CITY COUNCIL REGULAR MEETING

Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA

Thursday, August 19, 2021

Regular Meeting 6:00 PM

On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which allows Council Members to attend City Council meetings telephonically. On June 11, 2021, Governor Newsom extended this Order through September 30, 2021. Please be advised that some, or all, of the Clearlake City Council Members may attend this meeting telephonically.

The City Council meetings are viewable in person in the Council Chambers, via livestreaming on the City's YouTube Channel (https://www.youtube.com/channel/UCTyifT_nKS-3woxEu1ilBXA) or "Lake County PEG TV Live Stream" at https://www.youtube.com/user/LakeCountyPegTV/featured and the public may participate through Zoom at the link listed below. The public can submit comments and questions in writing for City Council consideration by sending them to the Administrative Services Director/City Clerk at mswanson@clearlake.ca.us. To give the City Council adequate time to review your questions and comments, please submit your written comments prior to 4:00 p.m. on the day of the meeting.

AGENDA

MEETING PROCEDURES: *All items on agenda will be open for public comments before final action is taken. Citizens wishing to introduce written material into the record at the public meeting on any item are requested to provide a copy of the written material to the Administrative Services Director/City Clerk prior to the meeting date so that the material may be distributed to the City Council prior to the meeting. Speakers must restrict comments to the item as it appears on the agenda and stay within a three minutes time limit. The Mayor has the discretion of limiting the total discussion time for an item.*

AMERICANS WITH DISABILITY ACT (ADA) REQUESTS

If you need disability related modification, including auxiliary aids or services, to participate in this meeting, please contact Melissa Swanson, Administrative Services Director/City Clerk at the Clearlake City Hall, 14050 Olympic Drive, Clearlake, California 95422, phone (707) 994-8201, ext 106, or via email at mswanson@clearlake.ca.us at least 72 hours prior to the meeting, to allow time to provide for special accommodations.

AGENDA REPORTS

Staff reports for each agenda item are available for review at www.clearlake.ca.us. Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection on the City's website at www.clearlake.ca.us.

Zoom Link: https://clearlakeca.zoom.us/j/84432077709

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. INVOCATION/MOMENT OF SILENCE: *The City Council invites members of the clergy, as well as interested members of the public in the City of Clearlake, to voluntarily offer an invocation before the beginning of its meetings for the benefit and blessing of the City Council. This opportunity is voluntary and invocations are to be less than three minutes, offered in a solemn and respectful tone, and directed at the City Council. Invocational speakers who do not abide by these simple rules of respect and brevity shall be given a warning and/or not invited back to provide a subsequent invocation for a reasonable period of time, as determined appropriate by the City. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the City Council with, nor express the City Council's preference for, any faith or religious denomination. Rather, this policy is intended to acknowledge and express the City Council's respect for the diversity of religious denominations and faith represented and practiced among the citizens of Clearlake. If a scheduled invocational speaker does not appear at the scheduled meeting, the Mayor will ask that the City Council observe a moment of silence in lieu of the invocation. More information about the City's invocation policy is available upon request by contacting the Administrative Services Director/City Clerk at (707) 994-8201x106 or via email at mswanson@clearlake.ca.us.*

D. ADOPTION OF THE AGENDA *(This is the time for agenda modifications.)*

E. PRESENTATIONS

1. Presentation of August's Adoptable Dogs

2. Proclamation Declaring August 31, 2021 as International Overdose Awareness Day

F. PUBLIC COMMENT: *This is the time for any member of the public to address the City Council on any matter not on the agenda that is within the subject matter jurisdiction of the City.* ***The Brown Act, with limited exceptions, does not allow the Council or staff to discuss issues brought forth under Public Comment.*** *The Council cannot take action on non-agenda items. Concerns may be referred to staff or placed on the next available agenda. Please note that comments from the public will also be taken on each agenda item. Comments shall be limited to three (3) minutes per person.*

G. CONSENT AGENDA: *All items listed under the Consent Agenda are considered to be routine in nature and will be approved by one motion. There will be no separate discussion of these items unless a member of the Council requests otherwise, or if staff has requested a change under Adoption of the Agenda, in which case the item will be removed for separate consideration. Any item so removed will be taken up following the motion to approve the Consent Agenda.*

3. Warrants
Recommended Action: Receive and file

4. Minutes of the July 14, 2021 Lake County Vector Control District Board
Recommended Action: Receive and file

5. Second Reading and Adoption of Ordinance No. 256-2021, An Amendment to Chapter 17 of the Clearlake Municipal Code Repealing and Replacing Floodplain Management Regulations

Recommended Action: Hold second reading, read by title only, waive further reading and adopt ordinance

6. Minutes of the July 15, 2021 Meeting
Recommended Action: Receive and file

7. Authorization of an Agreement for a Remodel of the City Hall Breakroom
Recommended Action: Approve agreement and authorize the City Manager to sign

H. BUSINESS

8. Consideration of Approval of Purchase and Sale Agreement for Approximately 11.28 acres of Property Located at 6885 and 7110 Old Highway 53, Clearlake, from the Burbank Housing and Development Corporation
Recommended Action: Authorize the City Manager to Execute the Purchase and Sale Agreement with Burbank Housing, and other documents as necessary, to complete the purchase of approximately 11.28 acres at the former Pearce Field airport.

9. Consideration of Resolution Approving an Application of CDBG-CV HomeKey Funding for Rehabilitation Work at the Hope Center
Recommended Action: Adopt Resolution No. 2021-42 – A Resolution Approving an Application for Funding and the Execution of a Grant Agreement and any Amendments Thereto from the 2020 Community Development Block Grant Program- Coronavirus Response and/or the 2020-21 Funding Year of the State CDBG Program.

10. Discussion of the 2021 League of California Cities Annual Conference Resolutions
Recommended Action: Discuss and give direction to the Conference delegates

I. CITY MANAGER AND COUNCILMEMBER REPORTS

J. FUTURE AGENDA ITEMS

K. CLOSED SESSION

(11) Conference with Legal Counsel- Existing Litigation: Pursuant to Government Code Section 54956.9: Case No. CV-421149; Name of Case: City of Clearlake v. County of Lake, a political subdivision of the State of California; Board of Supervisors of the County of Lake, a public body of the County of Lake; Barbara C. Ringen, in her official capacity as the Treasurer-Tax Collector of the County of Lake; and Does 1 through 30, inclusive

L. ANNOUNCEMENT OF ACTION FROM CLOSED SESSION

M. ADJOURNMENT

POSTED: August 13, 2021

BY:

Melissa Swanson

Melissa Swanson, Administrative Services Director/City Clerk

International Overdose Awareness Day
August 31 2021

WHEREAS, International Overdose Awareness Day is a global event that is held on August 31st of each year to remember those gone too soon from overdose deaths; and

WHEREAS, like many counties, Lake County is fighting concurrent epidemics – while prescription opioids are driving deaths in rural areas of the California, illicit opioid drugs are the primary drivers of deaths in suburban and urban areas; and

WHEREAS, in 2019, Lake County deaths from opioid overdoses were 4 times the state average; and

WHEREAS, California encourages communities to develop and support local coalitions because this epidemic looks different in various parts of the state, and local engagement and leadership is imperative; and

WHEREAS, culture change happens in neighborhoods and local communities, and localities play a major role in assisting with the removal of the stigma of addiction and the normalization of recovery; and

WHEREAS, our dedicated treatment providers work tirelessly to help individuals with substance use disorders recover; and

WHEREAS, addiction is not a moral failing but a complex and treatable disease, and a life of recovery is possible; and

WHEREAS, on August 24th, 2021, SafeRX Lake County, which is a collaboration between the agencies that make up Hope Rising, to include but not limited to, Lake County Public Health, Sutter Lakeside, Adventist Health and Lake County Behavioral Health, will announce an expansion of efforts, to help fight the opioid crisis; and

WHEREAS, International Overdose Awareness Day is an opportunity for all members of Lake County to stand beside those who have lost loved ones to an overdose and those who have a substance use disorder and are diligently working toward recovery.

NOW, THEREFORE, it is hereby recognized that August 31, 2021, will be known as INTERNATIONAL OVERDOSE AWARENESS DAY in Clearlake, California, and I call this observance to the attention of all our citizens.

Dated this 19th Day of August, 2021

Dirk Slooten, Mayor

Check Register

Clearlake, CA

Packet: APPKT00742 - 8/2/21 AP Check Run AA

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP-Accounts Payable						
001300	A & B COLLISION	08/02/2021	Regular	0.00	5,202.16	11053
VEN01085	ACC BUSINESS	08/02/2021	Regular	0.00	603.58	11054
001897	AIRMEDCARE NETWORK	08/02/2021	Regular	0.00	38.00	11055
000085	ARAMARK UNIFORM SERVICES	08/02/2021	Regular	0.00	49.31	11056
001397	AT&T CALNET 3	08/02/2021	Regular	0.00	45.21	11057
001397	AT&T CALNET 3	08/02/2021	Regular	0.00	834.84	11058
001397	AT&T CALNET 3	08/02/2021	Regular	0.00	196.67	11059
VEN01170	AUDIO DESIGN LLC	08/02/2021	Regular	0.00	1,162.96	11060
002350	CRAMER ENTERPRISES	08/02/2021	Regular	0.00	428.73	11061
002392	DE LAGE LANDEN PUBLIC FINANCE	08/02/2021	Regular	0.00	829.68	11062
002327	DEBRA SALLY D.V.M.	08/02/2021	Regular	0.00	415.50	11063
002300	DONALD WYMER	08/02/2021	Regular	0.00	40.21	11064
000073	EASTLAKE SANITARY LANDFILL	08/02/2021	Regular	0.00	32.80	11065
000120	FED EX	08/02/2021	Regular	0.00	11.77	11066
000241	GALL'S LLC	08/02/2021	Regular	0.00	764.12	11067
000797	GRANITE CONSTRUCTION	08/02/2021	Regular	0.00	38,151.32	11068
VEN01053	HIGH COUNTRY SECURITY	08/02/2021	Regular	0.00	8,847.94	11069
VEN01183	JACOB MUSSELMAN	08/02/2021	Regular	0.00	550.00	11070
000304	KONOCTI COUNTY WATER DISTRICT	08/02/2021	Regular	0.00	60.00	11071
002040	LINDA PERALTA	08/02/2021	Regular	0.00	70.76	11072
000026	NATIONWIDE RETIREMENT SOLUTION	08/02/2021	Regular	0.00	1,130.00	11073
001843	PG&E CFM	08/02/2021	Regular	0.00	54.00	11074
000711	PURCHASE POWER	08/02/2021	Regular	0.00	1,020.99	11075
002031	REDWOOD COAST FUELS	08/02/2021	Regular	0.00	1,048.99	11076
000708	VALIC LOCKBOX	08/02/2021	Regular	0.00	695.00	11077
002264	WEX BANK	08/02/2021	Regular	0.00	8,994.68	11078

Bank Code AP Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	33	26	0.00	71,279.22
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	33	**26**	**0.00**	**71,279.22**

Fund Summary

Fund	Name	Period	Amount
999	Pooled Cash	8/2021	71,279.22
			71,279.22

Check Register

Clearlake, CA

Packet: APPKT00762 - 8/12/21 AP Check Run AA

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP-Accounts Payable						
001897	AIRMEDCARE NETWORK	08/12/2021	Regular	0.00	35.00	11121
000101	AMERIGAS	08/12/2021	Regular	0.00	713.57	11122
000085	ARAMARK UNIFORM SERVICES	08/12/2021	Regular	0.00	49.31	11123
001397	AT&T CALNET 3	08/12/2021	Regular	0.00	23.20	11124
001397	AT&T CALNET 3	08/12/2021	Regular	0.00	23.20	11125
001397	AT&T CALNET 3	08/12/2021	Regular	0.00	23.53	11126
000068	BOB'S JANITORIAL	08/12/2021	Regular	0.00	119.63	11127
002328	CALAFCO	08/12/2021	Regular	0.00	1,889.00	11128
002162	CALIFORNIA ENGINEERING	08/12/2021	Regular	0.00	47,508.65	11129
001811	CALIFORNIA EXTERMINATORS ALLIA	08/12/2021	Regular	0.00	100.00	11130
000024	CLEARLAKE POLICE ASSOCIATION	08/12/2021	Regular	0.00	1,500.00	11131
002083	COUNTY OF LAKE WATER RESOURCES	08/12/2021	Regular	0.00	360.67	11132
001744	DC ELECTRIC	08/12/2021	Regular	0.00	82,650.00	11133
000194	DEPARTMENT OF TRANSPORTATION	08/12/2021	Regular	0.00	4,461.73	11134
000067	JIM JONAS, INC.	08/12/2021	Regular	0.00	129.00	11135
001775	JONES & MAYER	08/12/2021	Regular	0.00	14,328.27	11136
VEN01123	LOOMIS	08/12/2021	Regular	0.00	487.15	11137
000061	MISSION LINEN SUPPLY	08/12/2021	Regular	0.00	41.47	11138
001489	NAPA AUTO PARTS	08/12/2021	Regular	0.00	759.33	11139
000026	NATIONWIDE RETIREMENT SOLUTION	08/12/2021	Regular	0.00	1,281.86	11140
001392	OFFICE DEPOT	08/12/2021	Regular	0.00	245.94	11141
000009	OPERATING ENGINEERS LOCAL 3	08/12/2021	Regular	0.00	480.00	11142
000027	OPERATING ENGINEERS PUBLIC EMP	08/12/2021	Regular	0.00	72,009.00	11143
001889	PERFORMANCE MECHANICAL	08/12/2021	Regular	0.00	169.00	11144
001483	PETERSON CAT	08/12/2021	Regular	0.00	216.77	11145
001843	PG&E CFM	08/12/2021	Regular	0.00	392.74	11146
002061	PLEXUS GLOBAL LLC	08/12/2021	Regular	0.00	12.25	11147
002031	REDWOOD COAST FUELS	08/12/2021	Regular	0.00	2,359.80	11148
001876	SYAR INDUSTRIES INC	08/12/2021	Regular	0.00	1,594.67	11149
000708	VALIC LOCKBOX	08/12/2021	Regular	0.00	695.00	11150

Bank Code AP Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	67	30	0.00	234,659.74
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	67	**30**	**0.00**	**234,659.74**

Fund Summary

Fund	Name	Period	Amount
999	Pooled Cash	8/2021	234,659.74
			234,659.74

MINUTES OF PREVIOUS MEETING

July 14, 2021

The regular monthly meeting of the Board of Trustees of the Lake County Vector Control District was called to order at 1:32 P.M. by President Giambruno.

Board Present: Rob Bostock, Curt Giambruno, Chuck Leonard, Ron Nagy, and George Spurr.

Absent: None.

District Personnel: Jamesina Scott, Ph.D., Manager and Research Director and Ms. Jacinda Franusich, Office Manager.

Guests: Ms. Melanie Lee of SCI Consulting Group.

Citizen's Input: None.

Agenda additions and/or deletions: None.

Open Public Hearing and Consideration of Levy of the Assessment for the Lake County Vector Control District Mosquito, Vector and Disease Control Assessment.
President Giambruno opened the Public Hearing at 1:34 P.M.

President Giambruno opened the Public Input portion of the Public Hearing at 1:35 P.M.

There was no public input.

President Giambruno closed the Public Input portion of the Public Hearing at 1:38 P.M.

Consideration of Resolution 10-03 Approving Engineer's Report, Confirming Diagram and Assessment, and Ordering Levy of The Mosquito, Vector, and Disease Control Assessment for Fiscal Year 2021-2022

Mr. Leonard moved to approve Resolution 21-03 Approving Engineer's Report, Confirming Diagram and Assessment, and Ordering Levy of the Mosquito, Vector, and Disease Control Assessment for Fiscal Year 2021-20222. Mr. Nagy seconded the motion. Motion carried with a roll call vote as follows: five in favor: (Mr. Bostock, Mr. Giambruno, Mr. Leonard, Mr. Nagy, and Mr. Spurr), and none against.

Approve Minutes of June 9, 2021 Regular Meeting with a Correction to the Check Numbers to Include Checks 20191-20206 Making the Total Expenditures for June 2021 $83,844.11.

Mr. Spurr moved to approve the minutes of June 9, 2021 Regular Meeting with corrections. Mr. Bostock seconded the motion. Motion carried unanimously.

Research Report

Dr. Scott reported on vectorborne virus activity. No West Nile virus (WNV) has been detected in Lake County this year.

In California, WNV has been detected in 177 mosquito samples and 45 dead birds.

For the rest of the United States, 10 states have reported WNV activity including four states with human infections.

Dr. Scott reported on adult biting fly activity. Carbon dioxide-baited traps were set in various locations around the county in June. *Culicoides* spp. were the most abundant biting fly and outnumbered mosquitoes. Mosquito numbers remain low due to the dry conditions. Among the mosquito species collected were *Culex tarsalis, Anopheles freeborni,* and *Aedes sierrenis.*

New Jersey light traps were set in the Reclamation and near Borax Lake during June. Among the mosquito species collected were *Anopheles freeborni* and *Culex tarsalis.*

Large resting boxes in Kelseyville, Lakeport, and Upper Lake were sampled on several dates in June. Among the mosquito species collected were *Aedes sierrensis, Anopheles freeborni,* and *Culex tarsalis.*

Dr. Scott reported on tick testing. Twenty-four *Ixodes pacificus* ticks that Lake County residents removed from themselves have been submitted to the Sonoma County Public Health Laboratory for testing for *Borrelia burgdorferi.* One tick was in poor condition and not tested; all twenty-three that were tested were negative.

Dr. Scott reported on Clear Lake Gnat, Chironominae, and Tanypodinae Surveillance in Clear Lake. Clear Lake Gnat larval counts in the Upper Arm decreased from 5.00 larvae per dredge in May to 0.39 larvae per dredge in June. Chironominae numbers decreased from 28.07 larvae per dredge in May to 13.43 larvae per dredge in June. Tanypodinae numbers increased from 21.54 larvae per dredge in May to 27.18 larvae per dredge in June.

Operation Report

During June, no rainfall was recorded in the District's rain gauge. The total rainfall for the season is 11.26 inches, which is 42% of the average rainfall for this date.

On June 1, the level of Clear Lake was 0.38 feet on the Rumsey Gauge, reaching zero Rumsey on June 18, and dropping to -0.24 feet by June 30.

The District reopened to the public in June, and is complying with the state's public health orders.

The District responded to 145 service requests in June. One yellowjacket service request was also completed in June.

An aerial application of VectoMax FG to the wild rice in the Reclamation was made on June 16.

In June, the process was started to update the District's website with a new website service. Streamline specializes in helping special districts with website compliance and communication. The new website should go live in early July.

Dr. Scott participated in the Employer Risk Management Agency board meeting on June 8. Dr. Scott serves as the alternate board member for the Vector Control Joint Powers Agency.

Dr. Scott participated in the monthly Mosquito and Vector Control Association of California (MVCAC) Executive Board meeting via Zoom.

Final Budget Hearing for Fiscal Year 2021/2022

After some discussion, Mr. Spurr moved to approve the Final Budget for Fiscal Year 2021/2022. Mr. Nagy seconded the motion. Motion carried unanimously.

Approve Checks for the Month of July 2021

Mr. Nagy moved to approve Check Nos. 20207-20274 for the month of July 2021 in the amount of $353,953.10. Mr. Bostock seconded the motion. Motion carried unanimously.

Other Business

Dr. Scott mentioned that AB 1234 Ethics Training is due this year, and that an online group training session before a Board Meeting might be the best option to fulfill the requirements. The District will hold a training session on at 11:00 AM, August 11, before the regular board meeting starts.

Announcement of the Next Board Meeting

The next regular meeting of the Board of Trustees of the Lake County Vector Control District will be at 1:30 P.M. on August 11, 2021 in the LCVCD Board Room, 410 Esplanade Lakeport, CA 95453.

Mr. Spurr moved to adjourn the meeting. Mr. Nagy seconded the motion. There being no other business the meeting was adjourned by President Giambruno at 2:41 P.M.

Respectfully submitted,

Ronald Nagy
Secretary

CITY OF CLEARLAKE

City Council

STAFF REPORT			
SUBJECT:	Repeal and Replace Chapter 17 of the CMC	**MEETING DATE:**	August 19, 2021
SUBMITTED BY:	Dave Swartz, City Engineer and Flood Plain Manager; Susanna Gutierrez, Assistant Planner; Mark Roberts, Senior Planner		
PURPOSE OF REPORT:	☐ Information only ☐ Discussion ☒ Action Item		

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to consider revisions to Chapter 17 of the Clearlake Municipal Code "Floodplain Management" as reviewed by the Federal Emergency Management Agency (FEMA) and the California Department of Water Resources (DWR) in order to ensure compliance with the National Flood Insurance Program (NFIP).

BACKGROUND/DISCUSSION:

- The City has been an active member of the NFIP, a program that makes federally backed flood insurance available in those states and communities that agree to adopt and enforce flood-plain management ordinances to reduce future flood damage, since before incorporation starting October 17, 1978.

- The National Flood Insurance Act of 1968 was enacted by title XIII of the Housing and Urban Development Act of 1968 to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide protection was added to the Program by the Housing and Urban Development Act of 1969. Flood-related erosion protection was added to the Program by the Flood Disaster Protection Act of 1973.The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program.

- The National Flood Insurance Act of 1968 prohibits FEMA from providing flood insurance in a community unless the community adopts and enforces floodplain management regulations that meets or exceeds the minimum NFIP criteria. **A community can be suspended from the NFIP for failure to adopt compliant floodplain management measures as well as failure to enforce its floodplain management regulations.**

- Suspension from the Program Implies:
    - **No new flood insurance shall be provided** for any property which the Federal Insurance Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances

which are intended to discourage or otherwise restrict land development or occupan[cy in flood-]
prone areas.

- Staff has been working closely with both FEMA's NFIP branch and DWR implementing Clearlake's Corrective Action plan since early 2020 in order to avoid suspension, part of which involves updating the City's Floodplain Management Ordinance (Chapter 17 of the Clearlake Municipal Code). The state model ordinance was updated in August of 2020 and is attached for reference with minimal substantive edits for review by Council.

SUGGESTED MOTIONS:

Move to hold second reading of Ordinance No. 256-2021, An Amendment to Chapter 17 of the Clearlake Municipal Code Repealing and Replacing Floodplain Management Regulations, read it by title only, waive further reading adopt.

ALTERNATIVE MOTIONS:

Move to deny second reading of Ordinance No. 256-2021, Amending Chapter 17 of the Clearlake Municipal Code Repealing and Replacing Floodplain Management Regulations, and direct staff to make the amendments as directed.

FISCAL IMPACT:

☒ None ☐ $ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☒ Goal #2: Make Clearlake a Statistically Safer City

☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☐ Goal #4: Improve the Image of Clearlake

☒ Goal #5: Ensure Fiscal Sustainability of City

☒ Goal #6: Update Policies and Procedures to Current Government Standards

☐ Goal #7: Support Economic Development

☒ **Attachments:** 1) Ordinance 256-2021

ORDINANCE NO. 256-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE AMENDI THE CLEARLAKE CODE OF ORDINANCES TO REPEAL CHAPTER 17, FLOODPLAIN MANAGEMENT OF THE CLEARLAKE MUNICIPAL CODE; TO ADOPT A NEW CHAPTER 17, FLOODPLAIN MANAGEMENT OF THE CLEARLAKE MUNICIPAL CODE; TO ADOPT FLOOD HAZARD MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Clearlake and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City of Clearlake was accepted for participation in the National Flood Insurance Program on October 17, 1978 and the City Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, pursuant to the California Health and Safety Code, Division 13, Part 1.5 and Part 2.5, the City of Clearlake is required to administer and enforce the *California Building Standards Code*, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

WHEREAS, the City Council has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the *California Building Standards Code.*

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Clearlake that the following floodplain management regulations are hereby adopted.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. These regulations specifically repeal and replace the following ordinance(s) and regulation(s):
Chapter 17, Floodplain Management of the Clearlake Municipal Code

CHAPTER 17 – FLOODPLAIN MANAGEMENT

PART I. – SCOPE AND ADMINISTRATION

ARTICLE 101 GENERAL PROVISIONS

Sec. 101-1. - Title. These regulations, in combination with the flood provisions of California Code of Regulations Title 24, the *California Building Standards Code* (hereinafter “building codes,” consisting of the Part 2 (building), Part 2.5 (residential), Part 10 (existing building), and related codes), shall be known as the *Floodplain Management Regulations* of the City of Clearlake (hereinafter “these regulations”).

Sec. 101-2. - Statutory authority. Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Sec. 101-3. - Scope. The provisions of these regulations, in combination with the flood provisions of the building codes, shall apply to all proposed development entirely or partially in flood hazard areas established in Section 102-2 of these regulations.

Sec. 101-4. – Purposes and objectives. The purposes and objectives of these regulations and the flood load and flood resistant construction requirements of the building codes are to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

(1) Minimize unnecessary disruption of commerce, access and public service during times of flooding.

(2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage.

(3) Manage the alteration of natural floodplains, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain.

(4) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential.

(5) Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.

(6) Contribute to improved construction techniques in the floodplain.

(7) Minimize damage to public and private facilities and utilities.

(8) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.

(9) Minimize the need for rescue and relief efforts associated with flooding.

(10) Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.

(11) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.

(12) Meet the requirements of the National Flood Insurance Program for community participation as set forth in Title 44 Code of Federal Regulations, Section 59.22.

Sec. 101-5. - Coordination with *California Building Standards Code*. Pursuant to the requirement established in State statute that the City of Clearlake administer and enforce the *California Building Standards Code*, the City Council of the City of Clearlake hereby acknowledges that the building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the building codes.

Sec. 101-6. - Warning. The degree of flood protection required by these regulations and the building codes is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations and the building codes does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance

Program. No guaranty of vested use, existing use, or future use is implied or expressed by c with these regulations.

Sec. 101-7. - Disclaimer of liability. These regulations shall not create liability on the part of the City Council, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder. The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the community in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by a legal representative of the community until the final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

Sec. 101-8. - Other laws. The provisions of these regulations shall not be deemed to nullify any provisions of local, State or federal law.

Sec. 101-9. - Abrogation and greater restrictions. These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal, abrogate or impair any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes, nor any existing easements, covenants, or deed restrictions. In the event of an overlap or conflict between these regulations and any other ordinance, code, regulation, easement, covenant, or deed restriction, the more restrictive shall govern.

ARTICLE 102 APPLICABILITY

Sec. 102-1. - General applicability. These regulations, in conjunction with the building codes, provide minimum requirements for development located in flood hazard areas, including the subdivision of land; filling, grading and other site improvements; installation of utilities; installation, placement and replacement of manufactured homes; placement of recreational vehicles; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; certain building work exempt from permit under the building codes; and flood control projects.

Sec. 102-2. - Establishment of flood hazard areas. The Flood Insurance Study for Lake County, California and Incorporated Areas dated October 17, 1978, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are hereby adopted by reference as a part of these regulations and serve as the basis for establishing flood hazard areas. Where the building code establishes flood hazard areas, such areas are established by this section. Additional maps and studies, when specifically adopted, supplement the FIS and FIRMs to establish additional flood hazard areas. Maps and studies that establish flood hazard areas are on file at Clearlake City Hall at 14050 Olympic Drive**.**

Sec. 102-3. - Interpretation. In the interpretation and application of these regulations, all provisions shall be:

(1) Considered as minimum requirements.
(2) Deemed neither to limit nor repeal any other powers granted under state statutes.

ARTICLE 103 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

Sec. 103-1. - Designation. The City Engineer is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

Sec. 103-2. - General authority. The Floodplain Administrator is authorized and directed to administer and enforce these regulations. The Floodplain Administrator shall have the authority interpretations of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to Article 107 of these regulations. The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a qualified professional engineer or licensed land surveyor when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with these regulations.

Sec. 103-3. - Coordination. The Floodplain Administrator shall coordinate with and provide comments to the Building Official to administer and enforce the flood provisions of the building code and to ensure compliance with the applicable provisions of these regulations. The Floodplain Administrator and the Building Official have the authority to establish written procedures for reviewing applications and conducting inspections for buildings and for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 103-5 of these regulations.

Sec. 103-4. - Duties. The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

(1) Review all permit applications and plans to determine whether proposed development is located in flood hazard areas.

(2) Review all applications and plans for development in flood hazard areas for compliance with these regulations.

(3) Review, in coordination with the Building Official, required design certifications and documentation of elevations specified by the building code to determine that such certifications and documentations are complete.

(4) Review applications and plans for modification of any existing development in flood hazard areas for compliance with these regulations.

(5) Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.

(6) Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.

(7) Determine whether additional flood hazard data shall be obtained from other sources or developed by the applicant.

(8) Complete the appropriate section of the Department of Housing and Community Development Floodplain Ordinance Compliance Certification for Manufactured Home/Mobilehome Installations when submitted by applicants.

(9) Review requests submitted to the Building Official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the building code, to determine whether such requests require consideration as a variance pursuant to Article 107 of these regulations.

(10) Coordinate with the Building Official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.

(11) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.

(12) Require applicants who propose alteration of a watercourse to notify adjacent

communities and the NFIP State Coordinating Agency, and to submit copies of such n to the Federal Emergency Management Agency (FEMA).

(13) Inspect development in accordance with Article 106 of these regulations and inspect flood hazard areas to determine when development is undertaken without issuance of permits.

(14) Prepare comments and recommendations for consideration when applicants seek variances for development other than buildings in accordance with Article 107 of these regulations.

(15) Cite violations in accordance with Article 108 of these regulations.

(16) Notify FEMA when the corporate boundaries of the City of Clearlake have been modified and provide a map and legal description of the changes in the corporate boundaries.

Sec. 103-5. - Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

(1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.

(2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.

(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.

(4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

Sec. 103-6. - Department records. In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the building codes, including Flood Insurance Studies and Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the building codes and these regulations; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurance that the flood carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the building codes.

ARTICLE 104 PERMITS FOR FLOODPLAIN DEVELOPMENT

Sec. 104-1. - Permits required. Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall make application to the Floodplain Administrator and shall obtain the required city permits. No permit shall be issued until compliance with the requirements of these regulations and all other applicable codes and regulations has been satisfied. No building permit shall be issued based on Conditional Letters of Map Revision issued by FEMA. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine a permit for floodplain development is required in addition to a building permit.

Sec. 104-2. - Application for permit. The applicant shall file an application in writing on city standard forms. The information shall include:

(1) Identify and describe the development to be covered by the permit.

(2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitely locate the site.

(3) Indicate the use and occupancy for which the proposed development is intended.

(4) Be accompanied by a site plan and construction documents as specified in Article 105 of these regulations, including grading, excavation and filling plans and other information deemed appropriate by the Floodplain Administrator.

(5) State the valuation of the proposed work.

(6) Be signed by the applicant or the applicant's authorized agent.

(7) Include such other data and information required by the Floodplain Administrator to demonstrate compliance with these regulations.

Sec. 104-3. - Validity of permit. The issuance of a permit for floodplain development under these regulations or the building codes shall not be construed to be a permit for, or approval of, any violation of these regulations, the building code, or any other ordinance of the community. The issuance of a permit for floodplain development based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations.

Sec. 104-4. - Other permits required. The applicant shall obtain all other required state and federal permits prior to initiating work authorized by these regulations and shall provide documentation of such permits to the Floodplain Administrator. Such permits include but are not limited to the California State Water Resources Control Board for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.

Sec. 104-5. - Expiration. A permit for floodplain development shall run concurrently with the life of the associated city permits.

(1) **"Start of Construction"** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date.

(2) **Expiration:**

(a) Every Grading, Building, Fire, Plumbing, Mechanical, and Electrical permit issued by the city under this code shall expire by limitation and become null and void two (2) years after the date of issuance (The maximum allowable length for all permits is two (2) years, unless otherwise noted. Extensions will not normally be considered. Applicants with extenuating circumstances may submit written request and a filing fee to the Building Official. Such requests are required to outline extenuating circumstances that did not allow for the completion of the work as permitted) or if the building or work authorized by such permit is not commenced within 180 days from the date of issuance, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced. Suspension and/or abandonment shall be determined by a lack of progress inspections for a period of more than 180 days since a previous documented inspection. If a permit has expired, no work can recommence until a new permit is obtained.

(b) The cost of a new permit, the purpose of which is to facilitate completion of work for which a permit has expired, will be based on a quantitative estimation of inspections necessary for completion. If costs for providing services to the project exceed the estimated fees collected at permit issuance, additional fees will apply. Said fees will be in accordance with the City's Building Division Fee Schedule established by resolution of the City Council. It is the responsibility of the permittee to schedule all inspections necessary for a permit to remain current and valid. All inspections for this purpose must verify progress.

(c) Permits may be issued for a limited period of time when deemed necessary by the Building Official to abate dangerous, substandard, and/or illegal conditions. In such cases, the Building Official will establish the expiration at 30, 60, 90, or 180 days depending on the health and/or safety hazards. Such permit term limitations may be shorter if deemed appropriate and/or necessary by the Building Official.

Sec. 104-6. - Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a permit for floodplain development issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of these regulations or any ordinance or code of this community.

Sec. 104-7. - Appeals of decisions. When it is alleged there is an error in any decision or determination made by the Floodplain Administrator in the interpretation or enforcement of these regulations, such decision or determination may be appealed to the **City Council** by filing a written appeal setting forth the reasons of the appeal.

ARTICLE 105 SITE PLANS AND CONSTRUCTION DOCUMENTS

Sec. 105-1. - Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

(1) Delineation of flood hazard areas; floodway boundaries and flood zone(s); base flood elevation(s); ground elevations; proposed filling, grading, and excavation; and drainage patterns and facilities when necessary for review of the proposed development.

(2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 105-2 or Section 105-3 of these regulations.

(3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section 105-2(2) of these regulations.

(4) Location of the proposed activity and proposed structures; locations of water supply, sanitary sewer, and other utilities; and locations of existing buildings and structures.

(5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.

(6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

(7) Existing and proposed alignment of any proposed alteration of a watercourse.

Sec. 105-2. - Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator is authorized to:

(1) Require the applicant to include base flood elevation data prepared by a qualified professional engineer or licensed land surveyor in accordance with currently accepted engineering practices. Such analyses shall be performed and sealed by a qualified professional engineer or surveyor.

Studies, analyses and computations shall be submitted in sufficient detail to allow r approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

(2) Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.

(3) Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:

(a) Require the applicant to include base flood elevation data in accordance with Section 105-2(1) of these regulations; or

(b) Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.

(4) Where the base flood elevation data are to be used to support a request for a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a qualified professional engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

Sec. 105-3. - Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of these regulations, the applicant shall have the following analyses signed and sealed by a qualified professional engineer for submission with the site plan and construction documents:

(1) For development activities proposed to be located in a floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 105-4 of these regulations and shall submit the Conditional Letter of Map Revision, when issued by FEMA, with the site plan and construction documents.

(2) For development activities proposed to be located in a riverine flood hazard area where base flood elevations are included in the Flood Insurance Study or on the FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.

(3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices that demonstrates the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in Section 105-4 of these regulations. The applicant shall notify the chief executive officer of adjacent communities and the California Department of Water Resources. The Floodplain Administrator shall maintain a copy of the notification in the permit records and shall submit a copy to FEMA.

Sec. 105-4. - Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a qualified registered professional engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant. Provided FEMA issues a Conditional Letter of Map Revision, construction of proposed flood control projects and land preparation for development are permitted, including clearing, excavation, grading, and filling. Permits for construction of buildings shall not be issued until the applicant satisfies the FEMA requirements for issuance of a Letter of Map Revision.

ARTICLE 106 INSPECTIONS

Sec. 106-1. - Inspections, in general. Development for which a permit for floodplain development is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

Sec. 106-2. - Inspections of development other than buildings and structures. The Floodplain Administrator shall make or cause to be made, inspections of all development other than buildings and structures that is authorized by issuance of a permit for floodplain development under these regulations. The Floodplain Administrator shall inspect flood hazard areas from time to time to determine when development is undertaken without issuance of a permit.

Sec. 106-3. - Inspections of manufactured homes installations. The Floodplain Administrator shall make or cause to be made, inspections of installation and replacement of manufactured homes in flood hazard areas authorized by issuance of a permit for floodplain development under these regulations. Upon installation of a manufactured home and receipt of the elevation certification required in Section 304-1 of these regulations the Floodplain Administrator shall inspect the installation or have the installation inspected.

Sec. 106-4. - Buildings and structures. The Building Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit, in accordance with the building code:

(1) **Lowest floor elevation.** Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in the building code shall be prepared by a licensed land surveyor or registered civil engineer and submitted to the building official.

(2) **Final inspection.** Prior to the final inspection, certification of the elevation required in the building code shall be prepared by a licensed land surveyor or registered civil engineer and submitted to the building official.

ARTICLE 107 VARIANCES

Sec. 107-1. - Nature of variances. The considerations and conditions for variances set forth in this article are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be issued for a parcel of property with physical characteristics so unusual that complying with the requirements of these regulations would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. The issuance of a variance is for floodplain management purposes only. Federal flood insurance premium rates are determined by the National Flood Insurance Program according to actuarial risk and will not be modified by the granting of a variance.

It is the duty of the **City Council** to promote public health, safety and welfare and minimize losses from flooding. This duty is so compelling and the implications of property damage and the cost of insuring a structure built below flood level are so serious that variances from the elevation or other requirements in the building codes should be quite rare. The long term goal of preventing and reducing flood loss and damage, and minimizing recovery costs, inconvenience, danger, and suffering, can only be variances are strictly limited. Therefore, the variance requirements in these regulations are detailed and contain multiple provisions that must be met before a variance can be properly issued. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

Sec. 107-2. – Variances; general. The **City Council** shall hear and decide requests for variances from the strict application of these regulations.

Sec. 107-3. - Limitations on authority. The **City Council** shall base its determination on technical justifications submitted by applicants, the considerations and conditions set forth in this article, the comments and recommendations of the Floodplain Administrator and Building Official, as applicable, and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations and the building code.

Sec. 107-4. - Records. The Floodplain Administrator shall maintain a permanent record of all variance actions, including justification for issuance.

Sec. 107-5. - Historic structures. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic structure upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure. When the proposed work precludes the structure's continued designation as a historic building, a variance shall not be granted and the structure and any repair, improvement, and rehabilitation shall be subject to the requirements of the building code.

Sec. 107-6. - Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analyses required in Section 105-3(1) of these regulations.

Sec. 107-7. - Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the criteria in Section 1612 of the building code (CCR Title 24 Part 2) or Section R322 of the residential code (CCR Title 24 Part 2.5) are met, as applicable, and the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damages during the base flood and create no additional threats to public safety.

Sec. 107-8. - Agricultural structures. A variance is authorized to be issued for the construction or substantial improvement of agricultural structures that are not elevated or dry flood proofed, provided the requirements of this section are satisfied and:

(1) A determination has been made that the proposed agricultural structure:

  (a) Is used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, or storage of tools or equipment used in connection with these purposes or uses, and will be restricted to such exclusive uses.

  (b) Has low damage potential.

  (c) Does not increase risks and pose a danger to public health, safety, and welfare if flooded and contents are released, including but not limited to the effects of flooding on manure storage, livestock confinement operations, liquified natural gas terminals, and production and storage of highly volatile, toxic, or water-reactive materials.

  (d) Complies with the wet floodproofing construction requirements of Section 107-8(2), below.

(2) Wet floodproofing construction requirements.

  (a) Anchored to resist flotation, collapse, and lateral movement.

(b) When enclosed by walls, walls have flood openings that comply with the flood opening requirements of ASCE 24, Chapter 2.

(c) Flood damage-resistant materials are used below the base flood elevation.

(d) Mechanical, electrical, and utility equipment are elevated above the base flood elevation.

Sec. 107-9. - Considerations for issuance of variances. In reviewing applications for variances, all technical evaluations, all relevant factors, all other requirements of these regulations and the building code, as applicable, and the following shall be considered:

(1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.

(2) The danger to life and property due to flooding or erosion damage.

(3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.

(4) The importance of the services provided by the proposed development to the community.

(5) The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.

(6) The compatibility of the proposed development with existing and anticipated development.

(7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.

(8) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, if applicable, expected at the site.

(10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

Sec. 107-10. - Conditions for issuance of variances. Variances shall only be issued upon:

(1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.

(2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or future property owners, or conflict with existing local laws or ordinances.

(4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) When the request is to allow construction of the lowest floor of a new building or substantial improvement of a building below the base flood elevation, notification to the applicant in writing over the signature of the Floodplain Administrator specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that issuance of a variance to construct below the elevation required in the building code will result in increased premium rates for federal flood insurance up to amounts as high as $25 for $100 of insurance coverage, and that such construction below the required elevation increases risks to life and property.

ARTICLE 108 VIOLATIONS

Sec. 108-1. - Violations. Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of the elevation of the lowest floor, other required design certifications, or other evidence of compliance required by these regulations or the building code, is presumed to be a violation until such time as required documentation is submitted. Violation of the requirements shall constitute a misdemeanor.

Sec. 108-2. - Authority. The Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the building codes, but is regulated by these regulations and that is determined to be a violation.

Sec. 108-3. - Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

PART II. – DEFINITIONS

ARTICLE 201 DEFINITIONS

Sec. 201-1. - General. The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Where terms are not defined in these regulations and are defined in the building code (CCR Title 24 Part 2) and used in the residential code (CCR Title 24 Part 2.5), such terms shall have the meanings ascribed to them in those codes. Where terms are not defined in these regulations or the building code, such terms shall have ordinarily accepted meanings such as the context implies.

Sec. 201-2. - Definitions

"Accessory Structure" means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.

"Agricultural Structure" means a walled and roofed structure used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock, including aquatic organisms. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

"Alteration of a watercourse" means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

"ASCE 24" means the standard *Flood Resistant Design and Construction*, referenced by the building code, developed and published by the American Society of Civil Engineers, Reston, VA. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the building code.

"Base flood" means the flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in CCR Title 24 Part 2.]

"Base flood elevation" means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in CCR Title 24 Part 2.]

“Basement” means, for the purpose of floodplain management, the portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in CCR Title 24 Part 2.]

“Building code” means California Code of Regulations Title 24, the *California Building Standards Code*, the family of building codes specifically adopted by the State of California and composed of:

(1) Part 2, applicable to buildings and structures other than dwellings within the scope of this part.
(2) Part 2.5, applicable to one- and two-family dwellings and townhouses not more than three stories, and accessory structures.
(3) Part 10, applicable to existing buildings (as defined in that code).
(4) Other specified codes.

“Design flood” means the flood associated with the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

(1) Area with a flood plain subject to a 1-percent or greater chance of flooding in any year.
(2) Area designated as a flood hazard area on a community’s flood hazard map, or otherwise legally designated.

“Design flood elevation” means the elevation of the “design flood,” including wave height, relative to the datum specified on the community’s legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building’s perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm). [Also defined in CCR Title 24 Part 2.]

“Development” means any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations, flood control projects, and other land-disturbing activities.

“Encroachment” means the placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

"**Exceptional hardship**" means, for the purpose of variances from these regulations or the building code, the exceptional difficulty that would result from a failure to grant a requested variance. Mere economic or financial hardship is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors do not, as a rule, qualify as exceptional hardships. All of these circumstances can be resolved through other means without granting variances, even when the alternatives are more expensive or require the property owner to build elsewhere or put the parcel to a different use than originally intended.

"**Existing manufactured home park or subdivision**" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before October 17, 1978.

"**Expansion to an existing manufactured home park or subdivision**" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Flood or flooding” means a general and temporary condition of partial or complete inundation of normally dry land from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding.

“Flood control project” means a dam or barrier design and constructed to keep water away from or out of a specified area, including but not limited to levees, floodwalls, and channelization.

“Flood damage-resistant materials” means any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in CCR Title 24 Part 2.]

“Flood hazard area” means the greater of the following two areas: [Also defined in CCR Title 24 Part 2.]

(1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.

(2) The area designated as a flood hazard area on the community’s flood hazard map, or otherwise legally designated.

“Flood Insurance Rate Map (FIRM)” means an official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas and the risk premium zones applicable to the community. [Also defined in CCR Title 24 Part 2.]

”Flood Insurance Study” means the official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the base flood and supporting technical data. [Also defined in CCR Title 24 Part 2.]

“Floodplain Administrator” means the community official designated by title to administer and enforce the floodplain management regulations.

“Floodway” means the channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Also defined in CCR Title 24 Part 2.]

"**Fraud or victimization**" means, for the purpose of variances from these regulations or the building code, the intentional use of deceit to deprive another of rights or property, making a victim of the deprived person or the public. As it pertains to buildings granted variances to be constructed below the elevation required by the building code, future owners or tenants of such buildings and the community as a whole may bear the burden of increased risk of damage from floods, increased cost of flood insurance, and increased recovery costs, inconvenience, danger, and suffering.

“Functionally dependent use” means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding or ship repair facilities. The term does not include long-term storage, manufacture, sales or service facilities.

“Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

"**Historic structure**" means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on the inventory of historic places maintained by the California Office of Historic

Preservation; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the California Office of Historic Preservation.

"Letter of Map Change (LOMC)" means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

(1) Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

(2) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

(3) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

(4) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

"Light-duty truck" means, as defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is:

(1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

(2) Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or

(3) Available with special features enabling off-street or off-highway operation and use.

"Lowest floor" means the lowest floor of the lowest enclosed area, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the building codes. [Also defined in CCR Title 24 Part 2.]

"Manufactured home" means a structure that is transportable in one or more sections, built on a permanent chassis, designed for use as a single-family dwelling with or without a permanent foundation when connected to the required utilities, and constructed to the Manufactured Home Construction and Safety Standards promulgated by the U.S. Department of Housing and Urban Development. Also see definitions in Health and Safety Code sections18000.(a)(2) and 18001.(a). For the purposes of floodplain management, the term also includes mobile homes and recreational vehicles, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Market value" means the price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by one of the following methods: (1) Actual Cash Value (replacement cost depreciated for age and quality of construction), (2) tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser, or (3) a qualified independent appraiser.

"**New manufactured home park or subdivision**" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed on or after October 17, 1978.

"**Nuisance**" means that which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Permit for floodplain development” means an official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specified development activities that are located in flood hazard areas and that are determined to be compliant with these regulations.

“Recreational vehicle” means a vehicle that is built on a single chassis, 400 square feet (37.16 m^2) or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use when it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions. Also see definitions in Health and Safety Code section 18010.

"**Riverine**" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"**Special flood hazard area (SFHA)**" means the land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE, or V1-30. [Also defined in CCR Title 24 Part 2.]

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. [Also defined in CCR Title 24 Part 2.]

“Substantial improvement” means any repair, reconstruction, rehabilitation, alteration, addition or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. When the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in CCR Title 24 Part 2.]

(1) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
(2) Any alteration of a historic structure provided that the alteration will not preclude the structure’s continued designation as a historic structure.

“Utility and Miscellaneous Group U” means buildings and structures of an accessory character and miscellaneous structure not classified in any special occupancy, as described in the building code.

“Variance” means a grant of relief from the requirements of these regulations which permits construction in a manner otherwise prohibited and where specific enforcement would result in exceptional hardship.

“Violation” means a development that is not fully compliant with these regulations or the flood provisions of the building code, as applicable.

“Watercourse” means a river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

PART III. – FLOOD RESISTANT DEVELOPMENT

ARTICLE 301 BUILDINGS AND STRUCTURES

Sec. 301-1. - Requirements for buildings and structures in flood hazard areas. Applications for building and structures within the scope of the building code that are proposed in flood hazard areas shall comply with the applicable requirements of the building code

Sec. 301-2. – Detached garages and accessory storage structures. Detached garages and accessory storage structures used only for parking or storage are permitted below the base flood elevation provided the garages and accessory storage structures:

(1) Are one story and not larger than 600 square feet in area when located in special flood hazard areas.

(2) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.

(3) Have flood openings in accordance with the building code.

(4) Have flood damage-resistant materials used below the base flood elevation.

(5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation.

Sec. 301-3. - Utility and Miscellaneous Group U. Utility and miscellaneous Group U includes buildings that are accessory in character and miscellaneous structures not classified in any specific occupancy in the building code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, fences more than 6 feet (1829 mm) high, grain silos (accessory to a residential occupancy), greenhouses, livestock shelters, private garages, retaining walls, sheds, stables, and towers. In addition to the building code requirements for fire and life safety, the following shall apply to utility and miscellaneous Group U buildings and structures in flood hazard areas:

(1) New construction and substantial improvement of such buildings and structures shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions of the design flood.

(2) New construction and substantial improvement of such buildings and structures, when fully enclosed by walls, shall be elevated such that the lowest floor, including basement, is elevated to or above the design flood elevation in accordance with ASCE 24 or shall be dry floodproofed in accordance with ASCE 24.

(3) Unless dry floodproofed, fully enclosed areas below the design flood elevation shall be constructed in accordance with ASCE 24 and limited to parking, storage, and building access.

(4) When fully enclosed by walls, flood openings shall be installed in accordance with ASCE 24.

(5) Flood damage-resistant materials shall be used below the design flood elevation.

(6) Mechanical, plumbing and electrical systems, including plumbing fixtures, shall be located or installed in accordance with ASCE 24.

ARTICLE 302 SUBDIVISIONS

Sec. 302-1. - Minimum requirements. Subdivision proposals in flood hazard areas, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.

(2) All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage in accordance with Section 303-2 and Section 303-3 of these regulations, as applicable, and appropriate codes.

(3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

Sec. 302-2. - Subdivision requirements. In addition to the requirements of Section 302-1 of these regulations, where any portion of proposed subdivisions, including proposals for manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

(1) The flood hazard area, including floodways, as appropriate, shall be delineated on preliminary subdivision plats.

(2) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 105-2(1) of these regulations.

(3) When, as part of a proposed subdivision, fill will be placed to support buildings, the fill shall be placed in accordance with the building code and approval of the subdivision shall require submission of as-built elevations for each filled pad certified by a licensed land surveyor or registered civil engineer.

ARTICLE 303 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

Sec. 303-1. - Minimum requirements. All proposed development in flood hazard areas shall be reviewed to determine that:

(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding.

(2) Where the proposed development has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 105-2(1) of these regulations.

(3) All public utilities and facilities, such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage.

(4) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from proposed structures.

Sec. 303-2. - Sanitary sewer facilities. All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

Sec. 303-3. - Water supply facilities. All new and replaced water supply facilities shall be designed in accordance with the provisions of Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwaters into the systems.

Sec. 303-4. - Development in floodways. Development, site improvements and land disturbing activity involving fill or regrading shall not be authorized in the floodway unless the floodway encroachment analysis required in Section 105-3(1) of these regulations demonstrates the proposed work will not result in any increase in the base flood level during occurrence of the base flood discharge.

Sec. 303-5. - Limitations on placement of fill. Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures, fill shall comply with the requirements of the building code. The placement of fill intended to change base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs shall be subject to the requirements of Section 105-4 of these regulations.

ARTICLE 304 INSTALLATION OF MANUFACTURED HOMES

Sec. 304-1. - Installation. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to the Business and Professions Code and shall comply with the requirements of the Department of Housing and Community Development (HCD) and the requirements of these regulations. In addition to permits pursuant to these regulations, permits from the HCD are required where the HCD is the enforcement agency for installation of manufactured homes. Upon completion of installation and prior to the final inspection by the Floodplain Administrator, the installer shall submit certification of the elevation of the manufactured home, prepared by a licensed land surveyor or registered civil engineer, to the Floodplain Administrator.

Sec. 304-2. - Foundations. All new and replacement manufactured homes, including substantial improvement of manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of Section R322.2 of the residential code (CCR Title 24 Part 2.5) and these regulations. Foundations for manufactured homes subject to Section 304-5 of these regulations are permitted to be reinforced piers or other foundation elements of at least equivalent strength.

Sec. 304-3. - Anchoring. All new and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind loads and seismic loads.

Sec. 304-4. - General elevation requirement. Unless subject to the requirements of Section 304-5 of these regulations, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the lowest floor, or bottom of the lowest horizontal member of the lowest floor, as applicable to the flood hazard area, is at or above the base flood elevation.

Sec. 304-5. - Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to Section 304-4 of these regulations, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as a result of flooding has occurred, shall be elevated such that either the:

(1) Lowest floor, or bottom of the lowest horizontal structural member, as applicable to the flood hazard area, is at or above the base flood elevation.

(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

Sec. 304-6. - Flood damage-resistant materials. Materials below elevated manufactured homes shall comply with the flood-damage resistant materials requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

Sec. 304-7. - Enclosures. Fully enclosed areas below elevated manufactured homes shall comply with the enclosed area requirements of Section R322 of the residential code (CCR Title 24 Part 2.5).

Sec. 304-8. - Protection of mechanical equipment and outside appliances. Mechanical equipment and outside appliances shall be elevated to or above the lowest floor or bottom of the lowest horizontal structural member of the manufactured home, as applicable to the flood hazard area.

Exception. Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, occurrence of flooding up to the elevation required by Section 304-4 or Section 304-5, as applicable, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

ARTICLE 305 RECREATIONAL VEHICLES

Sec. 305-1. - Temporary placement. Recreational vehicles in flood hazard areas, shall be placed on a site for less than 180 consecutive days or shall be fully licensed and ready for highway use. Ready for highway use means the recreational vehicle is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, such as rooms, stairs, decks and porches.

Sec. 305-2. - Permanent placement. Recreational vehicles that do not meet the limitations in Section 305-1 for temporary placement shall meet the requirements of Article 304 for manufactured homes.

ARTICLE 306 OTHER DEVELOPMENT

Sec. 306-1. - General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the building code, shall:

(1) Be located and constructed to minimize flood damage.

(2) Meet the limitations of Section 303-4 of these regulations when located in a regulated floodway.

(3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(4) Be constructed of flood damage-resistant materials.

(5) Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of the building code for wet locations.

Sec. 306-2. - Tanks. Tanks that serve buildings shall comply with the requirements of the building code. Underground and above-ground tanks that serve other purposes shall be designed, constructed, installed and anchored in accordance with ASCE 24.

Sec. 306-3. - Requirements for temporary structures and temporary storage in flood hazard areas. Temporary structures shall be erected for a period of less than 180 days and temporary storage of goods and materials shall be permitted for a period of less than 180 days. Extensions may be granted in accordance with Section 104-5 of these regulations. In addition, the following apply:

(1) Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.

(2) Temporary stored materials shall not include hazardous materials.

(3) The requirements of Section 303-4 of these regulations, when located in floodways.

Sec. 306-4. - Fences in floodways. Fences in floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 303-4 of these regulations.

Sec. 306-5. - Oil derricks. Oil derricks located in flood hazard areas shall be designed in conformance with flood loads required by the building code.

Sec. 306-6. - Retaining walls, sidewalks and driveways in floodways. Retaining walls and sidewalks and driveways that involve placement of fill in floodways shall meet the limitations of Section 303-4 of these regulations and the requirements for site grading in Chapter 18 of the building code.

Sec. 306-7. - Roads and watercourse crossings in floodways. Roads and watercourse crossings that encroach into floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side shall meet the limitations of Section 303-4 of these regulations. Alteration of a watercourse that is part of work proposed for a road or watercourse crossing shall meet the requirements of Section 105-3(3) of these regulations.

Sec. 306-8. - Swimming pools. Above-ground swimming pools, on-ground swimming pools, and in-ground swimming pools that involve placement of fill in floodways shall meet the requirement of Section 303-4 of these regulations.

ARTICLE 307 FLOOD CONTROL PROJECTS

Sec. 307-1. - Flood control projects; general. In addition to applicable Federal, State and other local permits, a permit for floodplain development is required for construction of flood control projects. The purpose for the permit is to examine the impact on flood hazard areas, floodways, and base flood elevations shown on the FIRM. Unless otherwise authorized by separate regulations, issuance of this permit does not address the sufficiency of the structural elements of the proposed flood control project. Permits for floodplain development and building permits in areas affected by proposed flood control projects shall not be issued based on Conditional Letters of Map Revision issued by FEMA.

Sec. 307-2. - Flood control projects; applications. Applications for permits for flood control projects shall include documentation including but not limited to:

(1) Site plan or document showing the existing topography and the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations shown on the FIRM.

(2) Site plan or document showing the proposed topography and the proposed changes to the boundaries of the flood hazard areas, floodway boundaries, and base flood elevations.

(3) The documentation submitted to FEMA for a Conditional Letter of Map Revision (CLOMR) and, if issued, the Conditional Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. A CLOMR is required when a proposed flood control project alters a floodway and increases base flood elevations more than greater than 0.00 feet, or alters a watercourse a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated and increases base flood elevations more than 1.0 foot.

SECTION 3. APPLICABILITY. For the purposes of jurisdictional applicability, this ordinance shall apply in all incorporated areas within the City of Clearlake. This ordinance shall apply to all applications for development, including building permit applications, zoning clearances, and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 4. INCLUSION INTO THE CODE OF ORDINANCES.
It is the intent of the City Council that the provisions of this ordinance shall become and be made a part of the City of Clearlake's Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. SEVERABILITY.
If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as

a whole, or any part thereof, other than the part so declared.

SECTION 6. EFFECTIVE DATE.
This ordinance shall take effect on **September 18, 2021 (30 days from August 19)**

PASSED on first reading **August 5, 2021**

PASSED and ADOPTED in regular session, with a quorum present and voting, by the City Council of the City of Clearlake, upon second and final reading this **August 19, 2021.**

AYES:

NOES:

ABSTAIN:

ABSENT:

____
Dirk Slooten, Mayor

ATTEST:

____
Melissa Swanson, City Clerk

CITY COUNCIL REGULAR MEETING

Clearlake City Hall Council Chambers
14050 Olympic Dr, Clearlake, CA

Thursday, July 15, 2021

Regular Meeting 6:00 PM

MINUTES

Zoom Link: https://clearlakeca.zoom.us/j/89552720387

A. ROLL CALL

PRESENT
Mayor Dirk Slooten
Vice Mayor Russ Perdock
Council Member David Claffey
Council Member Russ Cremer
Council Member Joyce Overton

1. **5:00** Burns Valley Development Project Workshop

   City Manager Flora gave the staff report. The Lake County Recreation Task Force gave a presentation. No action was taken by Council on this item.

B. PLEDGE OF ALLEGIANCE

C. INVOCATION/MOMENT OF SILENCE

D. ADOPTION OF THE AGENDA

Motion made by Vice Mayor Perdock, Seconded by Council Member Cremer.
Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

E. PRESENTATIONS

2. Presentation of July's Adoptable Dogs

3. Presentation of the Regional Transportation Plan

4. Presentation by the Cyanobacteria Outreach Workgroup

F. PUBLIC COMMENT

There was no public comment.

G. CONSENT AGENDA

Motion made by Council Member Overton, Seconded by Council Member Cremer.
Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

5. Warrants
   Recommended Action: Receive and file

6. Award of Contract for the Design Services.
   Recommended Action: Authorize City Manager to enter into a contract with California Engineering Company for Design Services for Phase 1 of the Burns Valley Development Project.

7. Award of Contract for the Design Services for the Dam Road Extension and South Center Drive Project.
   Recommended Action: Authorize City Manager to enter into a contract with California Engineering Company for Design Services.

8. Award of Contract for the Design Services.
   Recommended Action: Authorize City Manager to enter into a contract with California Engineering Company for Design Services for the 2nd and Modoc Road Rehabilitation Project.

9. Notification of Expiring Committee Appointments
   Recommended Action: Receive and file

10. Continuation of Declaration of Local Emergency Issued on March 14, 2020 and Ratified by Council Action on March 19, 2020
    Recommended Action: By motion keep declaration of emergency active and set next review in sixty days

11. Continuation of Declaration of Local Emergency Issued on October 9, 2017 and Ratified by Council Action October 12, 2017
    Recommended Action: By motion keep declaration of emergency active and set next review in 30 days

12. Approval of the Sole Source Purchase of a Seat Wall from Universal Precast
    Recommended Action: Adoption of Resolution 2021-36 and Approval of Sole Source Purchase of a Seat Wall from Universal Precast

13. License Agreement with Pacific Gas and Electric Company (PG&E) for Use of the Clearlake Community Senior Center as a Customer Resource Center
    Recommended Action: Approve agreement and authorize City Manager to sign

14. Minutes of the June Meetings
Recommended Action: Receive and file

H. PUBLIC HEARING

15. Public Hearing to consider Resolution No.2021-38, A Resolution of the City of Clearlake, Approving Restricted Access to the Segment of Burns Valley Rd, between Arrowhead and Acacia, in the Effort to Reduce Illegal Dumping
Recommended Action: Hold Public Hearing and adopt Resolution

Contract City Engineer Swartz gave the staff report.

Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.
Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

I. BUSINESS

16. Presentation and Acceptance of the Annual Financial Report for Fiscal Year 2018-19; Resolution No. 2021-35
Recommended Action: Adopt resolution

City Manager Flora and Chief White gave the staff report.

Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.
Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

17. Award of contract for Demolition of Structures located at 14525 Lakeshore Drive Clearlake, CA 95422
Recommended Action: Authorize the City Manager to execute a contract with Chernoh Excavating Inc. in the amount of $55,000.00

Code Enforcement Supervisor Lambert gave the staff report.

There was no action taken by the Council on this item.

18. Discussion Regarding the Sale of Property Located at 6356 Armijo Avenue, Clearlake to MLI Associates, LLC for development of a Hotel
Recommended Action: Authorize the City Manager to Execute the Purchase and Sale Agreement with MLI Associates, LLC for Sale of Property at 6356 Armijo Avenue, Clearlake.

City Manager Flora gave the staff report.

Motion made by Council Member Cremer, Seconded by Council Member Overton.
Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member

Cremer, Council Member Overton

19. Award of Construction Contract for the 2021 Measure V Pavement Rehabilitation Project
    Recommended Action: Authorize City Manager to enter into contract with Granite Construction for construction of the 2021 Measure V Pavement Rehabilitation Project base bid and additive alternates for the total amount of $2,023,121.50 and authorize the City Manager to approve up to 10% for additional unforeseen contract amendments.

    Contract City Engineer Swartz gave the staff report.

    Motion made by Vice Mayor Perdock, Seconded by Council Member Cremer.
    Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

20. Adoption of the 1st Amendment to the FY 2021-22 Budget (Resolution 2021-33) Appropriating CalTrans Local Roadway Safety Plan Grant Funding and Measure V Project Funding; Resolution No. 2021-37
    Recommended Action: Adopt resolution 2021-37

    Chief White gave the staff report.

    Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.
    Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

21. Consideration of a Memorandum of Understanding between the City of Clearlake and the Clearlake Miscellaneous Employees Association for the period July 1, 2021 to June 30, 2022 Recommended Action: Adopt Memorandum of Understanding between the City of Clearlake and Clearlake Miscellaneous Employees Association and authorize the City Manager to sign.

    City Manager Flora gave the staff report.

    Motion made by Council Member Overton, Seconded by Vice Mayor Perdock.
    Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

22. Consideration of a Memorandum of Understanding between the City of Clearlake and the Clearlake Police Officers Association for the period July 1, 2021 to June 30, 2022 Recommended Action: Adopt Memorandum of Understanding between the City of Clearlake and Clearlake Police Officers Association and authorize the City Manager to sign.

    City Manager Flora gave the staff report.

Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.
Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

23. Consideration of a Memorandum of Understanding between the City of Clearlake and the Clearlake Middle Management Association for the period July 1, 2021 to June 30, 2023
Recommended Action: Adopt Memorandum of Understanding between the City of Clearlake and Clearlake Middle Management Association and authorize the City Manager to sign.

    City Manager Flora gave the staff report.

    Motion made by Vice Mayor Perdock, Seconded by Council Member Overton.
    Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

24. Consideration of Updates to Management Classification and Benefits Plan and City Salary Schedule
Recommended Action: Adopt CPI Adjustment for Management Employees per the Management Benefit Plan

    City Manager Flora gave the staff report.

    Motion made by Council Member Overton, Seconded by Council Member Cremer.
    Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

25. Consideration of Designation of Voting Delegates and Alternate(s) For the League of California Cities Annual Conference in September
Recommended Action: Motion to designate voting delegate and alternate(s)

    Administrative Services Director/City Clerk gave the staff report.

    Councilmember Overton as delegate, with Councilmembers Perdock and Cremer as alternates.

    Motion made by Council Member Cremer, Seconded by Vice Mayor Perdock.
    Voting Yea: Mayor Slooten, Vice Mayor Perdock, Council Member Claffey, Council Member Cremer, Council Member Overton

J. CITY MANAGER AND COUNCILMEMBER REPORTS

K. FUTURE AGENDA ITEMS

L. CLOSED SESSION

26. Conference with Legal Counsel- Existing Litigation: Pursuant to Government Code Section 54956.9: Case No. CV-421149; Name of Case: City of Clearlake v. County of Lake, a political subdivision of the State of California; Board of Supervisors of the County of Lake, a public body of the County of Lake; Barbara C. Ringen, in her official capacity as the Treasurer-Tax Collector of the County of Lake; and Does 1 through 30, inclusive

27. Conference with Legal Counsel - Existing Litigation: Pursuant to Government Code 54956.9 - City of Clearlake vs. Amerisourcebergen Drug Corporation, et al. Case No. 1:20-cv-06212

M. ANNOUNCEMENT OF ACTION FROM CLOSED SESSION

There was no action taken in closed session.

N. ADJOURNMENT

The meeting was adjourned at 8:50 p.m.

BY:

Melissa Swanson

Melissa Swanson, Administrative Services Director/City Clerk

CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT:	Authorization of an Agreement for a Remodel of the City Hall Breakroom	**MEETING DATE:**	August 19, 2021
SUBMITTED BY:	Melissa Swanson, Administrative Services Director/City Clerk		
PURPOSE OF REPORT:	☐ Information only ☐ Discussion ☒ Action Item		

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to approve a contract with Lucky's Construction for $45,364.00.

BACKGROUND/DISCUSSION:

The City Hall employee break room/kitchen area needs repairs and expansion. The furniture is in disrepair, the refrigerator is an older, secondhand model, and the sink area leaks. Additionally, the cabinets are missing and/or broken. Staff requested proposals from local contractors within Lake County. Lucky's Construction was the lowest proposal for the work that is being requested in the break room/kitchen. The proposed work would include expanding the kitchen into a storage area, replacing the flooring, ceiling, doors, and cabinets.

OPTIONS:

1. Move to approve the contract with Lucky's Construction in the amount of $45,364.00
2. Other direction

FISCAL IMPACT:

☐ None ☒ $45,364.00 Budgeted Item? ☒ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☒ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☒ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Move to approve the contract with Lucky's Construction in the amount of $45,364.00

☐ **Attachments:**

CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Consideration of Approval of Purchase and Sale Agreement for Approximately 11.28 acres of Property Located at 6885 and 7110 Old Highway 53, Clearlake from the Burbank Housing Development Corporation	**MEETING DATE:** Aug. 19, 2021
SUBMITTED BY: Alan D. Flora, City Manager	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL:

The City Council is being asked to approve the purchase of 11.28 acres located at 6885 and 7110 Old Highway 53 for development as a retail center.

BACKGROUND/DISCUSSION:

The City currently owns approximately 28 acres which comprised the former Pearce Field airport west of Highway 53. The City recently approved the sale of approximately 2.5 acres of the property for development of a Fairfield Inn and Suites and is working with various developers, business owners, retailers and investors with an interest in the overall project.

The City has been working with our Retail Strategies partners and others over the past year or so to attract retail interest in the retail development that has long been envisioned for the former airport site. Interest has been quite strong and many of the pieces necessary for a successful development are starting to come together. It became apparent some time ago that having control over the bulk of the developable area would be helpful for a consistent and cohesive development plan. The 11-acre property in question is the location of the former water park and was part of the original airport site the City acquired from the County in 1994. Staff contacted Burbank Housing Development about their intentions with the 11-acre property at the site, which they have owned since 2017. Burbank is an affordable housing developer from Sonoma County and was gifted the property but have no plans for development in Clearlake or the Lake County area. The owner of approximately 5.5 acres of property to the south had an active option agreement to purchase the property, but no active plans underway for development. The City was able to negotiate a sale price of $1 million for the 11-acre property.

This purchase will give the City control of nearly 40 acres of development area along Highway 53 and will allow more strategic master planning of the entire site. The City is currently working with architecture firm Ankrom Moisan on the site master plan.

Upon closing of the purchase of the property the City will begin demolition of the remaining infrastructure from the water park, racetrack, batting cages, etc. in order to prepare the site for development. The City expects to begin construction of the road and utility infrastructure at the site in the spring of 2022.

OPTIONS:

1. Authorize the City Manager to Execute a Purchase and Sale Agreement with Burbank Housing, and other documents as necessary, to complete the purchase of approximately 11.28 acres at the former Pearce Field airport.
2. Take no action.
3. Other direction.

FISCAL IMPACT:

☐ None ☒ $1,000,000 Budgeted Item? ☒ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☒ Other: 240-Capital Projects

Comments**:** Funding for the purchase is included in the Capital Projects Fund of the FY 2021-22 Budget.

STRATEGIC PLAN IMPACT:

☒ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☒ Goal #4: Improve the Image of Clearlake

☒ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☒ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Authorize the City Manager to Execute a Purchase and Sale Agreement with Burbank Housing, and other documents as necessary, to complete the purchase of approximately 11.28 acres at the former Pearce Field airport.

☒ **Attachments:** 1) Purchase and Sale Agreement

2) Pearce Field Map

AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS
(6885 & 7110 Old Highway 53, Clearlake, CA)

TO: Fidelity National Title Company	Escrow No.:
18990 Coyote Valley Road, Suite 13	Escrow Officer:
Hidden Valley Lake, CA 95467	Title Order No.
("Escrow Holder")	Title Officer: ________________________

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this "***Agreement***") is entered into as of March __, 2019, by and between City of Clearlake, a California Municipal Corporation (the "***Buyer***"), and Burbank Housing Development Corporation (the "***Seller***"), with respect to the following:

A. Seller is the owner of property located in the State of California, County of Lake, consisting of land (the "***Land***" which is described on Exhibit A attached hereto, located at 6885 & 7110 Old Highway 53, Clearlake, and commonly known as APN's 010-043-40, 010-043-41, 010-043-42, and 010-043-48. The Land and all easements, rights and appurtenances pertaining thereto, together with the Improvements, any and all fixtures of Seller located on or in the Land and Improvements, and all tangible personal property of Seller located on the Land and/or Improvements and intangible personal property, used in connection with the operation or maintenance of the Land and/or Improvements shall hereinafter be collectively referred to as the "***Property***."

B. Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property from Seller upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer (individually a "***Party***" and collectively, the "***Parties***") hereby agree that the terms and conditions of this Agreement and the instructions to Escrow Holder with regard to the escrow ("***Escrow***") created pursuant hereto are as follows:

AGREEMENT

1. **Purchase and Sale**. Seller agrees to sell, transfer and convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller, upon the terms and conditions herein set forth. Buyer is acquiring the Property in "AS IS" condition, and without representation by Seller or its representatives as to any matter except for the express representations and warranties of Seller contained in this Agreement.

2. **Purchase Price**. The purchase price ("***Purchase Price***") for the Property shall be One Million and 00/100 Dollars ($1,000,000.00).

3. **<u>Payment of Purchase Price</u>**. The Purchase Price for the Property shall be paid by Buyer as follows:

(a) <u>Deposit</u>. Buyer will make a Deposit within 10 days of notification by Escrow Holder of the opening of escrow for the purchase in the amount of Fifty Thousand Dollars ($50,000). Escrow Holder shall place the Deposit in an interest bearing account. The Deposit and the interest accrued thereon shall be refundable to Buyer if Buyer terminates this Agreement in accordance with Buyer's right to do so pursuant to the express terms of this Agreement, including Sections 7(a)(i) - 7(a)(iii) below. The Deposit and all interest accrued thereon shall be applicable to the Purchase Price upon Close of Escrow and, except as otherwise provided for herein, nonrefundable to Buyer unless Seller fails to convey the Property to Buyer as provided herein and such failure constitutes a default by Seller hereunder.

(b) <u>Closing Funds</u>. At or prior to the Close of Escrow, Buyer shall cause to be deposited with Escrow Holder the balance of the Purchase Price plus Escrow Holder's estimate of Buyer's share of closing costs, prorations and charges payable pursuant to this Agreement.

4. **<u>Escrow</u>**.

(a) <u>Opening of Escrow</u>. For purposes of this Agreement, the Escrow shall be deemed opened on the date Escrow Holder shall have received a fully executed original or originally executed counterparts of this Agreement from Seller and Buyer (the "***Opening of Escrow***"), and Escrow Holder shall immediately notify Buyer and Seller, in writing, of the date Escrow is opened. Buyer and Seller agree to execute, deliver and be bound by any reasonable and customary supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. To the extent of any inconsistency between the provisions of such supplemental instructions and the provisions of this Agreement, the provisions of this Agreement shall control.

(b) <u>Close of Escrow</u>. For purposes of this Agreement, the "***Closing***" shall be defined as the consummation of the transaction contemplated by this Agreement and "***Close of Escrow***" shall be defined as the date that a grant deed ("***Grant Deed***"), the form of which is attached hereto as <u>Exhibit B</u> conveying the Property to Buyer, is recorded in the Official Records. This Escrow shall close on or before the date which is ten (10) days after the satisfaction of Section 7(c) below, and the satisfaction or Buyer's waiver of the last of the conditions to closing set forth in Sections 7(a)(i) - 7(a)(vi) below.

5. **<u>Condition of Title</u>**. It shall be a condition to the Close of Escrow for Buyer's benefit that title to the Property shall be conveyed to Buyer by the Grant Deed subject to the following condition of title ("***Condition of Title***"):

(a) A lien to secure payment of general and special real property taxes and assessments, not delinquent.

(b) Matters affecting the Condition of Title created by or with the written consent of Buyer.

(c) All matters which a correct survey and inspection of the Property would disclose.

(d) All exceptions which are disclosed by the "Report" described in Section 7(a)(ii)(A) below which are approved by Buyer as provided herein.

6. **Title Policy Upon Closing**. Title shall be evidenced by the willingness of Escrow Holder in its capacity as title insurer ("***Title Company***") to issue its Owner's Standard Form (CTLA) Policy of Title Insurance or, at Buyer's election, an ALTA Policy of Title Insurance ("***Title Policy***") in the amount of the Purchase Price showing title to the Property vested in Buyer and subject only to the Condition of Title.

7. **Conditions to Close of Escrow**.

(a) Conditions to Buyer's Obligations. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the dates designated below for the satisfaction of such conditions.

(i) Property Investigation; Documents and Materials. Buyer shall have until 5:00 p.m. on the twentieth (20th) day following the date of Opening of Escrow (the "***General Contingency Period***") to satisfy itself, in Buyer's sole and absolute discretion, as to the following matters:

(A) Buyer's Inspection of the Property and Related Matters. Buyer shall be satisfied with all aspects of the Property and its condition and suitability for Buyer's intended use thereof, including, without limitation, the zoning for the Property and the availability of all permits, licenses, variances and the like necessary for Buyer's intended use of the Property. During the term of this Escrow, Buyer shall have the right (upon reasonable advance notice to Seller, but not less than 24 hours notice, and during times reasonably designed to minimize any unreasonable interference with Seller and/or any tenant at the Property) to make such inspections, surveys and tests as may be necessary in Buyer's discretion, including, without limitation, soils tests, toxic waste analysis, geological studies, engineering studies (including testing of all structural and mechanical systems) and land use or related studies. Buyer shall restore the Property to its original condition after any and all tests and/or inspections and shall not permit any liens to attach to the Property by reason thereof. Buyer agrees to indemnify, defend, protect and hold Seller harmless from and against any and all liens, claims, losses, liabilities, damages, costs, expenses, and causes of action (including reasonable attorneys' fees and court costs) arising out of Buyer's inspections of the Property pursuant hereto. Prior to any entry upon the Land and Improvements by Buyer's agents, contractors, subcontractors, Buyer shall deliver to Seller an original endorsement to Buyer's commercial general liability insurance policy which evidences that Buyer is carrying a commercial general liability insurance policy with a financially responsible insurance company reasonably acceptable to Seller, covering the activities of Buyer's agents, contractors and subcontractors on or upon the Property. Such endorsement to such insurance policy shall evidence that such insurance policy shall have a per occurrence limit of at least One Million Dollars ($1,000,000) and an aggregate limit of at least Two Million Dollars ($2,000,000), shall name Seller as an additional insured, shall be primary and noncontributing with any other insurance available to Seller and shall contain a full waiver of subrogation clause.

(B) Review of Documents and Materials. Within five (5) days of the date of this Agreement, Seller shall deliver to Buyer the following documents and materials (in original form or copies thereof) to the extent in Seller's possession or control respecting the Property (the "***Documents and Materials***"):

(I) Plans. All improvement plans including so called "as-built" plans, and governmental agency related correspondence.

(II) Permits and Licenses. The building permit(s) and the certificate(s) of occupancy pertaining to the Property and any other permit, license or written governmental approval pertaining to the Property.

(III) Soils, Geology and Engineering Reports. All soils, geology, environmental and building reports, and engineering data pertaining to the Property, including any so-called "Phase I" or "Phase II" environmental reports, and any and all architectural studies, grading plans, topographical maps and similar data regarding the Property.

(IV) Contracts. All occupancy agreements and property management, service, maintenance and supply contracts currently in effect with respect to the Property (collectively, the "***Contracts***").

(V) Surveys and Aerial Photographs. Any existing ALTA survey and aerial photographs of the Property.

(VI) Personal Property. An itemization of all personal property of Seller to be included as part of the "Property" under this Agreement.

(VII) Insurance. A summary of all casualty and liability insurance in place with respect to the Property, including any loss history and the costs and coverage of each such insurance policy.

In addition, Seller shall deliver to Buyer within three (3) Business Days of Buyer's request from time to time, any other non-privileged documents and materials concerning the Property in Seller's possession or under Seller's control ("***Supplemental Information***"). Buyer agrees that if Buyer does not acquire the Property for any reason, Buyer shall promptly return to Seller all of the Documents and Materials and the Supplemental Information. All information obtained by Buyer from the Documents and Materials and/or Supplemental Information which is private, secret and proprietary information of Seller, other than information that was or becomes available to Buyer from a source other than Seller, or becomes generally available or known in the industry, shall be and remain confidential regardless of whether the Closing occurs; provided, however, the foregoing shall not prevent Buyer from disclosing such information, if any, as may reasonably be required to carry out its obligations hereunder (including without limitation disclosure to its attorneys or consultants retained for the purposes of this transaction).

(C) Satisfaction. If, during the General Contingency Period, Buyer determines that it is satisfied, in Buyer's sole and absolute discretion, with the Property (i.e., its condition and suitability for Buyer's intended use) and with the

Documents and Materials and any Supplemental Information, then Buyer shall deliver written notice thereof to Seller and Escrow Holder on or before the expiration of the General Contingency Period. If Buyer fails to deliver any such notice to Seller and Escrow Holder on or before the expiration of the General Contingency Period, then Buyer shall be deemed to be dissatisfied with the Property, the Documents and Materials and the Supplemental Information, in which event (I) this Agreement and the Escrow created pursuant hereto shall terminate and be of no further force or effect, (II) Escrow Holder shall return to Buyer the Deposit and all interest accrued thereon, and (III) Buyer shall return to Seller all Documents and Materials and Supplemental Information previously delivered to Buyer by Seller.

(ii) Buyer's Review of Title.

(A) Buyer shall have until the expiration of the General Contingency Period (the "***Title Review Period***") in which to give Seller and Escrow Holder written notice of its approval of the condition of title to the Property ("***Buyer's Title Notice***") based on (I) a standard preliminary report from the Title Company with respect to the Land, together with complete and legible copies of the underlying documents relating to the Schedule B exceptions set forth in such report, and (II) any survey to be conducted on behalf of Buyer at Buyer's sole cost and expense (collectively, the "***Report***"). The failure of Buyer to give Buyer's Title Notice on or before the end of the General Contingency Period shall be deemed to constitute Buyer's disapproval of the condition of the title to the Property, in which event (XI) this Agreement and the Escrow created pursuant hereto shall terminate and be of no further force or effect, (XII) Escrow Holder shall return to Buyer the Deposit and all interest accrued thereon, and (XIII) Buyer shall return to Seller all Documents and Materials and Supplemental Information previously delivered to Buyer by Seller.

(B) If Buyer disapproves or conditionally approves any matter of title shown in the Report, then Seller may, but shall have no obligation to, within five (5) Business Days after its receipt of Buyer's Title Notice ("***Seller's Election Period***"), elect to eliminate or ameliorate to Buyer's satisfaction the disapproved or conditionally approved title matters by giving Buyer written notice ("***Seller's Title Notice***") of those disapproved or conditionally approved title matters, if any, which Seller agrees to so eliminate or ameliorate by the Closing Date.

(C) If Seller does not elect to eliminate or ameliorate any disapproved or conditionally approved title matters, or if Buyer disapproves Seller's Title Notice, or if Seller fails to timely deliver Seller's Title Notice, then Buyer shall have the right, upon delivery to Seller and Escrow Holder, on or before five (5) Business Days following the expiration of Seller's Election Period, by written notice, to either (I) waive its prior disapproval or conditional approval, in which event said matters shall be deemed approved, or (II) terminate this Agreement and the Escrow created pursuant thereto. Failure to take either one of the actions described in clauses "(I)" and "(II)" above shall be deemed to be Buyer's election to take the action described in clause "(II)" above. In the event this Agreement is terminated by Buyer pursuant to the provision of this Section, then (1) this Agreement and the Escrow created pursuant hereto shall terminate and be of no further force or effect, (2) Escrow Holder shall return to Buyer the Deposit and all interest accrued thereon, and (3) Buyer shall return to

Seller all Documents and Materials and Supplemental Information previously delivered to Buyer by Seller.

(D) Buyer may, at or prior to the Close of Escrow, notify Seller in writing ("***Gap Notice***") of any objections to title (I) first disclosed by the Title Company between the expiration of the Title Review Period and the Close of Escrow, and (II) not otherwise known to Buyer prior to the expiration of the Title Review Period; provided that Buyer must notify Seller in writing of such objection within three (3) Business Days of being made aware of the existence of such exception; otherwise the right to object thereto shall be waived. If Buyer delivers a Gap Notice to Seller, then Buyer and Seller shall have the same rights and obligations with respect to such notice as set forth in Sections 7(a)(ii)(B) and (C) above.

(iii) Seller's Obligations. As of the Close of Escrow: (A) Seller shall have timely performed or caused to be performed all of the obligations required to be performed under this Agreement, and (B) all representations and warranties of Seller expressly contained in this Agreement are true as of the Closing.

(b) Conditions to Seller's Obligations. For the benefit of Seller, the Close of Escrow shall be conditioned upon the occurrence or satisfaction (or Seller's waiver thereof, it being agreed that Seller may waive such condition) of the conditions that (i) Buyer shall have performed all of the obligations required by the terms of this Agreement to be performed by Buyer, and (ii) all representations and warranties of Buyer expressly contained in this Agreement are true as of the Closing.

8. Deposits by Seller. At least one (1) Business Day prior to the Close of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following documents and instruments:

(a) Grant Deed. The Grant Deed, in the form attached hereto as Exhibit B, duly executed by Seller and acknowledged.

(b) Assignment of Contracts. Two original counterparts of the Assignment of Contracts and Assumption Agreement ("***Assignment of Contracts***"), duly executed by Seller in the form attached hereto as Exhibit C, pursuant to which Seller shall assign to Buyer all of Seller's right, title and interest in, under and to the Contracts which Buyer, in Buyer's sole and absolute discretion, elects to assume.

(c) Bill of Sale. The Bill of Sale ("***Bill of Sale***"), duly executed by Seller in the form attached hereto as Exhibit D, conveying all of Seller's right, title and interest in and to any personal property owned by Seller which is used exclusively in connection with the operation and/or maintenance of the Property.

(d) Title Company Informational Affidavits. Such informational affidavits or certificates as are reasonably required by the Title Company to the determination by the Title Company of the condition of title to the Land and Improvements.

(e) Original Documents and Materials and Miscellaneous Building Items. Unless otherwise agreed upon by the Parties, all original Documents and Materials, Supplemental information and keys, security cards and codes, operating manuals, construction plans and original permits and licenses for the Land and Improvements in Seller's possession.

(f) Other Instruments. Such other documents and instruments as are contemplated under the terms of Section 22(b) below.

9. Deposits by Buyer. Buyer shall deposit or cause to be deposited with Escrow Holder the Deposit and the balance of the Purchase Price in the amounts and at the times set forth in Section 3 above. In addition, Buyer shall deposit with Escrow Holder prior to the Close of Escrow the following documents and instruments.

(a) Assignment of Contracts. Two original counterparts of the Assignment of Contracts, duly executed by Buyer.

(b) Other Instruments. Such other documents and instruments as are contemplated under the terms of Section 22(b) below.

10. Costs and Expenses. The cost of the CLTA portion of the Title Policy shall be paid in equal share by Buyer and Seller, and the premium and any additional costs for the ALTA extended coverage (additional to the cost of the CLTA portions of the Title Policy) and the cost of any endorsements to the Title Policy shall be paid by Buyer. The escrow fee of Escrow Holder shall be shared equally by Seller and Buyer. Seller shall pay all documentary transfer taxes and recording fees payable in connection with the recordation of the Grant Deed. Buyer and Seller shall pay, respectively, the Escrow Holder's customary charges to buyers and sellers for document drafting and miscellaneous charges. See Section 19 regarding broker fees. If, as a result of no fault of Buyer and Seller, Escrow fails to close, Buyer and Seller shall share equally all of Escrow Holder's fees and charges.

11. Prorations. The following prorations shall be made between Seller and Buyer on the Close of Escrow, computed as of the Close of Escrow:

(a) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If necessary, the Parties shall, in the absence of any final meter readings as of the Close of Escrow, estimate such expenses as of the Close of Escrow based upon the prior operating history of the Property. At least one (1) Business Day prior to the Close of Escrow the Parties shall agree upon all of the prorations to be made and submit a statement to the Escrow Holder setting forth the same.

(b) Post-Closing Adjustments. In the event that any prorations, apportionments or computations made under this Section 11 shall require final adjustment, then the Parties shall make the appropriate adjustments promptly when accurate information becomes available and either Party shall be entitled to an adjustment to correct the same. Any corrected adjustment or proration will be paid in cash and upon demand to the Party entitled thereto.

12. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow, Escrow Holder shall promptly undertake all of the following in the manner indicated:

(a) Prorations. Prorate all matters referenced in Section 11 above, based upon the proration statement(s) signed by the Parties and delivered into Escrow.

(b) Recording. Cause the Grant Deed and any other documents which the Parties may mutually direct, to be recorded in the Official Records, in the order directed by the Parties.

(c) Funds. Disburse from funds deposited by Buyer with Escrow Holder towards payment of all items chargeable to the account of Buyer pursuant hereto in payment of such costs, including, without limitation, the payment of the Purchase Price to Seller, and disburse the balance of such funds, if any, to Buyer.

(d) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(e) Documents to Seller. Deliver to Seller a complete original of the Assignment of Contracts executed by Buyer and Seller.

(f) Documents to Buyer. Deliver to Buyer the Contracts, a complete original of the Assignment of Contracts executed by Buyer and Seller, and an original Bill of Sale executed by Seller.

13. Seller's Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property from Seller, each Seller represents to Buyer as follows and will be deemed to have so represented again at the Closing:

(a) Authority. Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement.

(b) No Conflict. The consummation of the transaction contemplated hereby, shall not conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any agreement or instrument to which Seller is a party or affecting the Property.

(c) Third Party Purchase Rights. There are no options or rights held by any third party to purchase the Property nor does the entering into this Agreement create a third-party right to make an offer to purchase the Property.

(d) Mechanic Liens. As of the Closing, there will be no outstanding contracts made by or on behalf of Seller for any material improvement to the Property which have not been fully performed and paid for, and Seller shall pay or shall cause to be discharged on or prior to the Closing any and all mechanic's or materialmen's liens arising from any labor performed or materials furnished to the Property at the direction of Seller (such discharge may be accomplished by bonding around such liens in accordance with applicable statutes).

(e) Legal Compliance. To Seller's knowledge, there is no action, suit, investigation or proceeding threatened against or affecting the Property or any portion thereof by any person or government agency, board or bureau. To Seller's knowledge, Seller has not received any notice from any governmental authority requiring any public improvements or installations on or in connection with the Property, or asserting any violation of any applicable law, regulation or other governmental requirement, and Seller is not otherwise aware of any such violations or requirements of public improvements or installations.

(f) Condemnation. To Seller's knowledge, there is no pending or threatened condemnation or similar proceeding affecting the Property.

(g) Hazardous Substances. To the actual knowledge of Lawrance Florin, Chief Executive Officer of Seller, with no further duty of inquiry, and except as may be disclosed in the Documents and Materials, there are no hazardous substances, petroleum, hydrocarbons, underground storage tanks or toxic material of any kind ("***Hazardous Substances***") in, on or at the Property (excepting such de minimus amounts as may be the result of the operation of motor vehicles at the Property) in violation of applicable law, and Seller has not deposited or released (nor permitted the deposit or release of) Hazardous Substances on the Property in violation of applicable law.

(h) Contracts. The copies of the Contracts delivered by Seller to Buyer are current, true and complete, and constitute all of the operative agreements with respect to occupancy, service to and/or maintenance of the Property.

14. Buyer's Covenants, Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following covenants, representations and warranties, each of which is material and is being relied upon by Seller and each of which shall survive for a period of one year following the Close of Escrow:

(a) Authority; Ability to Perform. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement.

(b) "AS-IS". Buyer is acquiring the Property "AS IS" and without representation by Seller or its representatives as to any matter except for the express representations and warranties of Seller contained in this Agreement.

15. SELLER'S REMEDIES UPON DEFAULT. BUYER AND SELLER AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN OR UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH SELLER'S DAMAGE BY REASON OF BUYER'S DEFAULT UNDER THIS AGREEMENT AND FAILURE TO CLOSE ESCROW. ACCORDINGLY, BUYER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT AND FAILURE TO CLOSE ESCROW BY BUYER UNDER THIS AGREEMENT, IT WOULD BE REASONABLE AT SUCH TIME TO AWARD SELLER, AS SELLER'S SOLE AND EXCLUSIVE REMEDY AT LAW, "LIQUIDATED DAMAGES" EQUAL TO THE AMOUNT REPRESENTED BY THE DEPOSIT HELD BY ESCROW HOLDER. THEREFORE, IF BUYER COMMITS A DEFAULT UNDER THIS AGREEMENT AND FAILS TO CLOSE ESCROW, SELLER MAY INSTRUCT ESCROW HOLDER TO CANCEL THE ESCROW WHEREUPON ESCROW HOLDER SHALL IMMEDIATELY PAY OVER TO SELLER THE DEPOSIT HELD BY ESCROW HOLDER, TOGETHER WITH ALL INTEREST ACCRUED THEREON, AND SELLER SHALL BE RELIEVED FROM ALL OBLIGATIONS AND LIABILITIES HEREUNDER AND, PROMPTLY FOLLOWING ESCROW HOLDER'S RECEIPT OF SUCH INSTRUCTION, ESCROW HOLDER SHALL CANCEL THE ESCROW. AS MATERIAL CONSIDERATION TO EACH PARTY'S AGREEMENT TO THE LIQUIDATED DAMAGES PROVISIONS STATED ABOVE, EACH PARTY HEREBY AGREES TO WAIVE ANY AND ALL RIGHTS WHATSOEVER TO CONTEST THE VALIDITY OF THE LIQUIDATED DAMAGES PROVISIONS FOR ANY REASON WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THAT SUCH PROVISION WAS UNREASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THIS AGREEMENT WAS MADE. SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS

OF THIS SECTION 15 AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

____________ ____________

Seller's Initials Buyer's Initials

The Parties agree that any dispute concerning disposition of any deposit that is not resolved by their mutual agreement shall be submitted to final and binding arbitration in Lake County, California, before JAMS or its successor (the "***Arbitration Provider***") pursuant to pursuant to the California Code of Civil Procedure, Section 1280 to 1294.2. Any Party may commence the arbitration process called for in this Section 15 by filing a written demand for arbitration with the Arbitration Provider, with a copy to all Parties. The arbitration shall be conducted by a single arbitrator ("***Arbitrator***") who shall be a former California Superior Court judge, and in accordance with the provisions of JAMS' Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The arbitration hearing shall be commenced within thirty (30) days of the filing of the application with the Arbitrator Provider and a decision shall be rendered by the Arbitrator within thirty (30) days of the conclusion of the hearing. The Parties will cooperate with the Arbitrator and with one another in selecting an arbitrator from the Arbitrator Provider's panel of neutrals, and in scheduling the arbitration proceedings. The Parties covenant that they will participate in the arbitration in good faith, and, to the extent not otherwise prohibited by law, that they will share equally in its costs. The provisions of this Section 15 may be enforced by any Court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Party against whom enforcement is ordered.

16. Operation of the Property.

(a) From the date of this Agreement until the earlier of the date of expiration of the General Contingency Period or termination of this Agreement: (A) Seller shall manage the Property in a manner consistent with Seller's prior management of the Property; (B) Seller shall not make any material alterations or changes to the Property, except in the ordinary course of business and following written notice to Buyer; (C) Seller shall not enter into any new agreements or contracts affecting the Property except following written notice to Buyer; (D) Seller shall continue to perform all of its material obligations under the Contracts; (E) Seller shall not amend, terminate or otherwise modify the Contracts, except in the ordinary course of business and following written notice to Buyer; and (F) Seller shall not sell, transfer, convey or encumber, or cause or permit to be sold, transferred, conveyed or encumbered, the Property or any part thereof or interest therein.

(b) From the date of expiration of the General Contingency Period until the earlier of the Close of Escrow or termination of this Agreement: (A) Seller shall manage the Property in a manner consistent with Seller's prior management of the Property; (B) Seller shall not make any material alterations or changes to the Property; (C) Seller shall not enter into any new agreements or contracts affecting the Property without the written consent of Buyer first obtained; (D) Seller shall continue to perform all of its material obligations under the Contracts; (E) Seller shall not amend, terminate or otherwise modify the Contracts without the written consent of Buyer first obtained; and (F) Seller shall not sell, transfer, convey or encumber, or cause or permit to be sold, transferred, conveyed or encumbered, the Property or any part thereof or interest therein.

17. Damage or Condemnation Prior to Closing. Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding commenced prior to the Close of Escrow.

If any such damage or proceeding relates to or may result in the loss of any Material (as defined herein below) portion of the Property, Buyer shall, at its option, elect either to: (i) terminate this Agreement, in which event all funds deposited into Escrow by Buyer shall be returned to Buyer and neither Party shall have any further rights or obligations hereunder, or (ii) continue the Agreement in effect, in which event upon the Close of Escrow, Buyer shall be entitled to any compensation, awards, or other payments or relief resulting from such casualty or condemnation proceeding relating to the Property and there shall be no adjustment to the Purchase Price. Buyer shall notify Seller in writing of Buyer's election not later than ten (10) days following Buyer's receipt of notice from Seller as to the casualty or condemnation. As used herein, "***Material***" shall mean a casualty resulting in a loss in excess of $100,000.00 or a condemnation proceeding with respect to any portion of the Property having a value in excess of $100,000.00.

18. **Notices**. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or delivered by overnight courier such as FedEx, Express Mail, etc., for the next Business Day delivery, and shall be deemed received upon the earlier of (i) if personally delivered, the Business Day of delivery to the address of the person to receive such notice, and (ii) if delivered by overnight courier, the next Business Day.

If to Buyer:
City of Clearlake
City Manager
14050 Olympic Drive
Clearlake, CA 95422

With a copy to:

Jones & Mayer
Attention: Ryan R. Jones
6349 Auburn Boulevard
Citrus Heights, California 95621

If to Seller:
Burbank Housing Development Corporation
1425 Corporate Center Parkway
Santa Rosa, CA 95407
Attn.: Larry Florin, CEO

With a copy to:

Notice of change of address shall be given by written notice in the manner detailed in this Section 18. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

19. **Brokers**. Seller shall pay any commissions, finder's fees or brokerage fees (collectively, a "***Commission***") arising out of the transaction contemplated by this Agreement. Buyer shall indemnify and hold Seller harmless from and against any and all liabilities, claims, damages, costs and expenses, including, without limitation, court costs and reasonable attorneys' fees, in connection with claims for any commissions, finder's fees or brokerage fees arising out of Buyer's conduct or the inaccuracy of the foregoing representations and/or warranty of Buyer. Seller shall likewise indemnify and hold Buyer harmless from and against any and all liabilities, claims, damages, costs and expenses, including, without limitation, court costs and reasonable attorneys' fees, in connection with claims for any commissions, finder's fees or brokerage fees arising out of Seller's conduct or the inaccuracy of the foregoing representations and/or warranty of Seller.

20. Legal Fees. In the event of the bringing of any action or suit by a Party against another Party by reason of any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement, then in that event, the prevailing Party in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover of and from the other Party all costs and expenses of suit, including actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively "***Costs***") incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section 20, Costs shall include bankruptcy litigation.

21. Assignment. Buyer shall not assign its rights under this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

22. Miscellaneous.

(a) Survival of Covenants. The covenants, representations and warranties of Seller and Buyer set forth in this Agreement shall survive the recordation of the Grant Deed and the Close of Escrow for one year, and shall not be deemed merged into the Grant Deed upon its recordation.

(b) Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use good faith efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

(c) Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

(d) Business Days. As used in this Agreement, the term "***Business Day***" or "***Business Days***" shall be defined as any day on which national banking institutions in Lake County, California, are open for the transaction of banking business (excepting any Saturday or Sunday).

(e) Captions. Any captions or headings of the sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(f) No Obligation to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon nor obligate either of Buyer or Seller to, any person or entity other than the Parties.

(g) Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

(h) Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties.

(i) Waiver. The waiver or failure to enforce any provision in this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

(j) Governing Law; Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to the conflict of laws rules thereof. The Parties hereto irrevocably submit to the jurisdiction of the courts of the State of California and the Federal courts of the United States of America located in Lake County, California, and agree that all claims with respect to this Agreement shall be heard and determined in such a State of California or Federal court. The Parties hereto hereby consent to and grant any such court jurisdiction over the person of such Parties and over the subject matter of any such dispute.

(k) Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with the negotiation and preparation of this Agreement.

(l) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

(m) Partial Invalidity. If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way effect the validity or enforceability of the remaining portions of this Agreement.

(n) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties.

(o) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(p) Transmission by E-mail. With the exception of the Grant Deed, any and all documents to be executed by any Party (including this Agreement) may when executed be transmitted to the other Party and to Escrow Holder (as applicable) by e-mail and such transmission shall constitute delivery of such document, provided, however, that the original of such document bearing the original signature(s) is sent on the date of the e-mail transmission to the recipient via overnight courier for the next Business Day delivery.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement of Purchase and Sale and Joint Escrow Instructions as of the day and year first written above.

Buyer: City of Clearlake, a municipal corporation.

By: ______________________________________
Alan Flora, City Manager

Seller: Burbank Housing Development Corporation

By: _____________________________________
Larry Florin
Title: Chief Executive Officer

Attest:

By: _____________________________________
Melissa Swanson
Title: City Clerk

Approved as to form:

JONES & MAYER

By: ____________________________________
Ryan R. Jones
Title: City Attorney

LEGAL DESCRIPTION OF LAND

[to be inserted by Escrow Holder / Title Company]

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:
MAIL TAX STATEMENTS TO:

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

APN:

THE UNDERSIGNED GRANTOR DECLARES
THAT DOCUMENTARY TRANSFER TAX IS:
$________________ computed on the full value
of the interest or property conveyed.

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, Burbank Housing Development Corporation (collectively "Grantor") hereby grants to City of Clearlake, a California Municipal Corporation, the real property located in the State of California, County of Lake, City of Clearlake, described in Exhibit A attached hereto (the "Property"), together with all Grantor's right, title and interest, of, in and to all structures and improvements now located on the Property, subject to the following:

1. Taxes and assessments, not delinquent.

2. All other covenants, conditions, restrictions, reservations, rights, rights of way, easements, encumbrances, liens and title matters of record or visible from an inspection or survey of the Property.

Grantor: Burbank Housing Development Corporation

By: ____________________________________
Print Name:
Title: Chief Executive Officer

<u>ASSIGNMENT OF CONTRACTS AND ASSUMPTION AGREEMENT</u>

This Assignment of Contracts and Assumption Agreement ("Assignment"), dated ___________, is made by and between Burbank Housing Development Corporation (collectively, "Assignor"), and City of Clearlake ("Assignee"), with reference to the following:

A. Assignor and City of Clearlake, a California Municipal Corporation, entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions, dated August __, 2021 ("Agreement") for the purchase and sale of the ("Property") located at 6885 & 7110 Old Highway 53, Clearlake, California, and more particularly described in Exhibit A to the Agreement.

B. This Assignment is being made pursuant to the terms of the Agreement for the purpose of assigning to Assignee all of Assignor's right, title, and interest in and to those certain rental, lease, or service and maintenance contracts described on Schedule A attached hereto (the "Contracts").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. <u>Assignment of Contracts</u>. Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee all of Assignor's right, title, interest, benefits and privileges, if any, under the Contracts, and Assignee hereby accepts such Assignment.

2. <u>Assumption of Obligations</u>. By acceptance of this Assignment, Assignee hereby assumes and agrees to perform and to be bound by all of the terms, covenants, conditions and obligations imposed upon or assumed by Assignor under the Contracts. Said assumption shall have application only to those obligations under the Contracts first accruing or arising on or after the date of Close of Escrow ("Close of Escrow" being defined in the Agreement) and shall have no application to obligations accruing or arising prior to said date.

3. <u>Indemnification</u>.

(a) Assignee shall indemnify and hold Assignor harmless on demand on a dollar-for-dollar basis from and against all losses, actual damages, liabilities, claims, demands, obligations, deficiencies, payments, judgments, settlements, costs and expenses of any nature whatsoever resulting from, arising out of, or due to obligations which arise under the Contracts after the Close of Escrow.

(b) Assignor shall indemnify and hold Assignee harmless on demand on a dollar-for-dollar basis from and against all losses, actual damages, liabilities, claims, demands, obligations, deficiencies, payments, judgments, settlements, costs and expenses of any nature whatsoever resulting from, arising out of, or due to obligations which arise under the Contracts prior to the Close of Escrow.

4. <u>Successors and Assigns</u>. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective parties hereto.

5. Attorneys' Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

6. Governing Law; Venue. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to the conflict of laws rules thereof. The parties hereto irrevocably submit to the jurisdiction of the courts of the State of California and the Federal courts of the United States of America located in Lake County, California and agree that all claims with respect to this Assignment shall be heard and determined in such a State of California or Federal court. The parties hereto hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute.

7. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment of Contracts and Assumption Agreement as of the date indicated below.

Assignor: Burbank Housing Development Corporation

By: ____________________________________
Print Name:
Title: Chief Executive Officer

Assignee: CITY OF CLEARLAKE, a California Municipal Corporation

By: ____________________________________
Print Name: Alan Flora
Title: City Manager

Attest:

By: ____________________________________
Print Name: ______________________________
Title: City Clerk

Approved as to form:

JONES & MAYER

By: ___________________________________
Print Name: Ryan R. Jones
Title: City Attorney

SCHEDULE A

Schedule of Contracts

(1) [to come]

BILL OF SALE

For valuable consideration, the receipt of which is hereby acknowledged, ("Seller"), do hereby give, grant, bargain, sell, transfer and deliver to City of Clearlake, a California Municipal Corporation ("Buyer"), all of the personal property (collectively, the "Personal Property") which is owned by Seller and is located on or used in connection with the real property commonly known as 6885 & 7110 Old Highway 53, Clearlake, California, including without limitation the Personal Property listed on Schedule 1 attached hereto, which is being conveyed to Buyer "as-is" and without any representation or warranty of any kind or nature of Seller, express, implied or statutory, as to the nature of the Personal Property or its fitness for Buyer's intended use of same.

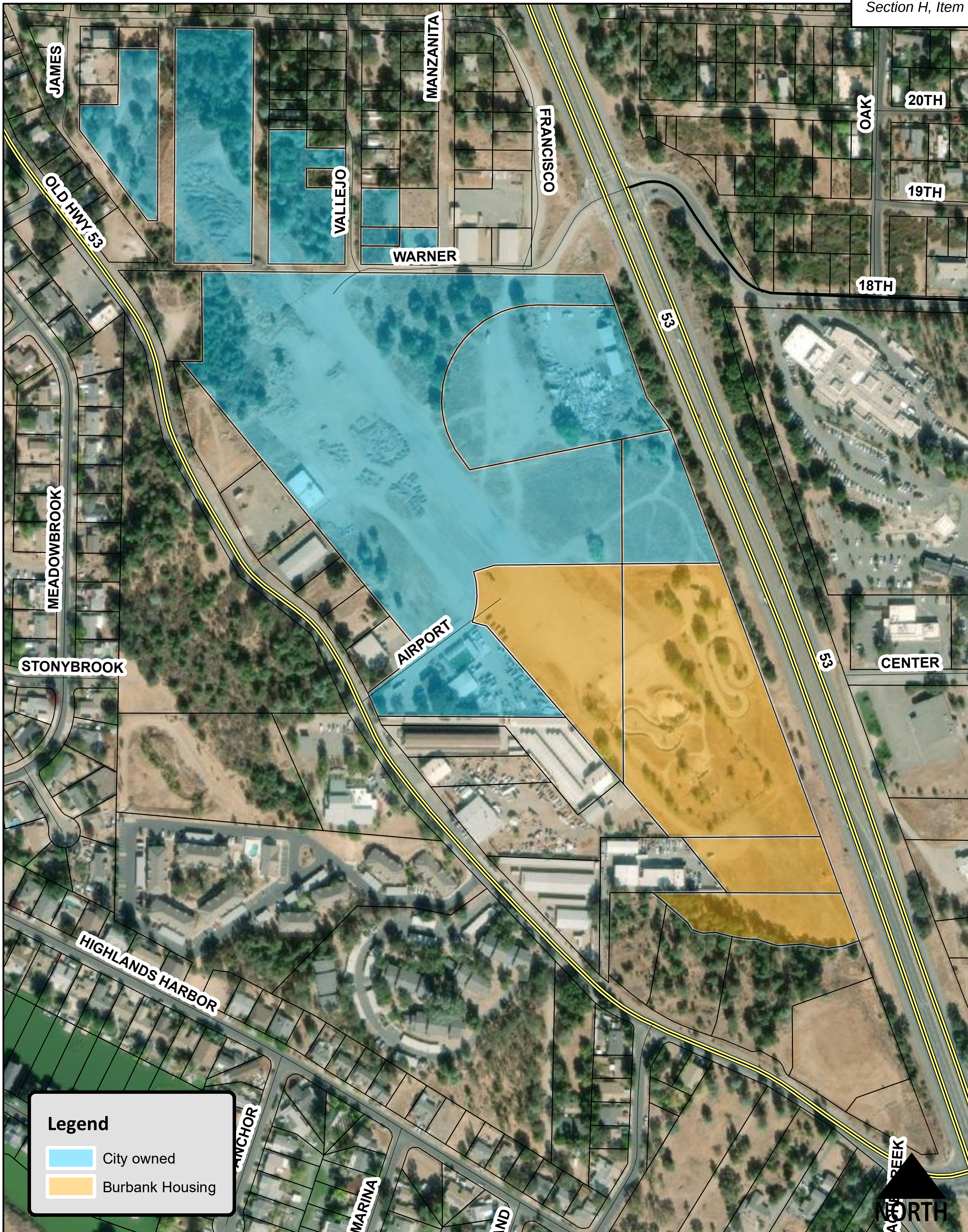
Seller: Burbank Housing Development Corporation

By: ___________________________________
Print Name:
Title: Chief Executive Officer

SCHEDULE 1

Personal Property

(1) [to come]



PEARCE FIELD

Date: 8/13/2021

CITY OF CLEARLAKE

City Council

STAFF REPORT	
SUBJECT: Consideration of Resolution Approving an Application for CDBG -CV HomeKey Funding for Rehabilitation Work at the Hope Center	**MEETING DATE:** Aug. 19, 2021
SUBMITTED BY: Alan D. Flora, City Manager	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL:

The City Council is being asked to approve the application for funding for additional improvements at the Hope Center from the Community Development Block Grant – Coronavirus Response (CDBG-CV) Program.

BACKGROUND/DISCUSSION:

The City has partnered with Adventist Health, Hope Rising and other local partners for development of the Hope Center, a transitional housing facility in Clearlake. Additional improvements for the project are warranted, including curb gutter and sidewalks, and a energy microgrid system, which are eligible for funding through the CDBG-CV Home Key program. The Hope Center renovation was funded in large part by the first round of Home Key funding in 2020 with the County as a sponsor. The County is not interested in sponsoring the current application, so the City has stepped up. The City will be the applicant and will pass through the funds to the Hope Center, but will rely on Adventist Health and Hope Rising for reporting and administrative support of the grant process.

OPTIONS:

1. Adopt Resolution No. 2021-42 – A Resolution Approving an Application for Funding and the Execution of a Grant Agreement and any Amendments Thereto from the 2020 Community Development Block Grant Program- Coronavirus Response and/or the 2020-21 Funding Year of the State CDBG Program.
2. Take no action.
3. Other direction.

FISCAL IMPACT:

☒ None ☐ $ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☒ No If yes, amount of appropriation increase: $

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments**:** Funding for the purchase is included in the Capital Projects Fund of the FY 2021-22 Budget.

STRATEGIC PLAN IMPACT:

☒ Goal #1: Make Clearlake a Visibly Cleaner City

☒ Goal #2: Make Clearlake a Statistically Safer City

☒ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☒ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

Adopt Resolution No. 2021-42 – A Resolution Approving an Application for Funding and the Execution of a Grant Agreement and any Amendments Thereto from the 2020 Community Development Block Grant Program- Coronavirus Response and/or the 2020-21 Funding Year of the State CDBG Program.

☒ **Attachments:** 1) Resolution No 2021-42

APPENDIX D 1

RESOLUTION NO. 2021-42

A RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2020 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM – CORONAVIRUS RESPONSE (CDBG-CV) AND/OR THE 2020-2021 FUNDING YEAR OF THE STATE CDBG PROGRAM

BE IT RESOLVED by the City Council of the **City of Clearlake** of Lake County as follows:

SECTION 1:

The City has reviewed and hereby approves the submission to the State of California of one or more application(s) in the aggregate amount of, not to exceed, $1,000,000 for (i) the following CDBG-CV activities, pursuant to the CDBG Method of Distribution as described in the State of California 2019-2020 Annual Action Plan August 2020 Second Substantial Amendment, and/or (ii) the following CDBG activities, pursuant to the CDBG Method of Distribution as described in the State of California 2020-2021 Annual Action Plan January 2021 Substantial Amendment:

List activities and amounts

Transitional Housing Facility Rehabilitation *$1,000,000*

SECTION 2:

The City hereby approves the use of Program Income in an amount not to exceed $ 1,000,000 for the CDBG-CV activities and/or CDBG activities described in Section 1.

SECTION 3:

The City acknowledges compliance with all state and federal public participation requirements in the development of its application(s).

SECTION 4:

The City hereby authorizes and directs the City Manager, to execute and deliver all applications and act on the City's behalf in all matters pertaining to all such applications.

SECTION 5:

APPENDIX D

If an application is approved, the City Manager, is authorized to enter into, execute and deliver the grant agreement (*i.e*., Standard Agreement) and any and all subsequent amendments thereto with the State of California for the purposes of the grant.

SECTION 6:

If an application is approved, the City Manager, is authorized to sign and submit Funds Requests and all required reporting forms and other documentation, without limitation, including any covenant or regulatory agreement as may be required by the State of California from time to time in connection with the grant.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Clearlake of Lake County held on August 19, 2021 by the following vote:

APPENDIX D

3

AYES: Enter # of votes
NOES: Enter # of votes

ABSENT: Enter # of absences
ABSTAIN: Enter # of abstentions

____
Dirk Slooten, Mayor
City Council

STATE OF CALIFORNIA
City of Clearlake

I, Melissa Swanson , City Clerk of the City of Clearlake,State of California, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by said City Council/Board of Supervisors on this 19th day of August, 2021.

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Melissa Swanson, Clerk of the City of Clearlake of Lake County

By:______________________________________
Melissa Swanson, City Clerk

CITY OF CLEARLAKE

City Council

STAFF REPORT	
SUBJECT: Discussion of the 2021 League of California Cities Annual Conference Resolutions	**MEETING DATE:** August 19, 2021
SUBMITTED BY: Melissa Swanson, Administrative Services Director/City Clerk	
PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to discuss the proposed resolutions and give direction to the Conference delegates.

BACKGROUND/DISCUSSION:

At the annual League of California Cities (LOCC) Conference, attendees will hold a business meeting where proposed resolutions are voted on to determine the LOCC's stance on certain issues in the coming year. These are policy resolutions on issues of statewide importance that have a direct bearing on municipal affairs and are of broad municipal interest. This year's general assembly and business meeting will be held during the annual conference on Friday, September 24th. The City Council appointed Councilmember Overton as the delegate and Councilmember Cremer and Vice Mayor Perdock as alternates.

There are two resolutions for consideration at the annual conference this year and the information provided by the League of California Cities is attached. The first is a resolution calling on the State Legislature to pass legislation in regards to distribution of the Bradley Burns 1% local sales tax. The second is a resolution calling on the Governor and Legislature to provide funding for the California Public Utilities Commission to inspect railroad lines for illegal dumping and homeless encampments along railroad right-of-ways.

OPTIONS:

1. Discuss the resolutions and give direction to the Conference delegates on voting for or against the adoption of the resolutions at the Conference.
2. Other direction

FISCAL IMPACT:

☒ None ☐ $ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☐ No If yes, amount of appropriation increase: $

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments**:** Support of the League resolutions does not commit cities to adopting or implementing any League position in their local communities.

STRATEGIC PLAN IMPACT:

☐ Goal #1: Make Clearlake a Visibly Cleaner City

☐ Goal #2: Make Clearlake a Statistically Safer City

☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☐ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☐ Goal #6: Update Policies and Procedures to Current Government Standards

☐ Goal #7: Support Economic Development

☒ **Attachments:** 1) 2021 Annual Conference Resolutions Packet

LEAGUE OF CALIFORNIA CITIES

Annual Conference Resolutions Packet

2021 Annual Conference Resolutions

2021 ANNUAL CONFERENCE & EXPO
LEAGUE OF CALIFORNIA CITIES
SACRAMENTO SEPTEMBER 22-24

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

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

ACTION FOOTNOTES

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

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

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.

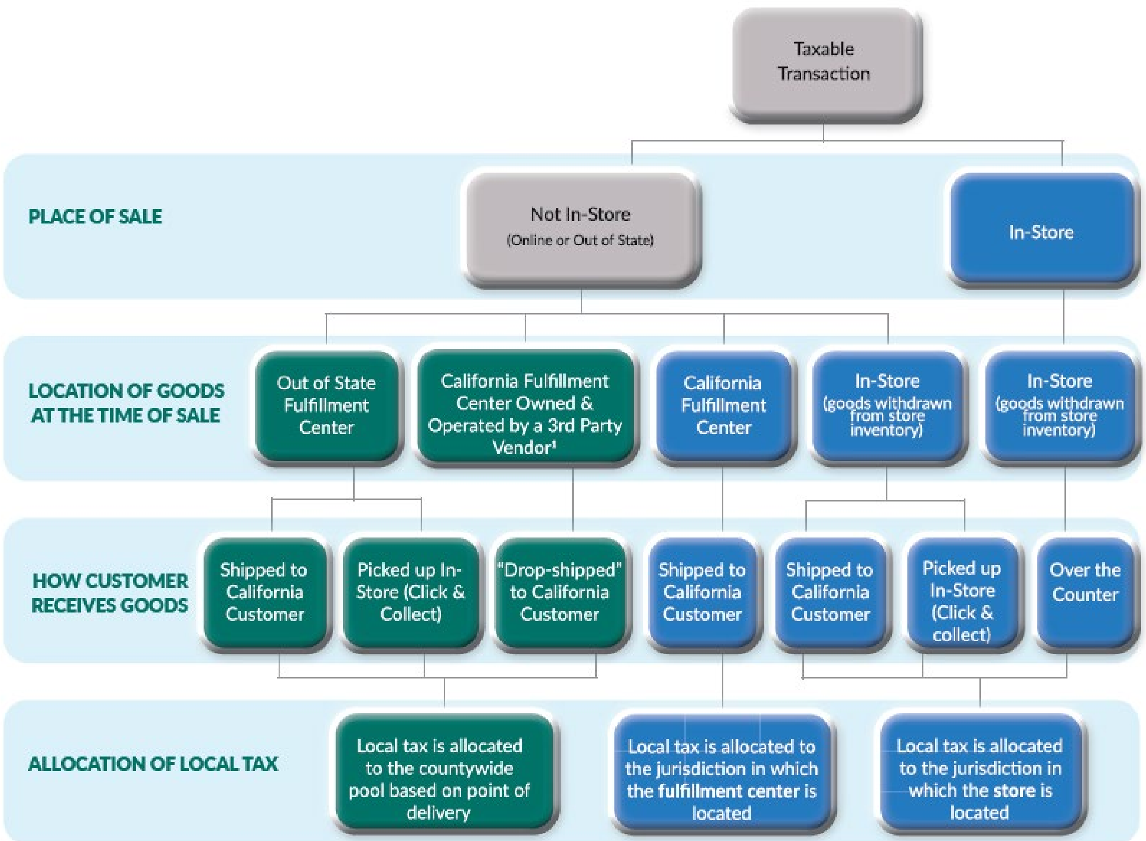
Background Information to Resolution

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.

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 recoupment 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

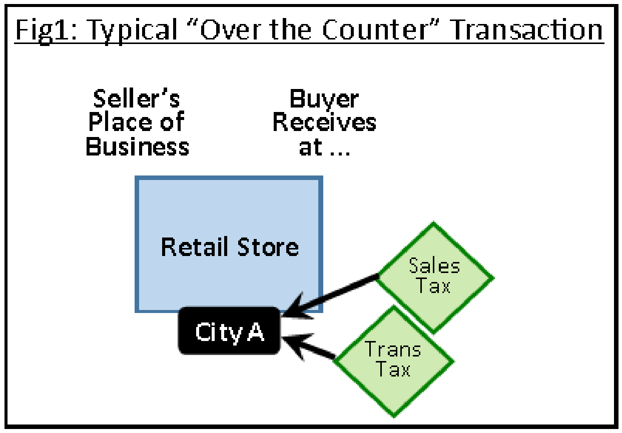


Fig1: Typical "Over the Counter" Transaction
Seller's Place of Business
Buyer Receives at ...
Retail Store
City A
Sales Tax
Trans Tax

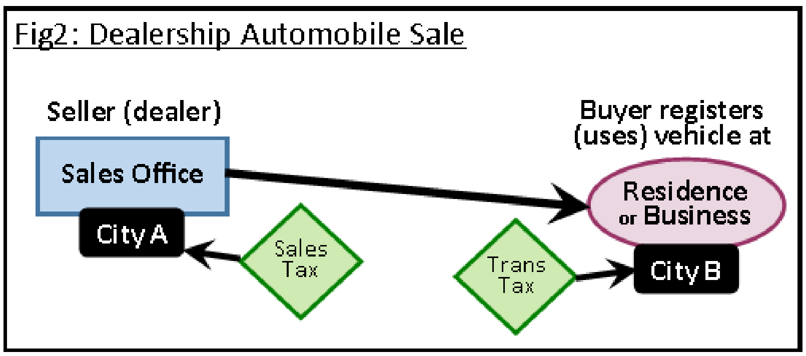


Fig2: Dealership Automobile Sale
Seller (dealer)
Buyer registers (uses) vehicle at
Sales Office
City A
Sales Tax
Residence or Business
Trans Tax
City B

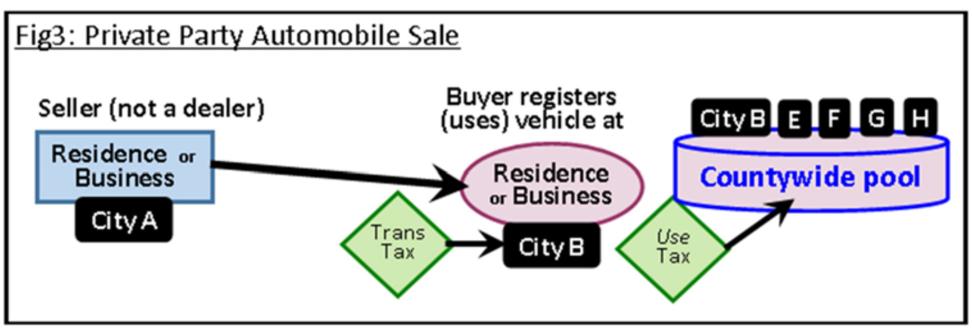
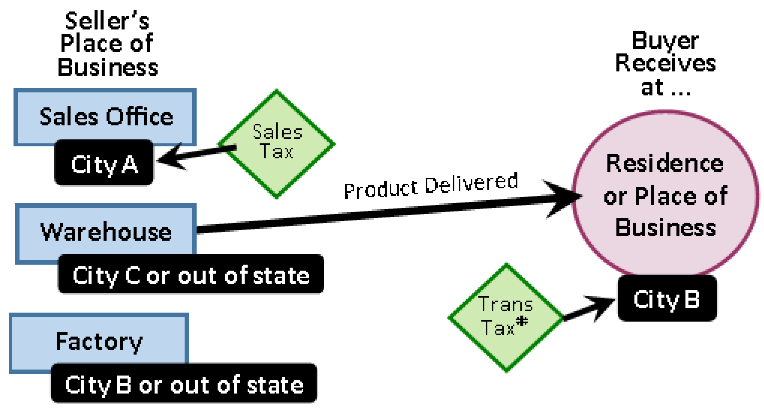


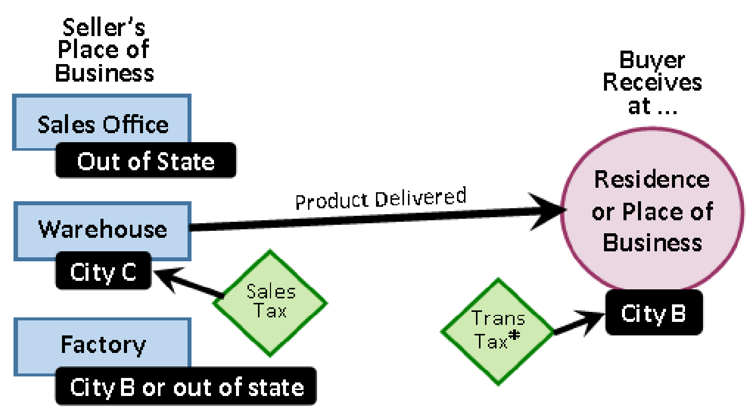
Fig3: Private Party Automobile Sale
Seller (not a dealer)
Buyer registers (uses) vehicle at
City B E F G H
Residence or Business
City A
Residence or Business
Countywide pool
Trans Tax
City B
Use Tax

Fig4: Remote (Online) Sale—In-State Business Office

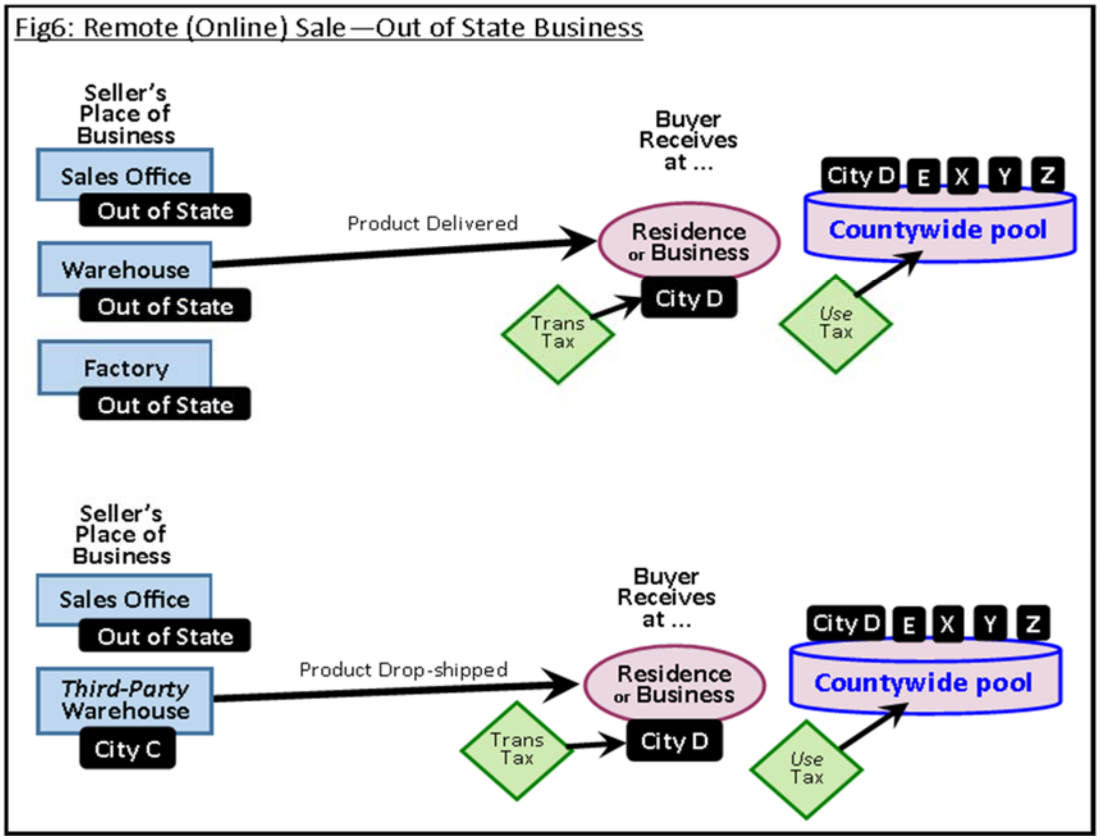


*If the seller is in the same Transactions and Use Tax "district" as the buyer, then the seller is responsible for collecting and remitting the tax. If the buyer is in a different district, the buyer is responsible.

Fig5: Remote (Online) Sale—In-State Warehouse, Out-of-State Sales Office



*If the seller is in the same Transactions and Use Tax "district" as the buyer, then the seller is responsible for collecting and remitting the tax. If the buyer is in a different district, the buyer is responsible.



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 Fulfilment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfilment 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 Concept[7]

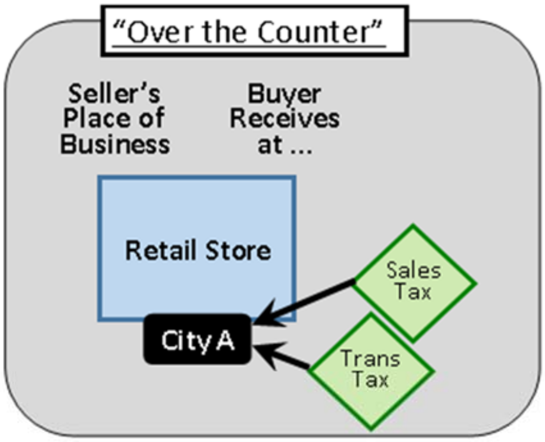
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

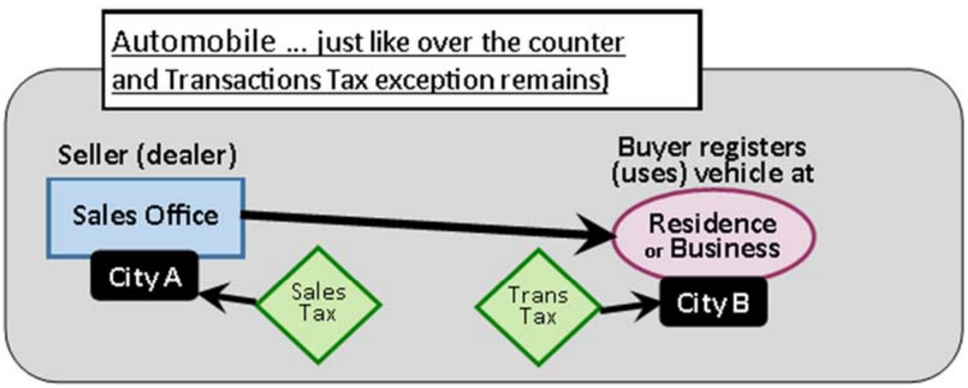
A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would 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.

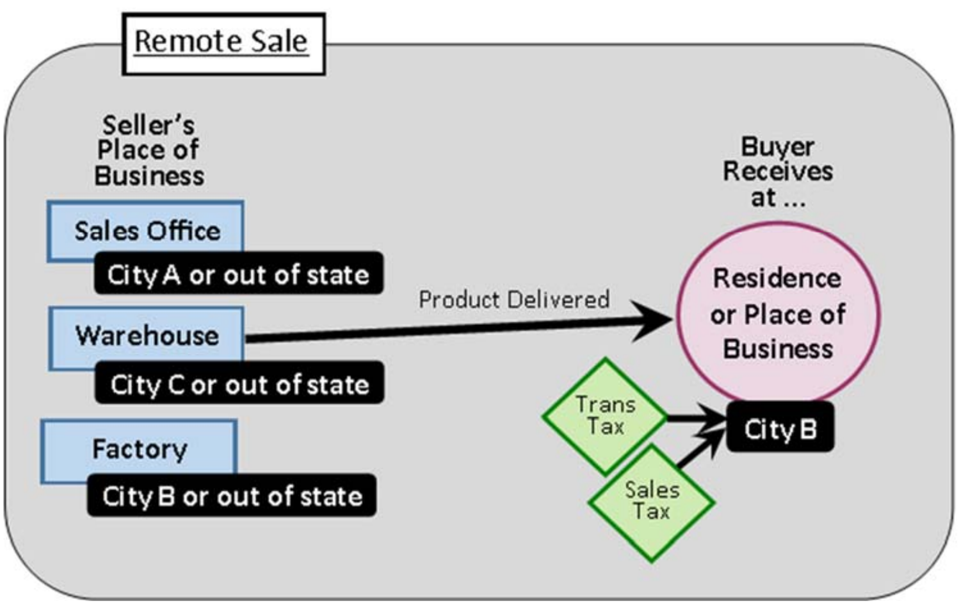
[6] See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

[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

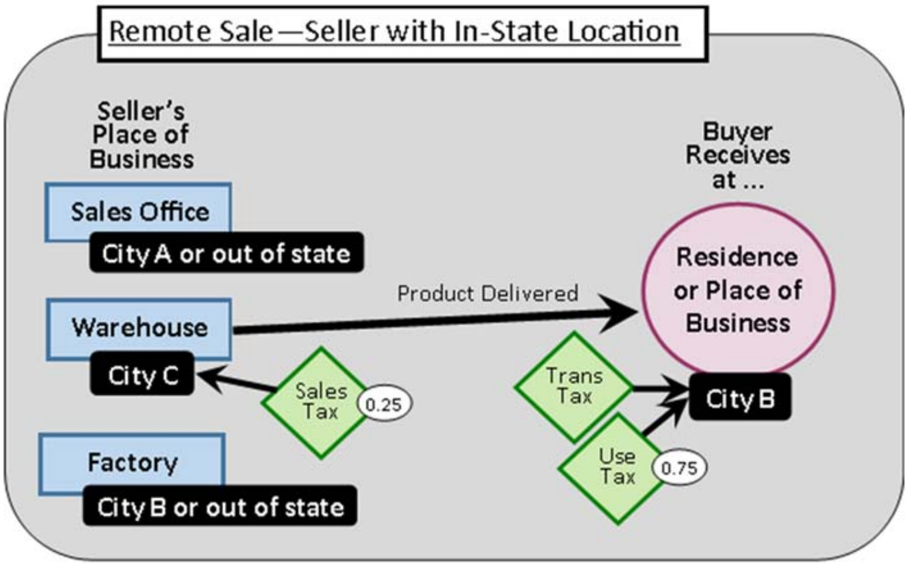


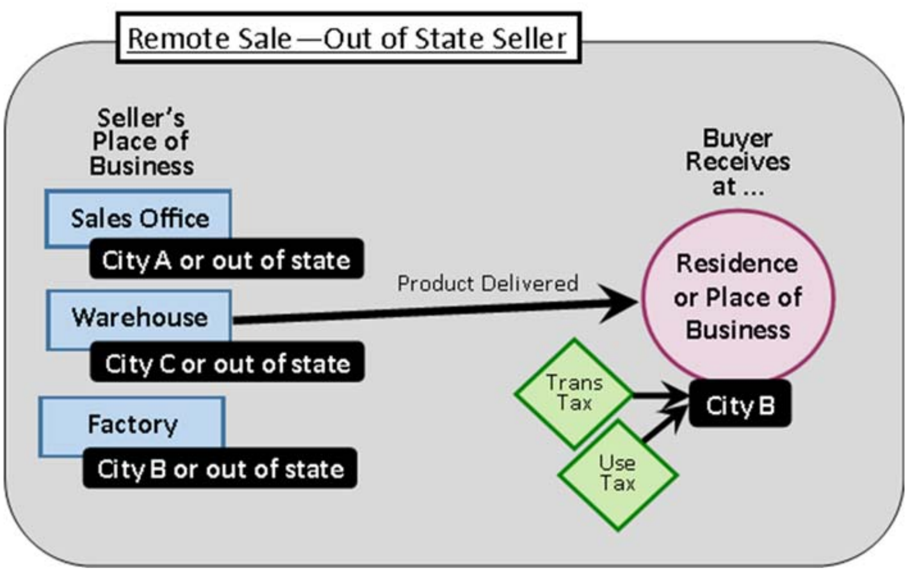




Destination Sourcing Scenario 2: Split Source

- Same as now for "over the counter" and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.





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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 NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT 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.

LETTERS OF CONCURRENCE

Resolution No. 2

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 ~~QAULITY~~ QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT~~T~~ 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.