CITY OF RANCHO CORDOVA

CONCURRENT MEETING
CITY COUNCIL/SUCCESSOR AGENCY TO THE CRA/RCFC

Monday, November 03, 2014

5:00 PM – Special Meeting/Closed Session
5:30 PM – Regular Meeting

AGENDA

Dan Skoglund, Mayor

Robert J. McGarvey, Vice Mayor

David Sander, Council Member

Donald Terry, Council Member

Linda Budge, Council Member

CITY OF RANCHO CORDOVA

CONCURRENT MEETING
CITY COUNCIL/SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY (CRA)/RANCHO CORDOVA FINANCING CORPORATION (RCFC)

City Hall
2729 Prospect Park Drive, Rancho Cordova

Monday, November 03, 2014

5:00 PM – Special Meeting/Closed Session
Community Board Room

5:30 PM – Regular Meeting
David B. Roberts Council Chambers

AGENDA

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Council Members Budge, McGarvey, Sander, Terry and Mayor Skoglund.

2. PUBLIC COMMENT

At a study session or special meeting, citizens wishing to address the Council for any matter on the agenda may do so at the time the matter is discussed. Note, under the provisions of the California Government Code, the City Council is prohibited from discussing or taking action on any item not on the agenda.

3. CLOSED SESSION

Council may adjourn to Closed Session to discuss the following item(s):

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: (Number of potential cases: 1).

4. ADJOURNMENT OF CLOSED SESSION

Mayor Skoglund will adjourn the closed session to regular meeting in the David B. Roberts Council Chambers.

5. REGULAR MEETING - CALL TO ORDER / ROLL CALL

Council Members Budge, McGarvey, Sander, Terry and Mayor Skoglund.

6. METRO CABLE TV TELEVISION ANNOUNCEMENT

The Clerk will announce the meetings video recording and playback schedules.

7. PLEDGE OF ALLEGIANCE

The Mayor will call on someone in attendance to lead the Pledge.

8. INVOCATION

A representative from Sacramento County Law Enforcement Chaplaincy will give the invocation.

9. OPEN SESSION - REPORT FROM CLOSED SESSION

The City Attorney will report on action taken in Closed Session.

10. PRESENTATIONS

10.1 Presentation from Linda Geissinger of the Air Force Civil Engineer Center Regarding Cleanup Activities at the Former Mather Air Force Base.

10.2 Business Distinction Award Presented to American River Brewing Company Given by Ethan Meltzer, Economic Development Department.

11. PUBLIC COMMENT

Citizens wishing to address the Council for any matter on the Consent Calendar or not on the agenda may do so at this time by completing and submitting a Speaker Card to the City Clerk. For items on the agenda, speakers will be called up to the podium by the Mayor at the point on the agenda when the item will be heard. Speakers are encouraged to keep comments to three minutes or less and to state name and community of residence.

Note, under the provisions of the California Government Code, the City Council is prohibited from discussing or taking immediate action on any unagendized item unless it can be demonstrated to be of an emergency nature or the need to take immediate action arose after the posting of the agenda.

12. COUNCIL REPORTS

13. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

13.1 **Subject:** Meeting Minutes of October 20, 2014 Special and Regular Meeting and

Amended Meeting Minutes of September 29, 2014 Special Meeting.
Recommendation: Adopt Minutes.

13.2 **Subject:** City Council Appointment to the California Capital Airshow (CCA) Board of Directors.
Recommendation: Adopt Resolution No. 124-2014.
Result of Recommended Action: As specified in the CCA bylaws, this approval would give Rancho Cordova continued representation on the CCA Board of Directors specifically chosen by the City Council.
Staff Report: Stephanie Snyder, Senior Management Analyst.
Advances Goals: 1, 2, 5, 6.

13.3 **Subject:** Annexation of the North Douglas Project to the City of Rancho Cordova Community Facilities District No. 2014-2 (Street, Lighting and Landscape Maintenance) and Amending Attachment 1 to the Rate and Method of Apportionment to add Zone 2.
Recommendation: Adopt Resolution No. 126-2014.
Result of Recommended Action: Adoption of Resolution No. 126-2014 approves Annexation Map. No. 1 for the North Douglas Project to Community Facilities District No. 2014-2 (Street Lighting and Road Maintenance) (hereinafter "CFD No. 2014-2") and amends Attachment 1 to the rate and method of apportionment to add Zone 2. There is no financial impact to existing residents.
Staff Report: Elizabeth Sparkman, Senior Engineer.
Advances Goal: 5.

13.4 **Subject:** Resolution Declaring City's Intention to Impose an Annual Stormwater Utility Fee for the Maintenance of Storm Drainage and Flood Protection System for the North Douglas Project.
Recommendation: Adopt Resolution No. 122-2014, designating a time and place for hearing protests in connection with the Annual Stormwater Utility Fee for the North Douglas Project.
Result of Recommended Action: Action on this item will declare the Council's intention to impose an annual Stormwater Utility Fee for the maintenance of the storm drainage and flood protection system in the North Douglas Project and sets a public hearing on November 17, 2014 on the matter.
Staff Report: Elizabeth Sparkman, Senior Engineer.
Advances Goal: 5.

13.5 **Subject:** Resolution Authorizing the City Manager to Execute a Contract with Kimley-Horn and Associates for Technical Design Services for the Intelligent Transportation System (ITS) Infrastructure Improvements Project.
Recommendation: Adopt Resolution No. 125-2014.
Result of Recommended Action: Adoption of this resolution will allow the City Manager to approve Contract No. 105-2014 with Kimley-Horn and Associates in the amount not to exceed $600,000 to provide technical design services for the ITS Infrastructure Improvements project.
Staff Report: Cyrus Abhar, Public Works Director and Kathy Garcia, Senior Engineer.
Advances Goal: 5.

13.6 **Subject:** Resolution Authorizing the City Manager to Execute the Second Amendment to Contract 64-2013 with R3 Consulting Group For Solid Waste Consulting Services.
Recommendation: Adopt Resolution No. 127-2014.
Result of Recommended Action: Adoption of Resolution No. 127-2014 allows the

City Manager to execute the second amendment to Contract No. 64-2013 with R3 Consulting Group for solid waste technical services to expand the scope of work and increase the project budget by $110,000 for a total contract amount of $250,000.
Staff Report: Cyrus Abhar, Public Works Director and Kathy Garcia, Senior Engineer.
Advances Goal: 5.

13.7 **Subject:** Resolution No.123-2014, Authorizing the City Manager to Execute the Fourth Amendment to Contract 46-2011 for On-Call Engineering Services with Wood Rodgers, Inc.
Recommendation: Adopt Resolution No. 123-2014.
Result of Recommended Action: Adoption of Resolution No. 123-2014 will authorize the City Manager to execute the fourth amendment contract no. 46-2011-4 with Wood Rodgers, Inc. in the amount of $75,000 for on-call engineering services to complete the design of the White Rock Road Widening Project and other on-call civil engineering tasks. The total contract amount will be increased from $600,000 to $675,000.
Staff Report: Cyrus Abhar, Public Works Director and Kathy Garcia, Senior Engineer.
Advances Goal: 5.

14. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

NONE.

15. PUBLIC HEARING ITEMS

15.1 **Subject:** An Urgency Ordinance of the City of Rancho Cordova Extending a Temporary Moratorium on the Establishment and Operation of Establishments Serving Alcohol for On-Site Consumption within 500 Feet of Adult Businesses.
Recommendation: Adopt Urgency Ordinance No. 26-2014, extending the temporary moratorium on the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of adult businesses, pending the review and possible amendment of zoning regulations applicable to these types of establishments.
Result of Recommended Action: Adoption of this Urgency Ordinance will extend the temporary moratorium for an additional ten (10) months and fifteen (15) days pursuant to Government Code Section 65858(a). The extension is needed in order to: (1) further address the concerns regarding the negative secondary effects, such as assaults, prostitution and other alcohol related crimes resulting from the operation of establishments serving alcohol for on-site consumption in close proximity to adult businesses; (2) further study the potential impacts that these types of businesses may have on the public health, safety and welfare; (3) further study and determine what local regulations may be appropriate or necessary for establishments serving alcohol for on-site consumption within 500 feet of adult businesses; (4) further study and determine the appropriate location for these types of businesses; and (5) determine appropriate measures to ensure the protection of public health, safety and welfare.
Staff Report: Adam U. Lindgren, City Attorney and Paul Junker, Planning Director.
Advances Goals: 1, 2.

15.2 **Subject:** Public Hearing Considering Adoption of an Amendment to the 2014-15 Community Development Block Grant Action Plan.
Recommendation: Approve Resolution No. 121-2014, adopting an Amendment to the 2014-15 Community Development Block Grant Action Plan.
Result of Recommended Action:
1. Adopts the amendment to the 2014-15 CDBG Action Plan;

2. Authorizes the City Manager to submit the amendment and all required certifications and forms to the Department of Housing and Urban Development; and
3. Allows staff to make technical modifications to the Action Plan to correct minor errors and to respond to direction from HUD.
Staff Report: Jessica Hayes, Housing and Neighborhood Development Analyst and Peter Ibrahim, Housing Services Assistant.
Advances Goals: 1, 2, 5, 6.

16. REGULAR CALENDAR ITEMS

16.1 **Subject:** 2015 Legislative Priorities.
Recommendation: Provide direction to staff for Fiscal Year (FY) 2016 funding requests and a platform for discussions with legislators during the National League of Cities Congressional Conference, March 6-11, 2015 in Washington, D.C. Also, receive an update on City's Legislative Program and provide direction about the 2015 program.
Result of Recommended Action: Submission of requests for federal funding for projects consistent with the Council's and community's priorities and provide topics for discussions that the Mayor and Council members will hold with Congressional representatives during the March conference in Washington, D.C. Staff will also proceed with recommended changes and actions for the City's legislative program.
Staff Report: Troy Holt, Communications and Government Relations Director.
Advances Goals: 1, 2, 3, 4, 5, 6.

16.2 **Subject:** Preliminary Results of General Fund Operations for Fiscal Year 2013-14.
Recommendation: Receive and File.
Result of Recommended Action: This report will inform the Council and the Community on the preliminary results of fiscal year ending June 30, 2014 for the General Fund.
Staff Report: Donna Silva, Chief Financial Officer.
Advances Goal: 5.

17. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

18. CITY MANAGER'S REPORT

Update to Council on the Youth Center Given by Housing Services Division.

19. ADJOURNMENT

ADDITIONAL INFORMATION

UNLESS THE COUNCIL ADOPTS A MOTION TO EXTEND THE MEETING, ANY ITEM THAT IS NOT INITIATED BEFORE 11:00 PM WILL BE CONTINUED TO THE NEXT DAY AT 5:30 PM OR SCHEDULED ON THE NEXT REGULAR MEETING AGENDA OF THE COUNCIL.

Public documents related to items on the open session portion of this agenda, which are distributed to the City Council less than 72 hours prior to the meeting, shall be available for public inspection at the time the documents are distributed to the Council. Documents are available for inspection at the City Clerk's office located in Rancho Cordova City Hall.

The agenda items are accessible on the City's website at www.cityofranchocordova.org on Thursdays or Fridays prior to the Regular City Council Meeting.

CITYWIDE GOALS - (Adopted March 27, 2012)	
1.	Promote the Positive Image of Rancho Cordova
2.	Ensure a Safe, Inviting and Livable Community
3.	Empower Responsible Citizenship
4.	Establish Logical City Boundaries that Provide Regional Leadership and Address Financial Challenges
5.	Ensure the Availability of the Best Public Services in the Region while Practicing Sound Fiscal Management
6.	Drive Diverse Economic Opportunities

UPCOMING MEETINGS	
Wednesday, November 12, 2014	*City Council Closed Session (5:30 PM)*
Monday, November 17, 2014	*City Council Regular Meeting (5:30 PM)*
Monday, December 1, 2014	*City Council Study Session (4:00 PM) and Regular Meeting City (5:30 PM)*
Tuesday, December 9, 2014	*City Council Work Session (5:30 PM)*
Monday, December 15, 2014	*City Council Regular Meeting (5:30 PM)*

If you have any technical questions related to the agenda items, please contact the appropriate department as follows:

DEPARTMENTAL GENERAL TELEPHONE NUMBERS	
Building and Safety Division	(916) 851-8760
City Attorney's Office	(916) 556-1531
City Clerk's Department	(916) 851-8720
City Manager's Office	(916) 851-8800
Communications Department	(916) 851-8791
Economic Development Department	(916) 851-8780
Finance Department	(916) 851-8730
Housing Division	(916) 851-8784
Human Resources Department	(916) 851-8740
IT Department	(916) 851-8700
Neighborhood Services – Animal Services	(916) 851-8770
Parks & Recreation (Cordova Recreation & Park District)	(916) 362-1841
Planning Department	(916) 851-8750
Public Works Department	(916) 851-8710
Rancho Cordova Police Department	(916) 875-9600
Redevelopment Department	(916) 851-8780
Sac Metro Fire District	(916) 859-4300

The Rancho Cordova City Council/Successor Agency to the CRA/RCFC will be videotaped in its entirety and will be cablecast without interruption on Metro Cable 14, the Government Affairs Channel on the Comcast and SureWest Cable Systems. Closed Captioning will be available on the playback cablecast. Tune to Metro Cable Channel 14, for playback times. A VHS copy is available for check out from any library branch, a DVD copy is available from the City Clerk's Department, and a webcast of this meeting will be available for viewing via video streaming from the City's website within 48 hours of adjournment of this meeting. The City does not control scheduling of this telecast and persons interested in watching the televised meeting should confirm this schedule with Metro Cable TV, Channel 14.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 851-8720 at least 48 hours prior to the meeting.

CERTIFICATION OF POSTING OF AGENDA

I, Mindy Cuppy, MMC, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the Monday, November 03, 2014 Special and Regular Meeting of the Rancho Cordova City Council/Successor Agency to the CRA/RCFC was posted and available for review on Thursday, October 30, 2014 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city website at www.cityofranchocordova.org.

Signed Thursday, October 30, 2014 at Rancho Cordova, California.

Mindy Cuppy

Mindy Cuppy, MMC, City Clerk

Air Force Civil Engineer Center

Integrity - Service - Excellence

Mather

Cleanup Update

Linda Geissinger
Air Force Civil Engineer Center
Western Region
Nov 3, 2014

Property Transferred

Property Transfer Status Map at Mather AFB

Parcel Key

A-1 is the main Airport parcel

A-2 is the part of the airport that will contain a wetland preservation area

A-3 is the part of the airport northeast of Mather Blvd where there are two AF landfills and Zinfandel Blvd has been extended southward.

Parcel C (various sub-parcels) are the Economic Development Conveyance areas

G is the park property

Parcel I-2 is the church in the housing area

Parcel M is the Mather Community Campus

Parcel P is the Sacramento County Office of Education

LEGEND

Parcels

Transferred

Last update September, 2014

AGENDA ITEM 10.1

Groundwater Cleanup

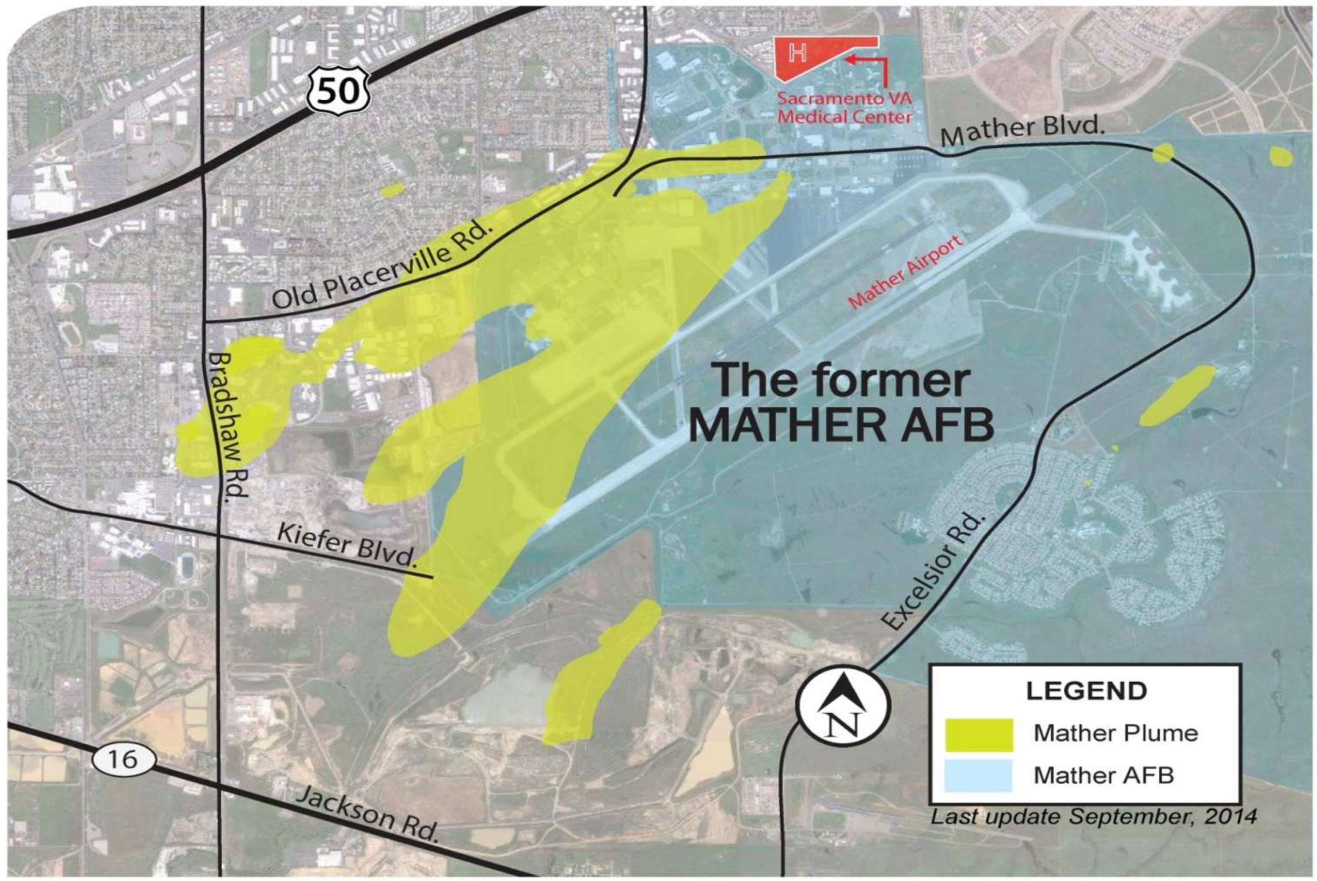
Groundwater Cleanup at Former Mather AFB

A

B

C

D



A: 3 groundwater treatment plants at Mather pump a total of 1,700 gallons of water per minute out of the ground. Contaminants are removed from the water, and the purified water is then injected back into the ground or used at Mather Lake.

B: More than 600 testing and treatment wells are used in the cleanup. 34 wells extract water for treatment, 8 inject cleaned water back into the ground, and the rest are monitoring wells used to track and measure contamination.

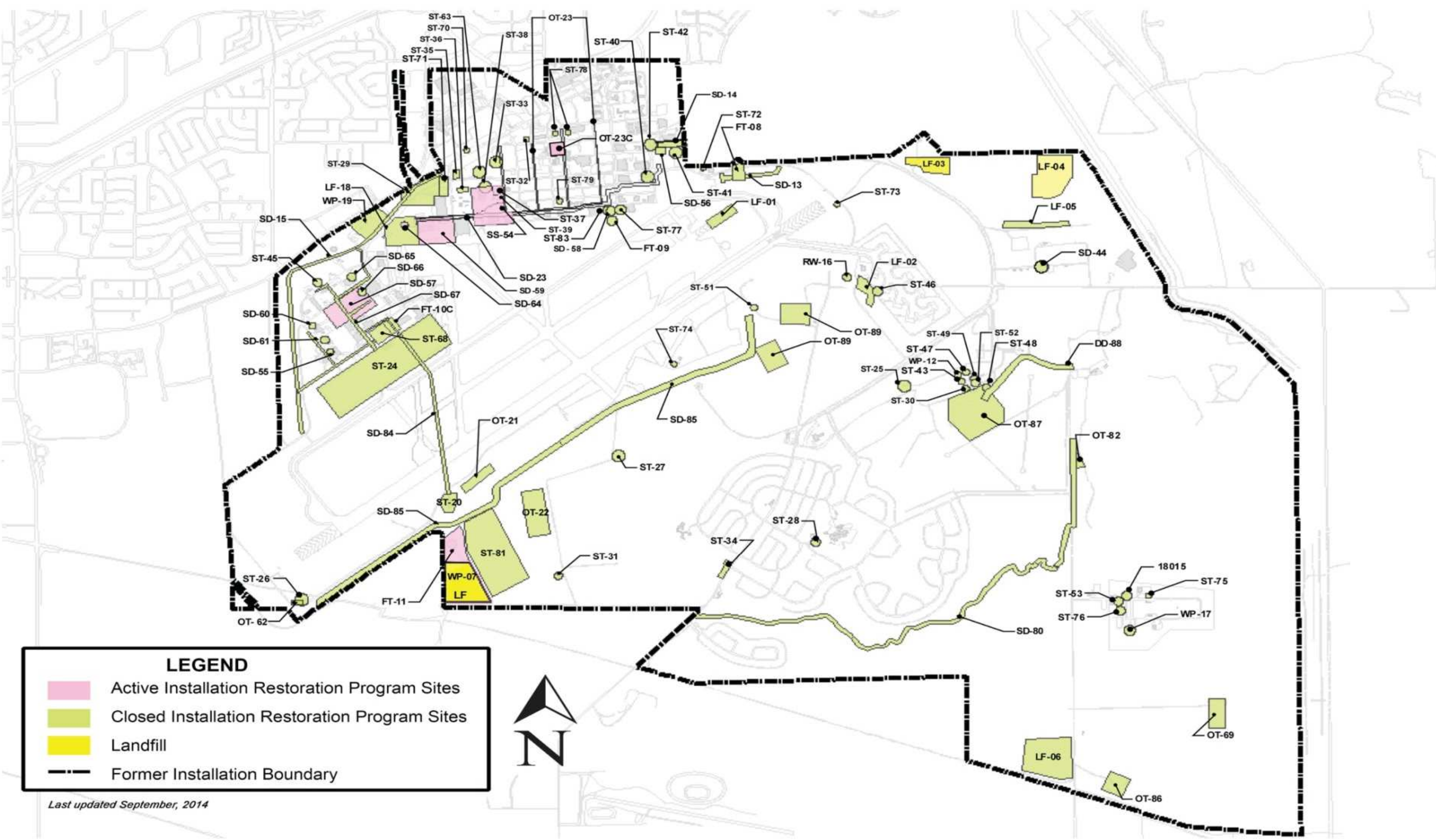
C: Contaminated water is not used for drinking. Safe drinking water is supplied to Mather (and surrounding neighborhoods) by Sacramento County Water Agency on the former base and California American Water Company to homes nearby.

D: The Air Force has spent more than $162 million on the cleanup. Millions more will be spent for ongoing monitoring, operation and maintenance of cleanup systems. The Air Force will continue managing the cleanup process until environmental restoration is finished.

AGENDA ITEM 10.1

Soil Sites Cleanup

Soil Cleanup at Former Mather AFB



AGENDA ITEM 10.1

Summary

- **Cleanup is in final phase**
  - **All decisions are complete**
  - **Regulatory approval verifies success of program**
- **All property is transferred from the Air Force**
  - **Majority is in Sacramento County control**
  - **Redevelopment is progressing well**
- **Air Force appreciates continued interest from City Council and community**
- **www.af.mil/brac/mather/index.asp**
- **(916) 643-1250 x109**

Integrity - Service - Excellence

CONCURRENT MEETING
CITY COUNCIL/SUCCESSOR AGENCY COMMUNITY REDEVELOPMENT AGENCY (CRA)/RANCHO CORDOVA FINANCING CORPORATION (RCFC)

City Hall
2729 Prospect Park Drive, Rancho Cordova

Monday, September 29, 2014

5:30 PM – Special Meeting
Community Board Room

DRAFT AMENDED MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Council Members Present:	McGarvey, Skoglund, Budge, Sander
Council Members Absent:	Terry
Staff Members Present:	Lindgren, Chinn, Junker, Simpson, Haven, Sparkman, Cuffe, Cook, Goold, Nakamura

Mayor Skoglund called the special meeting to order in the Community Board at 5:42 PM.

2. PUBLIC COMMENT

Mayor Skoglund opened the public comment period. There were no speakers. Mayor Skoglund closed the public comment period.

3. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: (Number of potential cases: 2).

ACTION: Discussion item only; no action taken.

4. OPEN SESSION - REPORT FROM CLOSED SESSION

City Attorney Adam Lindgren reported that there was no reportable action from closed session.

5. SPECIAL MEETING ITEM

5.1 **Subject:** An Urgency Ordinance of the City Council of the City of Rancho Cordova Establishing a Temporary Moratorium on the Establishment and Operation of Establishments Serving Alcohol for On-Site Consumption within 500 Feet of Adult Businesses, to Become Effective Immediately.

Recommendation: Adopt Urgency Ordinance No. 25-2014 establishing a temporary moratorium on the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of adult businesses, pending the review and possible amendment of zoning regulations applicable to this type of establishment.

Result of Recommended Action: Adoption of this Ordinance will establish a forty-five (45) day temporary moratorium on the establishment, expansion or relocation of establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of adult businesses. This moratorium is needed in order to: (1) address the community concerns regarding the negative secondary effects, such as assaults, prostitution and other alcohol related crimes resulting from the operation of establishments serving alcohol for on-site consumption in close proximity to adult businesses; (2) study the potential impacts that these types of businesses may have on the public health, safety and welfare; (3) study and determine what local regulations may be appropriate or necessary for establishments serving alcohol for on-site consumption within 500 feet of adult businesses; (4) study and determine the appropriate location for these types of businesses; and (5) determine appropriate measures to ensure the protection of public health, safety and welfare.

Staff Report: Paul Junker, Planning Director and Adam U. Lindgren, City Attorney.

Advances Goals: 1, 2.

ACTION: Motion to approve by Budge second by McGarvey;
Carried by a 4:0 roll call vote (Terry absent). **<--(ONLY AMENDMENT/ADDITION)**

6. ADJOURNMENT

Mayor Skoglund adjourned the meeting at 6:38 PM.

____
Mindy Cuppy, MMC, City Clerk

CONCURRENT MEETING
CITY COUNCIL/SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY (CRA)/RANCHO CORDOVA FINANCING CORPORATION (RCFC)

City Hall
2729 Prospect Park Drive, Rancho Cordova

Monday, October 20, 2014

4:00 PM – Special Meeting
Community Board Room

5:30 PM – Regular Meeting
David B. Roberts Council Chambers

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Vice Mayor McGarvey called the special meeting to order in the Community Board Room at 4:11 PM.

Council Members Present:	McGarvey, Budge, Sander, Terry
Council Members Absent:	Skoglund
Staff Members Present:	Lindgren, Cuppy, Silva, Chinn, Haven, Nakamura

2. PUBLIC COMMENT

Vice Mayor McGarvey opened the public comment period. The following individuals addressed the Council:

- Derald Langwell, in opposition of item 4.1.

Vice Mayor McGarvey closed the public comment period.

3. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: (Number of potential cases: 1).

ACTION: Council continued the Closed Session to immediately following the Regular Meeting.

4. SPECIAL MEETING ITEM

Council Members Present: McGarvey, Budge, Sander, Terry

Council Members Absent: Skoglund

Staff Members Present: Nakamura, Chinn, Cuppy, Silva, Snyder, Thomas, Haven, Peterson

4.1 **Subject:** Determining Objectives of a Potential Down Payment Assistance Program.

ACTION: Discussion item only; no action taken.

5. ADJOURNMENT OF SPECIAL MEETING

Vice Mayor McGarvey adjourned the special meeting to the regular meeting in the David B. Roberts Council Chambers at 5:03 PM.

6. REGULAR MEETING - CALL TO ORDER / ROLL CALL

Vice Mayor McGarvey called the regular meeting to order in the David B. Roberts Council Chambers at 5:40 PM.

Council Members Present: McGarvey, Budge, Sander, Terry

Council Members Absent: Skoglund

Staff Members Present: Lindgren, Cuppy, Junker, Chinn, Downton, Simpson, Thomas, Humphrey, Diaz, Boyer, Nakamura, Goold, George

7. METRO CABLE TV TELEVISION ANNOUNCEMENT

The City Clerk read the meetings recordings and playback schedules.

8. INVOCATION

Vice Mayor McGarvey led everyone in a moment of silence.

9. PLEDGE OF ALLEGIANCE

Scottie Moore led the pledge.

10. OPEN SESSION - REPORT FROM CLOSED SESSION

City Attorney Adam Lindgren reported there was no reportable action taken in closed session.

11. PRESENTATIONS

11.1 Presentation of NextEd, Education for the Next Economy Given by David N. Butler of NextEd and Debbie Bettencourt of Folsom Cordova Unified School District.

11.2 Rancho Cordova Historical Society Presentation Honoring Kiyo Sato for Honorary Membership and Introducing Historical Society President, Diana Rindernick was postponed to a later date.

11.3 Presentation of Proclamation in Recognition of National Feral Cat Day Presented to Scottie Moore, President and Founder of Save Our Cats & Kittens - Sensibly (S.O.C.K.S.).

11.4 Presentation of Proclamation in Recognition of October is Bully Prevention Month Presented to Debbie Bettencourt from Folsom Cordova Unified School District.

12. PUBLIC COMMENT

Vice Mayor McGarvey opened the public comment period. The following individuals addressed the Council:

- James Feci regarding sting rays and cameras.
- Sheryl Longworth regarding the Soroptimist International of Rancho Cordova Spaghetti Feed.

Vice Mayor McGarvey closed the public comment period.

13. COUNCIL REPORTS

Council reported on events since the last meeting.

14. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

Item 14.2 pulled for separate discussion.

ACTION: Motion to approve item 14.1 and 14.3 through 14.5 by Terry second by Budge; Carried by a 4:0 roll call vote. (Skoglund absent)

ACTION: Motion to approve item 14.2 by Terry second by Budge; Carried by a 4:0 roll call vote. (Skoglund absent)

14.1 **Subject:** Meeting Minutes of October 6, 2014 Regular Meeting.
Recommendation: Adopt minutes.

14.2 **Subject:** Resolution Recommending and Supporting the Elk Grove Unified School District's Efforts to Construct Its Next High School Within the Rancho Cordova City Limits.
Recommendation: Adopt Resolution No. 115-2014, supporting construction of the next Elk Grove Unified School District high school in the Rancho Cordova city limits.

Result of Recommended Action: Adoption of Resolution No. 115-2014 will be presented to the Elk Grove Unified School District's Board of Trustees by the Rancho Cordova City Council on behalf of the citizens of Rancho Cordova served by the Elk Grove Unified School District. The resolution seeks to support the District's endeavors to continue providing exceptional K-12 educational opportunities within the Rancho Cordova City limits as well as address environmental issues related to Green House Gas emissions, reducing traffic congestion and improving educational quality of life for Elk Grove Unified students.
Staff Report: Brian S. Nakamura, City Manager.
Advances Goals: 1, 2, 3, 5, 6.

14.3 **Subject:** Resolution Authorizing the City Manager to Execute Contract Amendment No. 16-2013-1 for On-Call Professional Services with Wood Rodgers, Inc., to Increase the Contract Amount from $100,000 to $300,000.
Recommendation: Adopt Resolution No. 114-2014.
Result of Recommended Action: Adoption of this resolution will authorize the City Manager to execute contract amendment 16-2013-1 for on-call professional services with Wood Rodgers, Inc. to increase the contract amount from $100,000 to $300,000 for engineering design services for the Mather Rails to Trails Project.
Staff Report: Cyrus Abhar, Public Works Director and Chris Boyer, Associate Civil Engineer.
Advances Goals: 1, 2, 5.

14.4 **Subject:** Resolution Authorizing the City Manager to Execute Contract Amendment 148-2013-1 for Professional Services with West Yost Associates to Increase the Contract Amount from $100,000 to $250,000.
Recommendation: Adopt Resolution No. 120-2014.
Result of Recommended Action: Adoption of this resolution will authorize the City Manager to execute contract amendment 148 2013 1 with West Yost Associates. This amendment will increase the contract amount from $100,000 to $250,000 and will change the existing end date from December 31, 2016 to a new end date of June 30, 2017. This time extension and increase in costs is to pay for continued expenses of providing drainage master planning, technical review of drainage studies, and preparation of floodplain mapping, and assistance with the establishment of the City's Zone 11 drainage fee program.
Staff Report: Cyrus Abhar, Public Works Director and Britton Snipes, Senior Engineer.
Advances Goals: 2, 5.

14.5 **Subject:** Resolution Authorizing the City Manager to Execute Contract Amendment No. 44-2013-1 for On-Call Professional Services with Quincy Engineering to Increase the Contract Amount from $100,000 to $250,000.
Recommendation: Adopt Resolution No. 119 -2014.
Result of Recommended Action: Adoption of this resolution will authorize the City Manager to execute contract amendment no. 44-2013-1 for on-call professional services with Quincy Engineering to increase the contract amount from $100,000 to $250,000 for engineering design services for the Rancho Cordova Elementary School Bicycle and Pedestrian Improvement Project.
Staff Report: Cyrus Abhar, Public Works Director and Chris Boyer, Associate Civil Engineer.
Advances Goals: 1, 2, 5.

15. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

Vice Mayor McGarvey opened the public comment period. There were no speakers. Vice Mayor McGarvey closed the public comment period.

Item 15.1 was pulled for separate discussion.

Jeff Leonhardt from RMW Architecture & Interiors addressed Council's questions.

ACTION: Motion to approve item 15.1 with revised conditions of approval and item 15.2 by Budge second by Sander;
Carried by a 4:0 roll call vote. (Skoglund absent)

15.1 **Subject:** Resolution Approving a Major Design Review for Bradshaw Business Park Center- Project No. DD8503, Located at 9778, 9792, 9800, and 9816 Business Park Drive.
Recommendation: Adopt Resolution No. 117-2014.
Result of Recommended Action: Adoption of this resolution would allow the applicant to proceed in obtaining the necessary building permits to improve the facades for four commercial warehouse buildings within the Bradshaw Business Park Center. This project would involve the conversion of some standard parking stalls to compact and upgraded landscaping however it does not include an increase in square footage or change in use.
Staff Report: Matthew Diaz, Associate Planner.
Advances Goals: 1, 2.

15.2 **Subject:** Resolution Approving a Conditional Use Permit for The Palace Ballroom to Establish a New Buffet Style Restaurant and Hold Special Events; Project No. DD8497 – Located at 11354 White Rock Road.
Recommendation: Adopt Resolution No. 118-2014.
Result of Recommended Action: Adoption of Resolution No. 118-2014 would allow the applicant to begin operation of a buffet restaurant and banquet hall for special events (weddings, meetings, etc.) at 11354 White Rock Road. While the restaurant will have typical daytime hours, the special events will occur mostly on weekends with some late night hours (past 10:00 p.m.). Approval of this application would allow the applicant to obtain a business license and necessary building permits associated with either operation.
Staff Report: Matthew Diaz, Associate Planner.
Advances Goals: 1, 2.

16. PUBLIC HEARING ITEMS

NONE.

17. REGULAR CALENDAR ITEMS

17.1 **Subject:** Resolution Authorizing the City Manager to Execute a Contract with the Sacramento Abandoned Vehicle Service Authority (SAVSA).
Recommendation: Adopt Resolution No. 113-2014.
Result of Recommended Action: Adoption of this resolution will allow the City to enter into a contract with the Sacramento Abandoned Vehicle Service Authority and join the Authority for the purpose of managing an abandoned vehicle abatement

program including receipt and distribution of funds derived from vehicle registration fees.
Staff Report: Kerry Simpson, Neighborhood Services Manager and Jessica Crone, Accounting Technician.
Advances Goals: 1, 2, 5.

Norman Hom addressed Council's questions.

ACTION: Motion to approve by Budge second by Terry;
Carried by a 4:0 roll call vote. (Skoglund absent)

18. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Terry requested discussion of traffic violation cameras on school buses.

Budge requested discussion on light rail crossing safety.

19. CITY MANAGER'S REPORT

Police Department Annual Report to Council.

20. ADJOURNMENT

Vice Mayor McGarvey adjourned the meeting to closed session in the Community Board Room at 8:04 PM.

CLOSED SESSION CONTINUED FROM 4:00 PM MEETING – CALL TO ORDER

Vice Mayor McGarvey called the special meeting to order in the Community Board Room at 8:10 PM.

Council Members Present:	McGarvey, Budge, Sander, Terry
Council Members Absent:	Skoglund
Staff Members Present:	Lindgren, Silva, Chinn, Haven, Nakamura

CLOSED SESSION ITEM

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: (Number of potential cases: 1)

OPEN SESSION - REPORT FROM CLOSED SESSION

City Attorney Adam Lindgren reported there was no reportable action taken in closed session.

ADJOURNMENT

Vice Mayor McGarvey adjourned the meeting at 9:42 PM.

____

Mindy Cuppy, MMC, City Clerk

MEMORANDUM

DATE: November 3. 2014

TO: Honorable Mayor and Council Members

FROM: Stephanie Snyder, City Manager's Office

SUBJECT: City Council Appointment to the California Capital Airshow (CCA) Board of Directors

RECOMMENDATION

Adopt Resolution No. 124-2014.

RESULT OF RECOMMENDED ACTION

As specified in the CCA bylaws, this approval would give Rancho Cordova continued representation on the CCA Board of Directors specifically chosen by the City Council.

BACKGROUND

The CCA bylaws state that "the Rancho Cordova City Council shall appoint one director", and this seat has been filled since May 2012 by Mike Treacy who was appointed for an indefinite term. The bylaws were amended in early 2014 to include three year terms for all Board appointments, exercising best practices for nonprofit leadership. For maximum flexibility, the bylaws also state that "the number of times a director may be reelected is not limited." For continuity of Board leadership, the bylaws dictate an initial staggering of terms so that only one-third of the membership turns over every year. A random selection to implement the new change resulted in the Rancho Cordova City Council appointment of Mike Treacy expiring in the first wave on December 31, 2014. Mr. Treacy has expressed a desire to continue to serve the Rancho Cordova community on the CCA Board and seeks City Council approval for a three year appointment effective January 1, 2015.

As the Rancho Cordova representative on the CCA Board for the last two and a half years, Mike has brought his extensive experience and knowledge base in the management of 80 fairs and festivals within the California state fair system. He is a member of several professional fair associations and has received multiple awards and honors in his career, including his induction into the Western Fairs Association's Hall of Fame. He has proven himself to be an invaluable asset to the CCA Board and adds a unique Rancho Cordova "fresh take" to the event by helping to strengthen the customer experience on the ground.

ATTACHMENT

Resolution No. 124-2014, Reappointing Mike Treacy to Represent the City of Rancho Cordova on the California Capital Airshow (CCA) Board of Directors.

CITY OF RANCHO CORDOVA

RESOLUTION NO. 124-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA REAPPOINTING MIKE TREACY TO REPRESENT THE CITY OF RANCHO CORDOVA ON THE CALIFORNIA CAPITAL AIRSHOW (CCA) BOARD OF DIRECTORS

WHEREAS, the City Council is entitled to appoint a director to the California Capital Airshow (CCA) Board of Directors; and

WHEREAS, Mike Treacy has served the Rancho Cordova community in this role since he was originally appointed to an indefinite term in May 2012; and

WHEREAS, due to revised CCA bylaws, Mike Treacy's term now ends December 31, 2014, and he is eligible under CCA bylaws to be reappointed for a three year term; and

WHEREAS, Mike Treacy has brought his extensive background and added value to the success of the California Capital Airshow and desires to continue representing the City Council and community on the Board of Directors.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does authorize Mike Treacy to serve as the City's representative on the California Capital Airshow (CCA) Board of Directors for a three year term effective January 1, 2015.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ___ day of ________, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Dan Skoglund, Mayor

ATTEST:

____
Mindy Cuppy, MMC, City Clerk

MEMORANDUM

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Elizabeth Sparkman, Senior Engineer

SUBJECT: **ANNEXATION OF NORTH DOUGLAS PROJECT TO THE CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2 (STREET LIGHTING AND ROAD MAINTENANCE) AND AMENDING ATTACHMENT 1 TO THE RATE AND METHOD OF APPORTIONMENT TO ADD ZONE 2**

RECOMMENDATION

Staff recommends Council adopt Resolution No. 126-2014.

RESULT OF RECOMMENDED ACTIONS

Adoption of Resolution No. 126-2014 approves Annexation Map. No. 1 for the North Douglas Project to Community Facilities District No. 2014-2 (Street Lighting and Road Maintenance) (hereinafter "CFD No. 2014-2") and amends Attachment 1 to the rate and method of apportionment to add Zone 2. There is no financial impact to existing residents.

BACKGROUND

On April 21, 2014, the City adopted a resolution of intention to establish a Community Facilities District (CFD) and Future Annexation Area for Citywide street lighting and road maintenance services. On June 2, 2014, the City adopted the resolution forming CFD No. 2014-2 pursuant to the Mello-Roos Community Facilities Act of 1982 (State of California Government Code Section 5311 et seq.) (the "Act"). The action defining the Future Annexation Area for the District provided for a more efficient process for the annexation of property when the property owners have provided for their unanimous consent. Defining the Future Annexation Area provided the resolution of intention, noticing, and public hearing for the entire Future Annexation Area so these steps do not need to be repeated for each annexation.

The annexation process for projects within the Future Annexation Area has been simplified to receiving a petition and waiver from the property owner(s), the City Council approving the Annexation Boundary Map by resolution, followed by the recording of the Boundary Map and Notice of Special Tax Lien by the City Clerk.

DISCUSSION

The Project included in this action was conditioned to annex to CFD No. 2014-2 to provide funding for maintenance services including the maintenance, repair, replacement and lighting of public streets and roads and appurtenant facilities in the public right of way. In October of 2014, the property owners signed a unanimous approval of the annexation to CFD No. 2014-2.

Adoption of the attached resolution approves Annexation Map No.1 for the project and directs the Clerk to execute and record the Map and Notice of Special Tax Lien for the project.

The North Douglas project will be annexed into Zone 2 of CFD No. 2014-2 which will fund street lighting only. The maximum annual special tax that will be levied on the project is based on the rates identified in the Rate and Method of Apportionment as shown in the table below.

MAXIMUM SPECIAL TAXES
ORDINARY USE PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Street Lighting Only Maximum Special Tax Zone 2
Single Family Detached Property	$38.00 per Unit
Single Family Attached Property	$38.00 per Unit
Multi-Family Property	$157.03 per Unit
Commercial Property	$210.00 per 1,000 Square Feet
Hotel Property	$162.54 per Unit
Industrial Property	$123.97 per 1,000 Square Feet
Office Property	$210.00 per 1,000 Square Feet

The annual tax will escalate annually based on the construction cost index in Engineering News Record.

ATTACHMENT

Resolution 126-2014 including Exhibit A.

CITY OF RANCHO CORDOVA

RESOLUTION NO. 126-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA APPROVING THE BOUNDARY MAP FOR THE NORTH DOUGLAS PROJECT ANNEXATION TO THE CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2 (STREET LIGHTING AND ROAD MAINTENANCE), ORDERING THE ANNEXATION, AUTHORIZING THE SPECIAL TAX LEVY, DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN, AND AMENDING ATTACHMENT 1 TO THE RATE AND METHOD OF APPORTIONMENT

WHEREAS, The Conditions of Approval for the North Douglas Project requires the property owner/applicant to participate in the provision of funding to provide fair share maintenance of any existing and all new public improvements associated with the project; and

WHEREAS, On April 21, 2014, the City adopted Resolution No. 20-2014 declaring its intention to establish Community Facilities District No. 2014-2 (Street Lighting and Road Maintenance) (the “District”) and Future Annexation Area for maintenance of street lighting and road maintenance services. On June 2, 2014, the City adopted Resolution No. 34-2014 forming CFD No. 2012-2 pursuant to the Mello-Roos Community Facilities Act of 1982 (State of California Government Code Section 5311 et seq.) (the “Act”); and

WHEREAS, the action defining the Future Annexation Area for the District provided for a more efficient process for the annexation of property when the property owners have provided for their unanimous consent such that the annexation process for projects within the Future Annexation Area has been reduced to receiving a petition, consent and waiver from the property owner(s); and

WHEREAS, in October of 2014, the property owners executed a unanimous approval form which irrevocably consents to and votes in favor of the annexation of the property to the District and the levy of the special tax on the property to finance the services of the CFD in accordance with the Rate and Method of the District; and

WHEREAS, in the case of annexation proceedings, pursuant to Streets and Highways Code Section 3110.5, a separate map of the area proposed to be annexed is required to be prepared and adopted; and

WHEREAS, City staff has caused to be prepared Annexation Map No. 1 for the property known as the North Douglas project, **EXHIBIT A** attached hereto, for the annexation of the property to CFD No. 2014-2 (Street Lighting and Road Maintenance); and

WHEREAS, Attachment 1 to the Rate and Method of Apportionment for CFD No. 2014-2 is being amended to add Zone 2 and the rates in this zone shall not exceed the maximum rates set in the original Rate and Method of Apportionment.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, as follows:

Section 1. The above recitals are true and correct, and the Council so finds and determines.

Section 2. Council approves Annexation Map No. 1 and finds and determines that the territory shown in the Annexation Map is hereby added to and made a part of the District with full legal effect;

Section 6. The City Clerk is directed to execute and record Annexation Map No. 1 in the office of the County Recorder of Sacramento County not later than 15 days after the adoption of this resolution;

Section 8. The City Council finds and determines that a special tax shall be levied within the Territory to be annexed and which special tax shall be the same as the tax to be levied within the District. Collection of said tax shall commence in Fiscal Year 2015-16, and the rate and method of apportionment of said tax shall be as set forth in the Resolution of Formation of the District.

Section 9. The City Clerk is directed to execute and record a Notice of Special Tax Lien in substantially the same form as shown in **EXHIBIT B** attached hereto, in the office of the County Recorder of Sacramento County not later than 15 days after recordation of the Annexation Map No. 1.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the _____ day of __________, 2014, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

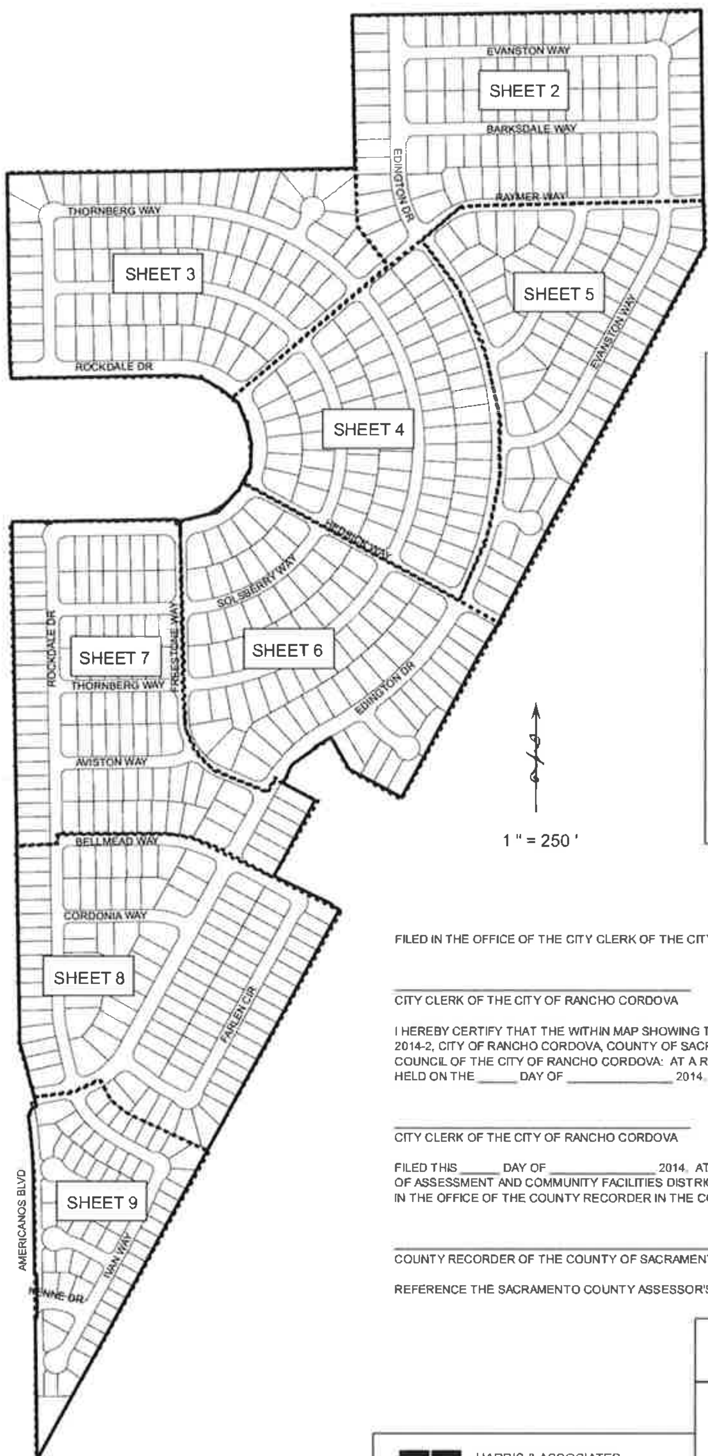
ABSTAIN:

____
Dan Skogland, Mayor

ATTEST:

____
Mindy Cuppy, MMC, City Clerk

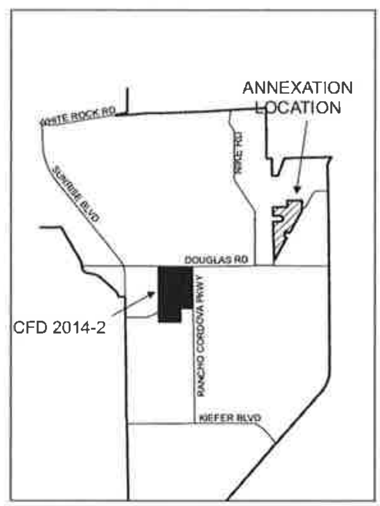
PROPOSED BOUNDARY OF
ANNEXATION 1 (NORTH DOUGLAS) TO
CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2014-2
(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA



Legend

- Annexation Boundary
- Map Sheet Boundaries
- Parcel Boundary

VICINITY MAP



FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF RANCHO CORDOVA THIS _____ DAY OF ___________ 2014.

____
CITY CLERK OF THE CITY OF RANCHO CORDOVA

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING THE PROPOSED BOUNDARIES OF COMMUNITY FACILITIES DISTRICT NO. 2014-2, CITY OF RANCHO CORDOVA, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA: AT A REGULARLY SCHEDULED MEETING THEREOF, HELD ON THE _____ DAY OF _____________ 2014, BY ITS RESOLUTION NO. _____________.

____
CITY CLERK OF THE CITY OF RANCHO CORDOVA

FILED THIS _____ DAY OF _____________ 2014, AT THE HOUR OF _________ O'CLOCK ___M. IN BOOK ______ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS PAGE NOS. ____ THROUGH ____ AS INSTRUMENT NO. _________ IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

____
COUNTY RECORDER OF THE COUNTY OF SACRAMENTO FEE $ __________

REFERENCE THE SACRAMENTO COUNTY ASSESSOR'S MAPS FOR A DETAILED DESCRIPTION OF PARCEL LINES AND DIMENSIONS

PROPOSED BOUNDARY MAP

City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 1 **of** 9

HARRIS & ASSOCIATES
22 EXECUTIVE PARK SUITE 200
IRVINE, CALIFORNIA 92614
800-827-4901

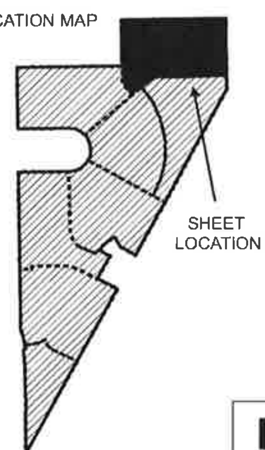
PROPOSED BOUNDARY OF ANNEXATION 1 (NORTH DOUGLAS) TO CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2

(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

Assessor's Map Book 072

REFERENCE THE SACRAMENTO COUNTY ASSESSOR'S MAPS FOR DETAILED DESCRIPTION OF PARCEL LINES AND DIMENSIONS

LOCATION MAP



1 " = 80 '

Legend

- Annexation Boundary
- Map Sheet Boundaries
- Parcel Boundary
- (2900) Assessor's Page Section
- (1) Assessor's Parcel Number

PROPOSED BOUNDARY MAP

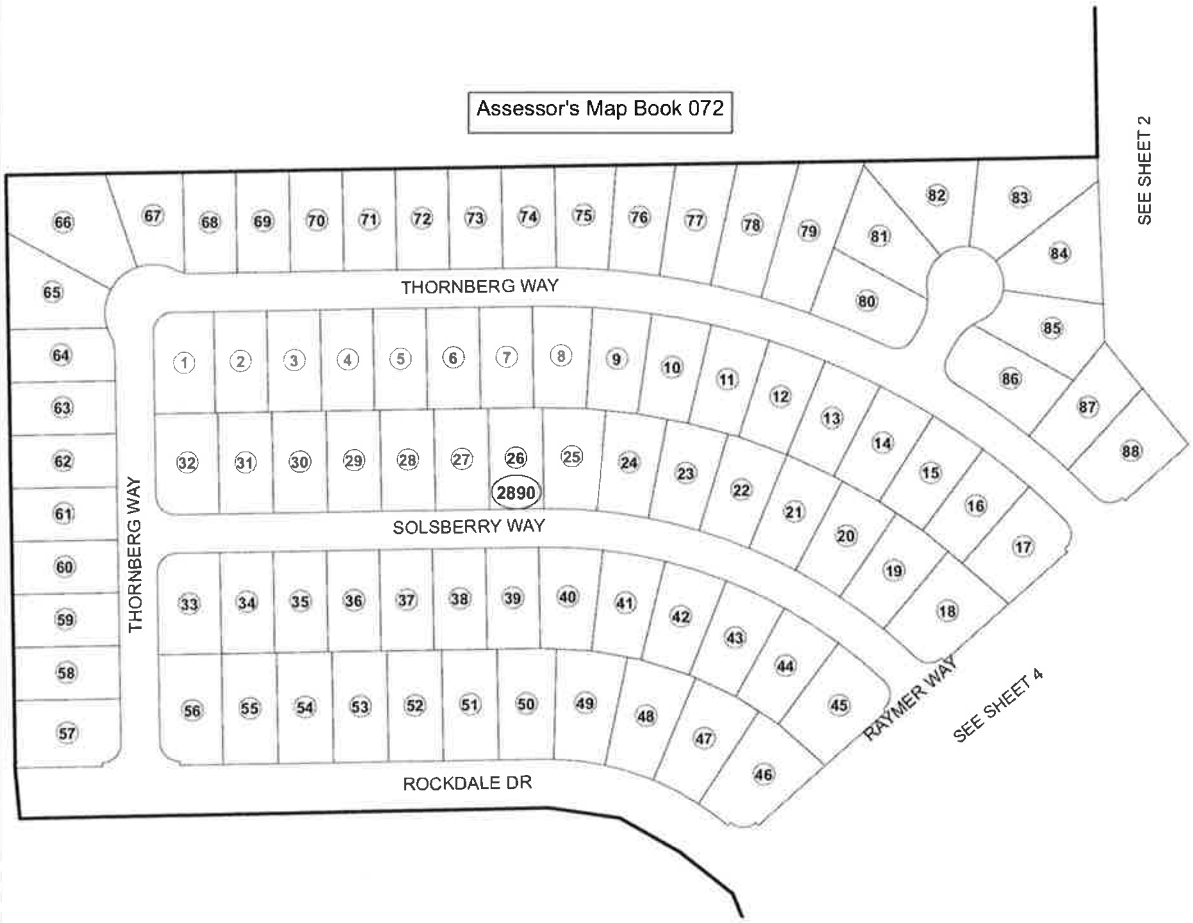
HARRIS & ASSOCIATES
22 EXECUTIVE PARK SUITE 200
IRVINE, CALIFORNIA 92614
800-827-4901

City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 2 **of** 9

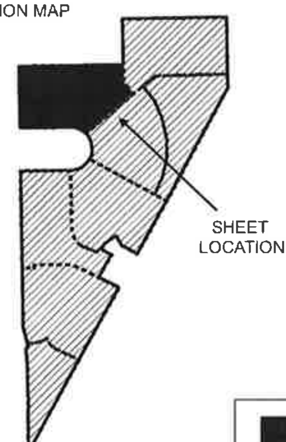
PROPOSED BOUNDARY OF ANNEXATION 1 (NORTH DOUGLAS) TO CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2

(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA



REFERENCE THE SACRAMENTO COUNTY ASSESSOR'S MAPS FOR DETAILED DESCRIPTION OF PARCEL LINES AND DIMENSIONS

LOCATION MAP



Legend

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- (2900) Assessor's Page Section
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PROPOSED BOUNDARY MAP

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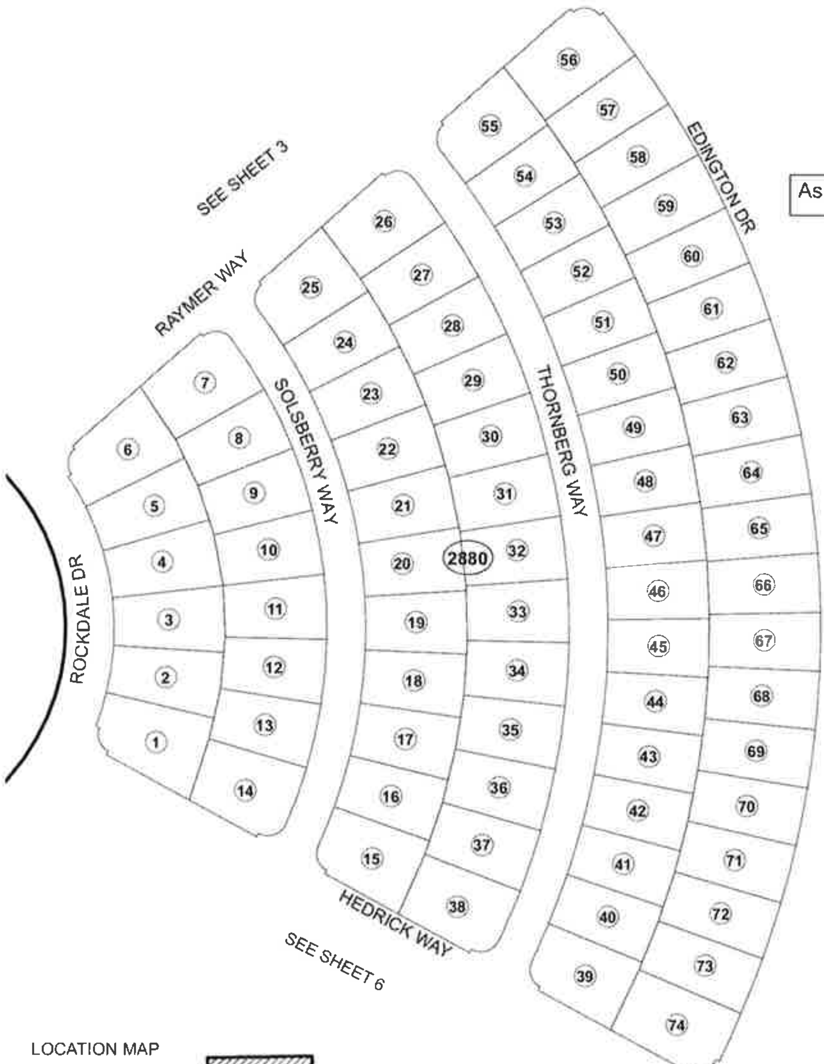
800-827-4901

City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 3 of 9

PROPOSED BOUNDARY OF ANNEXATION 1 (NORTH DOUGLAS) TO CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2

(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

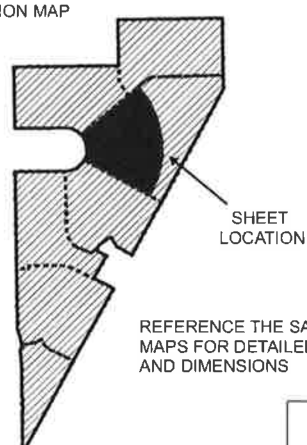


Assessor's Map Book 072

SEE SHEET 5

1 " = 80 '

LOCATION MAP



Legend

- Annexation Boundary
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REFERENCE THE SACRAMENTO COUNTY ASSESSOR'S MAPS FOR DETAILED DESCRIPTION OF PARCEL LINES AND DIMENSIONS

PROPOSED BOUNDARY MAP

City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 4 of 9

HARRIS & ASSOCIATES
22 EXECUTIVE PARK SUITE 200
IRVINE, CALIFORNIA 92614
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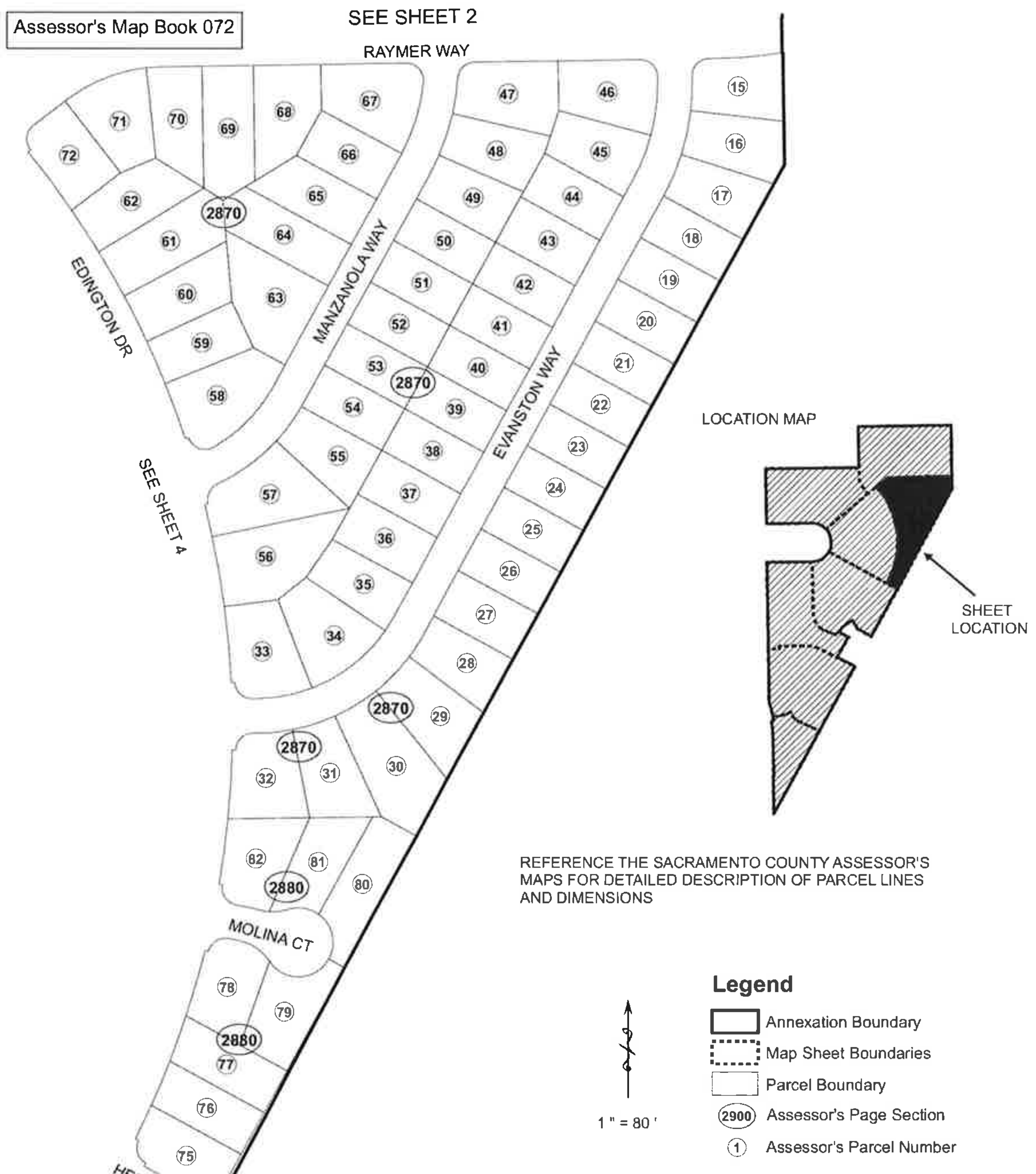
PROPOSED BOUNDARY OF ANNEXATION 1 (NORTH DOUGLAS) TO CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2

(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA



PROPOSED BOUNDARY MAP

City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 5 **of** 9

HARRIS & ASSOCIATES
22 EXECUTIVE PARK SUITE 200
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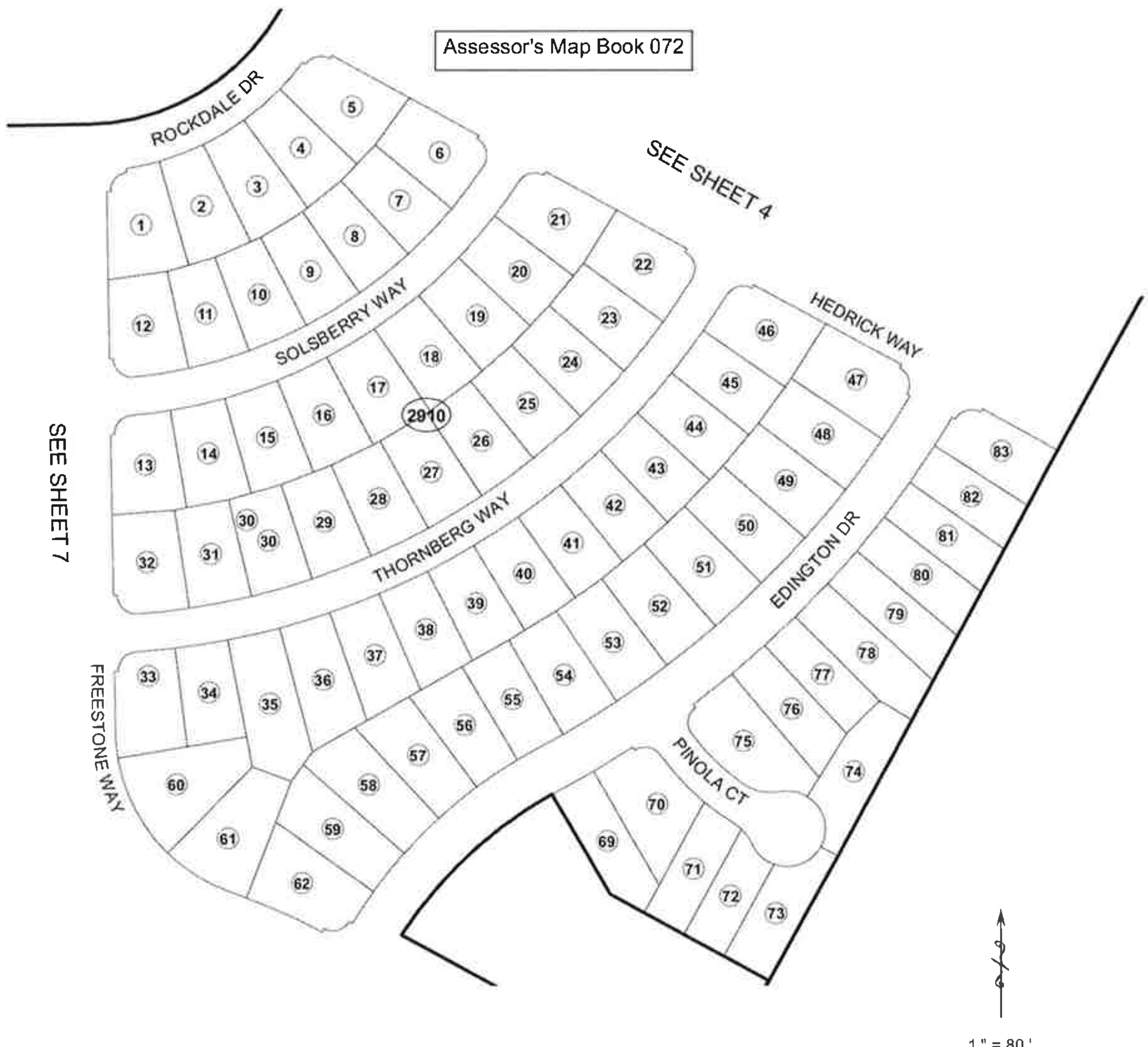
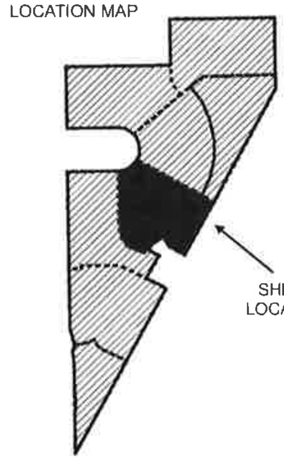
PROPOSED BOUNDARY OF ANNEXATION 1 (NORTH DOUGLAS) TO CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2

(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA





REFERENCE THE SACRAMENTO COUNTY ASSESSOR'S MAPS FOR DETAILED DESCRIPTION OF PARCEL LINES AND DIMENSIONS

Legend

- Annexation Boundary
- Map Sheet Boundaries
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PROPOSED BOUNDARY MAP

City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 6 of 9

HARRIS & ASSOCIATES
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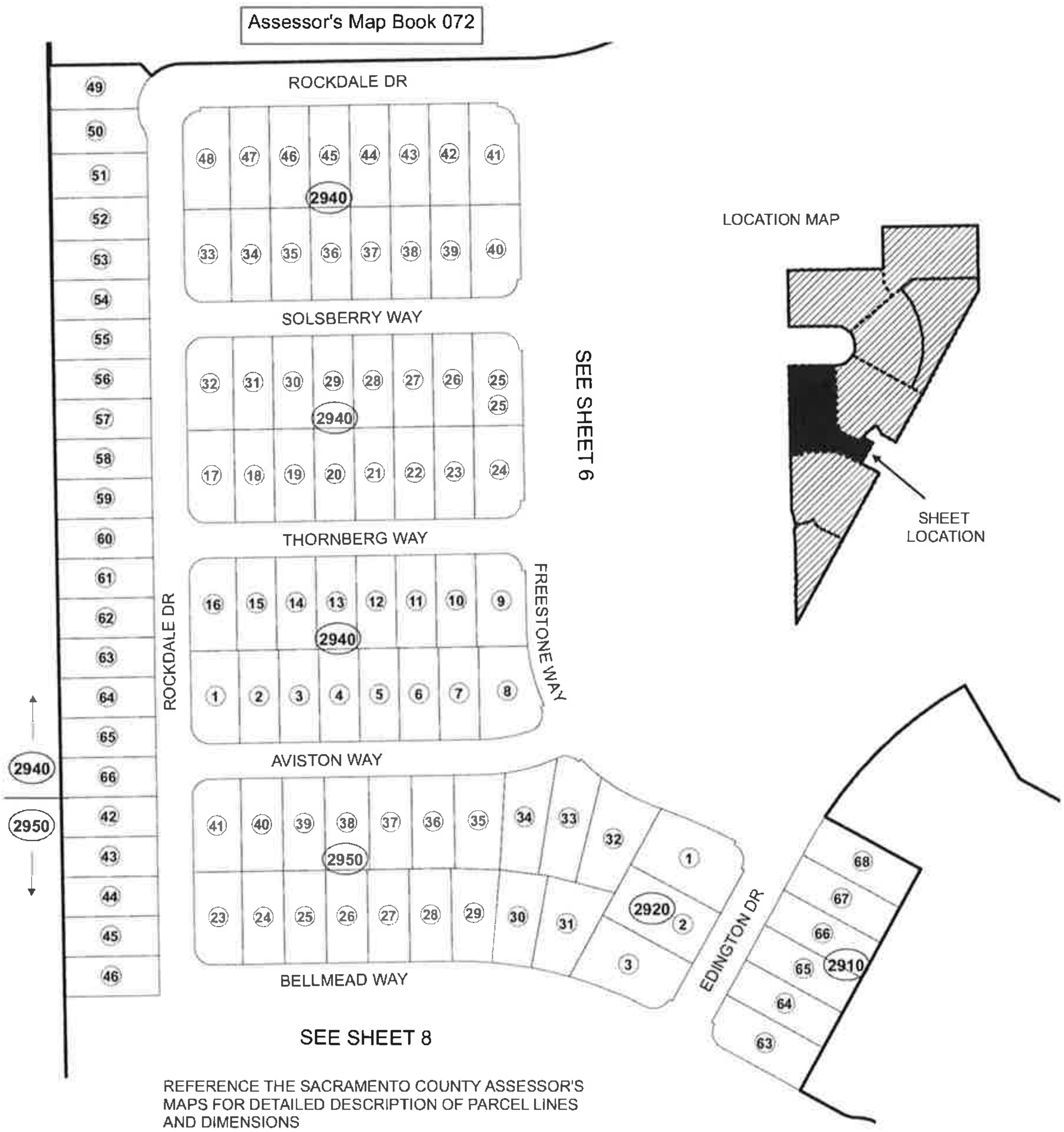
PROPOSED BOUNDARY OF ANNEXATION 1 (NORTH DOUGLAS) TO CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2

(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA



REFERENCE THE SACRAMENTO COUNTY ASSESSOR'S MAPS FOR DETAILED DESCRIPTION OF PARCEL LINES AND DIMENSIONS

Legend

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1 " = 80 '

HARRIS & ASSOCIATES
22 EXECUTIVE PARK SUITE 200
IRVINE, CALIFORNIA 92614
800-827-4901

PROPOSED BOUNDARY MAP

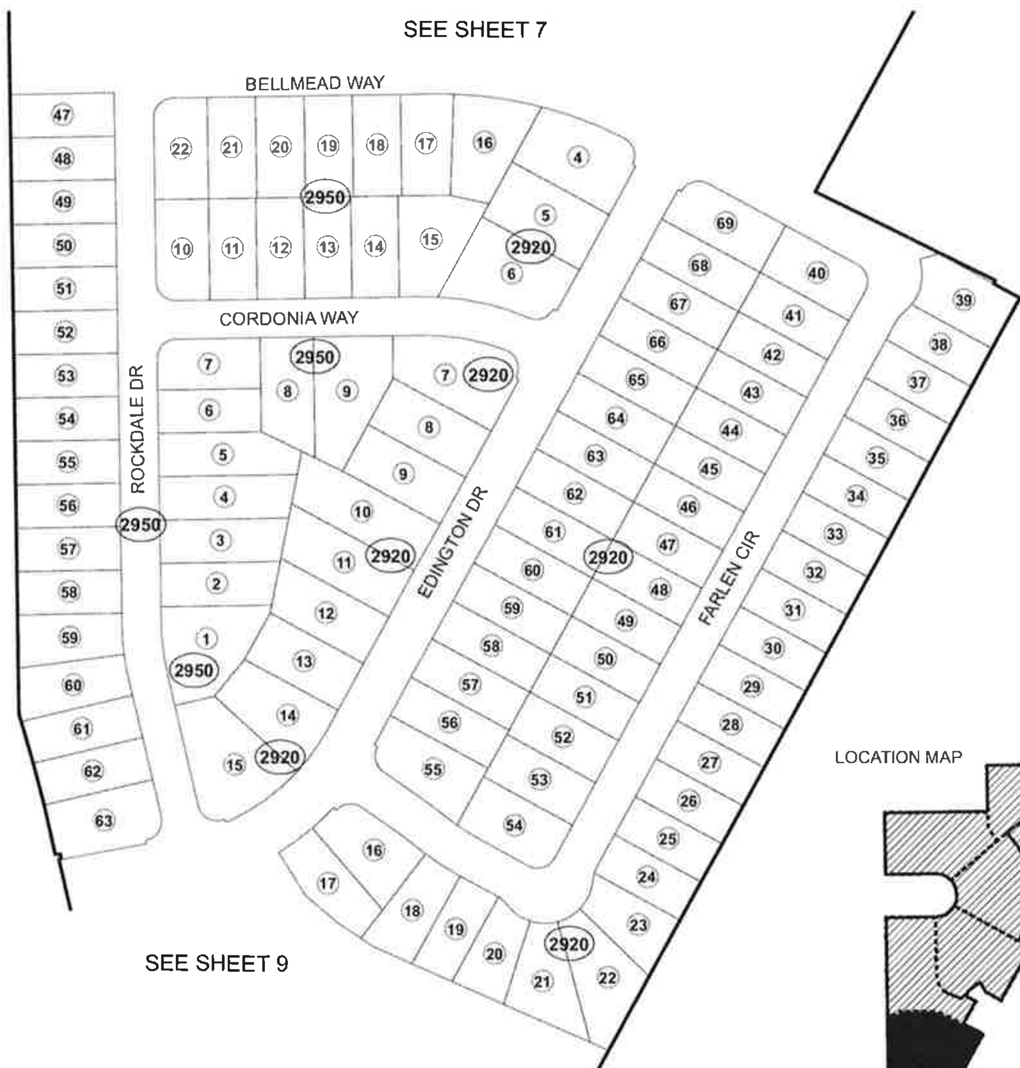
City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 7 **of** 9

PROPOSED BOUNDARY OF ANNEXATION 1 (NORTH DOUGLAS) TO CITY OF RANCHO CORDOVA COMMUNITY FACILITIES DISTRICT NO. 2014-2

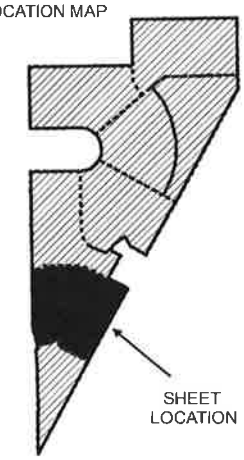
(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

Assessor's Map Book 072



REFERENCE THE SACRAMENTO COUNTY ASSESSOR'S MAPS FOR DETAILED DESCRIPTION OF PARCEL LINES AND DIMENSIONS

LOCATION MAP



Legend

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PROPOSED BOUNDARY MAP

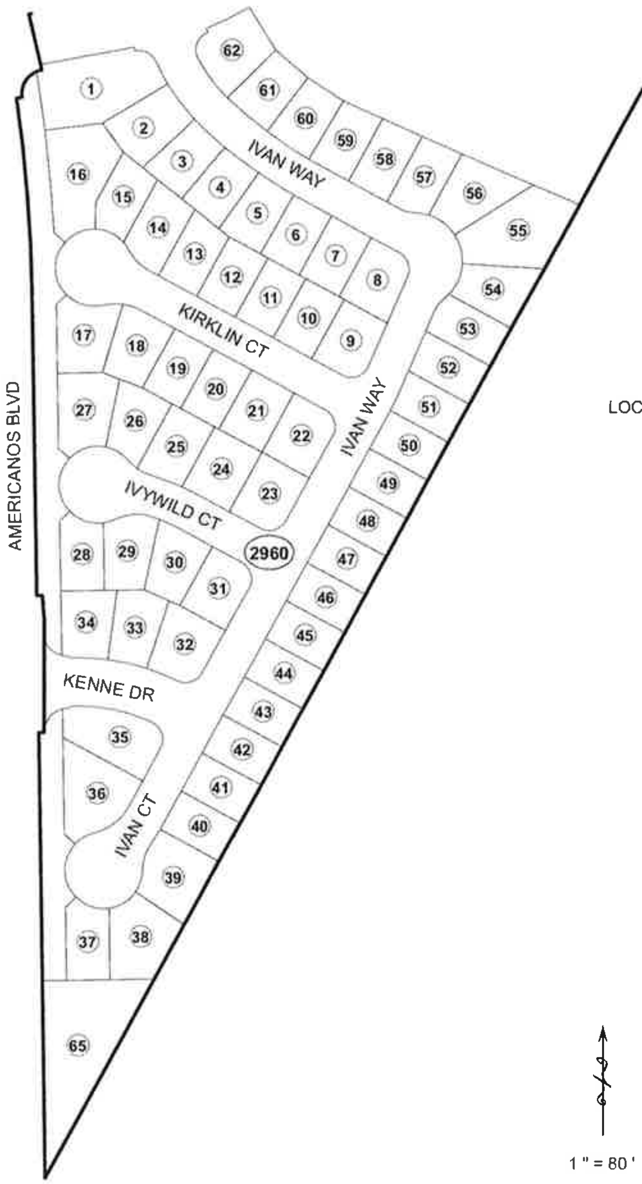
City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 8 **of** 9

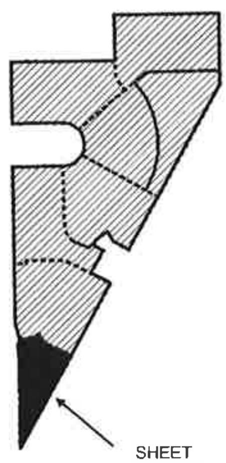
PROPOSED BOUNDARY OF
ANNEXATION 1 (NORTH DOUGLAS) TO
CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2014-2
(STREET, LIGHTING, AND LANDSCAPING MAINTENANCE)
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

Assessor's Map Book 072

SEE SHEET 8



LOCATION MAP



Legend

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REFERENCE THE SACRAMENTO COUNTY ASSESSOR'S MAPS FOR DETAILED DESCRIPTION OF PARCEL LINES AND DIMENSIONS

HARRIS & ASSOCIATES
22 EXECUTIVE PARK SUITE 200
IRVINE, CALIFORNIA 92614
800-827-4901

PROPOSED BOUNDARY MAP

City of Rancho Cordova
Community Facilities District No. 2014-2
ANNEXATION 1 (NORTH DOUGLAS)
County of Sacramento, California

Sheet 9 **of** 9

EXHIBIT B

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, California 95670
Attention: City Clerk

AMENDMENT NO. 1 TO NOTICE OF SPECIAL TAX LIEN

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code and Section 53328.3 of the Government Code, the undersigned clerk of the legislative body of the City of Rancho Cordova (the "City"), State of California, hereby gives notice that a lien to secure payment of special taxes is hereby imposed by the City Council of the City. The special taxes secured by this lien are authorized to be levied for the purpose of providing operation and maintenance of law enforcement, fire and paramedic services.

The special taxes are authorized to be levied within Annexation No. 1 (the "Annexed Area") of the City of Rancho Cordova Community Facilities District No. 2014-2 (Street, Lighting and Landscaping Maintenance) (the "District"), which has now been officially annexed to the District, and the lien of the special taxes are a continuing lien which shall secure each annual levy of the special taxes and which shall continue in force and effect until the special taxes cease to be levied and a notice of cessation of special taxes is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of authorized special tax is as set forth in Exhibit "A" attached hereto and hereby made a part hereof. The obligation to pay the special tax may not be prepaid and permanently satisfied and the lien of the special taxes canceled.

Notice is further given that upon the recording of this notice in the office of the county recorder, the obligation to pay the special tax levies shall become a lien upon all nonexempt real property within the District in accordance with Section 3115.5 of the Streets and Highways Code.

The name of the owner and the assessor's tax parcel number(s) of the real property included within the District and not exempt from the special tax are as set forth in Exhibit "B" attached hereto.

Reference is hereby made to the Notice of Special Tax Lien with respect to the District recorded on June 17, 2014, as Document No. 20140617, in the office of the County Clerk & Recorder of the County of Sacramento, California, which contains a list of the then existing owners and assessor tax parcel numbers of the original boundaries of the District.

EXHIBIT B

Reference is hereby made to Amendment No. 1 to the Notice of Special Tax Lien with respect to the District recorded on ______________2014, as Document No.______________, in the office of the County Clerk & Recorder of the County of Sacramento, California, which contains a list of the then existing owners and assessor tax parcel numbers of the Annexation No. 1 boundaries of the District.

Reference is made to the original boundary map of the District recorded on April 30, 2014 as Document No. 20140430PG0873, at Book 116 of Maps of Assessment and Community Facilities Districts at Page Nos. 0023-0024, in the office of the County Clerk & Recorder of the County of Sacramento, California, which map is now the final boundary map of the District.

Reference is made to the boundary map of Annexation No. 1 recorded at Book ____ of Maps of Assessment and Community Facilities Districts at Page____, in the office of the County Clerk & Recorder for the County of Sacramento, California.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact the Department of Public Works of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California 95670, (916) 851-8710.

Dated: ____________________________

____
CITY CLERK OF THE CITY OF
RANCHO CORDOVA

EXHIBIT B

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On ________________________ before me, ________________________ (here insert name and title of the officer), personally appeared ________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature ________________________________ (SEAL)

EXHIBIT A

CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2014-2
(STREET, LIGHTING AND LANDSCAPING MAINTENANCE)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in Community Facilities District No. 2014-2 (Street, Lighting and Landscaping Maintenance) shall be levied and collected according to the tax liability determined by the City Council, acting in its capacity as the legislative body of CFD No. 2014-2, through the application of the appropriate Special Tax rate, as described below. All of the property in CFD No. 2014-2, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2014-2 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre or Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final subdivision map, a final parcel map, a final approved condominium plan, or functionally equivalent final map or instrument recorded in the Office of the County Recorder. If the area shown on said map is in square footage, Acreage shall be calculated by dividing the square footage by 43,560.

"Additional Load and Decorative Lighting Parcel" means any Parcel that is determined by the City to be both an Additional Load Parcel and a Decorative Lighting Parcel.

"Additional Load Parcel" means any Parcel of Commercial Property or Industrial Property that is determined by the City to create excessive wear and tear on the roadways and/or a high volume of vehicular traffic.

"Administrative Expenses" means the costs incurred by the City to determine, levy and collect the Special Tax, including salaries of City employees and fees of consultants and the costs of collecting installments of the Special Taxes upon the general tax rolls, preparation of required reports, and any other costs required to administer the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Tax.

"Annual Escalation Factor" means the annual percentage increase in the McGraw-Hill Engineering News Record Construction Cost Index (ENR CCI) for the San Francisco area from January of the previous year to January of the year that the Special Tax is levied. In the event that the

ENR CCI defined above is no longer reported, the City Council shall select a similar index to replace it.

"Assessor's Parcel" or **"Parcel"** means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor designating parcels by Assessor's Parcel number.

"Authorized Services" means the public services authorized to be funded by CFD No. 2014-2 as set forth in the documents adopted by the City Council when the CFD was formed.

"CFD" or **"CFD No. 2014-2"** means the City of Rancho Cordova Community Facilities District No. 2014-2 (Street, Lighting and Landscaping Maintenance).

"City" means the City of Rancho Cordova.

"City Council" means the City Council of the City of Rancho Cordova, acting as the legislative body of CFD No. 2014-2.

"Commercial Property" means, in any Fiscal Year, all Developed Property for which a building permit or use permit has been issued for a commercial establishment which includes, but is not limited to, retail stores, clothing stores, book stores, convenience stores, drug stores, professional services (i.e., barber shops, dry cleaners), restaurants, supermarkets, hospitals, movie theaters, appliance and electronics stores, home supply stores, auto parts stores, and other retail uses. The City shall make the determination if a Parcel is Commercial Property.

"County" means the County of Sacramento.

"Decorative Lighting Parcel" means any Parcel of Developed Property that is determined by the City to have or benefit from decorative lighting features.

"Developed Property" means, in any Fiscal Year, all Parcels of Taxable Property for which a use permit or building permit for new construction of a residential or non-residential structure (which shall not include a permit issued solely for construction of the foundation if another permit remains to be issued for vertical construction of the building) was issued prior to June 30 of the preceding Fiscal Year.

"Fiscal Year" means the period starting on July 1 and ending on the following June 30.

"Hotel Property" means, in any Fiscal Year, all Developed Property for which a building permit or use permit has been issued for a structure that constitutes a place of lodging providing sleeping accommodations and related facilities for travelers.

"Industrial Property" means, in any Fiscal Year, all Developed Property for which a building permit or use permit has been issued for construction of an industrial, manufacturing, or warehousing structure. The City shall make the determination if a Parcel is Industrial Property.

"Maximum Special Tax" means the greatest amount of Special Tax that can be levied on an Assessor's Parcel in any Fiscal Year determined in accordance with Section C below.

"Multi-Family Property" means, in any Fiscal Year, all Parcels of Developed Property for which a building permit or use permit has been issued for construction of a residential structure with five (5) or more Units that share a single Assessor's Parcel number, all of which are offered for rent to the general public and cannot be purchased by individual homebuyers.

"Non-Residential Property" means, collectively, Commercial Property, Hotel Property, Industrial Property, and Office Property.

"Office Property" means, in any Fiscal Year, all Parcels of Developed Property for which a building permit or use permit has been issued for a building in which professional, banking, insurance, real estate, administrative or in-office medical or dental activities are conducted. The City shall make the determination if a Parcel is Office Property.

"Ordinary Use Parcel" means any Parcel of Taxable Property that is not an Additional Load Parcel, Decorative Lighting Parcel, Residential Alley Parcel, Additional Load and Decorative Lighting Parcel, or Residential Alley and Decorative Lighting Parcel.

"Proportionately" means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Parcels of Developed Property.

"Public Property" means any property within the boundaries of CFD No. 2014-2 that is owned by the federal government, State of California, County, City, or other public agency.

"Residential Alley and Decorative Lighting Parcel" means any Parcel that is determined by the City to be both a Residential Alley Parcel and a Decorative Lighting Parcel.

"Residential Alley Parcel" means any Parcel of Residential Property that is determined by the City to have residential alleys that are part of the public roadways.

"Residential Property" means, collectively, Single Family Attached Property, Single Family Detached Property, and Multi-Family Property.

"Single Family Attached Property" means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two (2) to four (4) Units that share common walls, have separate Assessor's Parcel numbers assigned to them (except for a duplex unit, which may share an Assessor's Parcel with another duplex unit), and are offered as for-sale Units (which shall still be the case even if the Units are purchased and subsequently offered for rent by the owner of the Unit(s)), including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

"Single Family Detached Property" means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a Unit that does not share a common wall with another Unit.

"Soundwall Parcel" means any Parcel of Developed Property whose tract boundary is encompassed by soundwalls maintained within the CFD.

"Special Tax Requirement" means the amount of revenue needed in any Fiscal Year to pay for the following: (i) Authorized Services, (ii) Administrative Expenses, and (iii) amounts needed to cure any delinquencies in the payment of Special Taxes which have occurred or (based on delinquency rates in prior years) may be expected to occur in the Fiscal Year in which the tax will be collected.

"Special Tax" means a special tax levied in any Fiscal Year on property within CFD No. 2014-2 to pay the Special Tax Requirement.

"Square Foot," "Square Footage," or **"Square Feet"** means the building square footage reflected on the original building permit issued for construction of a building.

"Taxable Property" means all Assessor's Parcels within the boundaries of CFD No. 2014-2 which are not exempt from the Special Tax pursuant to law or Section E below.

"Taxable Public Property" means, in any Fiscal Year, all Assessor's Parcels in CFD No. 2014-2 that had, in prior Fiscal Years, been taxed as Developed Property and subsequently came under the ownership of a public agency.

"Tax Zone" means a mutually exclusive tax zone identified in Attachment 1 of this Rate and Method of Apportionment of Special Tax, as may be updated to include new Parcels or new tax zones added to the CFD as a result of future annexations.

"Unit" means an individual single-family detached unit or an individual residential unit within a duplex, triplex, fourplex, townhome, condominium, or apartment structure. Unit shall also mean a rentable single hotel room or rentable unit on a Parcel of Hotel Property.

B. DATA COLLECTION FOR ANNUAL TAX LEVY

Each Fiscal Year, the Administrator shall identify the current Assessor's Parcel number for all Parcels of Taxable Property within CFD No. 2014-2 and shall determine within which Tax Zone each Assessor's Parcel is located. Upon each annexation of property into CFD No. 2014-2, the Administrator shall update Attachment 1 to include the new Assessor's Parcel number(s). In addition, for all Parcels of Developed Property, if applicable to the Tax Zone in which the Parcels are located, the Administrator shall determine if each Parcel is an Ordinary Use Parcel, an Additional Load Parcel, a Residential Alley Parcel, a Decorative Lighting Parcel, an Additional Load and Decorative Lighting Parcel, or a Residential Alley and Decorative Lighting Parcel.

Based on review of building permit records for property within the CFD, the Administrator shall determine which Parcels in the CFD are Developed Property for purposes of levying the Special Tax pursuant to Section D below. For Single Family Attached Property, Multi-Family Property, and Hotel Property, the number of Units shall be determined by referencing the condominium plan, apartment plan, site plan or other development plan for the property. For Residential Property, the Administrator shall determine the Square Footage of each Unit. For Non-

Residential Property, the Administrator shall determine the Acreage of, and Square Footage on, each Parcel.

If a Parcel in the CFD is rezoned prior to such Parcel becoming Developed Property, the City may in its sole discretion, move the Parcel to a different Tax Zone based on the rezone. If a Parcel rezones after the Parcel has been taxed as Developed Property in prior Fiscal Years, the City can either continue to apply the Maximum Special Tax to the Parcel that had applied prior to the rezone or, in the City's sole discretion, allow for the Parcel to be moved to a different Tax Zone based on the rezone.

In any Fiscal Year, if it is determined that (i) a parcel map for a portion of property in CFD No. 2014-2 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the parcel map by determining the Special Tax that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the parcel map.

C. MAXIMUM SPECIAL TAX

1. All Tax Zones

The following Maximum Special Taxes apply to all Parcels of Developed Property within each Tax Zone of CFD No. 2014-2, unless otherwise specified in Attachment 1.

a. Ordinary Use Parcels

MAXIMUM SPECIAL TAXES
ORDINARY USE PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Maximum Special Tax
Single Family Detached Property	$374.78 per Unit
Single Family Attached Property	$296.07 per Unit
Multi-Family Property	$213.62 per Unit
Commercial Property	$559.17 per 1,000 Square Feet
Hotel Property	$221.12 per Unit
Industrial Property	$168.65 per 1,000 Square Feet
Office Property	$558.42 per 1,000 Square Feet

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

b. Residential Alley Parcels

**MAXIMUM SPECIAL TAXES
RESIDENTIAL ALLEY PARCELS
(FISCAL YEAR 2014-15)**

Land Use Class	Maximum Special Tax
Single Family Detached Property	$406.87 per Unit
Single Family Attached Property	$321.43 per Unit
Multi-Family Property	$231.92 per Unit
Commercial Property	N/A
Hotel Property	N/A
Industrial Property	N/A
Office Property	N/A

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

c. Decorative Lighting Parcels

**MAXIMUM SPECIAL TAXES
DECORATIVE LIGHTING PARCELS
(FISCAL YEAR 2014-15)**

Land Use Class	Maximum Special Tax
Single Family Detached Property	$380.51 per Unit
Single Family Attached Property	$300.60 per Unit
Multi-Family Property	$216.89 per Unit
Commercial Property	$567.72 per 1,000 Square Feet
Hotel Property	$224.50 per Unit
Industrial Property	$171.23 per 1,000 Square Feet
Office Property	$566.96 per 1,000 Square Feet

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

d. Additional Load Parcels

MAXIMUM SPECIAL TAXES
ADDITIONAL LOAD PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Maximum Special Tax
Single Family Detached Property	N/A
Single Family Attached Property	N/A
Multi-Family Property	N/A
Commercial Property	$580.39 per 1,000 Square Feet
Hotel Property	N/A
Industrial Property	$175.05 per 1,000 Square Feet
Office Property	N/A

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

e. Soundwall Parcels

MAXIMUM SPECIAL TAXES
SOUNDWALL PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Maximum Special Tax
Single Family Detached Property	$390.71 per Unit
Single Family Attached Property	$308.66 per Unit
Multi-Family Property	$222.70 per Unit
Commercial Property	$582.94 per 1,000 Square Feet
Hotel Property	$230.52 per Unit
Industrial Property	$175.82 per 1,000 Square Feet
Office Property	$582.16 per 1,000 Square Feet

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

f. Additional Load and Decorative Lighting Parcels

MAXIMUM SPECIAL TAXES
ADDITIONAL LOAD AND DECORATIVE LIGHTING PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Maximum Special Tax
Single Family Detached Property	N/A
Single Family Attached Property	N/A
Multi-Family Property	N/A
Commercial Property	$588.94 per 1,000 Square Feet
Hotel Property	N/A
Industrial Property	$177.63 per 1,000 Square Feet
Office Property	N/A

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

g. Residential Alley and Decorative Lighting Parcels

MAXIMUM SPECIAL TAXES
RESIDENTIAL ALLEY AND DECORATIVE LIGHTING PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Maximum Special Tax
Single Family Detached Property	$412.60 per Unit
Single Family Attached Property	$325.96 per Unit
Multi-Family Property	$235.18 per Unit
Commercial Property	N/A
Hotel Property	N/A
Industrial Property	N/A
Office Property	N/A

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

h. Residential Alley and Soundwall Parcels

MAXIMUM SPECIAL TAXES
RESIDENTIAL ALLEY AND SOUNDWALL PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Maximum Special Tax
Single Family Detached Property	$425.31 per Unit
Single Family Attached Property	$336.00 per Unit
Multi-Family Property	$242.43 per Unit
Commercial Property	N/A
Hotel Property	N/A
Industrial Property	N/A
Office Property	N/A

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

i. Decorative Lighting and Soundwall Parcels

MAXIMUM SPECIAL TAXES
DECORATIVE LIGHTING AND SOUNDWALL PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Maximum Special Tax
Single Family Detached Property	$396.30 per Unit
Single Family Attached Property	$313.07 per Unit
Multi-Family Property	$225.89 per Unit
Commercial Property	$591.27 per 1,000 Square Feet
Hotel Property	$233.81 per Unit
Industrial Property	$178.33 per 1,000 Square Feet
Office Property	$590.48 per 1,000 Square Feet

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

j. Residential Alley, Decorative Lighting, and Soundwall Parcels

MAXIMUM SPECIAL TAXES
RESIDENTIAL ALLEY, DECORATIVE LIGHTING AND SOUNDWALL PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Maximum Special Tax
Single Family Detached Property	$428.15 per Unit
Single Family Attached Property	$338.23 per Unit
Multi-Family Property	$244.04 per Unit
Commercial Property	N/A
Hotel Property	N/A
Industrial Property	N/A
Office Property	N/A

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

D. METHOD OF LEVY AND COLLECTION OF SPECIAL TAX

Each Fiscal Year, the Special Tax shall be levied as follows until the amount of the levy equals the Special Tax Requirement for that Fiscal Year:

First: The Special Tax shall be levied proportionately on each Parcel of Developed Property up to 100% of the Maximum Special Tax determined for each category of Developed Property within the CFD and each Tax Zone until the amount levied is equal to the Special Tax Requirement for the Fiscal Year.

Second: If additional revenue is needed after the first step has been completed, the Special Tax shall be levied proportionately on each Parcel of Taxable Public Property up to 100% of the Maximum Special Tax that would have applied to the Parcel had the Parcel not become Public Property until the amount levied is equal to the Special Tax Requirement for the Fiscal Year.

The Special Tax for CFD No. 2014-2 shall be collected at the same time and in the same manner as ordinary ad valorem property taxes provided, however, that the City may (under the authority of Government Code Section 53340) collect Special Taxes at a different time or in a different manner if necessary to meet CFD No. 2014-2 financial obligations and the Special Tax shall be equally subject to foreclosure if delinquent.

E. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on (i) any Parcel of Public Property that is not Taxable Public Property, and (ii) any Parcel in CFD No. 2014-2 that is not Developed Property.

F. DURATION OF SPECIAL TAX

The Special Tax shall be levied in perpetuity to fund the Special Tax Requirement, unless no longer required as determined at the sole discretion of the City Council.

G. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the Rate and Method of Apportionment of Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. The City may make interpretations by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Taxes.

EXHIBIT B

ATTACHMENT 1

CITY OF RANCHO CORDOVA
COMMUNITY FACILITIES DISTRICT NO. 2014-2
(STREET, LIGHTING AND LANDSCAPING MAINTENANCE)

IDENTIFICATION OF TAX ZONES

TAX ZONE 1

Assessor's Parcels Included in Tax Zone 1 *	Fiscal Year In Which Property Was Added to CFD No. 2014-2
067-0030-066 067-0030-067 067-0030-069 067-0030-070 067-1020-001 067-1020-002	2013-14

*** The property identified by the Assessor's Parcel Numbers listed above shall remain part of the identified Tax Zone regardless of changes in the configuration of the Assessor's Parcels or changes to APNs in future Fiscal Years. As APNs change, the City may update Attachment 1 to reflect the most current APNs and Tax Zones consistent with the categories of Developed Property set forth in the Rate and Method of Apportionment of Special Tax for CFD No. 2014-2.**

Tax Zone 1 – Maximum Special Taxes

The following Maximum Special Taxes apply to all Parcels of Developed Property within Tax Zone 1 of CFD No. 2014-2. These Maximum Special Taxes do not incorporate the long-term maintenance activities which are included as a part of CFD No. 2014-1 (Montelena).

EXHIBIT B

MAXIMUM SPECIAL TAXES
ORDINARY USE PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Ordinary Use Parcels Maximum Special Tax Zone 1	Soundwall and Decorative Lighting Parcels Maximum Special Tax Zone 1
Single Family Detached Property	$275.49 per Unit	$279.85 per Unit
Single Family Attached Property	$217.64 per Unit	$221.08 per Unit
Multi-Family Property	$157.03 per Unit	$159.52 per Unit
Commercial Property	$210.00 per 1,000 Square Feet	$210.00 per 1,000 Square Feet
Hotel Property	$162.54 per Unit	$165.11 per Unit
Industrial Property	$123.97 per 1,000 Square Feet	$125.93 per 1,000 Square Feet
Office Property	$210.00 per 1,000 Square Feet	$210.00 per 1,000 Square Feet

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

TAX ZONE 2

Assessor's Parcels Included In Tax Zone 2*			Fiscal Year in Which Property Was Added to CFD No. 2014-2
072-2870-001	through	072-2870-072	2014-15
072-2880-001	through	072-2880-082	
072-2890-001	through	072-2890-088	
072-2900-001	through	072-2900-080	
072-2910-001	through	072-2910-083	
072-2920-001	through	072-2920-069	
072-2940-001	through	072-2940-066	
072-2950-001	through	072-2950-063	
072-2960-001	through	072-2960-065	

*** The property identified by the Assessor's Parcel Numbers listed above shall remain part of the identified Tax Zone regardless of changes in the configuration of the Assessor's**

Parcels or changes to APNs in future Fiscal Years. As APNs change, the City may update Attachment 1 to reflect the most current APNs and Tax Zones consistent with the categories of Developed Property set forth in the Rate and Method of Apportionment of Special Tax for CFD No. 2014-2.

Tax Zone 2 – Maximum Special Taxes

The following Maximum Special Taxes apply to all Parcels of Developed Property within Tax Zone 2 of CFD No. 2014-2. These Maximum Special Taxes include the maintenance of street lighting only.

MAXIMUM SPECIAL TAXES
ORDINARY USE PARCELS
(FISCAL YEAR 2014-15)

Land Use Class	Street Lighting Only Maximum Special Tax Zone 2
Single Family Detached Property	$38.00 per Unit
Single Family Attached Property	$38.00 per Unit
Multi-Family Property	$157.03 per Unit
Commercial Property	$210.00 per 1,000 Square Feet
Hotel Property	$162.54 per Unit
Industrial Property	$123.97 per 1,000 Square Feet
Office Property	$210.00 per 1,000 Square Feet

On each July 1, commencing July 1, 2015, the Maximum Special Taxes shown above shall be increased by the Annual Escalation Factor.

EXHIBIT B

EXHIBIT B

OWNER AND THE ASSESSOR'S TAX PARCEL NUMBER(S)

Parcel No.	Owner	Parcel No.	Owner
072-2890-001	Lennar Homes of California, inc.	072-2940-053	Lennar Homes of California, inc.
072-2890-002	Lennar Homes of California, inc.	072-2950-007	Lennar Homes of California, inc.
072-2890-003	Lennar Homes of California, inc.	072-2890-009	MS Rialto North Douglas CA, LLC
072-2890-004	Lennar Homes of California, inc.	072-2890-010	MS Rialto North Douglas CA, LLC
072-2890-005	Lennar Homes of California, inc.	072-2890-011	MS Rialto North Douglas CA, LLC
072-2890-006	Lennar Homes of California, inc.	072-2890-012	MS Rialto North Douglas CA, LLC
072-2890-007	Lennar Homes of California, inc.	072-2890-013	MS Rialto North Douglas CA, LLC
072-2890-008	Lennar Homes of California, inc.	072-2890-014	MS Rialto North Douglas CA, LLC
072-2890-060	Lennar Homes of California, inc.	072-2890-015	MS Rialto North Douglas CA, LLC
072-2890-061	Lennar Homes of California, inc.	072-2890-016	MS Rialto North Douglas CA, LLC
072-2890-062	Lennar Homes of California, inc.	072-2890-017	MS Rialto North Douglas CA, LLC
072-2890-063	Lennar Homes of California, inc.	072-2890-018	MS Rialto North Douglas CA, LLC
072-2890-064	Lennar Homes of California, inc.	072-2890-019	MS Rialto North Douglas CA, LLC
072-2890-065	Lennar Homes of California, inc.	072-2890-020	MS Rialto North Douglas CA, LLC
072-2890-066	Lennar Homes of California, inc.	072-2890-021	MS Rialto North Douglas CA, LLC
072-2890-067	Lennar Homes of California, inc.	072-2890-022	MS Rialto North Douglas CA, LLC
072-2890-068	Lennar Homes of California, inc.	072-2890-023	MS Rialto North Douglas CA, LLC
072-2890-069	Lennar Homes of California, inc.	072-2890-024	MS Rialto North Douglas CA, LLC
072-2890-070	Lennar Homes of California, inc.	072-2890-025	MS Rialto North Douglas CA, LLC
072-2890-072	Lennar Homes of California, inc.	072-2890-026	MS Rialto North Douglas CA, LLC
072-2890-073	Lennar Homes of California, inc.	072-2890-027	MS Rialto North Douglas CA, LLC
072-2890-074	Lennar Homes of California, inc.	072-2890-028	MS Rialto North Douglas CA, LLC
072-2920-012	Lennar Homes of California, inc.	072-2890-029	MS Rialto North Douglas CA, LLC
072-2920-013	Lennar Homes of California, inc.	072-2890-030	MS Rialto North Douglas CA, LLC
072-2920-014	Lennar Homes of California, inc.	072-2890-031	MS Rialto North Douglas CA, LLC
072-2940-032	Lennar Homes of California, inc.	072-2890-032	MS Rialto North Douglas CA, LLC
072-2940-033	Lennar Homes of California, inc.	072-2890-033	MS Rialto North Douglas CA, LLC
072-2940-034	Lennar Homes of California, inc.	072-2890-034	MS Rialto North Douglas CA, LLC
072-2940-035	Lennar Homes of California, inc.	072-2890-035	MS Rialto North Douglas CA, LLC
072-2940-036	Lennar Homes of California, inc.	072-2890-036	MS Rialto North Douglas CA, LLC
072-2940-037	Lennar Homes of California, inc.	072-2890-037	MS Rialto North Douglas CA, LLC
072-2940-038	Lennar Homes of California, inc.	072-2890-038	MS Rialto North Douglas CA, LLC
072-2940-039	Lennar Homes of California, inc.	072-2890-039	MS Rialto North Douglas CA, LLC
072-2940-040	Lennar Homes of California, inc.	072-2890-040	MS Rialto North Douglas CA, LLC
072-2940-041	Lennar Homes of California, inc.	072-2890-041	MS Rialto North Douglas CA, LLC
072-2940-042	Lennar Homes of California, inc.	072-2890-042	MS Rialto North Douglas CA, LLC
072-2940-043	Lennar Homes of California, inc.	072-2890-043	MS Rialto North Douglas CA, LLC
072-2940-044	Lennar Homes of California, inc.	072-2890-044	MS Rialto North Douglas CA, LLC
072-2940-045	Lennar Homes of California, inc.	072-2890-045	MS Rialto North Douglas CA, LLC
072-2940-046	Lennar Homes of California, inc.	072-2890-046	MS Rialto North Douglas CA, LLC
072-2940-047	Lennar Homes of California, inc.	072-2890-047	MS Rialto North Douglas CA, LLC
072-2940-048	Lennar Homes of California, inc.	072-2890-048	MS Rialto North Douglas CA, LLC
072-2940-050	Lennar Homes of California, inc.	072-2890-049	MS Rialto North Douglas CA, LLC
072-2940-051	Lennar Homes of California, inc.	072-2890-050	MS Rialto North Douglas CA, LLC
072-2940-052	Lennar Homes of California, inc.	072-2890-051	MS Rialto North Douglas CA, LLC

EXHIBIT B

Parcel No.	Owner	Parcel No.	Owner
072-2890-052	MS Rialto North Douglas CA, LLC	072-2870-026	MS Rialto North Douglas CA, LLC
072-2890-053	MS Rialto North Douglas CA, LLC	072-2870-027	MS Rialto North Douglas CA, LLC
072-2890-054	MS Rialto North Douglas CA, LLC	072-2870-028	MS Rialto North Douglas CA, LLC
072-2890-055	MS Rialto North Douglas CA, LLC	072-2870-029	MS Rialto North Douglas CA, LLC
072-2890-056	MS Rialto North Douglas CA, LLC	072-2870-030	MS Rialto North Douglas CA, LLC
072-2890-057	MS Rialto North Douglas CA, LLC	072-2870-031	MS Rialto North Douglas CA, LLC
072-2890-058	MS Rialto North Douglas CA, LLC	072-2870-032	MS Rialto North Douglas CA, LLC
072-2890-059	MS Rialto North Douglas CA, LLC	072-2870-033	MS Rialto North Douglas CA, LLC
072-2890-071	MS Rialto North Douglas CA, LLC	072-2870-034	MS Rialto North Douglas CA, LLC
072-2890-075	MS Rialto North Douglas CA, LLC	072-2870-035	MS Rialto North Douglas CA, LLC
072-2890-076	MS Rialto North Douglas CA, LLC	072-2870-036	MS Rialto North Douglas CA, LLC
072-2890-077	MS Rialto North Douglas CA, LLC	072-2870-037	MS Rialto North Douglas CA, LLC
072-2890-078	MS Rialto North Douglas CA, LLC	072-2870-038	MS Rialto North Douglas CA, LLC
072-2890-079	MS Rialto North Douglas CA, LLC	072-2870-039	MS Rialto North Douglas CA, LLC
072-2890-080	MS Rialto North Douglas CA, LLC	072-2870-040	MS Rialto North Douglas CA, LLC
072-2890-081	MS Rialto North Douglas CA, LLC	072-2870-041	MS Rialto North Douglas CA, LLC
072-2890-082	MS Rialto North Douglas CA, LLC	072-2870-042	MS Rialto North Douglas CA, LLC
072-2890-083	MS Rialto North Douglas CA, LLC	072-2870-043	MS Rialto North Douglas CA, LLC
072-2890-084	MS Rialto North Douglas CA, LLC	072-2870-044	MS Rialto North Douglas CA, LLC
072-2890-085	MS Rialto North Douglas CA, LLC	072-2870-045	MS Rialto North Douglas CA, LLC
072-2890-086	MS Rialto North Douglas CA, LLC	072-2870-046	MS Rialto North Douglas CA, LLC
072-2890-087	MS Rialto North Douglas CA, LLC	072-2870-047	MS Rialto North Douglas CA, LLC
072-2890-088	MS Rialto North Douglas CA, LLC	072-2870-048	MS Rialto North Douglas CA, LLC
072-2900-080	MS Rialto North Douglas CA, LLC	072-2870-049	MS Rialto North Douglas CA, LLC
072-2870-001	MS Rialto North Douglas CA, LLC	072-2870-050	MS Rialto North Douglas CA, LLC
072-2870-002	MS Rialto North Douglas CA, LLC	072-2870-051	MS Rialto North Douglas CA, LLC
072-2870-003	MS Rialto North Douglas CA, LLC	072-2870-052	MS Rialto North Douglas CA, LLC
072-2870-004	MS Rialto North Douglas CA, LLC	072-2870-053	MS Rialto North Douglas CA, LLC
072-2870-005	MS Rialto North Douglas CA, LLC	072-2870-054	MS Rialto North Douglas CA, LLC
072-2870-006	MS Rialto North Douglas CA, LLC	072-2870-055	MS Rialto North Douglas CA, LLC
072-2870-007	MS Rialto North Douglas CA, LLC	072-2870-056	MS Rialto North Douglas CA, LLC
072-2870-008	MS Rialto North Douglas CA, LLC	072-2870-057	MS Rialto North Douglas CA, LLC
072-2870-009	MS Rialto North Douglas CA, LLC	072-2870-058	MS Rialto North Douglas CA, LLC
072-2870-010	MS Rialto North Douglas CA, LLC	072-2870-059	MS Rialto North Douglas CA, LLC
072-2870-011	MS Rialto North Douglas CA, LLC	072-2870-060	MS Rialto North Douglas CA, LLC
072-2870-012	MS Rialto North Douglas CA, LLC	072-2870-061	MS Rialto North Douglas CA, LLC
072-2870-013	MS Rialto North Douglas CA, LLC	072-2870-062	MS Rialto North Douglas CA, LLC
072-2870-014	MS Rialto North Douglas CA, LLC	072-2870-063	MS Rialto North Douglas CA, LLC
072-2870-015	MS Rialto North Douglas CA, LLC	072-2870-064	MS Rialto North Douglas CA, LLC
072-2870-016	MS Rialto North Douglas CA, LLC	072-2870-065	MS Rialto North Douglas CA, LLC
072-2870-017	MS Rialto North Douglas CA, LLC	072-2870-066	MS Rialto North Douglas CA, LLC
072-2870-018	MS Rialto North Douglas CA, LLC	072-2870-067	MS Rialto North Douglas CA, LLC
072-2870-019	MS Rialto North Douglas CA, LLC	072-2870-068	MS Rialto North Douglas CA, LLC
072-2870-020	MS Rialto North Douglas CA, LLC	072-2870-069	MS Rialto North Douglas CA, LLC
072-2870-021	MS Rialto North Douglas CA, LLC	072-2870-070	MS Rialto North Douglas CA, LLC
072-2870-022	MS Rialto North Douglas CA, LLC	072-2870-071	MS Rialto North Douglas CA, LLC
072-2870-023	MS Rialto North Douglas CA, LLC	072-2870-072	MS Rialto North Douglas CA, LLC
072-2870-024	MS Rialto North Douglas CA, LLC	072-2880-001	MS Rialto North Douglas CA, LLC
072-2870-025	MS Rialto North Douglas CA, LLC	072-2880-002	MS Rialto North Douglas CA, LLC

EXHIBIT B

Parcel No.	Owner	Parcel No.	Owner
072-2880-003	MS Rialto North Douglas CA, LLC	072-2880-052	MS Rialto North Douglas CA, LLC
072-2880-004	MS Rialto North Douglas CA, LLC	072-2880-053	MS Rialto North Douglas CA, LLC
072-2880-005	MS Rialto North Douglas CA, LLC	072-2880-054	MS Rialto North Douglas CA, LLC
072-2880-006	MS Rialto North Douglas CA, LLC	072-2880-055	MS Rialto North Douglas CA, LLC
072-2880-007	MS Rialto North Douglas CA, LLC	072-2880-056	MS Rialto North Douglas CA, LLC
072-2880-008	MS Rialto North Douglas CA, LLC	072-2880-057	MS Rialto North Douglas CA, LLC
072-2880-009	MS Rialto North Douglas CA, LLC	072-2880-058	MS Rialto North Douglas CA, LLC
072-2880-010	MS Rialto North Douglas CA, LLC	072-2880-059	MS Rialto North Douglas CA, LLC
072-2880-011	MS Rialto North Douglas CA, LLC	072-2880-060	MS Rialto North Douglas CA, LLC
072-2880-012	MS Rialto North Douglas CA, LLC	072-2880-061	MS Rialto North Douglas CA, LLC
072-2880-013	MS Rialto North Douglas CA, LLC	072-2880-062	MS Rialto North Douglas CA, LLC
072-2880-014	MS Rialto North Douglas CA, LLC	072-2880-063	MS Rialto North Douglas CA, LLC
072-2880-015	MS Rialto North Douglas CA, LLC	072-2880-064	MS Rialto North Douglas CA, LLC
072-2880-016	MS Rialto North Douglas CA, LLC	072-2880-065	MS Rialto North Douglas CA, LLC
072-2880-017	MS Rialto North Douglas CA, LLC	072-2880-066	MS Rialto North Douglas CA, LLC
072-2880-018	MS Rialto North Douglas CA, LLC	072-2880-067	MS Rialto North Douglas CA, LLC
072-2880-019	MS Rialto North Douglas CA, LLC	072-2880-068	MS Rialto North Douglas CA, LLC
072-2880-020	MS Rialto North Douglas CA, LLC	072-2880-069	MS Rialto North Douglas CA, LLC
072-2880-021	MS Rialto North Douglas CA, LLC	072-2880-070	MS Rialto North Douglas CA, LLC
072-2880-022	MS Rialto North Douglas CA, LLC	072-2880-071	MS Rialto North Douglas CA, LLC
072-2880-023	MS Rialto North Douglas CA, LLC	072-2880-072	MS Rialto North Douglas CA, LLC
072-2880-024	MS Rialto North Douglas CA, LLC	072-2880-073	MS Rialto North Douglas CA, LLC
072-2880-025	MS Rialto North Douglas CA, LLC	072-2880-074	MS Rialto North Douglas CA, LLC
072-2880-026	MS Rialto North Douglas CA, LLC	072-2880-075	MS Rialto North Douglas CA, LLC
072-2880-027	MS Rialto North Douglas CA, LLC	072-2880-076	MS Rialto North Douglas CA, LLC
072-2880-028	MS Rialto North Douglas CA, LLC	072-2880-077	MS Rialto North Douglas CA, LLC
072-2880-029	MS Rialto North Douglas CA, LLC	072-2880-078	MS Rialto North Douglas CA, LLC
072-2880-030	MS Rialto North Douglas CA, LLC	072-2880-079	MS Rialto North Douglas CA, LLC
072-2880-031	MS Rialto North Douglas CA, LLC	072-2880-080	MS Rialto North Douglas CA, LLC
072-2880-032	MS Rialto North Douglas CA, LLC	072-2880-081	MS Rialto North Douglas CA, LLC
072-2880-033	MS Rialto North Douglas CA, LLC	072-2880-082	MS Rialto North Douglas CA, LLC
072-2880-034	MS Rialto North Douglas CA, LLC	072-2910-001	MS Rialto North Douglas CA, LLC
072-2880-035	MS Rialto North Douglas CA, LLC	072-2910-002	MS Rialto North Douglas CA, LLC
072-2880-036	MS Rialto North Douglas CA, LLC	072-2910-003	MS Rialto North Douglas CA, LLC
072-2880-037	MS Rialto North Douglas CA, LLC	072-2910-004	MS Rialto North Douglas CA, LLC
072-2880-038	MS Rialto North Douglas CA, LLC	072-2910-005	MS Rialto North Douglas CA, LLC
072-2880-039	MS Rialto North Douglas CA, LLC	072-2910-006	MS Rialto North Douglas CA, LLC
072-2880-040	MS Rialto North Douglas CA, LLC	072-2910-007	MS Rialto North Douglas CA, LLC
072-2880-041	MS Rialto North Douglas CA, LLC	072-2910-008	MS Rialto North Douglas CA, LLC
072-2880-042	MS Rialto North Douglas CA, LLC	072-2910-009	MS Rialto North Douglas CA, LLC
072-2880-043	MS Rialto North Douglas CA, LLC	072-2910-010	MS Rialto North Douglas CA, LLC
072-2880-044	MS Rialto North Douglas CA, LLC	072-2910-011	MS Rialto North Douglas CA, LLC
072-2880-045	MS Rialto North Douglas CA, LLC	072-2910-012	MS Rialto North Douglas CA, LLC
072-2880-046	MS Rialto North Douglas CA, LLC	072-2910-013	MS Rialto North Douglas CA, LLC
072-2880-047	MS Rialto North Douglas CA, LLC	072-2910-014	MS Rialto North Douglas CA, LLC
072-2880-048	MS Rialto North Douglas CA, LLC	072-2910-015	MS Rialto North Douglas CA, LLC
072-2880-049	MS Rialto North Douglas CA, LLC	072-2910-016	MS Rialto North Douglas CA, LLC
072-2880-050	MS Rialto North Douglas CA, LLC	072-2910-017	MS Rialto North Douglas CA, LLC
072-2880-051	MS Rialto North Douglas CA, LLC	072-2910-018	MS Rialto North Douglas CA, LLC

EXHIBIT B

Parcel No.	Owner	Parcel No.	Owner
072-2910-019	MS Rialto North Douglas CA, LLC	072-2920-010	MS Rialto North Douglas CA, LLC
072-2910-020	MS Rialto North Douglas CA, LLC	072-2920-011	MS Rialto North Douglas CA, LLC
072-2910-021	MS Rialto North Douglas CA, LLC	072-2920-015	MS Rialto North Douglas CA, LLC
072-2910-022	MS Rialto North Douglas CA, LLC	072-2910-063	MS Rialto North Douglas CA, LLC
072-2910-023	MS Rialto North Douglas CA, LLC	072-2910-064	MS Rialto North Douglas CA, LLC
072-2910-024	MS Rialto North Douglas CA, LLC	072-2910-065	MS Rialto North Douglas CA, LLC
072-2910-025	MS Rialto North Douglas CA, LLC	072-2910-066	MS Rialto North Douglas CA, LLC
072-2910-026	MS Rialto North Douglas CA, LLC	072-2910-067	MS Rialto North Douglas CA, LLC
072-2910-027	MS Rialto North Douglas CA, LLC	072-2910-068	MS Rialto North Douglas CA, LLC
072-2910-028	MS Rialto North Douglas CA, LLC	072-2910-069	MS Rialto North Douglas CA, LLC
072-2910-029	MS Rialto North Douglas CA, LLC	072-2910-070	MS Rialto North Douglas CA, LLC
072-2910-030	MS Rialto North Douglas CA, LLC	072-2910-071	MS Rialto North Douglas CA, LLC
072-2910-031	MS Rialto North Douglas CA, LLC	072-2910-072	MS Rialto North Douglas CA, LLC
072-2910-032	MS Rialto North Douglas CA, LLC	072-2910-073	MS Rialto North Douglas CA, LLC
072-2910-033	MS Rialto North Douglas CA, LLC	072-2910-074	MS Rialto North Douglas CA, LLC
072-2910-034	MS Rialto North Douglas CA, LLC	072-2910-075	MS Rialto North Douglas CA, LLC
072-2910-035	MS Rialto North Douglas CA, LLC	072-2910-076	MS Rialto North Douglas CA, LLC
072-2910-036	MS Rialto North Douglas CA, LLC	072-2910-077	MS Rialto North Douglas CA, LLC
072-2910-037	MS Rialto North Douglas CA, LLC	072-2910-078	MS Rialto North Douglas CA, LLC
072-2910-038	MS Rialto North Douglas CA, LLC	072-2910-079	MS Rialto North Douglas CA, LLC
072-2910-039	MS Rialto North Douglas CA, LLC	072-2910-080	MS Rialto North Douglas CA, LLC
072-2910-040	MS Rialto North Douglas CA, LLC	072-2910-081	MS Rialto North Douglas CA, LLC
072-2910-041	MS Rialto North Douglas CA, LLC	072-2910-082	MS Rialto North Douglas CA, LLC
072-2910-042	MS Rialto North Douglas CA, LLC	072-2910-083	MS Rialto North Douglas CA, LLC
072-2910-043	MS Rialto North Douglas CA, LLC	072-2920-016	MS Rialto North Douglas CA, LLC
072-2910-044	MS Rialto North Douglas CA, LLC	072-2920-017	MS Rialto North Douglas CA, LLC
072-2910-045	MS Rialto North Douglas CA, LLC	072-2920-018	MS Rialto North Douglas CA, LLC
072-2910-046	MS Rialto North Douglas CA, LLC	072-2920-019	MS Rialto North Douglas CA, LLC
072-2910-047	MS Rialto North Douglas CA, LLC	072-2920-020	MS Rialto North Douglas CA, LLC
072-2910-048	MS Rialto North Douglas CA, LLC	072-2920-021	MS Rialto North Douglas CA, LLC
072-2910-049	MS Rialto North Douglas CA, LLC	072-2920-022	MS Rialto North Douglas CA, LLC
072-2910-050	MS Rialto North Douglas CA, LLC	072-2920-023	MS Rialto North Douglas CA, LLC
072-2910-051	MS Rialto North Douglas CA, LLC	072-2920-024	MS Rialto North Douglas CA, LLC
072-2910-052	MS Rialto North Douglas CA, LLC	072-2920-025	MS Rialto North Douglas CA, LLC
072-2910-057	MS Rialto North Douglas CA, LLC	072-2920-026	MS Rialto North Douglas CA, LLC
072-2910-058	MS Rialto North Douglas CA, LLC	072-2920-027	MS Rialto North Douglas CA, LLC
072-2910-059	MS Rialto North Douglas CA, LLC	072-2920-028	MS Rialto North Douglas CA, LLC
072-2910-060	MS Rialto North Douglas CA, LLC	072-2920-029	MS Rialto North Douglas CA, LLC
072-2910-061	MS Rialto North Douglas CA, LLC	072-2920-030	MS Rialto North Douglas CA, LLC
072-2910-062	MS Rialto North Douglas CA, LLC	072-2920-031	MS Rialto North Douglas CA, LLC
072-2920-001	MS Rialto North Douglas CA, LLC	072-2920-032	MS Rialto North Douglas CA, LLC
072-2920-002	MS Rialto North Douglas CA, LLC	072-2920-033	MS Rialto North Douglas CA, LLC
072-2920-003	MS Rialto North Douglas CA, LLC	072-2920-034	MS Rialto North Douglas CA, LLC
072-2920-004	MS Rialto North Douglas CA, LLC	072-2920-035	MS Rialto North Douglas CA, LLC
072-2920-005	MS Rialto North Douglas CA, LLC	072-2920-036	MS Rialto North Douglas CA, LLC
072-2920-006	MS Rialto North Douglas CA, LLC	072-2920-037	MS Rialto North Douglas CA, LLC
072-2920-007	MS Rialto North Douglas CA, LLC	072-2920-038	MS Rialto North Douglas CA, LLC
072-2920-008	MS Rialto North Douglas CA, LLC	072-2920-039	MS Rialto North Douglas CA, LLC
072-2920-009	MS Rialto North Douglas CA, LLC	072-2920-040	MS Rialto North Douglas CA, LLC

EXHIBIT B

Parcel No.	Owner	Parcel No.	Owner
072-2920-041	MS Rialto North Douglas CA, LLC	072-2940-021	MS Rialto North Douglas CA, LLC
072-2920-042	MS Rialto North Douglas CA, LLC	072-2940-022	MS Rialto North Douglas CA, LLC
072-2920-043	MS Rialto North Douglas CA, LLC	072-2940-023	MS Rialto North Douglas CA, LLC
072-2920-044	MS Rialto North Douglas CA, LLC	072-2940-024	MS Rialto North Douglas CA, LLC
072-2920-045	MS Rialto North Douglas CA, LLC	072-2940-025	MS Rialto North Douglas CA, LLC
072-2920-046	MS Rialto North Douglas CA, LLC	072-2940-026	MS Rialto North Douglas CA, LLC
072-2920-047	MS Rialto North Douglas CA, LLC	072-2940-027	MS Rialto North Douglas CA, LLC
072-2920-048	MS Rialto North Douglas CA, LLC	072-2940-028	MS Rialto North Douglas CA, LLC
072-2920-049	MS Rialto North Douglas CA, LLC	072-2940-029	MS Rialto North Douglas CA, LLC
072-2920-050	MS Rialto North Douglas CA, LLC	072-2940-030	MS Rialto North Douglas CA, LLC
072-2920-051	MS Rialto North Douglas CA, LLC	072-2940-031	MS Rialto North Douglas CA, LLC
072-2920-052	MS Rialto North Douglas CA, LLC	072-2940-049	MS Rialto North Douglas CA, LLC
072-2920-053	MS Rialto North Douglas CA, LLC	072-2940-054	MS Rialto North Douglas CA, LLC
072-2920-054	MS Rialto North Douglas CA, LLC	072-2940-055	MS Rialto North Douglas CA, LLC
072-2920-055	MS Rialto North Douglas CA, LLC	072-2940-056	MS Rialto North Douglas CA, LLC
072-2920-056	MS Rialto North Douglas CA, LLC	072-2940-057	MS Rialto North Douglas CA, LLC
072-2920-057	MS Rialto North Douglas CA, LLC	072-2940-058	MS Rialto North Douglas CA, LLC
072-2920-058	MS Rialto North Douglas CA, LLC	072-2940-059	MS Rialto North Douglas CA, LLC
072-2920-059	MS Rialto North Douglas CA, LLC	072-2940-060	MS Rialto North Douglas CA, LLC
072-2920-060	MS Rialto North Douglas CA, LLC	072-2940-061	MS Rialto North Douglas CA, LLC
072-2920-061	MS Rialto North Douglas CA, LLC	072-2940-062	MS Rialto North Douglas CA, LLC
072-2920-062	MS Rialto North Douglas CA, LLC	072-2940-063	MS Rialto North Douglas CA, LLC
072-2920-063	MS Rialto North Douglas CA, LLC	072-2940-064	MS Rialto North Douglas CA, LLC
072-2920-064	MS Rialto North Douglas CA, LLC	072-2940-065	MS Rialto North Douglas CA, LLC
072-2920-065	MS Rialto North Douglas CA, LLC	072-2940-066	MS Rialto North Douglas CA, LLC
072-2920-066	MS Rialto North Douglas CA, LLC	072-2950-001	MS Rialto North Douglas CA, LLC
072-2920-067	MS Rialto North Douglas CA, LLC	072-2950-002	MS Rialto North Douglas CA, LLC
072-2920-068	MS Rialto North Douglas CA, LLC	072-2950-003	MS Rialto North Douglas CA, LLC
072-2920-069	MS Rialto North Douglas CA, LLC	072-2950-004	MS Rialto North Douglas CA, LLC
072-2940-001	MS Rialto North Douglas CA, LLC	072-2950-005	MS Rialto North Douglas CA, LLC
072-2940-002	MS Rialto North Douglas CA, LLC	072-2950-006	MS Rialto North Douglas CA, LLC
072-2940-003	MS Rialto North Douglas CA, LLC	072-2950-008	MS Rialto North Douglas CA, LLC
072-2940-004	MS Rialto North Douglas CA, LLC	072-2950-009	MS Rialto North Douglas CA, LLC
072-2940-005	MS Rialto North Douglas CA, LLC	072-2950-010	MS Rialto North Douglas CA, LLC
072-2940-006	MS Rialto North Douglas CA, LLC	072-2950-011	MS Rialto North Douglas CA, LLC
072-2940-007	MS Rialto North Douglas CA, LLC	072-2950-012	MS Rialto North Douglas CA, LLC
072-2940-008	MS Rialto North Douglas CA, LLC	072-2950-013	MS Rialto North Douglas CA, LLC
072-2940-009	MS Rialto North Douglas CA, LLC	072-2950-014	MS Rialto North Douglas CA, LLC
072-2940-010	MS Rialto North Douglas CA, LLC	072-2950-015	MS Rialto North Douglas CA, LLC
072-2940-011	MS Rialto North Douglas CA, LLC	072-2950-016	MS Rialto North Douglas CA, LLC
072-2940-012	MS Rialto North Douglas CA, LLC	072-2950-017	MS Rialto North Douglas CA, LLC
072-2940-013	MS Rialto North Douglas CA, LLC	072-2950-018	MS Rialto North Douglas CA, LLC
072-2940-014	MS Rialto North Douglas CA, LLC	072-2950-019	MS Rialto North Douglas CA, LLC
072-2940-015	MS Rialto North Douglas CA, LLC	072-2950-020	MS Rialto North Douglas CA, LLC
072-2940-016	MS Rialto North Douglas CA, LLC	072-2950-021	MS Rialto North Douglas CA, LLC
072-2940-017	MS Rialto North Douglas CA, LLC	072-2950-022	MS Rialto North Douglas CA, LLC
072-2940-018	MS Rialto North Douglas CA, LLC	072-2950-023	MS Rialto North Douglas CA, LLC
072-2940-019	MS Rialto North Douglas CA, LLC	072-2950-024	MS Rialto North Douglas CA, LLC
072-2940-020	MS Rialto North Douglas CA, LLC	072-2950-025	MS Rialto North Douglas CA, LLC

EXHIBIT B

Parcel No.	Owner	Parcel No.	Owner
072-2950-026	MS Rialto North Douglas CA, LLC	072-2960-012	MS Rialto North Douglas CA, LLC
072-2950-027	MS Rialto North Douglas CA, LLC	072-2960-013	MS Rialto North Douglas CA, LLC
072-2950-028	MS Rialto North Douglas CA, LLC	072-2960-014	MS Rialto North Douglas CA, LLC
072-2950-029	MS Rialto North Douglas CA, LLC	072-2960-015	MS Rialto North Douglas CA, LLC
072-2950-030	MS Rialto North Douglas CA, LLC	072-2960-016	MS Rialto North Douglas CA, LLC
072-2950-031	MS Rialto North Douglas CA, LLC	072-2960-017	MS Rialto North Douglas CA, LLC
072-2950-032	MS Rialto North Douglas CA, LLC	072-2960-018	MS Rialto North Douglas CA, LLC
072-2950-033	MS Rialto North Douglas CA, LLC	072-2960-019	MS Rialto North Douglas CA, LLC
072-2950-034	MS Rialto North Douglas CA, LLC	072-2960-020	MS Rialto North Douglas CA, LLC
072-2950-035	MS Rialto North Douglas CA, LLC	072-2960-021	MS Rialto North Douglas CA, LLC
072-2950-036	MS Rialto North Douglas CA, LLC	072-2960-022	MS Rialto North Douglas CA, LLC
072-2950-037	MS Rialto North Douglas CA, LLC	072-2960-023	MS Rialto North Douglas CA, LLC
072-2950-038	MS Rialto North Douglas CA, LLC	072-2960-024	MS Rialto North Douglas CA, LLC
072-2950-039	MS Rialto North Douglas CA, LLC	072-2960-025	MS Rialto North Douglas CA, LLC
072-2950-040	MS Rialto North Douglas CA, LLC	072-2960-026	MS Rialto North Douglas CA, LLC
072-2950-041	MS Rialto North Douglas CA, LLC	072-2960-027	MS Rialto North Douglas CA, LLC
072-2950-042	MS Rialto North Douglas CA, LLC	072-2960-028	MS Rialto North Douglas CA, LLC
072-2950-043	MS Rialto North Douglas CA, LLC	072-2960-029	MS Rialto North Douglas CA, LLC
072-2950-044	MS Rialto North Douglas CA, LLC	072-2960-030	MS Rialto North Douglas CA, LLC
072-2950-045	MS Rialto North Douglas CA, LLC	072-2960-031	MS Rialto North Douglas CA, LLC
072-2950-046	MS Rialto North Douglas CA, LLC	072-2960-032	MS Rialto North Douglas CA, LLC
072-2950-047	MS Rialto North Douglas CA, LLC	072-2960-033	MS Rialto North Douglas CA, LLC
072-2950-048	MS Rialto North Douglas CA, LLC	072-2960-034	MS Rialto North Douglas CA, LLC
072-2950-049	MS Rialto North Douglas CA, LLC	072-2960-035	MS Rialto North Douglas CA, LLC
072-2950-050	MS Rialto North Douglas CA, LLC	072-2960-036	MS Rialto North Douglas CA, LLC
072-2950-051	MS Rialto North Douglas CA, LLC	072-2960-037	MS Rialto North Douglas CA, LLC
072-2950-052	MS Rialto North Douglas CA, LLC	072-2960-038	MS Rialto North Douglas CA, LLC
072-2950-053	MS Rialto North Douglas CA, LLC	072-2960-039	MS Rialto North Douglas CA, LLC
072-2950-054	MS Rialto North Douglas CA, LLC	072-2960-040	MS Rialto North Douglas CA, LLC
072-2950-055	MS Rialto North Douglas CA, LLC	072-2960-041	MS Rialto North Douglas CA, LLC
072-2950-056	MS Rialto North Douglas CA, LLC	072-2960-042	MS Rialto North Douglas CA, LLC
072-2950-057	MS Rialto North Douglas CA, LLC	072-2960-043	MS Rialto North Douglas CA, LLC
072-2950-058	MS Rialto North Douglas CA, LLC	072-2960-044	MS Rialto North Douglas CA, LLC
072-2950-059	MS Rialto North Douglas CA, LLC	072-2960-045	MS Rialto North Douglas CA, LLC
072-2950-060	MS Rialto North Douglas CA, LLC	072-2960-046	MS Rialto North Douglas CA, LLC
072-2950-061	MS Rialto North Douglas CA, LLC	072-2960-047	MS Rialto North Douglas CA, LLC
072-2950-062	MS Rialto North Douglas CA, LLC	072-2960-048	MS Rialto North Douglas CA, LLC
072-2950-063	MS Rialto North Douglas CA, LLC	072-2960-049	MS Rialto North Douglas CA, LLC
072-2960-001	MS Rialto North Douglas CA, LLC	072-2960-050	MS Rialto North Douglas CA, LLC
072-2960-002	MS Rialto North Douglas CA, LLC	072-2960-051	MS Rialto North Douglas CA, LLC
072-2960-003	MS Rialto North Douglas CA, LLC	072-2960-052	MS Rialto North Douglas CA, LLC
072-2960-004	MS Rialto North Douglas CA, LLC	072-2960-053	MS Rialto North Douglas CA, LLC
072-2960-005	MS Rialto North Douglas CA, LLC	072-2960-054	MS Rialto North Douglas CA, LLC
072-2960-006	MS Rialto North Douglas CA, LLC	072-2960-055	MS Rialto North Douglas CA, LLC
072-2960-007	MS Rialto North Douglas CA, LLC	072-2960-056	MS Rialto North Douglas CA, LLC
072-2960-008	MS Rialto North Douglas CA, LLC	072-2960-057	MS Rialto North Douglas CA, LLC
072-2960-009	MS Rialto North Douglas CA, LLC	072-2960-058	MS Rialto North Douglas CA, LLC
072-2960-010	MS Rialto North Douglas CA, LLC	072-2960-059	MS Rialto North Douglas CA, LLC
072-2960-011	MS Rialto North Douglas CA, LLC	072-2960-060	MS Rialto North Douglas CA, LLC

EXHIBIT B

Parcel No.	Owner	Parcel No.	Owner
072-2960-061	MS Rialto North Douglas CA, LLC	072-2900-045	WOODSIDE 05N, LP
072-2960-062	MS Rialto North Douglas CA, LLC	072-2900-046	WOODSIDE 05N, LP
072-2960-063	MS Rialto North Douglas CA, LLC	072-2900-047	WOODSIDE 05N, LP
072-2960-064	MS Rialto North Douglas CA, LLC	072-2900-048	WOODSIDE 05N, LP
072-2960-065	MS Rialto North Douglas CA, LLC	072-2900-049	WOODSIDE 05N, LP
072-2900-001	WOODSIDE 05N, LP	072-2900-050	WOODSIDE 05N, LP
072-2900-002	WOODSIDE 05N, LP	072-2900-051	WOODSIDE 05N, LP
072-2900-003	WOODSIDE 05N, LP	072-2900-052	WOODSIDE 05N, LP
072-2900-004	WOODSIDE 05N, LP	072-2900-053	WOODSIDE 05N, LP
072-2900-005	WOODSIDE 05N, LP	072-2900-054	WOODSIDE 05N, LP
072-2900-006	WOODSIDE 05N, LP	072-2900-055	WOODSIDE 05N, LP
072-2900-007	WOODSIDE 05N, LP	072-2900-056	WOODSIDE 05N, LP
072-2900-008	WOODSIDE 05N, LP	072-2900-057	WOODSIDE 05N, LP
072-2900-009	WOODSIDE 05N, LP	072-2900-058	WOODSIDE 05N, LP
072-2900-010	WOODSIDE 05N, LP	072-2900-059	WOODSIDE 05N, LP
072-2900-011	WOODSIDE 05N, LP	072-2900-060	WOODSIDE 05N, LP
072-2900-012	WOODSIDE 05N, LP	072-2900-061	WOODSIDE 05N, LP
072-2900-013	WOODSIDE 05N, LP	072-2900-062	WOODSIDE 05N, LP
072-2900-014	WOODSIDE 05N, LP	072-2900-063	WOODSIDE 05N, LP
072-2900-015	WOODSIDE 05N, LP	072-2900-064	WOODSIDE 05N, LP
072-2900-016	WOODSIDE 05N, LP	072-2900-065	WOODSIDE 05N, LP
072-2900-017	WOODSIDE 05N, LP	072-2900-066	WOODSIDE 05N, LP
072-2900-018	WOODSIDE 05N, LP	072-2900-067	WOODSIDE 05N, LP
072-2900-019	WOODSIDE 05N, LP	072-2900-068	WOODSIDE 05N, LP
072-2900-020	WOODSIDE 05N, LP	072-2900-069	WOODSIDE 05N, LP
072-2900-021	WOODSIDE 05N, LP	072-2900-070	WOODSIDE 05N, LP
072-2900-022	WOODSIDE 05N, LP	072-2900-071	WOODSIDE 05N, LP
072-2900-023	WOODSIDE 05N, LP	072-2900-072	WOODSIDE 05N, LP
072-2900-024	WOODSIDE 05N, LP	072-2900-073	WOODSIDE 05N, LP
072-2900-025	WOODSIDE 05N, LP	072-2900-074	WOODSIDE 05N, LP
072-2900-026	WOODSIDE 05N, LP	072-2900-075	WOODSIDE 05N, LP
072-2900-027	WOODSIDE 05N, LP	072-2900-076	WOODSIDE 05N, LP
072-2900-028	WOODSIDE 05N, LP	072-2900-078	WOODSIDE 05N, LP
072-2900-029	WOODSIDE 05N, LP	072-2900-077	WOODSIDE 05N, LP
072-2900-030	WOODSIDE 05N, LP	072-2900-079	WOODSIDE 05N, LP
072-2900-031	WOODSIDE 05N, LP	072-2910-053	WOODSIDE 05N, LP
072-2900-032	WOODSIDE 05N, LP	072-2910-054	WOODSIDE 05N, LP
072-2900-033	WOODSIDE 05N, LP	072-2910-055	WOODSIDE 05N, LP
072-2900-034	WOODSIDE 05N, LP	072-2910-056	WOODSIDE 05N, LP
072-2900-035	WOODSIDE 05N, LP		
072-2900-036	WOODSIDE 05N, LP		
072-2900-037	WOODSIDE 05N, LP		
072-2900-038	WOODSIDE 05N, LP		
072-2900-039	WOODSIDE 05N, LP		
072-2900-040	WOODSIDE 05N, LP		
072-2900-041	WOODSIDE 05N, LP		
072-2900-042	WOODSIDE 05N, LP		
072-2900-043	WOODSIDE 05N, LP		
072-2900-044	WOODSIDE 05N, LP		

AGENDA ITEM 13.3

MEMORANDUM

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Elizabeth Sparkman, Senior Engineer

SUBJECT: **RESOLUTION DECLARING CITY'S INTENTION TO IMPOSE AN ANNUAL STORMWATER UTILITY FEE FOR THE MAINTENANCE OF STORM DRAINAGE AND FLOOD PROTECTION SYSTEM FOR THE NORTH DOUGLAS PROJECT**

RECOMMENDATION

Adopt Resolution No.122-2014, designating a time and place for hearing protests in connection with the annual Stormwater Utility (SWU) Fee for the North Douglas.

RESULT OF RECOMMENDED ACTION

Action on this item will declare the Council's intention to impose an annual Stormwater Utility Fee for the maintenance of the storm drainage and flood protection system in the North Douglas Project and sets a public hearing on November 17, 2014 on the matter.

BACKGROUND

The Council has approved projects in the City, including the North Douglas project. This project has a condition of approval which requires that the property owner fund operation and maintenance of the storm drainage system. This condition will be satisfied by the participation in the City's Stormwater Utility Fee for storm drainage and flood protection services which is the subject of tonight's action.

Previously, projects were required to annex to the County's Stormwater Utility. Since the City is taking over drainage maintenance and operations services from the County, it was necessary to establish the Stormwater Utility District to properly fund drainage services to ensure compliance with new state and federal laws and regulations. The Stormwater Utility Fee was established on September 2, 2014 by Ordinance No. 7-2014. The boundary of the Stormwater Utility Fee only included Montelana at that time.

DISCUSSION

The property owner has submitted a petition and waiver for the City to institute the proceedings to impose the Stormwater Utility Fee. The North Douglas Project is being annexed into the Stormwater Utility Fee, see **ATTACHMENT 1**. The maintenance services to be funded include the furnishing of services and materials for the ordinary and usual operation, maintenance, and servicing of the storm drain and flood protection improvements.

ATTACHMENT 2 is the Resolution of Intention which sets 5:30 p.m., or as soon thereafter as possible, on November 17, 2014 as the time and date for a hearing on the matters set forth therein. Notice of the Public Hearing will be published in the Grapevine Independent as required by law. Furthermore, a notice of the hearing will be mailed to each property owner within the proposed Stormwater Utility Fee area.

The "Rate Analysis Report" was prepared by Harris & Associates and adopted on September 2, 2014 by Resolution 103-2014. The report calculated the Fiscal Year 2014/2015 maximum annual Stormwater Utility Fee amount for each parcel proportionate to the estimated stormwater runoff for each parcel. The maximum annual fee is proposed to be increased each subsequent Fiscal Year by the annual change in the Consumer Price Index (CPI), during the preceding year, for All Urban Consumers, for the San Francisco-Oakland-San Jose areas, published by the United States Department of Labor, Bureau of Labor Statistics

A sample of the Stormwater Utility Fees for Fiscal Year 2014/2015 are summarized in the following table:

Table 1

Land Use Description	Total Area (acres)	Sample Fee
Single Family Residential (SFR1)	0.16	$144.48
Single Family Residential (SFR2)	0.22	$158.93
Single Family Residential (SFR3)	0.30	$169.77
Single Family Residential (SFR4)	0.40	$180.60
Single Family Residential (SFR5)	1.00	$225.75
Multi-Family Residential (MFR1)	5.00	$6,772.61
Commercial	1.00	$1,715.73
Industrial	1.00	$1,444.82
Schools	5.00	$4,515.08
Private Recreation	1.00	$451.51
Parks/Greenbelts	2.00	$361.21
Public Property (with structures)	2.00	$1,083.62

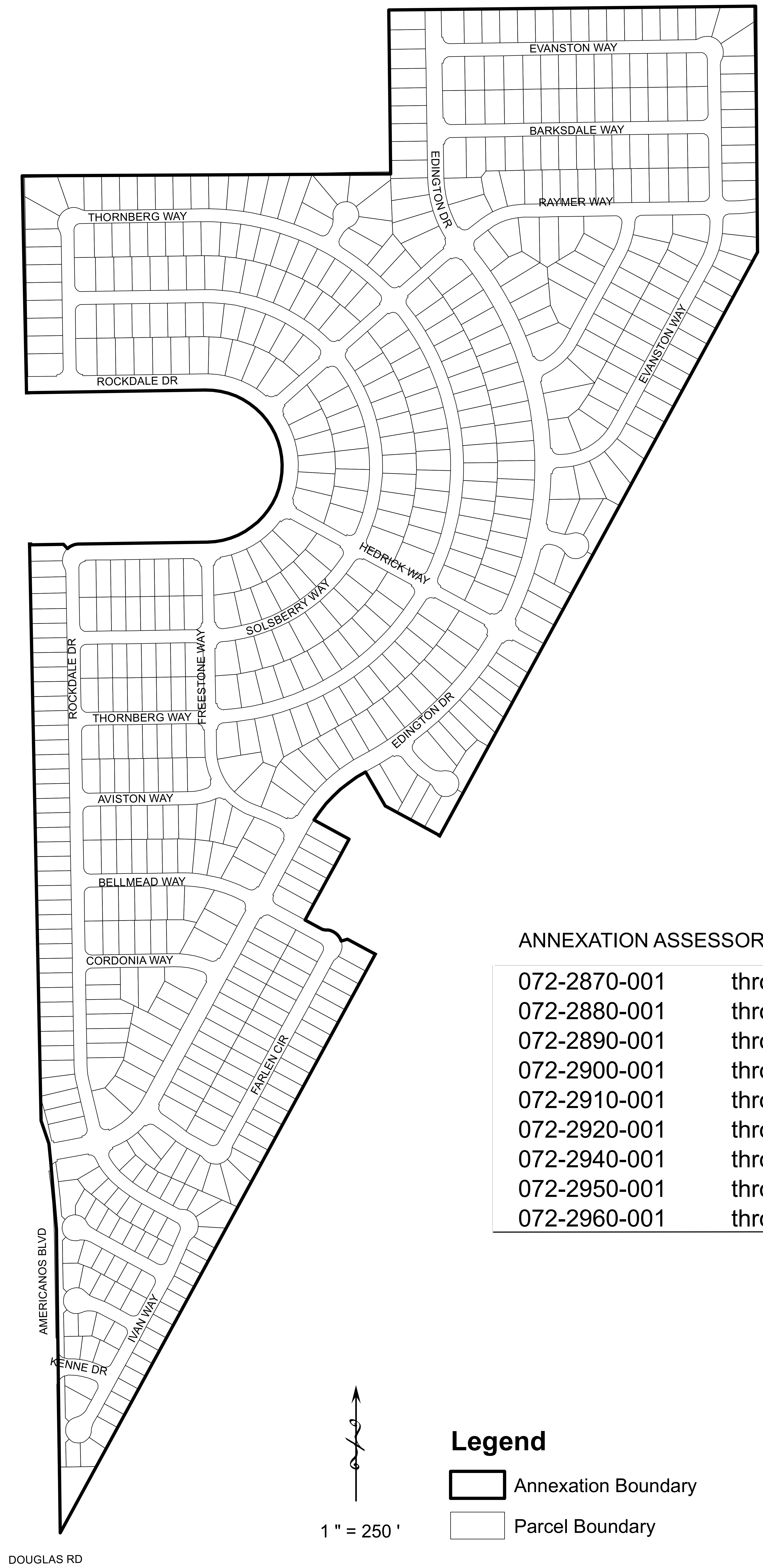
In tonight's action, the council is requested to adopt Resolution No. 122-2014 which sets November 17, 2014 as the date and time for a public hearing and directs the City Clerk to give notice of the public hearing.

ATTACHMENTS

1. Boundary Map.
2. Resolution No. 122-2014 with Exhibit A.

ATTACHMENT 1

CITY OF RANCHO CORDOVA
STORMWATER UTILITY FEE AREA
ANNEXATION 1
(NORTH DOUGLAS) TO



ANNEXATION ASSESSOR PARCEL NUMBERS (APN)

072-2870-001	through	072-2870-072
072-2880-001	through	072-2880-082
072-2890-001	through	072-2890-088
072-2900-001	through	072-2900-080
072-2910-001	through	072-2910-083
072-2920-001	through	072-2920-069
072-2940-001	through	072-2940-066
072-2950-001	through	072-2950-063
072-2960-001	through	072-2960-065

HARRIS & ASSOCIATES
22 EXECUTIVE PARK SUITE 200
IRVINE, CALIFORNIA 92614
800-827-4901

ATTACHMENT 2

RESOLUTION NO. 122-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DESIGNATING A TIME AND PLACE FOR HEARING PROTESTS IN CONNECTION WITH THE ANNUAL STORMWATER UTILITY FEE FOR THE NORTH DOUGLAS PROJECT

RESOLVED, by the City Council (the “Council”) of the City of Rancho Cordova (the “City”), County of Sacramento, State of California as follows:

WHEREAS, the Stormwater Utility Fee was established on September 2, 2014 by Ordinance No. 7-2014 to fund services and facilities furnished by the City in connection with its storm drain system. The Proposed Stormwater Utility Fee may be billed through the County Utility Billing Service (CUBS) as part of the consolidated utility bill or may be collected on the County of Sacramento tax roll, commencing in Fiscal Year 2014-15, in the same manner, by the same persons, and at the same time as, together with and not separately from, the general taxes of the City in the manner prescribed by Sections 5471 et seq. of the California Health and Safety Code; and

WHEREAS, this Council has caused a written report entitled, "Rate Analysis Report", dated July 15, 2014, (the "Written Report") to be prepared by Harris & Associates and filed with the City Clerk containing a description of each parcel of real property within the City to which the Proposed Stormwater Utility Fee is applicable (collectively, the "Identified Parcels") and the amount of the Proposed Stormwater Utility Fee for each such Identified Parcel for Fiscal Year 2014-15. The Written Report is on file in the office of the City Clerk and is available for public inspection; and

WHEREAS, this Council has received petitions and waivers from the owners of not less than 100% of the area of land proposed to be included in the Proposed Stormwater Utility Fee; and

WHEREAS, Article XIII D of the California Constitution and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750, et seq.) (the "Implementation Act") imposes certain procedural and substantive requirements relating to the imposition of property-related fees and charges (as defined in Article XIII D), such as the Proposed Stormwater Utility Fee, including the requirement to conduct a protest hearing and balloting for consideration of the Proposed Stormwater Utility Fee. In accordance with Article XIII D and the Implementation Act, the City Council hereby approves the "Procedures for the Conduct of a Protest Hearing and Balloting Relating to a Proposed Stormwater Utility Fee " as set forth in Exhibit "A," attached hereto and incorporated herein by reference (the "Procedures").

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The foregoing recitals are true and correct.

2. NOTICE IS HEREBY GIVEN THAT THE CITY COUNCIL DESIGNATES MONDAY, NOVEMBER 17, 2014, AT THE HOUR OF 5:30 P.M., IN THE COUNCIL CHAMBERS, CITY HALL, 2729 PROSPECT DRIVE, RANCHO CORDOVA, CALIFORNIA, AS THE TIME AND PLACE FOR A PUBLIC HEARING ON THE ABOVE-DESCRIBED WRITTEN REPORT AND PROTESTS OR OBJECTIONS TO THE IMPOSITION OF THE PROPOSED STORMWATER UTILITY FEE.

At the above-described public hearing, all interested persons shall be afforded the opportunity to hear and be heard, and the City Council shall consider all protests against the Proposed Stormwater Utility Fee. If written protests against the Stormwater Utility Fee are presented by a majority of owners of the Identified Parcels, the City shall not impose the Proposed Stormwater Utility Fee. In the absence of a majority protest, the City Council may submit the Proposed Stormwater Utility Fee to a vote of the property owners in accordance with Article XIII D of the California Constitution.

3. The City Clerk is hereby authorized and directed to give notice of the above-described public hearing in accordance with law and the Procedures.

4. Reference is hereby made to the Written Report described in Section 2 hereof, which is on file in the office of the City Clerk, for a full and detailed description of the Proposed Stormwater Utility Fee upon parcels of land within the City

5. The City Council hereby designates Elizabeth Sparkman, Senior Engineer, telephone number, (916) 851-8714 to answer inquiries regarding the public hearing, protest proceedings and procedural or technical matters.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova this ___ day of ________, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

____
Dan Skoglund, Mayor

ATTEST:

____
Mindy Cuppy, MMC, City Clerk

EXHIBIT "A"

PROCEDURES FOR THE CONDUCT OF A PROTEST HEARING AND VOTE RELATING TO A PROPOSED STORMWATER UTILITY FEE

The following Procedures have been adopted by the City Council of the City of Rancho Cordova for the purpose of conducting a protest hearing required by Article XIII D of the California Constitution for consideration of the imposition of a proposed Stormwater Utility Fee *Fee (the "Proposed* Stormwater Utility Fee *").*

TABLE OF CONTENTS

A. <u>Written Report</u>

The City shall cause to be prepared a written report ("Written Report"), which shall contain a list of all parcels to which the Proposed Stormwater Utility Fee will apply (the "Identified Parcels") and the amount of the Proposed Stormwater Utility Fee for each Identified Parcel for Fiscal Year 2014-15.

The Written Report shall be placed on file in the office of the City Clerk prior to the mailing of the Notice of Public Hearing on the Proposed Stormwater Utility Fee and shall remain available for public inspection.

B. <u>Notice of the Public Hearing on the Proposed Stormwater Utility Fee</u>

Notice of the public hearing on the Proposed Stormwater Utility Fee shall be sent, postage prepaid, by first class mail at least forty-five (45) days prior to the date set for the public hearing to the Record Owner of each Identified Parcel. The forty-five (45) day requirement may be waived with the unanimous consent of the property owners.

"Record Owner" means the owner of an Identified Parcel whose name and address appears on the last Sacramento County equalized secured property tax assessment roll (the "Assessment

Roll"), or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the City.

Notices shall be mailed to the Record Owners of the Identified Parcels, addressed to the names and addresses as they appear on the Assessment Roll, and, in the case of any public entity, the State of California, or the United States, addressed to the public entity at the address of that entity known to the City. In addition, notices shall be mailed to owners of the Identified Parcels, addressed to the names and addresses known to the City Clerk, if different than shown on the Assessment Roll.

Each mailed notice shall contain all of the following:

- A reference to filing of the Written Report;
- A reference to the proposed ordinance imposing the Proposed Stormwater Utility Fee and providing for the collection of the Fee on the County tax roll;
- The amount of the Proposed Stormwater Utility Fee to be imposed upon the Identified Parcel covered by the notice;
- The basis upon which the amount of the Proposed Stormwater Utility Fee was calculated;
- The reason for the Proposed Stormwater Utility Fee;
- A statement that the Proposed Stormwater Utility Fee may be collected as part of a consolidated utility bill via CUBS or on the County of Sacramento tax roll each year, commencing with Fiscal Year 2014-15;
- The effect of a majority protest; and
- The date, time and location of a public hearing on the Proposed Stormwater Utility Fee.

The City Clerk, or the designee of the City Clerk, may certify the proper mailing of notices by an affidavit, which shall constitute conclusive proof of mailing in the absence of fraud.

Failure of any person to receive notice shall not invalidate the proceedings.

Notice of the filing of the Written Report and the public hearing shall be published once a week for two successive weeks in the Grapevine Independent, with the first publication at least fourteen (14) days prior to the date of the public hearing, and with at least five (5) days intervening between the first and second publications. The published notice may be waived by unanimous consent of the property owners.

C. Eligibility to File a Protest

The Assessment Roll shall be presumptive evidence of ownership of an Identified Parcel for protest purposes.

If the owner of any Identified Parcel is not shown on the Assessment Roll, such owner may file a protest for such parcel by filing with the City Clerk a proxy from the Record Owner in a form satisfactory to the City Attorney or evidence of ownership satisfactory to the City Attorney. Any such proxy or evidence must be received by the City Clerk prior to the conclusion of the public hearing.

When an Identified Parcel is held by a partnership, as community property, in joint tenancy, or as a tenancy in common, any partner, spouse, joint tenant, or tenant in common, as the case may be, may file a protest for such parcel.

An executor, administrator, or guardian may file a protest for an Identified Parcel on behalf of the estate it represents. If such representative is shown on the Assessment Roll as paying taxes and assessments levied against the parcel, that fact shall establish the right of such representative to file the protest. If such representative is not shown on the Assessment Roll, the representative must file with the City Clerk written documentation satisfactory to the City Attorney establishing the legal representation. Any such documentation must be filed with the City Clerk prior to the conclusion of the public hearing.

When an Identified Parcel is held by a corporation or unincorporated association, a protest may be filed by any person authorized in writing by the board of directors or trustees or other managing body thereof to take such actions. The corporation or unincorporated association must file with the City Clerk written authorization satisfactory to the City Attorney. Any such written authorization must be filed with the City Clerk prior to the conclusion of the public hearing.

D. <u>Submission of Written Protests</u>

Written protests may be mailed (via U.S. mail) to the City Clerk at City Hall or delivered in person to the City Clerk at City Hall or at the public hearing.

No protests delivered via e-mail will be counted for purposes of determining whether a majority protest exists, but the City Council may, in its discretion, consider such protests in making determinations regarding the Proposed Stormwater Utility Fee

Each written protest must identify the property covered by the protest and be signed.

No protest received after the close of the public hearing shall be counted in determining the existence of a majority protest. The last pick up by the City Clerk of protests mailed or delivered to City Hall will occur at 4:30 p.m. on the date scheduled for the public hearing. To ensure that protests which are mailed or delivered to City Hall are received by the City Clerk prior to the close of the public hearing, such protests must be received by the City Clerk at City Hall prior to 4:30 p.m. on the date scheduled for the public hearing. The City Clerk shall endorse on each written protest the date it is filed with the City. The City Clerk shall identify any protests which are received after the close of the public hearing.

Written protests may be withdrawn in writing at any time before the conclusion of the public hearing by the person who submitted the written protest.

For purposes of determining whether a majority protest exists, only one protest for each Identified Parcel will be counted.

All written protests shall be considered public records.

E. Conduct of the Public Hearing; Determination of a Majority Protest

1. At the time, date and place fixed for the public hearing, the City Council shall:

   (i) Conduct a public hearing pertaining to the Proposed Stormwater Utility Fee;

   (ii) Hear all persons interested in the matter of the Proposed Stormwater Utility Fee; and

   (iii) Receive all written communications regarding the Proposed Stormwater Utility Fee.

2. The public hearing may be continued from time to time, as the City Council determines is necessary to complete its consideration of the Proposed Stormwater Utility Fee.
3. If the City Council determines at the close of the public hearing that written protests have been presented, and not withdrawn, by a majority of owners of the Identified Parcels (i.e., there is a majority protest), the Proposed Stormwater Utility Fee shall not be approved.
4. If the City Council determines at the close of the public hearing that there is not a majority protest, the City Council may:

   (i) Remedy and correct any clerical error in the Written Report or otherwise modify the Written Report; provided that any such modification or correction shall not result in a Proposed Stormwater Utility Fee for any Identified Parcel which is greater than the amount shown in the notice of the public hearing that was mailed to the Record Owner of the Identified Parcel;

   (ii) Confirm the Written Report, as originally filed or as amended in accordance with subparagraph (i), above;

   (iii) Adopt a resolution calling for a property owner vote regarding the Proposed Stormwater Utility Fee.

F. Conduct Property Owner Vote; Determination of a Majority Consent

Pursuant to Government Code Section 53755.5(c), the proceedings described in this section shall not constitute an election or voting for purposes of Article II of the California Constitution or of the Elections Code.

An election on the Proposed Stormwater Utility Fee shall be sent, postage prepaid, by first class mail at least forty-five (45) days prior to the date set for the election to the Record Owner of each Identified Parcel. The forty-five (45) day requirement may be waived with the unanimous consent of the property owners.

Each mailed ballot shall contain all of the following:

- On the face of the envelope in which the notice of election and ballot are mailed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED."

- The ballot shall include the agency's address for return of the ballot, the date and location where the ballots will be tabulated, and a place where the person returning it may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed fee. The ballots shall be tabulated in a location accessible to the public. The ballot shall be in a form that conceals its content once it is sealed by the person submitting it. The ballot shall remain sealed until the ballot tabulation commences.

No ballot received after the time of the ballot tabulation shall be counted in determining the existence of majority consent. The last pick up by the City Clerk of ballots mailed or delivered to City Hall will occur at 4:30 p.m. on the date scheduled for the election. To ensure that ballots which are mailed or delivered to City Hall are received by the City Clerk prior to the commencement of the ballot tabulation, such ballots must be received by the City Clerk at City Hall prior to 4:30 p.m. on the date scheduled for the ballot tabulation. The City Clerk shall endorse on each ballot the date it is filed with the City. The City Clerk shall identify any ballots which are received after the commencement of the ballot tabulation.

An impartial person designated by the City who does not have a vested interest in the outcome of the proposed fee shall tabulate the ballots submitted in support of or opposition to the proposed fee. An impartial person includes, but is not limited to, the City Clerk. If the City uses City personnel for the ballot tabulation, or if the City contracts with a vendor for the ballot tabulation and the vendor or its affiliates participated in the research, design, engineering, public education, or promotion of the fee, the ballots shall be unsealed and tabulated in public view to permit all interested persons to meaningfully monitor the accuracy of the tabulation process.

The ballot tabulation may be continued to a different time or different location accessible to the public, provided that the time and location are announced at the location at which the tabulation commenced and posted by the City in a location accessible to the public. The impartial person may use technological methods to tabulate the ballots, including, but not limited to, punchcard or optically readable (bar-coded) ballots. During and after the tabulation, the ballots and, if applicable, the information used to determine the weight of each ballot, shall be treated as public records, subject to public disclosure and made available for inspection by any interested person. The ballots shall be preserved for a minimum of two years, after which they may be destroyed.

Majority approval of the Record Owners shall exist if the number of valid ballots in favor of the fee exceeds the number of valid ballots in opposition to the fee.

At the time, date and place fixed for the ballot tabulation, the City Council shall direct the City Clerk to commence the ballot tabulation.

If there is no majority approval, the Stormwater Utility Fee shall not be imposed.

If majority approval exists, the City Council may impose the Stormwater Utility Fee pursuant to the Ordinance.

MEMORANDUM

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director and
Kathy Garcia, Senior Civil Engineer

SUBJECT: **RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH KIMLEY-HORN AND ASSOCIATES FOR TECHNICAL DESIGN SERVICES FOR THE INTELLIGENT TRANSPORTATION SYSTEM (ITS) INFRASTRUCTURE IMPROVEMENTS PROJECT**

RECOMMENDATION

Adopt Resolution 125-2014.

RESULT OF RECOMMENDED ACTION

Adoption of this resolution will allow the City Manager to approve Contract No. 105-2014 with Kimley-Horn and Associates in the amount not to exceed $600,000 to provide technical design services for the ITS Infrastructure Improvements project.

BACKGROUND

Since incorporation, the City has contracted with the County of Sacramento to provide traffic operations for the City's traffic signals and ITS infrastructure. ITS infrastructure includes various types of equipment and technology that is used to improve the City's transportation system. Current ITS infrastructure includes traffic cameras, changeable message sign, and traffic signal coordination on Sunrise Blvd from Gold Country Boulevard to Mechanical Drive, Folsom Boulevard from Rod Beaudry Drive to Sunrise Boulevard, and Zinfandel Drive from Folsom Boulevard to White Rock Road.

The ITS infrastructure project will purchase a new advanced traffic management system (ATMS) which will be located at City Hall and will be connected to the Sacramento County Traffic Operations Center. The ATMS is a program that will allow the City to monitor the status of our transportation network, improve the coordination of our traffic signals, view images from our traffic cameras, and share this information with our residents on the City's website.

This project will also expand our traffic signal coordination by adding the following segments; extending Sunrise Boulevard south to Kiefer Boulevard, extending Zinfandel Drive south to the Sacramento Metro Fire Department driveway traffic signal, extending Folsom Boulevard east to Hazel Avenue and west to Bradshaw Road, White Rock Road from Zinfandel Drive to Sunrise Boulevard, Mather Field Road from Folsom Boulevard to Peter A McCuen Boulevard, International Drive from Mather Field Road to Sunrise Boulevard, and Rockingham Drive from Old Placerville Road to Mather Field Road.

Additional improvements that are part of this project including upgrading traffic signal cabinets and controllers and installing additional traffic cameras to better utilize the enhanced capabilities of the new ATMS.

Public Works staff applied for and received two federal grants totaling $4,000,000, one from SACOG's Regional/Local Funding Program and the other from Federal Highway Administration, Highway Safety Improvement Program (HSIP) to fund the project scoping, design and construction of this project.

City staff prepared a request for qualifications (RFQ) to hire a consultant to assist with the project scoping, design, and construction support. Five consultant firms responded to the City's RFQ. After reviewing the qualifications, City staff recommends hiring Kimley-Horn and Associates based on their experience with similar types of projects, the understanding of the City's project, and their familiarity with the Sacramento region.

FISCAL IMPACT

The funding for this project comes from Federal Grants.

ATTACHMENT

Resolution 125-2014, including Exhibit 1 – Contract 105-2014

CITY OF RANCHO CORDOVA

RESOLUTION NO. 125-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH KIMLEY-HORN & ASSOCIATES, INC. TO PROVIDE TECHNICAL DESIGN SERVICES FOR THE INTELLIGENT TRANSPORTATION SYSTEM (ITS) INFRASTRUCTURE IMPROVEMENTS PROJECT

WHEREAS, the City of Rancho Cordova wishes to contract with a professional engineering firm to provide technical design services for the Intelligent Transportation System (ITS) Infrastructure Improvements Project; and

WHEREAS, the City of Rancho Cordova wishes to contract with Kimley-Horn & Associates, Inc. for these services in an amount not to exceed $600,000; and

WHEREAS, the cost of those services will exceed the maximum amount that the City Manager has authorization to approve.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA that the City Council authorizes the City Manager to execute a contract with Kimley-Horn & Associates, Inc. (**Exhibit 1**), in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council on the ___ day of ________, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Dan Skoglund, Mayor

ATTEST:

____
Mindy Cuppy, MMC, City Clerk

EXHIBIT 1

CONTRACT NO.: 105-2014

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF RANCHO CORDOVA AND
KIMLEY-HORN**

THIS AGREEMENT for professional services is made by and between the City of Rancho Cordova, a California municipal corporation ("City"), and Kimley-Horn ("Professional") as of _________________, 2014.

Section 1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Professional shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on 12/31/16, the date of completion specified in Exhibit A. Professional shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. Professional is advised that any recommendation for contract award is not binding on City until the contract is fully executed and approved by City.

1.2 **Standard of Performance.** Professional shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Professional is engaged in the geographical area in which Professional practices its profession. Professional shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Professional's profession.

1.3 **Assignment of Personnel.** Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Professional shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons. There shall be no change in Professional's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by City's Contract Administrator.

1.4 **Time.** Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Professional's obligations hereunder.

Section 2. **COMPENSATION.** City hereby agrees to pay Professional a sum not to exceed Six Hundred Thousand Dollars ($600,000), notwithstanding any contrary indications that may be contained in

EXHIBIT 1

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Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Professional's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Professional for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Professional for services rendered pursuant to this Agreement. Professional shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Professional shall not bill City for duplicate services performed by more than one person.

Professional and City acknowledge and agree that compensation paid by City to Professional under this Agreement is based upon Professional's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Professional. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Professional and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Professional shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Professional and each employee, agent, and subcontractor of Professional performing services hereunder, as well as a separate notice when the total number of hours of work by Professional and any individual employee, agent, or subcontractor of Professional reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Professional's signature.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Professional.

2.3 **Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 **Total Payment.** City shall pay for the services to be rendered by Professional pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Professional in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Professional submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 **Hourly Fees.** Fees for work performed by Professional on an hourly basis shall not exceed the amounts shown on the fee schedule set forth in Exhibit B.

2.6 **Reimbursable Expenses.** Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 **Payment of Taxes.** Professional is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 **Payment upon Termination.** In the event that the City or Professional terminates this Agreement pursuant to Section 8, the City shall compensate the Professional for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Professional shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.9 **Authorization to Perform Services.** The Professional is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. **FACILITIES AND EQUIPMENT.** Except as set forth herein, Professional shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Professional only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Professional's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Professional, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Professional and its agents, representatives, employees, and subcontractors. Professional shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Professional shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Professional's bid. Professional shall not allow any subcontractor to commence work on any subcontract until Professional has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Professional shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Professional shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Professional. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. In the alternative, Professional may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Professional, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

The requirement to maintain Statutory Worker's Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Professional does not have any employees.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Professional, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS ($2,000,000.00) and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00). The commercial general liability and automobile liability insurance shall be per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a commercial general liability insurance or an automobile liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 **Minimum scope of coverage.** Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Professional, including the insured's general supervision of Professional; products and completed operations of Professional; premises owned, occupied, or used by Professional; and automobiles owned, leased, or used by the Professional. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of Professional to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Professional shall notify City within fourteen (14) days of notification from Professional's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.3 **Professional Liability Insurance.** Professional, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS ($2,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Professional must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The City shall have the right to exercise, at the Professional's sole cost and expense, any extended reporting provisions of the policy, if the Professional cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Professional shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.4.3 Subcontractors. Professional shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Professional shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Professional may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Professional procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.5 Waiver of Subrogation. Professional hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Professional agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Professional, its employees, agents, and subcontractors.

4.4.6 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Professional shall provide written notice to City at Professional's earliest possible opportunity and in no case later than five (5) days after Professional is notified of the change in coverage.

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4.5 **Remedies.** In addition to any other remedies City may have if Professional fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Professional's breach:

§ Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

§ Order Professional to stop work under this Agreement or withhold any payment that becomes due to Professional hereunder, or both stop work and withhold any payment, until Professional demonstrates compliance with the requirements hereof; and/or

§ Terminate this Agreement.

Section 5. INDEMNIFICATION AND PROFESSIONAL'S RESPONSIBILITIES.

5.1 **General Requirement.** Professional shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Professional or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Professional shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Professional or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Professional to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Professional from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Professional acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.2 **PERS Indemnification.** In the event that Professional or any employee, agent, or subcontractor of Professional providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System

(PERS) to be eligible for enrollment in PERS as an employee of City, Professional shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Professional or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

5.3 **Design Professionals.** Notwithstanding Sections 5.1 and 5.2, to the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Professional's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

Section 6. STATUS OF PROFESSIONAL.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Professional shall be an independent contractor as defined in Labor Code Section 3353, and shall not be an employee of City. Nothing contained in this Agreement shall be construed to be inconsistent with the foregoing relationship or status. City shall have the right to control Professional only insofar as the results of Professional's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Professional accomplishes services rendered pursuant to this Agreement. Professional shall have no power or authority by this Agreement to bind the City in any respect. All employees and agents hired or retained by Professional are employees and agents of Professional and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Professional by any such employees or agents, or any other person resulting from performance of this Agreement.

Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Professional and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Professional shall not allow any employee to become eligible for a claim for PERS benefits.

6.2 **Professional Not an Agent.** Except as City may specify in writing, Professional shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Professional shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

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Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Professional and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code Section 1770 and following, and any copyright, patent or trademark law. Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Professional and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Professional represents and warrants to City that Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Professional represents and warrants to City that Professional and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Professional and any subcontractors shall obtain and maintain valid Business Licenses from City during the term of this Agreement.

7.5 **Nondiscrimination and Equal Opportunity/ Statement of Compliance.**

7.5.1 Professional's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Professional has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

7.5.2 During the performance of this Contract, Professional and its sub-professionals shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Professional and subprofessionals shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Professional and subprofessionals shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Professional and its subprofessionals shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

7.5.3 Professional shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

7.6 **SAFETY.**

7.6.1 Professional shall comply with OSHA regulations applicable to Professional regarding necessary safety equipment or procedures. Professional shall comply with safety instructions issued by City Safety Officer and other City representatives. Professional personnel shall wear hard hats and safety vests at all times while working on the construction project site.

7.6.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, City has determined that such areas are within the limits of the project and are open to public traffic. Professional shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Professional shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

7.6.3 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

7.6.4 Professional must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City reserves the right to terminate this contract upon thirty (30) calendar days' written notice to Professional with the reasons for termination stated in the notice.

Professional may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Professional shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Professional delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Professional or prepared by or for Professional or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Professional understands and agrees that, if City grants such an extension, City shall have no obligation to provide Professional with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Professional for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties. Professional shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by City's Contract Administrator.

8.4 **Assignment and Subcontracting.** City and Professional recognize and agree that this Agreement contemplates personal performance by Professional and is based upon a determination of Professional's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Professional. Professional may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Professional shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all the provisions stipulated in this contract to be applicable to subcontractors. Any substitution of subcontractors must be approved in writing by City's Contract Administrator prior to the start of work by the subcontractor.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Professional shall survive the termination of this Agreement.

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8.6 **Options upon Breach by Professional.** If Professional materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Professional pursuant to this Agreement;

8.6.3 Retain a different Professional to complete the work described in Exhibit A not finished by Professional; or

8.6.4 Charge Professional the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Professional pursuant to Section 2 if Professional had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Professional's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Professional prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Professional hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Professional agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Professional, subcontractors, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Professional that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of $25,000 shall contain this provision.

9.2 **<u>Professional's Books and Records.</u>** Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Professional pursuant to this Agreement.

9.3 **<u>Inspection and Audit of Work and Records.</u>** Any records or documents that Section 9.2 of this Agreement requires Professional to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement. Professional and any subcontractor shall permit City, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

9.4 **<u>Confidentiality of Data.</u>**

<u>9.4.1</u> All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to Professional in order to carry out this contract, shall be protected by Professional from unauthorized use and disclosure.

<u>9.4.2</u> Permission to disclose information on one occasion, or public hearing held by City relating to the contract, shall not authorize Professional to further disclose such information, or disseminate the same on any other occasion.

<u>9.4.3</u> Professional shall not comment publicly to the press or any other media regarding the contract or City's actions on the same, except to City's staff, Professional's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

<u>9.4.4</u> Professional shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by City, and receipt of City's written permission.

<u>9.4.5</u> <u>Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.</u>

9.4.6 All information related to the construction estimate is confidential, and shall not be disclosed by Professional to any entity other than City.

9.5 Ownership of Data.

9.5.1 Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in City; and no further agreement will be necessary to transfer ownership to City. Professional shall furnish City all necessary copies of data needed to complete the review and approval process.

9.5.2 It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

9.5.3 Professional is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by City of the machine-readable information and data provided by Professional under this contract; further, Professional is not liable for claims, liabilities, or losses arising out of, or connected with any use by City of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by Professional.

9.5.4 Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

9.5.5 City may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

9.5.6 Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

9.6 Audit Review Procedures.

9.6.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by City's Chief Financial Officer.

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9.6.2 Not later than 30 days after issuance of the final audit report, Professional may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

9.6.3 Neither the pendency of a dispute nor its consideration by City will excuse Professional from full and timely performance, in accordance with the terms of this contract.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Sacramento or in the United States District Court for the Eastern District of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach**. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Professional shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.**

10.7.1 Professional may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place

Professional in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

10.7.2 Professional shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

10.7.3 Professional hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Professional was an employee, agent, appointee, or official of the City in the previous twelve months, Professional warrants that it did not participate in any manner in the forming of this Agreement. Professional understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Professional will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Professional will be required to reimburse the City for any sums paid to the Professional. Professional understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.7.4 Federal Transit Funding Provisions Related to Conflict of Interest.

10.7.4.1 The Professional shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this contract, or any ensuing City construction project. The Professional shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.

10.7.4.2 The Professional hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

10.7.4.3 The Professional hereby certifies that neither Professional, nor any firm affiliated with the Professional will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

10.7.4.4 Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

10.7.4.5 The Professional hereby certifies that the Professional, its employees, nor any firm affiliated with the Professional providing service on this project prepared the Plans, Specifications, and Estimates for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

10.7.4.6 The Professional further certifies that neither Professional, nor any firm affiliated with the Professional, will bid on any construction subcontracts included within the construction contract. Additionally, Professional certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.

10.7.4.7 Except for subcontractors whose services are limited to materials testing, no subcontractor who is providing service on this contract shall have provided services on the design of any project included within this contract.

10.8 **Solicitation.** Professional agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Kathy Garcia ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Professional shall be sent to:

Kimley-Horn
Attn: Tom Coppin

Any written notice to City shall be sent to:

City of Rancho Cordova

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Attn: Kathy Garcia
2729 Prospect Park Drive
Rancho Cordova, CA 95670

10.11 **Professional Seal.** Where applicable in the determination of the contract administrator or when required by law, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

______________________________ Seal and Signature of Registered Professional with report/design responsibility.

10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, the compensation schedule attached hereto and incorporated herein as Exhibit B, as well as Exhibits 10-H, 10-I, 10,J, 10-01, 10-02, 17-F, 10-P, 12-B, 10-V, and 10-F represents the entire and integrated agreement between City and Professional and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 **IRS Form W-9.** Professional shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

Section 11 FEDERAL FUND PROVISIONS.

11.1 **Prohibition of Expending City State or Federal Funds for Lobbying.** The Professional certifies to the best of his or her knowledge and belief that:

11.1.1 No state, federal or City appropriated funds have been paid, or will be paid by-or-on behalf of the Professional to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the state Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

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11.1.2 If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Professional shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

11.1.3 This certification is a material representation of fact upon which reliance was place when these transactions was made or enter into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

11.1.4 The Professional also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed $100,000, and that all such sub recipients shall certify and disclose accordingly.

11.2 Rebates, Kickbacks or other Unlawful Consideration. The Professional warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

11.3 Debarment and Suspension Certification.

11.3.1 Professional's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Professional has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to City.

11.3.2 Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Professional responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

11.3.3 Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

11.4 Evaluation of Professional. Professional's performance will be evaluated by City. A copy of the evaluation will be sent to Professional for comments. The evaluation together with the comments shall be retained as part of the contract record.

11.5 National Labor Relations Board Certification. In accordance with Public Contract Code Section 10296, Professional hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Professional within the immediately preceding two-year period, because of Professional's failure to comply with an order of a federal court that orders Professional to comply with an order of the National Labor Relations Board.

11.6 Equipment Purchase.

11.6.1 Prior authorization in writing, by the City's Contract Manager shall be required before the Professional enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or Professional services. The Professional shall provide an evaluation of the necessity or desirability of incurring such costs.

11.6.2 For purchase of any item, service or consulting work not covered in the Professional's Cost Proposal and exceeding $5,000 prior authorization by the City's Contract Manger; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

11.6.3 Any equipment purchased as a result of this contract is subject to the following; "The Professional shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the City shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the Professional may either keep the equipment and credit the City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit the City in an amount equal to the sale price. If the Professional elects to keep the equipment, fair market value shall be determined at the Professional's expenses, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the City and the Professional, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the City. 49 CFR. Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the project.

11.7 Disputes.

11.7.1 Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of City's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by Professional.

11.7.2 Not later than 30 days after completion of all work under the contract, Professional may request review by City Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

11.7.3 Neither the pendency of a dispute, nor its consideration by the committee will excuse Professional from full and timely performance in accordance with the terms of this contract.

11.8 Cost Principles.

11.8.1 Professional agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allow ability of individual items.

11.8.2 Professional also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

11.8.3 Any costs for which payment has been made to Professional that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Professional to City.

11.9 Disadvantaged Business Enterprise Considerations. Professional must give consideration to DBE firms as specified in 23 CFR §172.5 (b), 49 CFR, Part 26, and in

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Exhibit 10-I "Notice to Proposers Disadvantaged Business Enterprise Information." If the contract has DBE goal, the Professional must meet the DBE goal by using DBEs as subcontractors or document a good faith effort to have met the goal. If a DBE subcontractor is unable to perform, the Professional must make a good faith effort to replace him/her with another DBE subcontractor is the goal is not otherwise met. LAPM Exhibits 10-I, 10-J, 10-O1, 15-H and 17-F are included in this Contract as though fully set forth herein.**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first set forth above, which date shall be considered by the Parties to be the effective date of this Agreement. The two Parties to this contract, hereby agree that this contract constitutes the entire agreement which is made and concluded in duplicate between the parties. Both of these Parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as evidenced by the signatures below.

City of Rancho Cordova	Professional
______________________________	______________________________
Brian Nakamura, City Manager	**Thomas G. Coppin, Vice President**
Date: ____________________	Date: ____________________

Attest:

____

Mindy Cuppy, CMC, City Clerk

Date: ____________________

Approved as to Form:

____

Adam Lindgren, **City Attorney**

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Date: ___________________

Attachments:
Exhibit A – Scope of Services
Exhibit B – Contractor's Proposal
Exhibit 10-H – Fee Proposal
Exhibit 10-I – Notice to Proposers DBE Information
Exhibit 10-J – Standard Contract Provisions for Subcontractors/DBE Participation
Exhibit 10-O1 – Professional's Proposal DBE Commitment
Exhibit 10-O2 – Professional Contract DBE Information
Exhibit 17-F – Final Report – Utilization of DBE First Tier Subcontractors
Exhibit 10-P – Nonlobbying Certification for Federal-Aid Contracts
Exhibit 12-B – Bidder's List of Subcontractors (DBE and Non-DBE)
Exhibit 10-V – Non-Discrimination Clause
Exhibit 10-F – Certification of Consultant Commission and Fees

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EXHIBIT A

SCOPE OF SERVICES

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EXHIBIT 1

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EXHIBIT B

COMPENSATION SCHEDULE

Form **W-9**
(Rev. December 2011)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶

☐ Other (see instructions) ▶

☐ Exempt payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
☐☐☐ – ☐☐ – ☐☐☐☐

Employer identification number
☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here | **Signature of U.S. person ▶** | **Date ▶**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

• The U.S. owner of a disregarded entity and not the entity,

• The U.S. grantor or other owner of a grantor trust and not the trust, and

• The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.

2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA) name" on the "Business name/disregarded entity name" line.

Disregarded entity. Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

Note. Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the “Business name/ disregarded entity name” line.

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the “Exempt payee” box in the line following the “Business name/ disregarded entity name,” sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over $600 required to be reported and direct sales over $5,000 [1]	Generally, exempt payees 1 through 7 [2]

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner’s SSN (or EIN, if the owner has one). Do not enter the disregarded entity’s EIN. If the LLC is classified as a corporation or partnership, enter the entity’s EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at *www.ssa.gov*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write “Applied For” in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering “Applied For” means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: *A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.*

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the “Name” line must sign. Exempt payees, see *Exempt Payee* on page 3.

Signature requirements. Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account [1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor [2]
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee [1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner [1]
5. Sole proprietorship or disregarded entity owned by an individual	The owner [3]
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	**Give name and EIN of:**
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity [4]
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

***Note.** Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov*. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: *spam@uce.gov* or contact them at *www.ftc.gov/idtheft* or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

YEAR **2013**

Withholding Exemption Certificate

CALIFORNIA FORM **590**

This form can only be used to certify exemption from nonresident withholding under California Revenue and Taxation Code (R&TC) Section 18662. Do not use this form for exemption from wage withholding.

File this form with your withholding agent. (Please type or print)

Withholding agent's name

Payee's name | Payee's ☐ SSN or ITIN ☐ FEIN ☐ CA corp. no. ☐ CA SOS file no

Address (number and street, PO Box, or PMB no.) | Apt. no./ Ste. no.

City | State | ZIP Code

Read the following carefully and check the box that applies to the payee.

I certify that for the reasons checked below, the payee named on this form is exempt from the California income tax withholding requirement on payment(s) made to the entity or individual.

☐ **Individuals — Certification of Residency:**
I am a resident of California and I reside at the address shown above. If I become a nonresident at any time, I will promptly notify the withholding agent. See instructions for General Information D, Who is a Resident, for the definition of a resident.

☐ **Corporations:**
The above-named corporation has a permanent place of business in California at the address shown above or is qualified through the California Secretary of State (SOS) to do business in California. The corporation will file a California tax return and withhold on payments of California source income to nonresidents when required. If this corporation ceases to have a permanent place of business in California or ceases to do any of the above, I will promptly notify the withholding agent. See instructions for General Information F, What is a Permanent Place of Business, for the definition of permanent place of business.

☐ **Partnerships or limited liability companies (LLC):**
The above-named partnership or LLC has a permanent place of business in California at the address shown above or is registered with the California SOS, and is subject to the laws of California. The partnership or LLC will file a California tax return and will withhold on foreign and domestic nonresident partners or members when required. If the partnership or LLC ceases to do any of the above, I will promptly inform the withholding agent. For withholding purposes, a limited liability partnership (LLP) is treated like any other partnership.

☐ **Tax-Exempt Entities:**
The above-named entity is exempt from tax under California Revenue and Taxation Code (R&TC) Section 23701 ______ (insert letter) or Internal Revenue Code Section 501(c) _____ (insert number). The tax-exempt entity will withhold on payments of California source income to nonresidents when required. If this entity ceases to be exempt from tax, I will promptly notify the withholding agent. Individuals cannot be tax-exempt entities.

☐ **Insurance Companies, Individual Retirement Arrangements (IRAs), or Qualified Pension/Profit Sharing Plans:**
The above-named entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.

☐ **California Trusts:**
At least one trustee and one noncontingent beneficiary of the above-named trust is a California resident. The trust will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required. If the trustee becomes a nonresident at any time, I will promptly notify the withholding agent.

☐ **Estates — Certification of Residency of Deceased Person:**
I am the executor of the above-named person's estate. The decedent was a California resident at the time of death. The estate will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required.

☐ **Nonmilitary Spouse of a Military Servicemember:**
I am a nonmilitary spouse of a military servicemember and I meet the Military Spouse Residency Relief Act (MSRRA) requirements. See instructions for General Information E, MSRRA.

CERTIFICATE: Please complete and sign below.

Under penalties of perjury, I hereby certify that the information provided in this document is, to the best of my knowledge, true and correct. If conditions change, I will promptly notify the withholding agent.

Payee's name and title (type or print) ________________________ Daytime telephone no.__________________

Payee's signature ▶ ____ Date ______________

Instructions for Form 590

Withholding Exemption Certificate

References in these instructions are to the California Revenue and Taxation Code (R&TC).

General Information

For purposes of California income tax, references to a spouse, husband, or wife also refer to a Registered Domestic Partner (RDP) unless otherwise specified. For more information on RDPs, get FTB Pub. 737, Tax Information for Registered Domestic Partners.

Private Mail Box (PMB) – Include the PMB in the address field. Write "PMB" first, then the box number. Example: 111 Main Street PMB 123.

Foreign Address – Enter the information in the following order: City, Country, Province/ Region, and Postal Code. Follow the country's practice for entering the postal code. **Do not** abbreviate the country's name.

A Purpose

Use Form 590, Withholding Exemption Certificate, to certify an exemption from nonresident withholding. California residents or entities should complete and present Form 590 to the withholding agent. The withholding agent is then relieved of the withholding requirements if the agent relies in good faith on a completed and signed Form 590 unless told by the Franchise Tax Board (FTB) that the form should not be relied upon.

Important – This form cannot be used for exemption from wage and real estate withholding.

- If you are an employee, any wage withholding questions should be directed to the FTB General Information number, 800.852.5711. Employers should call **888**.745.3886 or go to **edd.ca.gov**.
- Sellers of California real estate use Form 593-C, Real Estate Withholding Certificate, to claim an exemption from real estate withholding.

B Requirement

R&TC Section 18662 requires withholding of income or franchise tax on payments of California source income made to nonresidents of California.

Withholding is required on the following, but is not limited to:

- Payments to nonresidents for services rendered in California.
- Distributions of California source income made to domestic nonresident S corporation shareholders, partners and members and allocations of California source income made to foreign partners and members.
- Payments to nonresidents for rents if the payments are made in the course of the withholding agent's business.
- Payments to nonresidents for royalties with activities in California.
- Distributions of California source income to nonresident beneficiaries from an estate or trust.
- Prizes and winnings received by nonresidents for contests in California.

However, withholding is optional if the total payments of California source income are $1,500 or less during the calendar year.

For more information on withholding get FTB Pub. 1017, Resident and Nonresident Withholding Guidelines. To get a withholding publication see General Information H, Publications, Forms, and Additional Information.

Backup Withholding – Beginning on or after January 1, 2010, with certain limited exceptions, payers that are required to withhold and remit backup withholding to the Internal Revenue Service (IRS) are also required to withhold and remit to the FTB. The California backup withholding rate is 7% of the payment. For California purposes, dividends, interests, and any financial institutions release of loan funds made in the normal course of business are exempt from backup withholding. For additional information on California backup withholding, go to **ftb.ca.gov** and search for **backup withholding**.

If a payee has backup withholding, the payee must contact the FTB to provide a valid Taxpayer Identification Number (TIN) before filing a tax return. The following are acceptable TINs: social security number (SSN); individual taxpayer identification number (ITIN); federal employer identification number (FEIN); California corporation number (CA Corp No.); or California Secretary of State (SOS) file number. Failure to provide a valid TIN will result in the denial of the backup withholding credit. For more information go to **ftb.ca.gov** and search for **backup withholding**.

Who is Excluded from Withholding – The following are excluded from withholding and completing this form:

- The United States and any of its agencies or instrumentalities
- A state, a possession of the United States, the District of Columbia, or any of its political subdivisions or instrumentalities
- A foreign government or any of its political subdivisions, agencies, or instrumentalities

C Who Certifies this Form

Form 590 is certified by the payee. An incomplete certificate is invalid and the withholding agent should not accept it. If the withholding agent receives an incomplete certificate, the withholding agent is required to withhold tax on payments made to the payee until a valid certificate is received. In lieu of a completed certificate on the preprinted form, the withholding agent may accept as a substitute certificate a letter from the payee explaining why the payee is not subject to withholding. The letter must contain all the information required on the certificate in similar language, including the under penalty of perjury statement and the payee's taxpayer identification number. The withholding agent must retain a copy of the certificate or substitute for at least four years after the last payment to which the certificate applies, and provide it upon request to the FTB.

For example, if an entertainer (or the entertainer's business entity) is paid for a performance, the entertainer's information must be provided. **Do not** submit the entertainer's agent or promoter information.

The grantor of a grantor trust shall be treated as the payee for withholding purposes. Therefore, if the payee is a grantor trust and one or more of the grantors is a nonresident, withholding is required. If all of the grantors on the trust are residents, no withholding is required. Resident grantors can check the box on Form 590 labeled "Individuals — Certification of Residency."

D Who is a Resident

A California resident is any individual who is in California for other than a temporary or transitory purpose or any individual domiciled in California who is absent for a temporary or transitory purpose.

An individual domiciled in California who is absent from California for an uninterrupted period of at least 546 consecutive days under an employment-related contract is considered outside California for other than a temporary or transitory purpose.

An individual is still considered outside California for other than a temporary or transitory purpose if return visits to California do not total more than 45 days during any taxable year covered by an employment contract.

This provision does not apply if an individual has income from stocks, bonds, notes, or other intangible personal property in excess of $200,000 in any taxable year in which the employment-related contract is in effect.

A spouse/RDP absent from California for an uninterrupted period of at least 546 days to accompany a spouse/RDP under an employment-related contract is considered outside of California for other than a temporary or transitory purpose.

Generally, an individual who comes to California for a purpose which will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.

For assistance in determining resident status, get FTB Pub. 1031, Guidelines for Determining Resident Status, and FTB Pub. 1032, Tax Information for Military Personnel, or call the FTB at 800.852.5711 or 916.845.6500.

E Military Spouse Residency Relief Act (MSRRA)

Generally, for tax purposes you are considered to maintain your existing residence or domicile. If a military servicemember and nonmilitary spouse have the same state of domicile, the MSRRA provides:

- A spouse shall not be deemed to have lost a residence or domicile in any state solely by reason of being absent to be with the servicemember serving in compliance with military orders.
- A spouse shall not be deemed to have acquired a residence or domicile in any other state solely by reason of being there to be with the servicemember serving in compliance with military orders.

Domicile is defined as the one place:

- Where you maintain a true, fixed, and permanent home
- To which you intend to return whenever you are absent

A military servicemember's nonmilitary spouse is considered a nonresident for tax purposes if the servicemember and spouse have the same domicile outside of California and the spouse is in California solely to be with the servicemember who is serving in compliance with Permanent Change of Station orders. Note: California may require nonmilitary spouses of military servicemembers to provide proof that they meet the criteria for California personal income tax exemption as set forth in the MSRRA.

Income of a military servicemember's nonmilitary spouse for services performed in California is not California source income subject to state tax if the spouse is in California to be with the servicemember serving in compliance with military orders, and the servicemember and spouse have the same domicile in a state other than California.

For additional information or assistance in determining whether the applicant meets the MSRRA requirements, get FTB Pub. 1032.

F What is a Permanent Place of Business

A corporation has a permanent place of business in California if it is organized and existing under the laws of California or if it is a foreign corporation qualified to transact intrastate business by the California SOS. A corporation that has not qualified to transact intrastate business (e.g., a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in California only if it maintains a permanent office in California that is permanently staffed by its employees.

G Withholding Agent

Keep Form 590 for your records. **Do not** send this form to the FTB unless it has been specifically requested.

For more information, contact Withholding Services and Compliance, see General Information H.

The payee must notify the withholding agent if any of the following situations occur:

- The individual payee becomes a nonresident.
- The corporation ceases to have a permanent place of business in California or ceases to be qualified to do business in California.
- The partnership ceases to have a permanent place of business in California.
- The LLC ceases to have a permanent place of business in California.
- The tax-exempt entity loses its tax-exempt status.

The withholding agent must then withhold and report the withholding using Form 592, Resident and Nonresident Withholding Statement, and remit the withholding using Form 592-V, Payment Voucher for Resident and Nonresident Withholding. Form 592-B, Resident and Nonresident Withholding Tax Statement, is retained by the withholding agent and a copy is given to the payee.

H Additional Information

To get additional nonresident withholding information, contact the Withholding Services and Compliance.

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Telephone: **888**.792.4900
916.845.4900
Fax: 916.845.9512

You can download, view, and print California tax forms and publications at **ftb.ca.gov**.

OR to get forms by mail write to:

TAX FORMS REQUEST UNIT MS F284
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

For all other questions unrelated to withholding or to access the TTY/TDD numbers, see the information below.

Internet and Telephone Assistance

Website: **ftb.ca.gov**
Telephone: 800.852.5711 from within the United States
916.845.6500 from outside the United States
TTY/TDD: 800.822.6268 for persons with hearing or speech impairments

Asistencia Por Internet y Teléfono

Sitio web: **ftb.ca.gov**
Teléfono: 800.852.5711 dentro de los Estados Unidos
916.845.6500 fuera de los Estados Unidos
TTY/TDD: 800.822.6268 personas con discapacidades auditivas y del habla

2319132.2

STAFF REPORT

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director and
Kathy Garcia, Senior Civil Engineer

SUBJECT: **RESOLUTION NO. 127-2014 AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO CONTRACT NO. 64-2013 WITH R3 CONSULTING GROUP FOR SOLID WASTE CONSULTING SERVICES**

RECOMMENDATION

Adopt Resolution No. 127-2014.

RESULT OF RECOMMENDED ACTION

Adoption of Resolution No. 127-2014 allows the City Manager to execute the second amendment to Contract No. 64-2013 with R3 Consulting Group for solid waste technical services to expand the scope of work and increase the project budget by $110,000 for a total contract amount of $250,000.

BACKGROUND

In July 2013, the City executed Contract No. 64-2013 with R3 Consulting Group in the amount of $75,000 to provide on-call solid waste consulting services.

The R3 Contract and Scope of Services (Exhibit 1) for this second amendment include the following services. Expanded services are needed for auditing and to meet updated regulations:

- Commercial Hauler Monitoring
- Republic Services Contract Administration
- Preparation, Monitoring and Managing Grant Applications and Programs
- Construction and Demolition Debris Compliance Monitoring
- Annual Report Preparation for CalRecyle
- Other Solid Waste Assistance including updating current programs and services, and hauler audits.

FISCAL IMPACT

Funding for this Amendment is included in the City's currently approved 2014/2015 Public Works Operating Budget.

ATTACHMENT

Resolution No. 127-2014, including Exhibit 1, Contract and Scope of Services.

CITY OF RANCHO CORDOVA

RESOLUTION NO. 127-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO CONTRACT NO. 64-2013 WITH R3 CONSULTING GROUP FOR SOLID WASTE CONSULTING SERVICES

WHEREAS, in July 2013, the City executed Contract No. 64-2013 with R3 Consulting Group in the amount of $75,000 to provide on-call solid waste consulting services to the City of Rancho Cordova; and

WHEREAS, in January 2014, the City executed the first amendment Contract No. 64-2013-01 in the amount of $75,000, to increase the contract total to $140,000; and

WHEREAS, Contract No. 64-2013-02 is the second amendment to Contract No. 64-2013, and increases the project budget by $110,000 for a total contract amount of $250,000.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF RANCHO CORDVOVA that the Council authorizes the City Manager to execute Contract No. 64-2013-02 with R3 Consulting Group in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ___day of _________, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Dan Skoglund, Mayor

ATTEST:

____
Mindy Cuppy, MMC, City Clerk

CONTRACT NO. 64-2013-2

SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF RANCHO CORDOVA AND R3 CONSULTING GROUP

This Second Amendment to the Agreement for Professional Services ("Amendment") is made by and between the City of Rancho Cordova ("City") and R3 Consulting Group ("Professional") as of _____________. City and Professional are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a Professional Services Agreement ("PSA") dated July 1, 2013 for the purpose of providing ongoing solid waste technical services; and

WHEREAS, this Amendment will **increase the contract amount by $110,000, bringing the contract total to $250,000** and

WHEREAS, the Parties agree that changes to the term and services provided for in the PSA are necessary in order for the City to continue receiving services by Professional.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. Section 2 of the PSA, "Compensation," provides for the City to pay Professional a sum not to exceed One Hundred and Ten Thousand Dollars ($110,000). The Parties agree to amend Section 2 of the PSA in order to increase the compensation amount to pay Professional for additional services. The first sentence of Section 2 of the PSA is amended to read as follows:

   "City hereby agrees to pay Professional a sum not to exceed Two Hundred and Fifty Thousand Dollars ($250,000), notwithstanding any contrary indication that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement."

2. The document entitled "Scope of Work," attached hereto as **Exhibit A**, shall replace and supersede the PSA's **Exhibit A**.

3. The document entitled "Compensation Schedule," attached hereto as **Exhibit B**, shall replace and supersede the PSA's **Exhibit B**.

4. All other terms and conditions in the PSA shall remain in full force and effect to the extent they are not in conflict with this Amendment.

5. The signatures of the Parties to this Amendment may be executed and acknowledged on separate pages or in counterparts which, when attached to this Amendment, shall constitute one complete Amendment.

6. **Contract Administration.** This Agreement shall be administered by Kathy Garcia ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

   Notices. Any written notice to Professional shall be sent to:

   R3 Consulting Group, Inc.
   Attn: Richard Tagore-Erwin
   1512 Eureka Road, Suite 220
   Roseville, CA 95661

   Any written notice to City shall be sent to:

   City of Rancho Cordova
   Attn: Kathy Garcia,
   2729 Prospect Park Drive
   Rancho Cordova, CA 95670

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CITY OF RANCHO CORDOVA

____
Brian Nakamura, City Manager

Date:__________________

Attest:

____
Mindy Cuppy, MMC, City Clerk

Date:__________________

Approved as to Form:

____
Adam Lindgren, City Attorney
Date:__________________

PROFESSIONAL

____
Richard Tagore-Erwin, Principal

Date:__________________

R3 Consulting Group, Inc.
Resources Responsibility Respect

1512 Eureka Road, Suite 220
Roseville, CA 95661
Tel: 916-782-7821
Fax: 916-782-7824
www.r3cgi.com

July 10, 2014

Ms. Kathy Garcia
Integrated Waste Manager
2729 Prospect Park Drive
Rancho Cordova, CA 95670

Subject: Proposal for On-Call Solid Waste Technical Services

Dear Kathy:

R3 Consulting Group, Inc. (R3) is pleased to present this proposal to the City of Rancho Cordova (City) for On-Call Solid Waste Technical Services (On-Call Services). The following tasks outline our proposed scope of work.

Scope of Work

This scope of services provides the City of Rancho Cordova (City) with ongoing solid waste technical services to include, but not be limited to, the sub-tasks set forth below. While the nature of on-call services makes it difficult to determine what services R3 may be asked to perform, we have prepared a scope of work based on our past and current work for the City which illustrates our understanding of the various services we may be asked to provide. The amount of time to be allocated to each sub-task will be dependent on the requests of the City and the not-to-exceed budget.

Task 1 Commercial Hauler Monitoring

Task 1.1 Commercial Hauler Franchise Fee Payment Monitoring

R3 will review monthly franchise fee reports submitted to the City. R3 will perform the following financial review:

- Verify that all haulers have submitted the required 10% Franchise Fees to the City within sixty (60) calendar days of the end of each month;
- Maintain a spreadsheet to track revenues, payments and deductions for each hauler, and distribute the spreadsheet to appropriate City staff;
- Prepare letters for City signature to notify haulers of delinquent Franchise Fee payments; and
- Administer the penalty process for late payments of Franchise Fees.

Task 1.2 Commercial Hauler Diversion Monitoring

The haulers are required to submit a report to the City on a quarterly basis showing material type, quantities, and locations of materials disposed and recycled. This is an integral component of the City's overall strategy to comply with the 50% diversion mandates of AB 939. In addition, the haulers are required to submit an annual report to the City describing all outreach and education programs. R3 proposes to complete the following tasks regarding the quarterly diversion reports:

- Verify receipt of a quarterly report from each hauler with a City Franchise Agreement within thirty (30) days of the end of each quarter;
- Review recycling and diversion data for reasonableness and consistency, and report any data irregularities to City staff for further review; and
- As necessary, perform random site visits to specific accounts to verify source separated collection of reported materials.

Task 1.3 Mandatory Commercial and Multi-Family Recycling Monitoring

R3 will monitor and manage the City's mandatory commercial and multi-family recycling programs. R3 proposes to complete the following tasks regarding the mandatory commercial and multi-family recycling monitoring:

- Review and approve commercial hauler annual education and outreach plans;
- Annually review and verify the completion of the education and outreach plans;
- Verify receipt of quarterly mandatory commercial and multi-family status reports; and
- Review commercial and multi-family status reports for completeness and accuracy.

Task 1.4 AB 341 Tracking and Program Implementation

The State has set a goal of 75% recycling, composting, or source reduction of solid waste by 2020. Although the 75% goal is a State goal, not a jurisdictional mandate, the State has and will require local government to implement and manage new programs. Under this task, R3 will monitor new legislation and program requirements related to AB 341, as our budget permits.

Task 2 Republic Services Contract Administration

R3 will assist the City in monitoring Republic Services' programs. For the monthly meeting with the hauler, we will prepare an agenda, which will include a review of data from the hauler's monthly reports, and a review of key contract compliance items for the month. R3 will act as City staff in ensuring that reports, Franchise Fees, and other deliverable requirements which are set forth in the contract are met. We will use a Contract Monitoring Schedule, which we will use at each monthly meeting, as appropriate.

Some of the items we identified in the City's Franchise Agreement that should be monitored and would be included in the Contract Monitoring Schedule are:

- Monthly Franchise Fee payments;
- Annual reports;
- Annual rate adjustment information;
- Vehicle registration, licensing and inspection;
- Public Education and Outreach program requirements;
- Insurance certificates and performance bond;
- Liquidated damages for non-compliance; and
- Compliance with the 50% diversion requirements.

Ms. Kathy Garcia
Page 3

In addition, R3 will conduct analyses of hauler-provided diversion data to identify under-performing diversion sectors, or to discuss data anomalies. R3 uses this type of analysis conducted for other cities to identify and discuss programs that are under-performing, or to identify reporting errors that could subsequently be corrected.

Task 3 Preparing, Monitoring and Managing Grant Applications/Programs

R3 will assist the City by managing and administering current grant programs, and submitting reports to the grant agency. R3 will also assist the City in applying for CalRecycle's Beverage Container Recycling Grant.

Task 4 Construction and Demolition Debris (C&D)

R3 will assist the City in monitoring compliance with the City's Construction and Demolition Debris Reduction, Reuse and Recycling Ordinance and those portions of the California Green Building Standards Code (CalGreen) related to the disposal and diversion of C&D from covered projects. This will include:

- Manage the Green Halo System for online reporting;
- Review and approve waste management plans for covered projects;
- Review and approve waste plans for covered projects; and
- Analyze data and generate reports to be included in the annual report to CalRecycle.

Task 5 AB 939 Annual Report Preparation and CalRecycle Coordination

R3 will prepare the AB 939 Annual Report to describe the activities undertaken through the programs adopted in the City's Source Reduction and Recycling Element (SRRE) and Household Hazardous Waste Element (HHWE) to reach and maintain 50% diversion. The Annual Report is due on August 1 of each year, but is frequently postponed until the Department of Finance has made their information available.

Task 6 Other Solid Waste Assistance

R3 will provide additional solid waste assistance as may be requested by the City.

Task 7 Solid Waste Program Update and Presentation

Task 7.1 Legislation Overview

The City's waste and recyclable material is managed through a series of exclusive and non-exclusive franchise agreements. Republic Services, the City's exclusive residential franchise hauler, was originally awarded an eight-year contract that was set to expire on December 31, 2012. The City subsequently awarded Republic a five-year contract extension that will expire December 31, 2017. The City's commercial waste and recyclables are managed through a number of non-exclusive commercial franchise agreements, which will also expire on December 31, 2017.

With the expiring contracts, the City Council, City staff, businesses, and residents have an opportunity to plan for the future of the City's solid waste management programs and establish the vision of future waste and recycling programs.

Task 7.2 Summary of Current Programs and Services

R3 will prepare a description of the City's existing programs and services to provide City Staff, City Council, and residents an understanding of the City's current solid waste programs and services, performance stands and operational requirements, among other things. Our review will also include, but not necessarily be limited to:

- Customer rates and rate structures;
- Material types collected;
- Special collection programs such as bulky item collection, household hazardous waste collection, and sharps and pharmaceuticals collection;
- Processing and diversion of material types from landfill; and
- Waste reduction, recycling and education programs and strategies.

Task 7.3 City Council Workshop

R3 will prepare a presentation to be given at a City Council Workshop summarizing the results of the previous tasks. The goals of the presentation are:

- Update the Council on the status of the City's current solid waste programs and requirements;
- Provide comparison of programs and service of other local jurisdiction;
- Discuss future legislative and regulatory requirements; and
- Receive City Council direction regarding the future direction of City solid waste and diversion programs.

Task 8 Joint SWA Audit

R3 will assist the City in performing the joint SWA hauler audits if requested by the City. Our budget assumes the joint SWA audit for FY 14/15 will consist of one large hauler and one medium hauler.

Budget

We propose to provide the services identified in the above tasks on a time and material basis for a total cost not-to-exceed the following budget:

Task	Budget
Tasks 1 - 8: On-Call Solid Waste Technical Services	$75,000
Task 9: Joint SWA Audit	$10,000
Source Reduction and Recycling	$25,000
Total	$110,000

We appreciate the opportunity to be of assistance to the City. If you have any questions regarding this submittal, please feel free to contact me by phone at (916) 782-7821 or by email at rterwin@r3cgi.com.

Sincerely,

R3 CONSULTING GROUP, INC.

Richard Tagore-Erwin

Richard Tagore-Erwin

Principal

MEMORANDUM

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Cyrus Abhar, Public Works Director and
Kathy Garcia, Senior Civil Engineer

SUBJECT: **RESOLUTION NO. 123-2014 AUTHORIZING THE CITY MANAGER TO EXECUTE THE FOURTH AMENDMENT CONTRACT NO. 46-2011 FOR ON-CALL ENGINEERING SERVICES WITH WOOD RODGERS INC.**

RECOMMENDATION

Adopt Resolution No. 123-2014.

RESULT OF RECOMMENDED ACTION

Adoption of Resolution No. 123-2014 will authorize the City Manager to execute the fourth amendment contract no. 46-2011-4 with Wood Rodgers, Inc. in the amount of $75,000 for on-call engineering services to complete the design of the White Rock Road Widening Project and other on-call civil engineering tasks. The total contract amount will be increased from $600,000 to $675,000.

BACKGROUND

Project Description – The White Rock Road Widening Project will improve safety along White Rock Road by adding a landscape median, bike lanes, traffic control and updated horizontal and vertical alignments providing better site lines for travelers.

Contracting History – In 2011, City Council approved the original on-call contract no. 46-2011 with Wood Rodgers, Inc., for engineering design services. Under the original contract the City initiated the White Rock Road Widening Project completing preliminary engineering. The contract was then expanded in December of 2011 to complete contract plans and specifications. The expanded upper limit is currently $600,000. The other amendments were for time extensions only.

This contract amendment is needed to address updates to the scope that have resulted in our coordination with business along White Rock road near Sunrise Boulevard. The new work will include additional field survey, design and preparation of traffic signal plans, intersection and lane configuration improvements and landscaping design.

PROJECT FUNDING

Funding for White Rock Road Widening Project consists of $3,500,000 in Federal Grants. The remaining balance will be funded from traffic impact fees.

This project is included in the City's current approved Capital Improvement Plan (CIP) and is included in the 2014/2015 budget.

ATTACHMENT

Resolution No. 123-2014, including Exhibit 1 - Contract No. 46-2011-4

CITY OF RANCHO CORDOVA

RESOLUTION NO. 123-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AUTHORIZING THE CITY MANAGER TO EXECUTE THE FOURTH AMENDMENT WITH WOOD RODGERS, INC. FOR ON-CALL CONSULTING SERVICES

WHEREAS, On April 26, 2011, the City Manager executed an agreement with Wood Rodgers, Inc., Contract No. 46-2011, to provide on-call consulting services for civil engineering and surveying in the amount of $100,000; and

WHEREAS, On December 5, 2011, the City Council approved the first amendment, Contract No. 46-2011-1, which increased the total contract amount to $600,000; and

WHEREAS, the City has determined that the scope of work for the White Rock Road Widening Project as well as other civil engineering tasks would exceed the existing contract maximum; and

WHEREAS, the City wishes to increase the contract amount from $600,000 to $675,000; and

WHEREAS, those services will exceed the maximum amount that the City Manager has the authorization to approve.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF RANCHO CORDOVA that the City Council authorizes the City Manager to execute the fourth contract amendment 46-2011-4 with Wood Rodgers, Inc., to increase the total contract amount to $675,000 for on-call consulting services described in **Exhibit 1**.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ___ day of ________, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Dan Skoglund, Mayor

ATTEST:

____
Mindy Cuppy, MMC, City Clerk

CONTRACT NO. 46-2011-4

**FOURTH AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF RANCHO CORDOVA AND WOOD RODGERS, INC.**

This Fourth Amendment to the Agreement for Professional Services ("Amendment") is made by and between the City of Rancho Cordova ("City") and Wood Rodgers, Inc. ("Professional") as of _____________. City and Professional are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a Professional Services Agreement ("PSA") dated April 1, 2011 for the purpose of providing on-call surveying and engineering design services; and

WHEREAS, the parties agree that changes to the scope of work and cost estimate provided in the PSA are necessary in order to account for changes in the number of projects requiring surveying and civil engineering design services; and

WHEREAS, this Amendment will increase the contract amount by $75,000, bringing the contract total to $675,000

WHEREAS, the Parties agree that changes to the term and services provided for in the PSA are necessary in order for the City to continue receiving services by Professional.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. Section 2 of the PSA, "Compensation," provides for the City to pay Professional a sum not to exceed Seventy-Five Thousand Dollars ($75,000). The Parties agree to amend Section 2 of the PSA in order to increase the compensation amount to pay Professional for additional services. The first sentence of Section 2 of the PSA is amended to read as follows:

   "City hereby agrees to pay Professional a sum not to exceed Six Hundred and Seventy-Five Thousand Dollars ($675,000), notwithstanding any contrary indication that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement."

2. All other terms and conditions in the PSA shall remain in full force and effect to the extent they are not in conflict with this Amendment.

3. The signatures of the Parties to this Amendment may be executed and acknowledged on separate pages or in counterparts which, when attached to this Amendment, shall constitute one complete Amendment.

4. **Contract Administration.** This Agreement shall be administered by **Kathy Garcia** ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

CONTRACT NO. 46-2011-4

Notices. Any written notice to Professional shall be sent to:

Wood Rodgers, Inc.
Attn: Mark Rayback.
3301 C Street, Bldg. 100-B
Sacramento, CA 95816

Any written notice to City shall be sent to:

City of Rancho Cordova
Attn: Kathy Garcia
2729 Prospect Park Drive
Rancho Cordova, CA 95670

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CITY OF RANCHO CORDOVA	**PROFESSIONAL**
______________________________	______________________________
Brian Nakamura, City Manager	**Mark Rayback, Vice President**
Date:___________________	Date:___________________

Attest:

____
Mindy Cuppy, MMC, City Clerk

Date:___________________

Approved as to Form:

____
Adam Lindgren, City Attorney
Date:___________________

WOOD RODGERS

October 13, 2014

Kathy Garcia, Senior Civil Engineer, Public Works
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670

Re: Request for Amendment No. 2 to Revise Term of Services in Consulting Services Agreement for the Preparation of the Plans, Specifications & Estimate for White Rock Road Widening Improvements

Dear Kathy:

Recent changes to the White Rock Road design, including but not limited to: modifying proposed interim lane configurations, new improvements at Costco, and the Rancho Cordova Parkway intersection, were not included in the original scope of work. In order to incorporate these design changes into the PS&E package, additional budget will be required. Wood Rodgers proposes to accomplish this work as an amendment to "Task 6 – Final Design" of the original White Rock Widening project scope. This letter is to formally request an amendment to our agreement with the City of Rancho Cordova (City).

It should be noted that other design changes to the original project, as detailed in recent email correspondence, will be covered under a separate agreement with Elliott Homes. Specifically, these changes included:

- Construct the frontage lane (No. 3 lane) and frontage improvements including curb, sidewalk, and landscaping, to eastbound White Rock Road between Luyung Drive and the future Rancho Cordova Parkway intersection.
- Construct a storm drain system for White Rock Road between Luyung Drive and the future Rancho Cordova Parkway intersection. This drainage will outlet into Elliott Homes development.
- Constructing a sewer main and possibly a water main under White Rock Road between Luyung Drive and the future Rancho Cordova Parkway intersection.
- Placing additional landscaping beyond just trees in the median.
- Option to construct the eastbound White Rock Road No. 1 lane between Luyung Drive and the future Rancho Cordova Parkway intersection.

Task 6 – Final Design

In addition to those items already included in the agreed upon scope, Wood Rodgers is proposing the following work items be added and/or amended to Task 6 – Final Design in order to incorporate the recent design changes.

Costco Improvements **$29,000 T&M**

The original scope of work did not include designing any improvements at Costco. The City has now proposed to construct a new access driveway for Costco along Gold Valley Drive, reconfigure the Costco parking lot for this new access, and construct a traffic signal at the White Rock Road/Gold Valley Drive intersection. Additional budget is needed to incorporate the following design work into the plans:

- Wood Rodgers does not have topography of the Costco parking lot or of Gold Valley Drive, as this area was previously outside the project limits. Additional field survey is required for this area in order to design the proposed Costco access point and traffic signal at the White Rock Road/Gold Valley Drive intersection.
- Wood Rodgers will design and prepare plan and detail sheets for the Costco parking lot reconfiguration and new access driveway. These plans will also include a new raised median on White Rock Road between Sunrise Boulevard and Gold Valley Drive.
- Wood Rodgers will design and prepare traffic signal plans for the proposed signal at the White Rock Road/Gold Valley Drive intersection. The installation of a traffic signal at this location will also necessitate the closing of at least one existing business driveway on White Rock Road. Wood Rodgers will work with the City and property owner(s) to create a shared access between this business and an adjacent business' access.
- Wood Rodgers will prepare plats and descriptions for the shared access agreement required for the parcels north White Rock Road at the proposed White Rock Road/Gold Valley Drive traffic signal. This work will necessitate acquiring two (2) title reports for the affected parcels.

Roadway Design for Segment of White Rock Road between Luyung Drive and Eastern City Limit $42,000 T&M

The original scope and budget was for the design of a four lane roadway with raised median between Luyung Drive and the eastern City Limit. The project would have built the No. 1 and No. 2 lanes, with the No. 3 lanes being constructed as a separate project in the future. Wood Rodgers was in the process of preparing 90% PS&E based on this lane configuration when instructed by the City in Fall 2013 to halt design due to a delay in the environmental analysis. The City is now requesting the design have different lane configurations for White Rock Road between Luyung Drive and the eastern City Limit. Additional budget is needed to incorporate the following design work into the plans:

<u>Between Luyung Drive and the Eastern Boundary of Elliott Homes Development</u>

- White Rock Road will be redesigned to include the No. 2 lane in the eastbound direction and the No. 1 and No. 2 lanes in the westbound direction. The eastbound No. 1 lane will be left unpaved but will be graded for future paving. A raised median will be designed in its ultimate location.
- Landscaping will be added to the PS&E package. Wood Rodgers will design landscaping to include trees in the raised median, while the area for the future eastbound No. 1 lane will be minimally landscaped consisting of grasses, shrubs, and other low water, low maintenance plants. An irrigation system and crossovers will be included in the plans for the raised median.
- The White Rock Road/Rancho Cordova Parkway intersection will be added to the plans. This intersection was not part of the original scope and budget. Wood Rodgers will design the intersection as a 3-leg "T" intersection with only the south leg of Rancho Cordova Parkway designed. The design will allow for the addition of the north leg in the future. The intersection design will include curb returns, left and right turn pockets, and a traffic signal. Curb returns and signal poles will be set at their ultimate locations on the south side of White

Rock Road, but not on the north. Additional layout, detail, and traffic signal plans will be required.

Between the Eastern Boundary of Elliott Homes Development and the Eastern City Limit

- White Rock Road will be redesigned to include the No. 2 lane in the eastbound direction and the No. 1 lane in the westbound direction. The eastbound No. 1 lane will be left unpaved but will be graded for future paving. A raised median will be designed in its ultimate location. Roadside ditches will be designed for drainage.
- Landscaping will be added to the PS&E package. Wood Rodgers will design landscaping to include trees in the raised median, while the area for the future eastbound No. 1 lane will be minimally landscaped consisting of grasses, shrubs, and other low water, low maintenance plants.

TOTAL **$71,000 T&M**

We look forward to continuing our involvement with you and reaching a successful completion of this project and recommend your authorization.

If you require additional information regarding this request, please do not hesitate to contact me at (916) 440-8131.

Sincerely,
WOOD RODGERS, INC.

Mark Rayback, PE
Vice President

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White Rock Road Amendment No. 2

Estimated Labor Hours and Costs

WOOD RODGERS

Task Description	Wood Rodgers, Inc.													TOTAL COST
	Direct Costs	Project Manager/PIC	Associate Engineer II	Engineer III	Engineer I	CAD Tech. III	Associate Landscape Architect	Landscape Architect I	Surveyor/Principal I	Associate Surveyor II	Associate Surveyor I	2 Person Survey Crew	HOURS	
		$205.00	$150.00	$130.00	$110.00	$110.00	$130.00	$110.00	$165.00	$150.00	$140.00	$240.00		
Costco Improvements	**$1,220.00**	**8**	**8**	**30**	**44**	**82**	**0**	**0**	**6**	**12**	**4**	**16**	**210**	**$29,010.00**
Survey/Field Work		1		2		8			2	4	4	16	37	$6,675.00
Costco Parking and Access Design and Plans		4		4	16	20							44	$5,300.00
White Rock Road/Gold Valley Drive Traffic Signal Design and Plans		2	8	22	28	54							114	$13,490.00
Plats and Descriptions	$1,220.00	1		2					4	8			15	$3,545.00
Roadway Design for White Rock Road	**$0.00**	**22**	**8**	**44**	**70**	**94**	**32**	**76**	**0**	**0**	**0**	**0**	**346**	**$41,990.00**
Redesign White Rock Road between Luyung Dr and E. Elliott Homes		4		4	12	12							32	$3,980.00
Median Landscaping between Luyung Dr and E. Elliott Homes		2					12	28					42	$5,050.00
White Rock Rd/Rancho Cordova Parkway Intersection Design		8	8	30	40	60							146	$17,740.00
Redesign White Rock Road between E. Elliott Homes and E. City Limit		4		10	18	22							54	$6,520.00
Median Landscaping between E. Elliott Homes and E. City Limit		4					20	48					72	$8,700.00
Total Hours		30	16	74	114	176	32	76	6	12	4	16	556	$69,780.00
TOTAL PROJECT COST	**$1,220.00**	**$6,150.00**	**$2,400.00**	**$9,620.00**	**$12,540.00**	**$19,360.00**	**$4,160.00**	**$8,360.00**	**$990.00**	**$1,800.00**	**$560.00**	**$3,840.00**		**$71,000.00**

Note: Direct Costs include acquiring Title Reports.

MEMORANDUM

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Adam U. Lindgren, City Attorney
Paul Junker, Planning Director

SUBJECT: **AN URGENCY ORDINANCE OF THE CITY OF RANCHO CORDOVA EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF ESTABLISHMENTS SERVING ALCOHOL FOR ON-SITE CONSUMPTION WITHIN 500 FEET OF ADULT BUSINESSES**

RECOMMENDATION

Adopt Urgency Ordinance No. 26-2014, extending the temporary moratorium on the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of adult businesses, pending the review and possible amendment of zoning regulations applicable to these types of establishments.

RESULT OF RECOMMENDED ACTION

Adoption of this Urgency Ordinance will extend the temporary moratorium for an additional ten (10) months and fifteen (15) days pursuant to Government Code section 65858(a). The extension is needed in order to: (1) further address the concerns regarding the negative effects, such as prostitution, assaults and drug transactions resulting from the operation of establishments serving alcohol for on-site consumption in close proximity to adult businesses; (2) further study the potential impacts that these types of businesses may have on the public health, safety and welfare; (3) further study and determine what local regulations may be appropriate or necessary for establishments serving alcohol for on-site consumption within 500 feet of adult businesses; (4) further study and determine the appropriate location for these types of businesses; and (5) determine appropriate measures to ensure the protection of public health, safety and welfare.

BACKGROUND

Law

Pursuant to Government Code section 65858, a city may establish an initial 45-day moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering, studying, or intends to study, within a reasonable time. Adoption or extension of a moratorium requires at least a four-fifths vote of the Council. Government Code section 65858 allows for the moratorium to be extended twice, once for ten (10) months and fifteen (15) days and a second time for an additional year, so long as a current and immediate threat to the public safety, health, or welfare exists.

Establishment of 45-day Temporary Moratorium
At its September 29, 2014 special meeting, the City Council adopted Urgency Ordinance No. 25-2014 establishing a 45-day moratorium on the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of adult businesses. The purpose of the moratorium was to give City staff time to analyze, consider and possibly adopt updated zoning regulations to best address new imminent threats to public safety, health, and welfare resulting from these establishments serving alcohol for on-site consumption within 500 feet of adult businesses.

The City made the required findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety and welfare and adopted Urgency Ordinance No. 25-2014 pursuant to California Government Code section 65858, subdivision (c).

Urgency Ordinance No. 25-2014 will, unless extended, expire by its own terms on November 13, 2014.

Current Application and Inquiries
Prior to the adoption of Urgency Ordinance No. 25-2014, the Building Department received a commercial application for a building permit from an applicant wishing to operate a restaurant within the same commercial center as an existing adult business that provides totally nude entertainment without the sale of alcohol. The California Department of Alcoholic Beverage Control ("ABC") prohibits a totally nude club from serving alcohol. The proposed restaurant would occupy a suite immediately adjacent to the live nude adult business in the same commercial center. The applicant has informed City staff that they intend the establishment's hours of operation to be from 11:00 a.m. to 5:00 a.m. and the service of alcoholic beverages will be until 2:00 a.m. The applicant has already applied for an "on-sale" license from ABC and the status of this license is pending.

The Economic Development Department also received inquiries from the representatives of another existing adult business featuring live totally nude dancing without the sale of alcohol who are interested in opening a restaurant or bar serving alcohol for on-site consumption in the same commercial center as the adult business they represent. Following the establishment of the moratorium pursuant to Urgency Ordinance No. 25-2014, the same representatives from the adult business once again contacted staff regarding their desire to open said establishment.

City staff anticipates additional requests for entitlements related to the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of live totally nude adult businesses.

Negative Effects
ABC expressly prohibits the sale of alcohol in establishments in which live totally nude dancers perform pursuant to Administrative Rule 143.3. (4 C.C.R. section 143.3). Rule 143.3 aims "to reduce the problems caused by [live nude] dancing in front of customers whose inhibitions and ability to control their impulses have been weakened by the consumption of liquor." *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, (2002) 99 Cal. App. 4th 880, 891.

ABC's adoption of Rule 143.3 was supported by substantial evidence that nude performances in conjunction with the on-site sale of alcohol led to not only lewd conduct "inside the business premises, but also to prostitution, indecent exposure, and sexual assault in the vicinity," which ABC recognized as secondary effects. *Dep't of Alcoholic Beverage Control,* 99 Cal. App. 4th at 888.

There are currently three adult businesses operating within the City that feature live totally nude dancing, and are therefore expressly prohibited from serving alcohol. All three adult businesses have been operating in their current locations prior to the incorporation of the City. There are currently no establishments selling alcohol for on-site or off-site consumption in close proximity to the adult businesses featuring live totally nude dancing in the City. The recent building permit application and inquiries raised serious concerns about the negative effects as to the public health, safety and welfare related to the sale of alcohol for on-site consumption in close proximity to live totally nude adult businesses.

The City considers establishments serving alcohol for on-site consumption located within 500 feet of adult businesses to be in close proximity. Because 500 feet is less than a tenth of a mile and thus easily walkable, the distance will likely facilitate and encourage customers that consume alcohol at an establishment serving alcohol for on-site consumption to visit adult businesses in an intoxicated state. The operation of an establishment serving alcohol for on-site consumption next to a live totally nude adult business would be contrary to the intended effect of Rule 143.3 and lead to the secondary effects that Rule 143.3 specifically seeks to prevent.

City Activities
Since adoption of Urgency Ordinance No. 25-2014, staff has commenced its study of the potential impacts of establishments serving alcohol for on-site consumption in close proximity to live nude adult businesses. Staff has also met with the applicant to discuss impacts.

Extension of Moratorium
The 45-day moratorium expires on November 13, 2014. Since the potential threats to public health, safety, and welfare identified by the Council in Urgency Ordinance No. 25-2014 still exist, staff recommends that the Council extend the moratorium. A four-fifths vote is required for the extension. In order to allow the City sufficient time to complete its study of the negative effects, resulting from the operation of establishments serving alcohol for on-site consumption in close proximity to live totally nude adult businesses, such as prostitution, assaults and drug transactions, staff recommends extending the moratorium for the period allowed under Government Code section 65858 of ten (10) months and fifteen (15) days. It may be repealed prior to its expiration as soon as an ordinance is presented to Council, adopted and effective.

This report and its attachments constitutes the written report required by Government Code section 65858(d).

REQUESTED MOTION

"I move that the City Council adopt this urgency ordinance extending a moratorium on the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of adult businesses pending the review and possible amendment of zoning regulations applicable to such businesses."

ATTACHMENTS

1. Draft Urgency Ordinance No. 26-2014, extending the temporary moratorium on the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of adult businesses.

2. Urgency Ordinance No. 25-2014.

3. Evidentiary Record for the Extension of the Moratorium on the Establishment and Operation of Establishments Serving Alcohol for On-Site Consumption within 500 Feet of Adult Businesses.

2352165.3

ATTACHMENT 1

CITY OF RANCHO CORDOVA

ORDINANCE NO. 26-2014

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA MAKING FINDINGS AND EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF ESTABLISHMENTS SERVING ALCOHOL FOR ON-SITE CONSUMPTION WITHIN 500 FEET OF ADULT BUSINESSES

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1. Findings.

A. At its September 29, 2014 special meeting, pursuant to California Government Code section 65858, the City Council of the City of Rancho Cordova adopted Urgency Ordinance No. 25-2014 imposing a 45-day moratorium on the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of adult businesses; and

B. California Government Code section 65858, subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum of two times and have a maximum total duration of 2 years; and

C. The City made the required findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety and welfare and adopted Urgency Ordinance No. 25-2014 pursuant to California Government Code section 65858, subdivision (c); and

D. Urgency Ordinance No. 25-2014 will, unless extended, expire by its own terms on November 13, 2014; and

E. This Urgency Ordinance incorporates by reference all the findings provided in Urgency Ordinance No. 25-2014 and its accompanying staff report and evidentiary record; and

F. The Building Department of the City of Rancho Cordova received a commercial application for a building permit from an applicant wishing to operate a restaurant within the same commercial center as an existing adult business that provides totally nude entertainment without the sale of alcohol. The Department of Alcoholic Beverage Control ("ABC") prohibits a totally nude club from serving alcohol. The proposed restaurant would occupy a suite immediately adjacent to the live nude adult business in the same commercial center. The applicant has informed City staff that they intend the establishment's hours of operation to be from 11:00 a.m. to 5:00 a.m. and the service of alcoholic beverages will be until 2:00 a.m. The applicant has already applied for an "on-sale" license from ABC and the status of this license is pending; and

G. The Economic Development Department also received inquiries from the representatives of another existing adult business featuring live totally nude dancing without the sale of alcohol who are interested in opening a restaurant or bar serving alcohol for on-site consumption in the same commercial center as the adult business they represent. Following the establishment of the moratorium pursuant to Urgency Ordinance No. 25-2014, the same representatives from the adult business once again contacted staff regarding their desire to open said establishment; and

H. City staff anticipates additional requests for entitlements related to the establishment and operation of establishments serving alcohol for on-site consumption within 500 feet of totally nude adult businesses; and

I. ABC expressly prohibits the sale of alcohol in establishments in which live fully nude dancers perform pursuant to Administrative Rule 143.3. (4 C.C.R. section 143.3). Rule 143.3 aims "to reduce the problems caused by [live nude] dancing in front of customers whose inhibitions and ability to control their impulses have been weakened by the consumption of liquor." *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd*., (2002) 99 Cal. App. 4th 880, 891; and

J. ABC's adoption of Rule 143.3 was supported by substantial evidence that nude performances in conjunction with the on-site sale of alcohol led to not only lewd conduct "inside the business premises, but also to prostitution, indecent exposure, and sexual assault in the vicinity," which ABC recognized as secondary effects. *Dep't of Alcoholic Beverage Control,* 99 Cal. App. 4th at 888; and

K. The City Council takes legislative notice of the decision in *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd*., (2002) 99 Cal. App. 4th 880, and finds this relevant to the land use and public health and safety issues currently at play in the City.

L. The City Council also recognizes that there is ample evidence that the combination of adult businesses and alcohol-serving establishments "pose larger and qualitatively different ambient public safety hazards." *See Testimony by Professor Richard McCleary, Ph.D. on Illinois State Senate Bill 3348*; and

M. There are currently three totally nude adult businesses operating within the City that feature live nude dancing, and are therefore expressly prohibited from serving alcohol. All three adult businesses have been operating in their current locations prior to the incorporation of the City; and

N. There are currently no establishments selling alcohol for on-site or off-site consumption in close proximity to the adult businesses featuring totally nude dancing in the City. The recent building permit application and inquiries raised serious concerns about the deleterious effects as to the public health, safety and welfare related to the sale of alcohol for on-site consumption in close proximity to live nude adult businesses.

O. The City considers establishments serving alcohol for on-site consumption located within 500 feet of adult businesses to be in close proximity. Because 500 feet is less than a tenth of a mile and thus easily walkable, the distance will likely facilitate and encourage customers that consume alcohol at an establishment serving alcohol for on-site consumption to visit adult businesses in an intoxicated state. The operation of an establishment serving alcohol for on-site consumption next to a live nude adult business would be contrary to the intended effect of Rule 143.3 and lead to the secondary effects that Rule 143.3 specifically seeks to prevent; and

P. The Rancho Cordova Municipal Code is silent with regards to regulations on establishments serving alcohol for on-site consumption in close proximity to adult businesses; and

Q. In order to address community concerns regarding the negative effects, resulting from the operation of establishments serving alcohol for on-site consumption in close proximity to live nude adult businesses, such as prostitution, assaults and drug transactions, it is necessary for the City to study the potential impact such establishments may have on the public health, safety and welfare; and

R. Pursuant to Article XI, Section 7 of the California Constitution, the City of Rancho Cordova may make and enforce, within its limits, all local police, sanitary, and other ordinances and regulations not in conflict with general laws; and

S. The moratorium is not intended to affect live nude adult businesses or any other adult business, but rather to help reduce the negative impacts and effects caused by alcohol being sold and consumed on the premises of an establishment in close proximity to live nude adult businesses. The moratorium will prevent such businesses from establishing in close proximity to live nude adult businesses until the City further studies this issue; and

T. Furthermore, the moratorium is not an attempt to regulate the sale of alcohol; a field exclusively occupied by the State. Instead, the moratorium is a valid exercise of the City's zoning power in order to control the secondary or nuisance effects related to establishments that serve alcohol for on-site consumption. *See Floresta, Inc. v. City of Leandro*, (1961) 190 Cal. App. 2d 599 (upholding ordinance prohibiting the sale of alcohol within 200 feet of a residential zone unless business demonstrated that there would be no negative secondary effects); *see also Korean Am. Legal Advocacy Found. v. City of Los Angeles, et. al.,* (1994) 23 Cal. App. 4th 376, 388 (upholding ordinance that imposed conditions on ABC licensees in order to "abate or eradicate nuisance activities" associated with the sale of alcohol). ; and

U. The focus of the moratorium is to further study and evaluate potential measures to abate or control the negative effects associated with the sale of alcohol for on-site consumption in close proximity to adult businesses featuring live nude dancing. While ABC's Rule 143.3 prohibits the sale of alcohol by adult businesses featuring live nude dancing it does not address the sale of alcohol near or in close proximity to these businesses; and

V. California Government Code section 65858, subdivision (c) prohibits legislative bodies from adopting or extending an interim ordinances unless the ordinance contains findings that there is a "current and immediate threat to the public health, safety, or welfare," and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and

W. The City Council has determined that the circumstances and conditions that led to the adoption of Ordinance No. 25-2014, which are set forth therein and summarized in this Urgency Ordinance, still exist and continue to pose a threat to the public health, safety and welfare; and

X. Staff will continue to study the potential impacts of establishments serving alcohol for on-site consumption in close proximity to live nude adult businesses, and possible amendments to the City's Municipal Code and Zoning Code for clear, consistent and uniform regulations related to the establishment, location and operation of such establishments serving alcohol for on-site consumption near adult businesses; and

Y. On November 3, 2014, in accordance with Government Code section 65858, the City Council held a properly noticed hearing to consider extending the moratorium for a period of ten (10) months and fifteen (15) days from the date that Urgency Ordinance No. 25-2014 would have otherwise expired.

Section 2. Moratorium Extended.

A. Scope.

In accordance with the authority granted to the City of Rancho Cordova under Article XI, Section 7 of the California Constitution and California Government Code section 65858, from and after the effective date of this Urgency Ordinance, no permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued for the establishment or operation of any establishment serving alcohol for on-site consumption within 500 feet of a live nude adult business in the City of Rancho Cordova.

B. Definitions.

1. For purposes of this Ordinance, "adult-related establishment" or "adult business" or "live nude adult business" means any business or establishment which has live nude dancing and is subject to Section 143.3 of Title 4 of the California Code of Regulations. "Adult-related establishment" or "adult business" or "live nude adult business" do not include an adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult hotel or motel, or cabaret.

2. For purposes of this Ordinance, "alcohol served for on-site consumption" means the service of alcohol served for consumption at the establishment requiring an "on-sale" license from ABC.

Section 3. Public Nuisance.

The establishment, maintenance or operation of businesses serving alcohol for on-site consumption within 500 feet of a live nude adult business or live nude adult-related establishment within the City limits of the City of Rancho Cordova is declared to be a public nuisance. Violations of this Ordinance may be enforced by any applicable laws or ordinances, including but not limited to injunctions, or administrative or criminal penalties under the Rancho Cordova Municipal Code.

Section 4. CEQA.

Pursuant to Section 15001 of the California Environmental Quality Act ("CEQA") Guidelines, this Urgency Ordinance is exempt from CEQA based on the following:

1. This Urgency Ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

2. This Urgency Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

3. This Urgency Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

Section 5. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Rancho Cordova hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 6. Effective Date and Duration.

This Urgency Ordinance shall become effective immediately upon passage and adoption by at least four-fifths vote of the City Council, and shall be in effect for ten (10) months and fifteen (15) days from and after the date that Urgency Ordinance No. 25-2014 would have expired, November 13, 2014, unless further extended by the City in accordance with California Government Code section 65858.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ____ day of __________, 2014 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____
Dan Skoglund, Mayor

ATTEST:

____
Mindy Cuppy, MMC, City Clerk
2349545.7

ORDINANCE NO. 25-2014

CITY OF RANCHO CORDOVA

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF ESTABLISHMENTS SERVING ALCOHOL FOR ON-SITE CONSUMPTION WITHIN 500 FEET OF ADULT BUSINESSES, TO BECOME EFFECTIVE IMMEDIATELY

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1. Purpose and Declarations.

A. The Building Department of the City of Rancho Cordova recently received a commercial application for a building permit from an applicant wishing to operate a restaurant within the same commercial center as an existing adult business. The proposed restaurant would occupy a different suite in the same commercial center; and

B. The proposed establishment has not applied for a business license, therefore, the Planning Department has begun to conduct a plan check in order to inform the applicant whether this type of business is allowed in the proposed location. The Planning Department was informed that the business would serve alcohol for on-site consumption. The applicant has already applied for an "on-sale" license from the California Department of Alcoholic Beverage Control Board and the status of this license is pending; and

C. The Economic Development Department has also received inquiries from representatives from another existing adult business considering opening a restaurant or bar serving alcohol for on-site consumption in close proximity and also in the same building as another existing adult business; and

D. The Rancho Cordova Municipal Code is silent with regards to regulations on establishments serving alcohol for on-site consumption in close proximity to adult businesses; and

E. In order to address community concerns regarding the negative secondary effects, such as assaults, prostitution and other alcohol related crimes, resulting from the operation of establishments serving alcohol for on-site consumption in close proximity to adult businesses, it is necessary for the City to study the potential impact such establishments may have on the public health, safety and welfare; and

F. The California Department of Alcoholic Beverage Control ("ABC") adopted Administrative Rule 143.3, effective August 10, 1970, prohibits the sale of alcohol in establishments in which live fully nude dancers perform. (4 C.C.R. section 143.3); and

G. It is necessary that the City study the possible adoption of amendments to the City's Municipal Code and Zoning Code regarding establishments that serve alcohol for on-site consumption within 500 feet of adult businesses. Staff needs time to study whether to establish minimum requirements on the operation of these businesses; and

H. As demonstrated by the recitals herein and the evidence in the record for this urgency Ordinance, there is a threat to the public health, safety and welfare of the community if establishments serving alcohol for on-site consumption operate in close proximity to adult businesses in the City without proper regulations in place. Absent the adoption of this interim urgency Ordinance, it is likely that the establishment and operation of establishments serving alcohol for on-site consumption in close proximity to adult businesses within the City, without appropriate controls in place to regulate the impacts on the community, will result in harmful effects to the businesses, employees of the adult businesses, property owners and residents of the City; and

I. Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

J. California Government Code Section 65858, subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum of two times and have a maximum total duration of 2 years; and

K. California Government Code Section 65858, subdivision (c) provides: that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and

L. The City Council desires to (1) address concerns regarding the on-site consumption of alcohol in establishments in close proximity to adult businesses, (2) study the potential impacts that establishments serving alcohol for on-site consumption in close proximity to adult businesses may have on the public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for establishments serving alcohol for on-site consumption in close proximity to adult businesses, and (4) determine appropriate controls for protection of public health and welfare; and

M. In accordance with California Government Code Section 65858, subdivision (c), which provides that such interim ordinances that have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (as defined in California Government Code Section 65858, subdivisions (g) and (h)) may not be extended except upon written findings adopted by the legislative body as specified in the subdivision, the City Council hereby finds that the moratorium established pursuant to this Ordinance will not have the effect of denying approvals needed for the development of projects with a significant component of multi-family housing; and that, therefore, the findings specified in Section 65858, subdivision (c), need not be made; and

N. Staff shall commence steps to conduct a study of the potential impacts of establishments serving alcohol for on-site consumption in close proximity to adult businesses, and possible amendments to the City's Municipal Code and Zoning Code for clear, consistent and uniform regulations related to the establishment, location and operation of such businesses; and

O. Pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this Ordinance is exempt from CEQA based on the following:

1. This Ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

2. This Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

3. This Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

Section 2. Moratorium Imposed.

A. Findings and Purpose.

This Ordinance is declared to be an interim ordinance as defined by California Government Code section 65858. This Ordinance is deemed necessary based on the evidence in the record for this Ordinance, the following findings of the City Council of the City of set forth in Section 1 of this Ordinance, and the additional information set forth below:

1. The purpose of this Ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the issuance of an applicable license or entitlement for establishments serving alcohol for on-site consumption within 500 feet of adult businesses and adult-related establishments. The City of Rancho Cordova does not currently have standards in the Municipal Code related to the location, operation and concentration of establishments serving alcohol for on-site consumption in close proximity to adult businesses within the City.

2. In 2003 and in 2005, the City adopted urgency ordinances regarding establishment of new sexually oriented businesses and the expansion of existing sexually oriented businesses pending the review and amendments of the City's zoning regulations applicable to such uses. The City referenced findings from the County of Sacramento, set forth in its Zoning Code, and to cases, studies and authorities involving other municipalities around the country clearly establishing that the existence of sexually oriented businesses in a community results in the creation of harmful secondary effects, such as increased crime and decreasing property values, which are a threat to the public safety, health and welfare. In adopting Chapter 4.34, "Adult-Related Establishments," of the City's Municipal Code, the City found that "[t]here has been a demonstrable relationship between high incidence of unlawful prostitution and drug-related crime, and the adult-related establishments regulated by this chapter. Such businesses operate as fronts for houses of prostitution and for illegal drug-related transactions." (Rancho Cordova Municipal Code section 4.34.000.) The records of those prior City and County ordinances are hereby incorporated by this reference.

3. The City Council reaffirms its findings related to the negative impacts that adult businesses can cause if not adequately regulated. The City Council acknowledges First Amendment Constitutional protections afforded to adult businesses. This moratorium is not intended to affect adult businesses, but rather to help reduce the negative impacts and secondary effects caused by alcohol being sold and consumed on the premises of or in close proximity to adult businesses by preventing more businesses selling alcohol from establishing in close proximity to adult businesses.

4. The problem with alcohol and adult businesses is well documented by the California Department of Alcohol and Beverage Control ("ABC"). ABC adopted Administrative Rule 143.3, effective August 10, 1970, prohibiting the sale of alcohol in establishments in which live fully nude dancers perform, declaring that violations of this rule "are deemed contrary to public welfare and morals." (4 C.C.R. section 143.3.)

5. ABC's Administrative Rule 143.3 was upheld by the United States Supreme Court in *California v. La Rue*, 409 U.S. 109 (1972). ABC argued that rules, including Rule 143.3, "further a substantial governmental interest, such as protection of the public welfare and morals from ..., prostitution, narcotics and the protection of minors." *La Rue vs. State of California*, 326 F. Supp. 348, 355 (C.D. Cal. 1971). ABC argued "that those problems are increased when alcohol and possible sexual stimulation are present within the same premises." *La Rue*, 326 F. Supp. at 355. The Supreme Court's decision noted that "[t]he Department's conclusion, embodied in these regulations, that certain sexual performances and the dispensation of liquor by the drink ought not to occur at premises that have licenses was not an irrational one." *La Rue*, 409 U.S. at 118.

6. Courts have affirmed the connection between nude and semi-nude entertainment, alcohol consumption, and criminal activity (see *Grand Faloon Tavern, Inc. v. Wiker*, 670 F.2d 943 (11th Cir. 1982)). The Court in *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003) noted that "[p]rohibiting alcohol on the premises of adult entertainment establishments will unquestionably reduce the enhanced secondary effects resulting from the explosive combination of alcohol consumption and nude or semi-nude dancing."

7. Administrative Rule 143.3 and many courts have established the harm and effects of alcohol served in adult businesses, especially adult businesses such as those in Rancho Cordova, where live full nude dancers perform. Staff needs time to study whether the availability of alcohol for on-site consumption in close proximity to adult businesses also results in the similar negative impacts that ABC and the Courts have documented.

8. Issuing permits, business licenses or other applicable licenses or entitlements providing for the establishment and/or operation of establishments serving alcohol for on-site consumption within 500 feet of an adult business, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare including assaults, prostitution and other alcohol related crimes.

9. This urgency Ordinance would not regulate adult businesses and thus does not implicate First Amendment protections on expressive conduct. Rather, this urgency Ordinance will apply to businesses that sell and allow consumption of alcohol because of the particular secondary effects that alcohol consumption can cause.

10. In light of the potential impact of the sale of alcohol for on-site consumption in close proximity to adult businesses, it is necessary, in accordance with Government Code section 65858, to impose a moratorium on the issuance of entitlements for establishments serving alcohol

for on-site consumption within 500 feet of adult businesses in the City to provide time for the City Council to further evaluate and consider possible adoption of legislation, guidelines and/or polices as required to avert the potential impacts of establishments serving alcohol for on-site consumption located within 500 feet of adult businesses and adult establishments. No decisions have been made about whether or not additional requirements are necessary or about the content of any additional requirements that may be considered or adopted.

B. Scope.

In accordance with the authority granted the City of Rancho Cordova under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this Ordinance, no permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued for the establishment or operation of any establishment serving alcohol for on-site consumption within 500 feet of an adult business in the City of Rancho Cordova.

C. Definitions.

1. For purposes of this Ordinance, "adult-related establishment" or "adult business" means any business or establishment which has live nude dancing and is subject to Section 143.3 of Title 4 of the California Code of Regulations. "Adult-related establishment" or "adult business" do not include an adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult hotel or motel, or cabaret.

2. For purposes of this Ordinance, "alcohol served for on-site consumption" means the service of alcohol served for consumption at the establishment requiring an "on-sale" license from ABC.

Section 3. Establishment, Maintenance Or Operation Of Businesses Serving Alcohol For On-Site Consumption Within 500 Feet Of An Adult-Related Establish or Adult Business Are Declared To Be A Public Nuisance.

The establishment, maintenance or operation of businesses serving alcohol for on-site consumption within 500 feet of an adult business or adult-related establishment within the City limits of the City of Rancho Cordova is declared to be a public nuisance. Violations of this Ordinance may be enforced by any applicable laws or ordinances, including but not limited to injunctions, or administrative or criminal penalties under the Rancho Cordova Municipal Code.

Section 4. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Rancho Cordova hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date and Duration.

This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 45 days there from unless extended by the City Council in accordance with California Government Code Section 65858.

Section 6. Penalties.

Any person who violates any section of this Ordinance shall be guilty of a misdemeanor and subject to a fine of up to one thousand dollars ($1,000) and/or imprisonment in the county jail for up to a period of six (6) months.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 29th day of September, 2014, by the following vote:

AYES: Budge, Sander, McGarvey, Skoglund

NOES: None

ABSENT: Terry

ABSTAIN: None

Dan Skoglund, Mayor

ATTEST:

Mindy Cuppy, MMC, City Clerk

2336503.4

UCIRVINE | UNIVERSITY of CALIFORNIA

Criminology, Law and Society
Irvine, CA 92697-7080

March 5, 2012

Illinois State Senate Public Health Committee
Attn: Chairman Delgado

Dear Chairman Delgado and Members of the Public Health Committee,

Invited testimony on SB 3348 is attached, along with *curriculum vitae* for me and for Professor Lori Sexton. We appreciate the opportunity to read and comment on this legislation. Of course, if either Professor Sexton or I can be further assistance in this matter, feel free to contact us.

Sincerely,

Richard McCleary

Richard McCleary, Ph.D.
Professor

cc: Sexton

Testimony on SB 3348

Richard McCleary, Ph.D.
Lori Sexton, M.A.

March 2nd, 2012

1. Qualifications

RICHARD MCCLEARY is a Professor at the University of California, Irvine with appointments in three departments: Criminology, Environmental Health Science, and Planning. A curriculum vitae is attached. Professor McCleary holds a B.S. from the University of Wisconsin and an M.A. and Ph.D. from Northwestern University. He has taught graduate courses in statistics and criminology at the University of California, Irvine; the University of Minnesota; the University of Michigan; the University of New Mexico; Arizona State University; the State University of New York; and the University of Illinois. He has served on Federal and state government task forces and panels and on the editorial boards of national peer-reviewed journals. He is the author or co-author of five books and more than 80 articles.

As a nationally recognized expert on adult entertainment businesses, Professor McCleary has testified in lawsuits on behalf of governments and has advised legislatures on mitigating the secondary effects of the businesses. As a former resident of and a frequent visitor to Illinois, he has a first-hand understanding of the State. In 2005, he testified as a expert in People of the State of Illinois *ex rel*. Edward C. Deters *v*. The Lion's Den, Inc.[1] An excerpt of his opinion in that case was published as an article in a peer-reviewed criminology journal (McCleary, 2008). Professor McCleary's research on the interaction of alcohol and adult entertainment businesses was cited in the Illinois Supreme Court decision in City of Chicago *v*. Pooh Bah Enterprises, Inc. *et al*.[2] The evidence considered in that case is especially relevant to SB 3348.

LORI SEXTON is an Assistant Professor at the University of Missouri, Kansas City with an appointment in the Department of Criminal Justice and Criminology. A curriculum vitae is attached. Currently a Ph.D. candidate at the University of California, Irvine, Professor Sexton holds a B.S. from Cornell University and an M.A. from the University of Pennsylvania. Professor Sexton has taught research methods and criminology courses at the University of California, Irvine and at the University of San Diego. As an expert on the sexual victimization of trans-gender prisoners, she testified in U.S. *v*. Ronald D. Royer, Jr. and before the California State Senate Committee on Public Safety. She has served as a consultant and advisor to the

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[1] Circuit Court for the 4th Judicial Circuit of Illinois, Case No. 04-CH-26.

[2] 865 N.E.2d 133 (2006) 224 Ill.2d 390.

California Department of Corrections and Rehabilitation. Her research on sexual assault has been funded by the National Institute of Justice, the National Science Foundation, and the California Department of Corrections and Rehabilitation. She is the co-author of several articles, book chapters, and government reports on topics in criminology including sexual assault.

2. General Opinions

We have been asked to testify on the secondary effects of "live adult entertainment facilities," the subclass of sexually-oriented businesses defined in SB 3348. The secondary effects of live adult entertainment facilities include litter, noise, traffic, real estate value, crime, and general quality of life. In light of the aim of SB 3348 to "make grants to sexual assault organizations with whom the Department has contracts for the purpose of providing community-based assistance to victims of sexual assault and for activities concerning the prevention of sexual assault," our testimony will focus on *public safety* or *crime-related* secondary effects. Based on our backgrounds and research, we have three general opinions:

> **Opinion 1**: The criminological theory of ambient crime risk, known as the "routine activity theory of hotspots," predicts that Sexually-oriented businesses will generate large, significant crime-related secondary effects. This effect is the product of three factors. (1) Sexually-oriented businesses draw patrons from wide catchment areas. (2) Because they are disproportionately male, open to vice overtures, and reluctant to report victimizations to the police, sexually-oriented business patrons are "soft" targets. (3) The high density of "soft" targets at the site attracts predatory criminals, including vice purveyors who dabble in crime and criminals who pose as vice purveyors in order to lure or lull potential victims. The conjunction of these three factors generates an ambient public safety hazard.
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> **Opinion 2**: Although the hotspot model applies to all such businesses, sexually-oriented businesses that offer on-site live entertainment *and* that serve alcohol are associated with sexual assault as defined in SB 3348, including but not limited to battery, exploitation, and gender-hate crimes. Victims of these crimes include not only customers and employees of the businesses but, also, vice purveyors working in the surrounding neighborhoods.
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> **Opinion 3:** The prevention strategy described in SB 3348 is a promising way to mitigate the sexual assaults associated with live adult entertainment facilities in Illinois. SB 3348 is modeled after a Texas statute that appears to be effective in that respect (Bureau of Business Research, *et al.*, 2009). Statutes similar to SB 3348 are currently under review by several state legislatures.

The details of our opinions begin with a necessary introduction to the criminological *theory* of secondary effects. This theory explains *why* sexually-oriented businesses in general have crime-related secondary effects. After developing the general theory, we apply it to the special case of the live adult entertainment facilities defined in SB 3348 and to the crimes of sexual assault, including battery and exploitation. We then review some of the studies that corroborate the general theory.

3. The Criminological Theory of Secondary Effects

The consensus finding of the secondary effects literature is a *scientific fact* because it rests on a strong scientific theory. Applied to "hotspots of predatory crime," such as SOB sites, the routine activity theory (Cohen and Felson, 1979; Sherman, Gartin and Buergner, 1989) holds that the number of crimes within 500-1000 feet of a site, is the product of four risk factors. This can be written as:

$$\textit{Ambient Crime Risk} \;=\; \frac{\sum (\textit{ Targets} \times \textit{Value })}{\textit{Police Presence}} \times \textit{ Offenders}$$

An increase (or decrease) in the number of targets at the site or in their average value yields an increase (or decrease) in ambient crime risk. An increase (or decrease) in police presence, on the other hand, yields a decrease in ambient risk.

Sexually-oriented business sites attract potential victims, or targets, from wide catchment areas. Sexually-oriented businesses are no different in that respect than tourist attractions and sporting events. Compared to the targets found at other hotspots, however, the targets attracted to sexually-oriented business sites are exceptionally attractive to offenders. This reflects presumed characteristics of the businesses' patrons. The patrons ordinarily travel long distances to the site, are disproportionately male, open to vice overtures, and carry cash. Most important of all, when victimized, the patrons are reluctant to involve the police. From the offender's perspective, they are "perfect" victims.

The offenders in this theory move freely from site to site, choosing to work at the most attractive site available. In Sutherland's (1937) terms, these offenders are "professional thieves." Some are vice purveyors (prostitutes, drug dealers, *etc.*) who only dabble in crime. Some are predatory criminals who use the promise of vice to lure and lull victims. Some are men, some are women. Despite their heterogeneity, the offenders share a rational decision-making calculus that draws them to sexually-oriented business sites.

The theory connecting vice and predatory crime has been a popular plot device for at least 250 years. John Gay's (1728) *Beggar's Opera*, for example, centers on the relationship between MacHeath, a predatory criminal, and a vice ring composed of Peachum, Lucy, and Jenny. This popular view is echoed in the empirical literature on criminal lifestyles and thought processes. The earliest and best-known study (Shaw, 1930; Snodgrass, 1982), *e.g.*, describes "Stanley," a delinquent who lives with a prostitute and preys on her clients.

Criminological thinking on the connection between vice and predatory crime has changed little in the 75 years since Shaw's *Jack-Roller* (Felson, 2006; Potter, 1989). To document the rational choices of predatory criminals, Wright and Decker (1997) interviewed 86 active armed robbers. Asked to describe a perfect victim, all mentioned victims involved in vice, either as sellers or buyers. Three of the armed robbers worked as prostitutes:

> From their perspective, the ideal robbery target was a married man in search of an illicit sexual adventure; he would be disinclined to make a police report for fear of exposing his own deviance (p. 69).

The rational calculus described by these prostitute-robbers echoes the descriptions of other predators (see Bennett and Wright, 1984; Feeney, 1986; Fleisher, 1995; Katz, 1988, 1991; Shover, 1996).

The third risk factor in the hotspot theory is police presence. Controlling for the quantity and value of the targets at a site, rational offenders choose sites with the lowest level of visible police presence. In strictly physical terms, increasing (or decreasing) the number of police physically on or near a site reduces (or increases) ambient risk. However, police presence can also be virtual through remote camera surveillance and similar processes. Whether physical or virtual, the *effectiveness* of police presence can be affected – for better or worse – by broadly defined environmental factors. Due to the reduced effectiveness of conventional patrolling after dark, *e.g.*, crime risk rises at night, peaking around the time that bars close.

3.1 Alcohol

Proximity to alcohol is a key component of the hotspot theory of secondary effects. The mechanism is obvious and straightforward. Alcohol aggravates the already-high ambient crime risk by lowering the inhibitions and clouding the judgments of patrons. In effect, alcohol makes the soft targets found at sexually-oriented business sites softer. The available data corroborate this theoretical expectation in all respects. Predatory criminals prefer inebriated victims, *e.g.*, In their interviews of active armed robbers, Wright and Decker (1997) report that:

> [E]ach of [the robbers] expressed a preference for intoxicated victims, who were viewed as good targets because they were in no condition to fight back. (p. 87)
>
> Several [robbers] said that they usually chose victims who appeared to be intoxicated because, as one put it, “Drunks never know what hit them.” (p. 70)

Reviewing the research on this point, the Illinois Supreme Court in City of Chicago *v*. Pooh Bah Enterprises, Inc. *et al*. (2006) find that “Victims become more vulnerable because of alcohol’s debilitating effects, thus creating an attractive situation for potential offenders.” Accordingly, sexually-oriented businesses that serve alcohol or that are located near liquor-serving businesses pose larger and qualitatively different ambient public safety hazards. Governments rely on this consistent finding of the empirical secondary effect literature as a rationale for limiting nudity in liquor-serving businesses. SB 3348 in particular is predicated on the finding that “consumption of alcoholic beverages on the premises of sexually oriented businesses exacerbates the negative secondary effects of those businesses on the community." Our review of the empirical literature supports this finding for live adult entertainment facilities as defined in SB 3348.

In addition to making potential victims more vulnerable, experimental laboratory results demonstrate that a set of *primary* effects emerge when alcohol and erotica are combined. Young men who are exposed to erotica tend to drink more alcohol (George, 1988) and to report higher feelings of anger and aggression (George and Martell, 1986). Norris *et al.* (2002) and Davis *et al.* (2006) measure the self-reported aggression and sexual arousal of young men under three conditions: after drinking alcohol, after viewing erotica, and after drinking alcohol *and* viewing erotica. Young men who both drank alcohol and viewed erotica reported the highest levels of aggression and arousal. The fact that the combination of alcohol *and* erotica generated strong anti-social primary effects has been used as the rationale for separating alcohol and erotica in adult entertainment facilities.

3.2 Live Adult Entertainment Facilities

Since all sexually-oriented business subclasses draw targets to their sites, all have crime-related secondary effects. Nevertheless, criminological theory allows for qualitative differences among subclasses. Sexually-oriented businesses that serve alcohol have higher ambient risks of non-instrumental personal crimes, such as assault, battery, and disorderly conduct. Sexually-oriented businesses that provide on-premise entertainment have higher risks of vice crime and customer-employee assault. The live adult entertainment facilities defined in SB 3348 combine these two sets of risk factors with predictable consequences.

The ambient public safety hazards posed by live adult entertainment facilities differ from the hazards of other sexually-oriented businesses in the quantity and quality of on-premise crime incidents. "Victimless" crimes such as lewd behavior are found to occur on the premises of all sexually-oriented businesses, including live adult entertainment facilities.[3] In addition to the "victimless" crimes found on the premises of all sexually-oriented businesses, however, the premises of live adult entertainment facilities are particularly risky places for assaultive crimes. It is useful to break on-premise assaults down into four categories: (1) patron-on-patron assault, (2) employee-on-patron assault, (3) patron-on-employee assault, and (4) employee-on-employee assault. Patron-on-employee and employee-on-employee assaults are often the sort of sexual assaults defined in SB 3348.

To some extent, the risk of on-premise assault can mitigated by regulation. Removing blind spots and closed booths reduces the opportunity for "victimless" crimes, *e.g.* To the extent that "victimless" crimes lead to confrontations, regulating the interior architecture of live adult

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[3] Using Texas Alcoholic Beverage Commission data, an evaluation of a Texas statute that is comparable to SB 3348 found that "for almost all the categories of violations, the number of sex- and drug-related offenses was higher for [adult entertainment facilities] than for bars." (BBR, 2009, p. 61).

entertainment facilities reduces the risk of assault. Regulations that physically separate patrons from entertainers (or other employees) also reduces the risk of assault. Ideally, the separation is achieved by mandated structures, such as raised stages. By creating a tangible "wall" between employees and patrons, raised stages reduce unintentional (or intentional) "touching," thereby reducing the risk of patron-on-employee and employee-on-patron crime.

While assaults on police officers are rare, they are among the most serious crimes that occur inside live entertainment facilities. Assault risk begins when officers enter the premises and continues until they leave. Regulations that minimize the length of time that officers must spend inside the facility reduce the risk of confrontation and assault. Requiring well-lit and obstacle-free interior premises and raised stages that separate entertainers and patrons illustrate these regulations.

4. Empirical Corroboration of the Criminological Theory

The strong criminological theory of secondary effects has been tested and corroborated by large empirical literature. Reviewing this literature as a predicate for SB 3348, the Illinois General Assembly finds that "crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located." Our review of the empirical literature supports this finding for sexually-oriented businesses in general and for live adult entertainment facilities in particular.

4.1 Greensboro, North Carolina

In 2003, Dr. Daniel Linz and his colleagues analyzed the distributions of 911 calls across Greensboro, North Carolina Census Block Groups (or "neighborhoods"). The results of Dr. Linz' analyses are plotted in Figure 1. The green bars in Figure 1 report the statistically adjusted numbers of 911 calls for neighborhoods that have no taverns or sexually-oriented businesses. To facilitate interpretation, we have fixed the number of 911 calls in control neighborhoods at 100 percent; the numbers of 911 calls in other neighborhoods can be interpreted, thus, as multiples of the control neighborhoods.

The blue bars in Figure 1 report the statistically adjusted numbers of 911 calls for neighborhoods with taverns. Since taverns are the "gold standard" of ambient crime risk,[4] it is not surprising that, compared to the control neighborhoods, tavern neighborhoods have relatively higher risks for all types of crime. The red bars in Figure 1 report the statistically adjusted numbers of 911 calls for neighborhoods with live adult entertainment facilities (or as Dr. Linz and his colleagues call these businesses, "adult cabarets"). Figure 1 has an unambiguous

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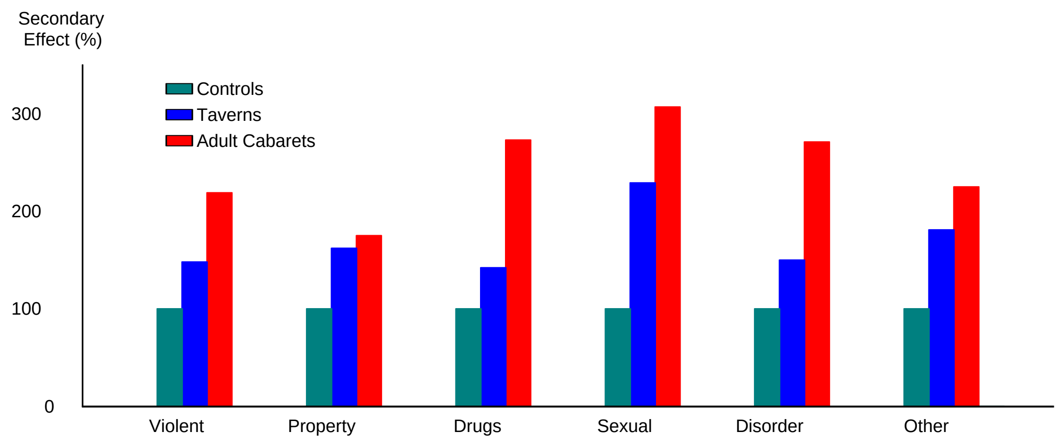
[4] The Illinois Supreme Court decision in City of Chicago *v.* Pooh Bah Enterprises, Inc. *et al.* (2006) cites Roucek and Provatiner (1989), McCleary and Meeker (1991), and Roucek and Maier (1991) on this point. It is a scientific fact that bars and taverns have relatively higher ambient crime risks.

interpretation. Compared to control neighborhoods (green bars), neighborhoods with taverns (blue bars) have higher ambient crime risks. But the ambient crime risks in neighborhoods with live adult entertainment facilities (red bars) have even higher ambient crime risks.

Figure 1 - Results of the 2003 Greensboro Study



Source: Tables 14-19, *Evaluating Potential Secondary Effects of Adult Cabarets and Video/ Bookstores in Greensboro: A Study of Calls for Service to the Police.* D. Linz and M. Yao, November 30th, 2003.

The ordered relationship among the three neighborhoods persists across all categories of crime. The numbers of 911 calls in tavern neighborhoods (blue bars) ranged from 148 percent (violent crimes) to 229 percent (sexual crimes) of the control numbers. The numbers of 911 calls in neighborhoods with live adult entertainment facilities ranged from 175 percent (for property crime) to 307 percent (for sexual crime) of the control numbers. These effects are large in every sense and, of course, given the strong criminological theory, not surprising. They are consistent with virtually every neighborhood-level secondary effects studies that used 911 calls to measure crime risk.

4.2 Charlotte, North Carolina

A study of Charlotte, North Carolina live adult entertainment facilities by Dr. Daniel Linz and his colleagues is sometime cited as an exception. To measure the secondary effects of live adult entertainment facilities in Charlotte, Linz *et al.* (2004) compared UCR Part I crime incidents near twenty adult cabarets to UCR Part I crime incidents near three control businesses: a McDonald's, a Kentucky Fried Chicken store, and an Exxon gas station mini-mart. Finding no statistically significant differences between the live adult entertainment facilities and the control businesses, Linz *et al.* concluded that live adult entertainment facilities do not pose ambient public safety hazards. We disagree with conclusion. A careful reading of their study suggests alternative explanations, however, including *crime reporting biases*:

Perhaps victims of crime in areas surrounding adult clubs are not motivated to

> report crime incidents to the police. If this were the case, there may not be stable crime reporting across study and control sites. It could be that, compared to the control sites, more of the crime that occurs in the adult dance club zone goes unreported. It seems plausible that many of the victims of crime in these areas might not want to draw attention to themselves. (Linz *et al.*, 2004, p. 100)

The decision to measure ambient crime risk with Part I UCR crime incidents (homicide, robbery, rape, aggravated assault, burglary, larceny, auto theft, and arson) is also problematic. The Part I UCR category excludes *all* vice crimes and *most* sexual assaults, for example. A more important shortcoming of the Charlotte study, however, concerns the non-comparability of the three control businesses and the twenty live adult entertainment facilities:

> Conceptually, it may be more appropriate to compare adult club sites with non-adult club sites so that one can determine whether the type of club activity affects the level of crime. This comparison may be implicit (if not explicit) in the minds of citizens and justices when considering whether an adult club should be allowed to locate in a particular area. Methodologically, using basic service type businesses such as fast food restaurants as control sites may confound the comparisons being made in the research, even if they are located in areas equivalent to those in which adult dance clubs are located. (Linz *et al.*, 2004, p. 100)

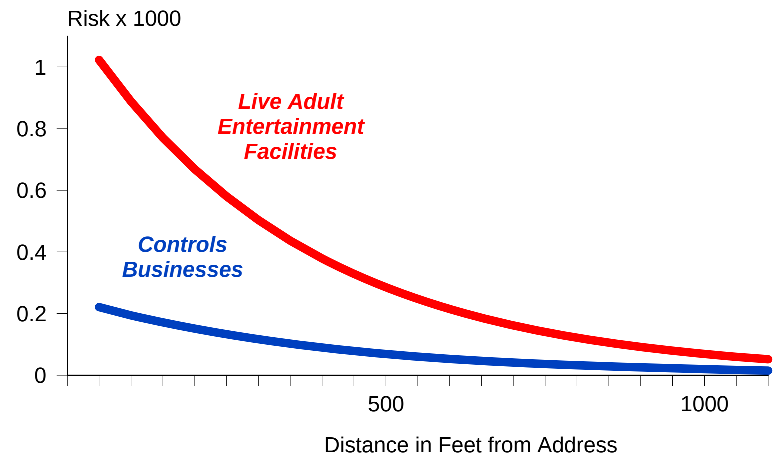
We agree with both methodological points. Had Linz *et al.* (2004) used more appropriate crime measures and controls, they would have found – as every other study has found – that live adult entertainment facilities pose a large, statistically significant ambient public safety hazard.

4.3 Palm Beach County, Florida

Three years after the Charlotte study by Linz *et al.* (2004), criminologists from the University California, Irvine conducted an analysis of the crime-related secondary effects of live adult entertainment facilities in Palm Beach County, Florida. Instead of using the subset of Part I UCR crime incidents to measure ambient crime risk, Jenness *et al.* (2007) used both Part I and Part II UCR crimes. And instead of using fast-food restaurants and gas station mini-marts as controls, Jenness *et al.* used businesses that were licensed to serve liquor and to offer non-adult entertainment.

The measure the ambient public safety hazards of the live adult entertainment facilities and the control businesses, Jenness *et al.* (2007) drew concentric zones centered on the sites and estimated ambient crime rates at expanding radii. The results of their analyses are summarized in the two risk-distance functions plotted in Figure 2. To interpret these functions, suppose that approach a site from the right. Since both the control businesses (the blue curve) and the live adult entertainment facilities (the red curve) serve alcohol, victimization risk rises as the distance to either type of site decreases. Victimization risk for the live adult entertainment facilities rises much more steeply, however. At 500 feet – approximately a long city block – ambient risk at a live adult entertainment site is four times higher than the risk at a control site. At 1,000 feet – approximately two long city blocks – victimization risk is much lower for either type of site. But even at that distance, ambient victimization risk is 3.5 times higher at live adult entertainment sites.

Figure 2 - Palm Beach County, Florida: Total Crime by Distance



Victimization risk at 50 feet or less represents on-premise crime. The premises of live adult entertainment facilities are particularly risky places. As noted, some of these on-premise crimes are “victimless” Many of the on-premise crimes are patron-on-employee assaults and employee-on-employee assaults, however, and these crime often fit the sexual assault definition of SB 3348.

5. Victims of Sexual Assault

The sexual assaults associated with live adult entertainment facilities include but are not limited to battery, intimidation, and exploitation. This broad definition is made necessary by the subtle nature of the phenomenon. Indeed, SB 3348 is predicated on the finding that “sexually-oriented businesses contribute to a culture that tolerates the sexual objectification and exploitation of women, and contribute to the need for community-based services to respond to victims of all forms of sexual exploitation, including sexual harassment, trafficking, and sexual assault.” Our review of the empirical literature supports this finding. While not all of the underlying cultural manifestations are defined as criminal sexual assault, moreover, all contribute to and aggravate the crimes sexual assault. This argues not only for the prevention strategies described in SB 3348 but, also, for the provision of services to victims.

We now review the sparse empirical literature on two important sexual assault victims: the employees of live adult entertainment facilities, including the vast majority who operate as “independent contractors” and prostitutes work in the neighborhoods around sexually-oriented businesses. Official statistics on sexual assaults are notoriously incomplete. The conventional wisdom is that sexual assaults in general under-reported to police agencies; in many ways, these crimes constitute the core of the "dark figure of crime" (Biderman and Reiss, 1967). The degree of under-reporting is certainly greater for sexual assaults in which the victim is an employee of a sexually-oriented business, however, or a prostitute. Given the lack of official police statistics on sexual assaults of these victims, much of our knowledge comes from ethnographic studies.

5.1 Entertainers

There is relatively little known about the lives of female entertainers who work in live adult entertainment facilities. Even less is known about their victimization experiences. The ethnographic study by Frank (2002), who worked as an exotic dancer to pay her graduate school tuition, describes the interactions of entertainers and their "regulars" in a way that emphasizes the reversal of roles. Allusions to victimization experience are brief and indirect. Focusing on First Amendment issues, Hanna (1998) represents another tradition. A prolific witness on behalf of sexually-oriented businesses, Hanna argues that any government attempt to regulate live adult entertainment facilities violates the First Amendment and interferes with economic opportunities of female entertainers. Although Hanna says nothing about the victimization of entertainers, we assume that she would view victimization as a minor problem at worst. Finally, a third view, represented by Jeffreys (2008), emphasizes the economic exploitation of entertainers by owners and managers. Although victimization is central to Jeffreys' view, the victimization experiences of individual entertainers are not described.

In light of the dearth of numbers, a survey of eighteen Minneapolis-St. Paul entertainers by Holsopple (1998) is striking. Using participant observation methods, Holsopple reports that victimization of entertainers is ubiquitous and routine:

> One hundred percent of the eighteen women in the survey report being physically abused in the stripclub ... One hundred percent ... report sexual abuse in the strip-club ... One hundred percent ... report verbal harassment in the stripclub ... One hundred percent ... report being propositioned for prostitution. Seventy eight percent ... were stalked by someone associated with the stripclub ... Sixty-one percent ... report that someone associated with the stripclub has attempted to sexually assault her ... [All of women ... witnessed these things happen to other strippers ... The overwhelming trend for violence against women in strip clubs was committed by customers ... Stripclub owners, managers, assistant managers, and the staff of bartenders, music programmers or disc jockeys, bouncers, security guards, floorwalkers, doormen, and valet were significantly less involved in violence against the women.

While one might quibble with the statistical adequacy of Holsopple's estimated victimization rates, her research leaves little doubt that the entertainers who work in live adult entertainment facilities experience sexual battery on a routine basis. Review articles by Baldwin (1989, 1999) which integrate data from a diverse range of sources support Holsopple's victimization findings.

5.2 Prostitutes

Whereas research on the sexual victimization experiences of female entertainers in live adult entertainment facilities is sparse, research on the sexual victimization of prostitutes is vast and wholly consistent. A synthetic review of two dozen studies by Raphael and Shapiro (2004) documents the incredibly high levels of violence against street prostitutes. Interviews with more than 200 prostitutes working in-doors at venues including live adult entertainment facilities find similar victimization rates. In addition to customers and pimps, the reported batterers included police officers. Comparing the sexual assaults of a sample of prostitutes and a matched sample of non-prostitute victims, DuMont and McGregor (2004) report that assaults against prostitutes are typically more severe with greater complications. Baldwin's (1989, 1999) review articles discuss the strong relationship between the sexual victimization of children in the context of prostitution and sexually-oriented businesses.

6. Concluding Remarks

Based on our backgrounds and research, it our opinion that SB 3348 is predicated on a sound body of evidence. We endorse each of the General Assembly's findings. In light of the experience elsewhere, particularly in Texas, we believe that the economic impact of SB 3348 on the live adult entertainment industry will be minimal. We believe further the community-based approach envisioned in this legislation will go a long way to mitigate the pernicious secondary effects of live adult entertainment facilities.

If SB 3348 has any shortcomings, it would be that no funds are provided for research. A modest research initiative aimed at better understanding secondary effects phenomena and, also, at evaluating the impact of SB 3348 would improve this legislation.

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B.S., University of Wisconsin, 1974

ACADEMIC APPOINTMENTS

University of California-Irvine: Professor of Social Ecology; Environmental Health Sciences; Criminology, Law and Society; Planning and Policy, 1988-Present.

Maine Medical Center Research Institute: Visiting Scientist, 2011.

University of Minnesota: Visiting Professor of Public Health (Epidemiology Division), 1998.

University of New Mexico: Associate Professor of Sociology, 1983-1988; Associate Director, New Mexico Statistical Analysis Center 1986-1988.

Human Relations Area Files, Yale University: Senior Research Scientist, 1986-1989.

University of Michigan: Instructor, ICPSR Summer Institute in Quantitative Social Science, 1983-1984.

State University of New York-Albany: Associate Professor of Criminal Justice, 1982-1983.

Arizona State University: Associate Professor of Criminal Justice, 1980-1982; Assistant Professor of Criminal Justice, 1978-1980; Director, Program in Applied Statistics, 1980-1982.

University of Illinois, Chicago: Assistant Professor of Criminal Justice and Sociology, 1977-1978; Lecturer in Criminal Justice, 1976-1977.

MEMBERSHIPS

American Society of Criminology
American Statistical Association
Justice Research and Statistics Association

EDITORIAL BOARDS

Behavioral Assessment: Associate Editor, 1980-1984
Criminology and Public Policy, Senior Editor, 2006-2007
Evaluation Studies Review Annual: Associate Editor, 1986

J. of Criminal Law and Criminology: Consulting Editor, 1982-Present
J. of Quantitative Criminology: Associate Editor, 2001-2012
J. of Research in Crime and Delinquency: Consulting Editor, 1981-Present
Justice Quarterly: Associate Editor, 1991-4
Law and Policy Quarterly: Associate Editor, 1978-88
New Direction for Program Evaluation: Advisory Editor, 1991-95
Research Methods in Social Relations, 4th Ed.: SPSSI Board of Advisors
Social Pathology: Associate Editor, 1994-Present

COMMUNITY SERVICE

Board of Directors, Prevent Child Abuse - Orange County, 1997-2003
Board of Directors, Orange County Youth and Family Services, 1995-2002
Technical Advisory Board (Health Link), Robert Wood Johnson Foundation
Executive Committee, UCI Mental Retardation Research Center, 1995-2000
Executive Committee, UC Institute for Brain Aging and Dementia, 1995-2003
Faculty Chair, UC Irvine School of Social Ecology, 2002, 2003
Member, UC Irvine Institutional Review Board “C,” 2003-2009
Aternate Member, UC Irvine Institutional Review Board “C,” 2010-present
Representative, UC Committee on Research Policy, 2004-2005
Chair, UC Irvine Council on Research, 2005-2007
Chair, UC Irvine Council on Student Experience, 2009-10

FINISHED WORK – Books

Bernard, T.J. and R. McCleary (eds.) *Life Without Parole by Victor Hassine*. Los Angeles: Roxbury, 1996.[1]

Bernard, T.J., R. McCleary, R. Wright (eds.) *Life Without Parole: Living in Prison Today, 2nd Edition by Victor Hassine*. Los Angeles: Roxbury, 1999.

R. McCleary. *Dangerous Men: The Sociology of Parole*. Beverly Hills and London: Sage, 1978, 202 pp.[2] *Second Revised Edition*. New York: Harrow and Heston, 1992.

R. McCleary and R.A. Hay, Jr. *Applied Time Series Analysis for the Social Sciences*. Beverly Hills and London: Sage, 1980, 328 pp.[3]

D. McDowall and R. McCleary. *Interrupted Time Series Analysis*. Volume #21, University Papers

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[1] *Wikipedia*: “On April 27, 2008, Victor Hassine died while in prison in Pennsylvania under unusual circumstances. An outspoken advocate for prison reform, the cause of his death is presently under investigation by prison authorities and private investigators, though it appears that he hanged himself according to a memo prepared by the Pennsylvania Department of Corrections April 28, 2008.”

[2]Reviewed in *Crime and Delinquency*, 1980, 26, 410-414; *Urban Life*, 1981, 10: 219-220.

[3]Reviewed in *Contemporary Sociology*, 1981, 10, 818-819; *Quantitative Sociology Newsletter*, 1981, 26, 191-2; *Quality and Quantity*, 1982, 566-7; *Scientometrics*, 1982, 401-3; *Sociology and Social Research*, 1981, 101-2.

Series: Quantitative Applications in the Social Sciences. Beverly Hills and London: Sage, 1980.[4]

H.P. Friesema, J.A. Caporaso, G.G. Goldstein and R. McCleary. *Aftermath: Communities After Natural Disaster*. Beverly Hills and London: Sage, 1978, 281 pp.

FINISHED WORK – Articles and Chapters

Gardiner, C. and R. McCleary. State-of-the-art in population projection and forecasting. Under review.

Tewksbury, R., L. Sexton and R. McCleary. Gendered activity cycles in adult bookstores. Under review.

Swanson, J.M., S. Schuck, M.M Porter, C. Carlson, C.A. Hartman, A. Sergeant, W. Clevenger, M. Wasdell, R. McCleary, R. Lakes, and T. Wigal. Categorical and dimensional definitions and evaluations of symptoms of ADHD: History of the SNAP and the SWAN rating scales. *The International Journal of Educational and Psychological Assessment*, 2012, 10:51-70.
April 2012, Vol. 10(1).

Weinstein, A.C. and R. McCleary. The association of adult businesses with secondary effects: Legal doctrine, social theory, and empirical evidence. *Cardozo Arts and Entertainment Law Journal*, 2011, 29:565-596.

McCleary, R. and D. McDowall. Time series designs. In Harris Cooper (ed.), *Handbook of Research Methods in Psychology*. Washington, DC, American Psychological Association, 2011, in press.

McCleary, R. and R. Tewksbury. Female patrons of porn. *Deviant Behavior*, 2010, 31:208-223.

McCleary, R. and A.C. Weinstein. Do "off-site" adult businesses have secondary effects? Legal doctrine, social theory, and empirical evidence. *Law and Policy*, 2009, 31:217-235.[5]

McCleary, R. Rural hotspots: The case of adult businesses. *Criminal Justice Policy Review*, 2008, 19:1-11.

McCleary, R. Crime and Incarceration, Editorial Introduction, Do prison releases cause crime? *Criminology and Public Policy*, 2007, 3:585-5988.

McCleary, R. and J.W. Meeker. Do peep shows "cause" crime? *Journal of Sex Research*, 2006, 43:194-196.[6]

McCleary, R., K. S. Y. Chew, V. Merrill and C. Napolitano. Does legalized gambling elevate the risk of suicide? An analysis of U.S. counties and metropolitan areas. *Suicide and Life-Threatening*

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[4] Reviewed in *Contemporary Psychology*, 1981, 720; *Quality and Quantity*, 1981, 473-474; *Australian Journal of Psychology*, 1986, 92-3.

[5] Cited in *Annex Books, Inc. v. City of Indianapolis IN*, No. 05-1926, U.S. Circuit Court of Appeals for the Seventh Circuit (2009).

[6] Cited by the U.S. Circuit Court of Appeals for the Eleventh Circuit, *Daytona Grand, Inc. v. City of Daytona Beach, Florida* (Case No. 06-12022).

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McCleary, R. and K.S.Y. Chew. Winter is the infanticide season: seasonal risk for child homicide. *Homicide Studies*, 2002, 6:228-239.

McCleary, R. Time series quasi-experiment. In T.D. Cook (ed.), *Encyclopedia of the Social Sciences*. Amsterdam: Elsevier, 2001.

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McCleary, R. Evolution of the time series experiment. Chapter 10 in L. Bickman (ed.), *Contributions to Research Design: Donald T. Campbell's Legacy*. Newberry Park, CA: Sage, 1999.

Chew, K., R. McCleary, M. Lew, and J. Wang. Epidemiology of child homicide: California, 1981-90. *Homicide Studies*, 1999, 2:78-85.

McCleary, R., S. Schuck, and J.M. Swanson. Ecological correlates of ADHD. Under review at *Journal of Attention Disorders*.

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Johnson, J.K., R. McCleary, M.H. Oshida, and C.W. Cotman. Initiation and propagation stages of β-amyloid are associated with distinctive Apolipoprotein-E, age, and gender profiles. *Brain Research*, 1998, 798:18-24.

Crinella, F., R. McCleary, and J. Swanson. How a regression artifact can make intermediate care facilities look harmful. *Mental Retardation*, 1998, 36:219-25.

Land, K.C. and R. McCleary. Missing data in time series analyses. *Criminology*, 1996, 34:281-288.

McCleary, R. *et al*. Ishihara color plates and dementia. *Journal of the Neurological Sciences*, 1996, 142:93-98.

McCleary, R., R. Mulnard, and W.R. Shankle. Hysterectomy risk in dementia: evidence from the 1986 Mortality Followback Survey. *Alzheimer's Research*, 1996, 2:181-184

Buckwalter, J.G. A.A. Rizzo, R.McCleary, *et al*. Gender comparisons of cognitive performances among vascular dementia, Alzheimer's disease, and non-demented older adults. *Archives of Neurology*, 1996, 53:436-439.

McCleary, R. *et al*. Full-information models for multiple psychometric tests: annualized rates of change in normal aging and demenia. *Alzheimer's Disease and Related Disorders*, 1996, 10:1-14.

Chew, K.S.Y and R. McCleary. The seasonality of suicide: a world survey. *Current Issues in Public Health*, 1996, 2:241-246.

Chew, K.S.Y. and R. McCleary. A cross-national study of the spring suicide peak. *Social Science and Medicine*, 1995, 40:223-230.

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Ross, H.L., R. McCleary and H. Klette. Recent trends in Scandinavian drunk-driving law. *Traffic Medicine*, 1992, 20:59-70.

R. McCleary and W.N. Welsh. Philosophical and statistical foundations of time series experiments. Chapter 4 in T.D. Kratochowill and J. Levine, *Designs for Single Subject Research*. New York: Lawrence Erlebaum and Associates, 1992.

R. McCleary, K.S.Y. Chew, J.J. Hellsten and M. Flynn-Bransford. Age and sex-specific cycles in U.S. suicides. *American Journal of Public Health*, 1991, 81:1494-1497.

K.S.Y. Chew, R. McCleary, B. Sandeen and J. Meyer. Who cares about public schools? *American Demographics*, 1991, 13:38-39.

B.H. Olson, R. McCleary and J.W. Meeker. Background and models for bacterial biofilm formation and function in water distribution systems. Chapter 12 in C.J. Hurst (ed.), *Modeling the Environmental Fate of Microorganisms*. Washington, DC: American Society for Microbiology, 1991.

H.L. Ross and R. McCleary. Can mandatory jail sentences deter drunken driving? Evidence from the Arizona case. *Journal of Criminal Law and Criminology*, 1990, 81:156-170.

M. Stiger and R. McCleary. Confirmatory spatial analysis by regressions of a Poisson variable. *Journal of Quantitative Anthropology*, 1989, 2:13-38.

W.B. Groves, R. McCleary and G.R. Newman. Religion, modernization, and crime. *Comparative Social Research*, 1985, 8:59-78.

D.B. McGaw and R. McCleary. PAC spending, electioneering, and lobbying: a vector ARIMA time series analysis. *Polity*, 1985, 17:574-585.

J.G. Jorgenson and R. McCleary. Social indicators in native village Alaska. *Human Organization*, 1985, 44:2-17.

H.L. Ross and R. McCleary. Liberalization and rationalization of drunk-driving laws in Scandinavia. *Accident Analysis and Prevention*, 1984, 16:471-487.

R. McCleary and D. McDowall. A time series approach to causal modeling: Swedish population growth, 1750-1849. *Political Methodology*, 1984, 10:357-375.

M.H. Baker, B.C. Nienstedt, R. Everett and R. McCleary. The impact of a crime wave: perceptions, fear, and confidence in the police. *Law and Society Review*, 1983, 17:319-335.

H.L. Ross and R. McCleary. Methods for studying the impact of drunk driving laws. *Accident Analysis and Prevention*, 1983, 15:415-428.

R. McCleary. Probation and parole: supervision. Pp. 1255-1260 in S.H. Kadish (ed.), *The Encyclopedia of Crime and Justice*. New York: The Free Press, 1983.

R. McCleary and J.E. Riggs. The impact of Australia's 1975 Family Law Act on divorce rates: a general model for evaluating legal impacts. Pp. 7-18 in G.H. Forehand (ed.), *New Directions in Program Evaluation: Applications of Time Series Analysis in Evaluation*. San Francisco: Jossey-Bass, 1982.

R. McCleary, J.M. Erven and B.C. Nienstedt. Uniform Crime Reports as organizational outcomes: three time series experiments. *Social Problems*, 1982, 29:361-372.[7]

G.A. Cavender and R. McCleary. Bar association surveys and the merit retention of judges: an empirical assessment. *Criminal Justice Review*, 1982, 7(1).

H.L. Ross, R. McCleary and T.F. Epperlein. Deterrence of drinking and driving in France: an evaluation of the law of July 12, 1978. *Law and Society Review*, 1982, 16:345-374.[8]

R. McCleary, J.M. Erven and B.C. Nienstedt. Interrupted time series analysis of crime statistics: the case of organizational reforms. Chapter 1 in J.A. Hagan (ed.), *Methodological Advances in Criminological Research*. Beverly Hills and London: Sage, 1982.

R. McCleary, M.J. O'Neil, T.F. Epperlein, C. Jones and R. Gray. The effects of legal education and work experience on perceptions of crime seriousness. *Social Problems*, 1981, 28:276-289.

D. McDowall, R. McCleary, A.C. Gordon and M.D. Maltz. A note on regression artifacts in correctional program evaluations. Pp. 27-48 in S.E. Zimmerman and H.D. Miller (eds.), *Corrections at the Crossroads: Designing Policy*. Beverly Hills and London: Sage, 1981.

R. McCleary and M.C. Musheno. Floor effects in the time series quasi-experiment. *Political Methodology*, 1980, 7:351-362.

M.D. Maltz, R. McCleary, D. McDowall and A.C. Gordon. An artifact in pretest-posttest designs: how it can mistakenly make delinquency programs look effective. *Evaluation Review*, 1980, 4:521-534.

R.A. Hay, Jr. and R. McCleary. Box-Tiao time series models for impact assessment. *Evaluation Review*, 1979, 3:245-292.

R. McCleary, D. McDowall, M.D. Maltz and A.C. Gordon. How a regression artifact can make any delinquency program look effective. Pp. 626-652 in L. Sechrest (ed.), *Evaluation Studies Review Annual, Volume 4*. Beverly Hills and London: Sage, 1979.

L.J. McCain and R. McCleary. The statistical analysis of the simple interrupted time series quasi-experiment. Chapter 6 in T.D. Cook and D.T. Campbell (eds.), *Quasi-experimentation: Design and Analysis Issues for Field Settings*. Chicago: Rand-McNally, 1979.[9]

M.D. Maltz and R. McCleary. Recidivism and likelihood functions. *Evaluation Review*, 1979, 3:124-131.

R. McCleary. On becoming a client. *Journal of Social Issues*, 1978, 34:57-75.

M.D. Maltz and R. McCleary. Rejoinder on "The stability of parameter estimates in the split

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[7] Excerpted in M. Klein and R.R. Ritti (eds.), *Understanding Organizational Behavior, 2nd Ed*. Boston: Kent, 1984; reprinted in S. Stojkovic, J. Klofas and D. Kalinich (eds.), *The Administration and Management of Criminal Justice Organizations*. Prospect Heights, IL: Waveland Press, 1990.

[8] Excerpted in R. Cales (ed.), *Trauma Care Systems*, Denver: Aspen System, 1985.

[9] Reviewed in *Contemporary Psychology*, 1980, 25(10).

population exponential distribution." *Evaluation Review*, 1978, 2:650-654.

R. McCleary. How parole officers use records. *Social Problems*, 1977, 24:576-589.[10]

M.D. Maltz and R. McCleary. The mathematics of behavioral change. *Evaluation Review*, 1977, 1:421-438.

R.A. Berk and R. McCleary. Descriptive distortions in covariance based statistics. *Social Science Research*, 1975, 5(1).

R. McCleary. How structural variables constrain the parole officer's use of discretionary power. *Social Problems*, 1975, 23(2)[11]

FINISHED WORK – Reviews

Review of *The Great American Crime Decline* by F. Zimring. *Contemporary Sociology*, 2009, 38:45-46.

McCleary, R., R. Crepeau and K. Delaire. Chaos from disorder: a consumer's guide to the recent literature. *Social Pathology*, 1996, 2:230-242.

Review of *Statistical Methods for Meta-Analysis* by L.V. Hedges and I. Olkin; *Issues in Data Synthesis* by W.H. Yeaton and P.M. Wortman (eds.); and *BASIC Meta-Analysis: Procedures and Programs* by B. Mullen and R. Rosenthal. *Contemporary Sociology*, 1987.

Worker artifacts as a source of spurious statistics: a response to Ginsberg. *Evaluation and Program Planning*, 1984, 7, 290-1.

Review of *Time-Series Analysis: A Comprehensive Introduction for Social Scientists* by J.M. Gottman, *Journal of the American Statistical Association*, 1983, 78(383).

Review of *Criminal Lawyers: An Endangered Species* by P.B. Wice, *Urban Life*, 1982, 11(2).

Review of *Beyond Probation* by C.A. Murray and L.A. Cox, *Crime and Delinquency*, 1980, 26(3), 387-389.

Evaluating a delinquency intervention program: a comment. *Criminal Justice Newsletter*, 1978, 9(16).

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[10] Reprinted in S.E. Messinger and E. Bittner (eds.), *Criminology Review Yearbook*. Beverly Hills and London: Sage, 1979; E. Rubington and M.S. Weinberg (eds.), *Deviance: The Interactionist Perspective, 4th Ed*. New York: MacMillan, 1980; D.H. Kelly (eds.), *Readings in Deviance*. New York: McGraw-Hill, 1990.

[11] Reprinted in W.J. Sanders (ed.), *Decision-making in the Criminal Justice System*. New York: Holt, Rinehart and Winston, 1977.

FINISHED WORK – Other

Reports and public testimony archived at www.secondaryeffectsresearch.com[12]

McCleary, R. and J.W. Meeker. *Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard*. October 23, 1991.[13]

FUNDED RESEARCH

Contract #C06.536 from the California Department of Corrections and Rehabilitation, OISB, to the Principal Investigator: "Consulting Services, Statistical Forecasting," $70,000 (PI).

Grant from the Texas City Attorneys' Association to the Principal Investigator: "Secondary Effects of Off-Site Adult Businesses," $50,000 (PI).

Grant #P30-95-S7 from the National Institute of Childhood Health and Development to the University of California Regents: "MRRC Biostatistics Core," $580,000 (PI).

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[12] Cited in *Annex Books, Inc. v. City of Indianapolis IN*, No. 05-1926, U.S. Circuit Court of Appeals for the Seventh Circuit (2009).

[13] Cited in *Peek-a-Boo Lounge of Bradenton v. Manatee County, FL*, No. 09-16438., 2011 WL 182819, U.S. Court of Appeals for the Eleventh Circuit (Jan. 21, 2011); *Flanigan's Entersprises v. Fulton County GA*, No. 08-17035, U.S. Court of Appeals for the Eleventh Circuit, 596 F.3d 1265 (2010); *Annex Books, Inc. v. City of Indianapolis IN*, No. 05-1926, U.S. Circuit Court of Appeals for the Seventh Circuit (2009); *Abilene Retail # 30, Inc. v. Board. of Commissioners, Dickinson County KS*, No. 05-3473, U.S. Court of Appeals for the Tenth Circuit, 492 F.3d 1164 (2007); *Richland Bookmart, Inc. v. Knox County TN*, No. 3:05-CV-229, U.S. District Court for the Eastern District of Tennessee, 529 F. Supp. 2d 868 (2007); *Bottoms Up Enters. v. Borough of Homestead PA*, No. 07-344, U.S. District Court for the Western District of Pennsylvania (2007); *City of Chicago v. Pooh Bah Enterprises*. 224 Ill.2d 390, 865 N.E.2d 133 (2006); *Doctor John's, Inc. v. City of Roy UT*, No. 04-4270, U.S. Court of Appeals for the Tenth Circuit, 465 F.3d 1150 (2006); *Doctor John's, Inc. v. City of Sioux City IA*, No. C03-4121-MWB, U.S. District Court for the Northern District of Iowa, Western Division, 438 F. Supp. 2d 1005 (2006); *Giovani Carandola, Ltd. v. Fox*, No. 1:01CV00115 , U.S. District Court for the Middle District of North Carolina, 396 F. Supp. 2d 630 (2005); *World Wide Video of Washington, Inc. v. City of Spokane WA*, No. 02-35936 , U.S. Court of Appeals for the Ninth Circuit, 368 F.3d 1186 (2004); *Heideman v. South Salt Lake City UT*, No. 02-4030 , U.S. Court of Appeals for the Tenth Circuit, 348 F.3d 1182 (2003); *Encore Videos, Inc. v. City of San Antonio TX*, No. 00-51119 , U.S. Court of Appeals for the Fifth Circuit, 330 F.3d 288 (2003); *Kentucky Restaurant Concepts, Inc. v. City of Louisville KY*, No. 3:01CV-374-H, U.S. District Court for the Western District of Kentucky, Louisville Division, 209 F. Supp. 2d 672 (2002); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County MD*, No. DKC 2001-3386 , U.S. District Court for the District of Maryland, 256 F. Supp. 2d 385 (2003); *Erie Blvd. Triangle Corp. v. City of Schenectady NY*, No. 00-CV-1716, U.S. District Court for the Northern District of New York, 152 F. Supp. 2d 241 (2001); *Z.J. Gifts D-2, L.L.C. v. City of Aurora CO*, No. 96-1483, U.S. Court of Appeals for the Tenth Circuit, 136 F.3d 683 (1998); *Lim v. City of Long Beach CA*, No. CV96-2742 RAP (RMBx), U.S. District Court for the Central District of California, 12 F. Supp. 2d 1050 (1998); *Santa Fe Springs Realty Corp. v. City of Westminster CA*, No. CV94-736 LEW, U.S. District Court for the Central District of California, 906 F. Supp. 1341 (1995).

Grant #AGA24806 from the American Gaming Association to the University of California Regents: “Suicide in Casino Gaming Areas,” $35,000 (PI).

Contract #C91-37 from the City of Garden Grove to the Principal Investigator, "Public safety hazards associated with adult entertainment businesses," $35,000 (PI).

Grant #JS2-47 from the U.S. Bureau of Justice Statistics to the University of New Mexico: "The New Mexico Criminal Justice Statistical Analysis Center," $50,000 (Co-PI).

Contract #14-12-001-30300 from the U.S. Department of the Interior to Human Relations Area File, Yale University: "Alaskan OCS Social Indicators System," $1,200,000 (Co-PI).

Contract #SOJ-85019 from the Alaska Department of Corrections to the Justice Center, University of Alaska, Anchorage: "A forecast of prison population through the year 2000," $15,000 (Co-PI).

Contract #BJS-82-007 from the Alaska Department of Public Safety to the Justice Center, University of Alaska: "Forecasting crime rates in Alaska and Oregon," $45,000 (Co-PI).

Contract #AG-82-1 from the Arizona Auditor General to the Principal Investigator: "An evaluation of Arizona's vehicle emissions inspection program," $17,000 (PI).

Grant #CF-80-08-0070(a) from the Arizona JPA to the Center of Criminal Justice, Arizona State University: "Technical assistance project in evaluation research," $40,000 (Co-PI).

Contract #22820 from the City of Phoenix to the co-principals: "Telephone survey of citizen attitudes toward team policing," $10,000 (Co-PI).

Contract #0772 et seq. from the State of Arizona to the Principal Investigator: "Evaluation of 'scared straight'/PLIP program," $17,000 (PI).

Contract #UIACC3-47-32-25-3-51 from the Illinois Department of Corrections to the Center for Criminal Justice, University of Illinois, Chicago: "Re-evaluation of UDIS," $8,000 (PI).

Grant #77-NI-99-0073 from the National Institute of Law Enforcement and Criminal Justice to the Center for Research in Criminal Justice, University of Illinois, Chicago: "Measurement of recidivism," $225,000 (Co-PI).

EXPERT WITNESS – DEPOSITION AND TESTIMONY (2001-present)

Alaska Inter-Tribal Council *v*. State. Alaska Superior Court, Dillingham Branch, Case No. 113 CI.

Artistic Entertainment *v.* City of Warner Robins. U.S. District Court, Middle District of Georgia (97-00-95-CV-4-HL-5); U.S. Court of Appeals, Eleventh Circuit (02-10216).

Scamp’s *v*. California Alcoholic Beverage Commission (and the City of Westminster, CA), Alcoholic Beverage Control Board Administrative Hearing.

Washington Retailtainment, Inc. *v.* City of Centralia, WA. U.S. District Court, Western District of Washington at Tacoma (Case No. C03-5137FDB).

People of the State of Illinois *ex rel*. Edward C. Deters *v.* The Lion’s Den, Inc. Circuit Court for the 4th Judicial Circuit of Illinois (Case No. 04-CH-26).

New Albany DVD, LLC. *v.* City of New Albany, IN. U.S. District Court, Southern District of Indiana, New Albany Division (Cause No. 4:04-CV-0052-SEB-WGH).

Giovani Carandola Ltd. et al. *v.* Ann Scott Fulton et al. U.S. District Court, Middle District of North Carolina, Greensboro Division (Case No. 1:01 CV 115).

Fantasyland Video, Inc., *v.* County of San Diego. U.S. District Court, the Southern District of California (Case No. 02-CV-1909 LAB (RBB)).

Tollis, Inc. and 1560 N. Magnolia Ave., LLC. *v.* County of San Diego U.S. District Court, Southern District of California (Case No. 02-CV-2023 LAB (RBB))

Reliable Consultants, Inc., et al. *v.* City of Kennedale, TX U.S. District Court, Northern District of Texas, Fort Worth Division (Civil No. 4:05-CV-166-A).

Abilene Retail #30, Inc. *v.* County of Dickinson *et al.* U.S. District Court for the District of Kansas (Case No. 02:04-CV-02330-JWL).

Regensberger *v.* City of Waterbury *et al.*, U.S. District Court, District of Connecticut (Civil No. 3:04-CV-1900(PCD)).

Charlie's Club, Inc. *v.* Mike Hale *et al.*, U.S. District Court, Northern District of Alabama, Southern Division (Case No. CV 05-CO-2189-S); and SJB, Inc., *et al.*, *v.* Troy King, *et al.* U.S. District Court, Northern District of Alabama, Southern Division (Case No. CV-05-TMP-2477-S).

Giovani Carandola Ltd. *et al. v.* City of Greensboro. U.S. District Court, Middle District of North Carolina, Greensboro Division (Civil No. 01:05-CV-1166).

YYBC, Inc. *v.* Town of Davie. U.S. District Court, Southern District of Florida (Case No. 06-60111-CIV-UNGARO-BENAGES/ O'Sullivan).

Alameda Books, Inc. and Highland Books, Inc. v. City of Los Angeles (U.S. District Court, Central District of California, Case no. CV 95-7771 DDP [Ctx]).

High Five Investments, LLC, and Shannon Video, INC., v. Floyd County, GA. (U.S. District Court, Northern District of Georgia, Rome Division, Civil Action No. 4:06-CV-190 HLM).

Illusions-Dallas Private Club, Inc., *et al. v.* John T. Steen, Jr., *et al.* (U.S. District Court, Northern District of Texas, Dallas Division, Civil Action 3:04-CV-0201-R).

Harris News, Inc. *v.* Board of County Commissioners of the County of Bernalillo, NM (U.S. District Court for the District of New Mexico, Case No. CIV-07355MCA/DJS).

Ten's Cabaret Inc. *v.* City of New York *et al.* (Supreme Court, State of New York, County of New York, Index No. 121080/02).

For the People Theatres of NY *v.* City of New York *et al.* (Supreme Court, State of New York, County of New York, Index No. 121080/02).

Jose F. Fong *et al. v.* City of El Paso. (District Court of El Paso County, TX, 34th Judicial District Court, Cause No. 2007-2900).

Flanigan's Enterprises, Inc. *et al. v.* City of Sandy Springs. (U.S. District Court for the Northern

District of Georgia, Atlanta Division, No. 1:09-CV-2747-RLV).

Karolina Obrycka *et al. v*. City of Chicago *et al.* (U.S. District Court for the Northern District of Illinois, No. 07-C-2372).

RIX 1040, LLC v. City of Hallandale Beach, Florida. (U.S. District Court for the Southern District of Florida, Miami Division, No. 10-60569-MORENO-TORRES).

Barry Gilfand *et al. v.* Sgt. Jeffrey Planey *et al.* (U.S. District Court for the Northern District of Illinois, No. 07 C 2566).

Entertainment Productions, Inc., *et al. v.* Shelby County, Tennessee *et al.* (U.S. District Court for the Western District of Tennessee, Western Division, No. 2:08-cv-02047-tmp).

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EDUCATION

University of California, Irvine, Ph.D. in Criminology, Law and Society — Expected June 2012
Dissertation: Under the Penal Gaze: An empirical examination of penal consciousness among prisoners
Chair: Valerie Jenness

University of Pennsylvania, M.A. in Criminology — May 2006
Thesis: Repeat Offending: Self-reported attitudes and crime in the Canberra RISE project
Chair: Lawrence Sherman

Cornell University, B.S. with Honors in Human Development — May 2005
Thesis: Female Sexuality Through the Lens of Identity
Chair: Ritch Savin-Williams

DISSERTATION

My dissertation develops a new theoretical framework, *penal consciousness*, which captures the myriad ways in which prisoners orient and assign meaning to their punishment and consequently experience punishment as both an objective and subjective phenomenon. This framework was developed through the inductive analysis of original data from 80 in-depth, qualitative interviews that I conducted with Ohio State prisoners. In order to fully examine the patterned nature of penal consciousness through systematic comparisons, I varied my sample along two axes: population (male and female prisoners) and setting (housing units characterized by traditional indirect supervision and innovative direct supervision styles). Findings reveal that variation in punishment can be understood along two dimensions—severity and salience—whose combination results in four distinct narratives of penal consciousness that differ according to the place prisoners afford punishment in relation to the rest of their lives.

FELLOWSHIPS, GRANTS, HONORS AND AWARDS

Graduate Research Fellowship 2010-IJ-CX-0002,
National Institute of Justice ($24,950) — November 2010 – June 2012
Dean's Dissertation Fellowship, University of California, Irvine — September 2011 – December 2011
Fletcher Jones Foundation Fellowship ($20,100) — October 2010 – June 2011
Doctoral Dissertation Fellowship SES-1023694, Law and Social Science Program,
National Science Foundation ($14,991) — August 2010 – June 2011
Professional Development Fellowship, University of California, Irvine — September 2010
Michelle Smith Pontell Memorial Fellowship, University of California, Irvine — May 2010
Social Ecology Data Gathering Fellowship, University of California, Irvine — May 2010
Social Ecology Graduate Mentoring Award, University of California, Irvine — May 2010
Arnie Binder Award, University of California, Irvine — May 2008
Social Ecology Graduate Mentoring Award, University of California, Irvine — May 2008
Social Ecology Stipend and Fee Fellowship, University of California, Irvine — October 2006 – March 2007
Cornell Tradition Class of 1976 Fellowship, Cornell University — August 2001 – May 2005
Dean's List, Cornell University — August 2001 – May 2005

PUBLICATIONS

Sexton, L. (In progress). Penal Subject(ivitie)s: Developing a Theoretical Framework for Penal Consciousness.

Sexton, L. (In progress). Prison as Life, Death, or Something in Between: Prisoners' Narratives of Penal Consciousness.

Sexton, L. and Jenness, V. (In progress). Rethinking Community in Prison: Collective Identity and Efficacy Among Transgender Prisoners.

Tewksbury, R., McCleary, R., and Sexton, L. (Under Review). Gendered Activity Cycles at Adult Bookstores.

Jenness, V., Sumner, J., and Sexton, L. (In Press). Cinderella, Wilma Flintstone, and Xena the Warrior Princess: Capturing Diversity Among Transgender Women in Men's Prisons. In C. M. Renzetti and R. K. Bergen (Eds.), *Understanding Diversity: Celebrating Difference, Challenging Inequality*.

Sexton, L., Jenness, V. and Sumner, J. (2010). Where the Margins Meet: A Demographic Assessment of Transgender Inmates in California Prisons. *Justice Quarterly, 27(6)*, 835-866.

- Basis for sworn testimony in *United States of America v. Ronald D. Royer, Jr.*

Turner, S., Myers, R., Sexton, L. and Smith, S. (2007). What crime rates tell us about where to focus programs and services for prisoners. *Criminology & Public Policy, 6(3),* 623-631.

REPORTS AND TESTIMONY

Jenness, V., Sexton, L., and Sumner, J. (2011). *Transgender Inmates in California's Prisons: An Empirical Study of a Vulnerable Population.* Report submitted to the California Department of Corrections and Rehabilitation.

Sexton, L., Myers, R., Valasik, M., and Turner, S. (2009). *An Examination of Culture and Violence in the California Division of Juvenile Justice.* Report submitted to the California Department of Corrections and Rehabilitation.

Fain, T., Turner, S., Ridgeway, G., Chamberlain, A., Myers, R., Sexton, L., Smith, S., and Valasik, M. (2009). *Los Angeles County Juvenile Justice Crime Prevention Act: RAND Quarterly Report, January 2009.* Report submitted to the Los Angeles County Probation Department.

Sexton, L., Jenness, V., and Sumner, J. (2009). *The Victimization of Transgender Inmates in California Prisons for Men.* Testimony presented at the California State Senate Committee on Public Safety for the State of California hearing on Assembly Bill 382 (LGBT Prisoner Safety Act). Sacramento, California.

Jenness, V., with contributions by Sexton, L., and Sumner, J. (2008). *Transgender Inmates in California Prisons: Comments from the Point of View of Research.* Testimony presented at an Informational Hearing on Issues Facing Lesbian, Gay, Bisexual, and Transgender Inmates in California Prisons, sponsored by the Senate Committee on Public Safety for the State of California. San Francisco, California.

Fain, T., Turner, S., Ridgeway, G., Jannetta, J., Chamberlain, A., Myers, R., Sexton, L., Smith, S., and Valasik, M. (2008). *Los Angeles County Juvenile Justice Crime Prevention Act: RAND Quarterly Report, October 2008.* Report submitted to the Los Angeles County Probation Department.

Jannetta, J., Myers, R., Sexton, L., Smith, S. and Whitby, A. (2007). *Report on the Results of the CDCR Two-Piece GPS System Field Test.* Report submitted to the California Department of Corrections and Rehabilitation.

PROFESSIONAL PRESENTATIONS

Sexton, L. (2011). *Penal Subjectivities: Complicating the Punitive Turn through Penal Consciousness.* Presented at the annual Critical Criminology and Justice Studies Conference in Irvine, CA.

Sexton, L. (2011). *Punishment as Life, Death, or Something in Between: Prisoners' Narratives of Penal Consciousness.* Presented at the annual meeting of the American Society of Criminology in Washington, DC.

Sexton, L. (2011). *Penal Subject(ivitie)s: Developing a Theoretical Framework for Penal Consciousness.* Presented at the annual meeting of the Society for the Study of Social Problems in Las Vegas, NV.
Sexton, L. (2011). *Penal Subject(ivitie)s: Salience, Severity and the Punishment Gap.* Presented at the annual meeting of the Law and Society Association in San Francisco, CA.
Sexton, L. (2011). *Penal Subject(ivitie)s: Severity, Salience, and the Punishment Gap.* Presented at Crime and Punishment in Comparative Perspectives conference at the City University of New York.
Sexton, L. (2011). *Under the Penal Gaze: Analyzing Data on Penal Consciousness*. Presented at the West Coast Law and Society Retreat at Southwestern Law School.
Sexton, L. (2010). *Under the Penal Gaze: Exploring the Varying Contours of Penal Consciousness Among Prisoners.* Presented at the annual meeting of the American Society of Criminology in San Francisco, California.
Sexton, L. and Jenness, V. (2010). *Competition or Community? Collective Identity and Efficacy Among Transgender Inmates in California Prisons for Men.* Presented at the UC Davis Consortium for Women and Research's Gender Matters Symposium in Davis, CA.
Sexton, L. (2010). *Under the Penal Gaze: A Theoretical Exploration of Penal Consciousness Among Prison Inmates*. Presented at the annual meeting of the Academy of Criminal Justice Sciences in San Diego, California.
Sexton, L. (2010). *Where the Margins Meet: A Demographic Assessment of Transgender Inmates in Men's Prisons*. Presented at the Thinking Gender Annual Graduate Student Research Conference at the University of California, Los Angeles.
Jenness, V. and Sexton, L. (2009). *Predictors of Victimization of Transgender Inmates and Male Inmates in California Prisons for Men.* Presented at the annual meeting of the American Society of Criminology in Philadelphia, Pennsylvania.
Sexton, L. (2009). *Victimization of Transgender Inmates in California Prisons for Men.* Presented to the Department of Criminology, Law and Society, University of California, Irvine.
Sexton, L. (2009). *Under the Penal Gaze: An Empirical Examination of Transgender Jail Inmates*. Presented at the West Coast Law and Society Retreat at Stanford Law School.
Jenness, V., with contributions by Sexton, L., and Sumner, J. (2009). *Transgender Inmates in California Prisons: An Empirical Study of a Vulnerable Population.* Presented at the California Department of Corrections and Rehabilitation Wardens' Meeting in Sacramento, California.
Sexton, L., Jenness, V. and Sumner, J. (2009). *The Dual Marginalization of Transgender Inmates: An Examination of a Uniquely Vulnerable Population.* Presentation at *Equality and Parity*: *A Statewide Action for Transgender HIV Prevention and Care* in Los Angeles, California.
Sexton, L. and Jenness, V. (2008). *Collective Identity and Efficacy Among Transgender Inmates in California Prisons for Men.* Presented at the annual meeting of the American Society of Criminology in St. Louis, Missouri.
Sexton, L. (2008). *Demographic Terrain and Environmental Correlates of Transgender Inmates' Collective Identity and Efficacy.* Presented to the Department of Criminology, Law and Society, University of California, Irvine.
Jenness, V. and Sexton, L. (2008). *The Victimization of California Inmates: A Tale of Two Studies on Inmate-on-Inmate Violence.* Presented at the annual meeting of the American Correctional Health Services Association in San Diego, California.
Sexton, L. (2008). *Collective Identity and Efficacy Among Transgender Inmates.* Presented to the Department of Criminology, Law and Society, University of California, Irvine.

OTHER CONFERENCE ACTIVITY

Participant, Graduate Student Workshop — May/June 2011
Led by Christopher Zorn at the Annual Meeting of the Law and Society Association in San Francisco, CA.

Participant, Grounded Theory Workshop November 2010

Led by Kathy Charmaz at the Annual Meeting of the American Society of Criminology in San Francisco, CA.

Participant, Ethnography as Method and Sensibility Workshop November 2009

Led by Jeff Ferrell at the Annual Meeting of the American Society of Criminology in St. Louis, MO.

RESEARCH EXPERIENCE

Project Manager, Prisoner Grievances in California, UC Irvine January 2009 – present

Assisting with a large-scale research study funded by the National Science Foundation's Law and Social Science Program and Sociology Programs. Tasks include preparing documents to secure official approvals required to study prisoners, contributing to instrument construction for face-to-face interviews with inmates and prison officials in California State Prisons, selecting random samples of inmates in three California State prisons for interviews, interviewing inmates and personnel in California State Prisons, assisting with the development of a coding scheme to conduct a content analysis of inmate grievances, coding interview data, analyzing quantitative official and interview data, and preparing first publication. Supervisors: Professors Kitty Calavita and Valerie Jenness.

Adjunct Project Research Associate, RAND Corporation June 2008 – present

Utilizing the Correctional Program Checklist (CPC) to evaluate Los Angeles County juvenile justice programs funded through the Juvenile Justice Crime Prevention Act. Programs evaluated to date include ten home-, school-, and community-based programs for at risk youth and juvenile probationers. Evaluation consists of site visits to programs throughout the county, interviews with program directors and staff, and reviews of case files and other pertinent materials. CPC ratings are compiled and supporting text written for two RAND quarterly reports. Supervisor: Dr. Susan Turner, Adjunct Senior Behavioral Scientist.

Project Manager, The Victimization of Transgender Inmates, UC Irvine September 2007 – June 2009

Assisted with a large-scale research study funded by the California Department of Corrections and Rehabilitation. Tasks included personnel and budget management, methodology design and instrument construction, pilot testing, development of a training manual and organizing training for a team of interviewers, facilitation of data collection at 27 California State Prisons, conducting face-to-face interviews with transgender inmates in California State prisons, development of a codebook, execution of data analysis, contributing to the writing a final report to the California Department of Corrections and Rehabilitation, and collaboration on presentations and dissemination of findings. Supervisor: Professor Valerie Jenness.

Graduate Researcher, Center for Evidence-Based Corrections, UC Irvine September 2006 – July 2009

- Conducted ratings on recidivism reduction programs using the California Program Assessment Process (CPAP) for inclusion in the *California Department of Corrections and Rehabilitation (CDCR) Expert Panel on Adult Offender and Recidivism Reduction Report to the California State Legislature.* Supervisors: Professors Joan Petersilia and Susan Turner.
- Cleaned and reviewed quantitative data for California Department of Corrections and Rehabilitation's field test to compare the merits of one- and two-piece GPS technology for high risk sex offender parolees and conducted statistical analysis for inclusion in Center for Evidence-Based Corrections' *Report on the Results of the CDCR Two-Piece GPS System Field Test*. Supervisors: Professors Joan Petersilia and Susan Turner.
- Assisted with parolee focus groups and qualitative interviews with parole agents in order to examine the implementation and outcomes of the San Diego High Risk Sex Offender Pilot Program. Qualitative data were presented alongside quantitative findings in a report to the CDCR. Supervisors: Professors Joan Petersilia and Susan Turner.
- Created dataset from official CDCR COMPSTAT data on California's juvenile detention facilities and analyzed data to assess whether institutional culture has changed over a period of two years and

what role, if any, this has had in the reduction of violence in those institutions. Contributed to writing of a report to the CDCR. Supervisor: Professor Susan Turner.

Research Assistant, Inmate and Parolee Mental Health Project, UC Irvine — January 2009 – April 2009

Assisted with sampling, collection, cleaning, and analysis of official data from the California Department of Corrections and Rehabilitation on the needs, official designation, treatment, and management of inmates with serious mental health problems. Contributed to the production of a report, *CDCR Inmates and Parolees with Serious Mental Health Problems: Behavior, Treatment and Management*, submitted to J. Clark Kelso, Medical Receiver for California prisons. Supervisor: Professor Valerie Jenness.

Masters Thesis, University of Pennsylvania — September 2005 – May 2006

In the Reintegrative Shaming Experiments (RISE) criminal offenders were randomly assigned to either a control group of conventional justice or a treatment group of diversionary restorative justice conferencing. RISE data on juvenile offenders was used to assess how attitudes on reoffending affect self-report data on subsequent criminal behavior, and whether there was a substantial difference in this effect between participants in restorative justice and participants in conventional justice. Through t-tests and multiple linear regression, results confirmed that restorative justice engenders greater respect for the law, as compared to conventional justice, although this increased respect did not translate into decreased reoffending for the juveniles studied. Supervisor: Professor Lawrence Sherman.

Senior Honors Thesis, Cornell University — September 2004 – May 2005

Heterosexual and sexual minority women were compared on three dimensions of sexuality—sexual orientation, behavior, and identity—to investigate differences between comparison groups. Participants were 333 women ages 18-24 years: 44 of these women self-identified as sexual minorities, 199 identified as heterosexual, 28 were unlabeled and of sexual minority orientation, and 62 were unlabeled and heterosexually oriented. Analysis of results through chi-squared statistics yielded significant findings in the area of fluidity: a hierarchy of fluidity emerged with regard to both sexual orientation and sexual identity on each of the three dimensions. The hierarchy delineated between sexual minority and heterosexual orientations, and implied a qualitative difference in the function of sexual identity labels across orientations. Supervisor: Professor Ritch Savin-Williams.

TEACHING EXPERIENCE

Adjunct Faculty, University of San Diego — September 2010 – present

Currently teaching upper division special topics course "Inside Prison Walls"; course focuses on the critical analysis of carceral life from numerous viewpoints. Previously taught two semesters of Contemporary Social Issues in Crime, Justice, Law and Society as instructor of record for 35 undergraduate students. Topics of the course included: law making, law breaking, formal social control and the criminal justice system, and the enduring tensions between social control and individual freedoms. Focus was on the critical analysis of contemporary social issues through a sociological lens.

Teaching Associate, UC Irvine, Research Design — June 2010 – July 2010

Instructor of record for 85 undergraduate students; provided an intensive introduction to quantitative and qualitative research design in the social sciences with a focus on understanding the methodology of classic and contemporary work in the field and designing/conducting individual empirical research.

Teaching Assistant, UC Irvine, Deviance — April 2009 – June 2009

Served as teaching assistant for over 300 undergraduate students; held office hours to consult with and tutor students; created midterm and final examinations; graded papers and examinations. Supervisor: Professor Valerie Jenness.

Teaching Assistant, UC Irvine, Graduate Research Methods January 2009 – March 2009
January 2008 – March 2008

Served as teaching assistant for 10-30 graduate students; provided in-depth, weekly feedback to students on original research papers; held office hours to consult with and tutor students; designed and administered lecture on experimental and quasi-experimental design; assisted with adaptation of course syllabus to address the evolving needs of graduate students in the department of Criminology, Law and Society. Supervisor: Professor Carroll Seron.

Teaching Assistant, UC Irvine, Prisons, Punishment and Corrections April 2007 – June 2007

Served as teaching assistant for 100 undergraduate students; held office hours to consult with and tutor students; designed paper assignments and examinations; graded papers and examinations; coordinated class trips to two local jails. Supervisor: Professor Susan Turner.

Teaching Assistant, University of Pennsylvania, Social Statistics January 2006 – May 2006

Served as teaching assistant for 60 undergraduate students; designed lab syllabus to teach students how to quantitatively analyze social science data using SPSS; taught three weekly lab sections of twenty students each; created and graded weekly homework assignments designed to familiarize students with SPSS; held office hours to consult with and tutor students; assisted students in writing research papers based on their own statistical findings from the General Social Survey data set; graded final research papers. Supervisor: Professor Camille Zubrinsky Charles.

Teaching Assistant, University of Pennsylvania, Criminology August 2005 – December 2005

Served as teaching assistant for 260 undergraduate students; graded weekly essays, midterm papers and final papers; calculated cumulative semester grades. Supervisor: Professor William Laufer.

Teaching Assistant, Cornell University, Collaborative Leadership August 2004 – December 2004

Served as teaching assistant for 30 undergraduate students; designed a diverse syllabus based on transformational leadership theory and principles; planned and staffed a three-day team-building retreat; taught applied leadership theory to 30 students in weekly recitation sections; led weekly discussion sections of nine students. Supervisor: Professor Brenda Bricker.

COURSE DEVELOPMENT

Online Masters Course Development, UC Irvine, Hate Crime July 2008 – December 2011

Contributed to re-envisioning of online Masters course on Hate Crime; conceptualized new modules for course; linked course material to current events to help students understand the relationship between hate crimes theory, empirical research, and contemporary social issues. Supervisor: Professor Valerie Jenness.

Online Masters Course Development, UC Irvine, Corrections and Sentencing January 2008 – April 2011

Contributed to re-envisioning of online Masters course on Corrections and Sentencing. Updated, revised, and developed anew content for course; designed assignments and exams to test student knowledge of subject matter in a comprehensive manner that stressed synthesis and integration of knowledge over rote memorization. Supervisors: Professors Joan Petersilia and Mona Lynch.

Course Design Certificate, UC Irvine, Teaching, Learning & Technology Center April 2010 – May 2010

Completed three-day certificate program on course design, focused on fostering active learning through the use of student-centered learning objectives.

Online Masters Course Development, UC Irvine, Legal Institutions July 2009 – September 2009

Contributed to re-envisioning of online Masters course on Legal Institutions and Society; developed anew content that elucidated the salience of legal institutions in contemporary society. Supervisor: Professor Kitty Calavita.

Online Masters Course Development, UC Irvine, Crime and Public Policy August 2007 – December 2007

Contributed to re-envisioning of online Masters course on Crime and Public Policy. Supervisor: Professor Joan Petersilia.

GUEST LECTURES

Sexton, L. (2011). *Capturing Diversity: Transgender Prisoners in California*. Presented as a guest lecture in "Introduction to Criminology, Law and Society," a course taught by Randy Myers at the University of California, Irvine.

Sexton, L. (2011). *Where the Margins Meet: Transgender Women in California Prisons for Men*. Presented as a guest lecture in "Deviance," a course taught by Sarah Smith at the University of California, Irvine.

Sexton, L. (2010). *Where the Margins Meet: Transgender Prisoners in California*. Presented as a guest lecture in "Deviance," a course taught by Randy Myers at the University of California, Irvine.

Sexton, L. (2010). *Transgender Inmates in California Prisons for Men: A Focus on Methodology*. Presented as a guest lecture in "Research Design," a course taught by Professor Victoria Basolo at the University of California, Irvine.

Sexton, L. (2010). *Diversity Behind Bars: Transgender Inmates in California Prisons for Men*. Presented as a guest lecture in "Cultural Diversity, Conflict and Crime," a course taught by Professor Joseph Davis at Brandman University, part of the Chapman University System, in Irvine, CA.

Sexton, L. (2010). *Where the Margins Meet: Transgender Inmates in Prison*. Presented as a guest lecture in "Corrections," a course taught by Professor Erik Fritsvold at the University of San Diego.

Sexton, L. (2009). *Transgender Inmates in California Prisons: An Empirical Examination of a Vulnerable Population.* Presented as a guest lecture in "Prisons, Punishment and Corrections," a course taught by Professor Susan Turner at the University of California, Irvine.

DEPARTMENT SERVICE

Panelist, Author Meets Critics, UC Irvine — February 2010

Participated in discussion on departmental discussion on *Sunbelt Justice: Arizona and the Transformation of American Punishment* by Mona Lynch.

Representative, Graduate Curriculum Committee, UC Irvine — September 2008 – May 2009

Student representative to the committee charged with renewing the department graduate curriculum and comprehensive examination structure to better foster a broad base of knowledge criminology and Law & Society while still allowing for in-depth examination of specific areas of interest.

Graduate Student Representative, UC Irvine — July 2007 – June 2008

Synthesized student issues and concerns for presentation at faculty meetings and coordinated a department-wide Town Hall-style meeting to encourage open communication and collaboration between graduate students and department administrators on issues relevant to the department.

Graduate Recruitment Coordinator, UC Irvine — January 2008 – April 2008

Organized and led graduate student recruitment. Coordination included planning and oversight of group recruitment events, development of personalized schedules for each recruit and faculty member, personalized follow-up for each recruit, and matching of new admits with peer mentors.

Human Ecology Undergraduate Education Committee, Cornell University — March 2002 – May 2005

Served on committee to assess and amend existing academic requirements, and implement new strategies to enrich student-faculty interaction. Committee consisted of ten faculty members and four student appointees within the College of Human Ecology.

PROFESSIONAL SERVICE

Reviewer, Sociology and Social Science Series, Routledge Publishing — January 2012

PROFESSIONAL AFFILIATIONS

Pacific Sociological Association	September 2011 – present
American Sociological Association	September 2010 – present
Law and Society Association	March 2010 – present
Western Society of Criminology	December 2008 – present

Society for the Study of Social Problems	January 2007 – present
Academy of Criminal Justice Sciences	September 2006 – present
American Society of Criminology	September 2005 – present

DATA ANALYSIS SOFTWARE

SPSS • Stata • AMOS • Mplus • ATLAS.ti

REFERENCES

Valerie Jenness, Ph.D. (Dissertation Chair)
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99 Cal.App.4th 880, 121 Cal.Rptr.2d 729, 02 Cal. Daily Op. Serv. 5851, 2002 Daily Journal D.A.R. 7401

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Petitioner,
v.
ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD, Respondent;
RENEE VICARY, Real Party in Interest.

No. E030224.
Court of Appeal, Fourth District, Division 2, California.
June 26, 2002.

SUMMARY

The Department of Alcoholic Beverage Control suspended the liquor license of the owner of a bar that offered topless entertainment, finding violations of Cal. Code Regs., tit. 4, § 143.3, in that dancers touched their bare breasts during dances and exposed their breasts while they were within six feet of patrons. The Alcoholic Beverage Control Appeals Board reversed the decision, finding that § 143.3 could not be constitutionally applied to the expressive conduct of the dancers.

The Court of Appeal annulled the order of the board and remanded to the board for reconsideration of the penalty. The court preliminarily held that the department's appointment of its employee to act as administrative law judge did not violate owner's due process rights. The court held that Cal. Code Regs., tit. 4, § 143.3, is not unconstitutional. Section 143.3 does not regulate or prohibit nude or erotic dancing in general; it is only an attempt to reduce the problems caused by such dancing in front of customers whose inhibitions and ability to control their impulses have been weakened by the consumption of liquor. This does not offend the Constitution. (Opinion by Hollenhorst, Acting P. J., with McKinster and Gaut, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c)
Administrative Law § 42--Adjudication--Due Process--Liquor License Penalty Proceeding--Administrative Law Judge Employed by Department of Alcoholic Beverage Control:Constitutional Law § 109--Due Process--Hearing.
In a Department of Alcoholic Beverage Control proceeding to suspend the liquor license of an owner of a bar, the department's appointment of its employee to act as administrative law judge (ALJ) did not violate the owner's due process rights. Although Gov. Code, § 11502, provides that ALJ's must be on the staff of the Office of Administrative hearings, Gov. Code, §§ 11415.10 and 11415.20, limit this rule when a specific statute applies to an agency. The ALJ acted under the authority of Bus. & Prof. Code, § 24210, which allows the department to delegate the power to hear and decide to an ALJ appointed by the director. The statute previously required ALJ's to be appointed pursuant to the Administrative Procedures Act, and thus the current version, which omits any reference to the act, is intended to permit the department to establish a staff of ALJ's. Further, that the ALJ was employed by the department did not lead to the conclusion that he was biased. The fact that the agency or entity holding a hearing also pays the adjudicator does not automatically require disqualification. ALJ's are protected by civil service laws against arbitrary or retaliatory dismissal, and thus they are not influenced to rule for their employer. Nor was there any other factor indicating this ALJ was biased.

(2)
Statutes § 52--Construction--General and Specific Provisions.
Where two statutes consider the same subject matter, the more specific prevails over the more general. However, this principle only applies if the two statutes cannot be reconciled.

(3)
Administrative Law § 42--Adjudication--Due Process.
Due process applies to administrative proceedings as well as to judicial proceedings. However, at least in the administrative context, all that is required is that the hearing officer or other decision maker be a reasonably impartial, noninvolved reviewer.

(4a, 4b, 4c)
Alcoholic Beverages § 7--Regulations--Validity--Restrictions on Erotic Entertainment in Establishment Selling Alcohol:Constitutional Law § 55--First Amendment--Freedom of Expression.
Cal. Code Regs., tit. 4, § 143.3, which places certain restrictions on erotic entertainment in establishments selling alcoholic beverages, is not unconstitutional. Thus, the owner

of a bar that offered topless entertainment was subject to penalties by the Department of Alcoholic Beverage Control, where there were violations of § 143.3, in that dancers touched their bare breasts during dances and exposed their breasts while they were within six feet of patrons. Although nude dancing is covered by U.S. Const., 1st Amend., it falls only within the outer ambit of protection, and if a regulation is directed at genuine secondary effects of the regulated conduct, the regulation is content neutral. The state is authorized under the police power to enact regulations affecting public health and morality. The adoption of § 143.3 was supported by ample evidence of the deleterious effects inherent in the combination of alcoholic beverages and explicitly erotic performances; regulation of performances will therefore logically reduce the negative secondary effects and thus further the governmental interest. Further, the governmental interest is not related to the suppression of any particular expression or expression in general. Finally, § 143.3 regulates conduct, and any incidental effect on the expressive element of nude dancing is de minimis. Section 143.3 does not regulate or prohibit nude or erotic dancing in general; it is only an attempt to reduce the problems caused by such dancing in front of customers whose inhibitions and ability to control their impulses have been weakened by the consumption of liquor.

[See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 327; West's Key Number Digest, Constitutional Law
90.4(5), West's Key Number Digest, Intoxicating Liquors
15.]

(5)
Alcoholic Beverages § 1--Regulation by State.
There is no inherent right to sell intoxicating liquors. The liquor business is fraught with danger to the community, and it may therefore be either entirely prohibited or permitted under such conditions as are prescribed by the regulatory agency. Once granted, a license may be revoked or suspended for the protection of the public welfare and morals. Thus, the state may properly regulate establishments that sell alcoholic beverages to patrons to protect the public interest in a safe and relatively seemly environment.

(6)
Constitutional Law § 55--First Amendment--Freedom of Expression--Erotic Entertainment at Establishment Selling Alcohol.
In determining the effects on constitutionally protected conduct of a city's restriction on erotic entertainment at establishment selling alcohol, the city need not conduct its own study regarding these effects. It may rely on evidence already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.

COUNSEL
Bill Lockyer, Attorney General, Dennis W. Dawson and Chris A. Knudsen, Deputy Attorneys General, for Petitioner.
No appearance for Respondent.
Roger Jon Diamond for Real Party in Interest. ***883**

HOLLENHORST, Acting P. J.

Real party in interest Renee Vicary (Vicary) is the proprietor of Angels Sports Bar, which offers topless entertainment. The bar is licensed to serve alcoholic beverages and accordingly is supervised by petitioner Department of Alcoholic Beverage Control (Department). During an investigation, Department investigators observed dancers employed by Vicary at the bar touching and fondling their bare breasts during dances. Other dancers were observed exposing one or more breasts while sitting or standing within six feet of patrons.

The Department thereafter filed an accusation alleging that Vicary's employees had seven times violated title 4, section 143.3, subdivision (1)(b) ("touching, caressing or fondling of the breast, buttocks, anus or genitals") of the California Code of Regulations, [1] and had once violated title 4, section 143.3, subdivision (2) of the California Code of Regulations, which prohibits the exposure of breast or buttock unless the dancer is on a raised stage at least six feet from patrons.

At the scheduled hearing, Vicary first raised a constitutional challenge to the power of the administrative law judge (ALJ), an employee of the Department, to hear the case. This challenge was rejected and the hearing proceeded. The ALJ sustained all counts of the accusation and a license suspension of 30 days was imposed. Vicary duly appealed. (Cal. Const., art. XX, § 22; Bus. & Prof. Code, § 23081.) The Alcoholic Beverage Control Appeals Board (Board) reversed the decision of the ALJ not on factual grounds, but on the basis that Rule 143.3 could not be constitutionally applied to the arguably "expressive" conduct of the dancers. The Department sought judicial review from this court. (Bus. & Prof. Code, § 23090.) We issued a writ of review, and now annul the decision of the Board.

Discussion

A.

([1a]) We first address the threshold issue of the ALJ's legal power and the propriety of his employment as a decision maker. Vicary argues that he was not selected in conformity with the Administrative Procedures Act, ***884** specifically Government Code section 11502;[2] further, that because he was an employee of the Department, his implicit bias deprived her of due process. Neither contention has merit.

Section 11502, subdivision (a), provides that "[a]ll hearings of state agencies required to be conducted under this chapter shall be conducted by administrative law judges on the staff of the Office of Administrative Hearings." However, subdivision (a) of section 11501 qualifies this requirement by stating: "This chapter applies to any agency *as determined by the statutes relating to that agency*." (Italics added.) Here, the ALJ acted under the authority of Business and Professions Code section 24210, which provides in subdivision (a) that "[t]he department may delegate the power to hear and decide to an administrative law judge appointed by the director." As petitioner points out, this statute was amended in 1994 to delete the existing provision that matters be heard pursuant to the Administrative Procedures Act statutes, and instead to empower the director of the Department to appoint ALJ's. Furthermore, sections 11415.10 and 11415.20 clearly confirm that "[t]he governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding," and that "[a] state statute ... applicable to a particular agency ... prevails over a conflicting or inconsistent provision of this chapter."[3] ([2]) These provisions make explicit the applicability of the rule that where two statutes consider the same subject matter, the more specific prevails over the more general. (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577 [7 Cal.Rptr.2d 245, 828 P.2d 147].)[4]

([1b]) Vicary's assertion that Business and Professions Code section 24210 merely authorizes the director of the Department to select an ALJ from the staff of the Office of Administrative Hearings to hear a particular case is without merit. This was the procedure under the *previous* version of ***885** the statute, and its express references back to the Administrative Procedures Act. The new version must have been designed to accomplish some alteration in procedure; to construe substantial changes in language as effecting no change would be absurd. We think it obvious that the intended change was to permit the director to establish a staff of Department ALJ's.[5] The new version provides that the Department may delegate its powers to an ALJ "appointed by the director," and in the context of state employment, "appointed" is frequently equivalent to "hired." (See § 18525.) We think it plain that the Department is authorized to hire and use its own ALJ's rather than to use those selected and employed by the Office of Administrative Hearings.

Vicary's second argument raises the issue of due process, which of course includes the right to an impartial decision maker. (*Hall v. Harker* (1999) 69 Cal.App.4th 836, 841 [82 Cal.Rptr.2d 44].) ([3]) Due process applies to administrative proceedings as well as to judicial proceedings. (*Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 582 [257 Cal.Rptr. 427].) However, at least in the administrative context, all that is required is that the hearing officer or other decision maker be a " '*reasonably* impartial, noninvolved reviewer.' " (*Linney v. Turpen* (1996) 42 Cal.App.4th 763, 771 [49 Cal.Rptr.2d 813] (*Linney*).)

([1c]) Vicary's position is that because the ALJ was employed by the Department, he necessarily had a bias in favor of the Department, which would be prompted by a perceived need to please the Department in order to keep his job. We recognize that no showing of *actual* bias is necessary if the challenged adjudicator has a strong, direct financial interest in the outcome. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1032-1034 [119 Cal.Rptr.2d 341, 45 P.3d 280] (*Haas*).) However, it has been consistently recognized that the fact that the agency or entity holding the hearing also ***886** pays the adjudicator does not automatically require disqualification (see *McIntyre v. Santa Barbara County Employees' Retirement System* (2001) 91 Cal.App.4th 730, 735 [110 Cal.Rptr.2d 565]; *Linney, supra*, 42 Cal.App.4th at pp. 770-771), and *Haas* confirms this. (*Haas, supra*, 27 Cal.4th at p. 1031.) As the Supreme Court also noted in *Haas*, such a rule would make it difficult or impossible for the government to provide hearings which it is constitutionally required to hold.

Haas involved a county that had no regular "hearing officer," but simply hired attorneys to serve on an ad hoc basis. The vice of the system was that an attorney who desired future appointments had a financial stake in pleasing the county, and that the county had almost unrestricted choice for future appointments. In this case, ALJ's are protected by civil service laws against arbitrary or retaliatory dismissal. (See § 18500 et seq.) Thus, there is no basis upon which to conclude that the ALJ was influenced to rule in favor of the Department by a desire for continued employment.

As the court noted in *Linney*, current law also authorizes disqualification if the circumstances would lead a reasonable person to suspect bias. (Code Civ. Proc., § 170.1, subd. (a)(6); *Linney, supra,* 42 Cal.App.4th at p. 776.) Given that the ALJ's financial interest in the result is too attenuated to require disqualification without a showing of actual bias, we find Vicary's other speculative and factually bare concerns about the ALJ's presumed "coziness" with the Department insufficient to raise a suspicion of bias. [6] The record contains no information on the manner in which an ALJ is selected by the Department for any given hearing which would suggest any possibility of bias. Finally, although Vicary insists that the Department should employ ALJ's provided by the Office of Administrative Hearings-that is, by the state-it is speculative to state that such ALJ's would be "more impartial" than those employed directly by a particular agency. We will not presume that state-employed professional ALJ's cannot, will not, or do not bring a constitutional level of impartiality to the cases they hear, even if one side is the agency that directly employs them. The procedure here was constitutionally permissible. ***887**

B.

([4a]) We turn now to the substance of the case and the continuing viability of Rule 143.3. In our view, the Board erred in underestimating the state's power to impose regulations directed at the undesirable secondary effects of certain types of entertainment and the establishments offering them. Furthermore, the Board failed to give adequate consideration to the rule that reasonable restrictions on the time, place, and manner of expression may be constitutionally valid. Finally, we reject any reliance by the Board on an alleged de minimis theory. [7]

([5]) It has long been recognized that "there is no inherent right to sell intoxicating liquors, that the liquor business is fraught with danger to the community, and [that it] may therefore be either entirely prohibited, or permitted under such conditions as are prescribed by the regulatory agency." (*Yu v. Alcoholic Bev. etc. Appeals Bd.* (1992) 3 Cal.App.4th 286, 296 [4 Cal.Rptr.2d 280].) Once granted, a license may be revoked or suspended for the protection of the public welfare and morals. (Cal. Const., art. XX, § 22; *Harris v. Alcoholic Bev. Con. Appeals Bd.* (1963) 212 Cal.App.2d 106 [28 Cal.Rptr. 74].) Thus, the state may properly regulate establishments which sell alcoholic beverages to patrons to protect the public interest in a safe and relatively seemly environment.

([4b]) In *California v. LaRue* (1972) 409 U.S. 109 [93 S.Ct. 390, 34 L.Ed.2d 342] (*LaRue*), the Supreme Court upheld the essential validity of Rule 143.3. In part, the court relied on the authority given to the states by the Twenty-first Amendment. [8] However, it also noted that Rule 143.3 constituted at most a minimal infringement on true expressive conduct. Acknowledging that the regulation would affect some conduct protected by the First Amendment, the court stated that "the critical fact is that California has not ***888** forbidden these performances [9] across the board. It has merely proscribed such performances in establishments that it licenses to sell liquor by the drink." (*LaRue, supra,* 409 U.S. at p. 118 [93 S.Ct. at p. 397].) ([6])**(See fn. 10.)** The court further took note that the adoption of Rule 143.3 was based on substantial evidence that nude performances in conjunction with the sale of liquor led not only to lewd conduct by customers inside the business premises, but also to prostitution, indecent exposure, and sexual assault in the vicinity. [10] ([4c]) As is still broadly recognized today: "Liquor and sex are an explosive combination." (*Blue Canary Corp. v. City of Milwaukee* (7th Cir. 2001) 251 F.3d 1121, 1124 (*Blue Canary*).) Although Vicary denies that the government has any interest in regulating the effect of speech on the listener, these cases also establish that in the limited context of liquor regulation, such an interest not only exists, but can be a proper exercise of the police power.

Several years later, a California court relied on *LaRue*'s approval of Rule 143.3 to uphold the granting of injunctive relief against an establishment that proposed to offer alcoholic beverages and "entertainment" which would concededly violate Rule 143.3. (*Stroh v. Midway Restaurant Systems, Inc.* (1986) 180 Cal.App.3d 1040, 1053-1054 [226 Cal.Rptr. 153].) Our Supreme Court also cited *LaRue* in discussing and distinguishing an ordinance whose prohibition of nude dancing extended *beyond* establishments offering alcoholic beverages. (*Morris v. Municipal Court* (1982) 32 Cal.3d 553, 560 [186 Cal.Rptr. 494, 652 P.2d 51].) Thus, the validity of Rule 143.3 would appear to be well established.

However, the Board concluded that more recent decisions from the United States Supreme Court undermined the authority of *LaRue* in crucial respects. As we will explain, this conclusion was wrong.

The Board relied on *44 Liquormart, Inc. v. Rhode Island* (1996) 517 U.S. 484 [116 S.Ct. 1495, 134 L.Ed.2d 711] (*44 Liquormart*), in which the court retreated from the *LaRue* court's reliance on the Twenty-first Amendment as ***889** conferring an added presumption of validity upon alcohol-related regulation of expressive conduct. Instead, the court held that the Twenty-first Amendment did not qualify or diminish the states' obligations to respect the First Amendment. (*44 Liquormart, supra,* 517 U.S. at pp. 515-516 [116 S.Ct. at pp. 1514-1515].)

44 Liquormart, however, was not a dancing-in-bars case, but rather involved Rhode Island's attempt to impose a total prohibition on the advertising of alcoholic beverages. The bulk of the discussion involves the regulation of commercial speech in general. Although the state's attempt to rely on *LaRue*' s gloss of the Twenty-first Amendment led to the retrenchment discussed above, the Supreme Court also commented: "We are now persuaded that the Court's analysis in *LaRue* would have led to precisely the same result if it had placed no reliance on the Twenty-first Amendment. [¶] *Entirely apart* from the Twenty-first Amendment, the State has *ample power* to prohibit the sale of alcoholic beverages in inappropriate locations." (*44 Liquormart, supra,* 517 U.S. at p. 515 [116 S.Ct. at p. 1514], italics added.) [11]

In other words, the Supreme Court in *44 Liquormart* stated that *LaRue* was correctly decided, that is, that the Department's adoption of Rule 143.3 was constitutionally permissible even though the buttress of the Twenty-first Amendment had been removed. Other courts have concluded that *44 Liquormart* does not obliterate the states' powers to regulate the combination of alcohol and expressive conduct. (E.g., *BZAPS, Inc. v. City of Mankato, supra,* 268 F.3d at p. 608; *El Marocco Club, Inc. v. Richardson* (R.I. 2000) 746 A.2d 1228.)

Confirming this view is the high court's opinion in a case decided after *44 Liquormart*, *Erie v. Pap's A.M.* (2000) 529 U.S. 277 [120 S.Ct. 1382, 146 L.Ed.2d 265] (*Pap's A.M.*). [12] In *Pap's A.M.*, the challenged local ordinance banned *all* public nudity, and the challenge was brought by an establishment which wished to present nude dancing. For our purposes, the case makes two significant points: (1) Although nude dancing is covered by the First Amendment, it falls "only within the outer ambit" of protection (*Pap's A.M., supra,* 529 U.S. at p. 289 [120 S.Ct. at p. 1391]; see also *Barnes v. Glen Theatre, Inc.* (1991) 501 U.S. 560, 565-566 [111 S.Ct. 2456, 2459-2460, 115 L.Ed.2d 504]); and (2) if a regulation is directed at genuine "secondary effects" of the ***890** regulated conduct, the regulation should be deemed "content neutral" for the purpose of determining the level of scrutiny. [13] (*Pap's A.M., supra,* 529 U.S. at pp. 292-296 [120 S.Ct. at pp. 1392-1395].)

The seminal content-neutral case, in turn, is *United States v. O'Brien* (1968) 391 U.S. 367 [88 S.Ct. 1673, 20 L.Ed.2d 672] (*O'Brien*), which arose out of the burning of a draft card allegedly with the expressive intent of protesting the Vietnam conflict. As the court explained in *Pap's A.M.*, in *O'Brien*, the statute prohibiting such destruction was "aimed at maintaining the integrity of the Selective Service System and not at suppressing the message of draft resistance ...." (*Pap's A.M., supra,* 529 U.S. at p. 291 [120 S.Ct. at p. 1392].) Such a statute was, and is, subject to an intermediate level of scrutiny which focuses on four factors: (1) Is the regulation within the power of the government to enact? (2) Does it further an important or substantial governmental interest? (3) Is the governmental interest unrelated to the suppression of free expression? (4) Is the restriction no greater than is essential to the furtherance of the governmental interest? (*Id.* at pp. 296-301 [120 S.Ct. at pp. 1394-1397].)

Even if the legal analysis of *LaRue* were no longer available to support Rule 143.3, an analysis under *Pap's A.M.* and *O'Brien* would be appropriate and would lead to the same result. As *Pap's A.M.* confirms, the state is authorized under the police power to enact regulations affecting public health and morality. (*Pap's A.M., supra,* 529 U.S. at. p. 296 [120 S.Ct. at pp. 1394-1395].) As *LaRue* also recognized, the adoption of Rule 143.3 was supported by ample evidence of the deleterious effects inherent in the combination of alcoholic beverages and explicitly erotic performances. [14] Regulation of the performances will therefore logically reduce the negative secondary effects and thus further the governmental interest. (See *Pap's A.M., supra,* 529 U.S. at pp. 300-301 [120 S.Ct. at pp. 1396-1397].) Turning ***891** to the third *O'Brien* factor, the governmental interest is not related to the suppression of any particular expression or expression in general. Finally, as was noted in *Pap's A.M.*, Rule 143.3 "regulates conduct, and any incidental impact on the expressive element of nude dancing is *de minimis*." (*Pap's A.M.*, at p. 301 [120 S.Ct. at p. 1397], original italics.) [15]

Hence, in our view the latest pronouncements of the United States Supreme Court tend to confirm, rather than undercut, the validity of Rule 143.3. The Board incorrectly found otherwise.

First, the Board distinguished *Pap's A.M.* by noting that it involved a total ban on public nudity, while Rule 143.3 regulates the conduct of a dancer who may be clothed. We do not see a great deal of significance to this. Secondly, the Board believed that "by singling out specific elements of conduct, devoid of context, [Rule 143.3] threatens to inhibit expression more than a minimal amount." [16]

However, to the extent that a ban on self-touching limits expression more than a requirement of pasties and G-strings, the Board has failed to give adequate weight to the fact that Rule 143.3 operates only in the field of licensed premises. As the Department points out, Rule 143.3 can also be fairly characterized as a "time, place, and manner" restriction. (See *City of Renton v. Playtime Theatres, Inc., supra,* 475 U.S. 41, 46 [106 S.Ct. 925, 928].) The Department is not attempting to regulate or prohibit nude or erotic dancing in general. It is only attempting to reduce the problems caused by such dancing in front of customers whose inhibitions and ability to control their impulses have been weakened by the consumption of liquor. If performers at Vicary's establishment feel constricted by Rule 143.3, they are free to exhibit their wares (and whatever else they wish) at clubs which do not serve alcoholic beverages. The *location-limited* effect of Rule 143.3 was cited as the "critical fact" favoring a finding of constitutional validity in ***892** *LaRue, supra,* 409 U.S. at page 118 [93 S.Ct. at page 397]. If it is supported by substantial governmental concerns, a regulation touching on expression is nevertheless valid so long as "reasonable alternative avenues of communication" remain. [17] (*City of Renton v. Playtime Theatres, Inc., supra,* 475 U.S. at p. 50 [106 S.Ct. at p. 930].) Such alternatives remain available here.

In our view, nothing in the subsequent decisions rendered by the high court affects this point as applied to the case at bar. We have considered a case cited by Vicary, *Schultz, supra,* 228 F.3d 831, in which the court did express the view that regulation of the dancers' sexually oriented self-touching gestures constituted an impermissible burden on expression. (*Id.* at p. 845.) Assuming this view is correct, *Schultz* is not controlling because it did not involve the combination of alcohol and sexually suggestive performance; the establishment in question did not serve liquor. Furthermore, *Schultz* involved a total ban on nude dancing and specified sexual gestures, so that no "time, place, and manner" analysis could be applied. On the other hand, in *Blue Canary, supra,* 251 F.3d at page 1124, the court had no difficulty upholding what was essentially a zoning regulation because "[the expression is] not suppressed but merely shoved off to another part of town." [18]

We are also unpersuaded that the decision in *LSO, Ltd. v. Stroh* (9th Cir. 2000) 205 F.3d 1146 requires that Rule 143.3 be struck down. In that case, which involves what the Department now admits was a "mistake," [19] an organization proposed to hold a sort of trade show that would include a display of erotic art and photographs. The show was to be held at a large convention center that held a liquor license. Relying on title 4, section 143.4 of the California Code of Regulations, [20] the Board warned the convention center that its license would be revoked if it permitted the exhibition to open-despite the trade show's offer to declare an "alcohol free zone" and to sell no alcohol in the portion of the center containing the show. (*LSO, Ltd. v. Stroh, supra,* 205 F.3d at p. 1151.) ***893**

It is obvious that this is exactly the sort of heavy-footed attempt to regulate fully protected expression that the Supreme Court, in *LaRue,* suggested might present itself in the future, although it was *not* presented in that case. (*LaRue, supra,* 409 U.S. at p. 119, fn. 5 [93 S.Ct. at p. 397].) Insofar as the Ninth Circuit Court of Appeals expressed doubts about the continuing viability of *LaRue,* as we have explained, we do not share them. It may well be true that Rule 143.3 could not be constitutionally applied to a reasonably high-minded display of serious artistic material in conjunction with alcohol, but that is not this case. As the cases reiterate, erotic dancing is not entitled to the same protection as Shakespeare's Hamlet. [21]

The Board was also concerned that the Department's actions were motivated "by what it perceives as the primary effects of the expression, i.e., the effect on the audience-'sexual arousal.' " Coupled with this was a criticism that there had been no finding that the touchings were "not part of the expressive element of the dance," and no attempt to "assess the impact the prohibition might have had upon the expression reflected in the dance." Of course the Department, and Rule 143.3, are indirectly concerned with the arousing effects of the prohibited conduct; that is not disputed. We may also assume, arguendo, that a dancer's expression of sensual emotion may be impaired if she cannot fondle her breasts or genitals. However, if expression tends to create deleterious secondary effects-here, immoral or unlawful actions by the viewers-*Pap's A.M.* confirms that some regulation of the expression is permitted; the hands of the state are not constitutionally bound. And although Rule 143.3 may reach more broadly than would be permissible for a regulation of conduct in *all* places, it is properly applied to regulate the "explosive" combination of liquor and sex. (See *Blue Canary, supra*, 251 F.3d at p. 1124.)

Vicary strenuously argues in line with the decision of the Board that the touchings involved should be viewed as integral parts of the artistic expression and therefore protected. She concedes that "prolonged" touching for "no artistic purpose" would violate Rule 143.3, but insists that this is a different case and that it is unconstitutional to forbid "brief" touchings in the context ***894** of expressive dance. Instead, she suggests that the Board (and this court) must evaluate each touching.[22]

We disagree. The prohibition of Rule 143.3 is clear and the touchings here were not inadvertent. We decline to hold that the minimal constitutional protection to which the dancers are entitled requires that they be permitted one or more "freebies." Furthermore, Vicary, and the dancers, cannot have it both ways. If the touchings were truly insignificant, there is a similarly insignificant effect on expression if the touchings are banned. On the other hand, if the touchings were the highlight of erotic expression, they were likely to spark exactly those reactions in the customer which Rule 143.3 properly attempts to prevent.[23]

Although Vicary argued at the hearing that her dancers were on the more protected part of the continuum running from Pavlova and Baryshnikov at the one end, to live-sex-on-stage performers at the other, experience indicates otherwise.[24] The record indicates only that the dancers performed to brief recorded songs, during which they typically removed their tops and, prompting this case, frequently caressed their breasts. Common sense-and the assumption underlies dozens of cases-suggests that gentlemen do not go to topless bars to see Swan Lake or even Twyla Tharp, and that a topless establishment that hoped to be successful would not offer such fare. While we agree that the conduct involved does not approach that cited in *LaRue* (see fn. 9, *ante*), we decline to hold that a state may prohibit performers from having sex with animals in bars, but must permit female dancers to rub their genitals and snap their bare breasts at the customers.[25] In terms of the potential for negative secondary effects, the distinction is one of degree and is not significant. ***895**

Agreed, dancers of this sort are entitled to at least some First Amendment protection. However, they are not entitled to flout rules enacted in the hope of maintaining some level of decorum in the potentially inebriated patrons, not only while on the premises, but after they leave. The state, through the Department, has not prohibited dancers from performing with the utmost level of erotic expression. They are simply forbidden to do so in establishments that serve alcohol, and the Constitution is not thereby offended.

It remains to consider whether Vicary should be given the opportunity to request the Board to reconsider the penalty imposed, an issue which became moot when the Board overturned the decision on the Rule 143.3 violations. We believe that Vicary is entitled to a determination on this point.

Disposition

The order of the Board is annulled. The matter is remanded to the Board for reconsideration of the penalty imposed.

McKinster J., and Gaut J., concurred.

A petition for a rehearing was denied July 18, 2002, and the petition of real party in interest for review by the Supreme Court was denied October 23, 2002. ***896**

Footnotes

1 In accordance with the practice of the parties, we will refer to this regulation as "Rule 143.3."

2 All further statutory references will be to the Government Code unless otherwise indicated.

3 Section 11415.10 goes on to further clarify, if further clarification is needed, that "[i]f no other governing procedure is provided by statute or regulation, an agency may conduct an adjudicative proceeding under the administrative adjudication provisions of the Administrative Procedure Act."

4 It is true that the principle only applies if the two statutes cannot be reconciled. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478 [66 Cal.Rptr.2d 319, 940 P.2d 906].) However, Business and Professions Code section 24210, which allows the director to appoint ALJ's, cannot be reconciled with Government Code section 11502's requirement that administrative hearings be held before an ALJ

on the staff of the Office of Administrative Hearings. Thus, the rule cited in *San Francisco Taxpayers Assn. v. Board of Supervisors, supra,* 2 Cal.4th at page 577, applies.

5 The Department's position is supported by legislative history. (See Legis. Counsel's Dig., Assem. Bill No. 463 (1994-1995 Reg. Sess.); Sen. Com. on Governmental Organization, Analysis of Assem. Bill No. 463 (1994-1995 Reg. Sess.) p. 2.)

On the other hand, Vicary attempts to make much of the fact that certain statutes authorizing *other* agencies to appoint their own employees as hearing officers include an express requirement that the officers be "impartial." (See, e.g., Lab. Code, § 1742, subd. (b); Unemp. Ins. Code, § 404.) Vicary argues that the omission of this word from Business and Professions Code section 24210 can only be explained by the fact that the section really requires the use of ALJ's from the Office of Administrative Hearings, who are *presumptively* impartial. As noted below, it is not self-evident that such ALJ's would be more impartial than Department ALJ's. We think that the drafters of the cited statutes included the requirement that the hearing officer be "impartial" simply as a matter of course, and that the omission of the term in the Business and Professions Code statute gives rise to no persuasive inference. What the cited statutes *do* demonstrate is that it is not at all unique for the Legislature to provide for a state agency's use of "in-house" ALJ's.

6 We note that under Vicary's theory, members of the Board could be similarly challenged, as they are subject to-or "fearful of"-removal by the Governor at his pleasure, or by majority vote of the Legislature for dereliction of duty, corruption, or incompetence. (Cal. Const., art. XX, § 22.) Furthermore, they are just as likely to be "cozy" with the Department enforcement personnel as are the ALJ's. Such an approach to disqualification, however, would essentially prevent the government from ever holding hearings on matters of public importance.

7 At oral argument, Vicary complained that our tentative opinion focused on the "facial validity" of Rule 143.3, while her attack was primarily on the *application* of the rule. While this is true, we take this approach because the Board's opinion can be read as reflecting the belief that *nonobscene* conduct cannot be regulated by the state even in conjunction with the sale of alcoholic beverages. The Board's lengthy discussion of what it referred to as the "continually evolving and highly controversial area of the law" and the underlying constitutional principles strongly suggested to us that it believed the rule to have been undermined by recent cases. The Department's concern, in its petition, to affirm the validity of the rule indicates that its reading of the Board's decision was similar to ours. Accordingly, we address these issues at some length for the guidance of the Board.

8 In addition to repealing Prohibition (U.S. Const., 18th Amend.), the Twenty-first Amendment, section 2 provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

9 E.g., "performances" featuring sodomy, flagellation, and bestiality, as well as the tamer type of touchings involved here.

10 A governmental unit need not conduct its own study regarding these effects, but may rely on evidence " 'already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.' " (*BZAPS, Inc. v. City of Mankato* (8th Cir. 2001) 268 F.3d 603, 606; see also *City of Renton v. Playtime Theatres, Inc.* (1986) 475 U.S. 41, 51 [106 S.Ct. 925, 930-931, 89 L.Ed.2d 29].) In this case, the Department did conduct certain studies before adopting the rule, and there is no evidence in the record that things have changed. Information from other jurisdictions, gleaned from reported cases, confirms that establishments offering both alcohol and "adult entertainment" still tend to attract both crime and disorderly behavior.

11 The power to which reference is made is, of course, the police power. (See generally *Berman v. Parker* (1954) 348 U.S. 26, 32-33 [75 S.Ct. 98, 102-103, 99 L.Ed. 27].) The California Constitution also contains a specific grant of regulatory power relating to alcoholic beverages in article XX, section 22.

12 The Board was aware of the *Pap's A.M.* decision, but believed that it did not provide a "clear answer" to the questions in this case.

13 To give a concrete example, a rule barring a dancer from "snapping" her breast by pulling on a ring attached to it (as was done by one of the dancers here) is content neutral because the dancer could intend to express any number of views, opinions, feelings, invitations, et cetera. The regulation is not concerned with the intended content of the "snapping."

Vicary argues strenuously that because Rule 143.3 is directed towards performances rather than the state of nudity, it is content directed and unconstitutional, thus attempting to distinguish *Pap's A.M.* However, even a case cited by Vicary recognizes that in the context of "adult entertainment," arguably content-directed regulations are commonly analyzed as content neutral if they can be *justified* without reference to content. (*Schultz v. City of Cumberland* (7th Cir. 2000) 228 F.3d 831, 845 (*Schultz*).)

14 Furthermore, at this point in time, courts are generally willing to accept the existence of negative "secondary effects" either as a matter of "common sense" or through reliance on reports from other jurisdictions. (See *Sammy's of Mobile, Ltd. v. City of Mobile* (11th Cir. 1998) 140 F.3d 993, 997.)

15 Justice Scalia, concurring in the judgment, and Justice Stevens, dissenting, commented that the requirement of pasties and G-strings would not be likely to substantially reduce the negative secondary effects. The court-via Justice O'Connor's plurality opinion-agreed that while a requirement that "erotic" dancers be fully clothed would probably be more effective, the fact that the City of Erie chose to experiment with a less drastic restriction could not be considered a factor invalidating the regulation.

16 In this respect it also felt that because the Department "has culled touches which lasted only seconds" from some 48 minutes of dance, "it is inescapable that the content of the expression is what the Department found to be offensive." Not so; what the Department found offensive was the specific conduct that violated Rule 143.3. Contrary to the Board's view, we think it extremely unlikely that these isolated bits of conduct were uniquely expressive or essential to the message-if any, as Justice Scalia would probably remark-of the dances. (See *Pap's A.M.,supra,* 529 U.S. at p. 310 [120 S.Ct. at p. 1402] (conc. opn. of Scalia, J.).)

17 That is, avenues for the same type of expression.

18 The *Blue Canary* court, in a typically stylish and forthright opinion by Judge Posner, also described the "impairment of First Amendment values" as "slight to the point of being risible ...." (*Blue Canary, supra,* 251 F.3d at p. 1124.)

19 In her return, Vicary requested that we ask the Department, at oral argument, whether it believed that Rule 143.3 would apply to prohibit an actress at the Mark Taper Forum Theatre in Los Angeles from touching her breasts through her clothing. It is obvious from the Department's characterization of its actions in *LSO, Ltd. v. Stroh*, that the answer would be "no."

20 This rule is very similar to Rule 143.3, except that it regulates the display of art, films, etc., in licensed premises.

21 We use the example, because the Department suggests that a licensed bar could not circumvent Rule 143.3 by having a performer recite "the soliloquy from Hamlet while fondling her breasts or genitalia." We are not sure this is a correct statement. A performance of Hamlet in which the performer playing Ophelia fondled herself while nude during the "mad scene" would be artistically viable (and has probably been done). For example, Ophelia's songs include the lyrics "Then up he rose, and donn'd his clothes; And dupp'd the chamber-door; Let in the maid, that out a maid; Never departed more." (Shakespeare, Hamlet, act IV, scene 5.)

22 The standards for evaluating the proposed touchings would presumably include both duration and the intended expression or content.

23 Of course, if the touchings were unrelated to any expression at all, they could be regulated, as even Vicary concedes.

24 Vicary requests that we take judicial notice of the fact that singer Michael Jackson frequently grabs his crotch during performances. In the same spirit, it is not unfair for us to rely on other than direct experience in characterizing the typical topless dances performed in bars.

We note that at oral argument, Vicary appeared to take the position that there was no "continuum" supporting a varying application of the First Amendment. We believe that the United States Supreme Court has clearly recognized that the constitutional protection varies with the type of speech, and that it lightens (but does not dissipate) near the "outer ambit" in which Vicary's dancers operate. (See *Pap's A.M., supra,* 529 U.S. at p. 289 [120 S.Ct. at p. 1391].)

25 Vicary argued strenuously at oral argument that the rule was not violated when the dancer "Pamela" manipulated her bare breasts by pulling on an implanted ring. The evidence also showed that "Pamela" violated the rule by flesh-to-flesh touchings as well. We find no need at this point to determine whether such a ring should be considered a "fixture" and part of the breast itself for the rule's purposes. We will leave that issue for a case which involves nothing *but* implanted rings and manipulation of the breasts thereby.

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190 Cal.App.2d 599
District Court of Appeal, First District, Division 1, California.

FLORESTA, INC., a Corporation, Plaintiff and Appellant,
v.
CITY COUNCIL OF the CITY OF SAN LEANDRO et al., Defendants and Respondents.

Civ. 19297. | March 29, 1961. | Hearing Denied May 24, 1961.

Applicant, whose application for permit under city zoning ordinance for a cocktail lounge in a shopping center, brought a mandamus proceeding against the city and others and requested a declaration that the ordinance was unconstitutional. The Superior Court, Alameda County, Folger Emerson, J., rendered a judgment adverse to the applicant, and the applicant appealed. The District Court of Appeal, Tobriner, J., held that the city had the right to enforce an ordinance which did not permit a cocktail lounge in a shopping center without a use permit, and that such prerogative had not been pre-empted by the State's generalized regulation of the sale of liquor.

Judgment affirmed.

Attorneys and Law Firms

****183** ***601** Bruner & Minder, Stephen M. Chandler, San Leandro, for appellant.

Stanley Mosk, Atty. Gen., Wiley W. Manuel, Deputy Atty. Gen., for amicus curiae, Dept. of Alcoholic Beverage Control, on behalf of appellant.

Arthur M. Carden, City Atty. of the City of San Leandro, Glenn A. Forbes, Asst. City Atty., San Leandro, for respondents.

Charles R. Martin, San Marino, for amicus curiae, City of San Marino, on behalf of respondents.

Opinion

TOBRINER, Justice.

This case apparently presents for the first time the precise question whether a city, pursuant to a zoning ordinance, may validly prohibit a cocktail lounge in a shopping ***602** center. The uniqueness of the question does not, however, render the answer difficult. We shall point out in more detail *infra* that in spite of the contention that the field of liquor regulation has been exclusively pre-empted by the state, the municipal function of planning and zoning is not defeated because its incidence may result in the prohibition of a cocktail lounge at a particular locality. We shall show, likewise, that the presentation before the local agencies sufficiently supported their denial of the sought permit and that their findings adequately upheld such denial. Finally, as the prior comments indicate, we think that appellant followed the proper procedure in presenting the question of constitutionality for our adjudication.

Section 7–3–143.2 of the San Leandro Municipal Code of 1957 provides that 'No dance hall, road house, night club, commercial club, or any establishment where a liquor is served * * * shall be established in any District closer than two hundred (200) feet to the boundary of any Residential District' unless a permit is obtained for that purpose. Section 7–3–163 declares that in order to grant such use permit 'the findings of the Board shall be that the establishment, maintenance, or operation of the use or building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood of such proposed use nor be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.'

Appellant filed its application for a use permit for the establishment, maintenance, and operation of a cocktail lounge in the Floresta Shopping Center in San Leandro. At a public hearing before the Board of Zoning Adjustments appellant, in support of its contention, urged that the proposed use 'would not under the circumstances of the particular case, be detrimental to the ****184** health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood * * *' Appellant offered a copy and explanation of the proposed plans for the location and construction of the lounge and a copy of an opinion of the City Attorney as to an application for a use permit for a bowling alley and restaurant at another location, stating that although the city could regulate the use of property within 200 feet of residential districts, 'such regulations must be reasonable, and must be issued as a result of some peculiar circumstance or condition existing ***603** at the specific location which does not exist in other locations otherwise situated.'

In addition, appellant's attorney described the existing commercial uses in the area, which encompassed three service stations, a milk depot, a construction company office, and a tract office, as well as a restaurant and cocktail lounge which pre-dated the enactment of the ordinance. The Floresta Shopping Center itself, according to the attorney, included 'a barber shop, beauty salon, cleaners, drugs, a restaurant, a supermarket and a variety store.' Emphasizing that cocktail lounges had been permitted in other instances in similar areas within the city, the attorney denied that the proposed use would cause adverse effects of any kind, including difficulties of parking or traffic.

Representatives of the Floresta Home Owners Association opposed the presence of a cocktail lounge because of the alleged danger to the neighborhood children, the increased problems of parking and traffic control, the possibility of noise in the area, the potentiality of the presence of unsavory people and their use of profane language, and the threat of general nuisance. The board denied the permit because of the proximity of the lounge to residential property, the increase in the noise, and the danger to pedestrian traffic. The city council sustained the board's decision.

As a consequence, appellant petitioned the superior court for a writ of mandamus and request for declaratory relief, asserting the arbitrary and discriminatory nature of the city's decision, and requesting that the court order the city council to issue to appellant the desired permit. As a separate cause of action appellant requested a declaration of the unconstitutionality of the ordinance. The court denied the petition and request, finding that the ordinance was constitutional and that the actions of respondents were neither arbitrary nor discriminatory.

We consider separately the following issues: the constitutionality of the zoning ordinance, the adequacy of the presentation before the local agencies and the findings based upon them, and the propriety of the procedure to present the constitutional question.

As to the first issue, we shall point out that the sections of the San Leandro Municipal Code here involved neither unconstitutionally invade a field pre-empted by the state nor constitute an attempted exercise of local option. An analysis of the zoning regulations of San Leandro demonstrates that although ***604** appellant would identify them with legislation regulating the sale of liquor, they seek a different objective, attainable by different means.

Article XX, sec. 22, of the Constitution of the State of California, as enacted November 6, 1934, provides in part: 'The State Board of Equalization shall have the exclusive power to license the * * * sale of intoxicating liquors in this State * * *.' As amended November 2, 1954, this section stated, 'The Department of Alcoholic Beverage Control shall have the exclusive power, *except as herein provided and in accordance with laws enacted by the Legislature,* to license the manufacture, importation and sale of alcoholic beverages in this State * * *.' (Emphasis added.)

The Legislature (Stats.1935, ch. 330, p. 1130) enacted section 15 of the Alcoholic Beverage Control Act and limited the power of the board to license and regulate the sale of intoxicating liquors. Section 15 has been codified in the present ****185** Business and Professions Code, §§ 23790 and 23791. Section 23790 provides: 'No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license *is contrary to a valid zoning ordinance* of any county or city unless the premises had been used in the exercise of such rights and privileges at a time prior to the effective date of the zoning ordinance.' (Emphasis added.) Section 23791 states: 'Nothing in this division interferes with the powers of cities conferred upon them by Sections 38690 to 38706, inclusive, of the Government Code, the 'Zoning Law of 1917.''

The Legislature has, then, provided that a license shall not be issued for any premises contrary to a 'valid zoning ordinance.' Our sole question, therefore, must be whether or not the San Leandro ordinance which restricts the use of commercial property within 200 feet of a residential district is a 'valid zoning ordinance.'

Appellant and amicus curiae attempt, here, to defeat the ordinance upon the ground that the field has been pre-empted by the state. They argue that although the ordinance, in general, controls 'recreational and commercial establishments it also expressly mentions and singles out 'or any establishment where liquor is served.'' While other business establishments are permitted in the area, the cocktail bar, in the absence of a permit, is prohibited. The isolation and identification of the cocktail lounge becomes, according to appellant and amicus ***605** curiae, a special regulation of the sale of liquor. Such regulation, they argue, can be exacted only by the Department of Alcoholic Beverage Control.

[1] The argument confuses the function of zoning with that of the control of the sale of liquor. The essence of zoning lies in metropolitan and regional planning; it is the use and treatment of public and private land and its appurtenances in the interests of the community as a whole. [1] The factors and reasons that determine the imposition of metropolitan zoning are entirely different from those which control the regulation of the consumption of liquor. To compress zoning or city planning into the mould of liquor regulation is to reduce its compass to a single aspect of its impact. That it may cover the regulation of the sale or consumption of liquor does not mean that it merely proposes liquor control; its sweep and design are wide; its particular application in the prohibition of a cocktail lounge does not correspondingly limit its scope or purpose.

The reliance of appellant and amicus curiae upon Town Council of Town of Los Gatos v. State Bd. of Equal., 1956, 141 Cal.App.2d 344, 296 P.2d 909, for the proposition that zoning ordinances cannot 'single out' certain vendors of liquor and prohibit their operation does not establish their case. Appellant refers to the following language: 'Zoning ordinances cannot single out and prohibit the sale of liquor as such. There must be a reasonable classification of districts and in any zoning district in which, for example, other retail businesses are allowed to be conducted, it might well be and probably would be unreasonable and arbitrary to exclude ****186** the sale of liquor. In such a situation, it would be for the Board of Equalization (now Department of Alcoholic Beverage Control) to determine the propriety of granting liquor licenses to ***606** locations within such a district.' At pages 346–347, 296 P.2d at page 911. The court's statement, however, is dicta; the decision actually held that the State Board of Equalization did not have the 'right to grant Bocci's [real party in interest's] application in view of the existing zoning restrictions in the district in which the premises are located.' At page 345, 296 P.2d at page 910. The further statement of the court applies here: 'It is clear that the Legislature did confer upon counties and cities the right to control the districts in which various types of liquor business could be carried on by the enactment of valid zoning ordinances.' At page 347, 296 P.2d at page 911.

Moreover, the dicta alludes to the exclusion of the 'sale of liquor' in a zoning district where 'other retail businesses are allowed to be conducted * * *.' At page 346, 296 P.2d at page 911. We adjudicate the propriety of a license for a cocktail bar or lounge. Even if we were to assume that no distinction could be made between the retail sale of liquor and the sale of other commodities, the social impact of a cocktail bar obviously differs fundamentally from that of a store which sells liquor for consumption off the premises.

Appellant's further contention that the department alone is empowered to determine whether 'a particular liquor license should be granted or denied'; that the department, and not the municipality, should apply the 'standards' for the license, and that the municipality's enforcement would engender conflict between it and the state merely reargues the pre-emption point in other terms. These propositions overlook the Legislature's express affirmation that retail licenses should not be issued for premises in any territory where it would be contrary to valid zoning ordinances, an indication that the Legislature intended to leave such zoning to local administration. As is stated in Pipoly v. Benson, 1942, 20 Cal.2d 366, 125 P.2d 482, 147 A.L.R. 515, a case cited by appellant, 'Where the statute contains language indicating that the legislature did not intend its regulations to be exclusive, the general rule permitting additional supplementary local regulations has been applied.' At page 371, 125 P.2d at page 485. To the same effect: Abbott v. City of Los Angeles, 1960, 53 Cal.2d 674, 683, 3 Cal.Rptr. 158, 349 P.2d 974; In re Farrant, 1960, 181 Cal.App.2d 231, 233, 5 Cal.Rptr. 171.

[2] Appellant finally asserts that the zoning ordinance covertly designs local option, but the argument does no more than frame a third statement as to pre-emption. Of course, ordinances which impose general regulations of the liquor traffic through licenses, taxes or other such mechanisms of ***607** control must succumb to the exclusive power of the department as to that subject matter. Desert Turf Club v. Board of Suervisors, 1956, 141 Cal.App.2d 446, 296 P.2d 882; Town of Los Gatos v. State Bd. of Equal., supra, 141 Cal.App.2d 344, 296 P.2d 909. The San Leandro ordinance, however, seeks only to restrict the sale or consumption of liquor as to retail establishments and cocktail bars within 200 feet of residences. Instead of eliminating the use of alcoholic beverages by San Leandro's residents, the ordinance permits the sale of liquors and the presence of cocktail bars elsewhere in the city. The ordinance is a geographic restriction as to place of sale and use of liquor, not an invasion of the state's general regulation and limitation of the consumption of liquors as such.

[3] We therefore conclude, in accordance with the decisions of other states [2] ****187** and an analogous ruling of the Alcoholic Beverage Control Appeals Board in 1957, [3] that the questioned ***608** zoning provisions of the San Leandro Municipal Code do not fail on constitutional grounds.

We turn to appellant's second issue, comprising the contentions that the denial of the permit did not rest upon the submitted evidence, that the burden of proving detrimental effects falls upon the city, and that the findings do not support the denial. Despite the informality of the proceedings before the local agencies and the lack of evidence in the strictly judicial sense, we believe that these bodies properly denied the use permit on the basis of the views presented them; the city did not bear the burden of proof; the findings adequately supported the decision.

Appellant's first contention that the proof does not sustain the denial of the permit, but that the objections to the cocktail lounge filed by individuals induced the ruling, cannot stand. While it is true that the loard relied upon opinion evidence, particularly statements of the attorneys representing the involved parties, the nature of the hearing itself evokes such presentation. Thus appellant's attorney expressed his opinion that the proposed cocktail lounge would neither cause traffic or parking problems, nor endanger neighborhood pedestrians and children nor produce sufficient noise to disturb the adjoining homeowners. He pointed to one existing bar in the general neighborhood and argued that the addition of the proposed cocktail lounge would not alter the character of the area. On the ****188** other hand, opposing counsel, denounced the lounge as a danger to those using the other facilities of the shopping center and as an invasion of the rights of the neighbors to quiet and security.

[4] **[5]** Most of the opinion testimony set forth above would neither have been admissible in a court of law nor have served as a proper basis for its decision, but such rules of admissibility of evidence do not bind administrative agencies. (Witkin, Calif. Evidence, § 7, p. 7.) The courts have regarded the weight and sufficiency of the evidence as matters of administrative discretion and have sustained the agency's decision if 'substantial evidence' supports it. (Witkin, ***609** Calif. Evidence, § 7, p. 9.) The present situation compares to that of Southern California Jockey Club v. Cal. etc. Racing Bd., 1950, 36 Cal.2d 167, 223 P.2d 1, involving a review of a denial of an application for a horse racing license. There the statute provided that the 'board shall not issue a license to conduct a horse race meeting * * * unless * * * the board * * * has determined that conducting horse racing meetings at such place will be in the public interest * * *.' (Stats.1941, ch. 1248, p. 3129.) After determing that under the wording of the statute an applicant for a license had the 'burden of proving, at least, that public interest and the purposes of the act would not be detrimentally affected by the proposed new tract,' (at page 177, 223 P.2d at page 7) the court concluded: 'Thus it was for the board to determine whether plaintiff's evidence was such that the burden had been met. This is especially true where most of the evidence consists of opinions, and the issues involved—public interest and purposes of the act—are general and incapable of exact definition.' At page 177, 223 P.2d at page 7. In that case the court found ample evidence in the various forms of opinion evidence to support the administrative agency's determination.

[6] The general presumption that the necessary facts sustain a finding (Wheeler v. Gregg, 1949, 90 Cal.App.2d 348, 360, 203 P.2d 37), as well as the foregoing language, leads us to hold that the zoning board's denial of a use permit rested upon sufficient evidence. The nature of the administrative process in this instance is such as to call for generalized statement. Its purpose is not to prove a precise fact, as in a trial in court, but to weigh the social and public advantages or disadvantages of the issuance of the permit.

Nor are the decisions of the Board of Zoning Adjustments and the city council defeated by appellant's contentions that they would not have been reached 'had it not been for the some 433 objections filed with the City's and that '[i]t has repeatedly been held invalid in this State to condition the granting of a use permit upon the approval of a certain number or percentage of adjoining property owners * * * adversely affected.' The ordinance did not, however, provide that the permit turn upon the vote of property holders; the filed opinions were advisory only. The hypothesis that the board decided the matter solely upon the objections rather than upon an application of the standards of the muncipal code is entirely unproven. Moreover, the courts have upheld even more formal expressions of affected persons as to their ***610** approval or disapproval of zoning programs or industry marketing plans. [4] The presence of the protests clearly does not invalidate the decisions of the board or the council.

****189** **[7]** **[8]** Appellant fails in its second contention that the doctrine of contemporaneous administrative construction compels a conclusion that the burden of proving detrimental effect rests on the city rather than the appellant. To sustain its position, appellant relies upon the opinion of the City Attorney, which we have set forth supra, to the effect that 'such regulations must be reasonable, and must be issued as a result of some peculiar circumstance or condition existing at the specific location which does not exist in other locations otherwise situated.' Yet the opinion cannot change the plain meaning of the ordinance. The city zoning ordinance prohibits the establishment of any place selling liquor within

200 feet of a residential district without a use permit, granting authority to the board to issue such permits upon the condition that it finds that 'the establishment, maintenance, or operation of the use * * * will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood * * *.' Thus, despite appellant's argument, ***611** the ordinance clearly imposes upon the applicant the burden of proving compliance with the required conditions and the absence of the described detriments.

Nor do appellant's citations of People v. Southern Pac. Co., 1930, 209 Cal. 578, 290 P. 25, and Christensen v. Thurber, 1953, 120 Cal.App.2d 517, 261 P.2d 312, postulate that the City Attorney's opinion be accepted as a binding contemporaneous construction of the ordinance. In the first case the court held that 'direct affirmative action and long acquiescence' by governmental agencies had placed a specific construction upon a statute sustaining its validity. 209 Cal. at page 595, 290 P. at page 32. A single opinion of a City Attorney written to the city council does not demonstrate such 'direct affirmative action and long acquiescence.' In the second case the City Attorney's opinion instead of constituting an isolated expression, 'was consistent with previous rulings by the city attorney on the same question * * *.' 120 Cal.App.2d at page 519, 261 P.2d at page 314. These cases do not hold that one opinion of the City Attorney is entitled to such 'great respect' that it will be followed despite its conflict with an ordinance.

Finally, we can discover no merit in appellant's attack upon the board's findings. The ordinance requires that as a condition for the permit the board find that the proposed use will not be detrimental to the welfare of persons residing or working in the neighborhood. Certainly the board's findings here that the permit 'be denied for the reasons of peace, health, and general welfare of the people in the area,' and more specifically, 'because of the closeness ****190** of the bar to this property,' 'the noise factor there,' and the danger to 'pedestrian traffic' adequately demonstrate the board's inability to reach the affirmative findings required for the issuance of a permit. See Southern California Jockey Club v. California etc. Racing Bd., supra, 36 Cal.2d 167, 177–178, 223 P.2d 1.

[9] **[10]** We come to the last issue of the case: the propriety of appellant's procedure to present for adjudication the question of the constitutionality of the ordinance. Our previous analysis shows our belief that the matter had properly been raised. Appellant has filed a petition for a writ of mandamus and request for declaratory relief. Despite respondents' objections, we believe appellant could properly seek to review the administrative agencise' decision by the writ and to test the constitutionality of the ordinance by declaratory relief. Nor does appellant's application for a permit foreclose it from an attack upon the constitutionality of the ordinance.

[11] **[12]** ***612** While mandamus is traditionally a procedure for reviewing the action of an administrative agency as to an alleged abuse of discretion (Bleuel v. City of Oakland, 1927, 87 Cal.App. 594, 262 P. 477), it may also be invoked to challenge the constitutionality of ordinances and regulations: Reynolds v. Barrett, 1938, 12 Cal.2d 244, 83 P.2d 29, (validity of a zoning ordinance); Danskin v. San Diego Unified Sch. Dist, 1946, 28 Cal.2d 536, 171 P.2d 885, (constitutionality of rules regulating the use of school property for public purposes); Roman Catholic Welfare Corp. of San Francisco v. City of Piedmont, 1955, 45 Cal.2d 325, 289 P.2d 438, (constitutionality of zoning ordinance). On the other hand, while an action for declaratory relief may properly test the constitutionality of a zoning ordinance (McCarthy v. City of Manhattan Beach, 1953, 41 Cal.2d 879, 882, 264 P.2d 932; People v. Amdur, 1954, 123 Cal.App.2d Supp. 951, 968, 267 P.2d 445), it is not an appropriate method for judicial review of administrative decisions (Hostetter v. Alderson, 1952, 38 Cal.2d 499, 500, 241 P.2d 230).

Since mandamus and declaratory relief actions can be joined (15 Cal.Jur.2d 148), appellant has properly sought a review of the agencies' decision in its petition for a writ of mandamus and a test of the constitutionality of the ordinance in its request for declaratory relief.

Respondents unsuccessfully contend that appellant by applying for a use permit admitted the constitutionality of the ordinance, and therefore cannot now question its validity. Altho the applicant for a permit cannot, in the proceedings which he has instituted to obtain the license, challenge the constitutionality of the ordinance under which he proceeds, (Hadden, Inc. v. City of Inglewood, 1950, 101 Cal.App.2d 47, 224 P.2d 913; Rubin v. Board of Directors, 1940, 16 Cal.2d 119, 104 P.2d 1041), '[t]his does not mean * * * that he has thereby waived his rights to object to the validity of the ordinance as affecting his property. After having exhausted his administrative remedies he may then, if he so desires, attack the validity of the ordinance * * *.' (Garden Grove Congregation of Jehovah's Witnesses v. City of Garden Grove, 1959, 176 Cal.App.2d 136, 143, 1 Cal.Rptr. 65, 69.) Having pursued its administrative procedures under the ordinance, appellant could properly challenge its validity in this independent action.

As we have said, the municipality retains the constitutional right to enforce a zoning ordinance which does not permit a cocktail lounge in a shopping center without a use permit, ***613** and this prerogative has not been pre-empted by the state's generalized regulation of the sale of liquor. At a time when the unprecedented congestion of metropolitan areas demands ever greater planning and regulation, the complaint that such control invades constitutional rights carries many of the overtones of yesterday. It emanates from a philosophy of frontier individualism that is incompatible with ****191** modern living. It is reminiscent of old battlecries in a legal struggle that has long been resolved.

We affirm the judgment.

BRAY, P. J., and DUNIWAY, J., concur.

Parallel Citations

190 Cal.App.2d 599

Footnotes

1 The concept of zoning reaches back historically to the Renaissance plans of public planning that started in Italy and spread to France; it is symbolized by the famous plan of Sir Christopher Wren for London after the fire of 1666 and in the United States by the L'Enfant's planned cities of Washington and Indianapolis; indeed, before its first significant development in the city planning of New York in this country, such planning had been widely accepted in Sweden and Germany. As is stated in Recent Social Trends in the U. S. by the Research Committee on Social Trends (1934, McGraw Hill Book Co., Inc), ‘The zoning movement * * * began over 30 years ago and today every state and the District of Columbia has adopted some form of zoning legislation or regulation. Since 1916 when New York City adopted a comprehensive zoning ordinance, the decided trend has been to integrate zoning with city planning. Today all but two states have comprehensive zoning legislation.’ (P. 1440.)

2 Other states have faced the problem of zoning ordinances restricting the sale of liquor. For example, a Texas appellate court upheld a zoning provision defining the areas within which liquor could be sold. In Louder v. Texas Liquor Control Board, Tex.Civ.App.1948, 214 S.W.2d 336, the court stated: ‘It is a matter of common knowledge, recognized by the courts, that the sale of intoxicants is accompanied with objectionable features not common to other types of commercial enterprises, and such facts constitute valid grounds for a separate classification or prohibition thereof in a given commercial area, for the protection of the health, morals, safety, peace, and convenience of the public. Eckert v. Jacobs, [Tex.Civ.App., 142 S.W.2d 374] supra.’ (at page 341.) The Supreme Court of Illinois, in Saladino v. City of South Beloit, 1956, 9 Ill.2d 320, 137 N.E.2d 364, at page 367, upheld a zoning ordinance which restricted the location of taverns to “C-Business Districts,” along with ‘amusement places, clubs, dance halls, motels and trucking terminals and, by omission, excluded them from classes ‘A and B-Business Districts' wherein innumerable sales and service uses' were permitted. The court concluded that ‘many reasons related to the public welfare, safety and morals may be suggested which cause it to be both desirable and reasonable that the shopping and service areas of a city's business districts, to which its citizens are drawn to fulfill their daily needs, be kept from the influences attendant to tavern operations.’ 137 N.E.2d at page 367.

3 In a case before the Alcoholic Beverage Control Appeals Board in 1957 that board considered an ordinance of the City of Carmel-by-the-Sea prohibiting the sale of intoxicating liquors in any part of the city except a specifically defined area within a C–1 district, except that ‘alcoholic liquors may be sold in Districts C–1 and C–2 provided that such sale shall be in conjunction with and subordinate to the carrying on of another primary business' permissible in that district. The board held: ‘The ‘buffer zone’ created by the City of Carmel-by-the-Sea was a reasonable solution of the vexatious problem which faces all planning commissions, that is, the problem of so defining various uses as to minimize the impairment of that portion of a residential district which might be contiguous to a commercial district. * * * The present ordinance creates a district which is a reasonable transition between that area where alcoholic beverage licensees may operate without restriction and a residential area where they may not operate at all. The objective of the municipality being a valid one, and its method of accomplishment reasonable, it was error on the Department of Alcoholic Beverage Control to hold the ordinance invalid and to approve an application for a license, the use of which would violate the provisions of the ordinance.' (In the Matter of the Protest of City Council, City of Carmel-by-the-Sea against the issuance of off-sale general license to: Paul E. Chedester and Robert A. Aebersold (A.B. 537 & 538).

4 Appellant's citations (Coon v. Board of Public Works, 1908, 7 Cal.App. 760, 95 P. 913, and Ex parte Sing Lee, 1892, 96 Cal. 354, 31 P. 245, 24 L.R.A. 195) invalidate legislative delegations to private persons as to issuance of permits, in the first case for a building and for the pursuit of a business in the second case, in the absence of legislative atandards for the applicable administrative body. Appellant's cited case of Hurst v. City of Burlingame, 1929, 207 Cal. 134, at pages 137 & 141, 277 P. 308 at pages 310 & 311 holds that such a delegation to a ‘majority of the owners of property’ in a designated area fails because the zoning ordinance and the state

zoning law 'are hopelessly inconsistent.' The courts, however, have held that there is no unlawful delegation of power in legislation which requires an affirmative petition of affected persons to institute regulatory programs. In re Bickerstaff, 1886, 70 Cal. 35, at page 37, 11 P. 393 at page 394 (applicant for liquor license must file petition with city council accompanied by "certificate signed by five respectable citizens of said city"; Davis v. Board of Supervisors, 1908, 7 Cal.App. 571, at page 572, 95 P. 170, at page 171 (no license should be granted "if a number of electors equal in number to a majority of the whole number of electors residing in * * * precinct * * * sign a written protest"; Ex parte Beck, 1912, 162 Cal. 701, 124 P. 543 (petition of 25 per cent of electors to determine if liquor district is to be created); Matter of Ellsworth, 1913, 165 Cal. 677, 133 P. 272 (to the same effect); Agricultural Prorate Com. v. Superior Ct., 1936, 5 Cal.2d 550, at page 583, 55 P.2d 495, at page 512 ('petition for the formation of a district * * * must be signed by not less than fifty producers of the commodity'); Brock v. Superior Court, 1952, 109 Cal.App.2d 594, at page 605, 241 P.2d 283 at page 291 ('marketing order must be submitted to the producers and handlers or assent obtained thereto from not less than 65 per cent of them').

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23 Cal.App.4th 376, 28 Cal.Rptr.2d 530

KOREAN AMERICAN LEGAL ADVOCACY FOUNDATION et al., Plaintiffs and Appellants,
v.
CITY OF LOS ANGELES, Defendant and Respondent; COMMUNITY COALITION FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT et al., Interveners and Respondents.
KOREAN AMERICAN LEGAL ADVOCACY FOUNDATION et al., Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; CITY OF LOS ANGELES et al., Real Parties in Interest.

No. B077272., No. B079224.
Court of Appeal, Second District, California.
Mar 17, 1994.

SUMMARY

The owners and operators of retail stores licensed to sell alcoholic beverages in a city brought an action seeking to prevent the city from enforcing an ordinance imposing a plan approval process for the rebuilding of businesses destroyed or damaged during a civil disturbance and providing for revocation hearings as to businesses that had become or were threatening to become a nuisance or law enforcement problem. Plaintiffs contended that the ordinance was preempted by the California Constitution as well as sections of the Business and Professions Code providing the exclusive means for regulating the sale of alcoholic beverages. The trial court denied plaintiffs' request for a preliminary injunction and sustained the city's demurrer to plaintiffs' causes of action alleging preemption. Plaintiffs appealed the order denying the preliminary injunction and petitioned for a writ of mandate as to the trial court's order sustaining the city's demurrer. (Superior Court of Los Angeles County, No. BC080635, Robert H. O'Brien, Judge.)

The Court of Appeal dismissed the appeal as moot, and denied the petition for a writ of mandate. The court held that the ordinance was not preempted by Cal. Const., art. XX, § 22 (state shall have exclusive power to license and regulate manufacture, sale, possession, and transportation of alcoholic beverages), since the purpose and effect of the ordinance was not to dictate, restrict, or regulate the actual sale of alcoholic beverages. Instead, it focused on abating or eradicating nuisance activities in a particular geographic area by imposing conditions aimed at mitigating those effects. Further, the ordinance did not either duplicate or contradict state law, and the Alcoholic Beverage Control Act (Bus. & Prof. Code, § 23000 et seq.) did not evidence an intent to occupy the field of land use regulation relating to retail establishments selling alcoholic beverages so as to preempt the ordinance. The court also held that plaintiffs were not immunized by Bus. & Prof. Code, § 23790 (premises already exercising rights conferred by license at time of enactment of zoning ordinance may continue operation under specified conditions), from compliance with the ordinance. Finally, the court held that the appeal from the order denying plaintiffs' request for a preliminary injunction was moot in light of the trial court's sustaining of the city's demurrer to the only causes of action that would have supported issuance of a preliminary injunction. (Opinion by Johnson, J., with Lillie, P. J., and Woods (Fred), J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
Appellate Review § 128--Scope of Review--Function of Appellate Court-- Rulings on Demurrers--Possibility of Amendment.
On review of an order sustaining a demurrer without leave to amend, an appellate court accepts as true all the properly pleaded facts in the complaint. When a demurrer is sustained, a reviewing court determines whether the complaint states facts sufficient to constitute a cause of action. If there is a reasonable probability the defect can be cured by amendment, the trial court has abused its discretion, and the appellate court reverses. If the defect cannot be cured by amendment, there has been no abuse of discretion, and the appellate court affirms.

(2)
Municipalities § 56--Ordinances, Bylaws, and Resolutions--Conflict With Statutes--Test for Preemption:Counties § 10--Ordinances--Preemption.
The constitutional grant of power to cities and counties (Cal. Const., art. XI, § 7) allows a certain amount of independence in matters of local concern. This local governmental independence is curbed, however, by the doctrine of state sovereignty, which may limit the power of local government

when there is a conflict with the general laws of the state. When such conflict is present, local law is "preempted." Conflicts exist if the local law duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a municipal affair.

[See 8 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 794.]

(3)

Zoning and Planning § 9--Content and Validity of Zoning Ordinances and Planning Enactments--Ordinance Restricting Rebuilding of Businesses Following Civil Disturbance--Effect on Retail Stores' Selling of Alcoholic Beverages-- State Preemption.

A city's ordinance imposing a plan approval process for the rebuilding of businesses destroyed or damaged during a civil disturbance and providing for revocation hearings as to businesses that had become or were threatening to become a nuisance or law enforcement problem was not expressly preempted by Cal. Const., art. XX, § 22 (state shall have exclusive power to license and regulate manufacture, sale, possession, and transportation of alcoholic beverages). The purpose and effect of the ordinance was not to dictate, restrict, or regulate the actual sale of alcoholic beverages; instead, it focused on abating or eradicating nuisance activities in a particular geographic area by imposing conditions aimed at mitigating those effects. These are typical and natural goals of zoning and land-use regulations. That these conditions might have some indirect impact on the sale of alcoholic beverages did not transmute the ordinance into regulations merely seeking to control alcohol sales. The ordinance constituted a valid exercise of the city's police powers under Cal. Const., art. XI, § 7, to control and abate nuisances.

[Zoning regulation of intoxicating liquor as pre-empted by state law, note, 65 **A.L.R.4th** 555.]

(4)

Alcoholic Beverages § 32--Regulation by Counties and Municipalities.

A local government entity may not entirely prohibit alcohol sales within its jurisdiction.

(5a, 5b)

Municipalities § 31--Regulation by Counties and Municipalities--Ordinance Restricting Rebuilding of Businesses Following Civil Disturbance.

A city's ordinance imposing a plan approval process for the rebuilding of businesses destroyed or damaged during a civil disturbance and providing for revocation hearings as to businesses that had become or were threatening to become a nuisance or law enforcement problem did not either duplicate or contradict state law so as to be preempted, even though the ordinance's provisions for abatement of nuisance activities, as applied to retail stores licensed to sell alcoholic beverages, seemed to overlap with state law provisions (Bus. & Prof. Code, §§ 23800, 23801, & 24300 et seq.). While the underlying purpose of both the city's and the state's actions might be to abate or eradicate nuisance activities, the focus and ultimate outcome of each procedure were completely different: the state's action could result in the revocation of a license to sell alcohol, while the city's action could result, not in the loss of a license, but in the loss of the right to sell alcoholic beverages on the subject premises.

(6)

Zoning and Planning § 28--Conditional Uses--Revocation.

Once a licensee has acquired a conditional use permit, or has "deemed approved" status, a muncipality's power to revoke the conditional use is limited. If the permittee has incurred substantial expense and acted in reliance on the permit, the permittee has acquired a vested property right in the permit and is entitled to the protections of due process before the permit may be revoked. In determining that a permit, validly issued, should be revoked, the governing body of a municipality acts in a quasi-judicial capacity. In revoking a permit lawfully granted, due process requires that the governing body act only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation. As revocation of a use permit could have the effect of putting the licensee completely out of business, it is consequently a very harsh remedy that requires the strictest adherence to principles of due process. Whenever alternate remedies can achieve the same goal, such as the imposition of additional conditions or controls, these avenues ought to be pursued if feasible.

(7)

Alcoholic Beverages § 32--Regulation by Counties and Municipalities-- Limitations on Power--Restrictions on Rebuilding of Businesses Following Civil Disturbance.

The Alcoholic Beverage Control Act (Bus. & Prof. Code, § 23000 et seq.) does not evidence an intent to occupy the field of land use regulation relating to retail establishments selling alcoholic beverages, and thus a city's ordinance imposing a plan approval process for the rebuilding of businesses destroyed or damaged during a civil disturbance and providing for revocation hearings as to businesses that had become or were threatening to become a nuisance or law enforcement problem was not preempted by the state statutory scheme. Bus. & Prof. Code, §§ 23790 and 23791, expressly reserve to local governments the right to enact local zoning ordinances. Since Bus. & Prof. Code, § 23790, expressly makes the issuance of licenses contingent on satisfying any existing, valid local zoning requirement, it is clear the Legislature did not intend for the state legislation to preempt local zoning regulations.

(8a, 8b)
Alcoholic Beverages § 32--Regulation by Counties and Municipalities--Limitations on Power--Restrictions on Rebuilding of Businesses Following Civil Disturbance--Effect of Grandfather Provision.
Retail establishments selling alcoholic beverages for off-site consumption were not immunized by Bus. & Prof. Code, § 23790 (premises already exercising rights conferred by license at time of enactment of zoning ordinance may continue operation under specified conditions), from compliance with a city's ordinance imposing a plan approval process for the rebuilding of businesses destroyed or damaged during a civil disturbance and providing for revocation hearings as to businesses that had become or were threatening to become a nuisance or law enforcement problem. The statutory exception for businesses interrupted for up to 30 days was inapplicable, since the businesses in question were closed for a longer period, and the exception for restorations made necessary by an act of God or a toxic accident was inapplicable as well. Although Bus. & Prof. Code, § 24801, pertaining to transfer of licenses, contains broader exceptions, Bus. & Prof. Code, § 23790, should not be construed to have that same broader scope, since the purpose and effect of the two provisions are quite distinct.

(9)
Words, Phrases, and Maxims--Act of God.
Destruction caused by human intervention by definition is not an “act of God” as that term is understood. The generally accepted definition of “act of God” only includes acts occasioned exclusively by violence of nature without the intervention of any human agency.

(10a, 10b)
Injunctions § 21--Temporary Restraining Orders and Preliminary Injunctions--Appeal--Mootness.
An appeal from an order denying a request for a preliminary injunction was moot. The injunction was sought by the owners and operators of retail stores licensed to sell alcoholic beverages in a city. The retailers wanted to prevent the city from enforcing an ordinance which imposed a plan approval process for rebuilding businesses destroyed or damaged during a civil disturbance and which provided for revocation hearings for businesses that had become or were threatening to become a nuisance or law enforcement problem. While the appeal was pending, the trial court sustained, without leave to amend, the city's demurrer to plaintiffs' causes of action alleging that the city's procedures were preempted by state law, and these were the only causes of action that might have supported a preliminary injunction.

(11)
Injunctions § 15--Temporary Restraining Orders and Preliminary Injunctions--Preliminary Injunctions--Necessity of Existence of Cause of Action.
A preliminary injunction is an interim remedy designed to maintain the status quo pending a decision on the merits. It is not, in itself, a cause of action. Thus, a cause of action must exist before injunctive relief may be granted. Accordingly, where the complaint fails to state a cause of action, an order granting a preliminary injunction must be reversed.

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No appearance for Respondent Superior Court.

JOHNSON, J.

In these actions owners/operators of retail stores licensed to sell alcoholic beverages sought to prevent the City of Los Angeles (City) from imposing any conditions or restrictions on the rebuilding of their businesses destroyed during the civil disturbance in spring 1992. They also sought to prevent the City from imposing conditions on the operation of existing businesses under threat of revoking their deemed approved status under the City's ordinance governing conditional uses.

Appellants and petitioners, Korean American Legal Advocacy Foundation, Soo Chun Cha, David Kim and Daniel K. Whang (plaintiffs), as taxpayers and persons affected by the City's actions, filed an action, inter alia, for injunctive and declaratory relief. They contended the City's ordinance was preempted by the California Constitution as well as provisions in ***382** the Business and Professions Code which provide the exclusive means for regulating the sale of alcoholic beverages. The trial court denied their request for a preliminary injunction and later sustained the City's demurrer without leave to amend to those causes of action alleging state preemption of the City's ordinance. We affirm the trial court's order sustaining the demurrer without leave to amend to the causes of action based on state preemption and dismiss as moot the appeal of the trial court's order denying a preliminary injunction decided on the same grounds.

Facts and Proceedings Below

Since 1985, the City has required a conditional use permit for off-site alcoholic beverage sales city wide. In 1987, the City adopted a specific plan for the sale of alcoholic beverages for the South Central area of Los Angeles. The specific plan required conditional use approvals for establishments dispensing alcohol in South Central Los Angeles and provided approval was contingent on specified findings.

Under either ordinance, existing uses before their operative dates became "deemed to be approved" conditional uses. (L.A. Mun. Code, § 12.24F.) [1] Thus, businesses such as those owned by the individual plaintiffs which operated before either the city wide conditional use permit ordinance or the specific plan were "grandfathered" and given "deemed approved" conditional use status.

During the civil disturbance of spring 1992, a number of these businesses were destroyed or damaged. In the aftermath of the civil disturbance, the City enacted legislation to facilitate rebuilding. Ordinances were adopted which provided for expedited procedures to process building permits in conformity with existing code provisions. Despite these expedited procedures, however, all conditional uses, including conditional uses selling alcoholic beverages for off-site consumption, had to submit plans for approval before rebuilding. (L.A. Mun. Code, § 12.24G.)

Although the plan approval process technically may not constitute a provision which requires a conditional use permit before rebuilding, the ***383** effect is essentially the same. This section provides approval of a rebuilding plan may be made contingent on agreement to conditions imposed "on the same basis as provided for in this section for the establishment of new conditional uses." (L.A. Mun. Code, § 12.24G(3).) Typically, the conditions imposed under this section as prerequisites to rebuilding require an owner to agree to remove graffiti promptly, provide adequate lighting, remove trash, provide a security guard and, in some instances, limit hours of operation.

In addition to the plan approval process, the City has instituted a number of so-called "revocation" hearings to revoke or condition an owner's deemed approved status or use permit in the event the business threatens to become, or has become, a nuisance or law enforcement problem in the area. (L.A. Mun. Code, § 12.24J.)

On May 10, 1993, plaintiffs filed a petition for writ of mandate and complaint for damages and declaratory and injunctive relief. On May 21, 1993, plaintiffs moved for a preliminary injunction to enjoin the City from pursuing its plan approval process for those owners who wished to rebuild and from conducting revocation hearings for existing businesses selling alcohol for off-site consumption. The trial court rejected plaintiffs' argument the City's ordinances were preempted by state statutory and constitutional provisions and denied the motion. The trial court found the City "has the authority to regulate land use, even though it cannot regulate licenses to sell liquor."

Plaintiffs filed a petition for writ of mandate with this court to review the denial of the preliminary injunction (B076378). We denied the petition on the basis the proper vehicle for review was by appeal. Plaintiffs then filed an appeal to challenge the denial of the preliminary injunction. The appeal is currently pending before this court (B077272).

On June 22, 1993, plaintiffs filed a first amended complaint. Causes of action 6 through 8 challenged the City's use of the plan approval process and causes of action 9 through 11 challenged the City's use of the revocation process. The City demurred to these causes of action on the ground the challenged ordinances were not preempted by state law. The trial court sustained the City's demurrer to these causes of action without leave to amend. The court found: "The City is not preempted by state law or by the State Constitution from exercising land use authority over uses which dispense alcohol for consideration."

Plaintiffs filed a petition for writ of mandate in this court (B079224) seeking to reverse the trial court's order dismissing its causes of action based on state preemption. ***384**

Discussion

I. *It Was Not an Abuse of Discretion to Sustain the City's Demurrer Without Leave to Amend as to the Causes of Action in the Complaint Alleging State Preemption.*

Plaintiffs' petition for writ of mandate seeks review of the trial court's order sustaining a demurrer without leave to amend to those causes of action which alleged the City's ordinances were preempted under state law.

([1]) On review of an order sustaining a demurrer without leave to amend an appellate court accepts as true all the properly pleaded facts in the complaint. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187].) When a demurrer is sustained, a reviewing court determines whether the complaint states facts sufficient to constitute a cause of action. If there is a reasonable probability the defect can be cured by amendment, the trial court has abused its discretion and we reverse. If the defect cannot be cured by amendment, there has been no abuse of discretion and we affirm. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718, 703 P.2d 58].)

The facts of this case are not in dispute. Instead, the controversy involves the proper interpretation of the statutory and constitutional provisions which govern this case. We conclude the causes of action alleging state preemption have no merit and affirm the trial court's order.

A. *The City Is Not Preempted by Either Article XX, Section 22 of the California Constitution or the Alcoholic Beverage Control Act From Exercising Land-Use Authority Over Businesses Licensed to Sell Alcoholic Beverages for Off-site Consumption.*

([2]) Under the California Constitution, a "county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) This constitutional grant of power allows a certain amount of independence in matters of local concern. This local governmental independence is curbed, however, by the doctrine of state sovereignty, which may limit the power of local government when there is a conflict with the general laws of the state. (See *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 62 [81 Cal.Rptr. 465, 460 P.2d 137].) When such conflict is present local law is "preempted."

"Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citations], or enters an area ***385** fully occupied by general law, either expressly or by legislative implication [citation]. If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject were otherwise one properly characterized as a 'municipal affair.' [Citations.]" (*People* ex rel. *Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484-485 [204 Cal.Rptr. 897, 683 P.2d 1150], citing *Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 806-808 [100 Cal.Rptr. 609, 494 P.2d 681].)

([3]) Plaintiffs contend the City's plan approval and revocation processes are completely preempted by the state Constitution which specifies the state has exclusive authority to regulate the sale of alcoholic beverages. Article XX, section 22 of the California Constitution provides: "The State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the state...." The State of California exercises this exclusive jurisdiction through the Alcoholic Beverage Control Act (Bus. & Prof. Code, § 23000 et seq.), which is enforced and administered by the California Department of Alcohol Beverage Control (ABC). [2]

Based on this constitutional provision, which gives exclusive jurisdiction to the ABC to regulate alcohol, plaintiffs contend the state has expressly stated its intention to completely preempt the field.

If the purpose and effect of the City's ordinances are to regulate the manufacture, sale, purchase, possession or transportation of alcoholic beverages, we would have to agree the state has expressly preempted the local regulation. Thus, the first, and perhaps most critical inquiry in this case is determining the nature, character and scope of the City's ordinances in order to analyze whether they conflict with the state constitutional or statutory provisions. (See, e.g., *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 473 [211 P.2d 564].)

Los Angeles Municipal Ordinance No. 162,128, known as the South Central Alcohol Sales Specific Plan, specially added off-site retail alcohol sales to the zoning codes as a use requiring a conditional use permit. The city council made specific findings the ordinance was necessary to protect ***386** the "peace, health, safety and general welfare" of persons living or working in the affected areas. [3]

As a conditional use, owners of retail establishments selling alcoholic beverages for off-site consumption wishing to rebuild after the civil disturbance had to first secure plan approvals pursuant to Los Angeles Municipal Code section 12.24G. This section provides:

"1. Development of Site. On any lot or portion thereof on which a conditional use is permitted pursuant to the provisions of this section, new buildings or structures may be erected, enlargements may be made to existing buildings, existing uses may be extended on an approved site, and existing institutions or school developments may be expanded as permitted in Subsection F of this section, *provided plans therefor are submitted to and approved by the Commission* or by a Zoning Administrator, whichever has jurisdiction at that time....

. . . . ***387**

"Any person submitting development plans, or any other person aggrieved by a determination of the Director or his duly authorized representatives made relative to the approval or disapproval of a development plan may appeal said determination to the City Planning Commission...." (Italics added.) [4]

The plan approval process, in turn, subjects the applicant to conditions an owner must agree to implement in order to secure approval. (L.A. Mun. Code, § 12.24G(3).) As noted, conditions imposed in the plan approval process generally include graffiti removal, trash removal, adequate lighting, security guards, protective fences and modified hours of operation.

In addition, establishments selling alcoholic beverages for off-site consumption are also subject to revocation of their conditional use permit or "deemed approved" status under the ordinance. Section 5 of the South Central Los Angeles Alcohol Specific Plan ordinance provides:

"For any conditional use, granted in accordance with the provisions of this ordinance or any existing use subject to this ordinance, and notwithstanding any provision of the Los Angeles Municipal Code to the contrary:

"The City Planning Commission may require the modification, discontinuance, or revocation of any such conditional use or existing use in accordance with the procedures and standards set forth in Section 12.24 J of the Los Angeles Municipal Code."

Section 12.24J of the Los Angeles Municipal Code describes the grounds for revocation hearings. This section provides:

"1. For any conditional use, granted in accordance with the provisions of this section or any existing use subject to Subsection F, and notwithstanding any other provision of this Code to the contrary:

"The City Planning Commission or the Zoning Administrator, whichever has jurisdiction, may require the modification, discontinuance, or revocation of any such conditional use or existing use, if the Commission or Administrator finds that the use as operated or maintained:

"(a) Adversely affects the health, peace, or safety of persons residing or working in the surrounding area; or

"(b) Jeopardizes or endangers the public health or safety of persons residing or working in the surrounding area; or ***388**

"(c) Constitutes a public nuisance; or

"(d) Has resulted in repeated nuisance activities including but not limited to disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detention and arrests; or

"(e) Violates any provision of this chapter, or any other city, state, or federal regulation, ordinance or statute."

The types of conditions imposed at an initial hearing to modify, discontinue or revoke a use are, again, the same as those imposed during the plan approval process.

These sorts of conditions do not directly regulate, or have as their effect the regulation of, alcohol licenses or the manufacture, sale, purchase, possession or transportation of alcoholic beverages. Instead the conditions generally imposed on an owner in the plan approval or revocation process attempt to control or eradicate the unlawful or undesirable activity which often occurs in the immediate vicinity of establishments which dispense alcoholic beverages for off-site consumption. Thus, despite plaintiffs' arguments to the contrary, the purpose and effect of the City's ordinance is not to dictate, restrict or regulate the actual sale of alcoholic beverages. Instead the focus of the ordinance is to abate or eradicate nuisance activities in a particular geographic area by imposing conditions aimed at mitigating those effects. These are typical and natural goals of zoning and land-use regulations. (*Floresta, Inc. v. City Council* (1961) 190 Cal.App.2d 599, 605 [12 Cal.Rptr. 182].)

Plaintiffs, however, contend the Specific Plan for Retail Sales of Alcoholic Beverage in South Central Los Angeles unconstitutionally singles out businesses which sell alcoholic beverages. For this reason they argue the City ordinance in fact constitutes a regulation of the sale of alcoholic beverages which may only be done by the ABC.

This contention was answered by the court in *Floresta, Inc. v. City Council, supra,* 190 Cal.App.2d 599. In that case a company filed an application for a use permit to open a cocktail lounge. The application was denied under a city ordinance which prohibited any business selling alcoholic beverages within 200 feet of a residential district. On appeal the ***389** company argued the city ordinance was preempted by state law, as only the ABC has authority to regulate alcohol sales and the city ordinance invalidly singled out businesses selling alcoholic beverages.

Justice Tobriner, writing for the Court of Appeal, rejected this argument stating, "[t]he argument confuses the function of zoning with that of the control of the sale of liquor. The essence of zoning lies in metropolitan and regional planning; it is the use and treatment of public and private land and its appurtenances in the interests of the community as a whole. The factors and reasons that determine the imposition of metropolitan zoning are entirely different from those which control the regulation of the consumption of liquor. To compress zoning or city planning into the mold of liquor regulation is to reduce its compass to a single aspect of its impact. That it may cover the regulation of the sale or consumption of liquor does not mean that it merely proposes liquor control; its sweep and design are wide; its particular application in the prohibition of a cocktail lounge does not correspondingly limit its scope or purpose." (190 Cal.App.2d at p. 605, fns. omitted.)

Similarly in the case at bar, the City's ordinance is a geographic limitation which imposes conditions on restricted businesses allowed to operate within the particular area. The focus of the City's ordinance is on the negative conduct which tends to occur on premises immediately surrounding retail establishments selling alcoholic beverages for off-site consumption. The effect of the conditions imposed under the ordinance is to reduce or eliminate the nuisance activities these businesses tend to attract. That the conditions imposed under the ordinance may have some indirect impact on the sale of alcoholic beverages does not transmute the purpose and scope of the ordinance into a regulation merely seeking to control alcohol sales. (See *Floresta, Inc. v. City Council, supra,* 190 Cal.App.2d at p. 605.)

Accordingly, neither the City's plan approval process for rebuilding nor its revocation process attempts to invade the exclusive power given to the state by article XX, section 22 of the California Constitution by regulating alcohol sales. Instead the ordinance constitutes a valid exercise of the City's police powers under article XI, section 7 of the California Constitution to control and abate nuisances. (See *City of Rancho Cucamonga v. Warner Consulting Services, Ltd.* (1989) 213 Cal.App.3d 1338, 1345 [262 Cal.Rptr. 349] [city's authority to regulate entertainment in clubs licensed to sell alcoholic beverages derives from its general police powers and not from article XX, section 22 of the Constitution which reserves the right to regulate alcohol sales and licensees to the ABC].)

Consequently, the City ordinance is not expressly preempted by article XX, section 22 of the California Constitution granting exclusive authority to ***390** the ABC to regulate alcohol sales. (See also *Cristmat, Inc. v. County of Los*

Angeles (1971) 15 Cal.App.3d 590 [93 Cal.Rptr. 325] [ordinance prohibiting persons in model studios while possessing, consuming, using or under the influence of alcoholic beverages was a valid police regulation which did not invade exclusive power of the state to regulate alcohol sales].)

Plaintiffs contest this finding. They claim the effect of the City's ordinances nevertheless is to prohibit all alcohol sales by businesses affected by the plan approval or revocation process because the conditions imposed during those processes are prohibitively expensive for the typical small business operation.

([4]) We agree a local governmental entity may not entirely prohibit alcohol sales within its jurisdiction. (*Town of Los Gatos v. State Bd. of Equal.* (1956) 141 Cal.App.2d 344, 346 [296 P.2d 909] ["There is no doubt that local option has been terminated. Zoning ordinances cannot single out and prohibit the sale of liquor as such."]; see also *Mussalli v. City of Glendale* (1988) 205 Cal.App.3d 524 [252 Cal.Rptr. 299] [ordinance imposing total ban on alcohol sales at gas stations invalid under California Constitution and as applied to "grandfathered" businesses which preexisted enactment of ordinance].) We also agree local regulations may not be arbitrary or unreasonable. (*Town of Los Gatos v. State Bd. of Equal., supra,* 141 Cal.App.2d at p. 346.)

However, the question of whether in a given case certain combinations of conditions may be arbitrary, unreasonable, or may impinge on the ABC's authority is not before this court. The question is whether the City's ordinance as a general matter is expressly preempted under article XX, section 22 of the California Constitution as a regulation of alcohol sales. Unlike the situations discussed in the cases just cited, the ordinance in the case at bar is not a total prohibition on alcohol sales. We therefore conclude, the City's ordinances which instead regulate land use and zoning are not expressly preempted by state law.

([5a]) The next inquiry is whether the City's ordinances either duplicate or contradict state law.

Plaintiffs do not suggest the City's ordinances contradict state law. They argue the conditions imposed under the ordinances which purport to regulate nuisance activities duplicate certain provisions of the Alcoholic Beverage Control Act. They note under sections 23800 and 23801 the ABC ***391** may impose conditions on a licensee, including conditions regarding hours of sale, display of signs, employment of designated persons, types and strengths of alcoholic beverages, and the personal conduct of the licensee. Section 24200 authorizes the ABC to suspend or revoke the license of a retail merchant who refuses to abate or control nuisance activities on the licensed premises or on the area immediately adjacent to the premises. In addition, section 24201 provides any person may make accusations against a licensee with the ABC in the event the business threatens to become a nuisance, and section 24203 provides for expedited hearings by the ABC in the event local governmental entities make similar accusations.

Superficially, the City's ordinances providing for abatement of nuisance activities occurring at licensed premises appear to overlap with the state law provisions. While the underlying purpose of both the City's and ABC's actions may be to abate or eradicate nuisance activities, the focus and ultimate outcome of each procedure are completely different.

Under the provisions of the Alcoholic Beverage Control Act, should the ABC conclude the accusations are true, a licensee stands to lose his or her alcoholic beverage license. However, even if the ABC revokes a license to sell alcohol that person would still be able to continue the other aspects of the business. Under the City's ordinance, on the other hand, a licensee risks the imposition of further land use conditions or the loss of his or her conditional use permit or "deemed approved" status. A licensee, however, would not lose his or her alcoholic beverage license under the City's procedures to abate nuisances and could presumably transfer the license to other business premises. (§ 24070 et seq.) Thus, the specific interests and the jurisdiction of each do not conflict. (Cf. *Abbott v. City of Los Angeles* (1960) 53 Cal.2d 674, 683 [3 Cal.Rptr. 158, 349 P.2d 974, 82 A.L.R.2d 385] [could be jurisdictional problems if both local government and state prosecuted and punished for same crime].)

([6])**(See fn. 5.)**, ([5b]) We acknowledge the ultimate sanction of permit, or "deemed approved" status, revocation could have the effect of prohibiting the sale of alcoholic beverages at a particular offending location.[5] However, nothing in the Act evidences an intent for the ABC to exercise sole and ***392** exclusive authority to abate nuisances on premises licensed for off-site sales of alcoholic beverages. (See, e.g., ***393** *Yu v. Alcoholic Bev. etc. Appeals Bd.* (1992) 3 Cal.App.4th 286 [4 Cal.Rptr.2d 280] [within purview of ABC to revoke license because illegal drug activity in area immediately adjacent to premises had become nuisance; did not hold ABC had exclusive jurisdiction to abate or eradicate nuisances]; *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519 [8 Cal.Rptr.2d 385] [city could have sought nuisance determination if it thought it necessary to revoke tavern's conditional use permit]; cf. *Century Plaza Hotel Co.* v. *City of Los Angeles* (1970) 7 Cal.App.3d 616 [87 Cal.Rptr. 166] [Los Angeles ordinance imposing excise tax on alcohol sales consumed on the premises preempted by overriding state interests].) Consequently, we see no conflict in the City exercising its constitutionally authorized police powers to prohibit nuisances on premises licensed to sell alcoholic beverages for off-site consumption under either its revocation hearing process or by filing a civil complaint to enjoin such activities. (Cal. Const., art. XI, § 7; *Jones v. City of Los Angeles* (1930) 211 Cal. 304 [295 P. 14].)

([7]) The next step in the analysis is to determine whether the statutory scheme evidences an intent to occupy the field by implication. As noted, the Legislature enacted the Alcoholic Beverage Control Act (§ 23000 et seq.) to carry out the constitutional provision. The act expressly excludes from the jurisdiction of the ABC and reserves to local governments the right to impose reasonable land use and zoning controls. Section 23790 provides in part: "No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a *valid zoning ordinance of any county or city*...." (Italics added.) Section 23791 provides: "Nothing in this division interferes with the powers of cities conferred upon them by Sections 65850 to 65861, inclusive, of the Government Code." Those provisions of the Government Code outline the power of local governments to impose reasonable land-use and zoning restrictions.

By expressly reserving to local governments the right to enact local zoning ordinances, and by expressly making the issuance of licenses contingent on satisfying any existing, valid local zoning requirement, it is clear the Legislature did not intend for the state legislation to preempt local zoning regulations. "Where the statute contains language indicating that the Legislature did not intend its regulations to be exclusive, the general rule permitting additional supplementary local regulations has been applied." (*Abbott v. City of Los Angeles, supra,* 53 Cal.2d 674, 683.) ***394**

Because the statutory language of the Alcoholic Beverage Control Act expressly allows local governments to enact supplementary legislation directed at zoning or land use, there is no preemption by implication of the City's ordinances which are directed at the land use effects of these businesses. (*Jon-Mar Co.* v. *City of Anaheim* (1962) 201 Cal.App.2d 832, 837 [20 Cal.Rptr. 350] ["By statutory provision the intent to extend state control to zoning matters through an exercise of its liquor license authority is expressly negatived."].)

In sum, we are persuaded state law has not completely preempted the field and the local regulation is a valid exercise of the City's authority to enact zoning and land-use regulations.

B. *Section 23790 No Longer Provides Plaintiffs Immunity From Compliance With Local Valid Zoning Ordinances.*

([8a]) Plaintiffs point out their businesses were in existence at the time the City enacted the ordinance making retail businesses which sell alcoholic beverages for off-site consumption conditional uses. Consequently, they contend the City violates the Alcoholic Beverage Control Act when it applies either the plan approval process, with its conditions for rebuilding, or the revocation hearing process, imposing conditions for the right to continue business, to these businesses. They contend the City is preempted by section 23790 from applying the later enacted ordinances authorizing these procedures to "grandfathered" businesses. Section 23790 provides:

"No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions:

"(a) The premises retain the same type of retail license within a license classification.

"(b) The licensed premises are operated continuously without substantial change in mode or character of operation.

"For purposes of this subdivision, a break in continuous operation does not include:

"(1) A closure for not more than 30 days for purposes of repair, if that repair does not change the nature of the licensed premises and does not ***395** increase the square footage of the business used for the sale of alcoholic beverages.

"(2) The closure for restoration of premises rendered totally or partially inaccessible by an act of God or a toxic accident, if the restoration does not increase the square footage of the business used for the sale of alcoholic beverages."

Based on this provision plaintiffs acknowledge the Legislature empowered a city, through local zoning ordinances, to control the approval process for the initial issuance of a liquor license. However, the plaintiffs argue, once a license has been issued, a "grandfathered" licensee's right to continue a business selling alcoholic beverages is not affected by, and cannot be conditioned on compliance with, any later enacted zoning ordinance.

However, section 23790 under the circumstances presented in this case, provides no protection to those initially "grandfathered" businesses which have not "operated continuously without substantial change in mode or character of operation" within the meaning of this section. Under section 23790 a business is considered to be continuously operating despite an interruption of up to 30 days for repairs or for an interruption for an unspecified amount of time for restorations made necessary by an "act of God" or "toxic accident." None of these exceptions is applicable to plaintiffs' situation.

Many of the plaintiffs' businesses were destroyed during the civil disturbance in spring 1992 and have remained closed. Because more than 30 days have elapsed and the businesses have not reopened, the first exception does not apply. Nor can plaintiffs fit their situation into the second statutory exception. The civil disturbance which resulted in the destruction of their businesses was not caused by a toxic accident. Nor did an act of God, such as a flood, earthquake, lightning, hurricane or the like, destroy their businesses. Instead the reason their businesses are not continuing in operation is because the facilities were destroyed by the willful, intentional or accidental acts of human beings. ([9]) Destruction caused by human intervention by definition is not an "act of God" as that term is understood. The generally accepted definition of "act of God" only includes acts "occasioned exclusively by violence of nature without the intervention of any human agency. It means a natural necessity proceeding from physical causes alone without the intervention of man. It is an act, event, happening, or occurrence, a disaster and effect due to natural causes and inevitable necessity which implies entire exclusion of all human agency which operates without interference or aid from man and which results from natural causes and is in no ***396** sense attributable to human agency. It is an accident which could not have been occasioned by human agency but proceeded from physical causes alone." (Black's Law Dict. (4th ed. 1951) p. 43, col. 2.)

([8b]) Because the civil disturbance and resulting destruction of businesses involved affirmative willful or accidental acts of human beings, the "act of God" exception is not applicable to exempt plaintiffs' businesses from the requirement of "continuous operation" to maintain their "grandfathered" status.

Nevertheless, plaintiffs suggest we should construe "act of God" in this section to mean "any catastrophe beyond the control of the owner." They point to language in a report prepared for the Assembly Committee on Governmental Organization concerning the amendment which added the exceptions to the "continuous operation" requirement to section 23790. In the report the author of the amendment stated "emergency shutdown due to a nearby toxic spill, industrial accident, or due to a natural disaster such as a flood, should not be held against the licensee since these are external events over which the licensee has no control." (Assem. Com. on Governmental Organization, Analysis of Assem. Bill No. 183 (1988-1989 Reg. Sess.).) The same report noted the amendment was prompted in part by the confusion some local retailers experienced after the Whittier earthquake in 1989.

However, there is nothing in the report to indicate the Legislature intended all catastrophic events in which the licensee did not personally take part should qualify as an occurrence justifying special treatment. Indeed, after considering the issue, the only man-made catastrophe included as an exception to the "continuous operation" requirement, and the only occurrence apparently considered sufficiently beyond the control of a licensee, was a toxic accident. Otherwise only natural disasters, or acts of God, were considered sufficiently beyond the control of a licensee to warrant special treatment. In the absence of clear legislative intent for an expansive interpretation of incidents which do not constitute breaks in operation, we decline plaintiffs' invitation to read such language into the statute.

Next, plaintiffs argue we should construe the language of section 23790 in light of the much broader language of section 24081. Section 24081, pertaining to the transfer of licenses, provides in pertinent part: "(b) Notwithstanding any other provision of law in this division, including, but not limited to, requirements relating to the issuance or transfer of a license, any licensee whose premises, for which an off-sale license has been issued, have been destroyed as a result of fire or any act of God or other force beyond the ***397** control of such licensee, may carry on his business for a period of not more than six months at a location within 500 feet of the premises for which the license was issued and while such premises are being repaired or rebuilt and he shall be entitled to carry on his business under his existing license upon the former premises when they have been repaired or rebuilt."

As plaintiffs point out, the language of section 24081 is considerably broader than that employed in section 23790. However, the purpose and effect of the two provisions are quite distinct. Section 24081 merely provides a licensee does not lose his or her license, and need not reapply for a liquor license in the event his or her business is destroyed by one of the enumerated events, provided the licensee satisfies the other requirements of the statute. This provision makes no distinction between conforming and nonconforming uses at the time of the disaster.

On the other hand, section 23790 does not address the issue of the retention of a liquor license once issued. This section instead specifies the conditions under which a licensee may retain his or her "grandfathered" status as a "deemed approved," but nonconforming use for the particular geographic area. "Grandfathered" businesses are nonconforming uses, and are not required to seek use permits under local zoning ordinances enacted after they were licensed for off-site alcohol sales. Consequently, it makes sense for the number and types of events allowing these nonconforming uses to continue without complying with updated codes to be narrow and limited.

This interpretation is consistent with the language of section 23790, which attempts to curtail growth of "grandfathered" but nonconforming uses. The statutory exceptions for events considered breaks in operation limit authorized closures for repair or restoration to those which do not expand the square footage of any business used for the sale of alcoholic beverages on penalty of losing "grandfathered" status. This statutory limitation evidences legislative intent to restrict any expansion of nonconforming, but "grandfathered" businesses.

The language of section 23790 persuades us the Legislature intended to strictly control the circumstances under which a business could retain "grandfathered" status. The qualifying events the Legislature chose as exceptions to "continuous operations" are few and extraordinary. These qualifying events, in turn, must be narrowly construed as exceptions to the general statutory scheme. (*City of National City v. Fritz* (1949) 33 Cal.2d 635, 636 [204 P.2d 7].) Thus, we reject an interpretation of section 23790 which would permit any and all acts theoretically beyond the control of a ***398** licensee to constitute exceptions to the requirement of "continuous operations."

As plaintiffs' businesses have been closed since 1992 they are not in continuous operation and by definition have undergone a substantial change in the mode or character of operation. Accordingly, because of the break in continuous operations, plaintiffs' businesses are no longer "grandfathered" or "deemed approved" conditional uses under section 23790. Since continuous operation is a requirement to retaining "grandfathered" or "deemed approved" status under section 23790, the statute provides plaintiffs no immunity from compliance with existing valid zoning ordinances affecting their businesses. [6]

II. *The Appeal From the Denial of the Preliminary Injunction Is Moot.*

([10a]) The eighth and eleventh causes of action in plaintiffs' complaint sought to enjoin the City from conducting any further revocation hearings or plan approval hearings for those owners having "deemed approved" status. The legal basis for seeking the preliminary injunction was plaintiffs' assertion the City's ordinance authorizing those procedures was preempted under state constitutional and statutory law. As noted, the trial court denied the preliminary injunction and plaintiffs appealed.

While this appeal was pending, the trial court sustained a demurrer without leave to amend to these causes of action. Because the sole legal basis for seeking a preliminary injunction was based on state preemption of the City's ordinance, plaintiffs' appeal from the denial of an injunction is now moot.

([11]) As we stated in *MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618 [9 Cal.Rptr.2d 237]: "A preliminary injunction is an interim ***399** remedy designed to maintain the status quo pending a decision on the merits. [Citation.] It is not, in itself, a cause of action. Thus, a cause of action must exist before injunctive relief may be granted. [Citation.] Accordingly, where the complaint fails to state a cause of action an order granting a preliminary injunction must be reversed. [Citation.]

"An appeal from an order denying a preliminary injunction does not deprive the trial court of jurisdiction to proceed to try the case on the merits. [Citations.] If the court can try the case on the merits then a fortiori it can determine the case has no merit by sustaining a demurrer without leave to amend. In the present case, the trial court having sustained a demurrer without leave to amend to the only cause of action which might have supported a preliminary injunction in favor of Ms. MaJor, her appeal from the denial of a preliminary injunction is moot." (*MaJor v. Miraverde Homeowners Assn., supra,* 7 Cal.App.4th at p. 623.)

([10b]) Similarly in the case at bar, the trial court sustained the City's demurrer without leave to amend to those causes of action alleging the City's procedures were preempted by state constitutional and statutory law. Because these were the only causes of action which would have supported a preliminary injunction in plaintiffs' favor, their appeal from the denial of a preliminary injunction is dismissed as moot. (See also, *Watson v. Santa Carmelita etc. Co.* (1943) 58 Cal.App.2d 709, 719 [137 P.2d 757] [a cause of action must exist before injunctive relief may be granted]; *Shell Oil Co.* v. *Richter* (1942) 52 Cal.App.2d 164, 168 [125 P.2d 930] [injunctive relief is a remedy and not in itself a cause of action, valid cause of action must exist before injunctive relief may be granted].)

Disposition

The appeal (B077272) is dismissed as moot. The petition for writ of mandate (B079224) is denied. The temporary stay is dissolved and the matter remanded for further proceedings. Each party to bear its own costs of appeal.

Lillie, P. J., and Woods (Fred), J., concurred.

A petition for a rehearing was denied April 15, 1994, and the opinion was modified to read as printed above. Appellants' petition for review by the Supreme Court was denied July 14, 1994. Mosk, J., and Arabian J., were of the opinion that the petition should be granted. ***400**

Footnotes

1 Los Angeles Municipal Code section 12.24F provides in part: "F. Existing Uses. (Amended by Ord. No. 161,716, Eff. 12/6/86.) Any lot or portion thereof being lawfully used for any of the purposes enumerated in this section at the time the property is first classified in a zone wherein such use is not permitted by right or at the time the use is prohibited by reason of an amendment to this article changing the permitted uses within the zone, *shall be deemed to be approved* site for such conditional use which may be continued thereon. Further, the conditions included in any special district ordinance, exception or variance which authorized such use shall also continue in effect." (Italics added.)

2 All further statutory references are to the Business and Professions Code unless otherwise indicated.

3 "Whereas, there is an unusually large number of establishments dispensing, for sale or other consideration, alcoholic beverages, including beer and wine, for off-site consumption, generally located in the South Central Area of the City of Los Angeles, including portions of the South Central Los Angeles, Southeast Los Angeles and West Adams District Plan Areas (hereinafter 'Area'); and

"Whereas, the existence of this inordinate number of establishments appears to directly contribute to numerous peace, health, safety and general welfare problems in the Area, including loitering, littering, drug trafficking, prostitution, public drunkenness, defacement and damaging of structures, pedestrian obstructions, as well as traffic circulation, parking, and noise problems on public streets and neighborhood lots; and

"Whereas, the existence of such problems creates serious impacts on the health, safety and welfare of the residents of nearby single and multiple family areas; including fear for the safety of their children and of visitors to the Area, as well as contributing to the deterioration of their neighborhoods, and concomitant devaluation of their property and destruction of their community values and quality of life; and

"Whereas, the District Plans for this Area provide for a commitment by 'the City to the redirection of its energies toward the improvement and upgrading of declining areas of Los Angeles in general and the South Central Los Angeles District in particular' and an intent to '... encourage and contribute to the economic, social and physical health, safety, welfare and convenience of the people who live in the District ... contribute to a healthful and pleasant environment; balance growth with stability ... and promote a socio-economic climate which will result in stable and desirable neighborhoods for the residents ...'; and

"Whereas, the Working Group on Liquor Outlets has compiled information which indicates serious problems in this Area and provides the substantive information for the imposition of a permanent control measure to prohibit the introduction of any additional establishments or any expansion or changes in the mode or character of operation of such existing establishments within the Area unless new or expanded establishments have first been thoroughly reviewed by the City through a conditional use process; ....”

4 Apparently all plaintiffs who have applied have received plan approval from the City.

5 Once a licensee has acquired a conditional use permit, or has “deemed approved” status, a municipality's power to revoke the conditional use is limited. (*Trans-Oceanic Oil Corp.* v. *Santa Barbara* (1948) 85 Cal.App.2d 776, 783 [194 P.2d 148].) If the permittee has incurred substantial expense and acted in reliance on the permit, the permittee has acquired a vested property right in the permit and is entitled to the protections of due process before the permit may be revoked. (*Id.* at p. 795.) “In determining that a permit, validly issued, should be revoked, the governing body of a municipality acts in a quasi-judicial capacity. In revoking a permit lawfully granted, due process requires that it act only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation.” (*Ibid.*)

“When a permittee has acquired such a vested right it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted [citations] or if there is a compelling public necessity. (*Jones v. City of Los Angeles* [(1930) 211 Cal. 304,] 314 [295 P. 14]; see *Lawton v. Steele* [1894)] 152 U.S. 133, 137 [38 L.Ed. 385, 388, 14 S.Ct. 499].” (*O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151, 158 [96 Cal.Rptr. 484].) A compelling public necessity warranting the revocation of a use permit for a lawful business may exist if the conduct of a business as a matter of fact constitutes a nuisance and the permittee refuses to comply with reasonable conditions to abate the nuisance. In these circumstances a municipality has the authority to remove such a business under its police power to prohibit and enjoin nuisances. (*Jones v. City of Los Angeles, supra,* 211 Cal. at p. 316.) However, in order to justify the interference with the constitutional right to carry on a lawful business it must be clear the public interests require such interference and that the means employed are reasonably necessary to accomplish the purpose and are not unduly oppressive on individuals. (*Lawton v. Steele* (1894) 152 U.S. 133, 137 [38 L.Ed. 385, 388, 14 S.Ct. 499]; *Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711, 717 [97 Cal.Rptr. 840].)

Los Angeles Municipal Code section 12.24J, subsection 2 codifies these requirements of due process before revoking a permit. That section provides:

“2. Procedures-Notice-Hearings-Appeals.

“The Commission or Administrator, whichever has jurisdiction, may give notice to the record owner and lessee of the real property affected to appear at a public hearing at a time and place fixed by the Commission or the Administrator, and show cause why the use should not be modified, discontinued, or revoked as the case may be. A written notice shall be mailed not less than 24 days prior to the date of hearing to the owner and lessee of the property involved, and to the owners of all property within and outside of the City that is within 500 feet of the exterior boundaries of the property involved, ...

“After such notice and hearing, the Commission or Administrator may require the modification, discontinuance, or revocation of the subject use. As part of any such action, the Commission or Zoning Administrator, whichever has jurisdiction, may impose such conditions as the Commission or Administrator deems appropriate including those necessary to protect the best interests of the surrounding property or neighborhood; to eliminate, lessen, or prevent any detrimental effect thereon, or to assure compliance with other applicable provisions of law....

“Any such action shall be supported by written findings, including a finding that it does not impair the constitutional rights of any person. However, the Commission or Zoning Administrator may require that a use be discontinued or revoked only if the Commission or Administrator also finds that (a) prior governmental efforts to get the owner or lessee to eliminate the problems associated with the use have failed; and (b) that the owner or lessee has failed to demonstrate, to the satisfaction of the Commission or Administrator, the willingness and ability to eliminate the problems associated with the use.

“An appeal from the action of the Commission may be taken to the Council .... [¶] Only the Commission or Administrator, whichever has jurisdiction, may require the discontinuance or revocation of a conditional use or existing use subject to 12.24F. Further, if it is established to the satisfaction of the Board or Council that the proposed action impairs the constitutional rights of any person, then it shall modify the proposed action accordingly.”

Nevertheless, it is clear revocation of a use permit could have the effect of putting the licensee completely out of business. It is consequently a very harsh remedy which requires the strictest adherence to principles of due process. Whenever alternate remedies can achieve the same goal, such as the imposition of additional conditions or controls, these avenues ought to be pursued if feasible. (See, e.g., *O'Hagen v. Board of Zoning Adjustment, supra,* 19 Cal.App.3d at p. 165.)

6 We note Los Angeles Municipal Ordinance No. 162,128, referred to as the South Central Alcohol Sales Specific Plan, attempted to track the language and rationale of section 23790 by providing an establishment selling alcoholic beverages for off-site consumption would lose its “deemed approved” status in the event there was a substantial change in the mode or character of operations. Section 4 of that ordinance provides:

"The use of a lot for an establishment dispensing, for sale or other consideration, alcoholic beverages, including beer and wine, for off-site consumption may not be continued or reestablished without conditional use approval granted in accordance with the provisions of this ordinance, if any of the following occur after the effective date of this ordinance:

"A. The establishment changes its type of retail liquor license within a license classification; or

"B. The operation of the establishment is abandoned or discontinued, including the case where the license for such operation is suspended; or

"C. There is a substantial change in the mode or character of operation of the establishment."

End of Document

MEMORANDUM

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Jessica Hayes, Housing and Neighborhood Development Analyst
Peter Ibrahim, Housing Services Assistant

SUBJECT: **PUBLIC HEARING CONSIDERING ADOPTION OF AN AMENDMENT TO THE 2014-15 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN**

RECOMMENDATION

Approve Resolution No. 121-2014, adopting an Amendment to the 2014-15 Community Development Block Grant Action Plan.

RESULT OF RECOMMENDED ACTION

1. Adopts the amendment to the 2014-15 CDBG Action Plan;
2. Authorizes the City Manager to submit the amendment and all required certifications and forms to the Department of Housing and Urban Development; and
3. Allows staff to make technical modifications to the Action Plan to correct minor errors and to respond to direction from HUD.

BACKGROUND

Each year the City receives an entitlement allocation of Community Development Block Grant (CDBG) funding from the U.S. Department of Housing and Urban Development (HUD). In order to secure funding, the City must submit an Action Plan, which serves as the CDBG program's annual budget and program implementation document. The City Council adopted the 2014-15 Action Plan on April 21, 2014. Since that time, a total of $283,735 remained in unspent prior year and reprogrammed funds. Some of these funds were left over from projects that were completed under budget, and some were programmed for projects that were later determined to be infeasible. In order to commit a substantial amount of these recovered funds to existing activities, the City must amend its 2014-15 Action Plan.

As part of the City's commitment to CDBG, there are obligations to expend funds in a timely manner and to use these funds to address qualified needs generally to be found in the CDBG target area. As such, the City could face penalty for having too large a balance of unexpended funding. To prevent this penalty, City staff recommends reallocating the $283,635 in unspent and reprogrammed prior year funds to certain housing and public facilities projects which respond to immediate community needs.

Based on qualifying projects which responded to immediate and pressing community needs, City staff recommends these changes:

Dedication of $275,000 to fund Public Works ADA Improvements, which will provide for continued improvements in the community, and for the Folsom Cordova Community Partnership to receive $8,635 in rollover funds for the installation of an Electronic Entry Security System.

2014-15 PROPOSED FUNDING CHANGES

Activity Name	Recaptured Funds	2013-14 Rollover	2014-15 Action Plan	Proposed Change	Amount of Increase/ Decrease
Rental Housing Inspection Program		$391.30	$78,000	$78,000	-
Code Enforcement		$0	$78,000	$78.000	-
Emergency Repair Grant Program		$11,132.89	$40,717	$40,717	-
Police Activities League (PAL) Youth Center*	$275,000	$0	$0	$0	
International and Femoyer Traffic Signal		-	-	$275,000	$275,000
Electronic Entry Security System Project		-	-	$8,635	$8,635
Public Works ADA Improvements – Sidewalk repair		$0	$100,000	$100,000	-
Neil Orchard Senior Activities Center – Pedestrian Traffic Signal		-	$70,000	$70,000	-
Group Mentoring Initiative		$2,299.89	$20,000	$20,000	-
Senior Nutrition Program (Meals on Wheels)		$2,058.24	$35,000	$35,000	-
SSHH - Tenant/Landlord Dispute		$0	$7,000	$7,000	-
SSHH - Housing Counseling		$0	$11,000	$11,000	-
Respite CLUB		$0	$9,000	$9,000	-
Fair Housing		$0	$14,463	$14,463	-
Planning and Administration		$7,938.71	$101,000	$101,000	-
TOTALS	**$275,000**	**$23,821.03**	**$564,180**	**$847,815**	**$283,635**

*Project was completely funding from previous program years

Note: all rollover funding is reprogrammed for capital

ATTACHMENTS

1. Resolution No. 121-2014.
2. 2014-15 CDBG Action Plan Amendment (Proposed).

ATTACHMENT 1

CITY OF RANCHO CORDOVA

RESOLUTION NO. 121-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA APPROVING THE ADOPTION OF THE AMENDMENT TO THE 2014-15 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN

WHEREAS, the Community Development Block Grant Program, authorized pursuant to Title 1 of the Housing and Community Development Act of 1974, as amended (Act), requires that jurisdictions provide for the issuance of grants in order to attain the objective of providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income; and

WHEREAS, the Department of Housing and Urban Development (HUD) is the federal agency that promulgates regulations and oversees the administration of the Community Development Block Grant (CDBG) program that the funds are granted under; and

WHEREAS, HUD requires that entitlement jurisdictions complete a plan for expending the funds on eligible activities, referred to as the Action Plan, and amend it as necessary to accommodate significant changes in the usage of funds; and

WHEREAS, staff has completed the amendment to the 2014-15 Action Plan; and

WHEREAS, the amendment to the Action Plan and a public notice announcing the 15-day public comment period for the report have been published for citizen comment prior to forwarding the document to City Council for adoption; and

WHEREAS, the City Council held a public hearing on November 3rd, 2014 to provide an opportunity for the public to comment on the information in the amendment to the Action Plan; and

WHEREAS, the public hearing will extend to November 7th, to allow the public extra time to comment on the proposed amendment.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does authorize:

1. Adoption of the amendment to the 2014-15 CDBG Action Plan;
2. Authorizes the City Manager to submit the amendment and all required certifications and forms to the Department of Housing and Urban Development; and
3. Allows staff to make technical modifications to the Action Plan to correct minor errors and to respond to direction from HUD.

ATTACHMENT 1

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the ___ day of ________, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Dan Skoglund, Mayor

ATTEST:

____
Mindy Cuppy, MMC, City Clerk

ATTACHMENT 2

CITY OF RANCHO CORDOVA
CALIFORNIA
Incorporated 2003

2014-2015 CDBG Amended Action Plan

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EXECUTIVE SUMMARY

The 2014-2015 Action Plan is a one-year plan to address the community development and low- and moderate-income community needs in the City of Rancho Cordova. It is the fourth Action Plan in the implementation of the City's five-year Consolidated Plan for the period 2011-2016. City Housing Services Division staff are responsible for implementing both the Consolidated Plan and the Annual Action plan. The City plans to use a variety of funding sources to meet its housing and community development needs, including Local Housing Trust Fund money, Community Development Block Grant (CDBG), and CalHome funds, as well as other local funds.

The City is scheduled to receive $564,180 for its 2014-2015 allocation of CDBG funding from the U.S. Department of Housing and Urban Development. The 2014-2015 program year marked the first time that the City has teamed with ZoomGrants (www.zoomgrants.com) to provide an efficient online application process. Rather than handling paper applications, staff has convenient online access to the grantees information and documents. Moreover, ZoomGrants has the ability to streamline application reviews and committee collaboration regarding CDBG applications. After the public notice for applications, staff hosted a technical workshop to introduce ZoomGrants and answer questions related to this year's application process

In the 2012-2013 and 2013-2014 program years, the City executed 2-year contracts with its subrecipients providing CDBG funded services. These organizations include: Folsom Cordova Community Partnership (FCCP), Meals on Wheels (MOW), Sacramento Self-Help Housing (SSH), and Respite C.L.U.B. by the Cordova Neighborhood Church (CNC). The City has contracted with these organizations in the past for the CDBG services they provide, and is confident in their capacity to report regularly on activities performed. To save time and administrative burden on the part of both the City and the organizations, staff has recommended the implementation of 2-year contracts for the 2014-2015 program year to allow for a continuation of these services through the 2015-2016 program year. All subrecipients will be reporting achievements on an annual basis, which will be reported through IDIS and the Consolidated Annual Performance Evaluation Report (CAPER).

OBJECTIVES

The City's key objectives for the 2014-2015 funding period are based on the public surveys used in the 2011-2016 Consolidated Plan and include the following:

- Improve housing opportunities, accessibility, affordability, and sustainability:

- Continue to fund the City's Emergency Repair Grant Program to make it possible for more residents to receive emergency health and safety repairs to their homes.

- Continue to arrest decline in deteriorated areas of the City by requiring rental property owners to fix code violations and improve their properties, and continuing code enforcement efforts.

- Continue assisting community-based organizations with funding that allows them to provide new or expanded services to target low-income residents, especially seniors and youth;

- Improve accessibility to public facilities for youth and seniors, primarily providing after school activities through FCCP/PAL and daytime activities for seniors at the Cordova Senior Center.

- Improve accessibility, including ADA improvements, to public infrastructure, such as sidewalks, crosswalks, and other public facilities, that increase public safety and improve the living environment of the City.

OUTCOMES

The City's housing outcomes for this planning period (July 1, 2014 – June 30, 2015) are primarily directed at providing needed services for youth, homeless, and seniors in the community, improving accessibility to community facilities, and providing funding for our Emergency Repair Grants Program to provide more residents a chance to receive emergency health and safety repairs in their homes.

The City intends to continue to fund five public services programs, which are expected to benefit approximately 750 residents in the 2014-2015 program year:

- Senior Nutrition Services, which provides homebound seniors with hot meals or frozen heat-and-serve meals, and provides lunch to seniors at the Cordova Senior Center.

- Group Mentoring Initiative, which provides youth support and improves community involvement through intensive youth mentoring.

- Sacramento Self-Help Housing, which provides services to residents who are in danger of homelessness, or who are already homeless, to aid them in securing stable housing. Sacramento Self-Help Housing will also provide tenant/landlord mediation to assist low income and very low income renters who have a conflict with their landlord or property manager .

- Respite CLUB, which provides affordable, senior respite day care services to senior with severe memory loss.

The City also plans to fund various capital improvements projects to benefit the community:

- City will continue to fund its Rental Housing Inspection Program, in which the Neighborhood Services Department inspects rental units in CDBG target areas to find and correct code violations.
- City will also continue funding its Code Enforcement activities, in which Neighborhood Services Code Enforcement officials provide code enforcement services in CDBG target areas.
- The City plans to continue funding the Emergency Repair Grant Program (ERGP), so that residents may continue to receive needed health and safety repairs to their homes.
- The City plans on funding the installation of a pedestrian signal at the Neil Orchard Senior Activities Center on Routier. The signal will allow for safe crossing from the bus stop to the senior center.
- The City plans to dedicate funding to its Public Works Department for the construction of a traffic signal at the International Drive and Femoyer Street intersection.
- The City plans on funding a capital project to install an electronic entry system with 7 points of secure entry in the office and education rooms of the Folsom Cordova Community Partnership's Family Resource Center located at 10665 Coloma Road in the heart of an at-risk, low-income community in Rancho Cordova.
- Additionally, the City funds an annual sidewalk program that removes and replaces damaged curbs, gutters, and sidewalks to meet current ADA standards throughout the City.

Evaluation of Past Performance

The Consolidated Annual Performance and Evaluation Report (CAPER) was available for review as of August of 2014. The CAPER for the previous 2012-13 program year was accepted by HUD as adequate, and is available on the City's website for viewing.

Citizen Participation Process

Each year the City receives an entitlement allocation of Community Development Block Grant (CDBG) funding from the U.S. Department of Housing and Urban Development (HUD). In order to secure funding, the City must submit an Action Plan, which serves as the CDBG program's annual budget and program implementation document. The City Council adopted the 2014-15 Action Plan on April 21st, 2014. Since that time, a total of $283,735 remained in unspent prior year and reprogrammed funds. Some of these funds were left over from projects that were completed under budget, and some were programmed for projects that were later determined to be infeasible. In order to commit a substantial amount of these recovered funds to existing activities, the City must amend its 2014-15 Action Plan.

The City utilized the 2011-2016 Citizen Participation Plan in the creation of this Action Plan. The 2014-2015 draft Action Plan was presented at a City Council meeting on April 21st for Council approval. This Action Plan amendment was noticed on October 24, 2014 and made available for public comment. According to the City's Citizen Participation Plan, the Public Comment Period must be open for a minimum of 15 days.

Any public comment the City receives will be included in the Appendix to this document.

Introduction

The U.S. Department of Housing and Urban Development (HUD) requires all government entities receiving federal Community Development Block Grant (CDBG) funds to prepare an Annual Action Plan. The Action Plan outlines funding priorities and discusses how activities will meet the community needs identified in the Consolidated Plan. The activities described in this Action Plan are proposed to be undertaken during the period between July 1, 2014 and June 30, 2015.

The major objectives of activities undertaken during the 2014-2015 funding year will be the furthering of issues identified in the 2011-2016 Consolidated Plan, which include efforts to:

- Arrest decline in deteriorated areas of the City by requiring rental property owners to fix code violations and improve their properties, and by increasing code enforcement efforts;

- Assist community-based organizations with funding that allows them to provide new or expanded services to target low-income residents, especially seniors and youth;

- Improve accessibility to public facilities for youth primarily through after school activities.

- Improve accessibility to public infrastructure around the City, including public right-of-way, sidewalk, crosswalks, and removal of other ADA barriers.

RESOURCES

The City of Rancho Cordova has been allocated $564,180 in CDBG funding for the 2014-2015 program year. While some residents in the City may live in Section 8 properties or use Housing Choice Vouchers (formerly Section 8), these programs are managed by the local public housing authority, Sacramento Housing and Redevelopment Agency. The City supports private developers in their applications for low-income housing tax credits, when possible, but does not manage or administer affordable housing.

The City does not have any CDBG programs that are currently bringing in any program income. All program income from previous program years has been obligated, spent, and drawn down from HUD.

ACTIVITIES TO BE UNDERTAKEN

Table 1 provides a description of the activities to be undertaken during the 2014-2015 program year. The one-year objective (output) and the estimated amount of CDBG funding allocated to each activity are identified. All activities are anticipated to be completed during the program year (July 1, 2014 to June 30, 2015). More detailed descriptions of activities follow the table.

The City chose to emphasize increased access to public facilities, continued funding for health and safety improvements to residents' homes, and continued funding of public services activities with its CDBG funding, as there are relatively few other sources of funding available to finance these activities. Within public services, the City gave a high priority to activities serving seniors and youth, as well as providing fair housing support, education, and service efforts in the community.

Table 1

Proposed CDBG Activities and Projects: Program Year 2014-2015

Goal	Activity Name	Activity Description	Output	Funding
Housing				
HS-1, HS-2	Rental Housing Inspection Program	Inspect rental units in CDBG target areas to find and correct code violations.	800 units inspected	$78,000
HS-1, HS-2	Code Enforcement	Provide code enforcement services in CDBG target areas	800 units inspected	$78,000
HS-1, HS-2	Emergency Repair Grant Program	Emergency repairs for very low- and low-income homeowners facing health and safety problems (including mobile homes)	8 grants	$40,717
Public Facilities				
CD-2 CD-3 CD-4	International and Femoyer Traffic Signal*	Construction of a traffic signal at the International Drive and Femoyer Street intersection	1 public works project completed	$275,000

CD-2 **CD-3** **CD-4**	Electronic Entry Security System Project*	Install an electronic entry system with 7 points of secure entry in the office and education rooms of the Folsom Cordova Community Partnership Family Resource Center	1 public facility project completed	$8,635
CD-2 **CD-3** **CD-4**	Public Works ADA Improvements	Sidewalk repair and gap completion projects, including installation of wheelchair ramps, crosswalks, and damaged sidewalk repairs	1 public works project completed	$100,000
CD-2 **CD-3** **CD-4**	Neil Orchard Senior Activities Center – Pedestrian Traffic Signal	This project will install a pedestrian signal at the Senior Activities Center on Routier Road to allow for safe crossing from the bus stop on the East side of the road to the Senior Center on the West side of the road	1 public works project completed	$70,000
Public Services				
CD-2,	Group Mentoring Initiative (Folsom	Provide youth support and	100 youth served	$20,000

CD-3	Cordova Community Partnership)	improve community involvement though intensive one-on-one youth mentoring		
CD-1, CD-3	Senior Nutrition Program (Meals on Wheels)	Provide homebound seniors with hot meals or frozen heat-and-serve meals and provide lunch to seniors at the Cordova Senior Center.	175-250 seniors provided meals. A daily average of 36 Home Delivered Meal participants and 22 Congregate Meal participants.	$35,000
HA-1, CD-3	Sacramento Self-Help Housing	Provide housing services to residents who are in danger of homelessness, or who are already homeless, to aid them in securing stable housing.	150 households provided counseling	$11,000
HA-1, CD-3	Sacramento Self-Help Housing	Responds to requests from Rancho Cordova residents who are in danger of becoming homeless due to conflicts with their landlord or property manager and are seeking assistance.	100 households provided counseling	$7,000
CD-1, CD-3	Respite C.L.U.B.	Provides senior respite day care services to	29 seniors provided day care services	$9,000

		seniors with severe memory loss.		
HS-1, HS-2	Fair Housing	Provide fair housing services to residents by responding to inquiries of illegal housing discrimination and investigating discrimination complaints.	30 households provided assistance and education	$2,627 Services Funding (in addition to $11,836 from Planning and Admin.)
Planning & Admin				
	Planning and Administration	Provide general administration of the CDBG program, including all planning and reporting activities	1 year of program administration.	$112,836 ($11,836 of this total to be used to further Fair Housing efforts)

*** Indicates new amended activity**

As part of the City's commitment to CDBG, there are obligations to expend funds in a timely manner and to use these funds to address qualified needs generally to be found in the CDBG target area. As such, the City could face penalty for having too large a balance of unexpended funding. To prevent this penalty, City staff recommends reallocating the $283,635 in unspent and reprogrammed prior year funds to certain housing and public facilities projects which respond to immediate community needs.

Based on qualifying projects which responded to immediate and pressing community needs, City staff recommends these changes:

Dedication of $275,000 to fund Public Works ADA Improvements, which will provide for continued improvements in the community, and for the Folsom Cordova Community Partnership to receive $8,635 in rollover funds for the installation of an Electronic Entry Security System.

HOUSING ACTIVITIES

Rental Housing Inspection Program – Existing Activity

The rental housing inspection program is an area benefit activity wherein CDBG is partially funding the salary and benefits for 1 FTE code enforcement officer whose duties will include inspecting rental units within the CDBG target area (see Figure 1). The City has many rental units which, due to general age and deferred maintenance, are out of compliance with applicable codes. This program, in coordination with private investment by property owners, will arrest the decline of the area by requiring landlords to improve their properties to meet health and safety standards.

2014-15 Output: 800 rental units inspected

Outcome Category: DH-3 "Decent Housing with Purpose of New or Improved Sustainability"

Goals Addressed: HS-1, HS-2

Funding: $78,000

Code Enforcement – Existing Activity

The code enforcement program is also an area benefit activity wherein CDBG is partially funding the salary and benefits for 1 FTE code enforcement officer whose responsibilities will include responding to code enforcement complaints and proactively enforcing City's health and safety code in single family homes and businesses in the CDBG target area.

2014-15 Output: 800 units inspected

Outcome Category: DH-3 "Decent Housing with Purpose of New or Improved Sustainability"

Goals Addressed: HS-1, HS-2

Funding: $78,000

Emergency Repair Grant Program – Existing Activity

The Emergency Repair Grant Program (ERGP) provides loans of up to $10,000 for mobile homes and single family homes to low and moderate income owner-occupants who need to address immediate health and safety deficiencies in their properties.

2014-15 Output: 8 loans to be made

Outcome Category: DH-2 "Affordability of Decent Housing"

Goals Addressed: HS-1, HS-2

Funding: $40,717

PUBLIC FACILITIES

The City has identified a few public facilities needs that are to be addressed during the 2014-2015 program year. The Police Activities League Youth Center has been in the planning phase for a few CDBG cycles. Funding has been identified, and now staff are working with PAL and with a property owner to program the site. The Public Works projects will both be designed and managed by City Public Works staff, and are part of a multi-phase public facilities improvement program.

Public Works ADA Improvements – Existing Activity

The City plans to dedicate $100,000 in CDBG funds to its Public Works Department for the Pedestrian Improvement Program, which will allow for continued development and improvement of annual sidewalk repair and gap completion projects that provide safety and consistency in the existing pedestrian network. These improvements may include the installation of wheelchair ramps, crosswalks, and damaged sidewalk repairs.

2014-15 Output: 1 public works project completed

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: CD-2, CD-3, CD-4

Funding: $100,000

Neil Orchard Senior Activities Center Pedestrian Traffic Signal – Existing Activity

The City plans to dedicate $70,000 in CDBG funds to its Public Works Department for the Rancho Cordova Senior Center Pedestrian Traffic Signal. This project will install a pedestrian signal at the senior center on Routier Road to allow for safe crossing from the bus stop on the East side of the road to the senior center on the west side of the road.

2014-15 Output: 1 public works project completed

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: CD-2, CD-3, CD-4

Funding: $70,000

International and Femoyer Traffic Signal – New Activity

The City plans to dedicate $275,000 in CDBG funds to its Public Works Department for the construction of a traffic signal at the International Drive and Femoyer Street intersection. The project will include the removal and replacement of curb, gutter, sidewalk, median, striping, add a new traffic signal and improve curb ramps to meet ADA standards. International Drive is an urban minor arterial roadway that has approximately 12,000 vehicles per day that uses this roadway.

2014-15 Output: 1 public works project completed

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: CD-2, CD-3, CD-4

Funding: $275,000

Electronic Entry Security System Project – New Activity

This is a capital project to install an electronic entry system with 7 points of secure entry in the office and education rooms of the Folsom Cordova Community Partnership's Family Resource Center located at 10665 Coloma Road in the heart of an at-risk, low income community in Rancho Cordova. The electronic entry system will secure 7 points of entry, both office space and community space. This electronic entry system will provide enhanced security and safety to the staff who deliver services and the community members who receive services at this Family Resource Center. The Family Resource Center provides services that break generational cycles of child abuse and neglect and well as break generational cycles of poverty. One of the primary catalysts for this project is the addition of Domestic Violence services scheduled to be offered at the Family Resource Center starting in October of 2014.

2014-15 Output: 1 public facility project completed

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: CD-2, CD-3, CD-4

Funding: $8,635

PUBLIC SERVICES

CDBG annually supports several of the most critical and valuable public services available in the City. These services are selected, in-part, as a response to the needs identified in the 2011-2016 Consolidated Plan, and are focused on serving at-risk youth, seniors, and near-homeless individuals and families.

Group Mentoring Initiative – Existing Activity

The Group Mentoring Initiative, operated by the Folsom Cordova Community Partnership (FCC), is a program that facilitates one-on-one mentoring for at-risk and disadvantaged youth. The program uses a multi-faceted mentoring and activity-based curriculum to encourage youth to stay away from socially disadvantageous activities and to pursue education and active community engagement.

2014-15 Output: 100 youth served

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: CD-2, CD-3

Funding: $20,000

Senior Nutrition Services (Meals on Wheels) – Existing Activity

The Senior Nutrition Services program (MOW) provides homebound seniors with hot meals or frozen heat-and-serve meals, and provides lunch to seniors at the Cordova Senior Center. MOW has received CDBG funding in previous program years, and provides a valued service to the City's senior population.

2014-15 Output: 205 seniors provided with meals

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: CD-1, CD-3

Funding: $35,000

Sacramento Self-Help Housing – Existing Activity

Sacramento Self-Help Housing, Inc. provides counseling and housing referrals to homeless and near-homeless individuals and households. With funding, the organization plans to continue operating in the City's primary low-income service center, the Rancho Cordova Neighborhood Center. In addition to providing counseling services, the organization will continue to provide tenant-landlord counseling, case management, and fair housing referrals. The proposed funding amount accounts for these additional services.

2014-15 Output: 150 households provided counseling

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: HA-1, CD-3

Funding: $18,000

Respite Club – Existing Activity

Respite C.L.U.B. is a service provided by the Cordova Neighborhood Church. The C.L.U.B., which has received CDBG funding in past years, provides affordable, senior respite day care service to seniors with severe memory loss. The program provides a much-needed service to seniors in the community, while also providing respite to individual caregivers (family members) who might otherwise need to pursue permanent living facilities for the seniors they care for.

2014-15 Output: 24 seniors provided day care services

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: CD-1, CD-3

Funding: $9,000

Fair Housing – Existing Activity

The 2012-2013 Action Plan identified the City's need to re-evaluate its efforts to Affirmatively Further Fair Housing. During the evaluation, the City identified tenant-landlord counseling and fair housing referral to be critical components of preventing homelessness and ensuring the affirmative furthering of fair housing in the community. The City is working with Sacramento Self-Help Housing to provide tenant-landlord counseling, case management, and fair housing referrals. The funding below will pay for training and staff time for the City's new Fair Housing Representative, who will respond to calls and complaints received related to fair housing.

2014-15 Output: 30 households assisted

Outcome Category: SL-1 "Availability/Accessibility of Suitable Living Environment"

Goals Addressed: HS-1, HS-2

Funding: $14,463 ($2,627 from Services, $11,836 from Planning and Administration)

PLANNING and ADMINISTRATION ACTIVITIES

PLANNING AND ADMINISTRATION – EXISTING ACTIVITY

The planning and administration funding is intended to provide funding for general staff administration of CDBG programs and activities, including Integrated Disbursement and Information System (IDIS) training, program set-up, reporting, planning, and subrecipient training and monitoring.

2014-15 Output: Quality administration of the CDBG program

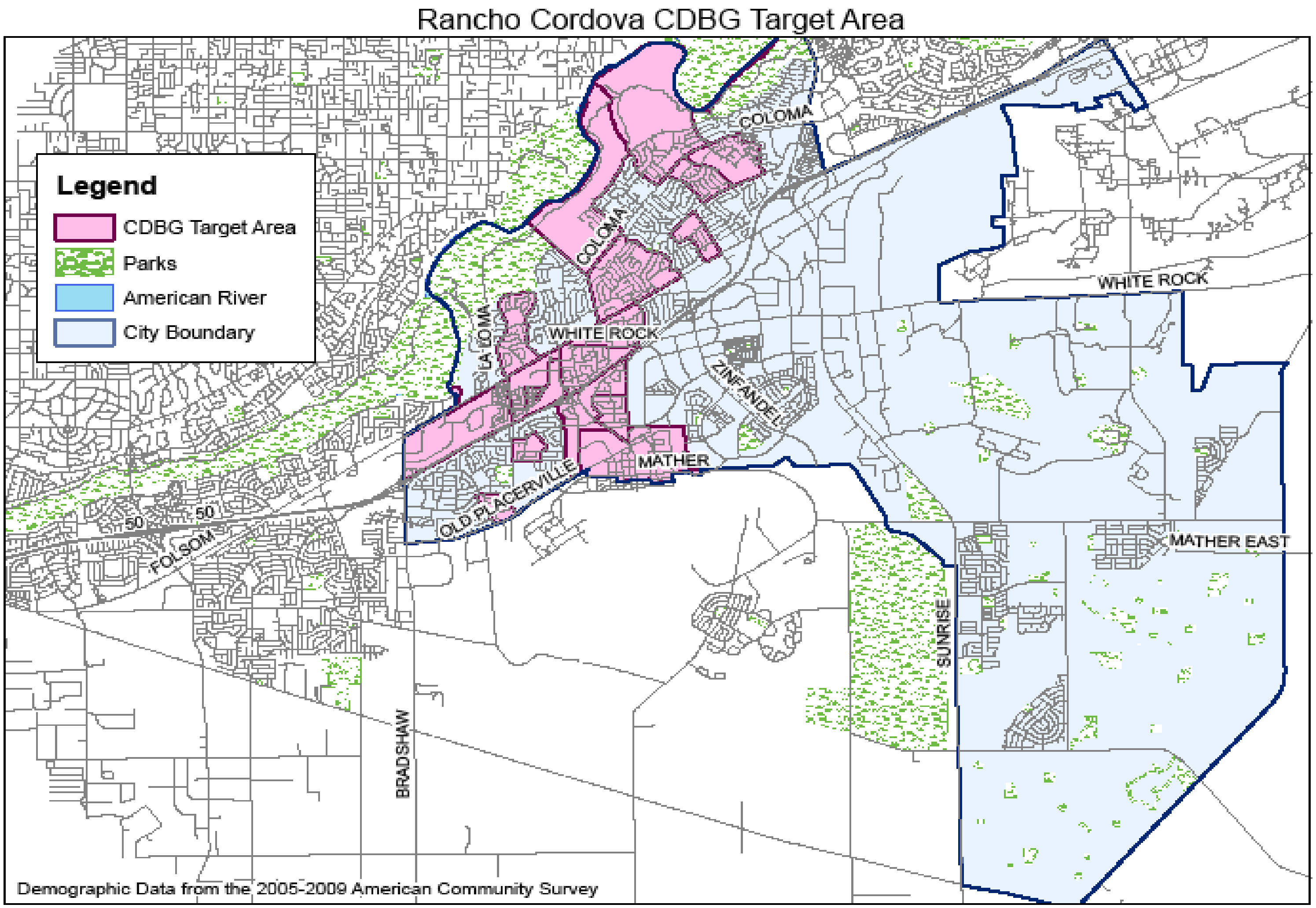
Goals Addressed: PA-1

Funding: $112,836 ($11,836 of this total to go to furthering Fair Housing efforts)

2014-15 PROPOSED AMENDED CDBG PROJECTS

Activity Name	Recaptured Funds	2013-14 Rollover	2014-15 Action Plan	Proposed Change	Amount of Increase/Decrease
Rental Housing Inspection Program		$391.30	$78,000	$78,000	-
Code Enforcement		$0	$78,000	$78.000	-
Emergency Repair Grant Program		$11,132.89	$40,717	$40,717	-
Police Activities League (PAL) Youth Center*	$275,000	$0	$0	$0	
International and Femoyer Traffic Signal		-	-	$275,000	$275,000
Electronic Entry Security System Project		-	-	$8,635	$8,635
Public Works ADA Improvements – Sidewalk repair		$0	$100,000	$100,000	-
Neil Orchard Senior Activities Center – Pedestrian Traffic Signal		-	$70,000	$70,000	-
Group Mentoring Initiative		$2,299.89	$20,000	$20,000	-
Senior Nutrition Program (Meals on Wheels)		$2,058.24	$35,000	$35,000	-
SSHH - Tenant/Landlord Dispute		$0	$7,000	$7,000	-
SSHH - Housing Counseling		$0	$11,000	$11,000	-
Respite CLUB		$0	$9,000	$9,000	-
Fair Housing		$0	$14,463	$14,463	-
Planning and Administration		$7,938.71	$101,000	$101,000	-
TOTALS	**$275,000**	**$23,821.03**	**$564,180**	**$847,815**	**$283,635**

Figure 1


Rancho Cordova CDBG Target Area
Legend
CDBG Target Area
Parks
American River
City Boundary
COLOMA
COLOMA
WHITE ROCK
WHITE ROCK
LA LOMA
ZINFANDEL
MATHER
OLD PLACERVILLE
50
50
FOLSOM
BRADSHAW
SUNRISE
MATHER EAST
Demographic Data from the 2005-2009 American Community Survey

Homeless and Other Special Needs Populations

The City's strategy related to the needs of the homeless, those at risk of homelessness, and other special needs populations involves funding a variety of supportive services offered locally or regionally to Rancho Cordova residents. Currently, Rancho Cordova is home to the Mather Community Campus, a major supportive housing facility for formerly homeless individuals, but all of our resources have very limited capacity. As identified in the 2011-2016 Consolidated Plan, the City's goal is to encourage a system of collaborative supportive services, located in the City, to allow for accessibility for residents. The City is seeking additional funding for programs and services aimed directly at assisting its homeless and special needs populations, as levels of CDBG funding appear to be in decline. For the 2014-15 program year, programs aimed at homeless and other special needs populations include:

- Homeless and family assistance to locate temporary or permanent housing, provided by Sacramento Self-Help Housing;

- Senior services, provided by Meals on Wheels and Cordova Neighborhood Church's Respite C.L.U.B.; and

- Youth services, provided by Police Activities League and Folsom Cordova Community Partnership.

In addition, the City in collaboration with the Veterans Affairs Hospital, Veterans Resource Center of America, Sacramento County, and Mercy Housing California, is actively pursuing the development of approximately 60 transitional housing opportunities for homeless and disabled veterans and 100 units of permanent supportive housing as part of the Mather Veterans Village development project. Furthermore, the Housing Division is in the process of developing affordable senior rental housing in the CDBG target area. The first phase of the project (50 permanent Supportive Housing units) has received a high ranking in the initial stages of the round one 2014 Tax Credit competition and is slated to be funded from 9% Tax Credits (potentially $ 13.3 million) rather than CDBG. A formal award expected in June will require construction start this calendar year. Finally, the City's Adopted Housing Element also identifies strategies to remove potential constraints to housing for persons with disabilities. These strategies include:

H.3.3 – Provide housing for the special needs populations, including housing accessible for persons with disabilities (including veterans as a primary target group), large households, the homeless, and single-parents households.

These programs have been used to help low and moderate income disabled home-owners to address health and safety issues and to improve accessibility in their homes.

While the City does not operate any transitional housing facilities, it does cooperate with the County of Sacramento's Continuum of Care. The City is also home to one of the larger transitional housing facilities in the area located at the Mather Community Campus. The City's plan for the 2014-15 program year is to continue cooperating and actively engaging the County of Sacramento in its attention to homeless issues. These issues also include chronic homelessness and near homelessness. The City of Rancho Cordova also contracts with Sacramento Self-Help to provide housing counseling and homelessness prevention to Rancho Cordova residents. Sacramento Self-Help is accessible to Rancho Cordova residents via the internet, by telephone, and by walk-in appointment at their Rancho Cordova office. The City will also continue the ADA Accessibility Improvements identified in the 2013-14 Action Plan through Public Works ADA Improvements. These activities include replacing deficient sidewalks, curb-cuts, and other pedestrian ADA improvements in the City. The City has also initiated in 2013-2014 an ADA Accessibility Improvement Program with Public Works to provide funding for sidewalk repairs and other ADA upgrades funded through CDBG over the next three CDBG program years.

Obstacles to Addressing Under-served Needs

While there are several constraints to meeting the needs of target-income residents, the primary obstacle is the lack of available resources for services within the City's boundaries. Many services are located in the City of Sacramento or the County of Sacramento unincorporated areas that are not convenient for the residents of Rancho Cordova; additionally, those services located locally often do not have sufficient capacity to meet current needs and the City does not have sufficient resources to help those local service providers to build that capacity.

The City plans to use its CDBG funds to promote the local provision of services for low- and moderate-income residents in Rancho Cordova. Furthermore, the City will also encourage area service providers to offer services in the community. In the 2014-15 program year, several organizations (including Sacramento Self-Help Housing, Cordova Neighborhood Church, and Folsom Cordova Community Partnership) are expected to provide services within Rancho Cordova.

Remove Barriers to Affordable Housing

The City is undertaking a number of actions to reduce potential barriers and constraints to affordable housing as well as housing for special needs populations. These include identifying funds in support of affordable housing development, as well as offering fee reductions, regulatory incentives, density incentives, and the operation of two home rehabilitation and repair programs, as well as several other options. These also include the actions and policies listed above, and can be found with additional detail in the City's 2014-2021 Housing Element.

Develop Institutional Structure

The Housing Services Division within the City's Economic Development Department will be responsible for the management, implementation, and monitoring of the Consolidated Plan documents, including the Action Plan.

City staff will administer the programs and activities funded with CDBG funds. These staff members will work with the individual City divisions, such as Public Works, as well as partner districts, such as Folsom Cordova Unified School District and, to develop procedures and coordinate the administration of programs that will be carried out by these divisions. Designated staff will also work closely with the providers of CDBG-funded services and programs that are not carried out by the City.

Enhance Coordination

The City will continue its work with neighboring jurisdictions such as the County of Sacramento, City of Sacramento, City of Citrus Heights, City of Elk Grove, City of Folsom, and other surrounding jurisdictions, including the Sacramento Housing and Redevelopment Agency and SACOG, to address the regional issues that affect the needs of target-income persons as well as special needs populations. The City intends to reinvigorate the regional CDBG working group to help streamline reporting and monitoring requirements for local service providers that operate within all/some of the jurisdictions. The goal in this effort is to reduce the burden of providing services within each jurisdiction with CDBG funding. The City also intends to work directly with service providers and local, state, and federal agencies (e.g., HUD and HCD).

Public Housing Needs

There are ten Public Housing apartment complexes or single family homes that include some of the 747 affordable housing units in Rancho Cordova. Some of these units are administered by Sacramento Housing and Redevelopment Agency (SHRA), which serves as the public housing authority for Sacramento County. The City of Rancho Cordova does not have its own local housing authority. Resident initiatives are handled directly by SHRA.

Anti-Poverty Strategy

The City's anti-poverty strategy is based on revitalizing the City's existing housing stock to provide safe and decent places to live, and supporting social services agencies that provide various services that promote income and housing stability. In addition, the City's strategy is to provide supportive services for target-income residents, including senior and youth services.

In the 2014-15 program year, the City plans the following anti-poverty programs:

- Senior nutrition programs, such as Meals on Wheels;
- Housing crisis intervention services, provided by Sacramento Self-Help Housing;
- Homeless services, provided by Sacramento Self-Help Housing and the processes set out in Sacramento County's Continuum of Care program; and
- Youth services aimed at fostering community involvement and increasing post-secondary education opportunities for low- and moderate-income youth.

Lead-Based Paint Hazards

The City complies with the Residential Lead-Based Paint Hazard Reduction Act of 1992 as implemented in 24 CFR 35 Subpart B. Compliance includes the following strategies.

Housing Rehabilitation

All housing rehabilitation activities funded under this Plan will assess lead hazard risk before proceeding. This includes the planned Emergency Repair Program. This applies to any work on structures constructed prior to January 1, 1978. The work will comply with the appropriate level of protection indicated in 24 CFR 35.100.

All work on homes constructed prior to January 1, 1978, will have a lead hazard risk assessment conducted as described at 24 CFR 35.110.

At the completion of any prescribed lead hazard reduction activities, a clearance examination is required as described at 24 CFR 35.110.

Information and Education

Households that participate in housing activities under this Plan, including home purchase, rental assistance, or rehabilitation, will be given educational material regarding the hazards of lead-based paint, signs of lead poisoning, and strategies to reduce exposure.

Materials will include the use of HUD/EPA publications such as "Protect Your Family from Lead in Your Home." Information will be provided in multiple languages.

Testing

Blood testing of children occupying housing constructed prior to January 1, 1978 will be encouraged for all housing rehabilitation or emergency repair projects to ensure health and safety needs are being met. Testing can be in conjunction with housing programs, public health programs, or other programs conducted under this Plan.

Monitoring Plan

The City of Rancho Cordova has developed a monitoring system to ensure that the activities carried out in furtherance of the Plan are done so in a timely manner in accordance with the federal monitoring requirements of 24 CFR 570.501(V) and 24 CFR 85.40 and all other applicable laws, regulations, policies, and sound management and accounting practices. The objectives of the monitoring plan are described in more detail in the Consolidated Plan.

Analysis of Impediments Compliance

During the 2012-2013 program year, the City completed a comprehensive review of its current Analysis of Impediments to identify progress and next steps to help ensure fair housing access and choice in the Rancho Cordova Community. The CDBG funds that have been allocated to Fair Housing efforts will be utilized to help the City make progress in addressing the specific impediments identified in the Analysis of Impediments study completed in the 2010-2011 program year. City staff is working on a marketing plan for educating the community about fair housing rights. A general fair housing informational brochure has been printed and is in distribution, and fair housing flyers have been printed in 5 commonly spoken languages in the City (Spanish, Tagalog, Chinese, Russian, and Vietnamese).

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approved No. 3076-0006 Version 7/03

		2. DATE SUBMITTED 5/12/14	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☑ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: City of Rancho Cordova	Organizational Unit: Department: Economic Development
Organizational DUNS: 14-279-8809	Division: Housing Services
Address: Street: 2729 Prospect Park Dr.	Name and telephone number of person to be contacted on matters involving this application (give area code) Prefix: First Name: Reed
City: Rancho Cordova	Middle Name
County: Sacramento	Last Name Flory
State California / Zip Code 95670	Suffix
Country USA	Email: rflory@cityofranchocordova.org
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 68-0458334	Phone Number (give area code) 916-851-8784 / Fax Number (give area code) 916-851-8787
8. TYPE OF APPLICATION: ☑ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	7. TYPE OF APPLICANT: (See back of form for Application Types) City or Township Other (specify)
	9. NAME OF FEDERAL AGENCY: Housing and Urban Development
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 14-218 TITLE (Name of Program): Labor Management Cooperation Program	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Code Enforcement Rental Housing Inspection Public Services (Youth, Senior, Homeless) Public Facilities ADA Improvements General Planning and Administration
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.): City of Rancho Cordova	
13. PROPOSED PROJECT Start Date: 7/1/2014 Ending Date: 6/30/2015	14. CONGRESSIONAL DISTRICTS OF: a. Applicant 7 b. Project 7

15. ESTIMATED FUNDING:		
a. Federal	$	584,100 .00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE:

b. No. ☑ PROGRAM IS NOT COVERED BY E. O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation. ☑ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name Joe	Middle Name
Last Name Chinn		Suffix
b. Title Interim City Manager		c. Telephone Number (give area code) 916-851-8800
d. Signature of Authorized Representative Joe Chinn		e. Date Signed 4/28/14

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

Funding Approval/Agreement

Title I of the Housing and Community Development Act (Public Law 930383)
HI-02515R of 20515R

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Community Development Block Grant Program

OMB Approval No. 2506-0193 (exp 1/31/2015)

1. Name of Grantee (as shown in item 5 of Standard Form 424)	3a. Grantee's 9-digit Tax ID Number	3b. Grantee's DUNS Number	4. Date use of funds may begin (mm/dd/yyyy)
City of Rancho Cordova	80-0058934	14-279-6309	07-01-14

2. Grantee's Complete Address (as shown in item 5 of Standard Form 424)	5a. Project/Grant No. 1	6a. Amount Approved
City of Rancho Cordova 2729 Prospect Park Drive Rancho Cordova, CA 95670	CDBG Entitlement	564,180
	5b. Project/Grant No. 2	6b. Amount Approved
	5c. Project/Grant No. 3	6c. Amount Approved

Grant Agreement: This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by subrecipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name)		Grantee Name	
		City of Rancho Cordova	
Title		Title: Interim City Manager	
Signature	Date (mm/dd/yyyy)	Signature	Date (mm/dd/yyyy) 4/28/14

7. Category of Title I Assistance for this Funding Action (check only one)

- [X] a. Entitlement, Sec 106(b)
- [ ] b. State-Administered, Sec 106(d)(1)
- [ ] c. HUD-Administered Small Cities, Sec 106(d)(2)(B)
- [ ] d. Indian CDBG Programs, Sec 106(a)(1)
- [ ] e. Surplus Urban Renewal Funds, Sec 112(b)
- [ ] f. Special Purpose Grants, Sec 107
- [ ] g. Loan Guarantee, Sec 108

8. Special Conditions (check one)

- [X] None
- [ ] Attached

9a. Date HUD Received Submission (mm/dd/yyyy)

9b. Date Grantee Notified (mm/dd/yyyy)

9c. Date of Start of Program Year (mm/dd/yyyy) 07-01-15

10. check one

- [ ] a. Orig. Funding Approval
- [ ] b. Amendment — Amendment Number

11. Amount of Community Development Block Grant	FY ( )	FY ( )	FY ( )
a. Funds Reserved for this Grantee			
b. Funds now being Approved			
c. Reservation to be Cancelled (11a minus 11b)			

12a. Amount of Loan Guarantee Commitment now being Approved

12b. Name and complete Address of Public Agency

Loan Guarantee Acceptance Provisions for Designated Agencies: The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.

12c. Name of Authorized Official for Designated Public Agency: Joe Chinn

Title: Interim City Manager

Signature

HUD Accounting use Only

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153 176											
			Y					Project Number		Amount		
			Y					Project Number		Amount		

Date Entered PAS (mm/dd/yyyy)	Date Entered LOCCS (mm/dd/yyyy)	Batch Number	Transaction Code	Entered By	Verified By

24 CFR 570 form HUD-7082 (11/10)

APPENDIX B

CITY OF RANCHO CORDOVA

RESOLUTION NO. 26-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA APPROVING AND ADOPTING THE 2014-15 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN, AND AUTHORIZING THE CITY MANAGER TO SUBMIT THE ACTION PLAN TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WHEREAS, the Community Development Block Grant (CDBG) Program, authorized pursuant to Title 1 of the Housing and Community Development Act of 1974 as amended (Act), requires that jurisdictions provide for the issuance of grants in order to attain the objective of providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income; and

WHEREAS, there has been presented to, and reviewed by this City Council, the 2014-2015 CDBG Action Plan (Action Plan), which describes programs to be funded, in compliance with the goals and objectives of the 2011-2016 Consolidated Plan, for the 2014-2015 program year; and

WHEREAS, there has been presented to, and reviewed by this City Council, Certifications to the U.S. Department of Housing and Urban Development (HUD), including those regarding affirmatively furthering fair housing, anti-displacement and relocation plan, drug free workplace, anti-lobbying, authority of jurisdiction, consistency with strategic plan, citizen participation, community development plan, following Consolidated Plan, use of funds, prohibition of excessive force, compliance with anti-discrimination laws, and lead-based paint; and

WHEREAS, the City has not yet received the annual application form for CDBG funding (Standard Form 424), and is awaiting an annual funding amount from HUD, and

WHEREAS, the Action Plan, and a notice of the 30-day public comment period, have been published for citizen comment prior to forwarding the documents to City Council for approval; and

WHEREAS, the City Council held public hearings on April 21, 2014 to provide an opportunity for the public to comment on the information provided in the Action Plan.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA:

1. Approves the adoption of Resolution 26-2014 which approves:
   a. The Action Plan, which serves as the CDBG budget for July 1, 2014 to June 30, 2015 (FY 2014-15),
   b. Certifications required by HUD that state the City of Rancho Cordova will continue to conduct its activities in accordance with applicable statutes and regulations governing the CDBG program, as identified in the Certifications in Appendix A of the Action Plan.

2. Authorizes the City Manager, or his designee, to execute and file the Application. Certifications, and all documents, including the Action Plan and SF 424, that are required to receive CDBG funding, for and on behalf of the City of Rancho Cordova, and to make minor changes to those documents where necessary.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 21st day of April, 2014 by the following vote:

AYES: Budge, McGarvey, Terry.

NOES: None.

ABSENT: Sander, Skoglund.

ABSTAIN: None.

Robert J. McGarvey, Vice Mayor

Robert J. McGarvey, Vice Mayor

ATTEST:

Stacie George, Deputy City Clerk for

Mindy Cuppy, CMC, City Clerk

2014-2015 CDBG Action Plan Amendment (Proposed)

Public Hearing

Housing Services Division
Jessica Hayes, Housing and Neighborhood Development Analyst
Peter Ibrahim, Housing Services Assistant

a fresh take.
RANCHO CORDOVA
CALIFORNIA

aFreshTake.org

Purpose

- Reprogramming and rollover funds require amendment to the action plan, thereby addressing the two proposed projects.

- Recaptured funds public notice went out July 2014 for approximately $283,000 dollars of capital funding.
  - Deadline to submit application was late August 2014.

Franklin Gothic Demi Font

Activity Name	Description	Output	Funding
International & Femoyer Traffic Signal	Construction of a traffic signal at the International Drive and Femoyer Street intersection. The project will include the removal and replacement of curb, gutter, sidewalk, median, striping, add a new traffic signal and improve curb ramps to meet ADA standards. International Drive is an urban minor arterial roadway that has approximately 12,000 vehicles per day that uses this roadway.	1 traffic signal	$275,000
Electronic Entry Security System Project	Install an electronic entry system with 7 points of secure entry in the office and education rooms of the Folsom Cordova Community Partnership's Family Resource Center. The electronic entry system will provide enhanced security and safety to the staff who deliver services and the community members who receive services at this Family Resource Center. The Family Resource Center provides services that break generational cycles of child abuse and neglect and well as break generational cycles of poverty.	1 public facility project	$8,635

Questions?

a fresh take. RANCHO CORDOVA CALIFORNIA

aFreshTake.org

MEMORANDUM

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Troy Holt, Director of Communications and Government Relations

SUBJECT: **2015 LEGISLATIVE PRIORITIES**

RECOMMENDATION

Provide direction to staff for Fiscal Year (FY) 2016 funding requests, and a platform for discussions with legislators during the National League of Cities Congressional Conference, March 6-11, 2015 in Washington D.C.; also, receive update on City's Legislative Program and provide direction about the 2015 program.

RESULT OF RECOMMENDED ACTION

Submission of requests for federal funding for projects consistent with the Council's and community's priorities, and provide topics for discussions that the Mayor and Council members will hold with Congressional representatives during the March conference in Washington, D.C. Staff will also proceed with recommended changes and actions for the City's legislative program.

BACKGROUND

Annually, the City has an opportunity to submit requests for federal funding. This includes both competitive project applications and appropriations opportunities. If appropriations opportunities exist for FY 2016, those requests will be submitted through the offices of our elected representatives in Washington, D.C. Senator Feinstein usually establishes a deadline in mid-January for requests, and it is anticipated that Senator Boxer and Congressman Bera would soon after issue their guidelines for requests for the FY 2016 funding cycle.

In the past, the City was successful in efforts to receive federal funding on projects such as: Folsom Boulevard enhancements ($6,600,000), Senior Center expansion ($200,000), White Rock Park Revitalization ($147,000), International Extension and Bridge ($250,000 in FY 2009 and $500,000 in FY 2010), Pedestrian, ADA, and Safety Improvements on Mather Field Road ($200,000), and Brownfields ($400,000). We also received American Recovery and Reinvestment Act (ARRA) funding for the Coloma Road Rehabilitation project ($1,121,360), the International Extension and Bridge project ($1,050,000), Business Outreach funding ($18,000), and the Energy Efficiency and Conservation Block Grant (EECBG) Program ($653,500) to complete the electrical upgrades in Hagan and Village Green Parks, the virtual desktop and utility sub-metering projects in City Hall, and the cool roof on the new Police building.

In keeping with recommended practices in designing our requests, proposed projects need to be well developed, sharply focused, and resonate with benefits that are readily seen by an audience at the federal level. With this in mind, staff is recommending submission of the attached projects to the appropriate federal agencies, along with Congressman Bera and both U.S. Senators. These projects have been vetted and further the City's goals of sustaining a livable community and improving transportation and connectivity.

Attachment 1 provides a list of questions used to evaluate projects eligible for funding requests and determine their readiness for submission. **Attachment 2** includes the recommended projects based on these criteria and follow-up discussions with staff members in our departments.

2015 LEGISLATIVE ADVOCACY PLATFORM

Managing federal funding requests is just one part of the City's legislative program. The program, founded on a set of policy guidelines that were first approved by the Council in 2007, encompasses staff's monitoring of state and federal legislation of interest to the City. It also directs our advocacy efforts to support or oppose legislation that significantly impacts the City, and serves as an information clearinghouse for legislative issues, intergovernmental grant funding and other resources. **Attachment 3** shows the City's 2015 Legislative Priorities. The Legislative Priorities are coordinated with those established by the League of California Cities and the National League of Cities.

During the year, staff monitored more than one hundred State and Federal bills of concern to local governments and, specifically, to Rancho Cordova. Our advocacy efforts were keenly focused on protecting our revenues and resources. We strategically used the relationships that we have been building with our legislative representatives and staff to articulate our priorities to our delegation, and we saw positive results.

In the coming 2015-16 legislative session, we look forward to continuing to pursue the attached legislative policies not only as priorities, but as strategic objectives to enable the City to ensure a continued quality of life for our citizens. At this time, staff is also requesting feedback from the Council regarding any changes or enhancements to the 2015 legislative program and priorities.

ATTACHMENTS

1. FY 2016 Project Development Questions.
2. FY 2016 Projects for Possible Federal Funding Opportunities.
3. 2015 Legislative Advocacy Platform.

ATTACHMENT 1

FY 2016 Project Development Questions

- What is the total project cost?
- What is the federal nexus (if necessary)?
- What is the prior year(s) federal funding history? (What other federal funds has this project received?)
- If this project has received previous federal funds, how have they been spent?
- What are the sources and amounts of state, local or private matching funds (if any)?
- What other agencies are affected by the requested project?
- What is the current status of the project described in this application?
- What is the background/justification for the requested amount (project need and federal role)?
- What other state, local or nonprofit organizations *support* this application?
- Provide a budget breakdown of how the requested funds will be used.
- What is the priority order of this request? (Example: 2 of 9)
- How quickly will these funds be expended? What is the expected work schedule?
- Is this a one-time request? Does the City anticipate requesting funding for this project again in future years?

ATTACHMENT 2

FY 2016 Projects for Possible Federal Funding Opportunities

Page 1 of 2

Project	Description
White Rock Road Improvements, Sunrise to City Limits	Improve White Rock Road, from Sunrise Boulevard to the eastern City limit. This project will eliminate the bottleneck between the existing six-lane road at Sunrise Boulevard to the eastern City limit of Rancho Cordova where Sacramento County is constructing additional lanes. White Rock Road has regional significance, as it will provide parallel relief capacity for U.S. Highway 50. This will increase the goods movement capacity and allow for increased freight and commerce capacity both within and through the Sacramento area. Completed in coordination with Sacramento County's similar White Rock Road project to the east of the City limit, this project will greatly enhance the safety benefits of this regional asset. This project was identified as a priority project by the Highway 50 Mobility Partnership. The total project cost of $16.5 million builds a four-lane arterial with median improvements. If funding for the total project cost is not immediately available, the construction can be phased. The City has secured $7 million for the project that will be used to construct the first phase from Sunrise Boulevard to approximately the future intersection of Rancho Cordova Parkway and White Rock Road. For an additional $5 million, the project could extend to the future intersection of International Drive and White Rock Road (Phase II). For $9.5 million, the project could extend to the City limits (Phase III). **The federal funding request is for $5 million for completion of Phase II, or $9.5 million for completion of Phases II and III**.
Zinfandel Complex Improvements	This project would modify and construct US 50 ramp intersections on Zinfandel Boulevard, lengthen turn pockets, add additional overhead signage, and build pedestrian refuge islands. The purpose of the project is to ease congestion and improve access for cyclists and pedestrians. The City has secured $700,000 for the preliminary engineering. The total project cost is $5,400,000. **The federal funding request is for $4.7 million.**
Sunrise Boulevard - Kiefer Blvd to SR16	Widen Sunrise Boulevard from two to four-lanes from Kiefer Boulevard to State Route 16 (Jackson Highway) and construct partial intersection improvements at Sunrise Boulevard and State Route 16. The project includes modifications to the bridge on Sunrise Boulevard over Laguna Creek. The total project cost of $12 million would provide two additional lanes on Sunrise from Kiefer Boulevard to State Route 16 (Jackson Highway), one of the few direct connections from Grant Line Road to Highway 50. This is the only section of Sunrise Boulevard that is two lanes and is currently at capacity. This project will include raising a portion of Sunrise Boulevard above a local flood plain. When this section of Sunrise floods, it cuts off a much needed connection to the southeast county. The City has secured $6 million in local funds. **The federal funding request is for $6 million.**
Folsom Boulevard Enhancement, Phase IV	This original project was to provide for improved aesthetics and safety along Folsom Boulevard between Rod Beaudry Drive and Bradshaw Road and between Kilgore Road and Sunrise Boulevard including the installation of new sidewalks, landscaping, medians, street lights, and intersection improvements along with road reconstruction. The City secured funding for the portion of the project from Rod Beaudry Drive to Horn Rd. which is currently in the design phase. In order to complete the project from Horn Rd to Bradshaw Road, an additional $4 million is needed. **The federal funding request is $4 million.**
Douglas Road, Sunrise Blvd. to West City Boundary	This project will widen Douglas Road from two to four lanes from Sunrise Blvd. to the west City Boundary. This project will include removing the existing bridge over the Folsom South Canal and replacing it with a six-lane bridge. This will be a complete streets project and will provide better access for bicycle and pedestrian mobility. This project will also provide relief to the congestion along Sunrise Blvd. **The federal funding request is for $13 million.**
Sunrise Boulevard – Douglas Road to Folsom Boulevard Water Conservation	This project will provide for water conservation improvements along Sunrise Boulevard from Douglas Road to Folsom Boulevard. The enhancements include replacing much of the existing landscaping with native and drought resistant plantings. The irrigation infrastructure will be replaced to conserve water and meet the requirements of State Assembly Bill 1881 (2006). The total project cost is $2.5 million. The City has secured $500,000 for this project. **The federal funding request is for $2 million.**
Anatolia/Kavala Ranch Bike Trail	This project would extend the Anatolia bike trail at Sandpiper Park across an open space to a new park in Kavala Ranch. The total project cost is $500,000. **The federal funding request is for $300,000**

FY 2016 Projects for Possible Federal Funding Opportunities

Page 2 of 2

Project	Description
COPS Hiring Program	COPS Hiring Program (CHP) grants are designed to advance public safety through community policing by addressing the full-time sworn officer needs of state, local, and tribal law enforcement agencies nationwide. CHP provides funds directly to law enforcement agencies to hire new and/or rehire career law enforcement officers, and to increase their community policing capacity and crime prevention efforts. Grants are 100% of the cost of salary and benefits for an entry-level officer for three years, with a commitment by the city to retain that officer for one year at its own cost. **The federal funding request is for $500,000.**
Mather Veterans Village (Request 50 VASH Vouchers to Local Housing Authority SHRA)	City of Rancho Cordova, County of Sacramento and Mather Veterans' Hospital are co-sponsoring the creation of up to 100 units of permanent supportive housing. The development will be comprised of up to three different types of living arrangements for a spectrum of disabled, homeless veterans. These veterans' needs will range from intake and stabilization through accommodated and independent living. The development will be contiguous to the Mather Veterans Administration Medical Center. A four-acre commitment of County land and initial funding in the amount of **$2 million for the first phase development of 50 units has been obtained. The local Housing Authority was awarded 50 VASH Vouchers in 2013 and has agreed to competitively award 25 of these units as project based VASH. It is requested that an additional 50 VASH Vouchers be awarded to our local housing authority in 2015/16.**

ATTACHMENT 3

2015 Legislative Advocacy Platform

The Statement of Priorities is adopted annually to authorize the City's active participation to influence federal and state decision-making on legislation and budget issues. It also guides City staff and contract lobbyists in creating federal funding requests for each federal fiscal year, serving as a filter through which to act upon legislative issues. Using this document as a guide, the City will take positions on specific legislation and amendments and craft its funding requests. The Mayor will sign legislative letters based on the City's identified interests; additionally, Council Members may be actively involved in advocacy efforts.

Priorities are stated broadly in order to provide the flexibility needed to respond in a timely way to the rapid changes inherent in the federal and state legislative process. This document should also serve as a guide to assist staff in identifying specific bills that are important to the City and in determining City interest in each. These priorities will help City officials, staff, and contract lobbyists to have a "single message" when speaking to representatives. The legislative programs of the League of California Cities, the National League of Cities, and other agencies may also influence City activities with common interests.

In addition, the City will evaluate legislation, pursue funding, and serve as a broker, facilitator and catalyst to enhance the community, based on specific policy areas, such as transportation and infrastructure, economic development, planning, and parks and recreation.

Generally, the City will evaluate legislation based on the following broad criteria:

§ Protection of local revenues
§ Protection/increase of local government discretion
§ Protection/increase of funding for specific programs or services (e.g. CDBG, EECBG, RDA, NSP)
§ Support of key programmatic goals
§ Preventing unfunded mandates
§ Consistency with existing City policy
§ Have a direct impact upon the City

Based on the above criteria, the following policy positions are recommended:

<u>Brown Act/Elections Code/Political Reform Act/Public Records Act</u>

Support:

- Legislation that simplifies and streamlines the administration of the Brown Act, the Elections Code, the Political Reform Act, and the Public Records Act, and provides opportunities to recover costs.
- Legislation that seeks to protect the City's ability to obtain confidential advice from legal counsel on items such as anticipated and pending litigation and real estate acquisition.

Oppose:

- Additional mandates in this policy area without full cost recovery.
- Legislation that would invade the attorney-client privilege and upset the balance between the public's right to know the conduct of its business and a city's temporary need for privileged conversations with legal counsel.

Economic Development

Support:

- Legislation, strategies, and policies that attract, retain, and expand business; supports job creation, retention, and expansion; maximizes revenue opportunities; fosters place making; and enhances community amenities.

Oppose:

- Legislation that adversely impacts the ability of communities to attract and retain jobs.

Environment

Support:

- Legislation that ensures local government representation and participation on state and federal environmental regulatory bodies.
- Legislation to standardize and streamline state and federal environmental regulations.
- Legislation that provides the City with the flexibility to enact environmental standards that are stricter than state or federal standards if the City so chooses.

Oppose:

- Legislation that, under the guise of environmental protection, restricts its land use authority.
- Legislation that deletes local government representation and participation on state and federal environmental regulatory bodies.

Housing

Support:

- Legislation that provides needed resources and flexibility to local governments for the production of housing that meets all socioeconomic needs and local demands.
- Measures that would provide local governments with greater flexibility in the housing element process.
- Legislation that provides needed federal and state incentives that help facilitate the production and preservation of affordable housing units including, but not limited to, housing bond funds and tax credits, housing element self-certification, relief from prevailing wage requirements, and CEQA reform.

Oppose:

- Legislation that unduly punishes local governments for non-compliance with rigid state housing standards that are imposed outside of the local decision-making process.

Local Control

Support:

- Legislation that enhances local control of resources and tools that allows Rancho Cordova to address the needs of residents within a framework of regional cooperation.

Oppose:
- Preemption of local authority, whether by state or federal legislation, or ballot propositions.

Mandates

Support:

- Legislation that encourages the use of state and federal incentives for local government action rather than mandates.
- Legislation to enhance local government's ability to comply with state and federal mandates.
- Measures to provide funding for federal and state mandates.
- Measures to streamline the process by which local governments are reimbursed by the state for the cost of unfunded mandates.

Oppose:

- Legislation that seeks to impose additional unfunded mandates on local governments that produce inequitable burdens and financial and other hardships.
- Measures that would further delay reimbursement for unfunded mandates.

Planning

Support:

- Measures that seek to enhance the flexibility of local planning agencies to meet community needs and provide community enhancement.
- Legislation to resolve ambiguous or unworkable planning and environmental statutes so that local agencies have clear direction from the federal and state governments.
- Legislation that provides technical and financial support for streamlining Endangered Species Act and Clean Water Act permitting programs.

Oppose:

- Legislation to impose additional mandatory and arbitrary reviews by non-local agencies of local planning documents.

Public Safety

Support:

- Legislation and measures to enhance public safety by providing additional funding for local agencies in their efforts to safeguard the public, increase the quality of life, reduce or prevent crime, educate citizens, and build community partnerships.
- Legislation that provides local law enforcement with additional tools to protect the public and prevent crime.
- Measures that establish task forces which unite multiple public safety resources in an effort to combat criminal acts which extend beyond the jurisdictional borders.
- Legislation to assist local law enforcement in its role as “first responders” to natural and man-made disasters.

Oppose:

- Legislation that limits the public safety policy tools available to local governments to deal with local conditions.
- Measures to reduce subventions and grant programs for public safety.
- Legislation that will limit or restrict public safety professionals from the efficient performance of their duties or that limits the law enforcement tools available to local public safety professionals.

Revenue Protection

Support:

- Measures that give local governments greater stability and independence in the state-local fiscal relationship, including full, constitutional protection of all local government revenues.
- Legislation that provides additional opportunities for local governments to be financially self-sufficient and oppose legislation that erodes the fiscal independence of local governments.
- Legislation that will enhance the state’s fiscal stability and minimize the impact to local governments of state budget deficits.

Oppose:

- Legislation that would give the state or federal government greater control over local revenue sources, or in any way reduces or diminishes City authority over local revenues.
- Legislation that would result in the permanent loss of City revenues unless it is part of a broader local government revenue protection package.
- Legislation that further exacerbates the state’s long-term budget imbalance and further exposes local governments to the effects of state budget deficits.

Telecommunications and Cable Franchises

Support:

- Legislation that maintains local control over public rights-of-way; protects local revenues used for essential local services, including public safety; guarantees access to, and funding for, public, educational and government access television.
- Legislation that ensures that the public is appropriately compensated by telecommunications providers that use the public's rights-of-way.

Oppose:

- Any legislation that does not adhere to the principles above.

Transportation and Infrastructure

Support:

- Additional funding for local transportation and other critical unmet infrastructure needs.
- Adequate and fair funding for the City and equitable distribution of transportation dollars within the SACOG region.

Oppose:

- Legislation that would reduce the ability of growing communities to address transportation and infrastructure needs with adequate funding (from diversified sources) and with as much flexibility as possible.
- Legislation that would in any way unduly restrict the City's ability to ensure that necessary public improvements are completed as part of new subdivisions.

MEMORANDUM

DATE: November 3, 2014

TO: Honorable Mayor and Council Members

FROM: Donna Silva, Chief Financial Officer

SUBJECT: **PRELIMINARY RESULTS OF GENERAL FUND OPERATIONS FOR FISCAL YEAR 2013-14**

RECOMMENDATION

Receive and File.

RESULT OF RECOMMENDED ACTION

This report will inform the Council and the Community on the preliminary results of fiscal year ending June 30, 2014 for the General Fund.

BACKGROUND

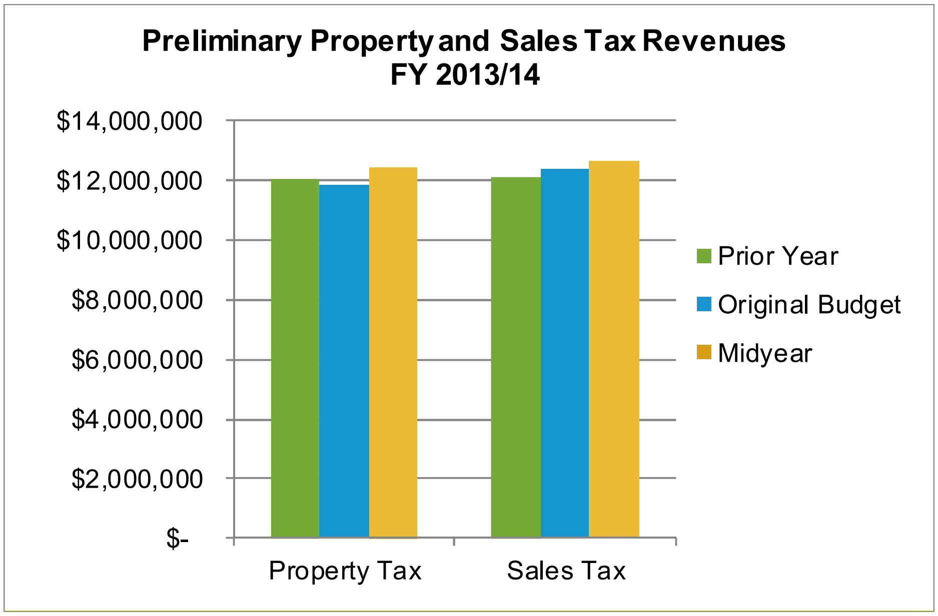
The City of Rancho Cordova currently operates under a two year budget. A two year budget cycle requires different timelines for reporting financial information to the City Council and community.

Year One:
In the first year of the cycle, the Corporate Report is held in February, sharing information about the economy, the results of previous fiscal year, the current mid-year budget review, three year projections and initial conversations about priorities for the upcoming budget year. A budget workshop is held in May and the two year budget is adopted by the end of June. In November staff shares the preliminary results of operations for the preceding fiscal year and advises if there are any known impacts to the current year budget.

Year Two:
In the second year of the cycle, a short presentation in made at a City Council meeting in January to share the final results from the prior fiscal year and the Corporate Report is pushed out to March and includes a review of the previously adopted budget for the upcoming year. There are no budget workshops or hearings in May or June, since the budget was adopted the prior year. In November (this report) staff shares the preliminary results of operations for the preceding fiscal year and advises if there are any known impacts to the current year budget.

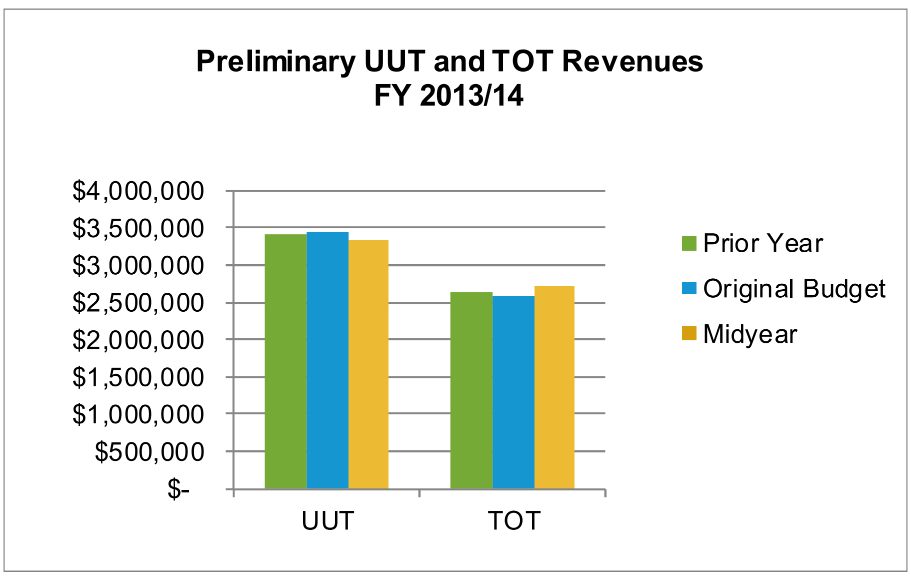
Preliminary Results – Fiscal Year Ending June 30, 2014

Total revenues for FY 2013/14 will exceed revenues from the prior year by approximately $1.6 million, continuing a trend of increasing revenues, and is expected to outperform the original budget by $2 million, a positive variance of about 4.9%. This result is driven by better than expected Tax revenues and Building Permit revenues.



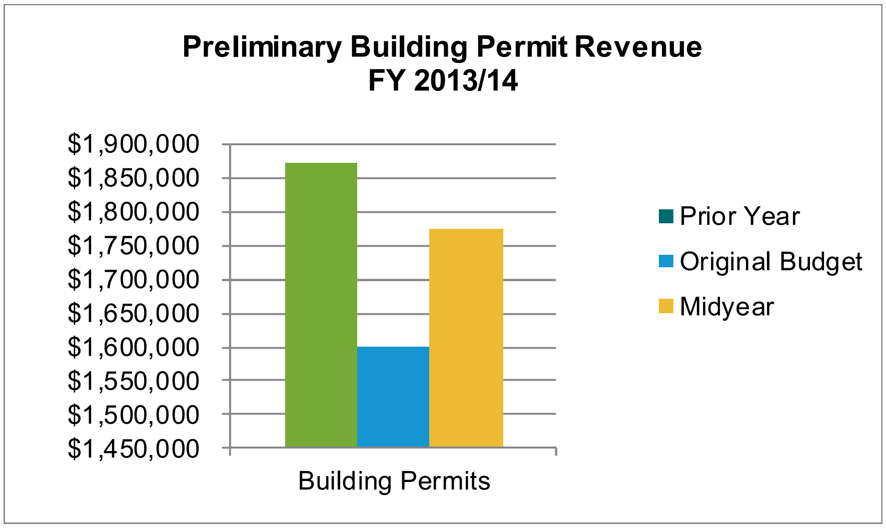
Property Tax revenues came about 5% above our original budget, within in 1% of our mid year estimate and almost 3.5% above the prior year.

Sales Tax revenues performed very well, with actual revenues greater than the prior year by 5.6%, the original budget by 3.4% and the mid year estimate by .095%.

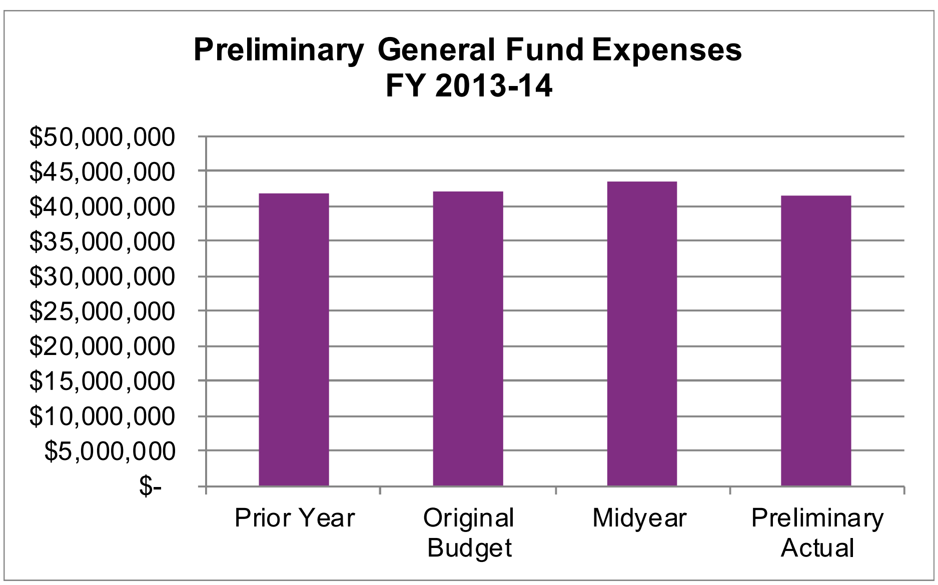


UUT was relatively constant from the prior year, with just a .83% increase. We pretty much hit the bulls-eye with our UUT budget. We had budgeted total UUT revenues of $3.43 million and the actual UUT was $3,439,608, a difference of only $9,608 or .28%!

On the other hand, TOT revenues were quite a bit better than we anticipated. TOT revenues grew 8% from the prior year and were 10% greater than the original budget and 5.6% above the midyear review. In reviewing the TOT revenues hotel by hotel it is clear that this increase was caused by an across the board increase in revenues experienced by the Rancho Cordova hotels.



Building Permits were higher than anticipated again this year; $253,303 greater than the original budget, a variance of 16%. Building permit revenues were relatively constant from the prior year posting revenues 1% below last year. We saw a slight increase in commercial permits and a slight decline in residential permits.



Unlike revenues, preliminary final expenditures were less than the prior year, by approximately 1%. Expenditures came in just under budget, with a 1.4% variance, and only .13% off from the mid-year estimate.

	12/13 Actual	13/14 Original Budget	13/14 Prelim. Actual	Variance from Prior Year - $'s	Variance from Prior Year -%	Variance from Budget - $'s	Variance from Budget - %
Property Tax	$12,008,691	$11,811,800	$12,421,202	$415,511	3.4%	$609,402	5%
Sales Tax	12,114,819	12,380,500	12,797,765	$682,946	5.6%	$417,265	3.4%
UUT	3,411,126	3,430,000	3,439,608	$28,482	0.8%	$9,608	0.28%
TOT	2,636,893	2,589,000	2,859,013	$222,120	8.4%	$270,013	10%
Building Permits	1,872,408	1,600,000	1,853,303	$(19,105)	(1%)	$253,303	15.8%
Other Revenues	10,560,291	10,366,300	10,861,157	$300,649	2.8%	$494,640	4.7%
Total Revenues	**$42,604,228**	**$42,177,600**	**$44,232,048**	**$1,627,603**	**3.8%**	**$2,054,231**	**4.8%**
Expenses	**$41,970,916**	**$42,162,900**	**$41,567,217**	**$(381,729)**	**0.9%**	**$(573,713)**	**(1.4%)**
Operating Surplus			**$2,664,831**				
Transfers Out			(1,998,622)				
Net Surplus	**$633,312**	**$14,700**	**$666,209**				

The net result looks to be our eleventh consecutive year of surplus in the General Fund, with an operating surplus of approximately $2.6 million, allowing us to transfer $1.9 million out for future capital needs, resulting in a net surplus of $666,209.

Please remember that these are preliminary results, the books have yet to be closed and the audit has not yet begun. There will inevitably be adjustments posted as we finish our analysis of accounts and work our way through the audit process.

The annual Citizens Financial Report will be included in the winter edition of City Views and will include a list of top accomplishments for the FY 2013/14 year.

The annual audit is underway and the financial statements will be issued by December 31, 2014, if not earlier. We will provide a report on the final results, as well as accomplishments at the Corporate Report on February 27.

Update on the Current Fiscal Year

We have budgeted revenues of $43.4 million for the current fiscal year. Given the revenues from fiscal year 2013/14 ($44.2 million) this is low.

Since there is an approximate two month lag in expense reporting it is too early in the year to identify any positive or negative trends in expenditures.

Staff will begin an in-depth analysis of current year revenues and expenditures in early January 2015, allowing us time to make any necessary mid-course corrections. The annual Corporate Report is currently scheduled for Friday February 27, 2015. During the Corporate Report we will update the City Council and the community of the results of the mid-year review, examine our three year projections and discuss any amendments that may be necessary to the 2014/15 budget, the second year in our adopted two year budget.

If Measure H passes, the new rate would apply in April 2015 so we will have only three months of additional revenues in fiscal year 2014/15. However, that could translate to as much as $1.25 million of additional revenues for FY 2014/15. Much discussion and planning will need to occur to ensure the funds are put to use immediately to address the identified community priorities.

Preliminary Results Fiscal Year 2013-14

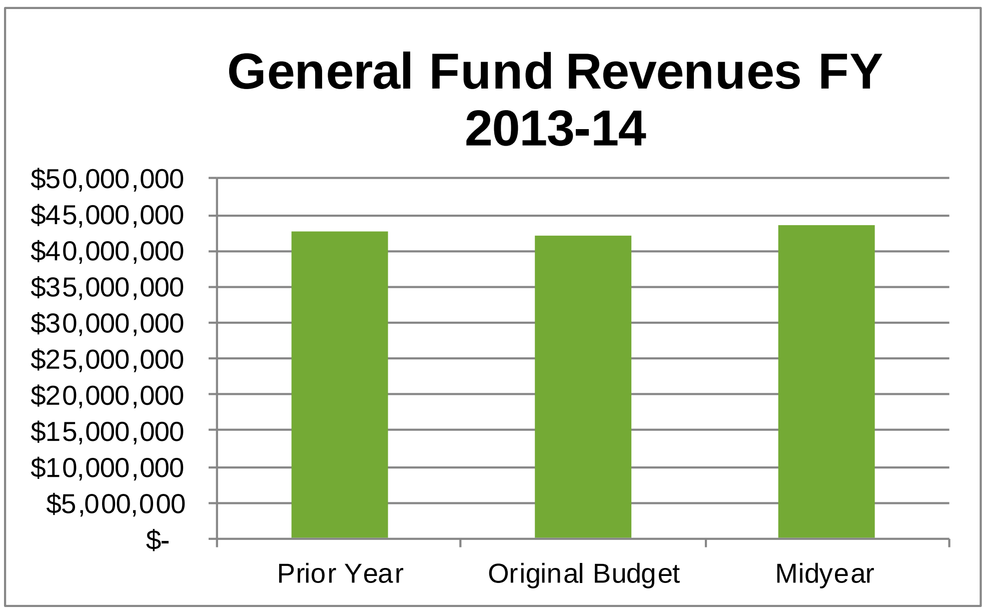
CITY OF RANCHO CORDOVA
The Center of it All
10 YEAR ANNIVERSARY
2003 ~ 2013

CITY OF Rancho Cordova
Incorporated July 1, 2003

AGENDA ITEM 16.2

Preliminary Results - General Fund

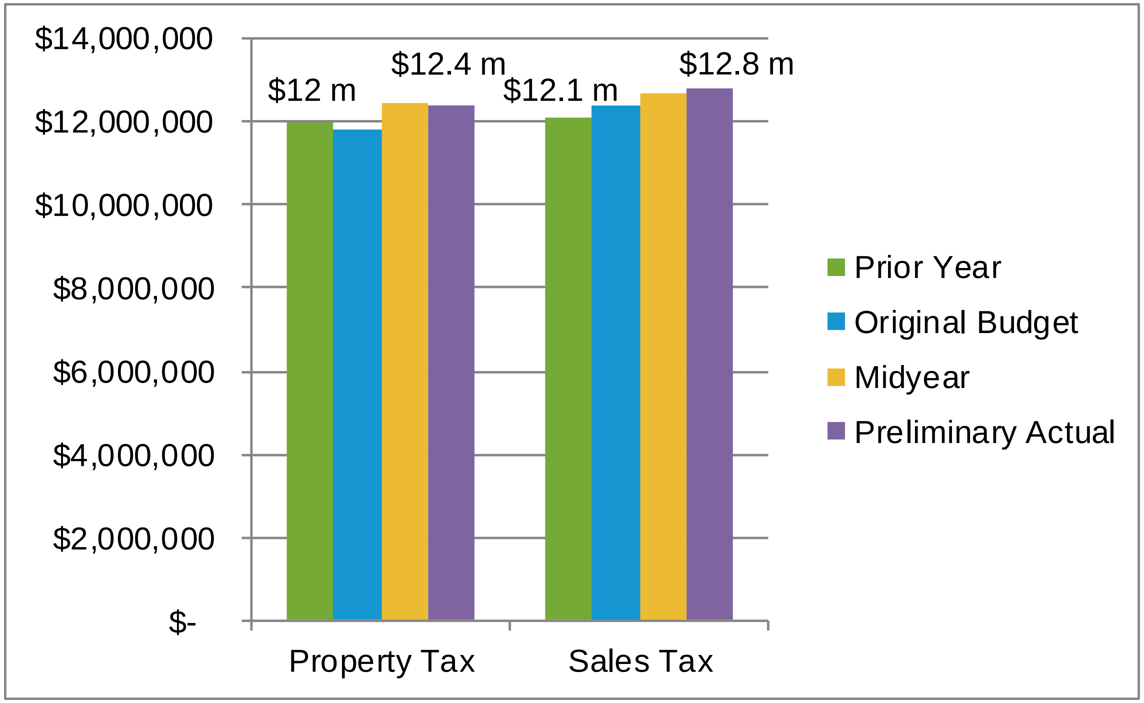
Up 5.75%



$42.6 mil | $42.18 mil | $43.69 mil

AGENDA ITEM 16.2

Preliminary Property and Sales Tax Revenues

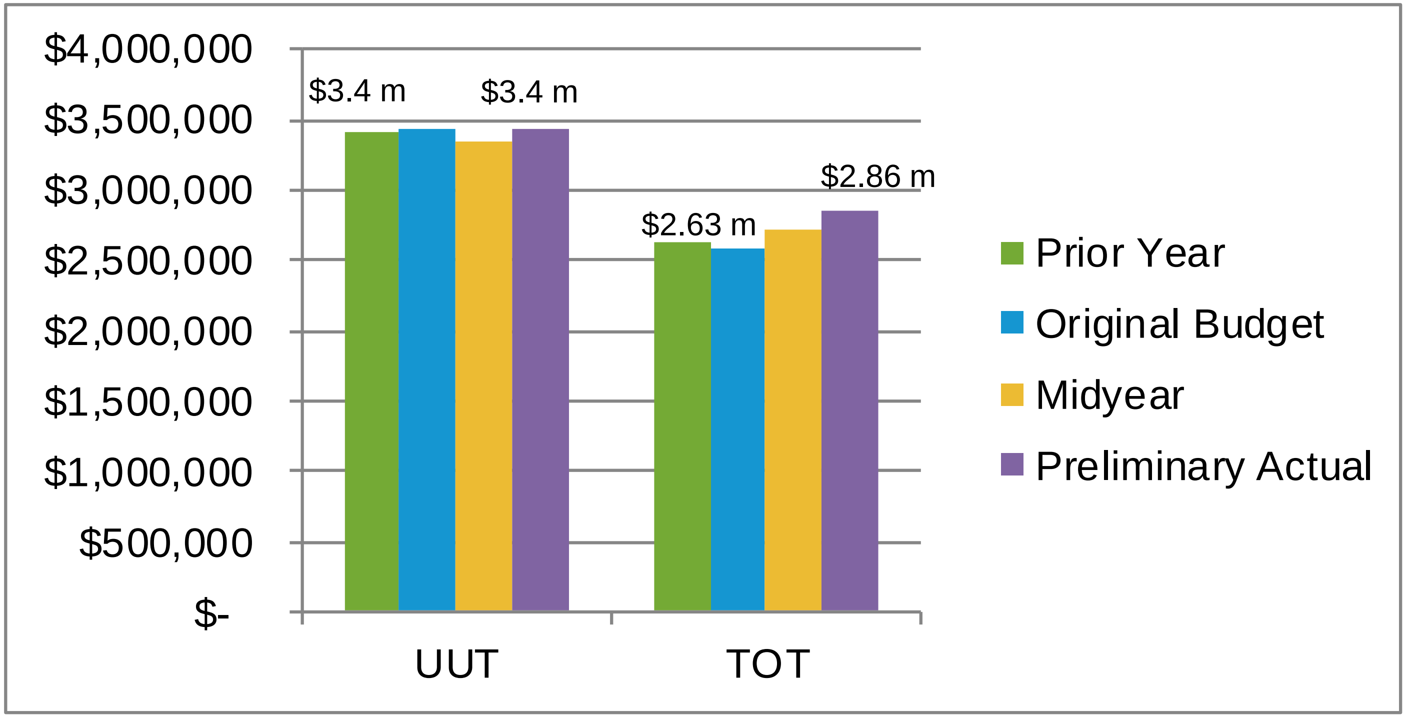


Up 6.2% from budget

Up 4.2% from budget

AGENDA ITEM 16.2

Preliminary UUT and TOT Revenues

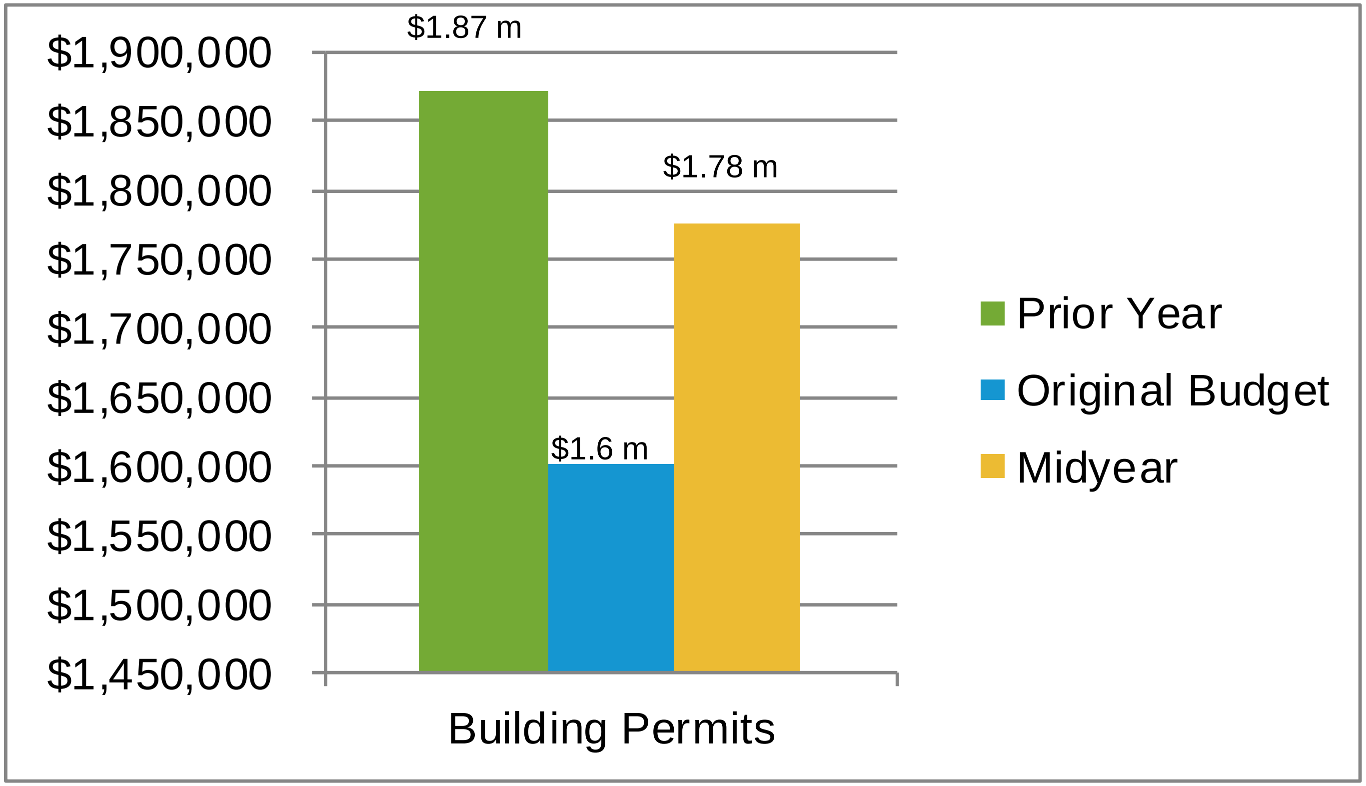


5% less than budget

6.3% more than budget

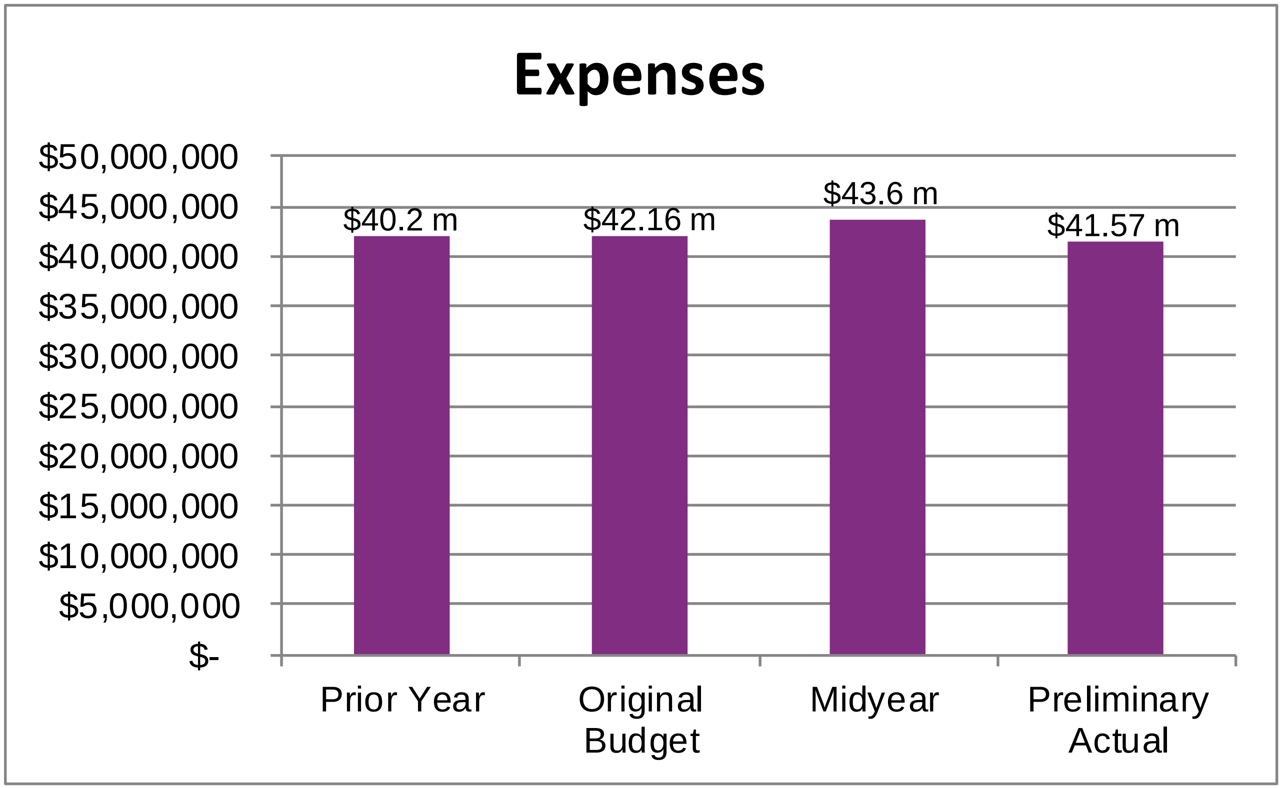
AGENDA ITEM 16.2

Preliminary Building Permit Revenues



AGENDA ITEM 16.2

Preliminary General Fund - Expenditures



AGENDA ITEM 16.2

City of Rancho Cordova
Incorporated July 1, 2003

Preliminary Results - General Fund

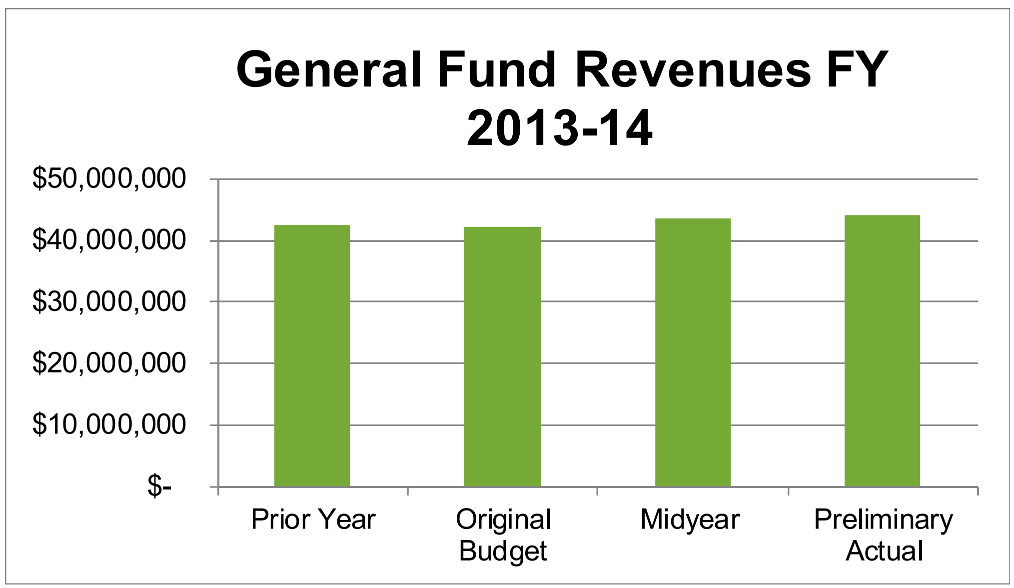
	12/13 Budget	12/13 Preliminary Actual	Variance	Variance %
Property Tax	$11,302,000	$12,008,691	$706,691	6.25%
Sales Tax	11,576,000	12,060,817	484,817	4.19%
UUT	3,595,000	3,411,126	(183,874)	(5.11%)
TOT	2,480,000	2,636,894	156,894	6.3%
Building Permits	1,250,000	1,872,409	622,409	49.8%
Other Revenues	10,084,400	10,614,282	529,882	5.25%
Total Revenues	**$40,287,400**	**$42,604,219**	**$2,316,819**	**5.75%**
Expenses	**$40,257,300**	**$39,914,079**	**$343,221**	**.85%**
Operating Surplus	**$30,100**	**$2,690,140**		
Transfers Out		**(2,017,605)**		
Net Surplus		**$672,535**		

AGENDA ITEM 16.2

Preliminary Results Fiscal Year 2013-14

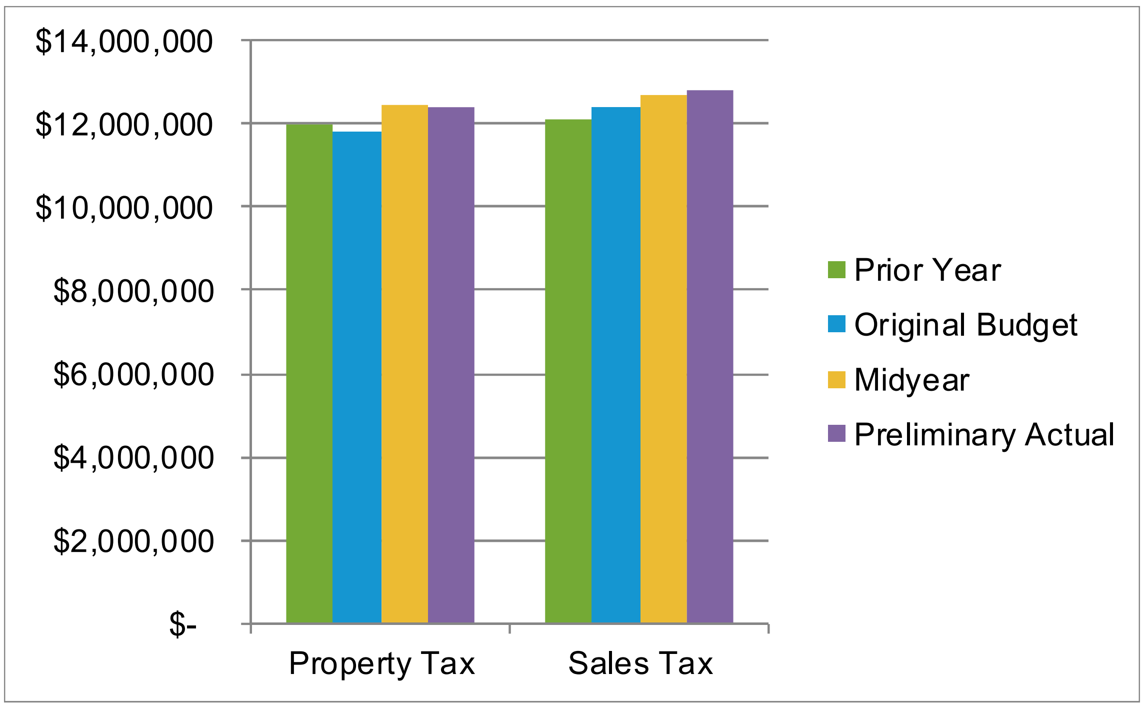
Preliminary Results - General Fund

Up 3.8%



$42.6 mil	$42.18 mil	$43.69 mil	$44.2 mil

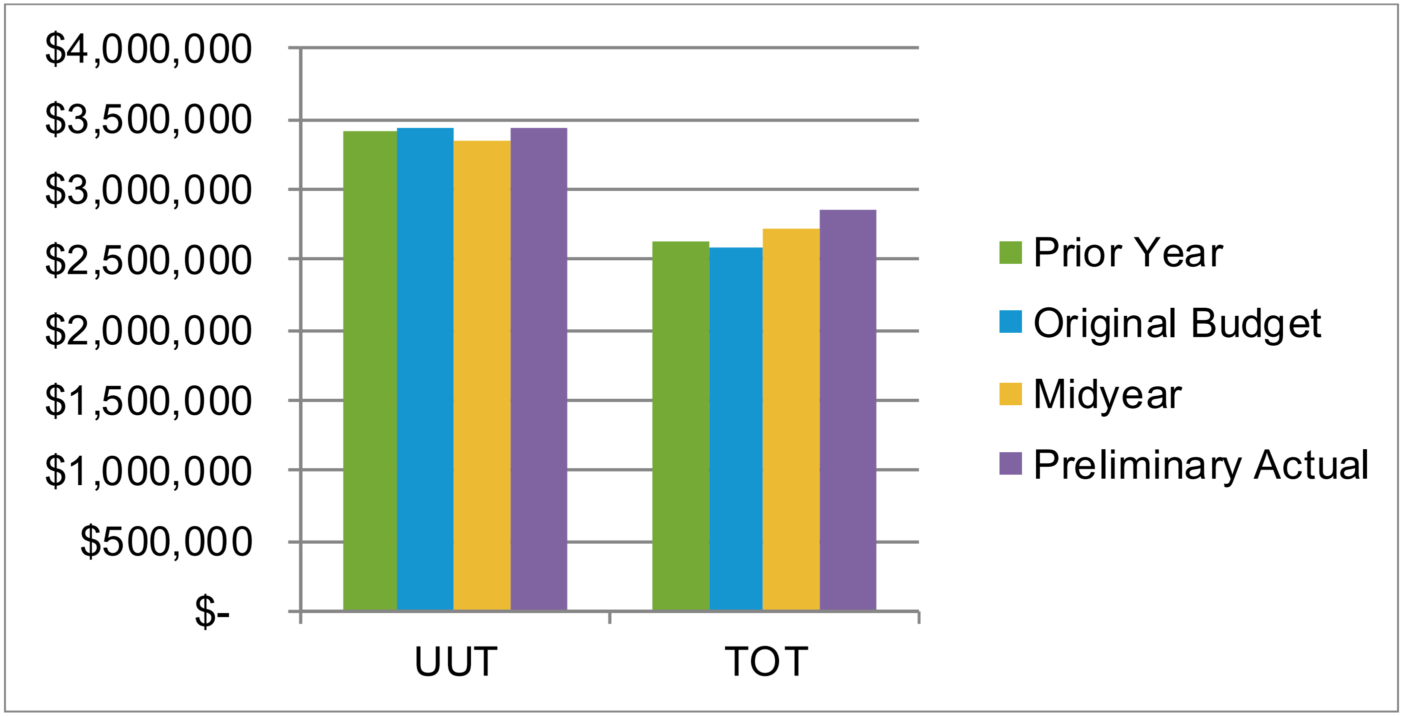
Preliminary Property and Sales Tax Revenues



Up 5% from budget

Up 3.4% from budget

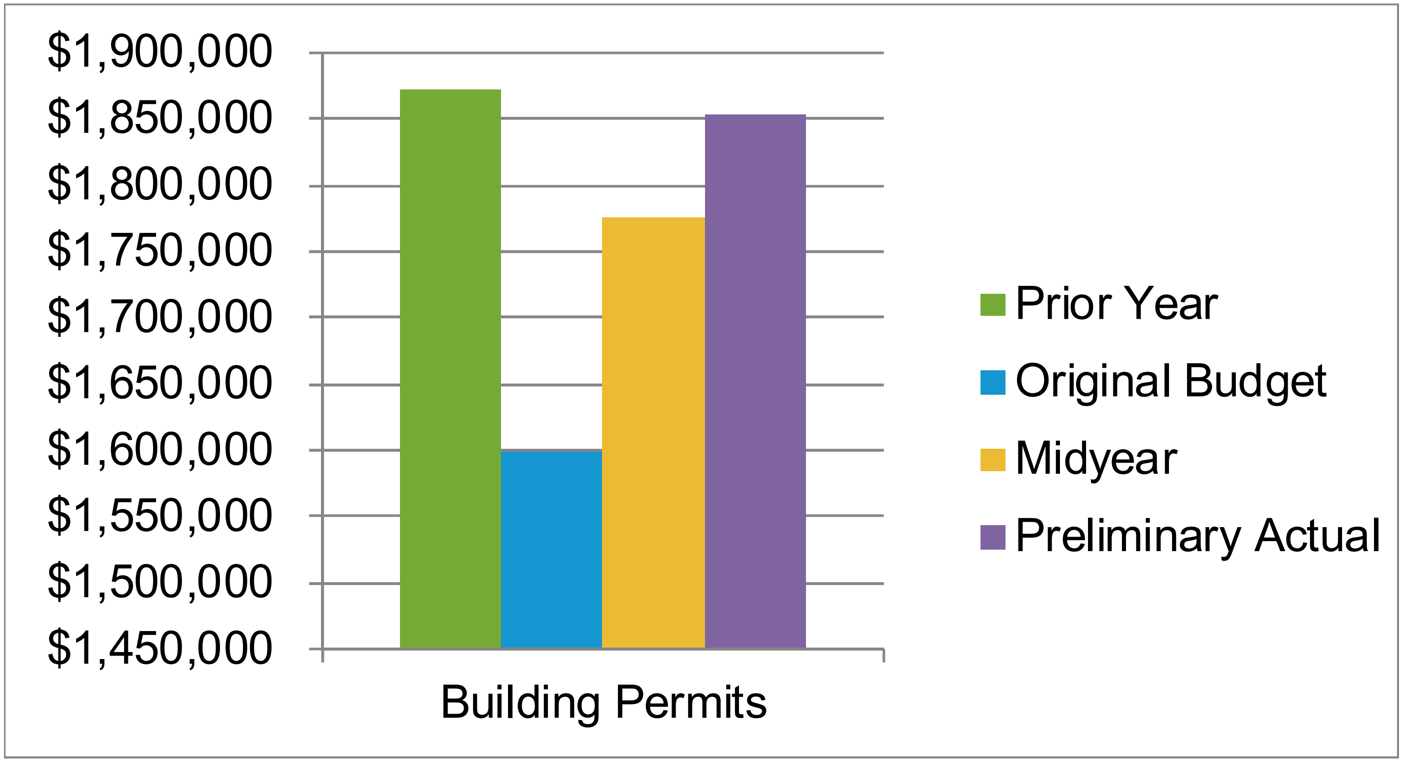
Preliminary UUT and TOT Revenues



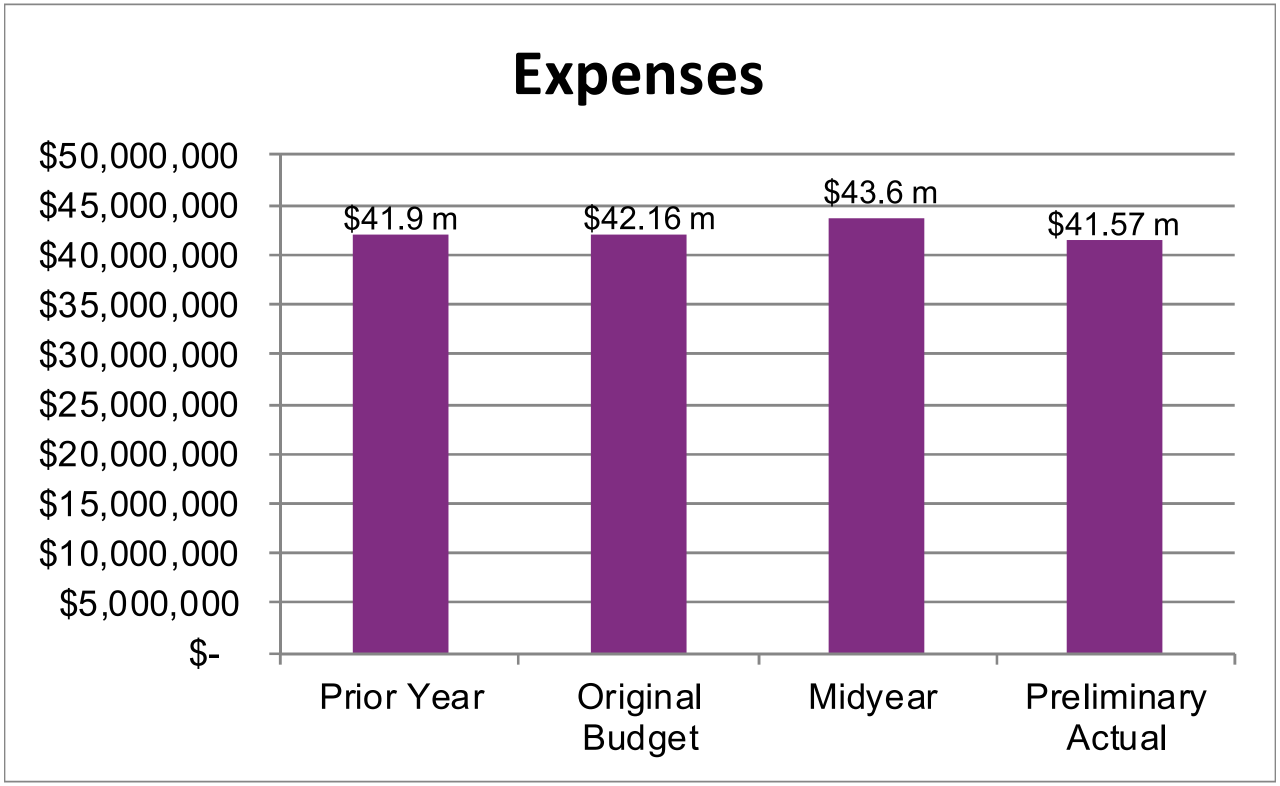
.28% more than budget

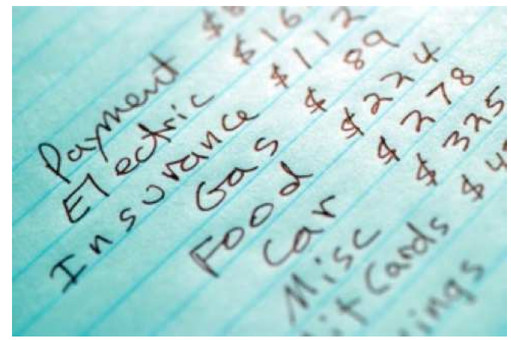
10% more than budget

Preliminary Building Permit Revenues



Preliminary General Fund - Expenditures





Preliminary Results - General Fund

	12/13 Actual	13/14 Original Budget	13/14 Prelim. Actual	Variance from PY		Variance From Budget	
Property Tax	$12,008,691	$11,811,800	$12,421,202	$415,511	3.4%	$609,402	5%
Sales Tax	12,114,819	12,380,500	12,797,765	682,946	5.6%	417,265	3.4%
UUT	3,411,126	3,430,000	3,439,608	28,482	.8%	9,608	.28%
TOT	2,636,893	2,589,000	2,859,013	222,120	8.4%	270,013	10%
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Operating Surplus			**$2,664,831**				
Transfers Out			**(1,998,622)**				
Net Surplus	**$633,312**	**$672,535**	**$666,209**				

Rancho Cordova Youth Center Update

Prepared by: Housing Services Division

Background:

Four years ago, Council charged staff to examine opportunities for establishing a youth oriented facility in partnership with the Police Activities League (PAL). After significant analysis, staff started working toward installing a portable building at the Cordova Lane Elementary School site that would be owned by FCUSD and would house a boxing ring along with all the equipment for a robust boxing program. PAL had obtained some quality boxing gear a while back, and had it in storage. The PAL team at the time had the experience and skills to effectively operate a boxing program. However, Rancho PAL had never operated a facility before, so staff required them to prepare a strategic plan that would detail how they would operate the facility, how they would handle staffing changes, and their budgeting priorities prior to financially committing to the project. It took PAL a while to get an effective strategic plan in place. In the mean-time, there was significant turn-over in PAL staff and the board. The new PAL staff did not have the experience or the desire to operate a boxing program, though they are fully committed to helping RC's youth.

During this time we were working with FCUSD to get a lease in place for the portable building. We had sent several lease drafts back and forth for comments and review. Each draft required legal comment, which was time consuming and expensive for both parties. There were clauses in the lease that were not compatible with CDBG rules, and the difficulty in getting the lease CDBG compliant, combined with the ongoing legal expenses and the turn-over in PAL staff, including the transfer of the boxing advocates to other Sac Sheriff facilities, made the whole program seem very impractical. CDBG is flexible but high-liability and the City did not want to end up as the operator of a boxing program at Cordova Lane. We graciously thanked FCUSD for all their hard work and expense, withdrew from lease negotiations, and decided to pass on the boxing program.

However, we still had a commitment to providing PAL with a youth center. We had an executed agreement with PAL, and we continued to believe that the City would benefit from an active and well-operated youth center. We started talking with Folsom Cordova Community Partnership (FCCP) and Cordova Recreation and Parks District (CRPD) to figure out if there was a way to leverage their programs and staff to help PAL put together a youth center program that would provide services to as many youth as possible and still be long-term feasible. We identified space at the Rancho Cordova Neighborhood Center (RCNC) immediately adjacent to FCCP and had begun negotiations with the landlord for a CDBG compliant 15-year lease. The space would allow for a computer lab, homework/tutoring center, game and entertainment area, foosball or ping-pong tables, a snack-bar, equipment storage, conference room, and an office for staff. The site is already ADA compliant with accessible restrooms, and since it was the former office of Neighborhood Services, it is wired for a computer network. The site is additionally appealing because it could be up and running in a very short time.

The PAL board decided that it was not a good time for PAL to take on the long term obligation for a youth center. Unfortunately, the CDBG funds had begun to age, and were under scrutiny by HUD. Staff approached FCCP to determine if they would be interested in operating a youth center adjacent to their existing facility. During this time, HUD provided feedback about the use of CDBG funds to finance a long-term lease. CDBG funds would have needed to be fronted to the property owner for the life of the lease. This was not something that the property owner was interested in doing, as it had a negative impact on his bottom line.

Update:

At the Housing Services Division update, Council asked staff to explore other youth center options before continuing to pursue the project with FCCP. Staff then interviewed Council members individually to assess priorities, and then began to research providers and facilities. Council had mentioned the Boys and Girls Club as a possible option for our community. Research confirmed that the Boys and Girls Club is the primary nationally known large facility operator in the region. Staff invited Maureen Price, the CEO and Shannon McPhedran, the VP of Operations of the local Boys and Girls Club branch to City Hall to learn how their facilities and programs work. Staff then went to the Boys and Girls Club facility in South Sacramento to tour the facility and see what a large scale youth center looks like. The following information is a debrief of what is involved in developing a Boys and Girls Club facility, and a comparison between the Boys and Girls Club, and the facility proposed for FCCP.

Programs:

FCCP:

The inflexibility of CDBG funds with regards to the lease, forced Staff to find another funding source. The CDBG funds were recaptured and reallocated. Staff were able to identify an additional $225,000 of unencumbered funds that could be used toward the youth facility, however these funds are also aging. The funds could be used for a tenant improvement of the site and the ongoing payment of a lease. The program, as initially discussed with FCCP, is intended to be in partnership with the existing FCCP youth mentoring project, and would most likely target at-risk youth, especially the pre-teens and teens that are participating in the mentoring project. The details of the programming were not thoroughly discussed; however FCCP expressed a willingness to be flexible and work with the City's desires and needs, including youth job training and life skills training.

Boys and Girls Club:

The South Sacramento Boys and Girls Club is an K-12 club with capacity for about 250 children. It currently serves around 125 children a day. The majority of the children are in elementary school, at 12 years or younger. There is a structured afternoon schedule that includes time for play, homework, athletics or arts, and snacks. The facility is open between 2 pm and 7 pm during the week, and has three full time and numerous part time staff. It also has a full size gymnasium, a multi-purpose room, a large play space, a full commercial kitchen, a library, a computer lab, and multiple classrooms. The facility also has a small space available exclusively for teens. However, teens make up a very small portion of the overall youths utilizing the site. The total site is 5 acres, with parking, a multi-use field, and raised bed gardens. While the site and building were very nice, there was evidence of deferred maintenance, which club staff identified as the most difficult cost to reliably fund.

Table 1 on the following sheet compares the two projects and identifies the strengths, and challenges of each.

TABLE 1

Variables	Boys and Girls Club	FCCP Youth Program
Capital Cost	$100,000 up front for a feasibility analysis. $15 to $20 million for a new facility ($7 to $10 million for a rehabilitated existing site)	$225,000 (existing un-encumbered funds)
Operating Cost	Depends on Club Size and number of attendees – Would be significant, and may require ongoing subsidy to fully meet need	Depends on Programming and hours of operation. FCCP will fund all operations. No anticipated ongoing operational subsidy
Operating Times	School Year: 2pm to 6pm for younger children, 7pm for teens during the week Summer: depends on funding	TBD
Facility Size	Minimum of 5 acres, 25,000 to 35,000 square feet	3,700 square feet (can be leveraged with CRPD park space, school district facilities, and PAL programs)
Timing	3-5 years for feasibility, capital construction, and indefinite operations timeline	3 month tenant improvement period, 7-8 year lease (timed to coincide with FCCP's current lease) for operations
Challenges	Finding qualifying sites, funding ongoing operations and maintenance, competing projects in North Sacramento, long development period, top level staff turnover, sites are not fully utilized – would need an agreement with a Charter School or similar to get full daily use of the facility, access to public transportation and potential challenges for residents both North and South of Highway 50	Limited period lease terms, no immediate access to outdoor space, no immediate youth center operation experience, access for residents South of Highway 50
Program Terms	Will not agree to a facility unless it will be long-term feasible, will need significant autonomy for siting, operates programming based on national organizational programs, most children pay an annual $15 membership fee.	Will leverage space for existing programs and uses, programs will be restricted to funding regulations
Target Population	Children ages 6 through mid/late teens. Frequently works as after-school care for families.	At risk youth between the ages of 10 and 18.
Assets	Nationally known program, strong donation pool, established programming, regional presence	Locally known program, good reputation as a performing non-profit, convenient siting, strong local fundraising presence
Liabilities	Significant ongoing cost, no experience in working with City staff	No youth center experience, no identified operational funding

Youth Center Update

Housing Services Division

Jessica Hayes
Peter Ibrahim

Boys & Girls Club of Greater Sacramento

Teichert Branch
5212 Lemon Hill Avenue
Sacramento

- 32,538 SF community center facility
- 3,204 SF office space

Boys & Girls Club of Greater Sacramento

- Gymnasium
- Art/music/drama room
- Teen center
- Library
- Games and central activities room
- Martial arts center
- Kitchen
- Kids café
- Board/Game room
- Exterior covered patio
- Soccer Fields

Youth Center Project Comparison

Variables	Boys & Girls Club	FCCP Youth Program
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Youth Center
Project Comparison

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Youth Center Project Comparison

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AGENDA ITEM