



AGENDA

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Tuesday, October 2, 2012 – 6:00 p.m.

Hillside Conference Room

REGULAR CITY COUNCIL MEETING

Tuesday, October 2, 2012 – 7:00 p.m.

City Council Chambers

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Bill Jones – Mayor

Mayor Pro Tem Greg Lyman
Councilmember Rebecca Benassini

Councilmember Ann Cheng
Councilmember Janet Abelson

6:00 p.m. ROLL CALL

CONVENE SPECIAL CITY COUNCIL CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9(b): One potential case

ORAL COMMUNICATIONS FROM THE PUBLIC (*Comments are limited to three minutes and to items on this Special City Council meeting agenda only.*)

RECESS INTO CLOSED SESSION

POSSIBLE REPORT OUT OF CLOSED SESSION

ADJOURN SPECIAL CITY COUNCIL MEETING

ROLL CALL

7:00 p.m. CONVENE REGULAR CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG – Councilmember Ann Cheng.

2. COUNCIL / STAFF COMMUNICATIONS (*Reports of Closed Session, commission*)

appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.)

3. ORAL COMMUNICATIONS FROM THE PUBLIC

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

4. PRESENTATIONS

A. Writer Coach Connection – *Presentation by Robert Menzimer, Executive Director, Community Alliance for Learning.*

Receive a presentation on the Writer Coach Connection Program.

B. National Public Radio “NewsPoet” Tess Taylor

Receive a presentation by National Public Radio “NewsPoet” and El Cerrito resident Tess Taylor. Approve and present a proclamation, recognizing Ms. Tess Taylor on her many accomplishments in the literary field and celebrating her contributions in the areas of both the Arts and Humanities locally and nationally.

C. Marin Clean Energy Community Choice Aggregation – *Presentation by Dawn Weisz, Executive Director of Marin Clean Energy, and Adam Lenz, Sustainability Coordinator, City of Richmond.*

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

Consent Calendar items are considered to be routine by the City Council and will be enacted by one motion unless a request for removal for discussion or explanation is received prior to the time Council votes on the motion to adopt the Consent Calendar.

CITY COUNCIL ITEMS

A. Minutes for Approval

Approve the: 1) September 18, 2012 Special City Council meeting; and 2) September 22, 2012 Special City Council meeting.

B. Proclamation Celebrating Arts and Humanities Month

Approve a proclamation declaring October 2012 as Arts and Humanities Month in the City of El Cerrito and encouraging all members of the community to enrich their lives by participating in the arts, by being creative, and by supporting local arts and cultural organizations and by celebrating the arts and humanities by attending the City’s Arts and Humanities Month Celebration on Friday, October 26, 2012 at City Hall.

C. Conflict of Interest Code Update

Adopt a resolution approving a revised Conflict of Interest Code for the City of El Cerrito, including filing requirements for related agencies, including the Public Financing Authority, Employee Pension Board and Successor Agency to the former Redevelopment Agency and rescinding Resolution No. 2011-54.

CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE FORMER
REDEVELOPMENT AGENCY ITEM

**D. Bylaws for the El Cerrito Redevelopment Agency Successor Agency and
Update on Implementation of the Dissolution Act and Trailer Bill**

Adopt a Successor Agency resolution approving bylaws for the Successor Agency consistent with Assembly Bill 1484.

6. PUBLIC HEARING

**Appeal of the Planning Commission's Approval of a Conditional Use Permit at
11858 San Pablo Avenue**

Conduct a public hearing and upon conclusion adopt a resolution denying the appeal to the Planning Commission's approval of a Conditional Use Permit to allow the re-use of a vacant auto dealership for an auto sales and auto service use located at 11858 San Pablo Avenue.

7. POLICY MATTERS

A. Tax Anticipation Note

Adopt a resolution authorizing the City Manager to enter into an agreement with Westamerica Bank for the issuance of \$4,000,000 in Tax Anticipation Notes (TAN), and to appropriate \$17,000 for costs associated with the TAN.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

A. Mayor Jones Assignments: Contra Costa County Mayors' Conference, Crime Prevention Committee, Design Review Board, Disaster Preparedness Council Delegate, Municipal Service Corporation Chair, Oversight Board of the Successor Agency for the Former El Cerrito Redevelopment Agency, Pension Board Chair, Temporary Permits Committee, Tom Bates Regional Sports Field JPA, Underground Utilities Committee, West County Integrated Waste Management Authority Alternate and West County Mayors' & Supervisors' Association.

B. Mayor Pro Tem Lyman Assignments: Commission/Committee Rules Subcommittee, Contra Costa County Mayors' Conference Alternate, Disaster Preparedness Council Alternate, Economic Development Board, Municipal Services Corporation Vice-Chair, Pension Board Alternate, Planning Commission, Tree Committee, West County Integrated Waste Management Authority Delegate and West County Mayors' & Supervisors' Association Alternate.

C. Councilmember Abelson Assignments: Association of Bay Area Governments (ABAG) General Assembly Alternate, Committee on Aging, Contra Costa Transportation Authority, Environmental Quality Committee, League of California Cities East Bay Division Delegate and West Contra Costa Transportation Advisory Committee Delegate.

D. Councilmember Benassini Assignments: Arts and Culture Commission, Park and Recreation Commission, Redevelopment Agency Vice-Chair, and Tom Bates Regional Sports Field JPA Alternate.

E. Councilmember Cheng Assignments: Association of Bay Area Governments (ABAG) General Assembly Delegate, Commission/Committee Rules Subcommittee, Financial Advisory Board, Human Relations Commission, League of California Cities East Bay Division Alternate,

Redevelopment Agency Chair and West Contra Costa Transportation Advisory Committee Alternate.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, October 16, 2012 at 7:00 p.m. The meeting will take place in the City Council Chambers at City Hall, 10890 San Pablo Avenue, El Cerrito.

- Council Meetings can be heard live on **FM Radio**, KECG – 88.1 and 97.7 FM and viewed live on **Cable TV - KCRT- Channel 28**. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- **IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.**
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

EL CERRITO CITY COUNCIL PROCLAMATION

In Recognition of El Cerrito Poet, Tess Taylor

WHEREAS, El Cerrito Poet, Tess Taylor, was recently selected as National Public Radios's "All Things Considered," NewsPoet for the month of August and the El Cerrito City Council wishes to recognize and celebrate this and the many accomplishments of one its own residents; and

WHEREAS, Ms. Taylor grew up in El Cerrito and attended Amherst College where she got her B.A, and New York University and Boston University where she obtained M.A.s in Journalism and Creative Writing; and

WHEREAS, Ms. Taylor's work has appeared in a number of literary reviews such as the Atlantic Monthly, the Boston Review, The Times Literary Supplement, Memorious, and The New Yorker and she is the author of a chapbook of poems, The Misremembered World, which was published by the Poetry Society of America, and

WHEREAS, in 2010-2011, Ms. Taylor was the Amy Clampitt Resident in Lenox, Massachusetts and in addition to being a poet she also works as a project editor and does freelance work as a journalist to publications such as the New York Times Magazine and Barnes and Noble Review; and

WHEREAS, after 17 years away, Ms. Taylor returned to the City of El Cerrito and her first book, *The Forage House*, is due out in 2013 from Red Hen Press.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby recognize Ms. Tess Taylor for her many accomplishments in the literary field and celebrates her contributions in the areas of Arts and Humanities both locally and nationally.

Dated: October 2, 2012

William C. Jones III, Mayor

NewsPoet: Tess Taylor Writes The Day In Verse



Enlarge

Emily Bogle/NPR

Tess Taylor visits NPR headquarters in Washington on Monday.

August 20, 2012

text size **AAA**

Today at All Things Considered, we continue a project we're calling [NewsPoet](#). Each month, we bring in a poet to spend time in the newsroom — and at the end of the day, to compose a poem reflecting on the day's stories.

The series has included Pulitzer Prize winner [Tracy K. Smith](#) as well as [Craig Morgan Teicher](#), [Kevin Young](#), [Monica Youn](#), [Carmen Gimenez Smith](#), former poet laureate [Robert Pinsky](#) and [Paisley Rekdal](#).

Today, poet Tess Taylor brings us the news in verse. She is the author of a chapbook of poems,

The Misremembered World, which was published by the Poetry Society of America. She was the 2010-2011 Amy Clampitt Resident in Lenox, Mass., and in addition to writing poetry she works as a freelance journalist and critic. Her first book, The Forage House, is due out next year.

Tess Taylor sat down with NPR's Melissa Block to talk about spending the day at *All Things Considered*. It was a day that started out slow, with editors scrambling to find interesting stories that could fill the show.

Being in a newsroom was not a new experience for Taylor, who graduated from journalism school herself, and who once worked on a small newspaper. But writing on deadline is never easy.

"I leave with great respect for what you do," she told Block.

Indeed, Taylor found that many of the stories she was interested in changed over the course of the day. "Every time it seemed that I would get a lead on something that would happen, it would disappear."

One strategy she used was coming up with the germ of her poem ahead of time. "I had just come back from a week of vacation where I happened to be reading Walt Whitman's *Memoranda During the War*," she explained. "He comes and explores Washington as a poet-journalist."

Whitman's words were a guide for Taylor: "I used them to sort of anchor me while everything in this world, including tweeting Martian rovers, a family that's living on Martian time — that didn't make it into the poem — everything was changing all around me."

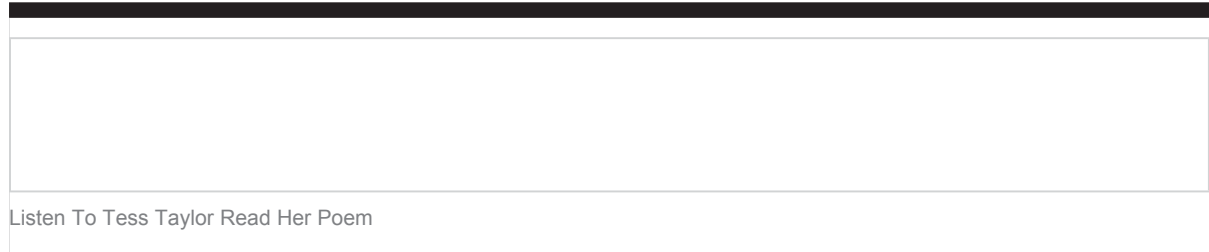
And he helped her get some perspective on viewing the news through a poet's lens. "You as journalists are really tied to this day as this day," she told Block, "but as a poet I get to break the frame of the day and make it something different." It allowed her to have a sense of historical perspective — "150 years ago we were in the middle of the civil war right here in this city — I think adds a certain dreaminess, a lyricism. I think it's the work of poetry to kind of unsettle the present," Taylor explained.

When asked if this is something she would like to try again, Taylor answered in the way that only a journalist/poet could:

"Are you offering me a job?"

Unstoppable: A Newsroom Poem

BY TESS TAYLOR



Listen To Tess Taylor Read Her Poem

The director of *Top Gun* has died.
Cuban dissidents were found dead on an unpaved road.
A politician from Missouri says rape rarely makes you pregnant.

August in Washington — pseudo-quiet season,
monuments and domes, a president
heading to Nevada while

his opponent rallies in New Hampshire.
Editors trawl late summer's transmissions.
A nude congressmen jumped in the Sea of Galilee.

Does nakedness make this a story?
Five percent of raped women get pregnant.
A Cuban widow suspects there was foul play.

The director of *Top Gun* made kinetic cuts,
shot leaping to shot, frame to frame.
As in, *if she gets pregnant, she must have liked it.*

Outside these offices a brick-faced former brothel
will be affixed to a new building for medical lobbyists,
and 150 years ago in a few months Walt Whitman

found this city filled with dying soldiers, and walked among them
keeping notebooks for "impromptu jottings."
He kissed both the dying and the dead.

He saw the drawn face of the president
and by moonlight dreamed the "White House of future poems."
Body to body, crafting acts of witness —

"But do we have reporters on the ground there?"

Here a digital whiteboard empties, fills —
Spiders with claws. A tweeting Martian rover.

Rape is rape, our current president says.
Lights flicker on the mixing board.
The naked congressman is sorry.

Somewhere beyond this poem my son is sleeping.
We record a story. Circulating, circulated.
Near that once-brothel, a bright tractor digs.

Real history will never get in the books,

Walt Whitman said.

All Things Considered's NewsPoet is produced and edited by Ellen Silva with production assistance from Rose Friedman.

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Please keep your community civil. All comments must follow the **NPR.org Community rules** and **Terms of Use**. NPR reserves the right to use the comments we receive, in whole or in part, and to use the commenter's name and location, in any medium. See also the **Terms of Use**, **Privacy Policy** and **Community FAQ**.



renewable. reliable. affordable.

Agenda Item No. 4(C)

MARIN CLEAN ENERGY



MCE In a Nut Shell

- Administered by local, not-for-profit, public agency (Marin Energy Authority)
- Created to give residents and businesses the option of having their energy demands met with greener energy
- Partner with PG&E to deliver energy and maintain power lines
- Provide choice of 50 or 100% renewable power
- Service area includes all of Marin County
- Currently serving approximately 95,000 customers
- Self-funding, no public funds or tax dollars



How It Works

- California Assembly Bill 117 passed in 2002
- Community Choice Aggregation (CCA)
- CCA is default electricity provider

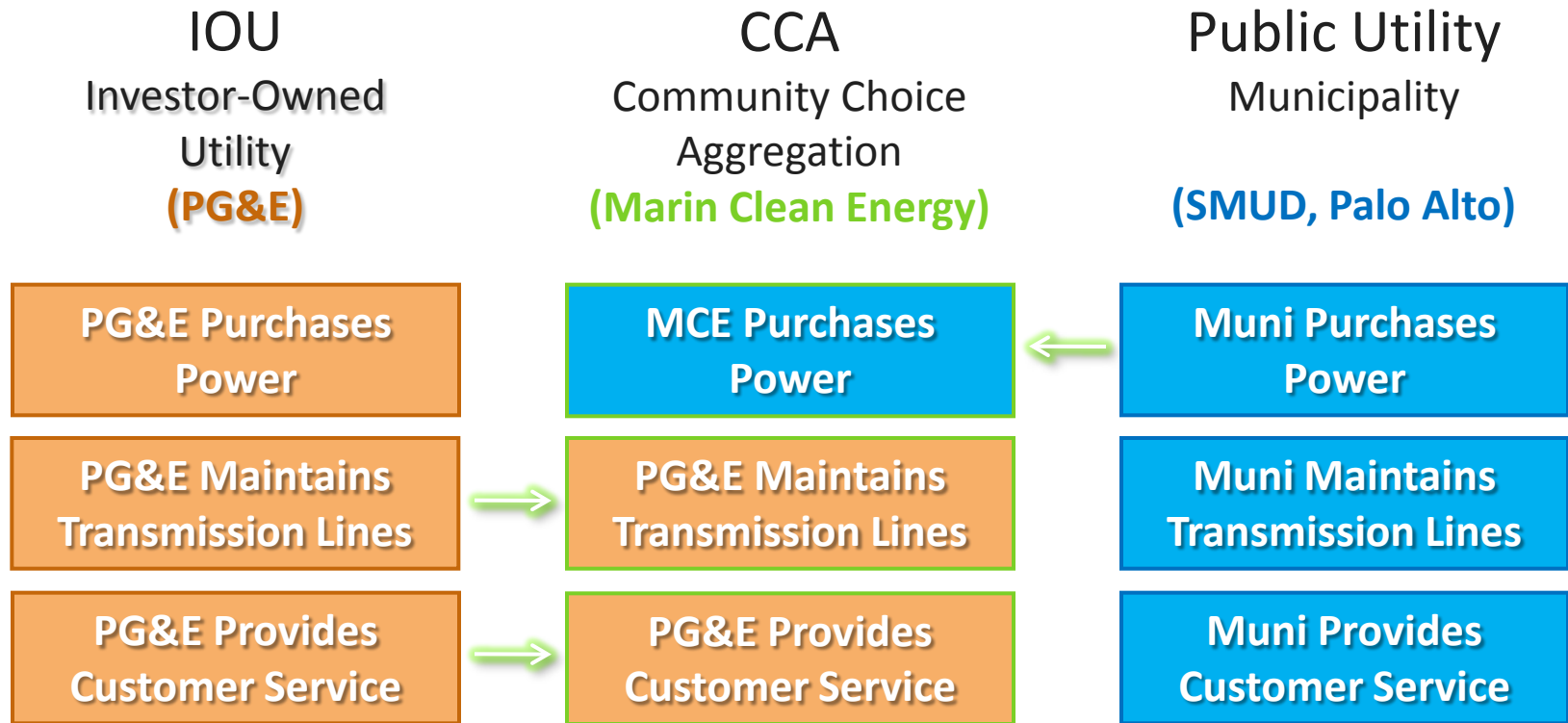


MCE buying and building energy supplies

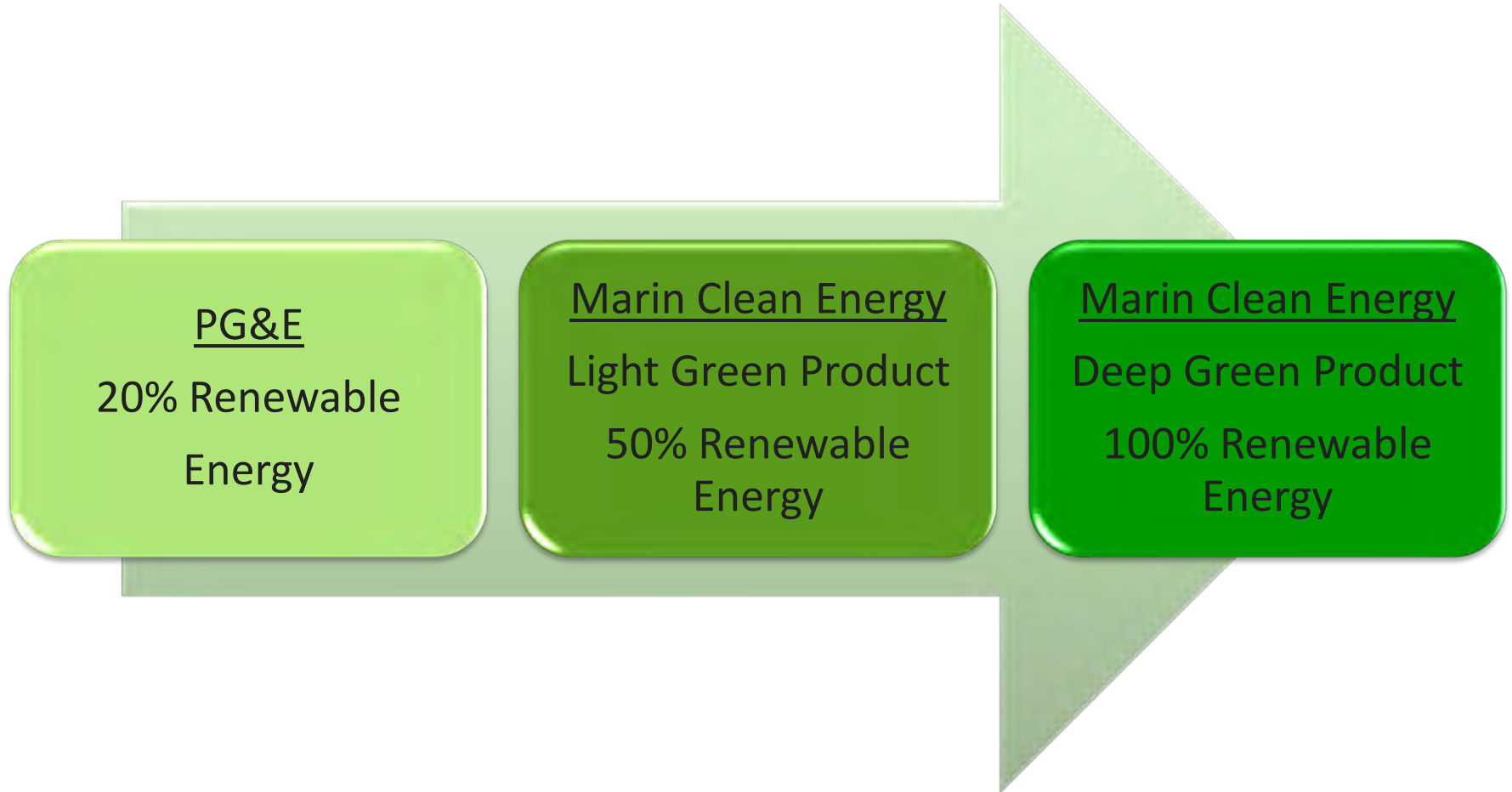
PG&E delivering energy, repairing lines, and serving customers

YOU benefitting from cleaner energy, stable costs, and local control

CCA – A Hybrid Approach



Choice of 3 Energy Products



MCE's 2011 Contracted Power Supply*

Sierra Pacific, WA
(17,319 MWh)

Nine Canyon, WA
(1,999 MWh)

Big Horn Wind, WA
(6,203 MWh)

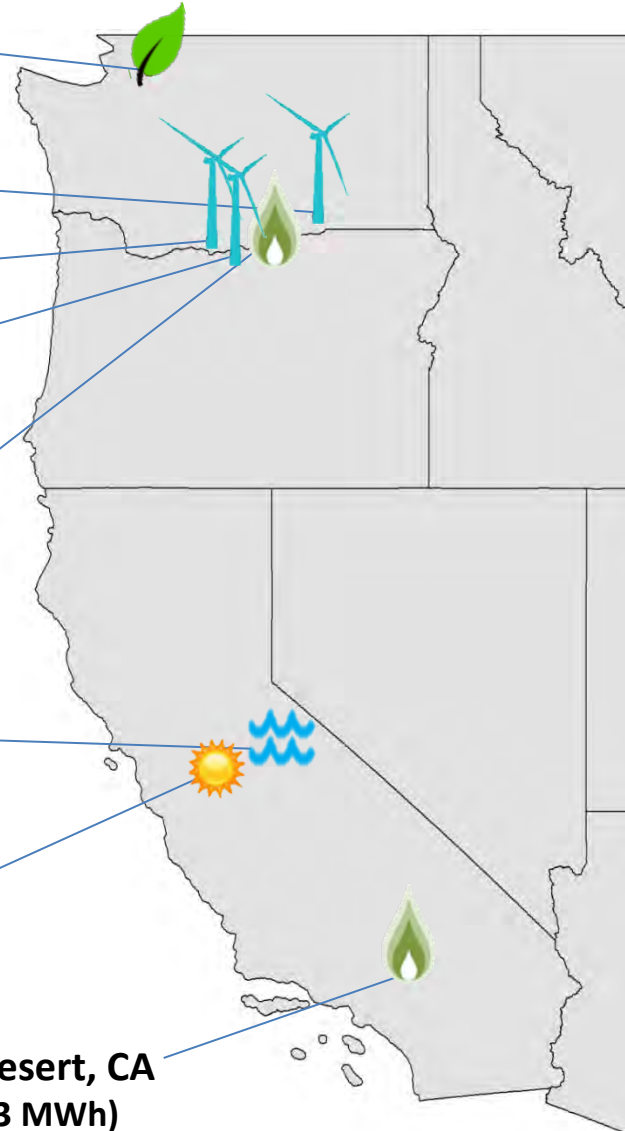
Klondike Wind Power, OR
(8,000 MWh)


Columbia Ridge, OR
(19,801 MWh)

Tri Dam, CA
(36,000 MWh)


Schulz Solar Farm, CA
(3,617 MWh)

High Desert, CA
(6,203 MWh)



 biomass

 wind

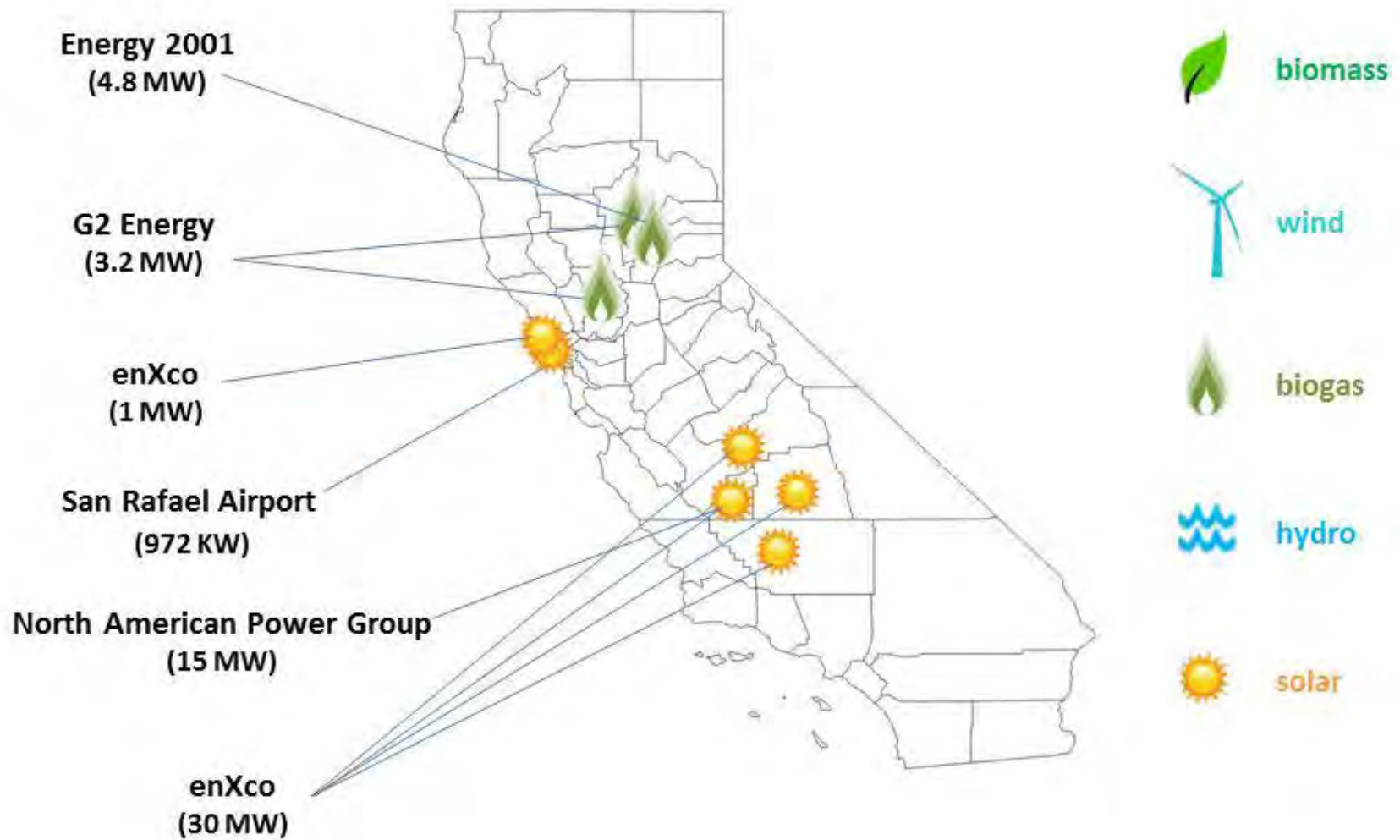
 biogas

 hydro

 solar

**Does not include System Power*

MCE Contracts for New Renewables



Renewable Purchases

Renewable Energy Contracts

- 30 MW new solar – enXco
 - 2014 - Kings, Tulare, Kerns County
- 15 MW new solar – North American Power Group
 - 2013 – Placer
- 3.2 MW of new biogas – G2 Energy
 - 2012 – Yuba, Solano County
- 4.8 MW of biogas (partially new) – GenPower/Energy 2001
 - 2013 – Placer County
- 20 MW of new solar – RE Kansas
 - 2016 – Kings County

Local Solar Procurement

- 972 kW solar at San Rafael Airport – September 2012
- 1 MW new solar carport shade structures in Marin – March 2014
- 1700+ MCE customers generating solar power

Sample Bill – Summary Page

PG&E Pacific Gas and Electric Company **WE DELIVER ENERGY.™**

999900909099909690099590000000044

Account Number	Bill Date	Amount Due	Due Date	Amount Enclosed
1234567890-1	05/17/2011	\$218.38	06/01/2011	

MARY GREEN
123 STREET AVENUE
SAN RAFAEL CA 94901

PG&E
BOX 997300
SACRAMENTO CA
95899-7300

Please return this portion with your payment. Thank you.

Telephone Assistance
1-800-743-5000
Assistance is available by telephone 24 hours per day, 7 days per week.

Local Office Address
750 LINDARO ST STE 160
SAN RAFAEL CA 94901

Account Number
1234567890-1

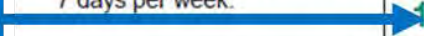
May 2011

ACCOUNT SUMMARY

Service	Service Dates	Amount
Gas	04/09/2011 To 05/09/2011	\$36.88
Electric	04/09/2011 To 05/09/2011	96.85
Energy Commission Tax		.17
Gas PPP Surcharge		15.95
2 Marin Clean Energy Electric Charges		68.53
TOTAL CURRENT CHARGES		\$218.38
Previous Balance		\$261.56
04/15/11 Payment - Thank You		\$261.56-

TOTAL AMOUNT DUE **\$218.38**
DUE DATE - 06/01/2011

PG&E
Transmission
and
Distribution
Charges



2

MCE
Generation
Charges



Net Energy Metering

Marin Clean Energy offers one of the best Net Energy Metering programs in California to incentivize distributed generation.

MCE	PG&E
<u>All</u> generation credited at premium rate (retail rate + \$0.01/kWh)	<u>Surplus</u> generation credited at \$0.04/kWh
\$4 monthly bonus credit for net generators	No additional incentives
Annual cash-out option for credit balances of >\$100	Compensation or credit rollover
Monthly settlement	Annual settlement
Perpetual rollover of excess credits	Credit balances settled annually at true-up date

Giving Back & Funding Local Programs

- Local renewables
 - Feed-In Tariff
 - San Rafael Airport Solar
 - Net Energy Metering
 - Solar Carport Shade Structure
- Will be offering more than \$125,000 in multifamily energy efficiency incentives in 2012
- Provided \$20,000 in energy efficiency and solar rebates to MCE customers
- 5 electric vehicle charging stations in Marin (San Rafael, Tiburon, San Anselmo)
- Support local community groups, nonprofits, and youth sports



Why Customers Choose MCE

About 80% of customers enroll in MCE. Why?

- Reduced pollution from electricity usage
- Creates a competitor – both in cost and quality of service – for PG&E
- Reduces reliance on fossil fuels
- Ratepayer money stays in Marin County to invest in local projects & programs
- Potential cost savings

The County of Marin, Larkspur, Corte Madera, Ross, Mill Valley, Tiburon, San Anselmo, and San Rafael are all MCE customers. Fairfax and Belvedere are Deep Green (100% renewable) customers.

Helping Cities Achieve Climate Action Goals

- Reduction of community/global greenhouse gas emissions
- Choice of energy providers and ability to purchase 100% renewable energy
- Advance local environmental and sustainability policies
- New opportunities to deploy energy efficiency, local solar or other distributed renewable generation through MCE incentives and programs
- MCE creates modest demand for local jobs and other local economic activity

Richmond joins Marin Energy Authority!

- Richmond City Council elects to join the Marin Energy Authority on June 6, 2012
- First California City outside of Marin County to offer CCA to customers
- Anticipated enrollment date of Richmond customers in July 2013



**Community Choice Aggregation
Community Meeting**

Hosted by the City of Richmond
and the Marin Energy Authority

Community Choice Aggregation is a system that allows local government to procure electric energy for residents and businesses. The City of Richmond is considering an option to join the Marin Energy Authority and participate in the only Community Choice Aggregation program in California - Marin Clean Energy.

Please attend the workshop to find out more about the Marin Clean Energy program and provide input for the City's evaluation of Community Choice Aggregation. More information can be found online at www.richmondenvironment.org.

Date: Wednesday, November 30, 2011
Time: 6:00 PM - 7:30 PM
Location: City Council Chambers
440 Civic Center Plaza

Questions:
Please email adam_jones@ci.richmond.ca.us
or call (510) 620-5537.
Please RSVP:
<http://ccacommunityworkshop.eventbrite.com>

Richmond CCA Policy Synergy

Policy EC3.A Community Choice Aggregation of the General Plan Update (2030) encourages the City to collaborate with neighboring jurisdictions.

In 2011, 80% community survey respondents stated that improving environmental quality was either “essential” or “very important” while only 4% stated it was “not important”.

City Council adopted resolutions:

- [Committing to GHG emissions reduction targets established by California’s Global Warming Solutions Act, or Assembly Bill 32](#)
- [Committing to Urban Environmental Accords](#)
- [Opposing Prop 16 and supporting “citizens' ability to opt for locally controlled public power by forming municipal utility districts or CCAs”](#)

Richmond's Evaluation

Community Outreach with MEA

Residents, community based organizations, neighborhood councils and business groups

Extensive Legal Review and Risk Analysis

Concluded City would not incur any potential recourse from JPA debts and liabilities and Richmond would have board representation.

Environmental & Community Co-benefits

Reduction of GHG emissions, provide a choice to customers, local innovative energy programs, workforce development opportunities, feed-in tariff, energy efficiency funding from CPUC.



MEA: Walking the Talk

Achieving Goals

- Creating demand for new renewable supply in California & Marin
- MCE electricity's carbon footprint is approximately 23-33% lower than PG&E's 551 lbs/MWh

Exceeding Targets

- MCE's Light Green has grown to 50% renewable
- MCE is exceeding CA State renewable mandate, and leading the State in renewable supply



Marin Clean Energy...It's working.



Call 1 (888) 632-3674
Visit MarinCleanEnergy.com

EL CERRITO CITY COUNCIL

MINUTES

SPECIAL CITY COUNCIL MEETING
Tuesday, September 18, 2012 – 7:30 p.m.
City Council Chambers

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

Bill Jones – Mayor

Mayor Pro Tem Greg Lyman
Councilmember Rebecca Benassini

Councilmember Ann Cheng
Councilmember Janet Abelson

ROLL CALL

Councilmembers Abelson, Benassini, Cheng, Lyman and Mayor Jones all present.

7:30 p.m.

CONVENE SPECIAL CITY COUNCIL MEETING

Mayor Jones convened the Special City Council meeting at 7:31 p.m.

1. **PLEDGE OF ALLEGIANCE TO THE FLAG** was led by Mayor Pro Tem Lyman.
2. **COUNCIL / STAFF COMMUNICATIONS**

Councilmember Benassini announced that the City Council will convene a workshop on Saturday, September 22, 2012 from 9:30 a.m. to 1:30 p.m. at City Hall on the Strategic Plan and invited all to attend. The Alberrito Street Play Event is also happening on the same day. This is a fun event for residents. Key Route Boulevard along Ashbury will be closed down to Albany allowing kids to play in the street. Additionally, there will be an Albany vs. El Cerrito Tug-of-War. Councilmember Benassini encouraged all to attend.

Councilmember Abelson reported on her attendance at the League of California Cities Annual Conference in San Diego. She participated in a number of different sessions and presided over a session in which attendees discussed gourmet food trucks and food vendors who operate without a brick and mortar establishment. The session was extremely well attended and is an area of interest for many cities. Although many people like to utilize the food trucks, the issue presents a variety of city permit issues. The session resulted in a very lively exchange.

Councilmember Abelson also attended a meeting of the League's Administrative Services Policy Committee. The Committee considered whether the League should endorse Proposition 31, the Government Performance Accountability Act. The Policy Committee took a position to oppose

the proposition and the League took a neutral position. Councilmember Abelson also attended the Mayors Conference in Richmond. She announced that the City-wide Garage Sale is on October 13 from 9 a.m. to 3 p.m. The Draft Climate Action Plan will be released in October/November.

Mayor Pro Tem Lyman acknowledged everyone who was involved with Tri-City Safety Day which was held on September 8, 2012. The event has occurred for three decades. Agencies involved this year included the American Red Cross, East Bay Regional Park District, Albany Police, Fire and Community Outreach Departments, Contra Costa County Hazardous Materials Response Unit, El Cerrito Police Department, El Cerrito/Kensington Fire Department, Contra Costa County Supervisor Gioia's staff, American Medical Response, Kensington Police Department, Community Emergency Response Team, Richmond Fire Department and Contra Costa County Animal Services. The United States Secret Service also attended and offered services connected with Operation Safe Kid. The Contra Costa County Health Department offered demonstrations of Hands Only Cardiopulmonary Resuscitation (CPR). Mayor Pro Tem Lyman concluded his report by stating that he also attended the Mayors' Conference with Mayor Jones and Councilmember Abelson.

Mayor Jones reported that he attended the League of California Cities Annual Conference. The League is promoting the message that strong cities make a strong state. This is a positive effort by the League. If you want to make cities strong and vibrant, then people need to support them. Additionally, the League is actively engaged in self-rule for cities. The statement, "if you make cities strong, the state will be strong" is very positive. Conference attendees also received information on post redevelopment and economic development; including tools that will be available in the future. There was also a sharing of what some cities are doing. Mayor Jones found the discussion positive and worthwhile and passed some of the ideas on to staff. It was reported that the State did not receive redevelopment related funding from twenty-one cities. All of these cities, including El Cerrito, received a letter from the State that was confusing and unclear – even to the lawyers. The State said that there are no penalties at this time but penalties may be assessed in the future. The Conference was surprisingly upbeat. Cities are struggling but there are a lot of good people trying to find solutions and go forward.

Mayor Jones also reported that El Cerrito employee Craig Johnson and his wife Joan Lundahl, are ranked third in the world in ballroom dancing in the "over 40" category. They also, between the two, have held several world championships in the past. Mayor Jones said he was surprised to learn that we have world champions working at the City. Mayor Jones also reported that the City had its annual golf tournament in support of the David Hunter Memorial Scholarship Fund and thanked the sponsors and individuals that showed up for that event. He also attended the Mayors Conference in Richmond. A reporter from the Contra Costa Times spoke about the upcoming election in Contra Costa County. Interestingly, there are thirty-seven cities, special districts, and other agencies who elect officials who are not having elections due to a lack of competition for open seats. Many contests go uncontested.

Mayor Jones concluded his report by stating that the City Council had convened two special meetings for the purposes of filling vacancies for boards, commissions and committees and announced the following appointments:

Arts and Culture Commission	Cristin Sethi to a term ending on January 1, 2013.
Economic Development Board	Vikram Bajaj to a term ending on January 1, 2016.
Planning Commission	Ken Hirano to a term ending January 1, 2014.

Tree Committee

Andrea Lucas to a term ending January 1, 2015.

Ralph Boniello to a term ending January 1, 2016.

Sheauchi Cheng to a term ending January 1, 2016.

Janet Hittle to a term ending January 1, 2016.

Steve Price to a term ending January 1, 2016.

Michael Srago to a term ending January 1, 2016.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Don Gancheff, El Cerrito, expressed concerns with his attempt to obtain information from the Police Department regarding parking tickets he had received. He requested information regarding how a police officer can tell that a car has not been driven within seventy-two hours.

Laura Woodford, El Cerrito, Golden Gate Audubon Society, spoke in support of the rodenticide resolution urging local businesses to refrain from selling dangerous rodenticides and expressed concerns with poisonings of children and secondary poisoning of pets, predator birds and wildlife.

Patricia Jones, El Cerrito, urged the City Council to support the rodenticide resolution and told a story about the death of a turkey vulture fledgling who died due to rat poisoning. One of the parent vultures is missing and is presumed to have been poisoned as well.

Robin Mitchell, El Cerrito, spoke in support of passage of the rodenticide resolution.

Jane Kelly, Berkeley, spoke in support of passage of the rodenticide resolution and explained that there are thousands of deaths caused by rat poisons each year. Ms. Kelly also stated that she is impressed with the environmental leadership in El Cerrito, noted that the City is forward thinking and creative and that this is not going unnoticed by neighboring cities.

Sylvia Falcon, El Cerrito, urged passage of the rodenticide resolution, noted that there are approximately 16,000 calls per year regarding suspected rodenticide poisoning and cited an alternative method of trapping rats using peanut butter and fruit.

Pamela Austin, El Cerrito, urged the City Council to place a ban on rodenticide and encouraged the use of owls and owl houses as a way of controlling the rat population.

Tom Kelly, Berkeley, stated that ivy houses a lot of rats. Removal of ivy will reduce the rat population. The USEPA is making efforts to reduce the use and approval of rodenticides and is getting a lot of push back from rodenticide manufacturers. Mr. Kelly encouraged the City Council to approve the rodenticide resolution as a way of supporting the USEPA.

Dave Weinstein, El Cerrito, Chair, El Cerrito Trail Trekkers, described the history and work of the Trail Trekkers in El Cerrito, and urged the City Council to support the resolution regarding the City's co-sponsorship of the Trail Trekkers. The Trail Trekkers will work with the Public Works Department and Environmental Services Division to map trails in El Cerrito. The group has also done hard physical work creating trails. Mr. Weinstein also explained that the Trekkers have obtained good cooperation from neighbors and staff, stated that the work is visionary and that there are many hidden little trails in El Cerrito.

4. PRESENTATIONS

A. Falls Prevention Awareness Proclamation

Approve and present a proclamation proclaiming September 22-28, 2012 as "Falls Prevention Awareness Week" in the City of El Cerrito and calling upon all residents and interested groups to observe the week with appropriate activities that promote awareness of fall prevention.

Presenter: Laurel Zien, Elder Care Director, Fall Prevention Program, Contra Costa County, outlined services provided by the Fall Prevention Program and Senior Outreach Services.

Action: Proclamation presented.

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

Moved, seconded (Lyman/Abelson) and carried unanimously to adopt Consent Calendar Item Nos. 5A through 5G and 5I as indicated below. Consent Calendar Item No. 5H was removed from the Consent Calendar at the request of Mayor Jones.

A. Minutes for Approval

Approve the: 1) August 21, 2012 Special Concurrent City Council/Public Financing Authority/Successor Agency to the Former Redevelopment Agency meeting minutes and Special City Council Acting as Successor Agency to the Former Redevelopment Agency Closed Session meeting minutes; and 2) September 11, 2012 Special City Council meeting minutes.

Action: Approved minutes.

B. Domestic Violence Awareness Month Proclamation

Approve a proclamation proclaiming October 2012 as Domestic Violence Awareness Month in the City of El Cerrito, and urging all residents to actively participate in the efforts to end violence in our homes, in our schools, and in our communities.

Action: Approved proclamation.

C. Execute Agreement and Accept Grant Deed from BART for Public Right-of-Way Easement Near Del Norte BART Station

Adopt a resolution authorizing the City Manager to execute an agreement between the San Francisco Bay Area Rapid Transit District (BART) and the City of El Cerrito in connection with the sidewalk and tree improvements at the Del Norte BART Station; and accepting the Grant Deed, referenced therein, for a public right-of-way easement adjacent to and near the Del Norte BART Station on Hill Street, Liberty Street, Key Boulevard, Cutting Boulevard, Knott Avenue and Kearney Street, and authorizing the City Manager to execute the Grant Deed after its approval by BART.

Action: Adopted Resolution No. 2012-68.

D. Co-Sponsorship Application for El Cerrito Trail Trekkers

Adopt a resolution authorizing the City Manager to grant free use of meeting room facilities for the El Cerrito Trail Trekker's monthly meetings.

Action: Adopted Resolution No. 2012-69.

E. Support West Contra Costa Unified School District Bond Measure E

At the request of Councilmember Abelson, adopt a resolution supporting the goals of Measure E and encouraging the voters of the City of El Cerrito to review the language and arguments concerning Measure E and cast their vote on Measure E on the November 6, 2012 presidential general election ballot.

Action: Adopted Resolution No. 2012-70.

F. Support West Contra Costa Unified School District Parcel Tax Measure G

At the request of Councilmember Abelson, adopt a resolution supporting the goals of Measure G and encouraging the voters of the City of El Cerrito to review the language and arguments concerning Measure G and cast their vote on Measure G on the November 6, 2012 presidential general election ballot.

Action: Adopted Resolution No. 2012-71.

G. Urge Local Businesses to Discontinue the Sale and Businesses and Residents to Discontinue Use of Rodenticide Resolution

Upon initial referral by Councilmember Cheng, staff requests that the Council take the following actions: 1) Adopt a resolution urging local businesses to stop selling and stocking certain rat poison products and discouraging the use of these products in the City of El Cerrito by contractors, City staff and residents; and 2) Send a letter to the Department of Pesticide Regulation requesting that they refuse to renew registration of twenty rodenticide products because of the risk that they pose to public and environmental health.

Action: Adopted Resolution No. 2012-72.

H. Oppose Proposition 32 “Stop Special Interest Money Now”

At the request of Councilmember Cheng, adopt a resolution expressing the City Council’s opposition to Proposition 32 on the November 6, 2012 general election ballot.

Action: Removed from the Consent Calendar by Mayor Jones. Moved, seconded (Cheng/Benassini) and carried unanimously to adopt Resolution No. 2012-73 as amended by Mayor Jones to modify several recitals to more closely reflect the standards and decorum of the City Council and the City’s official records.

I. Quarterly Investment Report

Receive and file the City’s June 30, 2012 Quarterly Investment Report.

Action: Received and filed.

6. PUBLIC HEARING

Abatement of Fire Hazard Public Nuisances on Four Properties Pursuant to El Cerrito Municipal Code Chapter 16.26

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

Presenter: David Ciappara, Fire Prevention Officer, Captain/Paramedic.

Mayor Jones opened the public hearing.

Speakers: James Richardson, M.D., El Cerrito, thanked the Fire Department for its concern and for looking into early notification for some properties. Dr. Richardson reported that he saw a couple smoking in the middle of the grass on the hill near his property after the July meeting and said he is particularly concerned with the property being in a hazardous condition during Fourth of July.

Moved, seconded (Lyman/Benassini) and carried unanimously to close the public hearing.

Action: Moved, seconded (Lyman/Abelson) and carried unanimously to adopt Resolution No. 2012-74.

7. POLICY MATTERS

A. SEIU, Local 1021 Memorandum of Understanding and Reporting the Value of Employer Paid Member Contributions for SEIU, Local 1021 Employees

Staff requests that the City Council take the following actions:

1. Adopt a resolution adopting the Memorandum of Understanding between the City of El Cerrito and the Service Employees International Union (SEIU), Local 1021 effective July 1, 2012 through June 30, 2014; and
2. Adopt a resolution amending the paying and reporting of the value of employer paid member contributions for SEIU, Local 1021.

Presenter: Mary Dodge, Administrative Services Director.

Mayor Jones stated for the record that the actions taken this evening are a result of the direction given by the City Council during closed session.

Action: Moved, seconded (Benassini/Lyman) and carried unanimously to adopt Resolution No. 2012-75 adopting the Memorandum of Understanding between the City of El Cerrito and the Service Employees International Union (SEIU), Local 1021.

Moved, seconded (Lyman/Abelson) and carried unanimously to adopt Resolution No. 2012-76 amending the paying and reporting of the value of employer paid member contributions for SEIU, Local 1021.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

Council Assignments and Liaison Reports were held over from the meeting of August 21, 2012.

A. Mayor Jones stated that the Successor Agency and Oversight Board had met and the city has filed all paperwork required by the State. The Tom Bates/Gilman Regional Sports Field Joint Powers Authority will meet on September 19. Everything seems to be going fine. The West County Mayors and Supervisors meet monthly to discuss regional issues. Assemblymember Skinner is scheduled to meet with the West County Mayors at their next meeting.

B. Mayor Pro Tem Lyman reported that RecycleMore/West Contra Costa Integrated Waste Management Authority is working on a strategic plan regarding the steps for consideration of the future for the Joint Powers Authority Agreement group over the next sixteen months. Member cities will have to make a decision about whether they wish to continue to be members of the Joint Powers Agreement Authority group after January 1, 2014. The decision will probably occur in December, 2012. Additionally, the group is considering a series of proposals from a wide number of entities on what the future processing will be. In January 2014 the current processing agreements for recyclables, green waste, hazardous waste and other related services will end. There are currently six firms competing for these services. The Technical Advisory Committee that is evaluating the proposals and advising the Authority is continuing to meet and negotiate with those who have submitted proposals to obtain the best rates and services possible. This Committee will make a recommendation to the Authority in November. The firm may be selected prior to the City Council's work session.

Additionally, the Authority recently received a report on the single user carryout bag reduction ordinance, "Plastic Bag Ban." The initial study has been released for thirty days. Several comments were received, including comments from the plastic bag coalition, who has threatened litigation if the ordinance is approved without the preparation of an environmental impact report. The Authority is moving forward with a negative declaration and has requested an analysis from its legal counsel and from legal counsel for each member city regarding whether a negative declaration is adequate. The California Supreme Court upheld the City of Manhattan Beach's decision to pass the plastic bag ban based on a negative declaration.

C. Councilmember Abelson – No report.

D. Councilmember Benassini – No report.

E. Councilmember Cheng reported that the Financial Advisory Board (FAB) discussed and reviewed City Council compensation within the context of the Contra Costa Grand Jury's recommendation to conduct an annual review as part of the budget. No recommendation has been made yet. The FAB also reviewed El Cerrito Municipal Code Section 2.04.300, the enabling legislation for the FAB, in light of dissolution of the redevelopment agency and also reviewed the 2009 Two Year Service Credit data and the Quarterly Investment report.

SUPPLEMENTAL COMMUNICATIONS

Item No. 4(A) Falls Prevention Awareness Proclamation

1. Fall Prevention Program and Meals on Wheels Senior Outreach Materials – *Submitted by Laurel Zien, Elder Care Director, Fall Prevention Program, Contra Costa County*
2. Third Annual Walk for Fall Prevention – *Submitted by Laurel Zien,*

Item No. 5(G) Urge Local Businesses to Discontinue the Sale and Business and Residents to Discontinue Use of Rodenticide.

3. Comments on effects of rodenticides – *Submitted by Patricia Jones, El Cerrito*
4. Comments in opposition to the resolution – *Submitted by Hal Ambuter, Reckitt Banckiser.*
9. **ADJOURNED SPECIAL CITY COUNCIL MEETING** at 8:54 p.m.

EL CERRITO CITY COUNCIL

MINUTES

SPECIAL CITY COUNCIL MEETING
Saturday, September 22, 2012 – 9:30 a.m.
City Council Chambers

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

Bill Jones – Mayor

Mayor Pro Tem Greg Lyman
Councilmember Rebecca Benassini

Councilmember Ann Cheng
Councilmember Janet Abelson

9:30 a.m. ROLL CALL

Councilmember Abelson, Benassini, Cheng, Lyman and Mayor Jones all present.

CONVENE SPECIAL CITY COUNCIL MEETING

Mayor Jones convened the Special City Council meeting at 9:36 a.m.

ORAL COMMUNICATIONS FROM THE PUBLIC

Susanna Marshland, El Cerrito, expressed support for development of bike trails in the City.

Tom Panas, El Cerrito, stated that El Cerrito needs to differentiate itself from other communities, cater to the next generation of families and be a place where people want to live and raise a family. It would be great to have a new library that is not just a place for information transactions but is also a destination for people of all ages with a modest performance venue, a café, an atrium, and meeting rooms.

Dave Weinstein, El Cerrito, stated that the City should focus on what is here now to attract people. There are buildings with true history such as the Mabuchi Building, Camp Herms, the former Windrush School/Chung Mei Orphanage, and many beautiful neighborhoods. Mr. Weinstein said it is important for the City to do a cultural resources survey and also pay attention to wildlife and open space and noted the work that has been done by the Environmental Quality Committee with sustainability and beekeeping. The Hillside Natural Area contains a variety of native plants. Mr. Weinstein advocated for a network of trails that are way-markers to historic buildings, open space and other features. The City needs to protect what it has and enhance it.

Gary Hill, El Cerrito, asked the City Council to think about how trails can be an asset for El Cerrito. There are a number of people that can be reached to make it a priority. There is great potential for a centralized bike park. A bike park would reach a lot of users and offer features that reach different abilities and skill sets across all ages. Cerrito Vista Park and Portola Middle

School offer sites that could create a centralized park with a bike component. Mr. Hill encouraged the City Council to authorize a feasibility study for the City. A centralized park would be a great asset and would not be too expensive. The project would attract a huge volunteer network, donations and sponsorships and would make El Cerrito a destination. It would be the first in the Bay Area and would attract a lot of people. Mr. Hill stated that he would like to see the centralized park put into the General Plan.

Xan Marshland, El Cerrito, said he is involved in mountain biking. He explained that he has to drive over to Marin to train and ride on the trails. It would be really wonderful to have a nice trail and bike network in the City. A member of the El Cerrito High School Mountain Biking Team placed second in the state last year and was able to achieve this designation without a place to train in the City. Mr. Marshland stated that Mountain Bike trails would be very popular here.

CITY COUNCIL WORK SESSION ON THE STRATEGIC PLAN

The City Council will discuss the City's Mission Statement, vision and values within the context of developing a Strategic Plan.

Mayor Jones explained that the current City Councilmembers and the City Council that will be elected in November will provide input into the Strategic Plan Process. Mayor Jones stated that the City Council wants to go forward as fast as possible with the strategic plan and wants to make sure there is enough time for public and professional comment. The Strategic Plan will ultimately weave into the General Plan. Funding for the Strategic Plan will be provided over three fiscal years.

Presenter: Nancy Hetrick and Emily Lohr, Management Partners.

Action: Presentation received. Discussion held.

SUPPLEMENTAL COMMUNICATIONS

1. Comments regarding where El Cerrito should be headed *Submitted by Tess Taylor, El Cerrito.*
2. Written Statement regarding attraction of new residents *Submitted by Tom Panas, El Cerrito.*
3. Please support a Bike Park in El Cerrito & Ride-able Trail Development in the Hillside Area *Submitted by Gary Hill, El Cerrito.*

ADJOURNED SPECIAL CITY COUNCIL MEETING at 12:58 p.m.

CITY OF EL CERRITO PROCLAMATION
Recognizing and Supporting October 2012 as National Arts
and Humanities Month in El Cerrito

WHEREAS, the month of October has been recognized as National Arts and Humanities Month by thousands of arts and cultural organizations, communities, and states across the country, as well as by the White House and Congress for more than two decades; and

WHEREAS, the Arts build cultural bridges, contribute towards cross-cultural understanding, strengthen the association between identity and citizenship, preserve the traditions and contributions of citizens and enhance the quality of life; and

WHEREAS, children learn critical-thinking skills, improve focus, and gain confidence when provided a solid foundation in the arts through in-school arts education, after-school arts programs, family outings to cultural institutions and events, and creative activities in the home; and

WHEREAS, studies show that innovation and creativity are key components to a prosperous future California economy, and

WHEREAS, industries and businesses locate themselves in communities that are centers of creativity and innovation, and California has more companies and employees in creative industries than any other state; and

WHEREAS, the arts and humanities enhance and enrich the lives of every American.

NOW THEREFORE, the City Council of the City of El Cerrito hereby declares October 2012 as Arts and Humanities Month in the City of El Cerrito and encourages all members of the community to enrich their lives by participating in the arts, by being creative, and by supporting local arts and cultural organizations and to celebrate the arts and humanities by attending the City's Arts and Humanities Month Celebration on Friday, October 26, 2012 at City Hall.

Dated: October 2, 2012

William C Jones III, Mayor



AGENDA BILL

Agenda Item No. 5(C)

Date: October 2, 2012
To: El Cerrito City Council
From: Cheryl Morse, City Clerk
Subject: Conflict of Interest Code Update

ACTION REQUESTED

Adopt a resolution approving a revised Conflict of Interest Code for the City of El Cerrito, including filing requirements for related agencies, including the Public Financing Authority, the Employee Pension Board, and the Successor Agency to the former Redevelopment Agency and rescinding Resolution No. 2011-54.

BACKGROUND

The Political Reform Act of 1974 ("Act") (codified in Government Code Sections 8100 *et seq.*) requires the City to adopt and promulgate a Conflict of Interest Code ("Code") applicable to designated City employees and public officials.

The City first adopted its Conflict of Interest Code in 1977. In 1983, the City Council enacted Resolution No. 83-14 to adopt the model Conflict of Interest Code drafted by the Fair Political Practices Commission. The Conflict of Interest Code covers matters such as the manner of reporting financial interests, the procedures to be utilized in filing conflict of interest statements, the contents of such statements, and the time within which such statements must be filed.

On July 19, 2011, the City Council amended its Conflict of Interest Code, to include the filing of related agency positions, including the Municipal Services Corporation (MSC), by Resolution No. 2011-54. However, since the MSC is not a public agency, but rather a non-profit, public benefit corporation, it is subject instead to the California Corporations Code. The MSC Board instead adopted its own Conflict of Interest Policy on October 17, 2011 by MSC Resolution No. 2011-11, following the model IRS Conflict of Interest Policy by which a charitable organization should implement decisions regarding transactions or arrangements between the charitable organization and members of the charitable organization's board of directors and other individuals. As such, the City's Conflict of Interest Code is now being amended to remove the MSC as a related agency position. MSC Directors and Officers do not file a Statement of Economic Interests – Form 700 pertaining to the MSC, but rather, will file a separate annual declaration as required under the MSC's existing Conflict of Interest Policy.

Agenda Item No. 5(C)

The City Council is the code-reviewing body, and has regularly amended the Conflict of Interest Code to correspond to changes in the City. The last revision was completed in 2011, by Resolution No. 2010-54.

ANALYSIS

The proposed resolution requires minor revision to delete references to the Municipal Services Corporation and the Redevelopment Agency and also reflects changes in employee classifications and organizational structure.

Attachment 1 presents the entire Code for adoption with all changes incorporated. The proposed resolution clearly illustrates those portions of the Code which require revision. Text which is underlined has been added and text proposed for deletion contains ~~striketrough~~. Appendix A indentifies designated positions and commissions and establishes their respective levels of disclosure. Appendix B outlines the specific requirements of each disclosure category.

Appendix A has been updated to reflect changes in department organization, including the addition of newly established classifications and the deletion of classifications which are no longer relevant. Updates to Appendix A include the following minor changes in position classifications:

1. Assistant City Attorney – Added
2. Environmental Programs Manager – Added
3. Maintenance and Engineering Services Manager retitled Maintenance Superintendent
4. Redevelopment Program Manager retitled as Economic Program Manager

Updates to Appendix B reflect the dissolution of the Redevelopment Agency and deletion of language relating to redevelopment from the Code. Disclosure language in *Category 3: Investments* was also modified slightly to clarify disclosure for board and commission members.

The following commissions are not included in the proposed amendment because they do not meet the State's criteria for disclosure at this time: Citizens Street Oversight Committee, Civil Service Commission, Committee on Aging, Crime Prevention Committee, Environmental Quality Committee, Economic Development Board, Human Relations Commission, Parks and Recreation Commission and the Tree Committee.

Appendix B outlines specific disclosure criteria for the designated employment classifications and the boards and commissions.

The Conflict of Interest Code has also been revised to add filing requirements for a related agency position, the Successor Agency to the Former El Cerrito Redevelopment Agency and delete all references to the former Redevelopment Agency and Municipal Services Corporation.

Agenda Item No. 5(C)

The Code as presented accurately designates all positions that make or participate in the making of governmental decisions. The disclosure categories assigned to these positions accurately require the disclosure of all investments, business positions, interests in real property and sources of income which may foreseeably be affected materially by the decisions made by those designated positions. The Code includes all other provisions required by Ca. Government Code Section 87302 and incorporates by reference FPPC Regulation 2 Cal. Admin. Code Section 18730.

The City Council, City Manager, City Attorney, City Treasurer and Planning Commissioners are Ca. Govt. Code Section 87200 filers. The City Conflict of Interest Code does not apply to this group. Although the City Clerk notifies each person in this group of his/her filing obligation, the Fair Political Practices Commission acts as the Filing Officer.

The City updates its Conflict of Interest Code biennially to accommodate changes in organizational structure and job classifications. Biennial review of the City's Conflict of Interest Code is mandated by the California Political Reform Act.

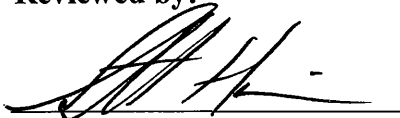
FINANCIAL CONSIDERATIONS

There will be no cost associated with the proposed revisions to the Conflict of Interest Code.

LEGAL CONSIDERATIONS

The Act requires the City Council to revise the Conflict of Interest Code on a regular basis and when such amendments are necessitated by changed circumstances, pursuant to Government Code Sections 87306 and 87306.5. Council adoption of the proposed Conflict of Interest Code will sustain continued compliance with State law.

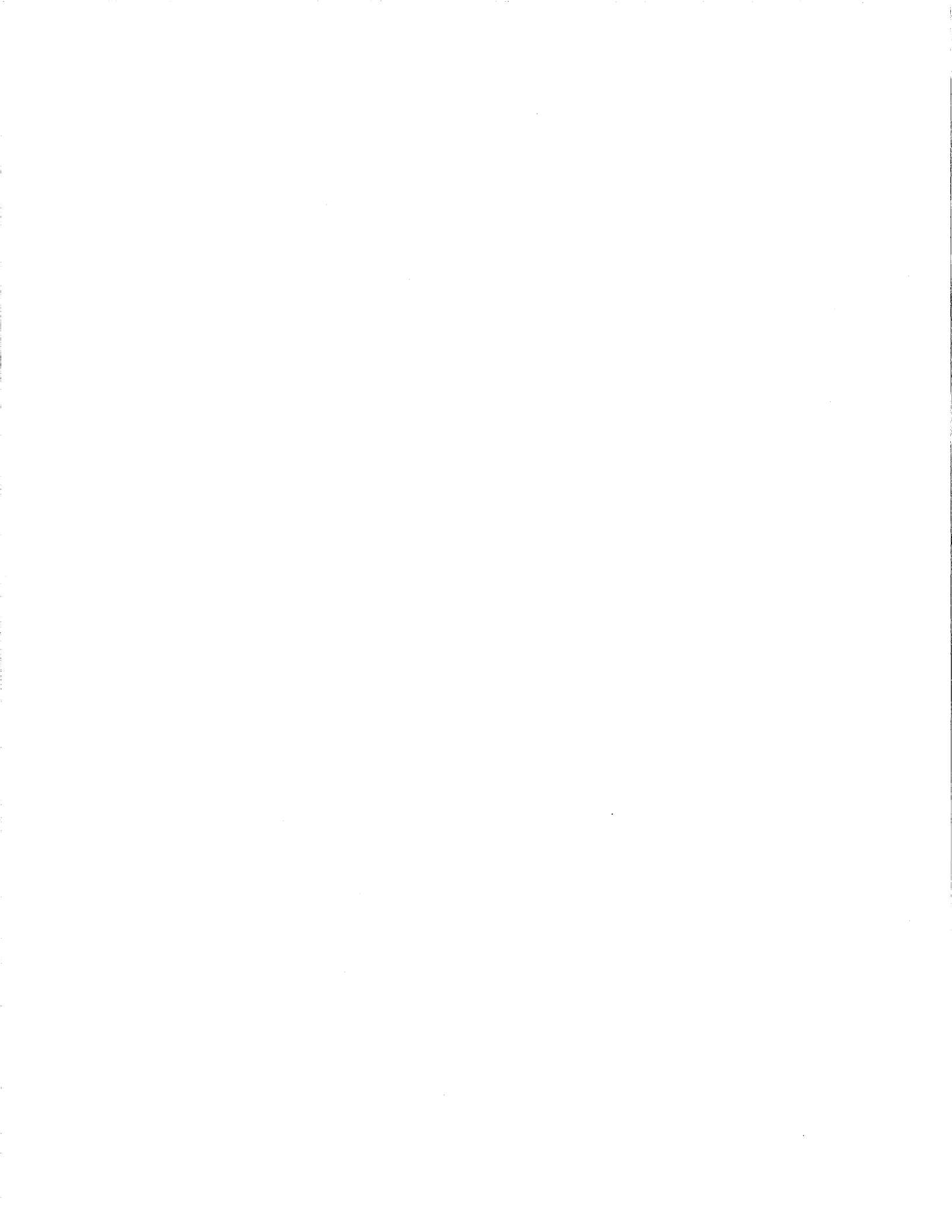
Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Proposed Resolution with revisions illustrated with underline and strikethrough



RESOLUTION 2012-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ADOPTING A REVISED CONFLICT OF INTEREST CODE FOR THE CITY OF EL CERRITO, INCLUDING THE FILING OF ANY RELATED AGENCY POSITIONS, SUCH AS THE EMPLOYEE PENSION BOARD, THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY, AND THE PUBLIC FINANCING AUTHORITY (PFA) AND THE MUNICIPAL SERVICES CORPORATION (MSC) AND RESCINDING RESOLUTION NO. 2011-54

WHEREAS, the Political Reform Act of 1974 ("Act"), Government Code Sections 8100 et seq. enacted as part of Proposition 9, requires every local agency to adopt and promulgate a Conflict of Interest Code applicable to employees or consultants holding designated employees positions and public officials within the jurisdiction of the local agency; and

WHEREAS, in 1977, the El Cerrito City Council enacted Resolution No. 3843, adopting a Conflict of Interest Code for the City of El Cerrito ("City"), and

WHEREAS, subsequent to the enactment of Resolution No. 3843, the Fair Political Practices Commission enacted 2 Cal.Code of Regs. Section 18730 which contains the terms of a standard model Conflict of Interest Code, which could be adopted by local agencies covering such matters as the manner of reporting financial interests, the procedures to be utilized in filing conflict of interest statements, the contents of such statements, the time within which such statements must be filed, etc; and which may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments to the Political Reform act; and

WHEREAS, in 1983, the City Council enacted Resolution No. 83-14 which adopted the model Conflict of Interest Code drafted by the Fair Political Practices Commission, including any amendments duly adopted by the Commission to conform to amendments to the Political Reform Act; and

WHEREAS, Appendix A of Resolution No. 83-14 listed the designated employees subject to the model Conflict of Interest Code (listed as "designated filers"); and Appendix B of Resolution No. 83-14 identified the specific financial ~~disclosures which would be applicable to the designated employees~~ interests that would be reportable; and

WHEREAS, state law as specified in the ~~Political Reform Act~~ ("Act") requires the City Council, as the City's code-reviewing body to direct the review of its Conflict of Interest Code; and

WHEREAS, the Act additionally requires the submission of a revised conflict of interest code for approval by the code-reviewing body or the notification of said body that no changes are necessary pursuant to Government Code Section 87306.5; and

WHEREAS, the City Council has regularly amended its Conflict of Interest Code to correspond to changes in the City resulting from reorganization of City departments and

Agenda Item No. 5(C)

Attachment

employees, changes in job classifications, and the addition and deletion of certain boards and commissions and to respond to any changes in State law; and

WHEREAS, the Conflict of Interest Code was last amended in 2011 through Resolution 2011-54 and the Code requires revision to reflect the changes in designated positions and the financial interests required to be reported; and

WHEREAS, this review has been completed and the City Council has determined that such changes are necessary due to changes in City organization and to comply with state law and that Appendix A and B, attached herein, accurately sets forth the designated positions, and their respective categories of financial interests which should be made reportable and those boards, commissions and committees which should be designated and the respective categories of financial interests which should be made reportable by their members; and

~~WHEREAS, the El Cerrito Municipal Services Corporation ("MSC") was created in 1982 for the broad purposes of benefiting the public, but has since then been generally inactive; and~~

~~WHEREAS, on March 7, 2011 the MSC took on new responsibility and entered into an Assignment Agreement with the City accepting the City's rights and responsibilities for economic development and redevelopment projects and programs on behalf of the El Cerrito Redevelopment Agency ("Agency"), under the Amended and Restated Public Improvements and Cooperation Agreement for the City of El Cerrito Redevelopment Project Area by and between the City and the Agency; and~~

~~WHEREAS, the City would now like to amend the Conflict of Interest Code to include filing requirements for any related agency positions, such as the Redevelopment Agency (RDA) the Successor Agency to the former El Cerrito Redevelopment Agency, the Public Financing Authority (PFA), and the Employee Pension Board; and the Municipal Services Corporation (MSC); and.~~

~~WHEREAS, the City would also like to amend the Conflict of Interest Code to include the requirement that each Redevelopment Agency Boardmember and officer file a written disclosure of any direct or indirect property interest that he/she possesses in the Redevelopment Project Area (including, without limitation, a personal residence), and refrain from acquiring any additional property in the Project Area except as permitted by Health and Safety Code Section 33130; and~~

WHEREAS, the City of El Cerrito Conflict of Interest Code, attached incorporated herein, requires revision so that it includes a filing requirement for all related agency positions, thereby accurately setting sets forth the designated positions and categories of financial interests which should be made reportable.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of El Cerrito as follows, with additions in underline and strikethrough:

Section 1. Incorporation of Recitals. All Recitals above are true and correct and are

incorporated herein.

Section 2. Adoption of Model Conflict of Interest Code. The terms of 2 Cal. Adm. Code Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and included as part of the Conflict of Interest Code of the City of El Cerrito.

Section 3. Statement of Economic Interest Requirement. Persons holding designated positions and persons required to do so by statute shall file Statements of Economic Interests with the City of El Cerrito on Fair Political Practices Commission forms, in conformance with the individual disclosure categories and State guidelines, when requested by the City Clerk. Persons holding designated positions and persons required by statute to file statements of economic interests shall also report interests for any other related agency positions, such as the Employee Pension Board, ~~Redevelopment Agency (RDA), Successor Agency to the former Redevelopment Agency, and the Public Finance Authority (PFA), and the Municipal Services Corporation (MSC).~~ The City Clerk will retain custody of the statements and make the statements available for public inspection and reproduction.

Section 4. Form 700 Requirement. In accordance with FPPC Regulation 18734, any individual hired for a position not yet covered under this Conflict of Interest Code must file a Form 700 if the individual serves in a position that makes or participates in making governmental decisions. Individuals in this category must file under the broadest disclosure category until the code is amended to include the new position unless the City of El Cerrito provides, in writing, a limited disclosure requirement.

Section 5. ~~Late Filings. Late filings and failure~~ Failure to file File statements Statements. ~~that any~~ Any violation of any provision of this Code is subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code Sections 81000 *et seq.* The following additional regulations shall apply to City of El Cerrito (a) designated employees, (b) designated members of boards and commissions appointed by the City Council, and (c) consultants:

(a) City Employees:

If a City employee fails to file an Initial, Assuming Office or Annual Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, he or she shall undergo steps resulting in a written reprimand in accordance with the provisions of the appropriate Memorandum of Understanding or City of El Cerrito Personnel Policies and Administrative Regulations. The employee's supervisor shall comply with the provisions of the appropriate Memorandum of Understanding or City of El Cerrito Personnel Rules and Administrative Regulations. In addition, the City Clerk shall impose late filing fees in accordance with Government Code Section 91013 and 91013.5. No person who has left City employment and failed to file the appropriate statement shall resume active employment with the City of El Cerrito if there are outstanding statements or fines.

(b) Members of Boards and Commissions:

If a member of any non-elected board, commission or committee specified in the Code fails to file an Assuming Office, Initial or Annual Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, the member's term on the commission shall expire. The City Clerk shall notify the commissioner that his/her term has expired and notify the City Council that a vacancy exists on the commission. ~~in~~ In addition, the City Clerk shall impose late filing fees in accordance with Government Code Sections 91013 and 91013.5.

Prior to being eligible for reappointment to any board, commission, or committee all outstanding filings for all commission appointments must be filed and any outstanding fines, payable under Government Code Section 91013, shall be paid. No person shall be appointed to any commission if there are outstanding statements or fines, and no person shall be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file statements.

(c) Consultants:

If a consultant, as defined in 2 Cal. Code Regs. Section 18701, fails to file any Statement of Economic Interests within thirty days after the City Clerk has given specific written notice of non-filing, he or she shall be advised by the City's project manager that no further payments shall be made by the City of El Cerrito under the contract until such statement has been received by the City Clerk. The City Clerk shall also impose late filing fees in accordance with Government Code Sections 91013 and 91013.5.

Section 6. Employees and Officials that Must Disclose Financial Interests. The City Conflict of Interest Code hereby includes Appendix A, which reflects changes in City organization and in the job titles of City management staff and reflects the ~~addition~~ inclusion of staff positions with decision making authority as authorized by the El Cerrito Municipal Code and in compliance with Title 2, Section 18701 of the California Code of Regulations. Designated Employees and Public Officials shall disclose financial interests as set forth in Appendix B.

A P P E N D I X A

DESIGNATED FILERS

Job Classification	Disclosure Category
Administrative Analyst	1,2,3,4
<u>Assistant City Attorney (Added)</u>	<u>1,2,3,4</u>
Assistant City Manager	1,2,3,4
Associate Engineer (Inactive)	1,2,3,4
Associate Planner (Inactive)	1,2,3,4
Battalion Fire Chief	1,2,3,4
Building Official (Inactive)	1,2,3,4

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

City Clerk	1,2,3,4
Community Development Director (<i>Inactive</i>)	1,2,3,4
Economic Development Director (<i>Inactive</i>)	1,2,3,4
Employee Services Manager	1,2,3,4
Environmental Services Manager	1,2,3,4
<u>Environmental Programs Manager (<i>Added</i>)</u>	<u>1,2,3,4</u>
Fire Chief	1,2,3,4
Information Systems Manager	1,2,3,4
Planning Manager (<i>Development Services Manager</i>)	1,2,3,4
Public Works Director/City Engineer	1,2,3,4
Maintenance Superintendent and Engineering Services	1,2,3,4
Police Chief	1,2,3,4
Police Captain	1,2,3,4
Project Manager	1,2,3,4
Recreation Director	1,2,3,4
Recreation Program Supervisor II (<i>Inactive</i>)	1,2,3,4
<u>Redevelopment Economic Program Manager (<i>Retitled</i>)</u>	<u>1,2,3,4</u>
Senior Engineer	1,2,3,4
Senior Planner	1,2,3,4
Senior Project Manager	1,2,3,4
Special Counsel	1,2,3,4
Consultants*	1,2,3,4

Commissioners & Board Members:

Arts and Culture Commissioners	5
Design Review Board Members	1,2,3,4
Financial Advisory Board Members	1,2,3,4

* With respect to consultants, the City Manager or designee may determine in writing that a particular consultant, has been hired to perform a range of duties that is sufficiently limited in scope so as not to require full compliance with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements, if any. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as the disclosure statements filed pursuant to this Resolution.

Section 7. Adoption of Disclosure Categories. The City Conflict Code hereby includes Appendix B, to achieve consistency with State Law and reflect the required disclosure categories of this Conflict of Interest Code:

**A P P E N D I X B
DISCLOSURE CATEGORIES**

Category 1: Personal Income

All sources of income, including investments, gifts, loans and travel payments as defined in Government Code Section 82030, as amended. Not included as income in this disclosure category is income received from any source outside the City of El Cerrito if that

source is not presently doing business within the City of El Cerrito and has not done business within the City of El Cerrito during the two years prior to the time this disclosure statement is made.

Category 2: Interests in Real Property

All interests in real property in excess of \$2,000 held by the designated employee, or commissioner, the employee or commissioner's spouse, domestic partner or dependent children located in whole or in part within the City of El Cerrito or within a two mile radius of the boundaries of the City of El Cerrito. Included within this disclosure category is any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property. Included within this disclosure category is any pro rata share of interests in real property of any business entity or trust in which the designated employee, or commissioner, the employee or commissioner's spouse, domestic partner or dependent children, owns directly, indirectly or beneficially, a 10 percent interest or greater. An "interest in real property" does not include the principal residence of the employee or commissioner, making the disclosure unless all or part of that residence is used for business purposes and claimed as a business deduction on the designated employee or commissioner's income tax return.

~~RDA Boardmembers. In compliance with Health and Safety Code Section 33130(a), each Agency Boardmember and officer shall file a written disclosure of any direct or indirect property interest that he/she possesses in the Redevelopment Project Area (including, without limitation, a personal residence), and shall refrain from acquiring any additional property in the Project Area except as permitted by Health and Safety Code Section 33130. The City Clerk/Agency Secretary shall cause such disclosures to be entered in the minutes of the Agency Board and the City Council of the City in fulfillment of the procedures of Health and Safety Code Section 33130(a).~~

Category 3: Investments

All financial interests in excess of \$2,000 held by the designated employee or commissioner, the employee or commissioner's spouse, domestic partner or dependent children in security issued by a business entity, including but not limited to common stock, preferred stock, options, ~~debt~~ debt instruments and any partnership or other ownership interest if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the City of El Cerrito, or does business or plans to do business in the City of El Cerrito, or has done business within the City of El Cerrito at any time during the two years prior to the time this disclosure statement is made. The term "investments" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission or a common trust fund created pursuant to Section 1564 of the Finance Code, or any bond or other debt instrument issued by any government or government agency. The term "investments" does include a pro rata share of investments of any business entity, mutual fund, or trust in which the designated employee or commissioner, or the employee's or commissioner's spouse, domestic partner or dependent children own directly, indirectly or beneficially, a 10 percent interest or greater.

Category 4: Management Positions

Management positions held with any business entity located, doing business, planning to do business, or having done business in the past two years within the City of El Cerrito.

Category 5: Arts and Culture Commission

All members of the Commission shall disclose business entities in which they have an investment, or in which they are a director, officer, partner, employee, or hold any position of management; and income as defined in Government Code Section 82030, as amended, including gifts, loans, and travel payments; if the business entity or source of income: a) has applied for, is receiving, or within the previous two years has received, funds through the City to advance Arts in El Cerrito; b) has profited from the creation, production, sale, or display of any artistic endeavor; or c) has provided services, goods, or equipment to artistic endeavors in the City of El Cerrito.

Section 8. Rescission of Previous Conflict of Interest Code. The City Council hereby rescinds Resolution No. 2011-54.

I CERTIFY that at a regular meeting on October 2, 2012 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October X, 2012.

Cheryl Morse, City Clerk

Approved:

William C. Jones III, Mayor



AGENDA BILL

Agenda Item No. 5(D)

Date: October 2, 2012

To: El Cerrito Redevelopment Agency Successor Agency

From: Lori Treviño, Economic Development Manager
Hilde Myall, Housing Program Manager
Karen Tiedemann, Legal Counsel

Subject: Bylaws for El Cerrito Redevelopment Agency Successor Agency and Update on Implementation of the Dissolution Act and Trailer Bill

ACTION REQUESTED

Adopt a Successor Agency resolution approving bylaws for the Successor Agency consistent with AB 1484.

BACKGROUND

ABx1 26 ("Dissolution Act") dissolved the El Cerrito Redevelopment Agency ("RDA") and established the El Cerrito Redevelopment Agency Successor Agency ("Successor Agency") on February 1, 2012. In June, 2012, AB 1484 ("Trailer Bill") was enacted, which made numerous changes to the Dissolution Act, requiring and/or allowing the Successor Agency to take certain actions.

SUCCESSOR AGENCY LEGAL STATUS

The Trailer Bill attempted to clarify the legal status of the Successor Agency. Most importantly, it stated that the Successor Agency and the City are separate legal entities, although it did not address the relationship between them. Other clarifications included:

- The City is not responsible for the former RDA's liabilities, as they automatically transferred to the Successor Agency upon RDA dissolution.
- The Successor Agency can only participate in redevelopment activities to the extent it is completing work on enforceable obligations.
- The Successor Agency is subject to the Brown Act.
- The City may not reverse its election to serve as the Successor Agency.
- The Successor Agency is able to file for bankruptcy as a local public entity.
- Creditors of the Successor Agency, DOF and affected taxing entities have standing to file suit to compel a Successor Agency to adopt a ROPS or face penalties.
- The Successor Agency is required to cause an annual audit of its financial transactions and records.
- The Successor Agency is required to dispose of all assets and terminate its existence within one year of its final debt payment.

The Successor Agency is authorized to:

- Hold reserves when the next allocation from the RPTTF will be insufficient to pay bond debt obligations;

Agenda Item No. 5(D)

- Create enforceable obligations as needed to conduct its wind-down activities, such as hiring staff, consultants or legal counsel, or procuring insurance;
- Enter into contracts to comply with enforceable obligations that existed prior to June 28, 2011;
- Enter into a contract (with Oversight Board approval) with the City to fund shortfalls for Successor Agency administrative costs, enforceable obligations, or project-related expenses;
- List on its ROPS certain costs separate from its administrative cost allowance.

Because the Successor Agency is now considered a separate legal entity it is important that basic operating procedures be established for the Successor Agency. Attachment 1 to this report is a Successor Agency Resolution for the Board's consideration, approving bylaws, which are Exhibit A to the Resolution, and provide those basic rules and procedures consistent with the provisions of the Trailer Bill.

TRUE UP PAYMENT

As the Board is aware, the Trailer Bill required a True Up Payment by the Successor Agency that was due on July 12, 2012. The True Up Payment for El Cerrito, which was calculated by the CAC based on the methodology specified by the Department of Finance ("DOF"), was \$1,756,794.67. The Successor Agency did not make the payment, but instead filed suit in Sacramento Superior Court challenging the State's authority to redistribute tax increment and disputing the methodology specified by DOF and used by the CAC to calculate the payment. While DOF representatives have publicly claimed that the dispute has been resolved and stated that penalties will not be assessed, it is unclear how DOF came to these conclusions and the litigation remains active at this time.

ROPS III

Subsequent to review by the Successor Agency at its August 21, 2012 meeting, ROPS III was amended to include an obligation of \$30,000 for completion of the Due Diligence Review described later in this report. The Oversight Board approved ROPS III for the period January to June 2013, including this additional obligation, and it was submitted to DOF, the CAC and the County Administrator for consideration, as required. Information regarding the amount of funds that will be available to make the payments approved on ROPS III has not yet been made available by the CAC.

HOUSING SUCCESSOR AND HOUSING ASSET TRANSFERS

The Trailer Bill significantly modified treatment of affordable housing assets and obligations under the Dissolution Act. In particular, the definition of a Housing Asset is clarified to include real property purchased for affordable housing, encumbered funds, receivables, and amounts that were owed to the Low and Moderate Income Housing Fund ("LMIHF") from the RDA for funds borrowed to pay the Supplemental Educational Revenue Augmentation Fund ("SERAF") in prior years. These SERAF-related changes were reflected in the Successor Agency's ROPS III, approved by the Oversight Board to the Successor Agency ("Oversight Board").

The Trailer Bill also proscribed a process for DOF review of the transfer of Housing Assets from the RDA to the City as Housing Successor, which was completed on

September 1, 2012. A copy of the Housing Assets List and DOF determination letter are Attachments 2 and 3 to this report.

AGREED UPON PROCEDURES

The Dissolution Act originally required that the County Auditor-Controller (“CAC”) to complete an agreed-upon procedures (“AUP”) to review the activities of the RDA while in suspension, in order to determine its enforceable obligations prior to certifying the Successor Agency’s first Recognized Obligations Payment Schedule (“ROPS”). Due to the delay in dissolution of the RDA by the CRA v. Matosantos litigation, the timing of the AUP and first ROPS were reversed. The Trailer Bill removed the requirement of the CAC certifying the first ROPS and delayed the completion of the AUP until October 1, 2012. Once finalized by the CAC, the AUP will be provided to the Successor Agency.

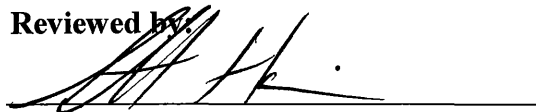
DUE DILIGENCE REVIEW

The Trailer Bill added a requirement of the Successor Agency to hire a licensed accountant, to be approved by the CAC, to complete a due diligence review (“DDR”) of the dissolution of the RDA and establishment of the Successor Agency, including disposition of real property and use of RDA funds. The process includes simultaneous consideration of the Review by the Oversight Board, the County administrative officer, the CAC, and the DOF. Review of the LMIHF is to be completed by October 1, 2012 and all other RDA funds by December 15, 2012.

Shortly after enactment of the Trailer Bill, the Government Accounting and Audit Committee (“GAAC”) advised certified public accounting firms not to engage this DDR as it doesn’t follow professional accounting standards. The GAAC worked with the DOF and State Controller’s Office on procedures that will meet accounting standards, which were available at the end of August. The DOF advised successor agencies that due to the delays in determining the procedures, penalties will not be levied for failing to complete the LMIHF portion of the DDR by October 1. The Successor Agency has engaged the licensed accounting firm MGO and the DDR for the LMIHF is underway.

The intent of the DDR is to determine if any funds or assets should be returned to the CAC for distribution to taxing entities. Of particular concern are provisions of the Trailer Bill that appear to exclude from the definition of enforceable obligations certain items that were considered enforceable under the Dissolution Act, thereby retroactively disallowing payments made by the RDA prior to dissolution, even though such payments were valid at the time they were made. Should the Successor Agency comply with any required return of funds and assets, the result of the DDR would be a Finding of Completion by the DOF that would allow the Successor Agency to retain RDA assets for redevelopment purposes.

Reviewed by:



Scott Hanin
Executive Director

Attachments:

1. Successor Agency Resolution 2012-XX, adopting bylaws of the Successor Agency
2. Housing Asset List
3. DOF determination letter for Housing Asset List

SUCCESSOR AGENCY RESOLUTION NO. 2012-XX

**RESOLUTION OF THE EL CERRITO SUCCESSOR AGENCY TO THE FORMER
REDEVELOPMENT AGENCY ADOPTING BYLAWS OF THE SUCCESSOR AGENCY**

WHEREAS, Health and Safety Code Section 3473 establishes that El Cerrito Redevelopment Agency Successor Agency (“Successor Agency”) is an entity separate from the City of El Cerrito; and

WHEREAS, the City Council of the City of El Cerrito serves as the governing body of the Successor Agency; and

WHEREAS, to assure the orderly process and function of the Successor Agency, it is desirable for the Successor Agency to adopt bylaws setting forth the operating procedures of the Successor Agency; and

WHEREAS, the Successor Agency staff has prepared proposed bylaws, a copy of which is attached to this Resolution as Exhibit A and incorporated herein by this reference.

NOW THEREFORE, BE IT RESOLVED that the El Cerrito Redevelopment Agency Successor Agency hereby approves the “Bylaws of the El Cerrito Redevelopment Agency Successor Agency” in the form attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect upon adoption.

PASSED AND ADOPTED by the El Cerrito Redevelopment Agency Successor Agency, California, this 2nd day of October, 2012, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

William C. Jones, III
Successor Agency Chair

ATTEST:

Cheryl Morse
Successor Agency Secretary

EXHIBIT A

BYLAWS OF THE EL CERRITO REDEVELOPMENT AGENCY SUCCESSOR AGENCY

ARTICLE I - THE SUCCESSOR AGENCY AND CITY COUNCIL

Section 1. Name. The official name of the successor agency shall be the "El Cerrito Redevelopment Agency Successor Agency."

Section 2. Office. The main office of the Successor Agency shall be at 10890 San Pablo Avenue, El Cerrito, California, or such other location in the City of El Cerrito that then serves as the office of the City Manager of the City of El Cerrito.

Section 3. Powers. The powers of the Successor Agency are vested in its members then in office, as set forth in Section 4 below. The members of the Successor Agency shall be referred to as "Successor Agency Boardmembers," and the members sitting as the governing body of the Successor Agency shall be referred to as the "Successor Agency Board." The Successor Agency, acting through the Successor Agency Board, shall exercise the powers of a successor agency in accordance with the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) and all other applicable laws. The Successor Agency Board may delegate such powers as are permitted by law, as appropriate within a suitable framework.

Section 4. Members. The members of the El Cerrito City Council from time to time shall serve as the Successor Agency Boardmembers and shall constitute the Successor Agency.

ARTICLE II - OFFICERS

Section 1. Officers. The officers of the Successor Agency shall be a Chair, Vice-Chair, Treasurer, Secretary and Executive Director. In addition, the City Attorney of the City of El Cerrito shall serve as Successor Agency Counsel.

Section 2. Additional Officers and Assistant Officers. The Successor Agency Board may, by resolution, appoint such additional officers, and assistant officers, establish their terms of office, and define their duties as the Successor Agency determines necessary or desirable.

Section 3. Chair. The Chair shall be the Mayor of the City of El Cerrito, and shall preside at all meetings of the Successor Agency Board. Subject to applicable statutory restrictions, the Chair shall be entitled to vote on all matters coming before the Successor Agency Board. The Chair may execute all documents of whatever description on the Successor Agency's behalf upon prior authorization of the Successor Agency Board.

Section 4. Vice-Chair. The Vice-Chair shall be the Vice Mayor of the City Council of the City of El Cerrito. The Vice-Chair shall perform the duties of the Chair in the absence or incapacity of the Chair. In case of the resignation or death of the Chair, the Vice-Chair shall perform such duties as are imposed on the Chair until such time as a new Mayor of the City Council of the City of El Cerrito is elected or appointed, at which time the new Mayor shall become Chair. Subject to applicable statutory restrictions, the Vice Mayor shall be entitled to vote on all matters coming before the Successor Agency Board. The Vice Mayor may execute all documents of whatever description on the Successor Agency's behalf upon prior authorization of the Successor Agency Board.

Section 5. Treasurer. The Treasurer shall be the Finance Director of the City of El Cerrito. The Treasurer shall be responsible for ascertaining that all funds of the Successor Agency are properly accounted for and are deposited in the name of the Successor Agency in such accounts and financial instruments as are permitted by law and consistent with the investment guidelines and procedures of the City of El Cerrito, which are hereby adopted as the investment guidelines and procedures of the Successor Agency. All checks issued by the Successor Agency shall be signed and/or countersigned by a person authorized to sign checks on behalf of the City of El Cerrito. All persons so authorized shall be bonded for faithful performance of duty in the same manner as they may be bonded in their comparable capacity on behalf of the City of El Cerrito.

Section 6. Secretary. The Secretary shall be the City Clerk of the City of El Cerrito. The Secretary shall keep the records of the Successor Agency Board and record all votes, and shall keep a record of the proceedings to be kept for such purposes, and shall perform all duties incident to said office. The Secretary shall keep in safe custody the seal of the Successor Agency and shall have the power to affix such seal to all contracts and instruments authorized to be executed by the Successor Agency.

Section 7. Executive Director. The Executive Director shall be the City Manager of the City of El Cerrito. The Executive Director shall serve as administrative officer of the Successor Agency, shall be directly responsible to the Successor Agency Board, and, subject thereto, shall have complete control of the responsibility for the execution of the Successor Agency's policies, the administration of its affairs, and the fulfillment of such other duties as from time to time the Successor Agency may impose. The Executive Director may execute all documents of whatever description upon prior authorization of the Agency Board or as otherwise required for the intended operation of the Successor Agency's powers, and may designate in writing a deputy to execute any such documents. The Executive Director shall have authority to enter into contracts on behalf of the Successor Agency in amounts not to exceed \$25,000 without the prior approval of the Successor Agency Board, provided such contracts comply with the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*)

Section 8. Additional Duties. The officers of the Successor Agency shall perform such other duties and functions as may from time to time be required by the Successor Agency, these Bylaws, other rules or regulations of the Successor Agency, and applicable law. No Successor Agency Boardmember shall be eligible to fill the office of Executive Director, Treasurer or Secretary except as a temporary appointee.

Section 9. Successor Agency Personnel. With the prior authorization of the Successor Agency Board and subject to applicable law, the Successor Agency may from time to time employ or retain such personnel as it deems necessary to exercise its powers, duties, and functions as prescribed by applicable law.

ARTICLE III - MEETINGS

Section 1. Meeting Time and Place.

a. All meetings of the Successor Agency Board shall be open and public, and all persons shall be permitted to attend any meeting of the Successor Agency Board, except that closed sessions may be held when permitted by law.

b. The time and place of regular meetings of the Successor Agency Board shall be the same as the time and place of the regular meetings of the City Council of the City of El Cerrito; provided, however, that if there is no matter scheduled before the Successor Agency Board at the time of a regular meeting of the City Council of the City of El Cerrito, the regular meeting of the Successor Agency Board otherwise scheduled for such time shall be deemed cancelled.

c. The time, place and manner of calling special and emergency meetings and adjourning or continuing regular meetings of the Successor Agency Board shall be in accordance with the Ralph M. Brown Act (Government Code Section 54950 et seq.).

Section 2. Agendas and Conduct of Meetings. The rules, regulations, procedures, and requirements for the noticing, agendaing and conduct of the regular and special meetings of the Successor Agency Board (including, without limitation, the rules, regulations, procedures and requirements for allowing public comment in accordance with Government Code Section 54934.3(b), the requirements for a quorum and for the required number of Successor Agency Boardmembers to take action, and the order and manner for conducting business) shall be the same as the rules, regulations, procedures, and requirements for the regular and special meetings of the City Council of the City of El Cerrito.

ARTICLE IV - GENERAL PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Successor Agency shall be the same as the fiscal year of the City of El Cerrito.

Section 2. Compensation. Successor Agency Boardmembers shall serve without compensation and shall receive no reimbursement for costs.

Section 3. Amendments to Bylaws. Any of these Bylaws may be amended or repealed and new Bylaws may be adopted with the approval of a majority of the members of the Successor Agency Board at a regular or special meeting.

Dated: October 2, 2012

Adopted by Resolution No. 2012XX

**Agenda Item No. 5(D)
Attachment 2**

**DEPARTMENT OF FINANCE
HOUSING ASSETS LIST
ASSEMBLY BILL X1 26 AND ASSEMBLY BILL 1484
(Health and Safety Code Section 34176)**

Former Redevelopment Agency: El Cerrito Redevelopment Agency

Successor Agency to the Former Redevelopment Agency: Successor Agency to the former El Cerrito Redevelopment Agency

Entity Assuming the Housing Functions of the former Redevelopment Agency: City of El Cerrito

Entity Assuming the Housing Functions Contact Name: Hilde Myall Title Housing Program Manager Phone (510) 215-4358 E-Mail Address hmyall@ci.el-cerrito.ca.us

Entity Assuming the Housing Functions Contact Name: Lori Trevino Title Economic Development Manage Phone (510) 215-4383 E-Mail Address ltrevino@ci.el-cerrito.ca.us

All assets transferred to the entity assuming the housing functions between February 1, 2012 and the date the exhibits were created are included in this housing assets list. The following Exhibits noted with an X in the box are included as part of this inventory of housing assets:

Exhibit A - Real Property	x
Exhibit B- Personal Property	
Exhibit C - Low-Mod Encumbrances	x
Exhibit D - Loans/Grants Receivables	x
Exhibit E - Rents/Operations	
Exhibit F- Rents	x
Exhibit G - Deferrals	x

Prepared By: Hilde Myall

Date Prepared: 1-Aug-12

City of El Cerrito
Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)
Housing Successor Owned Real Property (Section 34176(e)(1))

Item #	Type of Asset a/	Legal Title and Description	Carrying Value of Asset	Total square footage	Square footage reserved for low-mod housing	Is the property encumbered by a low-mod housing covenant?	Source of low-mod housing covenant b/	Date of transfer to Housing Successor Agency	Construction or acquisition cost funded with Low-Mod Housing Fund monies	Construction or acquisition costs funded with other RDA funds	Construction or acquisition costs funded with non-RDA funds	Date of construction or acquisition by the former RDA	Interest in real property (option to purchase, easement, etc.)
1	Real property for low-mod housing w/ commercial space	Real property address: 10848 and 10860 San Pablo Avenue, El Cerrito. Assessor Parcel Numbers: 503-010-003, 503-101-014	\$3,950,000	Land area is 41,985 sf (.96 acres). Square footage of proposed development is 59,779.	55,176 for 63 dwelling units, including common area and circulation space.	Yes.	See Exhibit C, Item 3: Pursuant to the terms of the Loan Agreement California Redevelopment Law regulatory restrictions for affordable rental housing will be recorded on the subject property at the time the property is conveyed to the developer.	February 1, 2012, pursuant to City Council Resolution No.2012-04, when City elected to retain housing functions. Note: This property was deeded to the City on March 22, 2011.	\$2,130,000 for land acquisition; \$40,000 for developer loan agreement (see Exhibit C, Item 2).	\$1,820,000 of tax-exempt bond proceeds for land acquisition; \$310,000 in RPTTF requested to fund developer loan agreement (See Exhibit C, Item 2).	All other proposed financing per developer proposal: \$2,000,000 CDBG; \$2,501,791 HOME; \$1,200,000 MHSA; \$630,000 AHP; \$11,071,287 LIHTC equity; \$1,017,031 Private financing; \$707,378 HUD Section 8 Mortgage TDC; \$23,427,486	1-May-09	fee simple ownership
2	Regulatory Agreement for mixed-income housing with commercial space.	Regulatory Agreement and Declaration of Restrictive Covenants El Cerrito Mill and Lumber (for the Village at Town Center, 10810 San Pablo Avenue, El Cerrito)	\$0	Development contains 158 units of mixed-income rental housing and commercial space.	24 rental units are deed-restricted to low- and moderate-income households through the Regulatory Agreement.	Yes.	California Redevelopment Law	1-Feb-12	\$0. No RDA financial assistance.	\$0. No RDA financial assistance.	No RDA or other public funds. Privately financed development. Estimated property value of \$23,459,823.	Date of Regulatory Agreement is 11/22/2005.	Deed restriction running with the land.
3	Notice of Special Housing Affordability Restrictions for low-mod housing	Notice of Special Housing Affordability Restrictions, El Cerrito Redevelopment Agency, Ibox Group (for the Del Norte Place, 11720 San Pablo Avenue)	\$0	Total estimated SF of mixed-use development: 124,257, including 135 rental units and 17,000 sf of commercial space.	Per agreement, no less than 20% of rental units or 27 units reserved for very-low income.	Yes.	California Redevelopment Law placed by Notice. In addition, property has tax credit and state bond indenture deed restrictions recorded by other public agencies.	1-Feb-12	Approximately \$3 million of LMIHF funded land acquisition in 1990. In 2003, the RDA sold its interest in the land to the developer and refunded a proportionate share of the sale proceeds to the LMIHF.	Information not available.	4% LIHTC, mortgage revenue bonds issued by Contra Costa County, private financing.	Date of Notice of Affordability Restrictions is 04/01/1991	Deed restriction running with the land.
4	Partnership interest in landowner of low-mod housing with associated community center	Partnership interest in landowner of land leased for low-mod housing and associated community center. Landowner is St. John's Land Partnership, a partnership between Roman Catholic Welfare Corporation of Oakland and the El Cerrito Redevelopment Agency (transferred to City of El Cerrito as Housing Successor) Address: 6510 Gladys Ave., El Cerrito. APNs: 502-540-002, 502-540-003, 502-540-001.	\$0	Development includes senior care facility of 102 units of senior housing and a community center of approximately 5,000sf.	30%, or 31 units, of the 102 senior housing units are reserved for very-low income senior households.	Yes.	Low-mod housing units covenanted by California Redevelopment Law and state bond indenture. Care facility is licensed by Department of Social Services.	1-Feb-12	A loan of \$250,000 of LMIHF monies was made in 1987 and subsequently repaid, per the loan agreement, in 2008.	No RDA funds.	Land dedication by private entity, mortgage revenue bonds issued by Contra Costa County.	Partnership acquired property as of 12/07/1987.	Partnership interest in landowner.

a/ Asset types may include low-mod housing, mixed-income housing, low-mod housing with commercial space, mixed-income housing with commercial space.

b/ May include California Redevelopment Law, tax credits, state bond indentures, and federal funds requirements.

c/ Deeds of trust associated with Housing Assets listed on Exhibit D or Exhibit E are not separately listed in this Exhibit A; but are considered interest in real property of the Housing Successor incorporated herein by this reference.

d/ Affordability covenants associated with Housing Assets listed on Exhibit D or Exhibit E are not separately listed in this Exhibit A; but are considered interest in real property of the Housing Successor incorporated herein by this reference.

e/ Includes any deed of trust, assignment agreement and related documents associated with Housing Assets listed in this Exhibit A; incorporated herein by this reference.

Listing of associated deeds of trust, development agreements and related documents:

Item 3. Disposition and Development Agreement between the Ibox Group and El Cerrito RDA (1990); Assignment and Assumption Agreements (1991, 2003, 2007)

Exhibit B - Personal Property

City of El Cerrito
Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)
Housing Successor Owned Personal Property (Section 34176(e)(1))

Item #	Type of Asset a/	Description	Carrying Value of Asset	Date of transfer to Housing Successor Agency	Acquisition cost funded with Low-Mod Housing Fund monies	Acquisition costs funded with other RDA funds	Acquisition costs funded with non-RDA funds	Date of acquisition by the former RDA
1								
2								
3								
4								

NO PERSONAL PROPERTY ITEMS TO REPORT

a/ Asset types any personal property provided in residences, including furniture and appliances, all housing-related files and loan documents, office supplies, software licenses, and mapping programs, that were acquired for low and moderate income housing purposes, either by purchase or through a loan, in whole or in part, with any source of funds.

**City of El Cerrito
Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)**

Encumbered Housing Funds for Enforceable Obligations (Section 34176(e)(2)) AND Excess Housing Bond Proceeds

Item #	Type of housing built or acquired with enforceably obligated funds a/	Date contract for Enforceable Obligation was executed	Contractual counterparty	Total amount currently owed for the Enforceable Obligation	Is the property encumbered by a low mod housing covenant?	Source of low-mod housing covenant b/	Current owner of the property	Construction or acquisition cost funded with Low-Mod Housing Fund monies	Construction or acquisition costs funded with other RDA funds	Construction or acquisition costs funded with non-RDA funds	Date of construction or acquisition of the property
1	Loan Agreement for development of Low-Mod housing with commercial space	24-Jun-09	Ohlone Gardens, L.P.	\$ 471,152	Yes	California Redevelopment Law	Ohlone Gardens, L.P.	\$3,028,848	\$0	All other financing: \$2,860,000 Prop. 1C Infill Infrastructure Grant; \$562,430 MHPWA; \$500,000 HOPWA; \$560,000 AHP; \$14,849,454 LIHTC equity. TDC is \$24,513,736.	Property acquisition date: July 2, 2009. Anticipated commencement of construction: March 2013
2	Loan Agreement for development of Low-Mod housing with commercial space	17-May-11	Eden Housing, Inc.	\$ 310,000	Pursuant to the terms of the Loan Agreement, California Redevelopment Law regulatory restrictions for affordable rental housing will be recorded on the subject property at the time the property is conveyed to the developer.	California Redevelopment Law	City of El Cerrito as Housing Successor (see Exhibit A, Item 1).	\$40,000 of predevelopment costs have been disbursed through the Loan Agreement with LMIHF monies. The remaining \$310,000 is requested on the ROPS through RPTTF.	\$310,000 requested on ROPS from RPTTF.	All other proposed financing per developer proposal: \$2,000,000 CDBG; \$2,501,791 HOME; \$1,200,000 MHPWA; \$630,000 AHP; \$11,071,287 LIHTC equity; \$1,017,031 Private financing; \$707,378 HUD Section 8 Mortgage. TDC: \$23,427,486	Property acquisition date: May 1, 2009. Anticipated start of construction: March 2015
3	Developer deposit held in trust under terms of the Exclusive Negotiating Rights Agreement for development of low-mod housing with commercial space. (Related to item 3, above, and Exhibit A, Item 1.)	8-Mar-11	Eden Housing, Inc.	\$ 25,000	See item 2, above.	See item 2, above.	See item 2, above.	See item 2, above.	See item 2, above.	See item 2, above.	See item 2, above.

a/ May include low-mod housing, mixed-income housing, low-mod housing with commercial space, mixed-income housing with commercial space.

b/ May include California Redevelopment Law, tax credits, state bond indentures, and federal funds requirements.

City of El Cerrito
Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)
Assets generated from Housing Fund Expenditures on Property Owned by Third Parties (Section 34176(e)(3))

Item #	Was the Low-Mod Housing Fund amount issued for a loan or a grant? b/	Amount of the loan or grant	Date the loan or grant was issued	Person or entity to whom the loan or grant was issued	Purpose for which the funds were loaned or granted	Are there contractual requirements specifying the purposes for which the funds may be used?	Repayment date, if the funds are for a loan	Interest rate of loan	Current outstanding loan balance
1	Residual receipts loan. See Footnote b/.	\$350,000	17-May-11	Eden Housing, Inc.	Predevelopment financial assistance to develop low-mod rental housing.	Yes.	Disbursed loan amount is to be forgiven except in case of developer default.	3% annual interest on principal disbursed.	\$40,000 outstanding. \$310,000 remaining to be disbursed to borrower, see Exhibit C, Item2.
2	Residual receipts loan. See Footnote b/.	\$3,500,000	24-Jun-09	Ohlone Gardens, L.P.	Predevelopment, acquisition and construction financial assistance to develop low-mod rental housing	Yes.	Annual residual receipt repayment installments starting May 1 of the year of Project completion, or upon event of borrower default. Final maturity date of 55 years from date of initial occupancy.	3% annual interest on principal disbursed.	\$3,210,179, including accrued interest. \$471,152 remaining to be disbursed to borrower, see Exhibit C, Item 1.
3	Residual receipts loan. See Footnote b/.	\$350,000	21-Jan-97	Idaho Apartments, L.P.	Financial assistance to acquire and rehab low-mod rental housing.	Yes.	Annual residual receipt repayment installments starting 12/09/2009, or upon event of borrower default. No residual receipts payable to date. Final maturity date of 55 years from date of initial occupancy.	3% annual interest on principal disbursed.	\$379,750, including accrued interest.

a/ Funded with multiple sources, including the Low and Moderate Income Housing Funds and CDBG, HOME, or other funding.

b/ Includes any deed of trust and affordability covenants associated with Housing Assets listed in this Exhibit D; incorporated herein by this reference.

Listing of associated deeds of trust, affordability covenants and related documents:

- Item 1. Promissory Note; Assignment Agreement
- Item 2. Promissory Note, Deed of Trust, Regulatory Agreement & Declaration of Restrictive Covenants
- Item 3. Owner Participation Agreement, Deed of Trust and Security Agreement, Promissory Note, Intercreditor Agreement with County of Contra Costa

City of El Cerrito

Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)

Assets generated from Non-Housing Fund Expenditures on Property Owned by Third Parties (Section 34176(e)(4)) see Footnote /d and /e

Item #	Type of payment a/	Type of property with which they payments are associated b/	Property owner	Entity that collects the payments	Entity to which the collected payments are ultimately remitted	Purpose for which the payments are used	Is the property encumbered by a low-mod housing covenant?	Source of low-mod housing covenant c/	Item # from Exhibit A the rent/operation is associated with (if applicable)
1									
2									
3									

NO ITEMS TO REPORT.

a/ May include revenues from rents, operation of properties, residual receipt payments from developers, conditional grant repayments, costs savings and proceeds from refinancing, and principal and interest payments from homebuyers subject to enforceable income limits.

b/ May include low-mod housing, mixed-income housing, low-mod housing with commercial space, mixed-income housing with commercial space.

c/ May include California Redevelopment Law, tax credits, state bond indentures, and federal funds requirements.

d/ All Housing Assets listed in Exhibit D also meet the definition under 34176(e)(3); but are listed in Exhibit D and not repeated herein.

City of El Cerrito

Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)

Income derived from Real Property Owned by Housing Successor (Section 34176(e)(5))

Item #	Type of payment a/	Type of property with which the payments are associated b/	Property owner	Entity that collects the payments	Entity to which the collected payments are ultimately remitted	Purpose for which the payments are used	Is the property encumbered by a low-mod housing covenant?	Source of low-mod housing covenant c/	Item # from Exhibit A the rent is associated with (if applicable)
1	Annual ground lease payment	Senior congregate care facility, including low income housing, and associated community center	Land is owned by St. John's Land Partnership, a partnership between Roman Catholic Welfare Corporation of Oakland and the El Cerrito Redevelopment Agency (transferred to City of El Cerrito as Housing Successor). Improvements are owned by El Cerrito Royale, L.P. and the Roman Catholic Welfare Corporation of Oakland.	St. John's Land Partnership	St. John's Land Partnership	Nominal payments received. (\$1 annual lease payment.)	Yes. See Exhibit A, Item 4.	See Exhibit A, Item 4.	Item 4.

a/ May include rents or home loan payments.

b/ May include low-mod housing, mixed-income housing, low-mod housing with commercial space, mixed-income housing with commercial space.

c/ May include California Redevelopment Law, tax credits, state bond indentures, and federal funds requirements.

City of El Cerrito
Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)

Loans or Deferrals owing to the LMIHF (Section 34176(e)(6))

Item #	Purpose for which funds were deferred	Fiscal year in which funds were deferred	Amount deferred	Interest rate at which funds were to be repaid	Current amount owed	Date upon which funds were to be repaid
1	Loan of funds to RDA for FY 2009/10 SERAF Payment pursuant to Health & Safety Code Section 33690(c)(1) & (2).	2009/10	\$ 1,767,418	0%	\$995,741. See Footnote a/	Equal annual repayments, with balance fully repaid by 6/30/2015 per Health & Safety Code Section 33690(c)(1)(2).
2	Loan of funds to RDA for FY 2004/5, 2005/6 ERAF Payments pursuant to Health & Safety Code Section 33681.12.	2004/5, 2005/6	\$ 609,908	0%	\$251,577. See Footnote b/	Equal annual repayments, with balance fully repaid by 6/30/2015 per Health & Safety Code Section 33681.12.

a/ Current amount owed reflects approval of \$331,914 payment from RPTTF by Oversight Board and DOF on 1st ROPS.

b/ Current amount owed reflects approval of \$83,859 payment from RPTTF by Oversight Board and DOF on 1st ROPS.



EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

September 5, 2012

Ms. Hilde Myall, Housing Program Manager
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Dear Ms. Myall:

Subject: Housing Assets Transfer Form

Pursuant to Health and Safety Code (HSC) section 34176 (a) (2), the City of El Cerrito submitted a Housing Assets Transfer Form (Form) to the California Department of Finance (Finance) on August 1, 2012 for the period February 1, 2012 through August 1, 2012.

Finance has completed its review of your Form, which may have included obtaining clarification for various items. Based on a sample of line items reviewed and the application of law, Finance is not objecting to any assets or transfers of assets identified on your Form.

Please direct inquiries to Nichelle Thomas, Supervisor or Wendy Griffe, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Lori Trevino, Economic Development Manager, City of El Cerrito
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office



AGENDA BILL

Agenda Item No. 6

Date: October 2, 2012

To: El Cerrito City Council

From: Noel M. Ibalio, Senior Planner
Jennifer Carman, Development Services Manager

Subject: Appeal of the Planning Commission's Approval of a Conditional Use Permit at 11858 San Pablo Avenue.

ACTION REQUESTED

Conduct a public hearing and upon conclusion approve a resolution denying the appeal of the Planning Commission's approval of a Conditional Use Permit to allow the reuse of a vacant auto dealership for an auto sales and auto service use located at 11858 San Pablo Avenue.

DISCUSSION

Background

The existing building is located on a site that was once part of a larger full service auto dealership site. City records show that the entire site was used as an auto repair shop in 1957 and transitioned into a full service dealership in 1975 through 2008, first by Honda and later by Mitsubishi. When the Mitsubishi dealership closed their doors in 2008, the site laid dormant. In 2010, the property owner at the time filed and obtained approval of a lot split, one 0.87 parcel and one 0.63 acre parcel.

The larger of the two lots was purchased by Steve Kahn of Steve's Auto Care. Mr. Kahn purchased the site to establish an auto sale and repair service use. Pursuant to Section 19.07.020 of the El Cerrito Municipal Code (ECMC), approval of a use permit for an automobile oriented use is required in the CC zoning District. A use permit and design review approval were granted in 2011. Subsequently, Mr. Kahn renovated the site in 2011 and obtained a Certificate of Occupancy from the City earlier this year.

The remainder 0.63 acre parcel is now being purchased by Xiao Yi Zheng for an automobile oriented use (consignment sales and repair service). The Planning Commission considered the project in a duly noticed public hearing on August 15, 2012 and approved the Conditional Use Permit upon motion of Commissioner Coty, second by Commissioner Pine with a 4-0-0-1 vote with one Commissioner absent. Mr. Kahn spoke in opposition to the project. An appeal was filed on August 16, 2012.

Project Proposal

The applicant is proposing to operate a consignment auto sale and auto service use. The primary use on the site will be for auto sales. Clients will park their cars on the lot for display while sales personnel market and sell the cars over the internet and other advertising means. Designated spaces will be provided at the rear of the lot for clients to display their automobiles. Interested buyers can then visit the business and view the cars on the lot. As an ancillary use to the sales, auto service will be provided for the cars being sold and for the general public. The auto service will locate inside and to the rear of the building and will include repair and maintenance of engines, transmissions, brakes, and other related automobile components. Hours of operation will be from 7:30 a.m. to 7:00 p.m. Monday through Saturday.

With regards to site improvements, the applicant is proposing to improve both the building and the site. Most of the work on the building will be minor and will be conducted internally. Two lifts will be added inside the building, two walls will be added to house hazardous materials and trash, and repairs will be made to the existing restrooms that have been vandalized. The Design Review Board reviewed the project under a conceptual review on August 1, 2012. Most of the recommendations were site and building improvements.

Planning Commission Determination

On August 15, 2012, the Planning Commission considered the case at their regularly scheduled public hearing. The Commission found the project proposal to be consistent with the General Plan designation of Commercial/Mixed use, intent of the CC (Community Commercial Zone) and compatible with the surrounding auto oriented businesses. The Commission then approved the case based on the finding required under Section 19.34.040.A of the El Cerrito Municipal Code and related conditions of approval.

Basis of the Appeal

Steve Kahn of Steve's Auto Care, 11820 San Pablo Avenue (adjacent property to the South), submitted an appeal of the Planning Commission's decision on August 16, 2012. The points listed in the appeal and staff justification for supporting the Planning Commission's decision are as follows (letter dated August 16, 2012):

- 1) *The site has never been registered by the Bureau of Automotive Repair, nor with the CAL EPA. The site was a show room for new vehicles and prior to that was a Mexican restaurant. The term "re-use" does not seem to be accurate.*

Under the CUP process, pursuant to Section 19.34.040.A of the El Cerrito Municipal Code, any automotive use requiring the approval of a use permit does not require the approval of the Cal EPA in order for the Planning Commission to consider a Use Permit. The term "re-use" in the Planning Commission staff report refers to the once overall automotive use of the entire 1.5 acre site as a Honda and Mitsubishi dealership, prior to the lot split, and then again the "re-use" of the building as an automobile

Agenda Item No. 6

oriented use as an office, showroom and display, and now adding a service repair component.

- 2) *I spoke briefly at the most recent PC meeting on 8-15-12, and asked specifically if there is a driveway to access Kearney Street from the subject property and was told "NO". However, I was required to have shipping and receiving to be conducted on Kearney Street and have upheld that, to keep San Pablo Avenue free of added congestion. It is very awkward to have suppliers not deliver to the front of 11820 and yet be ok for 11858.*

The parcel to the south (11820 SPA) has two existing driveways along Kearney Street. The subject site does not have a driveway access onto Kearney Street, driveway access is from San Pablo Avenue. As cars are delivered by their property owners to the subject lot for "for sale" consignment, they are immediately placed in a designated parking space for "for sale" cars. With regards to Steve's Auto site, suppliers typically utilize large trucks, whether it is for auto repair supplies or "for sale" cars on this site. To mitigate potential impacts to San Pablo Avenue and given the rear access points along Kearney, the use permit for Steve's Auto required that deliveries occur at the rear on Kearney Street, rather than on San Pablo Avenue.

- 3) *The most concerning is the total upset of the layout and use of the front of my business by competing with visual and audible activities of the proposed auto repair bays. As set forth by the Planning Commission, Zone one and Zone two are not being observed with the proposal of the auto repair bays on the south side of the building, clearly visible from San Pablo Avenue, as well as my property.*

The site configuration, size and building orientation of the two properties are opposite of each other. The building on the subject lot is located at the front of the site with the parking located at the rear. The building on the subject lot will have a display area at the front of the building, auto service at the rear of the building and a parking lot at the rear of the site. Due to the building's orientation, the location of the new service bays offer the necessary width for access. Steve's Auto has parking at the front of the site with a one room display area and the service bays at the rear of the site accessed by two driveways from Kearney Street. There are no specified "Zones" identified by the Planning Commission regarding any required orientation of the business on the lot.

- 4) *As you know my shop is very unique, the service entrance and reception is completely separated from my shop activity. I can greet my incoming customers without distraction, and the proposed repair shop will erode my business model. The proposed development will not be harmonious and compatible with my property.*

Both businesses operate under different business models. The subject lot is primarily an auto sales (consignment) business with ancillary auto service for those cars being sold on the lot and for some public customers. Steve's Auto is primarily an auto service repair shop with ancillary automobile sales.

Activities on the subject lot will be limited to clients dropping off their cars for sale and have some mechanical work performed on them. Ancillary auto service may also be offered for the general public. At Steve's Auto, clients drop their cars off for service throughout the day with possibly some clients viewing cars that are for sale on the site.

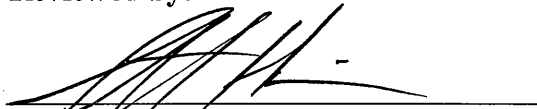
Council Options

There are two options available for Council consideration: granting the appeal to deny the decision of the Planning Commission; or denying the appeal and upholding the Planning Commission's decision. Staff recommends that the Council deny the appeal and uphold the decision of the Planning Commission based on the findings made in the Planning Commission Resolution PC 12-07.

LEGAL CONSIDERATIONS

Pursuant to the California Environmental Quality Act (CEQA), this project is considered as a Categorical Exemption Class 1, as a minor alteration of a structure involving an automotive use that is consistent with the general plan and zoning, and would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Proposed Resolution denying the appeal.
2. Appeal Letter from the Applicant dated August 16, 2012
3. Supplemental Communication from Mr. Kahn dated September 23, 2012
4. Planning Commission Resolution PC12-07
5. Plans
6. Aerial Photo of Site

RESOLUTION 2012-XX

A RESOLUTION OF THE EL CERRITO CITY COUNCIL DENYING AN APPEAL OF A PLANNING COMMISSION DECISION AND UPHOLDING THE APPROVAL OF A USE PERMIT TO ALLOW FOR AUTOMOTIVE SALES (CONSIGNMENT) AND AUTOMOTIVE REPAIR SERVICE ON A SITE LOCATED AT 11858 SAN PABLO AVENUE IN THE CC (COMMUNITY COMMERCIAL) ZONING DISTRICT

WHEREAS, on August 15, 2012, the Planning Commission held a public hearing and considered Planning Application PL12-080, a conditional use permit to establish an auto sale and service use; and

WHEREAS, Section 19.07.020 of the El Cerrito Zoning Ordinance allows for automobile sales and service uses with the approval of a Conditional Use Permit from the Planning Commission; and

WHEREAS, the applicant is proposing to sell used cars, under consignment, and repair such cars and others that come in from the general public; and

WHEREAS in deliberating the case, the Planning Commission found that the proposed use was consistent with commercial uses on surrounding lots and with the intent of the Zoning Ordinance and the General Plan; and

WHEREAS, upon consideration of the report and testimony from the applicant the Planning Commission made the necessary findings under Section 19.34.040.A. of the Zoning Ordinance and approved Planning Application No. PL12-080 by adopting Planning Commission Resolution PC 12-07; and

WHEREAS, on August 16, 2012, the City received an appeal letter from Steve Kahn (11820 San Pablo Avenue); and

WHEREAS, on October 2, 2012, the City Council held a duly noticed public hearing to consider the appeal; and

WHEREAS, based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony and the proceedings before the Planning Commission, the Council has considered the appeal.

NOW THEREFORE, BE IT RESOLVED:

The City Council of the City of El Cerrito finds that:

1. The location, size and design characteristics of the proposed development will be harmonious and compatible with surrounding properties. The proposed use is commercial in nature and is consistent with the commercial use and intensity on surrounding properties.
2. The location, size and site configuration provides a convenient and functional working environment. The proposed structure is compatible with the commercial nature on surrounding properties.

Agenda Item No. 6
Attachment 1

3. The primary use in the area is commercial. The area is intended for a variety of commercial uses and commercial development. The site is within the City's General Plan framework as a commercial use. Specifically, General Plan policies: LU 2.1, LU 2.2, LU2.3, LU 4.1, LU 4.2, LU 4.1, CD 1.3, CD 2.1, and CD2.7.

After careful consideration of facts, correspondence, and testimony, and other evidence submitted in this matter, the El Cerrito City Council hereby denies the appeal and upholds the Planning Commission's approval of the use permit to establish an auto sales and service use on the property located at 11858 San Pablo Avenue.

I CERTIFY that at a regular meeting on October 2, 2012, the El Cerrito City Council passed this Resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October XX, 2012.

Cheryl Morse, City Clerk

APPROVED:

William C. Jones III, Mayor

RECEIVED

Agenda Item No. 6
Attachment 2

AUG 16 2012

City of El Cerrito
City Clerk

To the El Cerrito City Council;

I am contesting the approval of the conditional use permit issued to Xiao Yi Zheng for the property at 11828 San Pablo Ave. Below are the following reasons:

1. The site has never been registered by the Bureau of Automotive repair, nor with CAL EPA. The site was a show room for new vehicles and prior to that was a Mexican restaurant. The term "re-use" does not seem to be accurate.

According to staff report on 1-19-11 as pertaining to my site at 11820 San Pablo Ave., it states "the business will operate in basically two zones. Zone one is the sales and office operation that fronts San Pablo ave. Zone two is where all auto repairs will occur, at the rear along Kearney Street.

2. I spoke briefly at the most recent PC meeting on 8-15-12, and asked specifically if there is a driveway to access Kearney from the subject property and was told "NO". However, I was required to have shipping and receiving to be conducted on Kearney St. and have upheld that, to keep San Pablo Ave. free of added congestion. It is very awkward to have suppliers not deliver to the front of 11820 and yet be ok for 11828.
3. The most concerning is the total upset of the layout and use of the front of my business by competing with visual and audible activity of the proposed auto repair bays. As set forth by the Planning Commission, Zone one and Zone two are not being observed with the proposal of the auto repair bays on the south side of the building, clearly visible from San Pablo Ave, as well as my property.
4. As you know my shop is very unique, the service entrance and reception is completely separated from my shop activity. I can greet my incoming customers without distraction, and the proposed repair shop will erode my business model. The proposed development will not be harmonious and compatible with my property.

Thank you,



Stephen Kahn
Owner/Operator
Steve's Auto Care Sales

RECEIVED

SEP 24 2012

City of El Cerrito
City Clerk

September 23, 2012

RE: Appeal of Application (PL12-0080), for Car Repair permit approval
From: Steve Kahn, dba Steve's Auto Care-Sales

Dear Honorable City Council Members;

Introduction

I have submitted my appeal because I believe the approval of the requested permit unnecessarily negatively impacts my business operations. The conditions imposed on the Applicant are inconsistent with what was imposed on my business when the City approved a permit (Permit No. PL10-0161) for my business, on the adjacent property in 2010.

I am requesting that the Council require that the Applicant mitigate the noise from its repair operations by requiring the entrance to the service bay to face Kearney St, which is the same requirement that I was required to perform.

I am also asking the Council to require, as I was required, to have deliveries made through the rear of the property on Kearney.

Background.

Thirty two years ago I started my career at El Cerrito Honda on 11820, the present location of my business, Steve's Auto Care. When I started working at El Cerrito Honda, that business also serviced British vehicles. As that business transitioned from British vehicles to Hondas, Don Strough, John Collins, and a silent partner purchased the next door restaurant, located at 11858 San Pablo, to create a new stand alone new car showroom. Those new owners of 11858 renovated the property. The property was used as a showroom. It was never used for car repairs, however around 1999 wash & detail department was moved to behind 11858. I believe Staff erred when it stated in its Staff report, dated August 15, 2012, that car repairs were done on the Applicant's property.

Issues of Appeal

I applied for a use permit to conduct my present business in 2010 (Permit Number PL10-0161). My application was thoroughly and exhaustively reviewed because Staff was concerned about the appearance of the business that faced towards San Pablo Ave and about any impacts my business operations would have on neighboring properties. In particular, Staff recommended and the City required that all repair activities be done with the repair bays opening to the rear, facing Kearney St., and towards BART. Staff felt it was important to create a barrier to the noise of the tools and equipment. It was important to Staff and the City that this noise did not project out towards San Pablo Avenue. Also,

by having the repair bays open to the rear, the front façade was by far more aesthetically pleasing and desirable, according to Staff.

The City also required that deliveries be made from Kearney to reduce traffic congestion on San Pablo and to create a more appealing appearance fronting San Pablo Avenue. The same delivery trucks will likely go to both of these properties. It makes no sense to allow front deliveries for the Applicant and then require the delivery truck to exit on San Pablo and go around the block to make a delivery to my property.

The conditions that the City imposed on my Application, presumably because the City felt them to be important design and environment features, were expensive. The move to Steve's Auto Care, to comply with all the conditions, cost in excess of \$340,000, a figure which does not include the purchase price for the property or equipment.

If this present application is approved without additional conditions, then it would seem that the City believes something has changed to omit seeking the same design and environmental goals it felt was important to impose on my permit. I believe just the opposite is true. It is even more important to require similar conditions of this Application. I say more important because the City required me to create a customer friendly entry. I did. Customers are greeted as they arrive. The customers and the public on San Pablo Avenue are not bombarded with noise from the repair operations. If the next door neighbor is allowed to have its repair bays open facing my building, then I will be affected by the noise pollution. The noise and appearance will also impact users on San Pablo. I feel this is not appropriate, especially in light of the conditions imposed on my permit application.

Conclusion

I believe it is only fair that this Applicant be required to comply with the same permit conditions that were required of me. To fail to do so would suggest for some reason this Applicant received more favorable treatment. More important, if those conditions are not imposed, then approval of this permit will detrimentally affect my property and the conduct of my business on my property.

I thank you for your consideration of these matters, and hope that the rules and regulations apply to all applicants.



Steve Kahn
Dba Steve's Auto Care

Planning Commission Resolution PC12-07

APPLICATION NO. PL12-0080

A RESOLUTION OF THE CITY OF EL CERRITO PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT FOR A CONSIGNMENT AUTO SALE AND SERVICE USE AT A SITE LOCATED AT 11858 SAN PABLO AVENUE, PURSUANT TO SECTION 19.34 OF THE EL CERRITO MUNICIPAL CODE

WHEREAS, on July 17, 2012, the applicant submitted an application requesting a conditional use permit to establish an auto sale and service use;

WHEREAS, on August 1, 2012, the project was reviewed by the Design Review Board under a conceptual review;

WHEREAS, the subject property is located at 11858 San Pablo Avenue;

WHEREAS, City records show that a building permit was issued in 1946 and a use permit for a repair shop in 1956;

WHEREAS, the General Plan land use classification of the site is Commercial Mixed Use;

WHEREAS, the zoning district of the site is CC (Community Commercial);

WHEREAS, this project is Categorically Exempt from the provisions of CEQA – Section 15301 Class 1 – Existing Facility; and

WHEREAS, on August 15, 2012, the Planning Commission of El Cerrito, after due consideration of all evidence and reports offered for review, does find and determine the following:

1. The location, size and design characteristics of the proposed development will be harmonious and compatible with surrounding properties. The proposed use is commercial in nature and is consistent with the commercial use and intensity on surrounding properties.
2. The location, size and site configuration provides a convenient and functional working environment. The proposed structure is compatible with the commercial nature on surrounding properties.
3. The primary use in the area is commercial. The area is intended for a variety of commercial uses and commercial development. The site is within the City's General Plan framework as a commercial use. Specifically, General Plan policies: LU 2.1, LU 2.2, LU2.3, LU 4.1, LU 4.2, LU 4.1, CD 1.3, CD 2.1, and CD2.7.

NOW, THEREFORE, BE IT RESOLVED, that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito Planning Commission hereby approves Application No. PL12-0080, subject to the following conditions:

Planning Division:

1. The project shall be developed and maintained substantially in compliance with the plans dated August 10, 2012, except as amended by subsequent conditions of this Resolution.
2. Approval of this use permit shall be limited to an automotive sales and service use.
3. If not used, this use permit shall expire two years from the date of this action.
4. Automobiles being serviced will be done so only within the building and not on the parking lot.
5. Prior to the issuance of a building permit, the applicant shall consult and obtain approval from the Police Department for the proposed use and all site improvements.
6. The hours of operation shall be as follow:

Auto Service - Monday through Saturday, 7:30 a.m. to 7: p.m.
Auto Sales - 7-days a week, 7:30 a.m. to 7 p.m.

Fire Department

7. Building construction shall meet current Building, California Fire Codes, and the El Cerrito Fire Code.
8. All electrical breakers shall be labeled.
9. Approved numbers or address shall be provided in such a position to be plainly visible and legible from the street fronting the property
10. Address shall be either internally or externally illuminated.
11. A Knox Box is required and shall be placed in a location approved of by the Fire Department.
12. If an electrically operated gate is installed, the gate shall be outfitted with a Knox Key Switch for emergency operation.
13. If any modifications to the building are to be done, building plans shall be submitted to the Fire Department for review and approval.
14. If there is an existing fire sprinkler or fire alarm system installed, no work to the systems shall be completed without plan review and approval.
15. Provide Fire Prevention Division with 72-hour notice prior to any inspections.

Public Works Department

16. Undertake all practicable best management practices to appropriately treat runoff from roof and impervious surfaces, use Bay-friendly landscaping features and techniques, and include other source controls specified in the Contra Costa Clean Water Program, Stormwater C.3 Guidebook Appendix D.

17. Submit detailed landscaping and drainage improvement plans as part of Building Permit application to document number 1 above.
18. Repair sidewalk at walkway leading to front door on San Pablo Avenue and along accessible route to be ADA-compliant.
19. Replace driveway approach on San Pablo Avenue to be ADA-compliant.
20. Any new trees at the back of sidewalk must be on the City's Approved Master Street Tree List.
21. Sidewalk and driveway improvements will require a Public Works Encroachment Permit.

Building Division

22. Must meet current ADA standards.
23. Submit detail of hazardous materials to be stored in the storeroom and the construction details.

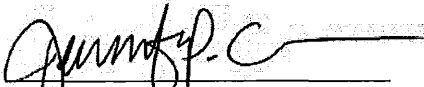
Recycling Center

24. Trash bins must be hauled out to the street for collection.

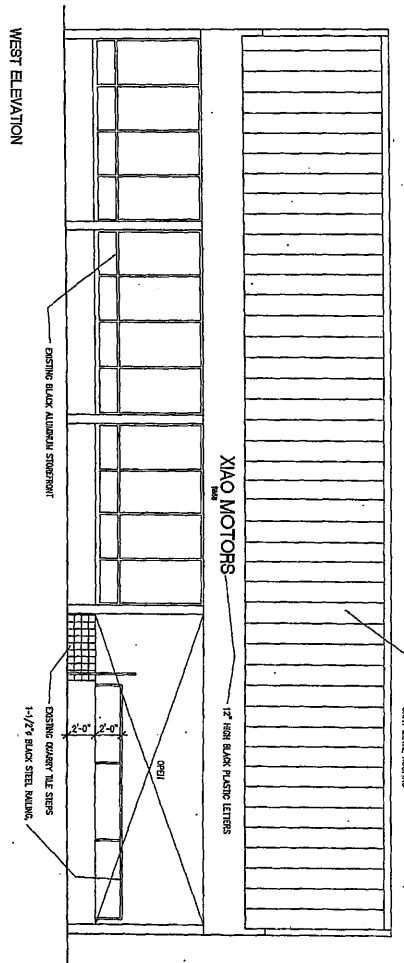
CERTIFICATION

I CERTIFY that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on August 15, 2012 upon motion of Commissioner Coty, second by Commissioner Pine.

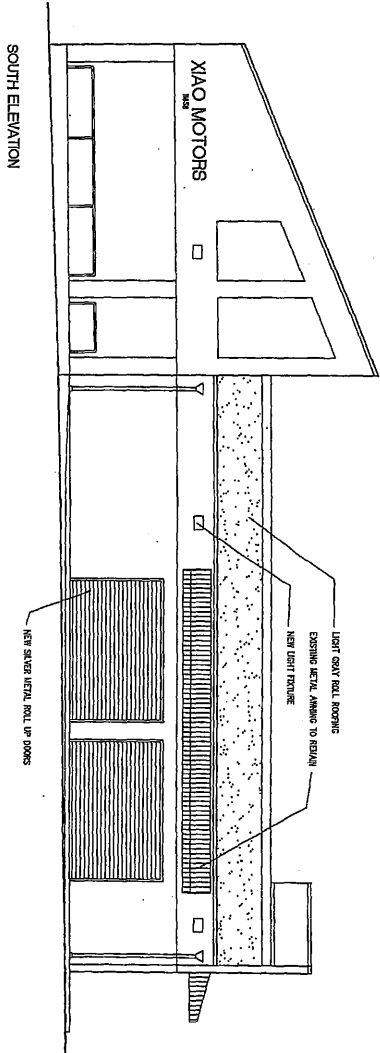
AYES: Kuhlman, Pine, Coty, Hansen
NOES: None
ABSTAIN: Motoyama
ABSENT: None



Jennifer P. Carman, AICP
Development Services Manager



WEST ELEVATION



SOUTH ELEVATION

DATE: 4/7/21
 SCALE: AS SHOWN
 DRAWN BY: [blank]
 CHECKED BY: [blank]
 PROJECT: EXISTING BUILDING
 1858 SAN PABLO AVENUE
 SAN PABLO, CALIFORNIA
 OWNER: XIAO YI ZHENG

EXTERIOR ELEVATIONS

Gary Guenther/Architect
 641 Norvel Street
 El Cerrito, CA 94530
 Tel and Fax (510) 526-2488



NO.	DESCRIPTION	DATE

SHEET
A.3
 OF
 SHEETS





AGENDA BILL

Agenda Item No. 7(A)

Date: October 2, 2012
To: El Cerrito City Council
From: Mary Dodge, Administrative Services Director/City Treasurer
Subject: Tax Anticipation Note

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to enter into an agreement with Westamerica Bank for the issuance of \$4,000,000 in Tax Anticipation Notes (TAN), and to appropriate \$17,000 for costs associated with the TAN.

BACKGROUND

Each year, many cities and school districts similar to El Cerrito undergo a period in the fall where available cash for operations is at its lowest. This is largely due to the distribution of property taxes being 55% in December, 40% in April and 5% in June. Additionally, bond debt payments are normally structured with the principal portion to be paid in the beginning of the fiscal year which results in the first half of the fiscal year having a much higher cash requirement than the second half. Expenditures for ongoing operations, the largest of which is personnel, are relatively evenly paid out on a monthly basis without regard to the revenue stream. Similar to last year, El Cerrito needs to augment its cash flow with a Tax Anticipation Note (TAN). The continuous availability of funds for operations is necessary and the issuance of a TAN is relatively common for cities, school districts, counties and even the State of California.

ANALYSIS

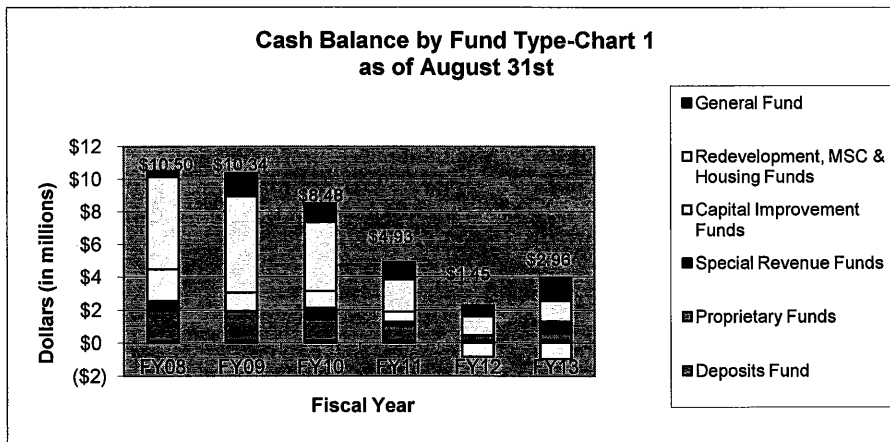
The table and chart below show the cash balances of all funds by type as of August 31st for the last five years. August 31st was chosen as the beginning date for last year's report. For continuity of data this date is being presented again as the beginning date for cash review. These cash balances do not include investments or debt service reserves but only pooled operating cash. The decline of operating cash over the last five years is a result of declining and deferred revenues, the use of bond proceeds and continuing capital and operating programs. This has resulted in a significant reduction in cash available to fund operations, primarily in the capital funds and from the former Redevelopment Agency.

Special Revenue Funds show an increase from the prior year due to the elimination of the Storm Drain reserve requirement from the recent refinancing. Capital Project Funds are still awaiting grant reimbursements and the Successor Housing Fund and the Municipal Services Corporation (MSC) are the only funds shown in the FY12-13 column for that category. Redevelopment Successor Agency (SA) funds are not considered with this analysis since the City is functioning only in a fiduciary capacity for the SA.

City of El Cerrito

Cash Balance by Fund Type-Table 1
As of August 31st

Fund	FY08	FY09	FY10	FY11	FY12	FY13
	8/31/2007	8/31/2008	8/31/2009	8/31/2010	8/31/2011	8/31/2012
General Fund	378,806	1,417,223	1,132,505	1,091,083	657,053	1,377,131
Special Revenue Funds	621,400	67,180	731,677	247,488	40,524	747,373
Capital Improvement Funds	1,942,416	1,110,292	995,233	605,768	(835,134)	(962,353)
Redevelopment, MSC & Housing Fund:	5,652,252	5,887,347	4,221,580	1,958,282	1,164,967	1,243,895
Proprietary Funds	1,746,010	1,677,369	1,234,601	850,238	246,602	378,595
Deposits Fund	156,976	184,725	168,485	174,321	175,366	174,115
	<u>10,497,859</u>	<u>10,344,137</u>	<u>8,484,081</u>	<u>4,927,180</u>	<u>1,449,378</u>	<u>2,958,757</u>



Annual principle and interest payments for Storm Drain, Recycling Center, Street Improvement and City Hall debt service are all paid in the first half of the year. In order to ensure adequate funds are available for operations, the City needs approximately \$4.0 million until the property tax payment from Contra Costa County is received in mid-December at which time the TAN will be repaid. Costs of issuance will be paid as invoiced and a request for a budget amendment for \$17,000 is included in the attached resolution.

The required amount has been calculated considering the following cash flow analysis. Revenue estimates include monthly sales tax, utility user taxes, Recreation Department receipts, Kensington Fire Protection payments, gas tax and other receipts. The payroll amounts vary between the first payroll of the month and the second due to monthly health insurance payments. The accounts payable amounts are averages.

**City of El Cerrito Cash Flow Requirements-Table 2
September 1, 2012 through December 31,2012**

Beginning Cash Balance -August 31, 2012 per Table 1		\$ 2,958,757		
Week of	Estimated Expenditure	Estimated Revenue	Description	Cumulative Balance
9/3/12		\$300,000	Revenue for Week	\$3,258,757
9/3/12	(\$1,100,000)		Payroll 9/7	\$2,158,757
9/10/12		\$300,000	Revenue for Week	\$2,458,757
9/10/12	(\$250,000)		Accounts Payable	\$2,208,757
9/17/12		\$300,000	Revenue for Week	\$2,508,757
9/17/12	(\$900,000)		Payroll 9/21	\$1,608,757
9/24/12		\$300,000	Revenue for Week	\$1,908,757
9/24/12	(\$400,000)		Accounts Payable	\$1,508,757
10/1/12		\$300,000	Revenue for Week	\$1,808,757
10/1/12	(\$1,100,000)		Payroll 10/5	\$708,757
10/1/12	(\$76,258)		Recycling Center DS	\$632,499
10/8/12		\$300,000	Revenue for Week	\$932,499
10/8/12	(\$250,000)		Accounts Payable	\$682,499
10/11/12		\$4,000,000	Receipt of Tan's	\$4,682,499
10/15/12		\$300,000	Revenue for Week	\$4,982,499
10/15/12	(\$900,000)		Payroll 10/19	\$4,082,499
10/15/12	(\$400,000)		Streets D/S	\$3,682,499
10/18/12		\$300,000	Revenue for Week	\$3,982,499
10/18/12	(\$250,000)		Accounts Payable	\$3,732,499
10/29/12		\$300,000	Revenue for Week	\$4,032,499
10/29/12	(\$1,100,000)		Payroll 11/2	\$2,932,499
10/29/12		\$250,000	Personal Property Tax	\$3,182,499
11/5/12		\$300,000	Revenue for Week	\$3,482,499
11/5/12	(\$400,000)		Accounts Payable	\$3,082,499
11/12/12		\$300,000	Revenue for Week	\$3,382,499
11/12/12	(\$900,000)		Payroll 11/16	\$2,482,499
11/19/12		\$300,000	Revenue for Week	\$2,782,499
11/19/12	(\$250,000)		Accounts Payable	\$2,532,499
11/19/12	(\$410,000)		City Hall D/S	\$2,122,499
11/26/12		\$300,000	Revenue for Week	\$2,422,499
11/26/12	(\$900,000)		Payroll 11/30	\$1,522,499
11/26/12		\$633,000	Streetscape Reimb	\$2,155,499
12/3/12		\$300,000	Revenue for Week	\$2,455,499
12/3/12	(\$400,000)		Accounts Payable	\$2,055,499
12/10/12		\$300,000	Revenue for Week	\$2,355,499
12/10/12	(\$1,100,000)		Payroll 12/14	\$1,255,499
12/10/12		\$300,000	Revenue for Week	\$1,555,499
12/10/12		\$450,000	Grant Reimbursement	\$2,005,499
12/10/12	(\$900,000)		Payroll 12/28	\$1,105,499
12/17/12		\$300,000	Revenue for Week	\$1,405,499
12/17/12		\$4,000,000	Property Tax Recpt.	\$5,405,499
12/17/12	(\$250,000)		Accounts Payable	\$5,155,499
12/30/12		\$300,000	Revenue for Week	\$5,455,499
12/30/12	(\$400,000)		Accounts Payable	\$5,055,499
12/30/12	(\$4,000,000)		Payment of TAN's	\$1,055,499

FINANCIAL CONSIDERATIONS

Brandis Tallman, LLC was contacted once again to solicit bids for this transaction. They received two proposals. One was from Westamerica Bank who provided the financing last year. WestAmerica proposed the same rate and similar costs as were approved last year. The other proposal the City received was from Chase Bank, whose proposal was similar, but Westamerica's interest rate was marginally less. With the lower rate and the smooth transaction from last year, Westamerica is the recommended vendor. We discussed this transaction with our primary bank, The Mechanic's Bank, a regional bank, and while this type of transaction is commonplace with larger banks like Westamerica and Chase, it is not with Mechanic's. The City did not receive a bid from them.

Firm	WestAmerica	Chase
Interest Rate	.75%	.80%
Interest Cost	\$7,166.67	\$7,618.64
Costs of Issuance	\$10,100.00	\$10,100.00
Total Cost	\$17,266.67	\$17,718.64

A copy of this report will be discussed with the Financial Advisory Board (FAB) at a special meeting on September 27, 2012 and a motion will be considered to support the issuance of the TAN's as recommended in an amount not to exceed \$4,000,000. The FAB's expertise and analysis is appreciated in reviewing the assumptions and presentation material for this transaction. The result of that meeting will be reported at the Council meeting.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the terms proposed and will approve the final documents including the issuance of an attorney's letter in regards to the form as required documentation for the TAN.

Reviewed by:



Scott Hanin, City Manager

Attachments:

- 1. Resolution
- 2. Summary of Financing Proposals

RESOLUTION 2012-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE ISSUANCE OF TAX ANTICIPATION NOTES, SERIES 2012, IN AN AGGREGATE PRINCIPAL AMOUNT OF \$4,000,000; APPROVING THE SALE THEREOF BY PRIVATE PLACEMENT; APPROVING THE FORM OF SAID NOTES; AND AUTHORIZING EXECUTION OF DOCUMENTS RELATED TO THE ISSUANCE, SALE AND DELIVERY OF SAID NOTES AND CERTAIN ACTIONS IN CONNECTION THEREWITH AND TO APPROPRIATE \$17,000 FOR FINANCING COSTS

WHEREAS, pursuant to Sections 53850 *et seq.* of the Government Code of the State of California (the "State") contained in Article 7.6, Chapter 4, Part 1, Division 2, Title 5 thereof, entitled "Temporary Borrowing" (the "Act"), the City of El Cerrito (the "City") may borrow money by issuing notes for any purpose for which the City is authorized to use and expend moneys, including but not limited to current expenses, capital expenditures, investment and reinvestment and the discharge of any obligation or indebtedness of the City; and

WHEREAS, this City Council (this "City Council") has determined that the sum of \$4,000,000 is needed to satisfy payment obligations of the City which the City anticipates will become payable prior to the receipt of the taxes in anticipation of which the Notes (as said term is defined below) are being issued, and that it is necessary that said sum be borrowed in anticipation of the receipt of taxes to be received by the City during Fiscal Year 2012-2013, by the issuance of tax anticipation notes, which shall be designated "City of El Cerrito Tax Anticipation Notes, Series 2012" (collectively, the "Notes"); and

WHEREAS, this City Council has deemed it necessary and desirable to authorize the issuance and sale of the Notes by negotiated sale to Westamerica Bank on the terms set forth herein; and

WHEREAS, the Notes will be initially issued in the form of a single, fully registered Note, representing the entire issue of the Notes, registered to Westamerica Bank as the initial purchaser thereof, and, provided that the conditions for transfer of registered ownership of the Notes, as set forth herein pertaining to the submission of an executed original of an Investor Letter, substantially in the form set forth in Exhibit A, attached hereto and by this reference incorporated herein, are satisfied, the Notes may later be issued in denominations of \$100,000 or integral multiples thereof; shall be dated the date of delivery thereof; and shall be in substantially the form set forth in Exhibit B, attached hereto and by this reference incorporated herein, and executed in the manner prescribed in this Resolution; and

WHEREAS, the Notes shall mature on December 30, 2012; and

WHEREAS, pursuant to Section 53856 of the Act, the City, by this Resolution, pledges all property taxes received by the City during Fiscal Year 2012-2013 (the "Pledged Taxes"), which Pledged Taxes are by this Resolution pledged for the payment of the Notes; and

WHEREAS, the Notes shall be a general obligation of the City and, to the extent not paid from the Pledged Taxes, shall be paid with interest thereon from any other moneys of the City lawfully available therefor, as required by Section 53857 of the Act; and

WHEREAS, it appears, and this City Council hereby finds and determines, that said \$4,000,000 aggregate principal amount of the Notes, when added to the interest payable thereon, does not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, income, revenue, cash receipts, and other moneys of the City, including moneys deposited in inactive or term deposits, attributable to Fiscal Year 2012-2013, and available for the payment of the Notes and the interest thereon; and

WHEREAS, no money has heretofore been borrowed by or on behalf of the City through the issuance of tax anticipation notes or temporary notes in anticipation of the receipt of, or payable from or secured by, taxes, income, revenue, cash receipts, and other moneys of the City, including moneys deposited in inactive or term deposits, that are received by the City for Fiscal Year 2012-2013; and

WHEREAS, all acts, conditions and things required by law to be done or performed have been done and performed in strict conformity with the laws authorizing the issuance of the Notes, is within all limits prescribed by law.

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

SECTION 1. Recitals. All the above recitals are true and correct, and this City Council so finds, determines and represents.

SECTION 2. Authorization of Issuance of Notes; Terms of Notes; Paying Agent. This City Council hereby authorizes the issuance of the Notes in the aggregate principal amount of \$4,000,000. The Notes shall be designated "City of El Cerrito Tax Anticipation Notes, Series 2012." The Notes, when originally issued as a single, fully-registered note, shall be numbered "R-1," and in the event that the Notes are later converted to multiple instruments in the minimum denominations of \$100,000, they will be numbered consecutively upward in order of issuance. The Notes shall be dated their date of delivery, shall mature (without option of prior redemption) on December 30, 2012 (the "Maturity Date"), and shall bear interest, computed on a 360-day year consisting of twelve 30-day months, at an interest rate of 0.75% per annum.

Both the principal of and interest on the Notes shall be payable on the Maturity Date in lawful money of the United States of America, at the office of the Administrative Services Director of the City (the "Paying Agent"), El Cerrito City Hall, 10890 San Pablo Avenue, El Cerrito, California 94530, but only upon the surrender of the Notes at said office; provided that, in the event that WestAmerica Bank is the registered holder of the Notes at maturity, the principal of and interest on the Notes may be paid on the Maturity Date by wire transfer upon receipt of the Notes.

SECTION 3. Form of Notes. The Notes shall be issued in registered form without coupons substantially in the form and substance set forth in Exhibit B, the blanks in said form to be filled in with the appropriate words and figures.

SECTION 4. Execution of Notes. The Notes shall be executed by manual or facsimile signature of the City Treasurer and countersigned by the manual or facsimile signature of the City Clerk, with the seal of the City affixed thereto, either manually or by facsimile impression

thereof. The Notes shall not be valid unless and until the Paying Agent shall have manually authenticated such Notes.

SECTION 5. Deposit of Note Proceeds. The proceeds of sale of the Notes shall be deposited in the general fund of the City and used and expended by the City for any purpose for which it is authorized to expend funds.

SECTION 6. Payment of Notes.

(a) Source of Payment. The principal amount of the Notes, together with the interest thereon, shall be payable from the Pledged Taxes and from any other taxes, income, revenue, cash receipts or other moneys of the City that are available for the payment of current expenses and other obligations of the City, including moneys deposited in inactive or term deposits (but excepting certain moneys encumbered for a special purpose), that are received by the City during Fiscal Year 2012-2013 and that are lawfully available therefor (collectively, the "General Fund Revenues"). The Notes shall be a general obligation of the City, and to the extent the Notes are not paid from the Pledged Taxes defined below, the Notes shall be paid with interest thereon from any other moneys of the City lawfully available therefor.

(b) Pledged Taxes. As security for the payment of the principal of and interest on the Notes, the City hereby pledges all property taxes received by the City during Fiscal Year 2012-2013 (the "Pledged Taxes"), which shall be set aside in the Repayment Fund (as hereinafter defined) upon receipt and restricted to the payment of the principal of and the interest on the Notes until the Notes are paid and redeemed in full. The principal of the Notes and the interest thereon shall be a first lien and charge against and shall be payable from the first moneys received by the City from such Pledged Taxes, as provided by law.

In the event that the amount on deposit in the Repayment Fund (as hereinafter defined) as of the date which is two calendar weeks prior to the Maturity Date, then the amount of any deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the repayment of the Notes and interest thereon.

(c) Deposit of Pledged Taxes in Repayment Fund. Forthwith upon receipt by the City, the Pledged Taxes shall be deposited in and held in a special fund designated as the "Series 2012 Tax Anticipation Notes Repayment Fund" (herein called the "Repayment Fund") and applied as directed in this Resolution. Any moneys placed in the Repayment Fund shall be for the benefit of the registered holder or holders of the Notes, and, until the Notes and all interest thereon are paid or until provision has been made for the payment of the Notes at maturity with interest to maturity, the moneys in the Repayment Fund shall be applied only for the purposes for which the Repayment Fund is created, namely the payment of the principal of and the interest on the Notes on the Maturity Date.

(d) Disbursement and Investment of Moneys in the Repayment Fund. From the date of adoption of this Resolution, which shall be the effective date of this Resolution, all Pledged Taxes, when received, shall be deposited in the Repayment Fund. After such date as the amount on deposit in the Repayment Fund is sufficient to pay in full the principal of and interest on the Notes on the Maturity Date, any moneys in excess of such amount received by or accruing to the

City shall be transferred to the general fund of the City. On the Maturity Date of the Notes, the moneys in the Repayment Fund shall be transferred to the Paying Agent to be used to pay the principal of and interest on the Notes.

Moneys in the Repayment Fund shall be invested by the City in investment securities as permitted by applicable California law and the City's investment policies, as the same are now in effect and as either may be amended, modified or supplemented from time to time; provided that no such investments shall have a maturity date later than the Maturity Date.

(e) Repayment of Notes. In order to give effect to the intent of this Resolution, a 2012-2013 budget appropriation is hereby made in an amount sufficient to pay the Notes in full. Further, the 2012-2013 budget is authorized to be adjusted to reflect the projected earnings to be generated in connection with investment of Note proceeds prior to their expenditure and to reflect any investment earnings on the Repayment Fund.

SECTION 7. Sale and Delivery of the Notes. The Notes are hereby sold to Westamerica Bank at a purchase price of 100% of the principal amount thereof, namely \$4,000,000. The delivery of the Notes to Westamerica Bank is expressly conditioned upon payment to the City of the purchase price and submission to the Paying Agent of an executed original Investor Letter, substantially in the form attached hereto as Exhibit A. The Administrative Services Director of the City (the "Administrative Services Director") is hereby authorized and directed on behalf of the City to provide for the preparation of the Notes and the execution thereof by the City Treasurer and the City Clerk and to coordinate arrangements for the delivery of the Notes and any other documents and opinions as may be reasonably required by the City or Westamerica Bank on or about October 4, 2012 (the "Closing Date," which shall include such other date as mutually agreed upon by the Administrative Services Director and Westamerica Bank), such delivery of the Notes to take place upon receipt by the City of the purchase price thereof and by the Paying Agent of the executed Investor Letter.

SECTION 8. Paying Agent and Registrar. This City Council hereby designates the Administrative Services Director of the City as the paying agent and registrar for the Notes (collectively, the "Paying Agent"). The City hereby directs and authorizes the payment by the Paying Agent of the principal of and the interest on the Notes on the Maturity Date, from the Repayment Fund to be established, held and administered by the Paying Agent in the name of the City pursuant to Section 6 of this Resolution. The City hereby covenants to deposit Pledged Taxes and other moneys of the City lawfully available for the repayment of the Notes and interest thereon in such Repayment Fund at the time and in the amount specified herein to provide sufficient moneys to pay the principal of and interest on the Notes on the Maturity Date. Payment of the Notes shall be in accordance with the terms of the Notes, the Purchase Agreement and this Resolution.

SECTION 9. Transfer; Registration; Exchange.

(a) Transfer; Exchange. Any Note may, in accordance with its terms, be transferred or exchanged for a like principal amount of Notes in authorized denominations, on the books required to be kept by the Paying Agent under these provisions, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Note for

cancellation, and, in the case of a transfer, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Paying Agent, together with an executed original of a "Investor Letter" in substantially the form and with substantially the same contents as the letter provided by Westamerica Bank as the original purchaser of the Notes. The Purchase Agreement shall expressly provide that the Paying Agent, in the Paying Agent's capacity as Registrar for the Notes, shall not be obligated to implement any transfer of registered ownership of the Notes unless and until an executed Investor Letter, executed by the proposed transferee, is provided to the Registrar. Notwithstanding the foregoing, no Notes shall be transferred or exchanged on the registration books maintained by the Paying Agent later than the fifteenth calendar day prior to the Maturity Date.

Upon satisfaction of the Investor Letter requirement, whenever any Note shall be surrendered for transfer or exchange, the City shall execute and deliver a new Note or Notes of authorized denominations for a like principal amount. The Paying Agent shall require the holder requesting such transfer or exchange to pay any tax or other governmental charge required to be paid for such transfer or exchange.

(b) Registration Books. The Paying Agent will keep or cause to be kept, at its principal office, located at 10890 San Pablo Avenue, El Cerrito, California 94530, sufficient books of the registration and transfer of registered ownership of the Notes, which shall at all times be open to inspection by the City. Upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, Notes as hereinbefore provided.

(c) Mutilated Notes. If any Note shall become mutilated, the City, at the expense of the holder of such Note, shall execute, and the Paying Agent shall thereupon authenticate and deliver a new Note of like tenor and number in exchange and substitution for the Note so mutilated, but only upon surrender to the Paying Agent of the Note so mutilated. Every mutilated Note so surrendered to the Paying Agent shall be cancelled by it and delivered to, or upon the order of, this City Council on behalf of the City. If any Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to this City Council on behalf of the City and the Paying Agent and, if such evidence be satisfactory to both and indemnity satisfactory to them shall be given, this City Council, at the expense of the holder, shall execute, and the Paying Agent shall thereupon authenticate and deliver a new Note of like tenor and number in lieu of and in substitution for the Note so lost, destroyed or stolen (of if any such Note shall have matured or shall be about to mature, instead of issuing a substitute Note, the Paying Agent may pay the same without surrender thereof). The Paying Agent may require payment of a sum not exceeding the actual cost of preparing each new Note issued pursuant to this paragraph and of the expenses that may be incurred by the City and the Paying Agent in the premises. Any Note issued under these provisions in lieu of any Note alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Note so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Resolution with all other Notes secured by this Resolution.

(d) Note Holders. The City and the Paying Agent may treat the person in whose name any Note is registered as the holder of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes. It shall be the duty of the owner

of the Note to give written notice to the Paying Agent of any change in address or, in the case of payment on the Maturity Date of the principal of and interest on the Notes by wire transfer, of any change in wire instructions.

The City and the Paying Agent may treat the person in whose name any Note shall be registered as the absolute owner of such Note, and payment of the principal of and interest on any such Note shall be made only to or upon the order of the registered owner thereof or its legal representative.

(e) Cancellation of Notes. This City Council may at any time deliver to the Paying Agent for cancellation any Notes previously executed and delivered hereunder that this City Council may have acquired in any manner whatsoever, and all Notes so delivered shall promptly be cancelled by the Paying Agent. No Note shall be executed in lieu of or in exchange for any Notes cancelled as provided herein, except as expressly permitted hereunder. All cancelled Notes held by the Paying Agent shall be disposed of as directed by this City Council on behalf of the City.

SECTION 10. Book-Entry System. In view of the short-term nature of the Notes, the City will not undertake to qualify the Notes for issuance as book-entry notes.

SECTION 11. Qualified Tax-Exempt Obligations. The City hereby designates the Notes as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) ("Section 265(b)(3)(B)") of the Internal Revenue Code (the "Code"). In furtherance of such designation, the City hereby expressly declares that it does not expect that the City, in combination with all subordinate entities of the City, will issue in the aggregate more than \$10.0 million of tax-exempt obligations during calendar year 2012.

SECTION 12. Covenants and Warranties. It is hereby covenanted that the City, its appropriate officials and this City Council have duly taken, or will take, all proceedings necessary to be taken by them for the levy, collection and enforcement of the Pledged Taxes in accordance with law for carrying out the provisions of this Resolution and the Notes.

SECTION 13. Tax Covenants. The City hereby covenants that, notwithstanding any other provisions of this Resolution, it will make no use of the proceeds of the Notes or of any other amounts, regardless of the source, or of any property, or will take any action, or refrain from taking any action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148 of the Code. The City will not make any use of the proceeds of the Notes or of any other amounts, regardless of source, or of any property, or take or omit to take any other action, that would cause the Notes to be "private activity bonds," within the meaning of Section 141 of the Code, or "federally guaranteed" within the meaning of Section 149(b) of the Code. To that end, so long as any Notes are outstanding, the City, with respect to such proceeds and such other amounts, will comply with all requirements of Sections 141 through 149 and Section 103 and all Treasury Regulations issued thereunder, to the extent such requirements are applicable and in effect. These covenants shall survive the payment in full of the Notes. In furtherance thereof, the City will comply with the Tax Certificate to be executed by the City on the date of issuance of the Notes.

SECTION 14. Authorized Investments. Subject to federal tax restrictions, moneys in the funds created hereunder shall be invested in investments permitted under the laws of the State of California and the City's adopted investment policies, as either may be modified or amended from time to time. Without limiting the generality of the foregoing, the proceeds of the Notes and the moneys in the Repayment Fund may be invested in the Local Agency Investment Fund ("LAIF") administered by the State of California.

SECTION 15. Delivery of Notes. The Administrative Services Director is hereby authorized and directed to deliver the Notes on the Closing Date to the Westamerica Bank, as the original purchaser thereof, in accordance with the terms and conditions of this Resolution. All actions heretofore taken by the officers and agents of the City with respect to the sale and issuance of the Notes are hereby approved, confirmed and ratified, and the officers of the City are hereby authorized and directed, for and in the name and on behalf of this City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Notes in accordance with, and to carry out the intent of, this Resolution.

SECTION 16. Professional Services. The Administrative Services Director is hereby authorized to compensate Meyers, Nave, Riback, Silver & Wilson for their special counsel legal services with respect to the authorization, issuance, sale and delivery of the Notes, and to pay a fee of \$7,500 to Brandis Tallman LLC for services of that firm as broker of the Notes.

SECTION 17. Issuance Costs. The City Council authorizes the appropriation of \$17,000 to cover the associated costs of issuance.

SECTION 18. Effective Date. This resolution shall take effect immediately upon its passage.

I CERTIFY that at the regular meeting on October 2, 2012, the El Cerrito City Council passed this resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAINED: COUNCILMEMBERS:

* * * * *

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October ____, 2012.

Cheryl Morse, City Clerk

APPROVED:

William Jones, III, Mayor

EXHIBIT A

FORM OF INVESTOR LETTER

October __, 2012

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, California

Re: **CITY OF EL CERRITO, CALIFORNIA**
TAX ANTICIPATION NOTES, SERIES 2012

Ladies and Gentlemen:

The undersigned (the "Investor") hereby acknowledges receipt of the above-referenced notes (the "Notes") on the date of this letter. The Notes have been executed by the City pursuant to the terms of a Resolution of the City Council, adopted _____, 2012 (the "Resolution"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

The Investor will provide the Paying Agent with the following information: a) the Investor's Social Security Number or Tax Identification Number; b) a signed IRS Form W-9; c) the Investor's mailing address; and d) payment instructions.

The undersigned acknowledges that the Notes were delivered for the purpose of financing anticipated cash flow needs of the City.

In connection with the sale of the Notes to the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor has authority to purchase the Notes and to execute this letter and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Notes.

2. The Investor is a "Qualified Institutional Buyer" and has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations and is capable of evaluating the merits and risks of its investment in the Notes. The Investor is able to bear the economic risk of, and entire loss of, an investment in the Notes. The definition of Qualified Institutional Buyer is attached hereto.

3. The Notes are being acquired by the Investor for investment and not with a view to, or for resale in connection with, any distribution of the Notes, and the Investor intends to hold the Notes for its own account until December 30, 2012 (the "Maturity Date"), and does not intend at this time to dispose of all or any part of the Notes prior to the Maturity Date. The Investor understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible.

4. The Investor understands that the Notes are not registered under the 1933 Act and that such registration is not legally required as of the date hereof; and further understands that the Notes (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

5. The Investor has authority to purchase the Notes and to execute this letter and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Notes. The undersigned is a duly appointed, qualified and acting officer of the Investor and is authorized to cause the Investor to make the certificates, representations and warranties contained herein by execution of this letter on behalf of the Investor.

6. The Investor acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City and the Notes and the security therefor so that, as a reasonable investor, the Investor has been able to make a decision to purchase the Notes.

7. The Investor acknowledges that the obligations of the City to make debt service payments with the Notes are limited obligations payable solely from taxes, income, revenue, cash receipts and other moneys which are received by the General Fund of the City for Fiscal Year 2012-2013 and other legally available funds.

8. The Investor has made its own inquiry and analysis with respect to the Notes and the security therefor, and other material factors affecting the security and payment of the Notes. The Investor is aware that the City's finances are subject to certain economic variables and risks that could adversely affect the security for the Notes.

9. The Investor acknowledges that its right to sell and transfer the Notes is subject to the delivery to the Fiscal Agent and the City of an investor's letter from the transferee to the same effect as this Investor's Letter, with no revisions except as may be approved in writing by the City. Failure to deliver such investor's letter to the Fiscal Agent and the City shall cause the purported transfer to be null and void. The Investor agrees to indemnify and hold harmless the City with respect to any claim asserted against the City that is based upon the sale, transfer or other disposition of the Notes in violation of the provisions hereof.

10. Neither Meyers, Nave, Riback, Silver & Wilson ("Special Note Counsel"), Brandis Tallman as broker for to the City respecting sale of the Notes, nor the City, its members, its governing body, or any of its employees, counsel or agents will have any responsibility to the Investor for the accuracy or completeness of information obtained by the Investor from any source regarding the City or its financial condition or regarding the Notes, the provision for payment thereof, or the sufficiency of any security therefore. The Investor acknowledges that, as between the Investor and all of such parties, the Investor has assumed responsibility for obtaining such information and making such review as the Investor deemed necessary or desirable in connection with its decision to purchase the Notes.

11. The Notes are being purchased in a direct, private placement transaction and the terms of the sale and purchase have been established through negotiations between the Investor and the City in an arm's-length transaction.

12. The purchase price for the Notes, established as described above, to be paid by the Investor, pursuant to the terms of this letter and the Resolution, is an amount equal to 100% of the aggregate principal amount of the Notes.

13. As of the date hereof, the price at which the Investor agreed to buy the Notes was, to the best knowledge and judgment of the Investor, the fair market value of the Notes. The Investor acknowledges that such price will be relied on by Special Note Counsel as the "issue price" for establishing the yield on the Notes, and other federal tax requirements based upon the issue price of the Notes.

14. The Investor is purchasing the Notes for its own account. If the Investor transfers, sells or disposes of the Notes, or any interest in the Notes, either (a) such transfer of any interest in the Notes will not occur within 60 days of the date hereof, during which time the Notes will be held exclusively for our own account and not subject to contractual arrangement for such transfer, or (b) such transfer of the Notes, or interest therein, will be at a price or prices that, in the aggregate (and taking into account any interest in the Notes not transferred), is not in excess of 100%, unless Special Note Counsel provides a written opinion that the failure to satisfy this paragraph will not adversely affect the exclusion from gross income of interest on the Notes. Furthermore, Investor understands that any transfer of the registered ownership of the Notes will be expressly conditioned upon the purchaser providing the Paying Agent with an executed Investor Letter substantially the same as this letter.

We understand that the foregoing information will be relied upon by the City with respect to certain representations in the Tax Certificate dated as of the date hereof or the Exhibits thereto and by Special Note Counsel in connection with its opinion as to the exclusion of the interest on the Notes from gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended.

Very truly yours,

Signature: _____

Name: _____

Tax Identification Number: _____

Mailing Address: _____

Payment Instructions: _____

EXHIBIT B

FORM OF NOTE

THE OWNER OF THIS NOTE IS INTENDED TO BE ONLY A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN THE RESOLUTION (AS DEFINED BELOW) THAT HAS EXECUTED AND DELIVERED TO THE PAYING AGENT FOR THE NOTES AN INVESTOR LETTER (AS DEFINED IN THE RESOLUTION), AND ANY TRANSFER OF THE REGISTERED OWNERSHIP OF THIS NOTE MAY ONLY BE TO A QUALIFIED INSTITUTIONAL BUYER THAT HAS EXECUTED AND DELIVERED TO THE PAYING AGENT AN INVESTOR LETTER AS REQUIRED BY THE RESOLUTION; AND ANY SUCH TRANSFEREE, BY THE ACCEPTANCE OF THIS NOTE, REPRESENTS THAT IT IS A QUALIFIED INSTITUTIONAL BUYER AND HAS EXECUTED THE INVESTOR LETTER REQUIRED BY THE RESOLUTION.

**Registered
No. R-1**

\$4,000,000

**CITY OF EL CERRITO, CALIFORNIA
TAX ANTICIPATION NOTE, SERIES 2012**

RATE OF INTEREST	NOTE DATE	MATURITY DATE
0.75%	October 4, 2012	December 30, 2012

PRINCIPAL SUM: FOUR MILLION DOLLARS

REGISTERED OWNER: WESTAMERICA BANK

FOR VALUE RECEIVED, the City of El Cerrito (the "City"), California acknowledges itself indebted to and promises to pay to the registered holder hereof at City Hall the principal sum shown above in lawful money of the United States of America, on the date shown above (the "Maturity Date"), together with interest thereon at the rate per annum shown above in like lawful money from the date hereof until payment in full of said principal sum. The principal of and the interest on this Note, both payable on the Maturity Date, shall be payable by wire transfer to the registered owner hereof as shown on the registration books of the Paying Agent, serving the function of Registrar, as of the close of business on the 15th calendar day prior to the Maturity Date, provided that this Note has been surrendered to the Paying Agent not later than the Maturity Date. However, no interest shall be payable for any period after the Maturity Date during which the registered owner hereof fails to properly present this Note for payment.

It is hereby certified, recited and declared that this Note represents the entire issue of the City of El Cerrito Tax Anticipation Notes, Series 2012, and it is executed and given pursuant to and by authority of Resolution No. 2012-____, adopted by the City Council of the City on _____, 2012 (the "Resolution"), under and by authority of Article 7.6 (commencing with Section 53850) of Chapter 4, Part 1, Division 2, Title 5, California Government Code (the "Act"), and that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note have existed, happened and been performed in regular and due time, form and manner as required by law, and that this Note, together with all other indebtedness and obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of California.

The principal amount of the Notes, together with the interest thereon, shall be payable from certain property taxes to be received by the City (the "Pledged Taxes," as said term is defined in the Resolution), and to the extent necessary, is payable from any other taxes, income, revenue, cash receipts and other moneys which are received by the General Fund of the City for Fiscal Year 2012-13. As security for the payment of the principal of and interest on the Notes the City has pledged the Pledged Taxes, the amount of which exceeds the principal of and interest on the Notes, and the principal of interest thereon shall constitute a first lien and charge on the Pledged Taxes and shall be payable from such Pledged Taxes, and to the extent not so paid shall be paid from any other moneys of the City lawfully available therefor.

This Note is transferable by the registered owner hereof in person or by his attorney duly authorized in writing at the office of the Paying Agent, but only in the manner and subject to the limitations in the Resolution, including but not limited to the submission to the Paying Agent of an originally executed Investor Letter (as said term is defined in the Resolution). The Paying Agent is not obligated to implement any requested transfer of the registered ownership of this Note until such executed Investor Letter is received by the Paying Agent. Upon such transfer a new note or notes of authorized denominations and for the same aggregate principal amount will be issued to the transferees in exchange therefor.

The City and the Paying Agent may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

IN WITNESS WHEREOF, the City of El Cerrito has caused this note to be executed by the manual or facsimile signature of the City Treasurer and countersigned by the manual or facsimile signature of the City Clerk, and caused a facsimile of its official seal to be reproduced hereon by facsimile this ____ day of _____ 2012.

CITY OF EL CERRITO

(Seal)

By: _____
City Treasurer

Countersigned:

City Clerk

BRANDIS TALLMAN LLC

22 Battery Street
Suite 500
San Francisco, CA 94111

Phone: 415-912-5630
Fax: 415-912-5636
www.brandistallman.com

Mary Dodge, Admin. Services Director/City Treasurer
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, California 94530

VIA EMAIL
September 24, 2012

Re: Summary of Financing Proposals - \$4,000,000 Tax Anticipation Notes

	<u>Proposal 1</u> <u>(West America Bank)</u>	<u>Proposal 2</u> <u>(Chase)</u>
1) Issuer:	City of El Cerrito	City of El Cerrito
2) Estimated Financing Amt:	\$4,000,000	\$4,000,000
3) Type of Financing:	Tax-exempt TANs	Tax-exempt TANs
4) Maturity Date:	December 30, 2012	December 30, 2012
5) Interest Rate:	0.75%	0.80% (Current LIBOR rate plus 43 basis points)
6) Estimated Cost of Issuance:	\$7,500 Placement Agent Fee \$600.00 CDIAC Fee \$2,000 Legal Counsel Fee	\$7,500 Placement Agent Fee \$600.00 CDIAC Fee \$2,000 Legal Counsel Fee
7) Rating:	No Rating Required	No Rating Required
8) Prepayment Provisions:	No Prepayment	No Prepayment
9) Interest Cost:	\$7,166.67 (based on 10/04/12 closing)	\$7,618.64 (based on 10/04/12 closing)
10) Bank Qualified:	Yes	Yes

For consideration/selection on October 2, 2012.