



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, OCTOBER 09, 2024

4:00 PM - Closed Session (Parkview Conference Room) - Cancelled

5:00 PM - Regular Session

Escondido City Council Chambers, 201 North Broadway, Escondido, CA 92025

WELCOME TO YOUR CITY COUNCIL MEETING

We welcome your interest and involvement in the legislative process of Escondido. This agenda includes information about topics coming before the City Council and the action recommended by City staff.

MAYOR

Dane White

DEPUTY MAYOR

Christian Garcia (District 3)

COUNCILMEMBERS

Consuelo Martinez (District 1)

Joe Garcia (District 2)

Michael Morasco (District 4)

CITY MANAGER

Sean McGlynn

CITY ATTORNEY

Michael McGuinness

CITY CLERK

Zack Beck

HOW TO WATCH

The City of Escondido provides three ways to watch a City Council meeting:

In Person



201 N. Broadway

On TV



Cox Cable Channel 19 and U-verse Channel 99

Online



www.escondido.gov



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HOW TO PARTICIPATE

The City of Escondido provides two ways to communicate with the City Council during a meeting:

In Person



Fill out Speaker Slip and Submit to City Clerk

In Writing



escondido-ca.municodemeetings.com

ASSISTANCE PROVIDED

If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 760-839-4869. Notification 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility. Listening devices are available for the hearing impaired – please see the City Clerk.





CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, OCTOBER 09, 2024

REGULAR SESSION

5:00 PM Regular Session

MOMENT OF REFLECTION

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FLAG SALUTE

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CALL TO ORDER

Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, White

PROCLAMATIONS

Fire Prevention Awareness Week October 6-12, 2024

PRESENTATIONS

Nuisance Abatement Ordinances and Practices

ORAL COMMUNICATIONS

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CLOSED SESSION REPORT

CONSENT CALENDAR

Items on the Consent Calendar are not discussed individually and are approved in a single motion. However, Council members always have the option to have an item considered separately, either on their own request or at the request of staff or a member of the public.



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

WEDNESDAY, OCTOBER 09, 2024

1. AFFIDAVITS OF PUBLICATION, MAILING, AND POSTING (COUNCIL/RRB)

2. APPROVAL OF WARRANT REGISTER (COUNCIL)

Request approval for City Council and Housing Successor Agency warrant numbers:

- 387634 – 387841 dated September 25, 2024

Staff Recommendation: Approval (Finance Department: Christina Holmes)

ESSENTIAL SERVICE – Yes, Internal requirement per Municipal Code Section 10-49

3. APPROVAL OF MINUTES: Regular Meeting Minutes of October 2, 2024

4. WAIVER OF READING OF ORDINANCES AND RESOLUTIONS

5. PL24-0254 – OUT-OF-AGENCY SERVICE AGREEMENT FOR 1155 PINECREST AVENUE

Request the City Council adopt Resolution No. 2024-150, authorizing the Mayor to execute an Out-of-Agency Sewer Agreement (“Agreement”) for a property located at 1155 Pinecrest Avenue (APN 235-110-10-00).

Staff Recommendation: Approval (Development Services Department: Christopher W. McKinney, Deputy City Manager and Interim Director of Development Services)

Presenter: Alex Rangel, Assistant Planner I

ESSENTIAL SERVICE – Yes, Sewer

a) Resolution No. 2024-150

CURRENT BUSINESS

6. INTERIM URGENCY ORDINANCE PROHIBITING NEW COMMERCIAL BATTERY ENERGY STORAGE SYSTEMS WITHIN THE CITY OF ESCONDIDO

Request the City Council adopt Ordinance No. 2024-12 approving, as an urgency measure, an Interim Ordinance to prohibit new commercial Battery Energy Storage Systems within the City of Escondido.

Staff Recommendation: None (Development Services: Christopher W. McKinney Deputy City Manager and Interim Director of Development Services)

Presenter: Veronica Morones, City Planner

ESSENTIAL SERVICE – Yes, Land Use/Development



CITY of ESCONDIDO

COUNCIL MEETING AGENDA

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COUNCIL PRIORITY – Improve Public Safety

a) Ordinance No. 2024-12

FUTURE AGENDA

7. FUTURE AGENDA

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Staff Recommendation: None (City Clerk's Office: Zack Beck)

COUNCILMEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS

CITY MANAGER'S WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety, and Community Development. This report is also available on the City's website, www.escondido.gov.

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ADJOURNMENT

UPCOMING MEETING SCHEDULE

Wednesday, October 23, 2024	4:00 & 5:00 PM	Closed Session, Regular Meeting, <i>Council Chambers</i>
Wednesday, November 20, 2024	4:00 & 5:00 PM	Closed Session, Regular Meeting, <i>Council Chambers</i>

SUCCESSOR AGENCY

Members of the Escondido City Council also sit as the Successor Agency to the Community Development Commission, Escondido Joint Powers Financing Authority, and the Mobilehome Rent Review Board.



A F F I D A V I T S
O F
I T E M
P O S T I N G – None



STAFF REPORT

October 09, 2024
File Number 0400-40

SUBJECT

APPROVAL OF WARRANT REGISTER (COUNCIL)

DEPARTMENT

Finance

RECOMMENDATION

Request approval for City Council and Housing Successor Agency warrant numbers:

387634 – 387841 dated September 25, 2024

Staff Recommendation: Approval (Finance Department: Christina Holmes)

ESSENTIAL SERVICE – Yes, Internal requirement per Municipal Code Section 10-49

COUNCIL PRIORITY –

FISCAL ANALYSIS

The total amount of the warrants for the following periods are as follows:

September 19, 2024 – September 25, 2024 is \$3,256,621.02

PREVIOUS ACTION

None

BACKGROUND

The Escondido Municipal Code Section 10-49 states that warrants or checks may be issued and paid prior to audit by the City Council, provided the warrants or checks are certified and approved by the Director of Finance as conforming to the current budget. These warrants or checks must then be ratified and approved by the City Council at the next regular Council meeting.



CITY of ESCONDIDO

COUNCIL MEETING MINUTES

CLOSED SESSION

4:00 PM

CALL TO ORDER

1. Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, White

ORAL COMMUNICATIONS

None

CLOSED SESSION

I. CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6)

- a. *Agency Representative: Sean McGlynn, City Manager, or designee*
Employee Organization: Escondido City Employees' Association, Supervisory Bargaining Unit
- b. *Agency Representative: Sean McGlynn, City Manager, or designee*
Employee Organization: Teamsters Local 911, Maintenance and Operations Bargaining Unit and Administrative / Clerical / Engineering Bargaining Unit

II. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Government Code § 54956.9(d)(1))

- a. *Noah Werner, et. al v. City of Escondido*
San Diego Superior Court Case No. 37-2021-00011594-CU-OR-NC

ADJOURNMENT

Mayor White adjourned the meeting at 4:38 p.m.

MAYOR

CITY CLERK



CITY of ESCONDIDO

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REGULAR SESSION

5:00 PM Regular Session

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Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, White

PROCLAMATIONS

Code Compliance Month

PRESENTATIONS

Grand Avenue Construction Project Update

Leah Peixoto – Expressed concern regarding the potential negative impacts the construction will have on Grand Ave Businesses.

Rotary Club of Escondido – Grape Day Park Presentation

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CITY of ESCONDIDO

COUNCIL MEETING MINUTES

ORAL COMMUNICATIONS

Becky Rapp – Expressed concern regarding second-hand smoke.

CONSENT CALENDAR

Motion: Morasco; Second: C. Garcia; Approved: 5-0

1. AFFIDAVITS OF PUBLICATION, MAILING, AND POSTING (COUNCIL/RRB)

2. APPROVAL OF WARRANT REGISTER (COUNCIL)

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- 387440 – 387633 dates September 18, 2024

Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

ESSENTIAL SERVICE – Yes, Internal requirement per Municipal Code Section 10-49

3. APPROVAL OF MINUTES: Regular Meeting Minutes of September 11, 2024 and September 18, 2024

4. WAIVER OF READING OF ORDINANCES AND RESOLUTIONS

5. YEAR 2025 HOLIDAYS

Request the City Council adopt Resolution No. 2024-123 to designate the dates that the City offices will be closed in the calendar year 2025 for holiday observances.

Staff Recommendation: Approval (Jessica Perpetua, Director of Human Resources)

Presenter: Jessica Perpetua, Director of Human Resources

ESSENTIAL SERVICE – No

a) Resolution No. 2024-123

6. CONTINUING REPAIR OF THE EMERGENCY REPAIR OF THE ESCONDIDO TRUNK SEWER MAIN

Request the City Council adopt Resolution No. 2024-141, declaring that pursuant to the terms of Section 22050 of the California Public Contract Code, the City Council finds there is a need to continue the emergency repair of the Escondido Trunk Sewer Main.

Staff Recommendation: Approval (Utilities: Angela Morrow, Director of Utilities)



CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Presenter: Kyle Morgan, Assistant Director of Utilities, Wastewater

ESSENTIAL SERVICE – Yes, Keep City Clean for Public Health and Safety; Sewer

COUNCIL PRIORITY –Improve Public Safety

a) Resolution No. 2024-141

FUTURE AGENDA

7. **FUTURE AGENDA**

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Staff Recommendation: None (City Clerk's Office: Zack Beck)

White/Morasco – Operational costs and investment required by the City of Escondido for the proposed Escondido Rotary Stage and Grape Day Park

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ORAL COMMUNICATIONS

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Mayor White adjourned the meeting at 6:07 p.m.

MAYOR

CITY CLERK



CITY of ESCONDIDO

COUNCIL MEETING MINUTES

CLOSED SESSION

4:00 PM

CALL TO ORDER

1. Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, White

ORAL COMMUNICATIONS

None

CLOSED SESSION

I. CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6)

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PROCLAMATIONS

Code Compliance Month

PRESENTATIONS

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Leah Peixoto – Expressed concern regarding the potential negative impacts the construction will have on Grand Ave Businesses.

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COUNCIL MEETING MINUTES

ORAL COMMUNICATIONS

Becky Rapp – Expressed concern regarding second-hand smoke.

CONSENT CALENDAR

Motion: Morasco; Second: C. Garcia; Approved: 5-0

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4. WAIVER OF READING OF ORDINANCES AND RESOLUTIONS

5. YEAR 2025 HOLIDAYS

Request the City Council adopt Resolution No. 2024-123 to designate the dates that the City offices will be closed in the calendar year 2025 for holiday observances.

Staff Recommendation: Approval (Jessica Perpetua, Director of Human Resources)

Presenter: Jessica Perpetua, Director of Human Resources

ESSENTIAL SERVICE – No

a) Resolution No. 2024-123

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Staff Recommendation: Approval (Utilities: Angela Morrow, Director of Utilities)



CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Presenter: Kyle Morgan, Assistant Director of Utilities, Wastewater

ESSENTIAL SERVICE – Yes, Keep City Clean for Public Health and Safety; Sewer

COUNCIL PRIORITY –Improve Public Safety

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CITY of ESCONDIDO

COUNCIL MEETING MINUTES

CLOSED SESSION

4:00 PM

CALL TO ORDER

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COUNCIL MEETING MINUTES

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CLOSED SESSION

I. CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6)

- a. *Agency Representative: Sean McGlynn, City Manager, or designee*
Employee Organization: Escondido City Employees’ Association, Supervisory Bargaining Unit
- b. *Agency Representative: Sean McGlynn, City Manager, or designee*
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II. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Government Code § 54956.9(d)(1))

- a. *Noah Werner, et. al v. City of Escondido*
San Diego Superior Court Case No. 37-2021-00011594-CU-OR-NC

ADJOURNMENT

Mayor White adjourned the meeting at 4:38 p.m.

MAYOR

CITY CLERK



CITY of ESCONDIDO

COUNCIL MEETING MINUTES

REGULAR SESSION

5:00 PM Regular Session

MOMENT OF REFLECTION

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CALL TO ORDER

Roll Call: C. Garcia, J. Garcia, Martinez, Morasco, White

PROCLAMATIONS

Code Compliance Month

PRESENTATIONS

Grand Avenue Construction Project Update

Leah Peixoto – Expressed concern regarding the potential negative impacts the construction will have on Grand Ave Businesses.

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CITY of ESCONDIDO

COUNCIL MEETING MINUTES

ORAL COMMUNICATIONS

Becky Rapp – Expressed concern regarding second-hand smoke.

CONSENT CALENDAR

Motion: Morasco; Second: C. Garcia; Approved: 5-0

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Staff Recommendation: Approval (Finance Department: Christina Holmes, Director of Finance)

ESSENTIAL SERVICE – Yes, Internal requirement per Municipal Code Section 10-49

3. APPROVAL OF MINUTES: Regular Meeting Minutes of September 11, 2024 and September 18, 2024

4. WAIVER OF READING OF ORDINANCES AND RESOLUTIONS

5. YEAR 2025 HOLIDAYS

Request the City Council adopt Resolution No. 2024-123 to designate the dates that the City offices will be closed in the calendar year 2025 for holiday observances.

Staff Recommendation: Approval (Jessica Perpetua, Director of Human Resources)

Presenter: Jessica Perpetua, Director of Human Resources

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CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Presenter: Kyle Morgan, Assistant Director of Utilities, Wastewater

ESSENTIAL SERVICE – Yes, Keep City Clean for Public Health and Safety; Sewer

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ORAL COMMUNICATIONS

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CITY of ESCONDIDO

COUNCIL MEETING MINUTES

CLOSED SESSION

4:00 PM

CALL TO ORDER

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ORAL COMMUNICATIONS

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CLOSED SESSION

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CITY of ESCONDIDO

COUNCIL MEETING MINUTES

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CITY of ESCONDIDO

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Staff Recommendation: Approval (Jessica Perpetua, Director of Human Resources)

Presenter: Jessica Perpetua, Director of Human Resources

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CITY of ESCONDIDO

COUNCIL MEETING MINUTES

Presenter: Kyle Morgan, Assistant Director of Utilities, Wastewater

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CITY of ESCONDIDO

COUNCIL MEETING MINUTES

CLOSED SESSION

4:00 PM

CALL TO ORDER

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ORAL COMMUNICATIONS

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CITY of ESCONDIDO

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CITY of ESCONDIDO

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ORAL COMMUNICATIONS

ADJOURNMENT

Mayor White adjourned the meeting at 6:07 p.m.

MAYOR

CITY CLERK



STAFF REPORT

ITEM NO. 4

SUBJECT

WAIVER OF READING OF ORDINANCES AND RESOLUTIONS –

ANALYSIS

The City Council/RRB has adopted a policy that is sufficient to read the title of ordinances at the time of introduction and adoption, and that reading of the full text of ordinances and the full text and title of resolutions may be waived.

Approval of this consent calendar item allows the City Council/RRB to waive the reading of the full text and title of all resolutions agendized in the Consent Calendar, as well as the full text of all ordinances agendized in either the Introduction and Adoption of Ordinances or General Items sections. **This particular consent calendar item requires unanimous approval of the City Council/RRB.**

Upon approval of this item as part of the Consent Calendar, all resolutions included in the motion and second to approve the Consent Calendar shall be approved. Those resolutions removed from the Consent Calendar and considered under separate action may also be approved without the reading of the full text and title of the resolutions.

Also, upon the approval of this item, the Mayor will read the titles of all ordinances included in the Introduction and Adoption of Ordinances section. After reading of the ordinance titles, the City Council/RRB may introduce and/or adopt all the ordinances in one motion and second.

RECOMMENDATION

Staff recommends that the City Council/RRB approve the waiving of reading of the text of all ordinances and the text and title of all resolutions included in this agenda. Unanimous approval of the City Council/RRB is required.

Respectfully Submitted,

Zack Beck
City Clerk



STAFF REPORT

October 9, 2024

File Number 0600-10; A-3561

SUBJECT

PL24-0254 – OUT-OF-AGENCY SERVICE AGREEMENT FOR 1155 PINECREST AVENUE

DEPARTMENT

Development Services Department, Planning Division

RECOMMENDATION

Request the City Council adopt Resolution No. 2024-150, authorizing the Mayor to execute an Out-of-Agency Sewer Agreement (“Agreement”) for a property located at 1155 Pinecrest Avenue (APN 235-110-10-00).

Staff Recommendation: Approval (Development Services Department: Christopher W. McKinney, Deputy City Manager and Interim Director of Development Services)

Presenter: Alex Rangel, Assistant Planner I

ESSENTIAL SERVICE – Yes, Sewer

COUNCIL PRIORITY –

FISCAL ANALYSIS

The property owner will be required to pay fees to cover all administrative costs and staff time for processing the extension of sewer service. All fees associated with the submittal of any contractual wastewater service agreement and future annexation application for the property to LAFCO will be borne by the applicant. Upon future annexation, the property will be required to establish a mechanism to offset future costs for the provisions of public service.

PREVIOUS ACTION

There are no previous actions for this property, it is currently located within county jurisdiction.

BACKGROUND

Out-of-Agency Sewer Agreements occur as part of an interjurisdictional coordination between the local jurisdiction (City of Escondido), San Diego County and the Local Agency Formation Commission (“LAFCO”). State law requires cities and special districts to request and receive approval from LAFCO before providing new or extended outside services by contracts or agreements (Gov. Code Section 56133). Per LAFCO



CITY of ESCONDIDO

STAFF REPORT

policies, cities and special districts involving territory within their spheres of influence in anticipation of future jurisdictional changes may conditionally approve agreements.

The subject property lies adjacent to the City’s boundary and is currently developed with a single-family residency on an aging septic system. The property owner, Guoliang Shen of 1155 Pinecrest Avenue submitted an application with the City of Escondido for an Out-of-Agency Sewer Agreement and provided City staff with a letter from the County of San Diego Department of Environmental Health documenting eminent failure of the property’s existing on-site wastewater treatment system (septic system). As a result of the letter from the County and petition from the property owner, the City of Escondido analyzed the subject site to ensure public sewer mains were available to provide adequate capacity for additional flow generated by the property. As a result of the analysis, staff determined the project eligible for the Agreement.

The City submitted a request to LAFCO to provide administrative approval for the subject agreement on September 5, 2024 (Attachment “2”). The subject agreement was approved on September 6, 2024 (Exhibit “B”)

Furthermore, the Agreement will include provisions that require the subject property to agree to an annexation to the City per an “irrevocable offer of annexation,” (“IOA”) and pre-zone as part of the annexation process. The subject site has a county zoning designation of Residential, Single (“RS”), and is within the city’s General Plan Sphere of Influence requiring a zoning designation similar to surrounding properties. The properties within the area are zoned Single Family Residential (“R-1-10”) and conform to the City’s General Plan Land Use designation.

Because the property at 1155 Pinecrest Avenue is immediately adjacent to City limits, the LAFCO placed a condition reflective of their policies upon the provision of the Agreement requiring the property owner to complete the annexation process within one year.

ENVIRONMENTAL

This application and request are not a project under the California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines section 15378(b)(5). The Agreement ensures that environmental review will be done at the appropriate time, when there is a project under CEQA, and provides that no construction of the Improvements shall occur without first completing environmental review.

RESOLUTIONS

- a) Resolution No. 2024-150
- b) Resolution No. 2024-150- Exhibit “A”- Out-of-Agency Services Agreement
- c) Resolution No. 2024-150- Exhibit “B”- Conditional Approval Letter



CITY *of* ESCONDIDO

STAFF REPORT

ATTACHMENTS

- a) Attachment "1" - Aerial Map, General Plan Designation, Zoning Designation
- b) Attachment "2" - City of Escondido Request for LAFCO Approval

RESOLUTION NO. 2024-150

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, AN OUT-OF-AGENCY SERVICE AGREEMENT, FOR A PROPERTY LOCATED AT 1155 PINECREST AVENUE

WHEREAS, the City of Escondido ("City") has received an Out-of-Agency Sewer Agreement application to provide sewer service to a property located at 1155 Pinecrest Avenue ("Property"); and

WHEREAS, the City has received approval from the San Diego County Local Agency Formation Commission ("LAFCO") for an out-of-agency services agreement ("Agreement"), attached hereto as Exhibit "A," for the provision of sewer services to the Property; and

WHEREAS, the Property is all that real property described in Exhibit "A" to the Agreement; and

WHEREAS, the application is "Not a Project" under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15378(b)(5).

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

1. That the above recitations are true.
2. That the City Council authorizes the Mayor to execute the Agreement, on behalf of the City, in substantially the same format as Exhibit "A," which is attached hereto and incorporated by this reference, subject to final approval as to form by the City Attorney.
3. That this Agreement is necessary in order for the area to receive urban services available from the City of Escondido.

4. That LAFCO is hereby requested to undertake proceedings related to the Agreement described in this resolution.

5. That this proposal is made pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000, Division 3, commencing with Section 5600 of the Government Code of the State of California.

6. That the City Clerk of the City of Escondido is hereby authorized and directed to file a certified copy of this Resolution to the executive officer of LAFCO.

7. That the City Council approves Resolution No. 2024-150, authorizing the mayor to execute an out-of-agency service Agreement, for a property located at 1155 Pinecrest Avenue.

EXEMPT FROM FEES pursuant to Gov't Code §§ 6103, 27383, and 27388.1 (filing requested/executed by municipality)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Planning Division
City of Escondido
201 North Broadway
Escondido, CA 92025-2798

This Space for Recorder's Use Only

APN: 235-110-10-00

OUT-OF-AGENCY SERVICE AGREEMENT

This OUT-OF-AGENCY SERVICE AGREEMENT ("**Agreement**") is made and entered into as of the last signature date set forth below ("**Effective Date**"), by and between the City of Escondido, a California municipal corporation ("**City**") and Guoliang Shen, an individual (collectively referred to herein as "**Owner**"). (The City and Owner may each be referred to herein as a "**Party**" and collectively as the "**Parties.**")

RECITALS

A. Owner possesses and owns that certain real property located at 1155 Pinecrest Avenue, Escondido, CA 92025, which is outside the jurisdictional boundary of the City, and within the unincorporated County of San Diego, as further described in Exhibit A to this Agreement, attached hereto and incorporated herein by this reference ("**Property**").

B. Pursuant to California Government Code section 56133(a), the City may provide new or extended services outside its jurisdictional boundary only if it first requests and receives written approval from the San Diego County Local Agency Formation Commission ("**LAFCO**").

C. Pursuant to California Government Code section 56133(b), LAFCO may authorize the City to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

D. In accordance with California Government Code section 56133 and LAFCO's local policies, in a letter dated September 6, 2024, which is attached hereto as Exhibit B and incorporated herein by this reference ("**Conditional Approval Letter**"), LAFCO provided a conditional approval for the City to establish contract wastewater service for the Property, limited to the existing one dwelling unit on the Property and subject to the LAFCO conditions stated therein.

E. The City and the Owner desire to enter into this Agreement so the City may provide wastewater service to the existing one dwelling unit on the Property, subject to Owner meeting all of the LAFCO conditions and any conditions otherwise expressed in this Agreement.

CAO: 2/2/2022

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, the Parties hereby mutually agree as follows:

1. Recitals. The Recitals set forth above are included herein by reference as part of this Agreement and the Parties agree that said Recitals are essential facts to this Agreement.
2. Applicability of Government Code. This Agreement is made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (California Government Code section 56000 et seq.) ("**Act**") and is subject to all of the provisions of the Act, including but not limited to Government Code section 56133.
3. Authority to Connect. Upon the Parties' execution of this Agreement and Owner's recordation of this Agreement in the County Recorder's Office for San Diego County, and subject to all other terms and conditions of this Agreement, Owner may connect to the City's sewer and water system ("**Improvements**"). Owner agrees to construct the Improvements in conformance with all applicable federal, state, and local laws and regulations. No construction of the Improvements shall occur without first securing all required permits and approvals from the City, County, or any other local agency or regulatory authority, and without first completing environmental review pursuant to the California Environmental Quality Act ("**CEQA**").
4. Irrevocable Offer of Annexation. Owner hereby makes an irrevocable offer of annexation of the Property to the City. Owner waives any right of protest in the annexation of the Property to the City provided for under the Act or any other law or policy. Such waiver shall be binding on Owner and its heirs, successors in interests, and assigns.
5. Conditions of Approval. This Agreement shall be subject to all LAFCO conditions:
 - a. Owner agrees to meet all LAFCO conditions, including each of the following:
 - (i.) Owner shall provide LAFCO a completed contractual service agreement form along with the required application filing fee.
 - (ii.) Owner shall provide LAFCO a landowner-petition application to annex the Property to the City ("**Annexation Petition**"), along with the required filing fee.
 - (iii.) Owner shall provide LAFCO a signed copy of this Agreement.
 - b. Within 10 days after execution of this Agreement by all Parties, Owner shall record this Agreement with the Office of the County Recorder for San Diego County.
 - c. Owner shall execute and record an agreement approved by LAFCO that consents to annexation of the Property into the City, which Agreement shall run with the land and inure to and bind all successors in interest to the Property. Owner shall undertake all rezoning and associated environmental review and pay all associated City and LAFCO fees related to the annexation of the Property.
 - d. As a condition to annexation, Owner shall apply to the City to have the Property rezoned, a discretionary act that will require environmental review. At the time Owner

CAO: 2/2/2022

Out-of-Agency Service Agreement

files an Annexation Petition, Owner shall file a formal application for rezoning with the City and shall diligently and in good faith prosecute such application to completion.

e. Owner shall be responsible for all LAFCO and City fees and charges in relation to the application for rezoning, application for annexation, Improvements, future wastewater service connection, or otherwise in relation to this Agreement.

f. This Agreement is limited to the provision of wastewater service to the existing one dwelling unit on the Property and shall not be construed to provide authority for the City's provision of any additional service in relation to the Property.

6. No Pre-Commitment; Final Action Subject to Environmental Review.

a. Notwithstanding any other provision of this Agreement, nothing herein shall commit or otherwise require the City, or be interpreted as requiring the City, to issue any permit, entitlement, or other approval in relation to the Improvements. Rather, the City and Owner acknowledge and agree that the City retains full discretionary authority with respect to the Improvements, and may approve, disapprove, modify, or condition the Improvements, or any portion thereof, as otherwise authorized by law. Owner acknowledges and agrees that it is proceeding at its own risk and expense until such time as all required permits, entitlements, or other approvals are approved and without assurance that any required permits, entitlements, or other approvals will be approved.

b. The City shall not enter into any agreement that will allow for the construction of the Improvements until there has been appropriate compliance with CEQA. The City, through the planning process with Owner as to the Improvements, will identify the actions and activities that would be necessary to construct the Improvements and thereby facilitate meaningful environmental review.

7. Term. This Agreement shall commence on the Effective Date and shall remain in effect until the earlier of any of the following: (i) the Property is annexed into the City; or (ii) the Agreement is terminated by the City if Owner fails to meet any condition stated herein.

8. Indemnification. Owner (including Owner's agents, employees, contractors, and subcontractors, if any) shall hold harmless, defend (with counsel reasonably acceptable to the City), and indemnify the City, its boards, commissions, departments, officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "**Claims**"), and any attorney's, consultant, or expert fees and City staff costs for investigating or responding to any Claims, incurred in connection with or arising in whole or in part from this Agreement, the use of the Improvements by the Owner (including Owner's agents, employees, invitees, contractors, and subcontractors, if any), the condition of the Improvements, or any related construction or other work undertaken on the Property, including without limitation (i) any death or bodily injury to a person; (ii) any injury to, loss, or theft of tangible or intangible property, including economic loss; or (iii) any other loss, damage, or expense sustained by the Owner in connection with any work or obligations performed in connection with this Agreement, except for any liability resulting from the active negligence, sole negligence, or

CAO: 2/2/2022

willful misconduct of the City. The duty to defend the City as described in this Paragraph 10 shall apply regardless of whether any Claims are groundless, fraudulent, or false. All obligations under this Paragraph 10 shall survive the termination of this Agreement.

9. Miscellaneous.

12.1 *Governing Law.* This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Any litigation arising out of this Agreement shall be conducted only in the state or federal courts of San Diego County, California.

12.2 *Entire Agreement.* This Agreement, together with its attachments or other documents, if any, described or incorporated herein, contains the entire agreement and understanding concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. Each of the Parties hereto acknowledges that no other Party, nor the agents nor the attorneys for any Party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Agreement and acknowledges that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

12.3 *Amendment.* This Agreement may not be amended except in a writing signed by all of the Parties hereto, and then only in the specific instance and for the specific purpose given. Any such amendment shall be recorded with the Office of the County Recorder for the County of San Diego.

12.4 *Independent Investigation.* The Parties acknowledge that they have conducted an independent investigation of the facts concerning the subject matter of this Agreement. The Parties agree that the factual recitals are correct and expressly assume the risk that the true facts concerning the foregoing may differ from those currently understood by them.

12.5 *Advice of Counsel.* The Parties hereby acknowledge that they have executed this Agreement after having the opportunity to consult with, and receive the advice of, their own counsel.

12.6 *Capacity.* Each individual signing this Agreement represents and warrants that he or she has been authorized to do so by proper action of the Party on whose behalf he or she has signed.

12.7 *Headings.* Section headings are for reference purposes only and shall not be used for interpreting the meaning of any provisions of this Agreement.

12.8 *Attorney's Fees.* In any action to enforce the terms of this Agreement, the Parties agree that the prevailing party shall be entitled to its reasonable attorney's fees and all costs, fees, and expenses, including the fees of expert witnesses and consultants, whether or not such costs, fees, and expenses are recoverable or allowed as costs under section 1033.5 of the California Code of Civil Procedure. In addition to the foregoing award of attorney's fees and costs, the prevailing party shall be entitled to its attorney's fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment. This provision is separate and shall survive the merger of this provision into any judgment on this Agreement.

12.9 *Counterparts.* This Agreement may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document.

12.10 *Severability.* This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.

12.11 *Notice.* All notices, demands, approvals, or consents provided for in this Agreement shall be in writing and delivered to the appropriate Party at its address as follows:

If to the City:

Director of Development Services
City of Escondido
201 N. Broadway
Escondido, CA 92025

If to Owner:

Guoliang Shen
140 E. El Norte Pkwy #45
Escondido, CA 92026

Any notice, delivery, or other communication shall be effective and shall be deemed to be received by the other Party within five business days after the notice has been deposited in the U.S. Mail, duly registered or certified, with postage prepaid, and addressed as set forth above. Any Party may change the address information provided above by giving written notice to the other Party in the manner provided in this Agreement.

12.12 *Covenants Run with Land.* So long as this Agreement remains in effect, the obligations and benefits provided for in this Agreement shall run with the land obligated and benefited, respectively, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof. As such, it is the intent of the Parties that this Agreement and the promises, covenants, rights, and obligations set forth herein (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Agreement, binding upon the Owner's successors in title and all subsequent owners and operators of the Property; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner and its respective successors and assigns during the term of this Agreement. Further, the Owner shall ensure that any future transfer of interest in the Property is made subject to the terms of this Agreement, such that any future successor in title or owner or operator of the Property shall be bound by the terms herein.

12.13 *Effective Date.* Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

CAO: 2/2/2022

Out-of-Agency Service Agreement

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: _____ By _____
Dane White, Mayor

OWNER(s)

Date: _____ By _____
Guoliang Shen

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
Michael R. McGuinness, City Attorney

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA]

COUNTY OF _____]

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

City of Escondido

CAO: 2/2/2022

Out-of-Agency Service Agreement

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA]

COUNTY OF _____]

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

(OWNER)

CAO: 2/2/2022

Exhibit A

Legal Description of Property

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

THAT PORTION OF LOT 3, BLOCK 311 OF RANCHO RINCON DEL DIABLO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 724, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 13, 1892, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3; THENCE ALONG EAST LINE THEREOF SOUTH 4°15' EAST 150 FEET TO THE NORTHEAST CORNER OF LAND CONVEYED TO ERIC A. EMERSON, ET UX, BY DEED RECORDED IN BOOK 1878, PAGE 383, OF OFFICIAL RECORDS, BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 84°50' WEST 144.88 FEET TO THE NORTHEAST CORNER OF LAND DESCRIBED IN DEED TO ELIZABETH B. WINKLER RECORDED IN BOOK 2101, PAGE 273, OF OFFICIAL RECORDS; THENCE CONTINUING SOUTH 84°50' WEST, ALONG THE NORTHERLY LINE OF SAID WINKLER LAND, 151.72 FEET; THENCE SOUTH 4°01' EAST 160 FEET; THENCE NORTH 84°50' EAST 152.75 FEET TO A POINT IN THE NORTHERLY LINE OF LAND DESCRIBED IN DEED TO ROY A. WILLIAMSON, ET UX, RECORDED IN BOOK 2019, PAGE 229, OF OFFICIAL RECORDS; THENCE NORTH 84°50' EAST ALONG THE NORTHERLY LINE OF SAID WILLIAMSON LAND, 145.37 FEET TO THE EASTERLY LINE OF LOT 3; THENCE ALONG SAID EASTERLY LINE NORTH 4°15' WEST 160 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE EASTERLY 40 FEET OF THE NORTHERLY 150 FEET OF LOT 3, BLOCK 311 OF RANCHO RINCON DEL DIABLO, ACCORDING TO MAP THEREOF MADE BY J.M. GRAHAM, NO. 724, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 13, 1892.

ASSESSOR'S PARCEL NUMBER: 235-110-10-00



San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

September 6, 2024

Delivered Electronically:

Guoliang Shen
1155 Pinecrest Avenue
Escondido, California 92025
guoliangshen0324@icloud.com

**SUBJECT: Notice of Administrative Approval:
Contractual Wastewater Service Agreement for the City of Escondido to
serve 1155 Pinecrest Avenue (Assessor Parcel Number 235-110-10-00)
(LAFCO File No. OAS24-08)**

Mr. Shen:

This letter serves as formal notice of San Diego County Local Agency Formation Commission (LAFCO)'s conditional approval for the City of Escondido to establish contract wastewater service for the unincorporated property located at 1155 Pinecrest Avenue and within the existing sphere of influence designation. This approval is authorized under my powers pursuant to Government Code Section 56133 and adopted LAFCO policy and substantiated based on a review of written documentation showing the existing septic system has failed and poses a threat to public health. The conditional approval extends one calendar year unless a time extension is requested and approved and follows a written recommendation from the County of San Diego Department of Environmental Health and Quality to immediately transition the property to public wastewater should it be available.

The conditional approval is limited to authorizing the City of Escondido to enter into an outside wastewater service agreement for only the existing primary residential dwelling unit developed on the affected territory as of September 6, 2024. The approval for outside-of-agency services can be administratively extended to the second unit within the affected territory, provided there is written confirmation that the County – as the current land use authority – has legally permitted the second unit. All approval conditions follow.

Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103 T 619.321.3380 www.sdlafco.org lafco@sdcountry.ca.gov	Joel Anderson County of San Diego Jim Desmond County of San Diego Nora Vargas, Alt. County of San Diego	Kristi Becker City of Solana Beach Dane White City of Escondido John McCann, Alt. City of Chula Vista	Chair Stephen Whitburn City of San Diego Marni von Wilpert, Alt. City of San Diego	Vice Chair Barry Willis Alpine Fire Protection Jo MacKenzie Vista Irrigation David Drake, Alt. Rincon del Diablo	Harry Mathis General Public Bridgette Browning, Alt. General Public
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San Diego LAFCO

Notice of Conditional Approval: Outside Wastewater Service Agreement Between City of Vista and 752 Busch Drive
August 23, 2024

1. Receipt by San Diego LAFCO of a landowner-petition application to annex the affected territory to the City of Escondido along with a filing fee in the amount of \$2,642.06. This amount includes a related boundary action involving detachment from County Service Area No. 135 and reflects a 75% fee reduction given documentation of a public health threat. The form is available online.

Given the underlying urgency, I agree to waive the requirement of a map and geographic description of the affected territory being submitted to LAFCO in conjunction with the other terms listed above. These documents, nonetheless, will be required to be submitted before an annexation proposal is presented for consideration by the Commission within the referenced one-year time frame.

Separate written confirmation of the completion of all conditions tied to this approval will be provided as appropriate and serve as official notice of your legal allowance to proceed with the contractual service with the City of Escondido.

Should you have any questions in the interim, please contact LAFCO Assistant Executive Officer Priscilla Mumpower by telephone at 858-276-9414 or email at priscilla.mumpower@sdcounty.ca.gov.

On behalf of the Executive Officer,



Priscilla Mumpower
Assistant Executive Officer

cc: Alex Rangel, City of Escondido
Jordan Conner, County of San Diego - DEH
Meghan Traynor, San Diego LAFCO
Joelle Burila, San Diego LAFCO
Keene Simonds, San Diego LAFCO
Erica Sellen, San Diego LAFCO



San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

CERTIFICATE OF ADMINISTRATIVE APPROVAL OF A CONTRACTUAL WASTEWATER SERVICE AGREEMENT

City of Escondido / Guoliang Shen
(LAFCO File No. OAS24-08)

September 6, 2024

In accordance with California Government Code Section 56133, the San Diego County Local Agency Formation Commission (LAFCO) authorizes the City of Escondido to immediately provide extraterritorial wastewater service by contract to 1155 Pinecrest Avenue. The subject property is owned by Guoliang Shen and comprises one unincorporated parcel identified by the County of San Diego Assessor’s Office as 235-110-10-00. The authorized service is limited to supporting the approximate 5,600 square foot single-family residence currently developed on the subject property. This authorization does not extend to the second unit developed on the affected territory.

Confirmation:

KEENE SIMONDS
Executive Officer

September 6, 2024

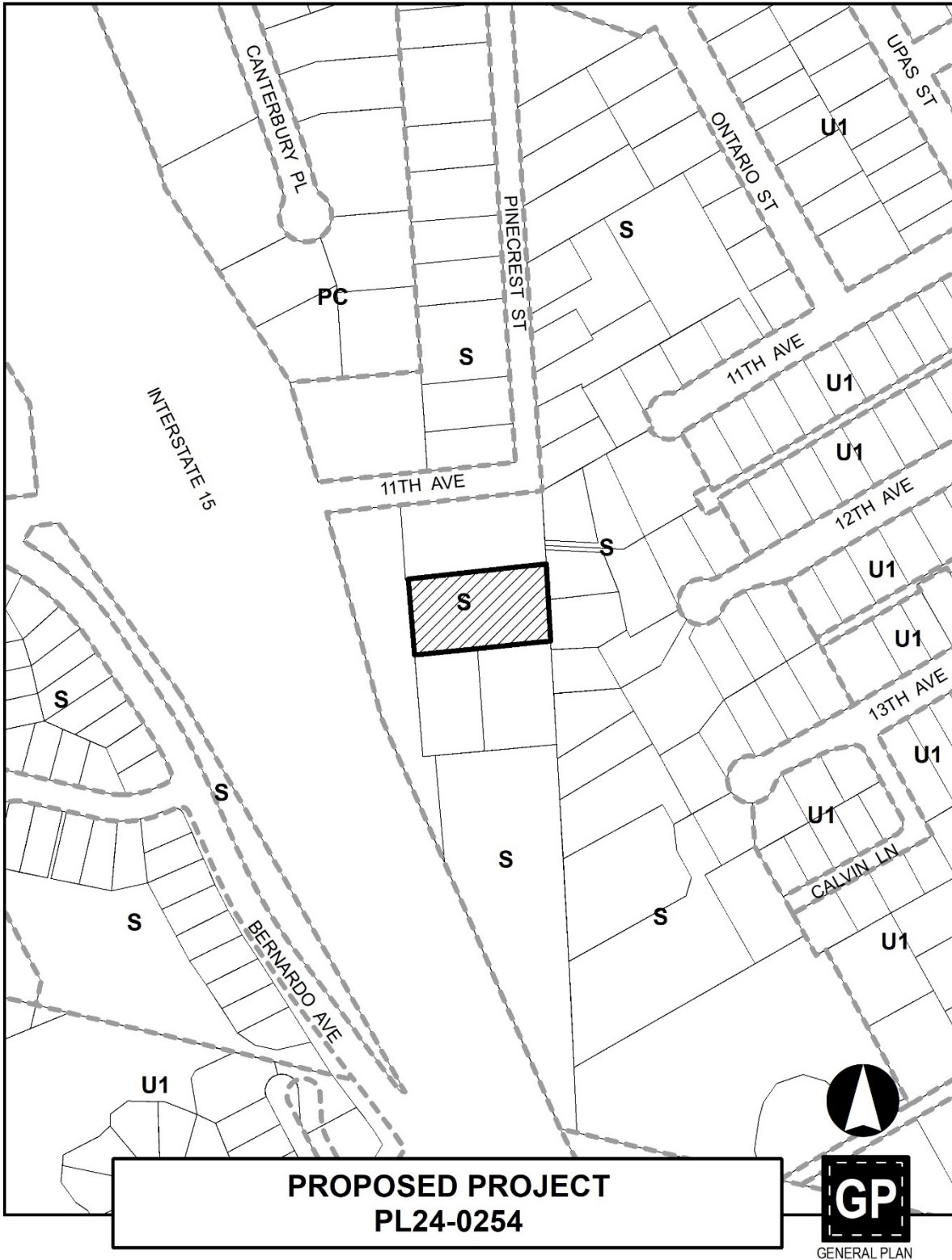
Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103 T 619.321.3380 www.sdlafco.org lafco@sdcounty.ca.gov	Joel Anderson County of San Diego Jim Desmond County of San Diego Nora Vargas, Alt. County of San Diego	Kristi Becker City of Solana Beach Dane White City of Escondido John McCann, Alt. City of Chula Vista	Chair Stephen Whitburn City of San Diego Mami von Wilpert, Alt. City of San Diego	Vice Chair Barry Willis Alpine Fire Protection Jo MacKenzie Vista Irrigation David Drake, Alt. Rincon del Diablo	Harry Mathis General Public Brigitte Browning, Alt. General Public
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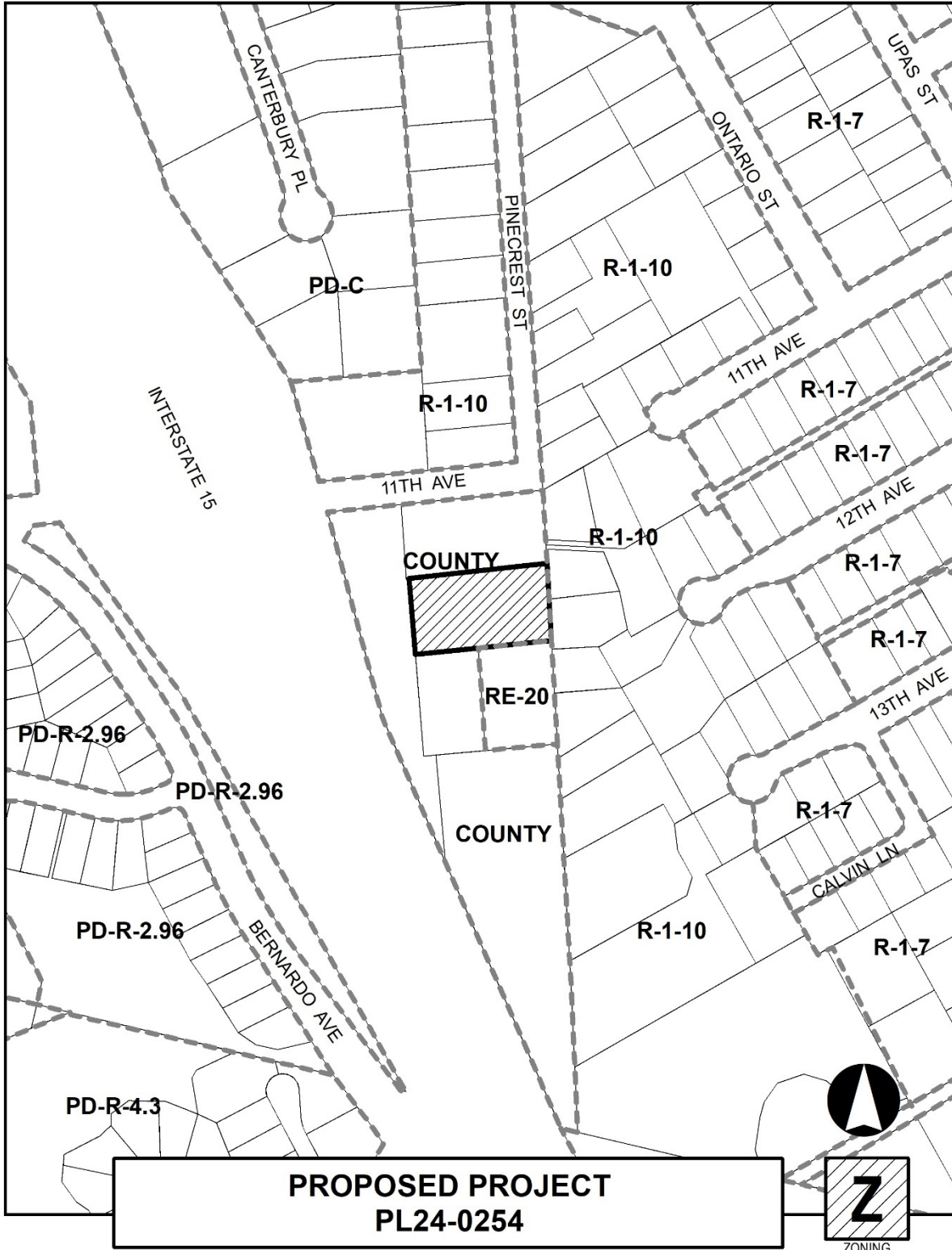


**PROPOSED PROJECT
PL24-0254**

A

AERIAL





**PROPOSED PROJECT
PL24-0254**





Sean McGlynn
City Manager
201 North Broadway, Escondido, CA 92025
Phone: 760-839-4631 Fax: 760-839-4578

September 5, 2024

Keene Simonds, Executive Officer
San Diego LAFCO
2550 Fifth Ave, Suite 725
San Diego, CA 92103

RE: Request for LAFCO Approval of an Emergency Out-of-Agency Service Request – 1155 Pinecrest Avenue, Escondido CA 92025

Mr. Simonds:

The City of Escondido has received a request from an affected landowner for an extension of City sewer service to unincorporated territory outside of the City's boundaries and within the City's sphere of influence in advance of a future change of organization to annex the property. Your administrative approval is requested for the proposed out-of-agency sewer service agreement and extension of sewer service outside the City's boundaries to resolve an existing or impending health and safety emergency threat to the residents of the subject property.

The affected property is located at 1155 Pinecrest Avenue and includes one parcel (APN 235-110-10-00) developed with one single-family residence experiencing a failure of its existing underground septic disposal system. The County of San Diego Department of Environmental Health has confirmed the failing status of the septic system in a letter dated August 16, 2024 and has recommended connection to public sewer as a permanent solution.

The City of Escondido has sewer service available to the subject property from adjacent infrastructure located within Pinecrest Avenue. The property owner would be responsible for all connection costs and fees. Attached to this request letter is a copy of Escondido's standard Out-of-Agency Service Agreement template which specifies all terms and conditions for such proposed extensions of City sewer service.

After receiving the LAFCO Executive Officer's Certificate of Administrative Approval for an Out of Agency Service Agreement, the conformed sewer service agreement for the subject property would go to the Escondido City Council for consideration. Following Council approval, the sewer service agreement would be recorded by the County Recorder and connection of the property to the City's sewer system would be allowed per the terms and conditions of the service agreement. A copy of the recorded service agreement would be forwarded to the LAFCO office.

September 5, 2024
1155 Pinecrest Ave. Out of Agency Service Agreement Request
Page 2

Please contact Alex Rangel at 760-839-4542 with the City of Escondido should you have any questions or require additional information regarding this request.

Sincerely,



Sean McGlynn
City Manager

Enclosures

Cc: Christopher W. McKinney, Deputy City Manager
Veronica Morones, City Planner



STAFF REPORT

October 9, 2024
File Number 0810-15

SUBJECT

INTERIM URGENCY ORDINANCE PROHIBITING NEW COMMERCIAL BATTERY ENERGY STORAGE SYSTEMS WITHIN THE CITY OF ESCONDIDO

DEPARTMENT

Development Services Department and City Attorney's Office

RECOMMENDATION

Request the City Council adopt Ordinance No. 2024-12 approving, as an urgency measure, an Interim Ordinance to prohibit new commercial Battery Energy Storage Systems within the City of Escondido.

Staff Recommendation: None (Development Services: Christopher W. McKinney Deputy City Manager and Interim Director of Development Services)

Presenter: Veronica Morones, City Planner

ESSENTIAL SERVICE – Yes, Land Use/Development

COUNCIL PRIORITY – Improve Public Safety

FISCAL ANALYSIS

No direct fiscal costs are associated with the adoption of this interim urgency ordinance.

PREVIOUS ACTION

On August 28, 2024, the City Council adopted Resolution No. 2024-113, expressing its position and recommendations on Battery Energy Storage Systems projects in and adjacent to the City of Escondido.

BACKGROUND

A Battery Energy Storage Systems (BESS) facility collects energy from the grid, stores it, and then discharges that energy later to provide electricity or other grid services when needed, typically at times of high demand. A commercial BESS facility means a facility that would provide electricity to third parties.

At this time, the number of existing commercial BESS facilities within City limits is unclear; however, based on the California Energy Commission's California Energy Storage System survey, there may be up to 27 commercial BESS within zip codes 92025, 92026, 92027, and 92029. Further research would be required



CITY of ESCONDIDO

STAFF REPORT

to determine which of these facilities are located within the City or within unincorporated areas subject to county regulations.

Currently, one application for entitlement of a commercial BESS facility is under review through the Development Services Department. On February 7, 2024, the City’s Development Services Department received a submittal for a Major Plot Plan to establish a 50-megawatt (MW) BESS facility comprised of 31 lithium-ion battery storage enclosures at 1968 Don Lee Place. The proposed project is located within the General Industrial (M-2) zoning designation. The City’s current zoning regulations do not contain criteria specifically for BESS facilities. The General Industrial Zone (Article 26 of Chapter 33 of the Escondido Municipal Code) permits for a wide-range of activities, including those considered “heavy” or “intensive” outside storage needs, heavier equipment, and operational characteristics that require the least restrictive design standards. The General Industrial zoning designation specifically allows for power plants, oil refineries and bulk stations, transmission facilities, and uses involving hazardous chemicals and waste, all of which are similar in intensity of a BESS.

The City Council approved a Major Plot Plan, Zoning Map Amendment, and Zoning Text Amendment for a commercial BESS located at 555 N. Tulip on December 6, 2023 (“Goal Line Project”). The Goal Line Project consists of a 50 MW commercial BESS which required a zoning designation change from Planned Industrial to General Industrial as part of the project’s approval. The applicant has yet to move forward with any post-entitlement permitting processes, such as grading or building permits. The approved entitlement for the commercial BESS will expire on December 6, 2025 unless the applicant receives issuance of a grading or building permit, or files an Extension of Time through Development Services prior to the expiration date.

BESS Project Concerns

Known concerns surrounding commercial BESS facilities include economic development implications resulting from their remote management and low onsite staffing, and public health and safety hazards stemming from the potential for the ignition of fires, explosions and “thermal runaway” events (which, once initiated, are extremely difficult to extinguish).

The City’s adopted 2023 to 2028 Comprehensive Economic Development Strategy (“CEDS”), a five-year roadmap which outlined a plan to improve the City’s local economy, made many findings including that the City had relatively high concentrations of less-than-optimal industries and building types which can impede employment growth and economic opportunity and deter more robust drivers to the City’s economy. Given the general operational model for BESS projects, placement of these projects in and around the City’s jurisdiction fails on a number of counts: achieve the critical long-range goals of increasing economic and employment opportunities for City residents; optimize available properties to their highest and best land use; increase land values; and develop land uses that attract families and business investment. Proliferation of commercial BESS facilities may cause long-term static land use, negative



CITY of ESCONDIDO

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impacts on existing residential land values, as well as disincentivize employers and businesses from locating into the area, and create lower-than-optimum local sales and ad valorem tax opportunities.

Further, commercial BESS facilities may burden the City with health and safety risks. The City is located in an area of San Diego County subject to severe and destructive wildfires and as such, its residents have been required to undertake extensive fire safety efforts at their homes and have experienced issues such as ever-increasing home insurance premiums or non-renewals of existing policies due to the potential of fires. Therefore, recent fires in and around Escondido, including the most recent BESS facility fire located at 571 Enterprise Street in the City of Escondido, raise concerns regarding health and safety and a question of what such risks may require from the City’s fire and safety resources and personnel to battle such fires.

On October 7, 2023, Senate Bill 38 was signed into law to address safety concerns with commercial BESS projects by requiring commercial facilities in California establish an emergency response and emergency action plan for the facility to protect surrounding residents, neighboring properties, emergency responders, and the environment. The BESS Facility owner or operator must coordinate with local emergency management agencies, unifies program agencies, and local first responders to develop the plan and submit it to the county and city where the facility is located.

SB 38 recognizes the many hazards that commercial BESS facilities create. It provides that the mandated emergency response and action plan may consider responses to potential offsite impacts, such as poor air quality, threats to municipal water supplies, and those related to shelter-in-place orders and road closure notifications.

Urgency Ordinance

California Government Code Section 65858 provides that, without following the procedures otherwise required prior to the adoption of a zoning ordinance, an urgency measure in the form of an interim ordinance may be adopted by a four-fifth vote of the City Council to protect the public from a current and immediate threat to the public health, safety, or welfare resulting from a contemplated zoning proposal.

Section 65858 further provides that such an urgency measure shall expire 45 days following its adoption; however, such measure may be extended beyond the initial 45-day period, following compliance with Government Code Section 65868, for an additional 10 months and 15 days, and subsequently for an additional 12 months. Government Code Section 65858(d) requires the City issue a written report describing the measures taken to alleviate the condition which led to the adoption of the initial interim ordinance 10 days prior to expiration (i.e., 35-days after passage of the interim ordinance) for purposes of extending the urgency ordinance. Subsequent to the written report, Government Code Section 65858(a) allows for an initial 10-month and 15-day extension to provide the City with additional time to study the potential impacts of commercial BESS facilities and measures for mitigating the public safety, health and welfare concerns described above.



CITY of ESCONDIDO

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With adoption of Ordinance No. 2024-12, the City Council would effectively prohibit any use permit, variance, building permit, business license, or any other entitlement for use from being approved or issued for the establishment, construction, or operation of a commercial BESS facility for any location or property within the City for the immediate preservation of public health, safety, and welfare based on the findings detailed in the ordinance.

CEQA Determination

This interim ordinance is not subject to CEQA (Public Resources Code §21000, et seq.) pursuant to CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.) Section 15060(c)(2) as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. Alternatively, this Interim Ordinance is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) because it prevents a clear and imminent danger that requires immediate action to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services.

ORDINANCES

- a) Ordinance No. 2024-12

ORDINANCE NO. 2024-12

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO PROHIBITING NEW COMMERCIAL BATTERY ENERGY STORAGE SYSTEMS WITHIN THE CITY OF ESCONDIDO, ADOPTED AS AN URGENCY MEASURE; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA

WHEREAS, the City of Escondido, California, ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in general, a Battery Energy Storage Systems ("BESS") facility collects energy from the grid, stores it, and then discharges that energy later to provide electricity or other grid services when needed, typically at times of high demand; and

WHEREAS, Escondido Energy Center, LLC ("Applicant") is proposing to construct a BESS facility on land currently owned by Escondido Energy Center, LLC located at 1968 Don Lee Place (Assessor's Parcel No.: 228-381-74-00); and

WHEREAS, on February 7, 2024, Applicant filed a land use development application (Planning Case No. PL24-0037), constituting a request for Major Plot Plan to establish a 50-megawatt (MW) BESS facility comprised of 31 lithium-ion battery storage enclosures. The proposed project is located within the General Industrial (M-2) zoning designation. Article 26 of the Escondido Zoning Ordinance (Chapter 33 of the Escondido Municipal Code) permits for a wide-range of activities, including those considered "heavy" or "intensive" outside storage needs, heavier equipment, and operational characteristics that require the least restrictive design standards. The General Industrial zoning designation specifically allows for power plants, oil refineries and bulk stations, transmission facilities, and uses involving hazardous chemicals and waste, all of which are similar in intensity of a BESS; and

WHEREAS, a BESS within the General Industrial zone would be permitted via the Major Plot Plan review process as outlined and pursuant to Article 61 (Administration and Enforcement), Division 8 (Plot Plans) of Chapter 33 (Zoning) of the Escondido Municipal Code; and

WHEREAS, the City's current Zoning Regulations do not contain criteria specifically for BESS facilities; and

WHEREAS, in 2022, the Governor signed into law Assembly Bill 205 ("AB 205"), which expands the California Energy Commission's ("CEC") powerplant siting authority- previously limited to thermal powerplants-to certain renewable energy facilities, including energy storage systems (as defined in Pub. Util. Code section 2835) that are capable of storing 200 Megawatt-hours or more of electrical energy; and

WHEREAS, pursuant to AB 205 (as codified at Pub. Res. Code Division 15, Chapter 6.2), an applicant proposing to build a qualifying energy facility may file an "opt- in application for certification" at the CEC and the CEC's permitting authority over the proposed project is "in lieu of any permit, certificate, or similar document required by a state, local, or regional agency, or federal agency, to the extent permitted by federal law, for those facilities"; and

WHEREAS, in reviewing so-called opt-in projects, the CEC functions as the Lead Agency for purposes of California Environmental Quality Act ("CEQA") review. In certifying an opt-in project, the CEC must make certain findings; and

WHEREAS, whether or not an Applicant's proposed project requires local entitlement approvals, there remain significant public safety-related concerns that must be analyzed prior to any BESS project moving forward within Escondido, whether at the 1968 Don Lee Place site or elsewhere in the community; and

WHEREAS, there have been several recent fires at BESS facilities in and around the City as well as throughout California and nationwide. BESS facilities that use lithium-ion batteries create particularly unique fire and explosion hazards. Lithium-ion batteries are considered inherently safe and stable but certain conditions elevate the risk of fire such as impacts, puncture, or mechanical damage, overcharging, overheating, and short circuits. The site for the pending application is within 700 feet of established residential uses located within the County; and

WHEREAS, on August 28, 2024, the City Council adopted Resolution No. 2024-113, which is incorporated herein as though set forth in full, outlining the Council’s concerns with the proliferation of BESS projects in and around the City of Escondido, including negative economic impacts inconsistent with the City’s adopted 2023 to 2028 Comprehensive Economic Development Strategy and potential public health and safety risks associated with the ignition of fires, including “thermal runaways,” from these facilities; and

WHEREAS, on September 5, 2024, at approximately 12:09 p.m., the Escondido Fire Department responded to a fire at a 30 MW San Diego Gas and Electric (“SDG&E”) BESS facility located at 571 Enterprise Street within the City of Escondido (“incident”). The incident entailed an active fire of a Lithium-Ion battery bank used for the purposes of energy storage. Due to specific hazards resulting from the burning of Lithium-Ion batteries, the City deployed a defensive strategy focused on protecting adjacent structures containing additional batteries and implemented evacuations of the surrounding area. Mandatory evacuations resulting from the incident included an area approximately one square mile for approximately 48-hours. Certain Escondido Unified School District schools and facilities shut down as a result of the fire as well. Responders from the Escondido Fire Department and Police Departments, as well as the San Diego County Hazardous Materials Division, Health Departments, and SDG&E monitored the site, including water and air sampling for

public health and safety; and

WHEREAS, on October 7, 2023, the Governor of California signed into law Senate Bill 38 ("SB 38"), which amends California Public Utilities Code Section 761.3 to address safety concerns with BESS projects. SB 38 requires every BESS facility in California to establish an emergency response and emergency action plan for the facility to protect surrounding residents, neighboring properties, emergency responders, and the environment. The BESS facility owner or operator must coordinate with local emergency management agencies, unified program agencies, and local first responders to develop the plan, and submit the plan to the county and the city where the facility is located; and

WHEREAS, given the fairly new technology, lack of long-term study of the performance and risk associated with these facilities, as well as the ever-increasing megawatt capacity of these projects, the City of Escondido has not had an adequate opportunity to undertake a comprehensive study of the developing technologies and designs such that it can publish appropriate development guidelines for these projects to ensure the public's welfare and safety; and

WHEREAS, California Government Code Section 65858 provides that, without following the procedures otherwise required prior to the adoption of a zoning ordinance, an urgency measure in the form of an interim ordinance may be adopted by a four-fifths vote of the City Council to protect the public from a current and immediate threat to the public health, safety, or welfare resulting from a contemplated zoning proposal. Government Code Section 65868 further provides that such an urgency measure shall be effective for only 45 days following its adoption, but may be extended beyond the initial 45-day period, following compliance with that Section, for an additional 10 months and 15 days and subsequently for an additional 12 months; and

WHEREAS, the potential for development of new commercial BESS facilities within the City of

Escondido without adequate land use policies and standards in place to implement SB 38 and to prevent potentially catastrophic interference with nearby communities presents a current and immediate threat to the public's safety and welfare, and the approval of use permits, building permits, or other applicable entitlements for such uses would result in that threat to public safety and welfare; and

WHEREAS, while this interim ordinance is in effect, the City intends to study and consider land use development policies and standards related to BESS facilities that should be added to the City's General Plan and Zoning Regulations; and

WHEREAS, the City Council has the authority under Government Code Sections 36934 and 36937(b) to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health or safety, contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council; and

WHEREAS, the City finds it is necessary for the City Council to adopt this Interim Ordinance as an Urgency Ordinance, as set forth in the above recitals, which are incorporated herein by reference, and pursuant to the powers under Government Code Sections 36934 and 36937(b), for the immediate preservation of the public health and safety.

NOW, THEREFORE, the City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. This Interim Ordinance is not subject to CEQA (Public Resources Code §21000, et seq.) pursuant to CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.) Section 15060(c)(2) as the activity will not result in a direct or reasonably foreseeable indirect physical change in the

environment. Here, the Interim Ordinance will prohibit certain projects from proceeding for a period of time during which the City will study the potential development. As a result, this Interim Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. Alternatively, this Interim Ordinance is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) because it prevents a clear and imminent danger that requires immediate action to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services. Here, the Interim Ordinance will prohibit certain projects from proceeding for a period of time during which the City will study the potential development. This activity is meant to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services by studying the hazards associated with BESS facilities, such as unique fire and explosion hazards, for potential development of zoning regulations for BESS facilities.

SECTION 3. From and after the date of enactment of the Interim Ordinance, no use permit, variance, building permit, business license, or any other entitlement for use shall be approved or issued for the establishment, construction, or operation of a commercial BESS facility for any location or property within the City of Escondido, unless a use permit was approved prior to October 9, 2024, authorizing the establishment, construction, and operation of the commercial BESS facility, in which case the commercial BESS facility may continue in operation as approved but may not be replaced or modified in any manner that would require revision or amendment to the use permit under the City's Zoning Regulations. As used in this Interim Ordinance, the term "commercial" means the use of a BESS facility to provide electricity to third parties, for consideration.

SECTION 4. This Interim Ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare based on the findings herein. It shall take effect immediately upon adoption and shall be of no further force and effect 45 days following the date of its adoption, unless

earlier repealed by the City Council or extended in accordance with the provisions set forth in California Government Code Section 65858.

SECTION 5. The penalties for land use violations that are prescribed in Sections 33-1310 through 33-1313 of the Municipal Code shall apply to violations of the provisions of this Interim Ordinance.

SECTION 6. If any provision of this Interim Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Interim Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

SECTION 7. The City Council hereby directs staff to prepare, execute, and file with the County of San Diego Clerk a Notice of Exemption within five (5) working days of the adoption of this Interim Ordinance.

SECTION 8. This Interim Ordinance is intended to supplement, not to duplicate or contradict, applicable state and federal law and shall be interpreted in light of that intent.

SECTION 9. Unless extended by City Council, this Interim Ordinance shall remain in effect until close of business on November 23, 2024.

SECTION 10. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 11. Pursuant to Government Code Sections 36934 and 36937(b), this Ordinance

shall be effective immediately upon its adoption.

SECTION 12. The City Clerk is hereby directed to certify to the immediate passage of this Interim Ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation for the City of Escondido.

KEY-

CONSENT CALENDAR CURRENT BUSINESS

PUBLIC HEARING WORKSHOP PROCLAMATION

Item 7.



CITY of ESCONDIDO

FUTURE AGENDA

10/23/2024

CONSENT CALENDAR - (A. MORROW) - CONTINUING REPAIR OF THE EMERGENCY REPAIR OF THE ESCONDIDO TRUNK SEWER MAIN

CONSENT CALENDAR - (S. MCGLYNN) - APPROVAL OF COUNCIL CHAMBERS TECHNOLOGY UPGRADE CONTRACT WITH TRITON TECHNOLOGY SOLUTIONS

CURRENT BUSINESS - (J. TENGER) - EMERGENCY MEDICAL SERVICES TRANSPORT FEES

PUBLIC HEARING - (C MCKINNEY) SHORT-FORM RENT INCREASE APPLICATION FOR CAREFREE RANCH MOBILEHOME PARK

PUBLIC HEARING - (C. MCKINNEY) - TEFRA HEARING FOR QUINCE STREET SENIOR APARTMENTS

PUBLIC HEARING - (J. SCHOENECK) - COMMERCIAL BUILDING AND LOT VACANCY ORDINANCE