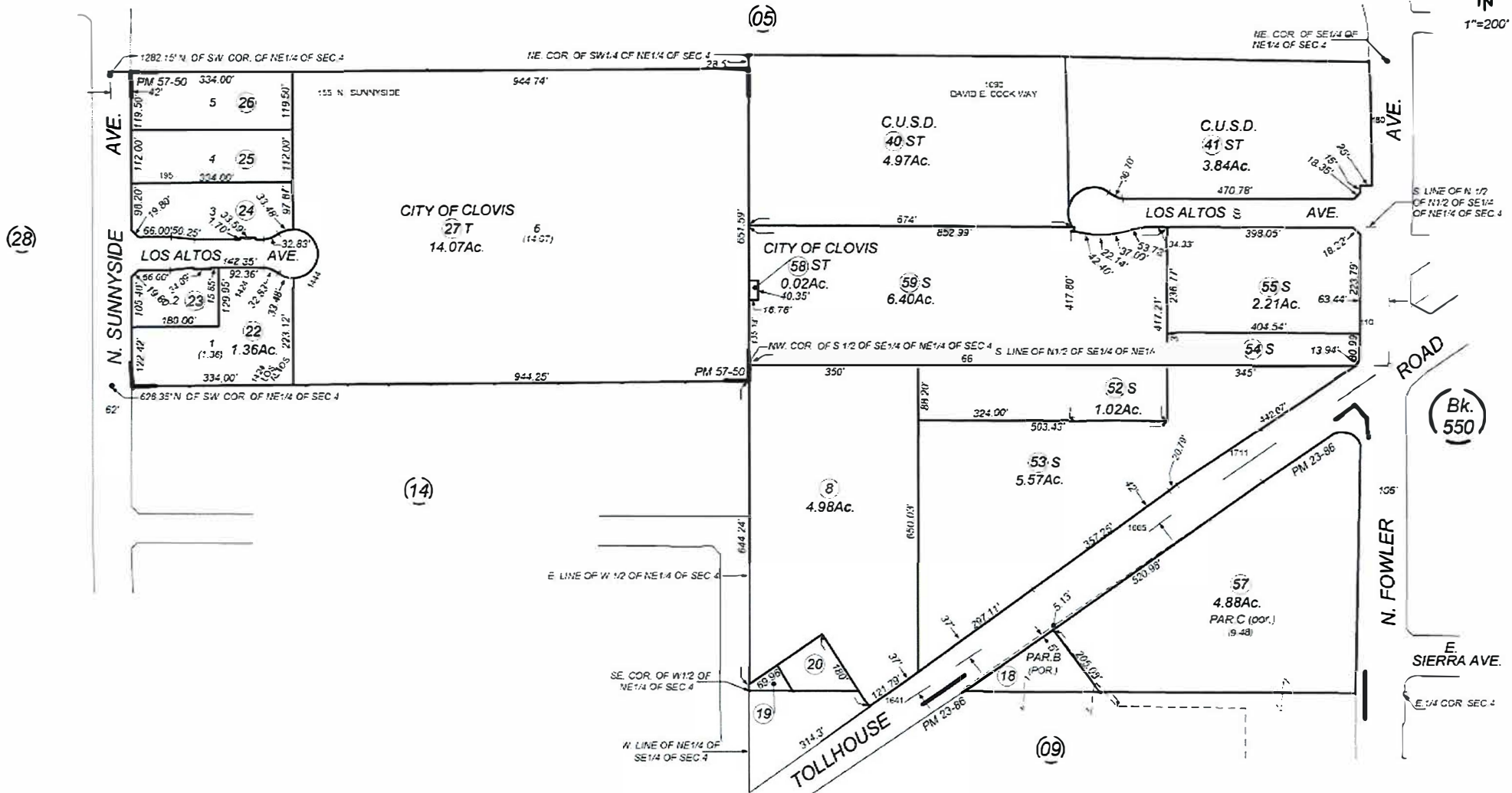
Fowl

ATTACHMENT B
LEGAL DESCRIPTION OF THE SITE

-NOTE-
 This map is for Assessment purposes only.
 It is not to be construed as portraying legal
 ownership or divisions of land for purposes
 of zoning or subdivision law.

AGENDA ITEM NO. 14.

1"=200'



Parcel Map No. 121 - Bk.23, Pg.86
 Parcel Map No. 94-08 - Bk.57, Pgs.50 & 51
 Record of Survey - Bk.41, Pgs.7 & 8 (Centerline of Tollhouse Rd.)

Assessor's Map Bk.491 - Pg.08
 County of Fresno, Calif.

Note - Assessor's Block Numbers Shown in Ellipses
 Assessor's Parcel Numbers Shown in Circles

4/24/2018

ATTACHMENT C
CLAIM FOR CITY TAX SHARING

City Manager
The City of Clovis
1033 Fifth Street
Clovis, California 93612

Re: Sales Tax Participation Agreement By and Between the City of Clovis and Anlin Industries, Inc. dated as of _____, 2017 (the "Agreement")

Dear Sir or Madam:

Pursuant to Section 4.2(b) of the Agreement, the undersigned hereby makes the following Claim for City Tax Sharing (capitalized terms used but not defined herein shall have their respective meanings as set forth in the Agreement):

Fiscal Year: This Claim for City Tax Sharing is made in connection with the Net Sales Tax Increment for the following Year:

Year: _____

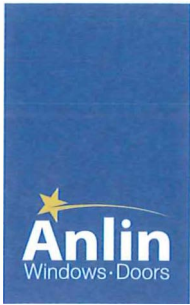
Amount of Claim. This Claim for City Tax Sharing is for the following amount, which was calculated using the percentage of the Net Sales Tax Increment due Participant as a cause of the total Site: **(TO BE INSERTED BY CITY AT TIME OF CLAIM BASED ON NET SALES TAX INCREMENT AND PERCENTAGE OF REIMBURSEMENT)**

Participant hereby represents that it has satisfied all Conditions Precedent to Payment pursuant to the Agreement, and all such Conditions Precedent to Payment continue to be satisfied as of the date of this Claim. Participant further warrants and represents that it is in full compliance with all terms and provisions of the Agreement.

Anlin Industries, Inc., a California Corporation

By: _____
Its: _____

[This Claim must be signed by a duly authorized officer of the entity that is the owner of the Site.]



THE STAR OF ENERGY SAVINGS

September 10, 2021

City of Clovis City Council

Andy Haussler
Community & Economic Development Director
1033 Fifth Street
Clovis, CA

RE: sales tax sharing agreement

Anlin is requesting an extension of the agreement by two years. The reasoning for the request is based on the timing of the acquisition of the Builders property. It took two years of extensive environmental testing of the site and negotiating with the existing owners of the property to finally close escrow April 2, 2019. Part of the requirements of the agreement with the City of Clovis was the acquisition of the Builders property. Therefore, the clock started running on the 10-year agreement before we acquired the property. Since the site for the sales tax sharing agreement included the existing plant and the new property, it seems appropriate to extend the agreement by two years.

We have continued to add personnel to our work force which does put dollars into the Clovis economy.

We have spent significant dollars to tear down the old structures and level the property. More dollars will be invested over the coming years.

Thank you for your consideration. We have always found the City of Clovis to be a good partner and appreciated the cooperation of the City over the years.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan R Chessum".

Jonathan R Chessum
CFO

Attachment 4

Anlin.Com

FIRST AMENDMENT TO SALES TAX PARTICIPATION AGREEMENT

This First Amendment to Sales Tax Participation Agreement (“First Amendment”) is entered into by and between the City of Clovis, a municipal corporation (“City”) and Anlin Industries, Inc., a California Corporation (“Participant”), and is effective as of September __, 2021 (“Effective Date”).

WHEREAS, City and Participant entered into that certain Sales Tax Participation Agreement dated September 7, 2017 (“Agreement”) which is incorporated herein by reference; and

WHEREAS, City and Participant desire to extend the termination date of the Agreement for two years and amend the Agreement as set forth in this First Amendment.

NOW, THEREFORE, in view of the above recitals, and in consideration for the mutual promises set forth in the Agreement and herein, City and Participant agree that the Agreement shall be amended as follows:

1. Section 4.1 of the Agreement, entitled “Financing Plan,” subsection (b), is hereby amended to read in its entirety as follows:

4.1 Financing Plan.

...

b) In order to provide Participant with the tax sharing that Participant and the City have determined necessary to make the Project economically feasible, and, subject to the prior satisfaction of the Conditions Precedent to Payment, the City shall share sales tax growth with Participant (the "City Tax Sharing") of fifty percent (50%) of annual Net Sales Tax Increment from the Site only, up to \$500,000 or twelve (12) years (which is after the completion of the City’s 2028-29 fiscal year), whichever occurs first.

2. Section 4.3 of the Agreement, entitled “Amount of Payment,” subsection (b), is hereby amended to read in its entirety as follows:

4.3 Amount of Payment.

...

b) Percentage of Net Sales Tax Increment. The percentage of the Net Sales Tax Increment to be paid annually to Participant shall be fifty percent (50%) of the Net Sales Tax Increment up to maximum of \$500,000 or twelve (12) years (which is after the completion of the City’s 2028-29 fiscal year), whichever occurs first.

3. Section 6.2 of the Agreement, entitled “Termination Date,” is amended to read in its entirety as follows:

6.2 Termination Date. This Agreement shall expire after twelve (12) years.

4. All Other Terms Remain in Effect. Unless separately defined herein, capitalized terms shall have the same meaning as set forth in the Agreement, and all other terms and conditions of the Agreement shall remain in full force and effect and shall be interpreted to give full force and effect to this First Amendment.

IN WITNESS WHEREOF, City and Participant have executed this First Amendment as of the Effective Date set forth above.

CITY:

City of Clovis, a municipal corporation

By: _____
Luke Serpa, City Manager

PARTICIPANT:

Anlin Industries, Inc., a California Corporation

By: _____
John J. Maloney, President

ATTEST:

By: _____
John Holt, Assistant City Manager/City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Scott G. Cross, City Attorney

J:\WDOCS\00604\041\AGT\00890353.DOC



CITY of CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: September 20, 2021

SUBJECT: Consider Various Items Associated with the Introduction of the new Clovis Household Hazardous Waste (HHW) Antifreeze, Batteries and Bulbs, Oil, and Paint (ABOP) Drop-Off Site:

a. Consider Approval – Res. 21-____, Adding One Utility Worker Position to Staff the HHW Site; and

b. Consider Approval – Res. 21-____, Approving a Budget Amendment for the New Position and the HHW ABOP Site.

Staff: Ivette Rodriguez, Solid Waste Manager

Recommendation: Approve

ATTACHMENTS:

1. Resolution and Budget Amendment – HHW ABOP Collection Facility
2. Resolution – Position Allocation Plan
3. Letter from Fresno County Department of Public Works and Planning, Resources Division
4. Vicinity Map

CONFLICT OF INTEREST

None

RECOMMENDATION

- 1) For the City Council to approve the City of Clovis Household Hazardous Waste (HHW) Antifreeze, Batteries and Bulbs, Oil, and Paint (ABOP) facility to be located at 79 N. Sunnyside Ave;
- 2) For the City Council to approve a resolution amending the City of Clovis FY 2021-22 Budget to account for the HHW ABOP facility; and
- 3) For the City Council to approve amending the City's Position Allocation Plan for the addition of one (1) Utility Worker position within the Public Utilities Department.

EXECUTIVE SUMMARY

On July 14, 2021, the Fresno County AB939 MOU committee met and approved an allocation of funding towards the establishment of a City of Clovis HHW ABOP facility, including the purchase of storage containers and collection of materials. The HHW ABOP facility will be City-owned and conveniently located near the City of Clovis Corporation Yard. Residents will have the convenience of easily and safely dropping off household hazardous waste materials not permitted in the residential trash collection.

Funds to operate the facility were not fully allocated for at the time of the 2021-22 budgeting process, and staff is recommending a budget amendment to capture the revenue and estimated additional expenditures for operation of the facility. Staff is also requesting that Council approve a Utility Worker position that will be an attendant at the site, removing household hazardous waste materials from vehicles and storing them inside proper storage containers. Accepted materials for this site will include: antifreeze, batteries, used motor oil, paint, and florescent bulbs and tubes.

BACKGROUND

The City of Clovis HHW ABOP facility will be part of the Fresno County Household Hazardous Waste program, offering an additional site for residents to properly dispose of antifreeze, batteries, bulbs, used motor oil, and paint at no cost to them. Currently, residents of Clovis can drop off paint at two local hardware stores, used motor oil at auto part stores, and batteries and florescent bulbs at the Clovis Library and the Clovis True Value store. The City of Clovis HHW ABOP site is planned to be open multiple days a week (including Saturdays) from 8:00 AM to noon, adding convenience to the proper disposal of household hazardous waste.

The City's Public Utilities Department began preparation of the new facility several months ago, working with the Fresno County Planning and Health Department to ensure the site will be in compliance with State requirements. Currently, the site is in plan review with the City's Planning Department and improvements are tentatively scheduled to start within the upcoming months for a potential opening by spring of next year.

The Fresno County AB939 MOU committee was formed by 14 Fresno County jurisdictions working together to keep household hazardous waste from being disposed of in trash containers and being poured down house drains or City streets. Fresno County AB939 landfill tipping fees will fund the City of Clovis HHW ABOP site and the removal of materials collected at the site for processing and disposal. The City of Clovis HHW ABOP site will provide residents a free, environmentally safe way to dispose of antifreeze, batteries, used motor oil, paint, and florescent light bulbs and tubes. This new site will serve an important need in the City of Clovis as well as the County, reducing illegal dumping of household hazardous waste materials and improper disposal, avoiding truck, recycling facility, and landfill fires caused by these types of flammables.

FISCAL IMPACT

The fiscal impact for FY 2021-22 is estimated at an additional \$126,000. This includes operational expenditures of \$86,000 for the HHW ABOP site and personnel expenses estimated at \$40,000 for one (1) Utility Worker. Expenditures in excess of the AB939 MOU committee commitment to the City of Clovis for the new facility and the cost of the additional Utility Worker position will be funded by the Community Sanitation account. Disposal costs for the hazardous material will be covered by the Fresno County AB939 tipping fee.

REASON FOR RECOMMENDATION

The HHW ABOP facility will provide City of Clovis residents a one-stop location to drop off household hazardous materials that are not accepted in the garbage or recycling containers and could be hazardous to the environment if improperly disposed.

ACTIONS FOLLOWING APPROVAL

Staff will move forward with establishment of a City of Clovis Household Hazardous Waste facility with a potential opening date in spring of 2022. The budget amendment and Position Allocation Plan amendment will be processed. Staff will prepare and submit required documents for the HHW ABOP site to the Department of Toxic Substance Control (DTSC) and begin site improvements and preparations for the facility.

Prepared by: Ivette Rodriguez, Solid Waste Manager

Reviewed by: City Manager *JH*

RESOLUTION NO. 21-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING AN AMENDMENT TO THE ANNUAL BUDGET FOR FISCAL YEAR
2021-2022**

WHEREAS, the City Council adopted the 2021-2022 Budget on June 14, 2021; and

WHEREAS, the City Council is amending the 2021-2022 Budget to include funding in the Public Utilities Department Community Sanitation Budget to allocate funds for the City of Clovis Household Hazardous Waste ABOP facility operations and an additional Utility Worker for staffing of the facility, and allocate funding from the Fresno County AB939 Committee that was approved for the Clovis ABOP facility to purchase storage containers and provide support for collection and disposal costs; and

WHEREAS, the expenditures were not included in the 2021-2022 Budget.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Clovis approves the budget amendment as shown in the “Summary of Expenditures by Department,” “Summary of Expenditures by Fund,” “Summary of Revenues by Department,” and “Summary of Revenues by Fund,” attached as Exhibit A.

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 20, 2021 by the following vote, to wit.

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

DATED:

Mayor

City Clerk

ATTACHMENT 1

EXHIBIT A

SUMMARY OF EXPENDITURES BY DEPARTMENT

Department		
Public Utilities Department		
Operations		\$86,000.00
Personnel		\$40,000.00
Total		\$126,000.00

SUMMARY OF EXPENDITURES BY FUND

Fund		
Community Sanitation		
Operations		\$86,000.00
Personnel		\$40,000.00
Total		\$126,000.00

SUMMARY OF REVENUES BY DEPARTMENT

Department		
Public Utilities Department		\$86,000.00
Total		\$86,000.00

SUMMARY OF REVENUES BY FUND

Fund		
Community Sanitation		\$86,000.00
Total		\$86,000.00

NET GENERAL FUND SUPPORT

Total		\$0
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RESOLUTION NO. 21-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVIS
APPROVING AN AMENDMENT TO THE CITY'S FY 2021-2022 POSITION
ALLOCATION PLAN**

WHEREAS, the FY 2021-2022 Position Allocation Plan in the Public Utilities Department was approved as part of the FY 2021-2022 City Budget adoption process; and

WHEREAS, a review of the staffing needs for the Household Hazardous Waste Collection Facility of the City indicates that the addition of one (1) Utility Worker position is necessary in order to provide the maintenance duties necessary for the Public Utilities Department; and

WHEREAS, amending the City's adopted FY 2021-2022 Position Allocation Plan requires City Council authorization.

NOW, THEREFORE, BE IT RESOLVED, RESOLVED by the City Council of the City of Clovis that the City's FY 2021-2022 Position Allocation Plan shall be amended as noted in Attachment A (attached).

* * * * *

The foregoing resolution was introduced and adopted at a regular meeting of the City Council of the City of Clovis held on September 20, 2021 by the following vote, to wit.

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

- DATED:

Mayor

City Clerk

ATTACHMENT 2

POSITION ALLOCATION ADJUSTMENT BY DEPARTMENT FY 2021-22

DEPARTMENT	NUMBER OF POSITIONS
Public Utilities Department	
Add: Utility Worker	1.0

ATTACHMENT 2, ATTACHMENT A



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
Steven E. White, DIRECTOR

DATE: September 7, 2021

TO: Scott Redelfs, Public Utilities Director
 City of Clovis

FROM: Craig Nickel, Senior Staff Analyst
 County of Fresno, Public Works and Planning
 Chairman of the AB939 MOU Committee

SUBJECT: Clovis ABOP Container Funding

Craig Nickel
 Digitally signed by Craig Nickel
 Date: 2021.09.08 15:53:21 -07'00'

As the Lead Agency responsible for the coordination and implementation of countywide programs and services covered by the AB 939 Memorandum of Understanding (MOU), the County of Fresno would like to inform you of an AB 939 MOU Committee Agenda Item concerning your future site for collection of antifreeze, bulbs, batteries, used motor oil and paint (ABOP) that was brought before the Committee and acted upon.

During the July 14, 2021 AB 939 MOU Committee meeting, Item No. VI – Clovis ABOP was presented for consideration. As stated in the Meeting Minutes (attached), the Committee unanimously approved Agenda Item No. VI to fund the purchase of containers, holding tanks and lockers from the Surcharge Trust Fund, as well as have the HHW Facility Operator pick up and dispose of household hazardous waste collected at the ABOP facility.

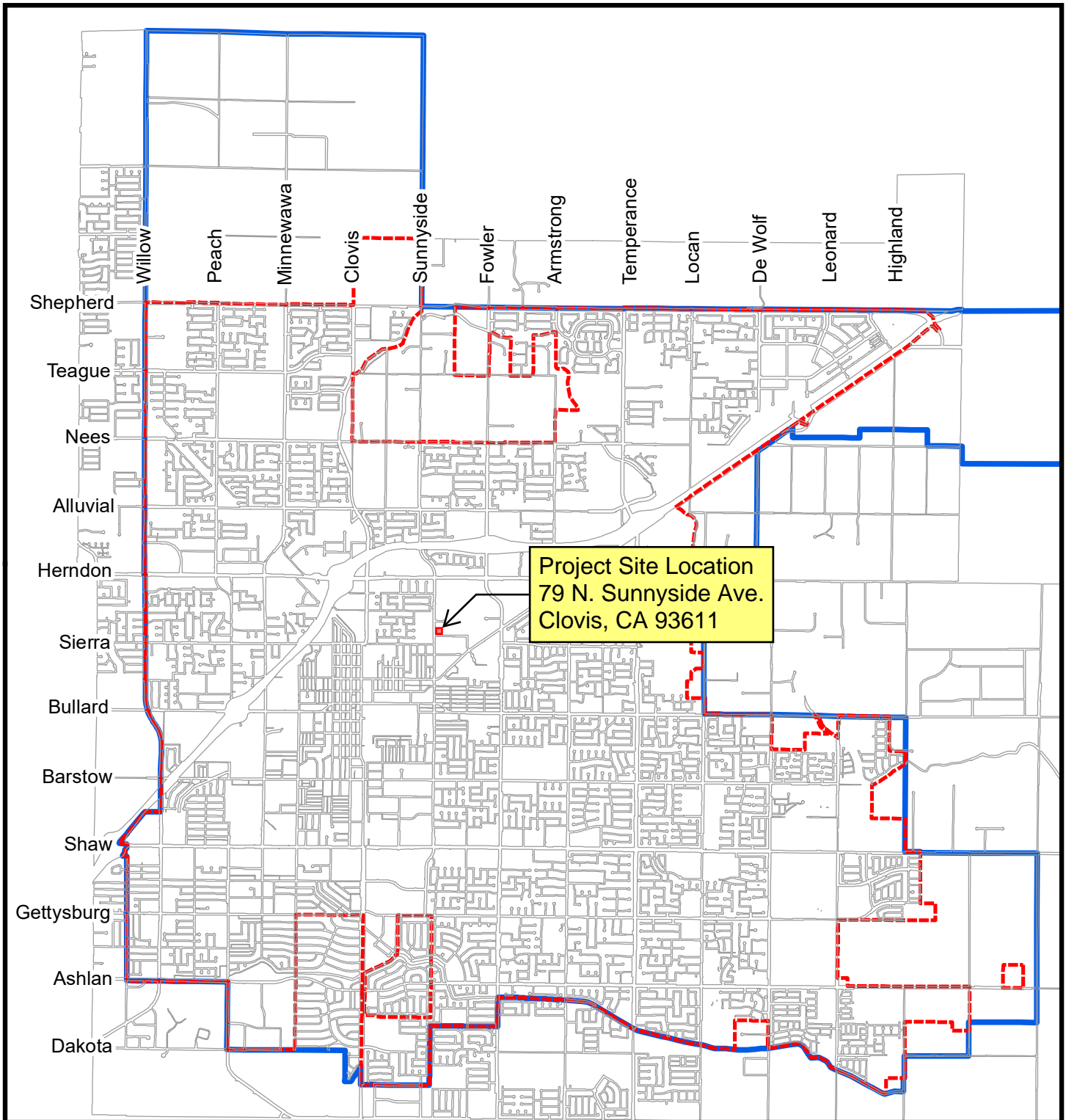
If you have any questions, please contact me at cnickel@fresnocountyca.gov or by phone at (559) 600-4480.

Attachment: July 14, 2021 AB 939 MOU Committee Meeting Minutes

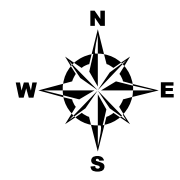
CC: Bernard Jimenez, County of Fresno – Assistant Director of Public Works and Planning
 Amina Flores-Becker, County of Fresno - Resources Manager
 Jerod Weeks, County of Fresno – Principal Analyst
 Ivette Rodriguez, City of Clovis – Solid Waste Manager

VICINITY MAP

Project - City of Clovis ABOP Facility



ATTACHMENT 4



CITY LIMITS
 SPHERE OF INFLUENCE



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Public Utilities Department

DATE: September 20, 2021

SUBJECT: Consider Approval – Report and Recommendation and Set Public Hearing to Increase Street Sweeping Charges.

Staff: Glenn Eastes, Assistant Public Utilities Director
Recommendation: Approve

ATTACHMENTS: 1. Draft Ordinance

CONFLICT OF INTEREST

None.

RECOMMENDATION

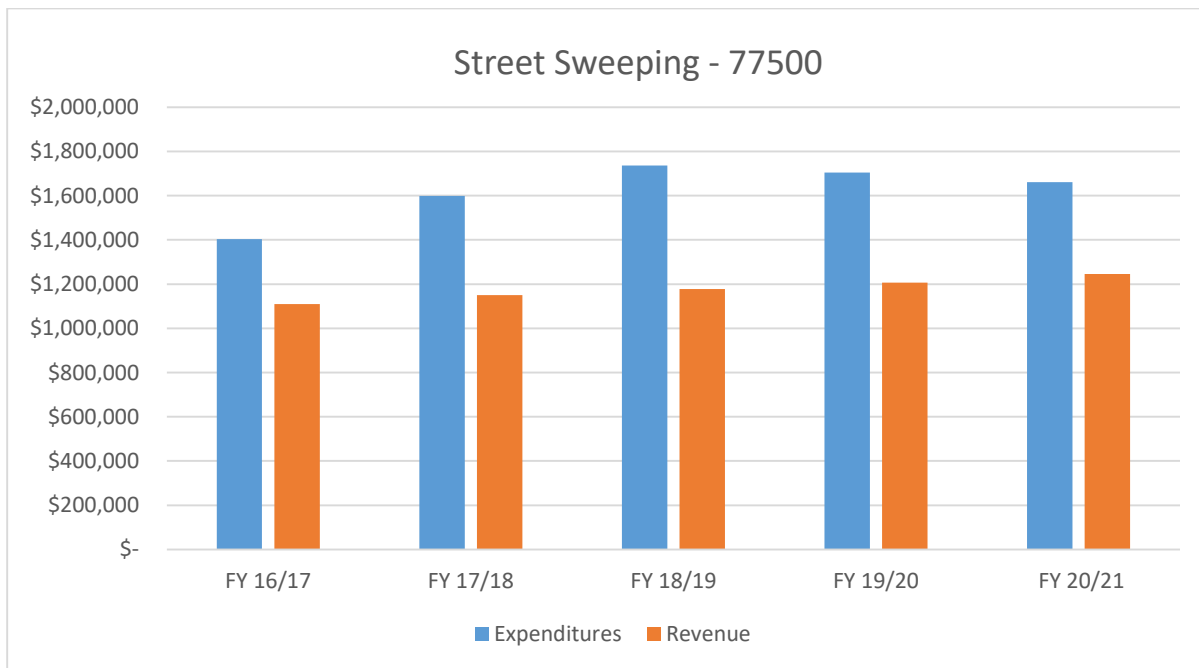
For the City Council to approve the Proposition 218 public hearing and majority protest procedures; to review the rate analysis, the draft ordinance proposing to increase the street sweeping charges, and staff's recommendation of a 1.5% Refuse rate reduction; and to set the public hearing for November 15, 2021.

EXECUTIVE SUMMARY

The City's Street Sweeping charges have not been increased since 2003, despite growing expenditures to provide the service. Staff is recommending a \$0.50 per month increase in the Street Sweeping charges, as well as an up to a maximum 4% annual increase in subsequent years, to create consistency between future Street Sweeping charge increases and Refuse rate increases. To offset the immediate impact to rate payers due to the proposed increase in the Street Sweeping charge, staff is recommending a 1.5% reduction in Refuse rates. Both of these adjustments would be scheduled to take effect on July 1, 2022, allowing sufficient time to fulfill the requirements of Proposition 218, which state that all impacted property owners and customers must be noticed of the public hearing, that a public hearing be conducted allowing all interested individuals to hear and be heard, and to determine if a majority protest exists.

BACKGROUND

The last increase to the Street Sweeping charge occurred in 2003, when the monthly rate was increased from \$1.25 to \$2.25 (an increase of \$1.00). The Street Sweeping charge currently remains at \$2.25 per month. Over the past 5 years, Street Sweeping expenditures have exceeded revenues, and each year, funds are transferred from the Refuse account to the Street Sweeping account to offset the revenue shortfall. To address this shortfall, staff is recommending a \$0.50 increase in Street Sweeping charges (from \$2.25 to \$2.75) and the establishment of an annual 4% rate increase in future years to be consistent with the annual Refuse rate increase. This annual increase will be managed the same way as the annual increase for the Refuse account. Council will evaluate staff’s recommendations during each annual budget cycle to determine if the increase is required for the upcoming budget year. This annual increase will help prevent future requests for large increases to the Street Sweeping charges, allow the fund to keep pace with increasing costs, and allow the fund to grow and maintain minimal operating reserves for continued services. To minimize the impact to rate payers, staff is recommending a 1.5% reduction in the Refuse rates to offset the increase in the Street Sweeping charges. The rate adjustments would take effect on July 1, 2022.



Proposition 218 Procedures

Per the requirements of Proposition 218, the City is required to provide a 45-day notice and hold a public hearing where a majority protest proceeding is conducted. Staff will prepare a public notice that will be mailed to all property owners in the City and to all current Refuse and Street Sweeping rate payers. The notices will include information about the public hearing time and place, the amount of the rates, the basis of the rates, and the reasons for the increase. All protests to the rate increase must be in writing, identify the property affected, be signed by the property owner or tenant, and clearly state that they are protesting the increase. Protests must be received by the City prior to the close of the public hearing.

Protests will be accepted from either the tenant or property owner but only one protest per property will be counted. Emails will not be accepted as there is no legal method for signing. The protests will be confidential until tabulated and may be withdrawn by the signatory of the protest prior to the close of the hearing. The City Clerk will tabulate the number of protests and verify their validity. If 50% plus one of the total number of properties in the City protests the rate increase, the rate cannot be approved.

FISCAL IMPACT

Staff recommends reducing the Refuse rates by 1.5% (approximately \$240,000 annually), which will substantially offset the proposed \$0.50 per month Street Sweeping charge increase. This will allow for the overall Community Sanitation Fund to be revenue-neutral for Fiscal Year 2022-23.

The proposed rates are designed to meet current and future Street Sweeping revenue needs, cover the cost of operations and capital investments, and maintain a small fund balance to cover unexpected costs.

As a part of the proposed Street Sweeping charge adjustment, staff has included an annual maximum 4% increase that will occur each year on July 1 beginning in 2023. It is difficult for City customers to deal with large increases in utility rates. Modest annual increases provide the revenues necessary to address the upward trend of the cost to provide services. Energy, fuel, materials, and vehicle and personnel costs all tend to increase over time. Small annual increases allow the Enterprise Funds to continue to provide services without substantial increases. Council has adopted this strategy in past Proposition 218 elections to allow Enterprise Fund revenues to grow with expenditures.

REASON FOR RECOMMENDATION

The City is required to comply with State law regarding rates and the City must make sure that revenues are adequate to fund Street Sweeping operations, an essential City service. A rate increase to Street Sweeping charges and a reduction to Refuse rates allows for the customer to be minimally affected and provides for the accounts to fund the services provided. The future annual adjustment allows for modest increases over time to address increasing costs for providing Street Sweeping services.

ACTIONS FOLLOWING APPROVAL

Staff will send notices to all affected property owners, as well as customers who are tenants, regarding the proposed rate adjustments and the opportunity to protest in accordance with Proposition 218 requirements. Staff will bring the proposed ordinance back to Council following the public hearing on November 15, 2021.

Below is the proposed schedule for the rate adjustment.

Send out notices to rate payers 45 days prior to public hearing:	September 30, 2021
Conduct public hearing and introduce ordinance:	November 15, 2021
Second reading of ordinance:	December 6, 2021
Ordinance becomes effective 30 days after second reading:	January 6, 2022
Rates become effective:	July 1, 2022

Prepared by: Glenn Eastes, Assistant Public Utilities Director

Reviewed by: City Manager *GA*

ORDINANCE 21-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVIS AMENDING SECTION 6.3.22 OF CHAPTER 6.3 OF TITLE 6 OF THE CLOVIS MUNICIPAL CODE RELATING TO STREET SWEEPING CHARGES

The City Council of the City of Clovis does ordain as follows:

Section 6.3.22 of Chapter 6.3 of Title 6 of the Clovis Municipal Code is hereby amended to read as follows:

6.3.22 Street sweeping charges

A charge of two and 75/100ths dollars (\$2.75) per month shall be paid by each customer beginning on July 1, 2022. Where two (2) or more living units or businesses are served by one water and/or sewer connection and are included on one account, the Street Sweeping rate shall be assessed for each such unit or business.

- (a) Annual Adjustments. The monthly Street Sweeping charge as provided in this section shall be increased annually by four percent (4%) beginning on July 1, 2023, and annually each July 1 thereafter by four percent (4%). Prior to June 30 of each year beginning in 2023, the Public Utilities Director shall evaluate the Street Sweeping fund balance and if determined to be adequate without the annual increase or with a lesser increase or with a rate reduction, shall recommend to the City Council a suspension or reduction of the rate adjustment or rate reduction for the next fiscal year.

This Ordinance shall go into effect and be in full force from and after thirty (30) days after its final passage and adoption.

APPROVED: November 15, 2021

Mayor
* * * * *

City Clerk
* * * * *

The foregoing Ordinance was introduced and read at a regular meeting of the City Council held on November 15, 2021, and was adopted at a regular meeting of said Council held on December 6, 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED: December 6, 2021

City Clerk

DRAFT



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council

FROM: Administration

DATE: September 20, 2021

SUBJECT: Consider the League of California Cities' Annual Resolutions and Proposed Bylaws Amendments set for Consideration at the Annual Conference on September 22 – 24, 2021.

Staff: Luke Serpa, City Manager

Recommendation: Discuss and direct voting delegate

ATTACHMENTS: 1. 2021 Annual Conference Resolutions Packet
2. Proposed Bylaws Amendments

CONFLICT OF INTEREST

None.

RECOMMENDATION

Consider the League of California Cities' Annual Resolutions and proposed Bylaws Amendments set for consideration at the Annual Conference and Business Meeting held on September 22 – 24, 2021, and provide policy direction for voting delegate.

EXECUTIVE SUMMARY

Resolution No. 1 calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Staff recommendation: Approve as Amended.

Resolution No. 2: The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

Staff recommendation: Approve as Amended.

Proposed Bylaws Amendments (summary):

1. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.
2. Recognize the Cal Cities Diversity Caucuses in the Cal Cities' bylaws to reflect the full contribution the caucuses make to Cal Cities' mission and vision.
3. Update the League of California Cities' moniker to Cal Cities.
4. Make various minor technical corrections.

Staff recommendation: Discuss and direct voting delegate.

BACKGROUND

Resolution No. 1: A RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

The City of Rancho Cucamonga is sponsoring this resolution to “address the issues in how sales and use taxes are distributed in the 21st century.”

The city notes that “sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.

Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year

2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers."

The city's resolution calls for action on an unspecified solution that "rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction," which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.

Ultimately, sponsoring cities believe "that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger."

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities' policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Managers working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities' policy.

Staff recommendation: Approve as Amended.

Resolution No. 2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CPUC TO FULFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.

California Public Utilities Commission (CPUC) Railroad Oversight. The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they

create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of Commission GO 118-A, which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of Commission GO 26-D, which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment 1. The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility. The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

If approved, Cal Cities would call for the Governor and the Legislature to work with Cal Cities and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. Cal Cities would work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

Staff has reviewed this resolution and purpose in regards to interests to the City of Clovis. In 1997, the City of Clovis used Federal funds to purchase the Railroad corridor to establish pedestrian trails in place of the railway, a program known as "Rails to Trails". A caveat to this

program is that the rail use can be re-established in the future. It is most likely to not happen since the rail lines have been removed in the City of Clovis railway corridors.

Staff recommends approving Resolution No. 2 as Amended. There is no immediate financial benefit to the City of Clovis because we no longer have railways and already provide maintenance of the “Rails to Trails” corridor for our pedestrian trail way. However, should the rail corridor ever be re-established, then funding for the CPUC to maintain the rail corridor would be beneficial to the City. There is a potential benefit to our neighboring cities that still have railroad corridors, such as the cities of Fresno and Sanger, in which the legislature funding the CPUC to maintain the rail corridors would help clean up blight, homeless encampments, and provide for other quality of life enhancements to the community railroad corridors.

Staff recommendation: Approve as Amended.

Summary of Proposed Bylaws Changes

1. Fully Recognize the Cal Cities Diversity Caucuses in the Cal Cities’ Bylaws.

- Add a new Article XI, formally recognizing the caucuses in the bylaws consistent with how departments and divisions are recognized. Provide default rules for caucus structure and process where the caucuses do not have bylaws or where caucus bylaws are silent.
- Make conforming changes as follows:
 - Amend Article VI, Section 3, Subdivisions (a) and (b) to allow for one elected official from each caucus to be appointed to the resolutions committee by their respective caucus, or by the Cal Cities President in the event a caucus does not make its appointment.
 - Amend Article VII, Section 10, Subdivision (c) to provide that one member of each standing policy committee shall be appointed by each caucus president.
 - Amend new Article XII (formerly, Article XI), Section 1, Subdivision (a) to specify that a majority of the members of a caucus constitutes a quorum for the purpose of making decisions.
 - Amend new Article XII (formerly, Article XI), Section 2, Subdivision (a) to provide that all voting in a caucus meeting is by voice vote.
 - Amend new Article XII (formerly, Article XI), Section 4 to provide that representatives of each Member City present and in good standing at a caucus meeting collectively cast one vote, except as otherwise provided in caucus bylaws.
 - Amend new Article XII (formerly, Article XI), Section 5, Subdivision (d) to allow caucuses to use mail balloting as specified in their bylaws.

- Amend Article XIII (formerly, Article XII), Section 1, Subdivision (a) to provide that persons must officially be in city service in a Member City in order to be eligible to hold office in a caucus.
- Amend Article XIII (formerly, Article XII), Section 2, Subdivisions (c) and (d) to clarify the effective date of a caucus office resignation or vacancy.
- Amend Article XIV (formerly, Article XIII), Section 2, Subdivision (b) to provide that a copy of Cal Cities' budget shall be sent to each caucus president who shall make it available to caucus members.
- Amend Article XVI (formerly, Article XV), Section 5 to provide that Robert's Rules of Order or other parliamentary rules adopted by the Cal Cities Board shall prevail at caucus meetings.

2. **Adjust the Composition of the Board.**

- **Add directors from each diversity caucus:**
 - Amend Article VII, Section 2, Subdivision (d) to add one director from each of the five caucuses to the Board for a term of two years.
 - Make conforming changes to the following sections:
 - Amend Article VII, Section 3, to stagger the terms of the caucus directors so that the terms of approximately one-half of the Board continue to expire each year. Provide that the terms for the directors from the African American, Asian Pacific Islander, and LGBTQ caucuses expire in even-numbered years, and terms of the directors from the Latino and Women's caucuses expire in odd- numbered years.
 - Amend Article VII, Section 4, Subdivision (c) to provide that the initial caucus director shall either be the caucus president or another caucus member appointed by the caucus president, and thereafter, that caucus directors are to be elected by their caucuses.
 - Amend Article VII, Section 4, new Subdivision (f) (formerly Subdivision (e)) to provide that newly created caucuses can elect a representative to the Board.
 - Amend Article VII, Section 6, Subdivision (c) to provide that, if a vacancy occurs in a caucus directorship, the caucus officers may elect a new director.
- **Transition members of the National League of Cities (NLC) Board of Directors from Cal Cities Directors to one non-voting advisor to the Board:**

- Delete Article VII, Section 2, Subdivision (e) which provides that directors on the NLC Board who hold an office in a Member City are directors on the Cal Cities Board, and make a conforming change as follows:
 - Delete the language from Article VII, Section 2, Subdivision (g) which provides that directors that sit on the Cal Cities Board by virtue of their directorship on the NLC Board shall serve until their terms on the NLC Board conclude.
 - Add new Section 17 to Article VII to provide that effective December 1, 2022 (after the terms of the currently serving NLC Board directors expire), if members of the NLC Board hold office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board for a term that coincides with their service on the NLC Board. Provide further that such non-voting advisor shall be invited to attend regularly-scheduled Board meetings, but shall not attend emergency meetings and/or closed/executive sessions unless otherwise determined by the Board.

3. **Change the League of California Cities Moniker.** Amend Article I, Section 1 to read, “This corporation is the League of California Cities (the League) (Cal Cities)” and make conforming changes to replace “League” with “Cal Cities” throughout the entirety of the bylaws.

4. **Make Technical Corrections.**

- Amend the following sections of the bylaws to correct technical errors and typos:
 - Article I, Section 3: change “to” to “do”
 - Article II, Section 2(a): change “Advocate legislation” to “Advocate for legislation”
 - Article II, Section 2(g): change “member cities” to “Member Cities”
 - Article III, Section 3: change “state and federal laws” to “state or federal laws”
 - Article V, Section 3(b): changed “Designating” to “Designated”
 - Article VI: clarify that “Petitioned Resolutions” is a defined term in Section 2 and capitalize “Petitioned Resolutions” in Section 4(a), Section 5(f), and Section 5(g)
 - Article VI, Section 5(d): change “late” to “later”
 - Article VII, Section 4(d): change “organization” to “organizational”
 - Article VII, Section 4(f): add “the” before “nominating committee”
 - Article VII, Section 10(c)(ii): capitalize “President”
 - Article IX, Section 7(c)(ii): correct cross-reference from 4(d) to 4(e)
 - Article X, Section 2(c): change “two years established” to “two years as established”
 - Article X, Section 2(d): capitalize “Director”
 - Article XII, Section 4: change “representatives” to “representative” and “cast” to “casts”
 - Article XVI, Section 5: add “and applicable law”
 - Article XVIII, Section 3(c): correct cross-reference from “Article XI” to “Article XII”
 - Article XII, Section 2(b): change “three or Member Cities” to “three or more Member Cities”

Staff Recommendation: Discuss and direct voting delegate.

REASON FOR RECOMMENDATION

The City Council should provide policy direction to the City's voting delegate for the Annual Business Meeting concerning policies and bylaws of the League.

ACTIONS FOLLOWING APPROVAL

The City Manager will follow up with any action as directed by the City Council.

Prepared by: Jacquie Pronovost, Executive Assistant

Reviewed by: City Manager LS



*Annual Conference
Resolutions Packet*

2021 Annual Conference Resolutions



September 22 - 24, 2021

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League of California Cities (Cal Cities) bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

POLICY COMMITTEES: Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

CLOSING LUNCHEON AND GENERAL ASSEMBLY: This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a petition resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond mdesmond@calcities.org.

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing Cal Cities policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number Key Word Index Reviewing Body Action

		1	2	3
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1 - Policy Committee Recommendation to General Resolutions Committee
 2 - General Resolutions Committee
 3 - General Assembly

HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

KEY TO ACTIONS TAKEN ON RESOLUTIONS (Continued)

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

- 1. Policy Committee
- 2. General Resolutions Committee
- 3. General Assembly

KEY TO ACTIONS TAKEN

- A Approve
- D Disapprove
- N No Action
- R Refer to appropriate policy committee for study
- a Amend+
- Aa Approve as amended+
- Aaa Approve with additional amendment(s)+
- Ra Refer as amended to appropriate policy committee for study+
- Raa Additional amendments and refer+
- Da Amend (for clarity or brevity) and Disapprove+
- Na Amend (for clarity or brevity) and take No Action+
- W Withdrawn by Sponsor

ACTION FOOTNOTES

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

Procedural Note:

The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.

1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

Source: City of Rancho Cucamonga

Concurrence of five or more cities/city officials:

Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento

Referred to: Revenue and Taxation Policy Committee

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center's sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background Information to Resolution

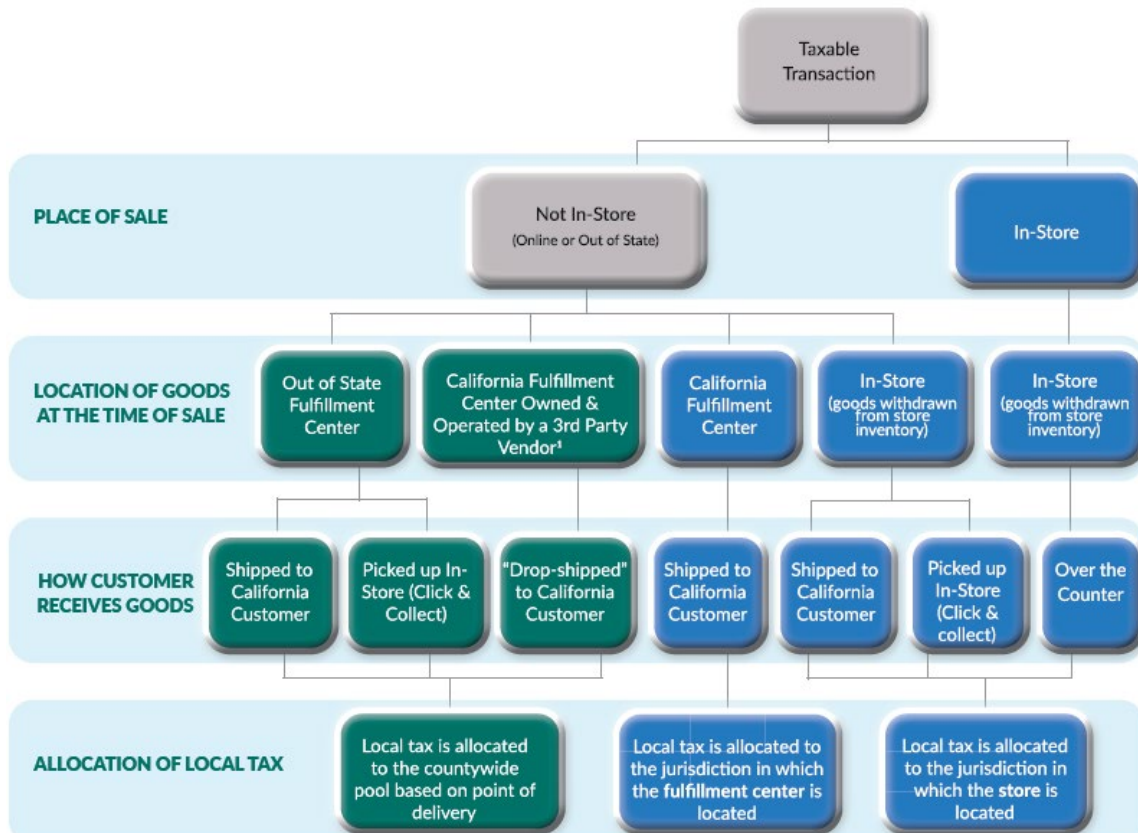
Source: City of Rancho Cucamonga

Background:

Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:



¹ In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax

growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21st century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.

LETTERS OF CONCURRENCE
Resolution No. 1

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The Town of Apple Valley strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool. Now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents.

We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the Town of Apple Valley concurs that the resolution should go before the General Assembly. If you have any questions regarding the Town's position in this matter, please do not hesitate to contact the Town Manager at 760-240-7000 x 7051.

Sincerely,

A handwritten signature in cursive script, appearing to read "Curt Emick", is displayed within a light gray rectangular box.

Curt Emick
Mayor

July 21, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Letter of Support for the City of Rancho Cucamonga's Resolution for Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax

Dear President Walker:

The City of El Cerrito supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Previously, all sales tax revenue generated by this retailer's sales went into a countywide pool and was distributed amongst the jurisdictions in the pool; now the revenue from in-state sales goes entirely to the city where the fulfillment center is located and the packages are shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities such as El Cerrito who have no chance of ever obtaining a fulfillment center as we are a built out, four square mile, small city. Additionally, cities not situated along major travel corridors and no/low property tax cities that rely on sales tax revenue are especially impacted, as well as cities struggling to build much needed affordable housing that may require rezoning commercial parcels in order to meet their RHNA allocations.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies serve to divide local agencies, exacerbate already difficult municipal finances, and in the end results in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of El Cerrito concurs that the resolution should go before the General Assembly.

Sincerely,



Paul Fadelli, Mayor
City of El Cerrito

cc: El Cerrito City Council
City of Rancho Cucamonga

City Council
 Terry Walker, Mayor
 Keith Eich, Mayor Pro Tem
 Jonathan C. Curtis
 Michael T. Davitt
 Richard B. Gunter III



July 14, 2021

Ms. Cheryl Viegas Walker, President
 League of California Cities
 1400 K Street, Suite 400
 Sacramento, CA 95814

Dear President Walker:

The City of La Cañada Flintridge strongly supports the City of Rancho Cucamonga's effort to introduce a resolution for consideration by the General Assembly at CalCITIES' 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1% Bradley Burns local tax revenue (sales tax) from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool, as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as an out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the jurisdiction where the fulfillment center is located and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state transactions even though their packages are delivered to locations within those cities' borders and paid for by residents in those locations. Cities that abut jurisdictions with fulfillment centers experience fulfillment centers' impacts just as much, such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers, that was once spread amongst all cities in countywide pools, is now concentrated in select cities fortunate enough to host a fulfillment center. This benefits only those few hosting jurisdictions and is particularly unfair to cities who have no chance of ever hosting a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely heavily on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably eager to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances and, in the end, result in a net loss of local government sales tax proceeds that simply serve to make private

Ms. Cheryl Viegas Walker, President

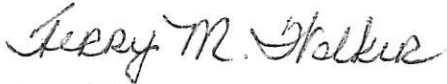
July 14, 2021

Page 2

sector businesses even more profitable at the expense of cities' residents. We should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Cañada Flintridge concurs that the proposed resolution should go before the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "Terry M. Walker".

Terry Walker

Mayor



CITY OF LA VERNE CITY HALL

3660 "D" Street, La Verne, California 91750-3599
www.cityoflaverne.org

July 19, 2021

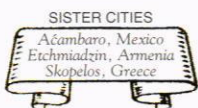
Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of La Verne strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities which have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are



especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exacerbate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Verne concurs that the resolution should go before the General Assembly.

Sincerely,



Bob Russi
City Manager
City of La Verne

Steve Croft
Vice Mayor

Ariel Pe
Council Member



Jeff Wood
Mayor

AGENDA ITEM NO. 17.

Council Member

Todd Rogers
Council Member

July 15, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Lakewood strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities that have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

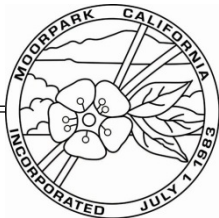
For these reasons, the City of Lakewood concurs that the resolution should go before the General Assembly.

Sincerely,

A handwritten signature in blue ink that reads "J Wood".

Jeff Wood
Mayor

Lakewood



CITY OF MOORPARK

799 Moorpark Avenue, Moorpark, California 93021
 Main City Phone Number (805) 517-6200 | Fax (805) 532-2205 | moorpark@moorparkca.gov

July 14, 2021

TRANSMITTED ELECTRONICALLY

Cheryl Viegas-Walker, President
 League of California Cities
 1400 K Street, Suite 400
 Sacramento, CA 95814

Dear President Walker:

The City of Moorpark strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies of the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates both as an in-state online retailer and as an out-of-state online retailer. Whereas all sales tax revenues generated by this retailer's sales previously went into countywide pools and were distributed amongst the jurisdictions in the pool, sales tax revenues from in-state sales now go entirely to the city where the fulfillment center is located and the package is shipped from. Cities that do not have a fulfillment center now receive no sales tax revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and deteriorating road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenues from large online retailers that were once spread amongst all cities in countywide pools are now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted, as well as

cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone limited commercial properties for residential land uses.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and ultimately result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses more profitable at the expense of everyone's residents. We can do better than this, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Moorpark concurs that the resolution should go before the General Assembly at the 2021 Annual Conference in Sacramento.

Sincerely,



Janice S. Parvin
Mayor

cc: City Council
City Manager

The People are the City



Mayor
CRAIG S. GREEN

Mayor Pro Tem
CHAD P. WANKE

Councilmembers:
RHONDA SHADER
WARD L. SMITH
JEREMY B. YAMAGUCHI

City Clerk ROBERT S. MCKINNELL	AGENDA ITEM NO. 17.
City Treasurer KEVIN A. LARSON	
City Administrator DAMIEN R. ARRULA	

401 East Chapman Avenue – Placentia, California 92870

July 14, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Placentia strongly supports the City of Rancho Cucamonga’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent (1%) Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer’s sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer’s online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

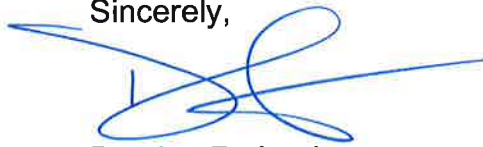
This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The

current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Placentia concurs that the resolution should go before the General Assembly. Should you have any questions regarding this letter, please contact me at (714) 993-8117 or via email at administration@placentia.org.

Sincerely,



Damien R. Arrula
City Administrator

Leyne Milstein
Assistant City Manager

City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814-2604
916-808-5704

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Sacramento strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment

Leyne Milstein
Assistant City Manager

City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814-2604
916-808-5704

center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Sacramento concurs that the resolution should go before the General Assembly.

Sincerely,



Leyne Milstein (Jul 19, 2021 14:48 PDT)

Leyne Milstein
Assistant City Manager

League of California Cities Staff Analysis on Resolution No. 1

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

Summary:

This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background:

The City of Rancho Cucamonga is sponsoring this resolution to “*address the issues in how sales and use taxes are distributed in the 21st century.*”

The City notes that “*sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.*

Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer’s fulfillment centers.”

The City’s resolution calls for action on an unspecified solution that “*rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,*” which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.

Ultimately, sponsoring cities believe *“that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.”*

Sales and Use Tax in California

The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as a *situs-based system*. A retailer’s physical place of business—such as a retail store or restaurant—is generally the place of sale. “Sourcing” is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as “transactions and use taxes” or “add-on sale and use taxes”). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:

- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller’s business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. *This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.*
- If the business’ sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under \$500,000 is allocated

via the county pools. The tax from transactions over \$500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. *For many large online retailers, this has been the traditional path.*

Online Sales and Countywide Pools

While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives – either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

Concentration of Online Sales Tax Revenue and Modernization

Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.

For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoument for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

For more on sales and use tax sourcing please see Attachment A.

State Auditor Recommendations

In 2017, the California State Auditor issued a report titled, "[The Bradley-Burns Tax and Local Transportation Funds](#)", noting that:

"Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.

The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."

The Auditor's report makes the following recommendation:

"To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale."

In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

Cal Cities Revenue and Taxation Committee and City Manager Working Group

In 2015 and 2016, Cal Cities' Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (situs) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See "Existing Cal Cities Policy" section below.

Cal Cities City Manager Sales Tax Working Group Recommendations

In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities' Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

Further Limiting Rebate Agreements: The consensus of the Group was that:

- Sales tax rebate agreements involving online retailers should be prohibited *going forward*. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited *going forward*. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group's recommendation is based first on the principle of "situs" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from \$5 million to \$100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.

The Resolution places further demands on data collected by CDTFA to establish a “fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.” Such data is proposed to be collected by [SB 792 \(Glazer, 2021\)](#). More discussion on this topic can be found in the “Staff Comments” section.

Staff Comments:

Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager’s working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

More Data is Needed to Achieve Equity Based Approach

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in [SB 792 \(Glazer, 2021\)](#), which would require retailers with online sales exceeding \$50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

Impact of Goods Movement Must Be Considered

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):

“Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013) Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997).”

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: [California Office of Environmental Health Hazard Assessment \(OEHHA\) CalEnviroScreen](#). City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. *To review the proposed changes, please see Attachment B.*

Fiscal Impact:

Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

Existing Cal Cities Policy:

- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

Support:

The following letters of concurrence were received:

Town of Apple Valley

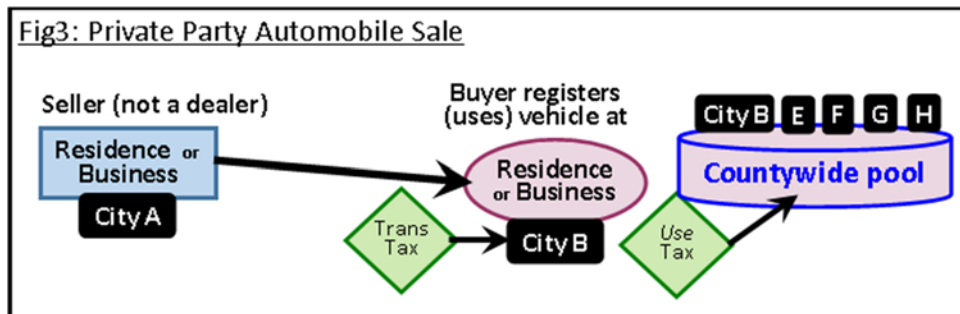
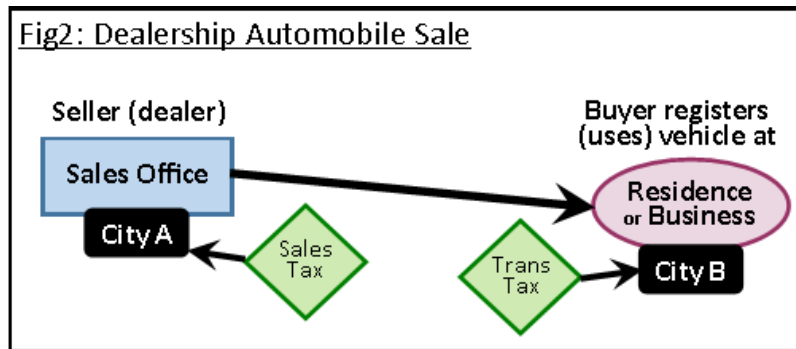
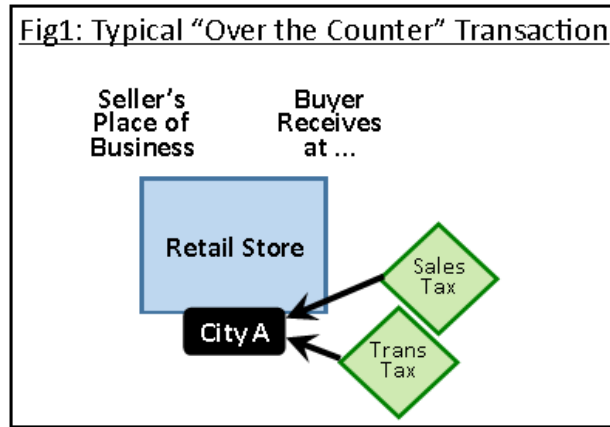
City of El Cerrito

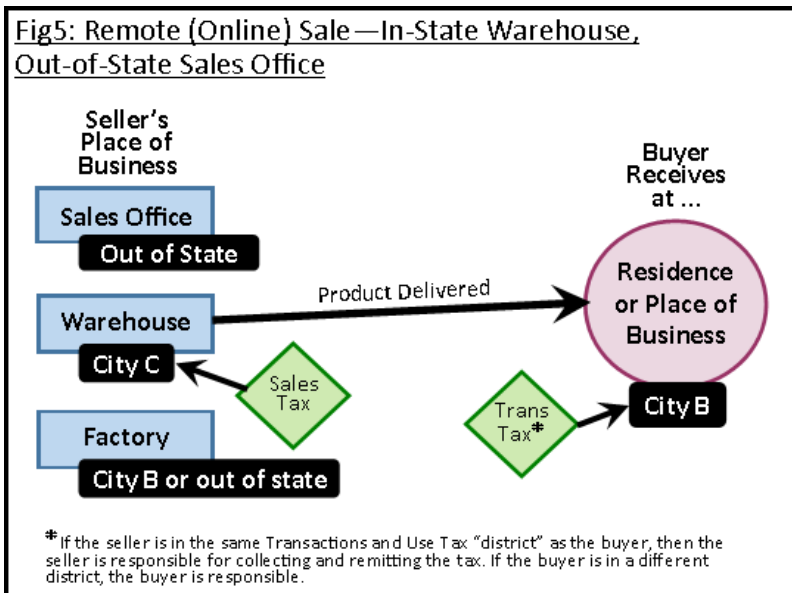
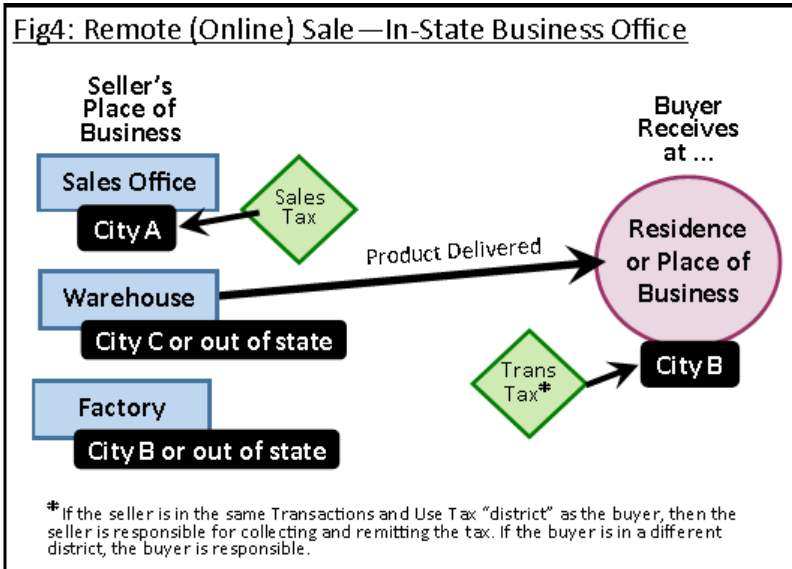
City of La Canada Flintridge

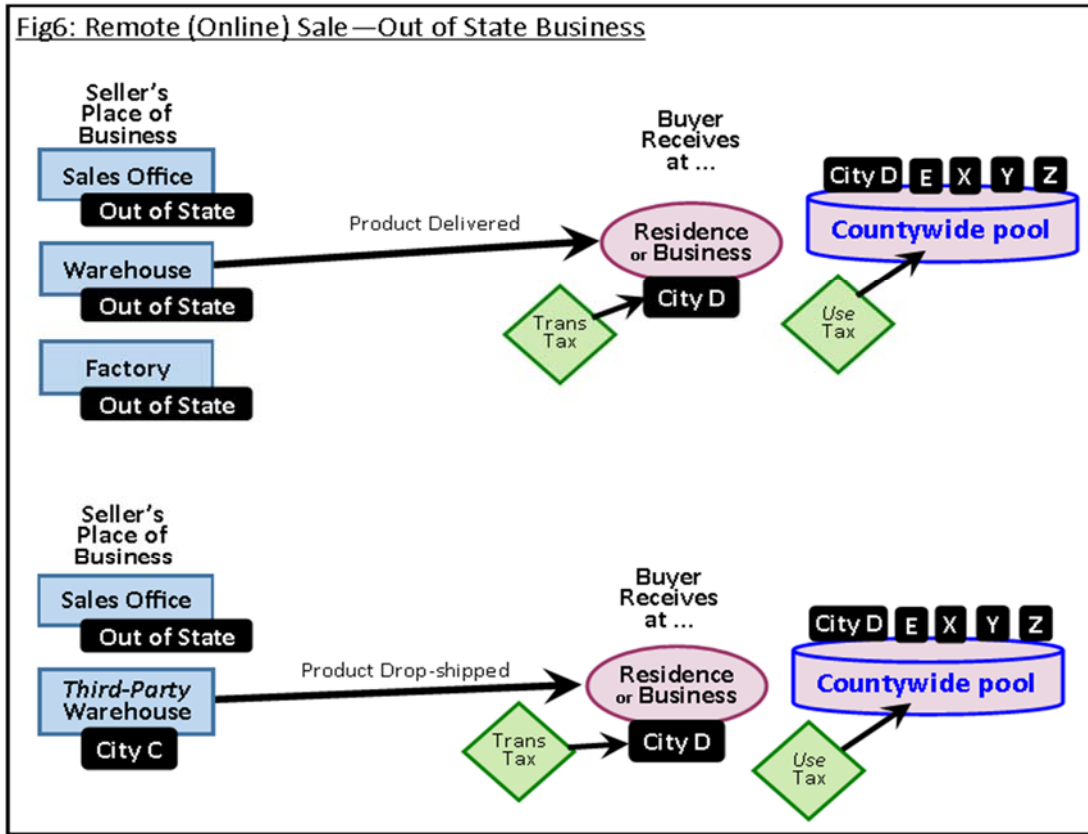
City of La Verne

City of Lakewood

City of Moorpark
City of Placentia
City of Sacramento







GUIDELINES FOR ALLOCATION OF LOCAL TAX - ONLINE AND IN-STORE			
Place of Sale	Location of Goods at the Time of Sale	How Customer Receives Goods	Allocation of Tax
Online – Order is placed or downloaded outside California	California Fulfillment Center	Shipped to California Customer	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online – Order is placed or downloaded in California	California Fulfillment Center	Shipped to California Customer	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfillment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfillment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

Courtesy of HdL Companies

CaliforniaCityFinance.com

Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California's odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.⁶

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over \$1 billion per year.

The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California's "warehouse rule" origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

Moving to Destination Sourcing: The Concept⁷

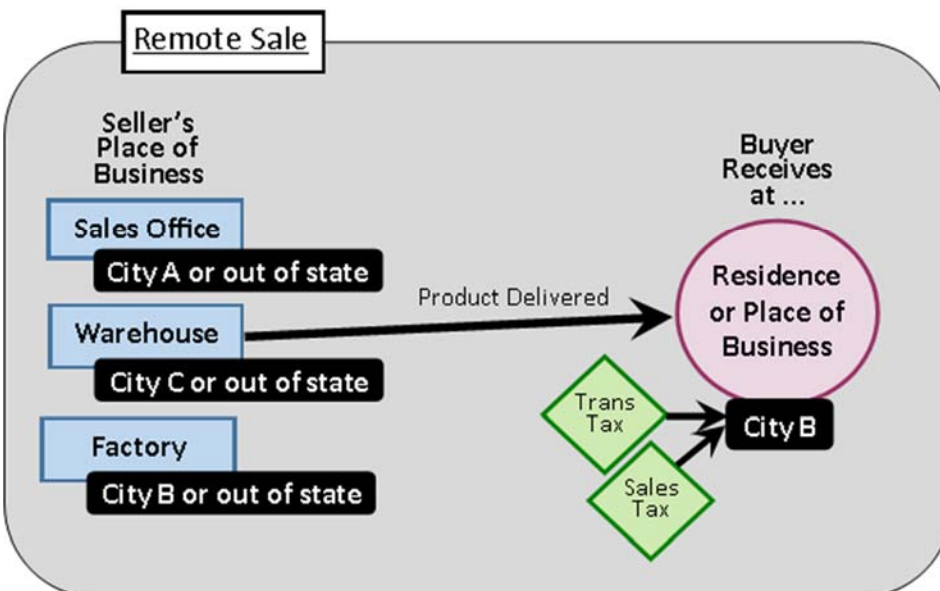
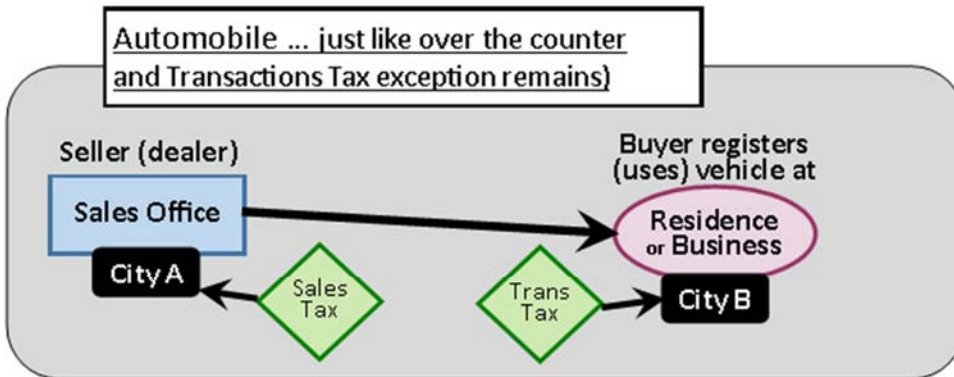
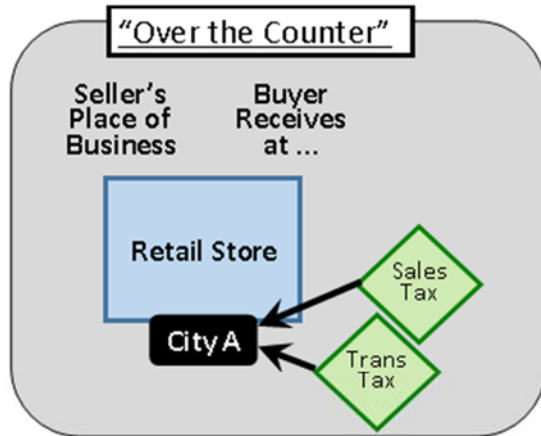
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

⁶ See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

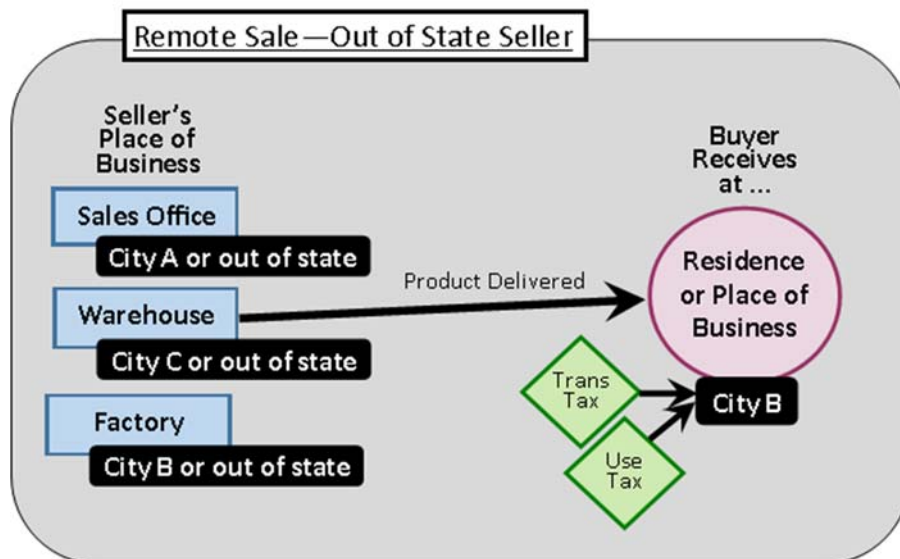
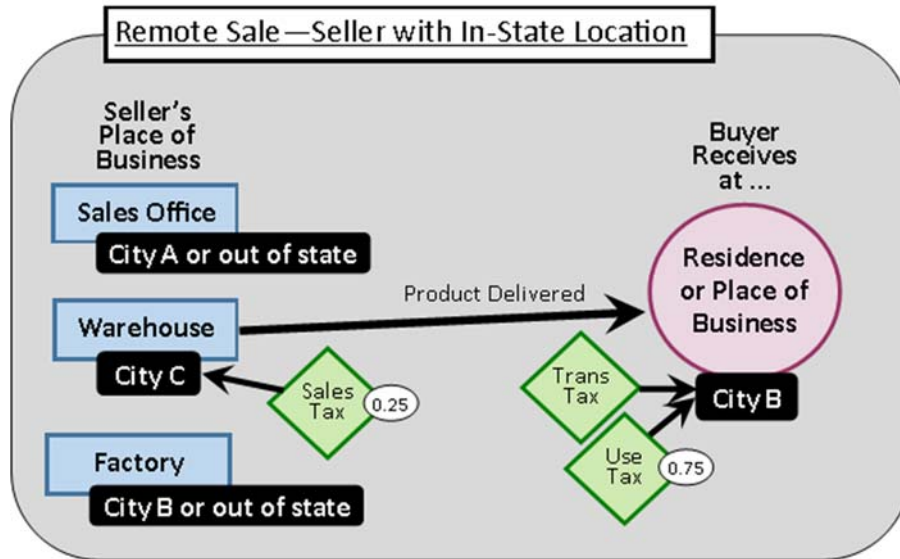
⁷ The same issues that are of concern regarding the local sales tax do not apply to California's Transactions and Use Taxes ("Add-on sales taxes") as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.

Destination Sourcing Scenario 1: Full-On



Destination Sourcing Scenario 2: Split Source

- Same as now for “over the counter” and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.



mjgc

RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being **entirely** allocated to **the specific city cities** where **the** warehouse fulfillment centers **is-are** located as opposed to going into **a** countywide pools that **is are** shared with all jurisdictions in **those counties that County**, as was done previously; and

WHEREAS, this all-or-nothing **change for the** allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue **from the retailer** that was once spread amongst all cities in countywide pools is now concentrated in select cities that host **a** fulfillment centers; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting **a 1 million square foot** fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their **Regional Housing Needs Allocation (RHNA)** obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from those that centers now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by them center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECESSARY FUNDING FOR CUPC TO FULFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ADJACENT TO THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials:

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

WHEREAS, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

Background Information to Resolution

Source: City of South Gate

Background:

The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over \$13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just \$50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.



AGENDA ITEM NO. 17.



LETTERS OF CONCURRENCE
Resolution No. 2



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Bell Gardens supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Marco Barcena at 562-7761 if you have any questions.

Sincerely,

Marco Barcena
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

As a Councilwoman with the City of Bell Gardens, I support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Lisseth Flores at (562) 806-7763 if you have any questions.

Sincerely,

Lisseth Flores

Lisseth Flores
Councilwoman

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 15, 2021

Cheryl Viegas Walker
 President
 League of California Cities
 1400 K Street, Suite 400
 Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The city of Bell supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Paul Philips, City Manager at 323-588-6211, if you have any questions.

Sincerely,

Alicia Romero
 Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
 Jennifer Quan, Executive Director, Los Angeles County Division,



CITY OF COMMERCE

July 20, 2021

Cheryl Viegas Walker
 President
 League of California Cities
 1400 K Street, Suite 400
 Sacramento, CA 95814

RE: Railroad Oversight Annual Conference Resolution

President Walker:

The City of Commerce supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' ("League") 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially disadvantaged communities of color that are home to the State's freight rail lines. While I am supportive of the economic base the railroad industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Edgar Cisneros, City Manager, via email at ecisneros@ci.commerce.ca.us or at 323-722-4805, should you have any questions.

Sincerely,

Mayor Leonard Mendoza

CC: Blanca Pacheco, President, Los Angeles County Division c/o
 Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



CITY OF CUDAHY CALIFORNIA

Incorporated November 10, 1960

5220 Santa Ana Street
Cudahy, California 90201
(323)773-5143

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

Dear President Walker:

The City of Cudahy supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. If you have any questions, please do not hesitate to call my office at 323-773-5143.

Sincerely,

Jose Gonzalez
Mayor

CC: Chris Jeffers, City Manager, City of South Gate



City of El Segundo

Office of the Mayor

July 16, 2021

Elected Officials:

Drew Boyles,
Mayor
Chris Pimentel
Mayor Pro Tem
Carol Pirsztuk,
Council Member
Scot Nicol,
Council Member
Lance Groux,
Council Member
Tracy Weaver,
City Clerk
Matthew Robinson,
City Treasurer

Appointed Officials:

Scott Mitnick,
City Manager
Mark D. Hensley,
City Attorney

Department Directors:

Barbara Voss
Deputy City Manager
Joseph Lillio,
Finance
Chris Donovan,
Fire Chief
Charles Mallory,
Information Technology
Services
Melissa McCollum,
Community Services
Rebecca Redyk,
Human Resources
Denis Cook,
Interim Development Services
Jamie Bermudez,
Interim Police Chief
Elias Sassoon,
Public Works

www.elsegundo.org
www.elsegundobusiness.com
www.elsegundo100.org

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of El Segundo supports the Los Angeles County Division's City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

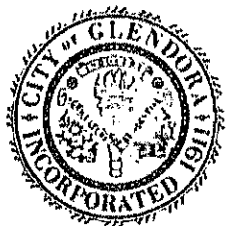
As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact El Segundo Public Works Director Elias Sassoon at 310-524-2356, if you have any questions.

Sincerely,

Drew Boyles
Mayor of El Segundo

CC: City Council, City of El Segundo
Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
Jeff Kiernan, League Regional Public Affairs Manager (via email)

350 Main Street, El Segundo, California 90245-3813
Phone (310) 524-2302 Fax (310) 322-7137


CITY OF GLENDORA CITY HALL

(626) 914-8200

 116 East Foothill Blvd., Glendora, California 91741
www.ci.glendora.ca.us

July 14, 2021

 Cheryl Viegas Walker, President
 League of California Cities
 1400 K Street, Suite 400
 Sacramento, CA 95814

**SUBJECT: SUPPORT FOR THE CITY OF SOUTH GATE'S ANNUAL
 CONFERENCE RESOLUTION**

Dear President Walker:

The City of Glendora is pleased to support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue that many communities, small and large, are experiencing along active transportation corridors, particularly rail lines. Given the importance and growth of the ports and logistics sector, and the economic support they provide, we need to do more to ensure that conflicts are appropriately addressed and mitigated to ensure they do not become attractive nuisances. Our cities are experiencing increasing amounts of illegal dumping (trash and debris) and the establishment of encampments by individuals experiencing homelessness along roadways, highways and rail lines. Such situations create unsafe conditions – safety, health and sanitation – that impact quality of life even as we collectively work to address this challenge in a coordinated and responsible manner.

As members of the League of California Cities, Glendora values the policy development process provided to the General Assembly and strongly support consideration of this issue. Your attention to this matter is greatly appreciated. Should you have any questions, please feel free to contact Adam Raymond, City Manager, at araymond@cityofglendora.org or (626) 914-8201.

Sincerely,

 Karen K. Davis
 Mayor

 C: Blanca Pacheco, President, Los Angeles County Division c/o
 Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

PRIDE OF THE FOOTHILLS



July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Re: Resolution No. 2021-18 Supporting City of South Gate Annual Conference Resolution

President Walker:

The City of Huntington Park (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Enclosed is Resolution No. 2021-18 adopted by the City Council of the City of Huntington Park.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively affect our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, Ricardo Reyes, at 323-582-6161, if you have any questions.

Sincerely,

Graciela Ortiz
Mayor, City of Huntington Park

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Enclosure(s)



CITY OF LA MIRADA
DEDICATED TO SERVICE

AGENDA ITEM NO. 17.

La Mirada, California 90638

P.O. Box 828

La Mirada, California 90637-0828

Phone: (562) 943-0131 Fax: (562) 943-1464

www.cityoflamirada.org

July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

**SUBJECT: LETTER OF SUPPORT FOR CITY OF SOUTH GATE'S PROPOSED
RESOLUTION AT CALCITIES ANNUAL CONFERENCE**

President Walker:

The City of La Mirada supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities that are home to the State's freight rail lines. While the City of La Mirada is supportive of the economic base the railroad industry serves to the State, the rail lines have become places where illegal dumping and a growing homeless population are significant problems. The negative impact of these illegal activities decreases the quality of life for the La Mirada community, increases blight and unhealthy sanitation issues, and negatively impacts the City's ability to meet State water quality standards under the MS4 permits.

As members of the League, the City of La Mirada values the policy development process provided to the General Assembly. We appreciate your consideration on this issue. Please feel free to contact Assistant City Manager Anne Haraksin at (562) 943-0131 if you have any questions.

Sincerely,

CITY OF LA MIRADA

Ed Eng
Mayor

cc: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

July 22, 2021

Cheryl Viegas Walker
 President
 League of California Cities
 1400 K Street, Suite 400
 Sacramento, CA 95814

RE: Support for City of South Gate Resolution—Cleanup Activities on Rail Operator Properties

Dear President Walker,

On behalf of the City of Long Beach, I write to support the City of South Gate’s proposed resolution for the League of California Cities’ (League) 2021 Annual Conference. This resolution seeks to direct the League to adopt a policy urging State and federal governments to increase oversight of rail operators’ land maintenance. The City is a proponent of increased maintenance along railways and believes a League advocacy strategy would help expedite regional responses.

The COVID-19 pandemic has exacerbated the public health and safety concerns on rail rights-of-way, as trash, debris, and encampments have increased exponentially. These challenges erode the quality of life for our communities, increase blight, and contribute to public health and sanitation issues. To address these concerns, the City has engaged directly with regional partners to prioritize ongoing maintenance and cleanups, and has invested \$4 million in the Clean Long Beach Initiative as part of the City’s Long Beach Recovery Act to advance economic recovery and public health in response to the COVID-19 pandemic.

The City of South Gate’s proposed resolution would further advance these efforts for interjurisdictional coordination. The increased oversight proposed by the resolution will help support better coordination and additional resources to address illegal dumping and encampments along private rail operator property. This is a critical measure to advance public health and uplift our most vulnerable communities. For these reasons, the City supports the proposed League resolution.

Sincerely,



THOMAS B. MODICA
 City Manager

cc: Blanca Pacheco, President, Los Angeles County Division c/o
 Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



OFFICE OF THE
MAYOR
MARISELA SANTANA

City of
LYNWOOD

Incorporated 1921

11330 Bullis Road, Lynwood, CA 90262
(310) 603-0220 x 200



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Lynwood supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Ernie Hernandez at (310) 603-0220 ext. 200, if you have any questions.

Sincerely,

Marisela Santana, Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



July 19, 2021

Cheryl Viegas Walker
 President
 League of California Cities
 1400 K Street, Suite 400
 Sacramento, CA 95814

RE: Resolution in Support of City of South Gate Annual Conference Resolution

President Walker:

The City of Montebello (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Attached is the Resolution to be considered for adoption by the City Council of the City of Montebello at our July 28, 2021, City Council meeting.

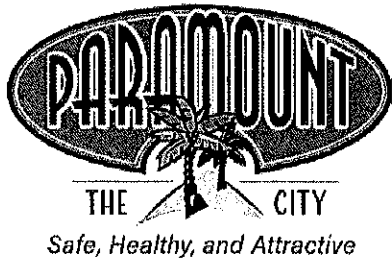
The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, René Bobadilla, at 323-887-1200, if you have any questions.

Sincerely,

Kimberly Cobos-Cawthorne
 Mayor, City of Montebello

CC: Blanca Pacheco, President, Los Angeles County Division c/o
 Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



BRENDA OLMOS
Mayor

VILMA CUELLAR STALLINGS
Vice Mayor

ISABEL AGUAYO
Councilmember

LAURIE GUILLEN
Councilmember

PEGGY LEMONS
Councilmember

July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

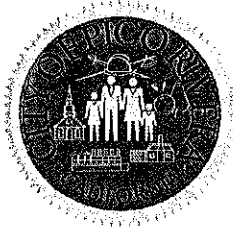
RE: SUPPORT FOR ANNUAL LEAGUE OF CITIES CONFERENCE GENERAL ASSEMBLY RESOLUTION

President Walker:

The City of Paramount supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento. The proposed resolution is attached

South Gate’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic boon the freight industry serves to the State, their rail line rights of way have often become places where illegal dumping is a constant problem and where our growing homeless populations reside. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As a member of the California League of Cities, the City of Paramount values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact City Manager John Moreno at (562) 220-2222 if you have any questions.



City of Pico Rivera
OFFICE OF THE CITY MANAGER

6615 Passons Boulevard · Pico Rivera, California 90660

(562) 801-4371

Web: www.pico-rivera.org e-mail: scastror@pico-rivera.org

Steve Carmona
City Manager

City Council
Raul Elias
Mayor
Dr. Monica Sánchez
Mayor Pro Tem
Gustavo V. Camacho
Councilmember
Andrew C. Lara
Councilmember
Erik Lutz
Councilmember

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 14, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Pico Rivera supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantaged communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Steve Carmona at (562) 801-4405 if you have any questions.

Sincerely,

City Manager
City of Pico Rivera

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

League of California Cities Staff Analysis on Resolution No. 2

Staff: Damon Conklin, Legislative Affairs, Lobbyist
Jason Rhine, Assistant Director, Legislative Affairs
Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works
Housing, Community, and Economic Development

Summary:

The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

Background:

California Public Utilities Commission (CPUC) Railroad Oversight

The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

CPUC's Ability to Address Homelessness on Railroads

Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of [Commission GO 118-A](#), which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of

[Commission GO 26-D](#), which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

Homelessness in California

According to the [2020 Annual Homeless Assessment Report \(AHAR\)](#) to Congress, there has been an increase in unsheltered individuals since 2019. More than half ([51 percent or 113,660 people](#)) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the [Federal Railroad Administration](#) over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad's private property. It can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

State Budget Allocations – Homelessness

The approved State Budget includes a homelessness package of \$12 billion. This consists of a commitment of \$1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- \$2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- \$50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- \$2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided \$2.2 billion specifically for Homekey with \$1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included \$1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

Cities Railroad Authority

A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city

must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company's expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to [compel railroad companies](#) to increase their efforts to address homeless encampments on their railroads or [grant a local authority's application](#) for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad's right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad's right-of-way.

Fiscal Impact:

If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

Existing League Policy:

Public Safety:

Graffiti

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

Transportation, Communications, and Public Works

Transportation

The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety

Housing, Community, and Economic Development

Housing for Homeless

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

Staff Comments:

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

Support:

The following letters of concurrence were received:

- City of Bell Gardens
- City of Bell
- City of Commerce
- City of Cudahy
- City of El Segundo
- City of Glendora
- City of La Mirada
- City of Paramount
- City of Pico Rivera
- City of Huntington Park
- City of Long Beach
- City of Lynwood
- City of Montebello

ATTACHMENT A

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECCESARY~~ ~~NECESSARY~~ FUNDING FOR ~~CUPC~~ THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULTY~~ QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the ~~California Public Utilities Commission~~ CPUC for operational safety and maintenance; and

WHEREAS, the ~~California Public Utilities Commission (CPUC)~~ is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Cal Cities Annual Conference on September 24, 2021, in Sacramento, that the Cal Cities League calls for the Governor and the Legislature to work with the Cal Cities League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The Cal Cities League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.



LEAGUE OF
CALIFORNIA
CITIES

PROPOSED BYLAWS AMENDMENTS

***2021 Annual Conference
Sacramento, CA***

***General Assembly
September 24, 2021***

**2020-2021
CAL CITIES OFFICERS**

President

Cheryl Viegas Walker
Mayor,
El Centro

First Vice President

Cindy Silva
Council Member,
Walnut Creek

Second Vice President

Ali Taj
Council Member,
Artesia

Immediate Past President

John F. Dunbar
Mayor,
Yountville

**Executive Director
and CEO**

Carolyn M. Coleman

To: Cal Cities General Assembly
From: Cheryl Viegas Walker, President
Carolyn Coleman, Executive Director
Date: September 2021
Re: Proposed Cal Cities Bylaws Amendments

On August 17, 2021, the League of California Cities (Cal Cities) Board of Directors (Board) voted to present proposed bylaws amendments to the General Assembly at the 2021 Cal Cities' Annual Conference. This document describes the background of the proposed amendments, summarizes the proposed amendments, and explains the procedure for adopting amendments to the bylaws.

Background

Beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the "Powering Up for California Cities Strategic Growth Plan 2018-2021" (Strategic Growth Plan). The Strategic Growth Plan set forth goals to enhance Cal Cities' governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and their effectiveness in supporting fulfillment of Cal Cities' mission; and (c) ensure the pathway to leadership is transparent and inclusive.

In furtherance of its governance goals, the Board engaged an association governance consultant (Consultant) to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities' governance. The Consultant gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys. On July 8, 2021, the Consultant produced a report (Governance Report) detailing 49 recommendations to the Board to deepen the engagement of Cal Cities' Member Cities and ensure Cal Cities' governance is operating at peak performance.

The Governance Report included findings indicating that Cal Cities is a strong organization, with a high level of member engagement, but also highlighted opportunities for Cal Cities to enhance its governance. The opportunities for enhancement included: (a) improving the clarity, ease, and consistency in how the governance system works; (b) clarifying the guidelines for position qualifications and performance expectations; (c) identifying ways to deepen member engagement and enhance the quality of the experience of involvement; and (d) ensuring Cal Cities has an intentional, consistent organizational culture at all levels of the governance system.

The findings and recommendations from the report were presented at the July Cal Cities Board meeting, and following a robust exchange of ideas and input, the Board decided to move forward with many of the recommendations, referred other recommendations to a Board subcommittee for further study, and deferred consideration of still other recommendations. Two of the approved recommendations adopted by the Board require bylaws amendments; specifically, the recommendations to adjust the composition of the Board, and fully recognize the Diversity Caucuses in the Cal Cities bylaws.¹

In addition to governance goals, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audiences; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities. In furtherance of its visibility goals, Cal Cities adopted the abbreviated moniker “Cal Cities” to identify and differentiate Cal Cities as the voice of California cities on priority issues. To promote consistency, the Cal Cities bylaws should be amended to change the League of California Cities’ moniker to Cal Cities.

Finally, in reviewing the Cal Cities bylaws amendments staff identified various minor technical corrections to the bylaws.

Summary of Amendments

At this time, the Board recommends for adoption the following amendments to the bylaws:

1. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.
2. Recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws to reflect the full contribution the caucuses make to Cal Cities’ mission and vision.
3. Update the League of California Cities’ moniker to Cal Cities.
4. Make various minor technical corrections.

While the work to enhance Cal Cities’ governance is a process that will be implemented in phases over several years, the Board believes these proposed amendments constitute an important first step towards ensuring Cal Cities’ governance is operating at peak performance.

¹ Cal Cities Diversity Caucuses are currently recognized through Board Policy. See page 35 of the Board Manual, available at [https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-\(b15\).pdf](https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-(b15).pdf).

Procedure for Amending the Cal Cities Bylaws

Amendments to the Cal Cities bylaws may be proposed by the Cal Cities Board and may be adopted: (a) by vote of the Cal Cities General Assembly, or (a) by mail ballot to member cities.² In this case, the amendments will be considered by the General Assembly. Bylaws amendments need to be approved by 2/3 of those voting,³ and the number that constitutes 2/3 of those voting (1) cannot be less than a majority of the voting delegates present if there is a quorum at the time the vote is taken;⁴ or (2) cannot be less than a majority of a quorum if the meeting started with a quorum but a quorum is not present when the vote is taken.⁵

If approved by the General Assembly, the amendments to the bylaws will go into effect after the expiration of a 60-day protest period.⁶ If, within 60 days after the adoption of the amendments, one-third or more of the Member Cities submit a written protest against the amendments, the amendments are automatically suspended until the next Annual Conference, when they may be taken up again for reconsideration and vote.⁷

² Article XVI, Section 1.

³ Article XVI, Section 2.

⁴ Cal. Corp. Code 7512, subd. (a).

⁵ Cal. Corp. Code 7512, subd. (d).

⁶ Article XVI, section 6.

⁷ Article XVI, section 7.

**RESOLUTION RELATING TO AMENDMENTS TO THE CAL CITIES BYLAWS
(2/3 vote at General Assembly required to approve)**

Source: League of California Cities Board of Directors

WHEREAS, the League of California Cities (Cal Cities) is a nonprofit mutual benefit corporation under California law and, as such, is governed by corporate bylaws; and

WHEREAS, the Cal Cities Board of Directors (Board) periodically reviews the Cal Cities bylaws for issues of clarity, practicality, compliance with current laws, and responsiveness to membership needs and interests; and

WHEREAS, beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the “Powering Up for California Cities Strategic Growth Plan 2018-2021” (Strategic Growth Plan); and

WHEREAS, the Strategic Growth Plan set forth goals to enhance Cal Cities’ governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and effectiveness in supporting fulfillment of the Cal Cities’ mission; and (c) ensure the pathway to leadership is transparent and inclusive; and

WHEREAS, in furtherance of its governance goals, the Board engaged an expert in association governance (Consultant) who gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities’ governance; and

WHEREAS, the Board approved certain recommendations made by the Consultant as a result of that governance assessment, which identified amendments to the bylaws that: (a) fully recognize the Cal Cities diversity caucuses; and (b) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; and

WHEREAS, Corporations Code section 7222(c) provides that a bylaws amendment that reduces the number of directors or the number of classes of directors does not remove any director prior to the expiration of the director’s term of office; and

WHEREAS, the Directors currently serving as Directors of Cal Cities by virtue of their service as Directors on the National League of Cities Board will continue to serve on the Cal Cities Board until the expiration of their terms and the bylaws amendment providing for one non-voting advisor to the Cal Cities Board to be appointed if members of the National League of Cities Board of Directors hold an office in a Member City will not become effective until December 1, 2022; and

WHEREAS, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audience; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities; and

WHEREAS, in furtherance of its visibility goals, the Board engaged a strategic communications expert to work alongside Cal Cities staff to assess the Cal Cities' brand; and

WHEREAS, that assessment indicated that numerous abbreviations for the "League of California Cities" were diluting its brand; and

WHEREAS, Cal Cities thus adopted the abbreviated moniker "Cal Cities" to identify and differentiate Cal Cities across all channels, including media, as the voice of California cities on priority issues; and

WHEREAS, the Cal Cities Board offers the following proposed amendments and additions to the bylaws, as summarized in the attached Summary of Proposed Bylaw Changes, and as set forth in full in the attached redlined version of the bylaws referenced below, both of which are hereby incorporated by reference, which (1) fully recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws; (2) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; (3) change the League of California Cities' moniker to Cal Cities; and (4) make various minor technical corrections; and

now therefore, be it

RESOLVED, by the General Assembly of the League of California Cities assembled during the Annual Conference in Sacramento on September 24, 2021, that Cal Cities makes the specified changes to the Cal Cities bylaws set forth in full in the attached redlined version of the bylaws, and as summarized in the attached Summary of Proposed Bylaws Changes.

See ATTACHMENT 1 for a summary of the proposed bylaws changes.

See ATTACHMENT 2 for full redlined version of the proposed changes to the bylaws.

ATTACHMENT 1
Summary of Proposed Bylaws Changes

Summary of Proposed Bylaws Changes

1. Fully Recognize the Cal Cities Diversity Caucuses in the Cal Cities Bylaws.

- Add a new Article XI, formally recognizing the caucuses in the bylaws consistent with how departments and divisions are recognized. Provide default rules for caucus structure and process where the caucuses do not have bylaws or where caucus bylaws are silent.
- Make conforming changes as follows:
 - Amend Article VI, Section 3, Subdivisions (a) and (b) to allow for one elected official from each caucus to be appointed to the resolutions committee by their respective caucus, or by the Cal Cities President in the event a caucus does not make its appointment.
 - Amend Article VII, Section 10, Subdivision (c) to provide that one member of each standing policy committee shall be appointed by each caucus president.
 - Amend new Article XII (formerly, Article XI), Section 1, Subdivision (a) to specify that a majority of the members of a caucus constitutes a quorum for the purpose of making decisions.
 - Amend new Article XII (formerly, Article XI), Section 2, Subdivision (a) to provide that all voting in a caucus meeting is by voice vote.
 - Amend new Article XII (formerly, Article XI), Section 4 to provide that representatives of each Member City present and in good standing at a caucus meeting collectively cast one vote, except as otherwise provided in caucus bylaws.
 - Amend new Article XII (formerly, Article XI), Section 5, Subdivision (d) to allow caucuses to use mail balloting as specified in their bylaws.
 - Amend Article XIII (formerly, Article XII), Section 1, Subdivision (a) to provide that persons must officially be in city service in a Member City in order to be eligible to hold office in a caucus.
 - Amend Article XIII (formerly, Article XII), Section 2, Subdivisions (c) and (d) to clarify the effective date of a caucus office resignation or vacancy.
 - Amend Article XIV (formerly, Article XIII), Section 2, Subdivision (b) to provide that a copy of Cal Cities' budget shall be sent to each caucus president who shall make it available to caucus members.

- Amend Article XVI (formerly, Article XV), Section 5 to provide that Robert's Rules of Order or other parliamentary rules adopted by the Cal Cities Board shall prevail at caucus meetings.

2. Adjust the Composition of the Board.

- **Add directors from each diversity caucus:**
 - Amend Article VII, Section 2, Subdivision (d) to add one director from each of the five caucuses to the Board for a term of two years.
 - Make conforming changes to the following sections:
 - Amend Article VII, Section 3, to stagger the terms of the caucus directors so that the terms of approximately one-half of the Board continue to expire each year. Provide that the terms for the directors from the African American, Asian Pacific Islander, and LGBTQ caucuses expire in even-numbered years, and terms of the directors from the Latino and Women's caucuses expire in odd-numbered years.
 - Amend Article VII, Section 4, Subdivision (c) to provide that the initial caucus director shall either be the caucus president or another caucus member appointed by the caucus president, and thereafter, that caucus directors are to be elected by their caucuses.
 - Amend Article VII, Section 4, new Subdivision (f) (formerly Subdivision (e)) to provide that newly created caucuses can elect a representative to the Board.
 - Amend Article VII, Section 6, Subdivision (c) to provide that, if a vacancy occurs in a caucus directorship, the caucus officers may elect a new director.
- **Transition members of the National League of Cities (NLC) Board of Directors from Cal Cities Directors to one non-voting advisor to the Board:**
 - Delete Article VII, Section 2, Subdivision (e) which provides that directors on the NLC Board who hold an office in a Member City are directors on the Cal Cities Board, and make a conforming change as follows:
 - Delete the language from Article VII, Section 2, Subdivision (g) which provides that directors that sit on the Cal Cities Board by virtue of their directorship on the NLC Board shall serve until their terms on the NLC Board conclude.

- Add new Section 17 to Article VII to provide that effective December 1, 2022 (after the terms of the currently serving NLC Board directors expire), if members of the NLC Board hold office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board for a term that coincides with their service on the NLC Board. Provide further that such non-voting advisor shall be invited to attend regularly-scheduled Board meetings, but shall not attend emergency meetings and/or closed/executive sessions unless otherwise determined by the Board.

- 3. **Change the League of California Cities Moniker.** Amend Article I, Section 1 to read, “This corporation is the League of California Cities (~~the League~~) (Cal Cities)” and make conforming changes to replace “League” with “Cal Cities” throughout the entirety of the bylaws.

- 4. **Make Technical Corrections.**
 - Amend the following sections of the bylaws to correct technical errors and typos:
 - Article I, Section 3: change “to” to “do”
 - Article II, Section 2(a): change “Advocate legislation” to “Advocate for legislation”
 - Article II, Section 2(g): change “member cities” to “Member Cities”
 - Article III, Section 3: change “state and federal laws” to “state or federal laws”
 - Article V, Section 3(b): changed “Designating” to “Designated”
 - Article VI: clarify that “Petitioned Resolutions” is a defined term in Section 2 and capitalize “Petitioned Resolutions” in Section 4(a), Section 5(f), and Section 5(g)
 - Article VI, Section 5(d): change “late” to “later”
 - Article VII, Section 4(d): change “organization” to “organizational”
 - Article VII, Section 4(f): add “the” before “nominating committee”
 - Article VII, Section 10(c)(ii): capitalize “President”
 - Article IX, Section 7(c)(ii): correct cross-reference from 4(d) to 4(e)
 - Article X, Section 2(c): change “two years established” to “two years as established”
 - Article X, Section 2(d): capitalize “Director”
 - Article XII, Section 4: change “representatives” to “representative” and “cast” to “casts”
 - Article XVI, Section 5: add “and applicable law”
 - Article XVIII, Section 3(c): correct cross-reference from “Article XI” to “Article XII”
 - Article XII, Section 2(b): change “three or Member Cities” to “three or more Member Cities”

ATTACHMENT 2
Full Redlined Version of Proposed Changes to Bylaws

Bylaws for the League of California Cities

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Bylaws for the League of California Cities¹

Article I: General

Section 1: Corporation Name.

This corporation is the League of California Cities (~~Cal Cities~~the League).

Section 2: Offices.

The principal office of this corporation shall be located in Sacramento, California. The ~~League-Cal Cities~~ Board of Directors (~~League-Cal Cities~~ Board) may establish such other ~~League-Cal Cities~~ offices as it deems necessary to the effective conduct of ~~League-Cal Cities~~ programs.

Section 3: Compliance with Governing Laws.

In all matters not specified in these bylaws, or in the event these bylaws ~~do~~ not comply with applicable law, the California Nonprofit Corporation Law applies.

Article II: Purpose and Objectives

Section 1: General.

~~The League's~~Cal Cities' purpose is to strengthen and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

Section 2: Objectives.

~~The League's~~Cal Cities' objectives are the following:

- (a) Advocate for legislation that results in benefits to Member Cities,
- (b) Communicate to Member Cities and the public on issues related to the general welfare of citizens in California cities,
- (c) Pursue strong intergovernmental relationships to promote the well being of California cities,
- (d) Organize educational opportunities, such as conferences of city officials,

¹ Note: All footnotes are for reference and explanation only and are not part of the bylaws text.

- (e) Stimulate greater public interest and more active civic consciousness as to the importance of cities in California's system of government,
- (f) Collect and disseminate information of interest to Member Cities, and
- (g) Engage the membership in a continuing analysis of the needs of ~~M~~member ~~C~~ities.

Article III: Membership

Section 1: Qualification.

- (a) **Cities.** Any city, or city and county, in California may, by the payment of annual dues prescribed in Article IV, become a Member City and as such is entitled to ~~League-Cal Cities~~ services and privileges.
- (b) **Elected and Appointed Officials.** All elected and appointed officials in Member Cities are members of ~~the LeagueCal Cities~~.

Section 2: Termination.

- (a) **Grounds for Termination.** Membership is suspended or terminated whenever any of the following occurs:
 - (i) The Member City resigns by giving written notice to ~~the LeagueCal Cities~~;
 - (ii) The Member City does not pay dues, fees or assessments in the amounts and terms set by the ~~League-Cal Cities~~ Board; or
 - (iii) An event occurs that makes the Member City ineligible for membership.
- (b) **Procedures for Termination.** ~~The LeagueCal Cities~~ shall give 15 days notice of any suspension or termination of membership and the reasons for such action, along with the opportunity to respond orally or in writing not less than five days before the effective date of the action.²

Section 3: Honorary Members.

Any person who has given conspicuous service for the improvement of city government may, by the vote of the ~~Cal Cities League~~ Board, be granted an honorary membership

² See Cal. Corp. Code § 7341(c) (requiring termination procedures be included in bylaws and specifying what constitutes a fair and reasonable procedure).

in ~~Cal Cities~~the League. All ex-presidents of ~~the League~~Cal Cities are Honorary Members. Honorary Members as such do not have a voice or vote in any of the meetings of ~~the League~~Cal Cities and do not have membership status in ~~Cal Cities~~ the League for purposes of state ~~and-or~~ federal laws.

Section 4: Non-Liability.

No Member City is liable for the debts or obligations of ~~Cal Cities~~the League.

Article IV: Dues

Section 1: Establishment.

The ~~League~~Cal Cities Board establishes ~~the League's~~Cal Cities' dues annually according to city population. The population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.

Section 2: Increase in Dues.

(a) Board Vote Requirement. Any increase in dues must be approved by the ~~League~~Cal Cities Board by a two-thirds vote. The ~~Cal Cities~~League Board's approval shall be accompanied by an explanation of the need for the increase, including but not limited to:

- (i) Increases in ~~the League's~~Cal Cities' costs related to general increases in the consumer price index or other factors; and/or
- (ii) The expansion of existing programs or initiation of new programs.

(b) Member City Ratification Requirement. Any dues increase that exceeds either the "consumer price index" for the preceding twelve months or five percent (whichever is greater) requires Member City ratification. In no event, however, shall the ~~League~~ Cal Cities Board approve a dues increase in excess of ten percent without Member City ratification.

(i) "Consumer Price Index" Defined. For purposes of this section, the consumer price index is the California consumer price index for all urban consumers calculated by the California Department of Industrial Relations or its state or federal successor.

(ii) Approval Threshold. Member City ratification requires a majority of Member Cities casting votes.

(iii) **Mechanism for Seeking Approval.** The ratification may occur at ~~the League's~~Cal Cities' General Assembly (see Article V) or by using the mail balloting procedure (see Article XI, section 5).

(c) **Dues Cap.** In no event will a Member City's dues increase by more than \$5,000 per year.

Section 3: Delinquency.

Any Member City of ~~the League~~Cal Cities who is delinquent in dues, fees or assessments may be suspended or have that member's membership terminated as provided in Article III, section 2.

Article V: Membership Meetings

Section 1: Annual Conference.

(a) **Time and Place.** ~~The League's~~Cal Cities' regular Annual Conference is held at the time and place as the League-Cal Cities Board determines. In case of any unusual conditions or extraordinary emergency, the League-Cal Cities Board may, at its discretion, change the time or place of the meeting.

(b) **Conference Program Planning.** The League-Cal Cities Board shall establish an Annual Conference program planning process that provides for input from representative segments of Cal Cities' ~~the League's~~ membership.

Section 2: Special Meetings.

Special meetings of Cal Cities ~~the League~~ may be called by the League-Cal Cities Board and shall be called by the League-Cal Cities Board upon the written request of five percent or more of the Member Cities.³ Any written request by Member Cities shall describe the general nature of the business to be transacted and the text of any proposed resolution(s).

Section 3: City Delegates as General Assembly.

(a) **Designation.** Each Member City may, with the approval of the city council, designate a city official as the city's designated voting delegate and, in the event that the designated voting delegate is unable to serve in that capacity, up to two alternate voting delegates.

³ See Cal. Corp. Code § 7510 ("special meetings of members for any lawful purpose may be called by 5 percent or more of the members").

(b) **Membership Decision-making Body.** Designated ~~ed~~ing voting delegates (or their alternates) constitute ~~the League's~~ Cal Cities' General Assembly.

(c) **Registration for Annual Conference.** For General Assemblies held in conjunction with the Annual Conference, designated voting delegates must register to attend the Annual Conference.

Section 4: Notice of Meetings.

(a) **General.** Notice shall be given to all Member Cities of the time and place of all regular and special meetings by faxing or mailing a written notice at least fifteen days prior to each meeting, or by publishing a notice of the meeting at least two weeks prior to the meeting in an official publication of Cal Cities~~the League~~; provided, however, that failure to receive such notice does not invalidate any proceedings at such meeting.

(b) **Special Notice Requirements for Special Meetings.** Any notice of the calling of a special meeting shall specify the purpose of the special meeting in such detail to enable Member Cities to determine whether they should attend. In the event a special meeting is requested by five percent or more of the Member Cities, the notice shall also set for the text of any proposed resolution(s).

Section 5: Parliamentarian.

The ~~League~~ Cal Cities President shall appoint a Parliamentarian to resolve procedural issues at ~~the League's~~ Cal Cities' General Assembly and in Resolutions Committee meetings.

Section 6: Credentials.

Designated voting delegates must register with the Credentials Committee. The Cal Cities ~~League~~ President shall appoint a three-person Credentials Committee no later than the first day of the General Assembly. In case of dispute, this committee determines the right of a member to participate.

Article VI: Resolutions

Section 1: Role and Scope of Resolutions.

Resolutions adopted by ~~the League's~~ Cal Cities' General Assembly and such ~~League~~ Cal Cities Board policies as are not inconsistent with such resolutions constitute ~~League~~ Cal Cities policy. All resolutions shall be germane to city issues.

Section 2: Origination.

Resolutions may originate from city officials, city councils, regional divisions, functional departments, caucuses, policy committees, or the League-Cal Cities Board or by being included in a petition signed by designated voting delegates of ten percent of the number of Member Cities (Petitioned Resolutions). Except for Petitioned Resolutions, all other resolutions must be submitted to ~~the League-Cal Cities~~ with documentation that at least five or more cities, or city officials from at least five or more cities, have concurred in the resolution.

Section 3: Resolutions Committee for Annual Conference Resolutions.

(a) Resolutions Committee Composition. The League-Cal Cities President establishes a Resolutions Committee sixty days prior to each Annual Conference, which committee shall consist of:

- (i) One elected official from each regional division, appointed by the regional division;
- (ii) One elected official from each policy committee, appointed by the policy committee;
- (iii) One member from each functional department, appointed by the department;
- (iv) One elected official from each caucus, appointed by the caucus; and
- (iv) Up to ten additional members (at least five of whom are elected officials) as the League-Cal Cities President deems necessary to achieve geographic and population balance, as well as recognize the multiplicity of city functions not represented by the other appointments, including, but not limited to, the perspectives of board and commission members as well as professional staff.

(b) Presidential Appointments. In the event a regional division, policy committee, ~~or~~ functional department, or caucus does not make its appointment to the Resolutions Committee, the League-Cal Cities President may make the appointment on the regional division's, policy committee's, ~~or~~ functional department's, or caucus's behalf.

(c) Chair. The League-Cal Cities President shall also appoint to the Resolutions Committee a committee chair and vice chair.

(d) Minimum Committee Size and Composition. In the event the full committee is not in attendance at the Annual Conference, the League-Cal Cities President shall appoint a sufficient number of city officials in attendance

to achieve a total of thirty. No less than two-thirds of the members of the Resolutions Committee shall be elected officials.

- (e) Committee Consideration of Proposed Resolutions.** Except for resolutions of courtesy, commendation, appreciation or condolence, no resolution expressing the opinion or policy of ~~the League-Cal Cities~~ on any question may be considered or discussed by ~~the League's Cal Cities'~~ General Assembly, unless it has been first submitted to, and reported on, by the Resolutions Committee.

Section 4: Procedure for Resolution Review for the Annual Conference.

- (a) Timing.** Except for ~~P~~petitioned ~~R~~esolutions, all resolutions shall be submitted to the Resolutions Committee, at ~~the League's Cal Cities'~~ headquarters, not later than sixty days prior to the opening session of ~~the League's Cal Cities'~~ Annual Conference.

(b) Referral to Policy Committees.

- (i) Review and Recommendations.** Except for resolutions of courtesy, commendation, appreciation or condolence, all resolutions submitted to the Resolutions Committee shall be referred by the ~~League-Cal Cities~~ President to an appropriate policy committee for review and recommendation prior to the opening general session of the Annual Conference.
- (ii) Report to Resolutions Committee.** Policy committees shall report their recommendations on such resolutions to the Resolutions Committee. The inability of a policy committee to make a recommendation on any resolution does not preclude the Resolutions Committee from acting upon it.

Section 5: Resolutions Proposed by Petition for the Annual Conference.

- (a) Presentation by Voting Delegate.** A designated voting delegate of a ~~Member C~~ity may present by petition a resolution to the ~~League-Cal Cities~~ President for consideration by the Resolutions Committee and the General Assembly at the Annual Conference. These resolutions are known as "~~P~~petitioned ~~R~~esolutions."
- (b) Contents.** The petition shall contain the specific language of the resolution and a statement requesting consideration by ~~the League's Cal Cities'~~ General Assembly.

- (c) **Signature Requirements.** The petition shall be signed by designated voting delegates registered with the Credentials Committee who represent ten percent of the number of Member Cities.
- (d) **Time Limit for Presentation.** The signed petition shall be presented to the ~~League-Cal Cities~~ President no later than twenty-four hours prior to the time set for convening ~~the League's~~Cal Cities' General Assembly.
- (e) **Parliamentarian Review.** If the ~~League-Cal Cities~~ President finds that the petition has been signed by designated voting delegates of ten percent of the number of Member Cities, the petition shall be reviewed by the Parliamentarian for form and substance. The Parliamentarian's report shall then be presented to the chair of the Resolutions Committee. Among the issues that may be addressed by the Parliamentarian's report is whether the resolution should be disqualified as being either:
- (i) Non-germane to city issues; or
 - (ii) Identical or substantially similar in substance to a resolution already under consideration.
- (f) **Disqualification.** The Resolutions Committee may disqualify a ~~P~~petitioned ~~R~~resolution as either being:
- (i) Non-germane to city issues; or
 - (ii) Identical or substantially similar in substance to a resolution already under consideration.
- (g) **Consideration by General Assembly.** The ~~P~~petitioned ~~R~~resolution and the action of the Resolutions Committee will be considered by ~~the League's~~Cal Cities' General Assembly following consideration of other resolutions.
- (h) **Availability of List of Voting Delegates.** A list of voting delegates shall be made available during the Annual Conference to any designated voting delegate upon request.

Section 6: Special Meeting Resolution Procedures.

- (a) **Germane-ness.** All resolutions must be germane to the meeting purpose specified in the special meeting notice.
- (b) **Opportunity for Member Review.** All resolutions to be proposed during the General Assembly shall be available for membership review by electronic (for example, by posting on the ~~Cal Cities~~League's website) or other means at least 24 hours prior to the beginning of the special meeting.

- (c) **Parliamentarian Review.** The Parliamentarian shall review all proposed resolutions for form and substance. The Parliamentarian's report shall be presented to the General Assembly.

Section 7: Full Debate.

The opportunity for full and free debate on each resolution brought before the General Assembly shall occur prior to consideration of a resolution.

Article VII: Board of Directors

Section 1: Role and Powers; Board Diversity Policy.

- (a) Subject to the provisions and limitations of California Nonprofit Corporation Law, any other applicable laws, and the provisions of these bylaws, Cal Cities' the League's activities and affairs are exercised by or under the direction of the League's Cal Cities Board of Directors. The League-Cal Cities Board is responsible for the overall supervision, control and direction of Cal Citiesthe League. The League-Cal Cities Board may delegate the management of the League's Cal Cities' affairs to any person or group, including a committee, provided the League-Cal Cities Board retains ultimate responsibility for the actions of such person or group.
- (b) The goal of the League Cal Cities is to ensure that the Board of Directors reflects the diverse ethnic and social fabric of California. As such, each Division, Department, Caucus, and Policy Committee should encourage and support members of every race, ethnicity, gender, age, sexual orientation and heritage to seek leadership positions within Cal Citiesthe League, with the ultimate goal of achieving membership on the Board of Directors.

Section 2: Composition.

The League's The Cal Cities Board is composed of the following:

- (a) A President, First Vice-President and Second Vice-President/Treasurer, who each serve a term of one year;
- (b) The Immediate Past President who serves for a term of one year, immediately succeeding his or her term as President;
- (c) Twelve Directors-at-Large,
- (i) Who serve staggered two-year terms, and

(ii) At least one of whom is a representative of a small city with a population of 10,000 or less;

(d) One Director to be elected from each of the regional divisions, ~~and~~ functional departments, ~~and caucuses~~ of ~~Cal Cities~~the League, each of whom serves for a term of two years; ~~and~~

~~(e) Members of the National League of Cities Board of Directors who hold an office in a Member City; and~~

~~(f)~~(e) Ten Directors that may be designated by the mayors of each of the ten largest cities in California to serve two-year terms.

~~(g)~~(f) For purposes of this section, the population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine these dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.

~~(h)~~(g) Directors hold office until their successors are elected and qualified ~~or, if they sit on the Cal Cities League Board by virtue of their membership on the National League of Cities Board of Directors, until their terms on the National League of Cities Board of Directors conclude.~~

Section 3: Staggered Terms.

The terms of the Directors are staggered, so that the terms of approximately one-half of the members of the ~~League~~Cal Cities Board expire each year.

(a) Even-Numbered Year Terms. The following directorship terms expire in even-numbered years:

(i) Departments. Directors from the Fiscal Officers, Public Works Officers, Mayors and Council Members, Planning and Community Development, Fire Chiefs, and City Clerks departments;

(ii) Divisions. Directors from the Central Valley, Desert-Mountain, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County divisions; ~~and~~

(iii) Caucuses. Directors from the African American, Asian Pacific Islander, and LGBTQ caucuses; and

(iv) At Large. Directors from five of the ten at-large directorships.

(b) Odd-Numbered Year Terms. The following directorships expire in odd-numbered years:

- (i) **Departments.** Directors from the City Attorneys, City Managers, Police Chiefs, Recreation, Parks and Community Services, and Personnel and Employee Relations departments;
- (ii) **Divisions.** Directors from the Channel Counties, Inland Empire, East Bay, Los Angeles County, Peninsula, Riverside County and South San Joaquin Valley divisions; ~~and~~

(iii) **Caucuses.** Directors from the Latino and Women’s caucuses; and

(iv) **At Large.** Directors from five of the ten at-large directorships.

Section 4: Election of Directors.

(a) Functional Department Directors. Unless their respective functional department bylaws provide otherwise, Departmental Directors are elected by their respective departments at the Annual Conference.

(b) Regional Division Directors. Unless their respective regional division bylaws provide otherwise, Regional Directors are elected at the regional division meeting immediately preceding the Annual Conference.

~~(b)~~(c) **Caucus Directors.** The caucus presidents shall serve, or may appoint a member of their respective caucuses to serve, as the initial Caucus Directors for their respective caucuses. Thereafter, unless their respective caucus bylaws provide otherwise, Caucus Directors shall be elected by their respective caucuses at the Annual Conference.

~~(c)~~(d) **At-Large Directors.** Directors-at-Large are elected by the League-Cal Cities Board at its organizational meeting.

~~(d)~~(e) **Commencement of Terms.** The term of office of all newly elected Directors commences immediately on the adjournment of the Annual Conference; however, the newly constituted League-Cal Cities Board may meet prior to the adjournment of the Annual Conference for the purpose of organization.

~~(e)~~(f) **Additional Directors.** In the event of the creation of additional regional divisions, ~~or~~ functional departments, ~~or~~ caucuses of Cal Cities the League, each regional division, ~~or~~ functional department, ~~or~~ caucus may elect a representative to the League-Cal Cities Board. When a new functional department, ~~or~~ regional division, ~~or~~ caucus is created at any Annual Conference, the League-Cal Cities Board may select a Director to represent

such functional department, ~~or~~ regional division, or caucus until the entity organizes and elects a Director in the regular manner. The ~~League-Cal Cities~~ Board may fix the initial term of any such Director from a new regional division, ~~or~~ functional department, or caucus at either one or two years, so as to keep the number of terms expiring on alternate years as nearly equal as possible.

Section 5: Nomination Process.

- (a) **Timing.** The ~~League-Cal Cities~~ President, with the concurrence of the ~~League-Cal Cities~~ Board, shall establish a nominating committee at the first Board meeting of the calendar year in which the election is to occur.
- (b) **Composition.** The nominating committee shall be comprised of eleven Board members. Two nominating committee members shall be At-Large Directors and one shall represent a functional department. Regional divisions shall be represented on the nominating committee on the following rotating basis:
- (i) **Even-Numbered Years:** In even-numbered years, the Central Valley, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County Regional Divisions shall be represented on the nominating committee.
 - (ii) **Odd-Numbered Years:** In odd-numbered years, the Channel Counties, Inland Empire, Desert-Mountain, East Bay, Los Angeles County, Peninsula, Riverside County, and South San Joaquin Regional Divisions shall be represented on the nominating committee.
- (c) **Nominating Committee Chair.** The ~~League-Cal Cities~~ President shall appoint the chair of the nominating committee.
- (d) **Candidates for Positions Ineligible.** Candidates for officer and at-large positions on the ~~League-Cal Cities~~ Board are not eligible to serve on the nominating committee. In the event a regional division representative on the nominating committee wishes to be a candidate for an officer or at-large position, the ~~League-Cal Cities~~ President will appoint a substitute nominating committee member from the same regional division, if available. If one is not available, the President shall appoint a substitute from a nearby regional division.
- (e) **Duties.** The duties of the nominating committee are to:
- (i) **Member Outreach.** Publicize the qualifications for the offices of Second Vice President/Treasurer and the at-large members of the ~~League-Cal Cities~~ Board to Cal Cities' ~~the League's~~ Member Cities;

- (ii) **At-Large and Second Vice President Recommendations.** Make recommendations to the League-Cal Cities Board on the following year's League-Cal Cities officers and at-large board members; and
- (iii) **President and First Vice President Recommendation.** Recommend whether the previous year's First Vice President becomes President and the previous year's Second Vice President/Treasurer becomes First Vice President.
- (f) **Notice to Members.** An explanation of the nomination process and relevant deadlines for submitting nominations to the nominating committee shall be publicized in League-Cal Cities publications and communications throughout the year, along with the identity of nominating committee members once such members are appointed. In addition, the nominating committee shall inform the membership of the opening of the nominations for the following year when it makes its report to the general membership as provided in Article VI, Section 5(g) below.
- (g) **Decision and Report.** The nominating committee's recommendations shall be communicated to the League-Cal Cities Board not later than 30 days prior to the date of Cal Cities' the League's Annual Conference and again at the Annual Conference. In addition, the nominating committee shall make its report to the membership at the opening general session of the Annual Conference.
- (h) **Election.** The election of League-Cal Cities Board officers and Directors-at-Large shall occur at a League-Cal Cities Board meeting at the Annual Conference as provided in Article VII, Section 4(c) and Article VII, section 3.

Section 6: Vacancies.

- (a) **Functional Departmental Directorships.** In the event of a vacancy in a functional departmental directorship, the president of the department may become a member of the League-Cal Cities Board or may appoint a member of his or her department to fill the vacancy.
- ~~(b)~~ **Regional Division Directorships.** If a vacancy occurs in the regional division directorship, the regional division in question may elect a new Director at the next regular meeting of the regional division.
- ~~(b)(c)~~ Caucus Directorships. If a vacancy occurs in a caucus directorship, the caucus officers may elect a new Director.
- ~~(c)(d)~~ **At-Large Directorships.** If a vacancy occurs in an at-large directorship, the League-Cal Cities Board may elect a new Director to fill the vacancy at

the next regular board meeting. The ~~League-Cal Cities~~ president may nominate individuals for consideration by the ~~League-Cal Cities~~ Board.

~~(d)~~**(e) Large City Directorships.** In the event of a vacancy in a large-city seat, that large city may designate a new representative.

~~(e)~~**(f) Terms.** The person elected or appointed to fill a vacancy holds office for the remainder of the term of the office in question (see Article VII, section 3).

~~(f)~~**(g) Grounds for Vacancy.** A vacancy in a directorship shall occur due to resignation, a vacancy in elective or appointed office held by the director, or if the ~~League-Cal Cities~~ Board determines the department, ~~or~~ division, ~~or~~ caucus that elected the director, or an appointed director, is not complying with these bylaws or the policies of the ~~League-Cal Cities~~ Board.

Section 7: Resignation.

Any Director resignation is effective upon receipt in writing by the ~~League's-Cal Cities~~ President or Executive Director, unless a later date is specified in the letter.

Section 8: Meetings and Meeting Notice.

(a) Regularly Scheduled Board Meetings. The ~~League-Cal Cities~~ Board shall meet no fewer than four times a year. Notice of regularly scheduled Board meetings shall be mailed to each Director at least 14 days before any such meeting.

(b) Emergency Board Meetings. A good faith effort shall be made to provide notice of any emergency board meetings (for example, by first-class mail, personal or telephone notification, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means).

(c) Telephonic or Electronic Participation. Members of the ~~League-Cal Cities~~ Board may participate in any meeting through the use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting by this means constitutes presence in person at such meeting.

(d) Notice Content. All meeting notices shall include the meeting date, place, time, and, as applicable, the means by which a ~~League-Cal Cities~~ Board member may participate electronically.

Section 9: Policies.

The ~~League-Cal Cities~~ Board may adopt such policies for its government as it deems necessary and which are not inconsistent with these bylaws. In the event of an inconsistency, these bylaws shall prevail.

Section 10: Committees.

(a) General. The ~~League-Cal Cities~~ Board may establish committees to study city problems, advise on ~~League-Cal Cities~~ educational efforts, make recommendations with respect to ~~League-Cal Cities~~ advocacy efforts, or to engage in other appropriate ~~Cal Cities League~~-service.

(b) Executive Committee.

(i) Composition. The Executive Committee of the ~~League-Cal Cities~~ Board consists of the following: the ~~League's-Cal Cities~~ President, First Vice-President, Second Vice-President/Treasurer, Immediate Past President and Executive Director.

(ii) Authority. The Executive Committee has authority to act for the ~~League-Cal Cities~~ Board between Board meetings, provided that no action of the Executive Committee is binding on the ~~League-Cal Cities~~ Board unless authorized or approved by the Board.

(c) Standing Policy Committees.

(i) Charge. ~~Cal CitiesThe League~~ shall have a series of standing policy committees, whose charge shall be to make recommendations to the ~~League-Cal Cities~~ Board on matters within the committees' jurisdiction, as well as fulfill other duties specified in these bylaws (see, for example, Article VI, section 4(b)).

(ii) Membership. Each ~~League-Cal Cities~~ Policy Committee shall be comprised of the following:

- Two members appointed by each regional division president;
- One member appointed by each functional department president;
- One member appointed by each caucus president;
- No more than 16 members appointed by the ~~League-Cal Cities~~ ~~Pp~~resident, to provide population and geographic balance, as well as expertise; and

- Such representatives of affiliate organizations in the capacity authorized by the League-Cal Cities Board.

(iii) **Feedback.** Policy committees shall receive information on actions taken on committee recommendations and the reasons for those actions.

(d) **Committee Chairs and Vice Chairs.** The League-Cal Cities President appoints the chair of all League-Cal-Cities-wide committees. The term of such appointments coincides with the League-Cal Cities President's term. The League-Cal Cities President may appoint vice chairs for such committees, as the League-Cal Cities President deems necessary.

Section 11: Compensation.

The Directors do not receive any compensation for their services, but, with League-Cal Cities Board approval, may be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

Section 12: Reports of Directors.

The League-Cal Cities Board's duties include providing an annual report to League-Cal Cities members at the regular Annual Conference showing the League's Cal Cities work, the League's Cal Cities financial condition, and a statement with respect to the League's Cal Cities' plans for further work and proposed policies.

Section 13: Standard of Care.⁴

(a) **General.** A Director shall perform the Director's duties, including duties on any committee on which the Director serves, in good faith, in a manner the Director believes to be in the best interests of the League-Cal Cities and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

(b) **Reliance on Information.** In performing the Director's duties, the Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:

- (i) One or more League-Cal Cities officers or employees whom the Director believes to be reliable and competent as to the matters presented;

⁴ See Cal. Corp. Code § 7231 (providing that a director who performs the director's duties according to these standards is not liable for any alleged failure to properly discharge the individual's obligations as a director).

- (ii) Counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (iii) A League-Cal Cities Board committee upon which the Director does not serve, as to matters within the committee's designated authority, provided that the Director believes the committee merits confidence.

The Director may rely on such information, opinions, reports, or statements as long as the Director acts in good faith after reasonable inquiry (when the need for such inquiry is indicated by the circumstances) and as long as the Director has no knowledge that would suggest that such reliance is unwarranted.

(c) Non-Liability. An individual who performs the duties of a Director in accordance with this section will not be liable for any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the generality of the preceding, any actions or omissions which are inconsistent with the League's Cal Cities' nonprofit purposes.

Section 14: Right to Inspect Records.

Every Director has a right at any reasonable time to inspect and copy all League-Cal Cities books, records and documents of every kind and to inspect the League's Cal Cities' physical property.⁵

Section 15: Policy Changes.

Any policy established by the League's Cal Cities' General Assembly may be changed by the League's Cal Cities Board upon ratification of such proposed change by a majority of the regional divisions representing a majority of Member Cities within the time period specified by the League-Cal Cities Board.

Section 16: Positions on Statewide Ballot Measures.

Notwithstanding any other provision of these bylaws, the League-Cal Cities Board may take a position on a statewide ballot measure by a 2/3rd vote of those Directors present.

Section 17: Non-Voting Advisor to the Board.

Effective December 1, 2022, if members of the National League of Cities Board of Directors hold an office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board, for a term that coincides with their term on the National League of Cities Board

⁵ See Cal. Corp. Code § 83343 (characterizing this right as absolute).

of Directors. Any such non-voting advisor shall be invited to attend all regularly-scheduled Board meetings. The non-voting advisor shall not attend emergency Board meetings and/or closed/executive sessions of the Board unless a determination is made by the Board to include the non-voting advisor in a particular emergency Board meeting and/or closed/executive session.

Article VIII: Officers

Section 1: Identity.

The officers of ~~the League-Cal Cities~~ are a President, a First Vice-President, a Second Vice-President/Treasurer, an Immediate Past President, and an Executive Director.

Section 2: Duties of ~~League-Cal Cities~~ Officers.

- (a) **President.** The President presides at all ~~League-Cal Cities~~ Board meetings and all General Assemblies. The President has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.
- (b) **First Vice-President.** The First Vice-President carries on the duties of the President in the President's temporary absence or incapacity. The First Vice-President has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.
- (c) **Second Vice-President/Treasurer.** The Second Vice-President/Treasurer carries on the duties of the President in the President's and First Vice-President's temporary absence or incapacity. The Second Vice-President/Treasurer has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.

Section 3: Election.

The ~~League-Cal Cities~~ Board elects the ~~League's-Cal Cities~~ President, First Vice-President and Second Vice-President for terms of one year.⁶ The election occurs at the ~~League-Cal Cities~~ Board's meeting at the Annual Conference.

Section 4: Vacancies.

A vacancy in the office of President is filled by the Immediate Past President who shall serve for the unexpired term of office and, upon election of a new President at the next Annual Conference, shall subsequently serve a full term as Immediate Past President. In the event the Immediate Past President is not available to fill the vacancy in the office of the President, or declines in writing, it shall be filled by the succession of the First

⁶ See Cal. Corp. Code § 7151(c)(5) (suggesting bylaws address this issue).

Vice-President to that office. A vacancy in the office of First Vice-President, or Second Vice-President/Treasurer, is filled for the un-expired term by appointment by the League Cal Cities Board of a member of the League-Cal Cities Board. A vacancy in the office of the Immediate Past President is filled for the un-expired term by the last Past President continuing to hold a city office.

Section 5: Executive Director and League-Cal Cities Employees.

(a) Employment. The League-Cal Cities Board selects an Executive Director who employs, or causes to be employed, such other persons as may be necessary who need not be League-Cal Cities members. The Executive Director and employees perform such duties and receive such compensation as the League-Cal Cities Board may from time to time prescribe.

(b) Specific Duties. The Executive Director performs or causes to be performed the following functions:

(1) Corporate Secretary. These duties include:

- (i) Keeping a full and complete record of the proceedings of the League-Cal Cities Board;
- (ii) Giving such notices as may be proper and necessary;
- (iii) Keeping minute books for Cal Cities~~the League~~;
- (iv) Communicating the League-Cal Cities Board's actions to Member Cities;
- (v) Executing such instruments necessary to carry out Board directives and policies; and
- (vi) Complying with other record-keeping and reporting requirements of California Nonprofit Corporation Law.

(2) Chief Financial Officer. These duties include:

- (i) Having charge of and custody of and receiving, safeguarding, disbursing and accounting for all League-Cal Cities funds;
- (ii) Depositing and investing such funds in such institutions and investments as approved by the League-Cal Cities Board;
- (iii) Maintaining ~~the League's~~Cal Cities' financial books and records; and

(iv) Preparing and submitting such accounting and tax forms as may be required by local, state and federal law.

(c) **Insurance.** All employees handling the finances of ~~Cal Cities the League~~ shall be insured in such amount as the ~~League-Cal Cities~~ Board deems desirable or necessary, such insurance to be approved by the ~~League-Cal Cities~~ Board or a committee designated by the ~~League-Cal Cities~~ Board and the premiums paid by ~~Cal Cities the League~~.

Article IX: Regional Divisions

Section 1: Listing.

(a) **Existing Regional Divisions.** ~~Cal Cities The League~~ is comprised of the following regional divisions:

- | | |
|--------------------|--------------------------|
| Central Valley | North Bay |
| Channel Counties | Orange County |
| Desert-Mountain | Peninsula |
| East Bay | Redwood Empire |
| Imperial County | Riverside County |
| Inland Empire | Sacramento Valley |
| Los Angeles County | San Diego County |
| Monterey Bay | South San Joaquin Valley |

(b) **New Divisions.** Additional divisions may be formed through an amendment to these bylaws (Article XVI).

Section 2: Purposes and Functions.

The purposes and functions of regional divisions of ~~Cal Cities the League~~ are as follows:

- (a) To promote interest in the problems of city government and administration among city officials within such divisions.
- (b) To assist ~~League-Cal Cities~~ officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the regional divisions. Resolutions adopted by regional divisions to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.
- (c) To take action consistent with general ~~League-Cal Cities~~ policy as duly adopted by ~~Cal Cities' the League's~~ General Assembly or by the ~~League's Cal Cities~~ Board. Regional divisions may take no action in conflict with such policies. Nothing in the foregoing limits or restricts regional division activities in matters of purely local interest and concern.

- (d) To meet not less than once every three months, provided that ~~the League~~Cal Cities' Annual Conference may be considered one such meeting of a regional division.

Section 3: Names of Divisions.

Each regional division will identify itself as a division of the League of California Cities.

Section 4: Boundaries.

The territorial boundaries of each regional division may be fixed by each division subject to the approval of ~~the League's~~Cal Cities' General Assembly.

Section 5. Membership.

All cities within the boundaries of a regional division may become members of and participate in the activities of that division. A city may join a different regional division with the approval of both the existing and proposed division, and the ~~League's~~Cal Cities Board of Directors.

Section 6: Voting.

Unless otherwise provided in a regional division's bylaws, the representatives of each Member City may cast collectively one vote on division matters, and a majority of the votes cast is necessary for a decision.

Section 7: Officers.

- (a) **Identity.** Each regional division elects a President, a Vice-President, and a representative on the ~~League~~Cal Cities Board of Directors, and such other officers as any regional division bylaws may establish.

- (b) **Election Timing.** Each regional division elects its officers at the regional division meeting immediately preceding ~~the League's~~Cal Cities' Annual Conference, unless another date is provided by any regional division's bylaws.

(c) **Terms.**

- (i) **Officers' Terms and Commencement Dates.** Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election unless another date is

provided by the regional division's bylaws.⁷ A majority of the members may amend any regional division bylaws to provide for two-year terms for regional division officers.

(ii) **Directors' Terms and Commencement Dates.** The term of office and commencement date for regional division representatives on the League-Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(~~ee~~) (term commencement).

(d) **Vacancies.** In the event of a vacancy in any regional division office, such vacancy is filled by election at the next regular meeting of such division for the unexpired term of that office. The fact that such a vacancy will be so filled shall be included in the notice of such meeting. This requirement also applies to a vacancy in the office of regional division director, as provided in Article VII, section 6(b).

(e) **Duties.**

(i) **President.** The President presides at all regional division meetings and has such other powers and duties as may be prescribed by any division bylaws.

(ii) **Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any division bylaws.

(iii) **Secretary.** The Secretary a) immediately notifies ~~the LeagueCal~~ Cities of any change in the regional division officers, b) records the minutes of all division meetings and sends one copy to League-Cal Cities headquarters, and c) prepares and mails all notices of the meetings of the division and sends a copy to the League-Cal Cities headquarters.

(iv) **Director.** The regional division Director shall represent the regional division on the League-Cal Cities Board and shall keep the division membership apprised of League-the Cal Cities Board's activities. The Director serves as a liaison between the regional division and the League-Cal Cities Board.

⁷ Note that this term commencement is different than that for the League-Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

Section 8: Resignation.

Except as provided in Article VII, section 7 for members of the League-Cal Cities Board, a regional division officer’s resignation is effective upon receipt in writing by the division’s President or Secretary, unless a later date is specified in the letter.

Section 9: Regional Division Bylaws.

Regional divisions may adopt their own bylaws. Division bylaws may not conflict with ~~the League’s Cal Cities’~~ bylaws. In the event of a conflict between a division’s bylaws and League-Cal Cities’ bylaws, ~~the League’s Cal Cities’~~ bylaws will prevail; ~~the League’s Cal Cities’~~ bylaws also prevail when the division does not have bylaws or the division’s bylaws are silent.

Article X: Functional Departments

Section 1: Listing.

(a) Existing Departments. The League-Cal Cities includes the following functional departments:

- | | |
|------------------------------------|----------------------------------|
| Mayors and Council Members | Police Chiefs |
| City Attorneys | Fire Chiefs |
| Fiscal Officers | Community Services |
| Public Works Officers | City Clerks |
| City Managers | Personnel and Employee Relations |
| Planning and Community Development | |

(b) New Departments. Additional functional departments may be formed through an amendment to these bylaws (Article XVI).

Section 2: Officers.

(a) Identity. Each functional department elects a President, a Vice-President, a representative on the Board, and such other officers as the department’s bylaws may establish.

(b) Election Timing. Each functional department elects its officers at the department’s business session at the League’s Cal Cities’ Annual Conference, unless the department’s bylaws provide otherwise.

(c) Terms. The term of office for functional department officers is one year, commencing immediately upon the adjournment of the Annual Conference. The exception is the functional department representatives of the League-Cal Cities Board, whose term is two years as established in Article VII, section 2(d).

(d) Vacancies. A vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other office of the functional department is filled by appointment by the department President for the unexpired term. The person so appointed shall be a member of such department. A vacancy in the office of department ~~De~~director is filled as provided in Article VII, section 6(a) for the unexpired term.

(e) Duties.

(i) President. The President presides at functional department meetings and has such other powers and duties as may be prescribed by any department bylaws.

(ii) Vice-President. The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any department bylaws.

(iii) Director. The department Director shall represent the functional department on the ~~League-Cal Cities~~ Board and shall keep the department membership apprised of ~~League-the Cal Cities~~ Board's activities. The Director serves as a liaison between the department and the ~~League-Cal Cities~~ Board.

(f) Resignation. Except as provided in Article VII, section 7 for members of the ~~League-Cal Cities~~ Board, a functional department officer's resignation is effective upon receipt in writing by the department's President or Vice-President, unless a later date is specified in the letter.

Section 3: Voting.

Except as otherwise provided in a functional department's bylaws, the representatives of each Member City may cast collectively one vote on functional department matters. A majority of the votes cast is necessary for a decision.

Section 4: Department Meetings.

Functional departments meet at the Annual Conference and at other times and places as they find necessary.

Section 5: Department Bylaws.

Functional departments may adopt their own bylaws. Such bylaws may not conflict with ~~the League's Cal Cities'~~ bylaws. In the event of a conflict between a department's

bylaws and ~~League-Cal Cities'~~ bylaws, ~~Cal Cities' the League's~~ bylaws will prevail; ~~Cal Cities' the League's~~ bylaws also prevail when the department does not have bylaws or the department's bylaws are silent.

Article XI: Caucuses

Section 1: Listing.

(a) Existing Caucuses. Cal Cities includes the following caucuses:

African American Caucus
Asian Pacific Islander Caucus
Lesbian Gay Bisexual Transgender Queer (LGBTQ) Caucus
Latino Caucus
Women's Caucus

(b) New Caucuses. Additional caucuses may be formed through an amendment to these bylaws (Article XVI).

Section 2: Purposes and Functions.

The purposes and functions of the caucuses are as follows:

- (a) To promote within Cal Cities the active involvement and full participation of a wide spectrum of city officials reflecting the diversity of California's cities, so as to enhance responsive city government.
- (b) To facilitate the sharing of information between city officials who share characteristics such as nationality, race, ethnicity, gender, sexual orientation, age, or religion, and to provide educational and leadership development opportunities to such city officials.
- (c) To promote interest in, and advocate for, issues relating to city government and administration that are of concern to caucus members to enhance the quality of life for their diverse constituencies.
- (d) To assist Cal Cities officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the caucuses. Resolutions adopted by caucuses to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.
- (e) To take action consistent with general Cal Cities policy as duly adopted by Cal Cities' General Assembly or by the Cal Cities Board. Caucuses may take no action in conflict with such policies.

(f) To meet at the Annual Conference and at other times and places as they find necessary.

Section 3: Names of Caucuses.

Each caucus will identify itself as a caucus of the League of California Cities.

Section 4: Membership.

All elected and appointed officials in Member Cities may apply to become members of a caucus in accordance with such caucus's bylaws or procedures.

Section 5: Voting.

Unless otherwise provided in caucus bylaws, each caucus member may cast one vote on caucus matters, and a majority of the votes cast is necessary for a decision.

Section 6: Officers.

(a) Identity. Each caucus elects a President, a Vice-President, and a representative on the Cal Cities Board of Directors, and such other officers as caucus bylaws may establish.

(b) Election Timing. Each caucus elects its officers at the caucus meeting at the Cal Cities Annual Conference, unless another date is provided by caucus bylaws.

(c) Terms.

(i) Officers' Terms and Commencement Dates. Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election, unless another term length or commencement date is provided by caucus bylaws.⁸

(ii) Directors' Terms and Commencement Dates. The term of office and commencement date for caucus representatives on the Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(c) (term commencement).

(d) Vacancies. Unless otherwise provided in caucus bylaws, a vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other

⁸ Note that this term commencement is different than that for the Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

office of the caucus is filled by appointment by the caucus President for the unexpired term. The person so appointed shall be a member of such caucus. A vacancy in the office of caucus Director is filled as provided in Article VII, section 6(c) for the unexpired term.

(e) Duties.

- (i) President.** The President presides at all caucus meetings and has such other powers and duties as may be prescribed by caucus bylaws.
- (ii) Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by caucus bylaws.
- (iii) Director.** The caucus Director shall represent the caucus on the Cal Cities Board and shall keep the caucus membership apprised of the Cal Cities Board's activities. The Director serves as a liaison between the caucus and the Cal Cities Board.

Section 7: Resignation.

Except as provided in Article VII, section 7 for members of the Cal Cities Board, a caucus officer's resignation is effective upon receipt in writing by the caucus's President, unless a later date is specified in the resignation letter or provided by caucus bylaws.

Section 8: Caucus Bylaws.

Caucuses may adopt their own bylaws. Such bylaws may not conflict with Cal Cities' bylaws. In the event of a conflict between a caucus's bylaws and Cal Cities' bylaws, Cal Cities' bylaws will prevail; Cal Cities' bylaws also prevail when the caucus does not have bylaws or the caucus's bylaws are silent.

Article XII: Voting

Section 1: Quorum.

- (a) In General.** A majority of the members of the League's Cal Cities Board, functional department, regional division, caucus, committee or other kind of subsidiary body constitutes a quorum for the purpose of making decisions.⁹

⁹ See Cal. Corp. Code § 7211(a)(8) (noting that a board meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action).

- (b) General Assembly.** The presence, at the General Assembly, of credentialed voting delegates (or alternates) representing a majority of Member Cities, constitutes a quorum.¹⁰
- (c) Failure to Achieve Quorum.** In the event that a body other than the League Cal Cities Board of directors lacks a quorum, all votes taken by that body will be advisory to the League Cal Cities Board, which shall be advised that a quorum was not present. In the event that the League's Cal Cities Board is unable to achieve a quorum, the League Cal Cities Board will adjourn until such time as a quorum can be achieved.

Section 2: Voting Methods.

- (a) General Assembly.** All voting in meetings of the General Assembly of Cal Cities~~the League~~, its regional divisions, functional departments, caucuses, committees, and other kinds of subsidiary bodies is by voice vote.
- (b) Alternative Methods.** If the presiding official cannot determine the outcome of the voice vote or three or more Member Cities request, an alternative method of voting may be used. An alternative voting method may be by any means (show of hands, written ballot, display of voting cards, etc.) which allows the presiding official to accurately determine the outcome of the vote.
- (c) Roll Call Vote.** A roll call may be demanded by representatives of ten percent or more of the voting body.
- (d) Voting Cards.** A voting card will be issued to each Member City's designated voting delegate upon presentation of evidence of the delegate's designation by the Member City.
- (e) Proxy Voting.** Proxy voting is not allowed.

Section 3: Vote Threshold.

Except as otherwise provided in these bylaws (see, for example, Article XVI, section 2), a majority vote of approval of those voting is necessary for decision.

¹⁰ See Cal. Corp. Code § 7512(c) (noting that a membership meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action—for example, bylaws approval).

Section 4: One City One Vote.

Except as otherwise provided in a functional department's, ~~or~~ a regional division's, or caucus's bylaws, the representatives of each Member City present and in good standing collectively cast s one vote. A majority of the votes cast is necessary for a decision.

Section 5: Mail Balloting.

In addition to voting at League-Cal Cities meetings, Cal Cities~~the League~~ may solicit member input by mail ballot.

- (a) **Mailing.**¹¹ The question(s) to be voted upon, along with explanatory materials and a ballot, shall be mailed by first class mail to each Member City for consideration and action.
- (b) **Time Frame for Action.** Member Cities shall have at least 45 days to cast their vote. Ballots shall be cast by returning the Member City's ballot to Cal Cities' the League's principal office in Sacramento.
- (c) **Ballot Tabulation and Results Announcement.** The League-Cal Cities President will appoint a counting committee of three board members to count the votes cast by mail ballot. The counting committee will submit its count to the League-Cal Cities Board, which shall canvass the vote and announce the results.
- (d) **Functional Departments, and Regional Divisions, and Caucuses.** Departments, ~~and~~ divisions, and caucuses may also use mail balloting under procedures specified in their respective ~~department and division~~ bylaws.

Article XIII: Qualifications to Hold Office and Vacancies**Section 1: Eligibility to Hold Office.**

- (a) **In General.** Excepting the office of the Executive Director, no person shall be eligible to hold office in ~~the League~~Cal Cities or any League-Cal Cities division, ~~or~~ department, or caucus unless the individual is officially in city service in a Member City at the time of the person's election or appointment. Regional divisions, ~~and~~ functional department, and caucus bylaws may specify additional eligibility requirements for their respective officeholders.

¹¹ The Administrative Services Committee recommends ~~the League~~Cal Cities also include notice of the upcoming ballot in a variety of League-Cal Cities communications to alert Member Cities to make inquiry in the event a city's ballot is lost in the mail.

(b) Length of Service. An individual who has occupied an elected League-Cal Cities Board office (as defined in Article VIII, section 1) for nine months (275 days) or more is ineligible to stand for election for that same office again.

Section 2: Vacancies.

(a) Vacancy Defined. A League-Cal Cities office becomes vacant when an individual resigns, misses three consecutive convened meetings or leaves city service.¹²

(b) Effective Date of Vacancy Caused by Leaving City Service. The effective date of a vacancy caused by a departure from city service is the date an individual ceases to occupy the same or comparable city office as the individual had when the individual was elected or appointed to League-the Cal Cities office. Upon written request of the individual, the League-Cal Cities Board may allow the individual to continue in the League-Cal Cities office for a period not to exceed 3 months from the effective date of the vacancy, which time period may be extended by the Board upon finding of good cause.

(c) Effective Date of Resignations. For the effective dates of resignations, see Article VII, section 7 (effective date of League-Cal Cities Board resignations), Article IX, section 8 (effective date of regional division officer resignations), ~~and~~ Article X, section 2(f) (effective date of department officer resignations), and Article XI, section 7& (effective date of caucus officer resignations).

(d) Filling Vacancies. Vacancies will be filled as provided in these bylaws; see Article VII, section 6 (filling League-Cal Cities Board vacancies), Article IX, section 7(d) (filling regional division officer vacancies), ~~and~~ Article X, section 2(d) (filling functional department officer vacancies), and Article XI, section 67(di) (filling caucus officer vacancies).

(e) Successor Terms. An individual filling a vacancy serves the unexpired term of his or her predecessor.

Article ~~XIV~~**III**: Finances

Section 1: Fiscal Year.

The fiscal year of ~~the League-Cal Cities~~ is the calendar year.

¹² See also Cal. Corp. Code § 7221 (board may declare a director's seat vacant if a court declares the director of unsound mind or the director has been convicted of a felony).

Section 2: Budget.

(a) **Preparation and Approval.** Not less than fifteen days prior to the budget meeting of the League-Cal Cities Board, the Executive Director shall distribute to the Board a detailed budget describing the estimated revenues and expenditures for the ensuing budgetary period for the Cal Cities League Board's consideration and approval.

(b) **Dissemination.** Upon approval, a copy of ~~the League's-Cal Cities'~~ budget shall be sent to each regional division, ~~and~~ functional department ~~president,~~ and caucus president, who shall make it available to division, ~~and~~ department, and caucus members.

Section 3: Limitation of Expenditures.

The League-Cal Cities Board may not incur indebtedness in excess of the estimated or actual revenues for the ensuing fiscal year, without the approval of ~~the League'sCal~~ Cities' General Assembly.

Section 4: Annual Audit.

~~The League'sCal Cities'~~ accounts shall be audited by a certified public accountant after the close of each fiscal year.

Section 5: Special Assessment for League-Cal Cities Building.

By resolution approved by a majority of those cities present and voting thereon at an Annual Conference, a special assessment may be levied for a permanent headquarters office building in Sacramento as specified in the resolution.

Article XIV: Prohibited Transactions**Section 1: Conflicts of Interest.**

General Principle. Members of the League-Cal Cities Board as well as members of League-Cal Cities policy committees, and members of any standing or ad hoc committees and task forces consisting of members of the League-Cal Cities Board or League-Cal Cities policy committees, are expected to make decisions in the best overall interests of cities statewide, as opposed to narrow parochial, personal, or financial interests. This is analogous to city officials being expected to make decisions in the best overall interests of the community as opposed to narrow private or self-interests.

Section 2: Loans.

Except as permitted by California Nonprofit Corporation Law,¹³ ~~the League~~Cal Cities may not make any loan of money or property to, or guarantee the obligation of, any director or officer. This prohibition does not prohibit ~~the League~~Cal Cities from advancing funds to a ~~League~~Cal Cities director or officer for expenses reasonably anticipated to be incurred in performance of their duties as an officer or director, so long as such individual would be entitled to be reimbursed for such expenses under ~~League~~Cal Cities Board policies absent that advance.

Section 3: Self-Dealing and Common Directorship Transactions.¹⁴

(a) Self-Dealing Transactions. A self-dealing transaction is a transaction to which ~~the League~~Cal Cities is a party and in which one or more of its directors has a material financial interest.

(b) Common Directorships. “Common directorships” occur when ~~the~~LeagueCal Cities enters into a transaction with an organization in which one of ~~the League~~Cal Cities’ directors also serves on the organization’s board.

(c) Pre-Transaction Approval. To approve a transaction involving either self-dealing or a common directorship, the ~~League~~Cal Cities Board shall determine, before the transaction, that

- (i) ~~Cal Cities~~The League is entering into the transaction for its own benefit;
- (ii) The transaction is fair and reasonable to ~~the League~~Cal Cities at the time; and
- (iii) After reasonable investigation, the ~~League~~Cal Cities Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

Such determinations shall be made by the ~~League~~Cal Cities Board in good faith, with knowledge of the material facts concerning the transaction and the director’s interest in the transaction, without counting the vote of the interested director or directors.

(d) Post-Transaction Approval. When it is not reasonably practicable to obtain Board approval before entering into such transactions, a Board committee may approve such transaction in a manner consistent with the requirements

¹³ See Cal. Corp. § 7235.

¹⁴ See generally Cal. Corp. Code § 7233. Note that interested or common directors may be counted in determining the existence of a quorum in a board or committee meeting that approves such transactions. See Cal. Corp. Code § 7234.

in the preceding paragraph, provided that, at its next meeting, the full Board determines in good faith that the League-Cal Cities Board committee's approval of the transaction was consistent with such requirements and that it was not reasonably practical to obtain advance approval by the full Board, and ratifies the transaction by a majority of the directors then in office without the vote of any interested director.¹⁵

Section 4: Ethical Considerations.

These restrictions, of course, represent the floor, not the ceiling, for ethical conduct as a League-Cal Cities board member or policy committee member. If a board member or policy committee member believes that there are circumstances under which ~~the~~ League's-Cal Cities' members might reasonably question the board member's or policy committee member's ability to act solely in the best interests of Cal Cities the League and its member cities, the prudent course is to abstain. As an example, typically League-Cal Cities board members have abstained from participating in decisions on legislation that would affect organizations for which they work. Another example is legislation that would uniquely benefit a board member's city. Policy committee members should also consider abstaining in similar circumstances.

Article XVI: Miscellaneous

Section 1: Indemnification.

(a) Indemnity Authorized. To the extent allowed by California Nonprofit Corporation Law,¹⁶ ~~the League~~Cal Cities may indemnify and advance expenses to its agents in connection with any proceeding, and in accordance with that law. For purposes of this section, "agent" includes directors, officers, employees, other League-Cal Cities agents, and persons formerly occupying these positions.

(b) Approval of Indemnity. An individual seeking indemnification shall make a written request to the League-Cal Cities Board in each case.

(i) Success on the Merits. To the extent that the individual has been successful on the merits, the League-Cal Cities Board will promptly authorize indemnification in accordance with California Nonprofit Corporation Law.¹⁷

¹⁵ See Cal. Corp. Code § 7233 (specifying under what circumstances a self-dealing transaction is void or voidable).

¹⁶ See Cal. Corp. Code § 7237.

¹⁷ See Cal. Corp. Code § 7237(d).

(ii) **Other Instances.** Otherwise, the League-Cal Cities Board shall promptly determine, by a vote of a majority of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the agent has met the applicable standard of conduct under California law,¹⁸ and, if so, will authorize indemnification to the extent permitted.

(c) **Advancing Expenses.** To the extent allowed under California Nonprofit Corporation Law,¹⁹ the League-Cal Cities Board may authorize an advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition. The League-Cal Cities Board shall find that:

- (i) the requested advances are reasonable; and
- (ii) before any advance is made, the agent will submit a written undertaking satisfactory to the League-Cal Cities Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this section.

Section 2: Insurance.²⁰

The League-Cal Cities Board may authorize the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, and such insurance may provide for coverage against liabilities beyond Cal Cities' the League's corporation's authority to indemnify an agent under law.

Section 3: Contracts and Execution of Instruments.

All contracts entered into on behalf of Cal Cities the League shall be authorized by the League-Cal Cities Board, or by the person or persons upon whom the League-Cal Cities Board confers such power from time to time. Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of Cal Cities the League shall be signed by the persons authorized to do so by the Cal Cities League Board.

Section 4: Disposition of Assets Upon Dissolution.

~~The League's~~ Cal Cities' properties and assets are irrevocably dedicated to the fulfillment of ~~the League's~~ Cal Cities' purposes as described in Article II. No part of ~~the~~

¹⁸ See Cal. Corp. Code § 7237(b) and (c) (with exceptions).

¹⁹ See Cal. Corp. Code § 7237(fa).

²⁰ See also Cal. Corp. Code § 7237(i) (authorizing insurance).

~~Cal Cities' League's~~ net earnings, properties and assets, on dissolution or otherwise, may inure to the benefit of any private person. On liquidation or dissolution, ~~Cal Cities'the League's~~ net assets shall be distributed to ~~the League's~~ Cal Cities' Member Cities consistent with the provisions of the California Nonprofit Corporation Law relating to mutual benefit corporations then in effect.

Section 5: Parliamentary Authority.

Subject to the provisions of these bylaws and applicable law, Robert's Rules of Order or other such parliamentary rules as may be adopted by the ~~League~~ Cal Cities Board shall prevail at all meetings of ~~the League~~ Cal Cities, the ~~League~~ Cal Cities Board, and in all functional departments, ~~and~~ regional divisions, and caucuses.

Section 6: Seal.

The ~~League~~ Cal Cities Board has provided a suitable seal for ~~the League~~ Cal Cities which is circular and which contains the following inscription:

"LEAGUE OF CALIFORNIA CITIES
INCORPORATED NOVEMBER 4, 1932, CALIFORNIA"

The seal may be affixed to corporate instruments, but any failure to affix it does not affect the instrument's validity.

Section 7: Governing Law.

In all matters not specified in these bylaws, or in the event these bylaws are inconsistent with applicable law, the provisions of California Nonprofit Corporation Law then in effect apply.

Section 8: Litigation Authority.

Member Cities authorize ~~the League~~ Cal Cities to initiate or respond to litigation on their collective behalf when the ~~League~~ Cal Cities Board determines such litigation is necessary to protect Member Cities' shared vital interests.

Article XVII: Amendments

Section 1: Consideration.

These bylaws may be amended by ~~the League's~~ Cal Cities' General Assembly (see Article XVII, section 5 for procedures) or by a mail ballot to Member Cities (see Article XI, section 5 for procedures).

Section 2: Vote Threshold.

A two-thirds vote of approval of those voting is necessary to amend these bylaws.

Section 3: Who May Propose.

Amendments may be proposed by the League-Cal Cities Board or by petition of ten percent of Member Cities. The proponent may specify whether the amendment is to be considered at the General Assembly or by mail ballot.

Section 4: Board Review.

Any amendment proposed by petition shall be submitted to the League-Cal Cities Board in writing for its review. The League-Cal Cities Board's recommendation and reasons following its review shall accompany all materials relating to the proposed amendment.

Section 5: Procedure for Consideration by General Assembly.

(a) **Notice.** The meeting notice required by Article V, section 4 for League-Cal Cities meetings shall include notice of any proposal to amend ~~the~~ League's Cal Cities' bylaws, along with the subject of the proposed amendment(s).

(b) **Consideration by General Assembly.** The proposed amendment, along with any action by the League-Cal Cities Board pursuant to section 4 of this Article, shall be considered by the General Assembly along with any resolutions presented pursuant to Article VI.

Section 6: Effective Date.

After approval, amendments go into effect after the expiration of the protest period (see Article XVII, section 7) unless otherwise specified in the amendment.

Section 7: Protest and Suspension until Next Conference.

If, within sixty days after the adoption of any amendment, one-third or more of the Member Cities submit a written protest against such amendment, the amendment is automatically suspended until the next Annual Conference, when it may be taken up again for reconsideration and vote.

Article XVII: Establishment and Financing of Grassroots Network**Section 1: Enhancement of Advocacy Efforts.**

To enhance ~~the League's Cal Cities'~~ advocacy efforts on behalf of cities, Cal Cities the League hereby establishes a Grassroots Network. The Grassroots Network consists of

a series of field offices throughout California, responsible for coordinating city advocacy efforts and promoting statewide League-Cal Cities policy priorities.

Section 2: Dues Increase.

(a) Initial Financing. The dues increase approved concurrently with the addition of this article shall finance ~~the League's~~Cal Cities' Grassroots Network for the second half of 2001 and 2002. The increase shall be used exclusively to finance the Grassroots Network.

(b) Continued Financing. Any subsequent dues increases shall occur in accordance with Article IV.

Section 3: Accountability.

(a) Annual Goal-Setting and Performance Assessment. The League-Cal Cities Board shall set long-term goals and annual objectives for Cal Cities'~~the League's~~ Grassroots Network. The League-Cal Cities Board shall periodically report to ~~the League's~~Cal Cities' Member Cities on the Grassroots Network's performance in meeting those goals and objectives.

(b) Board Discontinuance. If at any time the League-Cal Cities Board finds the Grassroots Network is not meeting its objectives on behalf of cities, the League-Cal Cities Board may discontinue the Grassroots Network.

(c) Membership Vote on Program Continuation. On or before December 31, 2007, Member Cities shall vote (see Article XI, section 5 for procedures) on whether to continue the Grassroots Network beyond December 31, 2008.²¹

²¹ At its meeting of September 8, 2007, the General Assembly of the League of California Cities adopted Resolution #1 that the Grassroots Network Program be continued and operated in accordance with these bylaws.



CITY *of* CLOVIS

REPORT TO THE CITY COUNCIL

TO: Mayor and City Council
 FROM: Administration
 DATE: September 20, 2021
 SUBJECT: Consider Approval - Confirmation of City Manager's Appointment of City Clerk.

Staff: Luke Serpa, City Manager
Recommendation: Confirm Appointment

ATTACHMENTS: None.

CONFLICT OF INTEREST

None.

RECOMMENDATION

Consider confirmation of the City Manager's appointment of Karey Cha as City Clerk effective October 1, 2021.

EXECUTIVE SUMMARY

In June of 2021, City Council approved amendments to Articles 1, 10, and 11 of Chapter 2.2 of Title 2 of the Clovis Municipal Code pertaining to the Appointment of City Clerk and City Treasurer. Summary of changes:

1. Remove the requirement that the City Clerk be assigned at the Department Head level.
2. Have the City Clerk appointed by the City Manager and confirmed by the City Council.
3. Appoint the Finance Director as Treasurer appointed by the City Manager and confirmed by the City Council.

The purpose of the amendments were two-fold: 1. To clean up the requirements associated with the appointment of the positions of City Clerk and City Treasurer; and 2. Remove the requirement that the City Clerk be appointed at the Department Head level.

In July of 2021, City Council approved updates to the Assistant City Manager/City Clerk classification to separate into two classifications. The revisions included both the Assistant City Manager and the City Clerk classifications. The work assignments were evaluated within the

department and it was determined that the Administration Department has a need for both classifications. The City Clerk position was approved at the Management Analyst classification level.

Karey Cha is currently a Staff Analyst in the City Manager's Office. Karey joined the City as an intern supporting Economic Development in December of 2015. In June of 2018, Karey was promoted to Administrative Analyst (under contract). In January of 2020, Karey was hired as a full-time Staff Analyst. Karey is a graduate of Clovis East High School, received a Bachelor of Science in Business Management from Fresno State, and is currently pursuing her MBA and is expected to be completed in early 2022.

Over the past 5 years, Karey has proven herself to be an incredibly valuable asset in the City Manager's office supporting Economic Development and the City Clerk divisions. Karey is currently pursuing her Certified Municipal Clerk certification. Karey has also been instrumental in the conduct of the 2019 and the 2021 City municipal elections.

FISCAL IMPACT

The salary and related benefit costs of the proposed change for the remainder of the fiscal year would be approximately an additional \$25,000. The additional costs were budgeted in the FY 2021-22 Administration Department budget allocation.

REASON FOR RECOMMENDATION

Pursuant to Clovis Municipal Code, Chapter 2.2.103(b)(3), the City Council must confirm appointment of the City Clerk made by the City Manager.

ACTIONS FOLLOWING APPROVAL

The City Manager will follow up with any appropriate action as directed by the City Council.

Prepared by: John Holt, Assistant City Manager

Reviewed by: City Manager LS