



CITY COUNCIL
HOUSING AUTHORITY AND
SUCCESSOR AGENCY TO THE EL CAJON
REDEVELOPMENT AGENCY

Council Chamber
200 Civic Center Way
El Cajon, CA 92020

Agenda

OCTOBER 12, 2021, 3:00 p.m.

Bill Wells, Mayor

Gary Kendrick, Mayor Pro Tem

Michelle Metschel, Councilmember

Steve Goble, Councilmember

Phil Ortiz, Councilmember

Graham Mitchell, City Manager

Vince DiMaggio, Assistant City Manager

Morgan Foley, City Attorney

Angela Cortez, City Clerk

CALL TO ORDER: Mayor Bill Wells

ROLL CALL: City Clerk Angela Cortez

PLEDGE OF ALLEGIANCE TO FLAG AND MOMENT OF SILENCE

POSTINGS: The City Clerk posted Orders of Adjournment of the September 28, 2021, Meetings and the Agenda of the October 12, 2021, Meeting in accordance to State Law and Council/Authority/Successor Agency to the Redevelopment Agency Policy.

PRESENTATIONS:

- **Proclamation: National Community Planning Month**
- **Proclamation: German American Month**

AGENDA CHANGES:

CONSENT ITEMS:

Consent Items are routine matters enacted by one motion according to the RECOMMENDATION listed below. With the concurrence of the City Council, a Council Member or person in attendance may request discussion of a *Consent Item* at this time.

1. Minutes of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting

RECOMMENDATION:

That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency approves Minutes of the September 28, 2021, Meetings of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

2. Warrants

RECOMMENDATION:

That the City Council approves payment of Warrants as submitted by the Finance Department.

3. Approval of Reading Ordinances by Title Only

RECOMMENDATION:

That the City Council approves the reading by title and waives the reading in full of all Ordinances on the Agenda.

4. 2022 Calendar of Meetings for the City Council/Housing Authority and Successor Agency to the Former Redevelopment Agency

RECOMMENDATION:

That the City Council reviews the proposed 2022 calendar of meetings for the City Council/Housing Authority and Successor Agency to the Former Redevelopment Agency, makes appropriate modifications, or accepts as presented.

5. Award of Bid No. 004-22 – Broadway Creek Restoration Project Phase A

RECOMMENDATION:

That the City Council adopts the next Resolutions, in order, to:

1. Approve Plans and Specifications for Broadway Creek Restoration Project Phase A, Bid No. 004-22;
2. Find the first low bidder, Palm Engineering Construction Company, Inc. (PECC), non-responsive for the reasons set forth in the agenda report; and
3. Award the bid to the second lowest responsive, responsible bidder, Whillock Contracting, Inc., in the amount of \$2,755,479.24.

6. Reject and Re-Bid of Bid No. 008-22 – Recreation Center HVAC Improvements

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to reject all bids and authorize re-bidding of the project with revised specifications.

7. 2020 Operation Stonegarden Grant (OPSG) - Funded by the Office of Homeland Security

RECOMMENDATION:

That the City Council takes the following actions:

1. Authorize the City Manager or designee to accept the 2020 Operation Stonegarden Grant (OPSG) in the amount of \$50,000, and to execute any grant documents and agreements necessary for the receipt and use of these funds; and
2. Appropriate funding in the amount of \$50,000 to reimburse the El Cajon Police Department for overtime (\$47,095), fringe benefits (\$1,973), and mileage costs (\$932) while participating in OPSG coordinated operations.

8. Authorization for the Execution of a Master Agreement and a Program Supplement Agreement with the California Department of Transportation (Caltrans)

RECOMMENDATION:

That the City Council adopts the next Resolutions, in order, approving Program Supplement Agreement No. 000000X82 for the Pedestrian Safety Improvements project HSIPL-5211(042) and General Master Agreement No. 11-5211S21 for Federal and State Funded Transportation projects.

9. Award of RFP No. 007-22 – Urban Design & Housing Strategies

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to enter into an agreement with Dudek, for an amount not to exceed \$199,757 for a term effective through December 31, 2023.

10. Fiscal Year 2021-22 First Quarter Budget Adjustment Report

RECOMMENDATION:

That the City Council:

1. Appropriates carry-over funding of \$8,025,820 from previously approved Capital Improvement Projects, capital outlay requests, and programs, to be expended in Fiscal Year 2021-22;
2. Authorizes the proposed personnel changes detailed in the report;
3. Authorizes the proposed capital expenditures and related funding transfers detailed in the report; and
4. Increases or modifies Fiscal Year 2021-22 appropriations in the amount of \$12,760,389 for additional needs as detailed in the report.

11. American Rescue Plan Act Projects

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, repealing Resolution No. 053-21 and approving American Rescue Plan Act projects with their respective expense category identification.

PUBLIC COMMENT:

At this time, any person may address a matter within the jurisdiction of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency that is not on the Agenda. Comments relating to items on today's docket are to be taken at the time the item is heard. State law prohibits discussion or action on items not on the Agenda; however, Council, Authority and Agency Members may briefly respond to statements or questions. An item may be placed on a future Agenda.

WRITTEN COMMUNICATIONS:

PUBLIC HEARINGS:

ADMINISTRATIVE REPORTS:

12. Microenterprise Home Kitchen Operations - MEHKO

RECOMMENDATION:

It is recommended that the City Council reviews the information provided in the report and directs staff to send a letter to the County recommending that the County Board of Supervisors "opt out" of the Microenterprise Home Kitchen Operations (MEHKO) program.

13. Senate Bill 9 (Atkins)

RECOMMENDATION:

This is an informational report only. No action required.

COMMISSION REPORTS:

ACTIVITIES REPORTS/COMMENTS OF MAYOR WELLS

SANDAG (San Diego Association of Governments) Board of Directors; SANDAG – Audit Committee, San Diego Division; LAFCO.

14. Council Activity Report

ACTIVITIES REPORTS/COMMENTS OF COUNCILMEMBERS:

15. **COUNCILMEMBER STEVE GOBLE**

MTS (Metropolitan Transit System Board); East County Advanced Water Purification Joint Powers Authority Board; Chamber of Commerce – Government Affairs Committee; SANDAG – Board of Directors – Alternate; SANDAG Public Safety Committee – Alternate; METRO Commission/Wastewater JPA – Alternate.

16. **MAYOR PRO TEM GARY KENDRICK**

METRO Commission/Wastewater JPA; Heartland Communications; Heartland Fire Training JPA.

17. **COUNCILMEMBER MICHELLE METSCHEL**

Harry Griffen Park Joint Steering Committee; Heartland Communications – Alternate; Heartland Fire Training JPA – Alternate.

18. **COUNCILMEMBER PHIL ORTIZ**

League of California Cities, San Diego Division; East County Economic Development Council; MTS (Metropolitan Transit System Board) – Alternate; East County Advanced Water Purification Joint Powers Authority Board – Alternate; Chamber of Commerce – Government Affairs Committee – Alternate.

JOINT COUNCILMEMBER REPORTS:

GENERAL INFORMATION ITEMS FOR DISCUSSION:

ORDINANCES: FIRST READING

ORDINANCES: SECOND READING AND ADOPTION

CLOSED SESSIONS:

ADJOURNMENT: The Regular Joint Meeting of the El Cajon City Council/ El Cajon Housing Authority/Successor Agency to the El Cajon Redevelopment Agency held this 12th day of October 2021, is adjourned to Tuesday, October 26, 2021, at 3:00 p.m.



City Council
Agenda Report

Agenda Item 1.

DATE: October 12, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Angela Cortez, City Clerk

SUBJECT: Minutes of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting

RECOMMENDATION:

That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency approves Minutes of the September 28, 2021, Meetings of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

Attachments

09-28-21DRAFT minutes - 3PM

09-28-21DRAFT minutes - 7PM

JOINT MEETING OF THE EL CAJON CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY



MINUTES

CITY OF EL CAJON EL CAJON, CALIFORNIA

September 28, 2021

An Adjourned Regular Joint Meeting of the El Cajon City Council/Housing Authority/ Successor Agency to the El Cajon Redevelopment Agency, held Tuesday, September 28, 2021, was called to order by Mayor/Chair Bill Wells at 3:00 p.m., in the Council Chambers, 200 Civic Center Way, El Cajon, California.

ROLL CALL

Council/Agencymembers present: Goble, Metschel, and Ortiz
Council/Agencymembers absent: None
Deputy Mayor/Vice Chair present: Kendrick
Mayor/Chair present: Wells
Other Officers present: Mitchell, City Manager/Executive Director
DiMaggio, Assistant City Manager
Foley, City Attorney/General Counsel
Cortez, City Clerk/Secretary

PLEDGE OF ALLEGIANCE TO FLAG led by Mayor Wells and MOMENT OF SILENCE. (The Courts have concluded that sectarian prayer, as part of City Council Meetings, is not permitted under the Constitution).

POSTINGS: The City Clerk posted Orders of Adjournment of the September 14, 2021, Meeting and the Agenda of the September 28 Meetings in accordance with State Law and El Cajon City/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Policy.

PRESENTATIONS:

- Commendation for Fire Rescue
- Proclamation for Fire Prevention Week
- Proclamation for Manufacturing Week

AGENDA CHANGES: None

CONSENT ITEMS: (1 – 7)

MOTION BY WELLS, SECOND BY METSCHEL, to APPROVE Consent Items 1 to 7.

MOTION CARRIED BY UNANIMOUS VOTE.

1. Minutes of El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meetings

Approves Minutes of the Re-Districting Meeting of September 8, 2021 and the September 14, 2021, Meeting of the El Cajon City Council/ Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

2. Warrants

Approves payment of Warrants as submitted by the Finance Department.

3. Approval of Reading Ordinances by Title only

Approves the reading by title and waives the reading in full of all Ordinances on the Agenda.

4. City of El Cajon Youth Sports Sponsorship

Accepts, appropriates, and expends a sponsorship in the amount of \$7,500 from Raising Cane's for the Youth Sports Programs.

CONSENT ITEMS: (Continued)

5. 2020 State Homeland Security Grant Program Funding

Adopts Resolution No. 072-21 authorizing the City Manager or designee to accept and appropriate the FY 2020 State Homeland Security Grant funds in the amount of \$81,968, and to execute any grant documents and agreements necessary for the receipt and use of these funds.

6. 2021 Investment Policy Update

Adopts Resolution No. 073-21 adopting the City of El Cajon Investment Policy and delegating investment authorities to the Director of Finance/Authority Treasurer.

7. El Cajon Housing Authority Annual Report (Fiscal Year 2020-2021)

Approves the attached Annual Report; and Authorizes the Executive Director to transmit it, in a form substantially as presented, to the California Department of Housing and Community Development as required by State law.

PUBLIC COMMENT:

Mike Anderson and ambassadors, representing the German American Society, spoke of El Cajon Oktoberfest.

WRITTEN COMMUNICATIONS: None

PUBLIC HEARINGS:

8. Public Hearing for the Consideration to Vacate a Walkway Easement on Mona Place

RECOMMENDATION:

1. Opens the Public Hearing and receives testimony;
2. Closes the Public Hearing; and
3. Adopts the next Resolution, in order, to approve the vacation of a walkway easement between Mona Place and Benjamin Place, established by Council Resolution No. 7724 and recorded on May 23, 1966, Map No. 5738.

PUBLIC HEARINGS: (Item 8 – Continued)

DISCUSSION

Traffic Engineer, Mario Sanchez provided a summary of the Item.

Mayor Wells opened the Public Hearing.

The following people spoke or submitted online comments in support of vacating the walkway easement:

1. Peggy Bailey
2. Juan Silva Barrera

The following people spoke or submitted online comments in opposition of vacating the walkway easement:

1. Jeanette Malanga
2. Lynne Stark
3. Howard Stark
4. James G. Renzi
5. Deborah McGlennon
6. Corey Klassen
7. Reverend Edith Washington-Woods
8. Tim Pilot
9. Kris Klassen
10. Krissenda Leigh-Pink
11. Dana Fennessy
12. Rachel Klassen
13. Kathleen Castillo

DRAFT

MOTION BY WELLS, SECOND BY KENDRICK, to CLOSE the Public Hearing.

MOTION CARRIED BY UNANIMOUS VOTE.

Discussion ensued among Council and Staff concerning the following:

- Liability issues for the owners of the easement;
- Release of liability request from Peggy Bailey to users of the easement;
- Consideration to review traffic issues on Chase;
- Easement is a neighborhood benefit but not a benefit for the City; and
- Public Hearing notice was done appropriately.

PUBLIC HEARINGS: (Item 8 – Continued)

MOTION BY ORTIZ, SECOND BY METSCHEL, to ADOPT Resolution No. 074-21, to approve the vacation of a walkway easement between Mona Place and Benjamin Place, established by Council Resolution No. 7724 and recorded on May 23, 1966, Map No. 5738.

MOTION CARRIED BY 4-1 VOTE (KENDRICK – NO).

ADMINISTRATIVE REPORTS:

9. Youth League Utility Support Fiscal Year 2021/2022

RECOMMENDATION:

That the City Council approves the Recreation Council recommendation to provide utility support, in the amount of \$2,100 per league, to eight Executive Member youth leagues.

DISCUSSION

Director of Parks & Recreation, Frank Carson and Recreation Services Manager, Julie Alon provided detailed information of the Item.

Discussion ensued among Council and Staff in regards to City of El Cajon parks welcoming people from other cities.

No comments were received for the Item.

MOTION BY GOBLE, SECOND BY ORTIZ, to provide utility support, in the amount of \$2,100 per league, to eight Executive Member youth leagues.

MOTION CARRIED BY UNANIMOUS VOTE.

10. Public Safety Center Project Update - Solar PV and Battery Storage

RECOMMENDATION:

That the City Council receives the report from staff about the City's Solar Photovoltaic and Battery Storage Project as planned for the Public Safety Center.

ADMINISTRATIVE REPORTS: (Item 10 – Continued)

DISCUSSION

City Engineer, Jeffrey Manchester provided detailed information of the Item.

No comments were received for the Item.

11. Harry Griffen Park Joint Powers Authority

RECOMMENDATION:

That the City Council receives the report and provides feedback and direction regarding Harry Griffen Park Joint Powers Authority.

DISCUSSION

City Manager Mitchell introduced Director of Parks & Recreation, Frank Carson, who provided detailed information of the Item.

Discussion ensued among Council and Staff in regards to the following:

- Increase the contributions by the City of El Cajon;
- Withdraw from the Joint Power Authority (JPA);
- Continue funding at 15%; and
- JPA representative must consult with the City Council for fee increases.

No comments were received for the Item.

MOTION BY GOBLE, SECOND BY KENDRICK, to MAINTAIN the current contribution of 15% to the JPA and request to update JPA By-Laws to include language that recommended increases be approved by the affected member agency's board.

MOTION CARRIED BY UNANIMOUS VOTE.

12. Update on Expenditures Related to the American Rescue Plan Act

RECOMMENDATION:

That the City Council receives the report and provides feedback.

ADMINISTRATIVE REPORTS: (Item 12 – Continued)

DISCUSSION

City Manager Mitchell provided detailed information of the Item.

Discussion ensued among Council and Staff in regards to the following:

- Request for a list of business who have received grant funding;
- Number of applications pending approval;
- Continue to encourage businesses to apply; and
- New Hire Process incentives.

No comments were received for the Item.

COMMISSION REPORTS: None

ACTIVITIES REPORTS/COMMENTS OF MAYOR WELLS:

SANDAG (San Diego Association of Governments) Board of Directors; SANDAG – Audit Committee; LAFCO.

13. Council Activities Report/Comments

Report as stated.

ACTIVITIES REPORTS OF COUNCILMEMBERS:

14. COUNCILMEMBER STEVE GOBLE

MTS (Metropolitan Transit System Board); East County Advanced Water Purification Joint Powers Authority Board; Chamber of Commerce – Government Affairs Committee; SANDAG – Board of Directors – Alternate; SANDAG Public Safety Committee – Alternate; METRO Commission/Wastewater JPA – Alternate.

Council Activities Report/Comments.

Report as stated.

ACTIVITIES REPORTS OF COUNCILMEMBERS: (Continued)

15. MAYOR PRO TEM GARY KENDRICK
METRO Commission/Wastewater JPA; Heartland Communications; Heartland Fire Training JPA.

Council Activities Report/Comments.

Report as stated.

16. COUNCILMEMBER MICHELLE METSCHEL
Harry Griffen Park Joint Steering Committee; Heartland Communications – Alternate; Heartland Fire Training JPA – Alternate.

Council Activities Report/Comments.

Report as stated.

17. COUNCILMEMBER PHIL ORTIZ
League of California Cities, San Diego Division; East County Economic Development Council; MTS (Metropolitan Transit System Board) – Alternate; East County Advanced Water Purification Joint Powers Authority Board – Alternate; Chamber of Commerce – Government Affairs Committee – Alternate.

Council Activities Report/Comments.

Report as stated.

JOINT COUNCILMEMBER REPORTS: None

GENERAL INFORMATION ITEMS FOR DISCUSSION: None

ORDINANCES: FIRST READING - None

ORDINANCES: SECOND READING AND ADOPTION - None

CLOSED SESSIONS:

18. Closed Session - Conference with Legal Counsel - Anticipated Litigation - Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9: One potential case

MOTION BY WELLS, SECOND BY KENDRICK, to ADJOURN to Closed Session at 5:38 p.m.

MOTION CARRIED BY UNANIMOUS VOTE.

RECONVENE TO OPEN SESSION AT 5:53 p.m.

City Attorney Foley reported the following actions:

- Directed Staff to obtain a pre-litigation analysis of land use, economic development and social impacts of the County of San Diego proposed 'Working Families Ordinance'

Adjournment: Mayor Wells adjourned the Adjourned Regular Joint Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency held this 28th day of September, 2021, at 5:54 p.m., to Tuesday, September 28, 2021, at 7:00 p.m.

DRAFT

ANGELA L. CORTEZ, CMC
City Clerk/Secretary

JOINT MEETING OF THE EL CAJON CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY



MINUTES

CITY OF EL CAJON EL CAJON, CALIFORNIA

September 28, 2021

An Adjourned Regular Joint Meeting of the El Cajon City Council/Housing Authority/ Successor Agency to the El Cajon Redevelopment Agency, held Tuesday, September 28, 2021, was called to order by Mayor/Chair Bill Wells at 7:00 p.m., in the Council Chambers, 200 Civic Center Way, El Cajon, California. This meeting was adjourned from the Adjourned Regular Joint Meeting held at 3:00 p.m., Tuesday, September 28, 2021, by order of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

ROLL CALL

Council/Agencymembers present:

Goble, Metschel, and Ortiz

Council/Agencymembers absent:

None

Deputy Mayor/Vice Chair present:

Kendrick

Mayor/Chair present:

Wells

Other Officers present:

Mitchell, City Manager/Executive Director

DiMaggio, Assistant City Manager

Foley, City Attorney/General Counsel

Cortez, City Clerk/Secretary

PLEDGE OF ALLEGIANCE TO FLAG led by Mayor Wells and MOMENT OF SILENCE. (The Courts have concluded that sectarian prayer, as part of City Council Meetings, is not permitted under the Constitution).

AGENDA CHANGES: None

PUBLIC COMMENT: None

PUBLIC HEARINGS:

100. Melody Lane Subdivision - Proposed Five-Lot Subdivision (TSM No. 2020-0002)

RECOMMENDATION:

That the City Council:

1. Opens the Public Hearing and receives testimony;
2. Closes the Public Hearing;
3. Moves to ADOPT the next Resolution, in order, APPROVING the CEQA Determination; and
4. Moves to ADOPT the next Resolution, in order, APPROVING Tentative Subdivision Map (TSM) No. 2020-0002 subject to conditions.

DISCUSSION

Director of Community Development, Anthony Shute, provided detailed information of the Item.

Mayor Wells opened the Public Hearing.

No comments were received for the Item.

Discussion ensued among Council and Staff concerning the following:

- Low income housing;
- Planned homes are to be priced at market rate; and
- Initial phase of subdivision.

MOTION BY WELLS, SECOND BY KENDRICK, to CLOSE the Public Hearing.

MOTION CARRIED BY UNANIMOUS VOTE.

MOTION BY WELLS, SECOND BY KENDRICK, to ADOPT Resolution No. 075-21, Approving the CEQA Determination; and ADOPT Resolution No. 076-21, Approving Tentative Subdivision Map No. 2020-0002 subject to conditions.

MOTION CARRIED BY UNANIMOUS VOTE.

ADJOURNMENT: Mayor Wells adjourned the Adjourned Regular Joint Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency, held this 28th day of September, 2021, at 7:05 p.m., to Tuesday, October 12, 2021, at 3:00 p.m.

ANGELA L. CORTEZ, CMC
City Clerk/Secretary

DRAFT



City Council
Agenda Report

Agenda Item 4.

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Angela Cortez, City Clerk
SUBJECT: 2022 Calendar of Meetings for the City Council/Housing Authority and Successor Agency to the Former Redevelopment Agency

RECOMMENDATION:

That the City Council reviews the proposed 2022 calendar of meetings for the City Council/Housing Authority and Successor Agency to the Former Redevelopment Agency, makes appropriate modifications, or accepts as presented.

BACKGROUND:

In 1996, the City Council established a schedule of meetings on the 2nd and 4th Tuesdays of each month. The proposed calendar follows the schedule, with the exception that only one meeting will be held in the months of November and December in order to accommodate holiday observances.

The League of California Cities Annual Conference dates for 2022 have not been determined.

2022 Holidays and Observances

January 1	New Year's Day
January 17	Martin Luther King's Birthday
February 21	President's Day
May 30	Memorial Day
July 4	Independence Day
September 5	Labor Day
November 11	Veterans Day
November 24 & 25	Thanksgiving Observance
December 24 & 25	Christmas Eve and Christmas Day
December 31	New Year's Eve

FISCAL IMPACT:

There is no fiscal impact associated with this recommendation.

Prepared By: Jackie Sangsanoy-Heng, Deputy City Clerk

Reviewed By: Angela Cortez, City Clerk

Approved By: Graham Mitchell, City Manager

Attachments

2022 CC Calendar



Proposed City Council Meeting Schedule

January 2022 - December 2022

January 2022 1						
S	M	T	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February 2022 2						
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27	28					

March 2022 3						
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April 2022 4						
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May 2022 5						
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29	30	31				

June 2022 6						
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July 2022 7						
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31						

August 2022 8						
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September 2022 9						
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October 2022 10						
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30	31					

November 2022 11						
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27	28	29	30			

December 2022 12						
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City Council
(619) 441-1763

City Hall Closed

Holidays

League of CA Cities Conference
To be Announced, Long Beach CA



City Council Agenda Report

Agenda Item 5.

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mara Romano, Purchasing Agent
SUBJECT: Award of Bid No. 004-22 – Broadway Creek Restoration Project Phase A

RECOMMENDATION:

That the City Council adopts the next Resolutions, in order, to:

1. Approve Plans and Specifications for Broadway Creek Restoration Project Phase A, Bid No. 004-22;
2. Find the first low bidder, Palm Engineering Construction Company, Inc. (PECC), non-responsive for the reasons set forth in the agenda report; and
3. Award the bid to the second lowest responsive, responsible bidder, Whillock Contracting, Inc., in the amount of \$2,755,479.24.

BACKGROUND:

The Broadway Creek Restoration Project Phase A is a restoration effort of a 1,300-foot section of Broadway Creek, which serves as a regional flood control waterway. The project footprint is surrounded by neighborhoods designated as disadvantaged communities. Improvements are required to mitigate ephemeral flooding risks to private and public property, both of which pose health and safety concerns to the community. The project scope will address flooding by widening the bottom of the channel, stabilizing the slopes, and installing a new reinforced concrete box culvert. Additionally, the project will restore natural habitat by removing invasive plant species and planting native vegetation, including over one hundred new trees, to enhance the shade canopy and provide additional environmental benefits.

This solicitation was advertised on July 15, 2021. The City received six responses on August 23, 2021. The three lowest bid responses were evaluated.

The lowest bid provided by PECC included an alternate product for consideration with their bid: Enviroflex® Articulated Concrete Block (Enviroflex), manufactured by Soil Retention Products. The alternate submitted was deemed to be a qualification of the bid, which formed the basis of pricing provided. The City's contract specifications require the use of ArmorFlex® Articulated Concrete Block (ArmorFlex), a product from Contech Engineered Solutions, or a product of equal (or better) quality and utility. Following review of the product submitted by PECC, City staff requested justification from PECC that the product submitted meets or exceeds quality and utility.

The justification submitted by PECC was reviewed by both City Engineering Staff and the Consultant Engineer of Record and following are the findings:

1. Steel cabling systems, which are fed through the cable ducts on each and every concrete block, are required for the installation. This process ensures long-term stability and resilience against high-velocity waters. The product submitted, Enviroflex, lacks a cabling system capable of resisting tensile forces and instead relies on vertical interlocking to provide stability. As such, it is not a complete and reliable solution for the project.
2. The low bidder, PECC, has not shown how openings for tree plantings can be accomplished under the specific permit requirements issued for the subject project. Specifically, the permits do not allow for concrete to be poured within the creek's cross-section as PECC recommends. Moreover, PECC has not demonstrated that the system will maintain its continued integrity and perform under conditions where the articulated concrete block (ACB) matting contains openings.

Conversely, the City's design was closely coordinated with the specified manufacturer to ensure proper openings can be made through the ACB mat to allow for the planting of over one-hundred (100) trees and the connection to nearly twenty (20) existing storm drain pipes. The system allows for as large as a 36" in diameter opening to be installed in the ACB mat without pouring any additional concrete in the creek's cross-section. Under these conditions, steel cabling installed throughout the ACB mat serves to hold the systems in place and maintain its structural integrity during rain or storm water conveyance events.

3. The low bidder, PECC, provided stability calculations for the ACB using 2:1 side-slopes, which differ from the project conditions. The project will be installing an ACB mat on steeper slopes than provided in the stability study (1.5:1 for the subject project), and as such, it is not clear if the alternate, Enviroflex ACB is structurally stable in the configuration designed.

For the reasons set forth above, PECC has not provided an alternate product that is "equal or better in quality and utility" to the original product specified and is considered non-responsive to the bid specifications.

Staff recommends that the City Council deems the bid of PECC as non-responsive and awards the bid to the second lowest responsive, responsible bidder, Whillock Contracting, Inc., in the amount of \$2,755,479.24. The summary of bids is attached and complete proposals are on file in the Purchasing Division.

FISCAL IMPACT:

The fiscal impact is \$2,755,479.24. Sufficient funds are available in Fiscal Year 2021-22 Annual Budget: Broadway Creek Restoration (WW3586).

Prepared By: Mara Romano, Purchasing Agent

Reviewed By: Yazmin Arellano, Director of Public Works

Approved By: Graham Mitchell, City Manager

Attachments

Reso - Plans & Specs

Reso - Award

Bid Summary - 004-22

RESOLUTION NO. __-21

RESOLUTION APPROVING
PLANS AND SPECIFICATIONS FOR
BROADWAY CREEK RESTORATION PROJECT PHASE A
(Bid No. 004-22)

WHEREAS, the Director of Public Works has submitted plans and specifications for the Broadway Creek Restoration Project Phase A (the "Project"); and

WHEREAS, it appears to be in the best interests of the City of El Cajon that the plans and specifications for the Project should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the plans and specifications for the Project submitted by the Director of Public Works are hereby approved and adopted as the official plans and specifications for said Project.

2. Said plans and specifications are directed to be filed in the office of the Director of Public Works of the City of El Cajon.

RESOLUTION NO. __-21

RESOLUTION AWARDING BID FOR
BROADWAY CREEK RESTORATION PROJECT PHASE A
(Bid No. 004-22)

WHEREAS, the Broadway Creek Restoration Project Phase A (the "Project") is a restoration effort of a 1,300-foot section of Broadway Creek, which serves as a regional flood control waterway; and

WHEREAS, the Project footprint is surrounded by neighborhoods designated as disadvantaged communities, and improvements are required to mitigate ephemeral flooding risks to private and public property, both of which pose health and safety concerns to the community; and

WHEREAS, the Project scope will address flooding by widening the bottom of the channel, stabilizing the slopes, and installing a new reinforced concrete box culvert; and

WHEREAS, the Project will also restore natural habitat by removing invasive plant species and planting native vegetation, including over one hundred new trees to enhance the shade canopy and provide additional environmental benefits; and

WHEREAS, the City of El Cajon (the "City") advertised the bid solicitation on July 15, 2021; and

WHEREAS, six (6) responses were received and opened at 2:00 p.m. on August 23, 2021, and the three (3) lowest bid responses were evaluated; and

WHEREAS, the Project was designed to be constructed using an articulated concrete block ("ACB") system, sufficient to withstand erosion and movement even though the bottom of the channel is required to be left in its natural state, and openings in the ACB can be cut to allow the planting of trees and for the intrusion of existing drain pipes, all of which is required by the State of California as the funding agency; and

WHEREAS, although there are various products for constructing the Project with an ACB system without cut outs for trees and drain pipes and installed to cover the bottom of the channel, the City's engineers and consultants have identified only one ACB system that will maintain integrity where the ACB is not used on the bottom of the channel and also following the cuts outs required for the Project; and

WHEREAS, Section 303 – Concrete and Masonry, 303-9 of the bid specifications identified and called for ArmorFlex® ACB ("ArmorFlex"), a product from Contech Engineered Solutions, as the specified product for the ACB system of the Project, or an equivalent ACB in lieu of ArmorFlex; and

WHEREAS, the bid submitted by the first low bidder, Palm Engineering Construction Company, Inc. ("PECC") included an alternate product for the Project's ACB

system, specifically, Enviroflex® ACB ("Enviroflex"), a product from Soil Retention Products; and

WHEREAS, City staff requested justification substantiating Enviroflex was of "equal or better in quality and utility" than the specified ArmorFlex, and PECC's responses were reviewed by City staff and the Engineer of Record, and it was determined:

A revetment cabling system for hydraulic stability in open channel flow is required, along with anchorage to a concrete footing at the top of slopes. The City's design to fully restore the channel and to implement all proposed flood control measures, as presented to grant funding agencies (Department of Water Resources and San Diego River Conservancy), cannot be achieved without stable ACB systems. Cables must be fed through the ACB's cable ducts on each and every block for long-term stability and resilience against high-velocity waters. Enviroflex lacks a cabling system capable of resisting tensile forces, and instead relies on a vertically interlocking mat designed for uses on a smaller scale. It is not a complete and reliable solution for this Project.

WHEREAS, in support of its designated alternative product, PECC has not demonstrated how the Enviroflex ACB product can be installed without using the product to cover the bottom of the channel, and how the product will withstand the openings for the trees and drains, all of which is necessary to meet the resource agency permit guidelines, or that the system will maintain its continued integrity and continue to work as designed with these required openings and with the absence of ACB on the bottom of the channel; and

WHEREAS, the City's design was closely coordinated with the ArmorFlex ACB product to ensure proper openings can be made through the ACB to allow for the planting of one hundred twenty (120) 15-gallon trees and twenty (20) existing drain pipes; and such openings, as big a 36" in diameter, can only be achieved with a cabling revetment system to hold the rest of the ACB mat in place, which the Enviroflex system lacks; and

WHEREAS, in the Project, as designed, only the Contech product can support the cutting of revetment cable, with washers and nuts installed so blocks can be removed as needed; and

WHEREAS, the study provided by PECC in support of the Enviroflex ACB product clearly was strictly for channel bottoms, but not the channel side slopes without the ACB bottom, and the analysis provided to justify the substitution of the Enviroflex product fails to provide proof that the ACB will remain in place without cabling where the channel bottom remains open; and

WHEREAS, PECC provided stability calculations for the Enviroflex ACB using sheets from the plans to identify the channel geometry and establish factors of safety for six (6) cross sections; however, it is not clear how the Enviroflex ACB can be configured as shown in the cross sections; and

WHEREAS, staff recommends that the City Council rejects the bid of PECC as non-responsive and awards the bid to the lowest responsive, responsible bidder, Whillock Contracting, Inc., in the amount of \$2,755,479.24; and

WHEREAS, sufficient funds are available in Fiscal Year 2021-22 Annual Budget: Broadway Creek Restoration; and

WHEREAS, the City Council believes it to be in the best interests of the City to reject the bid of PECC as non-responsive, and award the bid to the lowest responsive, responsible bidder, Whillock Contracting, Inc., in the amount of \$2,755,479.24.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The above recitals are true and correct, and are the findings of the City Council.
2. The City Council hereby rejects the bid of PECC as non-responsive due to the reasons set forth in the Recitals, above.
3. The City Council hereby awards the bid for the Project to the lowest responsive, responsible bidder:

Whillock Contracting, Inc.

in an amount not to exceed \$2,755,479.24.

4. The City Manager and City Clerk are authorized and directed to execute a contract for the Project on behalf of the City of El Cajon, with such changes or amendments as maybe approved by the City Manager.



City of El Cajon – Purchasing Division

BID EVALUATION

(To be included as an attachment to the agenda report.)

Bid No. 004-22	Bid Name: Broadway Creek Restoration Project Phase A
Solicitation Due Date/Time: August 23, 2021/2:00 p.m.	Initial Date of Advertisement: July 15, 2021
Number of Responses Received: 6	Bid Estimate: \$2,200,000.00

SUMMARY OF BIDS (INCLUDE ANY ADD. ALTS.):

Vendor	Vendor Type	Bid Amount	Format	Submit Date
Palm Engineering Construction Co		\$2,128,478.2500	Electronic	08/23/2021 1:23:16 PM
Whillock Contracting, Inc.		\$2,755,479.2400	Electronic	08/23/2021 1:42:41 PM
3-D Enterprises, Inc.	CADIR	\$2,858,705.0000	Electronic	08/23/2021 1:47:44 PM
Hazard Construction Engr LLC	CADIR	\$2,870,245.9500	Electronic	08/23/2021 1:35:20 PM
LB Civil Construction		\$3,038,486.0200	Electronic	08/23/2021 1:26:49 PM
TC Construction Company, Inc.		\$3,075,604.9500	Electronic	08/23/2021 1:53:07 PM

BID EVALUATION (TOP THREE LOWEST RESPONSES):

Bidder	Bid Responsiveness	Notes
Palm Engineering Construction Company, Inc.	No	Alternate product not approved.
Whillock Contracting, Inc.	Yes	
3-D Enterprises, Inc.	Yes	

LEGAL REVIEW REQUIRED: YES NO **IF YES, DATE LEGAL REVIEW COMPLETED:** SEPTEMBER 30, 2021

RENEWAL OPTIONS: YES NO **IF YES, SPECIFY TERM W/RENEWAL OPTIONS:** _____

LOWEST, RESPONSIVE, RESPONSIBLE BIDDER NAME AND AMOUNT: WHILLOCK CONTRACTING, INC. - \$2,755,479.24

TENTATIVE CITY COUNCIL AWARD DATE: OCTOBER 12, 2021

PURCHASING DIVISION:

Review Completed By: Mara Romano

Date: October 3, 2021



City Council
Agenda Report

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mara Romano, Purchasing Agent
SUBJECT: Reject and Re-Bid of Bid No. 008-22 – Recreation Center HVAC Improvements

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to reject all bids and authorize re-bidding of the project with revised specifications.

BACKGROUND:

The Recreation Center HVAC Improvements project includes installation of HVAC Systems at Bostonia, Kennedy, and Fletcher Hills Recreation Centers. The bid was advertised on August 5, 2021. One response was received at 2:00 p.m. on September 2, 2021.

Once the bid response was reviewed, City staff determined that due to the configuration of the specifications, it would be in the City's best interest to reject the bid and re-bid the services with revised specifications.

FISCAL IMPACT:

None.

Prepared By: Mara Romano, Purchasing Agent

Reviewed By: Yazmin Arellano, Director of Public Works

Approved By: Graham Mitchell, City Manager

Attachments

Resolution

RESOLUTION NO. ___-21

RESOLUTION REJECTING BIDS FOR
RECREATION CENTER HVAC IMPROVEMENTS
(Bid No. 008-22)

WHEREAS, Bid No. 008-22 for the Recreation Center HVAC Improvements project (the "Project"), including installation of HVAC Systems at Bostonia, Kennedy, and Fletcher Hills Recreation Centers, was advertised on August 5, 2021; and

WHEREAS, one (1) response was received at 2:00 p.m. on September 2, 2021; and

WHEREAS, upon review of the bid response, City staff determined that due to the configuration of the specifications, it would be in the best interest of the City of El Cajon (the "City") to reject the sole bid and re-bid the Project with revised bid specifications; and

WHEREAS, the City Council believes it to be in the best interest of the City to reject the sole bid and re-bid the Project with revised bid specifications as recommended by staff.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The foregoing recitals are true and correct and are the findings of the City Council.
2. The City Council hereby rejects the sole bid received for the reasons stated above, and authorizes re-bidding of the Project with revisions to the bid specifications, as approved by the City Manager.
3. The City Manager is hereby authorized to approve the final plans and revised specifications prior to re-bidding for and on behalf of the City of El Cajon.



City Council Agenda Report

Agenda Item 7.

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mike Moulton, Chief of Police
SUBJECT: 2020 Operation Stonegarden Grant (OPSG) - Funded by the Office of Homeland Security

RECOMMENDATION:

That the City Council takes the following actions:

1. Authorize the City Manager or designee to accept the 2020 Operation Stonegarden Grant (OPSG) in the amount of \$50,000, and to execute any grant documents and agreements necessary for the receipt and use of these funds; and
2. Appropriate funding in the amount of \$50,000 to reimburse the El Cajon Police Department for overtime (\$47,095), fringe benefits (\$1,973), and mileage costs (\$932) while participating in OPSG coordinated operations.

BACKGROUND:

Operation Stonegarden Grant (OPSG) is funded by the U.S. Department of Homeland Security and administered by the San Diego County Sheriff's Department. Through a partnership with the Office of Homeland Security, Customs and Border Protection/Border Patrol, and several local law enforcement agencies, the Stonegarden mission is to:

- Disrupt and degrade targeted transnational criminal organizations (TCOs);
- Expand opportunities to work cooperatively with several regional agencies on border-related crime; and
- Maximize intelligence gathering and enforcement opportunities targeting drug and weapons smuggling, criminal transportation cells, and other border-related crime.

Multi-agency operations, funded through OPSG, will saturate areas known to be used by transnational drug and smuggling groups. The large law enforcement presence will serve as a criminal deterrent and help to maintain secure borders. These operations promote cooperation in the region and lead to drug and vehicle seizures, as well as arrests. These multi-agency operations include target-based, intelligence-led operations, high-profile saturation patrols, undercover operations, and interdiction details. The primary areas of focus will be the I-8 egress and the surrounding feeder roads and areas. The El Cajon Police Department will utilize the OPSG funding for overtime, fringe benefits, and mileage costs, in order to participate in these coordinated operations.

FISCAL IMPACT:

The 2020 Stonegarden grant will provide \$50,000 in funding to the Police Special Revenue Fund (225900) and will not impact the General Fund. No matching funds are required for this grant. These funds will be used by the El Cajon Police Department for the projects listed above or as modified in the grant workbook and approved by the granting agency.

Prepared By: Jennifer Lytle, Management Analyst

Reviewed By: Mike Moulton, Police Chief

Approved By: Graham Mitchell, City Manager



City Council Agenda Report

Agenda Item 8.

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Yazmin Arellano, Director of Public of Works
SUBJECT: Authorization for the Execution of a Master Agreement and a Program Supplement Agreement with the California Department of Transportation (Caltrans)

RECOMMENDATION:

That the City Council adopts the next Resolutions, in order, approving Program Supplement Agreement No. 000000X82 for the Pedestrian Safety Improvements project HSIPL-5211(042) and General Master Agreement No. 11-5211S21 for Federal and State Funded Transportation projects.

BACKGROUND:

The City was recently awarded a Highway Safety Improvement Program (HSIP) Cycle 10 grant in the amount of \$245,900.00 from Caltrans. This pedestrian safety improvement project will install Yellow Rectangular Rapid Flashing Beacons at eleven (11) uncontrolled pedestrian crossing locations to enhance visibility and safety of pedestrians crossing the roadway. The identified locations are on routes to adjacent schools and parks.

The Caltrans Program Supplement Agreement establishes terms and conditions for City compliance in order to receive State funds for this pedestrian safety improvement project. The General Master Agreement is a broader requirement to allow the City to receive both Federal and State funds for the reimbursement of expended costs which are typically design and construction. Over the past decade, the City has benefited greatly from the Highway Safety Improvement Program which has funded several safety improvement projects.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

This item is statutorily exempt from CEQA.

FISCAL IMPACT:

Grant funds in the amount of \$245,900.00 will be received from Caltrans. The funding source is State funding and thus no Federal funds are planned to be received. No general funds will be expended on this project. There is no fiscal impact with the execution of the Master Agreement.

Prepared By: Mario Sanchez, City Traffic Engineer
Reviewed By: Yazmin Arellano, Director of Public Works
Approved By: Graham Mitchell, City Manager

Attachments

Reso - Program Supplement Agmt
Reso - Master Agmt
Program Supplement Agreement
El Cajon Master Agreement

RESOLUTION NO. ___-21

RESOLUTION OF THE CITY OF EL CAJON
APPROVING AND AUTHORIZING THE EXECUTION OF A
PROGRAM SUPPLEMENT AGREEMENT WITH CALTRANS
FOR A HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP)
GRANT PROJECT PEDESTRIAN SAFETY IMPROVEMENTS
HSIPSL- 5211(042)

WHEREAS, the City of El Cajon (the "City") was recently awarded a state-aid grant from the California Department of Transportation ("Caltrans") for the purpose of installing Yellow Rectangular Rapid Flashing Beacon ("RRFB") systems at eleven (11) un-controlled pedestrian crossings at various locations in the City (the "Project"); and

WHEREAS, the Program Supplement No. 000000X82 to Administering Agency-State Agreement for State Funded Projects No. 11- 5211S21, with Caltrans for a Highway Safety Improvement Program ("HSIP") Grant Project (the "Agreement") is required for the reimbursement of expended costs for the Project, and establishes terms and conditions the City must meet and comply with in order to receive state funds to implement transportation improvement projects; and

WHEREAS, the Project will improve pedestrian safety by enhancing un-controlled crossings in order to increase the visibility of pedestrians crossing streets; and

WHEREAS, the parties desire to enter into the Agreement to set forth the terms and conditions for the successful completion of the Project.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The City Council hereby approves the Agreement, substantially in the form as presented at this meeting.
2. The City Council hereby authorizes the City Manager to execute the Agreement on behalf of the City, with such changes as may be approved by the City Manager, and to take all actions and to execute all documents, attachments to the Agreement, and other documents necessary or appropriate to carry out the terms of the Agreement.
3. The City Council hereby further authorizes the City Clerk to attest to the signature of the City Manager in executing the Agreement and such documents as authorized in Section 2, above.

RESOLUTION NO. ___-21

RESOLUTION OF THE CITY OF EL CAJON
APPROVING THE MASTER AGREEMENT
ADMINISTERING AGENCY- STATE
AGREEMENT FOR STATE-FUNDED PROJECTS
AGREEMENT NO. 11-5211S21

WHEREAS, the City of El Cajon (the "City") is eligible to receive Federal and/or State funding for certain Transportation Projects, through the California Department of Transportation ("Caltrans"); and

WHEREAS, Master Agreements, Program Supplement Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements with Caltrans require execution before such funds can be claimed; and

WHEREAS, the City wishes to delegate authorization to execute any and all agreements, supplements, and any amendments thereto to the City Manager, or designee.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The City Council hereby approves the Master Agreement No. 11-5211S21, substantially in the form as presented at this meeting.

2. The City Council hereby authorizes the City Manager, or designee, to execute Master Agreements, any Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements, and any amendments thereto with the California Department of Transportation on behalf of the City of El Cajon.

PROGRAM SUPPLEMENT NO. 000000X82
 to
 ADMINISTERING AGENCY-STATE AGREEMENT
 FOR STATE FUNDED PROJECTS NO 11-5211S21

Adv. Project ID 1122000029
 Date: September 08, 2021
 Location: 11-SD-0-ECJ
 Project Number: HSIPSL-5211(042)
 E.A. Number:
 Locode: 5211

This Program Supplement, effective _____, hereby adopts and incorporates into the Administering Agency-State Agreement No. 11-5211S21 for State Funded Projects which was entered into between the ADMINISTERING AGENCY and the STATE with an effective date of _____ and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. _____ approved by the ADMINISTERING AGENCY on _____ (See copy attached). The ADMINISTERING AGENCY further stipulates that as a condition to the payment by the State of any funds derived from sources noted below encumbered to this project, Administering Agency accepts and will comply with the Special Covenants and remarks set forth on the following pages.

PROJECT LOCATION: 11 unsignalized pedestrian crossings citywide.

TYPE OF WORK: Install Rectangular Rapid Flashing Beacons (RRFBs) and High Visibility Crosswalks. LENGTH: 0.0(MILES)

Estimated Cost	State Funds		Matching Funds	
	STATE		LOCAL	OTHER
\$245,900.00		\$245,900.00	\$0.00	\$0.00

CITY OF EL CAJON

STATE OF CALIFORNIA
 Department of Transportation

By _____
 Title _____
 Date _____
 Attest _____

By _____
 Chief, Office of Project Implementation
 Division of Local Assistance
 Date _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer Janie Yee Date 9/9/2021 \$245,900.00

SPECIAL COVENANTS OR REMARKS

1.
 - A. This PROJECT has received STATE funds from Highway Safety Improvement Program (HSIP). The ADMINISTERING AGENCY agrees to administer the PROJECT in accordance with the Highway Safety Improvement Program (HSIP) Guidelines, the Local Assistance Procedures Manual (LAPM), the Local Assistance Program Guidelines (LAPG), and this PROGRAM SUPPLEMENT.
 - B. The STATE funds for this PROJECT may be provided under one or more phases, which are Preliminary Engineering (PE), Right-of-Way (R/W) and Construction (Con).

A phase-specific fund allocation is required, in addition to other requirements, before reimbursable work can occur for the phase identified. Each allocation will be assigned an effective date and identify the amount of funds allocated per phase. Unless otherwise determined, the effective date of the phase-specific allocation will constitute the start of reimbursable expenditures for the phase. The STATE funds available for reimbursement will be limited to the amount allocated by the STATE for the phase.
 - C. At the time of the first fund allocation approval for the Project, this PROGRAM SUPPLEMENT, a STATE-approved Allocation Letter and STATE Finance Letter are prepared to allow reimbursement of eligible PROJECT expenditures for the phase allocated.
 - D. STATE and ADMINISTERING AGENCY agree that any additional fund allocations made after the execution of this PROGRAM SUPPLEMENT, for the phase that has been authorized in the first fund allocation approval or for a new phase, will be encumbered on this PROJECT by use of a STATE-approved Allocation Letter and a STATE Finance Letter and are subject to the terms and conditions thereof.
 - E. This PROJECT is subject to the delivery requirements enacted by the HSIP guidelines. The delivery requirements may be accessed at: <https://dot.ca.gov/programs/local-assistance/fed-and-state-programs/highway-safety-improvement-program/delivery-requirements-status-approved-projects>.
 - F. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer immediately after project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract. Failure to do so will cause a delay in the State processing of invoices for the construction phase.
 - G. The ADMINISTERING AGENCY shall invoice STATE for PE, R/W and CON costs no later than 180 days after the end of expenditure the phase. For construction costs, the ADMINISTERING AGENCY has 180 days after project completion or contract acceptance to make the final payment to the contractor, prepare the final Report of Expenditures and final invoice, and submit to STATE for verification and

SPECIAL COVENANTS OR REMARKS

payment.

H. ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LAPM provisions.

I. ADMINISTERING AGENCY agrees to comply with the requirements in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (applicable to Federal and State Funded Projects).

J. By executing this PROGRAM SUPPLEMENT, ADMINISTERING AGENCY agrees to provide the STATE, upon request, with the information related to the PROJECT for the purpose of project evaluation or other purposes.

K. The ADMINISTERING AGENCY shall construct the PROJECT in accordance with the scope of work presented in the application and approved by the State. Any changes to the approved PROJECT scope without the prior expressed approval of the State are ineligible for reimbursement and may result in the entire PROJECT becoming ineligible for reimbursement.

MASTER AGREEMENT
ADMINISTERING AGENCY-STATE AGREEMENT FOR
STATE-FUNDED PROJECTS

11	City of El Cajon
-----	-----
District	Administering Agency

Agreement No. 11-5211S21

This AGREEMENT, is entered into effective this _____ day of _____, 20____, by and between the City of El Cajon, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Legislature of the State of California has enacted legislation by which certain State funds are made available for use on local transportation related projects of public entities qualified to act as recipients of these state funds; and
2. WHEREAS, ADMINISTERING AGENCY has applied to the California Transportation Commission (CTC) and/or STATE for funding from a State-funded program (herein referred to as STATE FUNDS), as defined in the Local Assistance Program Guidelines (LAPG) and/or in the respective CTC Guidelines, for use on local authorized transportation related projects as a local administered project(s), hereinafter referred to as "PROJECT"; and
3. WHEREAS, said PROJECT will not receive any federal funds; and
4. WHEREAS, before STATE FUNDS will be made available for PROJECT, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving STATE FUNDS for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project- specific Program Supplement to this AGREEMENT for state funded projects, hereinafter referred to as "PROGRAM SUPPLEMENT", has been fully executed by both STATE and ADMINISTERING AGENCY.

2. The State approved project-specific allocation notification letter and approved CTC allocation documentation designate the party responsible for implementing PROJECT, type of work, and location of PROJECT for projects requiring CTC allocation by PROJECT component of work.

3. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive STATE FUNDS from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these STATE FUNDS that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.

4. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT. The PARTIES agree that STATE may suspend future allocations, encumbrances and invoice payments for any on- going or future STATE FUNDED PROJECT performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned, unless otherwise agreed by STATE in writing.

5. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of STATE FUNDS encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.

6. STATE FUNDS will not participate in any portion of PROJECT work performed in advance of the effective date of allocation by CTC, or by STATE for allocations delegated to STATE by CTC, for said PROJECT.

7. Projects allocated with STATE FUNDS will be administered in accordance with the current CTC STIP Guidelines, applicable chapter(s) of the LAPG, LAPM and/or any other instructions published by STATE.

8. ADMINISTERING AGENCY agrees to ensure compliance with all relevant State laws and requirements for work related to PROJECT, including the California Environmental Quality Act (CEQA).

9. ADMINISTERING AGENCY's eligible costs for preliminary engineering work includes all preliminary work directly related to PROJECT up to contract award for construction, including, but not limited to, environmental studies and permits (E&P),

preliminary surveys and reports, laboratory work, soil investigations, the preparation of plans, specifications and estimates (PS&E), advertising for bids, awarding of a contract and project development contract administration.

10. ADMINISTERING AGENCY's eligible costs for construction engineering include actual inspection and supervision of PROJECT construction work; construction staking; laboratory and field testing; and the preparation and processing of field reports, records, estimates, final reports, and allowable expenses of employees/consultants engaged in such activities.

11. Unless the PARTIES agree otherwise in writing, ADMINISTERING AGENCY's employees or its contracted engineering consultant shall be responsible for all PROJECT engineering work.

12. ADMINISTERING AGENCY shall not proceed with final design of PROJECT until final environmental approval of PROJECT. Final design entails the design work necessary to complete the PS&E and other work necessary for a construction contract but not required earlier for environmental clearance of that PROJECT.

13. If PROJECT is not on STATE-owned right-of-way, PROJECT shall be constructed in accordance with Chapter 11 of the LAPM that describes minimum statewide design standards for local agency streets and roads. The design standards for projects off the National Highway System (NHS) allow STATE to accept either the current Caltrans Highway Design Manual standards, the current FHWA-adopted American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets standards, or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current Local Assistance Procedures Manual.

14. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and where appropriate, an executed cooperative agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights-of-way or work which affects STATE facilities.

15. When PROJECT is not on the State Highway System (SHS) but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

16. ADMINISTERING AGENCY shall comply with the provisions of sections 4450 and 4454 of the California Government Code, as well as other Department of General Services guidance, if applicable, for the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and

usability. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

17. ADMINISTERING AGENCY shall provide a full-time public employee to be in responsible charge of each PROJECT. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. ADMINISTERING AGENCY may utilize consultants to perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer. Utilization of consultants does not relieve ADMINISTERING AGENCY of its obligation to provide a full-time public employee to be in responsible charge of each PROJECT.

18. Unless otherwise provided in the PROGRAM SUPPLEMENT, ADMINISTERING AGENCY shall advertise, award, and administer the PROJECT construction contract or contracts.

19. The cost of maintenance, security, or protection performed by ADMINISTERING AGENCY or contractor forces during any temporary suspension of PROJECT or at any other time may not be charged to the PROJECT.

20. ADMINISTERING AGENCY shall submit PROJECT-specific award information to STATE's District Local Assistance Engineer, within sixty (60) days after contract award.

21. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Final Project Expenditure Report", LAPM Exhibit 17-M, within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Final Project Expenditure Report", within 180 days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the Local Assistance Procedures Manual.

22. ADMINISTERING AGENCY shall comply with the Americans with Disabilities Act (ADA) of 1990 that prohibits discrimination on the basis of disability and all applicable regulations and guidelines issued pursuant to the ADA.

23. The Governor and the Legislature of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM, attached hereto as Exhibit A and further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of work connected with PROJECT shall incorporate Exhibit A (with third party's name replacing ADMINISTERING AGENCY) as parts of such agreement.

24. ADMINISTERING AGENCY shall include in all contracts and subcontracts awarded when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code sections 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective at the date of contract award by the ADMINISTERING AGENCY.

ARTICLE II - RIGHTS-OF-WAY

1. No contract for the construction of a STATE FUNDED PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights-of-way are available for construction purposes or will be available by the time of award of the construction contract.

2. The furnishing of rights of way by ADMINISTERING AGENCY as provided for herein includes, and is limited to, the following, unless the PROGRAM SUPPLEMENT provides otherwise.

(a) Expenditures of capital and support to purchase all real property required for PROJECT free and clear of liens, conflicting easements, obstructions and encumbrances, after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

(b) The cost of furnishing of right-of-way as provided for herein includes, in addition to real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of damages to owners of remainder real property not actually taken but injuriously affected by PROJECT.

(c) The cost of relocation payments and services provided to owners and occupants pursuant to Government Code sections 7260-7277 when PROJECT displaces an individual, family, business, farm operation or nonprofit organization.

(d) The cost of demolition and/or the sale of all improvements on the right-of-way after credit is recorded for sale proceeds used to offset PROJECT costs.

(e) The cost of all unavoidable utility relocation, protection or removal.

(f) The cost of all necessary hazardous material and hazardous waste treatment, encapsulation or removal and protective storage for which ADMINISTERING AGENCY accepts responsibility and where the actual generator cannot be identified, and recovery made.

3. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right-of-way for a PROJECT is not clear as certified by ADMINISTERING AGENCY, including, but not limited to, if said right-of-way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. ADMINISTERING AGENCY shall pay, from its own non- matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights-of-way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future STATE FUNDED PROJECTS of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

4. ADMINISTERING AGENCY shall comply with all applicable law, including but not limited to, all applicable legal authority regarding construction standards.

ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the CTC.
2. STATE'S financial commitment of STATE FUNDS will occur only upon the execution of this AGREEMENT, the execution of each project-specific PROGRAM SUPPLEMENT and/or STATE's approved finance letter.
3. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices in arrears for reimbursement of allowable PROJECT costs at least once every six months commencing after the STATE FUNDS are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future allocations and invoice payments for any on-going or future STATE FUNDED project performed by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period
4. Invoices shall be submitted on a standardized billing summary template, in accordance with Chapter 5 of the LAPM to claim reimbursement by ADMINISTERING AGENCY. For construction invoices, pay estimates must be included.
5. ADMINISTERING AGENCY must retain at least one copy of supporting backup documentation for allowable costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
6. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursements of actual allowable PROJECT costs already incurred and paid for by the ADMINISTERING AGENCY.
7. Indirect Cost Allocation Plans/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to the Inspector General - Independent Office of Audits and Investigations for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect cost incurred within each fiscal year being claimed for reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the LAPM, and the ICAP/ICRP approval procedures established by STATE.
8. STATE will withhold the greater of either two (2) percent of the total of all STATE FUNDS encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.
9. The estimated total cost of PROJECT, the amount of STATE FUNDS obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES with a finance letter, and an allocation notification letter when applicable. STATE FUNDING may be increased to cover PROJECT cost increases only if such additional funds are available and the CTC and/or STATE concurs with that increase in the

form of an allocation and finance letter.

10. When such additional STATE FUNDS are not available, ADMINISTERING AGENCY agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

11. ADMINISTERING AGENCY shall use its own non-STATE FUNDS to finance the local share of eligible costs and all PROJECT expenditures or contract items ruled ineligible for financing with STATE FUNDS. STATE shall make the final determination of ADMINISTERING AGENCY's cost eligibility for STATE FUNDED financing with respect to claimed PROJECT costs.

12. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

13. STATE FUNDS allocated by the CTC and/or STATE are subject to the timely use of funds provisions approved in CTC Guidelines and State procedures approved by the CTC and STATE.

14. STATE FUNDS encumbered for PROJECT are available for liquidation only for a limited period from the beginning of the State fiscal year when those funds were appropriated in the State Budget. STATE FUNDS not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance in accordance with Section 16304 of the Government Code. The exact date of fund reversion will be reflected in the STATE signed PROJECT finance letter.

15. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid to rank and file STATE employees under current California Department of Human Resources (CalHR) rules unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance in accordance with Government Code section 16304. If the rates invoiced by ADMINISTERING AGENCY are in excess of CalHR rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand.

16. ADMINISTERING AGENCY agrees to comply with California Government Code 4525-4529.14. Administering Agency shall undertake the procedures described in California Government Code 4527(a) and 4528(a). Administering Agency shall also comply with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards, excluding 2 CFR Part 200.318-200.326.

17. ADMINISTERING AGENCY agrees and will assure that its contractors and subcontractors will be obligated to agree that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

Every recipient and sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards, excluding 2 CFR Part 200.318-200.326 Governments. ADMINISTERING AGENCY agrees to comply with the provisions set forth in 23 CFR Parts 140, 645 and 646 when contracting with railroad and utility companies.

18. Every recipient and sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR 200 excluding 2 CFR Part 200.318-200.326, 48 CFR Chapter 1, Part 31, LAPM, Public Contract Code (PCC) 10300- 10334 (procurement of goods), PCC 10335-10381 (non-A&E services), California Government Code 4525-4529.5 including 4527(a) and 4528(a), and other applicable STATE regulations.

19. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be questioned, disallowed, or unallowable under 2 CFR, Part 200, 48 CFR, Chapter 1, Part 31, 23 CFR Parts 140, 645 and 646, LAPM, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), California Government Code 4525-4529.5 including 4527(a) and 4528(a), and other applicable STATE regulations are subject to repayment by ADMINISTERING AGENCY to STATE and may result in STATE imposing sanctions on ADMINISTERING AGENCY as described in Chapter 20 of the Local Assistance Procedures Manual.

20. Should ADMINISTERING AGENCY fail to refund any moneys due upon written demand by STATE as provided herein or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty (30) days of demand, or within such other period as may be agreed to in writing between the PARTIES hereto, STATE, acting through the State Controller, the State Treasurer, the CTC or any other public entity or agency, may intercept, withhold and demand the transfer of an amount equal to the amount paid by or owed to STATE for each PROJECT, from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may also withhold approval of future STATE FUNDED projects proposed by ADMINISTERING AGENCY.

21. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

22. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover STATE FUNDS improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V

AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of Article V.

2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.

3. ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts, and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above-referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years, or 35 years for Prop 1B funds, from the date of final payment to ADMINISTERING AGENCY.

4. ADMINISTERING AGENCY shall not award a construction contract over \$25,000 on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. All contracts awarded by ADMINISTERING AGENCY intended or used as local match credit must meet the requirements set forth in this AGREEMENT regarding local match funds.

5. ADMINISTERING AGENCY shall comply with Chapter 10 (commencing with Section 4525) Division 5 of Title 1 of the Government Code and shall undertake the procedures described in California Government Code 4527(a) and 4528(a). Administering Agency shall comply with Chapter 10 of the LAPM for A&E Consultant Contracts.

6. ADMINISTERING AGENCY shall comply with Government Code Division 5 Title 1 sections 4525-4529.5 and shall undertake the procedures described in California Government Code 4527(a) and 4528(a) for procurement of professional service contracts. Administering Agency shall follow Public Contract Code Section 10335-10381 for other professional service contracts.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of Article IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING, RECORDS RETENTION AND REPORTS and shall mandate that travel and per diem reimbursements and third-

party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner that is required of all other PROJECT expenditures.

9. Except as provided in this Article, this AGREEMENT is solely between and for the benefit of the PARTIES and there are no third-party beneficiaries.

ARTICLE VI - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all PROJECT funds reimbursed hereunder

only for transportation purposes that are in conformance with Article XIX of the California State Constitution and other California laws.

2. ADMINISTERING AGENCY shall conform to all applicable State and Federal statutes and regulations, and the Local Assistance Program Guidelines and Local Assistance Procedures Manual as published by STATE and incorporated herein, including all subsequent approved revisions thereto applicable to PROJECT unless otherwise designated in the project-specific executed PROJECT SUPPLEMENT.

3. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

4. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE.

5. Each project-specific PROGRAM SUPPLEMENT shall separately establish the terms and funding limits for each described PROJECT funded under this AGREEMENT and that PROGRAM SUPPLEMENT. No STATE FUNDS are obligated against this AGREEMENT.

6. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT, and ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.

7. ADMINISTERING AGENCY certifies, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the PROJECT work actually performed, or in STATE's discretion, to deduct from the price of PROGRAM SUPPLEMENT consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.

9. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE that may have an impact upon the outcome of this AGREEMENT or any individual PROJECT encompassed within a PROGRAM SUPPLEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of a PROJECT undertaken pursuant to this AGREEMENT. These disclosures shall be delivered to STATE in a form deemed

acceptable by the STATE prior to execution of this AGREEMENT.

10. ADMINISTERING AGENCY hereby certifies that it does not have, nor shall it acquire, any financial or business interest that would conflict with the performance of any PROJECT initiated under this AGREEMENT.

11. ADMINISTERING AGENCY certifies that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its sole discretion, to terminate this AGREEMENT without liability, to pay only for PROJECT work actually performed, or to deduct from a PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

12. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Manager, who shall be identified to ADMINISTERING AGENCY at the time of execution of this AGREEMENT and, as applicable, any time that Contract Manager changes during the duration of this AGREEMENT who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Manager, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Manager.

13. Neither the pending of a dispute nor its consideration by the Contract Manager will excuse the ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT and each PROGRAM SUPPLEMENT.

14. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under or in connection with any work, authority or jurisdiction of ADMINISTERING AGENCY arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims and suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

16. In the event of (a) ADMINISTERING AGENCY failing to timely proceed with effective PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT; (b) failing to maintain any applicable bonding requirements; and (c) otherwise materially violating the terms and conditions of this AGREEMENT and/or

any PROGRAM SUPPLEMENT, STATE reserves the right to terminate funding for that PROJECT upon thirty (30) days' written notice to ADMINISTERING AGENCY.

17. No termination notice shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if the default is not reasonably susceptible of cure within said thirty (30) day period the ADMINISTERING AGENCY proceeds thereafter to complete that cure in a manner and time line acceptable to STATE.

18. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT and the applicable PROGRAM SUPPLEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY for the reasons stated in paragraph sixteen (16) of ARTICLE VI, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE-approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of any PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

19. In the case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT and/or Cooperative Agreement, the terms stated in that PROGRAM SUPPLEMENT and/or Cooperative Agreement shall prevail over those in this AGREEMENT.

20. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

21. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officer.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
By _____

Chief, Office of Project Implementation
Division of Local Assistance

Date _____

City of El Cajon

By _____

City of El Cajon
Representative Name & Title
(Authorized Governing Body Representative)

Date _____

EXHIBIT A - FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 12900 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 11000, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage

sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.



City Council
Agenda Report

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mara Romano, Purchasing Agent
SUBJECT: Award of RFP No. 007-22 – Urban Design & Housing Strategies

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, to enter into an agreement with Dudek, for an amount not to exceed \$199,757 for a term effective through December 31, 2023.

BACKGROUND:

On August 9, 2021, the City of El Cajon issued a Request for Proposals (RFP) for Urban Design & Housing Strategies. Four responses were received by 5:00 p.m. on September 8, 2021.

The Urban Design & Housing Strategies project will help the City reach housing goals in the recently adopted 2021-2029 Housing Element. The purpose of this solicitation is to contract with a qualified firm to provide urban design services, including, but not limited to, updating and modernizing residential zoning and development standards, creating new residential objective design standards, creating public information materials for accessory dwelling units (ADUs), and preparing strategies or incentive plans for ADUs. Updates ensure that Zoning Code standards are conforming to new State regulations, and that minimum design standards are realized during the review of by-right residential developments. Updating permitting strategies and providing public information materials also helps streamline the development process.

A three-person evaluation team independently reviewed the proposals according to the criteria specified in the RFP. Several factors were evaluated, such as experience, innovation, and expertise.

After thorough evaluation of the proposals, the City determined the proposal received from Dudek best met the City's requirements. The attached memorandum details the evaluation process.

FISCAL IMPACT:

The fiscal impact is \$199,757 for the term effective through December 31, 2023. Sufficient funds are available in the FY2021-22 SB2 – Planning Grants Program (CD1001).

Prepared By: Mara Romano, Purchasing Agent

Reviewed By: Anthony Shute, Director of Community Development

Approved By: Graham Mitchell, City Manager

Attachments

Resolution

Memorandum - 007-22

RESOLUTION NO. ___-21

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF EL CAJON APPROVING AND
AUTHORIZING THE EXECUTION OF AN AGREEMENT
FOR URBAN DESIGN AND HOUSING STRATEGIES

WHEREAS, on August 9, 2021, the City of El Cajon (the "City") issued a Request for Proposals (the "RFP") for Urban Design and Housing Strategies (the "Project"); and

WHEREAS, four (4) responses were received by 5:00 p.m. on September 8, 2021; and

WHEREAS, the Project will help the City reach housing goals in the recently adopted 2021-2029 Housing Element, and the purpose of the solicitation is to contract with a qualified firm to provide urban design services, including, but not limited to, updating and modernizing residential zoning and development standards, creating new residential objective design standards, creating public information materials for accessory dwelling units ("ADUs"), and preparing strategies or incentive plans for ADUs; and

WHEREAS, updates ensure Zoning Code standards (1) conform to new State of California regulations, and (2) result in minimum design standards during the review of by-right residential developments, all of which helps streamline the development process; and

WHEREAS, a three-person evaluation team independently reviewed the proposals according to the criteria specified in the RFP, and after a thorough evaluation of the proposals, determined that the proposal received from Dudek best met the City's requirements; and

WHEREAS, sufficient funds are available in the FY2021-22 SB2 – Planning Grants Program (CD1001); and

WHEREAS, the City Council believes it to be in the City's best interest to enter into an agreement with Dudek in an amount not to exceed \$199,757, for a term effective through December 31, 2023.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. The above recitals are true and correct, and are the findings of the City Council.
2. The City Council hereby awards RFP No. 007-22 for Urban Design and Housing Strategies to:

Dudek

in the not-to-exceed amount of \$199,757, for a term effective through December 31, 2023.

3. The City Manager and City Clerk, on behalf of the City of El Cajon, are authorized and directed to execute an agreement for the RFP, with such changes or amendments as maybe approved by the City Manager.

10/12/21 CC Agenda
Reso – RFP 007-22 – Urban Design & Housing Strategies Agmt (Dudek) 100421

CITY OF EL CAJON



MEMORANDUM

DATE: September 22, 2021
TO: Mara Romano, Purchasing Agent
FROM: Spencer Hayes, Associate Planner
VIA: Anthony Shute, Director of Community Development
SUBJECT: Recommendation to Award – RFP No.007-22 – Urban Design & Housing Strategies

The City of El Cajon received four proposals for the above referenced Request for Proposal (RFP). The selection committee, comprised of personnel from the City of El Cajon, independently scored each proposal on the evaluation form included in RFP No. 007-22. The proposal evaluation form is based on a weighted scale with criteria including: 1) quality and completeness of the proposal, 2) consultant experience, innovation of work & technical ability, and 3) quality of staff, with a possible weighted average score of 100 points.

The weighted scores for Urban Design & Housing Strategies (RFP No. 007-22) after evaluations resulted in the following ranking:

Vendor	Average Score
DUDEK	86.08
Interwest Consulting Group	76.17
Citythinkers, Inc.	74.67
SWA Group	73.67

Recommendation:

Vendor interviews are not required. The selection committee concluded that the contract should be awarded to the top vendor: DUDEK.

Submitted by:

Spencer Hayes, Associate Planner

Authorized by:

Anthony Shute, Director



City Council
Agenda Report

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Clay Schoen, Director of Finance
SUBJECT: Fiscal Year 2021-22 First Quarter Budget Adjustment Report

RECOMMENDATION:

That the City Council:

1. Appropriates carry-over funding of \$8,025,820 from previously approved Capital Improvement Projects, capital outlay requests, and programs, to be expended in Fiscal Year 2021-22;
2. Authorizes the proposed personnel changes detailed in the report;
3. Authorizes the proposed capital expenditures and related funding transfers detailed in the report; and
4. Increases or modifies Fiscal Year 2021-22 appropriations in the amount of \$12,760,389 for additional needs as detailed in the report.

BACKGROUND:

Fiscal Year 2020-21 Results

Fiscal Year 2020-21 ended with total General Fund revenues of \$83.4 million. This amount exceeded the final budget by approximately \$9.3 million. Additionally, this total exceeds the amount projected during the assembly of the Fiscal Year 2021-22 Annual Budget by \$7.7 million. This was primarily due to Sales Tax increasingly outperforming estimates. This category alone bested estimates by \$7.1 million.

For the same period, General Fund expenditures totaled \$78.7 million. This was \$4.4 million below budget, and \$3.6 million below projected amounts. Of this amount \$2.0 million was the result of a reclassification of the contribution to the City's Public Agency Retirement Services (PARS) trust in the same amount. After the conclusion of the fiscal year, and following dialogue with the City's auditors, it was determined that this contribution did not represent an expenditure of funds, but was more similar to changing bank accounts, and therefore did not reduce General Fund Reserves.

As a result of this activity, the General Fund closed Fiscal Year 2020-21 with an increase to reserves of approximately \$4.7 million. Despite a tumultuous year, General Fund Sales Tax revenue experienced strong growth in the closing months. The Fiscal Year 2020-21 Annual Budget was adopted in June 2020 and anticipated the use of \$3.6 million of reserves. During the twelve months that followed, the City witnessed incremental, but building, recovery that

ended a remarkable turnaround of \$8.3 million, leading to continued strengthening of the City of El Cajon's financial condition.

First Quarter Budget Adjustments

As part of the budget process each year, departments estimate funding requirements through fiscal year-end (June 30), and the subsequent fiscal year to establish a total budget for multi-year projects, capital purchases, and certain programs. Due to unforeseen conditions and schedule adjustments, unspent, but committed, funds as of June 30 need to be carried forward to the new fiscal year so that projects and purchases can be completed. Table 1: Carry-Over Funding on the Attachment lists the carry-over amounts to be appropriated in Fiscal Year 2021-22.

Heartland Fire and Rescue (141000/145000)

A number of events and opportunities since the creation of the Fiscal Year 2021-22 Annual Budget have led to several unforeseen needs. These needs range from a mobile incident command and response management application (\$6,700) to a higher than expected consumption of hydration fluids (\$3,000). In order to maintain the uninterrupted delivery of services, staff recommends an increase to Heartland Fire & Rescue's operating supply budget of \$20,000.

Information Technology Services – Wastewater (615300)

In order to enhance services at the Public Works Septic Dump Station the use of a license plate reading system was identified as a means of improving vehicle tracking and billing. Sufficient funds are available in the adopted Fiscal Year 2021-22 Public Works – Wastewater Operations annual budget (650720). However, given the nature of the product and technical requirements, it was also determined that the implementation was best handled by the Information Technology (IT) Services group. Therefore, staff recommends amending the existing Wastewater budget to reflect a transfer to the IT Services fund, authorize the transfer, appropriate the transfer in the IT Services Fund (615300), as well as authorize the capital outlay of \$11,000 for this purpose.

Worker's Compensation Self Insurance (611000)

Staff recommends increasing appropriations for Worker's Compensation claims by \$500,000 in the Fiscal Year 2021-22 Worker's Compensation Self Insurance Fund's (611000) annual budget. This action makes funding available, if needed, by appropriating monies collected in previous years for this purpose.

Grant Awards (Various)

A number of grants to the City of El Cajon were not finalized at the time the Fiscal Year 2021-22 Annual Budget was adopted. These awards have since been finalized in amounts greater than anticipated. Staff recommends increasing total appropriations by \$55,339, for each award increased. Additionally, adoption of this action amends previous authorized amounts for acceptance and expenditure.

- Community Development Block Grant (CDBG) \$47,856
- HOME \$7,363
- State Homeland Security Grant (SHSG) \$120

State COPS Grant

The City of El Cajon recently entered into its second five-year contract with AXON for equipment and services related to body worn cameras. As a result of the timing of the start of the new

contract, the City has both a payment for the final year of the old contract, and the first payment for the new contract due in the same fiscal year. Over the duration of both contracts, this action does not represent an additional expenditure of funds, and only affects the timing of payments. However, the Fiscal Year 2021-22 Annual Budget only anticipated the final payment of the old contract. Therefore, staff recommends increasing appropriations by \$85,000 in the State COPS Grant Fund to accommodate this timing difference.

Bill Beck Park Playground Resurfacing Project (IFM3726)

This \$100,000 General Fund funded project to replace Bill Beck Park's aging playground surface was originally budgeted in Fiscal Year 2020-21. During preparation of the Fiscal Year 2021-22 Annual Budget, the project was identified, as being completed by June 30, 2021, and therefore would not require continuing the project into the new fiscal year. However, work is in progress, and the project is therefore not yet complete. Staff recommends reactivating the project in Fiscal Year 2021-22 with the same scope, budget, and funding as previously established and approved.

Broadway Creek Restoration Project (WW3586)

This project was originally budgeted in 2017 as a limited-scope project of \$478,750. Since that time, the project scope has grown in size and complexity. To better manage the overall plan, it was decided to break the project into smaller, easier to manage phases. Therefore, staff recommends reducing the scope and budget of the existing project by \$1,425,000 and retitling the current project as Broadway Creek Restoration Phase A. Additionally, staff recommends creating a new project, Broadway Creek Restoration Phase B in the amount of \$1,425,000 funded by the reduction in the existing project. This project is funded with the Wastewater funds, CDBG funds, several grants, and developer contribution.

Recreation Center Upgrades

In Fiscal Year 2019-20 the HVAC Improvements and Recreation Centers Project (IFM3679) was established with an original project budget of \$330,000. This project included limited improvements to City recreational facilities. As part of the programming of the American Rescue Plan Act (ARPA), the City Council allocated \$3.0 million for Recreation Center Upgrades – Cool Zones and Evacuation Sites. By making this funding available for this expanded purpose, it has effectively rendered the existing project obsolete. Therefore, staff recommends closing the existing project, and establishing a new capital project titled Recreation Center Upgrades – Cool Zones and Evacuation Sites for use of the funding provided for this purpose.

Solar PV and Battery Storage Improvements

In Fiscal Year 2020-21, \$3,235,000 of General Fund Reserves was used to establish the Public Safety Energy Efficiency Project (IFM3740). Since that time, the City Council made an allocation of \$5.0 million of ARPA funds for a second phase of this project. In order to expend ARPA funding in a timely manner, staff recommends replacing the original \$3,235,000 of General Fund funding in the original project with the ARPA allocation. Additionally, staff also recommends increasing the original project budget to \$3,800,300 also from the ARPA allocation.

Staff recommends the establishment of a new project titled Solar PV and Battery Storage Improvements – Phase 2 for \$5,100,000. This proposed project includes the \$3,235,000 of General Fund Reserves from the original project, along with an additional \$100,000 of General Fund proceeds and the remaining \$1,199,700 ARPA allocation.

Expand Broadband Citywide Project

This proposed ARPA-funded project is to install new fiber-optic communication systems at various City facilities. Funding for this purpose was previously approved via Council action allocating ARPA funds. Staff recommends the creation of a \$2.3 million Capital Improvement Project to administer this work consistent with amounts previously allocated.

Luke Lane Drainage Improvements

Proposed as a \$560,500 Wastewater Enterprise Fund and TransNet-funded project, this plan includes the replacement of drainage infrastructure along Luke Lane. The project includes road widening, concrete curbing, as well as asphalt and pavement improvements.

Pedestrian Safety Improvements

This proposed project includes a number of safety improvements at eleven currently un-signalized pedestrian crossings near schools and in the downtown area. Funding of \$263,250 is proposed using Highway Safety Improvement Program grant funds in conjunction with TransNet monies.

ADA Concrete Improvements 2021

This action proposes increasing the existing ADA Concrete Improvements 2021 (PW53021) project by an additional \$200,000 of TransNet funding. This project was originally established in 2021 using CDBG funding to improve access via sidewalk, curb and gutter, ramps, and other concrete improvements.

Personnel Adjustments

Subsequent to the creation of the Fiscal Year 2021-22 Annual Budget, a number of classification studies were completed. This process assesses if the current job classification correctly characterizes the work performed. These changes do not represent the addition of staff, and only reclassifies existing positions. As a result, three jobs are proposed for reclassification:

- Human Resources- reclassify Management Analyst to Human Resources Analyst
- Fire Department- reclassify Management Analyst to Senior Management Analyst
- Police Department- reclassify Administrative Secretary to Management Assistant
- Community Development- reclassify Planning Manager to Deputy Director of Community Development

In order to better serve the public, two increases (1.5 FTE total) in staffing proposals are proposed:

- City Clerk's Office- addition of one Customer Service Representative (1.0 FTE)
- Parks & Recreation Department- increase part-time Management Analyst to full time status (additional 0.5FTE)

Additionally, a Fleet Partskeeper was included in the Public Works Fiscal Year 2021-22 Annual Budget for the first time. Following the review and finalization of the job classification, the title of the position was revised to Fleet Specialist. There is no substantive change associated with this action, as this is simply an acknowledgement of the modification to the budget.

There are no appropriation adjustments requested at this time associated with these changes.

FISCAL IMPACT:

This action will carry over unused Fiscal Year 2020-21 appropriations totaling \$8,025,820 into the current year and authorize \$12,760,389 of additional Fiscal Year 2021-22 expenditures. Table 3 on the Attachment details the individual fund impact.

Prepared By: Caly Schoen, Director of Finance

Reviewed By:

Approved By: Graham Mitchell, City Manager

Attachments

FY2021-22 First Quarter Report Tables

FY2021-22 First Quarter Report CIP Project Sheets

FIRST QUARTER BUDGET AMENDMENTS FOR FISCAL YEAR 2021-22

TABLE 1: CARRY-OVER FUNDING

Purchase Order (PO)/ Project Number	Description	Fund Name Budget Activity	Carry Over Appropriation
PO 34303R	Tyler Technologies	IT Services Fund	\$ 28,800
PO 94403	Tyler Technologies	IT Services Fund	\$ 36,533
PO 94473	Downtown Ford Sales	Fleet Replacment / Wastewater Enterprise Fund	\$ 118,626
PO 94562	AEP California	Fleet Replacment / Wastewater Enterprise Fund	\$ 60,989
PO 94642	Computer Protection Technology	IT Services Fund	\$ 5,101
PO 94660	Tyler Technologies	IT Services Fund	\$ 1,877,865
PO 94766	C.T.E. Inc.	IT Services Fund	\$ 22,560
PO 94769	Fastenal Company	Gas Tax/ Wastewater Enterprise Fund	\$ 6,796
Project C0704	Mobile Home Rehabilitation Loan Program	CDBG	215,976
Project C0758	Guardrail Replacement at 1527 E Main St.	CDBG	25,000
Project C0922	Wells Park Improvements	CDBG	726,283
Project C0925	ADA Curb Ramps & Sidewalks (2019)	CDBG	227,549
Project C0926	ADA Curb Ramps & Sidewalks (2020)	CDBG	273,246
Project C0927	Neighborhood Street Light Improvement Program	CDBG	497,561
Project C0754V	Interfaith Shelter Network - Rental and Utility Assistance Program	CDBG - CARES	9,444
Project C0755V	CSA San Diego County - Rental and Utility Assistance Program	CDBG - CARES	9,766
Project C0756V	Home Start Inc - Rental and Utility Assistance Program	CDBG - CARES	219,833
Project C0757V	Home Start Inc - Motel Voucher Program	CDBG - CARES	2,432
Project C0758V	Home Start Inc - Emergency Shelter Scatter-Site	CDBG - CARES	400,000
Project C0759V	Mama's Kitchen - Home Delivered Meals	CDBG - CARES	10,000
Project C0760V	ECTLC - Emergency Shelter Program	CDBG - CARES	100,000
Project C0931V	Acquisition/Rehab of Facility for Homeless Shelter	CDBG - CARES	299,307
Project H0718	Community Housing Development Organization (CHDO) Project Set-Aside	HOME	337,543
Project H0720	Housing Rehabilitation Pool of Funds	HOME	2,513,964
Project H0722	Single Family Rehabilitation Program	HOME	646
Appropriations for Purchase Orders and Project Carry Overs			\$8,025,820

TABLE 2: MISCELLANEOUS ADJUSTMENTS

Description	Department/Fund	Type of Adjustment	Amount
Increase Operating Supplies	Fire Department- General Fund	Appropriation Increase	\$ 20,000
License Plate Reading System	Information Technology Services Fund	Appropriation Increase	\$ 11,000
Establish Claims Reserve	Workers Compensation Self Insurance Fund	Appropriation Increase	\$ 500,000
Increase in Grant Award	CDBG	Appropriation Increase	\$ 47,856
Increase in Grant Award	HOME	Appropriation Increase	\$ 7,363
Increase in Grant Award	State Homeland Security Grant	Appropriation Increase	\$ 120
Increase in Contract Payment	State COPS Grant	Appropriation Increase	\$ 85,000
Bill Beck Playground Resurfacing Project	City Capital Improvement Program Fund	Appropriation Increase	\$ 100,000
Broadway Creek Restoration Phase A	Wastewater Enterprise Fund	Appropriation Decrease	\$ (1,425,000)
Broadway Creek Restoration Phase B	Wastewater Enterprise Fund	Appropriation Increase	\$ 1,425,000
HVAC Improvements and Recreation Centers	City Capital Improvement Program Fund	Close Project	-
Recreation Center Upgrades – Cool Zones and Evacuation Sites	City Capital Improvement Program Fund	Appropriation Increase	\$ 3,000,000
Solar PV and Battery Storage Improvements Phase 1	City Capital Improvement Program Fund	Appropriation Increase	\$ 565,300
Solar PV and Battery Storage Improvements Phase 2	City Capital Improvement Program Fund	Appropriation Increase	\$ 5,100,000
Expand Broadband Citywide Project	City Capital Improvement Program Fund	Appropriation Increase	\$ 2,300,000
Luke Lane Drainage	Wastewater Enterprise Fund	Appropriation Increase	\$ 560,500
Pedestrian Safety Improvements	Transportation Capital Improv. Program Fund	Appropriation Increase	\$ 263,250
ADA Concrete Improvements 2021	Transportation Capital Improv. Program Fund	Appropriation Increase	\$ 200,000

TABLE 3: IMPACT BY FUND

Fund Name	Fund Number	Total Impact
General Fund	101	\$ 20,000
Gas Tax	211	1,699
State COPS Grant	215	85,000
State Homeland Security Program	221	120
Community Development Block Grant (CDBG)	270	3,064,253
HOME Grant	275	2,859,516
Capital Improvement Projects	501	11,065,300
Transportation Capital Improvement Projects	550	463,250
Vehicle Replacement	605	46,723
Workers Compensation Self Insurance Fund	611	500,000
Information Technology	615	1,981,859
Wastewater Enterprise Fund	650	698,489

TABLE 4: PERSONNEL ADJUSTMENTS

Classification	Department/Fund	Action (FTE)
Management Analyst	Human Resources Department - General Fund	Reclassify to Human Resources Analyst
Management Analyst	Fire Department - General Fund	Reclassify to Senior Management Analyst
Administrative Secretary	Police Department - General Fund	Reclassify to Management Assistant
Customer Service representative	City Clerk - General Fund	Add One
Management Analyst	Parks & Recreation - General Fund	Increase to Full Time (Add One Half)
Fleet Partskeeper	Public Works - Fleet Maintenance	Title Change to Fleet Specialist
Planning Manager	Community Development - General Fund	Reclassify to Deputy Director

CAPITAL IMPROVEMENT PROJECT FISCAL YEAR 2021-2022

PROJECT NAME: BILL BECK PARK PLAYGROUND RESURFACING **ACTIVITY:** 501000
PROJECT NO: IFM3726

Description:

Bill Beck Park playground, which is 2,500 square feet, will be resurfaced. This includes removing old surfacing and preparing the subgrade.

Justification:

The existing surface is engineered wood mulch, which requires frequent maintenance. Heavy storms wash away the mulch and decomposition requires PW Operations staff to refill the playground area often. The new surfacing will improve fall safety requirements and will be easier to maintain.

Scheduling:

Project is anticipated to be completed in Fiscal Year 2021-22.

Operating Budget Impact:

Significant decreases are expected to the operational budget due to the new improvements.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)				-
Consulting Services (8325)				-
Engineering Services (8335)				-
Engineering Services-Internal (8336)			5,000	5,000
Inspection-Internal (8337)			5,000	5,000
Legal Services (8345)				-
Other Prof/Tech Services (8395)				-
Advertising (8522)			450	450
Janitorial Services (8544)				-
Permits & Fees (8560)			50	50
Printing & Binding (8570)				-
Furniture, Machinery & Equipment (9035)				-
Land Improvements (9055)			89,500	89,500
Construction-Buildings (9060)				-
Infrastructure (9065)				-
Contingency (9060)				-
PROJECT COST TOTAL:	-	-	100,000	100,000

Source(s) of Funds:				
General Fund			100,000	100,000
FUNDING TOTAL:	-	-	100,000	100,000

CAPITAL IMPROVEMENT PROJECT

FISCAL YEAR 2021 - 2022

PROJECT NAME: BROADWAY CREEK RESTORATION PHASE A

ACTIVITY: 650900
PROJECT NO: WW3586

Description:

The project scope includes the planning, design, permitting and restoration of an 1,300' long earthen channel spanning from 400' north of Broadway, adjacent to Hunter's Run Apartments, through the Ballantyne Street undercrossing. A portion of the project is shared by the County of San Diego, and as such, partnering and cost share is defined. The project will accomplish one phase of the creek restoration, Phase A. Further, the scope intends to mitigate severe channel erosion and scour as prevalent in the existing condition, as well as protect private property from further damage. Design and planning efforts include utilizing consultants for preliminary and final design, resource agency permitting, environmental technical studies, improvement plans and specifications. Construction of the subject project is anticipated to occur in Fiscal Year 2021-22.

Justification:

The project is high-priority due to prolonged damage incurred from surface water, to both public and private assets, along with capacity issues inherent with the existing channel. The project also serves to restore vital biological habitat in the community in alignment with goals set for the City by the Regional Water Quality Control Board.

Scheduling:

Design commenced in fiscal year 2019-20, which includes environmental and permitting with resource agencies. Construction is expected to start and be completed in fiscal year 2022-23.

Operating Budget Impact:

The project will replace existing assets and reduce the Wastewater operational budget by reducing maintenance costs.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Operating Supplies (8160)		87		87
Architectural Services (8315)				-
Consulting Services (8325)	400,000	826,492	(300,000)	526,492
Engineering Services (8335)				-
Engineering Services-Internal (8336)	45,000	153,456	(40,000)	113,456
Inspection Services-Internal (8337)	30,000	100,000	(30,000)	70,000
Legal Services (8345)				-
Other Prof/Tech Services (8395)		7,988		7,988
Advertising (8522)	250	-		-
Janitorial Services (8544)				-
Permits & Fees (8560)	3,500	6,535		6,535
Printing & Binding (8570)				-
Furniture, Machinery & Equipment (9035)				-
Land (9050)	-	-		-
Construction-Buildings (9060)				-
Infrastructure (9065)	-	4,380,000	(1,055,000)	3,325,000
Contingency (9060)				-
PROJECT COST TOTAL:	478,750	5,474,558	(1,425,000)	4,049,558

Source(s) of Funds:				
Wastewater Enterprise Fund	478,750	2,179,558	(900,000)	1,279,558
SDRC Proposition 68		250,000		250,000
SDRC Proposition 1		750,000	-	750,000
Developer Contributions		600,000	-	600,000
County of San Diego Contributions		170,000	-	170,000
DWR USRP		1,000,000	-	1,000,000
CDBG		525,000	(525,000)	-
FUNDING TOTAL:	478,750	5,474,558	(1,425,000)	4,049,558

CAPITAL IMPROVEMENT PROJECT

FISCAL YEAR 2021 - 2022

PROJECT NAME: BROADWAY CREEK RESTORATION PHASE B - Ballantyne St. to Hart Dr. **ACTIVITY:** 650900
PROJECT NO: WW37XX (NEW)

Description:

The project scope includes the planning, design, permitting and restoration of an 450' long earthen channel spanning from 400' north of Broadway, emerging from the Ballantyne Street undercrossing and finishing at Hart Drive. A portion of the project is shared by the County of San Diego, and as such, partnering and cost share is defined (Earmarked County of San Diego CDBG funding will be appropriated at a later date). The project will accomplish one phase of the creek restoration, Phase B. Further, the scope intends to mitigate severe channel erosion and scour as prevalent in the existing condition, as well as protect private property from further damage. Design and planning efforts include utilizing consultants for preliminary and final design, resource agency permitting, environmental technical studies, improvement plans and specifications. Construction of the subject project is anticipate to occur in Fiscal Year 2022-23.

Justification:

The project is high-priority due to prolonged damage incurred from surface water, to both public and private assets, along with capacity issues inherent with the existing channel. The project also serves to restore vital biological habitat in the community and implement trash capture devices in alignment with goals set for the City by the Regional Water Quality Control Board.

Scheduling:

Design commenced in fiscal year 2020-21, which includes environmental and permitting with resource agencies. Construction is expected to start and be completed in fiscal year 2023-24.

Operating Budget Impact:

The project will replace existing assets and reduce the Wastewater operational budget by reducing maintenance costs.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Operating Supplies (8160)				-
Architectural Services (8315)				-
Consulting Services (8325)				250,000
Engineering Services (8335)				-
Engineering Services-Internal (8336)				45,000
Inspection Services-Internal (8337)				35,000
Legal Services (8345)				-
Other Prof/Tech Services (8395)				10,000
Advertising (8522)				250
Janitorial Services (8544)				-
Permits & Fees (8560)				9,750
Printing & Binding (8570)				-
Furniture, Machinery & Equipment (9035)				-
Land (9050)				-
Construction-Buildings (9060)				-
Infrastructure (9065)	-			1,075,000
Contingency (9060)				-
PROJECT COST TOTAL:	-	-	-	1,425,000

Source(s) of Funds:				
Wastewater Enterprise Fund				900,000
CDBG (City of El Cajon)			-	525,000
			-	-
FUNDING TOTAL:	-	-	-	1,425,000

CAPITAL IMPROVEMENT PROJECT FISCAL YEAR 2020 - 2021

PROJECT NAME: RECREATION CENTER HVAC IMPROVEMENTS

ACTIVITY: 501000
PROJECT NO: IFM3679

Description:

Installation of HVAC and other improvements at various Recreation Centers. Bostonia Center, Fletcher Hills Center and Kennedy Center will be prioritized.

Justification:

Currently, several of the rooms at Fletcher Hills, Bostonia Recreation Center and Kennedy Center are without air conditioning. The installation of HVAC in these portions of the centers will allow for expanded use by residents.

Scheduling:

Design and construction are anticipated to be completed by winter 2020.

Operating Budget Impact:

Minimal increase in maintenance cost.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)	24,700	22,000	-	22,000
Consulting Services (8325)	-	-	-	-
Engineering Services (8335)	-	-	-	-
Engineering Services-Internal (8336)	17,500	8,700	-	8,700
Inspection Services-Internal (8337)	17,500	1,000	-	1,000
Legal Services (8345)	-	-	-	-
Other Prof/Tech Services (8395)	-	-	-	-
Advertising (8522)	250	250	-	250
Janitorial (8544)	-	-	-	-
Permits & Fees (8560)	50	50	-	50
Printing & Binding (8570)	-	-	-	-
Furniture, Machinery & Equipment (9035)	-	-	-	-
Land Improvements / Abatement & Demo (9055)	-	-	-	-
Construction-Buildings (9060)	270,000	298,000	-	298,000
Infrastructure (9065)	-	-	-	-
Contingency (9060)	-	-	-	-
PROJECT COST TOTAL:	330,000	330,000	-	330,000

Source(s) of Funds:				
General Fund	240,000	240,000	-	240,000
Park Impact Fees 515000	90,000	90,000	-	90,000
FUNDING TOTAL:	330,000	330,000	-	330,000

CAPITAL IMPROVEMENT PROJECT

FISCAL YEAR 2021 - 2022

PROJECT NAME: Recreation Center Upgrades - Cool Zones and Evacuation Sites **ACTIVITY:** 501000
PROJECT NO: IFM37XX (NEW)

Description:

The project will install modern heating, ventilation and cooling (HVAC) systems for gymnasiums and large indoor spaces able to serve as evacuation sites at existing recreation centers. Included with the project are electrical system upgrades, including new service connections, that are necessary to serve the new building equipment.

Justification:

Currently, several of the large rooms and gymnasiums at the City's existing recreation centers are without air conditioning. The installation of HVAC in these portions of the centers will allow for expanded use by residents, serve as a refuge areas or "cool zones" during extreme heat days, and allow for emergency evacuation sites if needed.

Scheduling:

Planning, design and construction will occur in FY2022-23 with testing and commissioning occurring in the early part of FY2023-24.

Operating Budget Impact:

While additional energy needs are expected to be required from installing new HVAC systems, these will be offset by planned solar photovoltaic and battery storage systems planned for each recreation facility.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)				-
Consulting Services (8325)			300,000	300,000
Engineering Services (8335)				-
Engineering Services-Internal (8336)			50,000	50,000
Inspection Services-Internal (8337)			25,000	25,000
Legal Services (8345)				-
Other Prof/Tech Services (8395)				-
Advertising (8522)			900	900
Janitorial Services (8544)				-
Permits & Fees (8560)			100	100
Printing & Binding (8570)				-
Furniture, Machinery & Equipment (9035)				-
Land Improvements (9055)				-
Construction-Buildings (9060)			2,624,000	2,624,000
Infrastructure (9065)				-
Contingency (9060)				-
PROJECT COST TOTAL:	-	-	3,000,000	3,000,000

Source(s) of Funds:				
American Rescue Plan Act (ARPA)			3,000,000	3,000,000
FUNDING TOTAL:	-	-	3,000,000	3,000,000

CAPITAL IMPROVEMENT PROJECT

FISCAL YEAR 2021 - 2022

PROJECT NAME: Solar PV and Battery Storage Improvements - Phase 1 **ACTIVITY:** 501000
PROJECT NO: IFM3740

Description:

This project will provide solar photovoltaic panels, battery storage systems, and energy efficiency upgrades at Police and Fire Facilities.

Justification:

The installation of solar photovoltaic panels and battery storage systems on the City's Public Safety Facilities will provide renewable energy and significant cost savings with respect to energy purchased. The facilities were analyzed to determine the best balance of solar, battery, and other energy efficiency improvements. Prescribed renewable technologies and micro-grid software will optimize operations, charging and energy use.

Scheduling:

The project is anticipated to be constructed in FY2021-22.

Operating Budget Impact:

Significant reductions in energy costs and benefits from grid resiliency are anticipated.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)				-
Consulting Services (8325)		200,000		200,000
Engineering Services (8335)		50,000		50,000
Engineering Services-Internal (8336)		50,000		50,000
Inspection Services-Internal (8337)				-
Legal Services (8345)				-
Other Prof/Tech Services (8395)				-
Advertising (8522)		250		250
Janitorial Services (8544)				-
Permits & Fees (8560)		50		50
Printing & Binding (8570)				-
Furniture, Machinery & Equipment (9035)				-
Land Improvements (9055)				-
Construction-Buildings (9060)		2,635,000	865,000	3,500,000
Infrastructure (9065)				
Contingency (9060)		299,700	(299,700)	
PROJECT COST TOTAL:	-	3,235,000	565,300	3,800,300

Source(s) of Funds:				
American Rescue Plan Act (ARPA)		-	3,800,300	3,800,300
General Fund		3,235,000	(3,235,000)	-
FUNDING TOTAL:	-	3,235,000	565,300	3,800,300

CAPITAL IMPROVEMENT PROJECT

FISCAL YEAR 2021 - 2022

PROJECT NAME: Solar PV and Battery Storage Improvements - Phase 2 **ACTIVITY:** 501000
PROJECT NO: IFM37XX (NEW)

Description:

This project will provide solar photovoltaic panels, battery storage systems, and energy efficiency upgrades at the following facilities: Recreation Facilities and Parks, The Magnolia, City Hall, the Ronald Reagan Community Center and Fire Facilities.

Justification:

The installation of solar photovoltaic and battery storage systems will provide both clean energy and significant energy savings for the described facilities. A key design feature for the project will be grid-resiliency and energy back-up systems in the case of a power outage or extreme heat days requiring planned outages to the utility grid. Currently, these facilities are being analyzed to determine the best balance of solar, battery, and energy efficiency improvements. Once these are determined prescribed improvements will be implemented.

Scheduling:

The project is anticipated to be designed and constructed during two fiscal periods, starting in FY2021-22 and expected completion by the end of FY2022-23.

Operating Budget Impact:

Significant reductions in energy costs and benefits from grid resiliency are anticipated.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)				-
Consulting Services (8325)			400,000	400,000
Engineering Services (8335)				-
Engineering Services-Internal (8336)			50,000	50,000
Inspection Services-Internal (8337)			49,000	49,000
Legal Services (8345)				-
Other Prof/Tech Services (8395)				-
Advertising (8522)			900	900
Janitorial Services (8544)				-
Permits & Fees (8560)			100	100
Printing & Binding (8570)				-
Furniture, Machinery & Equipment (9035)				-
Land Improvements (9055)				-
Construction-Buildings (9060)			4,600,000	4,600,000
Infrastructure (9065)				
Contingency (9060)				
PROJECT COST TOTAL:	-	-	5,100,000	5,100,000

Source(s) of Funds:				
General Fund			3,335,000	3,335,000
American Rescue Plan Act (ARPA)			1,199,700	1,199,700
FUNDING TOTAL:	-	-	4,534,700	4,534,700

CAPITAL IMPROVEMENT PROJECT FISCAL YEAR 2021 - 2022

PROJECT NAME: Expand Broadband Citywide

ACTIVITY: 501000
PROJECT NO: IFM37XX (NEW)

Description:

The project will install new fiber-optic communication systems at eight existing city sites. These sites including Fletcher Hills Community Center, Fire Station #7, Hillside Park, Bostonia Rec Center, Fire Station #8, Kennedy Park, Renette Park and Ronald Reagan Community Center. This project will also upgrade the City's existing fiber optic backbone, create new redundancy connections in order to support these new and existing sites and expand overall broadband capabilities throughout the City.

Justification:

On June 22, 2021, City Council adopted a Resolution to appropriate American Rescue Plan Act funds for designated projects. One of the projects included the expansion of broadband and fiber network throughout the City. The project will increase network bandwidth to meet citizen and city employee needs and reduce the dependency on leased-lines from telecommunications providers that require ongoing operating costs, as well as position the city to use the next generation of cloud enabled applications and services.

Scheduling:

The project is anticipated to be designed during the 2021-2022 fiscal year and constructed during the 2022-2023 fiscal year.

Operating Budget Impact:

This project is expected to have a minimal increase in maintenance costs.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)				-
Consulting Services (8325)				75,000
Engineering Services (8335)				-
Engineering Services-Internal (8336)				32,700
Inspection Services-Internal (8337)				30,000
Legal Services (8345)				
Other Prof/Tech Services (8395)				-
Advertising (8522)				250
Janitorial Services (8544)				
Permits & Fees (8560)				50
Printing & Binding (8570)				
Furniture, Machinery & Equipment (9035)				-
Land Improvements (9055)				-
Construction-Buildings (9060)				-
Infrastructure (9065)				2,162,000
Contingency (9060)				-
PROJECT COST TOTAL:	-	-	-	2,300,000

Source(s) of Funds:				
American Rescue Plan Act (ARPA)			2,300,000	2,300,000
FUNDING TOTAL:	-	-	2,300,000	2,300,000

CAPITAL IMPROVEMENT PROJECT

FISCAL YEAR 2021-2022

PROJECT NAME: LUKE LANE DRAINAGE IMPROVEMENTS

ACTIVITY: 650900

PROJECT NO: WW37xx

Description:

Replacement of an existing roadside drainage ditch with underground 18-inch reinforced concrete pipe along the entire length of Luke Lane from N 3rd Street to the cul-de-sac. The project includes road widening, concrete curb, asphalt dike, asphalt pavement on the north side of Luke Lane and pavement rehabilitation for the remainder of the road.

Justification:

The existing shallow, natural ditch does not convey storm water properly and the lack of standard curb and gutter on Luke Lane does not contain storm water on the street. In addition to the Luke Lane drainage basin, the roadway also receives storm water from the upper Gorsline Drive. The installation of an 18-inch reinforced concrete pipe and various flatwork will improve roadway drainage overall, reduce surface flows, and mitigate flooding and sediment build-up during heavy rain events.

Scheduling:

Design and construction are anticipated to be completed by summer 2022

Operating Budget Impact:

As repairs are made, a need for intense maintenance will decrease.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)	-	-	-	-
Consulting Services (8325)	-	-	-	-
Engineering Services (8335)	-	-	-	-
Engineering Services-Internal (8336)	-	-	25,000	25,000
Inspection Services-Internal (8337)	-	-	25,000	25,000
Legal Services (8345)	-	-	-	-
Other Prof/Tech Services (8395)	-	-	-	-
Advertising (8522)	-	-	250	250
Janitorial (8544)	-	-	-	-
Permits & Fees (8560)	-	-	250	250
Printing & Binding (8570)	-	-	-	-
Furniture, Machinery & Equipment (9035)	-	-	-	-
Land Improvements / Abatement & Demo (9055)	-	-	-	-
Construction-Buildings (9060)	-	-	-	-
Infrastructure (9065)	-	-	510,000	510,000
Contingency (9060)	-	-	-	-
PROJECT COST TOTAL:	-	-	560,500	560,500

Source(s) of Funds:				
Wastewater Enterprise Fund	-	-	460,500	460,500
TransNet EL03	-	-	100,000	100,000
FUNDING TOTAL:	-	-	560,500	560,500

CAPITAL IMPROVEMENT PROJECT

FISCAL YEAR 2021 - 2022

PROJECT NAME: Pedestrian Safety Improvements

ACTIVITY: 550000

PROJECT NO: PWxxxx

Description:

This project will install Rectangular Rapid Flashing Beacon Systems and High Visibility Crosswalks at eleven unsignalized pedestrian crossings near schools and in the Downtown area.

Justification:

A total of eleven (11) high pedestrian crossing locations were identified to install Rectangular Rapid Flashing Beacons, RRFBs, to improve sight distance and enhance visibility of pedestrians crossing the roadway. The identified locations are within the safe route to school pathways and will be frequently used by school children. Out of the eleven (11) locations, nine (9) of the locations are either directly in front of the schools and/or are within the designated school zone. The other two (2) locations are in the Downtown El Cajon area with one proposed location adjacent to a 100-unit four-story senior apartment complex.

Scheduling:

Design and construction is anticipated to be completed in Fiscal Year 2021-2022.

Operating Budget Impact:

This is a Caltrans Highway Safety Improvement Program project which is 100% funded for construction. TransNet funds will be used to administer the project during construction.

	Original Project Budget	Current Project Budget	Proposed Project Amendment	Proposed Project Budget
Architectural Services (8315)				-
Consulting Services (8325)				-
Engineering Services (8335)				-
Engineering Services-Internal (8336)				2,000
Inspection Services-Internal (8337)				15,000
Legal Services (8345)				-
Other Prof/Tech Services (8395)				-
Advertising (8522)				300
Janitorial Services (8544)				-
Permits & Fees (8560)				50
Printing & Binding (8570)				-
Furniture, Machinery & Equipment (9035)				-
Land Improvements (9055)				-
Construction-Buildings (9060)				-
Infrastructure (9065)			245,900	245,900
Contingency (9060)				-
PROJECT COST TOTAL:	-	-	245,900	263,250

Source(s) of Funds:				
552900 HSIPL 5211(042)			245,900	245,900
TransNet Project ID #EL29			17,350	17,350
FUNDING TOTAL:	-	-	263,250	263,250



City Council
Agenda Report

Agenda Item 11.

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Graham Mitchell, City Manager
SUBJECT: American Rescue Plan Act Projects

RECOMMENDATION:

That the City Council adopts the next Resolution, in order, repealing Resolution No. 053-21 and approving American Rescue Plan Act projects with their respective expense category identification.

BACKGROUND:

On June 22, 2021, the City Council adopted a resolution allocating \$30.4 million in Federal American Rescue Plan Act funds for a variety of projects that meet U.S. Treasury Department (Treasury) guidelines. Since approval of the resolution by the City Council, Treasury has issued reporting requirements to track the City's expenditures. For ease in reporting, staff recommends that the City Council consider a revised resolution that includes an expenditure category (as defined by Treasury) along with the already approved projects by the City Council.

Staff also recommends that the "Reduce Vaccine Barriers" category be modified from \$100,000 in allocation to \$10,000 and that "Foodie Fest" be increased from \$150,000 in allocation to \$240,000.

The table below is reflected in the resolution and includes the projects identified by the City Council, the revised appropriated amounts, and the expenditure category as defined by Treasury.

PROJECTS	APPROPRIATED	EXPENDITURE CATEGORY
Assistance to Households & Businesses		
Street Beautification/Safety Projects	\$5,000,000	6.1
Small Business Grant Program	\$5,000,000	2.9
Cool Zones/Evacuation Site Upgrades at Recreation Centers	\$3,000,000	3.9
Public Improvements (Economic Development)	\$3,000,000	2.13
Park Amenities	\$2,925,000	3.9
"Dollar Days" Recreation Program	\$700,000	2.13
Social Worker Response Team Pilot Program	\$500,000	1.1
Business License Assistance Program	\$225,000	2.9
Economic Development Studies/Efforts	\$200,000	2.9

El Cajon Foodie Fest	\$240,000	2.9
COVID-19 Response & Mitigation		
Reimbursement for Mitigation Efforts	\$1,000,000	1.5 / 1.7 / 1.8 / 1.9
Reduce Vaccine Barriers	\$10,000	1.1
Replace Revenue & Reinvest in City Infrastructure		
Solar/Battery Project	\$5,000,000	6.1
City Network/Cybersecurity/Video Equipment Upgrades	\$1,300,000	6.1
Infrastructure		
Expand Broadband/Fiber Network	\$2,300,000	5.16 / 5.17
TOTAL	\$30,400,000	

As projects are completed, staff foresees the opportunity to reallocate funds to other needs that meet Treasury guidelines. Those recommendations will be brought forward as the City moves further in implementing the identified projects.

Prepared By:
Reviewed By: N/A
Approved By: Graham Mitchell, City Manager

Attachments

Resolution

RESOLUTION NO. ___-21

RESOLUTION REPEALING RESOLUTION NO. 053-21
AND APPROVING NEW AMERICAN RESCUE PLAN ACT
FUNDING APPROPRIATIONS FOR DESIGNATED PROJECTS

WHEREAS, on March 11, 2021, President Biden signed the American Rescue Plan Act ("ARPA") which designed approximately \$1.9 trillion in funds for state and local governments; and

WHEREAS, on June 22, 2021, the City Council of the City of El Cajon (the "City") adopted Resolution No. 053-21 to allocate \$30.4 million in Federal American Rescue Plan Act funds that the City is anticipated to receive, for a variety of projects that meet U.S. Treasury Department (the "Treasury") guidelines; and

WHEREAS, since approval of Resolution No. 053-21, the Treasury has issued reporting requirements to track the City's expenditures, and for ease in reporting, staff recommends that the City Council consider a revised resolution that includes an expenditure category (as defined by the Treasury), along with the projects already approved by the City Council; and

WHEREAS, staff also recommends that the "Reduce Vaccine Barriers" category be modified from \$100,000 in allocation to \$10,000, and that the "Foodie Fest" allocation be increased from \$150,000 to \$240,000; and

WHEREAS, the City Council believes it would be in the City's best interest to repeal Resolution No. 053-21 and approve the ARPA projects identified by the City Council, with the revised appropriated amounts, and the expenditure category as defined by Treasury.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. Resolution No. 053-21 of the El Cajon City Council is hereby repealed effective upon the approval of this Resolution.

2. The City Council hereby approves ARPA funds for the following programs/projects in the revised appropriated amounts herein designated, and the expenditure category as defined by the Treasury:

PROJECTS	APPROPRIATED	EXPENDITURE CATEGORY
Assistance to Households & Businesses		
Street Beautification/Safety Projects	\$5,000,000	6.1
Small Business Grant Program	\$5,000,000	2.9
Cool Zones/Evacuation Site Upgrades at Recreation Centers	\$3,000,000	3.9

Public Improvements (Economic Development)	\$3,000,000	2.13
Park Amenities	\$2,925,000	3.9
"Dollar Days" Recreation Program	\$700,000	2.13
Social Worker Response Team Pilot Program	\$500,000	1.1
Business License Assistance Program	\$225,000	2.9
Economic Development Studies/Efforts	\$200,000	2.9
El Cajon Foodie Fest	\$240,000	2.9
COVID-19 Response & Mitigation		
Reimbursement for Mitigation Efforts	\$1,000,000	1.5 / 1.7 / 1.8 / 1.9
Reduce Vaccine Barriers	\$10,000	1.1
Replace Revenue & Reinvest in City Infrastructure		
Solar/Battery Project	\$5,000,000	6.1
City Network/Cybersecurity/Video Equipment Upgrades	\$1,300,000	6.1
Infrastructure		
Expand Broadband/Fiber Network	\$2,300,000	5.16 / 5.17
TOTAL	\$30,400,000	

3. The City Manager is hereby required to provide periodic reports to the City Council on the expenditures related to ARPA appropriations.

3. The City Council hereby authorizes the City Manager to reallocate ARPA funds between programs/projects as may be necessary and approved by the City Manager.



City Council Agenda Report

Agenda Item 12.

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Anthony Shute, Director of Community Development
SUBJECT: Microenterprise Home Kitchen Operations - MEHKO

RECOMMENDATION:

It is recommended that the City Council reviews the information provided in the report and directs staff to send a letter to the County recommending that the County Board of Supervisors “opt out” of the Microenterprise Home Kitchen Operations (MEHKO) program.

BACKGROUND:

On January 1, 2019, the California Homemade Food Act (AB 626) went into effect and opened the door for cooks to enter the food economy (catering or restaurant) from their place of residence. County legislators were given jurisdictional authority to adopt an ordinance and implement AB 626; however, several counties required further clarification on various sections of the bill. Subsequently, AB 377, MEHKO, “a clean-up bill,” was introduced to clarify and define language in AB 626. Specifically, it eliminated third party delivery (e.g. DoorDash, Postmates, etc.) restrictions for these kitchen operations. The legislation allows a MEHKO to operate in a single-family or multi-family home, whether the residence is occupied by the owner or renter. These kitchens can store, handle, and prepare food that may be sold to consumers on-site or via delivery, as long as they meet certain health and sanitation standards regulated by the County of San Diego.

Staff has been in conversation with San Diego County Department of Environmental Health Quality (DEHQ) staff to better understand the MEHKO program. The legislation allows the County to opt-in or opt-out of the program. Should the County Board opt-in, then all cities within the County are subject to the program and do not have any ability to regulate the use. A MEHKO is subject to an annual registration and inspection by the County DEHQ, but except for requiring a business license no other permits or approvals from the City of El Cajon would be allowed. A MEHKO is eligible for an alcohol license from Alcoholic Beverage Control (ABC) and if issued could serve alcohol with a meal to the public. There may also be an opportunity to address nuisance activity that may be created by a MEHKO.

On September 15, 2021, the County Board of Supervisors voted unanimously to direct County DEHQ to return within 120 days (which will be around January 12, 2022) with an ordinance authorizing MEHKO operations in San Diego County, conduct community/municipality outreach and collect public input, and to implement an educational program for MEHKOs that provides guidance on food safety and good neighbor components (traffic, parking, noise, and grease/food waste disposal).

DISCUSSION

Prior to AB 626 and AB 377, there was no regulatory framework in place for selling food made in home kitchens, outside the Cottage Food Law, which permitted sales of only non-perishable items such as baked goods, potato chips, and preserves. The program is geared towards home cooks that are looking to supplement their income, or maybe want to experiment in the food business before deciding to ramp up production and rent a commercial kitchen. Advocates of the legislation state the MEHKO promotes the following:

- Creates economic opportunities for small-scale, home-cooking operations, which are primarily operated by women, immigrants, and people of color;
- Encourages existing “illegal” home food operations to become safer and legal;
- Enables family members to continue providing in-home care for developmentally disabled family members and older family members while still earning income;
- Creates a path to supplement family income for those hardest hit by the COVID-19 pandemic;
- Enables aspiring restaurateurs to try out and vet a menu while learning the basics of what it takes to run a small-scale retail food operation; and
- Provides additional food service options in remote locations.

The following provides some additional information related to the MEHKO program:

- The County DEH and the law states that only a permit from DEH would be required and the City would not be allowed to require any permits.
- The kitchen operator is limited to producing 30 meals per day or 60 meals per week, from earning more than \$50,000 in annual gross income, and from hiring more than one employee.
- Food must be cooked and served the same day, and can be consumed on-site, picked-up, or delivered.
- A city is prohibited from adopting any land use regulations regarding the operations, even if the County opts out.
- ABC may issue an alcohol license to the kitchen operator.

MEHKO raises concerns for City staff as it will create an additional need for enforcement due to conflicts between these potential uses and people residing in adjacent properties. The County DEH has indicated to City staff that enforcement of the above limitations will be challenging, if not completely impractical, due to a lack of staffing. Although staff recognizes the value of creating opportunities associated with these micro-enterprise kitchens, several concerns have been raised as noted below.

City Staff Concerns

The City staff (Code Compliance, Building Safety, Planning, Fire and Public Works) have evaluated the State law and have identified the below concerns should the County opt-in to the MEHKO program.

- An inclusive “opt-in” program by the County eliminates the City’s ability to regulate the use of the property – another attack on the City’s local control.
- Exempting a MEHKO business from zoning standards would eliminate the ability to impose standards that ensure compatibility. As an example, home occupation standards place common sense limits on businesses that are appropriate for residential areas (e.g. limited operating hours; no employees other than those who reside on the property; or MEHKO operations that creates fumes, odors, vibrations, noise, changes residential character, or similar conflicts with compatibility). This exemption creates several conflicts with the City’s Home Occupation standards and results in an unfair business advantage for those businesses that have obtained the appropriate permits and made investments into properly zoned commercial areas.
- Although it is unlikely that a MEHKO would purchase commercial equipment due to the cost of both equipment and retrofit, there is a potential hazard to persons and properties if equipment is not installed and operated to specific safety standards. All restaurants who open a business or undergo a tenant improvement are subject to Uniform Building Standards, commercial installation standards, and the fire codes.
- Customers would be allowed to get delivery, take-out, or consume the meals on-site, creating a restaurant use in a residential neighborhood. These type of operations could significantly impact adjoining residences by creating parking and traffic issues, with the potential of lines of customers waiting for food.
- Impact to local wastewater as a result of the additional fats, oils, and grease that will be added to the wastewater system as a result of additional food preparation activities within the residence. Residential wastewater systems are not designed for commercial enterprise activity.
- The MEHKO business would only be subject to registration and an annual inspection by DEH. There would be no reporting or other accountability to the City for these operations. Based on the general description of a MEHKO business, enforcement of the listed standards would be difficult. If a food facility is not open to the general public or easily accessed by inspectors, staff would have a difficult time monitoring potential violations. Food that is prepared, cooked, and served in a private residence could not be monitored nor the number of meals served. In addition, investigation of reported violations would require a significant amount of resources and likely would be under the DEH. No local enforcement.

RECOMMENDATION:

For the reasons identified above, it is recommended that the City Council direct staff to send a letter to the County recommending that the San Diego County Board of Supervisors “opt-out” of the MEHKO program, by voting not to mandate participation in the program by County DEHQ and the cities of San Diego County. If the County Board of Supervisors adopts a MEHKO program thereby “opting in” then the staff will return with a proposed zoning code amendment that specifically addresses nuisance activity that may be created by MEHKO kitchen operations.

Although AB 626 and AB 377 restricts the ability of jurisdictions to limit where MEHKOS can operate, and exempts them from conditions other than those required of typical residences, the law does allow for the enforcement of nuisances. Traffic issues, smoke from wood-burning ovens, attracting rodents from improper grease and refuse storage, and other conditions creating a nuisance, can be sufficiently mitigated through El Cajon Municipal Code chapter 1.16, especially when such conditions are specifically identified as nuisances by ordinance.

Prepared By: Anthony Shute, Director of Community Development

Reviewed By: Vince DiMaggio, Assistant City Manager

Approved By: Graham Mitchell, City Manager

Attachments

AB 626

AB 377

ECMC section 17.225.050

San Diego County MEHKO FAQs

Assembly Bill No. 626

CHAPTER 470

An act to amend Sections 110460, 111955, 113789, and 114390 of, to add Section 113825 to, and to add Chapter 11.6 (commencing with Section 114367) to Part 7 of Division 104 of, the Health and Safety Code, relating to the California Retail Food Code.

[Approved by Governor September 18, 2018. Filed with
Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 626, Eduardo Garcia. California Retail Food Code: microenterprise home kitchen operations.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities for regulation by the State Department of Public Health, and requires local enforcement agencies to enforce these provisions. Existing law defines "food facility" as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, as specified. Existing law exempts, among others, a private home, including a registered or permitted cottage food operation, from the definition of food facility. A violation of the California Retail Food Code is generally a misdemeanor.

This bill would, among other things, include a microenterprise home kitchen operation within the definition of a food facility, and would define a microenterprise home kitchen operation to mean a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets specified requirements, including, among others, that the operation has no more than one full-time equivalent food employee and has no more than \$50,000 in verifiable gross annual sales. The bill would specify that the governing body of a city or county, or city and county, shall have full discretion to authorize, by ordinance or resolution, the permitting of microenterprise home kitchen operations in accordance with the provisions of this bill, except as provided. The bill would require a microenterprise home kitchen operation to be considered a restricted food service facility for purposes of certain provisions of the code, except as otherwise provided, and would exempt a microenterprise home kitchen operation from various provisions applicable to food facilities, including, among others, provisions relating to handwashing, sinks, ventilation, and animals. The bill would require the applicant for a permit to operate a microenterprise home kitchen operation to submit to the local enforcement agency written standard operating procedures that include specified information, including all food types or

products that will be handled and the days and times that the home kitchen will potentially be utilized as a microenterprise home kitchen operation.

The bill would require an Internet food service intermediary, as defined, that lists or promotes a microenterprise home kitchen operation on its Internet Web site or mobile application to, among other things, be registered with the department, to clearly and conspicuously post on its Internet Web site or mobile application the requirements for the permitting of a microenterprise home kitchen operation, as specified, prior to the publication of the microenterprise home kitchen operation's offer of food for sale, and to submit the name and permit number of a microenterprise home kitchen operation to the local enforcement agency if it receives, through its Internet Web site or mobile application, 3 or more unrelated individual food safety or hygiene complaints in a calendar year from consumers who have made a purchase through its Internet Web site or mobile application. The bill would also make related findings and declarations.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 113789 of the Health and Safety Code proposed by AB 2178 and AB 2524 to be operative only if this bill and AB 2178, this bill and AB 2524, or all 3 bills are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California is the largest agricultural producer and exporter in the United States.

(2) California is home to the "farm-to-table" movement, which embraces the idea that restaurants and other food sellers should prioritize locally and sustainably produced foods.

(3) Many cities have embraced the idea of locally grown, produced, and prepared foods. Sacramento, for example, proclaimed itself the farm-to-fork capital of America.

(4) Accordingly, Californians have shown a preference for supporting local agriculture and local business and for finding sustainable solutions to food insecurity.

(5) The retail and commercial food market is an integral part of California's economy.

(6) Small-scale, home-cooking operations can create significant economic opportunities for Californians that need them most — often women, immigrants, and people of color.

(7) Under existing law, individuals can sell food through retail food facilities or cottage food operations, the latter of which being limited to a restricted list that primarily consists of nonperishable food items that can be prepared in the home. Both of these options make it difficult for the vast majority of home cooks to independently benefit from their labor, skills, and limited resources.

(8) Because the bar for entry to restaurant ownership is high, and the cost of renting a retail kitchen is so great, an informal economy of locally produced and prepared hot foods exists in the form of meal preparation services, food carts, and communally shared meals.

(9) However, due to a lack of appropriate regulations, many experienced cooks in California are unable to legally participate in the locally prepared food economy and to earn an income legally therein.

(10) As a result, and because they feel they have no other option, thousands of private chefs, home caterers, and many other food microentrepreneurs cook out of private homes or unlicensed food facilities, with little access to education for best practices or safety guidelines.

(11) Many of these cooks are unable to enter the traditional food economy based on disability, family responsibilities, or lack of opportunity.

(12) Under existing law, preparing and selling food from a home kitchen normally can be treated as a criminal act and may be punishable as a misdemeanor.

(13) Providing guidelines, training, and safety resources to home cooks would also increase public health safeguards in existing informal food economies.

(14) The exchange of home-cooked food can also improve access to healthy foods for communities, particularly in food deserts with severely limited options.

(15) The California Retail Food Code establishes health and sanitation standards for retail food facilities. That law exempts private homes from the definition of a food facility and includes cottage food operations in that exemption.

(16) Therefore, the Legislature should create a framework that authorizes the safe preparation and sale of meals prepared in home kitchens, providing adequate regulations and requirements for food handling and safety.

(b) It is the intent of the Legislature that this act authorize the use of home kitchens for small-scale, direct food sales by home cooks to consumers, providing appropriate flexibility in food types and appropriate health and sanitation standards.

SEC. 2. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food

operation that is registered or has a permit pursuant to Section 114365 or a microenterprise home kitchen, as defined in Section 113825.

SEC. 3. Section 111955 of the Health and Safety Code is amended to read:

111955. “Food processing establishment,” as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. “Food processing establishment” shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365 or a microenterprise home kitchen, as defined in Section 113825.

SEC. 4. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(11) Fishermen’s markets.

(12) Microenterprise home kitchen operations.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home when used for private, noncommercial purposes or when used as a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(6) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.

(7) A commercial food processing establishment, as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(13) A community food producer, as defined in Section 113752.

SEC. 4.1. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(11) Fishermen’s markets.

(12) Microenterprise home kitchen operations.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home when used for private, noncommercial purposes or when used as a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(6) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.

(7) A commercial food processing establishment, as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(13) A community food producer, as defined in Section 113752.

(14) A limited service charitable feeding operation, as defined in Section 113819.

SEC. 4.2. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(11) Fishermen’s markets.

(12) Microenterprise home kitchen operations.

(13) Catering operation.

(14) Host facility.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home when used for private, noncommercial purposes or when used as a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(6) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.

(7) A commercial food processing establishment, as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(13) A community food producer, as defined in Section 113752.

SEC. 4.3. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) A place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (12) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(11) Fishermen’s markets.

(12) Microenterprise home kitchen operations.

(13) Catering operation.

(14) Host facility.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home when used for private, noncommercial purposes or when used as a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code, or premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, and in the regulations adopted pursuant to those sections, that comply with Section 118375, regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food that is not potentially hazardous food is offered for sale or for onsite consumption.

(6) An outlet or location, including, but not limited to, premises, operated by a producer, selling or offering for sale only whole produce grown by the

producer or shell eggs, or both, provided the sales are conducted at an outlet or location controlled by the producer.

(7) A commercial food processing establishment, as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

(13) A community food producer, as defined in Section 113752.

(14) A limited service charitable feeding operation, as defined in Section 113819.

SEC. 5. Section 113825 is added to the Health and Safety Code, to read:

113825. (a) "Microenterprise home kitchen operation" means a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets all of the following requirements:

(1) The operation has no more than one full-time equivalent food employee, not including a family member or household member.

(2) Food is prepared, cooked, and served on the same day.

(3) Food is consumed onsite at the microenterprise home kitchen operation or offsite if the food is picked up by the consumer or delivered within a safe time period based on holding equipment capacity.

(4) Food preparation does not involve processes that require a HACCP plan, as specified in Section 114419, or the production, service, or sale of raw milk or raw milk products, as defined in Section 11380 of Title 17 of the California Code of Regulations.

(5) The service and sale of raw oysters is prohibited.

(6) Food preparation is limited to no more than 30 individual meals per day, or the approximate equivalent of meal components when sold separately, and no more than 60 individual meals, or the approximate equivalent of meal components when sold separately, per week. The local enforcement agency may decrease the limit of the number of individual meals prepared based on food preparation capacity of the operation, but shall not, in any case, increase the limit of the number of individual meals prepared.

(7) The operation has no more than fifty thousand dollars (\$50,000) in verifiable gross annual sales, as adjusted annually for inflation based on the California Consumer Price Index.

(8) The operation only sells food directly to consumers and not to any wholesaler or retailer. For purposes of this paragraph, the sale of food

prepared in a microenterprise home kitchen operation through the Internet Web site or mobile application of an Internet food service intermediary, as defined in Section 114367.6, is a direct sale to consumers. An operation that sells food through the Internet Web site or mobile application of an Internet food service intermediary shall consent to the disclosures specified in paragraphs (6) and (7) of subdivision (a) of Section 114367.6.

(b) “Microenterprise home kitchen operation” does not include either of the following:

- (1) A catering operation.
- (2) A cottage food operation, as defined in Section 113758.

(c) For purposes of this section, “resident of a private home” means an individual who resides in the private home when not elsewhere for labor or other special or temporary purpose.

SEC. 6. Chapter 11.6 (commencing with Section 114367) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.6. MICROENTERPRISE HOME KITCHEN OPERATION

114367. (a) Except as provided in subdivision (b), the governing body of a city or county, or city and county, shall have full discretion to authorize, by ordinance or resolution, the permitting of microenterprise home kitchen operations in accordance with this chapter.

(b) A permit issued by a county that has authorized the permitting of microenterprise home kitchen operations in accordance with this chapter shall be valid in any city within the county regardless of whether the city has separately enacted an ordinance or resolution to authorize or prohibit the permitting of microenterprise home kitchen operations within that city.

114367.1. (a) A microenterprise home kitchen operation, as defined in Section 113825, shall be considered a restricted food service facility for purposes of, and subject to all applicable requirements of, Chapter 1 (commencing with Section 113700) to Chapter 9 (commencing with Section 114265), inclusive, Chapter 12.6 (commencing with Section 114377), and Chapter 13 (commencing with Section 114380), except as otherwise provided in this chapter.

(b) A microenterprise home kitchen operation shall be exempt from all of the following provisions:

(1) Handwashing facilities requirements, as required in Section 113953, provided that a handwashing sink is supplied with warm water and located in the toilet room and supplied, as specified in Section 113953.2.

(2) Any provision in this part relating to sinks, warewashing machines, and manual or machine sanitation, including but not limited to, Sections 114099, 114099.2, 114099.4, 114099.6, 114099.7, 114101.1, 114101.2, 114103, 114107, 114123, 114125, 114163, and 114279, provided that the sink in a microenterprise home kitchen operation has hot and cold water and is fully operable.

(3) Prohibition on the presence of persons unnecessary to the food facility operation in the food preparation, food storage, or warewashing areas, as specified in Section 113945.1.

(4) No smoking sign posting requirements, as specified in Section 113978.

(5) Limitations on employee consumption of food, drink, or tobacco outside of designated areas, as specified in Sections 113977 and 114256.

(6) Limitations on consumer access to the food facility through food preparation areas, as specified in Section 113984.1.

(7) Display guard, cover, and container requirements, as specified in Section 114060, provided that any food on display that is not protected from the direct line of a consumer's mouth by an effective means is not served or sold to any subsequent consumer.

(8) Limitations on outdoor display and sale of foods, as specified in Section 114069.

(9) Requirements to provide clean drinking cups and tableware for second portions and beverage refills, as specified in Section 114075.

(10) Requirements pertaining to the characteristics and certification of utensils and equipment, as specified in Sections 114130, 114130.1, and 114139, provided that utensils and equipment are designed to retain their characteristic qualities under normal use conditions.

(11) Requirements pertaining to the characteristics, construction, and multiuse of food-contact and nonfood-contact surfaces, as specified in Sections 114130.1, 114130.3, and 114130.4, provided that food contact surfaces are smooth, easily cleanable, and in good repair.

(12) Requirements pertaining to the characteristics, construction, and disassembly of clean in place (CIP) equipment, as specified in Section 114130.5.

(13) Limitations on the use of wood as a food contact surface and in connection with other equipment, as specified in Section 114132.

(14) Any provision in this part relating to ventilation, including, but not limited to, Article 2 (commencing with Section 114149) of Chapter 6, provided that gases, odors, steam, heat, grease, vapors, and smoke are able to escape from the kitchen.

(15) Requirements that cold or hot holding equipment used for potentially hazardous food be equipped with integral or permanently affixed temperature measuring device or product mimicking sensors, as specified in subdivision (c) of Section 114157.

(16) Requirements pertaining to the installation of fixed, floor-mounted, and table-mounted equipment, as specified in Section 114169.

(17) Dedicated laundry facility requirements, as specified in Section 114185.5, provided that linens used in connection with the microenterprise home kitchen operation shall be laundered separately from the household and other laundry.

(18) Requirements pertaining to water, plumbing, drainage, and waste, as specified in Sections 114193, 114193.1, and 114245.7.

(19) Any requirement that a microenterprise home kitchen operation have more than one toilet facility or that access to the toilet facility not

require passage through the food preparation, food storage, or utensil washing areas, including, but not limited to, the requirements specified in Sections 114250 and 114276.

(20) Light intensity, light source, and lightbulb requirements, as specified in Sections 114252 and 114252.1, provided that food preparation areas are well lighted by natural or artificial light whenever food is being prepared.

(21) Requirements to provide and use lockers, storage facilities, and designated dressing areas, and that food facility premises be free of litter and items that are unnecessary to the operation, as specified in Sections 114256.1 and 114257.1, provided that personal effects and clothing not ordinarily found in a home kitchen are placed or stored away from food preparation areas and dressing takes place outside of the kitchen.

(22) Limitations on the presence and handling of animals, such as domestic, service, or patrol animals, as specified in Sections 114259.4 and 114259.5, provided that all animals, other than service animals, are kept outside of the kitchen and dining areas during food service and preparation.

(23) Requirements pertaining to floor, wall, and ceiling surfaces, as specified in Sections 114268, 114269, and 114271, provided that the floor, wall, and ceiling surfaces of the kitchen, storage, and toilet areas are smooth, of durable construction, and easily cleanable with no limitations on the use of wood, tile, and other nonfiber floor surfaces ordinarily used in residential settings.

(24) Any local evaluation or grading system for food facilities, as authorized by Section 113709.

(25) All prohibitions and limitations on the use of a kitchen in a private home as a food facility, including, but not limited to, prohibitions and limitations specified in Section 114285, provided that food is not prepared in designated sleeping quarters. Open kitchens adjacent to living and sleeping areas, kitchens in efficiency, studio, and loft-style residences, and kitchens without doors at all points of ingress and egress may be used in microenterprise home kitchen operations.

(26) Planning and permitting provisions of Sections 114380, 114381, and 114381.2.

(c) A microenterprise home kitchen operation may operate an open-air barbecue or outdoor wood-burning oven, pursuant to the requirements of Section 114143.

(d) The operator of a microenterprise home kitchen operation shall successfully pass an approved and accredited food safety certification examination, as specified in Section 113947.1.

(e) Any individual, other than the operator, who is involved in the preparation, storage, or service of food in a microenterprise home kitchen operation shall be subject to the food handler card requirements specified in Section 113948.

114367.2. (a) A microenterprise home kitchen operation shall not be open for business unless it has obtained a permit issued from the local enforcement agency.

(b) The department shall post on its Internet Web site the requirements for the permitting of a microenterprise home kitchen operation, pursuant to this chapter and any ordinance, resolution, or rules adopted by any city or county, or city and county, that has authorized the permitting of microenterprise home kitchen operations, which shall be written at a high school level.

(c) The applicant shall submit to the local enforcement agency written standard operating procedures that include all of the following information:

(1) All food types or products that will be handled.

(2) The proposed procedures and methods of food preparation and handling.

(3) Procedures, methods, and schedules for cleaning utensils, equipment, and for the disposal of refuse.

(4) How food will be maintained at the required holding temperatures, as specified in Section 113996, pending pickup by consumer or during delivery.

(5) Days and times that the home kitchen will potentially be utilized as a microenterprise home kitchen operation.

(d) (1) The local enforcement agency shall issue a permit after an initial inspection has determined that the proposed microenterprise home kitchen operation and its method of operation comply with the requirements of this chapter.

(2) A local enforcement agency shall not require a microenterprise home kitchen operation to comply with food safety requirements that are different from, or in addition to, the requirements of this chapter.

(e) For purposes of permitting, the permitted area includes the home kitchen, onsite consumer eating area, food storage, utensils and equipment, toilet room, janitorial or cleaning facilities, and refuse storage area. Food operations shall not be conducted outside of the permitted areas.

(f) A local enforcement agency may require a microenterprise home kitchen operation to renew its permit annually.

(g) A permit, once issued, is nontransferable. A permit shall be valid only for the person and location specified by that permit, and, unless suspended or revoked for cause, for the time period indicated.

(h) The permit, or an accurate copy thereof, shall be retained by the operator onsite and displayed at all times the microenterprise home kitchen operation is in operation.

(i) A local enforcement agency may collect a fee for the issuance of a permit pursuant to this chapter in an amount that does not exceed the reasonable administrative costs by the local enforcement agency in issuing the permit.

(j) Notwithstanding any other law, if there are multiple local agencies involved in the issuance of any type of permit, license, or other authorization to a microenterprise home kitchen operation, the governing body of the city or county, or city and county, shall designate one lead local agency that shall be vested with the sole authority to accept all applications for, to collect all fees for, and to issue, any permit, license, or other authorization required

for a microenterprise home kitchen operation to operate in the city or county, or city and county. A local agency other than the lead local agency shall not accept any applications for, collect any fees for, nor issue, any permits for the same purpose.

114367.3. (a) Notwithstanding any other law, after the initial inspection for purposes of determining compliance with this chapter, a microenterprise home kitchen operation shall not be subject to routine inspections, except that a representative of a local enforcement agency may access, for inspection purposes, the permitted area of a microenterprise home kitchen operation after the occurrence of either of the following:

(1) The representative has provided the microenterprise home kitchen operation with reasonable advance notice.

(2) The representative has a valid reason, such as a consumer complaint, to suspect that adulterated or otherwise unsafe food has been produced or served by the microenterprise home kitchen operation, or that the microenterprise home kitchen operation has otherwise been in violation of this part.

(b) Notwithstanding any other law, a microenterprise home kitchen operation shall not be subject to more than one inspection each year by the local enforcement agency, except in cases in which the local enforcement agency has valid reason, such as a consumer complaint, to suspect that adulterated or otherwise unsafe food has been produced or served by the microenterprise home kitchen operation, or that the microenterprise home kitchen operation has otherwise been in violation of this part.

(c) The local enforcement agency shall document the reason for the inspection, keep that documentation on file with the microenterprise home kitchen operation's permit, and provide the reason in writing to the operator of the microenterprise home kitchen operation.

(d) Access provided under this section is limited to the permitted area of the microenterprise home kitchen operation, during the posted operating hours of the microenterprise home kitchen operation, and solely for the purpose of enforcing or administering this part.

(e) A local enforcement agency may seek recovery from a microenterprise home kitchen operation of an amount that does not exceed the local enforcement agency's reasonable costs of inspecting the microenterprise home kitchen operation for compliance with this part if the microenterprise home kitchen operation is found to be in violation of this part.

114367.4. (a) (1) A city, county, or city and county shall not prohibit the operation of, require a permit to operate, require a rezone of the property for, or levy any fees on, or impose any other restriction on, a microenterprise home kitchen operation in any residential dwelling for zoning purposes. A microenterprise home kitchen operation shall be a permitted use of residential property in any residential dwelling for zoning purposes if the microenterprise home kitchen operation complies with both of the following criteria:

(A) Abstain from posting signage or other outdoor displays advertising the microenterprise home kitchen operation.

(B) Be in compliance with applicable local noise ordinances.

(2) This subdivision does not supersede or otherwise limit the investigative and enforcement authority of the city, county, or city and county with respect to violations of its nuisance ordinances.

(b) The use of a residence for the purposes of a microenterprise home kitchen operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or for purposes of local building and fire codes.

(c) A microenterprise home kitchen operation shall be considered a residence for the purposes of the State Uniform Building Standards Code and local building and fire codes.

114367.5. (a) A person delivering food on behalf of a microenterprise home kitchen operation with a permit issued pursuant to Section 114367.2 shall be an employee of the operation or a family member or household member of the permit holder, and, if the person drives a motor vehicle in the delivery of the food, the person shall have a valid driver's license.

(b) The microenterprise home kitchen operation shall keep on file a copy of the valid driver's license of a person delivering food on behalf of the operation.

114367.6. (a) An Internet food service intermediary that lists or promotes a microenterprise home kitchen operation on its Internet Web site or mobile application shall meet all of the following requirements:

(1) Be registered with the department.

(2) Prior to the listing or publication of a microenterprise home kitchen operation's offer of food for sale, clearly and conspicuously post on its Internet Web site or mobile application the requirements for the permitting of a microenterprise home kitchen specified in this chapter, which shall be written at the high school level and be provided by the department.

(3) Clearly and conspicuously post on its Internet Web site or mobile application the fees associated with using its platform in a manner that allows both the consumer and the microenterprise home kitchen operation to see and understand the amount being charged for the services provided by the Internet food service intermediary. The Internet food service intermediary shall notify microenterprise home kitchen operations of any changes to these fees exceeding a 2-percent increase in writing and no later than one month before the changes take effect.

(4) Clearly and conspicuously post on its Internet Web site or mobile application whether or not it has liability insurance that would cover any incidence arising from the sale or consumption of food listed or promoted on its Internet Web site or mobile application.

(5) Provide a dedicated field on its platform for a microenterprise home kitchen operation to post the permit number, and shall provide notice to the microenterprise home kitchen operation of the requirement that the permit number be updated annually.

(6) Clearly and conspicuously post on its Internet Web site or mobile application how a consumer can contact the Internet food service

intermediary through its Internet Web site or mobile application if the consumer has a food safety or hygiene complaint and a link to the department's Internet Web site that contains information for how to file a complaint with the local enforcement agency.

(7) Submit the name and permit number of a microenterprise home kitchen operation to the local enforcement agency if it receives, through its Internet Web site or mobile application, three or more unrelated individual food safety or hygiene complaints in a calendar year from consumers that have made a purchase through its Internet Web site or mobile application. The Internet food service intermediary shall submit this information to the local enforcement agency within two weeks of the third complaint received.

(8) If it is notified by the local enforcement agency of significant food safety related complaints from a verified consumer that has made a purchase through its Internet Web site or mobile application, submit to the local enforcement agency the name and permit number of microenterprise home kitchen operation where the food was purchased, and a list of consumers who purchased food on the same day from that microenterprise home kitchen operation through its Internet Web site or mobile application.

(9) Prior to the listing or publication of a microenterprise home kitchen operation's offer of food for sale, obtain consent from the microenterprise home kitchen operation to make the disclosures to government entities required pursuant to this section.

(b) For purposes of this chapter, an "Internet food service intermediary" means an entity that provides a platform on its Internet Web site or mobile application through which a microenterprise home kitchen operation may choose to offer food for sale and from which the Internet food service intermediary derives revenues, including, but not limited to, revenues from advertising and fees for services offered to a microenterprise home kitchen operation. Services offered by an Internet food service intermediary to a microenterprise home kitchen operation may include, but are not limited to, allowing a microenterprise home kitchen operation to advertise its food for sale and providing a means for potential consumers to arrange payment for the food, whether the consumer pays directly to the microenterprise home kitchen operation or to the Internet food service intermediary. Merely publishing an advertisement for the microenterprise home kitchen operation or food cooked therein does not make the publisher an Internet food service intermediary.

SEC. 7. Section 114390 of the Health and Safety Code is amended to read:

114390. (a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility, cottage food operation, or any facility suspected of being a food facility or cottage food operation, or a vehicle transporting food to or from a retail food facility, when the vehicle is

stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(3) The enforcement officer may, for the purpose of determining compliance with the gross annual sales requirements for operating a microenterprise home kitchen operation or a cottage food operation, require those operations to provide copies of documents related to determining gross annual sales.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made, and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 8. (a) Section 4.1 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2178. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 113789 of the Health and Safety Code, (3) Assembly Bill 2524 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2178, in which case Sections 4, 4.2, and 4.3 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2524. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 113789 of the Health and Safety Code, (3) Assembly Bill 2178 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2524, in which case Sections 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by this bill, Assembly Bill 2178,

and Assembly Bill 2524. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2019, (2) all three bills amend Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2178 and Assembly Bill 2524, in which case Sections 4, 4.1, and 4.2 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Assembly Bill No. 377

CHAPTER 536

An act to amend Sections 113825, 114367.1, 114367.2, 114367.5, and 114367.6 of, and to repeal and add Sections 114367 and 114367.3 of, the Health and Safety Code, relating to retail food facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2019. Filed with Secretary
of State October 7, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 377, Eduardo Garcia. Microenterprise home kitchen operations.

(1) The California Retail Food Code (code) authorizes the governing body of a city, county, or city and county, by ordinance or resolution, to permit microenterprise home kitchen operations if certain conditions are met. The code requires a microenterprise home kitchen operation, as a restricted food service facility, to meet specified food safety standards. A violation of the code is generally a misdemeanor.

This bill would prohibit a microenterprise home kitchen operation from producing, manufacturing, processing, freezing, or packaging milk or milk products, including, but not limited to, cheese and ice cream. The bill would modify the conditions for a city, county, or city and county to permit microenterprise home kitchen operations within its jurisdiction. The bill would modify the inspections and food safety standards applicable to microenterprise home kitchen operations. The bill would prohibit an internet food service intermediary or a microenterprise home kitchen operation from using the word "catering" or any variation of that word in a listing or advertisement of a microenterprise home kitchen operation's offer of food for sale. The bill would require a microenterprise home kitchen operation to include specific information, including its permit number, in its advertising. The bill would prohibit a third-party delivery service from delivering food produced by a microenterprise home kitchen operation, except to an individual who has a physical or mental condition that is a disability which limits the individual's ability to access the food without the assistance of a third-party delivery service. By expanding the scope of a crime for a violation of the code, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 113825 of the Health and Safety Code is amended to read:

113825. (a) “Microenterprise home kitchen operation” means a food facility that is operated by a resident in a private home where food is stored, handled, and prepared for, and may be served to, consumers, and that meets all of the following requirements:

(1) The operation has no more than one full-time equivalent food employee, not including a family member or household member.

(2) Food is prepared, cooked, and served on the same day.

(3) Food is consumed onsite at the microenterprise home kitchen operation or offsite if the food is picked up by the consumer or delivered within a safe time period based on holding equipment capacity.

(4) Food preparation does not involve processes that require a HACCP plan, as specified in Section 114419, or the production, service, or sale of raw milk or raw milk products, as defined in Section 11380 of Title 17 of the California Code of Regulations.

(5) The service and sale of raw oysters is prohibited.

(6) The production, manufacturing, processing, freezing, or packaging of milk or milk products, including, but not limited to, cheese, ice cream, yogurt, sour cream, and butter, is prohibited.

(7) Food preparation is limited to no more than 30 individual meals per day, or the approximate equivalent of meal components when sold separately, and no more than 60 individual meals, or the approximate equivalent of meal components when sold separately, per week. The local enforcement agency may decrease the limit of the number of individual meals prepared based on food preparation capacity of the operation, but shall not, in any case, increase the limit of the number of individual meals prepared.

(8) The operation has no more than fifty thousand dollars (\$50,000) in verifiable gross annual sales, as adjusted annually for inflation based on the California Consumer Price Index.

(9) The operation only sells food directly to consumers and not to any wholesaler or retailer. For purposes of this paragraph, the sale of food prepared in a microenterprise home kitchen operation through the internet website or mobile application of an Internet food service intermediary, as defined in Section 114367.6, is a direct sale to consumers. An operation that sells food through the internet website or mobile application of an Internet food service intermediary shall consent to the disclosures specified in paragraphs (6) and (7) of subdivision (a) of Section 114367.6.

(b) “Microenterprise home kitchen operation” does not include either of the following:

(1) A catering operation.

(2) A cottage food operation, as defined in Section 113758.

(c) For purposes of this section, “resident of a private home” means an individual who resides in the private home when not elsewhere for labor or other special or temporary purpose.

SEC. 2. Section 114367 of the Health and Safety Code is repealed.

SEC. 3. Section 114367 is added to the Health and Safety Code, to read:

114367. The governing body of a city, county, or city and county that is designated as the enforcement agency, as defined in Section 113773, may authorize, by ordinance or resolution, within its jurisdiction the permitting of microenterprise home kitchen operations in accordance with this chapter. If a governing body of a city, county, or city and county authorizes the permitting of microenterprise home kitchen operations, the authorization shall apply to all areas within its jurisdiction, including being applicable to all cities within a county that authorizes microenterprise home kitchen operations, regardless of whether each city located within the jurisdiction of the county separately authorizes them.

SEC. 4. Section 114367.1 of the Health and Safety Code is amended to read:

114367.1. (a) A microenterprise home kitchen operation, as defined in Section 113825, shall be considered a restricted food service facility for purposes of, and subject to all applicable requirements of, Chapter 1 (commencing with Section 113700) to Chapter 9 (commencing with Section 114265), inclusive, and Chapter 13 (commencing with Section 114380), except as otherwise provided in this chapter.

(b) A microenterprise home kitchen operation shall be exempt from all of the following provisions:

(1) Handwashing facilities requirements, as required in Section 113953, provided that a handwashing sink is supplied with warm water and located in the toilet room and supplied, as specified in Section 113953.2.

(2) Any provision in this part relating to sinks, warewashing machines, and manual or machine sanitation, including, but not limited to, Sections 114099, 114099.2, 114099.4, 114101.1, 114101.2, 114103, 114107, 114123, 114125, 114163, and 114279, provided that all of the following conditions are met:

(A) Utensils and equipment are able to be properly cleaned and sanitized.

(B) The sink in a microenterprise home kitchen operation has hot and cold water and is fully operable.

(C) If a dishwasher is used, it shall be operated in accordance with the manufacturer’s specifications.

(3) Prohibition on the presence of persons unnecessary to the food facility operation in the food preparation, food storage, or warewashing areas, as specified in Section 113945.1, provided that the permitholder takes steps to avoid any potential contamination to food, clean equipment, utensils, and unwrapped single-service and single-use articles and prevents a person suffering from symptoms associated with acute gastrointestinal illness or person known to be infected with a communicable disease that is

transmissible through food to enter the food preparation area while food is being prepared as part of a microenterprise home kitchen operation.

(4) No smoking sign posting requirements, as specified in Section 113978.

(5) Limitations on employee consumption of food, drink, or tobacco outside of designated areas, as specified in Sections 113977 and 114256, provided that the permitholder takes steps to avoid any potential contamination to food, clean equipment, utensils, and unwrapped single-service and single-use articles and prevents a person suffering from symptoms associated with acute gastrointestinal illness or person known to be infected with a communicable disease that is transmissible through food to enter the food preparation area while food is being prepared as part of a microenterprise home kitchen operation.

(6) Limitations on consumer access to the food facility through food preparation areas, as specified in Section 113984.1, provided that the permitholder takes steps to avoid any potential contamination to food, clean equipment, utensils, and unwrapped single-service and single-use articles and prevents a person suffering from symptoms associated with acute gastrointestinal illness or person known to be infected with a communicable disease that is transmissible through food to enter the food preparation area while food is being prepared as part of a microenterprise home kitchen operation.

(7) Display guard, cover, and container requirements, as specified in Section 114060, provided that any food on display that is not protected from the direct line of a consumer's mouth by an effective means is not served or sold to any subsequent consumer.

(8) Requirements to provide clean drinking cups and tableware for second portions and beverage refills, as specified in Section 114075.

(9) Requirements pertaining to the characteristics and certification of utensils and equipment, as specified in Sections 114130 and 114139, provided that utensils and equipment are designed to retain their characteristic qualities under normal use conditions.

(10) Requirements pertaining to the characteristics, construction, and multiuse of food-contact and nonfood-contact surfaces, as specified in Sections 114130.3 and 114130.4, provided that food contact surfaces are smooth, easily cleanable, and in good repair.

(11) Requirements pertaining to the characteristics, construction, and disassembly of clean in place (CIP) equipment, as specified in Section 114130.5.

(12) Limitations on the use of wood as a food contact surface and in connection with other equipment, as specified in Section 114132, provided that hard maple or equivalent wood is approved for use in direct contact with food during preparation.

(13) Any provision in this part relating to ventilation, including, but not limited to, Article 2 (commencing with Section 114149) of Chapter 6, provided that gases, odors, steam, heat, grease, vapors, and smoke are able to escape from the kitchen.

(14) Requirements that cold or hot holding equipment used for potentially hazardous food be equipped with integral or permanently affixed temperature measuring device or product mimicking sensors, as specified in subdivision (c) of Section 114157.

(15) Requirements pertaining to the installation of fixed, floor-mounted, and table-mounted equipment, as specified in Section 114169.

(16) Dedicated laundry facility requirements, as specified in Section 114185.5, provided that linens used in connection with the microenterprise home kitchen operation shall be laundered separately from the household and other laundry.

(17) Requirements pertaining to water, plumbing, drainage, and waste, as specified in Sections 114193, 114193.1, and 114245.7.

(18) Any requirement that a microenterprise home kitchen operation have more than one toilet facility or that access to the toilet facility not require passage through the food preparation, food storage, or utensil washing areas, including, but not limited to, the requirements specified in Sections 114250 and 114276.

(19) Light intensity, light source, and lightbulb requirements, as specified in Sections 114252 and 114252.1, provided that food preparation areas are well lighted by natural or artificial light whenever food is being prepared.

(20) Requirements to provide and use lockers, storage facilities, and designated dressing areas, and that food facility premises be free of litter and items that are unnecessary to the operation, as specified in Sections 114256.1 and 114257.1, provided that personal effects and clothing not ordinarily found in a home kitchen are placed or stored away from food preparation areas and dressing takes place outside of the kitchen.

(21) Limitations on the presence and handling of animals, such as domestic, service, or patrol animals, as specified in Sections 114259.4 and 114259.5, provided that all animals are kept outside of the kitchen during food service and preparation.

(22) Requirements pertaining to floor, wall, and ceiling surfaces, as specified in Sections 114268, 114269, and 114271, provided that the floor, wall, and ceiling surfaces of the kitchen, storage, and toilet areas are smooth, of durable construction, and easily cleanable with no limitations on the use of wood, tile, and other nonfiber floor surfaces ordinarily used in residential settings.

(23) Any local evaluation or grading system for food facilities, as authorized by Section 113709.

(24) All prohibitions and limitations on the use of a kitchen in a private home as a food facility, including, but not limited to, prohibitions and limitations specified in Section 114285, provided that food is not prepared in designated sleeping quarters. Open kitchens adjacent to living and sleeping areas, kitchens in efficiency, studio, and loft-style residences, and kitchens without doors at all points of ingress and egress may be used in microenterprise home kitchen operations.

(25) Planning and permitting provisions of Sections 114380 and 114381.2.

(c) A microenterprise home kitchen operation may operate an open-air barbecue or outdoor wood-burning oven, pursuant to the requirements of Section 114143.

(d) The operator of a microenterprise home kitchen operation shall successfully pass an approved and accredited food safety certification examination, as specified in Section 113947.1.

(e) Any individual, other than the operator, who is involved in the preparation, storage, or service of food in a microenterprise home kitchen operation shall be subject to the food handler card requirements specified in Section 113948.

(f) A microenterprise home kitchen operation shall only offer for sale or sell food that was prepared during a food demonstration or preparation event to a consumer who was present at that food demonstration or preparation event.

SEC. 5. Section 114367.2 of the Health and Safety Code is amended to read:

114367.2. (a) A microenterprise home kitchen operation shall not be open for business unless it has obtained a permit issued from the enforcement agency.

(b) The department shall post on its internet website the requirements for the permitting of a microenterprise home kitchen operation, pursuant to this chapter and any ordinance, resolution, or rules adopted by any city, county, or city and county, that has authorized the permitting of microenterprise home kitchen operations, which shall be written at a high school level.

(c) The applicant shall submit to the enforcement agency written standard operating procedures that include all of the following information:

(1) All food types or products that will be handled.

(2) The proposed procedures and methods of food preparation and handling.

(3) Procedures, methods, and schedules for cleaning utensils, equipment, and for the disposal of refuse.

(4) How food will be maintained at the required holding temperatures, as specified in Section 113996, pending pickup by consumer or during delivery.

(5) Days and times that the home kitchen may potentially be utilized as a microenterprise home kitchen operation. The stated days and times are not binding on the permitholder and shall be used for information purposes only.

(d) (1) The enforcement agency shall issue a permit after an initial inspection has determined that the proposed microenterprise home kitchen operation and its method of operation comply with the requirements of this chapter.

(2) An enforcement agency shall not require a microenterprise home kitchen operation to comply with food safety requirements that are different from, or in addition to, the requirements of this chapter.

(e) For purposes of permitting, the permitted area includes the home kitchen, onsite consumer eating area, food storage, utensils and equipment, toilet room, janitorial or cleaning facilities, and refuse storage area. Food operations shall not be conducted outside of the permitted areas.

(f) An enforcement agency may require a microenterprise home kitchen operation to renew its permit annually.

(g) A permit, once issued, is nontransferable. A permit shall be valid only for the person and location specified by that permit, and, unless suspended or revoked for cause, for the time period indicated.

(h) The permit, or an accurate copy thereof, shall be retained by the operator onsite and displayed at all times the microenterprise home kitchen operation is in operation.

(i) An enforcement agency may collect a fee for the issuance of a permit pursuant to this chapter in an amount that does not exceed the reasonable administrative costs by the enforcement agency in issuing the permit.

SEC. 6. Section 114367.3 of the Health and Safety Code is repealed.

SEC. 7. Section 114367.3 is added to the Health and Safety Code, to read:

114367.3. (a) Notwithstanding any other law, a microenterprise home kitchen operation shall only be subject to the three following types of inspections by the enforcement agency:

(1) A routine inspection for the purpose of allowing the enforcement agency to observe the permitholder engage in the usual activities of a microenterprise home kitchen operation, including, but not limited to, active food preparation. The enforcement agency shall provide notice to a permitholder before a routine inspection and shall conduct the routine inspection at a mutually agreeable date and time. A microenterprise home kitchen operation shall not be subject to more than one routine inspection within 12 months. This paragraph shall not be deemed to require the enforcement agency to conduct a routine inspection.

(2) An investigation inspection for the purpose of allowing the enforcement agency to perform an inspection when the enforcement agency has just cause that adulterated or otherwise unsafe food has been produced or served by the microenterprise home kitchen operation or that the permitholder has otherwise violated this part. One or more consumer complaints may constitute just cause for an investigation inspection. The enforcement agency shall provide notice to a permitholder before an investigation inspection and shall conduct the investigation inspection at a mutually agreeable date and time.

(3) An emergency inspection for the purpose of allowing the enforcement agency to perform a limited inspection when the enforcement agency has just cause that the microenterprise home kitchen operation poses a serious hazard or immediate threat to public health. To the extent that notice of an emergency inspection is reasonable under the circumstances, the enforcement agency shall provide notice to a permitholder before an emergency inspection. The scope of emergency inspection shall be limited in duration and scope to address the facts giving just cause that the microenterprise

home kitchen operation poses a serious hazard or immediate threat to public health.

(b) The enforcement agency shall only inspect the permitted area of the microenterprise home kitchen operation for the purpose of enforcing or administering this part.

(c) The enforcement agency may seek recovery from a microenterprise home kitchen operation of an amount that does not exceed the enforcement agency's reasonable costs of inspecting the microenterprise home kitchen operation for compliance with this part if the microenterprise home kitchen operation is found to be in violation of this part.

SEC. 8. Section 114367.5 of the Health and Safety Code is amended to read:

114367.5. (a) A person delivering food on behalf of a microenterprise home kitchen operation with a permit issued pursuant to Section 114367.2 shall be an employee of the microenterprise home kitchen operation or a family member or household member of the permitholder.

(b) (1) Except as provided in paragraph (2), food produced in a microenterprise home kitchen operation shall not be delivered by a third-party delivery service.

(2) (A) Food produced in a microenterprise home kitchen operation may be delivered by a third-party delivery service to an individual who has a physical or mental condition that is a disability which limits the individual's ability to access the food without the assistance of a third-party delivery service.

(B) A microenterprise home kitchen operation or an internet food service intermediary that offers or facilitates food delivery pursuant to subparagraph (A) shall do all of the following:

(i) Record and maintain a record of the number and dates of food deliveries made pursuant to subparagraph (A). A microenterprise home kitchen operation shall make the record available to an enforcement agency pursuant to any inspection authorized pursuant to Section 114367.3. An internet food service intermediary shall make the record available to an enforcement agency upon request.

(ii) Clearly and conspicuously post on its internet website or mobile application alongside any mention of third-party delivery options a notice that a third-party delivery service is prohibited from delivering food except to an individual who has a physical or mental condition that is a disability which limits the individual's ability to access the food without the assistance of a third-party delivery service.

(C) Food delivery by a third-party delivery service pursuant to subparagraph (A) does not apply to dine-in meals sold for consumption on the premises of a microenterprise home kitchen or to cooking classes or demonstrations.

SEC. 9. Section 114367.6 of the Health and Safety Code is amended to read:

114367.6. (a) An internet food service intermediary that lists or promotes a microenterprise home kitchen operation on its internet website or mobile application shall meet all of the following requirements:

(1) Be registered with the department. A registration, once issued, is nontransferable. A registration shall be valid only for the person and type of business specified by that registration, and unless suspended or revoked for cause by the department.

(2) Prior to the listing or publication of a microenterprise home kitchen operation's offer of food for sale, clearly and conspicuously post on its internet website or mobile application the requirements for the permitting of a microenterprise home kitchen specified in this chapter, which shall be written at the high school level and be provided by the department.

(3) Clearly and conspicuously post on its internet website or mobile application the fees associated with using its platform and fees associated with third-party delivery service pursuant to paragraph (2) of subdivision (b) of Section 114367.5 in a manner that allows both the consumer and the microenterprise home kitchen operation to see and understand the amount being charged for the services provided by the internet food service intermediary. The internet food service intermediary shall notify the microenterprise home kitchen operation of any changes to these fees exceeding a 2-percent increase in writing and no later than one month before the changes take effect.

(4) Clearly and conspicuously post on its internet website or mobile application whether or not it has liability insurance that would cover any incidence arising from the sale or consumption of food listed or promoted on its internet website or mobile application.

(5) Provide a dedicated field on its platform for a microenterprise home kitchen operation to post the permit number and the name of the enforcement agency that issued the permit.

(6) Clearly and conspicuously post on its internet website or mobile application how a consumer can contact the internet food service intermediary through its internet website or mobile application if the consumer has a food safety or hygiene complaint and a link to the department's internet website that contains information for how to file a complaint with the enforcement agency.

(7) Submit the name and permit number of a microenterprise home kitchen operation to the enforcement agency that issued the permit to the microenterprise home kitchen operation if the internet food service intermediary receives, through its internet website or mobile application, three or more unrelated individual food safety or hygiene complaints in a calendar year from consumers that have made a purchase through its internet website or mobile application. The internet food service intermediary shall submit this information to the enforcement agency within two weeks of the third complaint received.

(8) If it is notified by the enforcement agency of significant food safety related complaints from a verified consumer that has made a purchase through its internet website or mobile application, submit to the enforcement

agency the name and permit number of the microenterprise home kitchen operation where the food was purchased, and a list of consumers who purchased food on the same day from that microenterprise home kitchen operation through its internet website or mobile application.

(9) Prior to the listing or publication of a microenterprise home kitchen operation's offer of food for sale, obtain consent from the microenterprise home kitchen operation to make the disclosures to government entities required pursuant to this section.

(10) Shall not permit the use of the word "catering" or any variation of that word in a listing or publication of a microenterprise home kitchen operation's offer of food for sale.

(11) Shall not use, or knowingly facilitate the use of, a third-party delivery service for food produced by the microenterprise home kitchen operation, except as authorized pursuant to paragraph (2) of subdivision (b) of Section 114367.5.

(b) For purposes of this chapter, an "internet food service intermediary" means an entity that provides a platform on its internet website or mobile application through which a microenterprise home kitchen operation may choose to offer food for sale and from which the internet food service intermediary derives revenues, including, but not limited to, revenues from advertising and fees for services offered to a microenterprise home kitchen operation. Services offered by an internet food service intermediary to a microenterprise home kitchen operation may include, but are not limited to, allowing a microenterprise home kitchen operation to advertise its food for sale and providing a means for potential consumers to arrange payment for the food, whether the consumer pays directly to the microenterprise home kitchen operation or to the internet food service intermediary. Merely publishing an advertisement for the microenterprise home kitchen operation or food cooked therein does not make the publisher an internet food service intermediary.

(c) (1) A microenterprise home kitchen operation that advertises to the public, including, but not limited to, advertising by website, internet, social media platform, newspaper, newsletter, or other public announcement, shall include all of the following within the advertisement:

(A) Name of the enforcement agency that issued the permit.

(B) Permit number.

(C) Statement that the food prepared is "Made in a Home Kitchen" in a clear and conspicuous font and location within a written advertisement and an audible and comprehensible manner in a verbal advertisement.

(2) A microenterprise home kitchen operation shall not use the word "catering" or any variation of that word in an advertisement relating to the microenterprise home kitchen operation's offer of food for sale.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of

Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure a uniform implementation of the health and food safety responsibilities of microenterprise home kitchen operations throughout the state, it is necessary that this act take effect immediately.

17.225.050 Home occupations.

Home occupation means an occupation lawfully conducted within a dwelling by an inhabitant of such dwelling. A home occupation shall meet each of the requirements set forth in subsections (A) through (J) of this section, unless otherwise excepted by subsection (K), and further shall be subject to subsections (L) and (N) of this section.

- A. One for which no customer comes to the dwelling to receive the service or merchandise offered by the home occupation;
- B. One for which no employees other than inhabitants of the dwelling work at or come to the dwelling;
- C. One for which no sign or other advertising is displayed;
- D. One in which no merchandise, equipment or materials are kept or stored at the dwelling or outside the dwelling, except those necessary to maintain an office;
- E. One for which the required garage, carport or parking space for the dwelling is not converted for use in any way by the home occupation to preclude its use for parking;
- F. One in which there is no alteration of the residential character of the premises;
- G. One for which all contacts with customers or clients take place on-site only by mail, telephone, or electronic media, such as a computer and/or facsimile machine, or entirely off-site;

- H. One in which any equipment necessary to perform the home occupation on the premises must be kept in a pickup truck or van with a maximum capacity of one (1) ton or a trailer that can be towed by a truck or van;
- I. One which does not create a nuisance by reason of noise, dust, odor, vibration, fumes, smoke, electrical interference or similar conflicts with compatibility; and
- J. One for which a valid business license is obtained and annually renewed.
- K. Notwithstanding the above, any home occupation conducted by a disabled person or by a person for therapy and not deemed detrimental to the subject area may be permitted, provided the applicant's claim for handicap or therapy is supported by a written statement by a licensed medical doctor.
- L. Notwithstanding the above, a cottage food operation may be permitted to allow for the production and sale of cottage food products. A cottage food operator must obtain and maintain required permits from the County Department of Environmental Health in order to operate a cottage food home occupation business.
- M. Notwithstanding the above, any home occupation may be revoked by the director of community development upon the violation of any requirements of this title or any conditions of approval, unless the violation is corrected within five days of giving written notice thereof.
- N. Any decision of the director may be appealed to the planning commission for review pursuant to Chapter 17.30. (Ord. 5018 § 109, 2015)



County of San Diego

DEPARTMENT OF ENVIRONMENTAL HEALTH

FOOD AND HOUSING DIVISION

P.O. BOX 129261, SAN DIEGO, CA 92112-9261
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Microenterprise Home Kitchen Operation (MEHKO) FAQs

1. What does the new law do?

The new law establishes a “microenterprise home kitchen operation”, also referred to as MEHKO, as a new type of retail food facility to be operated by a resident in a private home. However, the law requires a city or County to either allow or not allow MEHKOs in their jurisdiction, and until the County or a city takes action, MEHKOs will not be allowed to operate in that city or County. The County has the option to either choose to authorize MEHKOs countywide which would include all cities, not authorize MEHKOs, or authorize only in the unincorporated areas and each city would decide whether to authorize MEHKOs in their city. Wherever MEHKOs are authorized, the County will be the permitting jurisdiction for Food Code purposes. Therefore, the Department of Environmental Health (DEH) will monitor whether local cities authorize MEHKOs to operate within that city.

2. When does the new law go into effect?

The new law will become effective on January 1, 2019. However, the new law gives a city or county “full discretion” to authorize the MEHKOs in their jurisdiction. Until a county or a city authorizes these types of operations, MEHKOs will not be able to be issued a health permit.

3. What is a Microenterprise Home Kitchen Operation or MEHKO?

A MEHKO is a type of food service, like a mini restaurant, that is operated by a resident in a private home where food is stored, handled, and prepared that may be served to customers. Food must be prepared the day of service and can be eaten onsite or be delivered to the customer. Food may also be sold and delivered through an internet website or a phone based mobile app belonging to an Internet Food Service Intermediary. Food products may not be sold to a wholesale or retail facility.

4. What is meant by “private home?”

“Private home” means a dwelling, including an apartment or other leased space, where individuals reside. The MEHKO must be conducted within the primary residence. Second homes, vacation homes, or motor homes DO NOT qualify as a MEHKO.

5. If a person is renting a private residence, can they still operate a MEHKO?

A person must check their lease agreement to see if there are any restrictions to operating a home-based business out of the residence.

6. Are there any meal or sales limitations for MEHKOs?

Yes, food preparation is limited to 30 meals per day or 60 individual meals per week and annual sales cannot exceed \$50,000. Records of all sales must be kept so that compliance with this limitation can be verified. The law also allows for DEH to limit the number of individual meals prepared if the physical space available for food preparation, food storage, and equipment storage is not adequate to support the number of meals being prepared.

7. Who is the “local enforcement agency” for MEHKOs in the San Diego region?

The local enforcement agency for food facilities, including MEHKOs, in the San Diego region is the County of San Diego Department of Environmental Health (DEH).

8. Is a permit required to operate a MEHKO?

Yes, a health permit is required from the County of San Diego Department of Environmental Health (DEH), Food and Housing Division, prior to operating.

9. How does a person who wants to operate a MEHKO obtain a permit from DEH?

If the County or a local city authorizes a MEHKO program, to obtain a permit, a person (the operator) must complete a permit application package that includes a health permit application form and "Written Operational Procedures" form, and pay a permit fee. Once the application and procedures are reviewed and approved by DEH, an initial inspection will be scheduled and conducted at the private residence to verify compliance with state law. Once compliance is verified, the permit will be issued. Once a city or the County has approved a program, an application packet can be picked up at the Department of Environmental Health Office, located at 5500 Overland Ave, Suite 170 San Diego, CA 92123, or online at www.sdcdeh.org.

10. How long does the application process take for a MEHKO?

The application process is determined by the level of detail and completeness of the application package. The standard application process for MEHKOs is up to 20 calendar days if the application package is complete and the level of detail in the operational procedures is included to demonstrate compliance with the law,

11. Does a person need any special training or certification to operate a MEHKO?

The operator of the MEHKO needs to successfully pass an approved and accredited food safety manager course and any individual, other than the operator, who is involved with the preparation, storage, or service of food in a MEHKO must also obtain a food handler card from one of the schools approved by DEH. For a list of approved food safety manager and food handler courses, visit our website at www.sdcountyfoodhandlers.org.

12. Can a MEHKO have employees?

A MEHKO can have one full time equivalent employee who is an individual employed for the MEHKO, this does not include household family members.

13. How often will a MEHKO be inspected?

All MEHKOs will receive one annual routine inspection. The first inspection will occur before a permit is issued to ensure compliance with the law. Additional inspections may be required in response to a complaint, if it is suspected that adulterated or otherwise unsafe food has been produced or served by the MEHKO, or if the MEHKO has violated state law (California Retail Food Code).

14. What areas of a private residence will be permitted and inspected as part of a MEHKO?

The areas of a private residence that will be permitted and inspected as part of a MEHKO includes the kitchen, onsite customer eating area, food storage areas, bathroom (toilet room), janitorial or cleaning areas, and trash storage areas. Any utensils and equipment used in the MEHKO will also be inspected.

15. Are kids and pets allowed to be in a MEHKO?

Yes, the law exempts a MEHKO from certain requirements of the CRFC. MEHKOs are not required to keep children and pets out of the food preparation and food storage areas, but DEH recommends that children and pets be excluded when food is being prepared.

16. Are there any restrictions to the type of food a MEHKO can serve?

A MEHKO can prepare and sell food and beverages that have been approved by the local enforcement agency for same day on-site consumption or delivery **with the exception of** food or beverages that:

- Involve the production, service, or sale of raw milk or raw milk products
- Involve the service or sale of raw oysters
- Involve food processes that require a Hazard Analysis Critical Control Point (HACCP) Plan such as:
 - Smoking food as a method of food preservation

- Curing food
- Using food additives or adding components such as vinegar as a method of food preservation
- Operating a molluscan shellfish life support system display tank used to store and display shellfish that are offered for human consumption
- Using acidification or activity to prevent the growth of Clostridium botulinum
- Packaging potentially hazardous food using a Reduced-Oxygen Packaging method
- Preparing food by another method that is determined by the lead local agency to require a HACCP plan
- Involve the manufacturing of ice cream without a license from California Department of Food and Agriculture
- Contains alcohol without the appropriate liquor license from Alcohol Beverage Control (ABC)

17. Can a MEHKO add in cannabis, CBD, or Kava to the products they sell as part of their operation?

No, current restrictions imposed by the California Department of Public Health (CDPH) and the FDA prohibit a food facility from putting these ingredients into any food products that are offered to the public for consumption.

18. Is commercial grade equipment required in a MEHKO?

No, commercial equipment/appliances are not required as long as the equipment/appliances used in a MEHKO are kept clean, stored in a sanitary manner, and are in good working order.

19. Can a MEHKO use an open-air barbecue or an outdoor wood-burning oven?

Yes, a MEHKO may use an open-air barbecue or an outdoor wood-burning oven as long as the barbecue or wood-burning oven is:

- Operated on the same premises and is within reasonable proximity to the MEHKO
- Does not have access to by the public
- Is not in a location that constitutes a fire hazard
- Meets the requirements of the California Retail Food Code §114143

20. Can an operator of a MEHKO sell or give away food products at temporary community events or at Certified Farmer's Markets?

No, an operator of a MEHKO cannot sell food products at a temporary community event or a Certified Farmer's Market. A MEHKO can only conduct food service directly to the public from the residential home, or sold and delivered through an internet website or a phone based mobile app belonging to an Internet Food Service Intermediary.

21. Are there any special requirements regarding a private residential water well?

Yes, only potable water from a properly constructed on-site well or municipal water system can be used.

22. Can homegrown fruits and vegetables be used in a MEHKO?

Yes, however care should be taken to ensure all fruit and produce is grown and handled using best management practices associated with a community food producer and all produce must be thoroughly washed prior to use.

23. What records are required to be maintained for review by the local enforcement agency?

An operator of a MEHKO must maintain the following documents onsite for review during an inspection:

- Written standard operating procedures that include a menu and hours of operation
- A valid permit issued by DEH, or a legible copy of the valid permit, must be displayed onsite at all times when the MEHKO is in operation
- A copy of a valid driver's license of the person delivering food on behalf of the MEHKO
- A copy of the most recent DEH inspection report
- Records of all receipts from the sales of food

24. Can an operator of a MEHKO donate any leftover food?

An operator of a MEHKO may donate food to a food bank or to any other nonprofit charitable organization as long as the food has been handled in compliance with food safety requirements. For more information on food donations, contact the DEH-FHD information specialist at (858) 505-6900, or one of the two San Diego Based Food Banks, Feeding San Diego at (858) 452-3663, or the San Diego Food Bank at (858) 527-1419.

25. If an operator moves to a new residence, do they need to go through the application process again?

Yes, DEH permits are non-transferable. If an operator moves to a new residence, they must go through the application process again.

26. Why isn't a letter grade posted at a MEHKO like it is at a permanent food facility or a mobile food facility?

The law exempts a MEHKO from any local grading system. However, just like permanent food facilities and mobile food facilities, inspection report data and violation information relating to any inspections conducted at a permitted MEHKO can be found at www.SDFoodInfo.org.

27. How does a customer determine if a MEHKO has an approved permit?

A MEHKO is required to display their permit, or a legible copy, during hours of operation. Customers can also visit www.SDFoodInfo.org to determine if a MEHKO has a valid permit.

28. If there are complaints about odors, traffic, parking, and/or excessive noise, what agency should be notified?

Any complaints involving nuisance concerns can be reported directly to the local city's Code Enforcement Department, or for MEHKOs in the unincorporated areas, to the County of San Diego Department of Planning & Development Services Code Enforcement Program.

For additional information, please visit
the Department of Environmental Health's webpage at: <http://www.sdcdeh.org>

**If you have any questions that have not been answered in these FAQ's,
or if additional clarification is needed, please contact the DEH-FHD Information Specialist
at (858) 505-6900 or by email at FHDUTYEH@sdcounty.ca.gov.**



City Council Agenda Report

Agenda Item 13.

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Anthony Shute, Director of Community Development
SUBJECT: Senate Bill 9 (Atkins)

RECOMMENDATION:

This is an informational report only. No action required.

DISCUSSION

On September 16, 2021, California Governor Newsom signed into law Senate Bill 9 (Atkins), which will take effect January 1, 2022. This law partially abrogates local planning and zoning control and public input by requiring the ministerial approval of housing developments containing two residential units and lot splits without a public hearing. In summary, if the proposed housing development meets certain state-adopted requirements, primarily designed to prevent the demolition of existing affordable housing or displacement of moderate, low- or very low-income families or historic properties, it can be approved ministerially.

SB 9 undermines local land use authority by imposing state legislation on local government agencies and municipalities, and makes no consideration of the constraints of local conditions. This would effectively convert the City's single family zoning to multi-family without the City's approval through local legislative processes. Despite the City's contemporary land-use planning policies and zoning designations (Mixed-use Overlay, Downtown Master Plan, Transit District Specific Plan) the new legislation replaces El Cajon's strategically planned, locally-appropriate areas of housing intensification with a blanket multi-family zoning.

The new law does not address a fundamental responsibility of all cities: basic infrastructure. Streets, parking, water supplies, power and sewer systems have been installed and maintained over decades with a presumption of the nature of the housing and development that would fit into single-family-residential zoned neighborhoods based on the City's general plan. This sweeping change to zoning dramatically increases the demand placed on sewer systems. SB 9's narrow-focused pursuit of housing-supply-at-all-costs ignores the fundamental basics that make homes functional: running water, flushing toilets and lights that turn on when needed. Issues that Sacramento does not have to solve—but now cities do.

The following is a summary of the law:

What is Senate Bill 9?

Senate Bill 9 allows property owners to split a single-family lot into two lots, add a second home to their lot, or split their lot into two and place duplexes on each. The last option would create four housing units on a property currently limited to a single-family house. Cities and counties across California will be required to approve development proposals that meet specified size and design standards. These are unknown at this time because the bill is unclear if such standards are set by the local jurisdiction or the state.

A proposed project under this new law cannot result in the demolition or alteration of affordable or rent-controlled housing or market-rate housing that has been occupied by a tenant in the past three years. Properties listed as historic landmarks or those located within a historic district are off-limits for new development. Wetlands, farmland and properties at high risk of fire or flooding are also exempt. This will eliminate most properties in Fletcher Hills and in the Shadow Mountain areas from the effects of SB 9.

Any unit created as a result of the law cannot be used for short-term rentals. They must be rented for a term longer than 30 days. However, it will be the City's responsibility to ensure these units are not being used as short-term rentals.

Who can do this?

Homeowners or landlords can apply to split their properties through their local jurisdiction, but only if they plan to live on the property for a minimum of three years. Property owners must sign an affidavit stating they will occupy one of the housing units as their primary residence.

Do cities and counties have to abide by this new law?

Under SB 9, local government officials may only deny a development application if they find that the proposed project would have a "specific, adverse impact" on "public health and safety or the physical environment," and there are no feasible and satisfactory mitigation options.

Will local rules about maximum square footage, building height and parking apply?

Proposals under this new law must adhere to objective zoning and design review standards established by local cities and counties. Developments must still follow local zoning rules such as those governing height and yard size requirements.

No parking is required for additional units if the property is within a half-mile of a major public transit stop. However, a local agency can require up to one parking space for each unit if there are no frequent transit stops nearby.

An SB 9 lot split followed by an SB 9 two-unit project on each of the two new lots would result in four total dwellings on what was formerly one single-family residential lot—all with only ministerial approval.

What might this look like?

Standards

Objective only. Under SB 9, local agencies may only impose *objective* zoning standards, *objective* subdivision standards and *objective* design standards on an eligible project—and even then, only to the extent that the standards do not physically preclude the construction of two units of at least 800 square feet.

Limited parking. Local agencies may require only one off-street parking space per unit—none if the site is close to transit or a car share vehicle location.

Setbacks of four feet or less. Side and rear setbacks are limited to four feet or less generally, but none at all may be imposed on an existing structure or one that is constructed in the same location and to the same dimensions as an existing structure.

Residential only. Local agencies must prohibit non-residential use of the new lots.

Other structures permitted. Proposed adjacent or connected structures must be allowed.

No dedications or offsite improvements. No right-of-way dedications or construction of offsite improvements may be required.

No corrections of non-conformities. Local agencies may not require the correction of non-conforming zoning conditions.

Three-year owner occupancy by affidavit. The applicant-owner must sign an affidavit stating that the owner intends to occupy one of the housing units as the owner's principal residence for at least 3 years following the lot split. Community land trusts and qualified nonprofit corporations are exempt. No other owner-occupancy requirement is allowed.

Report to State Department of Housing and Community Development. Local agencies must include the number of SB 9 lot split applications in annual housing element reports.

Limited grounds to deny. A local agency may only deny a qualifying SB 9 lot split if the building official finds that the resulting housing development project would have a specific, adverse impact on public health and safety or the physical environment and there is no feasible, satisfactory mitigation.

ADUs Not Required

SB 9 creates two narrow exceptions from the general requirement that local agencies allow accessory dwelling units and junior accessory dwelling units ministerially: First, when a lot is both created by an SB 9 lot split and developed with an SB 9 two-unit development, a local agency does not need to allow an ADU or JADU. Second, a local agency does not need to allow an ADU or JADU on a lot if there are already two units of any kind on the lot.

SB 9 also changes the lifespan of tentative subdivision maps. Local agencies may now extend map expiration by an additional year—up to 2 years generally and up to 4 years for maps that are conditioned on significant public improvement obligations.

Staff will be proposing amendments to the Zoning and Subdivision codes later this year to comply with SB 9.

Prepared By: Anthony Shute, Director of Community Development

Reviewed By: Vince DiMaggio, Assistant City Manager

Approved By: Graham Mitchell, City Manager

Attachments

SB 9 (Atkins)

Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with
Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24

months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is

no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) “Local agency” means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division

2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the

housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a “community land trust,” as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a “qualified nonprofit corporation” as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, “unit” means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) “Objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be

considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or

because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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**City Council
Agenda Report**

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mayor Wells
SUBJECT: Council Activity Report

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

September 26, 2021 – Chaldean Festival
September 21, 2021 – KUSI Interview
October 2, 2021 – Spoke at First Lutheran EC Men’s Group
October 12, 2021 – Attend City Council Meeting(s)

I am available to answer questions.

Submitted By: Bill Wells, Mayor



City Council
Agenda Report

Agenda Item 15.

DATE: October 12, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Councilmember Goble

SUBJECT: COUNCILMEMBER STEVE GOBLE

MTS (Metropolitan Transit System Board); East County Advanced Water Purification Joint Powers Authority Board; Chamber of Commerce – Government Affairs Committee; SANDAG – Board of Directors – Alternate; SANDAG Public Safety Committee – Alternate; METRO Commission/Wastewater JPA – Alternate.

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

September 30, 2021 - Email to Renee B re: VMT
October 1, 2021 - Chamber of Commerce First Friday Breakfast
October 1, 2021 - Phone call with Jeremy D re: Working Families Ord.
October 2, 2021 - Volunteer at El Cajon Oktoberfest
October 3, 2021 - Volunteer at El Cajon Oktoberfest
October 4, 2021 - Lunch w/former Supv Jacob
October 5, 2021 - Attend Chamber Gov't Affairs Committee
October 5, 2021 - Meeting with Ruth Anne T. re: work day at mobile home park
October 5, 2021 - Speak at County Board of Sup mtg re: Working Families Ord.
October 6, 2021 - Attend SD County COVID-19 webinar
October 6, 2021 - Email to Ansara B. re: VMT
October 6, 2021 - Email to Nicole H re: VMT
October 6, 2021 - Email to Dennis M. re: CRT funding
October 8, 2021 - Attend SANDAG Board of Directors meeting
October 9, 2021 - Attend EDCO Dump Day
October 9, 2021 - Attend Foodie Fest

October 10, 2021 - Attend Heartland Fire fundraiser

October 11, 2021 - Meeting with City Manager

October 12, 2021 - City Council Meeting(s)

I am available to answer questions.

Submitted By: Steve Goble, Councilmember



City Council
Agenda Report

Agenda Item 16.

DATE: October 12, 2021
TO: Honorable Mayor and City Councilmembers
FROM: Mayor Pro Tem Kendrick
SUBJECT: MAYOR PRO TEM GARY KENDRICK
METRO Commission/Wastewater JPA; Heartland Communications;
Heartland Fire Training JPA.

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

October 7, 2021 – Metro Wastewater JPA Meeting
October 12, 2021 – Attend City Council Meeting(s)

I am available to answer questions.

Submitted By: Gary Kendrick, Mayor Pro Tem



City Council
Agenda Report

Agenda Item 17.

DATE: October 12, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Councilmember Metschel

SUBJECT: COUNCILMEMBER MICHELLE METSCHEL

Harry Griffen Park Joint Steering Committee; Heartland Communications – Alternate; Heartland Fire Training JPA – Alternate.

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

October 1, 2021 – Attend Grand Opening of Team Mazda
October 6, 2021- Begin Citizen's Police Academy
October 9, 2021 – Attended Citizen's Police Academy
October 9, 2021 – Attend and participate in Foodie Fest
October 12, 2021 – Attend City Council Meeting(s)

I am available to answer questions.

Submitted By: Michelle Metschel, Councilmember



City Council
Agenda Report

Agenda Item 18.

DATE: October 12, 2021

TO: Honorable Mayor and City Councilmembers

FROM: Councilmember Ortiz

SUBJECT: COUNCILMEMBER PHIL ORTIZ

League of California Cities, San Diego Division; East County Economic Development Council; MTS (Metropolitan Transit System Board) – Alternate; East County Advanced Water Purification Joint Powers Authority Board – Alternate; Chamber of Commerce – Government Affairs Committee – Alternate.

RECOMMENDATION:

That the City Council accepts and files the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

October 11, 2021 – Speak at Cub Scouts WEBELOS Meeting

October 12, 2021 – Attend City Council Meeting(s)

I am available to answer questions.

Submitted By: Phil Ortiz, Councilmember
