CITY OF SOLEDAD
JOINT CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AUTHORITY AND SUCCESSOR HOUSING AGENCY REGULAR MEETING AGENDA

WEDNESDAY, MAY 1, 2024

CITY HALL, COUNCIL CHAMBERS

6:00 PM

The public meeting will open at 6:00 p.m. and, after taking public comment for closed session items, the Council will immediately recess to closed session.

Join Zoom Meeting
https://cityofsoledad.zoom.us/j/85628218944
Or Call
1-669-900-6833 and use Meeting ID: 856 2821 8944

Welcome to your City of Soledad City Council/Successor Agency Meeting. Your City Councilmembers/Agencymembers are:

Mayor Anna Velazquez
Mayor Pro Tem Maria Corralejo
Councilmember Fernando Cabrera
Councilmember Fernando Ansaldo-Sánchez

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC COMMENT - CLOSED SESSION ITEMS

At this time, any member of the public may address the Council/Agency on Closed Session items appearing on the agenda. Speakers shall have limited time of three (3) minutes. Please be brief and to the point.

IV. CLOSED SESSION

A Closed Session will be held immediately prior to the open public meeting, and will begin at 6:00 p.m. The open public meeting will begin at 6:30 p.m., or as soon thereafter as the Closed Session is concluded or adjourned for consideration and conclusion at the end of the open public meeting.

1. The City Council of the City of Soledad will recess to closed session to meet with its designated representatives regarding labor relations matters pursuant to Government Code Section 54957.6. The employee organizations are the Soledad Police Officers' Association (SPOA), SEIU Local 521 General Unit and SEIU Local 521 Mid-Management Unit and unrepresented employees.

2. The City Council will recess to closed session pursuant to Government Code Section 54956.8 to give instructions to the City's negotiator concerning the sale/exchange/lease of property located 183 Soledad Street (Assessor Parcel Numbers 022-026-001, -002, and -017). Instructions will include price and terms of payment.

V. CLOSED SESSION REPORTS

VI. PLEDGE OF ALLEGIANCE

VII. ADDITIONS/MODIFICATIONS TO THE AGENDA

Items of business may be added to the agenda upon a motion adopted by a minimum 2/3 vote finding that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the agenda being posted. Items may be deleted from the agenda upon request of staff or upon action of the Council.

VIII. PUBLIC COMMENT

At this time any member of the public may address the City Council on items not appearing on the agenda and items of interest to the public that are within the jurisdiction of the Council. A public comment card should be filled out completely to ensure the speaker is called upon to give comment. Public comments are generally limited to three (3) minutes; the mayor may further limit the time for public comments depending on the agenda schedule. Please be brief and to the point. No action or discussion shall be taken on an item not appearing on the agenda.

IX. COUNCIL PRESENTATIONS

1. A Proclamation of the City Council of the City of Soledad in Honor and Recognition of Mr. Benjamin Jimenez, Jr., for his outstanding years of service to the City of Soledad.

2. A Proclamation of the City Council of the City of Soledad Proclaiming April 28 - May 04, 2024 as Small Business Week.

3. A Proclamation of the City Council of the City of Soledad Proclaiming May 5 - 11, 2024 as Public Service Recognition Week.

4. A Proclamation of the City Council of the City of Soledad Proclaiming May 2024 as Mental Health Awareness Month.

5. A Proclamation of the City Council of the City of Soledad Proclaiming May 7, 2024 as Teachers' Day

X. PRESENTATIONS

1. Parks and Recreation Year 3 Update

Attachments:
Blue White Illustration Infographic Presentation

2. Townsend Public Affairs Presentation regarding Legislative and Grant Updates for the City of Soledad

Attachments:
City of Soledad - May.1.2024 Council Presentation FN.pptx

XI. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered routine by the City Council and will be adopted by one action of the Council unless any Councilmember has any questions or wishes to make a statement or discuss an item. In that event, the mayor will remove the item from the Consent Calendar for separate consideration.

1. Minutes

1. Joint City Council/Successor Agency Regular Meeting Minutes of April 03, 2024
2. Joint City Council/Successor Agency Special Meeting Minutes of April 09, 2024

Attachments:

Staff Report
Minutes of 04.03.2024
Letter of Resignation. 04-03-2024
Minutes of 04.09.2024

COUNCIL ACTION: _____

2. Warrants

054045 - 054283

Attachments:

Staff Report
054045 - 054283

COUNCIL ACTION: _____

3. Fire Department Activity Report

Attachments:

Staff Report Fire
- April 2024

COUNCIL ACTION: _____

4. Community Engagement, Activity Report

Attachments:

Staff Report

COUNCIL ACTION: _____

5. Human Resources Activity Report

Attachments:

Staff Report

COUNCIL ACTION: _____

6. Parks and Recreation Activity Report

Attachments:
Staff Report
23 24 3rd Qtr Activity Report.pdf

COUNCIL ACTION: _____

7. Public Works Activity Report

Attachments:
Staff Report
PW Activities Pictures

COUNCIL ACTION: _____

8. Community/Economic Development Dept. Activity Report

Attachments:
Staff Report
Building Permits Issued Apr. 2024.pdf

COUNCIL ACTION: _____

9. Police Department Activity Report

Attachments:
Staff Report
Monthly Crime, Calls for Service.pdf

COUNCIL ACTION: _____

10. Resolution No. 6072, a Resolution of the City Council of the City of Soledad Approving the Consulting Services Agreement with Wallace Group for Construction Management and Inspection Services for the Front Street Maintenance Project and Authorizing the City Manager to Execute Said Agreement For $299,830 Plus a 10% Contingency for a Total Not to Exceed Amount of $329,813

Attachments:
Staff Report
Resolution No. 6072
Exhibit A - Copy of Wallace Agreement

COUNCIL ACTION: _____

11. Resolution No. 6073, A Resolution of the City Council of the City of Soledad Authorizing the Submittal of a Prohousing Designation Program Application to the California Department of Housing and Community Development (HCD) and Participation in the Prohousing Designation Program

Attachments:
Staff Report
Resolution No. 6073
2 - State Resolution - HCD PHD Application
3 - Prohousing Application Soledad Application

COUNCIL ACTION: _____

12. Resolution No. 6074, a Resolution of the City Council of the City of Soledad to Accept and Approve the Final Miramonte Storm Drain Impact Study Dated January 2023

Attachments:
Staff Report
Resolution No. 6074
2023-01-18 Final Miramonte SD Impact
Report 2022-08-31 Miramonte SD Tech Memo

COUNCIL ACTION: _____

13. Resolution No. 6075, a Resolution of the City Council of the City of Soledad Establishing Speed Limits for Collector and Arterial Streets

Attachments:
Staff Report
Resolution No. 6075
Exhibit A - ETS Final Report.pdf

COUNCIL ACTION: _____

14. Resolution No. 6076, a Resolution of the City Council of The City of Soledad Approving the Consulting Services Agreement with Pavement Engineering Inc. for Construction Management and Inspection Services for The 2024 Crack Seal Project and Authorizing the City Manager to Execute Said Agreement For $76,000

Attachments:
Staff Report
Resolution No. 6076
Exhibit A - Copy of Agreement PEI
Exhibit B - Map of Streets under this project

COUNCIL ACTION: _____

15. Accept by Minute Motion The 2023 Water System Consumer Confidence Report

Attachments:
Staff Report
2023 Water Quality CCR

COUNCIL ACTION: _____

16. Resolution No. 6077, a Resolution of the City Council of the City of Soledad Approving the Purchase of One (1) Public Works Fleet Vehicle from Soledad Auto Sales, Dispensing with Bidding per Soledad Municipal Code Section 3.24.040 And Authorizing the City Manager to Purchase said Vehicle in an Amount Not to Exceed of $34,945

Attachments:
Staff Report
Resolution No. 6077
2021 Dodge Ram Quote, KBB Value and Car Fax Report

COUNCIL ACTION: _____

17. Resolution No. 6078, A Resolution of the City Council of the City of Soledad Approving and Authorizing the City Manager to Execute a Facilities Joint Use Agreement Between the Soledad Unified School District and the City of Soledad

Attachments:
Staff Report
Resolution No. 6078
Exhibit A - Joint Use Agreement with Soledad School District
Attachment 2 - 2022 Facility Use Agreement and Resolution No. 5755

COUNCIL ACTION: _____

XII. PUBLIC HEARING NO. 1

- Receive the Staff Report
- Open the Public Hearing
- Close the Public Hearing
- Council Action

1. Rescind Resolution No. 6070, Establishing Procedures for the Selections of the Mayor and Mayor Pro Tem

   Transition to District-Based Elections for Councilmembers-Proposed District Maps-Public Hearing No. 6

   Consider Introduction, Waiver of Reading and Read by Title Only an Ordinance of the City Council of the City of Soledad Establishing and Implementing By-District Elections-4 District Map

Attachments:
Staff Report
Resolution No. 6070
Ordinance re Four-District Action 4-17-24

XIII. BUSINESS

1. Resolution No. 6071, A Resolution of the City Council of the City of Soledad Accepting the Vision and Guiding Principles for the 2024 Siempre Soledad General Plan Update Meeting

Attachments:
Staff Report
Resolution No. 6071
Exhibit A- Vision and Guiding Principles- draft
Attachment 2. Key Themes Community Input
Attachment 3. Resolution No. 2024-04 The General Plan Vision and Guiding Principles - signed (002)
Attachment 4. CC Presentation 050124 AM Edits

COUNCIL ACTION: _____

2. Consider Proposed Changes to Councilmember Compensation and Provide Direction to Staff

Attachments:
Staff Report

COUNCIL ACTION: _____

3. Consideration of Council Rules, Procedures, Protocols, and Decorum and Provide Direction to Staff

Attachments:
Staff Report
Attachment 1. City Council Rules Policies and Procedures
Attachment 2 - Council Consensus on Meeting Protocols, Goal Setting, and Next Steps - August 23, 2023
Attachment 3 - Temecula 2024 Protocol Manual

COUNCIL ACTION: _____

XIV. MAYOR'S ANNOUNCEMENTS AND REPORTS

XV. COUNCILMEMBERS' ANNOUNCEMENTS AND REPORTS

XVI. COUNCILMEMBERS' PRAISES

XVII. CITY MANAGER'S REPORT

XVIII. FUTURE AGENDA ITEMS

XIX. ADJOURNMENT

XX. CERTIFICATION

I Megan Hunter, City Clerk of the City of Soledad, do hereby certify that a copy of the foregoing Joint City Council/Successor Agency Regular Meeting Agenda was posted at City Hall by Friday, April 26, 2024, at 5:00 p.m.

Megan Hunter, City Clerk

04/25/2024
Date

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact Deputy City Clerk Darlene Noriega at (831) 223-5014. Notification of at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (RCRF 35.102-35.104).

"Any writing or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at City Hall located at 248 Main Street, Soledad, California during normal business hours."

En caso que usted necesite ayuda en leer o en entender este aviso de Junta Publica, usted puede ponerse en contacto con la oficina del Edificio Municipal en 248 Calle Main o llamar al número (831) 223-5014, y el aviso será traducido para usted.

Advanced submittal of public comments via email are due by 2:00 P.M. on the day of the scheduled meeting to the Deputy City Clerk at darlene.noriega@cityofsoledad.com Comments are limited to 250 words or less and effort will be made to read your comment into the record, but some comments may not be read due to time limitations. The City Clerk will read email comments, provided that the reading shall not exceed three (3) minutes. The email comments submitted shall become part of the record.

Comentarios públicos por correo electrónico deben realizarse no más tarde de las 2:00 p.m. el día de la reunión programada y deben ser enviados al Secretario de la Ciudad a darlene.noriega@cityofsoledad.com. Los comentarios son limitados a 250 palabras o menos y se hará un esfuerzo para leer su comentario en el registro, pero es posible que algunos comentarios no se lean debido a limitaciones de tiempo. El Secretario de la Ciudad leerá los comentarios por correo electrónico, siempre que la lectura no exceda los tres (3) minutos. Los comentarios enviados por correo electrónico pasarán a formar parte del registro.

Parks and Recreation Department

FROM THE GROUND UP IN THREE YEARS

Jessica Potts
Recreation Manager

DEPARTMENT TIMELINE

YEAR 1

Hitting the Ground Running

April 2021 - June 2021

April 2021:

- Launched department, began renovations for the 30 yr old Community Center
- I started on April 19!
- Began creating dept. policy, program plans, etc.

May:

- Began registration for 1st SPR programs
  - Summer Camp & Youth Basketball
- Hired SPR's first staff - 26 PT Youth Staff

June

- 6/14 - First day of summer camp
- 6/15 - Soft open the doors to the public
- 6/2 - Official Grand Opening!

UP AND GOING IN 58 DAYS

Major Accomplishments
First Fiscal Year 21/22

Foundation Programs - 1273 Participants
Facility Fitness & Open Gym - 16,313 Uses

Pre-K Programs - 0-5 yrs - 182 Total (Parent/Guardian Inclusion)

- Art & Development - 182 Participants

Youth Programs: 6-17 yrs - 647 Total

- Art & Culture - 46 Participants
- Performing Arts (Dance) - 48 Participants
- Break Camps - 174 Participants
- Sports - 379 Participants
  - Basketball & Soccer

Adult & Family - 200 Total

- Art & Culture - 16 Participants
- Adult Sports & Fitness- 184 Participants

Seniors (60+) - 244 Total

- Art & Culture - 29 Participants
- Social Services - 215 Participants

From 0 to 16,313 Non-program visitors to the Community Center (Fitness Center & Gym)

- 16,313 June 14, 2021-June 30, 2022
- 1,255 avg a month
- 41 avg a day

Participation in Community Events

- NNO, Spookfest, Easter Celebration, SPR Summer Kick-off

Facility Repairs & Upgrades

- Installed Fitness Center
- Facility Painting, Inside and Out
- Removed Broken Bleachers
- Major Mold Eradication

DEPARTMENT TIMELINE

YEAR 2

Establishing a Foundation

Fiscal Year 22/23

Programs - 2,079 Participants
63 % Increase over 21/22

Fitness Center and Open Gym - 25,183
54% Increase over 21/22

Facility Open - 305 Days
Hours of Operation - 4,456

Pre-K Programs - 0-5 yrs - 222 Total (Parent/Guardian Inclusion)

- Art & Development - 159 Participants
- Sports - 63 Participants

Youth Programs: 6-17 yrs - 1,048 Total

- Art & Culture - 60 Participants
- Performing Arts (Dance) - 70 Participants
- Break Camps - 295 Participants
- Sports - 623 Participants
  - Basketball, Soccer, Flag Football, Volleyball

Adult & Family - 81 Total

- Art & Culture - 26 Participants
- Adult Sports & Fitness- 55 Participants

Seniors (60+) - 393 Total

- Social Services - 393 Participants

Special Events

- SPR Signature - 335 Total
  - Cookies with Santa - 99 Attendees
  - Summer Kick-off - 58 Attendees
  - Disney Dazzle Play - 178 Attendees
- Hot Summer Days, 4th of July Celebration, NNO, Spookfest, Easter Celebration

Fitness Center and Open Gym - 25,183 Uses

- Membership Uses - 14,837
- Gym Uses - 10,346
- 2,099 avg a month
- 84 avg a day

Facility Repairs & Upgrades

- Install New Mechanical Gym Bleachers
- Gym Floor Scrub, Repaint, and Recoat
- Upgrade and install cabinets in kitchen and Large Multi-Purpose Room

DEPARTMENT TIMELINE

YEAR 3 - Current

Watch us Grow

Fiscal Year 23/24

As of April 2024 (9 months)

Programs - 2,190 Participants
5% Increase over 22/23 - in 9 months

Fitness Center and Open Gym - 21,957
15% Anticipated increase over 22/23

Facility Open - 303 Days
Hours of Operation - 4,242

Pre-K Programs - 0-5 yrs - 222 Total (Parent/Guardian Inclusion)

- Art & Development - 114 Participants
- Sports - 36 Participants

Youth Programs: 6-17 yrs - 923 Total

- Art & Culture - 162 Participants
- Performing Arts (Dance) - 64 Participants
- Break Camps - 161 Participants
- Sports - 536 Participants
  - Basketball, Soccer, Flag Football, Volleyball

Adult & Family - 157 Total

- Art & Culture - 79 Participants
- Adult Sports & Fitness- 78 Participants

Seniors (60+) - 384 Total

- Social Services - 384 Participants

Fitness Center and Open Gym - 21,957 Uses

- Membership Uses - 14,438
- Gym Uses - 7,519
- 2,440 avg a month (9-months)
- 97 avg a day (9-months)

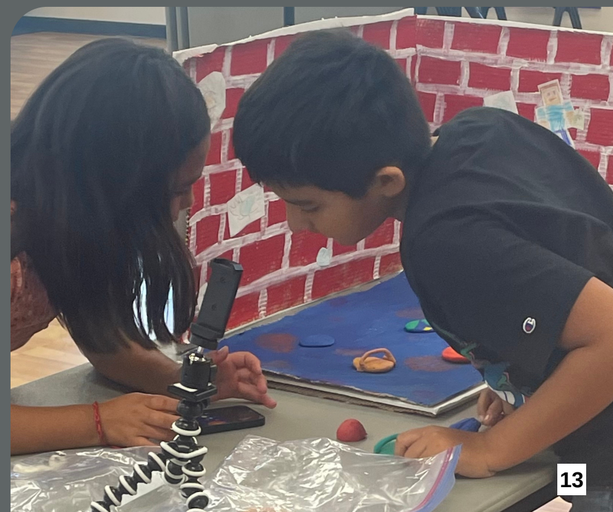
Special Events

- SPR Signature - 504 Total
  - Cookies with Santa - 116 Attendees
  - Haunted House - 192 Attendees
  - Aristocats Play - 196 Tickets to date
- Hot Summer Days, 4th of July, NNO, Spookfest, Dia de Los Muertos, Community Workshops, Resource Fairs, Easter Celebration

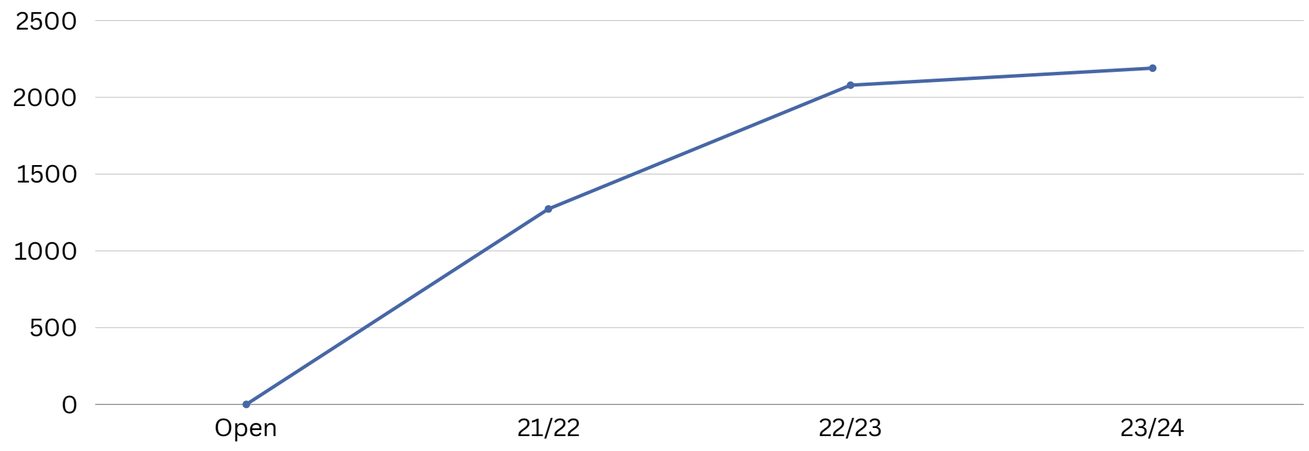
Park Additions

- Opened Orchard Lane Park
- Installed Field Light: Blas Santana & Jesse Gallardo Parks

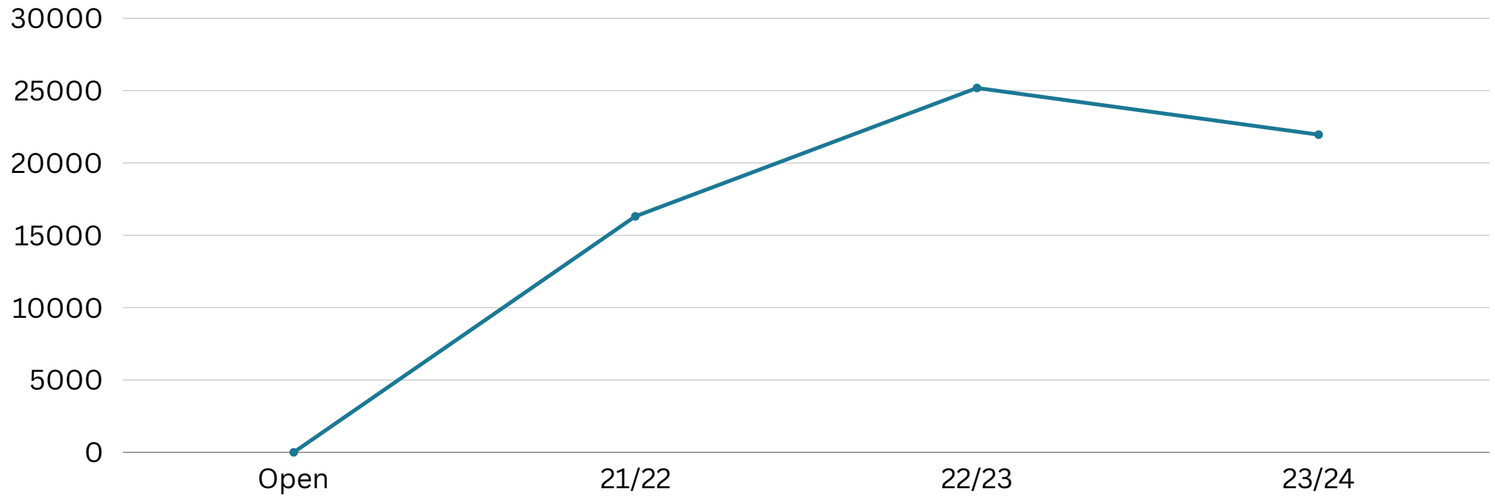
PROGRAM WALL OF FAME



PROGRAM PARTICIPATION GROWTH



FITNESS & GYM USE GROWTH



WHO MAKES IT HAPPEN

SPR Org End of 21/22 Fiscal Year

Jessica Potts
Recreation Manager

Priscilia Rodriguez
Recreation Supervisor

PT Staff
13-26

PT Instructors
2

SPR Org End of 22/23 Fiscal Year

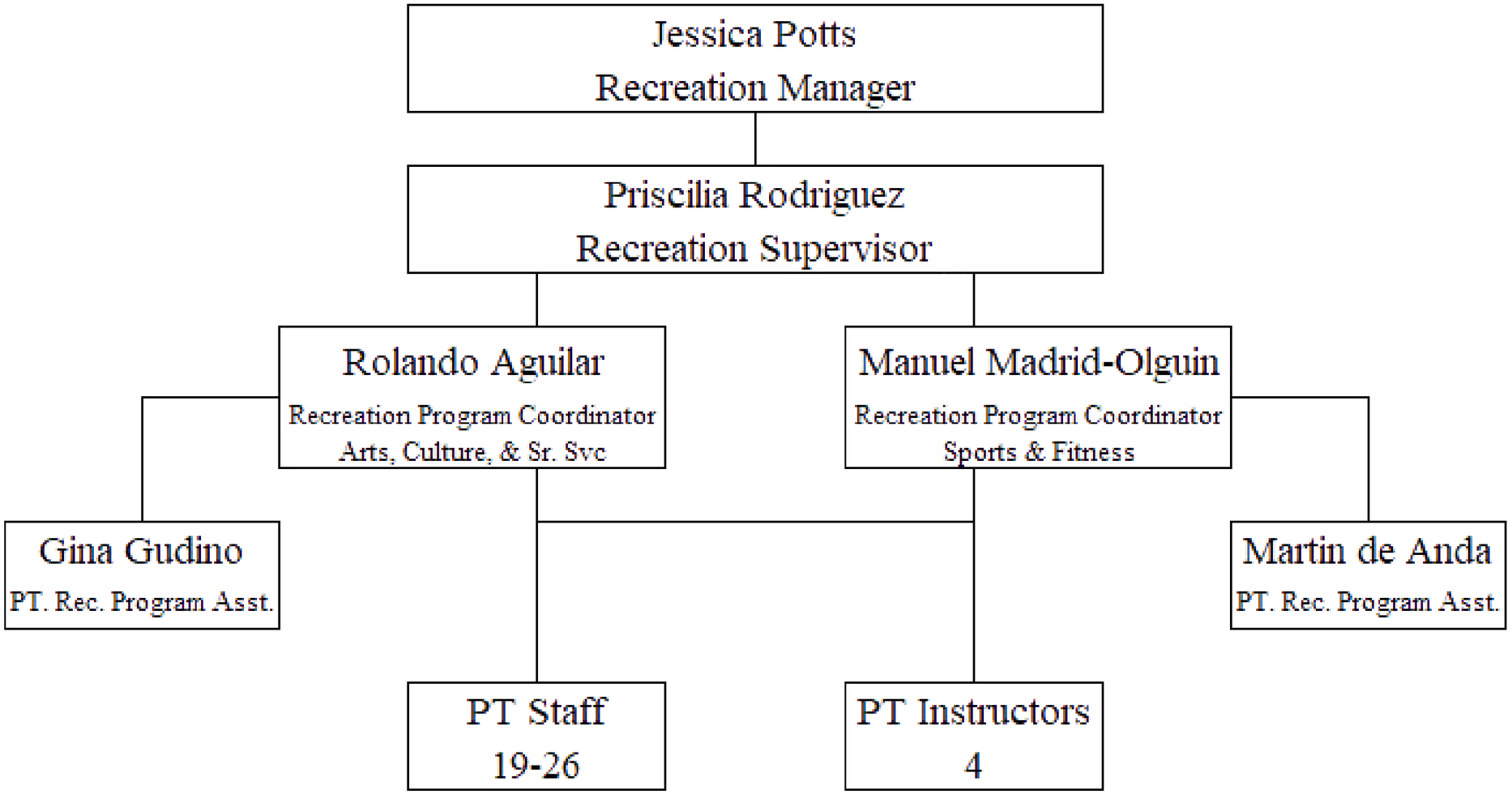
Jessica Potts
Recreation Manager

Priscilia Rodriguez
Recreation Supervisor

PT Staff
13-26

PT Instructors
2

SPR Org Today



4 - Full-time Staff
19 - Part-time Staff / 7 additional summer staff in the process
4 - Part-time Instructors / 3 additional in the process

OUR TEAM CULTURE

A culture that fosters growth, encourages creativity and leadership, and supports the needs and interests of our staff

WE COULDN’T DO IT ALONE

Current Partnerships

Providing our community with services is our priority!

Senior Services
- Meals on Wheels
- Loaves & Fishes
- Alliance on Aging
- Blue Zones Project
- Monterey County Foodbank

Youth Services / Special Needs
- Special Kids Connect
- Blue Zones Project
- Community Science Workshop

Family and Community Services
- Workforce
- County of Monterey
- Ecology Action
- Lioness Club of Soledad
- Soledad-Mission Recreation District

More partnerships to come!

Senior Services
- Monterey County Health Depart.

Youth Services / Special Needs
- Wahine Project
- ACEing Autism
- Breakthrough Behavior
- San Andreas Regional Center
- Soledad Family Resource Center

Family and Community Services
- Wahine Project

TOP ACHIEVEMENTS

01 - Created a new full-service department

02 - Renovated, upgraded, and improved the Soledad Community Center, creating a community activity and social hub

03 - Finalized and opened Orchard Lane Park, with South County's first inclusive playground

04 - Increased program capacity and accessibility by partnering with 12 service-based organizations

05 - Provided employment opportunities to over 50 Soledad youth

06 - Increased participation & user capacity through improved facility and increased program offerings

LOOKING TO THE FUTURE

Parks and Recreation Master Plan

Using community feedback and insights today to plan for the twenty years of services and community needs.

Community Center Capital Campaign

Necessary facility upgrades to ensure accessibility for all for generations to come

- Kitchen Remodel
- Full Facility ADA Improvements
- Updated Gym Lighting
- Electrical and Stage Upgrades
- HVAC Upgrades
- Emergency Services Upgrades
- Outdoor lighting, landscaping and EV Charging

Goals

01 - Take Recreational opportunities out into the community through recreation pop-up programs

02 - Increase program options for seniors and those with special needs buy creating additional partnerships

03 - Continue to increase program opportunities and increase participation by 20%

04 - Continue to seek grants to work to improve parks and recreational facilities

THANK YOU

Questions?

TOWNSEND
PUBLIC AFFAIRS
EST TPA 1998

City of Soledad Legislative Advocacy and Grants Update

May 1, 2024

WWW.TOWNSENDPA.COM

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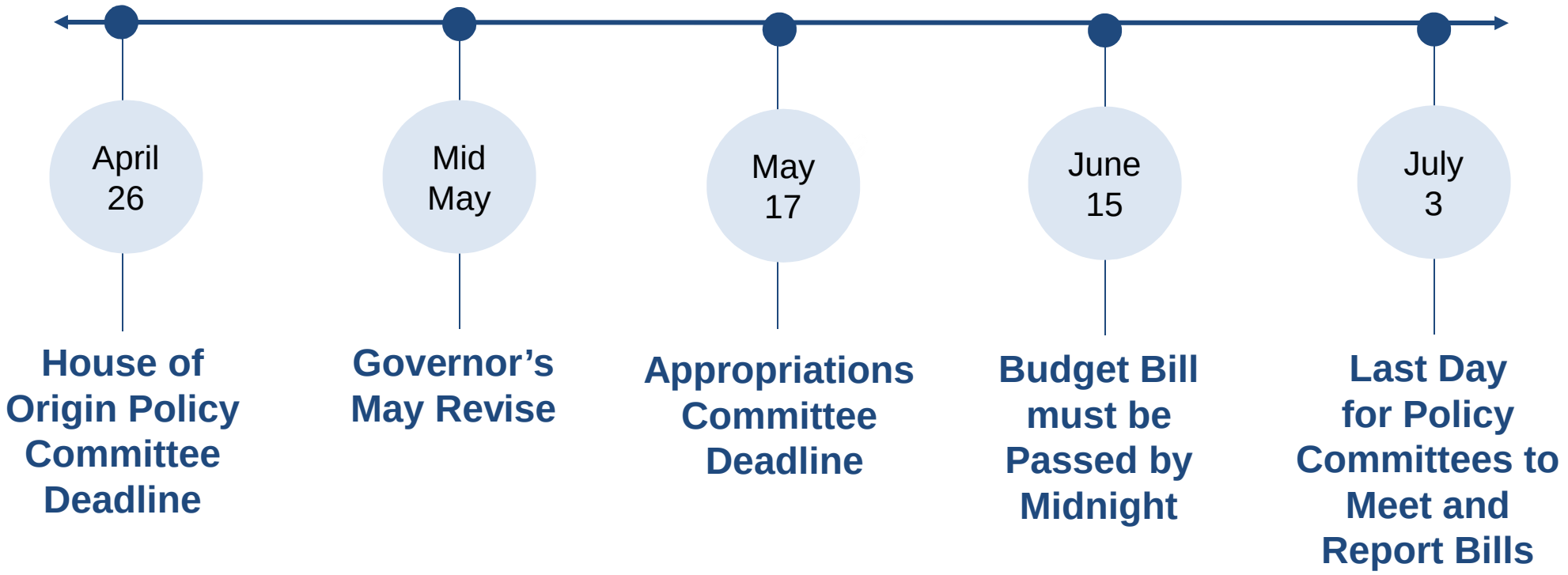
2024 Legislative Session



2024 Legislative Session

Sacramento Meetings During Cal Cities City Leaders Summit

Speaker Robert Rivas' Chief Consultant on Public Safety

Assembly Member Buffy Wicks' Chief Housing Policy Advisor

Recent Work

- Submission of State Budget Earmarks
- Submission of Federal Appropriations Earmarks.
- Formal positions on Public Safety Legislation and Housing Legislation
- Evaluating additional measures to act on
- Weekly and Monthly Legislative, Regulatory, Budget, and Grants Updates / Memos

Coming Up / Major Items

STATEWIDE BALLOT INITIATIVES

- ACA 13/Taxpayer Protection Act
- ACA 1

STATEWIDE BONDS

Under Consideration for November 2024

- Climate Bond
- Housing Bond
- School Facilities Bond

Grants Update – 2023 Submitted

Office of Traffic Safety Grant	**Public Safety Equipment Acquisition**	**$55,000**	**Awarded**
Assistance to Firefighters Grant	**Ladder and Hose Acquisition**	**$87,200**	**Not Awarded** **Resubmitted in 2024**
Integrated Climate Adaptation and Resiliency Program	**Climate Action Plan Update**	**$650,000**	**Not Awarded** **Resubmittal in Progress in 2024**
DOJ Tobacco Grant	**Tobacco Enforcement Operations**	**$215,967.00**	**Awarded**
Whale Tail Grant Program	**Senior Recreational Trips**	**$60,000.00**	**Not Awarded**
Outdoor Equity Grant Program	**Soledad Nature Adventures Travel Program**	**$134,423.00**	***Pending***

Total Awarded: **$270,967**

Grants Update – 2024 Submitted*

Sustainable Transportation Planning Grant	**Climate Action Plan Development Project**	**$260,000.00**	**Pending**
California Volunteers Grant Program	**City Youth Internship Program**	**$96,000.00**	**Not Awarded**
USDA Rural Business Development Grant	**Soledad Container Village Feasibility Study**	**$50,000.00**	***Pending***
AARP Community Challenge Grant	**Senior Wellness Trips**	**$30,000.00**	***Pending***
Assistance to Firefighters Grant	**Fire House Equipment**	**$47,272.00**	***Pending***
Staffing for Adequate Fire and Emergency Response Grant	**Four Firefighter Positions**	**$2,829,537**	***Pending***

*as of April 23, 2024

Total Pending: **$3,351,232**

Grants Update – Applications in Progress

Safe Streets and Roads For All (SS4A)

Transportation Safety Planning – Application in Progress

Integrated Climate Adaptation Planning Grant
City Climate Adaptation and Action Plan – Application in Progress
**Application scored highly in 2023 cycle, Agency Staff highly recommended resubmitting in the current cycle*.

Active Transportation Program
City Bicycle/Pedestrian Projects (To Be Determined) – Application in Progress

Walmart Grant Program:
Various Community Development Projects
Registration to Apply currently pending

Tobacco Grant Program:
Planned Resubmittal of Successful 2023 Application for 2024 Cycle, once open

Grant Opportunities: Q2 2024

Administrator & Grant Name	Application Info	Eligible Projects	Application Deadline
California Arts Council/Department of Parks and Recreation **Art in California Parks Grants**	$15,000 - $150,000 Match recommended, but not required	The program will establish art installations and programming in State and local parks as catalysts for sustainable community connection, health, and well-being.	**June 14, 2024**
CalOES/FEMA **Hazard Mitigation Grant**	Funds Hazard Mitigation Projects	Generators, Hazard Mitigation Planning, Flood Mitigation, Wildfire Mitigation **Monterey County-eligible Round will open shortly as a result of the President's April 19th State of Emergency Declaration of 2024 Winter Storms.**	Notice of Intent Deadline: TBA
Governor's Office of Planning and Research **Jobs First Initiative**	Implementation Grants TBD	Broad Economic Development Projects: Youth Corps, Incubators, Projects that Result in Noteworthy Economic Development **City projected to apply for Container Village Project**	TBD
CalFIRE **Urban and Community Forestry Grant**	Award range $150,000 - $1,500,000 No Match Required	The program supports increased, equitable access to urban tree canopy and associated benefits in disadvantaged communities, broadened community engagement in local urban forest planning, tree planting, and management activities; and improved community and urban forest resilience to climate change.	**May 30, 2024**
Department of Justice **Community Policing Development (CPD) Microgrants Program** **Hiring Program**	$200,000 per Microgrant $125,000 Annually per Officer (Hiring Grant)	The Community Policing Development (CPD) Microgrants Program provides funding to implement demonstration or pilot projects that offer creative ideas to advance crime fighting, community engagement, problem solving, or organizational changes in support of community policing. The COPS Hiring Grant provides funding to hire and retain additional law enforcement positions.	May 14, 2024 (Microgrants) June 6, 2024 (Hiring Grants)

Questions?

TOWNSEND
PUBLIC AFFAIRS
EST TPA 1998

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Anastasia Heaton
Senior Associate
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(949)629-5752

AGENDA ITEM NO. 1.

COUNCIL COMMUNICATION

SUBJECT: **Minutes**
1. Joint City Council/Successor Agency Regular Meeting Minutes of April 03, 2024
2. Joint City Council/Successor Agency Special Meeting Minutes of April 09, 2024

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Darlene Noriega, Deputy City Clerk**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Minutes

City of Soledad
Joint City Council/Successor Agency/Housing Authority/Successor Housing Agency/
Regular Meeting
April 03, 2024

CALL TO ORDER
Mayor Velazquez called the Joint City Council/ Successor Agency/ Housing Authority/ Successor Housing Agency/ Regular Meeting to order at 6:07p.m.

ROLL CALL
The Following Councilmembers/Agency members were present when the meeting was called to order:

Mayor/Chair	Anna M. Velazquez
Mayor Pro Tem/Vice Chair	Maria Corralejo
Councilmember/Agency Member	Fernando Cabrera

THE FOLLOWING COUNCILMEMBER WAS ABSENT

None

PUBLIC COMMENT – CLOSED SESSION ITEMS

None

MEETING RECESS TO CLOSED SESSION

None

CLOSED SESSION

None

MEETING RECONVIENED FROM CLOSED SESSION

None

CLOSED SESSION REPORTS

None

PLEDGE OF ALLEGIANCE

Mr. Anthony Rocha led the Pledge of Allegiance

ADDITIONS/MODIFICATIONS TO THE AGENDA

None

PUBLIC COMMENT

A public comment was received by Deputy City Clerk Darlene Noriega from Ben Jimenez Jr. and read into the record regarding his resignation (see attached letter).

There were no further public comments.

COUNCIL PRESENTATIONS

1. Mayor Velazquez presented a Proclamation recognizing April 7-13, 2024, as National Library Week the Soledad Branch Library.
2. Mayor Pro Tem Corralejo presented a Proclamation recognizing April 2024 as "Purple Up! for Military Kids" Month to the of the Bocanegra Family.
3. Councilmember Cabrera presented a Proclamation recognizing April 2024 as Sexual Assault Awareness Month to Lideres Campesinas
4. Mayor Velazquez presented a Proclamation in Recognition of Volunteer Appreciation Month to the Soledad Lions Club.

The Council took a brief break to take a photo with the groups who were presented proclamations.

CERTIFICATION OF THE MARCH 05, 2024, ELECTION

1. Resolution No. 6062, A Resolution of the City Council of the City of Soledad Declaring the Canvass of Returns and Results of the Consolidated Special Municipal Election Held on March 5, 2024

City Manager Megan Hunter presented a brief background on the item.

Motion: Councilmember Cabrera made motion to approve Resolution No. 6062. Motion was seconded by Mayor Pro Tem Corralejo and carried by following vote:

Action

Ayes:	Cabrera, Corralejo, Velazquez
Noes:	None
Abstain:	None
Absent:	None

OATH OF OFFICE ADMINISTERED TO INCOMING COUNCILMEMBER

Fernando Ansaldo-Sánchez, Councilmember
Mr. Anthony Rocha, City of Soledad Councilmember, performed the Oath of Office to the elected Councilmember Fernando Ansaldo-Sánchez

The Council took a brief break for the seating of Councilmember Fernando Ansaldo-Sánchez.

YOUTH COUNCIL REPORT

The 04/03/2024 written report was included in the agenda.

PRESENTATIONS

None

CONSENT CALENDAR

Mayor Pro Tem Corralejo requested to have separate discussion regarding item number C-10

There were no public comments.

Motion: Councilmember Cabrera made motion to approve items C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-11, C-12, and C-13. Motion was seconded by Mayor Pro Tem Corralejo and carried by following vote:

Action for Item C-1

Ayes:	Cabrera, Corralejo, Velazquez
Noes:	None
Abstain:	Ansaldo-Sánchez
Absent:	None

C-1. **Minutes**

Joint City Council/Successor Agency Regular Meeting Minutes of March 03, 2024

C-2. Warrants

053784 - 053919 and 053920 - 054044

C-3. Human Resources Activity Report

C-4. Community and Economic Development Department Activity Report

C-5. Parks and Recreation Department Activity Report

C-6. Public Works Department Activity Report

C-7. Fire Department Activity Report

C-8. Police Department Activity Report

C-9. Community Engagement Activity Report

C-11. Resolution No. 6058, A Resolution of the City Council of the City of Soledad Approving and Accepting the DOJ-Prop56 Tobacco Enforcement Grant, Authorizing the City Manager to Execute a Memorandum of Understanding with the California Department of Justice, and Approving a Budget Amendment to Fiscal Year 23/24 Budget

C-12. Resolution No. 6067, A Resolution of the City Council of the City of Soledad Accepting and Approving the Standard Agreement for the Alcoholic Beverage Control (ABC) ABC-2100 Alcohol Enforcement Grant and Approving a Related Budget Amendment

C-13. Resolution No. 6057, A Resolution of the City Council of the City of Soledad Approving a Contract with Townsend Public Affairs, Inc for Legislative Advocacy and Grant Funding Services in an amount not to exceed $30,000.

City Manager Hunter presented the staff report. The City did put down a deposit of $7,500 which is half of the total amount due and is what was agreed.

Motion: Mayor Pro Tem Corralejo made motion to approve items C-10. Motion was seconded by Councilmember Cabrera and carried by following vote:

Action

Ayes:	Corralejo, Cabrera, Ansaldo-Sánchez, Velazquez
Noes:	None
Abstain:	None
Absent:	None

C-10. Accept by Minute Motion Sponsorship of the 4th of July Fireworks Show

BUSINESS

B-1. Resolution No. 6063, A Resolution A Resolution of the City Council of the City of Soledad Approving a Final Subdivision Map (FM 2024-01) for the Soledad Marketplace Located at the Southeast Corner of Nestles Road and Los Coches Drive

City Manager Hunter presented the staff report.

There were no public comments.

Motion: Councilmember Cabrera made motion to approve Resolution No. 6063. Motion was seconded by Councilmember Ansaldo-Sánchez and carried by the following vote:

Action

Ayes:	Cabrera, Ansaldo-Sánchez, Corralejo, Velazquez
Noes:	None
Abstain:	None
Absent:	None

B-2. Resolution No. 6064, A Resolution of the City Council of the City of Soledad to Accept and Approve Amendment No. 1 to the City of Soledad Water System Master Plan and Amendment No. 2 to the Sanitary Sewer Master Plan to Include the Miramonte Project

Public Works Director Don Wilcox presented the staff report.

Akel Engineering Group Inc. President Tony Akel was present via Zoom and presented a brief PowerPoint presentation.

There were no public comments.

Councilmembers had numerous comments and questions.

Motion: Councilmember Cabrera made motion to approve Resolution No. 6064. Motion was seconded by Mayor Velazquez and carried by the following vote:

Action

Ayes:	Cabrera, Velazquez, Ansaldo-Sánchez, Corralejo
Noes:	None
Abstain:	None
Absent:	None

B-3. Resolution No. 6059, A Resolution of the City Council of the City of Soledad Approving and Accepting the 2023 General Plan and Housing Annual Progress Reports and Authorizing its Submittal to the State of California Department of Housing and Community Development and the Governor's Office of Planning and Research

Associate Planner Ariana Mora and Housing Analyst Beatriz Trujillo presented the staff report.

There were no public comments.

Councilmembers had numerous questions and comments.

Motion: Mayor Pro Tem Corralejo made motion to approve Resolution No. 6059. Motion was seconded by Councilmember Cabrera and carried by the following vote:

Action

Ayes:	Corralejo, Cabrera, Ansaldo-Sánchez, Velazquez
Noes:	None
Abstain:	None
Absent:	None

B-4. Receive the status update on Approved American Rescue Plan Act Projects and Approve Recommended Modification as Presented.

Finance Director Mike Howard presented the staff report.

Mr. Reynoso stated he applied for the façade program and has not heard anything further from City staff. He understands the City is wanting to move forward with other projects, however, he completed the application process before.

Community and Economic Development Director Kao Nou Yang said she will be in contact with Mr. Reynoso during normal business hours.

Councilmembers had numerous questions and comments.

Motion: Councilmember Cabrera made motion to approve the item as it was presented. Motion was seconded by Mayor Velazquez and carried by the following vote:

Action

Ayes:	Cabrera, Velazquez, Ansaldo-Sánchez, Corralejo
Noes:	None
Abstain:	None
Absent:	None

B-5. Review of FY 2023-24 Mid-Year Financial Report and Consideration of Mid-Year Financial Budget Adjustments and Position Reclassifications in the Public Works Department

Finance Director Mike Howard presented the staff report.

There were no public comments.

Councilmembers had numerous questions and comments.

Motion: Councilmember Cabrera made motion to approve the item as it was presented. Motion was seconded by Mayor Pro Tem Corralejo and carried by the following vote:

Action
Ayes: Cabrera, Corralejo, Ansaldo-Sánchez, Velazquez
Noes: None
Abstain: None
Absent: None

B-6. Resolution No. 6060, A Resolution of the City Council of the City of Soledad Approving a Contract for Construction Services with Blok Modular Constructors, Inc. In an Amount of $279,780 plus 10% Contingency for a Total Amount Not to Exceed of $307,758 for the Purchase and Installation of the Corporation Yard Modular Office Building and Authorizing the City Manager to Execute Said Contract on Behalf of the City of Soledad

Assistant Engineer Alex Ramos presented the staff report.

There were no public comments.

Motion: Councilmember Ansaldo-Sánchez made motion to approve Resolution No. 6060. Motion was seconded by Councilmember Cabrera and carried by the following vote:

Action
Ayes: Ansaldo-Sánchez, Cabrera, Corralejo, Velazquez
Noes: None
Abstain: None
Absent: None

B-7. Resolution No. 6061, A Resolution of the City Council of the City of Soledad Approving a Consulting Services Agreement Task order with Cannon Engineering for Professional Design Services for the City Hall/police Department/Emergency Operations Center - Backup Emergency Generator Replacement and Upgrades Project and Authorizing the City Manager to Execute the Task Order in the Not to Exceed Amount of $87,180

Public Works Director Don Wilcox presented the staff report.

There was no public comment.

Motion: Councilmember Ansaldo-Sánchez made motion to approve Resolution No. 6061. Motion was seconded by Mayor Velazquez and carried by the following vote:

Action
Ayes: Ansaldo-Sánchez, Velazquez, Cabrera, Corralejo
Noes: None
Abstain: None
Absent: None

B-8. Resolution No. 6065, A Resolution of the City Council of the City of Soledad Accepting the Orchard Lane Park Project as Completed by Monterey Peninsula Engineering and Authorizing the Release of Retention Payment.

Public Works Director Don Wilcox presented the staff report.

There were no public comments.

Motion: Mayor Pro Tem Corralejo made motion to approve Resolution No. 6065. Motion was seconded by Councilmember Cabrera and carried by the following vote:

Action

Ayes:	Corralejo, Cabrera, Ansaldo-Sánchez, Velazquez
Noes:	None
Abstain:	None
Absent:	None

B-9. Resolution No. 6066, A Resolution of the City Council of the City of Soledad Authorizing the City Manager to Execute Agreements with Four Organizations Deemed Eligible under the City's Mini Grants Program in an Amount not to Exceed $16,100

Community Engagement Manager Jesus Valenzuela presented the staff report.

There were no public comments.

Councilmembers had numerous questions and comments.

Motion: Councilmember Ansaldo-Sánchez made motion to approve Resolution No. 6066. Motion was seconded by Councilmember Mayor Velazquez and carried by the following vote:

Action

Ayes:	Ansaldo-Sánchez, Velazquez, Cabrera, Corralejo
Noes:	None
Abstain:	None
Absent:	None

The council took a brief break at 9:39 p.m.

The council returned from break at 9:46 p.m.

B-10. City Council Consideration and Direction Concerning Post-Referendum Action on By-District Voting.

City Attorney Mike Rodriquez presented the staff report.

There were no public comments.

Councilmembers had numerous questions and comments.

City Attorney Mike Rodriquez will look further into what the council can do to ensure that the the four-district map is not overridden by a future council; can this be done by way of language in an ordinance. He will also look into if the council approved a four-district map, could there be a citizens-initiated initiative that would then place that on the ballot. He will bring back his finding and recommendation to the next meeting scheduled meeting scheduled of 05/01/2024.

Action
The council received the report.
Council Direction was provided to staff.

B-11. Filling a Council Vacancy

City attorney Mike Rodriquez presented the staff report. The option the council has is to fill the vacancy by appointment.

Monica Andrade said she would like the appointment process opened to the public to apply. She would like to see transparency, equality, and no preferential treatment towards any applicant.

There were no further public comment.

Mayor Velazquez suggested that staff look at the application the City of Marina used. She found that Marina's process was transparent. They allowed each candidate up to 10 minutes to speak on their experience and qualifications. Also, each councilmember asked questions related to the city. Her recommendation is to move forward with opening the application process and have a special meeting for the interview process.

Councilmember Ansaldo-Sánchez agrees with the Mayor's suggestion; however, he would like to have questions given to applicants ahead of time.

Mayor Pro Tem Corralejo agrees with Councilmember Ansaldo-Sánchez in providing applicants the questions ahead of time. She remembers the last application process being very transparent because all the applicants and the public were able to see all the applications, personal information was redacted.

Action
The council received the report.
Council Direction was provided to staff.

B-12. Appointment to the Salinas Valley Waste Authority Board of Directors

City Manager Hunter presented the staff report and mentioned that Councilmember Corralejo was the Alternate and that should have been included in the report. It may make sense for her to serve as the replacement.

There were no public comments.

Mayor Velazquez recommended allowing Councilmember Ansaldo-Sánchez to be appointed to the Salinas Valley Waste Authority.

Councilmember Ansaldo-Sánchez expressed that he would like to be appointed to the Salinas Valley Solid Waste Authority Board.

Motion: Councilmember Ansaldo-Sánchez made motion to approve himself to be appointed to the Salinas Valley Solid Waste Authority Board. Motion was seconded by Councilmember Cabrera and carried by the following vote:

Action

Ayes:	Ansaldo-Sánchez, Cabrera, Corralejo, Velazquez
Noes:	None
Abstain:	None
Absent:	None

MAYOR'S ANNOUNCEMENTS AND REPORTS

1. On 03/07 she attended the Community vigil for the mass shooting that took place in King City.
2. On 03/11 she attended the Monterey-Salinas transit Board of Directors meeting.
3. On 03/01 she met with City Manager Hunter and Community and Economic Development Director. Kao Nou Yang to regarding an economic development initiative to pursue the container village.
4. On 03/14 she attended the Soledad Rotary Reverse Draw.
5. On 03/13 she attended the AMBAG Board of Directors meeting.
6. On 03/16 she attended opening ceremony for Soledad Little League.
7. On 03/20 she attended the Emergency Leadership Council Meeting.
8. On 03/21 she attended the City Budget workshop.
9. On 03/22 she met with San Andreas Regional Center Fransisco Valenzuela and Recreation Manager Jessica Potts to discuss Superhero Days.
10. On 03/25 she attended a visit with Congresswoman Zoe Lofgren.
11. On 03/28 she attended the Monterey County Traffic Alliance Safety Corridor 2nd Taskforce Meeting.
12. On 04/02 she participated in the Grassroots Advocacy Day with San Andreas Regional Centers.
13. On 04/03 she attended a meeting with Supervisor Lopez and the South County Mayors and City Managers.

COUNCILMEMBERS' ANNOUNCEMENTS AND REPORTS

Mayor Pro Tem Corralejo had 3 items to report:
1. On 03/14 she attended the Soledad Rotary Reverse Draw.
2. On 03/25 was not able to spend time with Congresswoman Zoe Lofgren.
3. On 03/28 she attended the Soledad Merchants meeting.

Councilmember Ansaldo-Sánchez had 1 item to report:
1. On 03/21 he attended the City's Budget workshop.

Councilmember Cabrera had 2 items to report:
1. On 03/21 he attended the City's Budget workshop.

COUNCILMEMBERS' PRAISES

Councilmembers gave praises to numerous groups.

CITY MANAGERS' REPORT

1. There will be a Special Council meeting on 04/09/2024.
2. On 04/10 there will be a Community meeting regarding Safety Improvements.
3. There have been concerns regarding opening an animal control center here in South Couty. South County will be hosting a future meeting to discuss the item.

FUTURE AGENDA ITEMS

Mayor Pro Tem Corralejo requested 1 future agenda item:
1. She would like an agenda item regarding streamlining council meetings. Meetings have been very long and there is a lack of decorum during meetings. The meetings should be efficient, equitable. Council should respect staff's time and Community members' time.

Councilmember Ansaldo-Sánchez requested 2 future agenda items:
1. He would like to have a presentation from the Code Enforcement Department.
2. He would like to have a proclamation and flag raising for Pride in June.

Councilmember Cabrera requested 1 future agenda item:
1. He would like to bring back the item of SB 329, city council salary, as an agenda item.

Mayor Velazquez requested 2 future agenda item and 1 Point of Privilege item:
1. The creation of a Legislation ad hoc committee.
2. Bring back council policies that councilmembers received in August, to have further discussion about streaming the meetings.

Mayor Velazquez stated that regarding to the timing of the last meeting, there were many items on the agenda and part of her job as the Chair is to move the meeting forward, and make sure everyone has enough time to speak. The council should come prepared to the meetings, ask their questions in advance, and should not make comments that don't necessarily have to be made.

ADJOURNMENT

Meeting adjourned at 11:24 p.m.

Minutes Approved: May 01, 2024

_____
ANNA M. VELAZQUEZ, Mayor/Chair

_____
MEGAN HUNTER, City Manager

A public comment was received by Deputy City Clerk Darlene Noriega from Ben Jimenez Jr. and read into the record regarding his resignation

ATTACHMENT - WRITTEN PUBLIC COMMENT

I am writing to inform you of my decision to resign from my position on the city council,
effective March 31, 2024. While it has been an absolute honor and privilege to serve the people of Soledad for the past eleven-plus years, it is time for me to step down and focus on my family.

I want to express my sincere gratitude to our staff and council members for their commitment to improving the quality of life in Soledad. I am particularly thrilled about a couple of initiatives that I have championed. First, the development of the west side of Front Street will attract new businesses that will create job opportunities, including restaurants, entertainment, and social events.

gathering spaces. Secondly, we implemented a youth violence prevention program, to provide our young people with alternatives and help them lead better lives. As I prepare to leave my position to spend more time with my grandchildren and family, I urge the council to work together to establish goals and objectives that meet the diverse needs of all the residents of Soledad. Our community consists of individuals from all walks of life, and we must continue to strive towards inclusivity and equality for all our citizens, and not just a few. In closing, I want to express my sincere gratitude to you and the rest of the council for your understanding and support throughout my tenure. I am grateful for the opportunity to have served the people of Soledad, and I wish the council continued success in their efforts.

Minutes

City of Soledad
Joint City Council/Successor Agency/Housing Authority/Successor Housing Agency/
Special Meeting
April 09, 2024

CALL TO ORDER
Mayor Velazquez called the Joint City Council/ Successor Agency/ Housing Authority/ Successor Housing Agency/ Regular Meeting to order at 6:30 p.m.

ROLL CALL
The Following Councilmembers/Agency members were present when the meeting was called to order:

Mayor/Chair	Anna M. Velazquez
Mayor Pro Tem/Vice Chair	Maria Corralejo
Councilmember/Agency Member	Fernando Cabrera
Councilmember/Agency Member	Fernando Ansaldo-Sánchez

THE FOLLOWING COUNCILMEMBER WAS ABSENT

None

PUBLIC COMMENT – CLOSED SESSION ITEMS

None

MEETING RECESS TO CLOSED SESSION

6:33 p.m.

CLOSED SESSION

1. The City Council of the City of Soledad will recess to closed session to meet with its designated representatives regarding labor relations matters pursuant to Government Code Section 54957.6. The employee organizations are the Soledad Police Officers' Association (SPOA), SEIU Local 521 General Unit and SEIU Local 521 Mid-Management Unit and unrepresented employees.

MEETING RECONVIENED FROM CLOSED SESSION

7:00 p.m.

CLOSED SESSION REPORTS

1. City Attorney Mike Rodriquez reported with respect to item no. 1, the council met with its labor negotiators and the associations that are listed on the agenda; SPOA, SEIU Local 521, and SEIU Local 521 Mid Management Unit and provided some direction to its negotiators. No other reportable action was taken.

PLEDGE OF ALLEGIANCE

Beatriz Trujillo led the Pledge of Allegiance.

ADDITIONS/MODIFICATIONS TO THE AGENDA

City Manager Hunter reported two modifications to the agenda:

1. The change is not specific to the agenda; On the Consent item, Amendment No. 2 says it will expire April 6, 2024, but it will expire April 30, 2024.
2. On the 5th Where As clause, there is an extension of one year until April 2025.

PUBLIC COMMENT

None

CONSENT CALENDAR

1. Resolution No. 6068, A Resolution of the City Council of the City of Soledad Approving Task Order No. 2, Amendment No. 3 with Harris & Associates for City Engineering and Staff Augmentation Services and Authorizing the City Manager to Execute Said Amendment on Behalf of the City of Soledad

City Manager Hunter presented the staff report.

There were no public comments.

Motion: Councilmember Cabrera made motion to approve items C-10. Motion was seconded by Mayor Pro Tem Corralejo and carried by following vote:

Action

Ayes:	Cabrera, Corralejo, Ansaldo-Sánchez, Velazquez
Noes:	None
Abstain:	None
Absent:	None

BUSINESS

B-1. Resolution No. 6069, a Resolution of the City Council of the City of Soledad Approving a Contract for Construction Services with David Construction & Management, Inc. In an Amount of $749,685.13 Plus a 5% Contingency for a Total Not to Exceed Amount of $787,169 for the Soledad Community Center Modernization Project and Authorizing the City Manager to Execute said Contract on Behalf of The City of Soledad

Assistant Engineer Alex Ramos presented the staff report.

Councilmembers had various comments and questions.

There were no public comments.

Motion: Councilmember Cabrera made motion to approve Resolution No. 6063. Motion was seconded by Councilmember Ansaldo-Sánchez and carried by the following vote:

Action

Ayes:	Ansaldo-Sánchez, Cabrera, Corralejo, Velazquez
Noes:	None
Abstain:	None
Absent:	None

ADJOURNMENT

Meeting adjourned at 7:13 p.m.

Minutes Approved: May 01, 2024

_____
ANNA M. VELAZQUEZ, Mayor/Chair

_____
MEGAN HUNTER, City Manager

AGENDA ITEM NO. 2.

COUNCIL COMMUNICATION

SUBJECT: **Warrants**
054045 - 054283

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Darlene Noriega, Deputy City Clerk**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

4/25/2024 2:28 PM A/P HISTORY CHECK REPORT PAGE: 1

VENDOR SET: 01 City of Soledad
BANK: * ALL BANKS
DATE RANGE: 4/03/2024 THRU 99/99/9999

VENDOR I.D.	NAME		STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
C-CHECK	VOID CHECK		V	4/05/2024			054053		
C-CHECK	VOID CHECK		V	4/05/2024			054054		
C-CHECK	VOID CHECK		V	4/05/2024			054056		
C-CHECK	VOID CHECK		V	4/05/2024			054063		
C-CHECK	VOID CHECK		V	4/05/2024			054064		
C-CHECK	VOID CHECK		V	4/05/2024			054069		
C-CHECK	VOID CHECK		V	4/05/2024			054076		
C-CHECK	VOID CHECK		V	4/05/2024			054121		
GREENS	GREEN'S ACCOUNTING								
C-CHECK	GREEN'S ACCOUNTING	VOIDED	V	4/05/2024			054158		16,337.03CR
C-CHECK	VOID CHECK		V	4/19/2024			054171		
C-CHECK	VOID CHECK		V	4/19/2024			054172		
C-CHECK	VOID CHECK		V	4/19/2024			054174		
C-CHECK	VOID CHECK		V	4/19/2024			054205		
C-CHECK	VOID CHECK		V	4/19/2024			054209		
C-CHECK	VOID CHECK		V	4/19/2024			054211		
C-CHECK	VOID CHECK		V	4/19/2024			054212		
C-CHECK	VOID CHECK		V	4/19/2024			054262		
C-CHECK	VOID CHECK		V	4/19/2024			054263		
C-CHECK	VOID CHECK		V	4/19/2024			054273		
C-CHECK	VOID CHECK		V	4/19/2024			054274		
C-CHECK	VOID CHECK		V	4/19/2024			054275		

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	0			0.00	0.00	0.00
HAND CHECKS:	0			0.00	0.00	0.00
DRAFTS:	0			0.00	0.00	0.00
EFT:	0			0.00	0.00	0.00
NON CHECKS:	0			0.00	0.00	0.00
VOID CHECKS:	21	VOID DEBITS	0.00			
		VOID CREDITS	16,337.03CR	16,337.03CR	0.00	

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: * TOTALS:	21	16,337.03CR	0.00	0.00
BANK: * TOTALS:	21	16,337.03CR	0.00	0.00

VENDOR SET: 01 City of Soledad
BANK: APRAB Mechanics Bank
DATE RANGE: 4/03/2024 THRU 99/99/9999

VENDOR I.D.		NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
AFLAC		AFLAC HEADQUARTERS							
	I-AF202404032186	AFLAC CONTRIBUTION	R	4/05/2024	709.34		054046		
	I-AFL202404032186	AFLAC CONTRIBUTION	R	4/05/2024	724.84		054046		1,434.18
CALIFS		CALIFORNIA STATE DISBURSEMENT							
	I-CH 202404032186	CHILD SUPPORT CONTRIBUTION	R	4/05/2024	874.15		054047		874.15
COMM F		COMMUNITY FOUNDATION FOR MONTE							
	I-CCD202404032186	CAPITAL CAMPAIGN DONATION	R	4/05/2024	165.00		054048		165.00
SEIU L		SEIU LOCAL 521							
	I-SCO202404032186	EMPLOYEE CONTRIBUTION	R	4/05/2024	24.00		054049		
	I-SEI202404032186	EMPLOYEE CONTRIBUTION	R	4/05/2024	1,356.33		054049		1,380.33
SPOA		SOLEDAD POLICE OFFICERS ASSOCI							
	I-SPO202404032186	POLICE OFFICERS CONTRIBUTIONS	R	4/05/2024	720.00		054050		720.00
STAEDD		STATE OF CALIFORNIA E.D.D.							
	I-T2 202404032186	STATE TAX W/H	R	4/05/2024	10,726.63		054051		
	I-T2 202404032187	STATE TAX W/H	R	4/05/2024	8.89		054051		10,735.52
STPERS		STATE OF CALIFORNIA PERS							
	I-PCR202404032186	CHIEF & LIEUTENANT	R	4/05/2024	3,291.69		054052		
	I-PEC202404032186	City of Soledad Conf PEPRA	R	4/05/2024	283.85		054052		
	I-PEP202404032186	EMPLOYEE CONTRIBUTION	R	4/05/2024	9,764.32		054052		
	I-PER202404032186	City of Soledad Regular Empl	R	4/05/2024	9,854.17		054052		
	I-PES202404032186	City of Soledad Police	R	4/05/2024	5,528.99		054052		
	I-PKE202404032186	City of Soledad Conf. Employee	R	4/05/2024	311.82		054052		
	I-PME202404032186	City of Soledad Reg Managers	R	4/05/2024	507.20		054052		
	I-PMR202404032186	City of Soledad Managers	R	4/05/2024	731.82		054052		
	I-PPE202404032186	City of Soledad Police	R	4/05/2024	2,258.16		054052		
	I-PPR202404032186	City of Soledad Police	R	4/05/2024	2,488.57		054052		
	I-PPS202404032186	City of Soledad Police	R	4/05/2024	5,614.73		054052		
	I-PRE202404032186	EMPLOYEE CONTRIBUTION	R	4/05/2024	4,476.58		054052		
	I-PRR202404032186	City of Soledad Regular Empl	R	4/05/2024	6,908.96		054052		52,020.86
SUNLIF		SUN LIFE ASSURANCE COMPANY OF							
	I-110202404032186	DENTAL INSURANCE	R	4/05/2024	2,572.34		054055		
	I-120202404032186	VISION INSURANCE	R	4/05/2024	458.53		054055		
	I-SLI202404032186	LIFE, AD&D, LTD	R	4/05/2024	1,677.36		054055		
	I-SLS202404032186	SUPPLEMENTAL	R	4/05/2024	365.13		054055		5,073.36
UNIWAY		UNITED WAY MONTEREY COUNTY							
	I-UN 202404032186	UNITED WAY CONTRIBUTIONS	R	4/05/2024	2.00		054057		2.00

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VANTAG		MISSION SQUARE-303584							
	I-D15202404032186	DEFERRED-EMPLOYEE PORTION	R	4/05/2024	543.61		054058		
	I-DDD202404032186	DEFERRED-EMPLOYEE PORTION	R	4/05/2024	6,550.00		054058		
	I-DEF202404032186	DEFERRED-EMPLOYEE PORTION	R	4/05/2024	477.14		054058		7,570.75
34TH S		34TH STREET INC							
	I-2023-206	Prof. Serv.-Council	R	4/05/2024	2,950.00		054059		2,950.00
AGILEO		AGILE OCCUPATION MEDICINE PC							
	I-EM015971	Pre-Emp. Med.-Maint.	R	4/05/2024	130.00		054060		130.00
AGUILA		ROLANDO AGUILAR							
	I-040524	Refund-Spring Camp 2024 Snacks	R	4/05/2024	18.98		054061		18.98
AMAZON		AMAZON CAPITAL SERVICES							
	C-11NQ-MH9R-6KKH	Return-Janitorial	R	4/05/2024	15.28CR		054062		
	I-114M-WCX6-1MQ7	Replacement Feet-Mgr's. Laptop	R	4/05/2024	25.11		054062		
	I-131G-3KNM-KXNW	VA-Supplies	R	4/05/2024	101.12		054062		
	I-13PP-HXDF-LH1Q	New Monitor for Front Office	R	4/05/2024	168.86		054062		
	I-144V-YRY4-144X	USBC Hub for Caitlan	R	4/05/2024	21.81		054062		
	I-14D1-N6XL-FVTG	PW Engineering New Hire	R	4/05/2024	498.31		054062		
	I-16CL-NYNQ-GFFV	Supplies	R	4/05/2024	42.14		054062		
	I-16RD-CDQ7-MK6P	Bluetooth Adapter for Araceli	R	4/05/2024	24.45		054062		
	I-16WM-FTRY-LQF3	Computer Monitor Replacement	R	4/05/2024	331.81		054062		
	I-17KG-TJK6-C6JN	ID-Background	R	4/05/2024	190.98		054062		
	I-17WW-XYPP-4K99	New PC for Security Camera	R	4/05/2024	414.19		054062		
	I-19KC-RR14-RJTK	Youth Art Program/Sketch Pads	R	4/05/2024	30.33		054062		
	I-1C4R-7RVD-L6LG	Replacement Holster for David	R	4/05/2024	27.07		054062		
	I-1DLG-LVKR-MLJT	New USB Chargers for Phones	R	4/05/2024	33.41		054062		
	I-1DTN-TLWT-7WWQ	Equipment	R	4/05/2024	1,539.60		054062		
	I-1FQF-GPPK-PM3L	Holiday Event/Decor/Backdrop	R	4/05/2024	341.39		054062		
	I-1H93-TT9T-RCXV	Gym Weight Belt/Fitness Equip.	R	4/05/2024	43.69		054062		
	I-1HJ4-L3RH-3CY7	Roof Cleaner for Well 11	R	4/05/2024	42.82		054062		
	I-1K7H-R9V6-T7XK	New Computers-PD Back Office	R	4/05/2024	1,346.01		054062		
	I-1LPJ-V6PW-FR4Y	FD-Office Chargers	R	4/05/2024	83.00		054062		
	I-1LYD-DYJR-N3GX	Chainsaw Chain Bars	R	4/05/2024	72.25		054062		
	I-1M67-CYQN-GCLF	File Cabinet/Office Supplies	R	4/05/2024	104.87		054062		
	I-1MC7-DHV1-LRDM	Supplies	R	4/05/2024	420.13		054062		
	I-1MDK-WKLT-19G7	Computer/Electronics Equip.	R	4/05/2024	2,133.46		054062		
	I-1MFH-9RKH-QY46	Carburator Replacement	R	4/05/2024	39.09		054062		
	I-1MHP-DWRF-76DL	New Phone Case for IT	R	4/05/2024	34.50		054062		
	I-1P9K-KT31-4GY1	Filing Cabinets	R	4/05/2024	419.44		054062		
	I-1R4D-MCKF-3CLK	Sgt's & Juan's Office Equip.	R	4/05/2024	1,066.89		054062		
	I-1RWJ-WJ61-3GWC	Scanner & Extension for Henry	R	4/05/2024	407.16		054062		
	I-1T3D-1NCY-66QX	Phone Case & Screen Protector	R	4/05/2024	59.99		054062		
	I-1TT6-M3JT-41FP	Office Supplies	R	4/05/2024	68.91		054062		
	I-1VQJ-QYVC-F9VD	Equipment/Supplies	R	4/05/2024	457.30		054062		
	I-1WKC-YGWX-4CHL	ACO Storage	R	4/05/2024	137.64		054062		

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	I-1YD7-L3LW-3FT4	Case for Replacement Phone	R	4/05/2024	29.36		054062		
	I-1YWH-L7GX-1NDP	Youth Program-Var.Art Supplies	R	4/05/2024	220.01		054062		10,961.82
AMESUP		AMERICAN SUPPLY COMPANY							
	I-3026437	Building Janitorial Supplies	R	4/05/2024	212.82		054065		212.82
ANGJOH		ANGEL H. JOHNSTONE							
	I-1020	CDBG Consulting	R	4/05/2024	11,932.68		054066		11,932.68
ANIMAL		ANIMAL DAMAGE MANAGEMENT, INC.							
	I-334761	Rodent Control-Chavez/Vosti	R	4/05/2024	200.00		054067		200.00
ARAMA		ARAMARK							
	I-155337901	PW Uniforms/Parks&Streets	R	4/05/2024	115.26		054068		
	I-5110429476	PW Uniforms/Parks&Streets	R	4/05/2024	104.60		054068		
	I-5110429477	PW Uniforms/Fleet	R	4/05/2024	118.03		054068		
	I-5110429481	WW Uniforms	R	4/05/2024	471.65		054068		
	I-5110429482	Water Uniforms	R	4/05/2024	116.76		054068		
	I-5110434097	PW Uniforms/Fleet	R	4/05/2024	118.03		054068		
	I-5110434101	WW Uniforms	R	4/05/2024	396.46		054068		
	I-5110434102	Water Uniforms	R	4/05/2024	102.74		054068		1,543.53
ARMORE		GANETE SOLUTIONS, INC.							
	I-1804674	Subscription	R	4/05/2024	3,800.00		054070		3,800.00
ASAP		ASAP SIGNS & PRINTING							
	I-24779	Office Supplies-City Council	R	4/05/2024	28.58		054071		28.58
ASSURE		ASSURED AGGREGATES COMPANY, IN							
	I-64030	Sand for Playfields	R	4/05/2024	2,863.22		054072		2,863.22
ATTCAL		AT&T							
	I-21456529	WWTP Phone	R	4/05/2024	203.57		054073		
	I-21456531	City Clerk Phone	R	4/05/2024	32.38		054073		235.95
AURUM		AURUM CONSULTING ENGINEERS MON							
	I-44509	Fire Station Load Recordings	R	4/05/2024	500.00		054074		500.00
AUTOZO		AUTOZONE LLC							
	C-5509660794	Return-Tire Bead Breaker	R	4/05/2024	79.05CR		054075		
	C-5509666167	Return-Radiator	R	4/05/2024	274.04CR		054075		
	I-5509661340	Fuel Tank Filler Hose	R	4/05/2024	73.41		054075		
	I-5509661546	MAP Sensor Connector	R	4/05/2024	32.61		054075		
	I-5509661680	Transmission Neutral Switch	R	4/05/2024	22.83		054075		
	I-5509662099	Sway Bar End Links-Suspension	R	4/05/2024	80.45		054075		
	I-5509662302	Headlight Bezel Assembly	R	4/05/2024	543.77		054075		
	I-5509665940	Battery Terminals	R	4/05/2024	34.47		054075		
	I-5509665941	Butane for Electrical Torch	R	4/05/2024	7.22		054075		

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	I-5509666159	Electrical Tape	R	4/05/2024	18.77		054075		
	I-5509666164	Radiator	R	4/05/2024	274.04		054075		
	I-5509666545	Suspension Parts	R	4/05/2024	182.98		054075		
	I-5509666547	Brake Rotor Pads	R	4/05/2024	347.98		054075		
	I-5509666564	Tools	R	4/05/2024	45.25		054075		
	I-5509666605	Water Pump	R	4/05/2024	69.59		054075		
	I-5509666781	Suspension End Links	R	4/05/2024	80.45		054075		
	I-5509666822	Thermostat&Coolant Housing	R	4/05/2024	102.26		054075		
	I-5509666824	Valve Cover&Intake Gaskets	R	4/05/2024	106.75		054075		
	I-5509666825	Thermal Imaging Tool	R	4/05/2024	172.25		054075		
	I-5509668850	Thread Sealant	R	4/05/2024	10.11		054075		
	I-5509669643	Shock Absorber	R	4/05/2024	386.85		054075		
	I-6290751186	BlueDEF Diesel-Shop	R	4/05/2024	138.31		054075		2,377.26
BADGER		BADGER METER, INC.							
	I-80155235	Badger Cell Signal	R	4/05/2024	1,306.25		054077		1,306.25
BNI		BNI PUBLICATIONS, INC.							
	I-77074	Traffic Control Workbooks	R	4/05/2024	256.76		054078		256.76
BRENNT		BRENNTAG PACIFIC INC							
	I-BPI418218	Well#7 Chlorine	R	4/05/2024	861.09		054079		
	I-BPI418219	Well#9 Chlorine	R	4/05/2024	2,782.03		054079		
	I-BPI418220	Well#11 Chlorine	R	4/05/2024	1,367.60		054079		
	I-BPI418221	La Cuesta Chlorine	R	4/05/2024	748.80		054079		5,759.52
BURKE		BURKE, WILLIAMS & SORENSEN, LL							
	I-318122	General-Prof. Attorney Svcs.	R	4/05/2024	1,209.00		054080		1,209.00
CISO		CITY OF SOLEDAD							
	I-032824	Water Services	R	4/05/2024	10,955.62		054081		10,955.62
CONEXW		BIZON GROUP INC.							
	I-INV-287286	Container Rental	R	4/05/2024	130.01		054082		130.01
CONTE		ONPOINT GENERATORS, INC.							
	I-1338	Annual Service-EM Gen.Well#6	R	4/05/2024	2,400.00		054083		2,400.00
CONWAY		CONWAY SHIELD, INC.							
	I-0520070	FD-Helmet, Badges	R	4/05/2024	464.50		054084		464.50
CORE&M		CORE & MAIN LP							
	I-T824240	Vault Hatch Cover-Lift Station	R	4/05/2024	10,650.78		054085		10,650.78

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CSC OF		CSC OF SALINAS							
	I-000996437	Repairs Dump Truck	R	4/05/2024	285.67		054086		
	I-000997833	Parts Repair-Little Brown Bear	R	4/05/2024	291.29		054086		576.96
DATA		DATAFLOW BUSINESS SYSTEMS, INC							
	I-385522	P.D. Copier	R	4/05/2024	12.50		054087		
	I-385574	C.H. Copier	R	4/05/2024	275.71		054087		
	I-386113	C.H. Copier	R	4/05/2024	12.50		054087		300.71
EDGES		EDGES ELECTRICAL GROUP, LLC							
	C-S6076218.003	LaCuesta Mixers	R	4/05/2024	569.86CR		054088		
	I-S6079458.001	Electric-Tool-Camera Kit	R	4/05/2024	296.67		054088		
	I-S6086461.001	Charger/Battery For Shop	R	4/05/2024	347.42		054088		
	I-S6102303.001	Restock-Vacuum Filters	R	4/05/2024	204.60		054088		
	I-S6107074.001	BNR#1-Faulty Transmitter	R	4/05/2024	332.49		054088		
	I-S6107376.001	Elec. Repairs-BNR#1	R	4/05/2024	303.97		054088		
	I-S6109688.001	Collection Heat Gun	R	4/05/2024	178.54		054088		1,093.83
EDIS		EMPLOYER DRIVEN INSURANCE SERV							
	I-031824	Claims Funding	R	4/05/2024	3,200.00		054089		
	I-347944-0	Admin Fees-March	R	4/05/2024	1,489.50		054089		
	I-347951-0	Admin Fees-April	R	4/05/2024	1,513.00		054089		6,202.50
EIKEDO		DOUGLAS EIKE							
	I-040524	Refund-Senior Travel Club	R	4/05/2024	25.00		054090		25.00
EVERBA		EVERBANK, N.A.							
	I-9932343	Late Fee	R	4/05/2024	20.00		054091		20.00
GREENR		GREEN RUBBER-KENNEDY AG							
	I-S-772068	Reducing Valve-Polymer Sys#2	R	4/05/2024	828.43		054092		828.43
GREENS		GREEN'S ACCOUNTING							
	I-December 2023	Finance Services-December 2023	R	4/05/2024	9,811.90		054093		9,811.90
GUERR		DAMIAN GUERRERO							
	I-68	West St. Landscape Service	R	4/05/2024	2,500.00		054094		
	I-69	San Vicente Golden Road	R	4/05/2024	1,500.00		054094		
	I-70	Serra Bio Swell Maint.	R	4/05/2024	1,750.00		054094		
	I-71	Serra Cul-de-Sac	R	4/05/2024	250.00		054094		
	I-72	Davalos Bio Swell Park	R	4/05/2024	1,750.00		054094		
	I-73	Calle Valverde Bio Swell	R	4/05/2024	1,750.00		054094		
	I-74	Orchard Lane Park	R	4/05/2024	4,000.00		054094		
	I-75	River Bottom Clean Up	R	4/05/2024	100.00		054094		
	I-76	River Bed Clean Up	R	4/05/2024	100.00		054094		13,700.00

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HACH C		HACH COMPANY							
	I-13975604	SC4500-BNR#1 Transmitters	R	4/05/2024	7,114.36		054095		7,114.36
HAREDU		DUSTIN HARE							
	I-040224	Referee Basketball 3@$40	R	4/05/2024	120.00		054096		120.00
HILLYA		HILLYARD, INC.							
	I-605415093	Janitorial	R	4/05/2024	310.32		054097		
	I-605433526	Janitorial	R	4/05/2024	124.24		054097		434.56
HOMEDE		HOME DEPOT CREDIT SERVICES							
	C-022124	Parts-PD	R	4/05/2024	233.80CR		054098		
	I-022124	Electrical Panel Repairs	R	4/05/2024	212.60		054098		
	I-032124	ElecWiring Bypass/WaterTrailer	R	4/05/2024	476.08		054098		454.88
HYDROT		HYDRO TURF INC.							
	I-I788291	Valve for Gallardo Park	R	4/05/2024	275.40		054099		275.40
J.A.V		ANA RUEDA DE VIDALES							
	I-24-32	Interpreting-Housing Workshop	R	4/05/2024	352.72		054100		
	I-24-40	Prof. Services-Translation	R	4/05/2024	340.00		054100		692.72
JP COO		J.P. COOKE COMPANY							
	I-827934	Evidence Stamp	R	4/05/2024	61.84		054101		61.84
KATZCO		CONNIE KATZ							
	I-040524	Refund-Senior Travel Club	R	4/05/2024	25.00		054102		25.00
LAWPRO		LAWSON PRODUCTS							
	I-9311362476	Ratchet Straps-Shop/Trucks	R	4/05/2024	146.31		054103		
	I-9311426780	Shop Restock-Maint.	R	4/05/2024	351.53		054103		497.84
LCACTI		L.C. ACTION POLICE SUPPLY, LTD							
	I-463594	Firearm Supplies	R	4/05/2024	4,022.31		054104		4,022.31
LEVARI		BRENDA LEVARIO							
	I-050323	Refund CoachesReg/D.Gonzales	R	4/05/2024	55.25		054105		55.25
LNCURT		L.N. CURTIS & SON							
	I-INV805274	FD-Ext. Maint.	R	4/05/2024	1,982.00		054106		
	I-INV805959	FD-New Rope	R	4/05/2024	686.85		054106		2,668.85
MADRIG		JOSUE FABIAN MADRIGAL							
	I-040224	Referee Basketball 3@$40	R	4/05/2024	120.00		054107		120.00

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MEDCLE		SANDRA LOPEZ MEDINA							
	I-040324	Reimb.-Cleaning Supplies	R	4/05/2024	24.01		054108		24.01
MNS		MNS ENGINEERS, INC							
	I-85839	Waterline Replacement Proj.	R	4/05/2024	3,652.50		054109		
	I-85863	Orchard Park Design/Constructn	R	4/05/2024	3,526.25		054109		
	I-85864	USBR WEEG #2 T.O. No.16	R	4/05/2024	20,750.98		054109		
	I-85865	UCDR Grant Admin.	R	4/05/2024	1,085.00		054109		
	I-85896	CM Orchard Park	R	4/05/2024	1,362.00		054109		30,376.73
MOBAUN		MONTEREY BAY AIR RESOURCES DIS							
	I-FAC-768_03/29/2024	Generator Annual Permits	R	4/05/2024	3,441.00		054110		3,441.00
MONTPE		MONTEREY PENINSULA ENGINEERING							
	I-11-03 RET	Retention Payment OLP	R	4/05/2024	290,231.32		054111		290,231.32
MPEXPR		MP EXPRESS, INC.							
	I-73855	Business Cards	R	4/05/2024	146.55		054112		146.55
MY JEE		SALINAS LINCOLN MERCURY, INC							
	I-254423	Battery Sensor/Fuse	R	4/05/2024	167.03		054113		167.03
NAVARR		DANIEL NAVARRO							
	I-040224	Reimb. Exam Fee&Renew Cert.	R	4/05/2024	305.00		054114		305.00
NAVIB		NAVIA BENEFIT SOLUTIONS							
	I-032924	Claims Funding	R	4/05/2024	18.99		054115		18.99
NEWSV		NEWSV MEDIA							
	I-104023	Ad for Budget Survey	R	4/05/2024	225.00		054116		225.00
NORCA		KYLE UMIDON							
	I-5793	Fleet-Lights	R	4/05/2024	1,062.50		054117		1,062.50
NUTRIE		NUTRIEN AG SOLUTIONS, INC.							
	I-53477954	Lifeline Pesticide WWTP	R	4/05/2024	1,197.24		054118		1,197.24
OREAUT		O'REILLY AUTO PARTS							
	C-3566-184936	Core Return-Dump Truck	R	4/05/2024	44.00CR		054119		
	I-3566-185510	Herculiner-Shop	R	4/05/2024	229.40		054119		
	I-3566-185511	Stock-Hydraulic Oil for Shop	R	4/05/2024	852.14		054119		
	I-3566-185951	Oil Change-Ford F250	R	4/05/2024	60.76		054119		
	I-3566-186121	FD-Glue	R	4/05/2024	8.73		054119		
	I-3566-186406	Electr.Dept.-Shop Towels	R	4/05/2024	19.65		054119		
	I-3566-186491	Coolant Fittings	R	4/05/2024	13.58		054119		
	I-3566-186606	Batteries for Motor Programmer	R	4/05/2024	21.83		054119		
	I-3566-186608	Floor Mats-Flatbed-GMC '99	R	4/05/2024	64.44		054119		
	I-3566-186826	Flasher	R	4/05/2024	16.61		054119		1,243.14

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P.G.E.		PACIFIC GAS & ELECTRIC							
	I-0698049418-8 3/24	WWTP	R	4/05/2024	17,497.95		054120		
	I-0887888084-1 3/24	DR Assessment Dist.	R	4/05/2024	110.31		054120		
	I-1785139879-6 3/24	Lights	R	4/05/2024	10,141.45		054120		
	I-1799702880-2 3/24	Parks,Facilities,Streets	R	4/05/2024	7,045.61		054120		
	I-2657757362-4 3/24	Fire Dept.	R	4/05/2024	608.66		054120		
	I-3182711635-6 3/24	Signals	R	4/05/2024	84.29		054120		
	I-3830995043-4 3/24	RSV Assessment Dist.	R	4/05/2024	15.04		054120		
	I-5258477320-5 3/24	Community Center	R	4/05/2024	5,171.60		054120		
	I-5379093458-1 3/24	Liberty Ct. Irrigation Meter	R	4/05/2024	7.62		054120		
	I-5491361450-6 3/24	Lights & Fire Dept.	R	4/05/2024	3,170.99		054120		
	I-8289424357-3 3/24	Lights	R	4/05/2024	134.92		054120		
	I-8580587393-3 3/24	Water	R	4/05/2024	11,129.22		054120		
	I-9523745462-4 3/24	Signals	R	4/05/2024	16.56		054120		
	I-9782172434-7 3/24	255 Soledad St.	R	4/05/2024	872.45		054120		56,006.67
PADILL		JORGE PADILLA							
	I-040224	Reimb. Meals-Rexel Tech Trng.	R	4/05/2024	32.34		054122		32.34
PENINS		PENINSULA WELDING & MEDICAL SU							
	I-258326	Welding Supplies	R	4/05/2024	496.79		054123		
	I-258327	Welding Supplies	R	4/05/2024	450.47		054123		
	I-258843	Cylinder Tanks Rental	R	4/05/2024	119.10		054123		1,066.36
REYTIR		JESUS REYES							
	I-012540	Tires-Deputy Chief's Unit	R	4/05/2024	1,235.24		054124		
	I-013048	Wheel Alignment	R	4/05/2024	115.00		054124		1,350.24
RIPLEY		CELESTINA MARIA RIPLEY							
	I-032624	Costume Suppls-Performing Arts	R	4/05/2024	50.09		054125		
	I-040524	Instructor Pay 32hrs@$30/hr	R	4/05/2024	960.00		054125		1,010.09
ROMERA		ANTONIO ROMERO							
	I-040224	Reimb. Meals-Rexel Tech Trng.	R	4/05/2024	35.39		054126		35.39
SALINV		SALINAS VALLEY TRIBUNE							
	I-040424	Subscription-Newspaper	R	4/05/2024	49.70		054127		49.70
SIGIRR		SIGNATURE IRRIGATION							
	I-53247	W3 Pressure Test	R	4/05/2024	15.30		054128		15.30
SNAPON		STEVEN PAUL WARBURTON							
	I-03272415890	Magnetic Claw	R	4/05/2024	46.70		054129		46.70

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VENDOR I.D.		NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
SOLAUT		SOLEDAD AUTO PARTS							
	I-185906	Valve-Hot Pressure Washer	R	4/05/2024	180.40		054130		180.40
SOLTRU		SOLEDAD TRUE VALUE							
	I-31922	Spring Hooks for Well#7	R	4/05/2024	10.47		054131		
	I-325427	Shop Tools	R	4/05/2024	14.18		054131		
	I-325676	Paint for La Cuesta TKS	R	4/05/2024	18.56		054131		
	I-325963	PVC Cap 3"	R	4/05/2024	4.36		054131		
	I-326324	Shop Restock Supplies	R	4/05/2024	43.67		054131		91.24
SOUTHM		SOUTH MONTEREY COUNTY FIRE PRO							
	I- Soledad 1	FD-Phones/Data	R	4/05/2024	229.68		054132		229.68
STAPLE		STAPLES BUSINESS CREDIT							
	I-6000777721	Office Supplies	R	4/05/2024	23.13		054133		
	I-6000777722	Envelopes	R	4/05/2024	32.39		054133		
	I-6000777723	Office Supplies	R	4/05/2024	53.74		054133		
	I-6000777725	Office Supplies	R	4/05/2024	16.70		054133		
	I-6000777726	Copy Paper	R	4/05/2024	102.67		054133		
	I-6000777727	Office Supplies	R	4/05/2024	35.18		054133		
	I-6000777728	Supplies	R	4/05/2024	181.38		054133		
	I-6000777730	Office Supplies	R	4/05/2024	13.10		054133		
	I-6000777732	Office Supplies	R	4/05/2024	35.31		054133		
	I-6000777734	Office Supplies	R	4/05/2024	384.70		054133		
	I-6000777735	Cleaning Supplies	R	4/05/2024	31.34		054133		
	I-6000777736	Office Supplies	R	4/05/2024	63.76		054133		
	I-6000777737	Supplies	R	4/05/2024	129.76		054133		1,103.16
TERMIN		RENTOKIL NORTH AMERICA INC							
	I-444547126	Orchard Park Pest Control	R	4/05/2024	35.00		054134		
	I-444741869	Pest Control-Gateway	R	4/05/2024	95.00		054134		
	I-444742836	Pest Control-City Hall	R	4/05/2024	102.00		054134		
	I-444855990	Pest Control	R	4/05/2024	45.00		054134		277.00
TL ENG		TL ENGINEERING							
	I-1417	On-Call Traffic Engin.Srvcs	R	4/05/2024	480.00		054135		
	I-1418	Final Speed Survey Report	R	4/05/2024	5,720.00		054135		6,200.00
TMOBIL		T-MOBILE USA, INC							
	I-032124	Cell Phone Svc	R	4/05/2024	158.27		054136		158.27
TMOBIL		T-MOBILE USA, INC							
	I-032124A	Cellphones for IT	R	4/05/2024	70.08		054137		70.08

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TMOBIL		T-MOBILE USA, INC							
	I-032124B	Cell Phones	R	4/05/2024	2,725.04		054138		2,725.04
TMOBIL		T-MOBILE USA, INC							
	I-032124C	Cell Service	R	4/05/2024	80.33		054139		80.33
TPO HU		TPO HUMAN RESOURCE MANAGEMENT							
	I-19691	2024 Leadership Workshop	R	4/05/2024	1,500.00		054140		1,500.00
TRICIT		TRI-CITIES DISPOSAL AND RECYCL							
	I-0001085925	Corp Yard Landfill Fees	R	4/05/2024	3,040.78		054141		
	I-2024-03	Garbage Fees-March 2024	R	4/05/2024	151,996.65		054141		155,037.43
TRICON		TRI-COUNTY FIRE PROTECTION, IN							
	I-HP63130	FD-Extinguisher Maintenance	R	4/05/2024	104.00		054142		
	I-HP63267	FD-Extinguisher Maintenance	R	4/05/2024	167.95		054142		271.95
USBANP		U.S. BANK CORPORATE PAYMENT SY							
	I-030624 Jesus	Various Charges	R	4/05/2024	2,418.39		054143		2,418.39
UTILTE		UTILITY TELECOM GROUP, LLC							
	I-90239000000000240316	City Phones	R	4/05/2024	3,997.11		054144		3,997.11
VASQ		ARIEL VASQUEZ-HERNANDEZ							
	I-032624	Refund Spring Camp 2024	R	4/05/2024	75.00		054145		75.00
VASQUF		VASQUEZ FABRICATION, INC							
	I-500	LaCuesta-Safety Ladder Install	R	4/05/2024	4,989.99		054146		4,989.99
VERIZO		VERIZON WIRELESS							
	I-9959782781	Air Cards	R	4/05/2024	38.52		054147		38.52
VIA		VIA HEART PROJECT							
	I-4911	AED Supplies	R	4/05/2024	415.39		054148		415.39
VICTOR		WILSON VICTORY							
	I-040224	Referee Basketball 6@$50	R	4/05/2024	300.00		054149		300.00
VOYAG		US BANK VOYAGER FLEET SYSTEMS,							
	I-8691428362413	Fuel	R	4/05/2024	12,501.51		054150		12,501.51
WAGEWO		WAGE WORKS, INC							
	I-INV6340150	FSA Admin Fees-March	R	4/05/2024	89.25		054151		89.25

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VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
1		HERRERA SANTIAG, GEN							
	I-000202403282180	US REFUND	R	4/05/2024	101.76		054152		101.76
1		ORTIZ, IDELINA							
	I-000202403282181	US REFUND	R	4/05/2024	137.65		054153		137.65
1		CARRILLO, JOHN							
	I-000202403282182	US REFUND	R	4/05/2024	18.84		054154		18.84
1		DENIZ, ALMA							
	I-000202403282183	US REFUND	R	4/05/2024	145.59		054155		145.59
1		LARIOS, FABIOLA							
	I-000202403282184	US REFUND	R	4/05/2024	252.98		054156		252.98
1		MP NEXLEVEL OF CALIF							
	I-000202403282185	US REFUND	R	4/05/2024	2,730.18		054157		2,730.18
GREENS		GREEN'S ACCOUNTING							
	I-January 2024	Finance Services-January 2024	V	4/05/2024	16,337.03		054158		16,337.03
GREENS		GREEN'S ACCOUNTING							
	M-CHECK	GREEN'S ACCOUNTING VOIDED	V	4/05/2024			054158		16,337.03CR
TOWNSE		TOWNSEND PUBLIC AFFAIRS, INC							
	I-21313	Grant Writer	R	4/05/2024	5,000.00		054159		5,000.00
GREENS		GREEN'S ACCOUNTING							
	I-January 2024	Finance Services-January 2024	R	4/05/2024	Reissue		054160		16,337.03
CENTRC		MONTEREY COUNTY BUSINESS COUNC							
	I-5009	Center Funding Contribution	R	4/11/2024	10,000.00		054161		10,000.00
PARK P		PARK ASSOCIATES INC							
	I-IN23-3431	OLP Shade Structures	R	4/11/2024	87,787.09		054162		
	I-IN24-1110	OLP Shade Structures	R	4/11/2024	43,452.00		054162		131,239.09
AFLAC		AFLAC HEADQUARTERS							
	I-AF202404162188	AFLAC CONTRIBUTION	R	4/19/2024	709.34		054164		
	I-AFL202404162188	AFLAC CONTRIBUTION	R	4/19/2024	724.84		054164		1,434.18
CALIFS		CALIFORNIA STATE DISBURSEMENT							
	I-CH 202404162188	CHILD SUPPORT CONTRIBUTION	R	4/19/2024	874.15		054165		874.15

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COMM F		COMMUNITY FOUNDATION FOR MONTE							
	I-CCD202404162188	CAPITAL CAMPAIGN DONATION	R	4/19/2024	240.00		054166		240.00
SEIU L		SEIU LOCAL 521							
	I-SCO202404162188	EMPLOYEE CONTRIBUTION	R	4/19/2024	24.00		054167		
	I-SEI202404162188	EMPLOYEE CONTRIBUTION	R	4/19/2024	1,358.29		054167		1,382.29
SPOA		SOLEDAD POLICE OFFICERS ASSOCI							
	I-SPO202404162188	POLICE OFFICERS CONTRIBUTIONS	R	4/19/2024	720.00		054168		720.00
STAEDD		STATE OF CALIFORNIA E.D.D.							
	I-T2 202404162188	STATE TAX W/H	R	4/19/2024	10,433.20		054169		10,433.20
STPERS		STATE OF CALIFORNIA PERS							
	I-PCR202404162188	CHIEF & LIEUTENANT	R	4/19/2024	3,291.69		054170		
	I-PEC202404162188	City of Soledad Conf PEPRA	R	4/19/2024	283.85		054170		
	I-PEP202404162188	EMPLOYEE CONTRIBUTION	R	4/19/2024	9,748.16		054170		
	I-PER202404162188	City of Soledad Regular Empl	R	4/19/2024	9,838.15		054170		
	I-PES202404162188	City of Soledad Police	R	4/19/2024	5,274.74		054170		
	I-PKE202404162188	City of Soledad Conf. Employee	R	4/19/2024	311.82		054170		
	I-PME202404162188	City of Soledad Reg Managers	R	4/19/2024	507.20		054170		
	I-PMR202404162188	City of Soledad Managers	R	4/19/2024	731.82		054170		
	I-PPE202404162188	City of Soledad Police	R	4/19/2024	2,252.74		054170		
	I-PPR202404162188	City of Soledad Police	R	4/19/2024	2,474.80		054170		
	I-PPS202404162188	City of Soledad Police	R	4/19/2024	5,356.52		054170		
	I-PRE202404162188	EMPLOYEE CONTRIBUTION	R	4/19/2024	4,485.70		054170		
	I-PRR202404162188	City of Soledad Regular Empl	R	4/19/2024	6,922.14		054170		51,479.33
SUNLIF		SUN LIFE ASSURANCE COMPANY OF							
	I-110202404162188	DENTAL INSURANCE	R	4/19/2024	2,602.28		054173		
	I-120202404162188	VISION INSURANCE	R	4/19/2024	462.91		054173		
	I-SLI202404162188	LIFE, AD&D, LTD	R	4/19/2024	1,710.64		054173		
	I-SLS202404162188	SUPPLEMENTAL	R	4/19/2024	366.02		054173		5,141.85
UNIWAY		UNITED WAY MONTEREY COUNTY							
	I-UN 202404162188	UNITED WAY CONTRIBUTIONS	R	4/19/2024	2.00		054175		2.00
VANTAG		MISSION SQUARE-303584							
	I-D15202404162188	DEFERRED-EMPLOYEE PORTION	R	4/19/2024	519.61		054176		
	I-DDD202404162188	DEFERRED-EMPLOYEE PORTION	R	4/19/2024	6,845.00		054176		
	I-DEF202404162188	DEFERRED-EMPLOYEE PORTION	R	4/19/2024	477.14		054176		7,841.75
ACTIVT		BIRCH GROVE SOFTWARE, INC							
	I-1690294	ActivTrak Final Bill for PW	R	4/16/2024	1,800.00		054177		1,800.00

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AMAZON		AMAZON CAPITAL SERVICES							
	I-14F3-XY9N-1QKM	New Servers for CH	R	4/16/2024	10,596.12		054178		
	I-16KG-CGXH-3NQ6	Supplies	R	4/16/2024	39.88		054178		
	I-1JQ4-G674-DR3D	Tri-pod	R	4/16/2024	34.94		054178		
	I-1K7M-H1JK-D3T4	Earth Day	R	4/16/2024	197.05		054178		
	I-1KJN-XHHR-FRXT	Equipment	R	4/16/2024	146.93		054178		
	I-1PLQ-364Q-9L93	VA-Supplies	R	4/16/2024	103.17		054178		11,118.09
AMESUP		AMERICAN SUPPLY COMPANY							
	I-3025176	Cleaning Supplies	R	4/16/2024	952.22		054179		952.22
ANALGE		ANALGESIC SERVICES, INC.							
	I-372212	FD-EMS Oxygen	R	4/16/2024	100.50		054180		
	I-HT1716	FD-EMS Hydrostat	R	4/16/2024	225.00		054180		325.50
CABRER		FERNANDO CABRERA							
	I-040924	Per Diem: League of Cal Cities	R	4/16/2024	471.73		054181		471.73
CALANI		CALIFORNIA ANIMAL WELFARE ASSO							
	I-300001882	ACO-Membership	R	4/16/2024	100.00		054182		100.00
GRETOW		GREENFIELD TOWING							
	I-6768	Evidence Tow	R	4/16/2024	120.00		054183		120.00
INFOSE		INFOSEND, INC							
	I-260025	Utility Bill Mailing	R	4/16/2024	4,873.08		054184		4,873.08
MPEXPR		MP EXPRESS, INC.							
	I-74012	Business Cards	R	4/16/2024	146.55		054185		146.55
MRCLEA		MARIA L. CORREA							
	I-7856	Carpet Cleaning	R	4/16/2024	160.00		054186		160.00
PASSPO		PASSPORT LABS, INC							
	I-INV-1044661	Parking Enforcement	R	4/16/2024	10,000.00		054187		10,000.00
SOLTRU		SOLEDAD TRUE VALUE							
	I-326868	Cleaning Supplies	R	4/16/2024	8.71		054188		8.71
STAPLE		STAPLES BUSINESS CREDIT							
	I-6000635264	FD-Multi Fold Towels	R	4/16/2024	36.99		054189		
	I-6000635267	Office Supplies	R	4/16/2024	1,166.32		054189		
	I-6000635268	FD-Bath Tissue	R	4/16/2024	59.97		054189		1,263.28

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SUNSTR		SUN STREET CENTERS							
	I-SOLE-R2S-108	YVPP	R	4/16/2024	10,109.92		054190		10,109.92
TRICON		TRI-COUNTY FIRE PROTECTION, IN							
	I-HP63294	Fire Extinguisher Inspections	R	4/16/2024	182.00		054191		182.00
VALENJ		JESUS VALENZUELA							
	I-040924	Reimb.-Food & Coffee for Mtgs.	R	4/16/2024	90.14		054192		
	I-041024	CAPIO-Transportation & Meals	R	4/16/2024	787.50		054192		877.64
VELAZQ		ANNA VELAZQUEZ							
	I-040924	Per Diem: League of Cal Cities	R	4/16/2024	459.76		054193		459.76
VERIZO		VERIZON WIRELESS							
	I-9959782782	Phone Service	R	4/16/2024	662.17		054194		662.17
ACCBUS		ACC BUSINESS							
	I-240702838	Internet Services-City Hall	R	4/19/2024	2,438.85		054195		2,438.85
ACCBUS		ACC BUSINESS							
	I-240728796	Internet Service	R	4/19/2024	2,032.99		054196		2,032.99
ACCBUS		ACC BUSINESS							
	I-240739234	Gateway Internet	R	4/19/2024	506.14		054197		506.14
ACCBUS		ACC BUSINESS							
	I-240777776	WWTP Internet Service	R	4/19/2024	1,341.31		054198		1,341.31
AGILEO		AGILE OCCUPATION MEDICINE PC							
	I-EM017564	Pre-Emp. Med.-Police Temp O.A.	R	4/19/2024	130.00		054199		130.00
AGUIHE		HENRY TAFOLLA AGUILAR							
	I-051724	Per Diem-CAPIO Annual Conf.	R	4/19/2024	359.50		054200		359.50
ALCANA		ALCANTAR ACE HARDWARE							
	I-040924	CDBGED-30043 -Ace Hardware	R	4/19/2024	36,370.00		054201		
	I-040924A	CDBGED-30043 -Ace Hardware	R	4/19/2024	208,630.00		054201		245,000.00
ALHAMB		DS SERVICES OF AMERICA, INC.							
	I-18185522 041224	Water & Dispenser	R	4/19/2024	212.80		054202		
	I-21460558 041124	Water Service	R	4/19/2024	192.83		054202		405.63
ALLINS		ALLIANT INSURANCE SERVICES, IN							
	I-2635890	Cert. of Liability-4th of July	R	4/19/2024	648.00		054203		648.00

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AMAZON	AMAZON CAPITAL SERVICES							
C-1PRD-KW6P-HLVM	Return-Facility-Cabinets	R	4/19/2024	33.64CR		054204		
I-11V3-YMQ4-GCVJ	Generator Battery Charger	R	4/19/2024	384.45		054204		
I-17C4-HCC9-WXD7	VA-Supplies	R	4/19/2024	138.69		054204		
I-19RH-VRX3-KWGT	Safety Cones	R	4/19/2024	78.66		054204		
I-1DVH-LN9D-QWCD	Cables-bad DP to HDMI Adapters	R	4/19/2024	74.33		054204		
I-1FPQ-DKKX-HML1	Various Supplies/Equipment	R	4/19/2024	497.85		054204		
I-1GHX-WDX6-6NPL	Headlights-'95 Toyota-R. Avila	R	4/19/2024	62.25		054204		
I-1HHR-QMMH-76V7	Cleaning Supplies	R	4/19/2024	100.30		054204		
I-1JRN-MF7V-47L9	Fleet Supplies	R	4/19/2024	82.54		054204		
I-1KHX-N9KM-N67W	Security Supplies	R	4/19/2024	693.87		054204		
I-1KJN-XHHR-TK3W	Tool Box-W-3 Utility Truck	R	4/19/2024	64.27		054204		
I-1L1C-3DL4-FLRW	Electric Tool-Circuit Breaker	R	4/19/2024	262.19		054204		
I-1M66-VY6R-DM9T	Wireless Kbd&Mouse-New Sgt PCs	R	4/19/2024	62.96		054204		
I-1M66-VY6R-JH6T	Cable Cover for New Ethernet	R	4/19/2024	26.19		054204		
I-1MD9-WHNG-D7LW	Wheel Chocks for Vehicles	R	4/19/2024	314.56		054204		
I-1MY3-XK9K-D1C3	Small Notepads-Operators	R	4/19/2024	34.83		054204		
I-1PQQ-DLX4-3JYM	Metal Gauge Tester Tool	R	4/19/2024	324.47		054204		
I-1RC4-WTYV-1QLJ	Security Platform	R	4/19/2024	3,426.10		054204		
I-1RYW-YH4N-1V1H	Various	R	4/19/2024	361.21		054204		
I-1WDF-QFDV-9KVG	UPS Battery Replacement	R	4/19/2024	283.25		054204		7,239.33
AMESUP	AMERICAN SUPPLY COMPANY							
I-3024600	Soap & Dispenser	R	4/19/2024	809.76		054206		
I-3025178	Single Fold Towels	R	4/19/2024	350.86		054206		1,160.62
ANDERS	ANDERSON PACIFIC ENGINEERING C							
I-2402-01	WRF Lever Repair Project	R	4/19/2024	89,073.12		054207		89,073.12
ARAMA	ARAMARK							
I-5110438749	PW Uniforms/Parks & Streets	R	4/19/2024	116.10		054208		
I-5110438750	PW Uniforms/Fleet	R	4/19/2024	118.03		054208		
I-5110438754	WW Uniforms	R	4/19/2024	420.79		054208		
I-5110438755	Water Uniforms	R	4/19/2024	101.75		054208		
I-5110443351	PW Uniforms/Parks & Streets	R	4/19/2024	116.25		054208		
I-5110443352	PW Uniforms/Fleet	R	4/19/2024	118.03		054208		
I-5110443356	WW Uniforms	R	4/19/2024	422.14		054208		
I-5110443357	Water Uniforms	R	4/19/2024	111.81		054208		1,524.90
AUTOZO	AUTOZONE LLC							
C-5509676954	Return Coolant Temp Sensor	R	4/19/2024	18.48CR		054210		
C-5509676955	Return Window Switch	R	4/19/2024	48.93CR		054210		
C-5509677490	Return U-Joints	R	4/19/2024	52.18CR		054210		
I-5509668889	Window Switch	R	4/19/2024	48.93		054210		
I-5509669889	Waste Coolant Tank	R	4/19/2024	1,359.38		054210		
I-5509670060	Transmission P. M	R	4/19/2024	149.01		054210		
I-5509670061	Batteries	R	4/19/2024	12.65		054210		
I-5509670073	O2 Sensor Tool	R	4/19/2024	32.63		054210		

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	I-5509670080	Door Handle	R	4/19/2024	154.41		054210		
	I-5509670149	Propane Torch	R	4/19/2024	10.32		054210		
	I-5509672436	U-Joints	R	4/19/2024	39.13		054210		
	I-5509672595	U-Joints	R	4/19/2024	32.60		054210		
	I-5509674165	Brake Pads & Rotors	R	4/19/2024	1,008.79		054210		
	I-5509674436	Gear Oil	R	4/19/2024	92.39		054210		
	I-5509674500	Engine P. M	R	4/19/2024	73.68		054210		
	I-5509674502	Engine Oil &Filter, Air Filter	R	4/19/2024	40.60		054210		
	I-5509674503	U-Joints	R	4/19/2024	206.61		054210		
	I-5509674538	Fuel Filters	R	4/19/2024	36.28		054210		
	I-5509676458	Batteries-Unit 57	R	4/19/2024	235.80		054210		
	I-5509676605	Water Pump Repairs	R	4/19/2024	222.54		054210		
	I-5509676633	Brake Boot Kit	R	4/19/2024	98.39		054210		
	I-5509676937	Vacuum Cap	R	4/19/2024	4.12		054210		
	I-5509676938	Door Handle	R	4/19/2024	18.48		054210		
	I-5509676940	Vise, Drain Pad	R	4/19/2024	462.17		054210		
	I-5509677187	Crankshaft Sensor	R	4/19/2024	53.28		054210		
	I-5509677470	EVAP Purge Solenoid	R	4/19/2024	44.58		054210		
	I-5509677471	Multimeter Tool	R	4/19/2024	37.18		054210		
	I-5509677483	U-Joints	R	4/19/2024	104.36		054210		
	I-5509677610	Heater Hose	R	4/19/2024	6.50		054210		
	I-5509677620	Transmission Service	R	4/19/2024	92.94		054210		
	I-5509677635	U-Joints	R	4/19/2024	52.18		054210		
	I-5509678017	Fuel Hose	R	4/19/2024	29.26		054210		
	I-5509678086	Rear Sway Bar	R	4/19/2024	304.04		054210		
	I-5509678088	Front Sway Bar	R	4/19/2024	288.14		054210		
	I-5509678149	Vacuum Connectors	R	4/19/2024	17.39		054210		
	I-5509678186	Tune-up Parts	R	4/19/2024	74.02		054210		
	I-5509680201	Water Pump Replacement	R	4/19/2024	192.13		054210		
	I-5509680332	Door Latch	R	4/19/2024	214.24		054210		
	I-6290790424	Gasket Seal-Tanks	R	4/19/2024	230.73		054210		
	I-6290793114	Hatch Seal Tanks	R	4/19/2024	30.57		054210		
	I-6290793690	Hatch Tanks Seal	R	4/19/2024	32.75		054210		6,023.61
BAILEY		BAILEY STREET LIMITED							
	I-100522476	Chlorine for Plant	R	4/19/2024	11,713.82		054213		11,713.82
BENITE		JESUS BENITEZ							
	I-1841	Rental Security	R	4/19/2024	1,200.00		054214		1,200.00
BNI		BNI PUBLICATIONS, INC.							
	I-77196	Traffic Control Books-Operator	R	4/19/2024	140.33		054215		140.33

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BOBGIL		TOTAL EQUIPMENT&RENTAL OF SANT							
	I-W01170	Bobcat Repairs	R	4/19/2024	3,660.67		054216		3,660.67
BRYCEH		BRYCE HR CONSULTING, INC.							
	I-4650	Comp Study	R	4/19/2024	950.00		054217		
	I-4678	Class/Comp Study-WRM	R	4/19/2024	475.00		054217		1,425.00
BUENRO		OBED BUENROSTRO							
	I-022624	Reimb-Spices-Emp. BBQ 2/28/24	R	4/19/2024	48.94		054218		48.94
CIT		FIRST-CITIZENS BANK & TRUST CO							
	I-44523403	Copier Copies	R	4/19/2024	134.95		054219		134.95
CITYOF		CITY OF SOLEDAD-PETTY CASH							
	I-041524	CITY OF SOLEDAD-PETTY CASH	R	4/19/2024	769.81		054220		769.81
COMOEM		COUNTY OF MONTEREY DEPT OF EME							
	I-FY 2023/24	911-Fees	R	4/19/2024	2,016.00		054221		2,016.00
COMOSH		COUNTY OF MONTEREY SHERIFF-COR							
	I-2592	CJIS-Maintenance/Jul-Sept 2023	R	4/19/2024	15,782.06		054222		
	I-2638	CJIS-Maintenance/Oct-Dec 2023	R	4/19/2024	19,119.67		054222		
	I-2650	CJIS-Maintenance/Jan-Mar 2024	R	4/19/2024	17,305.87		054222		52,207.60
CORE&M		CORE & MAIN LP							
	I-U365637	B-16 Covers Armorcast	R	4/19/2024	10,408.26		054223		10,408.26
CSC OF		CSC OF SALINAS							
	I-000998398	CAT Loader-Front Coupler	R	4/19/2024	88.69		054224		88.69
DATA		DATAFLOW BUSINESS SYSTEMS, INC							
	I-386390	P.D. Copier	R	4/19/2024	311.75		054225		
	I-387111	Comm. Center Copier	R	4/19/2024	108.53		054225		
	I-387550	C.H. Copier	R	4/19/2024	12.50		054225		
	I-387631	C.H. Copier (Front Office)	R	4/19/2024	294.95		054225		727.73
DEPJUS		DEPARTMENT OF JUSTICE-STATE OF							
	I-726910	Live Scan Fees	R	4/19/2024	354.00		054226		354.00
EDIS		EMPLOYER DRIVEN INSURANCE SERV							
	I-348757-0	Admin Fees/Claims Funding-May	R	4/19/2024	1,645.27		054227		1,645.27
EDUOUT		PROJECT ENERGY SAVERS, LLC							
	I-24-434	Pan Lids & Scrapers-Earth Day	R	4/19/2024	360.88		054228		360.88

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ELS		ELS							
	I-2023472	Soledad Container Village-Nov	R	4/19/2024	8,779.32		054229		
	I-2023513	Soledad Container Village-Dec	R	4/19/2024	1,492.50		054229		
	I-2023527	Soledad Container Village-Aug	R	4/19/2024	925.00		054229		
	I-2024016	Soledad Container Village-Jan	R	4/19/2024	18,603.20		054229		29,800.02
EMCPLA		EMC PLANNING GROUP INC.							
	I-16-001-77	Miramonte Staff Support	R	4/19/2024	30,273.21		054230		
	I-16-001-79	Miramonte Staff Support	R	4/19/2024	627.01		054230		30,900.22
FEDPAS		FEDEX							
	I-8-453-12833	Shipping-KSB Inc.	R	4/19/2024	15.86		054231		
	I-8-467-42021	Prop/Evidence Postage	R	4/19/2024	119.37		054231		135.23
FERENT		FERGUSON ENTERPRISES INC. 1423							
	I-1850504	Sewer Manhole Lids	R	4/19/2024	819.38		054232		819.38
GRAINE		GRAINGER							
	I-9063933569	4" Trash Pump	R	4/19/2024	4,100.11		054233		
	I-9073777865	Synthetic Lubricant-UV Station	R	4/19/2024	322.77		054233		
	I-9078628329	Bearing-Shop Restock	R	4/19/2024	30.61		054233		
	I-9083932187	Pipe Stand-Threader	R	4/19/2024	174.58		054233		4,628.07
GUERR		DAMIAN GUERRERO							
	I-78	Weed Abatement	R	4/19/2024	200.00		054234		
	I-79	Weekly River Bottom Cleanup	R	4/19/2024	100.00		054234		
	I-80	River Cleanup	R	4/19/2024	100.00		054234		
	I-81	Weed Abatement	R	4/19/2024	1,200.00		054234		
	I-82	West St. Trimming	R	4/19/2024	1,500.00		054234		
	I-83	Serra Ln. Bioswells	R	4/19/2024	1,750.00		054234		
	I-84	Davalos Bioswells	R	4/19/2024	1,750.00		054234		
	I-85	Calle Valverde Bioswells	R	4/19/2024	1,750.00		054234		
	I-86	Serra Ln Cul-de-Sac Bioswells	R	4/19/2024	250.00		054234		
	I-87	Orchard Ln. Park Maintenance	R	4/19/2024	4,000.00		054234		12,600.00
HAREDU		DUSTIN HARE							
	I-041624	Referee Basketball 3@$40	R	4/19/2024	120.00		054235		120.00
HILINE		HI-LINE ELECTRIC COMPANY, INC.							
	I-11115549	Shop Restock	R	4/19/2024	374.50		054236		374.50
HILLYA		HILLYARD, INC.							
	I-605448440	Facility-Janitorial	R	4/19/2024	304.56		054237		304.56

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HYDROT		HYDRO TURF INC.							
	I-I788652	Irrigation Valve Box Lids	R	4/19/2024	319.36		054238		
	I-I788706	Edger Blade	R	4/19/2024	34.18		054238		353.54
ISA		ISA IN STUDIO ARCHITECTURE, IN							
	I-2024-2282	Community Center Remodel	R	4/19/2024	2,340.00		054239		
	I-2024-2284	Fire Station Apparatus	R	4/19/2024	3,580.00		054239		5,920.00
J.A.V		ANA RUEDA DE VIDALES							
	I-24-79	Interpreting Svcs.-ADU Wkshp.	R	4/19/2024	432.72		054240		432.72
JARFAY		JARVIS FAY LLP							
	I-18695	General Legal	R	4/19/2024	10,764.00		054241		
	I-18696	Miramonte Specific Plan/Legal	R	4/19/2024	1,298.50		054241		12,062.50
JBHEAT		JBENJAMIN LARA CHAVEZ							
	I-00043	Main Building A/C Repair	R	4/19/2024	340.00		054242		340.00
KELLYP		K.P. PRODUCTIONS, INC							
	I-87017	Musician-Senior Social 4/9/24	R	4/19/2024	300.00		054243		300.00
KIESJB		J. BRUCE KIES							
	I-041624	Dep. Release-Encroachmt Permit	R	4/19/2024	1,092.00		054244		1,092.00
KSB		KSB, INC.							
	I-I20000031365	Groundwater Pump-Res. No. 6015	R	4/19/2024	31,013.51		054245		31,013.51
LAWPRO		LAWSON PRODUCTS							
	I-9311434011	Work Light	R	4/19/2024	227.20		054246		
	I-9311437558	Shop Work Light	R	4/19/2024	227.20		054246		
	I-9311444691	Restock-Service Truck	R	4/19/2024	416.24		054246		870.64
M&MBAC		MICHAEL J. WOLF							
	I-INV-001789	Water Test Efficiency	R	4/19/2024	277.50		054247		277.50
MADRIG		JOSUE FABIAN MADRIGAL							
	I-041624	Referee Basketball 3@$40	R	4/19/2024	120.00		054248		120.00
MARKMI		MARK A. MILLER							
	I-040324 1	Water Reservoir Cleaning	R	4/19/2024	2,572.50		054249		
	I-040324 1A	RFQ Preparation	R	4/19/2024	1,155.00		054249		3,727.50
MCMAST		MCMASTER-CARR SUPPLY COMPANY							
	I-25321778	Metric Tap&Die Set-Electrician	R	4/19/2024	499.62		054250		
	I-25342109	Standard Tap Set-Electrician	R	4/19/2024	590.15		054250		1,089.77

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MEDCLE		SANDRA LOPEZ MEDINA							
	I-0596	Janitorial-Trailer	R	4/19/2024	450.00		054251		
	I-0597	Blue Building-Janitorial	R	4/19/2024	335.00		054251		
	I-0598	WWTP/Water Janitorial	R	4/19/2024	980.00		054251		
	I-0599	Janitorial Service	R	4/19/2024	1,937.50		054251		
	I-0600	City Hall Janitorial	R	4/19/2024	2,257.50		054251		
	I-0601	Janitorial-Gateway	R	4/19/2024	800.00		054251		
	I-0602	Vehicle Cleaning	R	4/19/2024	80.00		054251		
	I-0604	Unit-Cleaning	R	4/19/2024	490.00		054251		7,330.00
MPEXPR		MP EXPRESS, INC.							
	I-73010	Door Hangers	R	4/19/2024	530.56		054252		530.56
NEWSV		NEWSV MEDIA							
	I-106823	Public Notices	R	4/19/2024	485.64		054253		
	I-108266	Public Notice	R	4/19/2024	105.08		054253		590.72
OREAUT		O'REILLY AUTO PARTS							
	I-3566-180602	Preventive Maintenance	R	4/19/2024	66.70		054254		
	I-3566-181757	Fuel Cap-Utility S. Truck	R	4/19/2024	12.31		054254		
	I-3566-184448	Preventive Maintenance	R	4/19/2024	75.43		054254		
	I-3566-184524	Pin-Clasp for Tractor Gates	R	4/19/2024	57.08		054254		
	I-3566-186666	Light, Tailgate Cable	R	4/19/2024	54.91		054254		
	I-3566-187891	Wiper Blades-Chevy 2021	R	4/19/2024	83.01		054254		
	I-3566-188049	Repairs-'95 Toyota	R	4/19/2024	728.05		054254		
	I-3566-188052	Tailgate Handle-'99 Chevy	R	4/19/2024	34.35		054254		
	I-3566-188054	Lamp Replac.-'95 Toyota	R	4/19/2024	44.52		054254		
	I-3566-188058	Floor Mats-'99 Chevy	R	4/19/2024	27.30		054254		
	I-3566-188542	Vehicle Tire Cleaner-Restock	R	4/19/2024	59.00		054254		
	I-3566-188873	Fuel Leak Detection Pump	R	4/19/2024	187.91		054254		
	I-3566-188946	Hose-Elbow	R	4/19/2024	5.04		054254		
	I-3566-189575	Multi Switch	R	4/19/2024	74.69		054254		
	I-3566-189579	Trailer Wire & Conduit	R	4/19/2024	27.89		054254		1,538.19
PARRAS		HEBERTO P GONZALEZ							
	I-784	Playground Repair	R	4/19/2024	280.00		054255		280.00
PAVEME		PAVEMENT ENGINEERING, INC.							
	I-2403-106	2023 Crack Seal Proj.	R	4/19/2024	6,497.50		054256		6,497.50
ROSSRE		ROSS RECREATION EQUIPMENT							
	I-I25185	Dogipot Bags	R	4/19/2024	729.63		054257		729.63

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SALSOL		SALINAS VALLEY SOLID WASTE AUT							
	I-24807	Solid Waste Fees/March 2024	R	4/19/2024	66,810.81		054258		
	I-FY2023-24-Q3	Admin Fees Jan.-Mar. 2024	R	4/19/2024	4,720.66		054258		71,531.47
SOLACE		ALCANTAR ACE HARDWARE							
	I-28/1	Electrician-Maint. Mat	R	4/19/2024	85.19		054259		
	I-35/1	Hand Tool 9"	R	4/19/2024	5.01		054259		
	I-59/1	Drill Bit Auger	R	4/19/2024	29.49		054259		119.69
SOLAUT		SOLEDAD AUTO PARTS							
	I-186072	Strap Wrench-Shop	R	4/19/2024	125.92		054260		
	I-186105	Oil-Restock for Shop	R	4/19/2024	254.66		054260		
	I-186116	Locks-Service Truck	R	4/19/2024	86.31		054260		466.89
SOLTRU		SOLEDAD TRUE VALUE							
	I-31668	1/2" Brass Plug	R	4/19/2024	6.54		054261		
	I-31670	Hardware Supplies	R	4/19/2024	119.27		054261		
	I-31671	Painting Supplies	R	4/19/2024	114.18		054261		
	I-31699	Keys	R	4/19/2024	14.38		054261		
	I-322553	Bolt Snaps	R	4/19/2024	13.08		054261		
	I-322555	Chain	R	4/19/2024	3.27		054261		
	I-322728	Wood Screws	R	4/19/2024	17.47		054261		
	I-322753	Spray Paint	R	4/19/2024	52.37		054261		
	I-322765	Lumber	R	4/19/2024	6.54		054261		
	I-322908	Hanger Strap	R	4/19/2024	16.33		054261		
	I-322928	Trash Cans	R	4/19/2024	43.69		054261		
	I-322929	Hardware	R	4/19/2024	1.40		054261		
	I-322980	Ties	R	4/19/2024	17.47		054261		
	I-323064	All Weather Tape	R	4/19/2024	24.56		054261		
	I-323093	Wood Screws	R	4/19/2024	30.56		054261		
	I-323449	Tie Down	R	4/19/2024	21.84		054261		
	I-323496	Sanding Sponge	R	4/19/2024	19.97		054261		
	I-323573	Screws/Nails	R	4/19/2024	114.85		054261		
	I-323611	Angle Iron	R	4/19/2024	1.41		054261		
	I-323657	Connecting Link	R	4/19/2024	23.87		054261		
	I-323706	Waterproof Connectors	R	4/19/2024	5.45		054261		
	I-324015	Paint Roller Handle	R	4/19/2024	8.73		054261		
	I-324716	Window Cleaner	R	4/19/2024	5.45		054261		
	I-325473	Brackets	R	4/19/2024	19.64		054261		
	I-325590	Zip Ties	R	4/19/2024	16.38		054261		
	I-325610	Park Supplies	R	4/19/2024	48.02		054261		
	I-325723	Hardware Supplies	R	4/19/2024	21.70		054261		
	I-325782	Thread Lock	R	4/19/2024	12.82		054261		
	I-325898	Cable Ties	R	4/19/2024	13.10		054261		
	I-325925	Duct Tape	R	4/19/2024	9.82		054261		
	I-325926	Hose Mender	R	4/19/2024	42.56		054261		
	I-325927	Lumber/Spray Paint	R	4/19/2024	144.79		054261		
	I-326530	Tool for Repairs	R	4/19/2024	6.64		054261		

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BANK: APRAB Mechanics Bank
DATE RANGE: 4/03/2024 THRU 99/99/9999

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
	I-326654	Tools-Flatbed T. Box	R	4/19/2024	78.63		054261		
	I-326741	Parts-WW Gas Cylinders	R	4/19/2024	49.13		054261		
	I-327206	Double Sided Tape-UV Station	R	4/19/2024	7.09		054261		
	I-327322	PVC/Parts-Plant	R	4/19/2024	11.97		054261		1,164.97
STAPLE		STAPLES BUSINESS CREDIT							
	I-6000635263	Office Supplies Restock	R	4/19/2024	46.64		054264		
	I-6000635265	Office Supplies-Negotiations	R	4/19/2024	28.19		054264		
	I-6000635266	Office Supplies Restock	R	4/19/2024	51.52		054264		126.35
SWRCB		SWRCB ACCOUNTING OFFICE							
	I-SW-0288854	Stormwater Permit OLP FY 24/25	R	4/19/2024	704.00		054265		704.00
TERMIN		RENTOKIL NORTH AMERICA INC							
	I-444854786	WWTP Pest Control	R	4/19/2024	57.00		054266		
	I-445170750	Orchard Land Park Pest Control	R	4/19/2024	35.00		054266		92.00
TL ENG		TL ENGINEERING							
	I-1442	On-Call Traffic Engineering	R	4/19/2024	3,840.00		054267		3,840.00
TPO HU		TPO HUMAN RESOURCE MANAGEMENT							
	I-19713	Leadership Series #1-Make Up	R	4/19/2024	338.00		054268		338.00
TRINIP		TRINIDAD ZAVALA							
	I-24-0314	Fixture Replacements	R	4/19/2024	2,945.70		054269		2,945.70
TYLER		TYLER TECHNOLOGIES							
	I-025-460002	Credit Card Fees	R	4/19/2024	6,292.90		054270		6,292.90
UNITED		UNITED RENTALS (NORTH AMERICA)							
	I-228397588-004	Dump Truck Cont. Rental	R	4/19/2024	4,007.08		054271		4,007.08
USBANP		U.S. BANK CORPORATE PAYMENT SY							
	I-040824 Don	Various Charges	R	4/19/2024	2,097.09		054272		
	I-040824 Fran	Various Charges	R	4/19/2024	894.95		054272		
	I-040824 Hilda	Various Charges	R	4/19/2024	1,418.41		054272		
	I-040824 Jessica	Various Charges	R	4/19/2024	3,310.77		054272		
	I-040824 Jesus	Various Charges	R	4/19/2024	2,434.50		054272		
	I-040824 Kao	Various Charges	R	4/19/2024	366.73		054272		
	I-040824 Megan	Various Charges	R	4/19/2024	2,333.51		054272		
	I-040824 Rec Dept	Various Charges	R	4/19/2024	387.00		054272		13,242.96
VARGAS		HORTENCIA C. VARGAS							
	I-041224	CALED Annual Conf.-Meals	R	4/19/2024	249.00		054276		249.00

VENDOR SET: 01 City of Soledad
BANK: APRAB Mechanics Bank
DATE RANGE: 4/03/2024 THRU 99/99/9999

VENDOR I.D.		NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
VASQUF		VASQUEZ FABRICATION, INC							
	I-509	Weld Box Water Trailer	R	4/19/2024	1,508.25		054277		
	I-510	Repair Storm Drain Grill	R	4/19/2024	610.63		054277		
	I-511	Repair Solar Pole Bracket	R	4/19/2024	262.50		054277		
	I-512	Box Cover Injector	R	4/19/2024	752.65		054277		
	I-513	Box Cover Injector	R	4/19/2024	752.65		054277		3,886.68
VICTOR		WILSON VICTORY							
	I-041624	Referee Basketball 6@$50	R	4/19/2024	300.00		054278		300.00
WALLAC		WALLACE GROUP							
	I-62015	Dixi St Water/Sewer Replacemnt	R	4/19/2024	8,697.25		054279		8,697.25
WECO		WECO INDUSTRIES, LLC							
	I-0053341-IN	24" Manhole Lids	R	4/19/2024	5,170.88		054280		5,170.88
YANGKA		KAO NOU YANG							
	I-041224	CALED Annual Conf.-Meals	R	4/19/2024	249.00		054281		249.00
Z&M EN		Z&M ENTERPRISE, LLC							
	I-744	Wiper Cylinders-UV Station	R	4/19/2024	3,673.30		054282		3,673.30
ZARCOS		ZARCOS TREE SERVICE							
	I-0173	Hazardous Tree Removal	R	4/19/2024	1,800.00		054283		1,800.00

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	216			1,798,371.66	0.00	1,798,371.66
HAND CHECKS:	0			0.00	0.00	0.00
DRAFTS:	0			0.00	0.00	0.00
EFT:	0			0.00	0.00	0.00
NON CHECKS:	0			0.00	0.00	0.00
VOID CHECKS:	1	VOID DEBITS	16,337.03			
		VOID CREDITS	16,337.03CR	0.00	0.00	

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: APRAB TOTALS:	217	1,798,371.66	0.00	1,798,371.66
BANK: APRAB TOTALS:	217	1,798,371.66	0.00	1,798,371.66
REPORT TOTALS:	217	1,798,371.66	0.00	1,798,371.66

AGENDA ITEM NO. 3.

COUNCIL COMMUNICATION

SUBJECT: **Fire Department Activity Report**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Jason Luckenbach, Fire Department**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

PUBLIC RELATIONS:

- 3/1/24 – E37 attended the Reading Event at San Vicente Elementary School
- 3/25/24 – E37 with CAL FIRE Public Relations attend the Career Fair and the College Career Fair at Soledad Middle School

SUSPECTED OPIOID INCIDENTS:

**April 2024 – No known Suspected Opioid Incidents

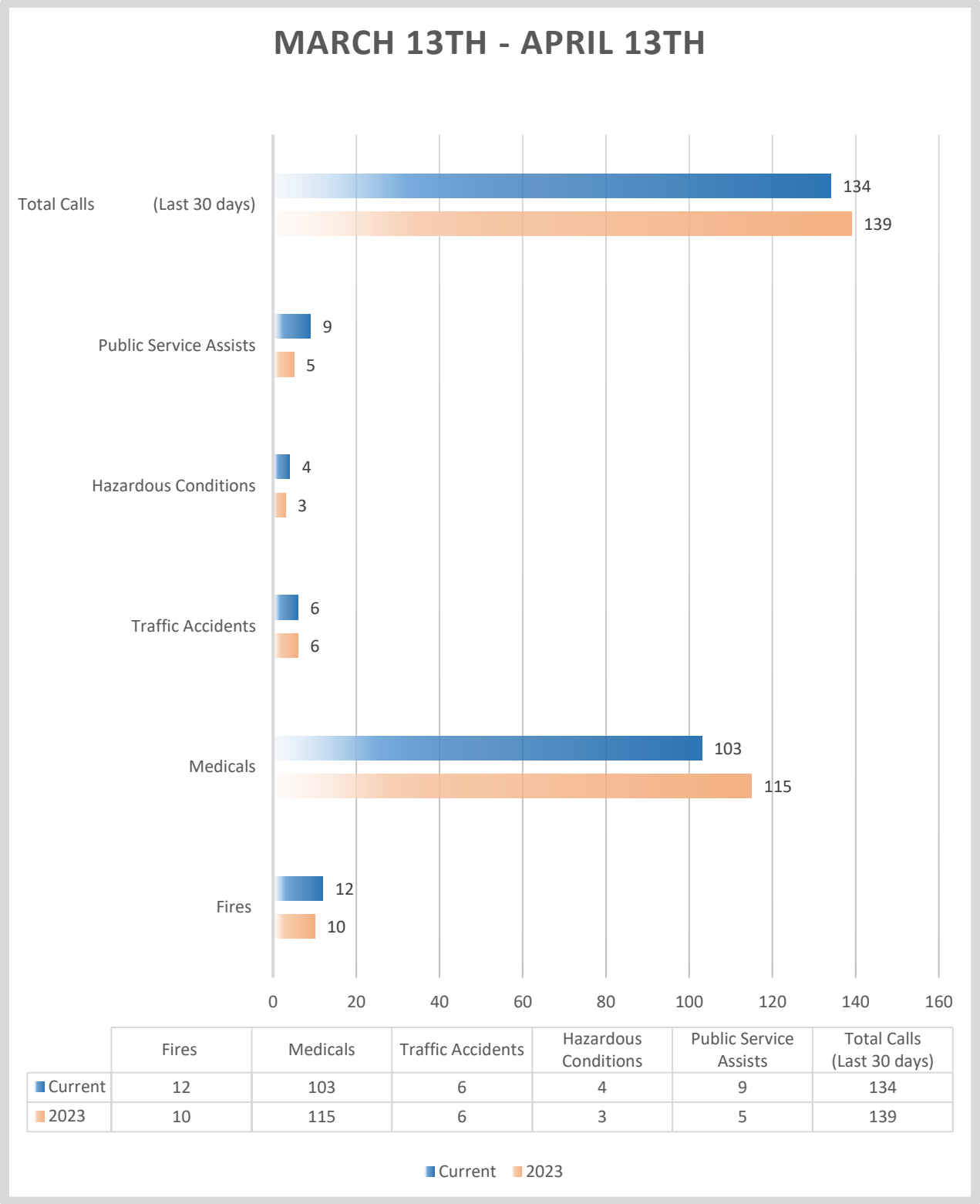
BUSINESS INSPECTIONS / PRE-PLANS:

- (15) Business Inspections have been completed
- Ø (5) Re-Inspections completed
- Ø (6) Fire Department Pre-Plans completed

SIGNIFICANT INCIDENTS:

- No significant incidents to report

Station 37 - Call Volume



	Fires	Medicals	Traffic Accidents	Hazardous Conditions	Public Service Assists	Total Calls (Last 30 days)
Current	12	103	6	4	9	134
2023	10	115	6	3	5	139

AGENDA ITEM NO. 4.

COUNCIL COMMUNICATION

SUBJECT: **Community Engagement, Activity Report**

TO: **Honorable Mayor Anna Velazquez and City Council**

FROM: **Jesus Valenzuela, Community Engagement Manager**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Social Media for the month of March

Facebook

- Reach: 31,800 people that saw our posts – 51.1% decrease
- Page Visits: 7,00 people visited our page – a 14.3% decrease
- New follows: 59 new follows
- Total followers: 4,657
    - Soledad – 39.3%
    - Women – 69.%
    - Men – 31%
- Most successful post: Las Viviendas Housing Workshop flyer – 20.1k reach

Instagram

- Reach: 3,900 – 26.8% increase from the previous report
- Visits: 1,300–57.7% increase
- New followers: 83 –10.7% increase
- Total followers: 1,462
    - Soledad –44.5%
    - Women – 67%
    - Men – 33%
- Most successful post: Summer Days Vendors video – 2.3k reach

Twitter

- Data for Twitter is currently unavailable

Roads Workshop

In collaboration with Public Works, Police, Fire, TAMC, and the County of Monterey, we held a roadway safety workshop that had over 20 people in attendance. We updated the community on some of our projects and got feedback. We also heard from the community what types of projects they want to see, including a Ciclovia.

Youth Summit
The OCE has been working with the Youth Commissioners to plan the inaugural South County Youth Summit. This summit will be held in conjunction with the Gonzales Youth Council and the Greenfield Youth Council. It is set for May 10 at Main Street Middle School in Soledad. The flyer and invitation will go out shortly.

540 Gabilan
The OCE is partnering with Community and Economic Development to launch a comprehensive survey on the 540 Gabilan property. We hope to discover what residents want to see on the property, and the results will help inform the RFP.

Mini-Grants
With the support of the Council, we have awarded four grantees in our first-ever mini-grants program. We met with the grantees on April 23rd to go over the next steps and take photos for the media advisory.

Website
The OCE has been working with various departments to keep the website current. With the support of each department, we have set up the Media Ad Hoc Committee that meets every month to discuss how we can keep the community up to date on what the City is working on.

AGENDA ITEM NO. 5.

COUNCIL COMMUNICATION

SUBJECT: **Human Resources Activity Report**

TO: **Honorable Mayor Anna Velazquez and City Council**

FROM: **Francine Uy, Human Resources Manager**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recruitments:
Assistant Engineer/Associate Civil Engineer (Flexible staffing; Management Analyst)
City Engineer (Flexible staffing; Water Resources Manager)
Police Officer
Recreation Leader I/II
Water Reclamation Shift Supervisor

Vacancies:
(1) Assistant Engineer/Associate Civil Engineer
(1) City Engineer
(1) Facilities Custodial Lead (PT/Seasonal) - Paused
(4) Police Officer - Two currently attending Police Academy
(1) Water Reclamation Shift Supervisor - Incumbent temporarily filling position

Temporary Staffing:
(1) Water Reclamation Chief Plant Operator
(1) Office Assistant (Building Permits)
(1) Office Assistant (Police)

AGENDA ITEM NO. 6.

COUNCIL COMMUNICATION

SUBJECT: **Parks and Recreation Activity Report**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Jessica Potts, Recreation Manager**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recreation Staff Report

January 1 – March 30 – 3rd Quarter

Memberships & Drop-In Usage (Daily Check-in)

	2nd Quarter		3rd Quarter		Difference	Difference
	Fitness	Gym	Fitness	Gym	Fitness	Gym
Adult – Drop-in	214	639	298	739	84	100
Youth & Teen – Drop-in	506	911	536	1066	30	155
Senior – Drop-in	3	2	6	53	3	51
Adult – Membership	2019	0	2820	0	801	0
Teen – Membership	1227	0	1466	0	239	0
Youth – Membership	34	0	38	0	4	0
Youth Mini – Membership	0	0	0	0	0	0
Senior – Membership	199	0	267	0	68	0
Employee – Membership	80	0	87	0	7	0
Family – Membership*	349	0	334	0	-15	0
Totals	4631	1552	5852	1858	1221	306
	6183		**7710**		**1527**	

Program Report

Programs/Outreach (Registered Participants)

	2nd Qtr	3rd Qtr	Difference
Pre-K Programming (Art & Science, Jr Sports): Ages 2-5	105	57	-48
Youth Programming (Art & Science & Drama): Ages 6-17	448	188	-260
Camp: Ages 5-12 (Summer/Seasonal School Breaks)	13	0	-13
Youth Sports: Basketball, Soccer, Flag Football, Volleyball, Clinics, etc. (5-13)	137	588	451
Special Needs: Art, Play & Explore, Sports League	60	0	-60
Adult Programs: (Sports, Art)	21	12	-9
Fitness Classes	37	72	35
Senior Activities: Social, Bingo, Art, Fitness	152	71	-81
Special Event/Activity:	0	0	0
City Sponsored/Waiver: (Celebration Nation-monthly)	?	?	?
School District Use:	?	?	?
City Use/SPR Partner:	?	?	?
Total	**973**	**988**	**15**

Membership Report

Active Community Center Memberships

	2nd Quarter		3rd Quarter		Difference	Difference
	Fitness	Gym	Fitness	Gym	Fitness	Gym
Adult – Membership	95		129		34	0
Adult – Couple	2		9		7	0
Teen – Membership	55		62		7	0
Youth – Membership	5		4		-1	0
Youth Mini – Membership	0		0		0	0
Senior – Membership	15		23		8	0
Family – Membership*	23		26		3	0
Employee	19		18		-1	0
Totals	214	0	271	0	57	0
	214		**271**		**57**	

*(# of individuals based on a family size of 4)

Program Sampling January - March 2024

Winter Basketball - Boys Division

Spring Break Camp

Easy Baking Class - Ages 6-12

Tiny Chefs - Ages 2-5

Ballet Class - Ages 6-7

Digital Art Class - Ages 6-12

Recreation Staff Report
March 2024

Memberships & Drop-In Usage			
	Fitness	Gym	Total Usage
Adult – Drop-in	63	149	212
Youth & Teen – Drop-in	223	389	612
Senior – Drop-in	2	0	2
Adult – Membership	954		954
Teen – Membership	511		511
Youth – Membership	15		15
Youth Mini – Membership			0
Senior – Membership	81		81
Employee – Membership	22		22
Family – Membership	105		105
*Discontinued Gym Membership due to program time decreasing available open gym time.	1976	538	2514
Total March 2024 Usage		**2514**	

Program Report

Programs/Outreach (Registered Participants)	
Pre-K Programming (Art & Science, Jr. Sports): Ages 2-5 (weekly-reg)	14
Youth Programming (Art & Science & Drama(3 times a week)): Ages 6-17 (weekly-reg)	36
Camp: Ages 5-12 (weekly-seasonal. Camp-25 max, + After Camp Program-ttl)	0
Youth Sports: (5-13, Co-Ed, wkly practice & games- reg) (Winter Basketball, Spring Volleyball)	244
Special Needs:	0
Fitness Classes	0
Adult Activities: Basketball - (Games 1 day a week)	71
Senior Activities: Social (monthly program- ttl), Senior Computer Class	45
Special Event/Activity: Easter Celebration (Lg events Attend unknown)	
City Sponsored/Waiver: (Celebration Nation-monthly)	
School District Use:	0
City Use/SPR Partner: (Election Polling, Truck Route Mtg (2), Budget Wkshp, Mtg. Congresswoman, ADU Wkshp, Hot Summer Days Mtg)	
**ttl= #check-ins (daily served) reg= # registered	
Estimated Program/Outreach Served Total	**410**

Membership Report

Community Center Active Membership		
	Fitness	Gym
Adult – Membership	129	
Adult – Couple	9	
Teen – Membership	62	
Youth – Membership	4	
Youth Mini – Membership		
Senior – Membership	23	
Family – Membership*	26	
Employee	18	
Totals	271	0
March 31, 2024 Active Memberships Total	**271**	

* (# of individuals based on a family size of 4)

PROGRAMS OF NOTE

- Monthly SoCoSocial Luncheon/Holiday Luncheon
- Volleyball begins / Flag Football Reg Begins
- Launch of Digital Arts Class using ARPA funded Computer Lab
- Introduce new and continued ongoing monthly program sessions

COLLABORATIONS/OUTREACH/GENERAL

- Meeting with San Andreas Regional Center regarding partnership for providing programs to person with special needs
- Meeting re: Miramonte parks system
- Bidder Walkthrough for Kitchen project
- Meet with Special Kids Connect regarding program partnership opportunities
- Meeting with CAPSLO regarding child care options
- Meeting with Monterey County Health Department regarding senior programming partnership
- Meeting with the Wahine Project organization to discuss partnership for summer camp, families, persons with special needs
- Attending city leadership training
- Meeting with Behavior Breakthrough regarding program partnership opportunities
- Bi-monthly P&R Master Plan Meetings as well as ongoing work and side-meetings related to the process. Periodic Advisory Committee Meetings.
- General operations, facilities upkeep, staff management

FACILITIES

	Hours Used		
	Council Waiver	City/SPR Use	Rented
Sports Fields - Little League, Soccer Orgs, SMRD	0	0	811
SCC Facility-Celebration Nation, PD Cops Giving Tree, FHL Mtg, PW, HR, Day of Dead Gen Plan	3	28	25
	Booked	Completed	Pending
General Public Event Rentals	0	2	4

Digital Art Program

Ballet Program

AGENDA ITEM NO. 7.

COUNCIL COMMUNICATION

SUBJECT: **Public Works Activity Report**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Donald T. Wilcox, Public Works Director, Alex Ramos, Assistant Engineer**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Projects and Activities

City-wide Roads and Safety Improvements

- The Public Works Department in collaboration with TAMC, TL Engineering, and Community Engagement, hosted a public event at the Community Center on April 10 to talk about important and interesting topics such as the truck route, West Street Road Diet and Complete Streets, and future ATP Grant funded safety improvements.

Capital Improvement Program and Budget

- PW Staff is currently reviewing and updating the CIP for next year's budget and is excited for what's to come in the next fiscal year!

Projects out for Bids (Planetbids) Updates:

- Front Street Maintenance Project
  - Front Street Maintenance Project is currently out to bid with an updated bid due date of April 24th, 2024!

WRF Metal Storage Building Project

- The Metal Building bid due date closed on April 4, 2024, and resulted in the City receiving five (5) bids! The lowest bid came in at $575,000 from Plummerbuilt Inc. and will be tentatively awarded at the May 1st Council Meeting.

Crack Seal Project

- The Crack Seal Project is currently out to bid and has an anticipated bid due date of April 17th, 2024!

Wastewater Reclamation Facility Assessment and Improvement Project

- The WRF Assessment and Improvement Project is officially out to bid with a due date of May 1st, 2024!

Pre-Engineered Metal Building (Fire Apparatus Bay)

- The Fire Apparatus Bay Building is officially out to bid with a bid due date of May 2nd, 2024!

Water Department Activities

Cross Connection Control Backflow Inspection

- PW Staff performing inspection on Backflow installations required by the State.

Combo Truck Training

- PW Staff training new staff on how to use the Combo Truck and its features to ensure safety when operating the equipment and having extra staff familiarize themselves for future use or emergencies.

Repairs

- Tank Hatch Repairs – PW Staff repaired the tank hatch at the Pinnacles Tank located at the foothills to prevent a safety incident from occurring and ensure there is no entry of a foreign substance or objects.
- Storm Drain Grate - PW Staff repaired the storm drain grate to prevent accidents and ensure public safety!

Hydrant Flushing

- PW Staff perform this exercise to verify the proper operation of hydrants to ensure they are working properly in the event of an emergency, flush the system to remove minerals and sediment build-up found in the water mains to deliver the highest quality water possible to the City residents.

Water Tank Rehab Project

- PW Staff working towards completing the Water Tank Cleaning (Rehab) Project for bidding!

Water Reclamation Facility Activities:

Camera System Installation

- PW Staff recently installed the new Aries HD Television System onto the Camera Van and is eager to start being put into service!

Safety Training Event

- Lock-Out/Tag-Out & Arc Flash Awareness Training for the South County Public Works Safety Group on April 17, 2024!

WRF Repairs

- Electrical repairs completed at the screw-press motor. Old wires to be replaced and reinstalled in the section leading to the screw-press motor.
- PW Staff completed repairs out in the UV Maintenance.

Army Corps Visit

- PW Staff met with the Army Core Rep Fanny Chan to discuss the status of the WRF Levee and the warranted repairs as a result of the major storms that occurred in the previous years.

Figure 1 - Cross Connection Backflow Inspection

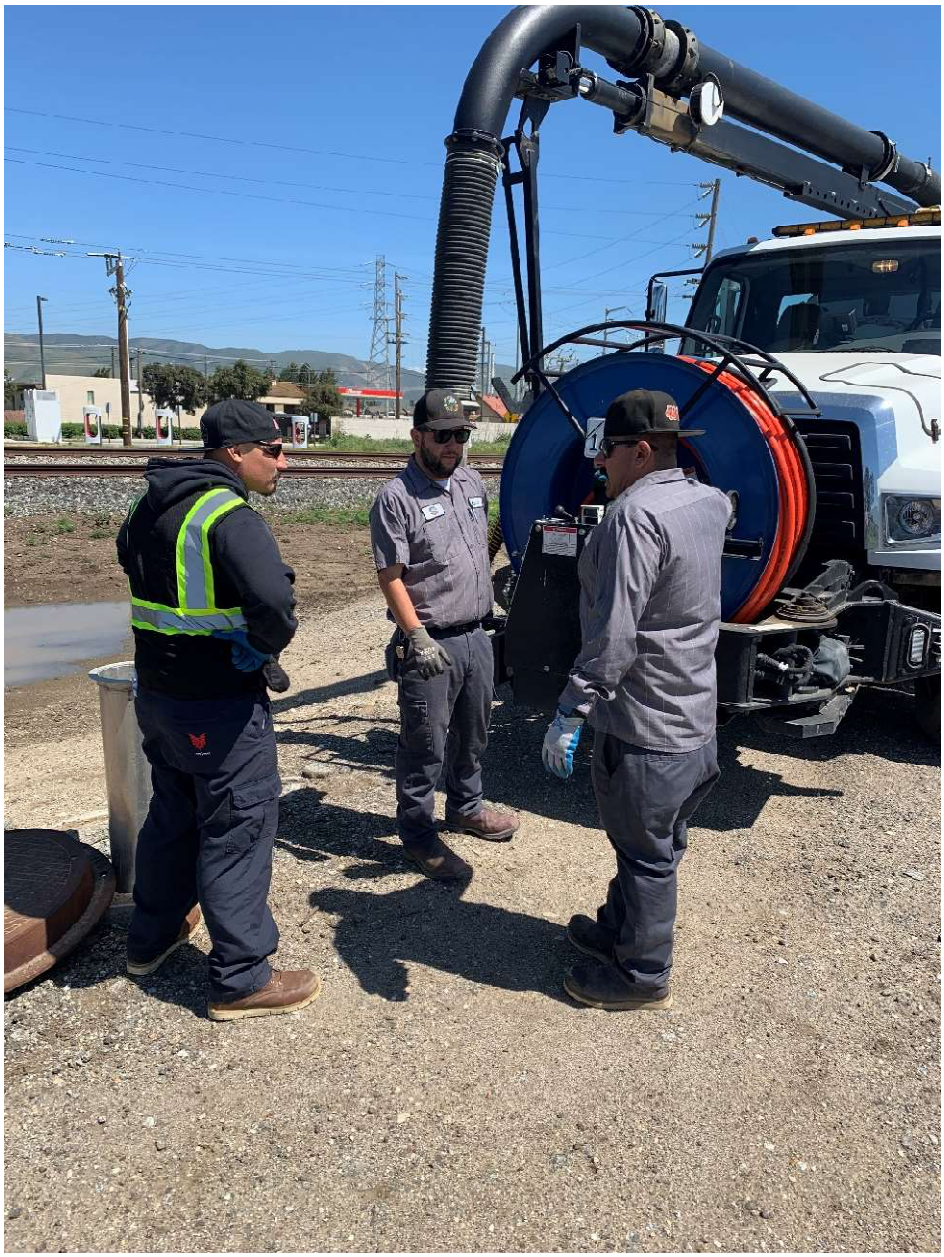


Figure 2 - Combo Truck Training

Figure 3 - Tank Hatch Repairs

Figure 4 - Storm Drain Repairs

Figure 4 - Storm Drain Repairs

Figure 5 - Hydrant Flashing

Figure 6 – Lock-Out/Tag-Out & Arc Flash Awareness Training for the SCPW Safety Group

AGENDA ITEM NO. 8.

COUNCIL COMMUNICATION

SUBJECT: **Community/Economic Development Dept. Activity Report**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Kao Nou Yang, Community and Economic Development Director**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

ECONOMIC DEVELOPMENT UPDATES

CDBG BUSINESS ASSISTANCE LOAN PROGRAM:

The first business loan was issue in April in the amount of $245,000 to the new Ace Hardware Store located on Front Street. There is currently $452,500.00 in loan funding that is available for business loans.

Staff will be doing a presentation on the CDBG Business Loan Program at the upcoming June Council Meeting.

BUSINESS ENGAGEMENT & EVENTS:

On April 14, Economic Development staff participated in the Pajaro Valley CDC's 'Dia del Empresario Latino'. The event was well-attended and featured a range of workshops covering essential topics such as Access to Capital, Launching Your Food Business, and Elevating your Business Technological Resources.

On April 27, 2024, Economic Development staff participated in and supported the grand opening of the new Ace Hardware Store, in collaboration with Soledad Merchants.

Our team is steadfast in its support of the Police Department for the eagerly awaited Hot Summer Days Event scheduled for July 6, 2024, all along Front Street. Furthermore, the event's promotion is already underway on the city's website and the See Monterey website. Links below:

https://www.cityofsoledad.com/2024/03/25/soledad-hot-summer-days-2024/
https://www.seemonterey.com/event/soledad-hot-summer-days/11354/

With the aim to bolstering tourism and stimulating the local economy the local economy, staff is actively strategizing a new autumn event, alongside exploring additional approaches to draw tourist to our beautiful city.

CAFECITO WITH ECONOMIC DEVELOPMENT:

On April 25, 2024, staff held another session of 'Cafecito with Economic Development'. This event showcased a presentation by our Public Department regarding the forthcoming redevelopment of our downtown corridor.

FRONT STREET CONTAINER VILLAGE PROJECT:

Staff has been collaborating with the Monterey Art's Council to integrate an art component into our downtown revitalization efforts. Currently the City is working in timeline with the Front Street maintenance project to ensure that infrastructure are stubbed and implemented.

MONTEREY COUNTY BUSINESS COUNCIL - SBDC SATELLITE OFFICE:

The City of Soledad has been chosen as one of the sites for the new SBDC Satellite Office. The SBDC expects to commence offering business support services by early May 2024. They will be at the Soledad Gateway on the first Tuesday of every month.

HOUSING PROGRAM UPDATES

SOLEDAD RIVERBED ENCAMPMENT HEALTH AND SAFETY DAY:

CED received $25,000 for the County of Monterey to coordination the efforts for the Soledad Riverbed Encampment Health and Safety Days. CDE staff has coordinated with the Police Department, Public Works and CalFire to ensure clean-up efforts run smoothly. The residents of the encampment have been informed of the scheduled Health and Safety Days, and they have been cooperative and responsive.

ENCAMPMENT RESOLUTION FUND (ERF):

The State has announced ERF-3 awards, and the County of Monterey's was awarded. The award allocated to the City of Soledad riverbed encampment is $4.7 million. This grant will support comprehensive strategies into stable and secure housing for encampment residents.

540 GABILAN – AFFORDABLE HOUSING:

CED has been preparing to launch a community engagement campaign that will guide the scope of work for the 540 Gabilan RFP. The community engagement plan includes an online survey and 3 pop-ups. CED's goal is to receive at least 300 responses by mid-May.

2015-2023 HOUSING ELEMENT ANNUAL PROGRESS REPORT:

Housing staff submitted the 2023 Housing Element APR on April 29, 2024. HCD

accepted and approved the 2023 APR on April 12, 2024.

PLANNING DIVISION UPDATES

SOLEDAD GENERAL PLAN

The City is continuing to work with Place works Inc. to create the 2045 General Plan for Soledad. Staff is currently working on the Vision and Guiding Principles. Staff is planning to present the final draft to the City Council on May 1st, 2024. You can find all the information about the General Plan on the website www.soledadgeneralpan2045.com, or you can get the material at City Hall.

SOLEDAD HOUSING ELEMENT:

On March 7, 2024, the City received final comments of our first draft from HCD and Staff is currently working on edits. On April 11, 2024, we routed our 2nd Draft of the Soledad Housing Element before submitting to HCD on April 18th, 2024. We anticipate having an approval letter or comments back from HCD within 60 days. All the housing element material is available on our website at www.soledadgeneralplan2045.com/housing-element/

SOLEDAD MARKETPLACE:

On March 14, 2024 the Planning Commission unanimously approved the Site Plan and Architectural Design for a new Tractor Supply. Tractor Supply anticipates to submit construction plans before the end of this year. The property owner/developer for the Soledad Marketplace obtained approval by the City Council on April 3rd, 2024 for the Final Map. This step is important as it aids the development of the shopping center and ongoing leases. DaVita and Dutch Bros is currently under construction. Dutch Bros is also in construction and is expected to open within the next couple of months.

PANDA EXPRESS:

The grading and building permits have officially been issued and they are ready to break ground.

HOLIDAY INN:

Staff received a Conditional Use Permit for a new hotel (Holiday Inn) at 800 Los Coches Rd. The Planning Commission unanimously approved on March 14th, 2024 the Conditional Use. The project applicant is working on a Site Plan and Architectural Design plan that is anticipated to go back to Planning Commission by June 2024.

SUHSD HOUSING PROJECT:

Staff will be working with SUSD to proceed with the construction process as soon as full plans are submitted. Applicant is aware that all Plan Checks from now until ownership are At-Risk Plan Checks.

MIRAMONTE (FORMER MIRAVALE III):

Staff continues to work on the Certification of Completion with LAFCO. Our City Manager, Megan Hunter has been the lead in LAFCO meetings to address the ag conservation easement efforts. Staff will continue to fulfill LAFCO requirements.

BUILDING DEPARTMENT UPDATES

Please see the attached building permit log

Permit List

47 Records

Permit #	Issued	Any Parcel Address	Site Address	Type	Project Description	Valuation Totals
240053	04/02/2024	1177 SAN ANTONIO	1177 SAN ANTONIO	ACCESSORY STRUCTURE	COVERED PATIO OUTDOOR KITCHEN 352 SQ FT	$5,000.00
240102	04/03/2024	983 Front Street	983 Front Street	COMMERCIAL PLUMBING	983,985,987,989 FRONT ST. BACKFLOW INSTALLATION	$800.00
240103	04/03/2024	980 BRYANT CANYON RD	980 BRYANT CANYON RD	COMMERCIAL ELECTRICAL	ELECTRICAL Main Panel Upgrade - Need Power Shut Down Temporary	$10,000.00
240103	04/03/2024	UNKNOWN	980 BRYANT CANYON RD	COMMERCIAL ELECTRICAL	ELECTRICAL Main Panel Upgrade - Need Power Shut Down Temporary	$10,000.00
240075	04/05/2024	3046 H. DeLaRosa Sr. Street	3046 H. DeLaRosa Sr. Street	NEW COMMERCIAL SIGN	Install 2 business signage - MICHOACANA QUE BONITA 37"x125" & 48"x120"	$5,000.00
240089	04/05/2024	280 3RD ST	280 3RD ST	RESIDENTIAL RE-ROOF	To repair-in-kind fire damage to include re-roof, facia remove and replace, fence repair, remove and replace 2 retrofit windows, paint	$20,000.00
240105	04/05/2024	845 MARKET ST	845 MARKET ST	RESIDENTIAL RE-ROOF	REROOF 2100 SQ FT REMOVE EXISTING, REPLACE WITH SHINGLES	$15,000.00
240098	04/08/2024	128 Kidder Street	128 Kidder Street	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$8,500.00
240108	04/08/2024	274 Kidder Street	274 Kidder Street	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$3,000.00
240111	04/09/2024	1185 FRONT ST	1185 FRONT ST	COMMERCIAL PLUMBING	INSTALLATION OF BACKFLOW PREVENTOR	$3,000.00
TUP-24004	04/09/2024	973 Vista De Soledad Street	973 Vista De Soledad Street	TEMPORARY USE OF LAND PERMIT	Fund-raising Carnival at Frank Ledesma Elementary April 25-28	

Permit #	Issued	Any Parcel Address	Site Address	Type	Project Description	Valuation Totals
240092	04/10/2024	504 SAN FERNANDO	504 SAN FERNANDO	SOLAR / PV SYSTEM	Pv roof mount(3.200kw)(8 panels) 1 ess	$13,008.00
240104	04/10/2024	1040 Santa Inez	1040 Santa Inez	SOLAR / PV SYSTEM	SOLAR/ PV SYSTEM 6 MODULES/2.220KWP	$10,200.00
240112	04/10/2024	500 MALMFELDT CIR	500 MALMFELDT CIR	RESIDENTIAL WATER HEATER	replace 40 gal. gas tank water heater with gas tank water heater, same location.	$2,395.00
240119	04/10/2024	214 5TH ST	214 5TH ST	SOLAR / PV SYSTEM	ROOF MOUNT PV SYSTEM 10 MODULES / 4.00 KW	$10,000.00
240060	04/11/2024	509 TOLTECA CIR	509 TOLTECA CIR	SOLAR / PV SYSTEM	SOLAR PV INSTALL 8 MODULES/13.5Kwh/BATTERY	$18,000.00
240113	04/11/2024	1000 Front Street	1000 Front Street	COMMERCIAL PLUMBING	Replacement of irrigation backflow and Installation of new domestic Backflow Device, backlfow blankets, and protective cages/concrete pads for cage	$6,750.00
240120	04/11/2024	273 OAK ST	273 Oak Street	RESIDENTIAL RE-ROOF	REROOF 1800 SQ FT REMOVE EXISTING, REPLACE WITH SHINGLES	$2,000.00
240121	04/11/2024	1441 MONTEREY ST	1441 MONTEREY ST	RESIDENTIAL ADDITION OR REMODEL	REPLACE WINDOWS 4X4 WITH STUCCO	$400.00
240035	04/12/2024	522 CALLE VALVERDE	522 CALLE VALVERDE	NEW SINGLE FAMILY DWELLING	GARAGE 453, PORCH 56 = TOTAL 2,640 SQ. FT.	$385,715.48
240036	04/12/2024	524 CALLE VALVERDE	524 CALLE VALVERDE	NEW SINGLE FAMILY DWELLING	GARAGE 451, PORCH 331 = TOTAL 2,585 SQ. FT.	$348,899.59
240037	04/12/2024	526 CALLE VALVERDE	526 CALLE VALVERDE	NEW SINGLE FAMILY DWELLING	GARAGE 479, PORCH 47 = TOTAL 2,520 SQ. FT.	$364,109.92
240038	04/12/2024	528 CALLE VALVERDE	528 CALLE VALVERDE	NEW SINGLE FAMILY DWELLING	GARAGE 476, PORCH 35 = TOTAL 2,949 SQ. FT.	$436,704.55

Permit #	Issued	Any Parcel Address	Site Address	Type	Project Description	Valuation Totals
240039	04/12/2024	530 CALLE VALVERDE	530 CALLE VALVERDE	NEW SINGLE FAMILY DWELLING	GARAGE 479, PORCH 41 = TOTAL 2,514 SQ. FT.	$363,724.78
240110	04/15/2024	235 Nestles Road	235 Nestles Road	COMMERCIAL PLUMBING	Backflow Installation	$9,000.00
240115	04/15/2024	155 KIDDER STREET	155 KIDDER STREET	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$1,500.00
240117	04/15/2024	136 Dixi Street	138 Dixi Street	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$1,500.00
240117	04/15/2024	138 Dixi Street	138 Dixi Street	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$1,500.00
240118	04/15/2024	235 WEST STREET	235 WEST STREET	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$1,500.00
240133	04/15/2024	1441 MONTEREY ST	1441 MONTEREY ST	RESIDENTIAL WALL HEATER	Single wall heater change out 35K BTU	$2,000.00
240135	04/15/2024	480 BELLE ST	480 BELLE ST	SOLAR / PV SYSTEM	19 MODULES, 5 KW SOLAR SYSTEM, W/ STORAGE SYSTEM	$41,500.00
240137	04/15/2024	2370 Relleum Drive	2370 Relleum Drive	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$6,000.00
240106	04/16/2024	104 INCA DR	104 INCA DR	ACCESSORY DWELLING UNIT	GARAGE CONVERSION TO ADU OF 406 SQFT	$41,200.88
240106	04/16/2024	104 Inca Drive	104 INCA DR	ACCESSORY DWELLING UNIT	GARAGE CONVERSION TO ADU OF 406 SQFT	$41,200.88
240139	04/16/2024	859 MORA CIR	859 MORA CIR	RESIDENTIAL PLUMBING	Water treatment permit	$8,750.00
TUP-24006	04/16/2024	919 MONTEREY ST	945 MONTEREY ST	TEMPORARY USE OF LAND PERMIT	PROVIDE SERVICE FOR FREE GOVERNMENT MEDICARE CELL PHONES (BINGO MARKET PARKING LOT)	

Permit #	Issued	Any Parcel Address	Site Address	Type	Project Description	Valuation Totals
TUP-24006	04/16/2024	945 MONTEREY ST	945 MONTEREY ST	TEMPORARY USE OF LAND PERMIT	PROVIDE SERVICE FOR FREE GOVERNMENT MEDICARE CELL PHONES (BINGO MARKET PARKING LOT)	
230143	04/17/2024	447 NESTLES ROAD	600 NESTLES ROAD	NEW COMMERCIAL BUILDING	NEW 2,669 SQ. FT. PANDA EXPRESS RESTAURANT W/DRIVE-THRU	$548,879.85
240091	04/17/2024	380 VALLEY RIDGE ST	380 Valleyridge Street	RESIDENTIAL ADDITION OR REMODEL	Add extra space to main home from ADU/Romove Wall	$850.00
240143	04/17/2024	622 REGINA DR	622 REGINA DR	RESIDENTIAL RE-ROOF	REMOVE EXISTING, REPLACE WITH SHINGLES	$9,000.00
240116	04/18/2024	136 Dixi Street	136 Dixi Street	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$1,500.00
240136	04/18/2024	148 Main Street	148 Main Street	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$1,500.00
240138	04/18/2024	148 NESTLES RD	148 NESTLES RD	COMMERCIAL PLUMBING	INSTALLATION OF A BACKFLOW DEVICE	$1,500.00
240140	04/18/2024	919 MONTEREY ST	945 MONTEREY ST	COMMERCIAL PLUMBING	Installation of Back-flow Preventer AT BINGO MARKET	$2,500.00
240140	04/18/2024	945 MONTEREY ST	945 MONTEREY ST	COMMERCIAL PLUMBING	Installation of Back-flow Preventer AT BINGO MARKET	$2,500.00
240141	04/18/2024	836 MONTEREY ST	836 MONTEREY ST	COMMERCIAL PLUMBING	Backflow Preventer Installation AT DELICIAS BAKERY	$2,500.00
240142	04/18/2024	555 FRONT ST	555 FRONT ST	COMMERCIAL PLUMBING	Backflow Preventer Install AT PRONTO DOLLAR	$2,500.00
240142	04/18/2024	585 FRONT ST	555 FRONT ST	COMMERCIAL PLUMBING	Backflow Preventer Install AT PRONTO DOLLAR	$2,500.00
240142	04/18/2024	FRONT ST	555 FRONT ST	COMMERCIAL PLUMBING	Backflow Preventer Install AT PRONTO DOLLAR	$2,500.00

Permit #	Issued	Any Parcel Address	Site Address	Type	Project Description	Valuation Totals
240144	04/18/2024	1050 STATE ST	1050 STATE ST	COMMERCIAL PLUMBING	Backflow Preventer Install	$2,500.00
240146	04/18/2024	500 MAIN ST	500 MAIN ST	RESIDENTIAL RE-ROOF	REMOVE EXISTING, REPLACE WITH 30YR COMP SHINGLES	$15,000.00
240147	04/18/2024	538 INDIAN WARRIOR WAY	538 INDIAN WARRIOR WAY	RESIDENTIAL RE-ROOF	REMOVE EXISTING, REPLACE WITH COMP. SHINGLES	$1,700.00
240148	04/19/2024	1415 Viento Street	1415 Viento Street	RESIDENTIAL RE-ROOF	REMOVE EXISTING, REPLACE WITH SHINGLES	$7,000.00
240149	04/22/2024	1246 WEST ST	1246 WEST ST	RESIDENTIAL RE-ROOF	REMOVE EXISTING, REPLACE WITH SHINGLES 30 YR	$10,000.00

AGENDA ITEM NO. 9.

COUNCIL COMMUNICATION

SUBJECT: **Police Department Activity Report**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Damon C. Wasson, Chief of Police**

THROUGH: **Patricia Alviar, Records Supervisor**

MEETING DATE: **May 1, 2024**

SOLEDAD POLICE DEPARTMENT

Monthly Crime Date and Calls for Service 2024

Activity	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly Totals
Murder/Attempted Murder	0	0	0	0									
Sexual Assault	0	1	0	1									
Armed Robbery	0	0	0	0									
Strong Arm Robbery	0	1	0	0									
Aggravated Assault	3	1	4	2									
Domestic Violence	5	2	2	4									
Arson	0	0	0	0									
Burglary	0	0	0	2									
Larceny	0	0	0	0									
Auto Theft	2	2	2	2									
Traffic Citations/Warnings Issued	115	113	110	61									
Total Arrests	27	19	25	19									
Dogs Impounded	0	4	0	8									
Cats & Other Impounds	5	1	0	2									
Animals transported to SPCA	4	4	0	4									
Code Enforcement Contacts	172	178	143	134									
Community Policing	185		124	184									
Victim Advocate Contacts	21	13	47	83									
Total Calls for Service	1,479	1,299	1,075	1,057									
TOTAL MONTHLY ACTIVITY	2,018	1,638	1,532	1,563									

SOLEDAD POLICE DEPARTMENT
STAFFING LEVELS
Authorized Sworn (20) Non-Sworn (6)

Month	Active Street Ready	Sworn Vacancies	Disabled **FTO Academy**	Administrative Leave Backgound	Non-Sworn	Non-Sworn Vacancies	Total Authorized Staff
July	15	2	3	0	6	0	26
August	15	2	3	0	6	0	26
September	15	2	3	0	6	0	26
October	12	4	2	1	7	0	26
November	12	4	2	1	7	0	26
December	12	4	2	1	7	0	26
January	12	4	2	1	7	0	26
February	12	4	2	1	7	0	26
March	12	4	2	1	7	0	26
April	12	4	2	1	7	0	26
May							
June							

03/21/2024 to
04/22/2024

2024

Soledad Police Department

COMMUNITY POLICING REPORT

Citizen Contacts: Officers have made approximately 60+ outreach contacts during this reporting period.
Business Checks: Officers conducted 46 business outreach contacts.
Apartment/Residential contacts: Officers made 18 contacts with residents on well-being checks.
Schools: Officers conducted 14 walk-throughs and drive-bys 31 times as part of school zone enforcement throughout Traffic Enforcement Unit. Special attention continues around the school with the Traffic Unit.
City Parks: Continuous patrol and 13 walk-throughs, with park visitor contacts made.
Youth Outreach: Numerous children were contacted by who provided stickers, goodie bags, and teddy bears.
Farmer's Market: Attended on 04/11 and 04/18 conducting outreach.
Special Events: 3RD Annual Soledad Hot Summer Days Carshow planning has begun.
Facebook: 1100 Likes, 70 Comments, 91 Shares, 5023 times photos viewed, 31,799 People Reached. We currently have 10,525 Followers, and this number increases monthly and is attributed to the hard work of the department's various units, as well as our outreach in person and on social media.
Churches: On-going visits of all churches throughout the city.
Volunteer/Reserve/Explorer Units: Reserve Officers donated 11 hours, Volunteer Unit donated 15 hours and the Explorer Unit donated 8 hours in this reporting period.

Prepared by: Deputy Chief Fred J. Lombardi

Victim Assistance Advocate activity report- C. Zamudio

March 22, 2024 – April 22, 2024

Referral Services: 01

On-scene crisis response: 04

Community Outreach: 25

Victim Advocate Training: 05

Schools visited: 07

Other Details: 41

TOTAL: 83

Code Enforcement Activity Report

March 20, 2023 – April 22, 2023

Vehicles Tagged – Public Roadway: 19

Vehicles Tagged – Private Property Enforcement: 05

Vehicles Towed: 06

Municipal Code Issues: 16

Citizen Complaints: 09

Parking Citations Issued: 04

Commercial Enforcement:10

Other Calls for Service:65

TOTAL CALLS FOR SERVICE: 134

Prepared by: P. CELAYA

Animal Control Activity Report

March 23, 2023 – April 22, 2024

Missing Animal Report - 0

Neighbor Animal Complaint/Welfare Check Request – 4

Issued Citations/Warning Citations - 0

Dogs Taken into Custody – 8

Cats Taken into Custody – 2

Other Animals taken into custody - 0

Animal Bites – 0

Deceased Animals – 2

Citizens Verbally Warned - 1

Humane Education/Referrals- 0

Cat Trap Request – 1

Unable to Locate/No Merit – 51

Dog License - 8

Other Details – 67

Animal Returned to Owner – 1

SPCA Transport – 4

Community Policing – 0

Breeder's License Applications received/Permits issued – 0

Contacts re: Breeding – 0 Note:

TOTAL CALLS FOR SERVICE: 149

Prepared by: J. Escarsega E00679

AGENDA ITEM NO. 10.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Resolution No. 6072, a Resolution of the City Council of the City of Soledad Approving the Consulting Services Agreement with Wallace Group for Construction Management and Inspection Services for the Front Street Maintenance Project and Authorizing the City Manager to Execute Said Agreement For $299,830 Plus a 10% Contingency for a Total Not to Exceed Amount of $329,813**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Donald T. Wilcox, Public Works Director, Alex Ramos, Assistant Engineer**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council of the City of Soledad Consider and Adopt Resolution No. 6072, "Approving the Consulting Services Agreement with Wallace Group for Construction Management and Inspection Services for the Front Street Maintenance Project and Authorizing the City Manager to Execute said Agreement for $299,830 plus a 10% Contingency for a Total Not to Exceed Amount of $329,813".

Executive Summary

To facilitate a successful project delivery, the City of Soledad will utilize construction management and inspection services to supplement city staff on major construction projects and provide construction oversight. Staff selected Wallace Group from the city's on-call consultant list to prepare a formal proposal for this project as staff has determined that Wallace Group has the experience and a team of qualified professionals to perform the services required for this project. Therefore, staff recommends approval of a consulting services agreement with Wallace Group for the Front Street Maintenance Project for $299,380 plus a 10% Contingency in the amount of $29,938 for a total not to exceed amount of $329,813. The City's standard consulting service agreement form is to be used.

Background

Front Street is an existing two-lane arterial that runs from H De La Rosa (4th Street) to Moranda Road, paralleling Highway 101 and spans about 1.5 miles in length. Over the years, Front Street has undergone a major revamp as part of the 2003 Front Street Revitalization Project in which a portion of the street corridor from Benito St. to East St. provided two 14' travel lanes, diagonal parking on both

sides, decorative streetlights in the downtown corridor, a 10' landscape median, 14' sidewalk on the west and 10' sidewalk on the east. Additionally, curb extensions (bulb-outs) were included and located at five intersections with benches and seating opportunities along with colored, decorative concrete sidewalks.

Due to existing tree root uplift, significant curb, gutter, and sidewalk areas have been damaged, resulting in drainage issues, ADA and pedestrian accessibility issues, and even preventing certain businesses from opening their front doors. Bollards at the curb extensions are in disrepair, offer minimal useful lighting at night for pedestrians, and are too bright at road level for vehicles. Four traffic signal lights are located along the corridor at San Vicente Road, East Street, Oak Street, and Nestles Road. North of Benito St. and south of East St., the street geometrics include center turn pockets, bike lanes, parallel parking, and standard curb, gutter, and sidewalk.

On August 3, 2022, City Council approved the consulting services agreement Task Order No. 4 with Harris & Associates to Provide Engineering Support Services for the Front Street Maintenance Project for $221,079. This project is currently out to bid with an engineer's estimate of probable construction costs of $4,059,748, and construction is anticipated to begin in the summer.

Review & Analysis

Under resolution No. 5698, the City Council approved a list of on-call professional services consultants to provide more flexibility to City staff for required infrastructure upgrades or repairs and increase efficiencies with the established list of qualified professional services contractors.

Staff has selected The Wallace Group from the city's on-call consultant list as they have the firm experience and team of qualified professionals to perform the services required for the project and are next in rotation for City projects. Wallace Group has previously provided CM services to the City of Soledad for the Dixi Street Sewer and Water Replacement Project, as well as other projects with multiple other agencies in California.

The Construction Management and Inspection Services will provide support to the City during the construction phase of the project. On major projects of this magnitude, Staff has typically sought these services from qualified firms, such as the Wallace Group; this is especially the case considering a significant amount of the construction work will be done in the Downtown Area where many of our local businesses and future anticipated Shipping Container Park are located. As such to ensure that we have a successful project and product, Staff recommends that City Council approve this Consulting Services Agreement.

Financial Considerations

This project will span FY 23-24 and FY 24-25. Funding for this project shall be from the Measure X Fund Capital Projects: 210-7160-5632, which has a currently projected FY 23-24 ending fund balance of $4,655,162, and an additional anticipated FY 24-25 revenue of $675,000 for a total revenue of $5,330,162 and a total project cost of $4,432,545 including 10% contingency. A Front Street landscape refresh and arts and amenities project is also under design and will be brought to Council for approval prior to proceeding with those enhancements.

Alternatives

- Approve the resolution as presented; or
- Reject the proposed resolution. This is not recommended as the Front Street Project shall require

construction oversight that staff does not have the capacity to provide given the resources.

Planning/CEQA

The proposed project is categorically exempt under Class 1 Existing Facilities, having met the qualifying criteria provided under CEQA Guidelines Section 15301. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of existing or former use. Section 15301 provides some, but does not limit the project scope to, examples of such projects, existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes). As detailed above, the Front Street Maintenance Project would be categorized under this description.

Public Notice Requirements

None required.

Attachment(s):
Resolution No. 6072
Exhibit A - Copy of Wallace Agreement

RESOLUTION NO. 6072

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD APPROVING THE CONSULTING SERVICES AGREEMENT WITH WALLACE GROUP FOR PROFESSIONAL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE FRONT STREET MAINTENANCE PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT FOR $299,380 PLUS A 10% CONTINGENCY FOR A TOTAL NOT TO EXCEED AMOUNT OF $329,813

WHEREAS, on August 3, 2022, City Council approved the Consulting Services Agreement Services Task Order No. 4 with Harris & Associates to provide engineering support services for the Design of the Front Street Maintenance Project; and

WHEREAS, the Front Street Maintenance Project is in the process of the bidding phase with construction anticipated in the summer of 2024; and

WHEREAS, a significant amount of the construction work will be done in the Downtown Area where many of the local businesses and future anticipated Shipping Container Park are located; and

WHEREAS, to facilitate a successful project delivery, the City of Soledad utilizes Construction Management and Inspection Services to supplement City Staff on major construction projects such as this to provide daily oversight; and

WHEREAS, staff selected the Wallace Group from the City's on-call consultant list for a proposal for construction management and inspection services; and

WHEREAS, staff has determined that The Wallace Group has the experience and a team of qualified professionals to perform the services required for the project as seen in the recent Dixi Street Sewer and Water Replacement Project; and

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Soledad, that the consulting services agreement between the City of Soledad and Wallace Group for Professional Construction Management and Inspection Services for $299,830 plus a 10% Contingency in a not to exceed amount of $329,813, and a copy of the agreement with Wallace Group, attached as **"Exhibit A"** and by reference incorporated herein, is hereby approved and the City Manager is hereby authorized and directed to execute the same on behalf of the City of Soledad.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 1st day of May 2024 by the following vote:

AYES, and in favor thereof, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

_____
ANNA M. VELAZQUEZ, Mayor

ATTEST:

_____
MEGAN HUNTER, City Clerk

CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SOLEDAD AND
WALLACE GROUP

THIS AGREEMENT for consulting services is made by and between the City of Soledad ("City") and Wallace Group ("Consultant") (together sometimes referred to as the "Parties") as of May 1, 2024 (the "Effective Date").

Section 1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Consultant 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 in 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 Effective Date and shall end on December 31, 2026, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.

1.2 **Standard of Performance.** Consultant 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 Consultant is engaged.

1.3 **Assignment of Personnel.** Consultant 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, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 **Time.** Consultant 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 1.1 above and to satisfy Consultant's obligations hereunder.

1.5 **Public Works Requirements.** Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C.

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed **$299,830,** notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the

Agreement shall prevail. City shall pay Consultant 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 Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant 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.** Consultant 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 Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

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 Consultant.

2.3 **Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 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 Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant 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 Consultant 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 Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed $-0-. Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 **Payment of Taxes.** Consultant 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 Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 **Authorization to Perform Services.** The Consultant 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, Consultant 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 Consultant 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 Consultant'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, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below 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 Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant 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, and that such insurance is in effect prior to beginning work to the City. Consultant 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 Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 **Workers' Compensation.** Consultant 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 Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than $ 1,000,000 per accident. In the alternative, Consultant 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 Consultant, 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.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than $ 1,000,000 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 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, 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 a certified endorsement to the policy:

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

b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3 **Professional Liability Insurance.**

4.3.1 **General requirements.** Consultant, 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 $ 1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is 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 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, Consultant shall purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.

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

4.3.3 **Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy

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, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written 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.

4.4.4 **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect 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 consultant, its employees, agents, and subcontractors.

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

4.5 **Remedies.** In addition to any other remedies City may have if Consultant 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 Consultant'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 Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** To the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its governing body, officers, agents, employees from and against any and all liability, loss damage, claims, expenses and costs (including, without limitation, reasonable attorney fees and cost and costs of litigation) (collectively "Liability") of every nature which arises out of, pertains to, or relates to the negligence, recklessness or willful misconduct of Consultant in the performance of this Agreement, except such Liability caused by the active negligence, sole negligence or willful misconduct of City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents or employees under Worker's Compensation acts, disability benefits acts, or other employee benefit acts. This indemnification obligation is not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and shall survive expiration or early termination of this Agreement. This section is applicable to services provided under this agreement that are design professional services provided by a licensed architect, landscape architect, professional engineer, or professional land surveyor.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant'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 Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant 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.

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

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.** Consultant 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, and any copyright, patent or trademark law. Consultant'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, Consultant 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.** Consultant represents and warrants to City that Consultant 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. Consultant represents and warrants to City that Consultant 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,

Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 60 days written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant 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. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant 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 Consultant 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.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a

determination of Consultant'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 Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant 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.

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

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, 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 Consultant pursuant to this Agreement;

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

8.6.4 Charge Consultant 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 Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant'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 Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant 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 Consultant 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.

9.2 **Consultant's Books and Records.** Consultant 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 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant 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 $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 3 years after final payment under the Agreement.

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 Monterey or in the United States District Court for the Northern 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.** Consultant 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.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place

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

Consultant 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.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant 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.

10.8 **Solicitation.** Consultant 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 Don Wilcox, Public Works Director ("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 Consultant shall be sent to:

Zack Teske, PE
Wallace Group
612 Clarion Ct.
San Luis Obispo, CA 93401
zacharyt@wallacegroup.us

Any written notice to City shall be sent to:
Megan Hunter, City Manager
City of Soledad
P.O. Box 248
Soledad, CA 93960
mhunter@cityofsoledad.com

10.11 **Professional Seal.** Where applicable in the determination of the contract administrator, 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 Exhibits A and B, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there may be a conflict between the consultant proposal terms and the agreement, the City's agreement language prevails.

Exhibit A	Scope of Services
Exhibit B	Payment Schedule
Exhibit C	Public Works Requirements

10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF SOLEDAD

_____
Megan Hunter, City Manager

Attest:

_____
Megan Hunter, City Clerk

Approved as to Form:

_____
Michael Rodriquez, City Attorney

CONSULTANT: Wallace Group

_____
Zack Teske, PE

EXHIBIT A

SCOPE OF SERVICES

.

EXHIBIT B

COMPENSATION SCHEDULE

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.

B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

C. The Consultant and its subcontractors shall forfeit as a penalty to the City $25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.

B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to $50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of

prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.

4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the

Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

AGENDA ITEM NO. 11.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Resolution No. 6073, A Resolution of the City Council of the City of Soledad Authorizing the Submittal of a Prohousing Designation Program Application to the California Department of Housing and Community Development (HCD) and Participation in the Prohousing Designation Program**

TO: **Honorable Mayor Anna Velazquez and City Council**

FROM: **Kao Nou Yang, Community and Economic Development Director**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recommendation

To Approve Resolution No. 6073 a Resolution authorizing the following:

1. The submission of an application to participate in the California Department of Housing and Community Development's Prohousing Designation Program; and

2. The City Manager for and on behalf of the City, to execute and enter into any agreements, documents or amendments required or deemed necessary or appropriate by HCD for participation in the Prohousing Designation Program.

Executive Summary

The City of Soledad is seeking to be the first South Monterey County jurisdiction to be accepted into the Prohousing Designation Program (PDP) by the California Department of Housing and Community Development (HCD). Inclusion in the PDP will demonstrate the City's strong commitment to the accelerated production of housing by implementing strategic, prohousing planning principles. Being a part of the PDP will provide the City with a scoring advantage and/or preference in emerging and competitive applications for critical affordable housing and infrastructure grant programs. These programs include the Affordable Housing and Sustainable Communities Program (AHSC), Transformative Climate Communities Program (TCC), and Infill Infrastructure Grant Program (IIG), Local Partner Programs, Transit and Intercity Rail Capital Program (TIRCP), as well as potential future advantages and opportunities involving both housing and non-housing funding sources. Once the proposed Resolution is approved, the City of Soledad will be authorized to submit an application to the Prohousing Designation Program of the California Department of Housing and Community Development.

Background

The PDP was created through Assembly Bill 101 Housing Development and Financing in the 2019-2020 Budget Act. This program was established to help address California's housing crisis by empowering local jurisdictions to adopt measures, programs, and incentives that go beyond existing state law, with the goal of facilitating and encouraging housing development. To be eligible for the program, jurisdictions must comply with state housing laws, Housing Element requirements, and submit annual required reporting. Successful designation provides jurisdictions with incentives like additional points or other preferences in competitive housing and infrastructure grant programs such as the Affordable Housing and Sustainable Communities Program (AHSC), Transformative Climate Communities Program (TCC), Infill Infrastructure Grant Program (IIG), and Transit and Intercity Rail Capital Program (TIRCP).

Review & Analysis

The City can qualify for a prohousing designation by submitting a completed PDP application for HCD review, which involves four separate scoring categories: (1) favorable zoning and land use, (2) acceleration of housing production timeframes, (3) reduction of construction and development costs, and (4) provision of financial subsidies towards housing projects. To meet the application threshold requirements, the City must implement at least one housing-supportive policy in each of the four categories and score a minimum of 30 points out of a total of 60.

The City has been allocated the responsibility to accommodate the development of almost 724 additional housing units as part of its most recent Regional Housing Needs Allocation (RHNA). Given this new RHNA allocation and the City's objectives for neighborhood preservation, housing production, and housing assistance, it is essential to secure new sources of local, state, and federal funds for affordable housing projects. The PDP designation would be an important tool in attracting and encouraging housing development within the City and would provide a competitive advantage in seeking and securing additional housing production-related funding. The PDP designation also signifies to private developers that the City is committed to streamlining housing production and may encourage new developers to invest in Soledad.

In collaboration with the lead consultant, PlaceWorks, the Community & Economic Development Department (CEDD) staff has prepared a complete PDP application that includes the City's qualifying policies, programs, and initiatives in each of the four required scoring categories. The application has received an initial "self-score" of 35 points, which is above the program's minimum 30-point designation threshold.

PDP applications are accepted on an open, rolling basis. After submission, HCD has 60 days to review and notify the City of its final determination, in writing. Unsuccessful applicants may continue to consult with PDP staff and work on developing and refining their jurisdictional policies, programs, and incentives to meet the designation standards and support the resubmission of an application.

Financial Considerations

The City initiated a small contract with PlaceWorks for $8,000 to assist in putting together the pro-housing application, which was budgeted within professional services for the Community and Economic Development Department. Submission of a PDP application has no additional financial impact. Once approved as a designated PDP jurisdiction, the City would be afforded future opportunities to compete for and secure additional funding.

Alternatives

- Do not approve the resolution and not submit an application for PDP designation. This is not recommended as it would prevent the City from seeking additional PDP funding opportunities.
- Provide other direction to staff.

Planning/CEQA

The proposed action is not a project defined under CEQA section 15378 of the CEQA Guidelines. Therefore, environmental review is not applicable.

Public Notice Requirements

None.

Attachment(s):
Resolution No. 6073
2 - State Resolution - HCD PHD Application
3 - Prohousing Application Soledad Application

RESOLUTION NO. 6073

A RESOLUTION AUTHORIZING THE SUBMITTAL OF A PROHOUSING DESIGNATION PROGRAM APPLICATION TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) AND PARTICIPATION IN THE PROHOUSING DESIGNATION PROGRAM

WHEREAS, Government Code section 65589.9 established the Prohousing Designation Program (PDP), which creates incentives for jurisdictions that are compliant with state housing element requirements and that have enacted Prohousing local policies; and

WHEREAS, the California Department of Housing and Community Development (HCD) has adopted emergency regulations (Cal. Code Regs., tit. 25, § 6600 et seq.) to implement the PDP, as authorized by Government Code section 65589.9, subdivision (d); and

WHEREAS, jurisdictions demonstrating PDP application threshold requirements will be designated Prohousing and, as such, will receive additional points or other preference during the scoring of competitive applications for both specified housing and infrastructure funding and potential, future non-housing funding; and

WHEREAS, the City of Soledad is currently working toward compliance with applicable state housing law and has submitted its Housing Element for HCD review, and is therefore eligible to apply; and

WHEREAS, the City of Soledad acknowledges and confirms that it will continue to comply with applicable housing laws and refrain from enacting laws, developing policies, or taking other local governmental actions that may or do inhibit or constrain housing production and further acknowledges and confirms that it commits itself to affirmatively furthering fair housing pursuant to Government Code section 8899.50; and

WHEREAS, the City of Soledad shall be subject to the application: the terms and conditions specified in the Prohousing Designation Program documents; the Prohousing Designation Program regulations: and any and all other applicable laws; and

WHEREAS, the City of Soledad desires to submit an application for acceptance into the PDP;

NOW, THEREFORE, BE IT RESOLVED that the Soledad City Council authorizes the submission of a City PDP application to the HCD and authorizes its full participation in the PDP; and

NOW, BE IT FURTHER RESOLVED that the City Council of the City of Soledad authorizes the City Manager to execute and enter into any documents and/or agreements, including future amendments, required or deemed necessary or appropriate by HCD to participate in the Prohousing Designation Program.

PASSED AND ADOPTED, at a duly noticed regular meeting of the City Council of the City of Soledad held on the 1st day of May 2024, by the following vote:

AYES, and in favor thereof Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

_____
ANNA M. VELAZQUEZ, Mayor

ATTEST:

_____
MEGAN HUNTER, City Clerk

Formal Resolution for the PROHOUSING Designation Program

RESOLUTION NO._____

A RESOLUTION OF THE GOVERNING BODY OF

CITY COUNCIL OF THE CITY OF SOLEDAD AUTHORIZING APPLICATION TO AND PARTICIPATION IN THE PROHOUSING DESIGNATION PROGRAM

WHEREAS, Government Code section 65589.9 established the Prohousing Designation Program ("Program"), which creates incentives for jurisdictions that are compliant with state housing element requirements and that have enacted Prohousing local policies; and

WHEREAS, such jurisdictions will be designated Prohousing, and, as such, will receive additional points or other preference during the scoring of their competitive Applications for specified housing and infrastructure funding; and

WHEREAS, the California Department of Housing and Community Development ("Department") has adopted regulations (Cal. Code Regs., tit. 25, § 6600 et seq.) to implement the Program ("**Program Regulations**"), as authorized by Government Code section 65589.9, subdivision (d); and

WHEREAS, the **City of Soledad** ("Applicant") desires to submit an Application for a Prohousing Designation ("Application").

THEREFORE, IT IS RESOLVED THAT:

1. Applicant is hereby authorized and directed to submit an Application to the Department.

2. Applicant acknowledges and confirms that it is currently in compliance with applicable state housing law.

3. Applicant acknowledges and confirms that it will continue to comply with applicable housing laws and to refrain from enacting laws, developing policies, or taking other local governmental actions that may or do inhibit or constrain housing production. Examples of such local laws, policies, and actions include moratoriums on development; local voter approval requirements related to housing production; downzoning; and unduly restrictive or onerous zoning regulations, development standards, or permit procedures. Applicant further acknowledges and confirms that the Prohousing Policies in its Application comply with its duty to Affirmatively Further Fair Housing pursuant to Government Code sections 8899.50 and 65583. Applicant further acknowledges and confirms that its general plan is in alignment with an adopted sustainable communities strategy pursuant to Public Resources Code section 21155- 21155.4. Applicant further acknowledges and confirms that its policies for the treatment of homeless encampments on public property comply with and will continue to

comply with the Constitution and that it has enacted best practices in its jurisdiction that are consistent with the United States Interagency Council on Homelessness' "7 Principles for Addressing Encampments" (June 17, 2022, update).

4. If the Application is approved, Applicant is hereby authorized and directed to enter into, execute, and deliver all documents required or deemed necessary or appropriate to participate in the Program, and all amendments thereto (the "Program Documents").

5. Applicant acknowledges and agrees that it shall be subject to the Application; the terms and conditions specified in the Program Documents; the Program Regulations; and any and all other applicable law.

6. **The Mayor or designee** is authorized to execute and deliver the Application and the Program Documents on behalf of the Applicant for participation in the Program.

PASSED AND ADOPTED this 1st day of May, 2024 by the following vote:

AYES: [ ] NOES: [ ] ABSENT: [ ] ABSTAIN: [ ]

The undersigned, [INSERT NAME AND TITLE OF SIGNATORY] of Applicant, does hereby attest and certify that the foregoing is a true and full copy of a resolution of the Applicant's governing body adopted at a duly convened meeting on the date above-mentioned, and that the resolution has not been altered, amended, or repealed.

SIGNATURE: _____ DATE: _____

NAME: _____ TITLE: _____

Appendix 2: Proposed Policy Completion Schedule

Category Number	Concise Written Description of Proposed Policy	Key Milestones and Milestone Dates	Anticipated Completion Date	Notes
1C	Sufficient sites, including rezoning, to accommodate 125 to 149 percent of the current or draft RHNA, whichever is greater, by total and income category. These points shall not be awarded if the applicant earns three points pursuant to Category (1)(A) above. These additional sites must be identified in the Jurisdiction's housing element adequate sites inventory, consistent with Government Code section 65583, subdivisions (a)(3) and (c)(1).	Adoption of Housing Element anticipated 7/24	7/24	
1D	Density bonus programs that allow additional density for additional affordability beyond minimum statutory requirements (Gov. Code, § 65915 et seq.).	Amend zoning ordinance by December 2025	12/25	
1H	Zoning or other land use designation methods to allow for residential or mixed uses in one or more non-residential zones (e.g., commercial, light industrial). Qualifying non-residential zones do not include open space or substantially similar zones.	Already implemented – Updates to zoning ordinance allow multifamily as a permitted use in C-R and C-1 were completed in 10/23.	10/23	
1I	Modification of development standards and other applicable zoning provisions or land use designation methods to promote greater development intensity. Potential areas of focus include floor area ratio, height limits, minimum lot or unit sizes, setbacks, and allowable dwelling units per acre. These policies must be separate from any qualifying policies under Category (1)(B) above.	Already implemented – existing PUD regulations in zoning ordinance	In City zoning ordinance since 1986	

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1K	Establishment of an inclusionary housing program requiring new developments to include housing affordable to and reserved for low- and very low-income households, consistent with the requirements of AB 1505 (Chapter 376, Statutes of 2017, Gov. Code, § 65850.01).	Inclusionary housing ordinance was first adopted in 2005 Amendments to zoning adopted 10/23	10/23	
2A	Establishment of ministerial approval processes for multiple housing types, including, for example, single-family, multifamily and mixed-use housing.	Already implemented – Updates to allow ministerial approval of multiple housing types were completed in 10/23.	10/23	
2B	Acceleration of Housing Production through the establishment of streamlined, program-level CEQA analysis and certification of general plans, community plans, specific plans with accompanying Environmental Impact Reports (EIR), and related documents.	Existing General Plan EIR was adopted in 2005	2005	
2C	Documented practice of streamlining housing development at the project level, such as by enabling a by-right approval process or by utilizing statutory and categorical exemptions as authorized by applicable law, (e.g., Pub. Resources Code, §§ 21155.1, 21155.4, 21159.24, 21159.25; Gov. Code, § 65457; Cal Code Regs., tit. 14, §§ 15303, 15332; Pub. Resources Code, §§ 21094.5, 21099, 21155.2, 21159.28).	Already implemented through applying CEQA infill exemption for nearly all housing projects	N/A	
2E	Absence or elimination of public hearings for projects consistent with zoning and the general plan.	Updates to some zoning chapters completed in 10/23. Otherwise, already in zoning ordinance.	10/23	
2H	Absence, elimination, or replacement of subjective development and design standards with objective development and design	Amend zoning ordinance by December 2025	12/25	

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	standards that simplify zoning clearance and improve approval certainty and timing.			
2I	Establishment of one-stop-shop permitting processes or a single point of contact where entitlements are coordinated across city approval functions (e.g., planning, public works, building) from entitlement application to certificate of occupancy.	Already implemented – 7/23	7/23	
2J	Priority permit processing or reduced plan check times for ADUs/JADUs or multifamily housing.	Already occurring. However, official process will be established by December 2024.	12/24	
2K	Establishment of a standardized application form for all entitlement applications.	City created a standardized application form in Fall 2023	11/23	
2L	Documented practice of publicly posting status updates on project permit approvals on the internet.	Begin posting by July 2024 in order to have a documented track record by Spring 2026.	7/24; 3/26	
3A	Waiver or significant reduction of development impact fees for residential development with units affordable to Lower-Income Households. This provision does not include fees associated with the provision of housing affordable to Lower-Income Households (e.g., inclusionary in lieu fees, affordable housing impact fees, and commercial linkage fees).	June 2025	6/25	
3B	Adoption of policies that result in less restrictive requirements than Government Code sections 65852.2 and 65852.22 to reduce barriers for property owners to create ADUs/JADUs. Examples of qualifying policies include, but are not limited to, development standards improvements, permit processing improvements, dedicated ADU/JADU staff,	Pre-approved ADU/JADU plans were released to the public in September 2023	9/23	

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	technical assistance programs, and pre-approved ADU/JADU design packages.			
3E	Measures that reduce costs for transportation-related infrastructure or programs that encourage active modes of transportation or other alternatives to automobiles. Qualifying policies include, but are not limited to, publicly funded programs to expand sidewalks or protect bike/micro-mobility lanes, creation of on-street parking for bikes, transit-related improvements, or establishment of carshare programs.	East Street and Metz Road roundabout was completed in 2021. Dixi Street shared roads completed Fall 2023. All remaining projects will be completed by Spring 2026.	7/21 10/23 3/26	
4B	Establishment of local housing trust funds or collaboration on a regional housing trust fund, which include the Jurisdiction's own funding contributions. The Jurisdiction must contribute to the local or regional housing trust fund regularly and significantly. For the purposes of this Category, "regularly" shall be defined as at least annually, and "significant" contributions shall be determined based on the impact the contributions have in accelerating the production of affordable housing.	Draft Housing Element Program 2.2.1: Coordinate with other Salinas Valley cities annually starting in 2024 Convene meetings with agricultural businesses in 2025 Begin implementation in 2026 Draft Housing Element Program 2.2.5: Explore options and select an approach to the Housing Trust Fund by summer 2024. Reassess at least annually.	3/26 9/24	Draft Housing Element Program 2.2.1 Draft Housing Element Program 2.2.5
4E	A comprehensive program that complies with the Surplus Land Act (Gov. Code, § 54220 et seq.) and that makes publicly owned land available for affordable housing, or for	City is already complying with SLA and has applied it to multiple properties. Program will be officially	12/25	

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	multifamily housing projects with the highest feasible percentage of units affordable to Lower Income Households. A qualifying program may utilize mechanisms such as land donations, land sales with significant write-downs, or below-market land leases.	established by December 2025.		
4G	Prioritization of local general funds to accelerate the production of housing affordable to Lower-Income Households.	Funds provided to purchase 540 Gabilan in 1/24	1/24	
4H	Directed residual redevelopment funds to accelerate the production of affordable housing.	Funds provided to purchase 540 Gabilan in 1/24	1/24	
4K	Providing operating subsidies for permanent Supportive Housing.	Meet with County staff by the end of 2024 and at least twice a year thereafter. The City and County will seek funding by the end of 2024. Purchase homes and begin operating subsidy by the end of 2025.	12/25	Draft Housing Element Program 3.1.7
4M	Other policies not described in Categories (4)(A)-(L) of this section that quantifiably promote, develop, or leverage financial resources for housing affordable to Lower-Income Households.	City hired Housing Analyst in 1/24	1/24	

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
CATEGORY 1: FAVORABLE ZONING AND LAND USE					**7**		**0**	**7**
1C	Sufficient sites to accommodate at least 125%-149% of current RHNA (724 x 1.25 = 905, 724 x 1.49 = 1,079; RHNA capacity = 1,145)	P	- Housing Element, Table 6-2	Electronic copy attached	2	-	-	2
1D	Updating density bonus regulations in the Zoning Ordinance to allow a 100% density bonus for senior projects that are already 100% affordable - so allowing them to double density.	P	- Project examples - Staff reports - CUPs - Resolution	Electronic copy attached	2	-	-	2

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
1H	Multifamily housing is a permitted use in the Commercial Residential (C-R) District and in the Downtown Core form-based zone portion of the Retail Central Business (C-1) District.	E	- C-R and C-1 Zone updates in Zoning Code	Electronic copy attached	1	-	-	1

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
1I	The City has a track record of modification of development standards on project processed as PUDs that have promoted greater development intensity.	E	- Applications/Plans - Staff Reports - Permits - Resolutions		1	-	-	1
1K	City has had an Inclusionary Housing Ordinance since 2005. Amendments were made in 2023.	E	- Zoning Code, Chapter 17.41	Electronic copy attached	1	-	-	1

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
CATEGORY 2: ACCELERATION OF HOUSING PRODUCTION TIMEFRAMES					**14**		**0**	**14**
2A	Ministerial approval process (Zoning permit issued by staff) for single family, duplex, multifamily, and mixed use in a variety of zones	E	- Zoning Code – Chapters 17.10, 17.11,17.12, 17.14 and 17.20	Electronic copy attached	3	-	-	3
2B	Programmatic CEQA clearance currently in General Plan EIR, enabling development to tier off programmatic document	E	- Final EIR adopted in 2005	Electronic copy attached	2	-	-	2
2C	Streamlining housing development at the project level by applying the CEQA infill exemption for nearly all housing projects	E	- Staff Reports	Electronic copy attached	2	-	-	2
2E	Streamlining housing development that does not need a GP or Zoning change at the project level through by-right approval processes that eliminate public hearings.	E	- Zoning district chapters – lists of permitted uses. Some of the chapters including Chapter 17.14 R-3 Zoning District were amended in 2023 to remove discretionary review of multifamily. - Zoning Code Chapter 17.42 Zoning Compliance Certificates,	Electronic copy attached	2	-	-	2

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
			Conditional Use Permits, Variances - Zoning Code Chapter 17.44 Site Plan Review					
2I	The Planning Department serves as the single point of contact for entitlements from the entitlement application to the certificate of occupancy. City implemented smart.gov system for online permitting and scheduling. It allows staff and applicants to • Receive application status updates online, thus reducing phone and email contact • Receive deficiency comments electronically • Access approved plans and permits online • Issue permits online	E	- Link	City of Soledad Public Portal (smartgovcommunity.com)	1	-	-	1

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
2J	Officially establish priority permit processing or reduced plan check times for ADUs/JADUs.	E & P	- Forms, reports and statistics	Electronic copy attached	1	-	-	
2K	City has a standardized application form for all entitlement applications.	E	- Link	City of Soledad Public Portal (smartgovcommunity.com)	1	-	-	
2L	Begin posting status updates on project permit approvals on the City website.	P	- City website homepage	Electronic copy attached	1	-	-	
CATEGORY 3: REDUCTION OF CONSTRUCTION AND DEVELOPMENT COSTS					**6**		**0**	**6**
3A	Allow fee deferrals as part of tax credit projects. The City is open to a waiver or a loan.	P	- Affordable Housing Agreements	Electronic copy attached	3	-	-	3
3B	Create and make available a set of preapproved ADU	E	- Link	https://www.cityofsoledad.com/department	2	-	-	2

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
	plans to facilitate production and reduce costs to applicants			s/community-and-economic-development/building-and-safety/adu/				
3E	Programs that encourage active modes of transportation or other alternatives to automobiles: - Dixi Street shared roads – installation of bike lane - Pedestrian safety improvements - East Street and Metz Road roundabout - Pedestrian improvements at Orchard Lane and Gabilan Drive - Intersection Improvements at Main Street and Gabilan Drive - Pedestrian Improvements at	E & P	- Roundabout opening news article - Council resolution - Scope of Work	Electronic copy attached	1	-	-	1

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
	Benito Street and Gabilan Street - Pedestrian Improvements on Orchard Lane							
CATEGORY 4: PROVIDING FINANCIAL SUBSIDIES					**9**		**2**	**11**
4B	Establish an Agricultural Housing Trust Fund that agricultural employers contribute to (Draft Housing Element Program 2.2.1). Also establish a regional Housing Trust Fund (Draft Housing Element Program 2.2.5).	P	- Draft Housing Element Program 2.2.1 - Draft Housing Element Program 2.2.5	Electronic copy attached	2	1	2	4
4E	Surplus Land Act properties include Housing Element sites/projects - School Housing Project and 540 Gabilan. There are two other properties that city has processed under the SLA.	E & P	- Latest resolutions demonstrating compliance with Surplus Lands Act	Electronic copy attached	2	-	-	2
4G	Prioritized local general funds to accelerate the production of housing affordable to Lower-Income Households at 540 Gabilan site purchased by the City.	E & P	- City Council staff report - Purchase Agreement	Electronic copy attached	2	-	-	2

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
	Used ARPA funds for purchase of 540 Gabilan. Used General Funds to pay for the Phase I Environmental Site Assessment, legal services, and staff time.							
4H	Directed residual redevelopment funds to accelerate the production of affordable housing at 540 Gabilan site purchased by the City.	E & P	- City Council staff report - Purchase Agreement	Electronic copy attached	1	-	-	1
4K	Provide operating subsidies for permanent Supportive Housing for TAY supportive housing units in Las Viviendas the City and County are working to purchase. The City has already contributed PLHA funds for this for this project and also intends to apply for entitlement funding.	E & P	- Draft Housing Element Program 3.1.7	Electronic copy attached	1	-	-	1
4M	The City hired a senior staff member - Housing Analyst in January 2024 to commit one full-time staffing person's worth of resources towards the	E	- Job posting for Housing Analyst	Electronic copy attached	1	-	-	1

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Appendix 3: Project Proposal Scoring Sheet								
Category Number	Concise Written Description of Prohousing Policy	Enacted or Proposed	Documentation Type (e.g., resolution, zoning code)	Links to Docs or attached as Appendix 5	Points	Enhancement Category Number	Enhancement Points	Total Points
	City's housing priorities.							
				GRAND TOTAL	**36**		**2**	**38**

Appendix 5: Additional Information and Supporting Documentation

- 1C_Housing Element Table 6-2.pdf
- 1D.pdf
- 1H_C-1_Ord. 758.pdf
- 1H_C-R_Ord. 748.pdf
- 1I_1. SR 03062019 Santa Clara Townhomes 2 - Nader Agha (v2).pdf
- 1I_CC. Attachment B.Slama.PUD.ltr.pdf
- 1I_CUP2002-10 Nader-Amendment.pdf
- 1I_DOC092718-001.pdf
- 1I_GabilanGardens.PC.050803.CUP.RESO.pdf
- 1I_ORCHARD VILLAS REPORT.pdf
- 1I_Orchard Villas_Amending Conditional Use Permit_05-23-052.pdf
- 1I_Parcel E PUD- Conditions of Approval.pdf
- 1I_PCAgenda050803GabilanGardens2VTM2000301.VTM.pdf
- 1I_PUD table.pdf
- 1I_SR 01102019 Santa Clara Townhomes 2 - Nader Agha.pdf
- 1I_SR 04013017 Santa Clara Townhomes - Nader Agha.pdf
- 1I_SR 10042018 San Antonio Townhomes - Legacy Homes.pdf
- 1I_SR 12062018 Santa Clara Townhomes 2 - Nader Agha.pdf
- 1I_SR-RESO-CUP #2013-03-1904 Monterey-PC 1 09 14 - Final.pdf
- 1K_Ord. 757.pdf
- 2A_Ord. 748.pdf
- 2A_Ord. 759.pdf
- 2B_2005 General Plan EIR.pdf
- 2C_SR Nino Liberty Court Study.pdf
- 2C_SR Nino Liberty Court Subdivision.pdf

2C_SUSD Housing Project.pdf

2E_Chapter_17.42__ZONING_COMPLIANCE_CERTIFICATES_CONDITIO...

2E_Chapter_17.44__SITE_PLAN_REVIEW.pdf

2E_Ord. 748.pdf

2E_Ord. 759.pdf

2J_ADU Plans ChecklistForm.pdf

2J_PERMIT STATISTICS 120-DAYS.pdf

2J_Pre-Approved ADU Plans Consult Form.pdf

2J_ViewReport (1).pdf

2L_Planning Website.pdf

3A_8th Street Apartments Affordable Agreement.pdf

3A_2019 07 19 Recorded Affordable Housing Agreement.pdf

3E_HSIP Cycle 10 - Pedestrian Safety.pdf

3E_Soledad unveils area's first roundabout intersection.pdf

3E_SR_TAMC Budgetory Election Results.pdf

4B_Program 2.2.1.pdf

4B_Program 2.2.5.pdf

4E_2. Exhibit to Reso 6022 Final Exhibit A and Exhibit B- SLA 502 Front S..

4E_Exhibit A to Reso. 6048- SLA Map and Notice Santa Elena Property.p..

4E_RESO 6048.pdf

4E_Reso. 6022.pdf

4G_SR 6038 - LOI for 540 Gabilan.pdf

4G_SR 6042 - 540 Gabilan Purchase and Sales Agreement.pdf

4H_SR 6038 - LOI for 540 Gabilan.pdf

4H_SR 6042 - 540 Gabilan Purchase and Sales Agreement.pdf

4K_Program 3.1.7.pdf

4M_Announcement - Housing Analyst 09.15.2023.pdf

AGENDA ITEM NO. 12.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Resolution No. 6074, a Resolution of the City Council of the City of Soledad to Accept and Approve the Final Miramonte Storm Drain Impact Study Dated January 2023**

TO: **Honorable Mayor Anna Velazquez and City Council**

FROM: **Donald T. Wilcox, Public Works Director**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council of the City of Soledad approve Resolution No.6074, to "Accept and Approve the Final Miramonte Storm Drain Impact Study Dated January 2023".

Executive Summary

For approximately two decades, staff has been working with the Agha family on the annexation of approximately 654 acres north of the City for the development of single and multi-family housing, neighborhood retail, schools, and parks in a development known as Miramonte. LAFCO conditionally approved annexation, and staff is now collaborating with the developer on a Development Agreement, the last piece to complete the entitlement process. A technical component of implementing the Miramonte Specific Plan, which ultimately requires public improvements, is the preparation of master plans for water, sanitary sewer, and storm drains to include the Miramonte Development and any required upgrades to our systems. Council received the Sanitary Sewer and Water System Master Plan reports on April 3, 2024, and this action presents the Storm Drain Report.

Background

Over 14 years ago, the City of Soledad started processing what was known as the Miravale III project. The project included a 920-acre annexation with capacity for approximately 4,200 residential units in various densities, zoning for commercial, an 18-hole golf course, and other sites for churches, schools, and community uses. A Specific Plan was prepared for the project, and an Environmental Impact Report was prepared. The City Council took action to certify the EIR in September 2010. However, the City Council did not take action on the Specific Plan or any planning entitlements at that time.

In 2018, the project was revived, and the Miramonte Specific Plan, which is comprised of approximately 654 acres of single and multi-family housing, affordable housing, and neighborhood retail, was approved by the City Council in a 4-1 vote. In early 2020, the LAFCO application was

submitted to amend the Sphere of Influence and apply for annexation of Miramonte to the City of Soledad. On December 19, 2022, the Local Agency Formation Commission of Monterey County (LAFCO) conditionally approved the City of Soledad's application for a sphere of influence amendment and annexation.

As part of the approval conditions, Miramonte is required to prepare master plans for water, sanitary sewer, and storm drain public improvements needed to provide these services for their development throughout the build-out of their project. Council received the Miramonte Sanitary Sewer and Water System Master Plan reports on April 3, 2024, and this action presents the Miramonte Storm Drain Report.

Review & Analysis

Soledad's storm drain master planning began with an unofficial study in 2000 by Hanna & Brunetti. RMA Associates then completed the first Storm Drain Master Plan (SDMP) in 2007, followed by an update by Schaaf & Wheeler in 2015. Since those plans were accepted, the City subsequently retained Schaaf & Wheeler (S&W) to determine the infrastructure requirements to service the Miramonte Project and assess the impacts on the storm drain system, and recommend amendments if needed.

Miramonte Storm Drain Impact Study (SDIS) – January 2023
The intent of this Study is to update the existing storm drain system hydraulic model with revised on-site pipeline alignments for the Miramonte Specific Plan. The existing storm drain master plan model was then updated with any improvements that have been constructed since 2015. The Miramonte development system was then added to the model to analyze its impact on the City's system during the 10-year storm event.

Based on the findings and recommendations of this SDIS, City staff will be tasked with ensuring that the facilities identified in this study will be constructed by the developer prior to when capacity is needed.

Financial Considerations

Fees for preparation of this SDIS are based on a time-and-materials basis, charged for the level of effort expended only (not lump sum or flat fee basis), with a not to exceed the amount of $46,860. All such fees will be paid by the Developer from the Miramonte Development Deposit.

Alternatives

None

Planning/CEQA

An EIR for the Miravale III (now Miramonte) project was certified by the City of Soledad City Council in 2010 and was completed in compliance with the requirements of CEQA and the CEQA Guidelines.

Public Notice Requirements

None required.

Attachment(s):
Resolution No. 6074

2023-01-18 Final Miramonte SD Impact Report
2022-08-31 Miramonte SD Tech Memo

RESOLUTION NO. 6074

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD TO ACCEPT AND APPROVE THE FINAL MIRAMONTE STORM DRAIN IMPACT STUDY DATED JANUARY 2023

WHEREAS, infrastructure master plan updates are performed periodically to ensure that the current highest priority projects are determined, prioritized and commenced as intended with collected funds; and

WHEREAS, with the annexation of the Miramonte development, the City's infrastructure master plans needed to be updated to include the infrastructure necessary to serve the full Miramonte development; and

WHEREAS, the Water System Master Plan (WSMP) and Sanitary Sewer Master Plan (SSMP) updates are separate projects already accepted and approved by the Council at the April 3, 2024 meeting.

WHEREAS, an updated Storm Drain Impact Study (SDIS) is needed to ensure that the current storm drain system is analyzed and the highest priority storm drain projects are programmed to sustain the City's storm drain system.

NOW THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Soledad that the Miramonte Storm Drain Impact Study Dated January 2023, a copy of which is attached hereto as **Exhibit 1,** and by reference incorporated herein, is hereby accepted and approved to include the Miramonte Project

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 1st day of May 2024 by the following vote:

AYES, and in favor thereof Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

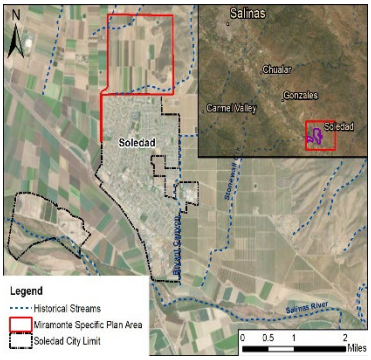
_____
ANNA M. VELAZQUEZ, Mayor

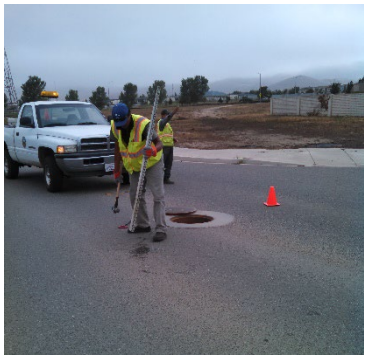
ATTEST:

_____
MEGAN HUNTER, City Clerk

Final
Miramonte Storm Drain Impact Study
January 2023

PREPARED FOR:
City of Soledad
248 Main Street
Soledad, CA 93960





PREPARED BY:
Schaaf & Wheeler
870 Market St.,
Ste. 1278
San Francisco, CA 94102

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

Introduction

The City of Soledad contracted Schaaf & Wheeler to complete a hydrologic and hydraulic analysis to determine the impact the Miramonte Development will have on the City's storm drain system, and what, if any, improvements are required to support the development. Schaaf & Wheeler completed the City of Soledad Storm Drain Master Plan Update in 2015 and will utilize the same hydrologic and hydraulic model to complete this analysis. The MIKE-URBAN (MU) model works within the ArcMap GIS interface and can simulate runoff, open channel flow, and pipe flow.

The Miramonte Development is located to the north of the current City limit as shown in Figure 1. Storm runoff in the development will be collected in a series of pipes and detention basins and will connect to the City's existing drainage system at San Vicente Road. The existing storm drain master plan model will be updated with any improvements that have been constructed since 2015. The development's system will then be added to the model to analyze its impact on the City's system during the 10-year storm event.

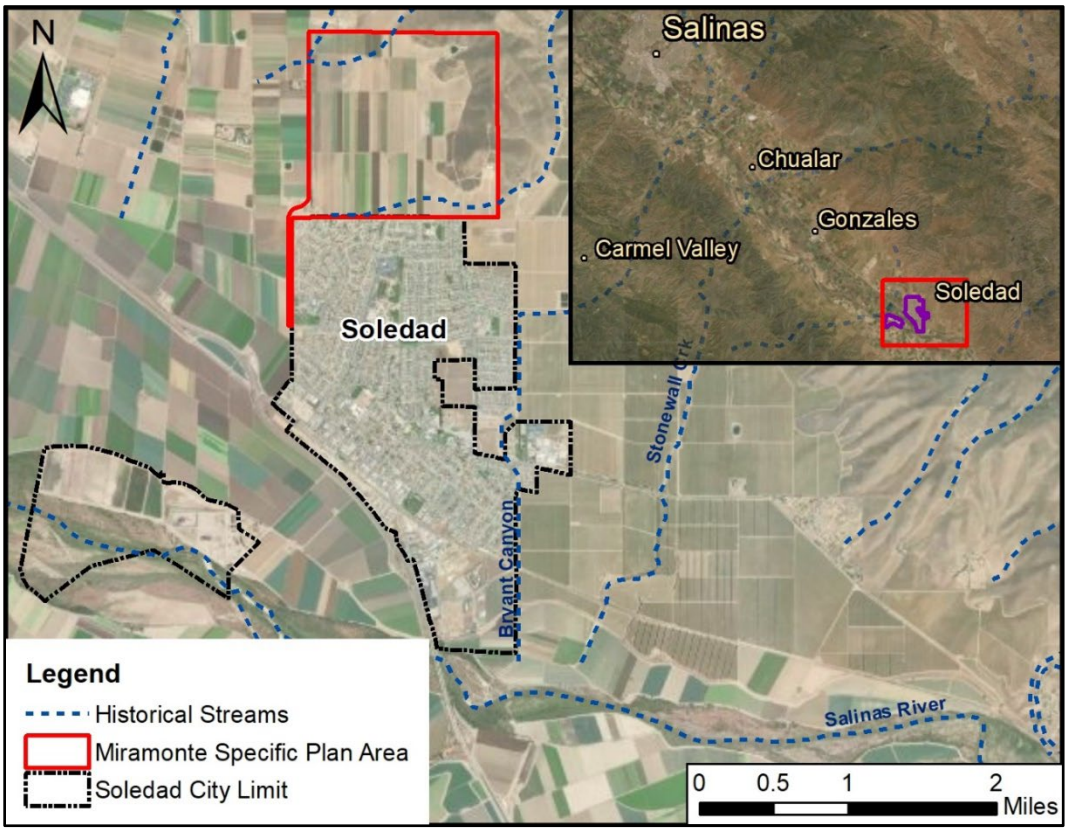


Figure 1 – Miramonte Development Vicinity Map

History of Flooding in the Development Area

The development site currently consists primarily of mildly sloped, agricultural fields draining southwest towards the northern City Limit and San Vicente Road. Off-site areas draining to this same point of concentration consist of steeper hillsides. The concentration of large storm events to San Vicente Road has historically resulted in flooding at the northwest limits of the City and accumulation of sediments from the hillsides and fields (Figure 2).

Figure 2 – Accumulation of Sediment at the corner of Vista De Soledad and San Vicente Road in January 2021.

The City has requested that RJA provide a detention basin design that allows for 100-year overflows to exit the basin and discharge to the west, across San Vicente, rather than allowing the full 100-year peak discharge to enter the City pipe system.

Hydrologic Analysis

The hydrologic methodology used for this study is consistent with the 2015 master plan. The NRCS Curve Number (CN) methodology is used to determine basin runoff. It relies on the use of curve numbers to characterize basin infiltration and runoff potential. Curve numbers are based on a combination of land use, soil characteristics, and antecedent moisture condition (AMC). The AMC for 10-year and 100-year storms is 1.5 based on previous calibration to regional stream gages. The soils and land use are shown in Figures 2 and 3. Percent impervious and CN are shown in Table 1.

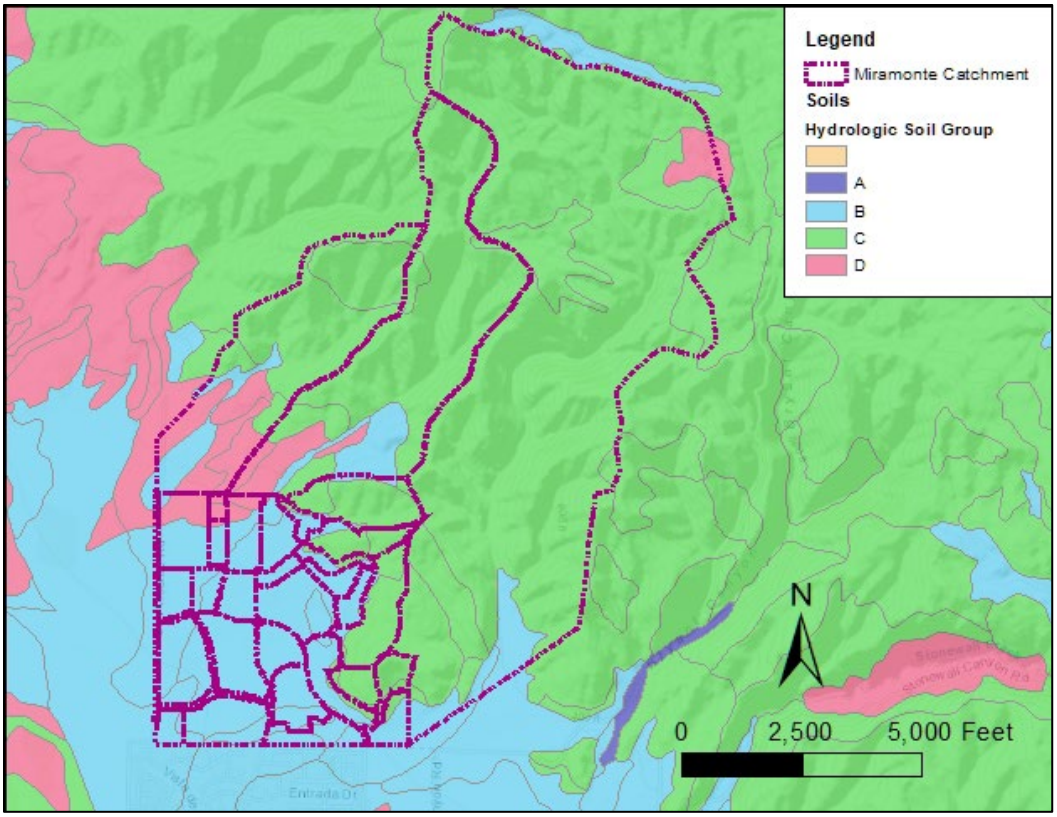


Figure 3 – Hydrologic Soil Group

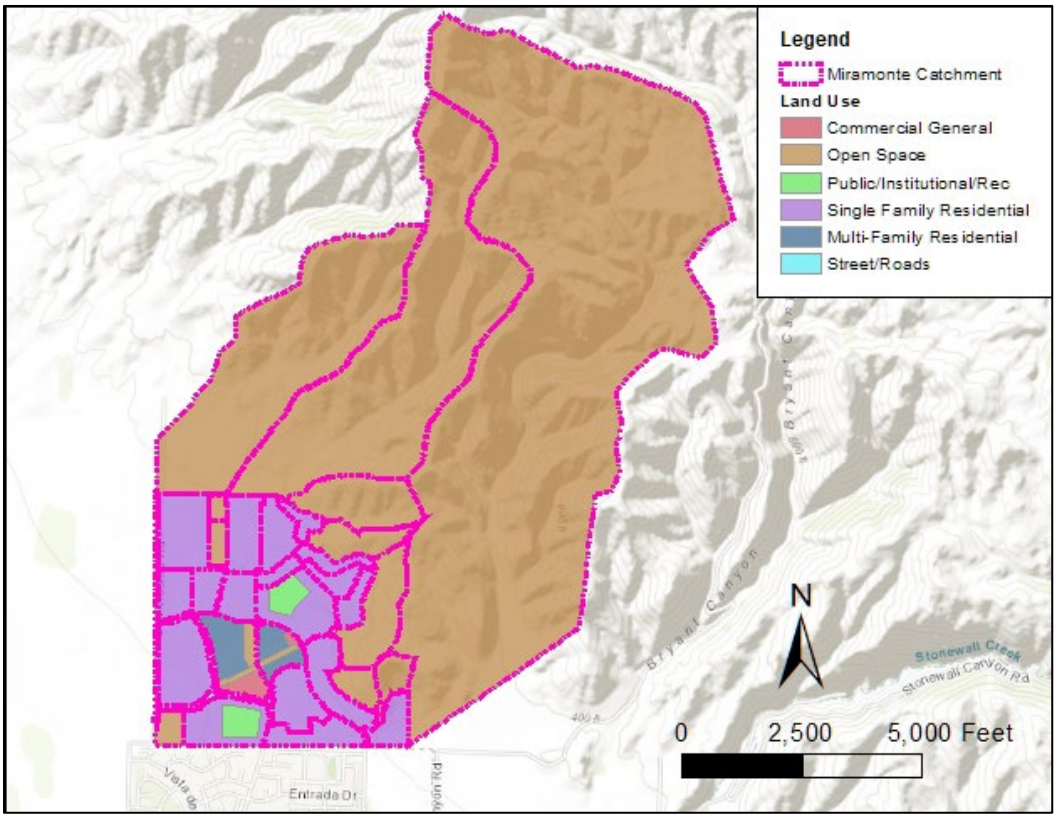


Figure 4 - Miramonte Development Area Land Use

Table 1 - Curve Number by Soil Group and Land Use

			Curve Number by Soil Group			
Land Use	**Impervious**	**Basin N**	**A**	**B**	**C**	**D**
Commercial General	0.80	0.025	44	58	71	74
Commercial Convenience	0.85	0.025	64	68	78	79
Commercial Community	0.85	0.025	64	68	78	79
Commercial-Residential	0.80	0.025	44	58	71	74
Commercial Highway	0.98	0.050	44	58	71	74
Industrial	0.90	0.050	44	58	71	74
Heavy Industrial	0.95	0.050	64	68	78	79
Industrial Buffer	0.60	0.080	44	58	71	74
Office	0.85	0.025	44	58	71	74
Open Space/Wildlife	0.05	0.080	35	51	65	72
Public/Institutional/Rec	0.20	0.025	44	58	71	74
Planned Unit Development	0.65	0.025	44	60	74	80
Single-Family Residential	0.65	0.025	44	58	71	74
Low Density Residential	0.70	0.025	44	58	71	74
Medium Density Residential	0.75	0.025	44	58	71	74
Multi-Family Residential	0.80	0.025	64	68	78	79
Streets/Roads	0.98	0.025	44	58	71	74

Catchment data includes the boundaries of each drainage catchment along with relevant physical and hydrologic parameters including surface area, land use characteristics, basin lag, and curve number. Catchment delineations completed by RJA were utilized for this study.

Curve numbers vary from 0 to 100, with 0 equating to no runoff and 100 indicating that all precipitation will run off. Weighted curve numbers were calculated for each catchment by applying the appropriate CN to the pervious percentage of the catchment and a CN of 100 to the impervious percentage of the catchment.

Basin lag time was calculated using the same methodology used in the storm drain mater plan. The equation uses basin length, shape, slope and land use and is shown below. Any lag times calculated below 10 minutes were raised to 10 minutes, which is a typical time used for roof to gutter flow time.

$$t_{lag} = (0.862) * 24 * N * \left(\frac{L * L_c}{\sqrt{S}}\right)^{0.38} + 0.083$$

where:

t_{lag} basin lag (hours)

N watershed roughness (calculated per catchment

L longest flow path from catchment divide to outlet (miles)

L_c length along flow path from a point perpendicular with the basin centroid to its outlet (miles)

S effective slope along main watercourse (feet/mile)

A 10-year, 24-hour design rainfall event with a total rainfall depth of 2.29-inches and a 100-year, 24-hour design event with a depth of 3.47-inches are utilized per NOAA Atlas 14. The design rainfall pattern is distributed in 5-minute time increments with a fraction of the total rainfall occurring in each interval. The 10-year and 100-year storm intensity graphs are shown in Figure 4.

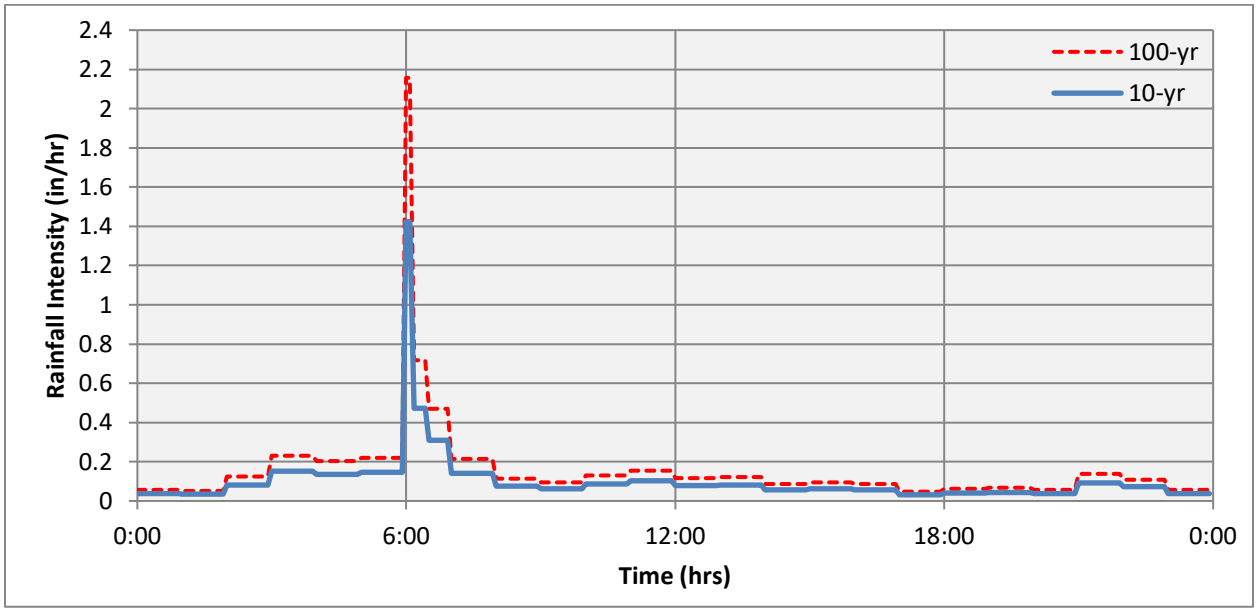


Figure 5 - Soledad 10-year and 100-year, 24-hour Storm Intensity Graph

A more detailed discussion of the hydrologic methodology used in the analysis can be found in the 2015 Soledad Storm Drain Master Plan Update.

Hydraulic Analysis

Model Development

The City's storm drain master plan MU model was updated with improvements constructed since 2015. Improvements include the "Soledad Regional Recharge Project" which consists of pipe improvements adjacent to San Vicente Road and the UPRR basin and the "Gabilan Drive Storm Drain Improvements" which include piping improvements along Gabilan Drive.

The Miramonte Development storm drain network data was added to the storm drain master plan MU model. The development's network consists of storm drain pipes, bioretention areas, detention basins, and detention basin outlet structures. All elements are added to the network except for the bioretention areas. They are considered insignificant due to their limited volume and they fill early enough in the storm to have an insignificant impact on the peak discharge. It is a conservative approach to not include them in the model. The development's network layout is included as Attachment 1.

The Miramonte Development drainage network includes five (5) detention basins of various sizes. They are added to the model as a basin node with an associated volume-elevation curve. The volume-elevation curve data is provided by RJA and is included as Attachment 2. Each basin has an associated outlet structure which restricts the flow out of the basin. The outlet invert and size for each structure is provided by RJA and is included as Attachment 3. Infiltration at the basins is ignored to be conservative.

The basin located at the southwest corner of the development (Basin 1) has a tributary drainage area that includes the entire development and most of the off-site hillside to the northeast. RJA has identified

that runoff from the westernmost off-site drainage area (identified in Attachment 1 as O-3) concentrates in an existing agricultural basin to the north of the City. As such, a bypass system conveys that runoff separately and discharges on the west side of San Vicente into that existing basin.

Model Results

The MU model was run with and without the Miramonte Development. MIKE URBAN "Node flood" results were compared to determine the impact of the development on the City's system. Node flood is defined as the maximum depth of water above ground during the storm event. Soledad's level of service per the master plan is a maximum depth of 0.5-feet above ground during the 10-year event. This roughly translates to curb height which means water is contained in the street.

The City's existing storm drain system in and around San Vicente Road currently meets this level of service. The Miramonte Development as initially designed increases the flood depths in the San Vicente system to greater than 0.5-feet at 4 locations between Front Street and Market Street as shown in Attachment 4. The initial design parameters of the outlet structure are summarized in Table 2.

Table 2 - Original Basin 1 Outlet Structure Design

	Original Design	
	Height/Invert	**Size (Shape)**
Orifice #1	1 ft	12 in (Circular)
Orifice #2	1 ft	13 in (Circular)
Orifice #3	1 ft	14 in (Circular)
Orifice #4	8 ft	3 ft x 1 ft (Rectangular)
Orifice #5	8 ft	3 ft x 1 ft (Rectangular)
Riser #1	12 ft	60 in (Circular)
Riser #2	12 ft	60 in (Circular)

The project inherently addresses the existing flooding issue adjacent to San Vicente by containing the runoff from the development and a large portion of the off-site area. Currently, this runoff accumulates at the northwest corner of the City and causes significant ponding. However, the City also voiced some concern about the impact of discharge from the 100-year event through the risers, which were connected to the City's pipe system. At least some portion of the runoff that ponds at the northern City limit discharges across San Vicente to the adjacent agricultural fields.

Without considerably greater detention volume, directing 100-year discharge from the basin into the City's pipe system downstream would cause significant increases in flooding, both in magnitude and duration. In order to mitigate those issues, RJA revised the initial design to include a spillway discharging to the west, across San Vicente to the adjacent fields, in lieu of the proposed risers discharging to the City pipe system. This design still caused a significant increase in flooding in the San Vicente system during the 10-year event.

Schaaf & Wheeler worked with the City and RJA to best determine how to meet the following performance criteria:

1. Decrease the impact of the development on the City's system
2. Ensure that the spillway does not activate in the 10-year event
3. Ensure that 100-year discharge to the west is adequately controlled.

Alterations to the Basin 1 geometry and outlet structure have been recommended. Changes to the outlet structure orifices, which control discharges to the City's system, were made in the model to control 10-

year flooding. The orifice inverts and sizes were adjusted until impacts to the City's system were decreased to meet City's level of service. The basin was also deepened by two feet (from 12 feet to 14 feet) and the spillway crest was raised by two feet. This was required to prevent spillway activation during the 10-year event that started to occur when the orifice sizes were reduced.

The recommended changes to the outlet structure are shown in Table 3. The basin geometry is summarized in Table 4. Provided these changes are made to the design no further storm drain improvements are required. The resulting rise in water surface elevation and flood depth are shown in Attachment 5.

Table 3 – Recommended Changes to Basin 1 Outlet Structure

	Updated Spillway Design		Recommended Design	
	Height/Invert	**Size (Shape)**	**Height/Invert**	**Size (Shape)**
Orifice #1	1 ft	12 in (Circular)	1 ft	6 in (Circular)
Orifice #2	4 ft	12 in (Circular)	4 ft	7 in (Circular)
Orifice #3	6 ft	12 in (Circular)	6 ft	12 in (Circular)
Orifice #4	9 ft	12 in (Circular)	8 ft	12 in (Circular)
Overflow Weir	10 ft	50 ft wide (Spillway)	12 ft	60 ft wide (Spillway)

Table 4 – Recommended Basin Geometry

Height (ft)	Surface Area (sq ft)
0	186,900
2	197,400
4	208,100
6	219,000
8	230,200
10	241,500
12	253,100
14	265,000

The spillway sends high flows beyond the capacity of the four orifices and basin storage into an open channel that discharges through culverts beneath San Vicente Road into the fields to the west. These facilities are to be sufficiently sized to convey flow to the west during a 100-year event without surcharge or flooding.

In general, this system should discharge at or below existing flow rates to adjacent properties. With the recommended orifice design to control flooding in the City's pipe system, the spillway conveys a 100-year peak flow of approximately 96 cfs with a maximum water surface elevation in the basin of 211.9 feet NAVD.

Table 5 – Pre- and Post-Development Result Summary

Model Scenario	10-year	100-year
Predevelopment Peak Discharge*	40.8 cfs	106.4 cfs
Post-Development Spillway Peak Discharge	0 cfs	94.5 cfs
Post-Development Orifice Discharge to System	18.8 cfs	21.0 cfs
Peak Basin Water Surface Elevation	211.5 ft NAVD	212.6 ft NAVD
Pre-Development Node Flood at Market St Basin	0.26 ft	1.98 ft
Post-Development Node Flood at Market St Basin	0.35 ft	2.03 ft

**This does not include the basin that bypasses the development system (O-3) or the development area*

Conclusion

The Miramonte Development was added to the City of Soledad's storm drain master plan hydrologic and hydraulic model to determine the impact the development will have on the City's system. As initially designed the development would have had a significant impact on the City's system by raising flood elevations to greater than 0.5-feet at 4 locations between Front Street and Market Street. Alternatives were explored to reduce the impact of the development. Changing the configuration of the Basin 1 outlet structure and geometry is the best way to reduce the impact of the development to an acceptable level. Designing the outlet structure and basin as shown in Table 3 and Table 4 reduces the 10-year flooding depths to below 0.5-feet, which is the City's level-of-service standard.

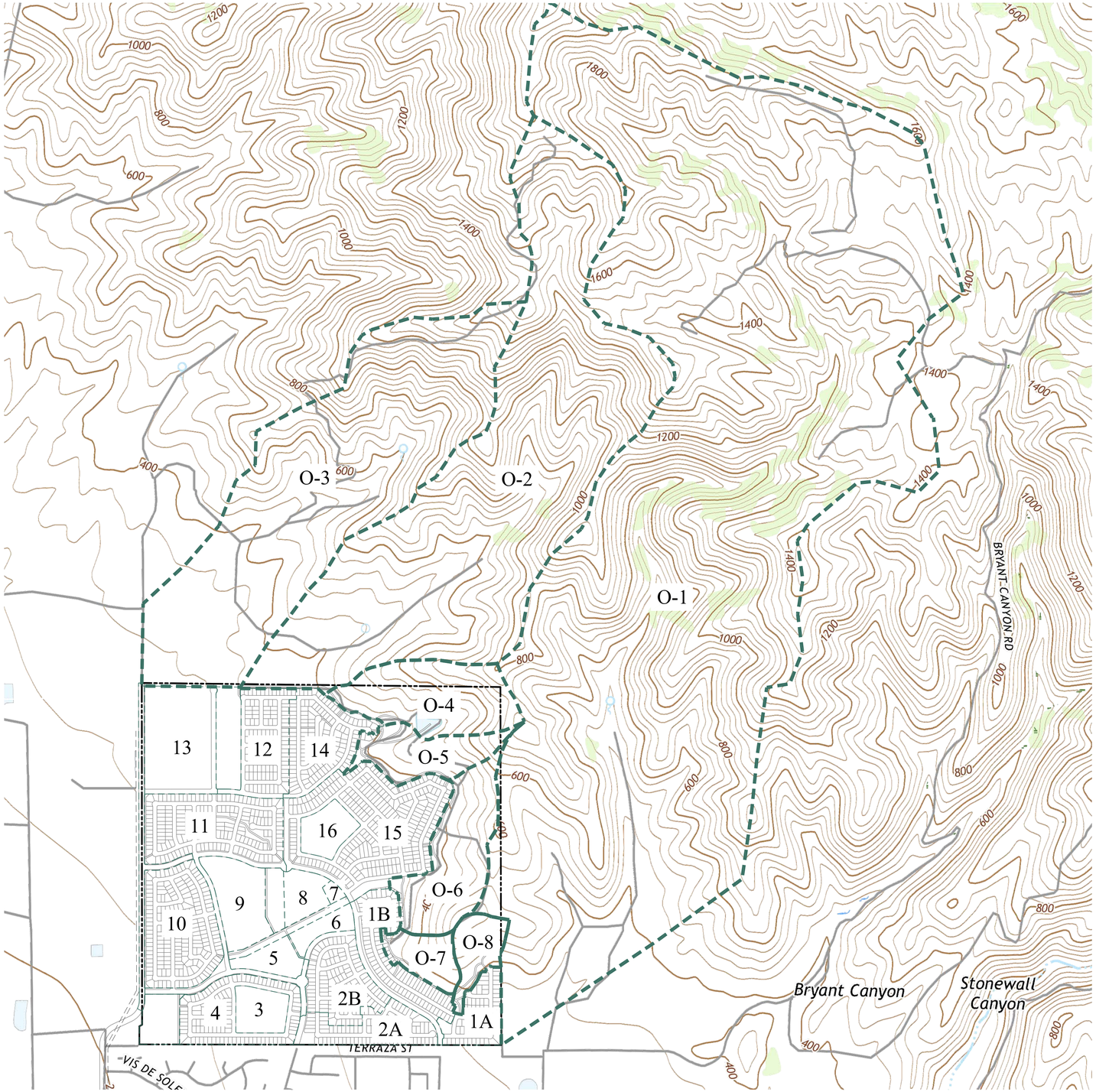
The model has also been used to evaluate the 100-year event and performance of the proposed basin spillway. Importantly, model results indicate that the spillway passes flows that don't exceed the pre-development 100-year peak. Discharge through the orifices during a 100-year event also do not appear to significantly worsen flooding depths in the City's system downstream. Further, the basin's proposed depth of 14 feet provides adequate freeboard during a 100-year event

Provided the design recommendations are followed, the Miramonte Development will have an insignificant impact on the City of Soledad's storm drain system.

Attachment 1

Miramonte Development Storm Drain System Layout

(by RJA)



MASTER PLAN NOTES:

1. THIS MASTER PLAN IS INTENDED TO REFLECT BACKBONE INFRASTRUCTURE REQUIRED TO SUPPORT THE FUTURE MIRAMONTE DEVELOPMENT. THE PRELIMINARY UTILITY DESIGNS OF THE INDIVIDUAL NEIGHBORHOODS WILL BE SHOWN ON FUTURE APPLICATIONS.

2. STORM DRAIN PIPE SIZES AND LOCATIONS SHOWN ON THIS MASTER PLAN ARE CONCEPTUAL AND SUBJECT TO CHANGE DURING FINAL DESIGN.

3. STORM DRAINS AND STORMWATER BASINS WILL BE PHASED AND MAY BE FURTHER DIVIDED INTO SUBPHASES.

4. ALL BACKBONE CONVEYANCE SYSTEMS AND RETENTION BASINS SHALL BE SIZED AND DESIGNED IN ACCORDANCE WITH THE APPLICABLE CITY DESIGN STANDARDS AND SHALL BE APPROPRIATELY SIZED TO ACCOMMODATE STORMWATER RUNOFF FROM A 100-YEAR STORM EVENT. THE FULL STREET SECTION MAY BE USED TO CONVEY THE 100-YEAR 24-HOUR STORM EVENT.

STORMWATER CONTROL NOTES:

1. THE PROJECT IS LOCATED IN THE CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD (CCRWQCB) JURISDICTION. STORM WATER RUNOFF MANAGEMENT SHALL ADHERE TO CCRWQCB RESOLUTION NO. R3-2013-0032 "POST-CONSTRUCTION STORMWATER MANAGEMENT REQUIREMENTS FOR DEVELOPMENT PROJECTS IN THE CENTRAL COAST REGION."

2. LOW IMPACT DEVELOPMENT STRATEGIES (LID) SHALL BE IMPLEMENTED TO THE MAXIMUM EXTENT FEASIBLE WITHIN INDIVIDUAL NEIGHBORHOODS. CONCEPTUAL LOCATIONS OF LID FACILITIES ARE IDENTIFIED ON SHEET 2. THESE LOCATIONS ARE PRELIMINARY AND SUBJECT TO CHANGE DURING FINAL DESIGN. FUTURE APPLICANTS ARE ENCOURAGED TO ADD ADDITIONAL LID FACILITIES WHERE FEASIBLE WITHIN INDIVIDUAL NEIGHBORHOODS.

3. EACH LAND USE AREA WITHIN THE MIRAMONTE DEVELOPMENT IS RESPONSIBLE FOR PROVIDING STORMWATER RETENTION AND TREATMENT PER CCRWQCB RESOLUTION R3-2013-0032 PERFORMANCE REQUIREMENT NO. 2 AND NO. 3. APPROXIMATE RUNOFF RETENTION VOLUMES ARE PROVIDED IN THE CONCEPTUAL STORMWATER TABLE ON SHEET 2.

4. TREATMENT FOR SAN VICENTE IS ANTICIPATED TO OCCUR IN ROADSIDE BIORETENTION SWALES OR MODULAR BIORETENTION BASINS THAT ACCEPTS RUNOFF VIA CURB CUTS. TREATED STORMWATER WILL THEN FLOW TO THE SAN VICENTE STORM DRAIN SYSTEM AND ULTIMATELY TO BASIN 1 WHICH WILL PROVIDE RUNOFF RETENTION FOR SAN VICENTE.

5. COMPLIANCE WITH RESOLUTION R3-2013-0032 PERFORMANCE REQUIREMENT NO. 2 AND NO. 3 IS ASSUMED TO BE ACHIEVED VIA INFILTRATION. HOWEVER, THIS IS SUBJECT TO CHANGE BASED ON SITE SPECIFIC INFILTRATION TESTING AND GEOTECHNICAL INVESTIGATIONS WHICH MAY REQUIRE MODIFICATIONS IN THE SITE PLAN, ASSUMED STOMWATER BASIN LOCATIONS, AND SIZES.

6. STORMWATER FROM ONSITE AREAS 1 THROUGH 16 AND OFFSITE DRAINAGE AREAS O-1 THROUGH O-8 ARE TRIBUTARY TO BASIN 1. IN ORDER TO NOT EXCEED CAPACITY OF THE EXISTING SAN VICENTE STORM DRAIN SYSTEM, BASIN 1 SHALL BE DESIGNED TO LIMIT ULTIMATE BUILDOUT CONDITION PEAK OUTFLOWS TO 100-CFS OR LESS FOR THE 25-YEAR STORM EVENT. IN ADDITION, PEAK FLOWS FOR THE FULLY DEVELOPED CONDITION SHALL NOT EXCEED THE PREDEVELOPMENT PEAK FLOWS FOR THE 2-YEAR THROUGH 100-YEAR STORM EVENTS.

7. CONCEPTUAL BACKBONE STORMWATER BASIN SIZES WERE DETERMINED USING CIVILSTORM HYDRAULIC ROUTING SOFTWARE BY BENTELY SYSTEMS INC. IN CONJUNCTION WITH THE NRCS CURVE NUMBER METHOD. TOTAL RAINFALL DEPTHS WERE DETERMINED USING NOAA ATLAS 14 PRECIPITATION FREQUENCY ESTIMATES SPECIFIC TO EACH DRAINAGE BASIN LOCATION AND ELEVATION. COMPOSITE OUTLET STRUCTURES WERE EMPLOYED FOR EACH BASIN CONSISTING OF A LOW FLOW ORIFICE, WEIR NOTCH OPENINGS, AND AN OVERFLOW INLET RISER.

8. ALL THE INFORMATION AND CALCULATIONS SHOWN ON THIS MASTER PLAN ARE CONCEPTUAL AND SUBJECT TO CHANGE DURING FINAL DESIGN.

STORM DRAIN NOTES:

1. THE STORM DRAIN PIPE NETWORK AND BASIN LOCATIONS ARE CONCEPTUAL AND SUBJECT TO REVISION DURING FINAL DESIGN.

2. STORM DRAIN BACKBONE INFRASTRUCTURE PIPE SIZES REPRESENT THE APPROXIMATE SIZE NECESSARY TO CONVEY FLOW DURING THE 25-YEAR STORM EVENT , AND ARE PRELIMINARY. BACKBONE STORM DRAINS ARE SIZED FOR THE 25 YEAR STORM EVENT PER CITY OF SOLEDAD REQUIREMENTS FOR TRUNK STORM DRAIN LINES. RAINFALL INTENSITY AND RUNOFF COEFFICIENTS WERE SELECTED FROM THE CITY OF SOLEDAD DESIGN STANDARDS AND SPECIFICATIONS.

3. THE CONCEPTUAL SIZE OF STORM DRAIN LINE "G" SHOWN ON THIS MASTER PLAN INCORPORATES DETENTION PROVIDED IN BASINS 2, 3 & 4. BASIN OUTFLOWS WERE CALCULATED USING CIVILSTORM HYDROGRAPH ROUTING.

4. INDIVIDUAL NEIGHBORHOOD STORM DRAIN PIPE SYSTEMS TO BE DESIGNED TO MEET CITY OF SOLEDAD DESIGN STANDARDS TO CONVEY THE 10-YEAR 24-HOUR PEAK FLOW RATE. THE 100-YEAR 24-HOUR PEAK FLOW WILL BE CONVEYED BY THE FULL STREET SECTION TO THE DOWNSTREAM STORMWATER BASIN.

STORM DRAIN MASTER PLAN

MIRAMONTE

SOLEDAD, CALIFORNIA

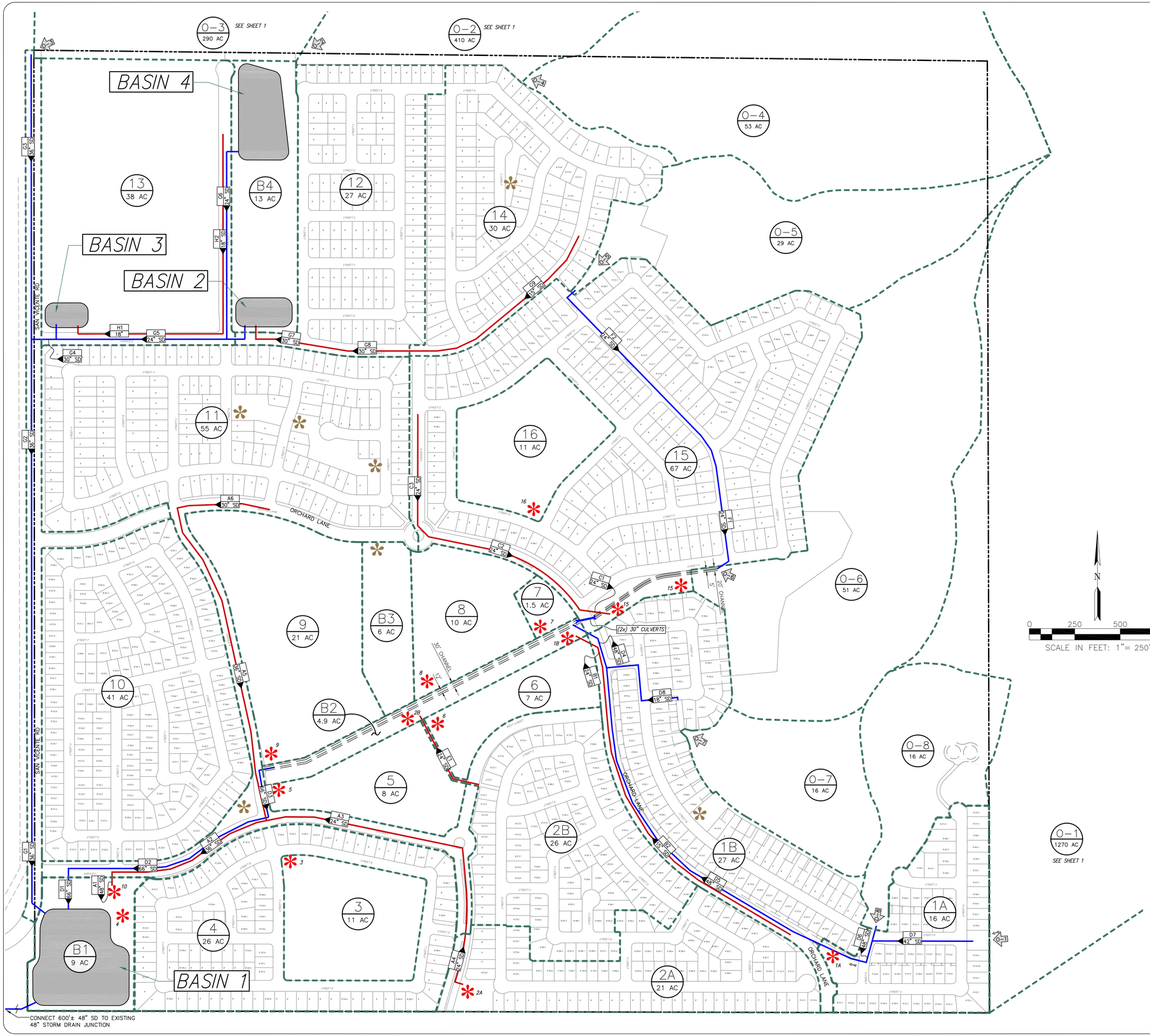
AUGUST 2020

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
8055 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302

JOB NUMBER: 202015

SHEET 1 OF 2 SHEETS

PLOT DATE: August 24, 2020
FILE PATH: W:\Jobs 20\202015 - Miramonte\Drawings\Preim\Exhibits\Master Plans\Storm Drain\MP-Miramonte Storm Drain-Cover.dwg



LEGEND

- DRAINAGE AREA BOUNDARY
- 15 / 67 AC — DRAINAGE AREA I.D.
- STORM DRAIN PIPE (TREATED STORMWATER AND OFFSITE STORMWATER BYPASS)
- STORM DRAIN PIPE (NON-TREATED STORMWATER)
- A1 / XX" SD — STORM DRAIN PIPE I.D.
- BACKBONE STORMWATER DETENTION BASIN
- ASSUMED NEIGHBORHOOD STORMWATER BIORETENTION BASIN LOCATION
- POTENTIAL LOCATION OF ADDITIONAL STORMWATER BMP/LID FACILITY
- STORM DRAIN CULVERT
- OFFSITE FLOW DIRECTION

NOTE:
ASSUMED BIORETENTION BASIN LOCATIONS ARE CONCEPTUAL AND DO NOT REPRESENT A FINAL DESIGN. THEY ARE INTENDED TO REPRESENT A MINIMUM DISTRIBUTION OF LID STORMWATER MANAGEMENT FACILITIES THROUGHOUT THE MIRAMONTE DEVELOPMENT. ADDITIONAL BMP/LID FACILITIES MAY BE INCORPORATED INTO THE SITE PLAN, WHERE FEASIBLE, UPON FUTURE APPLICATIONS OF INDIVIDUAL NEIGHBORHOODS.

CONCEPTUAL ONSITE STORMWATER CALCULATION TABLES:

Area ID	Total Area (ac)	Impervious Area (ac)	Pervious Area (ac)	Total % Imperv	Runoff Coefficient	Peak Flow Q_{25} (cfs)	CCRWQCB 95th% Runoff Retention Volume V_{95} (ft^3)
1A	15.7	9.4	6.3	60%	0.60	13.2	23,246
1B	27.3	16.4	10.9	60%	0.60	23.0	40,450
2A	21.0	13.7	7.4	65%	0.64	18.8	34,241
2B	26.4	17.1	9.2	65%	0.64	23.6	42,980
3	10.5	4.2	6.3	40%	0.45	6.7	10,671
4	26.0	16.9	9.1	65%	0.64	23.3	42,361
B1	9.4	0.2	9.2	2%	0.17	2.2	1,883
5	8.4	7.1	1.3	85%	0.79	9.3	20,163
6	6.7	5.3	1.3	80%	0.75	7.0	14,488
B2	4.9	1.0	3.9	20%	0.30	2.1	3,032
7	1.5	1.3	0.2	85%	0.79	1.7	3,601
8	9.5	7.6	1.9	80%	0.75	10.0	20,593
B3	5.6	1.1	4.4	20%	0.30	2.3	3,434
9	21.1	16.9	4.2	80%	0.75	22.3	45,945
10	40.8	26.5	14.3	65%	0.64	36.6	66,509
11	54.8	35.6	19.2	65%	0.64	49.1	89,271
12	26.5	17.2	9.3	65%	0.64	23.8	43,192
B4	12.5	2.5	10.0	20%	0.30	5.3	7,735
13	37.8	24.6	13.2	65%	0.64	33.9	61,609
14	29.9	19.4	10.5	65%	0.64	26.8	48,769
15	67.0	43.5	23.4	65%	0.64	60.0	109,179
16	11.0	4.4	6.6	40%	0.45	7.0	11,169
San Vicente	10.4	7.8	2.6	75%	0.71	11.7	20,467
TOTAL							**764,989**

Notes:

1. Land use density is per the approved VTM for Miramonte Subdivision with associated percent impervious taken from Table 2-2 of the City of Soledad Storm Drain Master Plan, May 2015.
2. Runoff Coefficients are based off Part V, Section 2 of the City of Soledad Design Standards and Specifications.

Governing Equations:

$$V_{95} = \frac{C * P_{95} * A}{12}$$

V_{95} = *95% Rainfall Depth Runoff Retention Volume (ft^3)*

$C = 0.858i^3 - 0.78i^2 + 0.774i + 0.04$

P_{95} = 1.00 *24-hr 95th percentile rainfall depth (in)*

A = *drainage area (ft^2)*

i = *% impervious*

N

0 250 500 750

SCALE IN FEET: 1" = 250'

OFFSITE STORMWATER DRAINAGE AREA SUMMARY

Area ID	Total Area (ac)	Impervious Area (ac)	Pervious Area (ac)	Total % Imperv	Curve Number CN	Peak Flow Q_{25} (cfs)
O-1	1270.0	0.0	1270.0	0%	65	108.5
O-2	410.0	0.0	410.0	0%	65	43.6
O-3	290.0	0.0	290.0	0%	65	35.4
O-4	53.0	0.0	53.0	0%	65	9.3
O-5	29.0	0.0	29.0	0%	65	5.6
O-6	52.0	0.0	52.0	0%	65	10.8
O-7	15.5	0.0	15.5	0%	65	3.4
O-8	15.5	0.0	15.5	0%	65	3.3

Notes:

1. Curve numbers (CNs) were selected from Table 2-2 of the City of Soledad Storm Drain Master Plan, dated May 2005, based on the Open Space/Wildlife land use for Class C soil.

BACKBONE STORMWATER BASINS

BASIN ID	BASIN LOCATION	TRIBUTARY AREA ID	INFLOW (CFS)	OUTFLOW (CFS)	REQUIRED VOLUME (AC FT)
BASIN 1	SOUTHWEST CORNER OF PROJECT	All	294	91	66.1±
BASIN 2	SOUTHWEST CORNER OF AREA 13	13	51	9	4.7±
BASIN 3	SOUTHERN PORTION OF PUBLIC PARK (12B)	12, 14	32	7	2.9±
BASIN 4	NORTHERN PORTION OF PUBLIC PARK (12B)	O-2, O-4	50	13	10.6±

STORM DRAIN MASTER PLAN
MIRAMONTE

SOLEDAD, CALIFORNIA

AUGUST 2020

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
8055 CAMINO ARROYO GILROY, CA 95020
PHONE: (408) 848-0300 FAX: (408) 848-0302

JOB NUMBER: 202015

SHEET 2 OF 2 SHEETS

PLOT DATE: August 24, 2020
FILE PATH: W:\Jobs 20\202015 - Miramonte\Drawings\Prelim\Exhibits\Master Plans\Storm Drain\MP-Miramonte Storm Drain-Sheet 2.dwg

Attachment 2

Basin Volume-Elevation Data (from RJA)

Project Name: Miramonte

Project Location: Soledad, CA

Date: November 2022

Basin 1

Basin Volume Calculations					Infiltration Rate = 0 in/hr		
Elev (ft)	Stage (ft)	Basin Area (ft^2)	Total Area (ac)	Void Ratio	Increment Volume (ft^3)	Cumm Volume (ft^3)	Cumm Volume (ac-ft)
200.00	0	186,900	4.2906		0	0	0.000
201.00	1.0	192,100	4.4100	100%	189,500	189,500	4.350
202.00	2.0	197,400	4.5317	100%	194,750	384,250	8.821
203.00	3.0	202,700	4.6534	100%	200,050	584,300	13.414
204.00	4.0	208,100	4.7773	100%	205,400	789,700	18.129
205.00	5.0	213,500	4.9013	100%	210,800	1,000,500	22.968
206.00	6.0	219,000	5.0275	100%	216,250	1,216,750	27.933
207.00	7.0	224,600	5.1561	100%	221,800	1,438,550	33.025
208.00	8.0	230,200	5.2847	100%	227,400	1,665,950	38.245
209.00	9.0	235,800	5.4132	100%	233,000	1,898,950	43.594
210.00	10.0	241,500	5.5441	100%	238,650	2,137,600	49.073
211.00	11.0	247,300	5.6772	100%	244,400	2,382,000	54.683
212.00	12.0	253,100	5.8104	100%	500,400	2,882,400	66.171
213.00	13.0	259,000	5.9458	100%	506,267	2,888,267	66.305
214.00	14.0	265,000	6.0836	100%	262,000	3,150,267	72.320

Basin 2

Basin Volume Calculations			Infiltration Rate =		1	in/hr		
Stage (ft)	Basin Area (ft^2)	Total Area (ac)	Void Ratio	Increment Volume (ft^3)	Cumm Volume (ft^3)	Cumm Volume (ac-ft)	Infiltration Flow (cfs)	
0.00	40,000	0.9183		0	0	0.000	0.9259	
0.50	40,000	0.9183	40%	8,000	8,000	0.184		*Gravel Layer Volume*
1.00	40,000	0.9183	40%	8,000	16,000	0.367		
1.50	40,000	0.9183	25%	5,000	21,000	0.482		*BSM Layer Volume*
2.00	40,000	0.9183	25%	5,000	26,000	0.597		
2.50	40,000	0.9183	25%	5,000	31,000	0.712		
3.00	40,000	0.9183	25%	5,000	36,000	0.826		
4.00	40,020	0.9187	100%	40,010	76,010	1.745		*Ponding Depth*
5.00	42,440	0.9743	100%	41,230	117,240	2.691		*Freeboard*
6.00	44,920	1.0312	100%	43,680	160,920	3.694		
7.00	47,450	1.0893	100%	89,873	207,113	4.755		

Basin 3

Basin Volume Calculations			Infiltration Rate =		1	in/hr		
Stage (ft)	Basin Area (ft^2)	Total Area (ac)	Void Ratio	Increment Volume (ft^3)	Cumm Volume (ft^3)	Cumm Volume (ac-ft)	Infiltration Flow (cfs)	
0.00	22,630	0.5195		0	0	0.000	0.5238	
0.50	22,630	0.5195	40%	4,526	4,526	0.104		*Gravel Layer Volume*
1.00	22,630	0.5195	40%	4,526	9,052	0.208		
1.50	22,630	0.5195	25%	2,829	11,881	0.273		*BSM Layer Volume*
2.00	22,630	0.5195	25%	2,829	14,710	0.338		
2.50	22,630	0.5195	25%	2,829	17,538	0.403		
3.00	22,630	0.5195	25%	2,829	20,367	0.468		
4.00	24,420	0.5606	100%	23,525	43,892	1.008		*Ponding Depth*
5.00	26,260	0.6028	100%	25,340	69,232	1.589		*Freeboard*
6.00	28,160	0.6465	100%	27,210	96,442	2.214		
7.00	30,120	0.6915	100%	56,360	125,592	2.883		

Basin 4

Basin Volume Calculations			Infiltration Rate =		1	in/hr	
Stage (ft)	Basin Area (ft^2)	Total Area (ac)	Void Ratio	Increment Volume (ft^3)	Cumm Volume (ft^3)	Cumm Volume (ac-ft)	Infiltration Flow (cfs)
0	104,900	2.4082		0	0	0.000	2.4282
1.0	110,400	2.5344	100%	107,650	107,650	2.471	
2.0	115,900	2.6607	100%	113,150	220,800	5.069	
3.0	121,600	2.7916	100%	118,750	339,550	7.795	
4.0	127,400	2.9247	100%	124,500	464,050	10.653	

Basin 5 (Not modeled)

Assumed bioretention basins for individual neighborhoods
Sized to retain 95th% runoff volume shown on Miramonte Storm Drain Master Plan Sheet 2

Basin Volume Calculations			Infiltration Rate =		1	in/hr		
Stage (ft)	Basin Area (ft^2)	Total Area (ac)	Void Ratio	Increment Volume (ft^3)	Cumm Volume (ft^3)	Cumm Volume (ac-ft)	Infiltration Flow (cfs)	
0.00	195,300	4.4835		0	0	0.000	4.5208	
0.50	195,300	4.4835	40%	39,060	39,060	0.897		*Gravel Layer Volume*
1.00	195,300	4.4835	40%	39,060	78,120	1.793		
1.50	195,300	4.4835	25%	24,413	102,533	2.354		*BSM Layer Volume*
2.00	195,300	4.4835	25%	24,413	126,945	2.914		
2.50	195,300	4.4835	25%	24,413	151,358	3.475		
3.00	195,300	4.4835	25%	24,413	175,770	4.035		
4.00	200,300	4.5983	100%	197,800	373,570	8.576		*Ponding Depth*
5.00	205,400	4.7153	100%	202,850	576,420	13.233		*Freeboard*

Attachment 3

Basin Outlet Structure Data (from RJA)

Basin 1

Composite Outlet Structure:

	Spillway	Orifice #1	Orifice #2	Orifice #3	Orifice #4
Invert Height	12 ft	1 ft	4 ft	6 ft	9 ft
Size (Shape)	60 ft (Spillway)	12 in (Circular)	12 in (Circular)	12 in (Circular)	12 in (Circular)

Basin 2

Composite Outlet Structure:

	Riser #1	Orifice #1
Invert Height	6 ft	4 ft
Size (Shape)	3 ft x 4 ft (Rectangular)	12 in (Circular)

Basin 3

Composite Outlet Structure:

	Riser #1	Orifice #1
Invert Height	6 ft	4 ft
Size (Shape)	3 ft x 4 ft (Rectangular)	12 in (Circular)

Basin 4

Composite Outlet Structure:

	Riser #1	Orifice #1
Invert Height	3 ft	0 ft
Size (Shape)	3 ft x 4 ft (Rectangular)	1 ft x 0.8 ft (Rectangular)

Basin 5

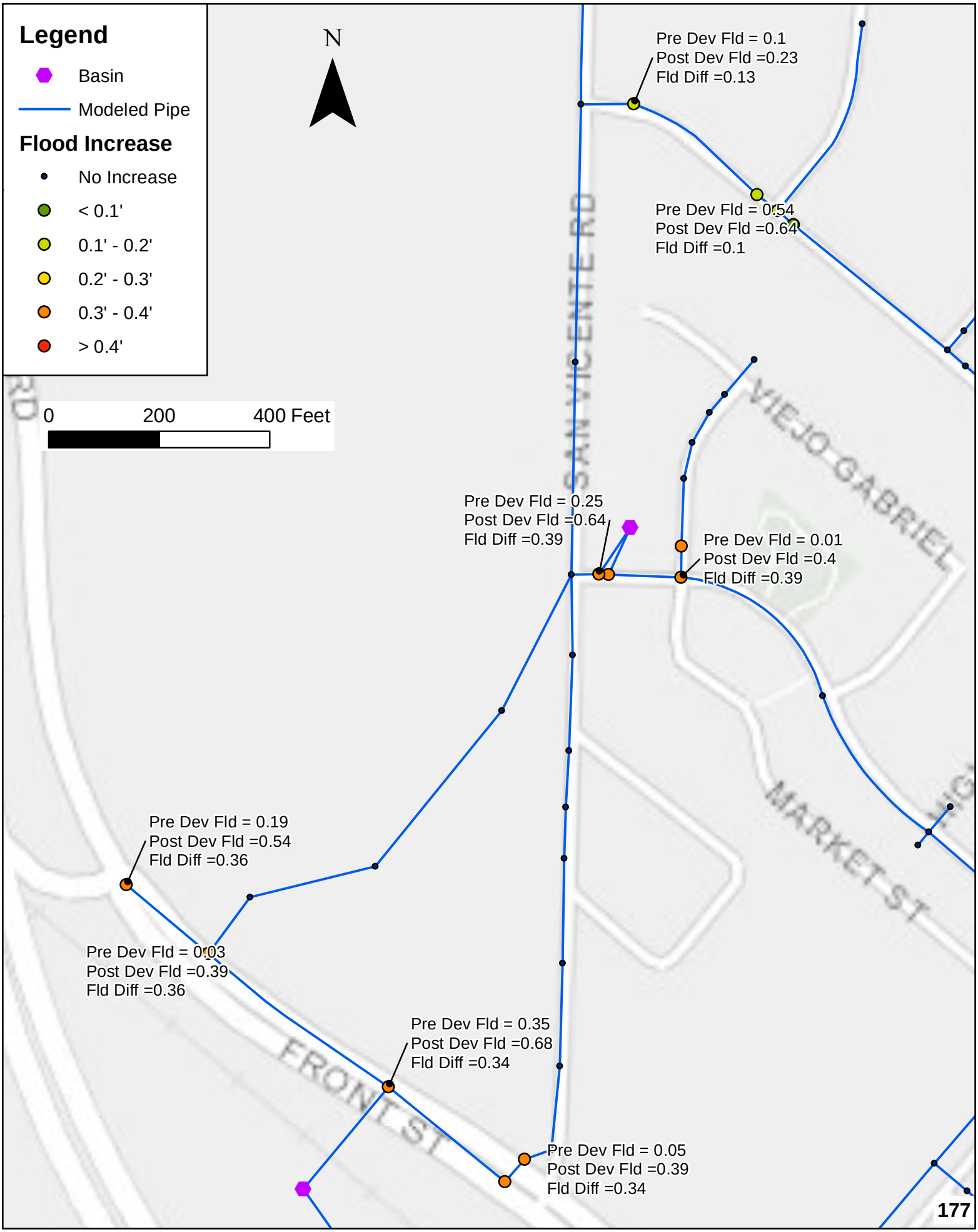
Composite Outlet Structure:

	Assumed Six (6x) Risers
Invert Height	4 ft
Size (Shape)	3 ft x 4 ft (Rectangular)

Attachment 4

10yr Water Surface Elevation Increase due to Miramonte Development as Originally Designed

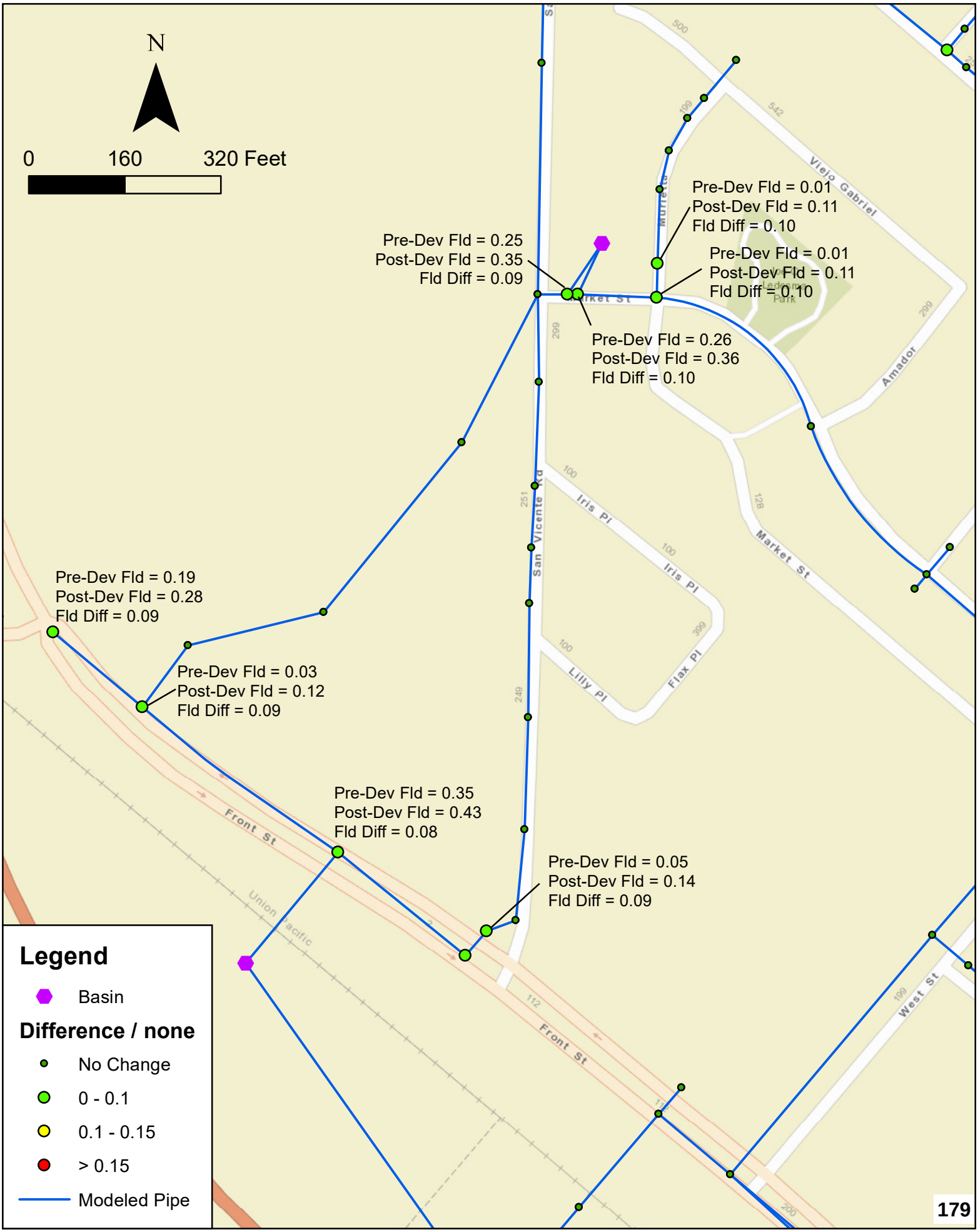
Increase in 10yr WSEL due to Miramonte Development



Attachment 5

10yr Water Surface Elevation Increase due to Miramonte Development with Final (Recommended) Design

Increase in 10yr WSEL due to Miramonte Development



Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

870 Market Street, Suite 1278
San Francisco, CA 94102
(415) 433-4848
info@swsv.com

MEMORANDUM

DATE: August 31, 2022
TO: Don Wilcox, PE, Director of Public Works (City of Soledad)
FROM: Dan Schaaf, PE
SUBJECT: Draft Miramonte Development Storm Drainage System Analysis

Introduction

The City of Soledad contracted Schaaf & Wheeler to complete a hydrologic and hydraulic analysis to determine the impact the Miramonte Development will have on the City's storm drain system, and what, if any, improvements are required to support the development. Schaaf & Wheeler completed the City of Soledad Storm Drain Master Plan Update in 2015 and is utilizing the same hydrologic and hydraulic model to complete this analysis. More details about the model can be found in the Storm Drain Master Plan document. The existing storm drain master plan model has been updated with improvements to the City system that have been constructed since 2015.

The Miramonte Development is located to the north of the current City limit as shown in the attached storm drain system figure. Storm runoff in the development will be collected in a series of pipes and detention basins and will connect to the City's existing drainage system at San Vicente Road. The development's system has also been added to the model to analyze its impact on the City's system during the 10-year storm event.

A figure is attached to this memo showing the Miramonte system and the downstream City system.

Hydrologic & Hydraulic Analysis

The hydrologic and hydraulic methodology are consistent with the 2015 master plan. The NRCS curve number method is applied to estimate basin runoff caused by 10-year and 100-year, 24-hour storms. The hydraulic model is MIKE URBAN (MU) with the MOUSE solver.

The MU model was run with and without the Miramonte Development. MIKE URBAN "Node flood" results were compared to determine the impact of the development on the City's system. Node flood is defined as the maximum depth of water above ground during the storm event. Soledad's level of service per the master plan is a maximum depth of 0.5-feet above ground during the 10-year event. This roughly translates to curb height which means water is contained in the street. The City's existing storm drain system in and around San Vicente Road currently meets this level of service.

Of primary concern is the function of the proposed detention basin within the Miramonte project at the northwest corner of the City. This basin ultimately has the biggest impact on controlling runoff into the City's existing storm drain system. Schaaf and Wheeler has worked with RJA to iteratively modify the model with varying basin geometry and outlet structure configurations and ensure that impacts to the City's system are minimized such that the 10-year level of service is

maintained throughout the system, and that the 100-year event can safely spill from the basin away from the City's pipe system.

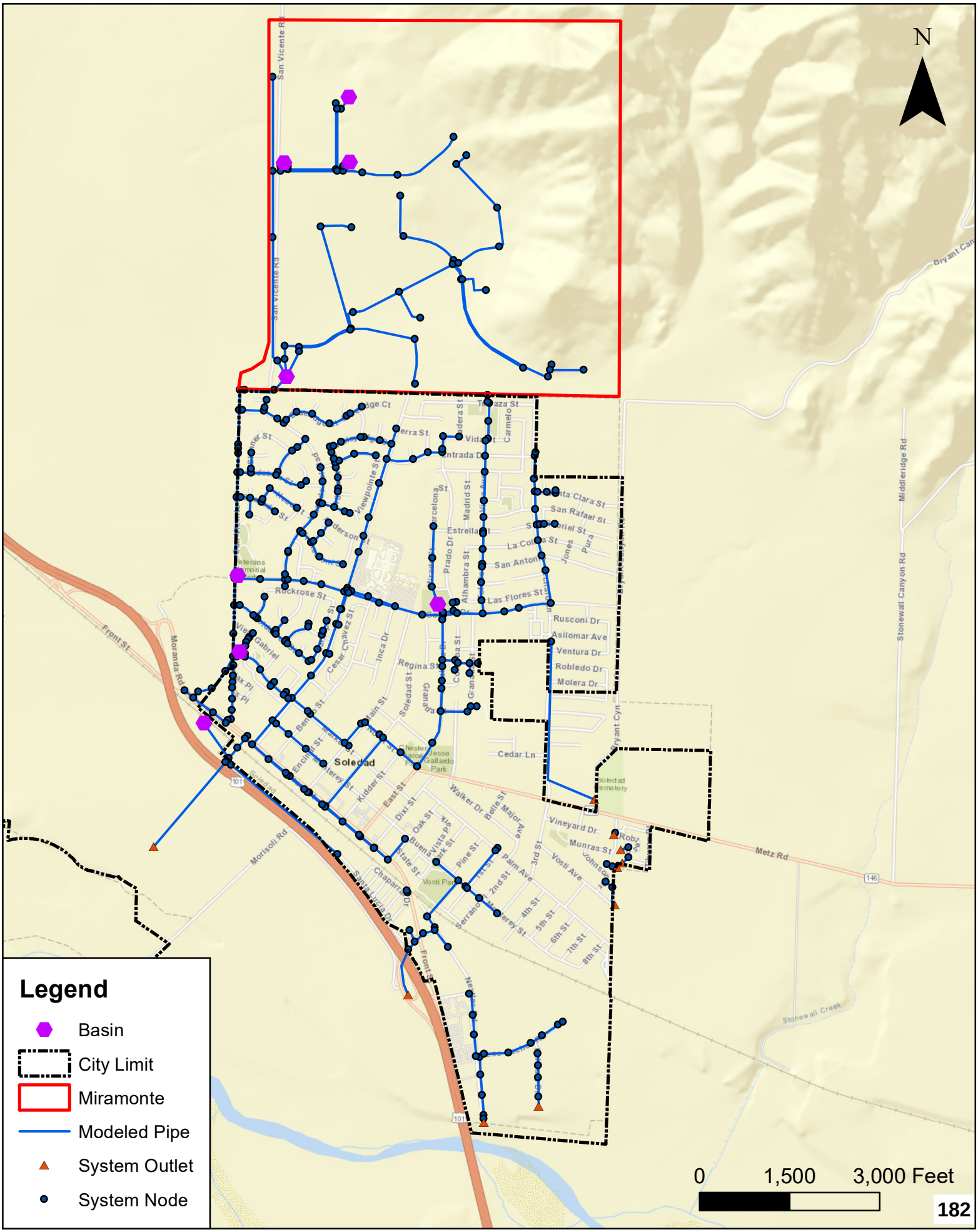
Conclusion

From an initial design, alternatives have been explored to reduce the impact of the development on the City storm drain system. A design for the Miramonte detention basin had been identified that can reduce the impact of the development to an insignificant level, keeping modeled flood depths to below 0.5-feet.

The model has also been used to evaluate the 100-year event and performance of the proposed basin spillway. Importantly, model results indicate that the spillway passes flows that don't exceed the pre-development 100-year peak with sufficient freeboard in the basin. Discharge through the orifices during a 100-year event also do not appear to significantly worsen flooding depths in the City's system downstream. Performing the 100-year analysis is a conservative approach to evaluating downstream system performance. The 100-year event is beyond the City's published performance criteria. However, it was analyzed to confirm that the risk of property damage downstream does not increase due to the project.

While a final basin design has not been identified, Schaaf & Wheeler has worked with the applicant team to identify a basin geometry and outlet configuration that meets the City's level of service and other design criteria. The final design of the project basin will meet these criteria and a full technical analysis will be provided. Downstream improvements to the City's existing system will not be required because the project is mitigating impact for the post-development condition.

City of Soledad & Proposed Miramonte Storm Systems



AGENDA ITEM NO. 13.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Resolution No. 6075, a Resolution of the City Council of the City of Soledad Establishing Speed Limits for Collector and Arterial Streets**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Donald Wilcox, Public Works Director, Leon Gomez, PE, Interim City Engineer**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council of the City of Soledad Consider and Adopt Resolution No. 6075, "A Resolution of the City Council of the City of Soledad Establishing Speed Limits for Collector and Arterial Streets."

Executive Summary

In July 2013, the City of Soledad (City) performed an Engineering and Traffic Survey (E&TS) to establish speed limits for collector and arterial streets for a period of five years to 2018. In July 2018, the City Engineer extended the speed limits by another five years to July 2023. The previously established speed limits have expired. In late 2023, the City engaged its on-call traffic engineer, TL Engineering (TLE), to perform a new E&TS to establish updated speed limits for collector and arterial streets within the City. The new E&TS was completed in March 2024 and the City now has the authority to set updated speed limits that are enforceable.

Background

Speed limits establish a reasonable and safe operating speed for a specific section of roadway. In California, speed limits are governed by the California Vehicle Code (CVC). In compliance with State laws and the CVC, vehicle speed laws can only be enforced when speed limits of a roadway are determined by an E&TS. The E&TS is an engineering study of the prevailing speeds and a review of the traffic conditions of a roadway, and it is completed every five years for streets greater than 40' in width, regardless of the street's classification. The E&TS can remain valid for a period of 10 years if a registered engineer determines no significant changes in roadway or traffic conditions have occurred. Local streets have a prima facie speed limit of 25 mph unless a different speed limit is determined by an engineering study.

The most widely accepted method of determining the posted speed limit is to set the speed limit at the

"85th percentile speed", which is the speed at or below which 85 percent of the traffic is travelling. The 85th percentile speed is the single most influential indicator of what is safe and reasonable, and it is used to determine the speed limit by rounding to the nearest 5 mph increment and then posting the speed limit at that speed. If there are conditions not readily apparent to the driver, as determined by a registered engineer, the posted speed limit may be lowered by 5 mph, but this must be clearly documented in the E&TS.

On December 13, 2023, City Council adopted Resolution No. 6034 approving Task Order No. 01 to TLE to prepare a new E&TS. From December 2023 to March 2024, TLE collected and evaluated data necessary to perform the E&TS. On March 1, 2024, TLE submitted a final report entitled, "City of Soledad Engineering and Traffic Survey, Final Report." The report included a summary of radar speed surveys, recent traffic collision data, and daily traffic volumes at 28 locations on 16 roadways throughout the City and included the following:

- Speed limit and speed zone traffic regulations;
- Daily traffic counts and traffic collision history;
- Speed survey results; and
- Recommended speed limit changes.

Review & Analysis

The CVC and California MUTCD describe the procedure for establishing speed limits. CVC Sections 22354 and 22358 authorize local authorities to establish prima facie speed limits on streets and roads under their jurisdiction, on the basis of an E&TS. CVC Section 22352 allows the prima facie speed of 25 mph on any highway in any business or residential district, unless a different speed is determined by local authority under procedures set forth in the code.

Of the 28 locations evaluated, 5 are recommended to have speed limit changes. This includes locations where there are currently no posted speed limit signs. Recommended speed limit changes are shown in the final report and on Table 2: Speed Survey Data. A copy of the final report is included as Exhibit A to the Resolution.

On March 1, 2024, TLE also submitted a plan entitled, "Soledad Speed Survey Signing Improvements, Citywide Speed Limit Signs." The plan shows the locations of existing signs and where new, relocated, and replaced signs are proposed to be installed throughout the City. All new signs and posts shall be installed in accordance with the latest Caltrans specifications and standard plans and applicable requirements of the latest California Manual on Uniform Traffic Control Devices (MUTCD). At the time of installation, the exact location of all new signs will be marked in the field by a contractor and shall be approved by the City prior to installation.

The final E&TS report prepared by TLE has been reviewed by the City's Engineering and Public Works and Police Department staff. Provisions of the CVC allow the City to decrease or increase speed limits based on the findings contained in the E&TS by resolution. Failure to approve necessary adjustments in speed limits on the basis of an E&TS may jeopardize the City's ability to enforce speed limits throughout the City.

Financial Considerations

Funding for the task order issued to TLE required a budget amendment to move funds from the City's General Fund to the Public Works Department General Fund. Installation of new speed limits signs per the plan developed by TLE will be performed by the City's Public Works Department and paid for from

the Fiscal Year 2023-2024 Highway User Tax Funds.

Alternatives

- Adopt the Resolution.
- Do not adopt the Resolution. This is not recommended. If the current E&TS is not approved by city council, traffic citations may not be enforceable.

Planning/CEQA

This project is exempt under Class 6 of the current California Environmental Quality Act (CEQA) Guidelines. Section 15306, Information Collection of the CEQA Guidelines states the following, "Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded."

Public Notice Requirements

None required.

Attachment(s):
Resolution No. 6075
Exhibit A - ETS Final Report.pdf

RESOLUTION NO. 6075

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD ESTABLISHING SPEED LIMITS FOR COLLECTOR AND ARTERIAL STREETS

WHEREAS, pursuant to California Vehicle Code (CVC) Section 40802, a section of a highway or street is a "speed trap" if the prima facie speed limit is not justified by an Engineering and Traffic Survey (E&TS) performed within the specified time period, and the enforcement of the speed limit involves the use of radar or any other electronic device for measuring the speed of moving objects; and

WHEREAS, the evidence of speeding violation based on a speed trap is inadmissible in court (CVC Section 40803); and

WHEREAS, in view of the foregoing, the prima facie speed limits on various streets within the City must be determined and established on the basis of an E&TS, prepared in accordance with the provisions of the CVC and the California Manual on Uniform Traffic Control Devices (MUTCD); and

WHEREAS, since the E&TS are valid for a certain period of time, the City must periodically perform an E&TS and reevaluate the speed limits on segments of the roadways to establish enforceable speed limits; and

WHEREAS, in order to ensure compliance with the requirements set forth in the CVC, the City contracted with TL Engineering (TLE), a licensed traffic engineering consultant, to perform a new E&TS at 28 locations on 16 roadways throughout the City and a summary of recommended speed limit changes is presented in the final report attached as **Exhibit A** to this resolution; and

WHEREAS, the E&TS was performed in accordance with the requirements set forth in the CVC, California MUTCD and established traffic engineering practices, and a copy of the final E&TS report is on file with the City Clerk.

NOW THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Soledad that pursuant to the California Vehicle Code Sections 627, 21400, 22352, 22354, 40802, 22358.6, 22358.7, 22358.8, and 22358.9 et seq., the declared prima facie speed limits and maximum speed limits have been determined by an E&TS and are hereby established for the designated streets as shown in Exhibit A, attached hereto. The Public Works Director is authorized to file this Resolution and the E&TS with the Monterey County Superior Court.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 1st day of May 2024 by the following vote:

AYES, and in favor thereof Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

_____
ANNA M. VELAZQUEZ, Mayor

ATTEST:

_____
MEGAN HUNTER, City Clerk

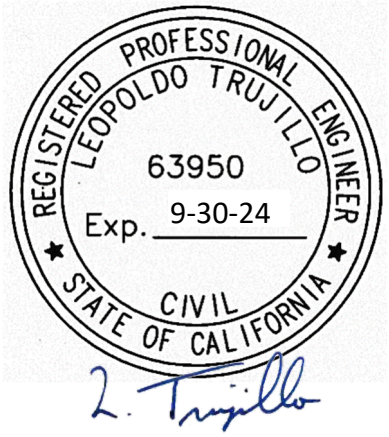
TL ENGINEERING

Attachment 2

CITY OF SOLEDAD
ENGINEERING AND TRAFFIC SURVEY

SOLEDAD, CALIFORNIA

Final Report



Prepared For

Public Works Department
Soledad, California

March 1, 2024

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1 INTRODUCTION

This study summarizes the 2024 engineering and traffic survey performed in the City of Soledad (City). The study includes a summary of radar speed surveys and recent traffic collisions at 28 locations on 16 roadways throughout the city.

This report includes the following:

- Speed limit and speed zone traffic regulations;
- Daily traffic counts and traffic collision history;
- Speed survey results; and
- Recommended speed limit changes.

The analysis within this report is based off of vehicle speed survey data, collision histories, and daily traffic volumes that were collected for this study; this information is summarized with Appendices A, B, & C of this document.

2 SPEED LIMIT AND SPEED ZONE CALCULATIONS

Traffic regulations regarding speed limits and zones are described in the California Department of Transportation's (Caltrans) California Manual on Uniform Traffic Control Devices (CA MUTCD) and the California Vehicle Code (CVC). The information contained in the latest version of the CVC (effective January 1, 2024) was used to prepare this Engineering and Traffic Survey, including Sections 627, 21400, 22352, 22354, 22358, 40802, 22358.6, 22358.7, 22358.8, and 22358.9. This section summarizes blanket traffic regulations and speed limit sign and marking procedures.

2.1 Blanket Traffic Regulations

Speed limits in California are governed by the California Vehicle Code (CVC). The statutes contained in the CVC establish or provide means for establishing speed limits by blanket regulations or by prima facie speed limits which are established by local authorities on the basis of an engineering and traffic survey. The Soledad Engineering and Traffic Survey is intended to comply with the statutes contained in the Vehicle Code.

Basic Speed Law

Section 22350 of the CVC describes the Basic Speed Law. It states that "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property." Reasonable is defined in Merriam-Webster's Collegiate Dictionary as "moderate," "fair" and "not extreme or excessive," while prudent is defined as "marked by wisdom or judiciousness" and "shrewd in the management of practical affairs." The courts have determined that the 85th percentile speed represents a reasonable or prudent speed.

Maximum Speed Limit

Section 22349 of the CVC provides that no person shall drive a vehicle upon a highway at a speed greater than 65 miles per hour (MPH). An exception to this, as stated in Section 22356, is that Caltrans may increase the speed limit to 70 MPH. This increase can only be made after consultation with the California Highway Patrol and on the basis of an engineering and traffic survey.

Even if the maximum speed is raised, certain vehicles are still not to be driven over 55 MPH per Section 22406. These are listed below:

- Motor trucks or truck tractors having three or more axles or any truck towing another vehicle.
- Passenger vehicles or buses towing other vehicles.
- School buses transporting any school pupil.
- Farm labor vehicles transporting passengers.

- Vehicles transporting explosives.
- Trailer buses, as defined in Section 636.

Speed Law Violations and Prima Facie Speed Limits

Section 22351 of the CVC states that "the speed of any vehicle upon a highway not in excess of the limits specified in Section 22352 or established as authorized in [the CVC] is lawful unless clearly proved to be in violation of the basic speed law." This same section also states that "the speed of any vehicle upon a highway in excess of the prima facie speed limits in Section 22352 or established as authorized in [the CVC] is prima facie unlawful unless the defendant establishes by competent evidence that the speed in excess of said limits did not constitute a violation of the basic speed law [CVC Section 22350] at the time, place and under the conditions then existing." Evidence may include what the CVC terms an "Engineering and Traffic Survey."

Section 22352 of the CVC establishes prima facie speed limits for local roads and streets. The literal definition of the phrase "prima facie" is "first appearance". It is also defined as "first view" and "before investigation". Prima facie evidence is evidence sufficient to establish fact, or to raise presumption of fact, unless rebutted. Prima facie speed limits are those that are defined in Section 22352. These speed limits shall be applicable unless changed as authorized in the CVC and, if so changed, only when signs have been erected giving notice thereof.

A speed limit of 15 MPH applies at railroad crossings, at uncontrolled highway intersections with obstructed view, and on alleys. A speed limit of 25 MPH can be applied in any business or residence district unless a different speed is established by local authority under procedures described in the CVC. The 25 MPH speed limit also applies in school zones and senior centers.

Section 235 of the CVC describes a business district as an area which at least 50 percent of the properties are used for business for a minimum distance of 600 feet on one side or 300 feet on both sides of the highway. Section 515 describes a residence district as an area outside of the business district along a highway which has a minimum of 13 separate dwelling units on one side, or 16 on both sides for a minimum distance of a quarter-mile.

CVC Sections 22357 and 22358 authorize local authorities to establish prima facie speed limits on streets and roads under their jurisdiction, on the basis of an engineering and traffic survey. CVC Section 22352 allows the prima facie speed of 25 mph on any highway in any business or residence district, unless a different speed is determined by local authority or Caltrans under procedures set forth in the code.

CVC Sections 22358.3 and 22358.4 authorize local agencies to reduce prima facie speed limits to 20 or 15 MPH on narrow streets (roadway width less than 25 feet), school zones, or senior centers on the basis of engineering and traffic surveys.

Speed Traps

Section 40802(a) of the CVC provides that prima facie speed limits established under Sections 22352(b), 22354, 22357, 22358, and 22358.3 may not be enforced by radar unless the speed limit has been justified by an engineering and traffic survey within the last five years. Roadways with speed limits not justified by an engineering and traffic survey are classified by the CVC as speed traps, which are outright prohibited in CVC Section 40801. Section 2B.13 of the 2014 CA MUTCD further emphasizes that a speed limit sign "shall display the limit established by law, ordinance, regulation, or as adopted by the authorizing agency based on the engineering study. Display shall be in multiples of 5 mph." This regulation, however, does not apply to a local street, road, school zone, business activity district, or speed limit adopted under Section 22358.7 or 22358.8.

Note that the CA MUTCD states that engineering and traffic surveys can be repeated as late as every seven years if all of the following three criteria are met:

1. The enforcement officers have obtained a minimum of 24 hours of certified radar operator course training; and
2. The radar guns used by the enforcement officers either meet or exceed the standards of the National Traffic Highway Safety Administration; and
3. The radar guns have been calibrated within the last three years.

The CA MUTCD also states that the survey can be repeated as late as every ten years if the prior set of criteria are all met and if a registered engineer evaluates a particular roadway and finds that no significant changes in roadway or traffic conditions have occurred since the previous survey (including changes in adjoining property or land use, roadway width or traffic volume).

Local Streets

CVC Section 40802(b) defines local streets as ones that that are functionally classified as "local" on the California Road System Maps approved by the Federal Highway Administration and maintained by the California Department of Transportation (Caltrans).

If a local street is not indicated on the California Road System Maps, CVC Section 40802(b) also allows local streets and roads to be defined as those that provide access to abutting residential property and meet the following three conditions:

- Roadway width of not more than 40 feet;
- Not more than one-half mile of uninterrupted length. Interruptions shall include official traffic control signals as defined in Section 445; and
- Not more than one traffic lane in each direction.

As noted in CVC Section 40802(a), roadways meeting either of the above CVC definitions for local streets and roadways are categorically exempt from any of the speed trap provisions within Section 40802. This means that the City of Soledad may enforce speed

limits on local streets and roadways meeting either definition without first performing an engineering and traffic survey. However, enforcement on local streets would still be based upon the Basic Speed Law (i.e. the 85th percentile).

2.2 Speed Limit Signs and Markings

Section 21359 of the CVC states that speed limits established by Caltrans or a local authority shall be posted with the appropriate speed restriction signs for the speed limit to be effective. Speed limit signs shall be placed at the beginning of all restricted speed zones.

Speed limit markings with appropriate figures may be used to supplement speed limit signs.

3 TRAFFIC COLLISION HISTORY

Recent collisions were considered to determine appropriate speed limits. Collision histories for the surveyed road segments during the 3-year period between January 1, 2020 and December 31, 2022 were obtained from the California Highway Patrol website (SWITRS), and are summarized in **Appendix B**. From this data, as well as Average Daily Traffic (ADT) volumes collected during December 2023 (**Appendix C**), collision rates were quantified for each surveyed roadway segment.

Note that several roadway segments have various distinct characteristics, and thus each roadway type is assessed separately. Gabilan Drive from San Vicente Road to its termination at the east end of town has three distinct roadway types, and the volumes and collision data are also different for each of these. Therefore, the Gabilan Drive project segment was broken off into three sub-segments. San Vicente Road has a constant roadway width, but the traffic volumes are significantly different between Front Street and Gabilan Drive than from Gabilan Drive to its termination on the north end. Therefore, the San Vicente Road project segment was broken off into two sub-segments. At the north end of town there is very little development (north of San Vicente Road), and Front Street connects to the US 101 freeway ramps, so traffic is naturally speeding up. The City's downtown area is located along Front Street between San Vicente Road and Oak Street. The area along Front Street between Oak Street and Hector De La Rosa is a more commercial area with no on-street parking, so it is designated with a higher speed limit. Therefore, the Front Street project segment was broken off into three sub-segments. All other study corridors maintain a relatively uniform roadway type. The resulting collision rates are summarized below in **Table 1**.

Table 1: Collision Rates

No.	Street	Total Collisions	Avg Daily Traffic (Vehicles)	Collision Rate (collisions per million vehicles)	
				Project Street	Statewide Average
1A	Gabilan Drive (San Vicente-West)	18	4,842	9.70	1.03
1B	Gabilan Drive (West-Granada)	14	4,444	7.02	1.3
1C	Gabilan Drive (Granada-East End)	2	4,046	1.00	1.08
2A	San Vicente Road	13	8,080	3.19	1.05
2B	San Vicente Road	3	3,282	1.11	1.05
3	West Street	29	3,139	11.56	1.08
4	Market Street	24	1,291	24.25	1.08
5	Vista De Soledad	5	1,658	3.88	1.08
6	Andalucia Drive	10	2,357	7.75	1.08
7	East Street	16	4,914	11.44	1.08
8	Entrada Drive	6	1,287	6.26	1.08
9	Prado Drive	9	2,002	7.46	1.08
10	Orchard Lane	9	3,211	2.02	1.08
11	Third Street	13	4,689	6.49	1.08
12	Metz Road	29	4,233	6.66	1.08
13	Palm Avenue	12	2,561	5.56	1.08
14	Monterey Street	54	4,187	9.58	1.08
15A	Front Street (Moranda-Benito)	22	15,918	6.64	1.08
15B	Front Street (Benito-Oak)	36	6,958	7.16	1.08
15C	Front Street (Oak-HDLR)	29	17,001	3.31	1.08
16	Nestles Road	30	4,761	8.72	1.08

= Project street segment with collision rate higher than the State average

Notes:

1. Collision data was obtained from CA CHP (SWITRS) and are included within **Appendix B**.
2. Daily traffic volume collected during December 2023 and included within **Appendix C**.
3. Collisions are from January 1, 2020 to December 31, 2022.
4. Statewide average collision rates are rates for similar roadways throughout California, and are taken from *2021 Crash Data on California State Highways*, California Department of Transportation, 2021

4 SPEED SURVEY RESULTS

This section of the report summarizes the results of the radar speed surveys. The median speed (50th percentile) and critical speed (85th percentile speeds) are reported.

4.1 Field Speed Surveys

Radar speed surveys were collected for each surveyed roadway. The measurement of prevailing speeds was done by using a radar speed gun. The following general procedures were followed for the measurements:

- Locations were selected where prevailing speeds were representative of the entire speed zone. Areas near traffic control devices and horizontal and vertical curves were avoided.
- Speed measurements were taken during off-peak hours on weekdays. If there was difficulty in obtaining the desired quantity, speed measurements were taken during other periods with free-flowing traffic.
- Weather was fair and the surveyor and radar equipment were as inconspicuous as possible.
- Angle to roadway centerline was no greater than 15 degrees in both directions.
- Each survey sample was a minimum of 100 vehicles (50 minimum in each direction).
- Short speed zones of less than one-half mile were avoided where possible.
- Speed zone changes were coordinated with changes in roadway conditions or roadside development.
- Because City of Soledad is an urban area, speed zone changes in 5 MPH increments were allowed.

The speed surveys for all of the surveyed roadways are included within **Appendix A**.

4.2 Speed Survey Results

Table 2 summarizes the existing speed limits, median (50th percentile) speeds and 85th percentile speeds for all studied street segments. The median speed is the middle value of speeds ranked in order of magnitude. The 85th percentile speed is the speed at or below which 85 percent of people surveyed drive.

Table 2: Speed Survey Data

No.	Street	Segment	Direction	Existing Speed Limit (mph)	Median Speed (mph)	Critical Speed (mph)	10 mph Pace Speed	% within Pace	Recommended Speed (mph)
1	Gabilan Drive	San Vicente Rd - West Street	EB	30	25	30	21-30	70%	30
			WB	30	26	30	23-32	80%	30
2	Gabilan Drive	West Street - east end	EB	30	25	31	20-29	73%	30
			WB	30	26	32	21-30	71%	30
3	San Vicente Road	Front Street - Gabilan Drive	NB	40	34	42	30-39	68%	40
			SB	40	36	41	31-40	70%	40
4	San Vicente Road	Gabilan Drive - north end	NB	40	34	42	29-38	73%	45
			SB	40	40	48	35-44	61%	45
5	West Street	Front Street - Gabilan Drive	EB	35	35	40	30-39	75%	35
			WB	35	30	35	26-35	82%	35
6	West Street	Gabilan Drive - north end	EB	25	25	28	20-29	85%	25
			WB	25	23	28	17-26	67%	25
7	Market Street	San Vicente Rd - West Street	EB	25	23	29	20-29	68%	25
			WB	25	27	33	22-31	67%	25
8	Market Street	West Street - Dixi Street	EB	25	25	30	21-30	68%	25
			WB	25	26	30	18-35	83%	25
9	Vista De Soledad	Gabilan Drive - Entrada Drive	NB	None	28	32	23-32	85%	30
			SB	None	30	35	27-36	81%	30
10	Vista De Soledad	Entrada Drive - San Vicente Rd	NB	None	34	38	30-39	75%	35
			SB	None	31	37	27-36	75%	35
11	Andalucia Drive	Metz Road - Gabilan Drive	NB	25	19	23	16-25	89%	25
			SB	25	19	23	16-25	89%	25
12	East Street	Front Street - Metz Road	NB	25	25	30	22-31	79%	25
			SB	25	24	29	21-30	75%	25
13	Entrada Drive	Vista De Soledad - West St	EB	None	23	25	18-27	93%	25
			WB	None	21	24	18-27	91%	25
14	Entrada Drive	West Street - Orchard Lane	EB	25	23	29	20-29	82%	25
			WB	25	25	30	21-30	76%	25
15	Prado Drive	Gabilan Drive - Vida Street	NB	None	24	27	20-29	90%	25
			SB	None	22	25	17-26	87%	25
16	Orchard Lane	Metz Road - Gabilan Drive	NB	None	31	37	28-37	74%	35
			SB	None	31	37	28-37	70%	35
17	Orchard Lane	Gabilan Drive - Terraza Street	NB	35	34	38	31-39	71%	35
			SB	35	29	34	25-34	75%	35
18	3rd Street	Monterey Street - Metz Road	NB	25	30	34	26-35	77%	30
			SB	25	32	36	26-35	69%	30
19	Metz Road	East Street - Orchard Lane	EB	25	33	39	29-38	75%	30
			WB	25	30	34	26-35	88%	30
20	Metz Road	Orchard Lane - Tiburon Place	EB	None	30	35	26-35	77%	35
			WB	None	30	34	25-34	72%	35
21	Palm Avenue	Dixi Street - 3rd Street	EB	25	24	28	19-28	81%	25
			WB	25	25	30	21-30	88%	25
22	Palm Avenue	3rd Street - east end	EB	25	27	31	23-32	79%	25
			WB	25	26	32	21-30	74%	25
23	Monterey Street	West Street - Oak Street	EB	25	24	29	20-29	80%	25
			WB	25	23	25	18-27	96%	25
24	Monterey Street	Oak Street - 8th Street	EB	25	27	32	23-32	80%	25
			WB	25	27	31	22-31	84%	25
25	Front Street	Moranda Road - Benito Street	EB	35	25	32	19-28	66%	35
			WB	35	27	36	22-31	64%	35
26	Front Street	Benito Street - Oak Street	EB	25	23	29	19-28	72%	25
			WB	25	21	26	18-27	95%	25
27	Front Street	Oak Street - HDLR Street	NB	35	32	36	27-36	83%	35
			SB	35	34	40	33-42	63%	35
28	Nestles Road	Front Street - Los Coches Rd	NB	25	25	32	19-28	62%	25
			SB	25	26	31	23-32	78%	25

= Project street segment with a recommended speed limit change from existing conditions.

Notes:

1. mph = miles per hour.
2. NB, SB, EB, WB = Northbound, Southbound, Eastbound, Westbound.

5 RECOMMENDED SPEED LIMIT CHANGES

This section summarizes recommended speed limits on the surveyed street segments and the reasons behind those recommendations.

5.1 Establishing Speed Limits

The CVC and the California Manual on Uniform Traffic Control Devices (CA MUTCD) describes the procedure for establishing speed limits. Section 22358.6 of the CVC states that "The [California] Department of Transportation shall, in the next scheduled revision, revise and thereafter maintain the California Manual on Uniform Traffic Control Devices [CA MUTCD] to require the [California] Department of Transportation or a local authority to round speed limits to the nearest five miles per hour of the 85th percentile of the free-flowing traffic." Accordingly, Section 2B.13 of the 2014 CA MUTCD states that "When a speed limit is to be posted, it shall be established at the nearest 5 mph increment of the 85th-percentile speed of free-flowing traffic," based upon the results of a vehicle engineering and traffic survey. Note that this procedure can, in certain instances, result in speed limits of 1 or 2 MPH higher than the surveyed critical speed.

The 85th percentile speed is the speed at or below which 85 percent of the vehicles are driven. The 85th percentile speed is often referred to as the critical speed. Speed limits higher than the critical speed are not generally considered reasonable and safe, while limits below the critical speed do not facilitate the orderly movement of traffic. Speed limits established on this basis conform to the consensus of those who drive highways as to what speed is reasonable and safe, and are not dependent on the judgement of one or a few individuals.

There are three categories of speed adjustments allowed by the CA MUTCD – 1) business district; 2) residential density; and 3) pedestrian and bicyclist safety. Each category has its own factors that must be considered prior to application; each is described in Subsections 5.1.1 thorough 5.1.3, below. There is also a one-time exception that allows for the 85th percentile speed (i.e. critical speed) to be rounded down instead of up – this exception is described in Subsection 5.1.4.

5.1.1 Business District

As previously noted in Section 2.1 of this document, speed limits within business districts are defined in the CVC as 25 MPH. Section 235 of the CVC describes a business district as an area where at least 50 percent of the properties are used for business for a minimum distance of 600 feet on one side or 300 feet on both sides of the highway.

5.1.2 Residential Density Reduction

As described within the CA MUTCD, a speed reduction of 5 MPH can be applied to the nearest 5 MPH increment to the critical speed if either of the following building densities currently exists along a roadway:

1. The density of separate dwelling houses or business structures contiguous along one side of a roadway is at least 13 dwelling houses or business structures per 0.25 miles; or

2. The density of separate dwelling houses or business structures contiguous along both sides of a roadway is at least 16 houses or structures per 0.25 miles.

5.1.3 Pedestrian and Bicyclist Safety

The CA MUTCD states that pedestrian and bicyclist safety can also be used as justification for keeping a speed limit low. The CA MUTCD does not provide specific criteria for use in this justification; however, in the spirit of the other guidance and statutes in the CA MUTCD and CVC, it is recommended that reductions be minimized where possible and that this be limited to roadways with moderate to heavy pedestrian and bicycle activity, such as near schools, parks, and other public gathering areas, as well as along obvious and established routes to schools. The factors which can enter into this decision process include the following:

- Most recent two-year collision record (minimum)
- Roadway design speed
- Safe stopping sight distance
- Superelevation
- Shoulder conditions
- Profile conditions
- Intersection spacing and offsets
- Commercial driveway characteristics
- Pedestrian traffic in roadway without sidewalks

The above factors conform to the conditions of CVC Section 627, “Engineering and Traffic Survey”, which states that the following factors shall be included for consideration:

- Prevailing speeds as determined by traffic engineering measurements
- Collision records
- Highway, traffic, and roadside conditions not readily apparent to the driver
- Pedestrian and bicyclist safety

The CA MUTCD also notes the following additional factors that may be considered when establishing or re-evaluating a speed limit:

- Roadway alignment
- Pace Speed (i.e. the 10 MPH interval in which the highest percentage of vehicle speeds are situated)
- Roadside development and environment
- Parking practices and pedestrian activity

5.1.4 Exception for Adjustment of Critical Speed

The CVC contains an exception to the CA MUTCD procedure to establish a speed limit from the critical speed (i.e. 85th percentile speed). Section 22358.6 of the CVC allows for the speed limit of a roadway to be rounded down to the nearest 5 MPH increment below the critical speed, as long as the speed limit would have otherwise been rounded up to the 5 MPH increment above the critical speed. A local authority may additionally lower the speed limit as provided in Section 22358.7 & 22358.8 of the CVC.

The speed reduction criteria under CVC Section 22358.7, which involves designating a roadway as a safety corridor, cannot be implemented until June 30, 2024. Therefore, this speed reduction criteria will not be used in this study.

The speed reduction criteria under CVC Section 22358.8 states the following:

(a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, retain the current speed limit or restore the immediately prior speed limit if that speed limit was established with an engineering and traffic survey and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit.

(b) This section does not authorize a speed limit to be reduced by any more than five miles per hour from the current speed limit nor below the immediately prior speed limit.

If the rounding down adjustment is applied to the critical speed, only the additional reduction described in CVC Section 22358.8 may be applied. Additional adjustments based on the Business District, Residential Density, or Pedestrian & Bicycle Safety cannot be made. This means that if this exception is applied, none of the other adjustments described under Subsections 5.1.1 through 5.1.3 could be applied, regardless of whether or not the criteria for those other adjustments are met. For example, if the critical speed was found to be 33 MPH, instead of rounding up to 35 MPH (the nearest 5 MPH increment), the speed limit could be rounded down to 30 MPH using the exception, but no further reductions, other than those described in CVC Section 22358.8, could be taken. Alternatively, if the critical speed was found to be 32 MPH, the nearest 5 MPH increment would be 30 MPH – a speed lower than the critical speed – and thus the exception would not apply but the other adjustments described in Subsections 5.1.1 through 5.1.3 could be applied if their criteria are met.

5.2 Recommended Speed Limits

Most of the existing speed limits on the 28 surveyed street segments are recommended to be retained. However, there are a few segments for which a change in speed limit is recommended. For some of the project segments, the observed critical speeds exceed the existing speed limits by 5 MPH or more. However, a review of other factors besides the critical speed indicates that some of these existing speed limits are appropriate. These factors are included as an explanation for not raising the speed limit. The existing and proposed speed limits are indicated in parentheses next to each corridor (**Existing MPH / Proposed MPH**).

1. Gabilan Drive – San Vicente Road to West Street (30 MPH / 30 MPH)
   The critical speed is at 30 MPH. No rounding is necessary and no exceptions apply to this segment of roadway, but none are necessary to maintain the existing speed limit. It is therefore recommended that the existing speed limit be retained.

2. Gabilan Drive – West Street to east end of town (30 MPH / 30 MPH)
   The critical speed is at 31.5 MPH. This rounds down to a speed of 30 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No exceptions apply to this segment of roadway, but none are necessary to maintain the existing speed limit. It is therefore recommended that the existing speed limit be retained. It is also important to note that there are several schools within this study segment (Soledad High School, Pinnacles High School, and Jack Franscioni Elementary School). In addition to the 30 MPH speed limit signs, the City should also install the appropriate SR4-1(CA) signs (i.e. 25 MPH school speed limit sign) at each school approach per section 7B.15 of the CA MUTCD.

3. San Vicente Road – Front Street to Gabilan Drive (40 MPH / 40 MPH)
   The critical speed is at 41.5 MPH. This rounds down to a speed of 40 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No exceptions apply to this segment of roadway, but none are necessary to maintain the existing speed limit. It is therefore recommended that the existing speed limit be kept at 40 MPH.

4. San Vicente Road – Gabilan Drive to north end of town (40 MPH / 45 MPH)
   The critical speed in the northbound and southbound directions is 42 MPH and 48 MPH, respectively. This yields an average critical speed of 45 MPH. No rounding is necessary. No exceptions apply to this segment of roadway, so it is therefore recommended that the existing speed limit be increased to 45 MPH.

5. West Street – Front Street to Gabilan Drive (35 MPH / 35 MPH)
   The critical speed in the eastbound and westbound directions is 40 MPH and 35 MPH, respectively. This yields an average critical speed of 37.5 MPH. This rounds up to a speed of 40 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC

Section 22358.6(a). Normally that would require a speed limit change to 40 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and the speed limit is recommended to be kept at 35 MPH.

6. West Street – Gabilan Drive to north end of town (25 MPH / 25 MPH)
   The critical speed is 28 MPH. Normally that would require a speed limit change to 30 MPH. However, the rounding exception in Section 22358.6 of the CVC is being applied to this segment and the speed limit is recommended to be kept at 25 MPH.

7. Market Street – San Vicente Road to West Street (25 MPH / 25 MPH)
   The critical speed in the eastbound and westbound directions is 29 MPH and 33 MPH, respectively. This yields an average critical speed of 31 MPH. This rounds down to a speed of 30 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit change to 30 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and the speed limit is recommended to be kept at 25 MPH.

8. Market Street – West Street to Dixi Street (25 MPH / 25 MPH)
   The critical speed is 30 MPH. Normally that would require a speed limit change to 30 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and the speed limit is recommended to be kept at 25 MPH.

9. Vista De Soledad – Gabilan Drive to Entrada Drive (NONE / 30 MPH)
   The critical speed in the northbound and southbound directions is 32 MPH and 35 MPH, respectively. This yields an average critical speed of 33.5 MPH. This rounds up to a speed of 35 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 35 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and the speed limit is recommended to be set at 30 MPH.

10. Vista De Soledad – Entrada Drive to San Vicente Road (NONE / 35 MPH)
    The critical speed in the northbound and southbound directions is 38 MPH and 37 MPH, respectively. This yields an average critical speed of 37.5 MPH. This rounds up to a speed of 40 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 40 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and the speed limit is recommended to be set at 35 MPH.

11. Andalucia Drive – Metz Road to Gabilan Drive (25 MPH / 25 MPH)
    The critical speed is 23 MPH. This rounds up to a speed of 25 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No exceptions are necessary for this segment of roadway, and it is recommended that the existing speed limit be kept at 25 MPH.

12. East Street – Front Street to Metz Road (25 MPH / 25 MPH)
    The critical speed is 30 MPH. No rounding is necessary. Normally that would require a speed limit designation of 30 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and it is recommended that the existing speed limit be kept at 25 MPH.

13. Entrada Drive – Vista De Soledad to West Street (25 MPH / 25 MPH)
    The critical speed is 25 MPH. No rounding is necessary. No exceptions are necessary for this segment of roadway, and it is recommended that the existing speed limit be kept at 25 MPH.

14. Entrada Drive – West Street to Orchard Drive (25 MPH / 25 MPH)
    The critical speed is 30 MPH. No rounding is necessary. Normally that would require a speed limit designation of 30 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and it is recommended that the existing speed limit be kept at 25 MPH.

15. Prado Drive – Gabilan Drive to Vida Street (25 MPH / 25 MPH)
    The critical speed is 26 MPH. This rounds down to a speed of 25 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No exceptions are necessary for this segment of roadway, and it is recommended that the existing speed limit be kept at 25 MPH.

16. Orchard Lane – Metz Road to Gabilan Drive (NONE / 35 MPH)
    The critical speed is 37 MPH. This rounds down to a speed of 35 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No exceptions are necessary for this segment of roadway, and it is recommended that the speed limit be set at 35 MPH.

17. Orchard Lane – Gabilan Drive to Terraza Street (35 MPH / 35 MPH)
    The critical speed in the northbound and southbound directions is 38 MPH and 34 MPH, respectively. This yields an average critical speed of 36 MPH. This rounds down to a speed of 35 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No exceptions are necessary for this segment of roadway, and it is recommended that the existing speed limit be kept at 35 MPH.

18. 3rd Street – Monterey Street to Metz Road (25 MPH / 30 MPH)
    The critical speed in the northbound and southbound directions is 34 MPH and 36 MPH, respectively. This yields an average critical speed of 35 MPH. No Rounding is necessary. Normally that would require a speed limit designation of 35 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and the speed limit is recommended to be set at 30 MPH.

19. Metz Road – East Street to Orchard Lane (25 MPH / 30 MPH)
The critical speed in the eastbound and westbound directions is 39 MPH and 34 MPH, respectively. This yields an average critical speed of 36.5 MPH. This rounds down to a speed of 35 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 35 MPH. However, due to the density of residential buildings along one side of the street, and based on the fact that there are two elementary schools located within this street segment, a 5 MPH reduction is applied and it is recommended that the existing speed limit be increased to 30 MPH. In addition to the 30 MPH speed limit signs, the City should also ensure that the appropriate SR4-1(CA) signs (i.e. 25 MPH school speed limit sign) are installed at each school approach per section 7B.15 of the CA MUTCD.

20. Metz Road – Orchard Lane to Tiburon Place (NONE / 35 MPH)
The critical speed in the eastbound and westbound directions is 35 MPH and 34 MPH, respectively. This yields an average critical speed of 34.5 MPH. This rounds up to a speed of 35 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No reduction is applied for this segment, and it is recommended that the speed limit be set at 35 MPH.

21. Palm Avenue – Dixi Street to 3rd Street (25 MPH / 25 MPH)
The critical speed in the eastbound and westbound directions is 28 MPH and 30 MPH, respectively. This yields an average critical speed of 29 MPH. This rounds up to a speed of 30 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 30 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and it is recommended that the existing speed limit be kept at 25 MPH.

22. Palm Avenue – 3rd Street to east end of town (25 MPH / 25 MPH)
The critical speed in the eastbound and westbound directions is 31 MPH and 32 MPH, respectively. This yields an average critical speed of 31.5 MPH. This rounds down to a speed of 30 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 30 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and it is recommended that the existing speed limit be kept at 25 MPH.

23. Monterey Street – West Street to Oak Street (25 MPH / 25 MPH)
The critical speed in the eastbound and westbound directions is 29 MPH and 25 MPH, respectively. This yields an average critical speed of 27 MPH. This rounds down to a speed of 25 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No exceptions are necessary for this segment of roadway, and it is recommended that the existing speed limit be kept at 25 MPH.

24. Monterey Street – Oak Street to 8th Street (25 MPH / 25 MPH)
The critical speed in the eastbound and westbound directions is 32 MPH and 31 MPH, respectively. This yields an average critical speed of 31.5 MPH. This rounds down to a speed of 30 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 30 MPH. However, due to the density of residential buildings along both sides of the street, a 5 MPH reduction is applied and it is recommended that the existing speed limit be kept at 25 MPH.

25. Front Street – Moranda Road to Benito Street (35 / 35 MPH)
The critical speed in the eastbound and westbound directions is 32 MPH and 36 MPH, respectively. This yields an average critical speed of 34 MPH. This rounds up to a speed of 35 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). No exceptions are applicable for this segment of roadway. Therefore, it is recommended that the existing speed limit be kept at 35 MPH.

26. Front Street – Benito Street to Oak Street (25 MPH / 25 MPH)
The critical speed in the eastbound and westbound directions is 29 MPH and 26 MPH, respectively. This yields an average critical speed of 27.5 MPH. This rounds up to a speed of 30 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 30 MPH. However, most of the properties along this street segment are commercial properties, as this is the city's downtown area. Therefore, this area is considered a business district and a 5 MPH reduction is applied, so it is recommended that the existing speed limit be kept at 25 MPH.

27. Front Street – Oak Street to HDLR Street (35 MPH / 35 MPH)
The critical speed in the eastbound and westbound directions is 36 MPH and 40 MPH, respectively. This yields an average critical speed of 38 MPH. This rounds up to a speed of 40 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 40 MPH. However, most of the properties along this street segment (between Nestles Road and HDLR Street) are commercial properties. Therefore, this area is considered a business district and the business district guidelines are applied, so it is recommended that the existing speed limit be kept at 35 MPH.

28. Nestles Road – Front Street to Los Coches Road (25 MPH / 25 MPH)
The critical speed in the eastbound and westbound directions is 32 MPH and 31 MPH, respectively. This yields an average critical speed of 31.5 MPH. This rounds down to a speed of 30 MPH based on the guidelines from Section 2B.13 of the 2014 CA MUTCD and CVC Section 22358.6(a). Normally that would require a speed limit designation of 30 MPH. However, most of the properties along this street segment are commercial properties. Therefore, this area is considered a business district and the business district guidelines are applied, so it is recommended that the existing speed limit be kept at 25

MPH.

6 CONCLUSION

Twenty-four (23) of the twenty-eight (28) surveyed locations are recommended to retain the existing speed limits, while speed limit changes are recommended at five (5) of the locations based on the speed survey data.

7 REFERENCES

List of References

California Vehicle Code (California Legislative Information) web site, https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=VEH&tocTitle=+Vehicle+Code+-+VEH, accessed January 2024.

1. *California Manual on Uniform Traffic Control Devices* Revision 7, California Department of Transportation (Caltrans), March 2023.
2. *Merriam-Webster's Collegiate Dictionary, 11th Edition,* Merriam Webster, 2020.

List of Contacts

1. Leon Gomez, City of Soledad Interim City Engineer
2. Donald Wilcox, City of Soledad Public Works Director

8 DISCLAIMER

"This document has been prepared for the titled project or named part thereof and should not be relied upon or used for any other project without an independent check being carried out as to its suitability and prior written authority of TL Engineering being obtained. TL Engineering accepts no responsibility or liability for the consequences of this document being used for a purpose other than the purposes for which it was commissioned. Any person using or relying on the document for such other purposes agrees, and will by such use or reliance be taken to confirm his agreement, to indemnify TL Engineering for all loss or damage resulting therefrom. TL Engineering accepts no responsibility or liability for this document to any party other than the person by whom it was commissioned.

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AGENDA ITEM NO. 14.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Resolution No. 6076, a Resolution of the City Council of The City of Soledad Approving the Consulting Services Agreement with Pavement Engineering Inc. for Construction Management and Inspection Services for The 2024 Crack Seal Project and Authorizing the City Manager to Execute Said Agreement For $76,000**

TO: **Honorable Mayor Velazquez, and City Manager**

FROM: **Donald Wilcox, Public Works Director, Alex Ramos Assistant Engineer**

THROUGH: **Megan Hunter**

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council of the City of Soledad Consider and Adopt Resolution No. 6076, "Approving the Consulting Services Agreement with Pavement Engineering Inc. for Construction Management and Inspection Services for the 2024 Crack Seal Project and Authorizing the City Manager to Execute said Agreement for $76,000.

Executive Summary

To facilitate successful project delivery and product, the City of Soledad utilizes construction management and inspection services to supplement city staff on major construction projects and provide construction oversight. Considering the amount of coordination and the continuous change of the project area, staff selected Pavement Engineering Inc. from the city's on-call consultant list to prepare a formal proposal for this project as staff has determined that Pavement Engineering Inc. has the experience and a team of qualified professionals to perform the services required of this project. Therefore, staff recommends approval of a consulting services agreement with Pavement Engineering Inc. for the 2024 Crack Seal Project for $76,000. The City's Standard consulting services agreement form is to be used.

Background

The City of Soledad has some of the best streets in the whole Monterey County and as such has received numerous compliments from other agencies, consultants, residents, and visitors of the city. To continue efforts in maintaining the city-owned streets on a limited budget for a large inventory, Staff in coordination with Pavement Engineering Inc. (PEI) completed the 2023 Pavement Management Program Update (PMP) as presented to Soledad City Council on October 18, 2023. In the PMP, Staff was able to determine the actual average Pavement Condition Index (PCI) of the whole City and

identify prescriptive treatments on individual streets and their PCI. This allows Staff to create projects and address a number of streets with the same treatment to effectively utilize funds to address multiple streets.

In 2021, the City performed a street maintenance project was in 2021 in which many streets were treated with a slurry seal. Since then, the City has not had another street maintenance project completed and in dire need of one to prevent the streets from deteriorating any further and to avoid doing a heavier treatment thus a more costly project. Crack sealing is the most fundamental pavement maintenance that can be performed. Road deterioration such as potholes and failed road base are most often caused by water entering unsealed pavement. Crack sealing helps save streets from needing expensive reconstruction long before the roadway is worn out.

Therefore, Staff prepared and formally put out to bid a Crack Seal Project. As part of this project, streets have been identified with cracks large enough to be filled with an adhesive to prevent the infiltration of water that, if left unattended, can create serious issues. A simple project in terms of scope of work but nevertheless a cost-effective treatment that will prolong the life of city streets.

Review & Analysis

Under resolution No. 5698, the City Council approved a list of on-call professional services consultants to provide more flexibility to City staff for required infrastructure upgrades or repairs and increase efficiencies with the established list of qualified professional services contractors.

Staff has selected PEI from the city's on-call consultant list as they have the firm experience and team of qualified professionals with the specialized skillset to perform the services required for this project. PEI assisted in completing the PMP and thus has a strong familiarity with the city and the current conditions of the streets within the city. Crack sealing construction management requires knowledgeable, experienced oversight to confirm the project goes as specified and safely. Adequate pre-cleaning of the pavement cracks is time-consuming and can be rushed without close inspection, along with placement of the right amount of material at the right temperature. Crack filling is also one of the most dangerous street maintenance projects as the project is constantly moving (not on a closed road), so correct and adequate dynamic traffic control, especially in intersections while placing extremely hot tar-like crack fill, requires constant attention from application to clean-up. Construction Management also includes measurement of quantities placed, evaluating change orders and pay requests.

PEI's proposal includes all potential hours necessary to manage the project. Since Soledad's consultant agreements are based on time and materials paid at established hourly rates (not flat fee or lump sum), the City only pays for the level of effort expended, not necessarily the maximum level of effort anticipated in the proposal. Therefore, if the contractor performs well and requires less CM level of effort than anticipated, the cost of CM could be much lower than the proposal total. The City only pays for the level of effort needed.

The Construction Management and Inspection Services will provide support to the City during the construction phase of the project. On major projects of this magnitude, Staff has typically sought these services from qualified firms, this is especially the case considering a significant amount of the construction work will be done in various locations throughout the City and will require coordination with residents, schools, and the Police Department.

A map of the streets this project plans to address is attached "Exhibit B." as such to ensure that we have

a successful project and product, Staff recommends that City Council approve this Consulting Services Agreement.

Financial Considerations

This project will span FY 23-24 and FY 24-25 and will be funded mostly from FY 24-25 from:

65 % - $49,400 from Measure X - Capital Projects 210-7160-5632
19 % - $14,400 from Diamond Ridge BAD #1 Fund 649 – Capital Projects 649-5300-5632
16 % - $12,160 Orchard Villas/Miravale II BAD #2 Fund Capital Projects 6525300-5632

Alternatives

- Approve the resolution as presented; or
- Reject the proposed resolution. This is not recommended as the 2024 Crack Seal Project shall require construction oversight that staff does not have the capacity to provide given the resources.

Planning/CEQA

The proposed project is categorically exempt under Class 1 Existing Facilities, having met the qualifying criteria provided under CEQA Guidelines Section 15301. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. As detailed above, the 2024 Crack Seal Project would be categorized under this description.

Public Notice Requirements

None required.

Attachment(s):
Resolution No. 6076
Exhibit A - Copy of Agreement PEI
Exhibit B - Map of Streets under this project

RESOLUTION NO. 6076

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD APPROVING THE CONSULTING SERVICES AGREEMENT PAVEMENT ENGINEERING INC. FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE 2024 CRACK SEAL PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT FOR $76,000.

WHEREAS, the City of Soledad has some of the best streets in the whole Monterey County and, as such has received numerous compliments from other agencies, consultants, residents, and visitors of the city; and

WHEREAS, on October 2023, Staff in coordination with Pavement Engineering Inc. (PEI) completed the 2023 Pavement Management Program Update (PMP) that provided staff with an extensive report of the existing streets in the city, their current Pavement Condition Index (PCI), and the various prescriptive treatments to individual streets; and

WHEREAS, in 2021, the City performed a street maintenance project in which many streets north of Gabilan Drive were treated with a Slurry Seal, and since then the City has not had another street maintenance project completed and is in dire need of another; and

WHEREAS, Staff has prepared and formally put out to bid a Crack Seal Project where a number of streets within the city have been identified to be great candidates for this prescriptive pavement treatment that is a cost-effective treatment that will aid in prolonging the life of city streets; and

WHEREAS, to facilitate a successful project delivery, the City of Soledad utilizes Construction Management and Inspection Services to supplement City Staff on major construction projects such as this to provide daily oversight; and

WHEREAS, staff selected PEI from the City's on-call consultant list for a proposal for construction management and inspection services; and

WHEREAS, staff has determined that PEI has the experience and a team of qualified professionals to perform the services required for the project and the familiarity with the City, project scope of work, and existing conditions of the streets.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Soledad, that the consulting services agreement between the City of Soledad and Pavement Engineering Inc. for Professional Construction Management and Inspection Services for $76,000, and a copy of the agreement with Pavement Engineering Inc., attached as **"Exhibit A"** and by reference incorporated herein, is hereby approved and the City Manager is hereby authorized and directed to execute the same on behalf of the City of Soledad.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 1st day of May 2024 by the following vote:

AYES, and in favor thereof, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

_____
ANNA M. VELAZQUEZ, Mayor

ATTEST:

_____
MEGAN HUNTER, City Clerk

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF SOLEDAD AND PAVEMENT ENGINEERING INC.

THIS AGREEMENT for consulting services is made by and between the City of Soledad ("City") and Pavement Engineering ("Consultant") (together, sometimes referred to as the "Parties") as of May 1, 2024 (the "Effective Date").

Section 1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Consultant 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 in 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 Effective Date and shall end on December 31, 2026, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.

1.2 **Standard of Performance.** Consultant 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 Consultant is engaged.

1.3 **Assignment of Personnel.** Consultant 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, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 **Time.** Consultant 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 1.1 above and to satisfy Consultant's obligations hereunder.

1.5 **Public Works Requirements.** Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C.

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed **$76,000**, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the

Agreement shall prevail. City shall pay Consultant 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 Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant 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.** Consultant 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 Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

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 Consultant.

2.3 **Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 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 Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant 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 Consultant 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 Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed $ 0 . Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 **Payment of Taxes.** Consultant 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 Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 **Authorization to Perform Services.** The Consultant 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, Consultant 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 Consultant 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 Consultant'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, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below 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 Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant 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, and that such insurance is in effect prior to beginning work to the City. Consultant 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 Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 **Workers' Compensation.** Consultant 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 Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than $ 1,000,000 per accident. In the alternative, Consultant 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 Consultant, 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.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than **$1,000,000** 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 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, 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 a certified endorsement to the policy:

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

b. City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3 **Professional Liability Insurance.**

4.3.1 **General requirements.** Consultant, 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 $1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is 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 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, Consultant shall purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.

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

4.3.3 **Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy

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, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written 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. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss.

Consultant agrees to obtain any endorsements that may be necessary to affect 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 consultant, its employees, agents, and subcontractors.

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

4.5 **Remedies.** In addition to any other remedies City may have if Consultant 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 Consultant'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 Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall, to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, defend with counsel acceptable to City, indemnify, and hold City, its officers, employees, agents, and volunteers, harmless from and against any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, ("Claims"). Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. **STATUS OF CONSULTANT.**

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant'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 Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant 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.

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

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.** Consultant 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, and any copyright, patent or trademark law. Consultant'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, Consultant 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.** Consultant represents and warrants to City that Consultant 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. Consultant represents and warrants to City that Consultant 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, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 60 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant 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. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant 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 Consultant 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.

8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant'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 Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the

Contract Administrator. Consultant 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.

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

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, 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 Consultant pursuant to this Agreement;

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

8.6.4 Charge Consultant 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 Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant'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 Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant 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 Consultant 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.

9.2 **Consultant's Books and Records.** Consultant 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 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant 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 $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 3 years after final payment under the Agreement.

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 Monterey or in the United States District Court for the Northern 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.** Consultant 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.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant 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.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant 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.

10.8 **Solicitation.** Consultant 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 Donald Wilcox, Public Works Director ("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 Consultant shall be sent to:

Joseph L. Ririe, P.E. President & Senior Principal Engineer
Pavement Engineering Inc.
3485 Sacramento Drive, Suite A
San Luis Obispo, CA 93401

Any written notice to City shall be sent to:

Megan Hunter, City Manager
City of Soledad
P.O. Box 156
Soledad, CA 93960

10.11 **Professional Seal.** Where applicable in the determination of the contract administrator, 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 Exhibits A, B & C, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there may be a conflict between the consultant proposal terms and the agreement, the City's agreement language prevails.

Exhibit A	Scope of Services
Exhibit B	Payment Schedule
Exhibit C	Public Works Requirements

10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF SOLEDAD

_____
Megan Hunter, City Manager

Attest:

_____
Megan Hunter, City Clerk

Approved as to Form:

_____
Michael Rodriquez, City Attorney

CONSULTANT: Pavement Engineering Inc.

_____
Joseph L. Ririe, P.E. Principal

EXHIBIT A

SCOPE OF SERVICES

.

EXHIBIT B

COMPENSATION SCHEDULE

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.

B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

C. The Consultant and its subcontractors shall forfeit as a penalty to the City $25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.

B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to $50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of

prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.

4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

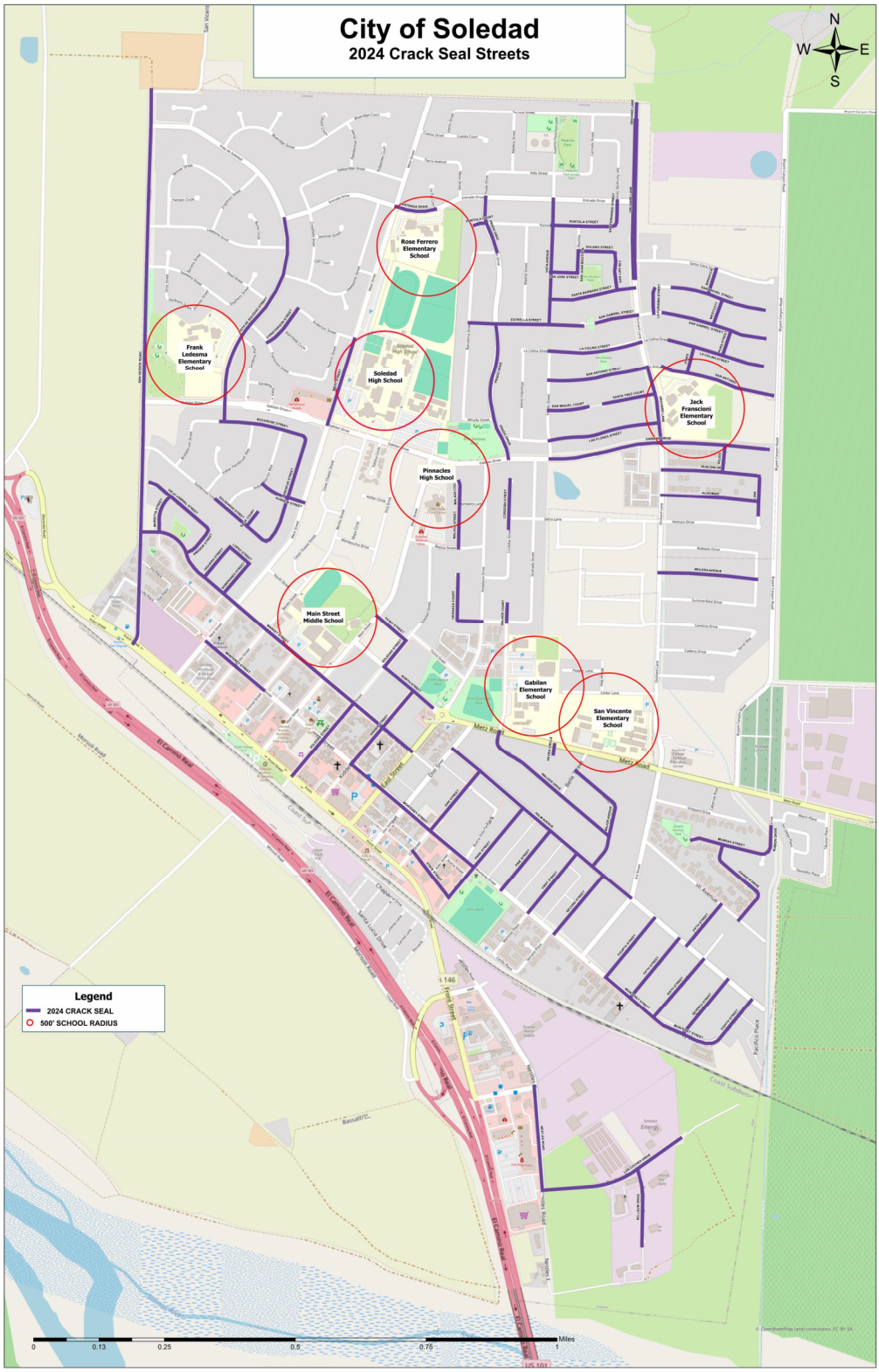
2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the

Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.



LOCATION MAP

City of Soledad, California

AGENDA ITEM NO. 15.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Accept by Minute Motion The 2023 Water System Consumer Confidence Report**

TO: **Honorable Mayor Velazquez, and City Council**

FROM: **Donald T. Wilcox, Public Works Director, Moises Arizmendi, Public Works Manager**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council accept the attached 2023 City of Soledad Water System Consumer Confidence Report (CCR).

Executive Summary

Soledad's water is monitored by City staff for many kinds of substances on a very strict sampling schedule, and the water we deliver must meet specific health standards. The Soledad water system had no violations for any regulated substance during calendar year 2023.

Background

Pursuant to the 1996 Safe Drinking Water Act, all community water systems that serve the same people year-round must prepare an annual Water Quality Report for their customers. The reports are published each year by July for the previous year. The reports tell where drinking water comes from, what is in the City's water and how consumers can help protect the City's water sources.

Review & Analysis

Water Quality Reports are the centerpiece of the right-to-know provisions in the 1996 Amendments to the Safe Drinking Water Act. This report is mailed to each water customer with water service so that it is available to everyone that drinks water at that location.

As required by law, the Water Quality Report must contain the following information:

- The type of water served (such as groundwater, surface water or water from another system) and the name and location of its source.
- Regulated and unregulated contaminants that have been detected in the water, their

concentrations and the allowable federal or state standard.
- Disinfection by-products or microbial contaminants; their concentrations and standards.
- Descriptions of possible health effects of contaminants in drinking water at concentrations greater than the federal or state health standard.
- Identification of the likely source of any contamination.
- Violations of any monitoring, reporting, treatment, or record keeping requirements.
- Opportunities for public involvement and water system contact information.

As our 2023 Water Quality Report indicates, the City continues to provide drinking water that meets or exceeds all state and federal drinking water standards with no violation.

Attached is a copy of the 2023 Consumer Confidence Report for your review. This report will be mailed to every water customer and available in English and Spanish on the City's website.

Financial Considerations

There are no financial impacts other than the cost of preparing and mailing the report, which is estimated to be $9,000 to The Gemini Group for these services paid from the Water Enterprise Fund.

Alternatives

The City is required to mail out these reports.

Planning/CEQA

The creation of this report is an administrative function and not considered a project under the California Environmental Quality Act.

Public Notice Requirements

Not required.

Attachment(s):
2023 Water Quality CCR

The City of Soledad
248 Main St.
Soledad, CA 93960

Este informe contiene información muy importante sobre su agua potable. Traúzcalo o hable con alguien que lo entienda bien.

Recycled and Recyclable
Copyright ©2024 Gemini Group LLC
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CA000358

Presented By

SOLEDAD CALIFORNIA

PWS ID#: CA2710011

ANNUAL WATER QUALITY REPORT

Reporting Year 2023

PR SRT STD
U.S. Postage
PAID
Gemini Group
22901

Our Commitment

We are pleased to present to you this year's annual water quality report. This report is a snapshot of last year's water quality covering all testing performed between January 1 and December 31, 2023. Included are details about your source of water, what it contains, and how it compares to standards set by regulatory agencies. Our constant goal is to provide you with a safe and dependable supply of drinking water. We want you to understand the efforts we make to continually improve the water treatment process and protect our water resources. We are committed to ensuring the quality of your water and providing you with this information because informed customers are our best allies.

Lead in Home Plumbing

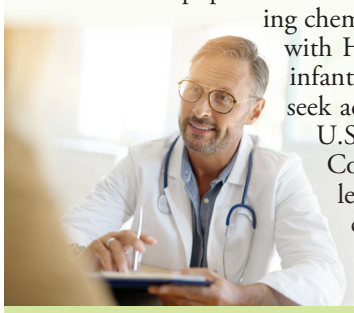
If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. We are responsible for providing high-quality drinking water, but we cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to two minutes before using water for drinking or cooking. (If you do so, you may wish to collect the flushed water and reuse it for another beneficial purpose, such as watering plants.) If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline at (800) 426-4791 or www.epa.gov/safewater/lead.

Community Participation

You are invited to attend City of Soledad Council meetings and share your ideas and concerns about your drinking water. The council meets the first and third Wednesday of each month at 6:00 p.m. at City Hall, 248 Main Street. Our office hours are Monday through Friday, 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m. Zoom and agenda links are available at www.cityofsoledad.com.

Important Health Information

Some people may be more vulnerable to contaminants in drinking water than the general population. Immunocompromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants may be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. The U.S. Environmental Protection Agency (EPA)/Centers for Disease Control and Prevention (CDC) guidelines on appropriate means to lessen the risk of infection by *cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline at (800) 426-4791 or http://water.epa.gov/drink/hotline.



Substances That Could Be in Water

The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material and can pick up substances resulting from the presence of animals or from human activity.

In order to ensure that tap water is safe to drink, the U.S. EPA and the State Water Resources Control Board (State Board) prescribe regulations that limit the amount of certain contaminants in water provided by public water systems. The U.S. Food and Drug Administration regulations and California law also establish limits for contaminants in bottled water that provide the same protection for public health. Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk.

Contaminants that may be present in source water include:

Microbial Contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

Inorganic Contaminants, such as salts and metals, that can be naturally occurring or can result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

Pesticides and Herbicides that may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses;

Organic Chemical Contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production and which can also come from gas stations, urban stormwater runoff, agricultural applications, and septic systems;

Radioactive Contaminants that can be naturally occurring or can be the result of oil and gas production and mining activities.

More information about contaminants and potential health effects can be obtained by calling the U.S. EPA's Safe Drinking Water Hotline at (800) 426-4791.

Source Water Assessment

A Source Water Assessment Plan (SWAP) is an assessment of the delineated area around our listed sources through which contaminants, if present, could migrate and reach our source water. It also includes an inventory of potential sources of contamination within the delineated area and a determination of the water supply's susceptibility to contamination by the identified potential sources.

According to the SWAP, our water system had a susceptibility rating of medium. If you would like to review the SWAP, please contact the public works manager during regular office hours.

QUESTIONS?

For more information about this report, or for any questions relating to your drinking water, please call Moises Arizmendi, Public Works Manager - Water Department, at (831) 223-5190 or email marizmendi@cityofsoledad.com.

Test Results

Our water is monitored for many different kinds of substances on a very strict sampling schedule, and the water we deliver must meet specific health standards. Here, we only show those substances that were detected in our water (a complete list of all our analytical results is available upon request). Remember that detecting a substance does not mean the water is unsafe to drink; our goal is to keep all detects below their respective maximum allowed levels.

The state recommends monitoring for certain substances less than once per year because the concentrations of these substances do not change frequently. In these cases, the most recent sample data are included, along with the year in which the sample was taken.

We participated in the fifth stage of the U.S. EPA's Unregulated Contaminant Monitoring Rule (UCMR5) program by performing additional tests on our drinking water. UCMR5 sampling benefits the environment and public health by providing the U.S. EPA with data on the occurrence of contaminants suspected to be in drinking water to determine if it needs to introduce new regulatory standards to improve drinking water quality. Unregulated contaminant monitoring data are available to the public, so please feel free to contact us if you are interested in obtaining that information. If you would like more information on the U.S. EPA's Unregulated Contaminant Monitoring Rule, please call the Safe Drinking Water Hotline at (800) 426-4791.

REGULATED SUBSTANCES

SUBSTANCE (UNIT OF MEASURE)	YEAR SAMPLED	MCL [MRDL]	PHG (MCLG) [MRDLG]	AMOUNT DETECTED	RANGE LOW-HIGH	VIOLATION	TYPICAL SOURCE
1,1,1-Trichloroethane (ppb)	2023	200	1,000	ND	NA	No	Discharge from metal degreasing sites and other factories; manufacture of food wrappings
Arsenic (ppb)	2021	10	0.004	1.8	1.3–2.3	No	Erosion of natural deposits; runoff from orchards; glass and electronics production wastes
Barium (ppm)	2021	1	2	0.105	0.047–0.280	No	Discharges of oil drilling wastes and from metal refineries; erosion of natural deposits
Chromium, Total (ppb)	2021	50	(100)	4.46	3.0–6.3	No	Discharge from steel and pulp mills and chrome plating; erosion of natural deposits
Fluoride (ppm)	2022	2.0	1	0.1	ND–0.10	No	Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories
Gross Alpha Particle Activity (pCi/L)	2023	15	(0)	3.16	0.648–7.69	No	Erosion of natural deposits
HAA5 [sum of 5 haloacetic acids]–Stage 2 (ppb)	2023	60	NA	3.56	ND–8	No	By-product of drinking water disinfection
Nitrate [as nitrogen] (ppm)	2023	10	10	0.42	0.1–0.9	No	Runoff and leaching from fertilizer use; leaching from septic tanks and sewage; erosion of natural deposits
Radium 226 (pCi/L)	2022	5	0.05	0.335	0.265–0.406	No	Erosion of natural deposits
Radium 228 (pCi/L)	2022	5	0.019	0.304	ND–0.608	No	Erosion of natural deposits
Selenium (ppb)	2021	50	30	2.2	2–3	No	Discharge from petroleum, glass, and metal refineries; erosion of natural deposits; discharge from mines and chemical manufacturers; runoff from livestock lots (feed additive)
TTHMs [total trihalomethanes]–Stage 2 (ppb)	2023	80[1]	NA	7.69	2–19	No	By-product of drinking water disinfection
Uranium (pCi/L)	2023	20	0.43	7.6	ND–7.6	No	Erosion of natural deposits

Tap water samples were collected for lead and copper analyses from sample sites throughout the community

SUBSTANCE (UNIT OF MEASURE)	YEAR SAMPLED	AL	PHG (MCLG)	AMOUNT DETECTED (90TH %ILE)	SITES ABOVE AL/TOTAL SITES	VIOLATION	TYPICAL SOURCE
Copper (ppm)	2023	1.3	0.3	0.15	0/35	No	Internal corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives
Lead (ppb)	2023	15	0.2	ND	0/35	No	Internal corrosion of household water plumbing systems; discharges from industrial manufacturers; erosion of natural deposits

SECONDARY SUBSTANCES

SUBSTANCE (UNIT OF MEASURE)	YEAR SAMPLED	SMCL	PHG (MCLG)	AMOUNT DETECTED	RANGE LOW-HIGH	VIOLATION	TYPICAL SOURCE
Chloride (ppm)	2022	500	NS	72.6	ND–72.6	No	Runoff/leaching from natural deposits; seawater influence
Iron (ppb)	2023	300	NS	99.75	85–107	No	Leaching from natural deposits; industrial wastes
Specific Conductance (µS/cm)	2023	1,600	NS	1,214[2]	1,184–1,258[2]	No	Substances that form ions when in water; seawater influence
Sulfate (ppm)	2022	500	NS	201	ND–201	No	Runoff/leaching from natural deposits; industrial wastes
Total Dissolved Solids (ppm)	2021	1,000	NS	564	402–742	No	Runoff/leaching from natural deposits
Turbidity (NTU)	2023	5	NS	0.43	0.25–0.55	No	Soil runoff

UNREGULATED SUBSTANCES[3]

SUBSTANCE (UNIT OF MEASURE)	YEAR SAMPLED	AMOUNT DETECTED	RANGE LOW-HIGH	TYPICAL SOURCE
Sodium (ppm)	2021	78	30–162	Naturally occurring
Total Hardness (ppm)	2021	296	248–382	Sum of polyvalent cations in water, generally naturally occurring calcium and magnesium

[1] Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system and may have an increased risk of getting cancer.
[2] Testing is done before filtering.
[3] Unregulated contaminant monitoring helps U.S. EPA and the State Board determine where certain contaminants occur and whether the contaminants need to be regulated.

Definitions

90th %ile: The levels reported for lead and copper represent the 90th percentile of the total number of sites tested. The 90th percentile is equal to or greater than 90% of our lead and copper detections.

AL (Regulatory Action Level): The concentration of a contaminant which, if exceeded, triggers treatment or other requirements that a water system must follow.

MCL (Maximum Contaminant Level): The highest level of a contaminant that is allowed in drinking water. Primary MCLs are set as close to the PHGs (or MCLGs) as is economically and technologically feasible. Secondary MCLs (SMCLs) are set to protect the odor, taste, and appearance of drinking water.

MCLG (Maximum Contaminant Level Goal): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs are set by the U.S. EPA.

MRDL (Maximum Residual Disinfectant Level): The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

MRDLG (Maximum Residual Disinfectant Level Goal): The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

NA: Not applicable.

ND (Not detected): Indicates that the substance was not found by laboratory analysis.

NS: No standard.

NTU (Nephelometric Turbidity Units): Measurement of the clarity, or turbidity, of water. Turbidity in excess of 5 NTU is just noticeable to the average person.

pCi/L (picocuries per liter): A measure of radioactivity.

PDWS (Primary Drinking Water Standard): MCLs and MRDLs for contaminants that affect health, along with their monitoring and reporting requirements and water treatment requirements.

PHG (Public Health Goal): The level of a contaminant in drinking water below which there is no known or expected risk to health. PHGs are set by the California EPA.

ppb (parts per billion): One part substance per billion parts water (or micrograms per liter).

ppm (parts per million): One part substance per million parts water (or milligrams per liter).

µS/cm (microsiemens per centimeter): A unit expressing the amount of electrical conductivity of a solution.

Where Does My Water Come From?

The City of Soledad's residents are fortunate to enjoy an abundant groundwater supply from the city's five active wells. The wells have a combined pumping capacity of about 4,788 gallons per minute. In 2023 these five wells pumped a total of more than 651 million gallons of clean drinking water. To learn more about our watershed online, visit U.S. EPA's How's My Waterway at www.epa.gov/waterdata/hows-my-waterway.

The water supply for the City of Soledad wells comes from aquifers that are continuously replenished with releases of water from the San Antonio and Nacimiento Reservoirs. The reservoirs are operated by the Monterey County Water Resource Agency. According to Monterey County Water Resource data, approximately 90.4 percent of the water from the Salinas Valley aquifers is consumed by agricultural operations. City populations consume about 9.6 percent of the groundwater supply.

What's a Cross-Connection?

Cross-connections that contaminate drinking water distribution lines are a major concern. A cross-connection is formed at any point where a drinking water line connects to equipment (boilers), systems containing chemicals (air conditioning systems, fire sprinkler systems, irrigation systems), or water sources of questionable quality. Cross-connection contamination can occur when the pressure in the equipment or system is greater than the pressure inside the drinking water line (backpressure). Contamination can also occur when the pressure in the drinking water line drops due to fairly routine occurrences (main breaks, heavy water demand), causing contaminants to be sucked out from the equipment and into the drinking water line (backsiphonage).

Outside water taps and garden hoses tend to be the most common sources of cross-connection contamination at home. The garden hose creates a hazard when submerged in a swimming pool or attached to a chemical sprayer for weed killing. Garden hoses that are left lying on the ground may be contaminated by fertilizers, cesspools, or garden chemicals. Improperly installed valves in your toilet could also be a source of cross-connection contamination.

Community water supplies are continuously jeopardized by cross-connections unless appropriate valves, known as backflow prevention devices, are installed and maintained. We have surveyed industrial, commercial, and institutional facilities in the service area to make sure that potential cross-connections are identified and eliminated or protected by a backflow preventer. We also inspect and test backflow preventers to make sure that they provide maximum protection.

For more information on backflow prevention, contact the Safe Drinking Water Hotline at (800) 426-4791, or City of Soledad Water Department at (831) 223-5000, or Public Works Manager Moises Arizmendi at (831) 223-5190.

AGENDA ITEM NO. 16.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Resolution No. 6077, a Resolution of the City Council of the City of Soledad Approving the Purchase of One (1) Public Works Fleet Vehicle from Soledad Auto Sales, Dispensing with Bidding per Soledad Municipal Code Section 3.24.040 And Authorizing the City Manager to Purchase said Vehicle in an Amount Not to Exceed of $34,945**

TO: **Honorable Mayor Velazquez, and City Council**

FROM: **Donald Wilcox, Public Works Director**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council of the City of Soledad Consider and Adopt Resolution No. 6077, "Approving the Purchase of one (1) Public Works Fleet Vehicle from Soledad Auto Sales, Dispensing with Bidding per Soledad Municipal Code Section 3.24.040 and Authorizing the City Manager to Purchase Said Vehicle in an Amount Not to Exceed $34,945".

Executive Summary

In the past the City Council has allowed the purchase of used vehicles to replace old vehicles with high mileage and that are at the end of their useful service life. Replacement of fleet vehicles has long been deferred, which has resulted in PW staff still driving vehicles Council surplused in 2020 due to those vehicles requiring more maintenance due to the added age and mileage. For employees to continue working efficiently and lessen the repair downtime, staff recommends that the city purchase the work truck currently in stock with Soledad Auto Sales for the Parks/Streets Division. This will take us to only two remaining PW vehicles that are still in use despite being surplused in 2020.

Background

Public Works has had a variety of vehicle procurements. Prior to COVID-19, new vehicles were purchased and equipped as the best fit for Public Works and kept for 10-15 or more years as mileage accrued is very low. However, new vehicles were unavailable during COVID-19, so the City leased several vehicles.

In March of 2019, the City Council approved an agreement with Enterprise Fleet Management to lease vehicles for the City of Soledad's vehicle fleet. The Public Works Department currently has six leased vehicles: two 2019 and three 2021 Dodge Rams work trucks and one 2021 Ford service truck. Leases

for two 2019 vehicles (1-Water and 1-Parks/Streets) will expire in September of this year, with the other three newer ones set to expire in 2026.

In November of 2022, the City Council allowed staff to procure used vehicles due to a lack of new vehicle availability. Since then, the Public Works Department has been purchasing vehicles locally from Soledad Auto Sales to replace vehicles that are at the end of their service life. To date, three vehicles have been replaced in the Wastewater Division and three in the Parks/Streets Division, however three surplused vehicles from 1999-2007 remain in daily use.

Staff contacted Soledad Auto Sales to inquire about their used vehicle inventory, and they currently have one work truck that fits the Parks/Street division's needs. Criteria used for purchasing used vehicles include work trucks 3-5 years old with about 50,000 miles or less. Purchasing used vehicles made sense because work vehicles tend to get bumped and banged a little in the course of service and accrue very low miles.

As no two used vehicles are the same, the competitive bid process does not work. However, the City of Soledad Municipal Code Section 3.24.040 authorizes purchase exceptions as follows:

Purchases of supplies and equipment shall be bid by procedures as prescribed by this chapter; provided, that bidding shall be dispensed with (1) when an emergency requires that an order be placed with the nearest available source of supply, or (2) when the amount involved is less than twenty-five thousand dollars; or (3) when the commodity, product or equipment can be obtained from only one vendor; or (4) when the city council determines, by a resolution passed by four-fifths of its members, that because of differences in the kinds or types of the particular commodity, product or equipment available on the market, it would be to the city's advantage to make a selection on the basis of suitability to the city's needs, rather than on the basis of price; or (5) when the city council determines, by a resolution passed by a majority of its members, that cost and time savings can be realized by using the purchasing procedures and bid results of another public entity in lieu of the bidding policies prescribed by this statute, in accordance with the procedures set forth in subsection C below.

Review & Analysis

Purchasing used vehicles that are a few years old and with relatively low mileage currently makes sense for Public Works vehicles. New vehicles are expensive up front, and the vehicle bodies are worn out before they get to high mileage. Leased vehicles are an option but can be challenging due to the extra wear and tear with typical Public Works service. Damage, such as drilled holes, does happen to PW vehicles and this damage must be repaired at the end of the lease. The City performs all leased vehicle maintenance. In addition, PW vehicles are equipped with special equipment, and often, the equipment is not universal, so it will not fit a replacement leased vehicle. Leased vehicles can be purchased at the end of the lease, but over the lifetime of the vehicle cost more than if the City had purchased the vehicle in the beginning.

The Parks/Streets Division has twelve employees (eleven full-time and one temporary/part-time). In the last year and a half, three vehicles have been purchased, yet half of the staff continues to operate twenty-year-old vehicles that are now long overdue for replacement. These employees should be provided with reliable vehicles so that they may continue working safely and efficiently. Staff will incorporate vehicle replacement needs into the city's CIP based on mechanical condition, repair history cost, department's operational needs, and available finances. The City Manager and Finance Director are working on a comprehensive fleet replacement plan, which will guide future purchases.

Purchase of a new vehicle is straightforward in that the City can solicit competitive bids for specific identical new vehicles. In contrast, there are no two identical used vehicles to compare prices. Therefore, staff proposes to purchase used vehicles using Kelly Blue Book (KBB) and/or JD Power (NADA) pricing for used vehicles in order to confirm fair market value for the use of public funds to purchase used vehicles.

Staff believes that bid exception 3.24.040 A.3, the "Sole Source Exception," which provides that bidding may be dispensed with when the involved commodity or equipment can only be obtained from one vendor, applies to the proposed purchase. This exception applies to used vehicles, where each vehicle is unique and available from a single vendor. Staff also believes that bid exception A.4, the "suitability to City needs exception," applies as the City's purchase is focused on the City's current needs, which dictates a focus on the availability of used vehicles with a variety of unique characteristics rather than reliance on pricing alone.

Staff recently contacted Soledad Auto Sales to inquire about their used car inventory, and they currently have one vehicle that meets the City's criteria: a 2021 Ram 1500 Classic Crew Cab with 55,299 miles for $29,000. This vehicle falls within the department's budget for Fiscal Year 2023/2024 and within the KBB Retail value. The total cost for the truck with taxes and fees is approximately $31,768.51. However, it is recommended that a 10% contingency is added in case pricing or supply availability changes. Staff is requesting that the Council authorize the City Manager to directly purchase said vehicle from Soledad Auto Sales in lieu of our past practice of leasing or purchasing new vehicles. The Dealer will resolve any open recalls prior to the City purchasing these vehicles.

Financial Considerations

The cost for the vehicle has been budgeted in the current Parks Department Fund 100-5600-4100 for FY 2023-2024.

Alternatives

- Approve the Resolution.
- Do not approve the Resolution.
- Provide other direction to staff.

Planning/CEQA

Not applicable.

Public Notice Requirements

None required.

Attachment(s):
Resolution No. 6077
2021 Dodge Ram Quote, KBB Value and Car Fax Report

RESOLUTION NO. 6077

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD APPROVING THE PURCHASE OF ONE (1) PUBLIC WORKS FLEET VEHICLE FROM SOLEDAD AUTO SALES, DISPENSING WITH BIDDING PER SOLEDAD MUNICIPAL CODE SECTION 3.24.040 AND AUTHORIZING THE CITY MANAGER TO PURCHASE SAID VEHICLES IN AN AMOUNT NOT TO EXCEED $34,945

WHEREAS, several of the City's current Public Works vehicles are at the end of their useful service life and need to be replaced; and

WHEREAS, the Parks/Streets Division vehicle has been budgeted for in the City's Adopted FY 2023-2024 Budget; and

WHEREAS, the best cost-benefit for Soledad Public Works vehicles is used vehicles, 3-5 years old, preferably at or under 50,000 miles and still under a transferable warranty; and

WHEREAS, Soledad Auto Sales currently has one used work truck that meets the needs of the Parks/Streets Department and is priced within the KBB and/or NADA values; and

WHEREAS, staff is requesting that the Council authorize the City Manager to purchase a 2021 Dodge Ram Classic for $31,768.51 and authorize an additional 10% contingency in case of changes to pricing or supply in an amount not to exceed $34,945; and

WHEREAS, while Soledad Municipal Code ("SMC") Section 3.34.040 requires that all purchases of supplies and equipment with anticipated costs in excess of $25,000 require public bidding, exceptions for bidding are provided when the commodity, product, or equipment can be obtained from only one vendor; and when the city council determines, by a resolution passed by four-fifths of its members, that because of differences in the kinds or types of the particular commodity, product or equipment available on the market, it would be to the city's advantage to make a selection on the basis of suitability to the city's needs, rather than on the basis of price. Staff believes that both of these exceptions are applicable for the reasons stated below.

NOW THEREFORE, BE IT HEREBY RESOLVED, by a four-fifths vote of the City Council of the City of Soledad as follows:

1. The City may dispense with bidding for the purchase of used vehicles from Soledad Auto Sales under the "sole source" exception set forth in SMC Section 3.24.040A.(3) because used vehicles are unique as no two used vehicles have identical mileage, condition, accessories, etc.

2. The City may also dispense with bidding for the purchase of used vehicles from Soledad Auto Sales pursuant to the "suitability to city needs" exception set forth in SMC Section 3.24.040A.(4) because the best cost-benefit for Soledad Public Works vehicles is used

vehicles, 3-5 years old, preferably at or under 50,000 miles, and still under a transferable warranty, rather than based on price alone.

3. Based on the foregoing, the City Council hereby approves the purchase of one used vehicle from Soledad Auto Sales for use as Public Works Fleet Vehicles in an amount not to exceed $34,945 and authorizes and directs the City Manager to execute a sales agreement for the procurement of said vehicles.

PASSED AND ADOPTED by the City Council of the City of Soledad this 1st day of May 2024, by the following vote:

AYES, and in favor thereof Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

_____
ANNA M. VELAZQUEZ, Mayor

ATTEST:

_____
MEGAN HUNTER, City Clerk

WORKSHEET

Soledad Auto Sales Inc
300 Front St
SOLEDAD, CA 93960

Vehicle Sold: 520269
2021 Ram 1500 Classic Crew Cab
VIN:1C6RR7TT5MS520269 Color: White
Mileage:

Date: Mar 21, 24

Cash Price.....:	29,000.00
Doc Prep.....:	65.00
Registration.....:	15.00
County.....:	MONTEREY
Sales Tax.....:	2688.51
Tax Rate.....:	9.250
Cash Down.....:	0.00
Trade.....:	0.00
Pay-Off.....:	0.00
Gap Contract.....:	0.00
Warranty.....:	0.00
Insurance.....:	0.00
Manufacturer's Rebate.....:	0.00
Amount Financed.....:	31,768.51
Payment Amount.....:	31,768.51
No. Of Payments.....:	One Pay

_____
Customer's Acceptance

Bookout Report

LASER APPRAISER®
AUTOMOTIVE MOBILE VALUATION

Vehicle Info

VIN:	1C6RR7TT5MS520269
Vehicle:	2021 Ram 1500 Classic Crew Cab
Trim:	SLT Pickup 4D 6 1/3 ft
Detail:	Auto
Mileage:	55299
Appraisal:	3/21/24 in CA
Valuation:	3/21/24
Bought / Ask:	No ($0) / $0

Dealer Information

Soledad Auto Sales
300 Front Street
Soledad, CA 93960

Kelley Blue Book
THE TRUSTED RESOURCE

Trim:	SLT Pickup 4D 6 1/3 ft
Detail:	Auto
Options:	(Retail) 4WD, V8, HEMI, 5.7 Liter, Automatic, 8-Spd, Electronic Stability Control, ABS (4-Wheel), Keyless Entry, Air Conditioning, Power Windows, Power Door Locks, Cruise Control, Alloy Wheels, AM/FM Stereo, SiriusXM Satellite, Bluetooth Wireless, Uconnect, Backup Camera, Dual Air Bags, Side Air Bags, F&R Head Curtain Air Bags, Bed Liner +190, Power Steering, Tilt Wheel

Kelley Blue Book Other	Retail
Base Vehicle Value	28993
Mileage Adjustment	-485
Total Equipment Value	190
Total Vehicle Value	28698

This report provided free of charge by:

CARFAX ADVANTAGE DEALER

Soledad **auto sales**
300 front street
Soledad ca 93960

CARFAX Vehicle History Report™

US $44.99

2021 RAM 1500 CLASSIC SLT

VIN: 1C6RR7TT5MS520269
CREW PICKUP
5.7L V8 F OHV 16V
GASOLINE
REAR WHEEL DRIVE W/ 4X4
Original Window Sticker

This CARFAX Report Provided by:
Soledad auto sales
300 front street
Soledad ca 93960

- No accidents or damage reported to CARFAX
- **2** Service history records
- CARFAX 1-Owner vehicle
- Rental vehicle
- Last owned in Oklahoma
- **51,400** Last reported odometer reading

This CARFAX Vehicle History Report is based only on information supplied to CARFAX and available as of 2/29/24 at 7:39:31 PM (CST). Other information about this vehicle, including problems, may not have been reported to CARFAX. Use this report as one important tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.

CARFAX Ownership History

The number of owners is estimated

Year purchased	
Type of owner	
Estimated length of ownership	
Owned in the following states/provinces	
Estimated miles driven per year	

CARFAX 1 OWNER

Last reported odometer reading

CARFAX Title History

CARFAX guarantees the information in this section

Damage Brands Salvage | Junk | Rebuilt | Fire | Flood | Hail | Lemon	Guaranteed No Problem
Odometer Brands Not Actual Mileage | Exceeds Mechanical Limits	Guaranteed No Problem

GUARANTEED - None of these title problems were reported by a U.S. state Department of Motor Vehicles (DMV). If you find that any of these title problems were reported by a DMV and not included in this report, you may qualify.
View Terms | View Certificate

CARFAX Additional History

Not all accidents / issues are reported to CARFAX

Total Loss No total loss reported to CARFAX.	No Issues Reported
Structural Damage No structural damage reported to CARFAX.	No Issues Reported
Airbag Deployment No airbag deployment reported to CARFAX.	No Issues Reported
Odometer Check No indication of an odometer rollback.	No Issues Indicated
Accident / Damage No accidents or damage reported to CARFAX.	No Issues Reported
Manufacturer Recall Check with an authorized RAM dealer for any open recalls.	No Recalls Reported
Basic Warranty Original warranty estimated to have expired.	Warranty Expired

CARFAX Detailed History

Owner 1
Purchased:

Rental Vehicle
21,611 mi/yr

2021

Date	Mileage	Source	Comments
Not Reported		FCA US LLC	**Vehicle manufactured and shipped to original dealer** Original Window Sticker
01/26/2021	7	California Motor Vehicle Dept.	**Title issued or updated** - First owner reported
01/26/2021		Oklahoma Motor Vehicle Dept. Tulsa, OK	**Titled or registered as rental vehicle**
07/05/2021	9,582	Jiffy Lube Service Center #2233 Fallon, NV 775-428-2249 jiffylube.com **4.4 / 5.0** 50 Verified Reviews **37** Customer Favorites	**Vehicle serviced**
06/13/2023	51,400	Brentwood Tire Company Brentwood, CA 925-516-8700 brentwoodtire.com/ **4.9 / 5.0** 30 Verified Reviews **40** Customer Favorites	**Vehicle serviced** - Maintenance inspection completed - Oil and filter changed - Drivability/performance checked - Air filter checked - Fluids checked - Tire condition and pressure checked - Body lubricated - Tires rotated

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CARFAX **Glossary**

First Owner
When the first owner(s) obtains a title from a Department of Motor Vehicles as proof of ownership.

Ownership History
CARFAX defines an owner as an individual or business that possesses and uses a vehicle. Not all title transactions represent changes in ownership. To provide estimated number of owners, CARFAX proprietary technology analyzes all the events in a vehicle history. Estimated ownership is available for vehicles manufactured after 1991 and titled solely in the US including Puerto Rico. Dealers sometimes opt to take ownership of a vehicle and are required to in the following states: Maine, Massachusetts, New Jersey, Ohio, Oklahoma, Pennsylvania and South Dakota. Please consider this as you review a vehicle's estimated ownership history.

Rental
Vehicle was registered by a rental agency.

Title Issued
A state issues a title to provide a vehicle owner with proof of ownership. Each title has a unique number. Each title or registration record on a CARFAX report does not necessarily indicate a change in ownership. In Canada, a registration and bill of sale are used as proof of ownership.

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2/29/24 7:39:31 PM (CST)

I have reviewed and received a copy of the CARFAX Vehicle History Report for this 2021 RAM 1500 CLASSIC vehicle (VIN: 1C6RR7TT5MS520269), which is based on information supplied to CARFAX and available as of 2/29/24 at 8:39 PM (EST).

Customer Signature	Date	Dealer Signature	Date

AGENDA ITEM NO. 17.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Resolution No. 6078, A Resolution of the City Council of the City of Soledad Approving and Authorizing the City Manager to Execute a Facilities Joint Use Agreement Between the Soledad Unified School District and the City of Soledad**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Megan Hunter, City Manager**

THROUGH:

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council of the City of Soledad adopt Resolution No. 6078, "Approving and Authorizing the City Manager to Execute a Facilities Joint Use Agreement Between the Soledad Unified School District and the City of Soledad".

Executive Summary

On December 15, 2021, City Council adopted Resolution No. 5755 approving a Facilities Joint Use Agreement ("Agreement") between the Soledad Unified School District and the City of Soledad. The purpose of the Agreement was to strengthen the City's relationship with the Soledad Unified School District ("District") and provide opportunities for our youth to have greater access to programming and District and City facilities. The term for this Agreement was one year with the ability to renew up to four times upon mutual written consent. Unfortunately, both the City and School District overlooked the renewal requirements and did not provide written consent in January 2023 when the Agreement expired. Therefore, a new Agreement will be required to continue this relationship.

Background

After extensive discussions between the City Council and the Soledad Unified School District ("District"), both parties executed a Facilities Joint Use Agreement ("Agreement") on December 15, 2021. Through the Agreement both agencies would be able to collaborate and better utilize community resources. The Agreement term expired one year after it took effect on January 1, 2022. However, the Agreement enabled up to 4 one-year renewals upon mutual written consent of both parties. Unfortunately, neither the City nor School District formally renewed the Agreement before the term technically expired. Although both parties honored the spirit of the Agreement without the requisite documentation in place, it was becoming increasingly challenging allowing use of the facilities as intended in the Agreement. More recently, the City requested use of the Family Resource Center and

was not able to secure the facility lacking a current Agreement.

Review & Analysis

At this time, Staff is proposing largely maintaining the expired Facilities Joint Use Agreement ("Agreement") as is. The new Agreement would mirror the old version except that the term would be changed from May 8, 2024 to June 30, 2026 (over two years) with three one-year renewals and it would allow the Superintendent and City Manager to provide the written consent for the renewal periods. After the City Council acts, this new Facilities Joint Use Agreement, it would be presented to the School District at their May 8th meeting for consideration.

California Education Code section 10900 et. seq. authorizes public authorities to organize, promote, and conduct such programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults and further empowers public authorities to cooperate with each other to attain such objectives. The City and District entered into the Agreement to promote, conduct, and contribute to the attainment of general educational and recreational objectives for children and adults in the community consistent with this Code.

The facilities covered in the proposed Facilities Joint Use Agreement include the following:

Soledad Unified School District ("District") Facilities:

- Soledad High School gymnasium for youth basketball.
- Main Street Middle School gymnasium for youth basketball.
- Gabilan Elementary School classrooms to hold meetings or events related to community recreation programs or activities.
- Gabilan Elementary School playground/structures on days when school is not in session.
- Performing art facilities on District school campuses, for approved uses.
- Computer labs at select District school campuses, to be determined by the District.

City of Soledad ("City") Facilities:

- Soledad Community Center gymnasium for volleyball and basketball, games and practices conducted by Main Street Middle School and Soledad High School.
- Soledad Community Center for student performances, parent meetings, assemblies, and ceremonies.
- City owned outdoor playing fields.

Generally, the implementation of the Agreement has run smoothly. The biggest challenge for the City is that janitorial costs to use District facilities has been so high that Staff have decided to largely use our own facilities. However, the City Manager and Superintendent have agreed to discuss ways to reduce barriers to City use of District facilities. More recently, the expiration of the previous Agreement has made it more difficult to share facilities. As a result, the City Manager and Superintendent are presenting a new Agreement for consideration.

If approved, the Agreement will be in effect until June 30, 2026, and may be renewed for 3 additional one-year terms in writing. Either party may terminate the agreement with 60 days' notice. Both the District and City will continue to monitor the Agreement and evaluate on whether it is meeting the needs of both parties.

Financial Considerations

No money is to be charged by either party for the use of facilities for each other's events. In the case

when staff/custodial support is required by a party to support off-hours events or provide special services, hourly charges will apply to each party. It is anticipated that these minimal costs to the City should not exceed $5,000 and will be funded through the Parks & Recreation program budget. Likewise, there may be a nominal increase in recreation revenue paid by the District based on their needs that require additional City staffing.

Alternatives

- Adopt the Resolution.
- Do not adopt the Resolution.
- Provide other direction to Staff.

Planning/CEQA

This Agreement is not an action as defined by the California Environmental Quality Act.

Public Notice Requirements

None.

Attachment(s):
Resolution No. 6078
Exhibit A - Joint Use Agreement with Soledad School District
Attachment 2 - 2022 Facility Use Agreement and Resolution No. 5755

RESOLUTION NO. 6078

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FACILITIES JOINT USE AGREEMENT BETWEEN THE SOLEDAD UNIFIED SCHOOL DISTRICT AND THE CITY OF SOLEDAD

WHEREAS, On December 15, 2021, City Council adopted Resolution No. 5755 approving a Facilities Joint Use Agreement ("Agreement") between the Soledad Unified School District and the City of Soledad.; and

WHEREAS, the purpose of the Agreement was to strengthen the City's relationship with the Soledad Unified School District ("District") and provide opportunities for our youth to have greater access to programming and District and City facilities; and

WHEREAS, the term for this Agreement was one year with the ability to renew up to four times upon mutual written consent; and

WHEREAS, both the City and District overlooked the renewal requirements and did not provide written consent in January 2023 when the Agreement expired; and

WHEREAS, it is in the interest of both the City and District to continue this relationship by entering into a new Agreement to increase recreational opportunities available to our youth and maximize opportunities for both agencies to better utilize community resources.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the Council approves the " Facilities Joint Use Agreement Between the Soledad Unified School District and the City of Soledad" a copy of which is attached hereto as **"Exhibit A"** and by this reference is incorporated herein, in substantial form and content, subject to minor modification as deemed necessary by the City Manager and City Attorney, and hereby authorizes the City Manager to execute said Agreement on behalf of the City of Soledad .

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 1st day of May 2024 by the following vote:

AYES, and in favor thereof, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

_____
ANNA M. VELAZQUEZ, Mayor

ATTEST:

_____
MEGAN HUNTER, City Clerk

Exhibit A

FACILITIES JOINT USE AGREEMENT

Between the

THE SOLEDAD UNIFIED SCHOOL DISTRICT

And

THE CITY OF SOLEDAD

This Facilities Joint Use Agreement ("Agreement") is made effective as of May 8, 2024 ("Effective Date"), by and between the Soledad Unified School District ("District"), and the City of Soledad ("City"). District and City may be referred to in this Agreement individually as "Party" and collectively as the "Parties."

RECITALS

A. **WHEREAS**, California Education Code section 10900 *et. seq*. authorizes public authorities to organize, promote, and conduct such programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults and further empowers public authorities to cooperate with each other to attain such objectives; and

B. **WHEREAS**, District and City desire to enter into this Agreement for the cooperative use of District Facilities and City Facilities, as defined herein; and

C. **WHEREAS**, this Agreement promotes, conducts, and contributes to the attainment of general educational and recreational objectives for children and adults in the community; and

D. **WHEREAS**, it is in the mutual interest of the District and City, and the community as a whole that the District Facilities and City Facilities be utilized for joint recreational purposes.

E. **NOW**, **THEREFORE**, in consideration of the mutual promises and agreements contained herein, the Parties agree as follows:

AGREEMENT

1. Facilities.

(a) District Facilities. The District hereby agrees that the City may use those school play fields, facilities, equipment and other portions of District property as more particularly identified in **Exhibit A**, attached hereto and incorporated herein by reference ("District Facilities"), subject to the terms of this Agreement.

(b) City Facilities. City agrees that the District may use those recreation sites, facilities, equipment and other portion of City property as more particularly identified in **Exhibit A**, ("City Facilities"), subject to the terms of this Agreement. The District Facilities and City Facilities are referred to individually as "Facility" or collectively as "Facilities."

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2. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall remain in effect until June 30, 2026 ("Term"). This Agreement may be renewed for up to three (3) additional one (1) year terms (each a "Renewal Term") upon the written mutual consent of the City Manager and Superintendent acting on behalf of the Parties. Each Party may terminate this Agreement for convenience upon sixty (60) days prior written notice to the other Party. Termination shall relieve both Parties of any further obligations under this Agreement.

3. Priority of Use. The Parties agree to cooperate in coordinating programs and activities conducted at the Facilities so as to avoid conflicting or competing uses. Each Party's use of a Facility shall be subject to the other Party's prior approval. The Parties shall make reasonable attempts to meet at least annually at a time and place mutually agreed upon by the Parties for the purposes of scheduling anticipated uses of the Facilities ("Scheduling Meeting"). The Parties may mutually agree to hold one or more additional Scheduling Meetings at the Parties' election. Notwithstanding recreation programs or activities agreed to during a Scheduling Meeting, scheduling and staffing for the use of the other Party's Facility shall be considered on a use-by-use basis, subject to the terms of this Agreement. Each Party shall use reasonable efforts to submit requests for use of the other Party's Facility at least thirty (30) days prior to the anticipated use.

(a) District Facilities. The District shall have exclusive use of District Facilities during regular school hours on all days in which school is in session ("Regular School Hours"), including summer school, absent any other agreement between the Parties. The District further reserves the right of first priority for use of District Facilities outside of Regular School Hours. The City shall have priority use of District Facilities over all third parties for recreational programs and activities. The District has final and sole discretion to determine the use and scheduling of the District Facilities.

(b) City Facilities. The City shall have the right of first priority for use of City Facilities. The District shall have priority use of City Facilities over all third parties for recreational programs and activities. The City has final and sole discretion to determine the use and scheduling of City Facilities.

(c) Unanticipated Changes. The Parties shall notify each other in case of any unanticipated scheduling changes requiring use or closure of a Facility, as soon as possible, and shall make best efforts to provide such notice at least one (1) week prior to the date of the unanticipated use or closure. Each Party agrees to reasonably accommodate the other Party in the event of an unanticipated change.

(d) Emergency Need. Nothing in this Agreement shall limit either Party's right to make immediate and unlimited use of all or any portion of its Facilities during an emergency. For purposes of this Agreement, an emergency is any circumstance or event that the Party, in its sole discretion, deems to pose an actual or potential danger to life or property. The Parties shall

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exchange and keep current a list of authorized representatives, by name or by title, to be contacted in the event of an emergency.

4. Facility Use Requirements.

(a) Each Party shall be responsible for the supervision of participants in its respective programs and activities and shall have at least one staff member on site at all times during an event, program, or activity at the other Party's Facility. Any youth recreation program or activity shall have a ratio of one (1) adult staff member for every twenty-four (24) youth on site at all times.

(b) The Parties shall utilize the Facilities in conformance with all applicable federal, state, and local laws, as well as any administrative regulations and policies adopted by either Party for their respective Facilities.

(c) Each Party agrees to comply with any and all federal, state, and local public health orders, regulations, and directives, as well as all applicable administrative regulations and policies adopted by either Party for their respective Facilities, at all times while using the other Parties Facilities including, but not limited to, policies and procedures related to social distancing and the use of face coverings.

5. Facility Use Costs.

(a) Facilities shall be provided under this Agreement at no cost; however, the Facility user shall pay costs for set-up, clean-up and custodial services provided by the Facility owner. The fees for such services are set forth in the Fee Schedule attached hereto as **Exhibit B** and incorporated herein by reference. Such costs shall be invoiced within thirty (30) days of Facility use and shall be paid within thirty (30) days of receipt of an invoice for such costs.

(b) Each Party shall be responsible for the costs of its own recreation programs and activities.

(c) Non-Exclusive Use. The Parties agree and acknowledge that they shall not have the exclusive right to use the other Party's Facilities. Use of the other Party's Facilities is limited to the terms and conditions of this Agreement and conveys no ownership or other property interests in those Facilities.

6. Maintenance, Repair, and Set-up.

(a) The Parties agree that they may use their own personnel for set up and clean up for any use of the other Party's Facilities, except to the extent a Party requires their own staff to perform such duties. Clean-up shall include removal of all trash and debris from the Facility. After use, a Facility shall be returned to its condition prior to use to the extent reasonably possible. If a Party fails to return a Facility to its condition prior to use, that Party shall be charged for the associated costs of clean up and custodial services and shall pay all such costs within thirty (30) days of receipt of an invoice.

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(b) Each Party shall be responsible for the cost of repair and/or replacement of any damage to the other Party's Facilities, including fixtures, improvements, and equipment that are lost, or damaged during and/or as a result of use of the Facility, normal wear and tear excepted, and shall promptly notify the Facility owner of any loss or damage occurring during use of the Facility. The Parties shall not permit any individual to participate in a recreation program or activity at the other Party's Facilities who has, on a prior occasion, willfully damaged any of the other Party's Facilities.

(c) The District and City shall each have sole discretion, which discretion will not be exercised in an arbitrary or discriminatory manner, to determine the maintenance and repair requirements and schedules, and intensity of use of their respective Facilities. The Parties shall discuss anticipated maintenance and repair schedules, restoration, and closures as needed.

(d) The Parties agree to timely notify each other of any unsafe condition at its Facility and shall take all reasonable steps necessary to repair or restrict access or block off the portion of the Facility with the unsafe condition.

(e) The Facilities are provided in as-is condition and the Parties make no representation or warranty of any kind regarding the suitability of the Facilities for any requested uses.

7. Improvements. Neither Party may construct or install improvements at a Facility owned by another Party without the prior written consent of the Facility owner.

(a) Any authorized improvement shall be performed in compliance with all applicable laws. Any improvements constructed or installed pursuant to this provision shall become the property of the Facility owner, unless otherwise specifically provided by the Parties in writing. The terms under which the improvements will be made and funded on any Facility shall be set forth in a separate agreement.

(b) The Party that is the Facility owner may construct improvements to such Facility without notice to or approval of the other Party. However, the Facility owner shall provide notice to the other Party in the event construction impacts any scheduled recreational programs or activities.

8. Alcoholic Beverages and Smoking. The use and/or possession of tobacco and/or controlled substances are prohibited in or on District and City Facilities at all times. Use and/or possession of alcoholic beverages are prohibited in or on District property. Use and/or possession of alcoholic beverages in or on City facilities is prohibited unless otherwise authorized by a written agreement.

9. Indemnification.

(a) Notwithstanding Government Code Section 895.2, no Party or any of its officers, agents, volunteers, contractors, employees, governing board, members of the governing board, council, and council members ("Indemnified Parties") shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of another Party under or in connection with any obligation delegated to the Parties under this Agreement. Pursuant to Government

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Code Section 895.4, each Party shall indemnify, defend and hold harmless the other Party and that Party's Indemnified Parties from any and all liability, loss, expense (including reasonable attorneys' fees and other defense costs), or claims imposed for damages of any nature whatsoever, including but not limited to, claims for discrimination, Title IX related issues, bodily injury, death, personal injury, or property damage occurring by reason of any acts or omissions on the part of the Party's own officers, agents, volunteers, contractors, employees, governing board, members of the governing board, council, and council members under or in connection with any obligation delegated to such Party under this Agreement. This indemnity shall survive termination of this Agreement.

(b) Each Party agrees to require all third party organizations that it authorizes to use or enter the other Party's Facility, to execute a document stating the following:

[Name of Organization] agrees to hold harmless, defend, and indemnify the Soledad Unified School District and City of Soledad, their respective governing boards, members of their governing boards, councils, council members, agents, officers, employees and representatives against all actions, claims, or demands for injury, death, loss or damages, regardless of fault or cause, by anyone whomsoever (except where such injury, death, loss, or damage is due to the sole negligence or willful misconduct of the Soledad Unified School District or the City of Soledad, whenever such injury, death, loss, damage or claim is a consequence of, or arises out of the use of or access to the Facility known as [name of Facility], by [name of organization] or its agents, officers, employees and representatives.

10. Insurance.

(a) Each Party agrees to maintain in full force and effect throughout the duration of the Agreement a suitable policy or policies of public liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or connected with the Party's use of Facilities under this Agreement. Such insurance shall be in amounts not less than $2,000,000 per occurrence; $4,000,000 for general aggregate and $2,000,000 for property damage. Each party agrees to provide the other proof of such coverages on an annual basis, naming the other party as "additional insured" where appropriate and shall also provide thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages. Failure to maintain insurance as required in this Agreement is a material breach of contract and may be grounds for termination of the Agreement.

(b) Certificates of Insurance for the City and District reflecting the coverage and amounts set forth above shall be attached to this Agreement as **Exhibits C and D**, respectively, and incorporated herein by reference.

(c) Sexual Molestation and Abuse Coverage. City's insurance policy or policies shall include or be endorsed to include sexual molestation and abuse coverage, unless that coverage is afforded elsewhere in the public liability and property damage policy by endorsement, with the following limits: $2,000,000 per occurrence and an aggregate of $4,000,000.00.

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(d) Workers' Compensation. The Parties shall maintain Workers' Compensation insurance in accordance with the laws of California.

11. Dispute Resolution. In the event of any dispute between the Parties arising out of this Agreement, the dispute shall be resolved in the following manner. First, the Parties shall attempt in good faith to resolve the dispute between the respective representatives having immediate supervision and control over the planning and use of Facilities. Second, if that is not successful, the Superintendent, or the Superintendent's authorized representative and the City's City Manager or the City Manager's authorized representative shall attempt in good faith to resolve the dispute. If all efforts fail, the Parties may agree to submit the matter to nonbinding mediation, with each Party bearing half the cost, or if no agreement can be reached, either Party may proceed to litigation.

12. Assignment. No Party shall assign this Agreement or any right or privilege any Party might have under this Agreement without the prior mutual written consent of the other Party.

13. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

14. Entire Agreement, Waivers and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or part of the subject matter thereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged. Any amendment or modification to this Agreement must be in writing and executed by all of the Parties hereto.

15. Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both Parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

16. Execution in Counterparts; Signatures. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart. Copies of signatures shall have the same force and effect as original signatures.

17. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of any Party, the Agreement shall forthwith be physically amended to make such insertion or correction.

18. Cooperation. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and

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requirements that are set out in this Agreement. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced in this Agreement.

19. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

20. Notices. Any notice to be given hereunder to either party shall be in writing and shall be given either by personal delivery (including express or courier service), by e-mail, by receipt-confirmed facsimile, by registered or certified mail, with return receipt requested and postage prepaid (excluding electronic messaging) and addressed as follows:

To District:

Randy Bangs
Soledad Unified School District
Attn: Superintendent
rbangs@soledad.k12.us
1261 Metz Road
Soledad, CA 93960

To City:

Megan Hunter
City of Soledad
Attn: City Manager
mhunter@cityofsoledad.gov
P.O. Box 156
Soledad, CA 93960

21. Headings. The headings of this Agreement are for convenience purposes only and shall not limit or define the meaning of the provisions of this Agreement.

22. Authority. The persons executing this Agreement warrant and represent that they are duly authorized to execute and deliver this Agreement on behalf of said Party and that by executing this Agreement, such Party is formally bound to the provisions of this Agreement.

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IN WITNESS WHEREOF, the City and District have entered into this Agreement as of the Effective Date.

DISTRICT:

Soledad Unified School District

_____

Name: Randy Bangs
Title: Superintendent

Date:_____

CITY:

City of Soledad

_____

Name: Megan Hunter
Title: City Manager

Date:_____

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List of City and District Facilities

Soledad Unified School District ("District") Facilities subject to Agreement:

- Soledad High School gymnasium for youth basketball.
- Main Street Middle School gymnasium for youth basketball.
- Gabilan Elementary School classrooms to hold meetings or events related to community recreation programs or activities.
- Gabilan Elementary School playground/structures on days when school is not in session.
- Performing art facilities on District school campuses, for approved uses.
- Computer labs at select District school campuses, to be determined by the District.

City of Soledad ("City") Facilities subject to Agreement:

- Soledad Community Center gymnasium for volleyball and basketball, games and practices conducted by Main Street Middle School and Soledad High School.
- Soledad Community Center for student performances, parent meetings, assemblies, and ceremonies.
- City owned outdoor playing fields.

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EXHIBIT B

[City and District Fee Schedule]

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EXHIBIT C

[City Certificate of Insurance]

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EXHIBIT D

[District Certificate of Insurance]

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RESOLUTION NO. 5755

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD APPROVING A FACILITIES JOINT USE AGREEMENT BETWEEN THE SOLEDAD UNIFIED SCHOOL DISTRICT AND THE CITY OF SOLEDAD

WHEREAS, the Soledad City Council is committed to the goal of developing a full City Parks & Recreation program; and

WHEREAS, working with its partner agencies in the community to increase recreational opportunities available to our youth has been a primary Council objective; and

WHEREAS, the City and the Soledad Unified School District have been working in collaboration on a Joint Use Agreement that will maximize opportunities for both agencies to better utilize community resources; and

WHEREAS, City and District staff have come to agreement on a Facilities Joint Use Agreement that provides these opportunities as directed by the City Council and District Board of Trustees.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the Council approves the "Facilities Joint Use Agreement Between the Soledad Unified School District and the City of Soledad" a copy of which is attached hereto as **Exhibit "A"** and by this reference is incorporated herein , in substantial form and content, subject to minor modification as deemed necessary by the City Manager and City Attorney, and hereby authorizes the City Manager to execute said Agreement on behalf of the City of Soledad .

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 15th day of December 2021, by the following vote:

AYES, and in favor thereof Councilmembers: Ben Jimenez, Jr., Alejandro Chavez, Marisela Lara, and Mayor Anna M. Velazquez

NOES, Councilmembers: None

ABSENT, Councilmembers: Strobridge

ABSTAIN, Councilmembers: None

ANNA M. VELAZQUEZ, Mayor

ATTEST:

BRENT SLAMA, City Clerk

FACILITIES JOINT USE AGREEMENT

Between the

THE SOLEDAD UNIFIED SCHOOL DISTRICT

And

THE CITY OF SOLEDAD

This Facilities Joint Use Agreement ("Agreement") is made effective as of January 1, 2022 ("Effective Date"), by and between the Soledad Unified School District ("District"), and the City of Soledad ("City"). District and City may be referred to in this Agreement individually as "Party" and collectively as the "Parties."

RECITALS

A. **WHEREAS,** California Education Code section 10900 *et. seq*. authorizes public authorities to organize, promote, and conduct such programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults and further empowers public authorities to cooperate with each other to attain such objectives; and

B. **WHEREAS,** District and City desire to enter into this Agreement for the cooperative use of District Facilities and City Facilities, as defined herein; and

C. **WHEREAS,** this Agreement promotes, conducts, and contributes to the attainment of general educational and recreational objectives for children and adults in the community; and

D. **WHEREAS,** it is in the mutual interest of the District and City, and the community as a whole that the District Facilities and City Facilities be utilized for joint recreational purposes.

E. **NOW, THEREFORE,** in consideration of the mutual promises and agreements contained herein, the Parties agree as follows:

AGREEMENT

1. Facilities.

(a) District Facilities. The District hereby agrees that the City may use those school play fields, facilities, equipment and other portions of District property as more particularly identified in **Exhibit A**, attached hereto and incorporated herein by reference ("District Facilities"), subject to the terms of this Agreement.

(b) City Facilities. City agrees that the District may use those recreation sites, facilities, equipment and other portions of City property as more particularly identified in **Exhibit A**, ("City Facilities"), subject to the terms of this Agreement. The District Facilities and City Facilities are referred to individually as "Facility" or collectively as "Facilities."

2. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall remain in effect for a period of one (1) year ("Term"). This Agreement may be renewed for up to four (4) additional one (1) year terms (each a "Renewal Term") upon the written mutual consent of the Parties. Each Party may terminate this Agreement for convenience upon sixty (60) days prior written notice to the other Party. Termination shall relieve both Parties of any further obligations under this Agreement.

3. Priority of Use. The Parties agree to cooperate in coordinating programs and activities conducted at the Facilities so as to avoid conflicting or competing uses. Each Party's use of a Facility shall be subject to the other Party's prior approval. The Parties shall make reasonable attempts to meet at least annually at a time and place mutually agreed upon by the Parties for the purposes of scheduling anticipated uses of the Facilities ("Scheduling Meeting"). The Parties may mutually agree to hold one or more additional Scheduling Meetings at the Parties' election. Notwithstanding recreation programs or activities agreed to during a Scheduling Meeting, scheduling and staffing for the use of the other Party's Facility shall be considered on a use-by-use basis, subject to the terms of this Agreement. Each Party shall use reasonable efforts to submit requests for use of the other Party's Facility at least thirty (30) days prior to the anticipated use.

(a) District Facilities. The District shall have exclusive use of District Facilities during regular school hours on all days in which school is in session ("Regular School Hours"), including summer school, absent any other agreement between the Parties. The District further reserves the right of first priority for use of District Facilities outside of Regular School Hours. The City shall have priority use of District Facilities over all third parties for recreational programs and activities. The District has final and sole discretion to determine the use and scheduling of the District Facilities.

(b) City Facilities. The City shall have the right of first priority for use of City Facilities. The District shall have priority use of City Facilities over all third parties for recreational programs and activities. The City has final and sole discretion to determine the use and scheduling of City Facilities.

(c) Unanticipated Changes. The Parties shall notify each other in case of any unanticipated scheduling changes requiring use or closure of a Facility, as soon as possible, and shall make best efforts to provide such notice at least one (1) week prior to the date of the unanticipated use or closure. Each Party agrees to reasonably accommodate the other Party in the event of an unanticipated change.

(d) Emergency Need. Nothing in this Agreement shall limit either Party's right to make immediate and unlimited use of all or any portion of its Facilities during an emergency. For purposes of this Agreement, an emergency is any circumstance or event that the Party, in its sole discretion, deems to pose an actual or potential danger to life or property. The Parties shall exchange and keep a list of authorized representatives, by name or by title, to be contacted in the event of an emergency.

4. Facility Use Requirements.

(a) Each Party shall be responsible for the supervision of participants in its respective programs and activities and shall have at least one staff member on site at all times during an event, program, or activity at the other Party's Facility. Any youth recreation program or activity shall have a ratio of one (1) adult staff member for every twenty-four (24) youth on site at all times.

(b) The Parties shall utilize the Facilities in conformance with all applicable federal, state, and local laws, as well as any administrative regulations and policies adopted by either Party for their respective Facilities.

(c) Each Party agrees to comply with any and all federal, state, and local public health orders, regulations, and directives, as well as all applicable administrative regulations and policies adopted by either Party for their respective Facilities, at all times while using the other Parties Facilities including, but not limited to, policies and procedures related to social distancing and the use of face coverings.

5. Facility Use Costs.

(a) Facilities shall be provided under this Agreement at no cost; however, the Facility user shall pay costs for set-up, clean-up and custodial services provided by the Facility owner. The fees for such services are set forth in the Fee Schedule attached hereto as **Exhibit B** and incorporated herein by reference. Such costs shall be invoiced within thirty (30) days of Facility use and shall be paid within thirty (30) days of receipt of an invoice for such costs.

(b) Each Party shall be responsible for the costs of its own recreation programs and activities.

(c) Non-Exclusive Use. The Parties agree and acknowledge that they shall not have the exclusive right to use the other Party's Facilities. Use of the other Party's Facilities is limited to the terms and conditions of this Agreement and conveys no ownership or other property interests in those Facilities.

6. Maintenance, Repair, and Set-up.

(a) The Parties agree that they may use their own personnel for set up and clean up for any use of the other Party's Facilities, except to the extent a Party requires their own

staff to perform such duties. Clean-up shall include removal of all trash and debris from the Facility. After use, a Facility shall be returned to its condition prior to use to the extent reasonably possible. If a Party fails to return a Facility to its condition prior to use, that Party shall be charged for the associated costs of clean up and custodial services and shall pay all such costs within thirty (30) days of receipt of an invoice.

(b) Each Party shall be responsible for the cost of repair and/or replacement of any damage to the other Party's Facilities, including fixtures, improvements, and equipment that are lost, or damaged during and/or as a result of use of the Facility, normal wear and tear excepted, and shall promptly notify the Facility owner of any loss or damage occurring during use of the Facility. The Parties shall not permit any individual to participate in a recreation program or activity at the other Party's Facilities who has, on a prior occasion, willfully damaged any of the other Party's Facilities.

(c) The District and City shall each have sole discretion, which discretion will not be exercised in an arbitrary or discriminatory manner, to determine the maintenance and repair requirements and schedules, and intensity of use of their respective Facilities. The Parties shall discuss anticipated maintenance and repair schedules, restoration, and closures as needed.

(d) The Parties agree to timely notify each other of any unsafe condition at its Facility and shall take all reasonable steps necessary to repair or restrict access or block off the portion of the Facility with the unsafe condition.

(e) The Facilities are provided in as-is condition and the Parties make no representation or warranty of any kind regarding the suitability of the Facilities for any requested uses.

7. Improvements. Neither Party may construct or install improvements at a Facility owned by another Party without the prior written consent of the Facility owner.

(a) Any authorized improvement shall be performed in compliance with all applicable laws. Any improvements constructed or installed pursuant to this provision shall become the property of the Facility owner, unless otherwise specifically provided by the Parties in writing. The terms under which the improvements will be made and funded on any Facility shall be set forth in a separate agreement.

(b) The Party that is the Facility owner may construct improvements to such Facility without notice to or approval of the other Party. However, the Facility owner shall provide notice to the other Party in the event construction impacts any scheduled recreational programs or activities.

8. Alcoholic Beverages and Smoking. The use and/or possession of tobacco and/or controlled substances are prohibited in or on District and City Facilities at all times. Use and/or possession of alcoholic beverages are prohibited in or on District property. Use and/or possession of alcoholic beverages in or on City facilities is prohibited unless otherwise authorized by a written agreement.

9. Indemnification.

(a) Notwithstanding Government Code Section 895.2, no Party or any of its officers, agents, volunteers, contractors, employees, governing board, members of the governing board, council, and council members ("Indemnified Parties") shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of another Party under or in connection with any obligation delegated to the Parties under this Agreement. Pursuant to Government Code Section 895.4, each Party shall indemnify, defend and hold harmless the other Party and that Party's Indemnified Parties from any and all liability, loss, expense (including reasonable attorneys' fees and other defense costs), or claims imposed for damages of any nature whatsoever, including but not limited to, claims for discrimination, Title IX related issues, bodily injury, death, personal injury, or property damage occurring by reason of any acts or omissions on the part of the Party's own officers, agents, volunteers, contractors, employees, governing board, members of the governing board, council, and council members under or in connection with any obligation delegated to such Party under this Agreement. This indemnity shall survive termination of this Agreement.

(b) Each Party agrees to require all third party organizations that it authorizes to use or enter the other Party's Facility, to execute a document stating the following:

> [Name of Organization] agrees to hold harmless, defend, and indemnify the Soledad Unified School District and City of Soledad, their respective governing boards, members of their governing boards, councils, council members, agents, officers, employees and representatives against all actions, claims, or demands for injury, death, loss or damages, regardless of fault or cause, by anyone whomsoever (except where such injury, death, loss, or damage is due to the sole negligence or willful misconduct of the Soledad Unified School District or the City of Soledad, whenever such injury, death, loss, damage or claim is a consequence of, or arises out of the use of or access to the Facility known as [name of Facility], by [name of organization] or its agents, officers, employees and representatives.

10. Insurance.

(a) Each Party agrees to maintain in full force and effect throughout the duration of the Agreement a suitable policy or policies of public liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or connected with the Party's use of Facilities under this Agreement. Such insurance shall be in amounts not less than $2,000,000 per occurrence; $4,000,000 for general aggregate and $2,000,000 for property damage. Each party agrees to provide the other proof of such coverages on an annual basis, naming the other party as "additional insured" where appropriate and shall also provide thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages. Failure to maintain

insurance as required in this Agreement is a material breach of contract and may be grounds for termination of the Agreement.

(b) Certificates of Insurance for the City and District reflecting the coverage and amounts set forth above shall be attached to this Agreement as **Exhibits C and D**, respectively, and incorporated herein by reference.

(c) Sexual Molestation and Abuse Coverage. City's insurance policy or policies shall include or be endorsed to include sexual molestation and abuse coverage, unless that coverage is afforded elsewhere in the public liability and property damage policy by endorsement, with the following limits: $2,000,000 per occurrence and an aggregate of $4,000,000.00.

(d) Workers' Compensation. The Parties shall maintain Workers' Compensation insurance in accordance with the laws of California.

11. Dispute Resolution. In the event of any dispute between the Parties arising out of this Agreement, the dispute shall be resolved in the following manner. First, the Parties shall attempt in good faith to resolve the dispute between the respective representatives having immediate supervision and control over the planning and use of Facilities. Second, if that is not successful, the Superintendent, or the Superintendent's authorized representative and the City's City Manager or the City Manager's authorized representative shall attempt in good faith to resolve the dispute. If all efforts fail, the Parties may agree to submit the matter to nonbinding mediation, with each Party bearing half the cost, or if no agreement can be reached, either Party may proceed to litigation.

12. Assignment. No Party shall assign this Agreement or any right or privilege any Party might have under this Agreement without the prior mutual written consent of the other Party.

13. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

14. Entire Agreement, Waivers and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or part of the subject matter thereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged. Any amendment or modification to this Agreement must be in writing and executed by all of the Parties hereto.

15. Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both Parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

16. Execution in Counterparts; Signatures. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart. Copies of signatures shall have the same force and effect as original signatures.

17. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of any Party, the Agreement shall forthwith be physically amended to make such insertion or correction.

18. Cooperation. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set out in this Agreement. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced in this Agreement.

19. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

20. Notices. Any notice to be given hereunder to either party shall be in writing and shall be given either by personal delivery (including express or courier service), by email, by receipt-confirmed facsimile, by registered or certified mail, with return receipt requested and postage prepaid (excluding electronic messaging) and addressed as follows:

To District:

Randy BangsSoledad Unified School District
Attn: Superintendent
rbangs@soledad.k12.us
1261 Metz Road
Soledad, CA 93960

To City

Brent Slama
City of Soledad
Attn: City Manager
bslama@cityofsoledad.com
P.O. Box 156
Soledad, CA 93960

21. Headings. The headings of this Agreement are for convenience purposes only and shall not limit or define the meaning of the provisions of this Agreement.

22. Authority. The persons executing this Agreement warrant and represent that the are duly authorized to execute and deliver this Agreement on behalf of said Party and that by executing this Agreement, such Party is formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the City and District have entered into this Agreement as of the Effective Date.

DISTRICT:

Soledad Unified School District

Name: Randy Bangs
Title: Superintendent

Date: 12/15/21

CITY:

City of Soledad

Brent Slama
City Manager

Date: 12/16/21

Exhibits:

A: City Use Of Facilities Agreement & Fee Schedule
B: District Use Of Facilities Agreement & Fee Schedule
C; List of District and City Facilities
D: City Certificate of Insurance
E: District Certificate of Insurance

EXHIBIT A

[City Use Of Facilities Agreement & Fee Schedule]

Soledad Parks & Recreation

SOLEDAD PARKS & RECREATION

Community Facilities Use/Rental Application

560 Walker Dr. Soledad, Ca 93960

(831) 223-5250

APPLICANT GROUP:	CONTACT PERSON:
EMAIL:	PHONE NUMBER:
MAILING ADDRESS:	

FACILITY REQUESTED:

☐ GYM (Capacity: 999, Dining 500) ☐ LARGE MULTI-PURPOSE ROOM (Capacity 300, Dining 150)

☐ SMALL MULTI-PURPOSE ROOM (Capacity: 49, Dining 25) ☐ KITCHEN: Purpose: _____

☐ Park/Sports Field: _____

INTENDED USE OF FACILITY:

SEATING FOR HOW MANY PERSONS:

DATE(S): START TIME: END TIME:

1. Will admission fees be charged, or contributions solicited?	YES ☐	NO ☐
2. If answer to (1) is yes, will net receipts be expended for the welfare of the community or for charitable purposes?	YES ☐	NO ☐
3. Is the meeting open to the public?	YES ☐	NO ☐
4. Will the activity serve beverages and food?	YES ☐	NO ☐
5. Will the activity require tables and chairs? If so, how many?	YES ☐	NO ☐
6. Will the activity require assistance with set-up?	YES ☐	NO ☐

The applicant group agrees to comply with the SPR's rules and regulations regarding the use of the facilities (a copy is attached). The applicant states that he/she is an authorized member of the applicant group and has authorization to act as representative in the application and use of the SPR facilities. Should the facilities or equipment be damaged or destroyed as a result of such group, it is agreed the group shall be held responsible for the cost of repairing or replacing same.

The undersigned states that to the best of his or her knowledge that the intended us of the SPR facility is for above stated purposes and will not be transferred to any other organization for any other purposes. THIS IS AN APPLICATION ONLY AND DOES NOT BECOME A PERMIT UNTIL APPROVED BY THE SOLEDAD PARKS AND RECREATION.

AGREEMENT

I fully understand and agree to the terms and conditions for the use of the Soledad Parks & Recreation facilities.

APPLICANT SIGNATURE: PRINT: DATE:

APPROVED SPR STAFF: DATE:

OFFICE USE ONLY

Charge for Use: YES ☐ NO ☐ Fee: _____

Reservation Entered Civic Rec By: _____ Date: _____

Number of staff needed: _____ Equipment needed: _____

Facility After Reservation Inspection By: _____ Date: _____ Time: _____

Inspection Notes: _____

Soledad Parks & Recreation

SOLEDAD PARKS & RECREATION
HOLD HARMLESS AGREEMENT

I, _____, agree to and hereby indemnify and hold harmless the City of Soledad, its officers, agents, and every claim or demand made, from every liability, loss, damage, or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Death or bodily injury to persons, loss of or injury to property, or any loss, damage or expense which may have been sustained by the City or any person, firm or corporation employed by the City upon or in connection with the activity called for in this agreement.

(b) Any injury to or death of persons or damage to property, any loss or theft sustained by person, firms or corporation arising from any act of neglect, default, omission, negligence, or willful misconduct of _____, or any person firm or corporation employed by _____, either directly or by independent contract and attributable in connection with the activity covered by this agreement, on or off City property.

_____, at the expense, cost and risk, shall defend any an all-action suits, or other proceeding that may be brought or instituted against the City of Soledad, its officers, agents or employees and shall pay or satisfy any such claim, demand, liability, or judgement rendered against the City, its officers, agents or employees in any action, suit or other proceedings as result of the activity called for in this agreement.

ACTIVITY: _____

_____

Legal Name: _____

Authorized Agent: _____ SPR Agent: _____

_____

Date: _____ Date: _____

_____

Soledad Parks & Recreation

SOLEDAD PARKS & RECREATION
Facilities Fee Waiver Request Form

Soledad Parks & Recreation Joint Use Agreement Fee Schedule
Set-up Venue (tables & chairs) - $50
Clean-up Venue - $100
Staffing needs (outside business hours) - $30 per staff/per hour

Instructions: After completing all facilities request documents, this form may be used to request a waiver. Please note that only programs that directly benefit the community of the City of Soledad will be considered for a waiver. Only the Soledad City Council or designee is authorized to approve the reduction or elimination of our standard fees.

Organization requesting use of facilities: _____

Address of organization: _____

_____

Person completing form: _____

Name of Event(s): _____

Date(s) requested: _____

Purpose of event: _____

Please describe how your program will benefit the community of the City of Soledad:

_____

_____

_____

_____

_____

_____

_____

_____

OFFICE USE ONLY	
Waiver for all fees and cost is approved:	☐
Waiver for only the facilities fees is approved:	☐ (Staff standby fee is still being charged)
Waiver is NOT approved:	☐
Signed: _____	Date: _____
Title/Position: _____	

Soledad Parks & Recreation

SOLEDAD PARKS & RECREATION RENTAL RULES

Please be sure that everyone involved in organizing the event are aware of all rules

1. All facilities request documents must be completed, signed, submitted, and approved before the event can be scheduled. Facilities use may not be transferred to any other or additional party.
2. To ensure the safety of your guests and to protect the City, the City of Soledad requires renters to obtain liability insurance. The renter will provide Broad Form Comprehensive Liability Insurance in the amount of, but not less than, $1,000,000 for each occurrence, combined single limit, personal injury, and property damage, naming the City of Soledad, its officers, elected officials, agents, and the employees as additional insured. The individual signing the application for Facilities Use shall, as a condition of use, agree to be held financially responsible in the cause of loss or damage to City property.
3. Scheduled SPR activities, programs, and events have priority over any other use of the facility.
4. All permission for use of facilities will be for the specific dates and times only. It is the responsibility of the organization to arrive and leave on time and to ensure the facility is left clean. Additional charges will be made for longer hours of use than requested, and for any janitorial time required by SPR to clean up after use.
5. No smoking, alcoholic beverages, drugs, gambling, fights, or firearms are allowed on City property. No food or drinks (other than water) are allowed inside the Gym, unless otherwise authorized. An adult must be stationed at the entrance doors to ensure that no food or drinks (other than water), are taken in.
6. Cancellation or denial of facility use may be made at the school's discretion. Any organization causing damage or vandalism of City facilities will not be allowed to use the facilities again.
7. Renter will be allowed to decorate PRIOR TO EVENT, if set up fee is paid and insurance covers setup time. Tables & chairs will be in building for you to arrange as you would like. Decorations may not be nailed, tacked, stapled, taped, or pinned to the walls, ceiling, or floor.
8. The kitchen facility is primarily a prep and warming kitchen. A licensed catering company is preferred, but not required. The barbecue pit located on the patio may be used, with prior authorization, when completing your contract. Any damage or improper use of facility equipment by renterand guests will be the responsibility of the renter. All personally owned food supplies and cookware must be removed from the site immediately after the event.
9. The City of Soledad has established rules governing noise levels. (See Municipal Code 9.09 Sound Amplifying Equipment) It is your responsibility that your Music, Band and/or DJ provides appropriate equipment to ensure thatsound levels are maintained. Failure to comply with these standards will result in loss of your deposit and may risk termination of music. To ensure an enjoyable event, please give the information to your band or DJ prior to the event.

EXHIBIT B

[District Use Of Facilities Agreement & Fee Schedule]

Soledad Unified School District
Application for the use of Facilities and Grounds

APPLICANT GROUP: EMAIL:

CONTACT PERSON: PHONE:

SITE REQUESTED: ROOM REQUESTED: SPECIFY GROUNDS

INTENDED USE OF FACILITY:

SEATING FOR HOW MANY PERSONS:

DATE(S): OPEN TIME:
CLOSE TIME:

MONTHS NEEDED: FROM: TO:

1.	WILL ADMISSION FEES BE CHARGED OR CONTRIBUTIONS SOLICITED?	YES O	NO O
2.	IF ANSWER TO(1) IS YES, WILL NET RECIEPTS BE EXPENDED FOR THE WELFARE OF THE PUPILS OF THE DISTRICT OR FOR CHARITABLE PURPOSES?	YES O	NO O
3.	IS THE MEETING OPEN TO THE GENERAL PUBLIC?	YES O	NO O
4.	WILL THE ACTIVITY SERVE BEVERAGES AND FOOD?	YES O	NO O
5.	WILL YOU NEED CUSTODIAL SERVICE?	YES O	NO O
6.	WILL YOU NEED SOMEONE TO OPEN AND CLOSE?	YES O	NO O
	6a. AREAS TO BE UNLOCK/LOCKED? PLEASE LIST AREAS_____		
7.	WILL THE ACTIVITY REQUIRE TABLES AND CHAIRS? IF YES, HOW MANY	YES O	NO O
8.	WILL THE ACTIVITY REQUIRE REARRANGING OF FURNATURE? IF YES, FILL OUT ADDITIONAL FORM.	YES O	NO O

The applicant group agrees to comply with the school district's rules and regulations regarding the use of school facilities. (A COPY OF THE RULES IS ATTACHED AND MADE A PART OF THIS APPLICATION.) The applicant states that he/ she is a member of the applicant group, and unless he/ she is an officer of the group, has obtained written authorization (copy provided) from the group to apply for the use of the school facility. Should the facilities or equipment be damaged or destroyed as a result of such group, it is agreed that the group shall be held responsible for the cost of repairing or replacing same.

The Undersigned states that to the best of his or her knowledge, the school property for you sandwich application is hereby made come Will not be used for the commission of any act intended to further any program or movement, the purpose of which is to accomplish the overthrow of the government of the United States or the State of California by force, violence, or any other unlawful means.

The_____, the organization on whose behalf he or she is making application for the use of school property, does not, to has to his or her knowledge, advocating the overthrow of the Government of the united states for the state of California by force, violence, or other unlawful means, and that to the best of his or her knowledge, it is not a communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement made under the penalties of perjury. THIS IS AN APPLICATION ONLY AND DOES NOT BECOME A PERMIT UNTIL APPROVED BY A SCHOOL OFFICIAL AND THE DISTRICT OFFICE

APPLICANT SIGNATURE: DATE:

APPROVED BY SITE ADMINISTRATOR: DATE:

APPROVED BY MOT DIRECTOR DATE:

FINAL APPROVAL BY DISTRICT OFFICE: DATE:

CHARGE FOR USE: YES O NO O

CUSTODIAN NUMBER OF HOURS NEEDED:_____
OTHER _____
UTLITIES _____
FAIR RENTAL _____
EQUIPMENT FEE _____

FORM S-143 (01-10) R

Soledad Unified School District
Use of Facilities

Date of Event:	**Nature of Event:**
Organization:	**School Requested:**
Requested By:	**Room Requested:**
Date Requested:	

In the space below, please indicate the number of tables, chairs, AV equipment, etc., you will need. Please draw a sketch of how you want it set up.

For District Use Only:

Scheduled By:

CC: District Office Requesting Party MOT	

SOLEDAD UNIFIED SCHOOL DISTRICT

STATEMENT OF INFORMATION

The undersigned states that, to the best of his/her knowledge, the school property for use of which application is hereby made will not be used for the commission of any act intended to further any program or movement the purposes of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means.

That _____, the organization on whose behalf he/she is making application for use of school property, does not, to the best of his/her knowledge, advocate the overthrow of the government of the United States or the State of California by force, violence, or other unlawful means, and that, to the best of his/her knowledge, it is not a communist action organization or communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under the penalties of perjury.

_____ _____

Signature Date

_____

(Organization, if Applicable)

SOLEDAD UNIFIED SCHOOL DISTRICT
Soledad, California

E (2) 1330
HOLD HARMLESS AGREEMENT

I, _____, agree to and hereby indemnify and hold harmless the Soledad Unified School District, its officers, agents and every claim or demand made, from every liability, loss, damage, or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Death or bodily injury to persons, loss of or injury to property, or any loss, damage or expense which may have been sustained by the District or any person, firm or corporation employed by the District upon or in connection with the activity called for in this agreement.

(b) Any injury to or death of persons or damage to property, any loss or theft sustained by person, firms or corporation arising from any act of neglect, default, omission, negligence or willful misconduct of _____, or any person firm or corporation employed by _____, either directly or by independent contract and attributable in connection with the activity covered by this agreement, on or off District property.

_____, at the expense, cost and risk, shall defend any and all action suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees and shall pay or satisfy any such claim, demand, liability, or judgment rendered against the District, its officers, agents, or employees in any action, suit or other proceedings as a result of the activity called for in this agreement.

ACTIVITY:_____

Legal Name: _____

Authorized Agent: _____

Date: _____

District Agent: _____

Date: _____

1261 Metz Road • P.O. Box 186 • Soledad, CA 93960 • (831) 678-3987 • Fax (831) 678-2866

Form S-68 R (3-01)

Distribution: White - District Office
Canary - Vendor
Pink - Director of Facilities

Soledad Unified School District

Schedule of Fees
Use of School Property

	GROUP I	GROUP II	GROUP III	DEPOSIT
	Soledad Unified School District Organizations and Non Profit/No Admittance Fee	**Non-Profit/ Admittance Fee**	**Commerical, Religious Organizations/ Admittance Fee**	
Classrooms	No Charge	$25/hour	$45/hour	$50
Multi-Purpose	No Charge	$55/hour	$75/hour	$100
Multi-Purpose w Kitchen	No Charge	$65/hour	$85/hour	$100
Gymnasium	No Charge	$75/hour	$85/hour	$100
Football Stadium	No Charge	$175/hour	$325/hour	$300
Athletic Field	No Charge	$45/hour	$65/hour	$100

PERSONNEL RATES				
Type		**Regular Time**		
(1)Custodial/Security Services	Actual time charge @	$30.00/hr.		
(2)Kitchen Services	Actual time charge @	$30.00/hr.		

1. Gymnasiums may not be used by any group that may harm the finish on floors.
2. No food or drinks are allowed in the gymnasiums, libraries, or classrooms.
3. Charges for unusual requests will be made on an individual basis.
4. When facilities are used, the permit holder is responsible for cleaning and restoring the facility to its original condition immediately after use. A fee will be charged if cleaning becomes a district responsibility.
5. Security personnel are required for activities involving more than 100 people and/or activities that are determined to be high risk.

Soledad Unified School District
Application for the use of Facilities and Grounds

Facilities Fee Waiver Request Form

Instructions: After completing all facilities request documents, this form may be used to request a waiver. Please also note that only programs that directly benefit the students of the Soledad Unified School District will be considered for a waiver. Only the District Superintendent or designee is authorized to approve the reduction or elimination of our standard fees.

Organization requesting use of facilities: _____

Address of organization: _____

_____

Person completing this form: _____

Name of the Event(s): _____

Date(s) requested: _____

Below please describe how your program will benefit the students of the Soledad Unified School District:

_____
_____
_____
_____
_____
_____

DISTRICT OFFICE USE ONLY:

Check appropriate:

Waiver for all fees and cost is hereby approved: O

Waiver for only the facilities fees is approved: O (district personnel cost is still being charged)

Waiver is NOT approved: O

Signed, District Superintendent or Designee:_____ Date:_____

Soledad Unified School District

RULES AND REGULATIONS FOR USE OF Soledad USD PROPERTY

1. A representative of the organization must complete the attached application form. The representative must sign the form, giving their address and phone number in case the school needs to contact them. This form must be returned to the District Office and approved by the administration before the event can be scheduled.

2. All user Groups shall provide a Certificate of Insurance showing they are properly insured for their own negligent acts.

3. The use of District facilities by user Groups II and III shall be conditioned upon the user agreeing to hold the District, its Governing Board of Trustees, the individual members thereof, and all District officers, agents, and employees free and harmless from any loss, damage, liability, cost or expense that may arise out of or be caused in any way by such use or occupancy of school property, and shall also provide an "additional named insured" endorsement naming the School District. Users of District facilities shall furnish such liability or other insurance for the protection of the public and the School District as the Chief Fiscal Officer may require.

4. The individual signing the Application for Use of School Property shall, as a condition of use, agree to be held financially responsible in the cause of loss or damage to district property.

5. School premises will not be available during hours that will interfere with the regular functions of the school. School activities and sporting events have priority over any other use of facilities.

6. All permission for use of facilities will be for the specific dates and times only. It is the responsibility of the organization to arrive and leave on time and to ensure the facility is left clean. Additional charges will be made for longer hours of use than what was requested.

7. After the event is over, the District will bill the organization for the charges. Charges will be based on the minimum number of hours the facility was requested, and additional charges will be billed for longer use. An additional charge may be made for any damage done to property or for excessive trash or spills.

8. No smoking, alcoholic beverages, drugs, gambling, fights, or firearms are allowed on school property. No food or drinks are allowed in any facility except for cafeterias and the Mission Room. Food and drinks may be set up outside gymnasiums, libraries, or classrooms. An adult must be stationed at each door to these facilities to ensure that no food or drinks are taken in.

9. Groups using the gym for athletic events must provide at least one adult in addition to coaches for supervision.

10. Cancellation or denial of facility use may be made at the school's discretion. Any organization causing damage or vandalism of school facilities will not be allowed to use the facilities again. Organizations that do no pay for facility use after being billed will be denied future use of facilities.

Soledad USD

Administrative Regulation

Use Of School Facilities

AR 1330
Community Relations

General Procedures and Requirements

Any persons applying for the use of any school facility or ground on behalf of any society, group or organization shall present written authorization from the group or organization to make the application. Nonprofit organizations will be required to provide proof of their 501(c)(3) status to qualify for Type II or Type III fees.

Persons or organizations applying for the use of school facilities or grounds shall submit a statement of information indicating that the organization upholds the state and federal constitutions and does not intend to use school premises to commit unlawful acts.

All forms in the Facilities Use packet are required to be completed prior to approval and scheduling of facilities. Applicants submitting incomplete forms will be contacted to address the matter. In the event that all requested material is not submitted in a timely manner, the application for use may be denied.

The Superintendent or designee has the authority to schedule and/or cancel events according to Board policy and administrative procedures, to determine appropriate facility use types according to the definitions in BP 1330, to assess appropriate fee schedules, to set standard and additional insurance coverage required, and to establish other regulatory mechanisms to facilitate the application process.

Any cancellation on the part of the school district requires approval of the Superintendent or designee before the applicant is informed of the need to cancel their reservation. The district shall give as much advance notice as is reasonably possible of pending or actual cancellations.

Civic Center Use

Subject to district policies and regulations, school facilities and grounds shall be available to citizens and community groups as a civic center for the following purposes: (Education Code 32282, 38131)

1. Public, literary, scientific, recreational, educational or public agency meetings

2. The discussion of matters of general or public interest

3. The conduct of religious services for temporary periods, on a one-time or renewable

basis, by any church or religious organization

4. Child care programs to provide supervision and activities for children of preschool and elementary school age

(cf. 5148 - Child Care and Development)
(cf. 5148.2 - Before/After School Programs)
(cf. 5148.3 - Preschool/Early Childhood Education)

5. The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies

6. Supervised recreational activities including, but not limited to, sports league activities that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination

7. A community youth center

(cf. 1020 - Youth Services)

8. Mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare

(cf. 0450 - Comprehensive Safety Plan)
(cf. 3516 - Emergencies and Disaster Preparedness Plan)

9. A ceremony, patriotic celebration, or related educational assembly conducted by a veterans' organization.

A veterans' organization means the American Legion, Veterans of Foreign Wars, Disabled American Veterans, United Spanish War Veterans, Grand Army of the Republic, or other duly recognized organization of honorably discharged soldiers, sailors, or marines of the United States, or any of their territories. (Military and Veterans Code 1800)

10. Other purposes deemed appropriate by the Governing Board

The district may grant the use of school facilities on those days on which the public school is closed. (Education Code 37220)

(cf. 6115 - Ceremonies and Observances)

Restrictions

School facilities or grounds shall not be used for any of the following activities:

1. Any use by an individual or group for the commission of any crime or any act prohibited

by law

2. Any use which is inconsistent with the use of the school facility for school purposes or which interferes with the regular conduct of school or school work

3. Any use which involves the possession, consumption or sale of alcoholic beverages or any restricted substances, including tobacco use and use of electronic nicotine delivery systems (with or without tobacco)

(cf. 3513.3 - Tobacco-Free Schools)
(cf. 5131.6 - Alcohol and Other Drugs)

The district may exclude certain school facilities from non-school use for safety or security reasons. This may include any computer lab setting.

Damage and Liability

Groups, organizations or persons using school facilities or grounds shall be liable for any property damages caused by the activity. The Board may charge the amount necessary to repair the damages and may deny the group further use of school facilities or grounds.

Any group or organization using school facilities or grounds shall be liable for any injuries resulting from its negligence during the use of district facilities or grounds. The group shall bear the cost of insuring against this risk and defending itself against claims arising from this risk. (Education Code 38134)

Groups or organizations shall provide the district with evidence of insurance against claims arising out of the group's own negligence. Groups or organizations shall also be required to include the district as an additional insured on their liability policies for claims arising out of the negligence of the group.

As permitted, the Superintendent or designee may require a hold harmless agreement and indemnification when warranted by the type of activity or the specific facility being used.

Regulation SOLEDAD UNIFIED SCHOOL DISTRICT
approved: February 13, 2013 Soledad, California
reviewed: June 9, 2014
revised: December 10, 2014

Soledad USD

Board Policy

Joint Use Agreements

BP 1330.1
Community Relations

In order to ensure the efficient use of public resources and increase access to needed services, the Board of Trustees may enter into an agreement with any public agency, public institution, and/or community organization to use community facilities for school programs or to make school facilities or grounds available for use by those entities. Such an agreement shall be based on an assessment of student and community needs and may be designed to increase access to spaces for recreation and physical activity, library services, school health centers, preschool programs, child care centers, before- or after-school programs, or other programs that benefit students and the community.

(cf. 1020 - Youth Services)
(cf. 1330 - Use of School Facilities)
(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)
(cf. 5030 - Student Wellness)
(cf. 5141.6 - School Health Services)
(cf. 5148 - Child Care and Development)
(cf. 5148.2 - Before/After School Programs)
(cf. 5148.3 - Preschool/Early Childhood Education)
(cf. 6142.7 - Physical Education and Activity)
(cf. 6145.2 - Athletic Competition)
(cf. 6163.1 - Library Media Centers)
(cf. 7000 - Concepts and Roles)
(cf. 7131 - Relations with Local Agencies)

When it is determined that joint use of facilities is in the best interest of the district and community, the Superintendent or designee shall identify a potential partner agency, institution, or organization. He/she shall involve that partner, appropriate district and school staff, and community members in establishing planning processes, goals and priorities for joint use, locations where programs or facilities are most needed, and protocols for ongoing communication and coordination between the partners.

(cf. 1220 - Citizen Advisory Committees)

The Superintendent or designee shall work with the partner agency, institution, or organization to develop a written site-specific joint use agreement that delineates the terms and conditions for joint use of the district or community facilities and the responsibilities of all parties. As appropriate, the agreement may address:

1. The underlying philosophy or reasons for entering into the joint use agreement

2. The specific district or community facilities or grounds that will be made available to the other party and areas that will be restricted

3. Priorities for use of the property

4. Hours that the property will be available for use by the district, the partner, or other parties

5. Projected capital costs, if any, and operating costs

(cf. 7110 - Facilities Master Plan)
(cf. 7150 - Site Selection and Development)
(cf. 7210 - Facilities Financing)

6. Resources to be allocated by the district and the partner

(cf. 3100 - Budget)

7. Rental or other fees, if any, to be charged to either party or third parties using the facilities

8. Responsibilities for management, scheduling, maintenance, on-site supervision, accounting, and other operations

9. Procedures and timelines for requesting use of the facilities

10. Code of conduct for users of the facilities and consequences for violations of the code

(cf. 3513.3 - Tobacco-Free Schools)
(cf. 3515.2 - Disruptions)
(cf. 5131 - Conduct)
(cf. 5131.5 - Vandalism and Graffiti)

11. Provision for regular inspection and notification of damage, as well as restitution and repair of property

(cf. 3515.4 - Recovery for Property Loss or Damage)
(cf. 3517 - Facilities Inspection)

12. Safety and security measures

(cf. 0450 - Comprehensive School Safety Plan)
(cf. 3515 - Campus Security)
(cf. 3516 - Emergencies and Disaster Preparedness Plan)

(cf. 5142 - Safety)

13. Liability, insurance, and risk management issues

(cf. 3320 - Claims and Actions Against the District)
(cf. 3530 - Risk Management/Insurance)
(cf. 9260 - Legal Protection)

14. Duration of the agreement, process for amending the agreement, and the bases for cancelling or terminating the agreement before the expiration date

15. Process for resolving disputes regarding any aspect of the agreement

16. How any equipment purchased or other investments made through the agreement will be disposed of at the termination of the agreement

The agreement shall be reviewed by legal counsel and approved by the Board.

The Superintendent or designee shall provide regular reports to the Board regarding progress toward project goals, including, but not limited to, levels of participation in joint use programs held at school or community facilities, feedback from program participants, and any report of damage to property or harm to individuals resulting from the joint use. As needed, the Superintendent or designee shall recommend amendments to the joint use agreement.

(cf. 0500 - Accountability)

Legal Reference:
EDUCATION CODE
8482-8484.6 After School Education and Safety Program
8484.7-8484.9 21st Century Community Learning Centers
10900-10914.5 Community recreation programs
17051-17052 Joint use
17077.40-17077.45 Eligibility for joint use funding
17565-17592 Board duties re property maintenance and control
35200-35214 Liabilities
37220 School holidays; use of facilities when school is closed
38130-38138 Civic Center Act, use of school property for public purposes
44808 Exemption from liability when students not on school property
BUSINESS AND PROFESSIONS CODE
25608 Alcoholic beverages on school premises
GOVERNMENT CODE
814-825.6 Liability of public entities and employees
830-840.6 Liability; dangerous conditions on property
895-895.8 Liability; agreement between public entities

989-991.2 Local public entity insurance
UNITED STATES CODE, TITLE 20
7171-7176 21st Century Community Learning Centers
7905 Equal access to public facilities

Management Resources:
CSBA PUBLICATIONS
Maximizing Opportunities for Physical Activity Through Joint Use of Facilities, Policy Brief, rev. February 2010
Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement, 2009
NATIONAL POLICY AND LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY PUBLICATIONS
Model California Joint Use Agreements
Liability for Use of School Property After Hours: An Overview of California Law, July 2009
Checklist for Developing Joint Use Agreements, March 2009
PUBLIC HEALTH LAW AND POLICY PUBLICATIONS
Opening School Grounds to the Community After Hours: A Toolkit for Increasing Physical Activity Through Joint Use Agreements, 2010
WEB SITES
CSBA: http://www.csba.org
California Project LEAN (Leaders Encouraging Activity and Nutrition): http://www.californiaprojectlean.org
Cities Counties and Schools Partnership: http://www.ccspartnership.org
Joint Use Statewide Task Force: http://www.jointuse.org
National Policy and Legal Analysis Network: http://www.nplan.org
Public Health Law and Policy: http://www.phlpnet.org

Policy SOLEDAD UNIFIED SCHOOL DISTRICT
adopted: June 9, 2014 Soledad, California

EXHIBIT C

[List of City and District Facilities]

List of City and District Facilities

Soledad Unified School District ("District") Facilities subject to Agreement:

- Soledad High School gymnasium for youth basketball.
- Main Street Middle School gymnasium for youth basketball.
- Gabilan Elementary School classrooms to hold meetings or events related to community recreation programs or activities.
- Gabilan Elementary School playground/structures on days when school is not in session.
- Performing art facilities on District school campuses, for approved uses.
- Computer labs at select District school campuses, to be determined by the District.

City of Soledad ("City") Facilities subject to Agreement:

- Soledad Community Center gymnasium for volleyball and basketball, games and practices conducted by Main Street Middle School and Soledad High School.
- Soledad Community Center for student performances, parent meetings, assemblies, and ceremonies.
- City owned outdoor playing fields.

EXHIBIT D

[City Certificate of Insurance]

CERTIFICATE OF COVERAGE

DATE (MM/DD/YYYY) 12/8/2021

PRODUCER

Alliant Insurance Services, Inc.
1301 Dove Street, Suite 200
Newport Beach CA 92660-2436

NAMED COVERED PARTY

MBASIA - City of Soledad
248 Main Street
Soledad CA 93960

THIS CERTIFICATE IS ISSUED AS A MATTER OF EVIDENCE ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE MEMORANDUM(S) OF COVERAGE BELOW.

THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING COVERAGE PROVIDER, AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: IF THE CERTIFICATE HOLDER IS AN ADDITIONAL COVERED PARTY, THE MEMORANDUM OF COVERAGE MUST BE ENDORSED. A STATEMENT ON THIS CERTIFICATE DOES NOT CONFER RIGHTS TO THE CERTIFICATE HOLDER IN LIEU OF SUCH ENDORSEMENT(S).

IMPORTANT: IF SUBROGATION IS WAIVED, SUBJECT TO THE TERMS AND CONDITIONS OF THE MEMORANDUM(S) OF COVERAGE AN ENDORSEMENT MAY BE REQUIRED. A STATEMENT ON THE CERTIFICATE DOES NOT CONFER RIGHTS TO THE CERTIFICATE HOLDER IN LIEU OF SUCH ENDORSEMENT(S).

PROGRAM AFFORDING COVERAGE

A: Monterey Bay Area Self Ins.

B:

C:

COVERAGES

THIS IS TO CERTIFY THAT THE COVERAGE IS AFFORDED TO THE ABOVE NAMED MEMBER, AS PROVIDED BY THE MEMORANDUM(S) OF COVERAGE, FOR THE PERIOD SHOWN BELOW, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED BY THE PROGRAM DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH MEMORANDUM(S) OF COVERAGE. THE FOLLOWING COVERAGE IS IN EFFECT.

JPA LTR	TYPE OF COVERAGE	MEMORANDUM NUMBER	COVERAGE EFFECTIVE DATE (MM/DD/YY)	COVERAGE EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	$
	CLAIMS MADE / OCCUR				MED EXPENSE (Any one person)	$
					PERSONAL & ADV INJURY	$
					GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS-COMP/OP AGG	$
	MEMORANDUM / PROJECT / LOC					
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO					$
	ALL OWNED AUTOS					
	SCHEDULED AUTOS					
	HIRED AUTOS					
	NON-OWNED AUTOS					
	WORKERS' COMPENSATION AND EMPLOYERS LIABILITY				WC STATUTORY LIMITS / OTHER	
	ANY PROPRIETOR/PARTNER/ EXECUTIVE/OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
	IF YES, DESCRIBED UNDER SPECIAL PROVISION BELOW				E.L. DISEASE – EA EMPLOYEE	$
					E.L. DISEASE – POLICY LIMIT	$
A	**OTHER** Public Entity Liability	MBA2122SOL010	7/1/2021	7/1/2022	$1,000,000 $10,000	Per Occ Deductible
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL/PROVISIONS

If required by written contract with the Named Covered Party, Soledad Unified School District is covered as an Additional Covered Party as respects the Facilities Joint Use Agreement with the City of Soledad.

The City of Soledad has $1,000,000 per occurrence in liability insurance with MBASIA and additional excess insurance with CARMA of $1,000,000 per occurrence, totaling $2,000,000 per occurrence. See attached CARMA certificate that shows $1,000,000 in excess of MBASIA.

Subject to policy terms, conditions and exclusions.

CERTIFICATE HOLDER

Soledad Unified School District
1261 Metz Road
Soledad CA 93960

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUM(S) OF COVERAGE BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE MEMORANDUM(S) OF COVERAGE PROVISIONS.

AUTHORIZED REPRESENTATIVE

California Affiliated Risk Management Authorities

1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833
916-244-1100

Liability Certificate of Coverage

Additional Covered Party

Certificate Number: 65388835

Certificate Holder: Soledad Unified School District
Attn: Superintendent

1261 Metz Road
Soledad, CA 93960

Covered Party: MBASIA - City of Soledad

Description of Covered Activity: As respects the Agreement between the Soledad Unified School District and the City of Soledad regarding the cooperative use of District and City Facilities; the Soledad Unified School District, its officers, agents, volunteers, contractors, employees, governing board, members of the governing board, council, and council members are additional covered parties with regard to any negligent acts or omissions of the City of Soledad, its officers, officials, employees, and volunteers, as pertains to the Agreement.

Memorandum of Coverage Number: CARMA 2021-GL **Effective Date:** 01/01/2022 **Expiration Date:** 7/1/2022

Limits: $1,000,000 (per occurrence)

Excess of: $1,000,000

The Following Coverage is in effect: General and automobile liability as defined in the Memorandum of Coverage on file with the covered party named above.

Pursuant to the definition of Covered Party in the Liability Memorandum of Coverage, the certificate holder named above is an additional covered party for covered claims arising out of the covered activity stated above and is subject to the limits stated above.

This is to certify that the coverage listed above has been issued to the Covered Party named above for the coverage period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The coverage afforded as described herein is subject to all the terms, exclusions, and conditions of the Liability Memorandum of Coverage of the Covered Party named above as well as to all the terms, exclusions, and conditions of the Liability Memorandum of Coverage of the California Affiliated Risk Management Authorities, which are available for your review upon request.

Coverage is in effect from 12:01 a.m. Pacific Time of effective date to 12:01 a.m. Pacific Time of expiration date as stated above and will not be canceled, limited, or allowed to expire except upon 30-day notice to the certificate holder.

Date Issued: 12/9/2021

Renewal: Yes **Underlying Certificate Issued:** Yes

Authorized Representative Signature:

This certificate cancels and supersedes ALL previously issued certificates.

EXHIBIT E

[District Certificate of Insurance]

CERTIFICATE NO. | ISSUE DATE

WC-4434	**CERTIFICATE OF COVERAGE**	12/09/2021

PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT

C/O ALLIANT INSURANCE SERVICES, INC.
PO BOX 6450
NEWPORT BEACH, CA 92658-6450
PHONE (949) 756-0271 / FAX (619) 699-0901
LICENSE #0C36861

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BELOW. THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITITUE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER

IMPORTANT: If the certificate holder is requesting a WAIVER OF SUBROGATION, the Memorandums of Coverage must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

COVERAGE AFFORDED	**A - See attached schedule of insurers**
COVERAGE AFFORDED	**B**
COVERAGE AFFORDED	**C**
COVERAGE AFFORDED	**D**

Member:
MONTEREY BAY AREA SELF INSURANCE AUTHORITY (MBASIA)
ATTN: CONOR BOUGHEY
100 PINE STREET, 11TH FLOOR
SAN FRANCISCO, CA 94111

Coverages

THIS IS TO CERTIFY THAT THE MEMORANDUMS OF COVERAGE AND POLICIES LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED BY THE MEMORANDUMS AND POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH MEMORANDUMS AND POLICIES.

CO LTR	TYPE OF COVERAGE	MEMORANDUM/ POLICY NUMBER	COVERAGE EFFECTIVE DATE	COVERAGE EXPIRATION DATE	LIABILITY LIMITS
A	EXCESS WORKERS' COMPENSATION & EMPLOYER'S LIABILITY	See attached Schedule of Insurers for policy numbers	07/01/2021	07/01/2022	WORKERS' COMPENSATION: Difference between Statutory and Member's $250,000 Retention EMPLOYERS' LIABILITY: Difference between $5,000,000 and Member's Retention

LIMITS APPLY PER OCCURRENCE FOR ALL PROGRAM MEMBERS COMBINED.

Description of Operations/Locations/Vehicles/Special Items

AS RESPECTS EVIDENCE OF COVERAGE FOR FACILITIES JOINT USE AGREEMENT BETWEEN CITY OF SOLEDAD FOR USE OF DISTRICT SCHOOL PLAY FIELDS, FACILITIES, EQUIPMENT AND OTHER SITES.

CITY OF SOLEDAD IS A MEMBER OF MONTEREY BAY AREA SELF INSURANCE AUTHORITY (MBASIA)

Certificate Holder

SOLEDAD UNIFIED SCHOOL DISTRICT
ATTN RANDY BANGS
1261 METZ ROAD
SOLEDAD, CA 93960

Cancellation

SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUMS OF COVERAGE/POLICIES BE CANCELLED BEFORE THE EXPIRATION THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE MEMORANDUMS OF COVERAGE/POLICIES PROVISIONS.

AUTHORIZED REPRESENTATIVE

Gina Dean

Public Risk Innovation, Solutions, and Management

PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT
EXCESS WORKERS' COMPENSATION PROGRAM
2021/2022 SCHEDULE OF INSURERS
MONTEREY BAY AREA SELF INSURANCE AUTHORITY (MBASIA)

PROVIDER	MEMORANDUM / POLICY NUMBER	LIMIT
Public Risk Innovation, Solutions, and Management	PRISM PE 21 EWC-131	Workers' Compensation: $50,000,000 each accident/each employee for disease (Difference between $50,000,000 and the individual member's retention) Employers' Liability: $5,000,000 each accident/each employee for disease (Difference between $5,000,000 and the individual member's retention)
Liberty Insurance Corporation	EW7-64N-444785-011	Statutory each accident/each employee for disease excess of $50,000,000

AGENDA ITEM NO. 1.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Rescind Resolution No. 6070, Establishing Procedures for the Selections of the Mayor and Mayor Pro Tem**

Transition to District-Based Elections for Councilmembers-Proposed District Maps-Public Hearing No. 6

Consider Introduction, Waiver of Reading and Read by Title Only an Ordinance of the City Council of the City of Soledad Establishing and Implementing By-District Elections-4 District Map

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Mike Rodriquez, City Attorney**

THROUGH: **Megan Hunter, City Manager**

MEETING DATE: **May 1, 2024**

Recommendation

Staff recommends that the City Council:

1. Rescind Resolution No. 6070, Establishing Procedures for the Selection of the Mayor and Mayor Pro Tem.
2. Conduct a public hearing, receive public comment, and discuss and give final approval to a preferred districting map and election sequencing plan for inclusion in an ordinance brought to the Council for introduction immediately following the public hearing on this topic on May 1, 2024.
3. Discuss and receive comment from the public, and thereafter introduce, waive reading, and read by title only "An Ordinance of the City Council of the City of Soledad Establishing and Implementing By-District Elections (Government Code Section 34886 and Election Code Section 10010)."

Executive Summary

On October 30, 2023, the Soledad City Clerk's office received a referendum petition against Ordinance No. 765, an ordinance adopted on October 4, 2023, by which the City Council established a five-district by-district voting plan in the City. The referendum on Ordinance No. 765, designated "Measure P" by the Monterey County Elections Department, was placed on the ballot for a Special Election on March 5, 2024. Results of the election were certified by the City Council on April 3, 2024, and Measure P, which asked whether Ordinance No. 765 should be adopted, was easily defeated by a vote of 1673 to 204. As a

result, Ordinance No. 765 is of no force and effect. As a housecleaning matter, the Council should now rescind Resolution No. 6006, which was adopted on October 4, 2023, to establish how the Mayor and Mayor Pro Tem would be selected in a five-district voting system. Thereafter, the Council should conduct its sixth public hearing in the by-district voting process to determine if it desires to consider and adopt one of the four-district maps previously developed and presented to the Council and the public during last year's districting efforts. (The Council expressed its preference for the Tan Map at its meeting on meeting on April 3, 2024.) After choosing a preferred map and voting sequence, the Council can then move forward with action to introduce, waive, and read by title only an ordinance that will codify the new election process and district map. The ordinance would come back to the Council for consideration of approval at the meeting of May 15, 2024. If the Council wishes to have a by-district voting plan in place for the November 2024 election it must act quickly as the approved map would need to be submitted to the County by the end of May.

Background

The City of Soledad currently elects its four city councilmembers and Mayor "at-large," meaning each registered voter in the City has the opportunity to vote for all candidates seeking seats in the election. In 2022, under threat of litigation, the City Council commenced the process of transitioning from at-large to by-district voting. By-district voting is a system whereby a city is divided into voting districts and the constituents of each district are represented on the council by a resident of the district elected solely by the voters of said district. The process included five public hearings, held from October 25, 2022, through September 6, 2023, a series of community workshops to educate the public on districting and to explain how to use mapping tools in the event a member of the public desired to prepare a map for Council consideration, and the formation of The City of Soledad Advisory Community Districting Committee, which met to discuss the districting process, the means by which maps are prepared, and to review and make recommendations on maps that had been prepared for or submitted to the City for consideration. All of these efforts were guided and overseen by the City's transition consultant, National Demographics Corporation ("NDC").

A total of eight four and five-district maps were prepared for Council consideration, five of which were prepared by NDC, two of which were prepared by members of the public, and one of which was a map prepared by a member of the public and then modified by NDC at the Council's request and direction. NDC verified that all of the maps were prepared in compliance with the criteria established by the Fair Maps Act- Elections Code Section 21601, and the City and NDC verified that the maps were available for public review for the requisite period required by law before they were subject to final consideration.

In addition to the above-referenced efforts, the City posted information concerning the transition to by-district elections on its website, including copies of proposed maps and a link to mapping tools, and various notices concerning the process and meetings were posted on the website, the City Facebook page, and at various locations around City Hall.

On September 6, 2023, at the fifth Public Hearing concerning the by-district transition, the Council met to decide between two maps it had expressed a preference for at the fourth districting Public Hearing on August 2, 2023: the four-district Tan Map and the five-district Map 501B. The Council received extensive public comment on the matter, the majority of which favored the four-district map whereby the Mayor would continue to be elected at-large. After public comment the Council discussed its options and positions at length, ultimately selecting the five-district Map 501B as the preferred map by a split 3-2 vote. Thereafter, on October 4, 2023, the Council adopted Ordinance No 765 "Establishing and Implementing By District Elections" in the City of Soledad. The ordinance was to take effect on

November 4, 2023. Additionally, on this same date, in light of the fact that Ordinance No. 765 eliminated the Mayor-at-large's position, the Council adopted Resolution No. 6006 establishing a new process by which the mayor and mayor pro tem's positions would be selected from among seated councilmembers on a rotating basis based on seniority on the Council.

However, on October 30, 2023, the City Clerk's Office received a referendum petition against Ordinance No. 765. The referendum process, established in Election Code Sections 9235-9247, provides citizens with a means by which to refer an ordinance passed by the Council to the vote of the people. The primary objection to Ordinance No. 765 was the fact that the approved five-district voting plan resulted in the loss of the right to vote for the mayor. By contrast, with a four-district voting plan, the Mayor's position would continue to be selected by at-large City-wide voting.

The Referendum Petition ("Referendum") was determined to be complete following the City Clerk's initial intake review and was thereafter certified by the Monterey County Registrar of Voters as exceeding the minimum number of valid signatures necessary to qualify the Referendum for consideration by the City Council. Per California Election Code Section 9237, the effective date of Ordinance No. 765 was postponed pending the outcome of the referendum process. Thereafter, the Council chose the option of placing the Referendum before the voters at a special election. The referendum question on the ballot, which was prepared in accordance with the law and designated Measure P by the County, read "Shall City of Soledad Ordinance No. 765- Establishing and Implementing By-District Elections, by which all City council members shall be selected from newly established voting districts and the Mayor's position shall no longer be elected at-large by the public but rather, shall be selected from among the seated council members, be adopted?"

The City Council certified the results of the election on April 3, 2024, verifying that Measure P was defeated by a vote of 1673 No to 204 Yes. As a result of this vote, Ordinance No. 765 was not adopted and is of no force and effect. Moreover, Resolution No. 6006, which established the selection process of a mayor in a five-district voting plan, was no longer applicable.

With the defeat of Measure P, on April 3, 2024, the Council discussed its options with respect to by-district voting in the City. Options raised by Staff included: 1) rely on previous districting work and efforts and consider approval of a previously prepared four-district map; 2) commence a new districting map preparation process for a four-district map; and 3) take no action and continue with at-large elections. Staff pointed out that only Option 1 would ensure that a by-district voting plan was in place in time for the November 2024 elections.

The Council was unsure of which action to pursue, although it appeared that there was still strong support for transitioning to by-district elections. Citing the amount of work and effort that has already been expended on the districting issue, the Council asked for further information on whether something could be done to protect an approved four-district election plan from repeal or modification by subsequent councils. In order to allow the Council to commence the process for adoption of its preferred four-district map, the Tan Map, Staff indicated it would bring back an ordinance for consideration of introduction at the May 1, 2024 meeting. Although the Council has designated the Tan Map as its preferred four-district map, any of the four-district maps previously presented for consideration would be acceptable for establishing a four-district voting plan.

Review & Analysis

As an initial matter, at the meeting of April 3, 2024, several members of the Council asked whether something could be done by the Council to protect the adoption of a four-district voting plan from

appeal or modification by a subsequent council. After conducting research and discussing this issue with Doug Johnson from NDC, the answer to this question is no.

The authority and powers of city councils in General Law cities such as Soledad are established by both the State Constitution and legislative act codified by statute. See Cal. Const art XI, Sections 1 and 7: "Municipalities receive their power from the California Constitution and applicable general laws." Long v. City of Fresno (1964) 225 Cal.App.2nd 59, 65. A sitting council has no ability to prohibit or constrain a future council's exercise of this grant of authority by a council legislative act such as an ordinance or resolution. Such action would clearly be outside the council's authority and would not withstand judicial scrutiny.

More importantly, a provision of Government Code Article 2-Election of Legislative Body By or From Districts in Cities (Sections 34870-34886) specifically provides city councils with the authority to modify and/or repeal previous council districting actions. Article 2, which details the process for establishing by-districting voting, includes Section 34873, which states "An ordinance enacted pursuant to this article may be amended or repealed in the same manner; provided, the term of office of any council member elected shall not be affected." In other words, the right of future councils to repeal or amend a by-district voting plan by ordinance is established and guaranteed by statute and as such, no council can adopt an ordinance barring a future council from taking such action.

There was also a suggestion that a by-district voting ordinance could be protected from future repeal or modification by having the Council place such an ordinance on the ballot by initiative for voter approval. However, based on both our previous discussions on this issue and the language and intent of Government Code Section 34873, voter approval of a council-initiated matter does not necessarily prohibit subsequent council action on the same matter. Although untested in the courts, the weight of opinion is that a council may modify or repeal a council initiative approved by the voters if such action is pursued pursuant to the authority conferred by statute. So for example, the City Council was able to consider an ordinance approving a five-district voting plan that would have eliminated the elected mayor's position, even though the elected mayor's position was previously approved by the voters, pursuant to statutory authority that compels by-district voting in order to achieve compliance with the California Voting Rights Act.

It is worth noting that in placing a districting ordinance before the voters, the Council would also run the risk that the ordinance would be defeated. Such circumstances would make subsequent action on districting problematic.

In light of the foregoing, Staff is recommending that the Council consider the following actions concerning districting:

1. Consider adoption of Resolution No. 6070, Rescinding Resolution No. 6006 Establishing Procedures for the Selection of the Mayor and Mayor Pro Tem. This is essentially a housekeeping issue. Resolution No. 6006 was only adopted after the Council's adoption of Ordinance No. 765 to provide a means of selecting a mayor since the Council-approved five-district voting plan eliminated the mayor-at-large's position. With the subsequent rejection of Ordinance No. 765 by the voters, Resolution No. 6006 has no purpose and cannot be utilized. Formal rescission will create a clear record that the resolution is no longer applicable.

2. Hearing on Four-District Map. The purpose of the evening's first hearing, the sixth in the districting process, is to briefly review districting, receive public input, and then to discuss and confirm a final selection on the preferred district map and election sequence for by-district elections. All of the four-

district maps received to date, including the preferred "Tan" four-district map have been available to the public both on the City's website and reproduced and included in agenda packets. NDC has confirmed that all of the four-district maps were prepared in compliance with the criteria established by the Fair Maps Act- Elections Code Section 21601. (Copies of all previously submitted four district maps are attached hereto.) Map drafting requirements include that districts shall be substantially equal in population, shall to the extent practicable be geographically contiguous, shall to the extent practicable respect the geographic integrity of any local neighborhood or local community of interest, shall be easily identifiable and understandable to residents (bounded by natural and artificial barriers, streets and city boundaries), and to the extent practicable, shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

The proposed four-district Tan Map would establish an election sequencing plan where the Mayor and two councilmembers would be up for election every two years. As is the law with districting transitions, no current councilmember's term of office would be impacted by the by-district conversion. This would be accomplished by phasing the conversion to district elections over the course of two election cycles in 2024 (Districts 3 and 4) and 2026 (Districts 1 and 2). Under the four-district format, councilmembers' terms would remain at four years and the current two-year term and accompanying two-year voting schedule for the Mayor's position would remain unchanged.

3. Hearing for Introduction of Ordinance Establishing By-District Elections. The purpose of the second public hearing is to introduce, waive reading and read by title only "An Ordinance of the City Council of the City of Soledad Establishing and Implementing By-District Elections." This Ordinance will amend Chapter 2.04 of Title 2- Administration and Personnel of the Soledad Municipal Code to establish the new by-district voting system. The Ordinance will codify by-district voting as the means by which councilmembers are elected in the City, incorporate the preferred four-district Tan Map district map, and establish a proposed election sequence to implement the new voting process.

If the Council decides to move forward with this action, it should take comment on the proposed ordinance and then after closing the comment period, consider introduction of the Ordinance. The Ordinance will then be set for consideration at a noticed hearing in accordance with the City's standard procedure for the City Council meeting of May 15, 2024. If adopted, Staff would immediately transmit a copy of the ordinance of the Elections Department so that by-district voting would commence in Soledad at the November 2024 election.

The Council is also free to take no action on a four-district voting plan at this time. Options would include directing Staff to prepare a Council initiative for placement on the ballot at the 2024 November Election, to initiate a new mapping process for a four-district map, or to simply take no action at all on districting and let at-large voting continue in the City. If desired, Staff and our NDC consultant will be available to discuss these options and possible consequences.

Financial Considerations

At this point the only cost the City has incurred for districting is the cost for the City's consultant as set forth in the applicable Consulting Service Agreement

Alternatives

The Council may:

- Approve the use of the four-district Map and initiate the approval process by introducing Ordinance No. 768.
- Request that the district map selection process begin anew and engage the City's consultant to initiate the process.
- Refrain from taking any action this evening, other than rescinding Resolution No. 6070, and provide Staff with direction.
- Decide to take no further action for transition to a by-district plan and leave the current at-large voting system in place. Such action will in all likelihood expose the City to potential litigation meant to compel a transition to by-district voting.

Planning/CEQA

Not applicable- the districting action is not a "project" pursuant to Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines. Additionally, the Districting Ordinance is not subject to CEQA pursuant to Guidelines Section 15061 as it can be seen with certainty that there is no possibility the Ordinance may have a significant effect on the environment.

Public Notice Requirements

The public hearing was noticed by posting on the City's website and Facebook page, and physically posted at City Hall. It was also identified as a public hearing on the Council's meeting agenda.

Attachment(s):
Resolution No. 6070
Ordinance re Four-District Action 4-17-24

RESOLUTION NO. 6070

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD RESCINDING RESOLUTION NO. 6006 ESTABLISHING PROCEDURES FOR THE SELECTION OF THE MAYOR AND MAYOR PRO TEM

WHEREAS, on January 6, 2021, the City Council adopted Resolution No. 5674 establishing a means by which to appoint the Mayor Pro Tem on a rotating annual basis; and

WHEREAS, on October 4, 2023, the Soledad City Council adopted Ordinance No. 765 establishing a five-district election system. As a result of the five-district system, the Mayor's position would no longer be elected at-large; and

WHEREAS, on October 4, 2023, the City Council adopted Resolution No. 6006 for the purpose of establishing new appointment procedures, using a seniority-based rotation system, for both the Mayor and Mayor Pro Tem's positions; and

WHEREAS, Ordinance No. 765 was defeated by the voters of the City in a special referendum election held on March 5, 2024; and

WHEREAS, in light of the fact that the Mayor's position will continue to be elected at-large, it is necessary to rescind Resolution No. 6006.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad as follows:

Section 1. Resolution No. 6006 is hereby rescinded in its entirety and is no longer of any force and effect.

Section 2. Resolution No. 5674, which provides the process for the selection of the Mayor Pro Tem, and which was superseded by the adoption of Resolution No. 6006, is hereby reenacted. A copy of Resolution No. 5674 is attached hereto as **Exhibit A.**

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular public meeting thereof held on the 1 day of May 2024, by the following vote:

AYES: and in favor thereof, Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

_____
ANNA M. VELAZQUEZ, Mayor

ATTEST:

_____
MEGAN HUNTER, City Clerk

Exhibit A

RESOLUTION NO. 5674

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD AMENDING THE CITY OF SOLEDAD RULES, POLICIES, AND PROCEDURES REGARDING ELECTION OF MAYOR PRO TEMPORE

WHEREAS, on November 3, 2010 the City Council has previously adopted an updated set of "City of Soledad City Council Rules, Policies and Procedures" ("RPP's") to provide regulations and guidance to elected officials with respect to Council duties and operations; and

WHEREAS, on December 2, 2020, the Council considered and discussed a changes to the RPP's to address Article III – Section 2 to allow for a rotating policy for the position of Mayor Pro Tempore.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the City Council hereby amends Article III – Section 2 of the "City Council Rules, Policies and Procedures," a copy of which is attached hereto as **Exhibit "A."**

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Soledad duly held on the 6th day of January 2020, by the following vote:

AYES, and in favor thereof, Councilmembers: Ben Jimenez, Jr., Mayor Pro Tem Carla Strobridge, Alejandro Chavez, Marisela Lara, and Mayor Anna M. Velazquez.

NOES, Councilmembers: None

ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None

Anna M. Velazquez

ANNA M. VELAZQUEZ, Mayor

ATTEST:

BRENT SLAMA, Interim City Clerk

ORDINANCE NO. 768

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLEDAD ESTABLISHING AND IMPLEMENTING BY-DISTRICT ELECTIONS (GOVERNMENT CODE § 34886 AND ELECTION CODE § 10010)

WHEREAS, the City of Soledad supports the full participation of all citizens in electing members of the City Council; and

WHEREAS, the City of Soledad currently elects its four (4) members of the City Council using an at-large election system, with a separately elected mayor, where candidates may reside in any part of the City and each member of the City Council is elected by the voters of the entire City; and

WHEREAS, California Government Code Section 34886, effective January 1, 2017, permits the City Council of any city to change the City's method of election by ordinance to a "by-district" system in which each member of the City Council is elected only by the voters in the district in which the candidate resides, and permits the mayor to continue to be elected at-large, in accordance with California Government Code Section 34871(c); and

WHEREAS, under the provisions of California Elections Code Section 10010, a city that changes from an at-large city council method of election to a by-district city council method of election requires a total of five public hearings, which includes at least two public hearings regarding potential voting district boundaries prior to the release and consideration of any draft voting district maps, and two public hearings following the release of draft voting district map(s); and

WHEREAS, after receiving a demand to transition to by-district elections and a threat of potential litigation, at a regular meeting of the City Council of the City of Soledad held on July 20, 2022, the City Council adopted Resolution No. 5833 that initiated the process of establishing a by-district election system and adopting the schedule therefor; and

WHEREAS, thereafter, at special joint meetings of the City Councils of the Cities of Gonzales and Soledad held on the 25th day of October, 2022 and the 14th day of December, 2022, respectively, pursuant to California Elections Code Section 10010(a)(1), the City Council held public hearings where the public was invited to provide input regarding the composition of the City's voting districts before any draft maps were drawn, and the City Council of the City of Soledad considered and discussed the same; and

WHEREAS, thereafter, at regular meetings of the City Council of the City of Soledad held on the 15th day of February, 2023 and the 2nd day of August, 2023, pursuant to California Elections Code Section 10010(a)(2), the City Council held public hearings where the public was invited to provide input regarding the content of draft four-district and/or five-district maps that had been released at least seven (7) days before each meeting, as prepared by consultant National Demographics Corporation ("NDC") or by members of the public, as well as the proposed

sequence of elections, and the City Council of the City of Soledad considered and discussed the same; and

WHEREAS, in addition to the Council meetings set forth above, the Council directed NDC and Staff to conduct a series of community workshops to educate the public on the districting process and to explain how to use mapping tools in the event any member of the public desired to prepare a map for council consideration, and said workshops were conducted in both English and Spanish on April 15 and June 13 and 14; and

WHEREAS, the City Council also formed The City of Soledad Advisory Community Districting Committee, comprised of residents of the City appointed by the Council, to review draft maps and to make recommendations to the Council, and the Committee thereafter met on May 23 and June 28 of 2023 and forwarded its recommendations for both preferred four-district and five-district maps; and

WHEREAS, at a regular meeting of the City Council of the City of Soledad held on the 6th day of September, 2023, the City Council held a fifth public hearing on the proposal to establish district boundaries, reviewed additional public input, formally selected a five-district voting district map and the corresponding election sequence, which was introduced for a first reading at the same regular meeting of the City Council of the City of Soledad and thereafter adopted as Ordinance No. 765 by the Council on October 4, 2023; and

WHEREAS, throughout the foregoing process, the City engaged in a significant amount of public outreach and engagement above and beyond the public hearings and other procedures required by California Elections Code Section 10010, including, but not limited to, postings of map information and diagrams and notice of City hearings on the City's website; and

WHEREAS, Ordinance No. 765 was subsequently rejected by the voters of the City at a special referendum election in March of 2024; and

WHEREAS, at a duly noticed regular meeting of the City Council of the City of Soledad held on the 1st day of May, 2024, the City Council held a sixth public hearing on the proposal to establish district boundaries, reviewed additional public input, formally selected a four-district voting district map and the corresponding election sequence, as attached to this Ordinance and incorporated herein, which was introduced for a first reading at the same regular meeting of the City Council of the City of Soledad. All map information and diagrams have been continually available for review on the City's website since 2023, and were available at least 15 days prior to the introduction of this ordinance; and

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code Section 34886, an ordinance providing for the election of members of the City Council of the City of Soledad by district in four single-member districts as reflected in Attachment A to this Ordinance, with the Mayor elected at-large, in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code) and to implement the guarantees of Section 7 of Article 1 and of Section 2 of Article II of the California Constitution.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Soledad as follows:

SECTION 1. All of the recitals set forth above are true and correct to the best of its knowledge and by this reference are incorporated herein as findings.

SECTION 2. Chapter 2.04 of Title 2-Administration and Personnel of the Soledad City Code is hereby amended by adding new Sections 2.04.030, 2.04.040, 2.04.050 and 2.04.060 to read as follows:

2.04.030 By-District Electoral System.

Pursuant to California Government Code Section 34886 and the schedule established in Section 2.04.050 of this Chapter, beginning in November 2024, members of the city council shall be elected on a by-district basis from four (4) single-member Council Districts. The mayor shall be separately elected on a City-wide basis per Section 2.04.060. The City's by-district electoral system shall be conducted in accordance with California Government Code Section 34871, subdivision (c).

2.04.040 Establishment of City Council Electoral Districts.

A. Pursuant to Section 2.04.030 of this Chapter, members of the city council shall be elected on a by-district basis, as that term is defined in California Government Code Section 34871, subdivision (c), from the four Council Districts described as follows, which shall continue in effect until they are amended or repealed in accordance with law:

1. Council District 1 shall comprise all that portion of the City reflected on Attachment A.

2. Council District 2 shall comprise all that portion of the City reflected on Attachment A.

3. Council District 3 shall comprise all that portion of the City reflected on Attachment A.

4. Council District 4 shall comprise all that portion of the City reflected on Attachment A.

B. Members of the city council, excluding the mayor, shall be elected in the electoral districts established by this Section and subsequently reapportioned pursuant to applicable State and federal law.

C. Except as provided in subdivision D herein and notwithstanding any other provision of this Chapter, once this Ordinance is fully phased in, the member of the city council elected to represent a district must reside in that district and be a registered voter in that district, and any candidate for city council must live in, and be a registered voter in, the district in which he or she seeks election at the time nomination papers are issued,

pursuant to California Government Code section 34882 and Elections Code section 10227. Termination of residency in a district by a member of the city council shall create an immediate vacancy for that Council district unless a substitute residence within the district is established within thirty (30) days after the termination of residency.

D. Notwithstanding any other provision of this Section, and consistent with the requirements of California Government Code Section 36512, the members of the city council in office at the time the Ordinance codified in this Chapter takes effect shall continue in office until the expiration of the full term to which he or she was elected and until his or her successor is qualified. At the end of the term of each member of the city council, excluding the separate office of mayor, that member of the city council's successor shall be elected on a by-district basis in the districts established in this Section and as provided in Section 2.04.050 of this Chapter.

E. Nothing in this Section shall affect the election of the mayor, who shall remain elected on a City-wide basis, in accordance with Section 2.04.060 of this Chapter of this Code.

2.04.050 Election Schedule.

Except as otherwise required by California Government Code Section 36512, the members of the city council shall be elected as follows: Councilmembers in District 3 and 4 at the General Municipal Election in November of 2024 and every four years thereafter, as such Council Districts may be amended; Council members in Districts 1 and 2 at the General Municipal Election in 2026, and every four years thereafter, as such Council Districts may be amended. The election schedule for the mayor is not affected by the schedule established in this Section.

2.04.060 Mayor; Selection

The position of the mayor is an elected office. The term of office for the mayor is two (2) years.

SECTION 3. A map showing the districts described in this Ordinance and codified in Section 2.04.040 of the City of Soledad Municipal Code is attached hereto as Attachment A and incorporated herein by reference.

SECTION 4. The City Clerk is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials within any district, only when necessary to facilitate the implementation of this Ordinance. The City Clerk shall consult with the City Manager and City Attorney concerning any technical adjustments deemed necessary and shall advise the City Council of any such adjustments required in the implementation of the districts. Pursuant to Elections Code 21601, as it may be amended from time to time, the City Council shall adjust the boundaries of any or all of the districts following each decennial federal census to ensure that the districts are in compliance with all applicable provisions of the law.

SECTION 5. To the extent the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof.

SECTION 6. In interpreting this Ordinance or resolving any ambiguity, this Ordinance shall be interpreted in a manner that effectively accomplishes its stated purposes.

SECTION 7. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, then such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Soledad hereby declares the Council would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that anyone or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, since there is no potential for the Ordinance to result in direct or indirect physical change in the environment. In addition, the Ordinance is not subject to CEQA pursuant to State CEQA Guidelines Section 15061 as it can be seen with certainty that there is no possibility the Ordinance may have a significant effect on the environment.

SECTION 9. This ordinance shall be effective thirty days after its adoption (scheduled for May 15, 2024) and the City Clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Soledad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a Regular Meeting of the Soledad City Council on the 1st day of May 2024, and thereafter

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Soledad on the 15th day of May, 2024, by the following vote, to wit:

AYES, and in favor thereof, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

_____

Anna Velazquez, The Honorable Mayor

ATTEST:

_____

Megan Hunter, City Clerk

AGENDA ITEM NO. 1.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Resolution No. 6071, A Resolution of the City Council of the City of Soledad Accepting the Vision and Guiding Principles for the 2024 Siempre Soledad General Plan Update Meeting**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Kao Nou Yang, Community and Economic Development Director**

THROUGH: **Megan Hunter, City Manage**

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council Consider and Approve Resolution No. 6071, "A Resolution of the City Council of the City of Soledad, Accepting the Vision and Guiding Principles for the 2045 Siempre Soledad General Plan Update".

Executive Summary

The City of Soledad is currently in the process of updating its General Plan, known as "2045 Siempre Soledad". This process is estimated to take another 18 to 20 months to complete. The City has concluded the visioning phase, which will set the tone for the plan as it is being developed. Over the last 6 months, the City has engaged with the community, the General Plan Advisory Committee (GPAC), and the Soledad Planning Commission to gather extensive feedback, which is reflected in the draft Vision and Guiding Principles that is being presented to the City Council for acceptance.

Background

California state law requires each city and county to adopt a general plan "for the physical development of the county or city, and any land outside its boundaries which in the planning agency's judgment bears relation to its planning" Gov. Code 65300. As part of California state law, the City is required to update the General Plan every 20 years for long range development and growth of the City. The City of Soledad is in the process of updating the General Plan named "2045 Siempre Soledad." This update is anticipated to be completed by late 2025.

The process of updating a general plan requires extensive data collection, analysis, and community engagement. The City has contracted with a consultant, "PlaceWorks" to help complete a comprehensive update of the 2005 General Plan. The Existing Conditions Report has been completed and now the visioning process has concluded resulting in draft Vision and Guiding Principles for City Council consideration.

Review & Analysis

The Vision Statement and Guiding Principles act as touchstones to ensure that the goals, policies, and implementation programs align with the overarching vision. The vision statement reflects what the community values most about the City and their aspirations for the future. Its purpose is to inspire and set the direction for the General Plan's goals, policies, and implementation programs.

The draft vision states: *Soledad is a small town with big ideas, celebrating our rich cultural heritage and serving as the gateway to Pinnacles National Park. We are a welcoming and diverse community that is committed to sustainable growth, improving quality of life, supporting businesses, and being a safe and healthy city where everyone thrives.*

Between November 1st, 2023 and February 29, 2024, the City of Soledad conducted extensive community engagement to gather feedback on some of the main issues facing the City. Outreach included community events, such as the El Dia de los Muertos, canvassing, Facebook posts, pop-ups, and interactive surveys. The feedback received is summarized in Attachment 2 and was very important in crafting the Vision and Guiding Principles presented as Exhibit A.

On February 21, 2024, a General Plan Advisory Committee (GPAC) meeting was held to review the Vision and Guiding Principles. The feedback from the GPAC resulted in changes to specific wording and more inclusive language for people with disabilities and the elderly. On March 14th, 2024, the Vision and Guiding Principles were presented to the Soledad Planning Commission, who agreed on many of GPAC's recommended revisions. The Planning Commission provided feedback that centered around safety, community spaces, and mobility. The proposed revisions given by the GPAC and the Planning Commission are included in the Final Draft Exhibit A.

Financial Considerations

The City has allocated $1,169,051.00 for the development of the General Plan, which has been budgeted through the General Fund and various grants. The City has a contract with PlaceWorks for $1,169,051. The development of the Vision and Guiding Principles are included as part of the PlaceWorks contract.

Alternatives

- Accept the Vision and Guiding Principles as recommended.
- Modify the Vision and Guiding Principles.
- Provide other direction to Staff.

Planning/CEQA

The General Plan Update will undergo environmental review pursuant to the California Environmental Quality Act (CEQA). Accepting the Vision and Guiding Principles as a step in the drafting of the General Plan is not a project as defined under CEQA Section 15378.

Public Notice Requirements

Not required.

Attachment(s):
Resolution No. 6071
Exhibit A- Vision and Guiding Principles- draft
Attachment 2. Key Themes Community Input
Attachment 3. Resolution No. 2024-04 The General Plan Vision and Guiding Principles - signed (002)
Attachment 4. CC Presentation 050124 AM Edits

RESOLUTION NO. 6071

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD ACCEPTING THE VISION AND GUIDING PRINCIPLES FOR THE 2045 SIEMPRE SOLEDAD GENERAL PLAN UPDATE

WHEREAS, the City of Soledad (City) adopted the General Plan in 2005 and initiated a General Plan update in January of 2023 called 2045 Siempre Soledad; and

WHEREAS, the vision statement reflects what the community values most about the city and their aspirations for the future and its purpose is to inspire and set the direction for the General Plan's goals, policies, and implementation programs; and

WHEREAS, between November 1, 2023 and February 29, 2024, extensive community engagement was conducted to gather feedback involving community events, canvassing, Facebook posts, pop-ups, and interactive surveys; and

WHEREAS, this community feedback along with recommended revisions from the General Plan Advisory Committee and the Planning Commission Community has been incorporated into the draft Vision and Guiding Principles for the 2045 Siempre Soledad General Plan Update for City Council consideration.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Soledad hereby accepts the 2045 Siempre Soledad Vision and Guiding Principles as **Exhibit "A"**.

PASSED AND ADOPTED, at a duly noticed regular meeting of the City Council of the City of Soledad held on the 1st day of May 2024, by the following vote:

AYES, and in favor thereof Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

_____
ANNA M. VELAZQUEZ, Mayor

ATTEST:

_____
MEGAN HUNTER, City Clerk

EXHIBIT A

Siempre Soledad
General Plan 2045

Vision: Soledad is a small town with big ideas, celebrating our rich cultural heritage and serving as the gateway to Pinnacles National Park. We are a welcoming and diverse community that is committed to sustainable growth, improving quality of life, supporting businesses, and being a safe and healthy city where everyone thrives.

Guiding Principles

Economy

We cultivate a thriving economy that supports quality retail for our residents' shopping needs, small businesses, and regional tourism. We aim to provide our residents with secure and well-paying jobs that will serve as the backbone of their livelihoods. Residents are able to shop locally for their essential needs.

Housing

We ensure access to quality, safe, and diverse housing near schools, jobs, retail, and parks that is affordable to residents of all income levels.

Equity

We are committed to diversity, equity, and inclusion and believe everyone has a voice in shaping Soledad and participating in local decision making.

Community Places

We value parks, public gathering spaces, recreation, cultural events, and vibrant community places that are comfortable and welcoming to all. We advance our beautiful park and recreation system with amenities that offer moments of play and connection with our neighbors.

Mobility

We have high-quality road and public transit systems that help prevent traffic fatalities and severe injuries, minimize traffic congestion and allow convenient and access to daily destinations. We are proud of our safe, walkable, accessible, and bikeable neighborhoods that promote these non-automobile modes of transportation.

Safety

We prioritize a safe and open community. Our streets have ample lighting, well maintained sidewalks, highly visible crosswalks, and protected bike lanes. Freeway access accommodates our need for evacuation in the event of an emergency. Our safety and law enforcement providers are partners with all of us in preparing for emergencies and in intervention and prevention of crime.

Youth

We invest in our youth by providing safe communities, access to health care, workforce development, educational pathways, quality housing, and parks and recreational opportunities for their well-being and growth.

Health

We promote both physical and mental health services through our infrastructure, facilities, stores, and services. This includes walking, biking, and access to healthy and safe foods. Healthcare and social services are plentiful and accessible to everyone in the community.

Education

We invest in the prosperity of our community and local workforce through a range of educational programs that provide academic advancement and job skills training. We are proud to provide educational services in Spanish, English, and other languages spoken locally.

Visión: Soledad es un pueblo pequeño con ideas grandes. Admiramos nuestra riqueza cultural y servimos como puerta de entrada al Parque Nacional Pinnacles. Somos una comunidad hospitalaria y diversa que se compromete a crecer de una manera sostenible, mejorar la calidad de vida, apoyar a los negocios y ser una ciudad segura y saludable donde todos prosperen.

Principios que nos guían

Economía

Cultivamos una economía prospera que apoya el comercio de buena calidad para las necesidades de nuestros residentes, los pequeños negocios y el turismo regional. Nuestro objetivo es dar empleos seguros y bien pagados a nuestros residentes para poder tener un mejor estilo de vida. Los residentes podrán comprar localmente para sus necesidades esenciales.

Vivienda

Garantizamos el acceso a viviendas seguras, diversas y de buena calidad, que estén cerca de escuelas, empleos, centros comerciales y parques. Ofreceremos opciones de vivienda para todos los residentes de todos los niveles de ingresos.

Equidad

Estamos comprometidos a la diversidad, equidad e inclusión y creemos que la voz de todos debe tomarse en cuenta para la formación de Soledad y en la participación de decisiones locales.

Centros Comunitarios

Valoramos los parques, los espacios públicos de reunión, la recreación, los eventos culturales y los lugares comunitarios vibrantes que son cómodos y agradables para todos. Crearemos un hermoso sistema de parques y recreación con amenidades que ofrecen momentos de juego y conexión con nuestros vecinos.

Movilidad

Contamos con sistemas de calles y transporte público de alta calidad que ayudan a prevenir accidentes graves, minimizan la congestión del tráfico y permiten un acceso conveniente a los destinos diariamente. Estamos orgullosos de nuestros vecindarios seguros, accesibles y transitables y que promueven modos alternativos de transporte.

Seguridad

Priorizamos una comunidad segura y abierta. Nuestras calles tienen amplia iluminación, banquetas bien mantenidas, cruces peatonales muy visibles y carriles seguros para bicicletas. El acceso a la autopista se adaptará a nuestra necesidad de evacuación en caso de emergencia. Nuestros proveedores de seguridad y agencia policiaca serán aliados de todos nosotros en la preparación de emergencias y en la intervención y prevención del crimen.

Juventud

Invertimos en nuestros jóvenes al proporcionar comunidades seguras, acceso a atención médica, desarrollo profesional, servicios educativos, viviendas de calidad y oportunidades recreativas para su bienestar y crecimiento.

Salud

Promovemos los servicios de salud física y mental a través de nuestra infraestructura, establecimientos, tiendas y servicios. Esto incluye caminar, andar en bicicleta y acceder a alimentos saludables y seguros. Los servicios sociales y de atención medica son diversos y accesibles para todos los miembros de la comunidad.

Educación

Invertimos en la prosperidad de nuestra comunidad y la fuerza laboral local a través de una variedad de programas educativos que brindan avance académico y desarrollo laboral. Estamos orgullosos de ofrecer servicios educativos en español, inglés y otros idiomas hablados localmente.

General Plan Visioning: Key Themes from Community Input

A. PUBLIC COMMENTS

The community visioning comments received through various public engagement events and efforts are organized by theme and parenthetically reference the source event. Many comments include multiple themes. All components of each comment are considered if they address multiple topics; but for ease of review, each comment is assigned to one theme only. Some comments note a "+" and number following the event title to demonstrate the number of times that topic came up in an event.

The themes are:

1. Housing
2. Environmental Justice
3. Circulation
4. Land Use
5. Jobs and Economy
6. Community Life
7. Parks and Recreation
8. Other

1. HOUSING

- What type of housing should the City focus on? (Hot Summer Days pop-up 7/8)
  - 20% of responses support rental apartments.
  - 16% of responses support single-family, detached homes.
  - 12% of responses support emergency shelters.
  - 12% of responses support mixed-use development.
  - 10% of responses support farmworker or employee housing.
  - 8% of responses support mobile home parks, but 0% of responses support mobile/manufactured homes.
  - 8% of responses support permanent supportive housing.
  - 8% of responses support tiny or micro homes.
  - 2% of responses support townhomes.

    - 2% of responses support accessory dwelling units.
    - 2% of responses support for-sale condominiums.
    - 2% of responses support “other” types of housing.
- What group of people should the City focus housing on? (Hot Summer Days Pop-Up 7/8)
    - 17% of responses support housing for low-income households.
    - 13% of responses support housing for students.
    - 11% of responses support housing for people experiencing homelessness.
    - 10% of responses support housing for people who work in Soledad.
    - 10% of responses support housing for farmworkers.
    - 10% of responses support housing for persons with disabilities.
    - 8% of responses support housing for first-time homebuyers.
    - 8% of responses support housing for seniors, independent living.
    - 6% of responses support housing for seniors that require assisted living.
    - 6% of responses support housing for households with children k-12.
    - 1% of responses support housing for “other” category.
- There is concern regarding gentrification and a need for more housing for residents. (Hot Summer Days Pop-Up, Dia de los Muertos event +1, Vision Survey +8)
- There is a need for more housing to attract more residents. (Hot Summer Days Pop-Up)
- There is a need for more affordable housing for low-income and “blue collar” worker populations. (Hot Summer Days Pop-Up +1, Dia de los Muertos event, National Night Out event)
- There is a need for more affordable moderate-income housing. (Dia de los Muertos event)
- There is a need for more family housing. (Hot Summer Days Pop-Up)
- There is a need for apartments uptown. (Hot Summer Days Pop-Up)
- There is a request for less “garage housing ADUs.” (Hot Summer Days Pop-Up)
- There is a need for more housing for seniors. (Dia de los Muertos event)
- There is a desire to keep the small town feel and prevent sprawl. (Dia de los Muertos event)
- What are the top three ways that the City can improve housing opportunities? (Dia de los Muertos event)
    - 20% partner with developers to build more affordable housing.
    - 14% educate residents on buying a home.
    - 13% preserve restrictions on affordable housing.

    - 13% develop programs to help residents pay for ownership housing (down payment assistance, low interest loans, etc.).
    - 10% provide supportive services and housing for unhoused residents.
    - 7% incentivize the construction of multi-family rental housing.
    - 7% provide rental assistance to keep residents housed.
    - 6% support tenant and landlord education programs.
    - 5% develop a housing rehabilitation program.
    - 5% work with agriculture businesses to construct family farmworker housing.
- There is a need for better housing to serve the local k-12 workforce. (Economic Development Focus Groups)
- There is a lack of sufficient affordable for-sale and rental housing options to serve all segments of the local workforce, including both single-person households and families. (Economic Development Focus Groups)

2. ENVIRONMENTAL JUSTICE

- Which three issues do you think are the most important to ensure all neighborhoods have access to healthy living conditions and environments? (Dia de los Muertos event)
    - 28% of responses noted concern regarding health care access.
    - 24% of responses noted concern regarding access to healthy food and grocery stores.
    - 23% of responses noted problems with or lack of city infrastructure and facilities that support physical activity, including sidewalks, bicycle lanes, parks, and recreation centers as a major concern.
    - 14% of responses noted concerns about access to safe and healthy housing.
    - 6% of responses noted concern regarding air pollution caused by vehicles.
    - 5% of responses noted concern regarding air or chemical pollution from industrial businesses and activities.

3. CIRCULATION

- There is a desire for safer streets and routes through the community, which includes protected bike lanes and improving crosswalks and signals near schools. (Hot Summer Days Pop-Up; Dia de los Muertos event)
- There is a need for another entrance/exit to and from Soledad to improve accessibility in and out of the city (+6), especially in case of emergencies and evacuations. (Hot Summer Days Pop-Up; Dia de los Muertos event, National Night Out, Vision Survey +2)
- There is a request to connect Nestles Rd to Metz Rd. (Hot Summer Days Pop-Up, Dia de los Muertos event)
- There is a need for expanded bus coverage. (Hot Summer Days Pop-Up)

- There is concern regarding traffic on 3rd St./Orchard Ln. (Hot Summer Days Pop-Up)
- There is a request for thirty-minute parking along Front St. in front of businesses. (+ 1, Dia de los Muertos event)
- There is a need to improve the quality of roads and sidewalks (+1), specifically on Andalucia Dr., Walker, and Monterey St. (Dia de los Muertos event)
- There is concern regarding an increase in traffic accidents and a request to improve road safety. (Dia de los Muertos event)
- There is concern that traffic moves too fast along San Vicente Rd. (Dia de los Muertos event)
- There is a request for a train station near Morsoli Rd, southeast of the city. (Dia de los Muertos event)
- Traffic improvements are needed to improve the freeway ramp at Front St and 101 as it is hard to maneuver for semitrucks. (Dia de los Muertos event)
- There is a need for a better connection between the south and north side of the city for bicycles and cars. (Dia de los Muertos event +1, Vision Survey +1)
- There is a request for speed bumps at 3rd and Metz as well as at North St. and Orchard Ln. (Dia de los Muertos event)
- There is a need for a better connection between the shopping center in the southern part of the city (Nestles Rd. and Los Coches Rd.) and the neighborhood to the north. (+ 1, Dia de los Muertos event)
- There is a request for police presence and traffic control at San Vicente and Front St. (Dia de los Muertos event)
- There is a request to fix damaged roads to improve safety. (+1, Vision Survey)
- There is a need for more traffic signals instead of stop signs. (Vision Survey)
- There is a request for a train station with service to the Bay Area. (Vision Survey)
- There is a need for alternative arterial roadways other than Main St. to reduce traffic impacts of growth. (Vision Survey)
- Vision Survey: What transit options are important to you? (in order of ranking)
    - Public transit to and from nearby cities.
    - Public transit to Downtown Soledad.
    - Transit to healthcare and retail facilities.
    - Regional transit service.
    - Transit to City events.

4. LAND USE

- There is a need for more shopping centers and stores, including coffee shops, sporting goods stores, clothing and shoe stores, and a pet supplies store. (Hot Summer Days Pop-Up, Vision Survey)
- There is a need for more restaurants and grocery stores, specifically a request for Safeway and an organic supermarket. (Hot Summer Days Pop-Up, Dia de los Muertos event)
- Community members would like to see more big-box retailers like Target, Walmart, and/or Costco. (+ 6 for Walmart/Costco specifically) (Hot Summer Days Pop-Up, Dia de los Muertos event). There was a request for Walmart because it has a pharmacy as well. (Vision Survey)
- There is a need for a hospital (+5) and more healthcare facilities, specifically a lab, urgent care clinics, dentists, and veterans' care. Residents say they must travel to Salinas in case of emergency. (Hot Summer Days Pop-Up, Dia de los Muertos, Vision Survey)
- Community members would like spaces for indoor physical recreational activities like a gym, gymnastics facility, bowling alley (+2), skating rink, soccer field, and dance studio. (Hot Summer Days Pop-Up, Dia de los Muertos event, Vision Survey)
- Community members would like spaces for outdoor physical recreational activities like a water park, mini petting zoo, or go-kart track. (Hot Summer Days Pop-Up)
- There is a desire for In-N-Out, a donut shop, or bowling alley in the southern industrial portion of the city. (Dia de los Muertos event)
- There is a need for more places for people to receive services related to food, housing, etc. in town that do not require extensive driving. (Dia de los Muertos event)
- There is a need for more event venues. (Dia de los Muertos event)
- There is a request for more mixed-use properties (commercial on bottom, residential on top) in the Neighborhood Commercial zoning district. (Dia de los Muertos event)
- There is a request for more stores at the neighborhood commercial site at Orchard Ln and Gabilan Dr. (Dia de los Muertos event)
- There is a request for a CSU Monterey Bay satellite campus in South County, particularly one that offers a master's in social work. This would bring more services to the area if there were more people here with this type of training. +1 (Dia de los Muertos event)
- There is a request for a commercial area and shopping center in the west side of town, just east of 101. + 1 (Dia de los Muertos event)
- There is a desire for a more active downtown. + 1 (Dia de los Muertos event)
- There is a desire for controlled commercial development with proper traffic flow management. (Vision Survey)
- There is a desire for more national businesses, chain stores, restaurants, and banks. +7 (Vision Survey)
- Community members want a walkable city with more public plazas. (Vision Survey)

5. JOBS AND ECONOMY

- Have an emphasis on a tourist attraction day trip. (Hot Summer Days Pop-Up)
- There is a need for more living-wage/higher-paying jobs and affordable childcare. (Hot Summer Days Pop-Up)
- There is a need for day care for middle-income families as many do not qualify for childcare subsidized for lower-income families. +3 (Dia de los Muertos)
- There is a need for more jobs in Soledad. (Hot Summer Days Pop-Up, Vision Survey)
- Not bringing tourist attractions, which can raise home prices. (Vision Survey)
- More work opportunities and economic growth to encourage people to make and spend their money in Soledad. +2 (Vision Survey)
- There is a need for more local jobs for young residents graduating from local high schools and colleges. (Hot Summer Days Pop-Up, National Night Out)
- There is a request for a local DMV branch. (Dia de los Muertos)
- What are the top three priorities you think are most important to bring to economic development to Soledad? (Dia de los Muertos event)
    - 20% of responses promote the development of new retail establishments such as clothing stores, restaurants, major grocery stores, office spaces, etc.
    - 16% of responses support revitalizing Front Street by supporting existing and encouraging new businesses.
    - 12% of responses support investing in high quality childcare.
    - 12% of responses support expanding youth employment opportunities.
    - 10% of responses support increasing access to government services like DMV and County Court Services.
    - 9% of responses support attracting new industries to Soledad that produce jobs.
    - 7% of responses support increasing access to job training programs and access to higher education.
    - 6% of responses support the development of the Shipping Container Village.
    - 4% of responses support Soledad as a tourist destination and building more tourist-serving businesses, such as hotels.
    - 3% of responses supported expanding resources and technical assistance for small business owners.
- Soledad's rich history and cultural heritage is a major economic asset, as well as the city's proximity to Pinnacles National Park. (Economic Development Focus Groups)
- Key potential economic growth sectors include tourism; value-added food and wine businesses building on the City's existing strength in agriculture (for example, a new wine trail

and related services); and additional local and regional serving retail and food and beverage uses. (Economic Development Focus Groups)

- Hartnell College is an important opportunity for providing a bridge to local residents seeking a four-year college degree. (Economic Development Focus Groups)
- There is a lack of infrastructure (roads, signage, reliable utilities) to support food and wine businesses. (Economic Development Focus Groups)
- Business owners appreciate the Economic Development Department's ongoing collaboration and assistance for small business owners as represented by monthly "Cafecito" meetings and new grant opportunities. (Economic Development Focus Groups)
- Business owners appreciate new and growing local and regional-serving retail centers such as the Marketplace. (Economic Development Focus Groups)
- Business owners expressed concern about retail vacancies and a lack of regional awareness of Soledad's retail offerings. (Economic Development Focus Groups)
- Attracting new retailers and other businesses is a challenge and often based on market and cost constraints which are driven by trends in the broader economy. (Economic Development Focus Groups)
- The limited supply of new and refurbished commercial spaces, including smaller spaces for services, co-working and new types of space needed for local entrepreneurs is a challenge. (Economic Development Focus Groups)
- Current lodging options are limited and the existing two hotels within the city boundaries are often at "full" occupancy. There is a need for new lodging products to accommodate a wider range of recreational visitors. (Economic Development Focus Groups)

6. COMMUNITY LIFE

- Community members would like to see more family and community events, like a kite festival. (Hot Summer Days Pop-Up)
- The City should have special events for the Latino community, such as Day of the Dead. (Hot Summer Days Pop-Up)
- Would like to see more after-school activities. +1 (Hot Summer Days Pop-Up; Dia de los Muertos)
- Would like a farmer's market with local fruits and vegetables. (Hot Summer Days Pop-Up 7/8)
- Native American history museum. (Dia de los Muertos event)
- There is a desire for a youth center and/or a Boys and Girls Club, as well as more resources for young people like art and dance classes. (National Night Out)
- There is a desire for more schools at all levels (elementary school, high school and middle school). (Dia de los Muertos event, National Night Out, Vision Survey)

- There is a request for improved lighting throughout the community, especially more streetlights along Palm Ave, San Vicente Rd., and Monterey. (Dia de los Muertos event)
- Programs to help those dealing with substance-abuse, mental health, family and individual counseling that is affordable or no cost. (Vision Survey)
- Youth programs with law-enforcement, elementary through high school, to break down stigmas and create unity and understanding. (Vision Survey)
- Youth engagement programs to encourage civic involvement. (Vision Survey)
- Events that support small businesses. (Vision Survey)
- More police and crime prevention. +1 (Vision Survey)
- More resident involvement in government decisions. There were specific complaints regarding resident power to choose the mayor and corruption in city council). +2 (Vision Survey)
- More social and nightlife options, such as concerts and cinemas. +1(Vision Survey)
- More retail and entertainment options for young people, such as a boba shop, clothing stores, an arcade/mini golf business. (Vision Survey)
- A cleaner Front St free of debris and litter. (Vision Survey)
- What are the top three ways the City can enhance public safety in Soledad? (Dia de los Muertos event)
    - 19% of responses support investing in the Soledad Explorer Program and other youth violence prevention programs.
    - 15% of responses support supporting and expanding animal control services.
    - 14% of responses support investing in adequate street lighting for pedestrian and vehicular travel.
    - 13% of responses support expanding domestic violence/social and mental health services.
    - 13% of responses support implementing and strengthening traffic calming measures in and around schools.
    - 12% of responses support identifying unsafe pedestrian environments and support health and safety revitalization.
    - 11% of responses support increasing access to disaster relief/emergency shelters (schools, City Hall, Soledad Community Center, and other public facilities are currently listed).
    - 3% of responses support promoting code enforcement/elimination of blight in neighborhoods.

7. PARKS AND RECREATION

- There is a need for additional dog parks. Potential locations for new dog parks are near McDonalds and near the Tesla station. (Hot Summer Days Pop-Up)
- There is a need for more parks, playgrounds, and recreation areas for families and children. (Hot Summer Days Pop-Up, National Night Out, Dia de los Muertos event)
- There is a desire for more soccer fields, including an indoor soccer field. (Hot Summer Days Pop-Up, Vision Survey)
- There is a need for more shade in parks. (Hot Summer Days Pop-Up; Dia de los Muertos event)
- There is a request to open the pool earlier than 7:00am. (Hot Summer Days Pop-Up)
- There is a need for bike lanes through parks. (Hot Summer Days Pop-Up)
- There is a request for space to ride off-road bikes. (Hot Summer Days Pop-Up)
- There is a request for more lighting at Veteran's Park. (Dia de los Muertos event)
- There is a desire for community gardens and accompanying education opportunities. (National Night Out)
- Community sports for young adults and adults. (Vision Survey)
- Activities for seniors. (Vision Survey)
- There is a desire to maintain existing park and recreation facilities and equipment. (Vision Survey)
- There is a desire for grassroots organized community programs for kids and teens. +1 (Vision Survey)

8. OTHER

- There is a need for more public restrooms and waste bins. (Hot Summer Days Pop-Up)
- There is a need for more English-as-a-second-language (ESL) classes. (Hot Summer Days Pop-Up, National Night Out)
- There is a need for more social services and code enforcement. (Hot Summer Days Pop-Up)
- There is a suggestion for a social services center. (National Night Out). There is also a suggestion for more social services at City Hall (Vision Survey)
- There is a need for more security in schools. (Hot Summer Days Pop-Up)
- There is a need for improved/faster internet. +1 (Vision Survey)
- There is a desire for renewable energy. (Vision Survey)

Visioning Survey Results

- Which of the following should be the City's priority for the next five years? (score out of 5 noted in parentheses)
  - Expand and encourage community revitalization efforts (2.8)
  - Work to enhance the economic development environment through business assistance and development (2.6).
  - Provide crisis assistance for those suffering from mental health illness, addiction and/or lacking shelter (2.5).
  - Expand opportunities for positive police and youth interactions (2.1).
- What would you like to see in your neighborhood? (all responses scored between 3 and 5)
  - Top 3:
    - Parks and trails
    - Improvements (sidewalks, lighting, street landscape)
    - Grocery or convenient stores
  - Second three:
    - Shade trees
    - Healthy food choices
    - Increased safety
  - Lowest:
    - Transit options

RESOLUTION 2024-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SOLEDAD RECOMMENDING THAT THE CITY COUNCIL ACCEPT THE VISION AND GUIDING PRINCIPLES FOR THE 2045 SIEMPRE SOLEDAD GENERAL PLAN UPDATE

WHEREAS, the City of Soledad (City) adopted the General Plan in 2005; and

WHEREAS, the General Plan's vision and guiding principles provide a roadmap for the future, highlighting key themes that need to be addressed; and

WHEREAS, the guiding principles act as touchstones to ensure that the goals, policies, and implementation programs align with the overarching vision; and

WHEREAS, the vision statement reflects what the community values most about the city and their aspirations for the future. Its purpose is to inspire and set the direction for the General Plan's goals, policies, and implementation programs; and

WHEREAS, between November 1st, 2023 and February 29, 2024, an extensive community engagement outreach process was conducted to gather feedback on some of the main issues facing the City of Soledad. The process involved various activities such as community events, canvassing, Facebook posts, pop-ups, and interactive surveys; and

WHEREAS, Staff has received responses and comments from the General Plan Advisory Committee and the Community and has prepared the Vision and Guiding principles for the 2045 Siempre Soledad General Plan Update.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Soledad that the 2045 Siempre Soledad Vision and Guiding Principles hereby accurately reflects the City's progress in implementing the 2045 General Plan; and

BE IT FURTHER RESOLVED that the Planning Commission of the City of Soledad hereby recommends that the City Council of the City of Soledad receives and accepts the 2045 Siempre Soledad Vision and Guiding Principles as **Exhibit "A"**.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Soledad at a regular meeting duly held on the 14th day of March 2024 by the following vote:

AYES, and in favor thereof Commissioners: Josie Perez-Aguilera, Sergio Diaz, Roberto Cruz, Sandy Fuerte, Lorenzo Sanchez

NOES, Commissioners:

ABSENT, Commissioners:

ABSTAIN, Commissioners:

Josie Perez-Aguilera (Apr 11, 2024 15:43 PDT)

Josie Perez-Aguilera
Chairperson, Planning Commission City of Soledad

ATTEST:

KAO NOU YANG
Secretary of Planning Commission
City of Soledad

Resolution No. 2024-04 The General Plan Vision and Guiding Principles

Final Audit Report 2024-04-11

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By:	Andrea Navarrete (anavarrete@cityofsoledad.com)
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"Resolution No. 2024-04 The General Plan Vision and Guiding Principles" History

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Document e-signed by Josie Perez-Aguilera (hjaguilera@yahoo.com)
Signature Date: 2024-04-11 - 10:43:01 PM GMT - Time Source: server

Agreement completed.
2024-04-11 - 10:43:01 PM GMT

Soledad General Plan 2045

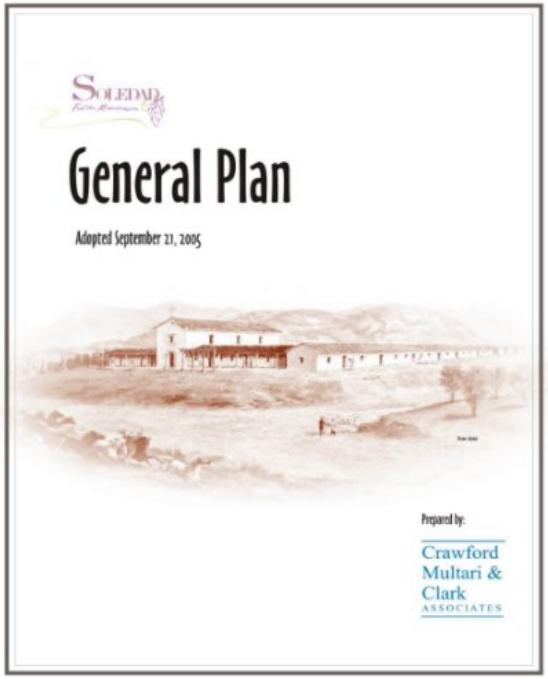
Siempre Soledad

City Council

May 1, 2024

General Plan Update

- Required by State Law
- Fundamental land use and development policy document
- Shows how the city will grow and conserve resources
- Establishes community vision for the physical form of the city
- Identifies important community issues
- Basis for fair and consistent local land use decisions and related policies



Where Are We Now?

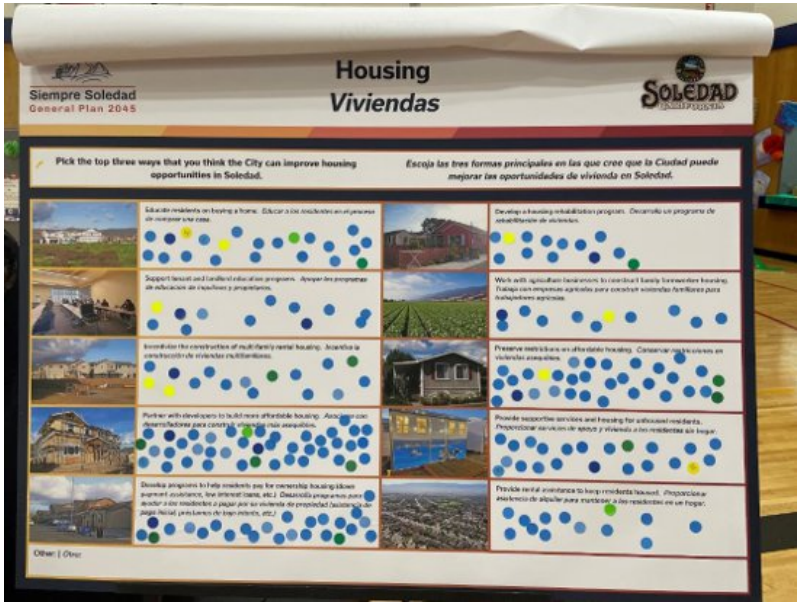
- Existing Conditions Memos and Briefing Book
- Vision and Guiding Principles
- Housing Element *(on a separate State-mandated timeline)*
- Draft Alternatives
- Policy Development
- Draft General Plan document
- Environmental Impact Report (EIR)
- Final General Plan and Adoption

Round 1: Community Input Ahead of the Vision

- Summer 2023 through Winter 2023
- Community pop-up events
  - » Hot Summer Days
  - » National Night Out
  - » Farmer's Market
  - » Resource Fair
- Economic development focus groups
- Dia de los Muertos community event
- Online visioning survey = 166 responses

Round 2: Community Input on the Vision

- Round two outreach occurred in February 2024
- Community pop-up events
  - » State of the City
  - » Las Viviendas Affordable Housing Workshop
- Online visioning survey = 98 responses
  - Approximately 90% approval for the Vision Statement and over 70% approval for each Guiding Principle.
  - Some respondents believe that they do not reflect on-the-ground conditions. However, the vision is aspirational and future-oriented.



GPAC & PC Input on Draft Vision

- GPAC met on February 12th ; PC met on March 14th
- Made the following changes:
  - Add National Park to Pinnacles in the vision.
  - Acknowledge balanced and orderly growth in the vision.
  - Include people with disabilities in the transportation guiding principle.
  - Acknowledge a commitment to intervention and prevention programs in the safety guiding principle.
  - Acknowledge commitment to diversity, equity, and inclusion in the equity guiding principle.
  - Expand the community places principle to go beyond Downtown and highlight the City's goal to also make other community places vibrant.
  - PC: Add the word "safe" in the housing guiding principle.
  - PC: Acknowledge people with disabilities in the guiding principles, specifically in the transportation guiding principle.

PLACEWORKS

Questions?

Siempre Soledad
General Plan 2045

EXHIBIT A

General Plan Advisory Committe & Planning Commission edits highlighted in Yellow

Vision: Soledad is a small town with big ideas, celebrating our rich cultural heritage and serving as the gateway to Pinnacles National Park. We are a welcoming and diverse community that is committed to sustainable growth, improving quality of life, supporting businesses, and being a safe and healthy city where everyone thrives.

Guiding Principles

Economy
We cultivate a thriving economy that supports quality retail for our residents' shopping needs, small businesses, and regional tourism. We aim to provide our residents with secure and well-paying jobs that will serve as the backbone of their livelihoods. Residents are able to shop locally for their essential needs.

Housing
We ensure access to quality, safe, and diverse housing near schools, jobs, retail, and parks that is affordable to residents of all income levels.

Equity
We are committed to diversity, equity, and inclusion and believe everyone has a voice in shaping Soledad and participating in local decision making.

Community Places
We value parks, public gathering spaces, recreation, cultural events, and vibrant community places that are comfortable and welcoming to all. We advance our beautiful park and recreation system with amenities that offer moments of play and connection with our neighbors.

Mobility
We have high-quality road and public transit systems that help prevent traffic fatalities and severe injuries, minimize traffic congestion and allow convenient and access to daily destinations. We are proud of our safe, walkable, accessible, and bikeable neighborhoods that promote these non-automobile modes of transportation.

Safety
We prioritize a safe and open community. Our streets have ample lighting, well maintained sidewalks, highly visible crosswalks, and protected bike lanes. Freeway access accommodates our need for evacuation in the event of an emergency. Our safety and law enforcement providers are partners with all of us in preparing for emergencies and in intervention and prevention of crime.

Youth
We invest in our youth by providing safe communities, access to health care, workforce development, educational pathways, quality housing, and parks and recreational opportunities for their well-being and growth.

Health
We promote both physical and mental health services through our infrastructure, facilities, stores, and services. This includes walking, biking, and access to healthy and safe foods. Healthcare and social services are plentiful and accessible to everyone in the community.

Education
We invest in the prosperity of our community and local workforce through a range of educational programs that provide academic advancement and job skills training. We are proud to provide educational services in Spanish, English, and other languages spoken locally.

AGENDA ITEM NO. 2.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Consider Proposed Changes to Councilmember Compensation and Provide Direction to Staff**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Megan Hunter, City Manager**

THROUGH:

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council receive and discuss information concerning the ability to increase council compensation and provide staff with direction for future consideration and action.

Executive Summary

State law regulates compensation for councilmembers. As was previously discussed with the Council, Senate Bill No. 329, adopted in 2023, allows significant increases in council compensation for the first time in almost 40 years. The last adjustment to the Soledad City Council's compensation was implemented in 2012. After discussing the new law, the Council requested that additional information be brought back detailing a range of potential increases. Staff is seeking direction from the Council on what increase, if any, it would like to see brought forward for future Council consideration and adoption.

Background

State law regulates maximum compensation for councilmembers and when adjustments to compensation become effective. The compensation schedule for general law cities like Soledad has not been adjusted by the legislature since 1984, meaning that city council compensation has not kept pace with inflation. On June 29, 2023, Governor Newsom approved Senate Bill No. 329 ("SB 329") which amended Government Code Section 36516 so as to increase the maximum amount of councilmember salary that may be approved by an ordinance passed by the city council. According to SB 329's author, the salary increases authorized by the new law are designed to address recent inflationary increases and economic realities, enable city councilmembers to balance their careers and personal obligations with the calling to serve the community, and provide incentive for members of marginalized communities to provide public service to a city.

Under AB 329, council compensation may be adjusted in several ways, including: 1) On the basis of a city's population; 2) By an amount equal to 5% for each calendar year from the operative date of the last

salary adjustment; or, 3) By an amount equal to inflation, based on the Consumer Price Index commencing in January of 2024, which may not exceed 10% for each calendar year. All increases must be adopted by ordinance, with a first and second reading, and include findings concerning the need for the proposed increase.

Additionally, the Council may also place the issue of Council compensation on the ballot at any municipal election, proposing that the compensation be increased beyond or decreased below the amounts set forth in Gov. Code Section 36516. The voters would then decide whether the proposed salary should be enacted. See Attachment A, copy of SB 329 amending Section 36516 of the Government Code.

Review & Analysis

The current salary for the Soledad City Council was established by resolution in 2012. In recognition of economic downturn at that time, the compensation for the Mayor was temporarily reduced for one year from $612 per month to $551 per month, or $6,612 annually, while the compensation for councilmembers was temporarily reduced for one year from $512 per month to $451 per month, or $5,412 annually. Currently City Council salaries are $612 per month for Mayor or $7,344 annually, and Councilmembers are $512 per month or $6,144 annually. (Note that per Soledad Municipal Code Section 2.28.010 and Government Code Section 36516.1, the mayor receives one hundred dollars per month in addition to his/her salary as a councilmember.)

This is an appropriate time to consider salaries given the recent vacancy on the Council and upcoming election of the mayor and two councilmembers. As noted, when the state legislature increased salaries, the change may make it feasible for candidates with less financial resources to consider elected office. This increase may also help defray expenses related to child and elder care to attend meetings.

Pursuant to the provisions of Government Code Section 36516, the Council's compensation choices are:

A. Apply the new maximum salary established by SB 329 for cities with a population of 35,000 or less to set the salary for council members in Soledad at $950 per month, or $11,400 annually. The salary for the Mayor would be $1,050 per month or $12,600 annually. This would represent a seventy-eight percent (78%) increase in council compensation.

B. Choose to increase the salary of Councilmembers to an amount below the maximum salary. Examples of annual and monthly salaries are as follows:

5% increase–Mayor - $7,656, ($638), Councilmember - $6,456, ($538)
10% increase–Mayor - $7,956, ($663), Councilmember – $6,756, ($563)
15% increase–Mayor - $8,268, ($689), Councilmember - $7,068, ($589)
20% increase–Mayor - $8,568, ($714), Councilmember - $7,368, ($614)

C. Consider adoption of an ordinance that would increase council compensation by either of the two formulas provided in Government Code Section 36516.

Application of the formula that allows for a 5% annual increase for every year since the last salary adjustment, or 2012, would result in a new annual salary of $11,028, ($919) for the Council, and $12,228, ($1,019) for the Mayor.

The Council could consider a lesser annual multiplier, with the results being as follows:
4% annually–Mayor - $11,040, ($920), Councilmember - $9,840, ($820)
3% annually–Mayor - $9,960, ($830), Councilmember - $8,760, ($730)
2% annually–Mayor - $8,988, ($749), Councilmember - $7,778, ($649)
1% annually–Mayor - $7,824, ($652), Councilmember - $6,624, ($552)

The other method listed for increasing salaries, by using the CPI commencing in January of 2024, capped at a maximum of 10%, would result in a new annual salary of $6,288, ($524) for the Council and $7,488, ($624) for the Mayor.

D. The Council may wish to reference and consider the percentage increase to the City's employees over the same time period. In December 2013, SEIU received a one-time stipend of 2.5% of salary. Thereafter SEIU employees received COLA increases of 2.5% in 2015, 2.5% in 2016, 2% in 2017, 2% in 2018, 3% in 2019, 3.5% in 2020, 3.25% in 2021, 3.5% in 2022, and 3.5% in 2023.

Based on this formula, a new annual salary for the Council would be $7,960 annually ($660) and for the Mayor $9,120 ($760).

E. Place a measure before the voters asking them to establish the salaries of the council and mayor. Said amount could be greater or less than the population-based maximums established in Section 36516.

Staff is seeking direction from the Council on whether they would like to consider a salary increase, and the amount thereof so that an appropriate ordinance can be prepared. Note that while any the Ordinance adopted by the Council would take effect thirty days after adoption, by operation of Government Code Section 36516.5, any change in salary would not take effect until the first pay period after a councilmember commences a new regular term of office, or after the election in November of 2024

Financial Considerations

The financial impact will depend on whether an increase is proposed and in what amount. Current council salaries total $31,920. With the most aggressive statutory increase based on population, total council salaries would be $58,200. This would be an annual increase of $26,280.

Alternatives

- Council may provide direction to Staff to prepare an ordinance increasing councilmember compensation for Council consideration.
- Council can request that a measure on council compensation be placed before the voters at the next municipal election.
- Council can request that this matter be deferred for the time being and brought back at Council request at a future date.

Planning/CEQA

Not Applicable.

Public Notice Requirements

Not required at this time.

AGENDA ITEM NO. 3.

CITY OF SOLEDAD
STAFF REPORT

SUBJECT: **Consideration of Council Rules, Procedures, Protocols, and Decorum and Provide Direction to Staff**

TO: **Honorable Mayor Velazquez and City Council**

FROM: **Megan Hunter**

THROUGH:

MEETING DATE: **May 1, 2024**

Recommendation

It is recommended that the City Council receive the staff report and provide direction to staff on Council Rules and Procedures and possible revisions or additions to address meeting protocols and decorum.

Executive Summary

At the meeting on April 3, 2024, both the Mayor and Mayor Pro Tem asked that an item be placed on the City Council agenda to discuss ways to improve the efficiency and decorum during meetings. While the City Council has adopted Rules and Procedures, some Councilmembers have questioned their effectiveness and indicated that they should be revisited. Based on this input, the City Manager contracted with a facilitator to conduct a workshop on Good Governance. On August 23, 2023, this workshop was held, and the Council reached a consensus on ways to improve the meetings. Although a consensus was reached, these meeting protocols have never been formerly adopted but were intended to be considered as part of future revisions to the Rules and Procedures. Staff is seeking direction on potential revisions to the Rules and Procedures or adoption of new polices. To aid in the discussion, the City of Temecula's Protocol Manuel has been included as Attachment 3 and could be a potential model.

Background

Over the last couple of years, the Mayor and Councilmembers have expressed concern over the length and effectiveness of the meetings and at times, the contentiousness on the dais. Although there is a Council Rules and Procedures Subcommittee to discuss these items, it has not met in well over a year. The current members of the subcommittee are Mayor Velazquez and Mayor Pro Tem Corralejo. At the April 3, 2024, both subcommittee members requested this item be brought to the City Council for discussion.

Although the subcommittee has not met in some time, the City Council as a whole did meet to discuss

good governance and talk about meeting protocols on August 23, 2023. The Council did reach consensus on several meeting protocols that have not been adopted or fully implemented. They are included in this report as Attachment 2. There has been discussion on revising the formally adopted Council Rules and Procedures (Attachment 1) to include more specific meeting protocols based on the August 23, 2023 consensus.

Review & Analysis

Over the years, the City has grown significantly and has sought to engage more residents in city governance. This has resulted in more agenda items and more public comment lengthening meetings and sometimes adding to Council divisions. This has been further complicated with the addition of Zoom that allows people to comment remotely. While past Council meetings may have had less business, been more informal, and had less debate, this is not the case today and meetings go on for much longer. Soledad is not alone in having longer and more contentious meetings, exacerbated by hostilities found on social media. For all of these reasons, it is advisable to modernize the Council Rules and Procedures and to set guideposts related to decorum. All Councilmembers agree that healthy debate is good but attacking each other is not productive.

The Council has a good set of Rules and Procedures to start from. These Rules and Procedures were adopted in January 2020 prior to the pandemic. Although these Rules and Procedures need to be revised to reflect some of the changes brought by the pandemic such as televised meetings, they are not very old and reflect many modern-day practices. The Council can consider incorporating Attachment 2, the meeting protocols from August 23rd into the current Rules and Procedures. The City Council could also restructure some of the content and follow examples of other cities. The Council could direct Staff to explore multiple examples and bring back an analysis for further discussion. As an example, Staff attached the City of Temecula's Protocol Manuel. There are many worthy policy discussions that could be included in Soledad's current Rules and Procedures such as how to place an item on the agenda.

Finally, the Council Rules and Procedures Subcommittee has not met for well over a year and the Rules and Procedures have not changed since their adoption in 2020. The Council could reconstitute the Subcommittee and direct Staff to coordinate meetings. The subcommittee then could recommend revisions and/or additions for the City Council to consider at a later date.

Financial Considerations

Unless the City Council recommends hiring a facilitator to support this effort, the only costs would be staff time and City Attorney expenses. If the direction is clear, it will help reduce City Attorney expenditures.

Alternatives

Staff is merely seeking direction on this item.

Planning/CEQA

This action is not considered a project under CEQA.

Public Notice Requirements

Not required.

Attachment(s):
Attachment 1. City Council Rules Policies and Procedures
Attachment 2 - Council Consensus on Meeting Protocols, Goal Setting, and Next Steps - August 23, 2023
Attachment 3 - Temecula 2024 Protocol Manual

Attachment 1

CITY COUNCIL RULES, POLICIES AND PROCEDURES

CITY OF SOLEDAD

ARTICLE I

GENERAL

Section 1. Scope

(A) Definition. These Soledad City Council Rules, Policies and Procedures shall govern the Soledad City Council and all of its affiliated subcommittees. This document is also designed to describe the manner in which councilmembers should treat one another, city staff, constituents, and others they come into contact with in representing the City of Soledad.

(B) Delegation. The City Council may delegate certain powers to the Mayor. No assignment, referral or delegation of authority by the Council shall preclude the Council from exercising the authority required to meet its responsibilities for operation of the City. The Council shall retain the right to rescind any such delegation.

Section 2. Powers

The Council shall have and exercise the powers set forth in California Government Code Sections 37100 et seq. and 37200 et seq.

Section 3. Purpose and Organization

(A) Purpose and Organization

(1) Purpose

The City is organized and operated pursuant to California Government Code Section 36800 et seq. The general functions of the City Council are to:

(a) Promote the development, maintenance and improvement of the City and related facilities as well as the protection of the City's natural, residential, industrial and commercial environments. Such efforts shall include promotion of the City of Soledad's Mission Statement, which provides:

> "The City of Soledad is committed to serving our community and improving the quality of life while celebrating our heritage and diversity."

(b) Oversee organized methods of efficient financial management.

(c) Attract a staff of highly qualified and competent employees and provide these employees with a clean, safe, working environment and opportunities for professional growth.

(2) Organization

(a) Council

The Council shall consist of five (5) members, an elected Mayor and four (4) council members, each of whom shall be a registered voter residing in the City. Members shall be elected by the registered voters residing in the City, pursuant to California Elections Code Section 32100, et seq. The terms shall be set in accordance with California Government Code Section 36503. An employee of the City may not be a Council member.

(b) City Manager

Pursuant to Chapter 2.08 of the Soledad Municipal Code, the Council is authorized to appoint a City Manager who shall, under the direction of the City Council, act as the administrative head of the City. The qualifications of the City Manager shall meet the requirements established by the Council. The duties of the City Manager shall be those set forth in Section 2.08.060 of the Soledad Municipal Code, as may be amended from time to time.

(c) City Attorney.

The Council is authorized to appoint a City Attorney who shall provide legal advice to the City Council and legal services and representation to the City as a whole. The City Attorney shall serve at the pleasure of the City Council.

(d) Staff.

The City Manager shall be responsible for maintaining a suitable staff to conduct the business of the City. The Council has approval powers over the size and organization of the staff.

Section 4. Council Member Duties and Responsibilities

(A) Duties of the individual Council members include, but are not necessarily limited to:

(1) Attendance at Council meetings.

(2) Attendance at meetings of committees to which the member is assigned.

(3) To relate community input to the Council.

(4) Representation of the City in a positive and effective manner in public forums.

(5) As appropriate, to be politically active on behalf of the City and its interests and needs.

(6) Becoming knowledgeable about City operations and services so that Council members can effectively question reports of the City Manager, staff and consultants and evaluate the answers.

(7) Participation in annual evaluation of the City Manager, conducted according to established procedures.

(8) Participation in orientation and training programs for new Council members.

(9) Participation in City workshops, including, but not limited to, annual budget and strategic plan workshops.

(10) Attendance, and where appropriate, representation at area and regional meetings. Said duty shall include responsibility for notifying the Council, Mayor or City Manager if unable to attend a meeting where representation is required so that an alternate can be notified or appointed to represent the City.

(B) Create necessary committees and subcommittees, and thereafter consider and approve or disapprove the elected Mayor's nominations and proposed appointments for various members on Council committees, subcommittees and all other subcommittees, boards and commissions.

(C) Vacancies

Where the office of a Council member, including the Mayor, becomes vacant during his/her term, the vacancy may be filled for the unexpired portion of the term by appointment by the majority of remaining Council members within thirty (30) days of the vacancy. Alternatively, the Council may call for a special election to fill the vacancy in accordance with Government Code Section 36512.

(D) Compensation

Council members may receive a salary in accordance with California Government Code Sections 36516 and 36516.5 and shall be allowed reimbursement for actual and necessary expenses incurred in the performance of their duties. The elected Mayor may draw a salary in addition to that established for council members if approved by the electorate or by an ordinance adopted by a majority of the Council.

(E) Conflict of Interest

Council members shall be required to follow the current Conflict of Interest Code adopted by the State of California.

ARTICLE II

MEETINGS

Section 1. All regular Council meetings shall be held in the City Hall in the City of Soledad, and shall be open to the public.

Section 2. Regular meetings

Regular meetings of the Council shall be held in accordance with a schedule adopted by resolution of the City Council. Any person may request that a copy of the agenda of any meeting of the Council be mailed to that person. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The Council may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the Council taken at the meeting for which the agenda or agenda packet was not received.

Section 3. The Council may from time to time, by majority vote, change the time and place of a regular meeting. The Council may at their option start the closed session of a regular meeting before 6:30 P.M., in an effort to begin open session proceedings on time. Such closed sessions will be noticed on the agenda.

Section 4. Special Meetings

Special meetings of the Council may be called at any time by the Mayor, or at the written request of a majority of the members of Council delivered to the City Clerk. Written notice of such special meetings shall be given to each Council member and to each local newspaper of general circulation and radio or television stations requesting notice in writing. The notice shall

be delivered personally or by any other means and shall be received at least twenty-four (24) hours before the time of the meeting. The notice shall specify the time and place of the meeting and the business to be transacted; no other business shall be considered at said meeting. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes, files with the City Clerk a written waiver of notice. The waiver may be given by telegram. Written notice may also be dispensed with as to any member who is present at the meeting at the time it convenes. The call and notice shall be posted at least twenty-four (24) hours prior to the special meeting in a location that is freely accessible to the public.

Section 5. For regular and special meetings of the Council, a quorum shall be three (3) of the Council members.

Section 6. All actions of the Council shall require a majority of three (3) of the Council members.

Section 7. Any meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the members present. Less than quorum may adjourn from time to time. The Mayor is given the authority to cancel a regular meeting if there are no public hearings or business items scheduled to be conducted at the meeting. Written notice of cancellation shall be given to each Council member and to each local newspaper of general circulation. The notice of cancellation shall be delivered personally or by any other means and shall be received at least twenty-four hours before the scheduled meeting time. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. The resulting adjourned meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

Section 8.

(A) At least seventy-two (72) hours before a regular meeting the City Clerk of the Council, or designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. No action shall be taken on any item not appearing on the posted agenda. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132). The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. The agenda should also include information regarding how, to whom and when a request for translation services may be made by a person who requests assistance in addressing the Council or understanding council discussion and actions at a given meeting.

(B) Notwithstanding subdivision (a), action may be taken on items of business not appearing on the posted agenda under any of the following conditions. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the Council that an emergency situation exists, as defined by Section 54956.5 of the Government Code;

(2) Upon a determination by a two-thirds vote of the Council, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that the need to take action arose subsequent to the agenda being posted as above provided;

(3) When the item was posted pursuant to the foregoing provisions of this section for a prior meeting of the Council occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which the action is being taken.

(C) Prior to each council meeting, the City Manager shall arrange a list of such matters to be included on the Council's meeting agenda, including all ordinances, resolutions, reports, communications, contracts, documents or other matters. Assistance in this regard may be provided by the Mayor, City Clerk and City Attorney. Prior to agenda posting, any council member may request that the City Manager place a given item on an agenda. Upon receipt of such a request, said item shall thereafter be placed on the next available meeting agenda, unless otherwise directed by the requesting council member. The authority of a single council member to have an item placed on a pending agenda shall not apply to matters on which the Council has already taken action or removed from formal consideration for a specified or indefinite time. In such instances, a council member must obtain the consent of a majority of the Council at a noticed meeting prior to having a given matter agendized for consideration, consideration on an expedited basis, or reconsideration. With respect to a matter on which the Council has already considered and taken action on the merits, reconsideration can only be proposed by a council member who voted with the majority vote on said matter.

Section 9. The abstention of a member from voting on an item at a meeting at which a quorum is present shall constitute consent on the part of the abstaining member(s) that the matter be determined by the vote of the other members present and not abstaining, subject to Section 6. In the event of one abstention, with or without cause, and a subsequent tie caused by a two-vote-in-favor/two-vote-against vote of the remaining council members, the involved action shall be deemed to have failed for lack of an affirmative vote of the majority of council members.

Section 10. The Mayor, or in the absence of the Mayor the Mayor pro tempore, shall call meetings to order and shall act as the presiding officer thereof. In the absence of both the Mayor and the Mayor pro tempore, a chairperson elected by the members present shall call meetings to order and shall act as the presiding officer thereof.

Section 11. Public Meetings

All regular, special and adjourned meetings of the Council shall be open to the public unless otherwise provided by law. Members of the public who desire to present oral comments to the Council shall observe the following:

(A) Prior to speaking, the intended speaker shall identify him/herself and provide an address for the City's future reference.

(B) The duration of the oral comments shall not exceed three (3) minutes without the prior consent of the Mayor of the Council.

(C) The time for oral comments may not be donated or extended to a speaker from other members of the public in attendance.

(D) Oral comments shall be addressed only to the members of the Council.

(E) The Mayor shall have the discretion to reasonably limit the number of speakers and the duration of the oral comments on each agenda item.

Section 12. Minutes

A record of all proceedings of all public meetings of the Council shall be kept on file.

Section 13. Rules of Debate

(A) Presiding Officer May Debate and Vote. The Mayor or Mayor Pro Tempore or such other member of the Council as may be presiding may move, second and debate from the Chair, subject only to such limitations of debate as are by these rules imposed on all members and shall not be deprived of any of these rights and privileges of a Councilmember by reason of his/her acting as the presiding officer.

(B) Getting the Floor - - Improper References. Every member desiring to speak shall address the Chair, and, upon recognition by the presiding officer, shall confine oneself to the question under debate, avoiding all personalities and indecorous language.

(C) Interruptions. A member, once recognized, shall not be interrupted when speaking unless it is to call him/her to order, or as herein otherwise provided. If a member, while speaking, be called to order, he/she shall cease speaking until the question of order be determined, and, if in order, he/she shall be permitted to proceed.

ARTICLE III

OFFICERS

Section 1. The officers of the Council shall be the elected Mayor and Mayor Pro Tempore.

Section 2. Election of Mayor Pro Tempore

(A) After each general municipal election at which council members are elected, the Council shall, at the meeting at which council members are sworn in and seated for new terms, elect the Mayor Pro Tempore from among its members.

(B) The Mayor Pro Tempore shall be elected for a period of two (2) years and shall serve until a successor is elected or a vacancy occurs.

Section 3. Duties

(A) Mayor - Generally

(1) Preside over all meetings of the Council. The Mayor shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, call for the vote, and announce the decision of the Council. The Mayor may make or second any motion and present and discuss any matter as a member of the Council.

(2) Sign as Mayor and execute in the name of the City, warrants, contracts, conveyances, and other written instruments which have been authorized by the Council unless this authority is otherwise delegated to another individual or individuals.

(3) The Mayor shall be recognized as the official head of the City at all meetings and/or functions at which a City representative is necessary or has been requested, and for all ceremonial purposes. Notwithstanding the foregoing, any member of the Council may be designated by the Mayor or the Council to fulfill formal and/or ceremonial duties.

(B) Mayor Pro Tempore - Generally

(1) The Mayor Pro Tempore shall, in the event of death, absence or other inability of the Mayor, exercise all the powers and perform all the duties of the office of the Mayor until the Mayor is able to resume such duties, or in the case of a vacancy, until the vacancy is filled pursuant to Article I, Section 4.(c) of these Rules..

Section 4. Vacancies and Removal of Mayor Pro Tempore

(A) Vacancy in the office of Mayor Pro Tempore shall be filled by Council election as soon as is reasonably possible.

(B) The Mayor Pro Tempore may be removed by vote of four (4) Council members for failure to perform the duties of the office or for malfeasance in the office.

ARTICLE IV

COMMITTEES

Section 1. Formation.

The Council has the authority to create necessary committees and subcommittees, and thereafter the Mayor has the authority to nominate and appoint the various members of Council committees, subcommittees and all other subcommittees, boards and commissions, either in accordance with statutory requirements, or where no such requirements exist, with the approval of the majority of the council members. All open positions and/or vacancies on committees, subcommittees, boards and commissions, with the exception of ad-hoc committees composed entirely of members of the City Council, shall be advertised in a newspaper of local jurisdiction and by other means deemed appropriate by City Staff. All applicants shall be required to complete an application for a given position, stating position qualifications and providing a "statement of interest."

Section 2. Administration.

The Office of the City Clerk maintains a current list of City Council Committee List which includes appointments to (1) Outside Agencies, Boards and Commissions, (2) Standing Committees, (3) Liaison appointments to outside local organizations, and (4) Ad-Hoc Committees. The list includes meeting dates and times. The Clerk coordinates all appointments to these positions.

Section 3. Types of Committees and Assignments

a) Standing Committee

A standing committee is a committee of the City Council with continuing existence, formed to consider or performed assigned work on a particular subject matter on an ongoing basis. All standing committee meetings are subject to the Brown Act, and will be conducted at regularly scheduled meetings and times. Standing committee meeting agendas will be prepared, posted and distributed in accordance with the Act, stating the time and place of the meeting and the subject matter(s) to be discussed. Standing committees generally serve in an advisory capacity to the City Council and will only have those powers specifically delegated by the City Council. Members serve for a minimum of two year terms and rotation is not required. A City Council Member, who is not a member of a standing Committee, may attend a Standing Committee meeting, provided he/she attends only as an observer, does not participate in any aspect of the meeting and sits with other amongst the public.

b) Liaison Appointments - A Council member may be appointed to act as a liaison between the City Council and a local organization. Such appointments are usually honorary, non-voting positions on the local organization's legislative board. Appointees will serve in an advisory capacity for a minimum of two year terms. Rotation is not required.

c) Ad Hoc Committee. Ad hoc committees are temporary or limited-life committees established on an as-needed basis for the purpose of carrying out a specific task or objective. An ad-hoc committee's role, specific task, and term must be specified by the Council at the time of formation. If the committee's role, specific task and term are not specified at the time the committee is formed, Staff will place this matter on the next scheduled Council meeting for direction. Appointments to ad-hoc committees are made for a specific duration, most of which will not exceed one year. Once the ad hoc committee has completed its task, the supporting department will submit a report to the Council stating completion of the ad hoc committee tasks and recommending dissolution. Ad Hoc Committees shall be reviewed on an annual basis for realignment with Council priorities as necessary. An ad hoc committee composed solely of less than a quorum of the Council shall be exempt from the provisions of the Brown Act, including all notice and agenda requirements.

ARTICLE V

GENERAL PROVISIONS

Section 1. Indemnification

Council members shall be indemnified by the City to the full extent permitted by law against all claims, liabilities and expenses incurred as a result of an action by the Council, except in the instance of willful misconduct in the performance of duties as a councilmember or officer.

Section 2. Execution of Contracts

By a vote of three (3) Council members, the Council, except as otherwise provided in these rules, policies and procedures, may authorize the City Manager or designee, to enter into any contract, to execute any contract, or execute any instrument in the name of and on behalf of the City.

Section 3. Fiscal Year

The fiscal year of the City shall commence on the first day of July of each year and shall end on the last day of June of each year.

Section 4. Audit

The affairs and financial condition of the City shall be audited annually by a Certified Public Accountant selected by the Council, and a written report of such audit and the appropriate financial statements shall be submitted to the Council for consideration and approval. Additional audits may be authorized as may be considered necessary or desirable by the Council.

Section 5. Revision

The Council Rules, Policies and Procedures should be reviewed at least every two (2) years and revised as necessary.

Section 6. Amendment

These Rules, Policies and Procedures may be amended at any noticed regular or special meeting of the Council by majority of three (3) Council members. All proposed changes must be introduced at a regular meeting, and then acted upon at a subsequent regular meeting at least five days after introduction.

Section 7. Adoption

Adoption of the Rules, Policies and Procedures shall be by a majority of three (3) Board members, at any properly noticed meeting of the Board.

Section 8. Office

The principal office of this organization is located at Soledad City Hall, 248 Main Street, Soledad, California, 93960.

ARTICLE VI

POLICIES AND PROTOCOL RELATED TO CONDUCT

Section 1. Ceremonial Events

Requests for a City representative at ceremonial events will be handled by City staff. The Mayor will ordinarily serve as the designated City representative. If the Mayor is unavailable, the Mayor will recommend which Council Member should be asked to serve as a substitute. Invitations received at City Hall are presumed to be for official City representation. Invitations addressed to Council Members and Commissioners at their homes are presumed to be for unofficial, personal consideration.

Section 2. Closed Session Confidentiality

Council Members and Commissioners may not disclose confidential information, as defined in Government Code Section 54963, that has been acquired by being present in a closed session authorized by Government Code Sections 54956.7, 54956.8, 54956.86, 54956.87, 54956.9,54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the City Council specifically authorizes disclosure of that confidential information. Any councilmember making an unauthorized release of such information shall be subject to the provisions and sanctions as provided in Government Code Section 54963.

Section 3. Avoid Conflicts

In keeping with their role as stewards of the public interest, councilmembers shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City.

Avoid even the appearance of conflict between public duties and personal interests and activities. If elected or appointed officials have personal or financial interests in matters coming before them, they shall disqualify themselves from making, participating in the making of, or seeking to influence any decision respecting such matter.

Because of the value of the independent advice of boards, commissions, and other advisory bodies to the public decision-making process, members of Council and all appointed officials shall refrain from using their positions to advocate for or to unduly influence the deliberations or outcomes of official proceedings of boards, commissions, and other advisory bodies.

Section 4. Confidential Information

Councilmembers shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without property legal authorization, nor use such information to advance their personal, financial or other private interest.

Section 5. Use of Public Resources

Councilmembers shall not use public resources not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

ARTICLE VII

COUNCIL CONDUCT

Section 1. General

The Council is composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and future of the community. In all cases, this common goal should be acknowledged even as councilmembers may "agree to disagree" on contentious issues.

Section 2. In Public Meetings

(A) Practice civility and decorum in discussions and debate. Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, councilmembers to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated.

(B) Honor the role of the Chair in maintaining order. It is the responsibility of the Chair to keep the comments of councilmembers on track during their public meetings. Councilmembers should honor efforts by the Chair to focus discussion on current agenda items. If there is disagreement about the agenda or the Chair's action, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

(C) Avoid personal comments that could offend other councilmembers. If a councilmember is personally offended by the remarks of another councilmember, the offended councilmember should make notes of the actual words used and call for a "point of personal privilege" that challenges the other councilmember to justify or apologize for the language used. The Chair will maintain control of this discussion.

(D) Demonstrate effective problem-solving approaches. Councilmembers have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

(E) Refrain from passing written notes during Council meetings. Councilmembers should refrain from passing written notes to one another, the City Manager or City Attorney during Council meetings. All councilmember communications during Council meetings should be made aloud.

(F) Avoid engaging in gossip. Councilmembers should avoid engaging in gossip among or about other councilmembers, staff members or members of the community.

Section 3. In Private Encounters

(A) Continue respectful behavior in private. The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

(B) Be aware of the insecurity of written notes, voicemail messages, and e-mail. Technology allows words written or said without much forethought to be distributed wide and far. All written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

(C) Even private conversations can have a public presence. City officials are always on display – people around them they may not know will monitor their actions, mannerisms, and language.

ARTICLE VIII

COUNCIL CONDUCT WITH CITY STAFF

Section 1. General. Governance of a City relies upon the cooperative efforts of elected officials who set policy and City staff who implement and administer the Council's policies, ordinances and other applicable laws and regulations. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

(A) Treat all staff as professionals. Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

(B) Positive Workplace Environment. Councilmembers shall support the maintenance of a positive and constructive workplace environment for City employees and for residents and businesses dealing with the City. Councilmembers shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

(C) Limit contact to specific City staff. Questions of City staff and/or requests for additional background information should be directed only to the City Manager, City Attorney, or Department Heads. The Office of the City Manager should be copied on any request, except those to the City Attorney. Requests for follow-up or directions to staff should be made only through the City Manager or the City Attorney when appropriate. When in doubt about what staff contact is appropriate, councilmembers should ask the City Manager for direction. Materials supplied to a councilmember in response to a request will be made available to all members of the Council so that all have equal access to information.

(D) Do not disrupt City staff work. Councilmembers should be respectful of staff's time and workload by always making an appointment for any discussion or meetings longer than a half hour (30) minutes. Councilmembers must remain mindful of the fact that staff must tend to the day to day business of the city. City staff should not be disturbed while in meeting, on the phone, or engrossed in performing their job functions, in order to meet a councilmember's individual needs.

(E) Never publicly criticize an individual employee. Councilmembers should never express concerns about the performance of a City employee in public or to the employee directly. Comments about staff performance should only be made to the City Manager through private correspondence or conversation.

(F) Do not get involved in administrative functions. Councilmembers must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

(G) Check with City staff on correspondence before taking action. Before sending correspondence, councilmembers should check with City staff to see if an official City response has already been sent or is in progress.

(H) Do not solicit political support from staff. Councilmembers should not solicit any type of political support (financial contributions, display of posters, political buttons or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace and never in their official capacity as a city employee.

ARTICLE IX

COUNCIL CONDUCT WITH THE PUBLIC

Section 1. In Public Meetings. Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual councilmembers toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

(A) In order to achieve these goals, councilmembers should:

(1) Be welcoming to speakers and treat them with care and gentleness.

(2) Be fair and equitable in allocating public hearing time to individual speakers.

(3) Engage in active listening.

(4) Ask for clarification, but avoid debate and argument with the public.

(5) No personal attacks of any kind, under any circumstances. Follow parliamentary procedure in conducting public meetings. The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. The Chair, subject to the appeal of the full Council, makes final rulings on parliamentary procedure.

Section 2. In Unofficial Settings.

(A) Make no promises on behalf of Council. Councilmembers will frequently be asked to explain an action they have taken or to give their opinion about an issue as they meet

and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council or action, or to promise City staff will do something specific.

(B) Make no personal comments about other councilmembers. It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other councilmembers, their opinions or actions.

(C) Remember that Soledad is a small city. The community is constantly observing councilmembers every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Soledad. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by councilmembers, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

ARTICLE X

COUNCIL CONDUCT WITH OTHER PUBLIC AGENCIES

Section 1. Be clear about representing the City or personal interests. If a councilmember appears before another governmental agency or organization to give a statement on an issue, the councilmember must clearly state: 1) if his or her statement reflects personal opinion or is the official stance of the City; and 2) whether this is the majority or minority opinion of his or her respective Council.

If the councilmember is representing the City, the councilmember must support and advocate the official City position on an issue, not a personal viewpoint. If the councilmember is representing another organization whose position is different from the City, the councilmember should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Councilmembers should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

Section 2. Correspondence should be equally clear about representation. City letterhead may be used when the councilmember is representing the City and the City's official position. A copy of official correspondence should be circulated and retained as part of the permanent public record in the City Clerk's office.

City letterhead is not to be used for correspondence of councilmembers representing a personal point of view, or a dissenting point of view from an official Council position.

ARTICLE XI

COUNCIL CONDUCT WITH COMMISSIONS

Section 1. General. Citizens who serve on Commissions become more involved in government and serve as advisors to the City Council or as independent bodies. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

(A) If attending a Commission meeting, be careful to only express personal opinions. Councilmembers may attend any Commission meeting, which are always open to any member of the public; however, they should be sensitive that their participation – especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a councilmember at a Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council. Any councilmember may appeal a Commission decision to the City Council as provided by law. A councilmember who makes such appeal may not participate in the decision-making process as a member of the Council hearing the appeal.

(B) Limit contact with Commission members to questions of clarification. It is inappropriate for a councilmember to contact a Commission member to lobby on behalf of an individual, business, or developer. It is acceptable for councilmembers to contact Commission members in order to clarify a position taken by the Commission.

(C) Remember that Commissions serve the community, not individual councilmembers. The Mayor appoints, with City Council approval, individuals to serve on Commissions and it is the responsibility of Commissions to follow policy established by the Council. Commission members do not report to individual councilmembers, nor should councilmembers feel they have the power or right to threaten Commission members with removal if they disagree about an issue. Appointment and re-appointment to a Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Commission appointment should not be used as a political "reward."

(D) Be respectful of diverse opinions. A primary role of Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Commissions, but must be fair and respectful of all citizens serving on Commissions.

(E) Keep political support away from public forums. Commission members may offer political support to a councilmember, but not in a public forum while conducting official duties. Conversely, councilmembers may support commission members who are running for office, but not in an official forum in their capacity as a councilmember.

(F) Inappropriate behavior can lead to removal. Inappropriate behavior by a commission member should be noted to the Mayor, and the Mayor should counsel the offending member. If inappropriate behavior continues, the Mayor should bring the situation to the attention of the Council and the individual is subject to removal from the Commission.

ARTICLE XII

COUNCIL CONDUCT WITH THE MEDIA

Section 1. General. Councilmembers are frequently contacted by the media for background and quotes.

(A) The best advice for dealing with the media is to never go "off the record." Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

(B) The Mayor is the official spokesperson for the Council on City policy. The Mayor is the designated representative of the Council to present and speak on the official City position. If the media contacts an individual councilmember, the councilmember should be clear about whether their comments represent the official City position or a personal viewpoint.

(C) Choose words carefully and cautiously. Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

ARTICLE XIII

SANCTIONS

Section 1. Public Disruption. Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers or Commission meeting room.

Section 2. Inappropriate Staff Behavior. Councilmembers should refer to the City Manager any City staff member that does not follow proper conduct in their dealings with Council Members, Commissioners or other City staff, or the public. If the City Manager finds that these allegations are substantiated, these employees may be disciplined in accordance with standard City procedures for such actions.

If violation of this Code of Conduct is outside of the observed behaviors by the Mayor or councilmembers, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the City Attorney to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can

include, but are not limited to: discussion and counseling with the individual, recommending sanction to the full Council to consider in a public meeting, and forming a Council ad hoc subcommittee to review the allegation, the investigation and findings, as well as to recommend sanction options for Council consideration. Videotaping of the complaint hearing should be used for a Council ad hoc subcommittee.

Section 3. Councilmembers' Behavior and Conduct. City councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose committee assignments (both within the City of Soledad or with inter-governmental agencies) or have official travel restricted. Serious infractions of this Code of Conduct could lead to other sanctions as deemed appropriate by Council.

Councilmembers should point out to the offending councilmember any infractions of the Code of Ethics or Code of Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Mayor Pro Tempore.

It is the responsibility of the Mayor to initiate action if a councilmember's behavior may warrant sanction. If the Mayor takes no action, the alleged violation(s) can be brought up with the full Council in a public meeting.

ARTICLE XIV

CHECKLIST FOR MONITORING CONDUCT

1. Will my decision / statement / action violate the trust, rights or good will of others?

2. What are my motives and the spirit behind my actions?

3. If I have to justify my conduct in public tomorrow, will I do so with pride or shame?

4. How would my conduct be evaluated by people whose integrity and character I respect?

5. Even if my conduct is not illegal or unethical, is it done at someone else's expense? Will I destroy their trust in me? Will it harm their reputation?

6. Is my conduct fair? Just? Morally right?

7. If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?

8. Does my conduct give others reason to trust or distrust me?

9. Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?

10. Do I exhibit the same conduct in my private life as I do in my public life?

11. Can I take legitimate pride in the way I conduct myself and the example I set?

12. Do I listen and understand the views of others?

13. Do I question and confront different points of view in a constructive manner?

14. Do I work to resolve differences and come to mutual agreement?

15. Do I support others and show respect for their ideas?

16. Will my conduct cause public embarrassment to someone else?

GLOSSARY OF TERMS

Attitude	The manner in which one shows one's dispositions, opinions, and feelings
Behavior	External appearance or action; manner of behaving; carriage of oneself
Civility	Politeness, consideration, courtesy
Conduct	The way one acts; personal behavior
Courtesy	Politeness connected with kindness
Decorum	Suitable; proper; good taste in behavior
Manners	A way of acting; a style, method, or form; the way in which things are done
Point of order	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
Point of personal privilege	A challenge to a speaker to defend or apologize for comments that a fellow councilmember considers offensive
Propriety	Conforming to acceptable standards of behavior
Protocol	The courtesies that are established as proper and correct
Respect	The act of noticing with attention; holding in esteem; courteous regard

RESOLUTION NO. 5674

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD AMENDING THE CITY OF SOLEDAD RULES, POLICIES, AND PROCEDURES REGARDING ELECTION OF MAYOR PRO TEMPORE

WHEREAS, on November 3, 2010 the City Council has previously adopted an updated set of "City of Soledad City Council Rules, Policies and Procedures" ("RPP's") to provide regulations and guidance to elected officials with respect to Council duties and operations; and

WHEREAS, on December 2, 2020, the Council considered and discussed a changes to the RPP's to address Article III – Section 2 to allow for a rotating policy for the position of Mayor Pro Tempore.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the City Council hereby amends Article III – Section 2 of the "City Council Rules, Policies and Procedures," a copy of which is attached hereto as **Exhibit "A."**

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Soledad duly held on the 6th day of January 2020, by the following vote:

AYES, and in favor thereof, Councilmembers: Ben Jimenez, Jr., Mayor Pro Tem Carla Strobridge, Alejandro Chavez, Marisela Lara, and Mayor Anna M. Velazquez.

NOES, Councilmembers: None

ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None

ANNA M. VELAZQUEZ, Mayor

ATTEST:

BRENT SLAMA, Interim City Clerk

Exhibit A

AMENDMENT TO CITY OF SOLEDAD CITY COUNCIL RULES, POLICIES AND PROCEDURES

ARTICLE III

Section 2. Appointment of Mayor Pro Tempore

(A) Councilmembers shall be appointed by the Mayor to serve as Mayor Pro Tempore on a rotating basis so that each councilmember serves a one (1) year term during his/her four (4) year term. Appointments shall be made in December of each year.

(B) The Council will establish a Mayor Pro Tempore Rotation List. After certification of each municipal election at which councilmembers are elected, the Council will review the Mayor Pro Tempore Rotation List and make modifications thereto as necessary.

(C) In the event of an occurrence that creates a disruption in the regular rotation of the Mayor Pro Tempore, the Council shall consider the following in making modifications to the Rotation List:

(1) The rotation history for the previous four years.

(2) Each Councilmember should serve as Mayor Pro Tempore for approximately a one-year period.

(3) In the event that two or more Councilmembers have not served as Mayor Pro Tempore and have equal tenure in office, the councilmember who received the most votes in the previous election shall be placed higher on the rotation list.

Council Consensus on Mee?ng Protocols, Goal Se? ng, and Next Steps
August 26, 2023

1. **Proclama?ons/Cer?ficates of Apprecia?on**
    a. Every December, staff will create a calendar (based on calendar year) of proclama?ons for Council considera?on. Councilmembers can suggest addi?ons to this calendar and request the opportunity to introduce a par?cular proclama?on.
    b. Only 1 person per group will be allowed to speak and be limited to 2 minutes.
    c. Limit this agenda item to 20 minutes and schedule during the 2nd mee?ng of the month.
2. **Presenta?ons**
    a. Limit to no more than 3 per mee?ng.
    b. Councilmembers will limit ques?ons and comments to just <u>once</u> during the mee?ng, recognizing the need to spend more ?me on items requiring Council ac?on.
    c. Mayor will follow the same order established for mee?ngs, either star?ng with Councilmembers on the le? or right and ending with the Mayor.
    d. Staff will let presenters know that presenta?ons should be limited to 7-10 slides and 7 minutes.
3. **Staff Reports**
    a. Staff presenta?ons will be limited to 7-10 slides and 7 minutes.
    b. PowerPoint presenta?ons will be included in the agenda packets.
    c. Lengthy staff reports and materials (i.e., the budget and Environmental Impact Reports) will be provided earlier – at least one week before the mee?ng.
4. **Public Comment**
    a. Speaker cards will be required when there is more than a couple of speakers (1-3).
    b. Mayor will con?nue to request addresses from speakers but will note that it is not mandatory.
    c. Mayor will remind the public to show respect and refrain from personal a?acks.
    d. Mayor will consider limi?ng public comment ?me to 2 minutes per person when there are a lot of speakers. *(Speaker cards will assist in making this determina?on.)*
    e. Mayor will encourage speakers not to be repe??ve and may suggest people show support/disapproval by standing up instead of speaking. (City A?orney indicated that we cannot prevent anyone from speaking who wants to make a comment.)
5. **Council Reports/Council Praises**
    a. Verbal reports will be limited to 2 minutes per person.
    b. Mayor/Councilmembers are encouraged to focus verbal reports on the commi?ees or boards they are assigned to as a member of Council.
    c. Mayor/Councilmembers are encouraged to provide wri?en reports that can be a?ached to the agenda or provided at the mee?ng and incorporated into the minutes.

6. **Order of Mee? ngs**
    a. Mayor will call on every Councilmember star? ng from one side of the dais (le? or right) and concluding with her comments.
    b. Mayor will alternate the order le? or right with each new discussion item.
    c. Mayor/Councilmembers will not comment a? er someone speaks un? l it is his/her turn.
    d. Everyone will have the opportunity to speak once before given a 2nd turn.
    e. When called upon it is okay to ask to be passed ini? ally. Mayor will return to Councilmember before beginning her turn to comment.
    f. A? er everyone has asked ques? ons/commented, the Mayor will ask if any member has any final comments following the same order.
    g. Upon conclusion of the discussion, the Mayor will entertain a mo? on.
    h. At any ? me, the Councilmembers do not have to comment when called upon.
    i. Mayor will generally keep track of everyone's ? me including her own to ensure each Councilmember has equitable ? me to speak should she/he chose to do so.
    j. Mayor/Councilmembers will be responsible for regula? ng her/his own ? me and tone ensuring to show respect even when disagreeing.
7. **Sea? ng on the Dais**
    a. The City Manager and City A? orney will sit on either side of the Mayor to allow for discreet guidance.
    b. The City Manager will work with the Mayor and Councilmembers to reconfigure the dais to improve the ability to see each other and communicate. The City Manager will also explore interim op? ons.

<u>Next Steps</u>

- **New Rules, Policies and Procedures Subcommi? ee**
    - Mayor Velazquez and Councilmember Corralejo will serve on the subcommi? ee.
    - Ensure that the changes related to the Mayor Pro-Tem are incorporated in the dra? .
    - Review other ci? es rules, policies, and procedures. Iden? fy best prac? ces; consider incorpora? ng some content from Los Altos.
    - Incorporate similar guidance as Los Altos on electronic devices.
    - Consider incorpora? ng a simplified version of Rosenberg's Rules of Order or more defined structure for conduct of mee? ngs.
    - Return to City Council for considera? on by December 2023.
- **Strategic Planning/Goal Se? ng Session** *(Everyone agreed this is a priority!)*
    - Schedule a 3-to-4-hour session, ideally in October.
    - Hire a professional facilitator to conduct the session, but ensure that the facilitator focuses on tangible, measurable goals and objec? ves.

- Review/revise exis?ng goals, which provide a good framework but encourage new ideas especially from Councilmembers that did not par?cipate in the current goals.
- Ensure that new goals include objec?ves, are priori?zed, and include a ?meline (i.e., short-term).
- Encourage Councilmembers to conduct some individual pre-work to make the session as produc?ve and efficient as possible.

Other Discussion Points

→ Although everyone agreed to observe rules of decorum, it was noted that the exis?ng Rules, Policies and Procedures allow a Councilmember to call for a "Point of Personal Privilege" if offended. City A?orney expressed hope that this will not be necessary if rules of decorum are followed.

→ City A?orney explained that you can request an address but cannot require it. Most jurisdic?ons s?ll request this informa?on.

→ City A?orney clarified that under the law it is hard to limit a speaker from being cri?cal of a Councilmember unless clearly abusive, threatening, profane, etc. There is more recourse when public comment is cri?cal of staff.

→ Mayor iden?fied the exis?ng language in the Rules, Policies, and Procedures regarding public comment and stated that she would enforce the rules and provide reminders to the public.

→ City Manager suggested that the Mayor/Councilmembers refrain from using the name of another Councilmember during discussion and instead focus on the item. Even if it is not meant to be personal, it can be perceived that way.

CITY OF TEMECULA

CITY COUNCIL PROTOCOL MANUAL

Temecula
The Heart of Southern California
Wine Country

UPDATED NOVEMBER 14, 2023

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POLICY NO. 1

GENERAL LAW CITY

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**General Law City**
Policy No.	**1**
Approved:	**May 23, 2023**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to reaffirm adherence to and acknowledgment of the City of Temecula as a general law city and include said policy in the City Council Protocol Manual.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Adherence to and Acknowledgment of the City of Temecula as a General Law City

Local government agencies are established through the California Government Code and Article XI of the California Constitution. Local government agencies include counties, cities, special districts, and other regional bodies. The City of Temecula is a local government agency pursuant to these laws and incorporated as such on December 1, 1989. Cities provide essential and general services and programs for their residents such as health and safety and parks and recreation.

Article XI, § 3 of the Constitution of California specifically provides for the creation of city government. As of the date of adoption of this policy, there are 482 incorporated cities in the State of California. Government Code §34100 et seq. sets forth the two types of cities - general law and charter. General law cities, the most common form, are governed by the California Government Code and other statutes. Charter cities, consisting of approximately one-quarter of the cities in California, are governed by their adopted charter. Matters deemed to be of "statewide concern" by the State of California, may be governed by statute irrespective of general law or charter designation.

The City of Temecula is a general law city existing and operating pursuant to the laws set forth in the California Constitution, California Government Code, and other relevant statutes.

POLICY NO. 2

COUNCIL-MANAGER FORM OF GOVERNMENT

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Council-Manager Form of Government**
Policy No.	**2**
Approved:	**May 23, 2023**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to reaffirm that the City of Temecula operates as a council-manager form of government and include said policy in the City Council Protocol Manual.

POLICY:
The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

<u>Operation as a Council-Manager Form of Government</u>

The council-manager form of government is the most common type of governance structure amongst cities in the United States. Under this form of government, residents elect a governing body (city council) to adopt legislation and set policy. The governing body then hires a manager or administrator with broad executive authority to carry out those policies and oversee the local government's day-to-day operations. This structure is similar to that of a corporation in the private sector whereby a board of directors sets forth policy and a chief executive officer implements such policy.

The council-manager form of government recognizes the critical role of elected officials as policy makers, who focus on mapping out a collective vision for the community and establishing the policies that govern it. The form also recognizes the need for a highly-qualified individual who is devoted exclusively to the delivery of services to residents. Under the council-manager form, there is a clear distinction between the administrative role of the manager and the political and policy roles of the governing body. The operations of the local government organization reside with the appointed manager, allowing elected officials to devote their time and energy to policy development and the assessment of the effectiveness of those policies within the community.

Government Code Section §34851 et seq. sets forth the process by which a council-manager form of government may be established in California. Temecula Municipal Code § 2.12 et. seq., adopted pursuant to the aforementioned code section, sets forth the specific duties, powers, and responsibilities of a city manager in relation to their service to the City of Temecula.

The municipal structure of the City of Temecula is a council-manager form of government operating pursuant to the laws set forth in the California Government Code and Temecula Municipal Code.

POLICY NO. 3

ROLE OF MAYOR, MAYOR PRO TEMPORE AND CITY COUNCIL

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Role of Mayor, Mayor Pro Tempore and City Council**
Policy No.	**3**
Approved:	**May 23, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to reaffirm the role of the Mayor, Mayor Pro Tempore and City Council and include said policy in the City Council Protocol Manual.

POLICY:
The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Role of Mayor, Mayor Pro Tempore and City Council

The City of Temecula is a general law city, operating as a council-manager form of government, with a five-member, non-partisan legislative body. The legislative body is referred to as the city council. Each council member is directly elected by the registered voters of their district. The positions of mayor and mayor pro tempore are ceremonial in nature and not directly elected. The city council selects the mayor and mayor pro tempore amongst themselves and the positions typically serve a calendar year.

The mayor is the public face of the community who presides at meetings, facilitates communication and understanding between elected and appointed officials and the public, and assists the legislative body in setting goals and advocating policy decisions. The mayor facilitates discussion and decision-making on important topics. The mayor pro tempore assists the mayor in fulfilling their role and presides in the absence of the mayor as needed.

The primary role of the city council is to engage with the community to determine needs and in response provide policy direction to ensure a high quality of life for all. The city council exercises its authority and sets policy through an ordinance, resolution, or minute order capturing its collective action on a variety of topics such as health and safety, fiscal stability, and growth and sustainability. The city council also adopts the annual budget, appoints members to its advisory boards and commissions, and manages the positions of the city manager and city attorney. All other employees in the City of Temecula remain the management responsibility of the city manager and department directors appointed by the city manager. General day-to-day operations remain under the purview of the city manager appointed by the city council.

The above reaffirms the role of the mayor, mayor pro tempore, and city council in the City of Temecula, a general law city with a council-manager form of government.

POLICY NO. 4

CODE OF CONDUCT

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Code of Conduct**
Policy No.	**4**
Approved:	**September 28, 2021**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to provide for considerate and thoughtful civil discourse through which respectful dialogue can occur in the best interest of the community.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

1. <u>Elected and Appointed Officials' Conduct with One Another</u>
Elected officials are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Notwithstanding this diversity, all have chosen to serve in public office in order to preserve and protect the high quality of life of the community. Even in the face of adversity and differences of opinion, this common goal is acknowledged and remains at the forefront.

1(a). <u>In Public Meetings</u>

<u>Formal titles and professional appearance</u>
Elected officials will refer to one another formally during public meetings, such as Mayor, Mayor Pro Tempore, Chair, or Council Member followed by the individual's last name. Council Members shall present a professional appearance in all public meetings.

<u>Civility and decorum in discussions and debate</u>
Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. While public officials have a right to state their opinions, public officials should set an example and refrain from personal, slanderous, threatening, abusive, or other disparaging comments. Shouting or physical actions that could be construed as threatening will not be tolerated.

<u>Role of Mayor in maintaining order</u>
It is the responsibility of the Mayor to keep the comments of members on track during public meetings. Members should honor efforts by focusing discussion on current agenda items. If there is disagreement about the agenda or the Mayor's actions, those objections should be voiced politely and with reason, following procedures outlined in the City Council Rules of Order.

Effective problem-solving approaches

Members have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole. Outside of official meetings, individual members represent themselves and not the City as a whole unless specifically authorized to do so by law or City Council policy. In private settings, members may communicate their individual viewpoints and opinions unless otherwise prohibited by law. In public, all members should strive to represent the official policies or positions of the City and City Council, although both the majority and minority viewpoint reflected in discussion may be shared or reported on.

1(b). In Private Encounters

Respectful behavior in private

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

Insecurity of written notes, voicemail messages, and e-mail

Technology allows words written or said without much forethought to be distributed wide and far. Written notes, voicemail messages and e-mail should be treated as potentially "public" communication.

Private conversations with a public presence

Elected officials are always on display and should be aware that their actions, mannerisms, and language are monitored by people around them that they may not know and may be shared with others unbeknownst to them.

2. Elected and Appointed Officials' Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected officials, and staff who implement and administer City Council direction and policy. Every effort should be made to show mutual respect for the contributions made by all for the betterment of the community.

Staff as professionals

The general expectation for all is clear and honest communication respecting the abilities, experience, and dignity of each individual. Contrary behavior towards staff is not acceptable.

Public criticism of employees

Elected officials should refrain from expressing concerns about individual employee conduct or performance in public, to the employee directly, or to the employee's manager. Such comments should be shared with the City Manager directly through private correspondence or conversation.

Involvement in administrative functions

In accordance with Section 2.12.080 of the Temecula Municipal Code, elected officials should not attempt to influence staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, granting of City licenses and permits, or any other administrative functions or operations of the City that fall within the purview of the City Manager.

Requests for staff support

Routine administrative support is provided to all Council Members. The Executive Assistant or others designated in the City Manager's Office, open and distribute mail, manage calendars and scheduling of meetings, and perform other similar administrative tasks for the City Council. Requests for additional staff support should be made to the City Manager directly to ensure proper allocation of resources.

Solicitation of political support

Elected officials shall not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace without utilizing any City equipment and/or resources.

3. Elected and Appointed Officials' Conduct with the Public

3(a). In Public Meetings

Making the public feel welcome is an important part of the democratic process. Every effort should be made to be fair and impartial in listening to public testimony. While questions of clarification may be asked, the elected official's primary role during public testimony is to actively listen.

Maintain an open mind

Members of the public deserve an opportunity to influence the thinking of elected officials. To express an opinion prior to the close of debate or a public hearing casts doubt on the ability to obtain a fair review of the issue. This is particularly important when officials are serving in a quasi-judicial capacity and in these cases Council Members shall not express an opinion on the matter prior to the completion of the public hearing or receive evidence on the matter outside of the public hearing.

Asking for clarification and avoiding debate

Only the Mayor can interrupt a speaker during a presentation. However, a Council Member can ask the Mayor for a point of order if the speaker is off the topic or exhibiting disruptive behavior. It is the responsibility of the Mayor to remain calm at all times, keep the speaker focused, and maintain the order and decorum of the meeting. The Mayor and all members of the City Council should follow the City Council Rules of Order in conducting public meetings and the City Attorney is present to make any final rulings on meeting procedures if needed.

3(b). In Unofficial Settings

Members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council or board/commission action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.). It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other members, their opinions and actions. Members shall refrain from expressing any opinions related to quasi-judicial land use matters in all unofficial settings as such discussions must occur in public meetings for the official record. Unofficial settings include internet and social media platforms (i.e., Facebook, Twitter, blogs, etc.)

4. Enforcement

The Code of Conduct expresses standards of conduct expected for members of the Temecula City Council. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of local government. Members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose committee assignments, or have other official representation on behalf of the City restricted. Serious infractions of the Code of Conduct could lead to other sanctions as deemed appropriate by the Council.

POLICY NO. 5

RULES OF ORDER FOR PUBLIC MEETINGS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Rules of Order for Public Meetings**
Policy No.	**5**
Approved:	**September 28, 2021**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to ensure that the business of the people that is conducted at a public meeting is done so in a clear, concise and orderly manner.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Obtaining the Floor. Any Council Member wishing to speak must first obtain the floor by being recognized by the Mayor. The Mayor must recognize any Council Member who seeks the floor when that Council Member is appropriately entitled to do so.

Council Discussion. Following the staff report and public comments on an item, the Council may discuss the matter before a motion is made.

Motions. The Mayor or any member of the Council may call for action on any matter before the Council by making a motion. Before the motion can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Mayor shall open the matter for debate offering the first opportunity to debate to the moving party and, thereafter, to any Council Member properly recognized by the Mayor. Once the motion has been fully debated and the Mayor calls for a vote, no further debate will be allowed. However, Council Members may be allowed to explain their vote.

Council Questions Only During Staff Report or Public Comment. Council participation during the presentation of public testimony or staff reports shall be limited to questions asked at the conclusion of the testimony. No general discussion should be permitted until the testimony has been completed. Council discussion not relevant to the agenda item should be reserved for the City Council Reports portion of the agenda.

Voting. If the vote is a voice vote, the Mayor shall declare the result and note for the record all yes votes and all no votes. The Council may also vote by roll call or electronically. Regardless of the manner of voting, the results reflecting all yes and no votes and the Council Members who cast them must be clearly set forth in the minutes of the meeting. No secret ballots are allowed. To be adopted, a motion requires the yes vote of a majority of the quorum present, unless the vote of three Council Members is required

by statute, ordinance, or resolution. If a member is disqualified from voting, the member shall not participate in the consideration of the matter and shall not be counted for the purpose of the quorum. In addition, as required by the Fair Political Practices Act and regulations the member shall leave the dais and the Council chamber during the consideration of the matter, except for matters on the Consent Calendar. If, however, the matter is being considered on the Consent Calendar and has not been removed from the Consent Calendar, the Council Member may remain on the dais and disclose the reason for disqualification. A disqualified Council Member may speak on the matter as a private citizen, but only to the limited extent allowed by the Section 18702.5 of the Regulations of the Fair Political Practices Commission, or its successor sections. A tie vote means no action has been taken on the motion.

Procedural Rules of Order. Once the main motion is properly placed on the floor, several related motions may be employed in addressing the main motion, and if properly made and seconded, must be disposed of before the main motion can be acted upon. The following motions are appropriate and may be made by the Mayor or any Council Member at any appropriate time during the discussion of the main motion. They are listed in order of precedence. The first three subsidiary motions are not debatable; the last three are debatable.

Subsidiary Motions.

Lay on the Table. Any Council Member may move to lay the matter under discussion on the table. This motion temporarily suspends any further discussion of the pending motion without setting a time certain to resume debate. To bring the matter back before the Council, a motion must be adopted that the matter be taken from the table. A motion to take from the table must be made at the same meeting at which it was placed on the table or at the next meeting of the Council. Otherwise the motion that was tabled dies, although it can be raised later as a new motion. A motion to lay on the table is not debatable.

Move Previous Question. Any Council Member may move to immediately bring the question being debated by the Council to a vote, suspending any further debate. The motion must be made and seconded without interrupting one who already has the floor. A majority vote of the quorum present is required for passage. A motion to move previous question is not debatable.

Limit or Extend Limits of Debate. Any Council Member may vote to put limits on the length of debate. The motion must be made and seconded and requires a majority vote of the quorum present to pass. A motion to limit or extend limits of debate is not debatable.

Postpone to a Time Certain. Any Council Member may move to postpone debate and action on a motion to a date and time certain. A motion to postpone to a time certain is debatable.

Commit or Refer. Any Council Member may move that the matter being discussed should be referred to staff, a committee, or a commission for further study. The motion may contain directions for the staff, committee, or commission, as well as a date upon which the matter will be returned to the Council's Agenda. If no date is set for returning the item to the Council Agenda, any Council Member may move, at any time, to require that the item be returned to the Agenda. A motion to commit or refer is debatable.

Amend. Any Council Member may amend the main motion or any amendment made to the main motion. Before the main motion may be acted upon, all amendments and amendments to the amendments must first be acted upon. An amendment must be related to the main motion or amendment to which it is

directed. Any amendment that substitutes a new motion rather than amending the existing motion is out of order and may be so declared by the Mayor. A motion to amend is debatable.

Motions of Privilege, Order, and Convenience. The following actions by the Council are to ensure orderly conduct of meetings and are for the convenience of the Mayor and Council Members. These motions take precedence over any pending main or subsidiary motion and may be debated except as noted.

Call for Orders of the Day. Any Council Member may demand that the agenda be followed in the order stated therein. No second is required, and the Mayor must comply unless the Council, by majority vote, sets aside the agenda order of the day.

Request for Privilege. Any Council Member, at any time during the meeting, may make a request of the Mayor to accommodate the personal needs of the Council for such things as reducing noise, adjusting room temperature, ventilation, etc. The validity of the request is ruled on by the Mayor.

Recess. Any Council Member may move for a recess. No second is required, and the Mayor must comply unless the Council, by majority vote, sets aside the motion.

Adjourn. Any Council Member may move to adjourn at any time, even if there is business pending. The motion must be seconded, and a majority vote is required for passage. A motion to adjourn is not debatable.

Point of Order. Any Council Member may require the Mayor to enforce the rules of the Council by raising a point of order. The point of order shall be ruled upon by the Mayor.

Appeal. Should any Council Member be dissatisfied with a ruling from the Mayor, he or she may move to appeal the ruling to the full Council. The motion to appeal requires a second, and the ruling of the Mayor may be overturned by a majority vote of the members present.

Suspend the Rules. Any Council Member may move to suspend the rules if necessary to accomplish a matter that would otherwise violate the rules. The motion requires a second, and a majority vote is required for passage.

Division of Question. Any Council Member may move to divide the subject matter of a motion which is made up of several parts so that Council Members can vote separately on each part. This motion may also be applied to complex ordinances or resolutions.

Reconsider. Except for votes regarding matters that are quasi-judicial in nature or matters that require a noticed Public Hearing, the Council may reconsider any vote taken at the same meeting, but no later than the same or next regular meeting, to correct inadvertent or precipitant errors or to consider new information not available at the time of the vote.

The motion to reconsider must be made by a Council Member who voted on the prevailing side, must be seconded, and requires a majority vote of the quorum for passage, regardless of the vote required to adopt the motion being reconsidered. If the matter is to be reconsidered at the next regular meeting, a Council Member on the prevailing side must ask the City Clerk to place the matter on the agenda or

otherwise comply with the Government Code. If the matter to reconsider is successful, the matter to be reconsidered takes no special precedence over other pending matters and any special voting requirements related thereto still apply. Except pursuant to a motion to reconsider, once a matter has been determined and voted upon, the same matter cannot be brought up again at the same meeting.

Rescind, Repeal, or Annul. The Council may rescind, repeal, or annul any prior action taken with reference to any legislative matter so long as the action to rescind, repeal, or annul complies with all the rules applicable to the initial adoption, including any special voting or notice requirements or unless otherwise specified by law.

Council Authority. The Council shall have the authority to waive provisions of the procedures established by this Resolution unless the procedure is required. Failure of the Council to follow the procedures established by this Resolution shall not invalidate or otherwise affect any action of the Council.

POLICY NO. 6

PUBLIC PARTICIPATION AT MEETINGS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Public Participation at Meetings**
Policy No.:	**6**
Approved:	**September 28, 2021**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to ensure that the community can formally address their local representatives in a public meeting regarding matters that relate to Council business or citizen concerns within the subject matter jurisdiction of the City Council.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

PUBLIC PARTICIPATION IN COUNCIL MEETINGS

Audience Decorum. Members of the audience have the right to express their views about items on the agenda or issues within the jurisdiction of the City subject to the time, place and manner rules described in this Policy. Actions expressing the views of members of the public, such as clapping, whistling; stomping; sign waving are permitted as free speech so long as the actions do not disturb, disrupt, or otherwise impede the orderly conduct of the meeting. The Council expects persons speaking at City Council meetings to do so in a civil manner that promotes the free exchange of ideas and encourages public participation.

Request to Speak Form. Members of the public may address the City Council during Public Comments and before consideration of any agenda item; however, no person shall address the Council without first being recognized by the Mayor. Any person wishing to speak, whether during Public Comments, Consent Calendar, or on an agenda item, shall first complete a Public Comment or Request to Speak form and submit this form to the City Clerk or Deputy City Clerk before the Mayor calls for Public Comments or calls the particular agenda item. A speaker is not required to list his or her name and address, but doing so does helps the Council and staff to provide follow-up information to the speaker if needed. Speakers shall be called in the order their Request to Speak form is received by the City Clerk or Deputy City Clerk.

Speak Only Once. Second opportunities for the public to speak on the same issue will not be permitted unless mandated by state or local law.

Addressing the Council. Comment and testimony shall be directed to the Council through the Mayor. Dialogue between and inquiries from citizens at the podium and individual Council Members, members

of staff, or the seated audience is not permitted. Council Members seeking to clarify testimony or gain additional information should direct their questions through the Mayor.

Public Comments to City Council

Non-Agenda Items and Consent Calendar. The public has right to comment on matters within the jurisdiction of the City that are not listed on the agenda as provided in this Policy. The agenda shall provide for such public comments. Public Comments will be heard at the meeting in the manner noted on the agenda. A maximum of thirty (30) minutes shall be allowed for such public comments. A member of the public who wishes to speak under Public Comments may fill out a Public Comment Request to Speak form and submit it to the City Clerk or Deputy City Clerk before the Mayor calls for Public Comments. Persons may speak under Public Comments for three (3) minutes. Deferral of one speaker's time to another is not permitted.

State law prohibits the City Council from taking action on any item not listed on the agenda unless the Council makes a determination that an emergency exists or that the need to take immediate action on the item arose subsequent to the final posting of the agenda. Council Members or staff members may provide brief response to comments, ask brief questions of the speaker, refer the speaker to staff or another agency, or request that the matter be placed on an agenda in a manner that is consistent with the City Council policy for the placement of items on a future agenda. Council Member or staff responses shall not exceed three (3) minutes each.

Consent Calendar Items. Members of the public who wish to speak on a Consent Calendar item will be allowed to speak for a maximum period of 30 minutes prior to the consideration of the Consent Calendar. Persons may speak on Consent Calendar items for three (3) minutes each. Deferral of one speaker's time to another is not permitted.

Agenda Items. The public has a right to comment on agenda items. A member of the public who wishes to speak on an agenda item may fill out a Request to Speak form and submit it to the City Clerk or Deputy City Clerk before the Mayor calls the agenda item. Subject to the special provisions discussed below for Public Hearings, persons may speak about an agenda item for a maximum of five (5) minutes. Deferral of one speaker's time to another is not permitted. In the event there is a large number of speakers, the Mayor may reduce the maximum time limit for members of the public to speak on the item.

Disruptive Behavior Prohibited at Council Meetings. The Council expects persons speaking at the City Council meeting to do so in a civil manner that promotes the free exchange of ideas and encourages public participation. Any person who engages in behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of any City Council meeting shall, upon an order by the Mayor, or the presiding officer, or a majority of the City Council, be barred from further audience before the City Council during that meeting.

> Examples of disruptive behavior. Examples of behavior that can actually disrupt, disturb, or otherwise impede the orderly conduct of a City Council meeting include, but are not limited to, the following:
>
> (1) Speaking without being recognized by the Mayor or the presiding officer.

(2) Continuing to speak after the allotted time has expired.

(3) Speaking on an item at a time not designated for discussion by the public of that item.

(4) Throwing objects.

(5) Speaking on an issue that is not within the jurisdiction of the City Council.

(6) Speaking to the audience rather than to the City Council.

(7) Interrupting a person who is speaking to the City Council during such person's allotted time.

(8) Preventing a person from speaking to the City Council during such time as is allocated for comments from the public.

(9) Wearing of a mask, costume, disguise or other regalia or paraphernalia that actually disrupts, disturbs or otherwise impedes the orderly conduct of the City Council meeting.

(10) Uttering loud, threatening, or abusive language that actually disrupts, disturbs or otherwise impedes the orderly conduct of the City Council meeting.

(11) Clapping, whistling, stomping feet, and sign waving that actually disrupts, disturbs or otherwise impedes the orderly conduct of the City Council meeting.

Enforcement. The rules of conduct for City Council meetings set forth in this section shall be enforced in the following manner:

(1) *Warning to desist.* Whenever practicable, the Mayor, or the presiding officer, or a majority of the City Council shall give a warning to a person whose behavior is actually disrupting, disturbing or otherwise impeding the orderly conduct of a City Council meeting. The warning shall identify the disruptive behavior and the manner in which the person must comply. A warning shall not be necessary when it would not be effective due to extraordinary circumstances. Examples of extraordinary circumstances in which no warning is required include situations in which a warning would be difficult to hear over the noise of the disturbance; situations involving an immediate threat to public safety such as the throwing of objects or the display of a weapon; and situations involving a person who has been warned about the same type of disruptive behavior at a City Council meeting held within the prior thirty (30) calendar days.

(2) *Recess.* If, after receiving a request from the Mayor, the person persists in violating the rules, the Mayor may order a recess. Any representative of law enforcement who is present at the meeting when the violation occurs shall be authorized to warn the person that his or her conduct is violating the rules and that he or she is requested to cease such conduct.

(3) *Order barring person from meeting*. The Mayor, or the presiding officer, or a majority of the City Council may issue an order barring a person from the remainder of a City Council meeting if such person was warned at that City

Council meeting about disruptive behavior and such person again engages in behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of the meeting. Additionally, the Mayor, or the presiding officer, or a majority of the City Council may issue an order barring a person from the remainder of a City Council meeting without a warning if there are extraordinary circumstances and the person engages in behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of the meeting.

(4) *Removal.* If a person barred from the remainder of a City Council meeting does not voluntarily exit the Council chambers, the Mayor, or the presiding officer, or a City Council majority may direct the Sergeant-at-arms to remove that person from the Council chambers and exclude that person for the remainder of that meeting.

(5) *Clearing the Room*. Pursuant to Government Code Section 54957.9, in the event that any meeting is willfully interrupted by a person or groups of persons so as to disrupt, disturb or otherwise impede the orderly conduct of such meeting and order cannot be restored by the removal of the individuals who are willfully interrupting the meeting, City Council may order that the meeting room may be ordered cleared and the meeting shall continue in session. The motion to clear the room shall be by a vote not less than three members of the City Council in favor. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to Government Code Section 54957.9.

(6) *Violation of the California Penal Code.* A person or persons who substantially impairs the conduct of a City Council meeting by knowingly and intentionally violating these rules of decorum may be prosecuted under Penal Code Section 403 for disturbing a public meeting. Every person who violates Penal Code Section 403 is guilty of a misdemeanor.

Unlawful behavior. The following conduct shall be unlawful:

(1) Engaging in behavior that actually disrupts, disturbs or otherwise impedes the orderly conduct of a City Council meeting after receiving a warning at that meeting from the Mayor, or the presiding officer, or a City Council Member.

(2) Refusing to leave the Council chambers after being barred for the remainder of a City Council meeting by the Mayor, or the presiding officer, or a City Council majority.

(3) Returning to the Council chambers before the conclusion of a City Council meeting after being barred for the remainder of that meeting by the Mayor, or the presiding officer, or a City Council majority.

Sergeant-at-arms. The Sheriff, or such members of the Sheriff's Department as he or she may designate, shall attend each Council meeting and shall be Sergeant-at-arms of the City Council unless otherwise directed by the City Manager. The Sergeant-at-arms shall

carry out all lawful orders given by the Mayor, or the presiding officer, or a majority of the City Council for the purpose of maintaining order at City Council meetings. The Sergeant-at-arms shall have the authority and power to enforce the orders of the Mayor, or the presiding officer, or a majority of the City Council relating to the order and conduct of City Council meetings. Any Council Member may move to require the Mayor, or presiding officer, to enforce the rules of conduct and a majority vote of the Council shall require him or her to do so.

Motion to Enforce. If the Mayor fails to enforce the rules of decorum set forth herein, any Council Member may move to require the Mayor to do so, and an affirmative vote of three members of the Council shall require the Mayor to do so. If the Mayor fails to carry out the will of the majority of the Council in this matter, the Council by an affirmative vote of three Council Members may designate another Council Member to act as Mayor for the limited purpose of enforcing the rules of decorum established herein for that meeting.

PUBLIC HEARINGS

Process and Procedures. The City Council conducts Public Hearings on applications, projects, and other matters as required to provide due process of law. The following outlines the process under which Public Hearings will be conducted. Staff will review the application/project/matter, will prepare a staff report, and may make a recommendation or propose alternatives to the City Council prior to the Public Hearing.

A notice of the Public Hearing shall be posted, published, and mailed as required by law and the Temecula Municipal Code. The members of the City Council will receive the staff report for the application/project/matter in the agenda packet prior to the meeting. This provides the Council with an opportunity to study the staff report, which will become part of the hearing record, and to become familiar with the project prior to the Public Hearing. When the Public Hearing is called, staff shall summarize the application/project/matter as contained in the staff report or request a continuance to a future meeting. The City Council may ask questions for clarification. Once the Public Hearing is opened, the applicant/property owner and the appellant is entitled to present the application/project/matter in person or through a representative. Following this presentation, members of the public shall be called upon to speak on the application/project/matter in the order their Request to Speak forms are received by the City Clerk or Deputy City Clerk. Once the members of the public have spoken, the applicant/property owner and the appellant shall be provided an opportunity to rebut any testimony or evidence provided by opponents or by staff. The rebuttal shall be limited to answering or refuting testimony of the public or staff. Following each presentation, members of the City Council may question the speakers. Following rebuttal, the item is then before the City Council for discussion and clarification.

When all parties have been heard and there are no additional requests to speak, the Mayor may close the Public Hearing and any member of the Council may make a motion to:

(1) Reopen the Public Hearing and continue it to a date certain to allow for further study or discussion; or

(2) Adopt the resolution or ordinance for approval or denial of the project, with or without changes, as recommended in the Staff Report; or

(3) Direct Staff to prepare a different resolution or ordinance than the one recommended for adoption on the Consent Calendar at the next regular meeting of the City Council.

The applicant may withdraw the application/project/matter at any time before a vote is taken by the City Council. An appellant may withdraw its appeal at any time prior to the opening of the public hearing.

Speaker Time Limits for Public Hearings

At Public Hearings involving land use matters the property owner or the applicant/property owner has the burden of proof and, therefore, shall be allowed fifteen (15) minutes for an initial presentation by its development team and an additional ten (10) minutes for rebuttal by its development team following the other comments on the matter. The Mayor may allow more time if required to provide due process for the property owner or applicant. An appellant, other than the property owner or applicant, and the spokesperson for an organized group of residents residing within the noticed area of the property which is the subject of the Public Hearing, shall be allowed fifteen (15) minutes to present the appellant's position to the Council. The Mayor may allow more time if required to provide due process for the appellant. All other members of the public may speak during the Public Hearing for a maximum period five (5) minutes each. Deferral of one speaker's time to another is not permitted. In the event there is a large number of speakers, the Mayor may reduce the maximum time limit for members of the public to speak.

Policy Applicable to All Public Meetings of the City. The above-referenced public participation standards of this Policy shall apply to all public meetings of the City including City Council and all commissions, boards and committees of the City.

POLICY NO. 7

AGENDA PLACEMENT BY COUNCIL MEMBERS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Agenda Placement by Council Members**
Policy No.	**7**
Approved:	**September 28, 2021**
Revised:	**March 14, 2023**

PURPOSE:

While most agenda items are scheduled through the City Manager's Office based on the administrative and operational needs of the City, the purpose of this City Council policy is to provide for an effective and efficient process through which an individual Council Member may place an item on the agenda.

POLICY:

Request for Placement. Any Council Member, including the Mayor, may request that an item be placed on a future agenda. The Council Member's request will be considered by the City Council under the "Items for Future City Council Agendas" section of the agenda. In making the request, a Council Member may briefly describe the topic of the proposed agenda item and any timing associated with the placement of the item on the agenda. The Council Members description of the requested future agenda item shall not exceed three (3) minutes unless extended by a majority vote of the City Council. No substantive discussion on the subject to be placed on a future agenda of the motion may occur except to explain the general nature of the item and the issue of timing for its placement on a future agenda. While a member of the public may express a desire to place an item on the agenda for consideration, items may only be placed on the agenda by Council Members pursuant to this policy or by the City Manager based on administrative or operational needs of the City.

Response to Request for Placement. In response to such a request to place an item on the agenda by an individual Council Member, the City Council by a majority vote may choose to do any of the following:

(1) Refer the item to the City Manager with specific direction to place the item on the agenda, conduct additional research and/or obtain additional information to report back to the City Council, and/or any other specific direction that the City Council deems appropriate.
(2) Refer the item to the City Council subcommittee most related to the subject matter of the request for additional review and consideration. The relevant Council subcommittee after consideration may place the item on an agenda at their request and/or report back the findings of their consideration at a Council meeting under the "City Council Reports" section of an agenda. At the direction of the subcommittee, the City Manager may also share the general findings in writing as an update to the full City Council.
(3) Take no action. Absent a majority vote of the City Council to refer an item pursuant to (1) and (2) above, the proposed item shall not be placed on a future agenda.

Motion Required. If a motion to refer an item pursuant to (1) and (2) above is made, seconded and approved by a majority vote of the City Council, the proposed item will be processed accordingly through the City Manager. If there is no second, or the motion fails for the lack of a majority, no subsequent action shall be taken on the request.

Time for Discussion and Public Comment

Public comments on the placement of these agenda items shall be limited to a maximum of 30 minutes. Individual comments shall not exceed three (3) minutes. General discussion amongst the City Council on the placement of agenda items listed under the "Items for Future City Council Agendas" section of the agenda shall be limited to 15 minutes.

Timing Direction. If the motion provides specific direction regarding timing, the approved item will be referred and/or placed on a future agenda consistent with that direction. If the motion is silent regarding timing, the approved item will be placed on a future agenda at the earliest reasonable time as determined by the City Manager.

Recurring Requests. Requests by Council Members to add the same agenda item to every subsequent agenda are not permitted. An item may not be reconsidered for placement for a minimum of three (3) months unless approved by a majority vote of the City Council.

POLICY NO. 8

REQUEST FOR INFORMATION AND STAFF TIME

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Requests for Information and Staff Time**
Policy No.	**8**
Approved:	**September 28, 2021**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to ensure the effective use of staff time to fulfill individual City Council Member requests in balance with implementing the direction of the full City Council.

POLICY:

1. General. Unless circumstances warrant otherwise, communications with staff should occur during normal City business hours. Responses to inquiries and questions should be expected within the next business day where possible.

2. Routine Requests for Information. Council Members may contact Executive Department Directors directly for information made readily available to the general public on a regular basis. Routine requests to provide information that can be fulfilled within a nominal period of time (i.e., status of a resident request, legislation, project timing, copy of existing documents, etc.) will be provided as soon as practicable. Staff shall treat all Council Members the same without preferential treatment and advise the City Manager of information provided as needed.

3. Non-Routine Requests for Information. Non-routine requests are defined as requests for information that exceed four (4) hours or one-half of a regular business day, as determined by the City Manager, to compile, research, prepare, etc.. Non-routine requests shall require the approval of the majority of the City Council. Non-routine requests may be placed on the agenda by the City Manager as an administrative or operational item under the Consent Calendar or Business section of the agenda to obtain such approval. The responsive information to non-routine requests will be distributed to the full City Council by way of written notification, as a future agenda item, or such other manner as determined by the City Manager. The City Manager retains the ability to bring any item to the full City Council irrespective of time constraints. The City Manager also retains the ability in the aggregate to perform work in response to individual City Council Member requests based on overall time and resource allocation.

4. Meeting Requests. Any Council Member requests for meetings with staff must be directed through the City Manager and/or relevant Executive Department Director, as appropriate.

POLICY NO. 9

PUBLIC RECOGNITIONS POLICY

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Public Recognitions Policy**
Policy No.	**9**
Approved:	**January 10, 2023**
Revised:	**N/A**

PURPOSE:

The purpose of this City Council policy is to ensure an effective and efficient process for the consideration and conduct of various public recognitions by the City Council.

POLICY:

The policy of the City Council with respect to the subject matter listed in the above-referenced title is as follows:

Public Recognitions Ad Hoc Subcommittee

A subcommittee shall be appointed annually as part of the City Council subcommittee review and selection process in January. To the extent possible, the subcommittee shall include both short and long tenured members of the City Council. The subcommittee will consider all public recognitions that include a nomination component (Community Leader Award of Distinction, Council Member Award of Recognition Upon Retirement, Wall of Honor, and Memorial, Monument and/or Facility Naming). The subcommittee will consider all nominations in a calendar year together and make recommendations to the full City Council. The subcommittee will function similarly to other ad hoc subcommittees that consider items on a calendar year basis.

Standard Certificates of Recognition

Standard certificates of recognition may be provided at the request of City residents, community leaders, businesses, nonprofit organizations, and/or Council Members. Standard certificates shall include those designated in the chart below. Such certificates shall be presented on behalf of the City of Temecula and shall be signed by a single signatory in the following order: (1) Council Member attending a related event, (2) Mayor, (3) Mayor Pro Tempore, or (4) Council Member designated by the Mayor.

1	Certificate of Achievement	Student of the Month, Student of the Year, Girl Scouts, Eagle Scouts, Student Sports and Competitions, Youth in Government	Common / Monthly
2	Certificate of Appreciation	Former Board and Commission Members, Meeting Entertainment	Common
3	Certificate of Commendation	Acts of Bravery, Heroism (Resident Assistance in Emergency Circumstances), Veterans	Rare

4	Certificate of Congratulations	25th/50th/75th/100th Birthdays, Wedding Anniversaries, Retirements	Rare
5	Certificate for Grand Opening / Ribbon Cutting	New Businesses / New Owners / Chamber of Commerce (Economic Development Requests)	Common
6	Certificates of Recognition	Miscellaneous – Noteworthy Residents, Non-Profits, Foundations, Chamber Gala	Common
7	Certificate of Remembrance	In Memoria, Adjournments	Rare
8	Certificate of Welcome	Sister City Dignitaries	Rare

Proclamations

Proclamations may be provided at the request of residents, businesses, nonprofit organizations and/or Council Members. The City Council shall approve annually a list of proclamations proposed to be issued for the calendar year. Unless three or more Council Members pull a proclamation from the list indicating exclusion, all proclamations on the annual list shall be issued for presentation via mail or in-person as requested. Proclamations shall be presented on behalf of the City of Temecula and shall be signed by a single signatory in the following order: (1) Mayor, (2) Mayor Pro Tempore, or (3) Council Member designated by the Mayor.

1	Proclamation	Day, Week or Month of Observation Consistent with Regional, State and/or National Recognition for Public Awareness / Education Purposes	Common
2	Proclamation – Person	Recognition of Day in Celebration of a Person (Council Member, Founding Member)	Rare

Pins and Medals

Pins and medals may be provided at the request of residents, businesses, nonprofit organizations and/or Council Members. Pins and medals shall include those designated in the chart below. Pins and medals shall be accompanied by a related certificate and shall be presented via mail or in-person as requested. Pins and medals shall be presented on behalf of the City of Temecula and any related certificate shall be signed by a single signatory in the following order: (1) Mayor, (2) Mayor Pro Tempore, or (3) Council Member designated by the Mayor.

1	Boy Scout / Girl Scout	Eagle Scout, Bronze/Silver/Gold Award, or Similar Noteworthy Accomplishment	Common
2	Hero's Medal and Pin	Acts of bravery and courage in the service of others	Rare

Community Leader Award of Distinction

A Community Leader Award of Distinction may be provided to a resident and/or nonprofit or business affiliate upon recommendation of the Public Recognitions Subcommittee. Such award is rare and therefore shall be presented on behalf of the City of Temecula in-person at a City Council meeting. Any

related certificate shall be signed by all Council Members. To be eligible for such an award, a nominee must meet the following criteria:

Criteria

1. Nomination Form – The requisite nomination form, with supporting documentation, is submitted to the City Clerk's Office pursuant to instructions by the relevant deadline.
2. Contributions – The contributions and proof of impact of the nominee, as illustrated in the nomination packet, are well known and recognized by a significant segment of the community and their respective industry (education, nonprofit, business).
3. Subcommittee Consideration – The nominee received a recommendation for recognition by the full City Council from the Public Recognitions Ad Hoc Subcommittee.
4. Public Recognition – During an in-person recognition at a City Council meeting, the nominee will receive a framed award signed by all Council Members, a swag bag from the City, and other recognitions from the community/industry as they deem appropriate.

Council Member Award of Recognition Upon Retirement

A Council Member Award of Recognition Upon Retirement shall be provided to retiring Council Members as indicated below. Such recognition is rare and therefore shall be presented on behalf of the City of Temecula in-person at a City Council meeting. Any related certificate shall be signed by all Council Members. To be eligible for such an award, a nominee must meet the following criteria:

Criteria

1. Internal Form – The requisite recognition form, with supporting documentation, is submitted by relevant staff to the City Clerk's Office pursuant to instructions by the relevant deadline.
2. Service – The subject Council Member has completed a minimum of one full-term if elected or the whole of an unexpired term if appointed.
3. Subcommittee Consideration – The subject Council Member received a recommendation for recognition by the full City Council from the Public Recognitions Ad Hoc Subcommittee.
4. Public Recognition – The subject Council Member receives recognition based on tenure with optional community recognitions at th meeting. While Board and Commission service is noted as part of the presentation, it is not counted towards years of service for purposes of recognition categories below:

A. One Term (4 Years) – The subject Council Member receives an engraved plaque with years of service, a commemorative street sign, and a swag bag from the City.
B. Two – Three Terms (8-12 Years) – The subject Council Member receives an engraved plaque with years of service, a framed proclamation recognizing member's retirement date as Member's Day, a commemorative street sign, and a swag bag from the City.
C. Four Terms and Beyond (16+ Years) – The subject Council Member receives a shadow box with a key to the City, a proclamation recognizing member's retirement date as Member's Day, a commemorative street sign, and a swag bag from the City.

Wall of Honor

A Wall of Honor recognition may be provided to any deserving individual (i.e., resident, service club member, former Council Member, Commissioner or staff, nonprofit or business affiliate, etc.) upon recommendation of the Public Recognitions Subcommittee. Such recognition is rare and therefore shall be presented on behalf of the City of Temecula in-person at a City Council meeting. Any related certificate

shall be signed by all Council Members. To be eligible for such a recognition, a nominee must meet the following criteria:

Criteria

1. Nomination Form – The requisite nomination form, with supporting documentation, is submitted to the City Clerk's Office pursuant to instructions by the relevant deadline.
2. Contributions – The contributions and proof of impact of the nominee, as illustrated in the nomination packet, have extended beyond a 10 year period of time, are well known, and recognized by a significant segment of the community and/or their respective industry (education, nonprofit, business).
3. Subcommittee Consideration – The nominee received a recommendation for recognition by the full City Council from the Public Recognitions Ad Hoc Subcommittee.
4. Public Recognition – During an in-person recognition at a City Council meeting, the nominee will receive a framed award signed by all Council Members and the nominee's name will be incorporated into the perpetual Wall of Honor plaque located at City Hall.

Memorial, Monument and/or Facility Naming

A memorial, monument and/or facility naming recognition may be provided to any deserving individual (i.e., resident, service club member, former Council Member, Commissioner or staff, nonprofit or business affiliate, etc.) upon recommendation of the Public Recognitions Subcommittee. Such recognition is rare and therefore shall be presented on behalf of the City of Temecula in-person at the site of the thing and/or place to be named. Any related certificate shall be signed by all Council Members. To be eligible for such a recognition, a nominee must meet the following criteria:

Criteria

1. Nomination Form – The requisite nomination form, with supporting documentation, is submitted to the City Clerk's Office pursuant to instructions by the relevant deadline.
2. Contributions – The contributions and proof of impact of the nominee, as illustrated in the nomination packet, have extended beyond a 20 year period of time, are well known, and recognized by a significant segment of the community and/or their respective industry (education, nonprofit, business). Such contributions exceed all other contributions in community value such that there is no other public recognition that can be applied.The 20 year period of time is subject to review and adjustment by the full City Council.
3. Subcommittee Consideration – The nominee received a recommendation for recognition by the full City Council from the Public Recognitions Ad Hoc Subcommittee.
4. Public Recognition – During an in-person recognition, the nominee will receive a framed award signed by all Council Members and the nominee's name will be incorporated into the subject memorial, monument and/or facility.

Miscellaneous

The following non-standard recognitions shall not have a political, religious, lifestyle, and/or commercial association: Community Leader Award of Distinction, Wall of Honor, Memorial, Monument, and/or Facility Naming. In addition, Resolutions of Principle, defined as statements in which an organization describes its collective beliefs, values, and intentions towards a particular topic(s), will not be issued by the Council and are not included as a part of this policy.

POLICY NO. 10

USE OF CITY LETTERHEAD AND SEAL

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Use of City Letterhead and Seal**
Policy No.	**10**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth clear guidelines for the use of City letterhead and seal for official City business. The use of City letterhead and seal for any other purpose is prohibited.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

City Letterhead
City letterhead shall be used to convey official City business. Council Member correspondence written on City letterhead may reflect a majority position of the Council and/or an individual Council Member's position. For example, City letterhead may be used to convey a collective position of the City Council on legislation, signed by the Mayor on behalf of the City Council. In addition, an individual Council Member, under their individual signature, may use City letterhead to support and/or oppose legislation. Any use of City letterhead shall clearly reference whether the correspondence is being sent on behalf of the members collectively or an individual member. All Council Member correspondence using City resources shall be copied to the full Council.

City Seal
Pursuant to Government Code Section 40811 the City Clerk is the custodian of the City Seal. Temecula Municipal Code Section 1.12.020 states "The city clerk shall have custody and charge of the City Seal and such other insignia that may from time to time be adopted pursuant to this code. Except as provided by this code, any seal, insignia or other symbol officially adopted for use by the City shall not be affixed to any instrument without the special warrant of the City Clerk therefore." Use of the City Seal is limited to official City business (i.e., official documents) and representation of the City as a whole. Individual use of the City Seal is prohibited.

POLICY NO. 11

COMPLIMENTARY TICKET USE AND REPORTING

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Complimentary Ticket Use and Reporting**
Policy No.	**11**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth the use and reporting requirements affiliated with a complimentary ticket policy. The Political Reform Act, codified in the California Government Code, requires City officials and those employees designated in the City' s conflict of interest code to report gifts valued at $50 or more on their Statement of Economic Interests (Form 700). The regulating agency is the Fair Political Practices Commission (FPPC). FPPC Regulation 18944.1 provides that a ticket or pass provided to such persons by the City and distributed and used in accordance with an adopted written policy that meets the requirements of Regulation 18944.1 is not a gift under the Political Reform Act. The City adopted a Complimentary Ticket Policy in January 2009 and amended it in January 2016 and December 2019.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is attached as Exhibit A.

EXHIBIT A

POLICY

EXHIBIT A

RESOLUTION NO. 19-72

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA UPDATING THE CITY'S COMPLIMENTARY TICKET POLICY

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council finds and determines as follows:

A. The Political Reform Act requires City officials and those employees designated in the City's conflict of interest code to report gifts valued at $50 or more on their Form 700. FPPC Regulation 18944.1 provides that a ticket or pass provided to such persons by the City and distributed and used in accordance with an adopted written policy that meets the requirements of Regulation 18944.1 is not a gift under the Political Reform Act.

B. The City adopted a Complimentary Ticket Policy in January 2009 and amended it in January 2016. The City must again amend the Complimentary Ticket Policy in order to update it to comply with revised FPPC Regulations.

Section 2. The City Council hereby approves the "Complimentary Ticket Policy," attached hereto as Exhibit A, that amends and restates the Policy. The Complimentary Ticket Policy approved by this Resolution supersedes all previous versions of the policy.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 10th day of December, 2019.

Michael S. Naggar, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Resolution No. 19-72 was duly and regularly adopted by the City Council of the City of Temecula at a meeting thereof held on the 10th day of December, 2019, by the following vote:

AYES:	5	COUNCIL MEMBERS:	Edwards, Rahn, Schwank, Stewart, Naggar
NOES:	0	COUNCIL MEMBERS:	None
ABSTAIN:	0	COUNCIL MEMBERS:	None
ABSENT:	0	COUNCIL MEMBERS:	None

Randi Johl, City Clerk

CITY OF TEMECULA

COMPLIMENTARY TICKET POLICY

1. **Purpose.** This policy governs the distribution of complimentary tickets or passes received by the City, or at the behest of a City Official or City Employee, to a facility, event, show or performance for entertainment, amusement, recreational or similar purposes (the "Event"). Many of the rental agreements for the various musical and theatrical performances taking place at the Old Town Temecula Community Theater or other City-owned venues ("City Venues") require that booking entities provide a limited number of complimentary tickets to the City for performances. Additionally, the City is a sponsor of many other events in the community providing funds for the event or in-kind services to support the event ("City Sponsored Events"). The organizers of these specific events and other events within the City and County often provide the City with complimentary tickets to the event. The purpose of this Policy is to establish a fair and equitable process for the distribution of complimentary tickets to the City in compliance with the requirements of Section 18944.1 of the Fair Political Practices Commission Regulations. This Policy is subject to all applicable FPPC Regulations and the Political Reform Act, as now exist or may hereafter be added or amended, including, without limitation, definitions. (These regulations can be found at Title 2 of the California Code of Regulations and will be referred to as "FPPC Regulation").

2. **Distribution of Complimentary Tickets by the City.** The City shall have sole discretion to determine who shall receive the complimentary tickets for Events that are provided to the City.

A. The City Manager may provide two (2) complimentary tickets for each City Council Member and Commission Members ("City Officials") for an Event. An Event shall only include one performance during each engagement at the City Venues or for the City-Sponsored Event or other Event. "Commission Members" shall mean members of the Planning Commission, Community Services Commission, Public/Traffic Safety Commission, and Old Town Local Review Board, and other commissions or boards established by the City Council.

1) The tickets shall be used by the City Official, his or her immediate family or no more than one guest solely for their personal use. The City Official receiving complimentary tickets shall not transfer a ticket to any other person, except to members of the City Official's immediate family or no more than one guest solely for their attendance at the Event.

2) The public and governmental purpose of providing the complimentary tickets to City Officials for an Event is to enable them to advertise and promote the City of Temecula, to monitor and evaluate the City Venues and the quality of performances and to monitor and evaluate the value of the City-Sponsored Event to the City and their compliance with City policies, agreements and other requirements.

3) City Officials may purchase at face value additional tickets to performances at the City Venues or to the City Sponsored Event, but no more than two complimentary tickets or passes will be provided as described in this Section.

4) If complimentary tickets are provided to a City Official for an Event at which the City Official performs a ceremonial role, the ticket is not a gift but shall be reported as provided in this Policy.

B. The City Manager may distribute two (2) complimentary tickets for a performance at a City Venue or a City Sponsored Event or other Event to a City Employee on an equitable basis. The tickets shall be used by the City Employee, the City Employee's immediate family or no more than one guest solely for their personal use.

1) The City Employee receiving the complimentary tickets shall not transfer the complimentary tickets, except to members of the City Employee's immediate family or no more than one guest solely for their attendance at the Event.

2) The purpose of providing the complimentary tickets to a City Employee is to enable the employee to advertise and promote the City of Temecula, to monitor and evaluate the City Venues and the quality of performances, evaluate the value of the City-Sponsored Event to the City and its compliance with City policies, agreements and other requirements, and to enhance employee morale.

C. The City Manager may distribute complimentary tickets for an Event to non-profit community service groups who have received or are eligible for Community Service funding from the City.

D. The City Manager may distribute complimentary tickets for an Event to persons participating in recreational, educational or cultural programs administered by the City or for other lawful purposes; provided, however, that complimentary tickets shall only be distributed to City Officials and City employees, their immediate family or no more than one guest in accordance with this Policy.

E. Complimentary tickets to Events shall be distributed to City Officials and City Employees under procedures designated by the City Manager, provided the manner of distribution conforms to this Policy and can be documented and reported as required by this Policy.

F. Any complimentary tickets for City Venues which are not distributed under this Policy may be sold by the City to the public.

G. Complimentary tickets distributed to those persons described in this Policy shall not be transferred except as provided in this Policy and shall not be sold.

H. If the public purpose cited for the use of tickets involves the oversight or inspection of facilities, the City Official or City Employee must document the public purpose by submitting a written inspection report of findings and recommendations to be provided to the City Clerk.

I. The disproportionate use of tickets or passes by a City Official, City Manager, or a member of the Executive Staff is prohibited.

J. The attendance of a City Employee at an Event for the purpose of carrying out the employee's job duties or for the purpose of providing services on behalf of the City for the Event,

shall not be deemed to be the distribution of a complimentary ticket and does not need to be reported as otherwise provided in this Policy.

K. Except for the provisions outlined in this Policy, this Policy shall in no way restrict or prohibit the Staff at the Old Town Temecula Community Theater from issuing complimentary tickets in compliance with the normal and customary business practices associated with promoting theatrical events and concerts to the general public. The public and governmental purposes of providing these complimentary tickets is to promote and advertise the City of Temecula and, particularly the Old Town Temecula Community Theater, to the public and the entertainment community and to develop quality entertainment for the Theater.

3. Complimentary Tickets Under this Policy Not Subject to Gift Regulations; Other Benefits Could Be Gifts.

A. The distribution of complimentary tickets pursuant to this Policy shall not constitute a "gift" to a City Official or City Employee pursuant to the terms of FPPC Regulation 18940; provided, however, that other benefits, such as food or beverage or other gifts provided to an official that are not part of the admission provided to all members of the public with the same class of ticket, will need to be accounted and reported for as gifts.

B. If the City receives complimentary tickets that are earmarked for particular City Official or City Employee, then the tickets are considered gifts to that City Official or City Employee. If these tickets not returned or donated, unused, to the provider, or if the City Official or City Employee does not reimburse the donor the full value of a ticket, within thirty (30) days of receipt, then the official must comply with the applicable FPPC gift limit regulations and reporting regulations.

4. Reporting of Complimentary Tickets. The distribution of the tickets and the use of any passes pursuant to this Policy shall be documented by the preparation and certification of the Fair Political Practices Commission Form 802. Within thirty (30) calendar days of the distribution of a ticket or the use of a pass the City Clerk, or his or her designee, shall prepare and certify Form 802, forward the Form 802 to the FPPC for posting on the FPPC's website, maintain the Form 802 as a public record and post it on the City's Website. This Policy shall be posted on the City website in a prominent fashion.

5. Complimentary Tickets to Political, Non-Profit and 501(c)(3) Organization Fundraisers. The reporting requirements for complimentary tickets to political, non-profit and 501(c)(3) organization fundraising events are governed by FPPC Regulation 18946.4 and the City has no jurisdiction to modify the reporting requirements. These complimentary tickets are referenced in this Policy as a convenience to persons seeking information concern distribution of complimentary tickets.

A. Pursuant to FPPC Regulation 18946.4, all complimentary tickets provided directly to a City Official or City Employee to political, non-profit or 501(c)(3) organization fundraising events are reportable as gifts on an official's Economic Disclosure Form 700 and are subject to the annual gift limit set forth in FPPC Regulation 18940.2 unless one of the following narrow exceptions applies:

- A City Official or City Employee may receive two complimentary tickets from a 501(c)(3) charitable organization to its fundraising event that shall be deemed to have no value. The official must make sure that the charity is a valid Internal Revenue Service 501(c)(3) organization because not all "non-profit organizations" are 501(c)(3) organizations. Also, additional complimentary tickets or admissions by invitations, or a gift of a ticket or tickets to a 501(c)(3) charitable organization's fundraising event to a City Official or City Employee from a third party other than the 501(c)(3) charitable organization, are gifts to the City Official or City Employee subject to the gift limit and reportable on Form 700.

- A City Official or City Employee may receive two complimentary tickets to a political fundraising event for a political committee as defined in Government Code Section 82013(a), or a comparable committee regulated under federal law or the laws of another state holding an event in California, that shall be deemed to have no value. Also, additional complimentary tickets or admissions by invitations, or a gift of a ticket or tickets to a political committee or candidate's fundraising event to an official from a third party other than the committee or candidate sponsoring it, are gifts to the official subject to the gift limit and reportable on Form 700.

B. FPPC Regulation 18946.4 contains detailed regulations concerning the calculation of the value of tickets to political and non-profit fundraisers when such tickets must be reported.

C. Complimentary tickets to a fundraising event for non-profit organizations donated to the City without designation of who should attend will be distributed as otherwise provided in this Policy.

6. Effective Date. This Policy shall be effective on the effective date of Resolution No. 19-72.

This Complimentary Ticket Policy was approved by Resolution No. 19-72 of the City Council on December 10, 2019.

Randi Johl, City Clerk

POLICY NO. 12

USE OF SYSTEMS, ELECTRONIC COMMUNICATIONS AND TECHNOLOGY RESOURCES

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Use of Systems, Electronic Communications and Technology Resources**
Policy No.	**12**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth certain expectations for the use of City systems, electronic communications and/or technology resources, regardless of whether the electronic communications and/or technology resources are owned or maintained by the City, to conduct City business. In utilizing systems, electronic communications and/or technology resources, all users are expected to share the obligation of safeguarding and maintaining the City's information and adhering to the relevant policy.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is attached as Exhibit A.

EXHIBIT A

POLICY

CITY OF TEMECULA

INFORMATION TECHNOLOGY & SUPPORT SERVICES DEPARTMENT

MEMORANDUM

TO: Aaron Adams, City Manager

FROM: Michael K Heslin, Director of ITSS

DATE: June 13, 2023

SUBJECT: Policy Update Approval – User Technology Resources Policy

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The attached User Technology Resources Policy is an update to the previously approved Employee Technology Resources Policy on October 30, 2023.

The User Technology Resources Policy includes all definitions of communications (including email and text messaging) and Appropriate Use of Electronic Mail, Retention, and Responsibility of City Officials/Employees. City Attorney's Office has revised this policy to combine all facets of users and technology use into this policy where applicable. This update now combines employees, elected officials and other consultants into one policy and addresses use of personal technology.

Attached is the updated User Technology Resources Policy dated June 13, 2023, that will supersede all other Employee Technology Resources Policies. Attached is the marked-up version for your reference.

Please call me with any questions you may have.

Thank you

R:/memos

CITY OF TEMECULA
INFORMATION TECHNOLOGY
& SUPPORT SERVICES

USER TECHNOLOGY RESOURCES POLICY

DATE: June 13, 2023

DEPARTMENT APPROVAL: _____ 6/13/2023
Department Director Signature — Date

CITY MANAGER APPROVAL: _____ 6/14/23
City Manager Signature — Date

PURPOSE:

All Users who access City systems or use any Electronic Communications or Technology Resources, regardless of whether the Electronic Communications or Technology Resources are owned or maintained by the City, to conduct City Business are expected to share the obligation for safeguarding and maintaining the City's information, as outlined in the following policy. If a User needs clarification on any of the terms of this Policy, the User should contact the ITSS Department.

SCOPE:

This Policy applies to all Users including those Users affiliated with third parties who access City Technology Resources or Electronic Communications or use any personal or commercial Technology Resources or create Electronic Communications to conduct City Business.

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2.2 "City" shall mean any entity controlled by the City Council, including but not limited to Temecula Community Services District, Public Financing Authority, Temecula Housing Authority or Successor Agency to the Temecula Redevelopment Agency. 4
2.3 "City Business" is broadly defined to mean those activities or other business, related to the City and its jurisdiction, functions, programs, operations, regulations or regulatory activities, or events relating to the City, or that contain information used by its officials, employees and consultants for the accomplishment of City-related tasks, or are related to the operation of the City, with the exception of limited incidental uses as described in Section 4.2. 4
2.4 "Electronic Communications" includes emails, text messages, voicemails, social media and blog posts, and any other electronic communications, including those developed or implemented in the future, transmitting or maintaining messages, documents, images or other writings via Technology Resources. 4
2.5 "Public Records" include any "writing" (as broadly defined below) containing information relating to the conduct of the City's business that is prepared, owned, used, or retained by the City, regardless of the physical form and characteristics. Public Records specifically include any recorded and retained communications regarding City Business sent or received by a User through commercial or personal Technology Resources or other Technology Resources not owned by the City or connected to a City computer network. Public Records do not have to be written but may be in another format that contains information such as computer tape or disc, video or audio recording, or email or text message. Public Records are further defined in Section 4.2.2. 4
2.6 "Public Records Request" is a request for Public Records made under the Public Records Act or subpoena duces tecum or discovery request addressed to the City or a User. 4
2.7 "Technology Resources" includes all electronic media and storage devices, software, and means of electronic communication including any of the following: personal computers and workstations; laptop computers; mini and mainframe computers; tablets; computer hardware such as disk drives, tape drives, external hard drives and flash/thumb drives; peripheral equipment such as printers, modems, fax machines, and copiers; computer software applications and associated files and data, including software that grants access to external services, such as the Internet or cloud storage accounts; electronic mail (or email); telephones; mobile phones; smart phones; personal organizers and other handheld devices; and instant messaging and text systems. Technology Resources is also intended to broadly include new or emerging devices, technology, software and means of communications that may be developed or implemented in the future. 4
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1 Confidentiality

Material contained in this document is property of the City of Temecula. This document should not be disclosed outside of the City without specific approval from the ITSS Director, and should not be duplicated, used or disclosed for any purpose other than that for which it was intended.

2 Definitions

2.1 "User" means all City employees, elected and appointed City officials, members of City commissions and advisory boards, and City consultants and other non-employees utilizing Electronic Communications or Technology Resources for the purpose of conducting City Business, regardless of the User's location when accessing any Electronic Communications or Technology Resource.

2.2 "City" shall mean any entity controlled by the City Council, including but not limited to Temecula Community Services District, Public Financing Authority, Temecula Housing Authority or Successor Agency to the Temecula Redevelopment Agency.

2.3 "City Business" is broadly defined to mean those activities or other business, related to the City and its jurisdiction, functions, programs, operations, regulations or regulatory activities, or events relating to the City, or that contain information used by its officials, employees and consultants for the accomplishment of City-related tasks, or are related to the operation of the City, with the exception of limited incidental uses as described in Section 4.2.

2.4 "Electronic Communications" includes emails, text messages, voicemails, social media and blog posts, and any other electronic communications, including those developed or implemented in the future, transmitting or maintaining messages, documents, images or other writings via Technology Resources.

2.5 "Public Records" include any "writing" (as broadly defined below) containing information relating to the conduct of the City's business that is prepared, owned, used, or retained by the City, regardless of the physical form and characteristics. Public Records specifically include any recorded and retained communications regarding City Business sent or received by a User through commercial or personal Technology Resources or other Technology Resources not owned by the City or connected to a City computer network. Public Records do not have to be written but may be in another format that contains information such as computer tape or disc, video or audio recording, or email or text message. Public Records are further defined in Section 4.2.2.

2.6 "Public Records Request" is a request for Public Records made under the Public Records Act or subpoena duces tecum or discovery request addressed to the City or a User.

2.7 "Technology Resources" includes all electronic media and storage devices, software, and means of electronic communication including any of the following: personal computers and workstations; laptop computers; mini and mainframe computers; tablets; computer hardware such as disk drives, tape drives, external hard drives and flash/thumb drives; peripheral equipment such as printers, modems, fax machines, and copiers; computer software applications and associated files and data, including software that grants access to external services, such as the Internet or cloud storage accounts; electronic mail (or email); telephones; mobile phones; smart phones; personal organizers and other handheld devices; and instant messaging and text systems. Technology Resources is also intended to broadly include new or emerging devices, technology, software and

means of communications that may be developed or implemented in the future.

3 Introduction

This Policy applies to all Users. Users are responsible for complying with this and all other City policies defining computer and network security measures.

It is City Policy that all information created, stored, processed, transmitted or printed by or on behalf of the City is and shall remain City property.

All Users who access or make decisions affecting City information play a role in protecting that information. Accordingly, it is expected that all Users share the obligation to safeguard and maintain the City's information.

All Users are expected to protect the information assets with which they have been entrusted from unauthorized, deliberate, or accidental:

- Access,
- Use,
- Modification,
- Destruction,
- Disclosure, or
- Possession.

This document defines City standards and guidelines for the protection of the availability, integrity and confidentiality of the City's Technology Resources and any Electronic Communications stored or transmitted in the furtherance of City Business, regardless of whether on City Technology Resources or other Technology Resources.

4 Conditions of Use of City Technology Resources

All Users utilizing City Technology Resources must respect the integrity of all security controls and abide by all implemented security measures, as well as adhere to all end-user license and contractual agreements associated with City Technology Resources.

1. The City reserves the right to limit permanently or restrict any User's usage of the City Technology Resources. The City reserves the rights to copy, remove or otherwise alter any information or system that may undermine the authorized use of the City Technology Resources. The City may do so with or without notice to the User in order to protect the integrity of the City Technology Resources against unauthorized or improper use, and to protect authorized Users from the effects of unauthorized or improper usage.
2. The City, through authorized individuals or entities, reserves the right periodically to check and monitor City Technology Resources, and reserves any and all other rights necessary to protect them.
3. The City disclaims responsibility and will not be responsible for loss or disclosure of User information or interference with User information resulting from its efforts to maintain the privacy, security and integrity of City Technology Resources and information.

4. The City reserves the right to take emergency action to safeguard the integrity and security of City Technology Resources and information. This includes, but is not limited to, termination of a program, job, or on-line session, or temporary alteration of User account names and passwords. The taking of emergency action does not waive the rights of the City to take additional actions under this Policy.
5. Users utilizing City Technology Resources do so subject to applicable laws and City policies. The City disclaims any responsibility and/or warranties for information and materials residing on non-company computer systems or available over publicly accessible networks, except where such responsibility is formally expressed. Such materials do not necessarily reflect the attitudes, opinions or values of the City or its employees.
6. A Department Director may recommend disciplinary action if after appropriate investigation an employee is found to be in willful violation of any City Policy. Other Users may lose access to City Technology Resources. Acts that may lead to discipline or loss of access include, but are not limited to:
   - Willful physical damage to any City Technology Resources;
   - Obtaining confidential information improperly;
   - Deliberate destruction of information;
   - Intentional interruption of normal services provided by the City Technology Resources;
   - Infringement of any patent or the breach of any copyright;
   - Gaining or attempting to gain unauthorized access to accounts and passwords;
   - Gaining or attempting to gain access to restricted areas without the permission of the appropriate authority; or
   - Inappropriate use of City Technology Resources.

4.1 Code of Conduct in the Use of City Technology Resources

It is City Policy that all Users who use, have access to, or are responsible for any City Technology Resources must recognize and comply with City's "Code of Conduct." Employees violating this Code of Conduct may be subject to disciplinary action, up to and including termination of employment, and legal action. All Users who violate this Code of Conduct may lose access to City Technology Resources.

4.1.1 Introduction

Standards for the use of City Technology Resources derive directly from standards of common sense and common decency that apply to the use of any shared resource. The City depends on a spirit of mutual respect and cooperation to resolve differences and resolve problems that arise from time to time. This Code of Conduct is published in that spirit. Its purpose is to specify User responsibilities and to promote the appropriate use of City Technology Resources for the protection of the City.

4.1.2 Responsibilities

All Users who access or make decisions affecting City information play a role in protecting that information. Accordingly, all users of any City Technology Resources must accept specific responsibilities for the security and confidentiality of the City's information. The following description of City network drives will better organize your documents and minimize the opportunity for losing files.

- 'V' Drive: This is your 'my documents' directory-for draft documents or confidential information. No other User is able to access this directory
- 'P' Drive: This is a Global Directory used for quick transfer of non-confidential files. All network Users have access and may copy, delete, and modify all files. Due to this, it is recommended that you use this directory with caution. ITSS will not restore documents lost or deleted from this directory.
- 'R' Drive: This is your department directory. Only members of your department have access to this directory. It is recommended that files that are shared by others within your department be stored here.
- 'C' Drive: This is your local hard drive on your desktop. City policy requires all data to be stored on the above network drives. Local hard drives are not backed up and will not be recovered in the event of data loss.

4.1.2.1 Disclosure and Disclaimer Statement

All intellectual and proprietary property rights, including copyrights and rights to service marks and trademarks, as to any and all text, material, images and/or content appearing on or accessible through the City websites, belong to their respective owners. Notwithstanding the foregoing, the City owns all intellectual and proprietary property rights, including copyrights and rights to service marks and trademarks, as to the City Seal, all City logos, symbols, emblems, and any and all other images, designs, content and materials created by or on behalf of the City that appear on or are accessible through the City websites.

Any use of any of the City-owned materials, images or other content accessible through, or appearing or stored on the City Technology Resources or City's websites is prohibited without the written permission of the City Manager. The following acts or activities are prohibited without prior, written permission from the City Manager: 1) modification and/or re-use of text, images or other content from a City server; 2) distribution of the City's web content; or 3) "mirroring" of the City's information, materials or data on a non-City server.

4.1.2.2 Security

City Policy uses access controls and other security measures to protect the confidentiality, integrity and availability of the information handled by City Technology Resources. All Users are responsible to insure the security of City Technology Resources by implementing procedures to:

- Safeguard their data, personal information, passwords and authorization codes, and confidential data;

- Take full advantage of file security mechanisms built into the City Technology Resources;
- Choose their passwords wisely and to change them as required; and
- Follow the security policies and procedures established to control access to administrative data.

4.1.2.3 Confidentiality

All Users using City Technology Resources must comply with all City Policies for the maintenance of confidentiality.

1. Users have an obligation to respect the privacy of other individuals and refrain from:
   - Intentionally seeking information on, obtaining copies of, or modifying files, tapes, or passwords belonging to other individuals or to the City;
   - Representing others, unless authorized to do so explicitly by those individuals; or
   - Divulging sensitive personal data to which they have access concerning staff, customers, vendors or other individuals without explicit authorization to do so.
2. Users are responsible for reporting any information concerning instances in which City Policies or any City standards or Codes of Conduct has been or are being violated. In general, reports about violations should be directed initially to the ITSS Director and/or Human Resource Director.
3. Printers used to produce confidential information should be monitored while printing.
4. Confidential files must be overwritten on fixed disks, tapes, or cartridges.

4.1.3 Inappropriate Activities

All information stored and processed on City Technology Resources and networks is City property and subject to inspection without notice. Non-compliance with City Policy on restricted activities will not be tolerated. Violating employees are subject to disciplinary action, up to and including termination of employment, and all Users, including employees, are subject to loss of access to City Technology Resources and/or legal action.

The following are intended to illustrate some examples of unacceptable actions rather than to exhaustively list every specific behavior that may violate the City Policies. Accordingly, disciplinary or other legal action may occur after other actions if the circumstances so warrant.

4.1.3.1 Illegal Activity

Users are specifically prohibited from accessing, downloading, storing, printing or disseminating anything using City Technology Resources that is considered inappropriate, offensive, illegal, disrespectful to others, or that could instigate legal conflicts, or otherwise harm the City.

4.1.3.2 Objectionable Material

The City's Technology Resources must not be used for the transmission, obtaining possession, demonstration, advertisement or requesting the transmission of objectionable material including, but not limited to:

- Pornography;
- An article or image that promotes hate, crime or violence, or incites or instructs in matters of hate, crime or violence; or
- An article or image that describes or depicts any material, in a manner that is likely to cause offense to a reasonable adult.

4.1.3.3 Restricted Material

City Technology Resources must not be used to transmit or make available restricted material to a minor. City Policy defines restricted material as an article that a reasonable adult—by reason of the nature of the article, or the nature or extent of references in the article—would find offensive as to matters of sex, race, ancestry or native origin, drug misuse or addiction, crime, cruelty, violence would regard as unsuitable for a minor to see, read or hear.

Users should be aware that there are severe penalties for such activities. The police or a person authorized for the purposes under state or federal law may without a warrant, at any reasonable time, enter any place where the operating of a Technology Resource is carried on and inspect any articles and records kept on the premises and may seize anything that the member reasonably suspects is connected with an offense that is found on or in the place. In addition, there are penalties for delaying, obstructing or otherwise hindering the police or authorized person in the performance of their functions and for giving false or misleading statements, which are misleading through the omission of information.

4.1.3.4 Restricted Activities

The City prohibits use of City Technology Resources for the conduct of a business enterprise, participation in activities for profit purposes, or involvement in activities contrary to the spirit of City Policies including, but not limited to:

- Gambling or performing an act of playing for stakes, involving a monetary wager, in the hope of winning (including the payment of a price for a chance to win a prize); including, but not limited to sports betting, poker, blackjack, and casino wagering; or
- Day Trading or involvement in any act involving a monetary wager to broker or act as agent in the buying and selling of stocks and bonds.

4.1.3.5 Restricted Hardware and Software

It is illegal, unethical and contrary to City Policy to use City Technology Resources to generate viruses, worms or any malicious devices to contaminate other Technology Resources. Users should not knowingly possess, give to another person, install on any of the City Technology Resources, or run, programs or other information, which could result in the violation of the City Policy or the violation of any applicable license or contract.

The unauthorized physical connection of monitoring devices to City Technology Resources, which could result in the violation of City Policy or applicable licenses or contracts, is prohibited.

4.1.3.5.1 Copying and Copyrights

The City strongly supports strict adherence to software vendors' license agreements and copyright holders' notices. In particular, Users should be aware of and abide by City Policies on copying and using computer software. Most software that resides on the City Technology Resources is owned by the City or by third parties, and is protected by copyright and other laws, together with licenses and other contractual agreements.

Users are required to respect and abide by the terms and conditions of software use and redistribution licenses. Such restrictions may include prohibitions against copying programs or data for use on the City Technology Resources or for distribution outside the City; against the resale of data or programs, or the use of them for non-City purposes or for financial gain; and against public disclosure of information about programs without the owner's authorization. Users who develop new packages that include components subject to use, copying, or redistribution restrictions have the responsibility to make any such restrictions known to the users of those packages.

4.1.3.6 Harassment

City policy prohibits sexual and discriminatory harassment. City Technology Resources are not to be used to libel, defame, or harass any other person. Computer harassment is exemplified by, but not limited to:

- Intentionally using a City Technology Resource to annoy, harass, terrify, intimidate, threaten, offend or bother another person by conveying obscene language, pictures, or other materials or threats of bodily harm to the recipient or the recipient's immediate family;
- Intentionally using any City Technology Resource to contact another person repeatedly with the intent to annoy, harass, or bother, regardless of whether any actual message is communicated, and/or where no purpose of legitimate communication exists, and where the recipient has expressed a desire for the communication to cease;
- Intentionally using any City Technology Resource to contact another person repeatedly regarding a matter for which one does not have a legal right to communicate, once the recipient has provided reasonable notice that he or she desires such communication to cease (such as debt collection); or
- Intentionally using any City Technology Resource to invade the privacy, academic or otherwise, of another or the threatened invasion of the privacy of another.

The display of offensive material in any publicly accessible area is likely to violate City harassment policies. There are materials available on the Internet and elsewhere that some members of the City will find offensive. One example is sexually explicit graphics. The City can restrict the availability of such material if it considers its display in a publicly accessible area to be inappropriate. Public display includes, but is not limited to, publicly accessible computer screens and printers.

4.1.3.7 Wasting Technology Resources

One role of ITSS is to educate Users about proper usage of City Technology Resources. Every effort will be made to help Users understand how to use City Technology Resources properly.

It is inappropriate to deliberately perform any act that will impair the operation of any part of the City Technology Resources or deny access by legitimate Users to any part of them. This includes, but is not limited to, wasting resources, tampering with components or reducing the operational readiness of the City Technology Resources.

Wastefulness includes, but is not limited to, passing chain letters, willful generation of large volumes of unnecessary printed output or disk space, willful creation of unnecessary multiple jobs or processes, or willful creation of heavy network traffic. In particular, the practice of willfully using City Technology Resources for the establishment of frivolous and unnecessary chains of communication is an inappropriate waste of resources.

The sending of random mailings (for example, "junk mail") is not permitted. It is poor etiquette at best, and potentially harassment, to send unwanted mail messages to strangers deliberately. Recipients who find junk mail objectionable should mark as junk or delete. If the junk mail continues, the recipient should contact ITSS helpdesk.

4.1.3.8 Game Playing

The City Technology Resources are not to be used for recreational or competitive game playing. The intention of this policy is to prohibit game playing with programs and other software that may adversely impact others, violate other provisions of this Policy or damage City ability to process City Business transactions promptly.

4.1.3.9 Commercial Use

City Technology Resources are provided for the support of the City's mission. Except where expressly permitted, it is inappropriate to use City Technology Resources for:

1. Commercial gain or placing a third party in a position of commercial advantage;
2. Any non-City related activity, including non-company related communications; and
3. Commercial advertising or sponsorship except where such advertising or sponsorship is clearly related to or supports the City's mission or the service being provided.

4.1.3.10 Use for Personal Business

City Technology Resources may not be used in connection with compensated outside work or for the benefit of organizations not related to the City, except where expressly permitted.

4.2 Appropriate Use of Electronic Communications

City Technology Resources are limited to use for City Business. All Electronic Communications transmitted over or by means of any City Technology Resource shall be limited to those which involve City functions, activities or

other business, or that contain information essential to its officials, employees and consultants for the accomplishment of City-related tasks.

Electronic Communications access, including Internet and Intranet access, is provided to authorized Users as a communication tool for appropriate internal and external City Business. Implementation of this Policy and its directives are essential to protecting vital City resources and interests. Accordingly, City Policies including, but not limited to, those addressing copyright, confidentiality, harassment and compliance with equal employment laws; applicable federal, state and local laws; and the corporate code of conduct govern use of any Electronic Communications access.

4.2.1 Introduction

All Users who use Electronic Communications are expected to conduct their use with the same integrity as in face-to-face or telephonic business operations. Any use perceived to be illegal, harassing, and offensive or in violation of other City Policies may be the basis for disciplinary action up to and including termination for employees and/or loss of use or legal action for all Users.

4.2.2 Scope

This Policy applies to all Users. Users must be aware of the following restrictions that have been placed on use of Electronic Communications:

- Electronic Communications on City Technology Resources are intended for City-related business purposes with other limited incidental uses. All Electronic Communications on city Technology Resources are the property of the City, just as are hard copies of City records. The City reserves the right to retrieve and make proper and lawful use and/or disclosure of any and all Electronic Communications transmitted through any City Technology Resource.

- Electronic Communications determined to be Public Records shall be retained in electronic folders or, as described above, in hard copy. Such Electronic Communications shall be retained for the period described in the City's Records Retention Schedule or expiration of a Litigation Hold or resolution of a Public Records Act Request.

4.2.3 Appropriate Use and Responsibility of Users

City guidelines and standards for appropriate and responsible use of Electronic Communications are derived directly from the same standards of common sense and decency that apply to the use of any City Technology Resource. All usage inconsistent with these objectives is considered inappropriate use.

All Users must recognize and comply with standards and guidelines for the appropriate use of Electronic Communications.

1. No Electronic Communications should be unethical, be perceived to be a conflict of interest with the City's interests, or be inconsistent with City Policies.

2. Users must take particular care not to disseminate confidential City information or personal information to unauthorized users. Users should refrain from leaving messages containing confidential or personal information on answering machines or voice-mail systems.
3. Electronic Communications must be able to withstand scrutiny without causing embarrassment to the City, its employees or citizens. Because Electronic Communications deleted by a User may still be present, either in another person's mailbox, or on a file server or back-up file of a User. Care must be taken to ensure the accuracy and professionalism of all Electronic Communications.
4. Users must not send messages prohibited or restricted by government security laws or regulations. Emailing copies of documents in violation of copyright laws or licensing agreements is also prohibited.
5. Users should consider Electronic Communications to be the electronic equivalent of a postcard. Users must recognize their responsibility for the content, dissemination and management of the messages they send. Electronic Communications should:
   - Be courteous and polite;
   - Be consistent with City standards of conduct;
   - Protect others' right to privacy and confidentiality; and
   - Contain an accurate, appropriate and informative signature.
6. Users should secure access to their email and voice mailboxes through the use of passwords and other security devices and should not leave the system on and available to unauthorized users.
7. Users may not reveal any confidential internal email names and passwords of the City's email or voicemail users to anyone including other Users or people who request such information over the telephone and seem to have a legitimate reason for asking. All such requests must be referred to the Records Department.
8. City policy prohibits use of profanity, obscenities, or derogatory remarks in Electronic Communications referencing other individuals. Such remarks, even when made in jest, may create legal problems.
9. Users are prohibited from sending or forwarding any Electronic Communications that a reasonable person would consider to be defamatory, harassing or explicitly sexual. Users are also prohibited from sending or forwarding Electronic Communications via City Technology Resources that would be likely to offend on the basis of race, gender, national origin, sexual orientation, religion, political beliefs, disability or other protected characteristics.
10. Users must not use an Electronic Communication account assigned to another individual either to send or receive messages. If there is need to access another's Electronic Communications, such as while the other person is out ill, message forwarding and other resources must instead be used. Contact ITSS Director and/or Human Resource Director to arrange such access.

11. Users must not disclose credit card numbers, passwords, research and development information, and other sensitive data via any Electronic Communication.
12. Users must not unnecessarily or frivolously overload the Electronic Communications system including, but not limited to, spamming and junk mailing.
13. City Electronic Communications may not be used for commercial purposes unless authorized by City Manager in writing in advance.
14. Internal telephone books must not be distributed to third parties without specific authorization of a Department Manager.

4.2.4 Confidentiality and Security

Users should be aware that Electronic Communications are not a confidential means of communication. The City cannot guarantee that Electronic Communications will be private. Users should be aware that Electronic Communications could, depending on the technology, be forwarded, intercepted, printed, and stored by others. Users should also be aware that, once Electronic Communications are transmitted, they might be altered. Deleting an Electronic Communication from an individual workstation will not eliminate it from the various systems it has been transmitted across. Therefore, Users should have no personal expectation that their Electronic Communications using City Technology Resources are private.

The City reserves the right to review all Electronic Communications stored or transmitted on City Technology Resources. Although, the City does not intend to monitor the contents of Electronic Communications routinely, Users should expect that System Administrators with or without the permission of the User might access Electronic Communications. However, no other individuals may monitor or access Electronic Communications of another User unless proxy rights have been delegated by the System Administrators and approved by ITSS Director and/or Human Resource Director.

All Users must accept and abide by management directives to ensure information security, including, but not limited to:

- Users must verify the integrity of their password and abide by City Policy on password security (see section on Password Requirements);
- Users are prohibited from sending confidential material through any Electronic Communications system unless it is marked confidential or otherwise protected;
- Users must take extreme care that confidential information be redirected only where there is a need and with the permission of the originator, where possible;
- Users should recognize that Electronic Communications can be forged. Therefore, if an Electronic Communication is suspect, Users must verify its authenticity via telephone, or personally; and
- It is recommended that personal confidential material not be stored on or sent through Electronic Communications using City Technology Resources.

Unauthorized access of Electronic Communications is a violation of the City Policy and grounds for potential employee discipline or other repercussions for both employees and other Users.

4.3 Password Requirements

It is City policy that information must be protected in a manner commensurate with its sensitivity, value and criticality. To ensure the security of the City Technology Resources, all authorized users must be uniquely identified and authenticated before being granted access to Electronic Communications. User identification and authentication will be authorized through the use of User identification (User ID) unique to each User. To insure the security of the City Technology Resources, such access must be authorized, logged and periodically reviewed.

Identification Password Management

Passwords are a primary defense mechanism on many City Technology Resources. Careful selection of passwords improves security. Users are responsible for the robustness and maintenance of their own passwords. Accordingly, the following standards for password use shall apply:

- Passwords must be used where possible;
- Passwords and User IDs must be unique to each authorized User and must never be shared with anyone else;
- Passwords must not be easily associated with a particular User;
- Passwords must be memorized and never written down with other account information such as an account name;
- Passwords must not be stored in readable form in batch files, automatic log-in scripts, software macros, terminal function keys, in City Technology Resources without access control, or in other locations where unauthorized persons might discover them;
- Passwords must be changed every 90 days, or immediately if compromised or suspected of compromise;
- To prevent the compromise of multiple systems, Users must employ different passwords on each of the systems to which they have been granted access;
- The display and printing of passwords must be masked, suppressed, or otherwise obscured so that unauthorized parties will not be able to observe or subsequently recover them;
- Passwords must consist of a minimum of eight alphanumeric characters one of which is upper case and a special character.
- Any User who suspects that a password has been compromised must report it to ITSS immediately through the IT Help Desk.

City management reserves the right to revoke the privileges of any User at any time. Conduct that interferes with the normal and proper operation of City Technology Resources, which adversely affects the ability of others to use

these City Technology Resources, or which is harmful or offensive to others, will not be permitted.

4.3.1 Password Standards

The following are standards for password construction:

- Passwords must never be related to a User's job or personal life. Details such as spouse's name, license plate, social security number, and birthday must not be used unless accompanied by additional unrelated characters;
- Passwords must not be the same as User IDs or given name;
- Users must not construct passwords that are identical or substantially similar to passwords that Users had previously employed;
- Must never use the default password for any software or hardware product;
- "Blank" passwords are prohibited;
- Passwords must never be derived from User's association with the City of Temecula; and
- Passwords must never consist of a word from a dictionary. Most basic cracking programs contain over 120,000 words, and plenty of variations.
- Users are encouraged to have a password to include numbers and mixed case letters.

4.4 Appropriate Use of City Technology Resources

City Technology Resources offer extensive capabilities, but also expose risks and threats. All Users are expected to be familiar with and to comply with this Policy.

1. City Technology Resources should not be used for personal purposes. Although incidental use of City Technology Resources for personal use is permissible, use of City Technology Resources for these types of activities consumes City Technology Resources and could potentially result in poor technology performance or even system failure.
2. Any use perceived to be illegal, harassing, offensive, in violation of other City Policies, or any other uses that would reflect adversely on the City can be the basis for disciplinary action up to and including termination for employees and other repercussions including legal action for all Users, including employees. Users are expected to conduct their use of City Technology Resources with the same integrity as in face-to-face or telephonic business operations.

4.4.1 Public Representations

4.4.2 Users must not publicly disclose City internal information via the City Technology Resources that may adversely affect City relations or public image. Care must be taken to properly structure comments and questions posted to social media, mailing lists, public news groups, and related public postings.

4.4.3 Downloading

Software should not be downloaded without approval of ITSS. All software used on City Technology Resources can only be installed by ITSS, following all licensing agreements and procedures. All software downloaded from non-City sources must be screened with virus detection software prior to being installed by ITSS and may require testing on a stand-alone (not networked), non-production machine.

4.4.4 Contacts

Contacts made over the Internet should not be trusted with City information unless reasonable steps have been taken to ensure the legitimacy of the contacts. This applies to the release of any City internal information.

4.4.5 Information Security

Login passwords, User IDs and other parameters that can be used to gain access to City Technology Resources, is confidential information and must not be sent over any Technology Resource in readable form. This information must not be posted on electronic bulletin boards, listed in telephone directories, placed on business cards, or otherwise made available to third parties without the advance written permission of the ITSS Director. Telephone numbers, fax numbers, and email addresses of a User may be disclosed by the User.

4.5 Software Security

The City strongly supports strict adherence to software vendors' license agreements. Adherence to these agreements is subject to random audits by these vendors or the Software Publishers Association (SPA). When City Technology Resources are employed, copying of software in a manner that is not consistent with the vendor's license is strictly forbidden. Users must not use any externally provided software from a vendor other than those approved by ITSS.

4.6 Security

4.6.1 Right to Examine

At any time and without prior notice, City management reserves the right to examine Electronic Communications including personal Electronic Communications, web browser cache files, web browser bookmarks, and other information stored on or passing through City Technology Resources. Such management access assures compliance with internal policies, assists with internal investigations, and assists with the management of City Technology Resources. Every attempt will be made to ensure that the User's privacy is respected.

4.6.2 Privacy

Users using City Technology Resources should realize that their communications are not automatically protected from viewing by third parties.

Unless encryption is used, Users should not send information over the Internet if they consider it to be private.

4.7 Reporting Security Problems

It is the responsibility of all Users to report any known or suspected breach of security, such as passwords or other system access control mechanisms to the ITSS Department.

The ITSS Director must be notified immediately when:

1. Sensitive or confidential City information is lost, disclosed to unauthorized parties, or suspected of being lost or disclosed to unauthorized parties;
2. Unauthorized use of City Technology Resources has taken place, or is suspected of taking place;
3. Passwords or other system access control mechanisms are lost, stolen, or disclosed, or are suspected of being lost, stolen, or disclosed; or
4. There is unusual system behavior such as missing files, frequent system crashes and misrouted messages, as these types of system behavior may be related to virus infections or other security problems and must be promptly reported and investigated.

4.8 Hardware Security

To ensure that computer systems are used in an effective and productive way, City Technology Resource hardware must be physically secured and the integrity of operating systems maintained.

1. On City Technology Resources, Users must never change operating system configurations, upgrade existing operating systems, or install new operating systems. If such changes are required Users should contact ITSS and ITSS administrators will perform them.
2. Users must not bring their own computers, computer peripherals, or computer software into City facilities without prior written authorization from their Department Head. Personal computers must be labeled clearly with the name of the owner. Desktop PCs, laptops, mobile devices, and City Technology Resources must not leave City offices unless authorized in writing by a department manager.

Printers used to produce sensitive and confidential information should be monitored and sensitive files must be overwritten on fixed disks, tapes, or cartridges.

5 Appropriate Use of Specific City Technology Resources: City-Issued Cellular Phones and Radios

Technology can significantly enhance local service delivery. Cellular telephones and radios are often practical and economical for safety services and emergency communications, and can enhance productivity. In all cases, the issuance of cellular phones or radios to Users is a privilege, not a right or an entitlement. Failure to abide by the procedures set forth in this Policy may result in the loss of use of the cellular phones or radios and in certain circumstances, may result in possible disciplinary action for employees.

5.1 Introduction

It is the intent of the City to provide each Department with effective communication devices, within the constraints of available resources. The City recognizes the need of City-owned cellular telephones and radios, and by this Policy establishes procedures for their authorization, deployment, and use in order to contain costs, ensure Departmental accountability, personal responsibility, and prevent improper use. It is important that each User assume personal responsibility for the prudent use of City-owned communication devices.

5.2 Appropriate Use and Responsibility of Users

City-owned cellular phones or radios are to be viewed as an asset provided to further assist Users in effectively completing their areas of responsibility for the City. The issuance of such communication equipment is also to be considered a vital resource in the event of an emergency. It is a goal, to ensure that City vehicles are configured with emergency (800 MHz) radios for two-way communications.

Users are responsible for maintaining adequate physical protection of the communication equipment issued to them by the City. Users shall immediately notify their Department Head or designee, who in turn shall notify the ITSS Director, if any City-owned cellular phone or radio is damaged, lost or stolen. Cellular phone and radio logs are Public Records.

Any communication equipment purchased by the City is owned by the City and must be returned to the City when the User separates from service or the need of such communication equipment no longer exists.

No User shall record any telephone call, without the knowledge and consent of all parties to the call.

The City reserves the right to terminate cellular service privileges of any User for any reason.

5.3 Inappropriate Use

City issued communication equipment are not considered a User's personal device. California law prohibits drivers from using a cellular phone while operating a vehicle without a hands-free device, e.g. wired headset (ear buds), speaker, or Bluetooth headset. It is City policy to comply with California law when using a City-owned cellular phone while operating in any vehicle. The ITSS Department provides wired headsets (ear buds) for all City-owned cellular phones. In order to further define inappropriate use, the following list is provided. Prohibited uses of cellular phones and radios include, but are not limited to:

- Any illegal use or activity
- Threats
- Slander/Libel
- Defamation
- Obscene, suggestive or offensive messages or communications
- Political endorsements or activities

6 Proximity Keys

Internal entrance to City Hall areas is extended to employees by the City. Proximity keys are issued to all Regular, Part-Time, Temporary, Project Employees, and Interns. Interns' access will be automatically disabled every 30 days unless otherwise noted by related department manager.

The City prohibits the sharing of proximity keys.

Users are required to notify ITSS immediately if proximity keys or readers are lost, damaged or stolen.

7 Technology Resource Check Out

The City understands the need occasionally to check out technology resources for work related issues. City Technology Resources such as: laptops, projectors and digital cameras are available for check out through the ITSS Department. Users in need of the equipment must have proper approval from department manager. A request in advance for the use of such City Technology Resource is necessary. If the City Technology Resource is available, Users must sign for receiving and return of any City Technology Resource on loan.

Users are responsible for maintaining adequate physical protection of the City Technology Resource issued to them by the City. Users shall also immediately notify their department head or designee, who in turn shall notify the ITSS Director, if any City-owned communications equipment is damaged, lost or stolen.

8 Employee Computer Purchase Program

The City has incorporated a program that allows employees to borrow, at no interest, up to $2,000 to purchase personal computer/supplies with a loan repayment up to 24-months. This program is available for full-time and part-time City employees. For more information, please visit SharePoint or the ITSS Department.

9 User Use of Technology Resources Not Owned and/or Controlled by City

Users should not store Electronic Communications that involve City Business on any Technology Resources that are not owned, issued and/or controlled by the City. When Users are using Technology Resources that are not owned, issued and/or controlled by the City to conduct City Business, Users should be aware and must acknowledge and agree that any Electronic Communication that is stored or transmitted through such Technology Resource is considered a Public Record and is subject to the same terms as any Electronic Communication stored or transmitted on City Technology Resources. Should the City receive a Public Records Request, or otherwise require access to Electronic Communications related to City Business stored or transmitted on or by personal or commercial Technology Resources, the User shall provide access to such Electronic Communications immediately upon request of the City. Additionally, User shall not delete any Electronic Records related to City Business prior to the expiration of the period described in the City's Records Retention Schedule or expiration of a Litigation Hold or resolution of a Public Records Act Request. The City may require that a User execute an affidavit confirming that the User has thoroughly searched its personal or commercial Technology Resource and has provided all responsive Electronic Communications.

POLICY NO. 13

STATE MANDATED TRAINING

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**State Mandated Training**
Policy No.	**13**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to outline the specific requirements of state mandated training for Council Members, specifically as it relates to AB 1234 and AB 1661.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

AB 1234 Mandatory Ethics Training
Government Code Sections 53235 and 53235.1 state that, if a local agency provides compensation, salary, or a stipend to a member of a legislative body or reimbursement for expenses incurred by a member of a legislative body in the performance of official duties, then said local agency officials shall receive two-hour training in ethics. Training opportunities are available online and in-person through a variety of sources including the Attorney General, Fair Political Practices Commission, League of California Cities, Institute for Local Government and other agencies and municipal law firms. In the City of Temecula, ethics training is mandated for the City Council, boards and commissions and executive staff. The City Clerk's office oversees the completion of said training and maintains relevant records pursuant to law.

AB 1661 Sexual Harassment Prevention Training and Education
Government Code Sections 53237-53237.5 requires local agency officials, including Council Members, to receive two hours of sexual harassment prevention training and education within the first six months of taking office and every two years thereafter if the agency provides any type of compensation, salary, or stipend to those officials. Training opportunities are available online and in-person through a variety of sources including the Attorney General, Fair Political Practices Commission, League of California Cities, Institute for Local Government and other agencies and municipal law firms. In the City of Temecula, ethics training is mandated for the City Council, boards and commissions and executive staff. The City Clerk's office oversees the completion of said training and maintains relevant records pursuant to law.

POLICY NO. 14

CONFLICT OF INTEREST LAWS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Conflict of Interest Laws**
Policy No.	**14**
Approved:	**October 24, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to provide general guidance and raise awareness of potential conflicts of interest that may arise periodically in the course of public service by Council Members. Council Members are encouraged to seek legal advice from the City Attorney for specific issues that may arise.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

Conflict of Interest Laws
The Political Reform Act, set forth in Government Code Sections 81000 to 91014, regulates conflicts of interest through (1) disclosure and (2) prohibition of participation in the decision-making process. The Act requires Council Members to annually disclose all financial interests that may be affected by decisions made in their official capacity. This includes investments, real property, and income. Council Members must also disqualify themselves from making and/or participating in making any governmental decision that will have a foreseeable material financial affect on any financial interest of the Council Member or certain family members.

When Council Members must disqualify themselves due to a financial interest, they are prohibited not only from "making" a decision but also from "participating" in the decision. Generally, an official makes a decision when the Council Member votes on a matter, appoints a person, obligates or commits the City to any course of action, or enters into any contract on behalf of the City. An official participates in making a decision when the official negotiates on behalf of the City, or advises or makes recommendations to the decision maker, either directly or without significant intervening substantive review.

The City Attorney prepares an annual Summary of the Conflict of Interest Laws Manual that is attached as Appendix 3 in the City Council Protocol Manual.

Conflict of Interest Code. The Political Reform Act requires state and local government agencies to review and adopt conflict of interest codes biannually. The City of Temecula adopts its Conflict of Interest Code in even-numbered years. The City's Conflict of Interest Code adopts the State Political Reform Act and designates certain City officials other than the Council who are subject the conflict of interest laws. The Code is attached as Exhibit A.

Statements of Economic Interest

A financial disclosure form (Statement of Economic Interest - Form 700) must be filed with the City Clerk no later than April 1 of each year for financial interests pertaining to the preceding calendar year. The April 1 deadline may be adjusted by the Fair Political Practices Commission (FPPC) for holidays and/or weekends. Council Members must also file a statement within 30 days of assuming office or leaving office. Filers shall file said statement electronically through NetFile, the City's certified electronic filing system.

Advice Regarding Conflicts of Interest

A Council Member who is uncertain as to whether they have a conflict of interest is encouraged to seek clarification from the City Attorney prior to the Council Meeting at which the matter will be discussed. The City Attorney or the official may also request a formal opinion from the FPPC.

Attachments

Exhibit A - Conflict of Interest Code

EXHIBIT A

POLICY

RESOLUTION NO. 2022-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA ADOPTING THE CITY'S 2022 CONFLICT OF INTEREST CODE

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council of the City of Temecula has previously adopted a Conflict of Interest Code to apply to certain officers and employees of the City with an Exhibit A designating certain positions within the City that require the filing of economic disclosure forms.

Section 2. The City Council of the City of Temecula does hereby amend the Conflict of Interest Code for the City of Temecula by deleting Exhibit A and substituting in its place a new Exhibit A, which is attached hereto and incorporated herein by this reference.

Section 3. The City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 15th day of November, 2022.

Matt Rahn, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Resolution No. 2022-84 was duly and regularly adopted by the City Council of the City of Temecula at a meeting thereof held on the 15th day of November, 2022, by the following vote:

AYES:	5	COUNCIL MEMBERS:	Alexander, Edwards, Rahn, Schwank, Stewart
NOES:	0	COUNCIL MEMBERS:	None
ABSTAIN:	0	COUNCIL MEMBERS:	None
ABSENT:	0	COUNCIL MEMBERS:	None

Randi Johl, City Clerk

SECTION 2. EXHIBIT A

DESIGNATED CITY OF TEMECULA EMPLOYEES AND DISCLOSURE CATEGORIES

The following positions entail the making or participating in the making of decisions which could have a material effect on financial interests.

Designated Position	**Disclosure Categories**
Assistant City Manager	1
Assistant Director of Community Development	1
Assistant Director of Community Services	1
Assistant Director of Finance	1
Assistant Director of Information Technology and Support Services	1
Assistant to the City Manager	1
Building Official	1
Chief of Police	1
Community Services Superintendent	1
Deputy City Manager	1
Designated Consultant*	1
Director of Community Development	1
Director of Community Services	1
Director of Finance	1
Director of Human Resources and Risk Management	1
Director of Information Technology and Support Services	1
Director of Legislative Affairs / City Clerk	1
Director of Public Works/City Engineer	1
Economic Development Manager	1
Engineering Manager	1
Exempt Officials	0

Fire Chief	1
Finance Manager	1
Fiscal Services Manager	1
Information Technology Manager	1
Maintenance Manager	1
Planning Manager	1
Principal Civil Engineer	1
Principal Management Analyst	1
Senior Civil Engineer	1
Senior Management Analyst	1
Senior Planner	1
Members of all City Commissions, Boards, and Committees (Other than Government 87200 Filers)	1

DESIGNATED CONSULTANTS:

Consultants who fit into one or more of the following categories shall be included in the list of designated employees as "Designated Consultants":

1. Consultants who make (not just recommend) governmental decisions, such as whether to approve a rate, rule, or regulation, whether to issue, deny, suspend, or revoke any permit, license, application, certificate or similar authorization, adopt or grant City approval to a plan, design, report, study, or adopt or grant City approval of policies, standards, or guidelines for the City or any subdivision thereof.

2. Consultants who serve in a staff capacity with the City, and in that capacity participate in making a governmental decision by providing information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

3. Consultants who perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a designated position in the City's Conflict of Interest Code.

When the consultant is a corporation, partnership, or limited liability company, only individuals who fit into one of the three categories of "Designated Consultants" described above must file disclosure statements.

Designated Consultant shall report all reportable interests in real property in the jurisdiction; reportable income and business positions; reportable investments; and reportable gifts within the disclosure category applicable to Designated Consultants unless the City Manager determines in writing that a particular consultant is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the section. If the City Manager determines in writing that a particular consultant is not required to fully comply with the requisite disclosure requirements, then such written determination shall include a description of the consultant's duties and based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

** The Mayor, City Council, Members of the Planning Commission, City Manager, City Attorney, and City Treasurer are all required to file disclosure statements pursuant to (Government Code 87200) and are thus not included herein.

RESOLUTION NO. 94-105

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA ADOPTING AN AMENDED CONFLICT OF INTEREST CODE

WHEREAS, the City Council of the City of Temecula has previously adopted a Conflict of Interest Code to apply to certain officers and employees of the City; and

WHEREAS, the City Council of the City of Temecula desires to adopt an Amended Conflict of Interest Code;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF TEMECULA DOES RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That the Amended Conflict of Interest Code, attached hereto as Exhibit A, is hereby adopted as the Conflict of Interest Code for the City of Temecula.

Section 2. The previously adopted Conflict of Interest Code for the City of Temecula is of no further force and effect.

Section 3. The City Clerk shall certify the adoption of this resolution.

APPROVED AND ADOPTED, this 15th day of November, 1994.

Ron Roberts, Mayor

ATTEST:

June S. Greek, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) SS
CITY OF TEMECULA)

I, June S. Greek, City Clerk of the City of Temecula, hereby do certify that the foregoing Resolution No. 94-105 was duly adopted at a regular meeting of the City Council of the City of Temecula on the 15th day of November, 1994 by the following roll call vote:

AYES:	5	COUNCILMEMBERS:	Birdsall, Muñoz, Parks, Stone, Roberts
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

June S. Greek, City Clerk

CONFLICT OF INTEREST CODE
OF THE
CITY OF TEMECULA

SECTION 1. Purpose. Pursuant to the provisions of Government Code Sections 87300, et seq., the City of Temecula (hereinafter referred to as "City") hereby adopts the following Conflict of Interest Code. The provisions of this Code are in addition to those contained in Title 9, Chapter 7 of the Government Code (Section 87100 et seq.). Except as otherwise indicated, the definitions contained in Title 9, Chapter 2 of the Government Code (Section 8200 et seq.) are incorporated herein and apply to this Code. It is the purpose of this Code to provide for the disclosure of assets and income of designated employees which may be materially affected by their official actions, and, in appropriate circumstances, to provide that designated employees should be disqualified from acting in order that conflicts of interest may be avoided.

SECTION 2. Designated Positions. The positions listed in Exhibit "A" are designated positions. Officers and employees holding those positions are designated employees and are deemed to make or participate in the making of decisions which may foreseably have a material effect on a financial interest.

SECTION 3. Disclosure Statements. Designated positions shall be assigned to one or more of the disclosure categories set forth in Exhibit "B". Each designated employee or official shall file an annual statement disclosing that employee's or official's interest in investments, business positions, interests in real property and source of income designated as reportable under the category to which the employee's or official's position is assigned in Exhibit "B".

SECTION 4. Place and Time of Filing.

A. All designated employees or officials required to submit a statement of financial interests, (FPPC Form No. 730), shall file the original with the City Clerk's office.

B. The City Clerk's office shall make and retain a copy of the statement.

C. A designated employee or official required to submit an initial statement of financial interest, (FPPC Form No. 730), shall submit the statement within 30 days after the effective date of this Code, disclosing interests held including investments, business positions, and interests in real property on the effective date of this Code, and income received during the twelve (12) months prior to the effective date of this Code.

D. All persons appointed, promoted, or transferred to designated positions shall file initial statements not more than 30 days after assuming office.

E. The first statement of financial interests filed by a designated employee shall disclose the designated employee's reportable investments, business positions, and interests

in real property as those investments, positions, and interests in real property exist as of the effective date of this Code or the date the designated employee assumed office, whichever is later, and income received during the preceding twelve (12) months.

F. Annual statements shall be filed by April 1, of each year by all designated employees. Such statements shall disclose reportable investments, business positions, interests in real property, and income held or received at any time during the previous calendar year or since the designated employee took office if during the calendar year.

G. A designated employee required to file a statement of financial interest with any other agency which is within the same territorial jurisdiction and whose disclosure requirements are comparable may comply with the provisions of this Code by filing a duplicate copy of the statement filed with the other agency, in lieu of an entirely separate statement.

H. Every designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing reportable investments, business positions, interests in real property, and income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.

I. A designated employee who resigns his or her position within 30 days twelve (12) months following initial appointment or within thirty (30) days of the date of a notice mailed by the filing officer of the individual's filing obligation, whichever is earlier, is not deemed to assume or leave office, provided that during the period between appointment and resignation the individual does not make, participate in making, or use the position to influence any decision of the City or receive or become entitled to receive any form of payment by virtue of being appointed to the position. Within thirty (30) days of the date of a notice mailed by the filing officer, the individual shall do both of the following:

1. File a written resignation with the appointing power.

2. File a written statement with the filing officer on a form prescribed by the commission and signed under penalty of perjury stating that the individual, during the period between appointment and resignation, did not make, participate in the making or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

SECTION 5. Contents of Disclosure Statements. Disclosure statements shall be made on forms supplied by the City Clerk's Office, (FPPC Form No. 730), and shall contain the following information:

A. Contents of Investment and Real Property Reports. When an investment or an interest in real property is required to be disclosed, the statement shall contain:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held and a general description of the business activity in which the business entity is engaged;

3. The address or other precise location of the real property;

4. A statement indicating whether the fair market value of the investment or interest in real property equals or exceeds one thousand dollars ($1,000) but does not exceed ten thousand dollars ($10,000), whether it exceeds ten thousand ($10,000) but does not exceed one hundred thousand dollars ($100,000), or whether it exceeds one hundred thousand dollars ($100,000). For purposes of this Code, "interest in real property" does not include the principle residence of the designated employee or any other property which the designated employee utilizes exclusively as the employee's personal residence.

5. For purposes of this subdivision (a) of Section 5, "interest in real property" does not include the principal residence of the filer or any other property which utilizes exclusively as the personal residence of the filer.

B. Contents of Personal Income Reports: When personal income[1] is required to be disclosed under this Code or pursuant to the Political Reform Act, the statement shall contain:

1. The name and address of each source of income aggregating two hundred fifty dollars ($250) or more in value, or fifty dollars ($50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement indicating whether the aggregated value of income from each source, or, in the case of a loan, the highest amount owed to each source, was at least two hundred fifty dollars ($250) but did not exceed one thousand dollars ($1,000), whether it was in excess of one thousand dollars ($1,000) but not greater than ten thousand dollars ($10,000), or whether it was greater than ten thousand dollars ($10,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value and the date on which the gift was received;

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[1] "Income" is defined in Title 9, Chapter 2 of the Government Code (section 82030). That definition is attached hereto as Exhibit "C."

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan.

C. Contents of Business Entity Reports. When the designated employee's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported, the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the designated employee's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars ($10,000) during a calendar year;

3. Income of a business entity is required to be reported only if the direct, indirect, or beneficial interest of the designated employee and his or her spouse in the business entity aggregates a 10 percent or greater interest. In addition, for purposes of subparagraphs 2 and 3 of this subsection, the disclosure of persons who are clients or customers of a business entity is required only if it is reasonably foreseeable that the client or customer may be materially affected by the decisions of the designated employee.

4. When a payment, including an advance or reimbursement for travel is required to be reported pursuant to (b) and (c) of this Section 5, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

D. Contents of Business Position Disclosure. When business positions are required to be reported, the designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management; a description of the business entity in which the business is engaged, and the designated employee's position with the business entity.

E. Acquisition or Disposal During a Calendar Year. If any otherwise reportable investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

SECTION 6. Disqualification. Designated employees shall disqualify themselves from making, participating in the making of, or in any way using their official position to influence a governmental decision when it is reasonably foreseeable that the decision will have a material financial affect distinguishable from its effect on the public generally, on the designated

employee, or a member of his or her immediate family, or on:

A. Any business entity in which the designated employee has a direct or indirect investment worth one thousand dollars ($1,000) or more;

B. Any real property in which the designated employee has a direct or indirect interest worth one thousand dollars ($1,000) or more;

C. Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars ($250) or more in value provided to, received by or promised to the designated employee within twelve (12) months prior to the time when the decision is made;

D. Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

E. Any donor of, or any intermediary of agent for a donor of, a gift or gifts aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the designated employee within twelve (12) months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a designated employee, by an agent on behalf of a designated employee, or by a business entity or trust in which the designated employee, the designated employee's agent, spouse, and dependent children own directly, indirectly, or beneficially a ten percent (10%) interest or greater.

No designated employee shall be required to disqualify himself or herself with respect to any matter which could not legally be acted upon or decided without his or her participation. A designated employee required to disqualify himself or herself shall notify the City Manager and the City Clerk in writing, and the City Clerk shall record the person's disqualification.

Violations. Pursuant to Government Code Section 87300, this Code "shall have the force of law" and any violation of any provision of this Code shall be punishable in accordance with Government Code Section 91000 to 91015 and include criminal and civil sanctions, as well as discipline within the City's Personnel System.

SECTION 7. EXHIBIT "A"
Designated City of Temecula Employees
and Disclosure Categories

The following positions entail the making or participation in the making of decisions which may foreseeably have a material effect on financial interests:

Designated Position	Disclosure Categories
Assistant City Manager	1
Building Official	1
Chief of Police	1
Chief Accountant	1
City Clerk	1
City Engineer/Director of Public Works	1
Consultant[2/]	1
Principal Engineer	1
Exempt Officials[3/]	0

[2/] Consultants shall be included in the list of designated employees and shall disclose all of the information required to be disclosed by designated employees subject to the following limitation:

The City Manager or his or her designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirement described in this Section. Such written disclosure shall include a description and based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

[3/] The Mayor, City Council, Members of the Planning Commission, City Manager, City Attorney, City Treasurer, and Director of Finance are all required to file disclosure statements pursuant to state law and thus are not included herein.

Director of Community Services 1

Financial Services Administator 1

Fire Chief 1

Maintenance Superintendent 1

Planning Director 1

Recreation Superintendent 1

Senior Accountant 1

Senior Building Inspector 1

Senior Management Analyst 1

Traffic Engineer 1

Senior Planner 1

Members of all City Commissions,
Boards, and Committees Not
Otherwise Required to File
Conflict of Interest Statements 1

SECTION 8. EXHIBIT "B"

Categories of Reportable Economic Interests

Designated Persons in Category "1" Must Report:

All investments, interests in real property, income, and any business entity in which the person is a director, officer, partner, trustee, employee, or holds any position of management. These financial interests are reportable only if located within and subject to the jurisdiction of the City, or if the business entity is doing business or planning to do business in an area subject to the jurisdiction of the City, or has done business within an area subject to the jurisdiction of the City at any time during the two years prior to the filing of the statement.

Designated Persons in Category "2" Must Report:

A. All Investments in real property located within or subject to the jurisdiction of the City.

B. Investments in any business entity which within the last two years has contracted or in the future foreseeably may contract with the City.

C. Income from any source which within the last two years has contracted or in the future foreseeably may contract with the City.

D. His or Her status as a director, officer, partner, trustee, employee, or holder of a position of management in any business entity which within the last two years has contracted or in the future foreseeably may contract with the City.

Designated persons in Category "3" must report:

A. Investments and business positions in, and income from business entities located in, doing business in, or planning to do business in the redevelopment project area and all interests in real property located within two miles of the redevelopment project area.

EXHIBIT "C"

82030. Income. A. "Income" means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income" other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

B. "Income" also does not include:

1. Campaign contributions required to be reported under Chapter 4 (commending with Section 84100).

2. Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic, or charitable organization.

3. Any devise or inheritance.

4. Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

5. Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States Government or a commodity future registered with the Commodity Futures Trading Commission of the United States Government, except proceeds from the sale of these securities and commodities futures.

6. Redemption of a mutual fund.

7. Alimony or child support payments.

8. Any loan or loans from a commercial lending institution which are made in the lenders' regular course of business on terms available to members of the public without regard to official status if:

A. Used to purchase, refinance the purchase of, or for improvements to, the principal residence of filer; or

B. The balance owed does not exceed ten thousand dollars ($10,000).

9. Any loan from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan from any such person shall be considered income if the lender is acting as an agent or intermediary for any person not covered by this paragraph.

10. Any indebtness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars ($10,000).

11. Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

12. Proceeds from the sale of securities registered with the securities and Exchange Commission of the United States Government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States Government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does no know or have reason to know the identity of the purchaser.

POLICY NO. 15

CODE OF ETHICS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Code of Ethics**
Policy No.	**15**
Approved:	**November 14, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth the Code of Ethics for the City Council of the City of Temecula.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

City Code of Ethics

Preamble
The citizens of the City of Temecula are entitled to responsible, fair and honest city government that operates in an atmosphere of respect and civility. Accordingly, the Temecula City Council has adopted this code to:

1. Describe the standards of behavior to which its leaders and staff aspire.
2. Provide an ongoing source of guidance to elected leaders, city officials and staff in their day-to-day service to the city.
3. Promote and maintain a culture of ethics.

Pledge
On November 14, 2023, the City Council of the City of Temecula adopted this City Code of Ethics, which applies to all City employees, officers, commissions, and elected or appointed officials and requires the following pledge:

Responsibility
- I understand that the community expects me to serve with dignity and respect, as well as be an agent of the democratic process.
- I avoid actions that might cause the public to question my independent judgment.
- I do not use my office or the resources of the city for personal or political gain.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the city and its citizens.

Fairness

- I promote consistency, equity and non-discrimination in public agency decision-making.
- I make decisions based on the merits of an issue, including research and facts.
- I encourage diverse public engagement in our decision-making processes and support the public's right to have access to public information concerning the conduct of the City's business.

Respect

- I treat my fellow city officials, staff, commission members and the public with patience, courtesy, civility, and respect, even when we disagree on what is best for the community and its citizens.

Honesty

- I am honest with all elected officials, staff, commission members, boards, the public and others.
- I am prepared to make decisions when necessary for the public's best interest, whether those decisions are popular or not.
- I take responsibility for my actions, even when it is uncomfortable to do so.

In addition, the City Council commits to the following core values:

1. As a representative of the City of Temecula, in practice, this value looks like: I will be ethical.
2. As a representative ofthe City of Temecula, I will be professional.
3. As a representative of the City of Temecula, I will be service-oriented.
4. As a representative of the City of Temecula, I will be fiscally responsible.
5. As a representative of the City of Temecula, I will be organized.
6. As a representative of the City of Temecula, I will be communicative.
7. As a representative of the City of Temecula, I will be collaborative.
8. As a representative of the City of Temecula, I will be innovative.

POLICY NO. 16

COMPENSATION AND/OR STIPENDS

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Compensation and/or Stipends**
Policy No.	**16**
Approved:	**November 14, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth the requirements related to Council compensation and/or stipends as codified in the Government Code and the Temecula Municipal Code.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

The City of Temecula is a general law city formed under the laws of the State of California. The City Council compensation schedule for general law cities is set forth in Government Code Section 36516 et seq. Current City Council compensation is $600 per month pursuant to Temecula Municipal Code Section 2.04.050. City Council compensation was last adjusted in October 2023 via Ordinance No. 2023-08. Ordinance No. 2023-08 reset the compensation from $600 to $1,900 per month pursuant to Senate Bill 329.

On June 29, 2023, Senate Bill 329 (SB 329) was signed into law setting forth a new compensation schedule for City Council members. SB 329 declared that the compensation schedule for general law cities had not been adjusted since 1984, indicating compensation had not kept pace with inflation. The Legislature also declared that compensation adjustments for inflation may help city councils become more diverse allowing individuals from across different income levels to serve the public and support their families. SB 329 was permissive and not mandatory. SB 329 increased the maximum amount of City Council salaries based upon population size, permitted adjustments by ordinance at two public meetings, and allowed for additional modification under specific circumstances. Automatic adjustments for CPI were prohibited. For cities 75,000 - 150,000 in population, maximum compensation was set at one thousand nine hundred dollars ($1,900) per month. While SB 329 set forth an alternative calculation to the $1,900 amount based on a maximum 5% increase per year from the date of the last adjustment (2003-2023=20 years), this amount was $1,200, and less than the $1,900 amount set by population. As such, the $1,900 amount remained the maximum cap for compensation adjustment at the time Ordinance 2023-08 was adopted.

Ordinance No. 2023-08 will become effective after the results of the November 2024 general municipal election is certified by the City Council of the City of Temecula. A copy of Ordinance No. 2023-08 is attached as Exhibit A.

EXHIBIT A

POLICY

ORDINANCE NO. 2023-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING SECTION 2.04.050 OF THE TEMECULA MUNICIPAL CODE REVISING THE SALARY FOR COUNCIL MEMBERS TO NINETEEN HUNDRED DOLLARS PER MONTH AS PROVIDED IN GOVERNMENT CODE SECTION 36516 AND PROVIDING FOR REIMBURSEMENT OF NECESSARY EXPENSES

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Temecula does hereby find, determine and declare that:

A. Effective January 1, 2024, with the passage of Senate Bill 329 (Dodd), Government Code Section 36516 provides that council members in a city with a population of 75,000 – 150,000 are authorized to receive a salary of nineteen hundred ($1,900.00) per month. The population of a city for the purposes of establishing council member salaries may be based upon either a federal census or an estimate of population validated by the California Department of Finance.

B. The population of the City of Temecula in 2023 is 108,899 as validated by the California Department of Finance.

C. The need for the increase in Council salary is based on the following: (1) Council Members work many hours per month in addition to regular council meetings, including meeting with constituents, reviewing agenda reports for Council and City Commissions, attending subcommittee meetings, meeting with staff, and attending events on behalf of the City and not reflected in their current salary; and (2) increasing the salary may help the City Council become more diverse because increased salary can help individuals from across different income levels receive sufficient income from their service to help ensure that they can continue to serve the public and support their families.

Section 2. Section 2.04.050 of the Temecula Municipal Code is hereby amended to read as follows:

"2.04.050 Compensation

"A. In accordance with Government Code Section 36516, each council member shall be entitled to a salary of in the amount of nineteen hundred dollars ($1,900.00) per month.

B. Upon the submission of an itemized account, any council member may be reimbursed for the actual and necessary expenses incurred in the performance of official duty. The

Council may, by resolution, establish a schedule of actual and necessary expenses incurred in the performance of official duty for which council members may be reimbursed."

Section 3. As required by Government Code Section 36516.5, council members shall not be eligible for the $1,900.00 salary described in Section 1 of this ordinance until the term of office begins for council members elected at the November 2024 General Municipal Election. Until such time, council members shall continue to receive $600.00 per month in salary.

Section 4. Severability. If any portion, provision, section, paragraph, sentence, or word of this ordinance is rendered or declared to be invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining portions, provisions, sections, paragraphs, sentences, and words of this ordinance shall remain in full force and effect and shall be interpreted by the court so as to give effect to such remaining portions of the Ordinance.

Section 5. Effective Date. This ordinance shall take effect thirty (30) days after its adoption.

Section 6. Notice of Adoption. The City Clerk shall certify to the adoption of this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 24th day of October, 2023.

Zak Schwank, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 2023-08 was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 26th day of September, 2023, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the 24th day of October, 2023, by the following vote:

AYES:	3	COUNCIL MEMBERS:	Brown, Kalfus, Schwank
NOES:	2	COUNCIL MEMBERS:	Alexander, Stewart
ABSTAIN:	0	COUNCIL MEMBERS:	None
ABSENT:	0	COUNCIL MEMBERS:	None

Randi Johl, City Clerk

POLICY NO. 17

ELECTED OFFICE TRAVEL AND REIMBURSMENT

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Elected Official Travel and Reimbursement**
Policy No.	**17**
Approved:	**November 14, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to establish responsibilities and guidelines for elected officials when attending business or professional conferences, training seminars or other travel on City business. It is the intent of the City of Temecula to assure compliance with all state and federal laws, including United States Internal Revenue Service regulations and Assembly Bill 1234 (2005).

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

In general, all reimbursements to elected officials are a use of public funds. The City expects to reimburse reasonable costs incurred by elected officials when traveling on City business, and elected officials are expected to use good judgment in their expenditure of public funds. Reimbursement of business-related expenses paid to elected officials is generally tax-free; however, elected officials must substantiate the expenses with original receipts. A detailed record of all reimbursable expenses incurred during the travel must be submitted on a City Travel/Expense Form.

A. DEFINITIONS

1. Business Travel - authorized attendance at conferences, meetings, and seminars or authorized travel for any other purpose in connection with official City responsibilities. Business travel includes day trips and trips requiring one or more overnight stays in connection with official representation of the City to do the following:

a. Communicate with representatives of regional, state and national government on City adopted policy positions.

b. Attend trainings, seminars, symposiums, conferences, hearings, conventions or other meetings.

c. Interview persons, inspect facilities or institutions, conduct surveys, and exchange professional information or otherwise travel for the benefit of the City.

d. Act as host to persons who, for protocol reasons, merit appropriate courtesies.

e. Participate in such other activities requiring expenditures for travel and/or subsistence as are clearly necessary to serve in the best interest of the City.

2. Business Travel Period – the time that is necessary to travel by the most cost effective and appropriate travel method to attend conferences, meetings, and seminars related to City business. Additional time required to travel as the result of alternative travel methods selected by elected officials are not included in the business travel period and expenses are not subject to reimbursement.

3. Local Travel - travel within a radius of fifty miles from Temecula City Hall.

4. Out-of-Town Travel - travel greater than fifty miles from Temecula City Hall.

5. Mileage Allowance - the reimbursement paid to the elected official for the use of their own personal vehicle during travel on official City business. The mileage reimbursement rate will be the prevailing rate established by the Internal Revenue Service (IRS). Elected officials receiving a monthly automobile allowance are not eligible to receive an additional mileage allowance.

6. Allowable Expense - an expenditure deemed by the U.S. General Services Administration (GSA) as a stand-alone expense that is fully reimbursable, and not included as an incidental expense under per diem rates.

7. Incidental Expense - federal travel regulations define "incidental expenses" as fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards and stewardesses and others; transportation between places of lodging or business and places where meals are taken; and the mailing cost associated with filing travel vouchers.

B. PROVISIONS

1. Approvals

a. It is the policy of the City Council to publicly disclose and approve all requests for travel expense reimbursement from elected officials as a part of its approval for the List of Demands. If the travel is directly related to City business, defined as those legislative matters that fall within the jurisdiction of a local government municipality, such travel should be considered pre-approved for reimbursement. Any other requests for travel and subsequent reimbursement shall require pre-approval by the City Council.

b. Any number of elected officials may attend conferences if the funds for such purposes are specifically provided for and included in the annual budget, and the number of attendees is justified in consideration of the additional cost. Any other requests for travel and subsequent reimbursement shall require pre-approval by the City Council.

2. Transportation

a. Use of air, train, private car or bus shall be selected based on the most cost effective and appropriate method, taking into consideration distance as calculated by an internet mileage calculator such as MapQuest, and total costs to the City after all expense items are tabulated. Trips should be via the most direct and commonly traveled routes. Other routes may be authorized when official business requires their use. Costs associated with indirect routes, stops along the way for personal reasons, or extending the time beyond what is required for official business will not be paid for or reimbursed by the City. Once booked, changes to flights should be avoided whenever possible to minimize cost to the City.

b. If an elected official wishes to drive rather than fly to a destination, and the official does not receive a monthly automobile allowance, the City will reimburse the elected official the lesser of the mileage rate to and from the site or the amount of the lowest cost airline coach fare within one week after the meeting or conference is booked plus the cost of mileage to and from the airport, the cost of long term parking, and the cost of transportation from the airport to the meeting or conference site for the time necessary for the business travel only. If parking fees are charged at the meeting or conference location due to the elected official driving their personal vehicle, the mileage and parking costs will be reimbursed up to the cost of the airfare, mileage, parking, and transportation costs listed above for the time necessary for business travel. The City will not cover the cost of additional expenditures such as meals, lodging, parking and any other costs incurred resulting from the additional time required to travel by automobile.

c. Reimbursement for mileage shall be at the prevailing IRS established rate and mileage will be calculated from Temecula City Hall. Use of a privately owned vehicle on City business requires the driver to possess a valid California driver's license and to carry automobile insurance. Any damage to the vehicle or service repairs are of a personal nature, and are not reimbursable by the City, and the City shall assume no liability. Reimbursement will be based on the vehicle and not on the number attending (i.e., the owner of the vehicle will be paid and not the passengers). Mileage related to attending conferences or meetings requiring travel is submitted on the Travel Expense Form along with other conference or meeting expenses. Mileage not associated with travel, such as for local events, must be submitted monthly on a Mileage Reimbursement Form within 30 calendar days of the end of the month to be eligible for reimbursement. Such reimbursement is not available to those receiving a monthly automobile allowance.

d. Expenditures deemed as an allowable expense by the GSA such as tolls, parking, internet service and checked baggage for airlines, will be fully reimbursed upon presentation of the original receipts for the period of travel time required for City business. If an elected official chooses to extend the trip for additional days, expenditures for these days will not be paid for or reimbursed by the City. The cost for valet parking will only be reimbursed if no lower cost self-parking was available.

e. When the use of public air carrier transportation is approved, travel for all personnel shall be in coach class or equivalent service. Private automobile use to and from the airport shall be reimbursed for all miles at the current mileage rate. Long-term offsite parking must be used for travel exceeding 24 hours unless the onsite parking rate is lower. If, in lieu of parking at the airport, the elected official obtains a ride to and from the airport, the cost of the mileage for

both round trips will be covered up to what the cost would have been for one round-trip plus the cost of long term parking for the required travel period.

f. While traveling, the use of rental vehicles is discouraged. Shuttle services, buses, taxis, ride share, or car services, between airports and meeting locations will be covered. Rental vehicles shall only be permitted when no other transportation is available, or when alternate transportation would be more expensive or impractical. When rental vehicles are used, the least expensive vehicle practical shall be used, and car rental insurance must be purchased from the rental agency. Car rental fees will be covered only for the time required for the official travel.

3. Lodging

a. Lodging shall be obtained at the most economical rate available for good quality accommodations. In general, the City will cover the cost of hotel accommodations at the standard room rate, government room rate, or conference attendee rate, whichever is less. Upgrades to accommodations are not covered and must be paid for directly by the elected official.

1) If lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking.

2) The City will pay for a single occupancy room (including taxes, parking and other allowable expenses) for as many nights as is necessary to attend the meeting or conference based on the applicable agenda. Any extension of time for personal use is not covered and must be paid for directly by the elected official. If attendance at an event that is not on the agenda is required resulting in additional lodging, meal or other costs, the elected official must attach a statement or other documentation outlining the time and purpose of the meeting attended to obtain reimbursement for the additional costs. Lodging will be provided to elected officials the night prior to the meeting or conference when flight schedules do not allow for arrival on the day of the event prior to the start. Lodging will be provided on the last day of the event only if the event ends late in the day and no return flights are available. Elected officials must cancel any reservation that will not be used. If the City is charged for an unused reservation, the elected official will be responsible for that charge unless circumstances requiring cancellation were reasonably beyond their control.

b. An elected official may stay with a friend or relative while attending an out-of-town meeting or conference; however, the City will not reimburse the elected official for any payment to the friend or relative for lodging, meals or transportation.

4. Meals, Incidental and Allowable Expenses

a. For trips requiring an overnight stay, the allowable cost of meals at a hotel, restaurant, cafeteria, cafe or deli consumed by the elected official while on required business travel will be reimbursed when documented by appropriate receipts. The cost includes non-alcoholic beverages, taxes and tip. Elected officials are not eligible to receive a per diem allowance.

1) Elected officials are eligible to receive reimbursement for actual costs of meals and incidental expenses to the maximum allowance under the GSA Per Diem Rate Schedule (www.gsa.gov) for the location where the meeting or conference took place calculated daily meaning that the meals in totality will be reimbursed up to the maximum allowable for the day, not on an individual meal basis. Partial days, including the first and last days of the conference or event will be prorated according to the GSA Per Diem Rate Schedule. Meals for spouses or guests must be paid for by the elected official and are not eligible for reimbursement.

2) When meals are provided during a conference, those meals must be subtracted out of the per diem rate allowed for the day using the GSA Per Diem Rate Schedule provisions for partial days for the location in which the meeting took place. The provision of a "Continental Breakfast" will not be counted as a meal provided for the purposes of this section.

3) Receipts must show the itemized meal and beverages. Credit card receipts with no detail are not acceptable documentation.

4) Other expenditures deemed by the GSA as an allowable expense (i.e., checked baggage for airlines) are reimbursable.

5) Elected officials are required to submit supporting documentation and receipts for all reimbursable purchases, including the elected official's name and the nature of the business.

b. For trips not requiring overnight stays, the actual cost of meals at a hotel, restaurant, cafeteria, cafe or deli consumed by the elected official while on business travel will be reimbursed when documented by appropriate receipts. The actual cost includes non-alcoholic beverages, taxes and a 15% tip.

1) Receipts must show the itemized meal and should have the elected official's name and the nature of the business documented.

2) Reimbursement shall not exceed the daily meal limit amounts set above, regardless of the amount in receipts submitted.

3) Meals for travel under twenty-four hours may be taxed according to IRS regulations.

4) Elected officials will not be reimbursed for meals if the location of the meeting or conference is within the City, since the elected official could have the meal in the manner they normally choose.

5) Elected officials will not be reimbursed for meals which are already included in the conference registration fee.

6) If an elected official is attending a one-day seminar whereby lunch is not included in the price of the seminar, the reimbursement may not exceed the prevailing U.S. GSA lunch rate for the location in which the meeting took place.

5. Cash Advances and Credit Card Usage

a. If an elected official requires a cash advance for travel expenditures related to City business, a cash advance of a minimum of one hundred ($100) dollars up to a maximum of one thousand five hundred ($1,500) dollars may be made to the elected official.

1) Authorization shall be in the form of a check request from the City Manager to the Finance Department.

2) Cash advances shall be restricted to a maximum of meal and incidental allowances as defined in Section 4.

b. Approved cash advances should be submitted to the Finance Department three weeks prior to departure date.

1) The elected official will be notified by the Finance Department when the requested funds are available for pickup immediately prior to the dates of travel.

2) Receipt of a cash advance for travel expenses does not constitute pre-approval for the expenditure of the entire amount so advanced, as all expenditures must be reasonable, justified and approved.

c. If an elected official has accepted a cash advance, a reconciliation of the advance payment must be made based on the actual expenses incurred as part of the expense report and submitted to the City within ten (10) calendar days of returning from the conference or meeting.

1) If actual expenses exceed the amount of the advance, any additional expenses will be reimbursed.

2) If actual expenses do not exceed the expense advance received, the elected official shall reimburse the City for the unused portion within ten (10) calendar days of filing the expense report. Any unreimbursed cash advance will be withheld from the elected official's next stipend.

d. Elected officials may be issued a credit card by the City of Temecula. Such credit card is to be used for City business only as set forth in this policy (i.e., conference registration, lodging hotel, transportation, non-covered meals, meetings, etc.). Said credit card shall remain in the possession of the Executive Assistant to the City Council and shall be checked out from time to time when the need arises including when the elected official is traveling for City business. Use of the credit card remains subject to all other relevant provisions set forth in this policy, including the submittal of actual costs incurred by way of receipts separately and/or via the Travel/Expense Form.

6. Other Provisions

a. Spouses and guests are permitted to accompany the elected official on City travel and at conferences, seminars, and meetings, except when such accompaniment would interfere with the conduct of City business. Any additional costs associated with the participation of the spouse or other guests are the sole responsibility of the elected official.

b. If Internet access is necessary for City related business, the City will reimburse Internet access connection and/or usage fees away from home during the authorized business travel period. The rate must be listed as such on the invoice, so as not to be confused with other incidental costs.

c. Baggage handling fees of a generally accepted, reasonable amount and gratuities of up to 15% will be reimbursed.

7. Unauthorized Expenses

a. Items of a personal nature are not reimbursable, including movies, entertainment, premium television services, alcoholic beverages, snacks, gift certificates, laundering or dry-cleaning, spas, gyms, barbers, magazines, shoeshine, travel insurance, purchase of clothing or toiletries, loss of tickets, fines or traffic violations, non-mileage personal automobile expenses, including repairs, insurance or gasoline, personal losses incurred while on City business, excess baggage, spouse and/or guest accommodations, office equipment and other items of a personal nature.

b. Spouses and guests are allowed to accompany the elected official on City travel and at conferences, seminars· and meetings when using public or private transportation. Any additional costs associated with the participation of the spouse or other guests are the sole responsibility of the elected official including any increased lodging rate due to double occupancy. Any increase in cost due to a spouse or guest accompanying an elected official is not to be charged to the City and must be paid for directly by the elected official.

c. Expenses for which elected officials receive reimbursement from another agency are not reimbursable.

d. If unauthorized expenses have been paid by the City, the elected official will be responsible for immediate reimbursement to the City by cash or personal check. If the payment has not been received within twenty (20) calendar days after the event, the amount due will be deducted from the elected official's next monthly stipend.

C. TRAVEL/EXPENSE FORM

1. Upon return from the event, the elected official must submit an approved Travel/Expense Form to the Finance Department within ten (IO) calendar days. This form itemizes all expenses associated with the event. All original receipts must be attached, as well as a copy of the conference schedule and/or itinerary. Electronic receipts will also be accepted.

2. Expense forms must document that the expenses in question meet the requirements of this policy.

3. If an elected official has lost a receipt for a travel-related item, a memo is required. The memo must include the following:

a. Detailed explanation, such as time, activity, and reason for losing the receipt.

b. Include all receipt information such as place, amount, date, and description of item.

c. The elected official must sign the memo.

D. INTERPRETATION OF POLICY

The intent of the policy is to provide guidelines to cover the necessary costs associated with elected officials attending conferences and meetings related to, and for the benefit of, the City of Temecula in the most cost-effective manner. Fiscal prudence should prevail in the interpretation of the policy as it is impossible to cover every unique situation that may arise. Any disagreement as to how the policy should be applied should be referred to the City Manager.

E. VIOLATIONS OF THIS POLICY

Use of public resources or falsifying expense reports in violation of this policy may result in any of the following: 1) loss of reimbursement privileges; 2) a demand for restitution to the City of Temecula; 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities; 4) civil penalties up to the maximum allowable by law; 5) prosecution for misuse of public resources.

POLICY NO. 18

APPOINTMENT TO INTERNAL/ EXTERNAL COMMITTEES

CITY OF TEMECULA
CITY COUNCIL POLICY

Title:	**Appointment to Internal/External Committees**
Policy No.	**18**
Approved:	**November 14, 2023**
Revised:	**N/A**

PURPOSE:
The purpose of this City Council policy is to set forth the guidelines affiliated with the appointment of Council Members to internal and external committees.

POLICY:
The policy of the City Council with respect to the matter listed in the above-referenced title is as follows:

Appointments to Committees
The City of Temecula has several internal committees – ad hoc and standing – on which the City Council serve. Under the Brown Act, which is codified in the Government Code, a "standing committee" is one that has "continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution or formal action of a legislative body." An "ad hoc committee" is one that has limited subject matter jurisdiction, typically one topic, and meets for such time as to complete a limited purpose. The Brown Act applies to all standing committee meetings and relevant staff ensure noticing requirements are met.

Appointments to external committees may include Western Riverside County Regional Conservation, Riverside County Habitat Conservation Agency Board, Riverside County Transportation Commission, Riverside Transit Agency, Western Riverside Council of Governments, League of California Cities, National League of Cities, and Pechanga Tribal Council Liaison among others.

The City Council makes appointments to its internal and external committees in January of each year. Two members are publicly appointed to each committee by a majority vote of the Council. Members may be appointed based on interest, continuity, availability, and/or any other reason. Members serve for the full calendar year in which they are appointed. In the event of a vacancy, another member may be appointed by majority vote of the City Council when the vacancy occurs.

Stipends for Committees
There are no stipends provided by the City of Temecula for any committee service on internal ad hoc and/or standing committees. For external committees, the corresponding regional agency (i.e., Riverside Transit Agency, Riverside Conservation Authority, etc.) may provide a stipend per month and/or meeting for service on their respective committee. Such appointments and related stipends are reportable pursuant to Fair Political Practices Commission Regulation 18702.5. The City Clerk's office is responsible for posting Form 806 listing paid appointed positions as required pursuant to law.

APPENDIX A

SUMMARY OF
RALPH M. BROWN ACT

2023

Brown Act HANDBOOK

Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

- Summary and Discussion of the Major Provisions of the Brown Act
- Text of the Ralph M. Brown Act
- Updated including changes effective January 1, 2023

RWG LAW

RICHARDS WATSON GERSHON

Representing California public and private entities since 1[illegible]

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INTRODUCTION

This Handbook is prepared to provide you with a summary of the major provisions of California's open meeting law for local governments – the Ralph M. Brown Act, including rules about calling and holding various types of meetings and closed sessions, as well as guidelines for how to avoid serial meetings. The second part contains the complete text of the Brown Act. This Handbook is designed for local government officials and staff and we hope you will find it useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact us.

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PART ONE:

SUMMARY OF THE MAJOR PROVISIONS AND REQUIREMENTS OF THE RALPH M. BROWN ACT

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Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

The Ralph M. Brown Act, more commonly known as the "Brown Act," is California's "sunshine" law for local government. The Brown Act is found in the California Government Code commencing with Section 54950. In a nutshell, the Brown Act requires local government business to be conducted at open and public meetings, except in certain limited situations. This Handbook briefly summarizes and discusses the major provisions of the Brown Act.

I. APPLICATION OF BROWN ACT TO "LEGISLATIVE BODIES"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council or the board of supervisors) and any commission, committee, board, or other body of the local agency, whether permanent or temporary, decision-making or advisory, that is created by formal action of a legislative body. § 54952(a)-(b).

Standing committees of a legislative body, that have either "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body, are also subject to the requirements of the Brown Act. Some common examples include the finance, personnel, or similar policy subcommittees of a legislative body. Standing committees exist to make routine, regular recommendations on a specific subject matter. These committees continue to exist over time and survive resolution of any one issue or matter. They are also a regular part of the governmental structure.

The Brown Act does not apply to "ad hoc" committees comprised solely of members of the legislative body that are less than a quorum of the body, provided these committees do not have a "continuing subject matter jurisdiction," or a meeting schedule fixed by formal action of the legislative body. Such ad hoc committees are purely advisory; they generally serve only a limited or single purpose, are not perpetual, and are dissolved when their specific task is completed.

Advisory and standing committees, but not ad hoc committees, are required to have agendas, and to have their agendas posted at least 72 hours in advance of their meetings. If this is done, the meeting is considered to be a regular meeting for all purposes. § 54954(a). If the agenda is not posted at least 72 hours in advance, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply, as discussed later in Section VIII of this Handbook.

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The governing boards of some private corporations, limited liability companies, and private entities may be subject to the Brown Act under certain circumstances. A private entity's governing board constitutes a legislative body within the meaning of the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the legislative body; or (ii) the private entity receives funds from a local agency and its governing board includes a member of the legislative body of the local agency who was appointed by the legislative body to the governing board as a full voting member. § 54952(c). Additionally, charter schools and entities managing charter schools may also be subject to the Brown Act. Educ. Code, § 47604.1(b)(1).

The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency even before they assume the duties of office. § 54952.1. Under this provision, the statute is applicable to newly elected, but not-yet-sworn-in, members of the legislative body.

II. DEFINITION OF "MEETING"

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act defines the term "meeting" very broadly in § 54952.2(a), and encompasses almost every gathering of a majority of legislative body members, including:

> "[A]ny congregation of a majority of the members of a legislative body at the same time and location, including a teleconference, . . . to **hear, discuss, deliberate, or take action** on any item that is within the subject matter jurisdiction of the legislative body."

In plain English, this definition means that a meeting is any gathering of a majority of council members, board of directors or other applicable legislative body, to hear, discuss or deliberate any item of local agency business or potential local agency business. It is important to emphasize that a meeting occurs if a majority gathers to hear, discuss or deliberate on a matter and not just voting or taking action on the issue.

III. EXCEPTIONS TO MEETING REQUIREMENT

There are six types of gatherings that are not subject to the Brown Act. We commonly refer to these exceptions as: (1) the individual contact exception; (2) the seminar or conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of the members of a legislative body falls within one of the exceptions discussed below, even if a majority of members are merely in the same room listening to a discussion of local agency business, they will

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be participating in a meeting within the meaning of the Brown Act that requires notice, an agenda, and a period for public comment.

A. The Individual Contact Exception

Conversations, whether in person, by telephone, video conferencing, or other means, between a member of a legislative body and any other person do not constitute a meeting under the Brown Act. § 54952.2(c)(1). However, such contacts may constitute a "serial meeting" (discussed below) in violation of the Brown Act, if the individual also makes a series of individual contacts with other members of the legislative body, and communications with these other members are used to "discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body." § 54952.2(a).

B. The Seminar or Conference Exception

Attendance by a majority of the legislative body at a seminar, conference or similar educational gathering is generally exempted from Brown Act requirements. § 54952.2(c)(2). However, in order to qualify under this exception, the seminar or conference must be open to the public and must involve issues of general interest to the public or to local agencies. Attendance at a California League of Cities or California Contract Cities seminar is an example of an educational gathering that fulfills these requirements. However, as with many of the exceptions, this exception will not apply if a majority of legislative body members discuss among themselves items of specific business relating to their own local agency other than as part of the scheduled program.

C. The Community Meeting Exception

The community meeting exception allows a majority of legislative body members to attend privately sponsored neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings at which issues of local interest are discussed. § 54952.2(c)(3). In order to fall within this exception, however, the community meeting must satisfy specific criteria. First, the community meeting must be "open and publicized." Therefore, a homeowners' association meeting restricted to the residents of a particular development and only publicized to those residents cannot be attended by a majority of the legislative body without following the Brown Act requirements because the meeting does not qualify for the exception. And again, for those meetings that fall within the community meeting exception, a majority of legislative body members cannot discuss among themselves items of business of their own local agency other than as part of the scheduled program.

D. The Other Legislative Body Exception

This exception allows a majority of members of any legislative body to attend open and noticed meetings of other legislative bodies of their local agency, or of another local agency, without treating such attendance as a meeting of the body. § 54952.2(c)(4).

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Of course, the legislative body members are prohibited from discussing items of business of their local agency among themselves other than as part of the scheduled meeting.

E. The Social or Ceremonial Occasion Exception

As has always been the case, the Brown Act does not apply to attendance by a majority of the legislative body members at purely social or ceremonial occasions. § 54952.2(c)(5). This exception only applies if a majority of legislative body members do not discuss among themselves items of business of their local agency.

F. The Standing Committee Exception

The standing committee exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the committee without making the gathering a meeting of the full legislative body itself. § 54952.2(c)(6). If a majority of the legislative body is created by the attendance of the additional members, the legislative body members who are not members of the standing committee may attend only as "observers." This means that the noncommittee members of the legislative body should not speak at the standing committee's meeting, sit in their usual seat on the dais, or otherwise participate in the meeting. It is generally recommended that, if a standing committee meeting is likely to be attended by other legislative body members, then the meeting should be agendized as a meeting of the whole legislative body. This will allow full participation by all members of the legislative body.

IV. PERMITTED LOCATIONS OF MEETINGS AND TELECONFERENCING

A. Permitted Locations of Meetings

The Brown Act generally requires all meetings of a legislative body to occur within the boundaries of the local agency. § 54954(b). There are limited exceptions to this rule, however, such as allowing meetings with a legislative body of another local agency in that agency's jurisdiction. Meetings held outside of a local agency's boundaries pursuant to an exception still must comply with agenda and notice requirements, as discussed below.

B. Teleconferencing

The role of "teleconferencing," or using telephonic and/or video technology in public meetings was expanded significantly during the COVID-19 pandemic.

Because the Brown Act relies on physical, in-person meetings as the primary means to achieve its goals of public participation and transparency, the law has traditionally limited a local agency's ability to use teleconferencing to hold public meetings.

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Generally, teleconferencing may only be used by members of a legislative body as a way to participate fully in the meeting from remote locations. § 54953(b). If one or more members participate in a meeting via teleconferencing, the following requirements apply to that meeting: (1) the remote location must be connected to the main meeting location by telephone, video or both; (2) the notice and agenda of the meeting must identify the remote location; (3) the remote location must be posted and accessible to the public; (4) all votes must be by roll call; and (5) the meeting must comply with the Brown Act, which includes allowing participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. These teleconferencing rules only apply to members of the legislative body. Staff members, attorneys or consultants may participate remotely without following the posting and public access requirements of the teleconferencing rules.

On March 17, 2020, Governor Newsom issued Executive Order ("EO") N-29-20, which temporarily relaxed these traditional teleconferencing requirements in response to the COVID-19 pandemic. That order expired on September 30, 2021, but recent amendments to the Brown Act, described below, now provide other alternatives to the standard teleconferencing rules under specific conditions. The Brown Act's standard teleconferencing rules described in the preceding paragraph remain available in lieu of the alternatives described below.

1) Assembly Bill 361

AB 361 built upon EO N-29-20 to provide a statutory basis in the Brown Act for relaxed teleconferencing requirements during the COVID-19 declared emergency. As described below, however, there must be a proclaimed state of emergency for an agency to rely on AB 361. Because The Governor has announced that the current COVID-19 state of emergency will end on February 28, 2023[1], agencies will be unable to rely on AB 361 after that date absent a new emergency declaration.

By its terms, AB 361 will sunset on January 1, 2024. § 54953(f). Until then, AB 361 authorizes local agencies to continue meeting remotely *during a state of emergency proclaimed by the Governor* without following the Brown Act's standard teleconferencing provisions, including the requirement that meetings be conducted in physical locations, if either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. § 54953(e)(1)(A)-(C). "State of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act.

AB 361 generally requires legislative bodies to make remote public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe

[1] *Governor Newsom to End the COVID-19 State of Emergency* (Oct. 17, 2022), available at: https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/ (as of Dec. 7. 2022).

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and to address the local legislative body, and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Brown Act. AB 361 provides the following procedures and requirements for conducting remote meetings as follows:

1. Public Comment Opportunities in Real Time: A legislative body that meets remotely pursuant to AB 361 must allow members of the public to access the meeting via a call-in option or an internet-based service option, and the agenda for the remote meeting must provide an opportunity for members of the public to directly address the body in real time. Although the agency may still ask for public comments to be submitted in advance, the agency cannot require public comments to be submitted in advance of the meeting. § 54953(e)(2)(E). Agencies may not close a public comment period until members of the public are given the opportunity to register and the time for that comment period has elapsed, whether it is for a specific agenda item or a general comment period. If an agency does not provide a timed public comment period, but takes public comment separately on each agenda item, it must allow a reasonable amount of time per agenda item to allow members of the public the opportunity to provide public comment, including time to register or "otherwise be recognized for the purpose of providing public comment." § 54953(e)(2)(G)(ii).

2. No Action During Disruptions: In the event of a disruption that prevents the local agency from broadcasting the remote meeting, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, AB 361 prohibits the legislative body from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored. § 54953(e)(2)(D).

3. Periodic Findings: To continue meeting remotely pursuant to AB 361, an agency must make periodic findings that: (1) the body has reconsidered the circumstances of the declared emergency; and (2) the emergency impacts the ability of the body's members to meet safely in person, or state or local officials continue to impose or recommend measures to promote social distancing. § 54953(e)(3). These findings must be made not later than 30 days after teleconferencing for the first time pursuant to AB 361, and every 30 days thereafter. We recommend that after the agency makes these findings for the first time, it place on the agenda (as a placeholder) "reconsideration" of the findings every month thereafter. § 54953(e)(3).

2) Assembly Bill 2449

AB 2449 provides alternate authority, separate from both the traditional Brown Act teleconferencing requirements and the relaxed teleconferencing requirements during declared emergencies under AB 361. The provisions of AB 2449 are effective for a period of three years beginning January 1, 2023 and ending January 1, 2026.

AB 2449 requires at least a quorum of the legislative body to participate in person from a singular, physical location clearly identified on the agenda, open to the public, and

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situated within the boundaries of the territory over which the agency exercises jurisdiction. § 54953(f)(1). AB 2449 allows other individual members to participate remotely without posting agendas at all teleconference locations, identifying all such locations in the agendas, or making each teleconference location open to the public in two specified circumstances: (1) "just cause" or (2) "emergency circumstances."

"Just cause" means any of the following: (A) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (B) a contagious illness that prevents a member from attending in person; (C) a need related to a physical or mental disability not otherwise accommodated by the agency's procedures for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the Americans with Disabilities Act; or (D) travel while on official business of the legislative body or another state or local agency. § 54953(j)(2).

To participate remotely for just cause, a member must notify the legislative body "at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause." This notification must include a general description of the circumstances relating to their need to appear remotely at the given meeting.

"Emergency circumstances" means a physical or family medical emergency that prevents a member from attending a meeting in person. § 54953(j)(1).

To participate remotely due to emergency circumstances, the member must request the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body must take action to approve the request. § 54953(f)(2)(A)(ii). If the legislative body does not approve the request, the member may not participate via teleconference under AB 2449 at that meeting other than as a member of the public. The legislative body must request a general description of the circumstances relating to the member's need to appear remotely at the given meeting. A general description need not exceed 20 words and does not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law. A legislative body member should request to participate remotely at a meeting due to emergency circumstances as soon as possible, and a separate request is required for each meeting in which they seek to participate remotely. § 54953(f)(2)(A)(i)(I). The legislative body may approve such a request by a majority vote. §§ 54953(f)(2)(A)(i)(II); 54954.2(b)(4). If the request is received at least 72 hours before a regular meeting, the legislative body's action on the request should be included on the agenda. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting, the legislative body may take action at the beginning of the meeting. § 54953(f)(2)(A)(i)(II).

There are strict limits on how often AB 2449 may be used for individual members. For "just cause," legislative members are only allowed to participate remotely up to two meetings per calendar year. Otherwise, legislative members may not participate solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the legislative body within a calendar

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year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

At the meeting before any action is taken, members of the legislative body participating remotely pursuant to AB 2449 must publicly disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals. § 54953(f)(2)(B). Members must also participate through both audio and visual technology so that the public can remotely hear and visually observe them. § 54953(f)(2)(C).

Local agencies relying on AB 2449 must follow certain requirements for noticing and conducting remote meetings similar to those required by AB 361. Meeting notices and agendas must identify the means by which members of the public may access the meeting and offer public comment. § 54953(f)(1)(B). Meeting agendas must identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in option, via an internet-based service option, and at the in-person location of the meeting. § 54953(f)(1)(C). In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body may take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. § 54953(f)(1)(D). The legislative body may not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. § 54953(f)(1)(E).

V. ADA COMPLIANCE

Pursuant to Section 54953.2, all meetings of a legislative body, other than closed session meetings or parts of meetings involving a closed session, are required to be held in a location and conducted in a manner that complies with the Americans with Disabilities Act of 1990.

However, local agencies must ensure that remote meetings are conducted in a manner that allows persons with a disability to participate to the fullest extent possible. Additionally, if requested, the agenda and documents in the agenda packet shall be made available in alternative formats to persons with a disability. § 54954.1. The agenda shall include information regarding how, to whom and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the meeting. § 54954.2.

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VI. SIMULTANEOUS OR SUCCESSIVE MEETINGS

A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or successively, only if a clerk or a member of the convened legislative body announces the following prior to convening the simultaneous or successive meeting:

1) There is a subsequent legislative body;

2) The amount of compensation or stipend, if any, each member may receive as a result of the multiple meetings; and

3) The form of the compensation or stipend that will be provided.

The amount of compensation and stipend is not required to be announced if it is listed in a statute without additional compensation authorized by the local agency, and in any case, the announced compensation must not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of his or her official duties. § 54952.3.

VII. SERIAL MEETINGS

In addition to regulating all gatherings of a majority of the members of a legislative body, the Brown Act also addresses certain contacts between individual members of the legislative body. On the one hand, the Brown Act specifically provides that nothing in the Act is intended to impose requirements on individual contacts or conversations between a member of a legislative body and any other person. § 54952.2(c)(1). This provision even applies to individual contacts between two members of the legislative body (the individual contact exception to the "meeting" described above). Despite this exception, however, the Brown Act prohibits "serial meetings." § 54952.2(b)(1).

A serial meeting is a series of meetings or communications, either in person or by other means, between individual members of the legislative body in which ideas are exchanged among a majority of a legislative body regarding an item of business that is within the subject matter jurisdiction of the legislative body. A serial meeting can occur even though a majority of legislative body members never gather in a room at the same time. For example, an email response concerning an agency's business circulating among a majority of the members of the legislative body, such as "reply to all," could be considered a serial meeting. A serial meeting typically occurs in one of two ways. The first is when a staff member, a legislative body member or some other person individually contacts a majority of legislative body members and shares ideas among the majority (e.g., "I've talked to members A and B and they will vote 'yes.' Will you?"). Alternatively,

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member A calls member B, who then calls member C and so on, until a majority of the legislative body has discussed or deliberated or has taken action on the item of business.

The prohibition against serial meetings does not, however, prohibit communications between staff and legislative body members for the purpose of answering questions or providing information regarding a matter that is within the subject matter jurisdiction of the local agency, as long as the staff person does not communicate with other members of the legislative body, the comments or positions of any other member of the legislative body. § 54952.2(b)(2).

Social media interactions between or among members of a legislative body can also raise serial meeting concerns. However, the prohibition against serial meetings does not prevent communication between members of a legislative body and members of the public on internet-based social media platforms to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that: (i) a majority of the members of the legislative body do not use the social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body, and (ii) members of the legislative body do not respond directly to any communication on a social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body. § 54952.2(b)(3).

Observing the following guidelines can avoid inadvertent violation of the serial meeting rule.

A. Contacts with Staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. Originally, the California Court of Appeal held that staff briefings of individual city council members do not constitute an illegal serial meeting under the Brown Act unless there was additional evidence that: (1) staff acted as a personal intermediary for other members of the legislative body; and (2) the meetings led to a collective concurrence among members of the legislative body. Following that decision, the state legislature amended Government Code Section 54952.2 in 2008, effective in 2009, to further clarify that staff briefings of individual city council members for the purpose of answering questions or providing information regarding an item of business do not constitute an illegal serial meeting under the Brown Act as long as a staff person does not communicate the comments or positions of a member of the legislative body to other members. Staff briefings must therefore be handled carefully. To avoid having a staff briefing become a serial meeting:

- Staff briefings of members of the legislative body should be "unidirectional" when done on an individual basis for a majority of the legislative body. This means that information should flow from staff to the member, and the member's participation should be limited to asking questions and acquiring information. Otherwise, if multiple members separately give staff direction

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thereby causing staff to shape or modify their ultimate recommendations in order to reconcile the views of a majority of the members, a violation might occur.

- A legislative body member should not ask staff to describe the views of any other members of the legislative body, and staff should not volunteer those views if known.

- Staff may present their views to a legislative body member during an individual contact, but staff should not ask for that member's views unless it is absolutely clear that staff is not discussing the matter with a majority of the legislative body.

B. Contacts with Constituents, Developers and Lobbyists

A constituent, developer or lobbyist can also inadvertently become an intermediary among a majority of members of a legislative body thereby creating an illegal serial meeting in violation of the Brown Act. Such person's unfamiliarity with the requirements of the Brown Act aggravate this potential problem because they may expect a legislative body member to be willing to commit to a position in a private conversation in advance of a meeting. To avoid violations arising from contacts with constituents, developers and lobbyists:

- State the ground rules "up front." Ask if the person has talked, or intends to talk, with other members of the legislative body about the same subject. If the answer is "yes," then make it clear that the person should not disclose the views of other legislative body member(s) during the conversation.

- Explain to the person that you will not make a final decision on a matter prior to the meeting. For example: "State law prevents me from giving you a commitment outside a noticed meeting. I will listen to what you have to say and give it consideration as I make up my mind."

- Do more listening and asking questions than expressing opinions. If you disclose your thoughts about a matter, counsel the person not to share them with other members of the legislative body.

- Be especially careful with discussions about matters involving "quasi-judicial" land use decisions such as subdivision maps, site development plans, conditional use permits or variances. Consult with your city attorney or legal counsel before the meeting in order to avoid any potential problems involving illegal prejudice against the project or illegally receiving evidence about the project outside of the administrative record.

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C. Contacts with Fellow Members of the Same Legislative Body

Direct contacts concerning local agency business with fellow members of the same legislative body – whether through face-to-face or telephonic conversations, notes, letters, online exchanges, email with or to staff members – are the most obvious means by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of local agency business with another member of that legislative body outside of a meeting; as long as the communication does not involve a majority of the legislative body, no "meeting" has occurred. There is, however, always the risk that one participant in the communication will disclose the views of the other participant to a third or fourth legislative body member, creating the possibility of a discussion of an item of business outside a noticed public meeting. Therefore, avoid discussing city business with a majority of the members of your legislative body and communicating the views of other legislative body members outside a meeting.

D. Contacts on Social Media

Social media engagement can also inadvertently lead to concerns of creating an illegal serial meeting in violation of the Brown Act. The Brown Act was previously silent regarding social media and its use by members of a legislative body, leading to uncertainty as to whether certain uses of social media could result in unintended violations of the Brown Act. Assembly Bill 992, passed in 2020 and effective January 1, 2021, amended certain provisions of the Brown Act until January 1, 2026 to clarify allowable uses of social media under the Act.

A member of a legislative body may engage in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body. However, a majority of the members of the legislative body cannot use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. Further, a member of the legislative body is prohibited from responding directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body. § 54952.2(b)(3)(A). Unlike other serial meeting restrictions that are invoked when there are contacts of a majority of the legislative body, this provision is triggered when there is interaction between as little as two members of a body. For purposes of these provisions, such interaction includes commenting or using digital icons that express reactions to communications made by other members of the legislative body. § 54952.2(b)(3)(B)(i). Thus, it is now clear that "liking" a post or using a digital icon is considered a discussion under the Brown Act.

Therefore, to avoid violations arising from social media engagement, members of a legislative body should avoid interacting on social media platforms with any other

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members of their legislative body regarding matters within the subject matter jurisdiction of the legislative body.

These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquiring important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act's goal of achieving open government. If you have questions about compliance with the Act in any given situation, you should seek advice from your city attorney or legal counsel. Adherence to the foregoing guidelines is not a substitute for securing advice from your legal counsel.

VIII. NOTICE, AGENDA AND REPORTING REQUIREMENTS

A. Time of Notice and Content of Agenda

Two key provisions of the Brown Act which ensure the public's business is conducted openly are the requirements that legislative bodies publicly post agendas prior to their meetings, (§§ 54954.2, 54955, 54956 and 54957.5) and that no action or discussion may occur on items or subjects not listed on the posted agenda (§ 54954.2). The limited exceptions to the rule against discussing or taking action not on a posted agenda are discussed further below.

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings. § 54954(a). A "regular" meeting is a meeting that occurs on the legislative body's established meeting day. Generally, agendas for a regular meeting must be publicly posted 72 hours in advance of the meeting in a place that is freely accessible to the public.

Agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting. § 54954.2(a). The description should inform the public of the "essential nature" of the matter, but need not exceed 20 words. *San Diegans for Open Government v. City of Oceanside*, 4 Cal. App. 5th 637 (2016).

Courts will not uphold a challenge to the sufficiency of an agenda item description when the description provides fair notice of what the agency will consider. The *San Diegans for Open Government* case provides an example of a sufficient agenda description that provides fair notice. In *San Diegans for Open Government*, the Oceanside City Council approved a subsidy agreement with a hotel developer using the following agenda item description:

> Adoption of a resolution to approve: 1. An Agreement Regarding Real Property (Use Restrictions) between the City of Oceanside and SD Malkin Properties Inc. to guarantee development and use of the property as a full service resort consistent with the entitlements for the project; 2. An Agreement Regarding Real Property to provide a

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> mechanism to share Transient Occupancy Tax (TOT) generated by the Project; 3. A Grant of Easement to permit construction of a subterranean parking garage under Mission Avenue; 4. A report required by AB 562 prepared by Paul Marra of Keyser Marston and Associates documenting the amount of subsidy provided to the developer, the proposed start and end date of the subsidy, the public purpose of the subsidy, the amount of the tax revenue and jobs generated by the project; and 5. A License Agreement to permit construction staging for the project on a portion of Lot 26.

The court ruled that this agenda description complied with the requirements of Government Code Section 54954.2 because the agenda description expressly gave the public notice that the council would consider a fairly substantial development of publicly owned property as a hotel, that the City would share the transient occupancy tax generated by the project and that the transaction would involve a subsidy by the City. Additional information, while helpful, was not necessary to provide fair notice of the essential nature of the action under state law. The court found that the language of the agenda, considered as a whole, provided more than a "clue" that the City planned to provide the developer with a substantial and ongoing financial subsidy in exchange for the project.

In contrast, in *Hernandez v. Town of Apple Valley*, 7 Cal. App. 5th 194 (2017), the court held that the Apple Valley Town Council's agenda description was insufficient. There, the Apple Valley Town Council adopted three resolutions that called for a special election related to an initiative to adopt a commercial specific plan and the filing of arguments and rebuttal arguments for and against the initiative. In addition, the Town Council adopted a Memorandum of Understanding ("MOU") that authorized the acceptance of a gift from an interested party, Wal-Mart, to pay for the special election. The agenda description for the matter read "Wal-Mart Initiative Measure" and included a recommendation for action that read "[p]rovide direction to staff."

The court reiterated that the Brown Act requires that each item of business be placed on the agenda. Specifically, the court highlighted that nothing in the agenda description, or even in the agenda packet, indicated that the Town Council was going to consider an MOU to accept a gift from Wal-Mart to pay for a special election to pass the initiative. The court concluded that the City violated the Brown Act by omitting the MOU from the agenda description because the omission meant that the plaintiff was given no notice of the item of business.

Furthermore, agendas should make clear whether items may be acted on or whether they are informational only. Thus, if an agenda for a meeting states that the legislative body will only "discuss" an item, the legislative body may not take an "action" on that item.

Agendas must also be posted on the local agency's website, if one exists, for City Council meetings, and meetings of any other legislative body where some members are City Council members and are compensated for their appearance. While the language of the 72 hour posting requirement appears absolute, the California Attorney General

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opined that technical difficulties, such as a power failure, cyber-attack or other third-party interference that prevents a local agency from posting its agenda on its website for the full 72 hours will not necessarily preclude the legislative body from lawfully holding its meeting. 99 Ops. Cal. Atty. Gen. 11 (2016). Whether a public meeting may continue as scheduled requires a fact specific analysis that turns on whether the local agency has otherwise "substantially complied" with the Brown Act's agenda posting requirements by properly posting a physical agenda and making other "reasonably effective efforts" (such as making the agenda available on social media or some other alternative website) to notify the public of the meeting.

Please note that the proposed adoption of a CEQA exemption or approval of a CEQA document, such as an environmental impact report or a negative declaration, by a Planning Commission or a City Council is a distinct item of business separate from the item approving the project and must be expressly described in an agenda. *G.I. Industries v. City of Thousand Oaks* (2022) 84 Cal.App.5th 814.

A "special" meeting is a meeting that is held at a time or place other than the time and place established for regular meetings. For special meetings, the "call and notice" of the meeting and the agenda must be posted in a publicly accessible area, including in some cases on the local agency's website, at least 24 hours prior to the meeting. § 54956(a). Additionally, each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as facsimile, email or U.S. mail) at least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and, if they have, then that notice must be given at the same time notice is provided to members of the legislative body.

An "emergency" meeting may be called to address certain emergencies, such as a terrorist act or crippling disaster, without complying with the 24-hour notice requirement. Certain requirements apply for notifying the press and for conducting closed sessions as part of those meetings and except as specified, all other rules governing special meetings apply. § 54956.5.

Both regular and special meetings may be adjourned to another time. Notices of adjourned meetings must be posted on the door of the meeting chambers where the meeting occurred within 24 hours after the meeting is adjourned. § 54955. If the adjourned meeting occurs more than five days after the prior meeting, a new agenda for that adjourned meeting must be posted 72 hours in advance of the adjourned meeting. § 54954.2(b)(3).

The Brown Act requires local agencies to mail the agenda or the full agenda packet to any person making a written request no later than the time the agenda is posted or is delivered to the members of the body, whichever is earlier. Additionally, a local agency with an internet website must send a website link to or a copy of the agenda or the full agenda packet by email, if a person requests that the documents be sent by email. A local agency may charge a fee to recover its costs of copying and mailing. Any person may make a standing request to receive these materials, in which event the request must

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be renewed annually. Failure by any requestor to receive the agenda does not constitute grounds to invalidate any action taken at a meeting. § 54954.1.

B. Action and Discussion on Non-agenda Items

The Brown Act also ensures the public's business is conducted openly by restricting a legislative body's ability to deviate from posted agendas. The statute affords a legislative body limited authority to act on or discuss non-agenda items at regular meetings, but forbids doing so at special meetings.

As a general rule, a legislative body may not act on or discuss any item that does not appear on the agenda posted for a regular meeting. § 54954.2(a)(3). This rule does not, however, preclude a legislative body from acting on a non-agenda item that comes to the local agency's attention subsequent to the agenda posting which requires immediate action. § 54954.2(b)(2). In order to utilize this exception, the legislative body must make findings of both components of the exception by a two-thirds vote of those present (by unanimous vote if less than two-thirds of the body is present). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required. In addition, an item not appearing on an agenda may be added if the legislative body determines by a majority vote that an emergency situation exists. § 54954.2(b)(1). For purposes of this exception, the term "emergency situation" refers to work stoppages or crippling disasters that severely impair public health, safety, or both.

Assembly Bill 2449, discussed above, also allows a legislative body act at the beginning of a meeting on a request from a member to participate in a meeting remotely due to emergency circumstances pursuant to AB 2449 if the member's request to participate remotely does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. § 54953(f)(2)(A)(i)(II); § 54954.2(b)(4). The legislative body may approve such a request by a majority vote of the legislative body. § 54954.2(b)(4).

In addition to the general exceptions discussed above, a legislative body may also discuss non-agenda items at a regular meeting under the following five additional exceptions:

- Members of the legislative body or staff may briefly respond to statements made or questions posed by persons during public comment periods;
- Members of the legislative body or staff may ask a question for clarification, make a brief announcement or make a brief report on their own activities;
- Members of the legislative body may, subject to the procedural rules of the body, provide a reference to staff or other resources for factual information;
- Members of the legislative body may, subject to the procedural rules of the body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and

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- Members of the legislative body may, subject to the procedural rules of the body, take action to direct staff to place a matter of business on a future agenda.

Therefore, spending a few minutes to discuss whether a matter should be placed on a future agenda or asking staff procedural questions is permissible. *Cruz v. City of Culver City*, 2 Cal.App. 5th 239 (2016). The legislative body may not, however, discuss non-agenda items to any significant degree. This means there should not be long or wide-ranging question and answer sessions on non-agenda items between the legislative body and the public or between the legislative body and staff. It is important to follow these exceptions carefully and construe them narrowly to avoid tainting an important and complex action by a non-agendized discussion of the item.

The Brown Act contains even more stringent regulations to restrict action on and discussion of non-agenda items at special meetings. In particular, the statute mandates that only business that is specified in the "call and notice" of the special meeting may be considered by the legislative body. § 54956. Notwithstanding, a special meeting may not be called to discuss compensation of a local agency executive. § 54956(b).

C. Reporting of Actions

The Brown Act mandates the public reporting of individual votes or abstentions by members of legislative bodies on any given motion or action. This requirement may be satisfied in most situations by reporting the individual vote or abstention of each member in the minutes of a meeting. § 54953(c). The Brown Act also requires that the legislative body orally report a summary of recommendations made with respect to the salary, salary schedule or compensation paid to a local agency executive. The legislative body must issue the report at the same meeting in which the final action on compensation is being considered. § 54953(c)(3).

IX. PUBLIC PARTICIPATION

A. Regular Meetings

The Brown Act mandates that every agenda for a regular meeting provide an opportunity for members of the public to directly address the legislative body on any matter that is within the subject matter jurisdiction of the legislative body. § 54954.3(a). In addition, the Brown Act requires the legislative body to allow members of the public to comment on any item on the agenda either before or during the body's consideration of that item. § 54954.3(a). Also, although not required under the Brown Act, local agencies may consider reading written comments received into the public record by the city clerk, or his or her designee, subject to reasonable time and content limitations imposed in accordance with the requirements outlined below in Section C (titled Limitations on the Length and Content of Public Comments).

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Some local agencies accomplish both public comment requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on both agenda and non-agenda items. Others provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda. Either method is permissible, though public comment on public hearing items must be taken during the hearing.

The Brown Act allows a legislative body to preclude public comments on an agenda item in one limited situation sometimes referred to as the "committee exception" – where the item was considered by a committee, composed solely of members of the body, that held a meeting where public comments on that item were allowed. So, if the legislative body has standing committees (which are required to have agendized and open meetings with an opportunity for the public to comment on agenda items) and the committee has previously considered an item, then at the time the item comes before the full legislative body, the body may choose not to take additional public comments on that item. However, if the version presented to the full legislative body is different from the version presented to, and considered by, the committee, then the public must be given another opportunity to speak on that item at the meeting of the full body. § 54954.3(a).

B. Public Comments at Special Meetings

The Brown Act requires that agendas for special meetings provide an opportunity for members of the public to address the legislative body concerning any item listed on the agenda before or during the body's consideration of that item. § 54954.3(a). Unlike regular meetings, though, the legislative body does not have to allow public comment on non-agenda matters at a special meeting. Additionally, unlike regular meetings, the exception to the requirement for public comment opportunity for items already considered by a committee (i.e., the "committee exception") does not apply to special meetings. *Preven v. City of Los Angeles*, 32 Cal. App. 5th 925, 936 (2019).

C. Limitations on the Length and Content of Public Comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. § 54954.3(b). Typical time limits restrict speakers to three or five minutes. If an individual utilizes a translator to give testimony and simultaneous translation equipment is not used, the legislative body must allot at least twice the standard amount of time to the speaker. § 54954.3(b)(2). A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance. However, setting total time limits per item for any quasi-judicial matter, such as a conditional use permit application, is not recommended because the time restriction could violate the due process rights of those who were not able to speak to the body during the time allotted.

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The Brown Act precludes a legislative body from prohibiting public criticism of the policies, procedures, programs or services of the local agency or the acts or omissions of the body. § 54954.3(c). This restriction does not mean that a member of the public may say anything during public testimony. If the topic of the public's comments falls outside the subject matter jurisdiction of the local agency, the legislative body may stop a speaker's comments if the comments are disruptive, as described below.

A legislative body also may adopt reasonable rules of decorum that preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of its meetings. § 54954.3(b). The right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the free speech rights of speakers by suppressing opinions relevant to the business of the legislative body.

Finally, in some circumstances, the use of profanity may serve as a basis for stopping a speaker. It will depend, however, upon what profane words or comments are made and the context of those comments. Therefore, no one should be ruled out of order for profanity unless the language both is truly objectionable and causes a disturbance or disruption in the proceeding.

The presiding officer of a legislative body may remove an individual from a meeting for actual disruptive behavior if they first warn the individual that their behavior is disruptive and that failure to cease their disruptive behavior could result in removal from the meeting. § 54957.95(a). Behavior is disruptive only if it actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting. § 54957.95(b)(1). Disruptive behavior may include noncompliance with the legislative body's established rules of decorum, such as speaking out of turn or exceeding established time limits on how long an individual can speak on a particular topic during public comment. § 54957.95(b)(1)(A). If the individual disrupting the meeting is using force or a true threat of force — meaning serious enough that a reasonable observer would perceive the threat to be an actual threat to use force by the person making the threat — they may be removed without a prior warning to cease their behavior. § 54957.95.

D. Additional Rights of the Public

The Brown Act grants the public the right to videotape or broadcast a public meeting, as well as the right to make a motion picture or still camera record of such meeting. § 54953.5(a). A legislative body may prohibit or limit recording of a meeting, however, if the body finds that the recording cannot continue without noise, illumination or view obstruction that constitutes, or would constitute, a disruption of the proceedings. § 54953.6.

Any audio or videotape record of an open and public meeting that is made, for whatever purpose, by or at the direction of the local agency is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act. § 54953.5(b). The local agency must not destroy the tape or film record for at least 30 days following the date of the taping or recording. Inspection of the audiotape or

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videotape must be made available to the public for free on equipment provided by the local agency.

The Brown Act requires written material distributed to a majority of the body by any person to be provided to the public without delay. This rule is inapplicable, to attorney-client memoranda, the confidentiality of which was affirmed by the California Supreme Court in *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 381 (1993). However, if non-privileged material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting. § 54957.5(c).

If material related to an agenda item is distributed to a majority of the body less than 72 hours prior to an open session of a regular meeting, the writing must be made available at the same time for public inspection at a public office or location that has been designated in advance for such purpose. Each local agency must list the address of the designated office or location on the agendas for all meetings of the legislative body of that agency. § 54957.5(b). Although this Brown Act provision technically requires an agency to list the designated office address on closed session meeting agendas, it does not require an agency to make such closed session documents and materials available for public inspection.

A local agency may also post all documents made available for public inspection pursuant to Section 54957.5(b) on the agency's Internet Web site. However, a local agency may not post the writings to its website in lieu of designating a public office or location for inspection of physical copies of the documents.

There is a limited exception for certain supplemental materials to the requirement described above regarding making a writing distributed to a majority of the legislative body less than 72 hours in advance of a meeting immediately available for public inspection at a physical location. § 54957.5(b)(2)(B). The exception only applies to materials that are supplementing an initial staff report or similar document containing an executive summary and the staff recommendation, if any, relating to that agenda item that was made available for public inspection at the office or location designated at least 72 hours before the meeting. The exception allows the agency to make the materials available for public inspection the next business day commencing at least 24 hours in advance of the meeting during regular hours if the agency posts the materials on the agency's website immediately upon distributing them to the majority of the body, making it clear they relate to the item at the upcoming meeting, and the agenda posted for all meetings of the legislative body contains the agency's website address.

We recommend that local agencies implement the following procedures to comply with Section 54957.5(b):

- Place a binder at the agency's principal place of business next to the public counter agenda packet that identifies the contents as follows: "Disclosable public documents related to an open session agenda item on

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the _____ Agenda Packet distributed by the [AGENCY] to a majority of the [LEGISLATIVE BODY] less than 72 hours prior to the meeting."

- On the agenda template for all meetings, there should be a standard footer or statement that indicates the following: "Any disclosable public writings related to an open session item on a regular meeting agenda and distributed by the [AGENCY] to at least a majority of the [LEGISLATIVE BODY] less than 72 hours prior to that meeting are available for public inspection at the _____ Counter at [AGENCY'S PLACE OF BUSINESS] located at [ADDRESS] and [optional] the _____ Counter at the _____ Library located at [LIBRARY ADDRESS] during normal business hours. [Optional] In addition, the Agency may also post such documents on the Agency's Website at [WEBSITE ADDRESS]." Agencies should make these documents available online to the greatest extent possible, when public buildings or facilities are temporarily closed to public access.

- On the agency's website, create a subfolder under the agenda packet folder that identifies the contents of the subfolder as follows: "Disclosable public documents related to an open session agenda item on the _____ Agenda Packet distributed by the [AGENCY] to a majority of the [LEGISLATIVE BODY] less than 72 hours prior to the meeting."

- On all documents made available for public inspection pursuant to Section 54957.5(b), make a notation of the date when distributed to at least a majority of the legislative body and placed in the binder at agency's place of business, [optional] the Library, or [optional] on the agency's Website.

- Charge customary photocopying charges for copies of such documents.

One problem left unaddressed by Section 54957.5(b) is what to do when written materials are distributed directly to a majority of the legislative body without knowledge of staff, or even without the legislative body members knowing that a majority has received it. The law still requires these materials to be treated as public records. Thus, it is a good idea for at least one member of the legislative body to ensure that staff gets a copy of any document distributed to members of the legislative body so that copies can be made for the local agency's records and for members of the public who request a copy.

X. CLOSED SESSIONS

The Brown Act allows a legislative body to convene a "closed session" during a meeting in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as "executive sessions," which is a holdover term from the statute's early days. Examples of business that may be conducted in closed session include personnel actions and evaluations, threats to public safety, labor negotiations, pending litigation, real estate negotiations and consideration of a response to an audit

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report. §§ 54956.8, 54956.9, 54957, 54957.6, 54956.75. Political sensitivity of an item is not a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. For a litigation threat against a city made outside an open and public meeting to be discussed in closed session it must be included in the agenda packet made available upon request before the meeting. *Fowler v. City of Lafayette*, 46 Cal. App. 5th 360, 370 (2020), *as modified on denial of reh'g* (Mar. 11, 2020), *review denied* (July 22, 2020).

Moreover, there is a "safe harbor" for using prescribed language to describe closed session items on an agenda in that legal challenges to the adequacy of the description are precluded when such language is used. § 54954.5. This so-called "safe harbor" encourages many local agencies to use a very similar agenda format, especially in light of a California Court of Appeal ruling that a local agency substantially complied with the Brown Act's requirement to describe closed session agenda items even though the notice referred to the wrong subsection of Section 54956.9. *Castaic Lake Water Agency v. Newhall County Water District*, 238 Cal.App. 4th 1196, 1207 (2015). Audio recording of closed sessions is not required unless a court orders such recording after finding a closed session violation. § 54960.

Closed sessions may be started in a location different from the usual meeting place as long as the location is noted on the agenda and the public can be present when the meeting first begins. Moreover, public comment on closed session items must be allowed before convening the closed session.

After a closed session, the legislative body must reconvene the public meeting and publicly report certain types of actions if they were taken and the vote on those actions. § 54957.1. There are limited exceptions for specified litigation decisions and to protect the victims of sexual misconduct or child abuse. Contracts, settlement agreements or other documents that are finally approved or adopted in closed session must be provided at the time the closed session ends to any person who has made a standing request for all documentation in connection with a request for notice of meetings (typically members of the media) and to any person who makes a request within 24 hours of the posting of the agenda, if the requestor is present when the closed session ends. § 54957.1.

One perennial area of confusion is whether a legislative body may discuss the salary and benefits of an individual employee (such as a city manager) as part of a performance evaluation session under Section 54957. It may not. However, the body may designate a negotiator or negotiators, such as two members of a five-member legislative body, to negotiate with that employee and then meet with the negotiator(s) in closed session under Section 54957.6 to provide directions on salary and compensation issues. The employee in question may not be present in such a closed session. The Brown Act prohibits attendees from disclosing confidential information obtained during a closed session, unless the legislative body authorizes the disclosure. Violations can be addressed through injunctions, disciplinary action, and referral to the grand jury. § 54963.

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XI. ENFORCEMENT

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, orders determining that an alleged act violated the Brown Act, orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body, and remedies for breaching closed session confidences. §§ 54960, 54960.1, 54960.2, 54963.

The procedures for claiming there was a Brown Act violation vary depending upon what the complaining party is seeking. If the complaining party is seeking to invalidate an action based on a violation of the Brown Act, the procedures for doing so are set forth in Section 54960.1, as summarized below. If the complaining party is merely seeking a determination that a Brown Act violation occurred or desires the court to impose an order preventing further violations, the procedures for doing so are set forth in Section 54960.2, also as summarized below.

Under Section 54960.1, prior to filing suit to obtain a judicial determination that an action is null and void because of an alleged Brown Act violation, the complaining party must make a written demand on the legislative body to cure or correct the alleged violation. § 54960.1(b). The written demand must be made within 90 days after the challenged action was taken. However, if the challenged action was taken in open session and involves a violation of the agenda requirements of Section 54954.2, then the written demand must be made within 30 days. § 54960.1(c)(1). The legislative body is required to cure or correct the challenged action and inform the party who filed the demand of its correcting actions or its decision not to cure or correct, within 30 days. § 54960.1(c)(2). The complaining party must file suit within 15 days after receipt of the written notice from the legislative body or if there is no written response, within 15 days after the 30-day cure period expires. § 54960.1(c). Under Section 54960.2, prior to filing suit to obtain a judicial determination that an alleged Brown Act violation occurred after January 1, 2013, the district attorney or interested person must submit a cease and desist letter to the legislative body clearly describing the legislative body's past action and the nature of the alleged violation within nine months of the alleged violation. § 54960.2(a). Second, the legislative body may respond within 30 days, including responding with an unconditional commitment to cease and desist from, and not repeat the past action that is alleged to violate the Brown Act. § 54960.2(b). If the legislative agency responds with an unconditional commitment, that commitment must be approved by the legislative body in open session at a regular or special meeting as a separate item of business not on the consent calendar and must be in substantially the form set forth in Section 54960.2(c)(1). Also, a legislative body may resolve to rescind an unconditional commitment with proper notice to the public and to each person to whom the unconditional commitment was made. § 54960.2(e). Upon rescission, the district attorney or any interested person may file an action pursuant to Section 54960(a). Finally, Section 54960.2 provides further deadlines and requirements that must be met when filing an action in connection with an unconditional commitment. § 54960.2. Note that even where a plaintiff can satisfy the threshold procedural requirements, a Brown Act violation will not automatically invalidate the action taken by the legislative body absent a

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showing that the violation caused prejudice. *Martis Camp Cmty. Ass'n v. Cty. of Placer*, 53 Cal. App. 5th 569, 592 (2020).

A member of a legislative body will not be criminally liable for a violation of the Brown Act unless the member intends to deprive the public of information which the member knows or has reason to know the public is entitled to under the Brown Act. § 54959. This standard became effective in 1994 and is a different standard from most criminal standards. Until it is applied and interpreted by a court, it is not clear what type of evidence will be necessary to prosecute a Brown Act violation.

XII. CONCLUSION

The Brown Act's many rules and ambiguities can be confusing, and compliance with it can be difficult. In the event that you have any questions regarding any provision of the law, you should contact your legal counsel for advice.

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PART TWO:

THE RALPH M. BROWN ACT

Updated including changes effective January 1, 2023

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The Ralph M. Brown Act

Government Code §§ 54950-54963

Section 54950. Declaration of public policy

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Section 54950.5. Title of act

This chapter shall be known as the Ralph M. Brown Act.

Section 54951. "Local agency"

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof or other local public agency.

Section 54952. "Legislative body"

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee or other multimember body that governs a private corporation, limited liability company or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full-voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee or other multimember body that governs a private corporation, limited liability company or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full-voting member to a nonvoting member.

(d) The lessee of any hospital, the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

Section 54952.1. Conduct and treatment of electee

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

Section 54952.2. Specified communications of legislative body of local agency prohibited outside meeting thereof

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members

of the legislative body the comments or position of any other member or members of the legislative body.

(3) (A) Paragraph (1) shall not be construed as preventing a member of the legislative body from engaging in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

(B) For purposes of this paragraph, all of the following definitions shall apply:

(i) "Discuss among themselves" means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.

(ii) "Internet–based social media platform" means an online service that is open and accessible to the public.

(iii) "Open and accessible to the public" means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval of the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Section 54952.3. Simultaneous or serial order meetings authorized; Requirements; Compensation or stipend

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

Section 54952.6. "Action taken"

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

Section 54952.7. Copy of chapter

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

Section 54953. Requirement that meetings be open and public; Teleconferencing; Teleconference meetings by health authority

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by roll call.

(B) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e).

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38 and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) The legislative body of a local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

(B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(C) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(E) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(f) (1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

(I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.

(B) The member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(C) The member shall participate through both audio and visual technology.

(3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

(g) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.

(h) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

(i) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

(2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.

(j) For the purposes of this section, the following definitions shall apply:

(1) "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.

(2) "Just cause" means any of the following:

(A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. "Child," "parent," "grandparent," "grandchild," and "sibling" have the same meaning as those terms do in Section 12945.2.

(B) A contagious illness that prevents a member from attending in person.

(C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (g).

(D) Travel while on official business of the legislative body or another state or local agency.

(3) "Remote location" means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (f), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) "State of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(6) "Teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

(7) "Two-way audiovisual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

(8) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

(9) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

(k) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

Section 54953.1. Grand jury testimony

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

Section 54953.2. Meetings to conform to Americans with Disabilities Act

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

Section 54953.3. Registration of attendance

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire or other similar document is posted at or near the entrance to the room where the meeting is to be held or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering or completion of the document is voluntary and that all persons may attend the meeting regardless of whether a person signs, registers or completes the document.

Section 54953.5. Recording proceedings

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise,

illumination or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by, or at the direction of the local agency, shall be subject to inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

Section 54953.6. Restrictions on broadcasts of proceedings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination or obstruction of view that would constitute a persistent disruption of the proceedings.

Section 54953.7. Access to meetings beyond minimal standards

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

Section 54954. Rules for conduct of business; Time and place of meetings

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide by ordinance, resolution, bylaws or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction, provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b) or to do any of the following:

(1) Attend a conference on non-adversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

Section 54954.1. Request for notice; Renewal; Fee

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If a local agency has an internet website, the legislative body or its designee shall email a copy of, or website link to, the agenda or a copy of all the documents constituting the agenda packet if the person requests that the item or items be delivered by email. If the local agency determines it is technologically infeasible to send a copy of all documents constituting the agenda packet or a link to a website that contains the documents by email or by other electronic means, the legislative body or its designee shall send by mail a copy of the agenda or a website link to the agenda and mail a copy of all other documents constituting the agenda packet in accordance with the mailing requirements established pursuant to this section. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

Section 54954.2. Posting of agenda; Actions not on agenda

(a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019 of a legislative body of a city, county, city and county, special district, school district or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii) and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(4) To consider action on a request from a member to participate in a meeting remotely due to emergency circumstances, pursuant to Section 54953, if the request does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. The legislative body may approve such a request by a majority vote of the legislative body.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

(e) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Section 54954.3. Public testimony at regular meetings

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) (1) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to,

regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs or services of the agency or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

Section 54954.4. Legislative findings and declarations relating to reimbursements; Legislative intent; Review of claims

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986 authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful and uninterrupted manner.

Section 54954.5. Description of closed session items

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL -- ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session). (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session)

Employee organization: (Specify name of organization representing employee or employees in question)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106 and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

Section 54954.6. Public meeting on general tax or assessment; Notice

(a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities or regulatory activity for which the fee is charged.

(B) A service charge, rate or charge, unless a special district's principal act requires the service charge, rate or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times and locations of the public meeting and hearing described in subdivision (a).

(F) The telephone number and address of an individual, office or organization that interested persons may contact to receive additional information about the tax.

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting

pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll, the State Board of Equalization assessment roll or the local agency's records pertaining to business ownership, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The telephone number and address of an individual, office or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts or uses of property and the

information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decision making process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

Section 54955. Adjournment of meetings

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned

regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw or other rule.

Section 54955.1. Continuance of hearing

Any hearing being held, or noticed or ordered to be held by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or re-continued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

Section 54956. Special meetings; call; notice; meetings regarding local agency executive salaries, salary schedules or compensation in form of fringe benefits; posting on Internet Web site

(a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

Section 54956.5. Emergency meetings; Notice

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity or other activity that severely impairs public health, safety or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956, or both, of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived and the legislative body or designee of the legislative body, shall notify those newspapers, radio stations or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements as prescribed in Section 54956, shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of person(s) who is the presiding officer of the legislative body or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

Section 54956.6. Fees

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

Section 54956.7. Closed sessions regarding application from person with criminal record

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license, but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

Section 54956.75. Closed session for response to final draft audit report

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

Section 54956.8. Closed sessions regarding real property negotiations

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange or

lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

Section 54956.81. Closed sessions regarding purchase or sale of pension fund investments

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

Section 54956.86. Closed session for health plan member

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

Section 54956.87. Disclosure of records and information; Meetings in closed session

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form to the board

of supervisors shall not constitute a waiver of exemption from disclosure and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Managed Health Care in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

Section 54956.9. Closed sessions concerning pending litigation; Lawyer-client privilege

(a) Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer

with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

(b) For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court or administrative body exercising its adjudicatory authority, hearing officer or arbitrator.

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(1) Litigation, to which the local agency is a party, has been initiated formally.

(2) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).

(4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

(e) For purposes of paragraphs (2) and (3) of subdivision (d), "existing facts and circumstances" shall consist only of one of the following:

(1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body, so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(f) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1).

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

Section 54956.95. Closed sessions regarding liability

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for purposes of insurance pooling, or a local agency member of the joint powers agency from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

Section 54956.96. Disclosure of specified information in closed session of joint powers agency, Clean Power Alliance of Southern California; Authorization of designated alternate to attend closed session; Closed session of legislative body of local agency member

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw, or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a local agency member may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that local agency member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that local agency member.

(B) Other members of the legislative body of the local agency present in a closed session of that local agency member.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) (1) In addition to the authority described in subdivision (a), the Clean Power Alliance of Southern California or its successor entity, may adopt a policy or a bylaw or include in its joint powers agreement a provision that authorizes both of the following:

(A) A designated alternate member of the legislative body of the Clean Power Alliance of Southern California or its successor entity, who is not a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the Clean Power Alliance of Southern California or its successor entity, in lieu of a local agency member's regularly appointed member to attend closed sessions of the Clean Power Alliance of Southern California or its successor entity.

(B) All information that is received by a designated alternate member of the legislative body of the Clean Power Alliance of Southern California or its successor entity, who is not a member of the legislative body of a local agency member and that is presented to the Clean Power Alliance of Southern California or its successor entity, in closed session, shall be confidential. However, the designated alternate member may disclose information obtained in a closed session that has direct financial or liability

implications for the local agency member for which the designated alternate member attended the closed session, to the following individuals:

(i) Legal counsel of that local agency member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that local agency member.

(ii) Members of the legislative body of the local agency present in a closed session of that local agency member.

(2) If the Clean Power Alliance of Southern California or its successor entity, adopts a policy or bylaw or includes in its joint powers agreement a provision authorized pursuant to paragraph (1), the Clean Power Alliance of Southern California or its successor entity, shall establish policies to prevent conflicts of interest and to address breaches of confidentiality that apply to a designated alternate member who is not a member of the legislative body of a local agency member who attends a closed session of the Clean Power Alliance of Southern California or its successor entity.

(c) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a) or (b), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b).

(d) This section shall remain in effect only until January 1, 2025 and as of that date is repealed.

Section 54956.97. Public bank; governing board or committee of governing board; closed session

Notwithstanding any provision of law, the governing board or a committee of the governing board of a public bank, as defined in Section 57600 of the Government Code, may meet in closed session to consider and take action on matters pertaining to all of the following:

(a) A loan or investment decision.

(b) A decision of the internal audit committee, the compliance committee or the governance committee.

(c) A meeting with a state or federal regulator.

Section 54956.98. Public bank; policy or bylaw; information from a closed session considered confidential

(a) For purposes of this section, the following definitions shall apply:

(1) "Shareholder, member, or owner local agency" or "shareholder, member, or owner" means a local agency that is a shareholder of a public bank.

(2) "Public bank" has the same meaning as defined in Section 57600.

(b) The governing board of a public bank may adopt a policy or a bylaw or include in its governing documents provisions that authorize any of the following:

(1) All information received by a shareholder, member or owner of the public bank in a closed session related to the information presented to the governing board of a public bank in closed session shall be confidential. However, a member of the governing board of a shareholder, member or owner local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that shareholder, member or owner local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that shareholder local agency.

(B) Other members of the governing board of the local agency present in a closed session of that shareholder, member or owner local agency.

(2) A designated alternate member of the governing board of the public bank who is also a member of the governing board of a shareholder, member or owner of the local agency and who is attending a properly noticed meeting of the public bank governing board in lieu of a shareholder, member or owner of the local agency's regularly appointed member may attend a closed session of the public bank governing board.

(c) If the governing board of a public bank adopts a policy or a bylaw or includes provisions in its governing documents pursuant to subdivision (b), then the governing board of the shareholder, member or owner of the local agency, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss and take action concerning information obtained in a closed session of the public bank governing board pursuant to paragraph (1) of subdivision (b).

Section 54957. Closed session regarding public security, facilities, employees, examination of witness

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff or chief of police, or their respective deputies or a security consultant or a security operations manager, on matters posing a threat to the

security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106 and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

Section 54957.1. Public report of action taken in closed session; Form; Availability; Actions for injury to interests

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final and upon inquiry by any person, the local agency shall disclose the fact of that approval and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and

has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

Section 54957.2. Minute book for closed sessions

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

Section 54957.5. Agendas and other writings as public records

(a) Agendas of public meetings are disclosable public records under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be made available upon request without delay and in compliance with Section 54954.2 or Section 54956, as applicable. However, this section shall not apply to a writing, or portion thereof, that is exempt from public disclosure.

(b) (1) If a writing is a public record related to an agenda item for an open session of a regular meeting of the legislative body of a local agency and is distributed to all, or a majority of all, of the members of a legislative body of a local agency by a person in connection with a matter subject to a discussion or consideration at an open meeting of the body less than 72 hours before that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) (A) Except as provided in subparagraph (B), a local agency shall comply with both of the following requirements:

(i) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose.

(ii) A local agency shall list the address of the office or location designated pursuant to clause (i) on the agendas for all meetings of the legislative body of that agency.

(B) A local agency shall not be required to comply with the requirements of subparagraph (A) if all of the following requirements are met:

(i) An initial staff report or similar document containing an executive summary and the staff recommendation, if any, relating to that agenda item is made available for public inspection at the office or location designated pursuant to clause (i) of subparagraph (A) at least 72 hours before the meeting.

(ii) The local agency immediately posts any writing described in paragraph (1) on the local agency's Internet Website in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(iii) The local agency lists the web address of the local agency's internet website on the agendas for all meetings of the legislative body of that agency.

(iv) (I) Subject to subclause (II), the local agency makes physical copies available for public inspection, beginning the next regular business hours

for the local agency, at the office or location designated pursuant to clause (i) of subparagraph (A).

(II) This clause is satisfied only if the next regular business hours of the local agency commence at least 24 hours before that meeting.

(c) Writings that are public records described in subdivision (b) and distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the federal rules and regulations adopted in implementation thereof.

(d) This chapter shall not be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 7922.530, except that a surcharge shall not be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), including, but not limited to, the ability of the public to inspect public records pursuant to Section 7922.525 and obtain copies of public records pursuant to either subdivision (b) of Section 7922.53 or Section 7922.535. This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

Section 54957.6. Closed sessions regarding employee matters

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body or other independent contractors.

Section 54957.7. Disclosure of items to be discussed at closed session

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

Section 54957.8. Closed sessions of multijurisdictional drug law enforcement agencies

(a) For purposes of this section, "multijurisdictional law enforcement agency" means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the

case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation and to discuss courses of action in particular cases.

Section 54957.9. Authorization to clear room where meeting willfully interrupted; Readmission

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

Section 54957.95 Removal of Disruptive Individuals

(a) (1) In addition to authority exercised pursuant to Sections 54954.3 and 54957.9, the presiding member of the legislative body conducting a meeting or their designee may remove, or cause the removal of, an individual for disrupting the meeting.

(2) Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. This paragraph does not apply to any behavior described in subparagraph (B) of paragraph (1) of subdivision (b).

(b) As used in this section:

(1) "Disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:

(A) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law.

(B) Engaging in behavior that constitutes use of force or a true threat of force.

(2)"True threat of force" means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

Section 54957.10. Closed sessions regarding application for early withdrawal of deferred compensation plan funds

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty or other extraordinary event, as specified in the deferred compensation plan.

Section 54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

Section 54959. Criminal penalty for violation of chapter

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows, or has reason to know, the public is entitled under this chapter, is guilty of a misdemeanor.

Section 54960. Proceeding to prevent violation of chapter; Recording closed sessions; Procedure for discovery of tapes

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957 or 54957.6, order the legislative body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960 or 54960.1 alleging that a violation of this chapter has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

Section 54960.1. Proceeding to determine validity of action; Demand for correction

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956 or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956 or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c) (1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956 or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956 and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956 or Section 54956.5, because of any defect, error, irregularity or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956 or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

Section 54960.2 Proceeding to determine the applicability of chapter to past actions of legislative body; Conditions; Cease and desist letter

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To _____:

The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:

[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

_____

[Chairperson or acting chairperson of the legislative body]

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to

commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

Section 54960.5. Costs and attorneys' fees

A court may award court costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1 or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorneys' fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorneys' fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

Section 54961. Meeting place with discriminatory admission policies; Identification of victim of sexual or child abuse

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

Section 54962. Prohibition against closed sessions except as expressly authorized

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106 and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1 and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

Section 54963. Disclosure of confidential information acquired in closed session prohibited; Disciplinary action for violation

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8 or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

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APPENDIX B

SUMMARY OF PUBLIC RECORDS LAWS

2023

Public Records Act HANDBOOK

Summary of the Major Provisions and Requirements of the Public Records Act and Related Topics

- Electronic Records
- Text of the Public Records Act
- Updated including changes effective January 1, 2023

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Introduction

This Handbook, designed for City officials and staff, provides a summary of the major provisions of California's Public Records Act and related topics. Part One of the Handbook summarizes the basic provisions of the Public Records Act, including documents that are exempt from disclosure and the proper procedure for complying with the Act. Part Two highlights the unique issues raised by electronic records. Part Three contains the complete text of the Public Records Act. We hope you find this Handbook useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact our office.

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PART ONE.

COMPLIANCE WITH THE PUBLIC RECORDS ACT

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COMPLIANCE WITH THE PUBLIC RECORDS ACT:

KEY QUESTIONS AND ANSWERS

> *The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.*
>
> CAL. CONST. ART. I, § 3(b)(1).

> *In enacting [the California Public Records Act], the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.*
>
> GOV'T CODE § 7921.000.

California's Public Records Act is a key part of the philosophy that government at all levels in this State must be open and accessible to all.[1] Under the Public Records Act, a local government agency must disclose virtually any public document; only a statutory exemption or a need for confidentiality that clearly outweighs the public's right to access will legally justify withholding a public document. The purpose of this Handbook is to provide a general overview of the Public Records Act and recent amendments to it, along with a general road map for compliance. Pursuant to AB 473, operative January 1, 2023, the Public Records Act has been reorganized and recodified in new Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code. While the Public Records Act has been recodified, the substance of the Public Records Act has not materially changed. The legislature specifically noted that its intent was not to substantively change the law, and revisions to the Public Records Act are intended to be entirely nonsubstantive in effect.[2] Additionally, cases interpreting the former Code sections may be used to analyze the equivalent recodified sections. This Handbook addresses the questions most frequently asked of us by our local government clients.

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[1] *Rogers v. Superior Ct. (City of Burbank)*, 19 Cal. App. 4th 469 (2 Dist. 1993).

[2] Gov't Code §7920.100

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I. WHAT IS THE PUBLIC RECORDS ACT?

The Public Records Act is a California statute that affords the public the right to inspect, and obtain a copy of, most of the information retained by State and local agencies in the course of business. The Public Records Act regulates the public's access to records and sets out the specific statutory circumstances under which particular records need not be disclosed. The Public Records Act states that public records are open to inspection at all times during the office hours of a local agency.[3]

The California Constitution also guarantees that public records are open to public scrutiny.[4] It provides that a law, such as the Public Records Act, should be "broadly construed" if it furthers the people's right of access to public records, and "narrowly construed" if it limits the right of access.[5]

II. WHAT RIGHTS DOES THE PUBLIC RECORDS ACT AFFORD TO THE PUBLIC?

Under the Public Records Act, every person has the right to inspect and to obtain a copy of any identifiable public record.[6] It is irrelevant whether the person making the Public Records Act request already has possession of the public records requested.[7] The term "person" includes individuals, and various types of business entities.[8] A "person" need not be a citizen of California or of the United States to make use of the Public Records Act.[9] A local agency must supply an exact copy of the record on request, unless it is "impracticable" to make an exact copy.[10] The word "impracticable" in the Public Records Act does not necessarily refer to situations where a copying request would be "inconvenient" or time consuming to the agency. Rather, the term "impracticable" modifies the requirement that the agency provide an "exact" copy. If a requested document is subject to the Public Records Act, the agency must provide the best or most

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[3] Gov't Code § 7922.525.

[4] CAL. CONST. art. I, § 3(b)(1).

[5] CAL. CONST. art. I, § 3(b)(2).

[6] Gov't Code §§ 7922.525, 7922.530(a). A requestor inspecting a disclosable record on the agency's premises generally has the right to use their own equipment, without being charged any fees or costs, to photograph or otherwise copy or reproduce the record in a manner that does not require the equipment to make physical contact with the record. Gov't Code § 7922.530(b).

[7] The motive of the requester seeking public records is immaterial; an individual already in possession of requested documents may seek the documents so he or she may publicly disseminate them without fear of liability for doing so. *Caldecott v. Superior Court*, 243 Cal. App. 4th 212, 219 (4 Dist. 2015).

[8] Both cities and city attorneys have been deemed "persons" under the Act. *Los Angeles Unified School Dist. v. Superior Court (City of Long Beach)*, 151 Cal. App. 4th 759 (2 Dist. 2007) (holding that the city, as well as the city attorney, were entitled to obtain records of a school district relating to a school construction project).

[9] Gov't Code § 7920.520; *Connell v. Superior Court (Intersource, Inc.)*, 56 Cal. App. 4th 601 (3 Dist. 1997).

[10] Gov't Code § 7922.530(a).

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complete copy of that document reasonably possible.[11] Any reasonably segregable portion must be made available after deletion of any portion exempt from disclosure.[12]

The requirements of the Public Records Act are the minimum standards which must be met by local agencies. The Public Records Act specifically provides that agencies may adopt procedures to allow greater access to records, except where the law otherwise prohibits access.[13]

The person who is the subject of a particular record does not have a specific right under the Public Records Act to prevent disclosure of any particular record.[14] Even in cases where the subject of a particular record has argued that disclosure would violate the individual right to privacy guaranteed by the California Constitution, disclosure has been compelled.[15]

III. IS THE PUBLIC RECORDS ACT RELATED TO THE FREEDOM OF INFORMATION ACT?

Persons who request access to public records frequently reference the Freedom of Information Act (the "FOIA") as the basis for their request. The FOIA is a federal statute that does not apply to local government agencies.[16] However, the Public Records Act was modeled after the FOIA, and we recommend that agencies respond to otherwise valid records requests even if the requester cites the FOIA instead of the Public Records Act.[17]

IV. TO WHICH LOCAL AGENCIES DOES THE PUBLIC RECORDS ACT APPLY?

The Public Records Act applies to all local government agencies. Under the Public Records Act, a "local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; any board, commission or agency of any of these; and

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[11] *See Rosenthal v. Hansen*, 34 Cal. App. 3d 754 (3 Dist. 1973) (holding that under the former Section 6256, an agency need not provide exact copies if doing so would be impracticable, but this does not excuse a public entity from producing the records at all).

[12] Gov't Code § 7922.525.

[13] Gov't Code § 7922.505. It is unclear whether a local public agency can, through a sunshine ordinance, seek to regulate other agencies, but such an ordinance would not override a state agency's determination on whether its internal documents were subject to disclosure. *SF Urban Forest Coal. v. City & Cty. of San Francisco*, 43 Cal. App. 5th 796, 807 (Ct. App. 2019), *review denied* (April 1, 2020).

[14] *LAPD v. Superior Court (Church of Scientology)*, 65 Cal. App. 3d 661, 668 (2 Dist. 1977).

[15] *Poway Unified Sch. Dist. v. Superior Court (Copley Press)*, 62 Cal. App. 4th 1496 (4 Dist. 1998).

[16] 5 U.S.C. § 552 et seq.

[17] *See ACLU v. Deukmejian*, 32 Cal. 3d 440, 447 (1982) (Public Records Act modeled on FOIA, judicial construction and legislative history of federal act illuminate the interpretation of its California counterpart); *Cook v. Craig*, 55 Cal. App. 3d 773, 781 (3 Dist. 1976) (noting the similarity between the provisions of state and federal law).

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certain non-profit organizations of local agencies which are supported by public funds.[18]

V. WHAT ARE "PUBLIC RECORDS?"

The Public Records Act defines "public records" as follows:

> Public records includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

The term "writing" means:

> any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.[19]

These definitions encompass much more than written or printed documents. Public records include computer data, and an agency must provide computer records in any electronic format in which the agency holds the information. If a requester asks for the records in a particular format, the agency must provide the records in that format, provided it is a format used by the agency to create copies for its own use or for provision to other agencies, unless an exception applies.[20] Note, however, that computer software developed by a local agency is not a "public record" subject to the Public Records Act.[21]

On the other hand, a requester's rights under the Public Records Act are not unlimited. A local agency is not required to create a document or compile a list in response to a request under the Public Records Act.[22]

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[18] Gov't Code § 7920.510. The Public Records Act also applies to charter schools and entities managing charter schools. Ed. Code § 47604.1.

[19] Gov't Code § 7920.530 and 7920.545.

[20] Gov't Code § 7922.570 For further discussion of the exception to this rule, see Part Two. Electronic Records, Section II.B. "Metadata" of this Handbook.

[21] Gov't Code § 7922.585.

[22] Based upon the definition of "writing," Gov't Code § 7920.545, and the requirement that a requested record be "identifiable," Gov't Code § 7922.530(a); See also *Sander v. State Bar of California*, 26 Cal. App. 5th 651, 665-66 (1 Dist.

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While these definitions are general, over the years the courts have both broadened and limited the scope of the definition of "public record." First, it is clear that the term "public records" encompasses more than simply those documents that public officials are required by law to keep as official records. Rather, courts have held that a public record is one that is kept because it is "necessary or convenient to the discharge of [an] official duty."[23] Second, courts have observed that merely because the writing is in the possession of the local agency, it is not automatically a public record. It must relate in some substantive way to the conduct of the public's business.[24] Thus, personal notes and personal records, such as shopping lists or letters from friends that are totally void of public business, are not public records.[25] In *City of San Jose v. Superior Court*, the California Supreme Court provided several factors to consider when analyzing whether a writing is a public record, including: the content of the writing; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment.[26] In addition, it is important to note that a record need not be a "document" to fall within the ambit of the Public Records Act. A public record is subject to disclosure under the Public Records Act "regardless of physical form or characteristics."[27]

Further, local agencies are obligated to determine whether a public records request seeks copies of disclosable public records in the "possession" — either actual or constructive possession — of the agency.[28] On occasion, a local agency prepares, uses, or owns a document containing information related to the conduct of the public's business, but does not physically possess it, such as when a local agency hires a private consultant to conduct work on behalf of the agency. When the public record is in the possession of a private consultant or sub-consultant who does work for the local agency, the contractual relationship between the local agency and consultant or sub-consultant will likely determine whether the local agency has the right to control the records and therefore "constructive possession" of the documents.[29] In *Community Youth Athletic*

2018) (stating that "the CPRA … does not require [public agencies] to create new records to satisfy a request."); *Steinle v. City & Cty. of San Francisco*, 919 F.3d 1154, 1166 (9th Cir. 2019).

[23] *City of San Jose v. Superior Court (Smith)*, 2 Cal. 5th 608, 618 (2017); *Braun v. City of Taft*, 154 Cal. App. 3d 332, 340 (5 Dist. 1984); *San Gabriel Tribune v. Superior Court (City of West Covina)*, 143 Cal. App. 3d 762, 774 (2 Dist. 1983); *People v. Tomalty*, 14 Cal. App. 224, 231 (1 Dist. 1910).

[24] *City of San Jose,* 2 Cal. 5th at 618; *Braun*, 154 Cal. App. 3d at 340; *San Gabriel Tribune*, 143 Cal. App. 3d at 774; Gov't Code § 7920.530.

[25] *San Gabriel Tribune*, 143 Cal. App. 3d at 774.

[26] *City of San Jose*, 2 Cal. 5th at 618.

[27] Gov't Code § 7920.530.

[28] Gov't Code § 7922.535. *City of San Jose*, 2 Cal. 5th at 623.

[29] *Consolidated Irrigation District v. Superior Court (City of Selma)*, 205 Cal. App. 4th 697, 709-11 (5 Dist. 2012); *Community Youth Athletic Center v. City of National City*, 220 Cal. App. 4th 1385, 1427-29 (4 Dist. 2013); *see also Regents of the University of California v. Superior Court (Reuters America LLC)*, 222 Cal. App. 4th 383, 398 (1 Dist. 2013) *as modified on denial of reh'g* (Jan. 14, 2014).

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Center v. City of National City, the court found that under the contract between the City and its consultant, the City had the right to possess and control the record that was the subject of a public records request, even if that local agency had not previously enforced its ownership right.[30] The court held that the City had an obligation "to make reasonable efforts to facilitate the location and release of the information."[31] The City's failure to assert its contractual right to obtain the record from the consultant violated the Public Records Act.[32] On the other hand, in *Anderson-Barker v. Superior Court of Los Angeles County*, the court held that a city's ability to access privately held, electronically-stored data did not equate to a form of possession of the data when a city does not direct what information a third party contractor places on its databases, and has no authority to modify the data in any way.[33] Similarly, in *Consolidated Irrigation District v. Superior Court*, the court found that the City had no control over a sub-consultant's records.[34] The sub-consultant had been hired by the City's primary consultant, and based on the facts in that case, the City had no obligation under the Public Records Act to obtain and produce the records of the sub-consultant.

VI. HOW DOES A LOCAL AGENCY DETERMINE THE SCOPE OF A PUBLIC RECORDS REQUEST?

Most public records requests are straightforward. The public is familiar with records regularly kept by a local agency, such as meeting minutes, staff reports, financial reports, and other documents discussed at public meetings. Requests for those records are easy to fulfill. Many of these records may be available on a local agency's website, and the Public Records Act allows a local agency to satisfy a request for public records by directing the requester to that website.[35] Sometimes, the public is unfamiliar with the types of records maintained by local agencies. The requester may not be able to provide the specificity necessary to identify a public record, or the request may be so broadly stated that a local agency cannot reasonably determine which records fall within the scope of the request.

Under those circumstances, the Public Records Act imposes duties on both local agencies and requesters. Local agencies must assist a requester to formulate a "focused and effective request that reasonably describes an identifiable record or records," by following certain procedural requirements.[36] Likewise, the

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[30] *Community Youth Athletic Center*, 220 Cal. App. 4th at 1428.

[31] *Id.* at 1429.

[32] *Id.*

[33] *Anderson-Barker v. Superior Court (City of Los Angeles)*, 31 Cal. App. 5th 528 (2 Dist. 2019).

[34] *Consolidated Irrigation District*, 205 Cal. App. 4th at 711.

[35] Gov't Code § 7922.545.

[36] Gov't Code § 7922.600. Further discussion of these procedural requirements is in Section X, below.

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requester is obligated to engage in this process, and to provide the scope of the public information requested, which the City must communicate to the custodian of records. Both the local agency and the requester must be reasonable in this process.[37]

In some instances, there may be many records responsive to a request. When faced with a voluminous request, agencies should work with the requester to narrow down the request, ask if they would consent to an extended deadline for responding, and providing responsive records on a rolling basis. Even where requests return a significant number of responsive records, courts have held that agencies must process the request.[38]

VII. CAN A LOCAL AGENCY RELINQUISH ITS PUBLIC RECORDS ACT OBLIGATIONS TO SOMEONE ELSE?

A local agency cannot sell or provide a public record subject to disclosure under the Public Records Act to a private entity in a manner that prevents the local agency from providing the record directly.[39] For example, the county recorder cannot transfer all birth and death records to a private company and insist that the public obtain birth certificates from the private entity.

Similarly, a local agency may not enter into a contract that allows another party to control the disclosure of information that is subject to the Public Records Act.[40] For example, a contract provision that requires the consent of a contractor before a local agency may release a public record prepared by the contractor violates the Public Records Act. Additionally, if a local agency enters into a contract that requires a private entity to review, audit, or report on any aspect of the local agency, that contract must be made available to the public upon request, unless the contract is exempt from disclosure pursuant to another exemption in the Public Records Act.[41]

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[37] *Community Youth Athletic Center v. National City*, 220 Cal. App. 4th 1385, 1427 (4 Dist. 2013).

[38] *Getz v. Superior Court*, 2021 WL 5879194 (3 Dist. 2021), ordered published (December 13, 2021) (holding that it is not unduly burdensome to require El Dorado County to review more than 42,000 emails that were potentially responsive to a request for "any/all emails" by or between "anyone" employed by the County and "anyone" at one of four email domains associated with a real estate developer, its legal counsel, and its public relations consultants).

[39] Gov't Code § 7921.010(a).

[40] Gov't Code § 7921.005.

[41] Gov't Code § 7928.700.

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VIII. MUST A PUBLIC RECORDS ACT REQUEST BE MADE IN WRITING, OR MAY IT BE MADE ORALLY?

Nothing in the Public Records Act requires a member of the public to place his or her request for public records in writing.[42] While many local agencies provide forms on their website or at their offices for making a written Public Records Act request, a requester is not required to use the form offered. An oral request is sufficient to trigger the requirements of the Public Records Act.

Additionally, an argumentative or disruptive requester cannot be permanently banned from the premises by a local agency or forced to make their requests in writing.[43] However, the right to inspect public records is subject to the implied rule of reason that enables the custodian of public records to formulate regulations necessary to prevent interference with the orderly functioning of the agency's office.[44] If faced with a loud or angry person who is making an oral request, and the records are not immediately available, it is advisable for staff to write down the request and tell the requester the agency will respond in writing within the time limits specified in the Public Records Act. Your city attorney can provide additional guidance in the event a member of the public is repeatedly abusive towards staff.

IX. WHAT PUBLIC RECORDS ARE EXEMPT FROM DISCLOSURE UNDER THE PUBLIC RECORDS ACT?

A. Disclosure of Exempt Records Waives Confidentiality

The Public Records Act specifically exempts a number of categories of records from disclosure requirements. If documents are exempt from disclosure, it is important that confidentiality be maintained. Once an otherwise exempt record is knowingly released to any member of the public, disclosure constitutes a waiver of the exemption for that record, and the record must be provided to any subsequent requesting member of the public.[45] This waiver ensures a public agency does not carry out "selective disclosure," wherein some members of the public are provided the right of access to specific records, while some requests for the same records are denied by the public agency for the same materials.[46]

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[42] *Los Angeles Times v. Alameda Corridor Transp. Authority*, 88 Cal. App. 4th 1381, 1392 (2 Dist. 2001).

[43] *Galbiso v. Orosi Public Utility District*, 167 Cal. App. 4th 1063, 1088-89 (5 Dist. 2008).

[44] *Bruce v. Gregory*, 65 Cal. 2d 666, 676 (1967); *Rosenthal v. Hansen*, 34 Cal. App. 3d 754, 761 (3 Dist. 1973); 64 Ops. Cal. Atty. Gen. 317 (1981).

[45] Gov't Code § 7921.505.

[46] *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 646, 658 (3 Dist. 1974).

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There are a few situations where the knowing disclosure of an otherwise exempt record does not constitute a waiver of exemption. Exemptions are not waived when disclosures are made:

- Through discovery procedures associated with lawsuits or in court proceedings;
- Pursuant to a statute that limits disclosure for specified purposes;
- When not required by law and prohibited by formal action of the elected legislative body of the local agency; or
- To another government agency that agrees to treat the records as confidential.[47]

The California Supreme Court held that a public agency's inadvertent disclosure resulting from human error does not waive an exemption.[48] In *Ardon v. City of Los Angeles*, the City of Los Angeles inadvertently disclosed several attorney-client and attorney work product documents in response to a PRA request. The requester was an attorney actively involved in pending litigation against the City.[49] After becoming aware of the inadvertent disclosure, the City filed a motion in court seeking the return of the privileged materials.[50] The California Supreme Court held that the Public Records Act's waiver provision[51] applied only to intentional and not inadvertent disclosure.[52] The court justified this distinction by finding that the City of Los Angeles had not engaged in selective disclosure: "[r]ather, it seeks no disclosure; it is trying to force plaintiff's attorney to return the privileged documents unread."[53]

The California Supreme Court's decision in *Ardon v. City of Los Angeles* allows a public agency to argue that a disclosure was inadvertent and ask for return of exempt records that were released in error. However, nothing in the Public Records Act compels the requester to return the records. Instead, the public agency must go to court to obtain a judicial order directing the requester to return or destroy the inadvertently disclosed records.[54] This presents a number of problems. First, the circumstances surrounding the dissemination of those materials would have to be evaluated on a case-by-case basis by the reviewing court.[55] The court may not agree with the public agency's assertion that the

[47] Gov't Code § 7921.505. Additional exceptions apply to specific state agencies.
[48] *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176 (2016).
[49] *Ardon*, 62 Cal. 4th at 1180-82.
[50] *Id*. at 1181.
[51] Gov't Code § 7921.505.
[52] *Ardon*, 62 Cal. 4th at 1180.
[53] *Id*. at 1185-86.
[54] *See Newark Unified School District v. Superior Court (Brazil)*, 245 Cal. App. 4th 887 (1 Dist. 2015).
[55] *Id*. at 910.

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disclosure was inadvertent. Second, if the exempt records were given widespread distribution before the error was found, a court may decide not to order return of the records. Once the information is in the public sphere, the bell cannot be unrung. Third, it is costly to go to court to seek injunctive relief.

Consequently, public agencies should continue to conduct a thorough and exhaustive review of responsive documents before releasing any materials in response to a Public Records Act request. The California Supreme Court acknowledged that its decision was limited to "truly inadvertent disclosures and must not be abused to permit the type of selective disclosure" prohibited by the Public Records Act.[56] Further, the California Supreme Court emphasized that a public agency's own characterization of its intent is not dispositive.[57] The best practice continues to be to complete a thorough review before releasing responsive records.

B. Statutory Exemptions for Confidential Records

The following is a list of the statutory exemptions. This list is not exhaustive.

(1) Public agency employees' personal information.

Gov't Code § 7928.300.

The Public Records Act contains protections for specified personal information of all public agency employees. The home addresses, home telephone numbers, personal cellular telephone numbers and birth dates of all public agency employees are not considered to be public records subject to disclosure, except in limited circumstances. Personal e-mail addresses of public employees are also not public records subject to disclosure, unless a personal e-mail address is used by an employee to conduct public business or if the address is necessary to identify a person in an otherwise disclosable communication. The Public Records Act also requires local agencies to redact social security numbers from records before disclosing the records to the public in response to a Public Records Act request.[58]

[56] *Ardon*, 62 Cal. 4th at 1190.

[57] *Id*.

[58] Gov't Code § 7922.200. State agencies are prohibited from sending outgoing U.S. mail to an individual that contains the individual's social security number unless the number is truncated to its last four digits, except in specified circumstances. Gov't Code § 11019.7.

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(2) Referendum, recall and initiative petitions, ballots and related material.

Gov't Code §§ 7924.100-7924.110.

Election-related petitions and all memoranda prepared by the county elections officials in their examination of the petitions indicating which registered voters signed the petitions are strictly confidential. These materials may be viewed only by elections officials and their deputies. Other officials, including agency attorneys, must obtain a court order to view petitions. If the elections officials determine that a petition is legally insufficient, petition proponents and their representatives designated in writing must be permitted to review these materials. Election ballots themselves are exempt from disclosure.[59]

(3) The identity of persons who have requested bilingual ballots or ballot pamphlets.

Gov't Code § 7924.005.

Election-related information revealing the identity of people who have requested bilingual ballots or ballot pamphlets or other related data that would reveal the identity of the people requesting bilingual materials is exempt from disclosure. Persons otherwise authorized to review this material, such as elections officials, may examine these materials.

(4) Preliminary drafts, notes, or interagency or intra-agency memoranda.

Gov't Code § 7927.500.

Public officials should be aware that preliminary drafts and notes, along with interagency and intra-agency memoranda, are exempt from disclosure as public records if those documents are not customarily retained by the local agency in the ordinary course of business, and the public interest in withholding those records clearly outweighs the public interest in disclosure.[60]

In considering whether to use this exemption, agencies should determine whether the disclosure of a preliminary draft, note, or interagency or intra-agency memorandum would further the interest of the Act in open government. The fact that the document is merely a step in the process and does not provide important information about the public's business probably weighs in favor of nondisclosure.

[59] Elec. Code §§ 15370 and 17301; *Citizens Oversight, Inc. v. Vu*, 35 Cal. App. 5th 612, 619–20 (4 Dist. 2019).

[60] Gov't Code § 7927.500.

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The key questions in this area generally may be boiled down to whether a draft, note, or interagency or intra-agency memorandum is one which:

- Is not normally kept by the agency in the ordinary course of business;
- Is not prepared or kept to document or memorialize the day-to-day transaction of the public's business;
- Is merely a temporary step in the process of preparing a final document, reaching a final decision, or determining a course of action; and
- Would expose the agency's decision-making process if disclosed,[61] and the public interest in nondisclosure clearly outweighs the public interest in disclosure.

If the document qualifies under all four categories above, the document probably is exempt from disclosure under the Public Records Act. Documents that do not satisfy one or more of the categories above probably are public records that must be disclosed unless another exemption applies. You should keep in mind, however, that any doubt or question in this regard likely will be decided in favor of disclosure of the record.

In discussing whether a record has not been retained in the ordinary course of business, one court observed, "[i]f preliminary materials are not customarily discarded or have not in fact been discarded as is customary they must be disclosed."[62] One of the purposes of this condition is to prevent "secret law," that is an undisclosed collection of written rules guiding the agency's decisions.[63]

Consequently, a record that must be retained pursuant to a local agency's records retention schedule, policies, or customs does not fall within this exemption. For example, if a policy decision is made to retain drafts in order to document the bargaining history after an agreement is negotiated; those drafts likely are not exempt under Section 7927.500. Also, if it is permissible under an agency's records retention schedule to destroy preliminary documents, but the agency retained such a document after the final report is prepared, the preliminary document arguably is not exempt under Section 7927.500.

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[61] *Citizens for a Better Environment v. Dep't of Food and Agriculture*, 171 Cal. App. 3d 704, 715-16 (3 Dist. 1985) (concluding that "[t]he interest in fostering robust agency debate" is the only public interest that can justify nondisclosure under Section 7927.500).

[62] *Id.* at 714.

[63] *Id.* at 714 n.7.

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(5) Records pertaining to pending litigation to which the agency is a party.

Gov't Code § 7927.200.

Under this exemption, records actually created by an agency for its own use in litigation are exempt from disclosure under the Public Records Act.[64] Previously created or disclosed records may not be retroactively re-classified as being exempt under this Section.[65] Generally, courts will examine the "dominant purpose" behind the document's creation.[66] Documents prepared "by a public entity for its own use in anticipation of litigation, which documents it reasonably has an interest in keeping to itself until litigation is finalized" are protected by the exemption.[67] Thus, while documents created prior to the commencement of litigation appear to receive greater scrutiny to determine their dominant purpose, the exemption can apply to documents created before litigation has commenced, that is, before a claim has been made with the local agency under the Government Claims Act or a complaint filed with a court. Once litigation is concluded, however, the exemption will no longer apply.[68]

This exemption also applies to litigation-related documents, even if not created by an agency, when sought by persons or entities not a party to the litigation and which the parties to the litigation do not intend to be revealed outside the litigation. This exemption does not cover deposition transcripts because they are available to the public under another statute.[69] And where a plaintiff generally is required to file a claim under the Government Claims Act to initiate litigation against a local agency, the actual claim form filed with the local agency is not exempt under this Section as "[t]here is no unfair disadvantage [in the pending litigation] to the public entity from disclosure of the mere claim form."[70]

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[64] *Fairley v. Superior Court (City of Long Beach)*, 66 Cal. App. 4th 1414, 1421-22 (2 Dist. 1998).

[65] *City of Hemet v. Superior Court (Press-Enterprise Co.)*, 37 Cal. App. 4th 1411, 1420 & n.11 (4 Dist. 1995).

[66] *Fairley*, 66 Cal. App. 4th at 1420

[67] *Id.* at 1421.

[68] Gov't Code § 7927.200 (noting that the exemption applies "until the pending litigation or claim has been finally adjudicated or otherwise settled."); *City of Los Angeles v. Superior Court (Axelrad)*, 41 Cal. App. 4th 1083, 1089 (2 Dist. 1996).

[69] *Board of Trustees of California State Univ. v. Superior Court (Copley Press, Inc.)*, 132 Cal. App. 4th 889, 901-902 (4 Dist. 2005); Civ. Proc. Code § 2025.570.

[70] *Poway Unified Sch. Dist. v. Superior Court (Copley Press, Inc.)*, 62 Cal. App. 4th 1496, 1505 (4 Dist. 1998).

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(6) Personnel, medical, or similar records.

Gov't Code §§ 7927.700; 7928.300.

When the disclosure of personnel,[71] medical, or similar files would constitute an unwarranted invasion of personal privacy, this exemption applies. In determining whether personnel records should be disclosed, courts first decide whether disclosure would compromise the individual's substantial privacy interest. If it does, the court determines whether the potential harm to those interests caused by disclosure outweighs the public interest in disclosure.[72] As will be discussed below, the California Supreme Court has concluded that public employees in general have a significantly reduced expectation of privacy in their salaries, and that the strong public interest in knowing how the government spends its money justifies disclosure of salary information.[73] Courts have recognized the privacy interest implicated by records of employee misconduct and wrongdoing.[74] However, at least one appellate court has found that where the public employee is in a position of authority, such as a superintendent of a school district, the individual has "a significantly reduced expectation of privacy in the matters of his [or her] public employment."[75] This exemption for personnel, medical or similar records does not justify withholding employment agreements. By statute, employment agreements between a local agency and any public official or public employee is a public record not subject to an exemption.[76]

This exemption for personnel records also does not justify withholding personnel records concerning incidents involving the discharge of a firearm at a person by a peace officer that resulted in death or great bodily injury, records concerning a sustained finding that a peace officer engaged in sexual assault or dishonesty, a sustained finding of unreasonable or excessive force, a sustained finding of failure to intervene against another officer using unreasonable or excessive force, or a sustained finding of discrimination against a protected class.[77]

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[71] The scope of personnel records generally covers records relating to an employee's performance or to any grievance concerning an employee, and would include personal information to which access is limited to an employee's supervisors. Such records do not need to be stored in a personnel file to be exempt; it is the contents of the document which makes them confidential. *Associated Chino Teachers v. Chino Valley Unified Sch. Dist.*, 30 Cal. App. 5th 530, 539-41 (4 Dist. 2018).

[72] *Versaci v. Superior Court (Palomar Cmty. Coll. Dist.)*, 127 Cal. App. 4th 805, 818-820 (4 Dist. 2005).

[73] *International Federation of Professional and Technical Engineers, LOCAL 21, AFL–CIO, v. Superior Court, (Contra Costa Newspapers, Inc.)*, 42 Cal. 4th 319, 329-333 (2007)(*International Federation*).

[74] *Associated Chino Teachers*, 30 Cal. App. 5th at 541.

[75] *BRV, Inc. v. Superior Court (Dunsmuir Joint Union High School District)*, 143 Cal. App. 4th 742, 758 (3 Dist. 2006) (ordering reports investigating allegations of misconduct disclosed, as the public's interest in why the district entered into a termination agreement with the superintendent that appeared to the public to be a "sweetheart deal" outweighed the superintendent's interest in preventing disclosure of the reports).

[76] Gov't Code § 7928.400.

[77] Penal Code §§ 832.7, 832.8.

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Disclosure of Public Employee Salaries

The California Supreme Court has held that salaries of public employees are not exempt from disclosure. In *International Federation of Professional and Technical Engineers v. Superior Court*, (Contra Costa Newspapers, Inc.),[78] the California Supreme Court held that individually identifiable salary information is not exempt from disclosure under the Public Records Act, the California Constitution or the Penal Code. In this case, a newspaper sought disclosure from the City of Oakland of names, job titles and gross salaries of City employees earning $100,000 or more each year, including overtime. The City provided salary and overtime information for each job classification but refused to provide salary information linked to individual employees. The newspaper sued to obtain disclosure of the records under the Public Records Act. The Supreme Court held that a public entity's payroll expenditures are public records, and that disclosure of salary records for City employees earning $100,000 or more each year is not an unwarranted invasion of personal privacy.[79]

With regard to peace officers, the Supreme Court rejected the police union's argument that Penal Code Sections 832.7 and 832.8 bar disclosure of the amount of a peace officer's salary.[80] The Supreme Court ruled that salary information of peace officers does not constitute "personnel records" under Penal Code Sections 832.7 or 832.8, and is not information obtained from personnel records.[81] As such, the Penal Code does not mandate that peace officer salary information be excluded from disclosure under the Public Records Act.

The Supreme Court also rejected the argument that each public records request must be evaluated on a case-by-case basis to evaluate the individual employee's privacy interests and the particular public interest at issue.[82] The Court stated that this would reverse the presumption of openness of public records mandated by the Public Records Act, and the public entity bears the burden of demonstrating that particular records are exempt.[83] The Court, however, left open the possibility that a public entity may, on a case-by-case basis, decline to

[78] *International Federation*, 42 Cal. 4th 319 (2007).

[79] The Supreme Court also narrowed the precedential value of *Teamsters Local 856 v. Priceless, LLC*., 112 Cal. App. 4th 1500 (1 Dist. 2003). The appellate court in *Priceless* held that names, job titles, and W-2 information of City employees was confidential information and not subject to disclosure under the Public Records Act because the City in question had a prior practice of treating that information as confidential. To the extent that *Priceless* could be read as holding that a City's practice of refusing to disclose certain information had created a privacy interest in those records, the California Supreme Court disagreed and refused to adopt that holding. *International Federation*, 42 Cal. 4th at 336.

[80] *Id.*, at 343.

[81] *Id*.

[82] *Id*. at 336.

[83] *Id*. at 336-37.

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release records pertaining to individual employees where anonymity is essential to their safety, such as undercover narcotics officers.

Although this decision arose in the context of a public records request for the names and salaries of City employees earning more than $100,000 per year, the Supreme Court's reasoning may have general application to salary information for all City employees, regardless of level of salary.

In a companion case, *Commission on Peace Officer Standards and Training v. Superior Court*, the California Supreme Court addressed the confidentiality of certain non-salary information.[84] In this case, the Commission refused to provide the names, employing departments, and hiring and termination dates of peace officers from its database. The Commission maintains the database to monitor participating law enforcement departments' compliance with Peace Officer Standards and Training ("POST") regulations. The California Supreme Court held that the names, employing departments, and hiring and termination dates of peace officers are not confidential under Penal Code Sections 832.7 and 832.8, and are not exempt from disclosure under the Public Records Act. The California Supreme Court, however, remanded the case to the lower courts to allow the Commission the opportunity to establish that information regarding particular officers or categories of officers should be excised from the disclosed records in order to protect the safety or efficacy of those peace officers.[85]

(7) Arrest records, complaint reports, investigatory, and security files.

Gov't Code §§ 7923.600-7923.630.

This exemption strictly limits the information required to be disclosed about arrests, complaints and investigations.[86] Records of complaints to or investigations conducted by police agencies generally may be withheld. Investigatory or security files compiled by a local agency for law enforcement or licensing purposes are also covered by the exemption, provided "there is a concrete and

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[84] *Commission on Peace Officer Standards and Training v. Superior Court (Los Angeles Times Communications LLC)*, 42 Cal. 4th 278 (2007).

[85] *Id.* at 303; *see also*, *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59 (2014) (holding the Act did not protect from disclosure the names of officers involved in on-duty shootings).

[86] The scope of "records of investigation" is narrowly construed. *American Civil Liberties Union Foundation v. Superior Court*, 3 Cal. 5th 1032, 1039 (2017). Records of investigation exempted under Section 7923.600 *et seq.* "encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1071 (2001). In *American Civil Liberties Union of Southern California v. Superior Court*, the California Supreme Court declined to extend the meaning of "investigation" to cover bulk raw data obtained as part of a mass personal data collection, because there was no targeted "investigation" into a particular criminal act. 3 Cal. 5th 1032, 1042.

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definite prospect of criminal law enforcement proceedings."[87] This exemption extends indefinitely, even after investigations are concluded.[88] In most cases, agencies are required to disclose to the public[89] the full name, current address, and occupation of every person arrested by the agency, including a general physical description, along with the date and time of arrest. This disclosure, however, is not required where it would endanger the safety of a person involved in an investigation or jeopardize the successful completion of the pending investigation or a related investigation.

While investigations conducted by police agencies are generally not disclosable, investigations of police agencies may be subject to PRA requests. When releasing records pertaining to investigations of police agencies, the agency must redact or otherwise withhold any information that is part of a police officer's confidential personnel file.[90] Counsel should be consulted to ensure that confidential information is not disclosed.

In addition, local agencies are required to disclose to the public the time, substance, and general location of all complaints and requests for assistance, and the time and nature of the agency's response. However, no disclosure may be made to any arrested person or defendant in a criminal action of the address and telephone number of any person who is a victim or witness in an alleged offense.[91] Further, this disclosure is not required where it would endanger the safety of a person involved in an investigation or jeopardize the successful completion of the pending investigation or a related investigation.

In all cases, the address of a victim of an alleged sex offense or human trafficking offense must be withheld.[92] Additionally, the name of the victim of an alleged sex offense must be withheld if the victim or a minor victim's parent or guardian requests it be withheld. While the law refers to "sex offenses," the crimes listed in Section § 7923.615 include sexual assault, child molestation, child abuse, hate crimes, and stalking.

The Public Records Act prohibits the commercial use of arrest and arrestee information, and requires that persons requesting such information sign a declaration, under penalty of perjury, that the request is made for a scholarly, journalistic, political, or governmental purpose, or for investigation by a licensed

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[87] *Dixon v. Superior Court (Neves)*, 170 Cal. App. 4th 1271, 1277 (3 Dist. 2009) (internal quotation omitted).

[88] *Rackauckas v. Superior Court (Los Angeles Times Communications)*, 104 Cal. App. 4th 169, 174-178 (4 Dist. 2002).

[89] Sections 7923.600-7923.630 also authorize release of certain limited information to the victim of a crime and other interested parties, above and beyond that information released to the public generally.

[90] *Pasadena Police Officers Association v. City of Pasadena*, 22 Cal. App. 5th 147 (2 Dist. 2018).

[91] Penal Code § 841.5.

[92] Penal Code § 293.

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private investigator.[93] This requirement, however, may have limited applicability given the outcome of litigation by United Reporting Publishing Corporation against the California Highway Patrol.[94] Subsequent to that case, the Attorney General issued an opinion that a law enforcement agency may not require that a requester present subscriber lists, copies of publications, or other verification of a journalistic purpose and the requester is not required to monitor subscribers to prohibit them from using the information for commercial purposes.[95]

Disclosure of Certain Police Department Records

Penal Code sections 832.7 and 832.8 previously provided that peace officer personnel records are confidential and subject to disclosure only after a granted *Pitchess* Motion. Those statutes were amended in 2019 to provide that certain peace officer personnel records and records relating to specified incidents, complaints, and investigations must be made available to the public under the Public Records Act. Under further amendments in 2021, disclosure of additional categories of information is required effective on January 1, 2022. Penal Code sections 832.7 and 832.8 now provide that an agency must disclose any record relating to the report, investigation, or finding of:

- An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.
- When a sustained finding was made that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
- When a sustained finding was made of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying or concealing of evidence, or perjury.

[93] Gov't Code § 7923.620. A commercial publisher of criminal records challenged the constitutionality of this limitation on disclosure, but the United States Supreme Court held that the statute did not violate the First Amendment to the U.S. Constitution. *Los Angeles Police Dep't v. United Reporting Publ'g Corp.*, 528 U.S. 32 (1999).

[94] *United Reporting Publ'g Corp. v. California Highway Patrol*, No. 96-CV-0888-B (S.D. Cal. Aug. 13, 2001) (final judgment on consent) ("As applied to United Reporting's activities as described in this lawsuit, section 6254(f)(3) (now § 7923.620) violates United Reporting's rights under the First Amendment to the United States Constitution by preventing United Reporting from engaging in its journalistic activities as described above.").

[95] 89 Ops. Cal. Atty Gen. 97 (2006).

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- When a sustained finding was made involving a complaint that alleged unreasonable or excessive force.
- When a sustained finding was made that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.
- When a sustained finding was made that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- When a sustained finding was made that the peace officer made an unlawful arrest or conducted an unlawful search.

A sustained finding means that the public agency has determined that misconduct occurred and the officer had an opportunity for an administrative appeal, even if that administrative appeal was not actually completed.[96]

These disclosure requirements apply regardless of whether the disclosable records sought pertain to officers employed by the agency or by another public agency and regardless of whether the agency or another public agency created the records.[97] These requirements also apply to records created prior to 2019 if a public records request is submitted after January 1, 2019.[98]

Note, however, that the catchall exemption to disclosure under the Public Records Act (Government Code section 7922.540), can apply to exempt otherwise disclosable records under Penal Code Section 832.7 where, based on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.[99]

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[96] *Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039 (1 Dist. 2021), review denied (June 30, 2021) (court held that the city manager's decision in favor of an officer's termination following a pre-discipline Skelly meeting constituted a sustained finding of dishonesty, even though the officer's subsequent administrative arbitration was not completed because the officer resigned as part of a settlement with the city).

[97] *Becerra v. Superior Court of City & Cty. of San Francisco*, 44 Cal. App. 5th 897 (1 Dist. 2020) *review denied* (May 13, 2020).

[98] *Ventura County Deputy Sheriffs' Assn v. Cty. of Ventura*, 61 Cal. App. 5th 585, 590, 594 (2 Dist. 2021); *Walnut Creek Police Officers' Assn v. City of Walnut Creek*, 33 Cal. App. 5th 940, 941–942 (1 Dist. 2019).

[99] *Becerra,* 44 Cal. App. 5th at 927-929.

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Further, as of July 1, 2019, the Act requires an agency to disclose audio and video recordings that relate to a "critical incident." A recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or an incident in which the use of force by a peace officer or custodial officer resulted in death or great bodily injury.[100]

Additionally, recent legislation has imposed requirements on law enforcement agencies to make available online all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the Public Records Act.[101]

The foregoing is a brief overview of this detailed and complex exemption. Police and code enforcement staff should familiarize themselves with the complete requirements of this Section prior to responding to requests for arrest and complaint information.

(8) Information required from any taxpayer in connection with the collection of local taxes.

Gov't Code § 7925.000.

This exemption applies to information that a city or other local agency requires from any taxpayer in connection with the collection of local taxes if that information is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information. One frequent example of this is the submittal of sales or income information under a business license tax requirement where the city has indicated in its business license tax ordinance that the financial information provided will be kept confidential. If the business license is required by ordinance to list the amount of tax paid and be posted at the place of business, however, the amount of tax paid arguably is not confidential.

(9) Library circulation records.

Gov't Code §7927.100.

While this exemption protects from disclosure library circulation records kept for the purpose of identifying the borrower of items available in libraries, it is not applicable to records of fines imposed on the borrowers.

[100] Gov't Code § 7923.625.

[101] Penal Code §13650.

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(10) Records exempt from disclosure under other laws including, but not limited to, the Evidence Code sections relating to privilege.

Gov't Code § 7927.705.

This provision of the Public Records Act exempts from disclosure every document held by a local agency that is legally privileged or confidential under some law outside the Public Records Act. The most common example of this exemption protects documents subject to the attorney-client privilege or the attorney work-product doctrine. It is important to note that neither the Public Records Act nor the Brown Act abrogate those important privileges for communications between a local agency and its legal counsel.[102]

For example, in *Los Angeles County Board of Supervisors v. Superior Court*, the Supreme Court ruled that the attorney-client privilege protects the confidentiality of invoices for legal work in pending and active legal matters.[103] The Court reasoned that such invoices are so closely related to attorney-client communications that they may reveal legal strategy or consultation. The Court emphasized, however, that the attorney-client privilege does not categorically shield everything in a billing invoice from PRA disclosure.

This case also reaffirms the principle that the Public Records Act does not permit public agencies to withhold an entire document that contains both exempt and nonexempt information. On this point, the Supreme Court ruled that agencies must "use the equivalent of a surgical scalpel to separate those portions of a record subject to disclosure from privileged portions" unless records are not "reasonably segregable."[104] Further, the Court stressed that any ambiguity must be construed in "whichever way will further the people's right of access."[105]

On remand, the Court of Appeal clarified that specific billing entries and descriptions of work contained in attorney invoices are not subject to disclosure under the PRA, whether they related to pending, ongoing or long-concluded legal matters. The Court further found that cumulative fee totals contained in attorney invoices for pending or ongoing legal matters are also protected from disclosure by the attorney-client privilege. And finally, it found that cumulative fee totals for matters concluded long ago may be subject to disclosure only if the cumulative fee totals do not reveal anything about the legal consultation or

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[102] *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 377 (1993).

[103] *Los Angeles County Board of Supervisors v. Superior Court (ACLU of Southern California),* 2 Cal. 5th 282 (2016).

[104] *Id.* at 292.

[105] *Id.* (citing *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176, 1190 (2016), and Cal. Const., art. I, § 3, subd. (b)(2)).

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provide any insight into legal strategy.[106] Whether or not any particular fee total must be disclosed is a factual inquiry for the trial court.[107]

While a full discussion of attorney-client privilege and attorney work product is outside the scope of this Handbook, it is worth noting that a court may find waiver of the privilege when a city and developer share communications prior to approval of a development project under the California Environmental Quality Act (CEQA). In *Citizens for Ceres v. Superior Court*, the appellate court held that a city waived those privileges for communications it sent to a developer prior to approval of a development project under CEQA.[108] The court held that the "common interest doctrine," which generally allows disclosure of privileged communications to third parties with a common interest in a legal matter, did not apply to prevent the city's waiver.[109] As a result, the city was required to include its attorneys' communications with the developer in the administrative record it prepared. In contrast, in another more recent CEQA case, *Golden Door Properties, LLC v. Superior Court*, the appellate court ruled a common interest existed between a county and developer prior to project approval because the plaintiffs had previously sued both the applicant and the lead agency twice before project approval.[110] In light of these differing opinions, local agencies should be cautious in sharing documents and legal opinions prepared by the agency's attorney with a project developer, and recognize that in the event it does share such documents and opinions of its attorneys, in some cases those disclosures may waive the agency's privilege.

In *Labor and Workforce Development Agency v. Superior Court*, the Court of Appeal extended the protection afforded by Section 7927.705 to documents revealing the deliberative process of an agency, even going so far as to prevent the disclosure of the identities of persons with whom the agency confidentially communicated, and the general subject matter of the communications.[111]

Determining which other confidentiality laws are incorporated into the Public Records Act has always been difficult and time-consuming. In 1998, the Legislature attempted to address this problem by enacting a statute that lists most of the exemptions found in other laws.[112] The list now begins at Government Code Section 7930.005 and continues for more than 20 pages. Although the Public Records Act cautions that this list may not be complete, it is a helpful list.

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[106] *County of Los Angeles v. Superior Court*, 12 Cal. App. 5th 1264, 1274 (2 Dist. 2017).

[107] *Id.*

[108] *Citizens for Ceres v. Superior Court (City of Ceres)*, 217 Cal. App. 4th 889, 922 (5 Dist. 2013).

[109] *Id.* at 914-921.

[110] *Golden Door Properties, LLC v. Superior Court of San Diego County*, 53 Cal. App. 5th 733, 755-756 (4 Dist. 2020), review denied (Nov 10, 2020).

[111] *Labor & Workforce Dev. Agency v. Superior Court*, 19 Cal. App. 5th 12 (3 Dist. 2018).

[112] Stats. 1997, c. 620 (S.B. 143 – Kopp).

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(11) Personal financial information required of licensees.

Gov't Code § 7925.005.

When a local agency requires that applicants for licenses, certificates, or permits submit personal financial data, that information is confidential. This exemption, however, does not apply to financial information filed by a franchisee to justify a rate increase, presumably because those affected by a rate increase have a right to know its basis.[113] The term "license" was narrowly construed by the court in *San Gabriel Tribune v. Superior Ct.* to exempt financial information of applicants whose business with the agency is only public because they must comply with licensing requirements and regulations. To give effect to the Public Records Act policy that favors disclosure over secrecy in government, the court concluded that a franchisee is akin to a contractual relationship and is not an applicant for a license under Section 7925.005.

(12) Terrorist assessment reports.

Gov't Code § 7929.200.

A document prepared for or by a local agency that assesses its vulnerability to terrorist attacks or other criminal acts intended to disrupt the local agency's operations is exempt from disclosure if the document is prepared for distribution or consideration in a closed session of the local agency.

(13) Voter registration information.

Gov't Code § 7924.000.

The home address, telephone number, email address, precinct number, and prior registration information shown on voter registration cards is confidential. Disclosure of that information is permitted only to candidates and campaigns, and to any person for election, scholarly, journalistic, or political purposes pursuant to Section 2194(a)(3) of the Elections Code. The driver's license number, social security number and signature of the voter shown on the voter registration card are also confidential and cannot be disclosed to any person.[114]

We believe that this exemption extends to any document that by law must include the information made confidential by this Section, including applications for absentee ballots and returned absentee ballot packages. However, voter registration information identified under Section 7924.000 of the Government

[113] *San Gabriel Tribune v. Superior Court (City of West Covina)*, 143 Cal. App. 3d 762, 779-780 (2 Dist. 1983).

[114] Elec. Code § 2194(b)(1).

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Code must be made available to the public if the information is at least one hundred years old.[115]

(14) Utility customer information.

Gov't Code § 7927.410.

The name, credit history, utility usage data, home address, and telephone number of utility customers of local agencies are exempt from disclosure, except in certain circumstances. This information may be disclosed to authorized family members of the person to whom the information pertains or his or her agent, to an officer or employee of another governmental agency when necessary to perform official duties, or upon court order or the request of law enforcement for an ongoing investigation. In addition, the information may be disclosed if the utility customer has used the utility services in a manner inconsistent with applicable local utility usage policies. If the utility customer is a public official with authority to determine utility usage policies, the information may be disclosed except that the home address of an appointed official may not be disclosed without the official's consent. Lastly, the information may be disclosed if the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure .

(15) Unauthorized Internet posting of officials' addresses and telephone numbers.

Gov't Code §§ 7928.205 - 7928.230

The posting of the home address or telephone number of any elected or appointed official on the internet by a local agency without that individual's written permission is prohibited. The definition of "elected or appointed officials" includes, but is not limited to, members of a city council, members of a board of supervisors, mayors, city attorneys, police chiefs, and sheriffs. It is a misdemeanor for any person to post such information with the intent to cause bodily injury to the official, his or her spouse or child. The official may bring an action for damages under certain circumstances. If bodily injury occurs as a result of the posting, then the posting could become a felony.

If a person, business, or association publicly posts on the internet the home address or telephone number of any elected or appointed official, the official may make a written demand to have the information removed. An official may bring an action in court to seek injunctive relief in the event the posting is not

[115] Elec. Code § 2194.1.

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removed or is posted again during the four years that the written demand is in effect.[116]

(16) Social Security Numbers.

Gov't Code § 7922.200.

Local agencies must redact social security numbers from records before disclosing them to the public.

(17) Records and Information of the Controller Obtained pursuant to the Unclaimed Property Law.

Gov't Code § 7527.425 and 7925.015

AB 2280 amended the Public Records Act to exempt records and information of the Controller obtained pursuant to the Unclaimed Property Law. This exempts records that the Controller and any third-party auditors obtain as a result of an examination of records pursuant to Section 1571 of the Code of Civil Procedure, other than records of property that should have been reported to the Controller as unclaimed property. It also exempts records related to statements of personal worth or personal financial data, including, but not limited to, wills, trusts, account statements, earnings statements, or other similar records and personal information as defined by Section 1798.3 of the Civil Code,

(18) General public interest exemption.

Gov't Code § 7922.540.

In cases where a specific statutory exemption does not apply, a record still might be exempt from disclosure if:

> on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.[117]

The numerous cases examining this "balancing test" make it clear that the burden is **on the local agency** to show that the public interest in confidentiality outweighs the public interest in disclosure. In fact, given the public policy involved, courts demand a demonstration of "clear overbalance" to justify non-disclosure.[118]

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[116] Note, however, that at least one court has indicated that this law may be unconstitutional where applied to prohibit the publication of contact information that is truthful information about a matter of public concern where the information published was lawfully obtained. *Publius v. Boyer-Vine*, 237 F. Supp. 3d 997, 1016, 1021(E.D. Cal. 2017).

[117] Gov't Code § 7922.000 and 7922.540.

[118] *City of Hemet*, 37 Cal. App. 4th at 1421; *see also Black Panther Party*, 42 Cal. App. 3d at 657.

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In practice, very few local agencies have been able to convince reviewing courts that the public interest in confidentiality outweighs the interest in disclosure. In the absence of a specific statutory exemption, this "catch-all" distinction rarely has been successfully relied upon to justify nondisclosure. Thus, local agencies must in good faith find a relatively rare "clear overbalance" to justify confidentiality on this ground.[119]

The right of privacy may provide a basis to shield disclosure of information under Government Code Section 7922.540. For example, relying on the right of privacy, the California Supreme Court ruled that disclosure of raw automated license plate reader data collected by a police department was protected from disclosure under this catch-all exemption.[120] The unaltered license plate scan data consisted of the plate number, date, time, and location information of each license plate record.[121] The Supreme Court found that the act of revealing the data would jeopardize the privacy of everyone associated with a scanned plate which was a significant threat to privacy because more than one million scans were conducted per week, and on that basis concluded that the public interest in preventing such disclosure "clearly outweighs the public interest served by disclosure of" these records. [122]

In a recent case during the COVID-19 pandemic, an appellate court upheld San Diego County's withholding of the specific location of COVID-19 outbreaks from a "confirmed outbreaks spreadsheet" disclosed to news media under the catchall exemption.[123] The county provided uncontradicted evidence from the public health officer that disclosing the exact name and address of an outbreak location would have a chilling effect on the public's willingness to cooperate with contact tracing efforts.[124] The court ruled that the value of the county's ability to conduct effective contact tracing clearly outweighed the public's interest in obtaining information about the exact outbreak locations, concluding that the evidence did not support the news media's contentions that a member of the public can better avoid COVID-19 infection if he or she knows of the particular locations where outbreaks occurred.[125]

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[119] *See, e.g., Michaelis, Montanari & Johnson v. Superior Court (City of Los Angeles Dept. of Airports)*, 38 Cal. 4th 1065 (2006) (holding under "catch-all" exemption that proposals for lease and development of a hangar facility at public airport were exempt from disclosure until City had completed negotiations where negotiations were part of the competitive process).

[120] *American Civil Liberties Union Foundation v. Superior Court*, 3 Cal. 5th 1032, 1043-1044 (2017).

[121] *Id.* at 1043.

[122] *Id.* at 1044.

[123] *Voice of San Diego v. Superior Court of San Diego County*, 66 Cal. App. 5th 669, 672-673 (4 Dist. 2021), review denied (Oct. 27, 2021).

[124] *Id.* at 692-693.

[125] *Id.*

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Two other areas in which a public interest in nondisclosure has been upheld involve public records disclosure that would adversely affect the deliberative process of a local agency, or the personal security of a public official. In *Times Mirror Co. v. Superior Court*,[126] for example, the State's refusal to release the Governor's schedule and appointment calendar out of concern for the Governor's personal safety was upheld. Additionally, the State asserted that the disclosure of appointment calendars and schedules would "chill the flow of information" to the Governor and inhibit the free exchange of ideas in private meetings. The breadth of the request, however, may affect the balancing of interests. The public interest in nondisclosure may be less where the request is carefully focused and confined to a few documents.[127]

The Governor's office won another Public Records Act case on the "deliberative process privilege" and the exemption for "correspondence of and to the Governor"[128] justifications in 1998 when the office refused to disclose applications submitted to the Governor for an appointment to a vacancy on a board of supervisors.[129]

On the local level, a city's refusal to disclose the telephone records of council members was upheld to protect the same "deliberative process privilege."[130]

Far more often, however, courts have found the public interest in disclosure outweighs the interest in confidentiality. Similarly, the Attorney General has issued several opinions favoring disclosure. Some illustrative cases and Attorney General opinions in this area include the following:

- *Becerra v. Superior Court of City & Cty. of San Francisco (First Amendment Coalition et al.)*[131]

Penal Code Section 832.7 generally requires disclosure of all responsive records in the possession of the Department of Justice, regardless of whether the records pertain to officers employed by the department or by another public agency and regardless of whether the department or another public agency created the records. Government Code Section 7922.540 may apply to records that are subject to disclosure under Penal Code Section 832.7, but while an agency may invoke the exception based on the concern that segregating nonexempt from exempt information would be unduly burdensome, for the exception to apply to withhold responsive records the agency must establish a clear overbalance on

[126] *Times Mirror Co. v. Superior Court (State of California)*, 53 Cal. 3d 1325 (1991).

[127] *Id.* at 1344-46.

[128] Gov't Code § 7928.000.

[129] *California First Amendment Coalition v. Superior Court (Wilson)*, 67 Cal. App. 4th 159 (3 Dist. 1998); *see also Wilson v. Superior Court (Los Angeles Times)*, 51 Cal. App. 4th 1136 (2 Dist. 1997), as modified.

[130] *Rogers v. Superior Court (City of Burbank)*, 19 Cal. App. 4th 469 (2 Dist. 1993).

[131] 44 Cal. App. 5th 897 (1 Dist. 2020).

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the side of confidentiality. The Department of Justice failed to make such a sufficient showing, despite arguing they faced an "'onerous burden of reviewing, redacting, and disclosing records regarding other agencies' officers, which involves 'potentially millions of records'" to disclose records under Penal Code Section 832.7.

- *Connell v. Superior Court (Intersource, Inc.)*[132]

Records relating to unpaid state warrants are public records and must be disclosed. The public interest in disclosure outweighs the public interest in preventing possible fraud that could be assisted through the release of too much information about the State's warrant system. The fact that the request was made solely for commercial purposes and profit did not affect the balancing test.[133]

- *Copley Press, Inc. v. Superior Court (M.P.R. - a minor)*[134]

As a matter of law, no compelling reason exists to seal the court records of a settlement reached between the insurer for a school district and a minor student who was sexually assaulted at school. The amount of settlement is a matter of public record.

- *CBS, Inc. v. Block*[135]

The possibility that public disclosure of applications for concealed weapons permits would discourage the filing of new applications, or that such disclosure might increase applicants' vulnerability to attack, did not justify nondisclosure.

- *Braun v. City of Taft (Polston)*[136]

A City's nondisclosure of personnel records and letters appointing an employee and then rescinding the appointment was not justified by the theory that future applicants would not be candid if they knew personal information would be made public.

[132] 56 Cal. App. 4th 601 (3 Dist. 1997).

[133] Government Code section 7921.300 states that the Public Records Act "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure."

[134] 63 Cal. App. 4th 367 (4 Dist. 1998).

[135] 42 Cal. 3d 646 (1986).

[136] 154 Cal. App. 3d 332 (5 Dist. 1984).

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- *Humane Society of U.S. v. Superior Court (The Regents of the University of California)*[137]

A public university's nondisclosure of certain information relating to an academic study was justified because the interest in protecting the academic research process outweighed the interest in public disclosure. Disclosure would "fundamentally impair" the academic research process and the public would suffer because the "'quantity and quality' of . . . academic research on important issues of public interest would be adversely affected."[138]

- *Los Angeles Unified School District v. Superior Court (Los Angeles Times)*[139]

A school district's decision to redact the names of teachers in a statistical model measuring each teacher's effect on students' standardized test scores was proper because the detrimental interference with the district's ability to function properly clearly outweighed the interest in public disclosure. The scores had already been released to the public categorized by school, grade, subject, and demographics; to require additional disclosure would sow discord among parents and teachers.

- *Long Beach Police Officers Assn. v. City of Long Beach (Los Angeles Times)*[140]

In a request by a newspaper for the names of peace officers involved in a fatal shooting, the California Supreme Court held that vague safety concerns – which apply equally to all officers involved in shootings that result in severe injury or death – were outweighed by the public's interest in such incidents.[141] The California Supreme Court held that in order for names of peace officers involved in such incidents to be exempt from disclosure, there must be a particularized showing of safety concerns regarding those officers.

- 90 Ops. Cal. Atty Gen. 40 (2007)

County recorder's accounting records that include a payment receipt showing the documentary transfer tax amount is subject to inspection under the Public Records Act. While the statutory scheme allows the documentary transfer tax to appear on a separate paper rather than on the recorded property conveyance

[137] 214 Cal. App. 4th 1233 (3 Dist. 2013).

[138] *Id.* at 1263.

[139] 228 Cal. App. 4th 222 (2 Dist. 2014).

[140] 59 Cal. 4th 59 (2014).

[141] Since the *Long Beach* decision, amendments to Penal Code Section 832.7 require that peace officer records relating to an incident involving the discharge of a firearm at a person by a peace officer or custodial officer or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury must be made available to the public under the Public Records Act.

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document, that procedure provides only limited privacy protection for property owners and does not make the documentary transfer tax amount confidential.

- 81 Ops. Cal. Atty Gen. 383 (1998)

Claims for senior citizens' exemptions from assessment of a parcel tax levied by a school district are subject to inspection by members of the general public. The concern that the residents' privacy would be compromised by solicitors targeting senior citizens was insufficient to overcome the public interest in disclosure.

X. WHAT IS THE PROPER PROCEDURE FOR COMPLYING WITH A PUBLIC RECORDS ACT REQUEST?

The following is a brief outline of the proper response procedure, as required by Government Code Sections 7922.525 *et seq*.

A. The agency has ten calendar days to determine whether to grant the request. Grounds for refusing a request include:

- The request does not seek records which are "reasonably segregable" from records which are exempt from disclosure;[142]
- The request does not reasonably describe an identifiable record;[143]
- The request would require the agency to create new records not currently in existence; or[144]
- The request seeks records which are exempt from disclosure.[145]

Note, however, that the Public Records Act requires the disclosure of "reasonably segregable" portions of records. This means that if portions of a record are exempt and other parts of the same record are not, the non-exempt portions of the document must be disclosed.[146]

[142] Gov't Code § 7922.525.

[143] Gov't Code § 7922.530(a).

[144] Based upon the definition of "writing," Gov't Code § 7920.545, and the requirement that a requested record be "identifiable," Gov't Code § 7922.530(a). See note 22.

[145] Gov't Code § 7922.530(a).

[146] Gov't Code § 7922.525.

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B. In "unusual circumstances" the agency may take up to an additional 14 calendar days to make the determination whether to grant the request. "Unusual circumstances" must be one of the following:

- The need to search for and collect the requested records from field facilities or other locations separate from the office processing the request;[147]
- The need to search for, collect, and examine a voluminous amount of separate and distinct records demanded in a single request;[148]
- The need for consultation with another agency having a substantial interest in the request or among two or more components of the agency having an interest in the subject matter of the request;[149] or
- The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.[150]

If the agency intends to use this additional time to respond, the agency must provide written notification to the requester that the additional time is required, the reason for the delay, and the date on which a determination will be given.[151]

C. When the agency has made a determination, the requester must be promptly notified of the agency's determination. This notification should be in writing and should include the following information:

- Whether the request is being granted or denied;[152]
- If the request is being granted, the estimated date and time when the records will be made available (or where the records are located on the agency's website);[153]

[147] Gov't Code § 7922.535(c)(1).
[148] Gov't Code § 7922.535(c)(2).
[149] Gov't Code § 7922.535(c)(3).
[150] Gov't Code § 7922.535(c)(4).
[151] Gov't Code § 7922.535(b).
[152] Gov't Code § 7922.535(a).
[153] Gov't Code § 7922.535(a).

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- If the request was made in writing and is being denied, in whole or in part, the response must be in writing and include the extent and the reasons for the denial;[154]

- The name and title or position of the person responsible for the denial;[155]

- The cost or an estimate of the cost of copying the records, if a copy is requested, and a request for pre-payment. Note that this is only the direct cost of duplication, or a statutory fee, if applicable, and does not include staff time to research, retrieve, or compile the records.[156] However, if the document requested is in electronic form, the agency may charge the full cost of reproducing the document when the record is one that is produced only at otherwise regularly scheduled intervals, or the request would require data compilation, extraction, or programming to produce the record.[157]

- The option to inspect the requested records at a mutually convenient time during office hours.[158]

- A requester who inspects a disclosable record on the agency's premises has the right to use their own equipment on those premises, within reasonable limits necessary to protect the safety of the records or to prevent unnecessary burden on the orderly function of the agency and its employees, without being charged any fees or costs, to photograph or otherwise copy or reproduce the record in a manner that does not require the equipment to make physical contact with the record.[159]

- If in response to a public records request the agency directs a member of the public to the location of that public record on its website, the agency must still promptly provide a copy of the record itself if the member of the public requests a copy due to his or her inability to access or reproduce the public record from the website.[160]

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[154] Gov't Code §§ 7922.540, 7922.535.

[155] Gov't Code §7922.540(b).

[156] Gov't Code § 7922.530(a); *North County Parents Organization v. Dep't of Education*, 23 Cal. App. 4th 144 (4 Dist. 1994).

[157] Gov't Code § 7922.575 ; *see also Nat'l Lawyers Guild v. City of Hayward*, 9 Cal. 5th 488 (2020) (finding that retrieving and editing raw video footage in response to a public records request does not qualify as "data extraction" within the meaning of the Public Records Act and therefore public agencies may not recover their costs for that process).

[158] Gov't Code § 7922.525.

[159] Gov't Code §7922.530(c). However, Health and Safety Code Section 19851 provides separate procedures for obtaining duplicates of official copies of building plans.

[160] Gov't Code §7922.545.

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D. In addition to the above requirements, if the local agency determines that the request should be denied and the reason for the denial is not solely because of a statutory exemption, the agency must also:

- Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;[161]
- Describe the information technology and physical location in which the records exist;[162]
- Provide suggestions for overcoming any practical basis for denying access to the records or the information sought.[163]

Alternatively, a local agency may forego these requirements if it instead makes available an index of the record.[164]

E. Upon payment of the cost of duplication, the agency must make the records "promptly available."[165]

F. Please note that the agency may not use this procedure to "delay or obstruct the inspection or copying" of public records.[166]

G. The local agency may provide guidelines for "faster, more efficient, or greater" access to records than provided by the Act.[167]

XI. WHAT ARE THE PENALTIES FOR FAILURE TO COMPLY WITH THE PUBLIC RECORDS ACT?

Unlike other open government laws, the Public Records Act does not criminally penalize a local agency for its failure to comply with the Act. Nor does it subject a local agency to money damages for a violation.[168] However, if a person requesting public records believes records have been improperly withheld, he or

[161] Gov't Code § 7922.600.
[162] Gov't Code § 7922.600.
[163] Gov't Code § 7922.600.
[164] Gov't Code § 7922.605.
[165] Gov't Code § 7922.530(a).
[166] Gov't Code § 7922.500.
[167] Gov't Code § 7922.505.
[168] *County of Santa Clara v. Superior Court (Naymark)*, 171 Cal. App. 4th 119, 130 (6 Dist. 2009).

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she may ask a court to compel a local agency to disclose the records.[169] Any person who prevails in enforcing his or her rights under the Act in court is entitled to receive court costs and reasonable attorneys' fees.[170]

Courts have deemed a person to be the "prevailing party" for purposes of awarding costs and fees if filing of the lawsuit motivated the local agency to produce any documents.[171] The production of just one document can be sufficient to trigger an award of costs and fees.[172] In the past, where the court determined the litigation was not what ultimately motivated the release of records, costs and fees were denied.[173] One court held that an award of attorneys' fees was appropriate even though no additional records were produced as a result of the lawsuit.[174] The local agency in that case had repeatedly refused to accept a requester's oral request to inspect public records and forced the requester to make her request in writing, constituting a general denial of access to all public records and justifying an award of attorneys' fees under the circumstances.

XII. CONCLUSION

This Handbook provides a brief overview of some of the most important provisions of the Public Records Act that frequently arise for local government agencies. There are, however, many other provisions not covered by the scope of this Handbook. Additionally, each factual situation contains nuances specific to the particular situation that may impact the analysis. Because it is important to comply with the Public Records Act within a relatively short time frame, it is critical to seek the advice of counsel if there is any question as to the appropriate course of action.

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[169] Gov't Code §§ 7923.000 and 7923.005; see also *Stevenson v. City of Sacramento*, 55 Cal. App. 5th 545 (3 Dist. 2020) (appellant seeking injunctive relief under Gov't Code § 6258 [now §§ 7923.000 and 7923.005] may be required to post a bond pursuant to Cal. Civ. Code § 529 prior to the court issuing a preliminary injunction on appellant's behalf).

[170] Gov't Code §7923.115.

[171] *Los Angeles Times v. Alameda Corridor Transportation Authority*, 88 Cal. App. 4th 1381, 1391 (2 Dist. 2001); *Rogers v. Superior Court*, 19 Cal App. 4th 469, 482 (2 Dist. 1993); *Nat'l Conference of Black Mayors v. Chico Cmty. Publ'g, Inc.*, 25 Cal. App. 5th 570 (3 Dist. 2018) (newspaper that fought third party effort to prevent disclosure of public records sought by the newspaper was not entitled to attorneys' fees under the Public Records Act because newspaper did not bring an action against the City to compel disclosure under the Act).

[172] *Los Angeles Times*, 88 Cal. App. 4th at 1392.

[173] *Id.* at 1391; *Crews v. Willows Unified School District*, 217 Cal. App. 4th 1368, 1381-82 (3 Dist. 2013).

[174] *Galbiso v. Orosi Public Utility District*, 167 Cal. App. 4th 1063, 1086-1089 (5 Dist. 2008).

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PART TWO.

ELECTRONIC RECORDS

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ELECTRONIC RECORDS

Advances in computer technology have significantly altered the method of communication with and between public officials and employees, but these technological developments have outpaced public records legislation. Email, electronic documents created on word processors, and web pages (including social media pages) do not readily fit into the categories of disclosure under decades-old laws.

The courts have had to fit the round peg of electronic documents into the square hole of state law on several occasions. In *Aguimatang v. California State Lottery*, the Court of Appeal rejected a defendant's argument that the plaintiff's computer records "were not made at or near the time of the event" and therefore did not qualify as an admissible "writing" under the evidentiary rules for business records.[175] The records were recorded on magnetic tape on the day the events of the case took place, but were not printed out until twenty-two months later. The court concluded that the magnetic tape, not just the printout, constituted a "writing" under the Evidence Code:

> Chanquin cites no authority holding that the retrieval, rather than the entry, of computer data must be made at or near the time of the event. Thus, although to qualify as a business record the "writing" must be made at or near the time of the event, "writing" is not limited to the commonly understood forms of writing but is defined very broadly to include all "means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof." Evid. Code § 250. Here, the "writing" is the magnetic tape. The data entries on the magnetic tapes are made contemporaneously with the Lotto transactions, hence qualify as business records. The computer printout does not violate the best evidence rule, because a computer printout is considered an "original." Evid. Code § 255.[176]

Similarly, in *People v. Martinez*, the California Supreme Court held that records from a state computer system of a defendant's prior criminal convictions were admissible as "official records" under the Evidence Code.[177]

In an attempt to catch up, in 2002 the Legislature enacted Assembly Bill 1962 ("AB 1962"), modifying the definition of "writing" under the Public Records Act and the Evidence Code to include "photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any

[175] *Aguimatang v. California State Lottery*, 234 Cal. App. 3d 769 (3 Dist. 1991).
[176] *Id*. at 798.
[177] *People v. Martinez*, 22 Cal. 4th 106 (2000).

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tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof," and clarifying that the definition applied "regardless of the manner in which the record has been stored."[178]

The legislative reports for AB 1962 cited to *Aquimatang* and *Martinez* to establish that the amendment was declaratory of existing law. The reports also observed that in an earlier case, a court of appeal stated that the definition of writing in the Public Records Act was "intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed."[179] Under the 2002 legislation, emails and other electronic documents are records subject to disclosure and present their own unique issues for local governments.

In 2009, the State Legislature enacted rules relating to the discovery of electronically stored information, similar to the rules enacted by the Federal Government in 2006. In 2006, the Federal Rules of Civil Procedure were revised to require parties in federal lawsuits to address the production and preservation of electronic records.[180] Under the 2006 Rules, a public entity should have an electronic retention practice and policy that ensures that electronic documents relevant to federal litigation are appropriately preserved. Rule 37 of the Federal Rules of Civil Procedure authorizes federal courts to impose sanctions on parties and their attorneys who fail to comply with discovery obligations and court orders.

City websites, in turn, raise questions about public rights of access. Websites are an important means of providing residents with access to information. An improperly framed policy on website use, however, could result in violations of the Brown Act, infringe upon residents' First Amendment rights, and even violate disability access laws. Consequently, it is important to establish clear policies governing website design and use.

This Part Two on Electronic Records will begin by discussing the types of email that are public records, and what exemptions under the Public Records Act might justify nondisclosure. Other unique issues raised by the use of email are also explored, such as emails sent or received by public officials and employees on nongovernmental accounts, email threads and the potential risk of using email to create an unlawful serial meeting under the Brown Act. We then look at the Public Records Act requirements for disclosure of other types of electronic records, including Geographic Information Systems.

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[178] Stats. 2002, c. 945 (A.B. 1962—Hollingsworth) (amending Gov't Code § 6252 and Evid. Code § 250).

[179] Assembly Committee on Judiciary, Report on AB 1962, May 14, 2002 (citing *San Gabriel Tribune v. Superior Court (City of West Covina)*, 143 Cal. App. 3d 762, 774 (1 Dist. 1983)).

[180] Fed. R. Civ. P. 26.

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The discussion then turns to other concerns raised by electronic records, including litigation discovery and metadata. We close with a discussion of city websites, including some of the legal issues that a public entity should consider when establishing and running a website.

I. EMAIL

Given that email can be a public record under Government Code Section 7920.545, in most circumstances a public entity is under an obligation to disclose email upon request. However, there are a number of complications, and despite AB 1962's attempt to respond to the changed method of communication, the bill provided nothing in the way of specifics.

A. Is the Email a Public Record?

Under the Public Records Act, certain exemptions might apply to justify withholding an email. But a fundamental question – one that must be considered before determining whether an exemption applies – is whether the document qualifies as a "public record" of the local agency.

(1) Personal Messages

Documents disclosable under the Public Records Act must be "prepared, owned, used, or retained by any state or local agency," and must contain information "relating to the conduct of the public's business."[181] Although this covers a very broad range of documents, it does not cover every document.

For example, emails on entirely personal subjects unrelated to local agency business would not relate to the conduct of the public's business, and therefore would not constitute "public records" under Section 7920.530.[182] A harder determination is whether a personal email that only mentions a city issue in passing would relate to the conduct of the public's business. In 2017, the California Supreme Court held the determination of whether a particular email qualifies as a public record, particularly for emails kept in personal accounts, will involve the consideration of a number of factors and may not always be clear.[183] The court suggested examining the content and context of the email, the purpose for which it was written and to whom, and whether the email was prepared by an employee purporting to act within the scope of his or her employment.[184]

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[181] Gov't Code § 7920.530(a).

[182] *City of San Jose*, 2 Cal. 5th 608, 618-19.

[183] *Id*. at 618.

[184] *Id*.

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(2) Emails Sent or Received Using Personal Devices and Personal Accounts

Staff frequently asks whether emails sent or received on a nongovernmental account (such as personal Gmail, Yahoo Mail, or Hotmail accounts), or from a home computer or smartphone, and which pertain to local agency business, qualify as a public record. The California Supreme Court decided this very issue, and held in a unanimous decision that the presumptive right of access of the PRA extends to emails and texts sent or received on nongovernmental accounts, whether on private or government-issued devices, used by local agency employees or officials that relate to the business of that local agency.[185]

In *City of San Jose v. Superior Court*, a request for 32 categories of public records was filed with the City of San Jose.[186] The request included emails and text messages sent or received on private electronic devices used by the mayor, two City council members, and their staff.[187] The City argued such emails were outside the reach of the PRA, both because the emails were not directly accessible to the City and thus did not qualify as writings "prepared, owned, used or retained" by the City under the Section 7920.530 definition of "public records," and because neither employees nor officials are included within the governmental entities listed in the definition of "local agency" under Section 7920.510.[188] The Court found neither argument persuasive when considering the legislative intent of the PRA and the constitutional directive to a broadly construed right of public access.[189]

The California Supreme Court found no indication "the Legislature meant to allow public officials to shield communications about official business simply by directing them through personal accounts."[190] The court did acknowledge the inherent balance that must be struck between the public's rights of access and an individual employee's or official's right of privacy, and sought to offer some limited guidance for how searches should be conducted for records sent or received on nongovernmental accounts that pertain to the public's business.[191]

Foremost, the California Supreme Court stated it is the local agency itself that is in the best position to adopt policies that will reduce the likelihood of public records being held in the private, nongovernmental accounts of local agency employees

[185] *Id*. at 629.
[186] *Id*. at 614.
[187] *Id*. at 615.
[188] *Id*. at 619-20.
[189] *Id*. at 620-21.
[190] *Id*. at 624.
[191] *Id*. at 627-29.

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or officials that pertain to the public's business.[192] Barring such a policy, the court stated that a local agency's first step upon receiving a PRA request that implicates nongovernmental accounts should be to communicate the request to the individual or individuals in question.[193] A local agency may then reasonably rely on those individuals "to search *their own* personal files, accounts and devices for responsive material."[194] Citing both federal precedent under the FOIA and a holding by the Washington Supreme Court under its state public records law, the California Supreme Court also discussed an employee or official submitting an affidavit that would give the local agency, requester, and ultimately the trial court reassurance that responsive records were appropriately searched on nongovernmental accounts.[195] Such an approach also strikes "an appropriate balance" with the individual's right of privacy in their personal affairs.[196]

The California Supreme Court's ruling in *City of San Jose v. Superior Court* is likely to have far-reaching consequences for public agencies; however, a number of questions remain unanswered by the court's decision. Since the City of San Jose refused to produce any emails from a nongovernmental account in response to the original PRA request, disputes over the content of specific emails and whether or not they fall under the definition of "public record" will likely be decided in subsequent proceedings.[197] Similarly, the decision does not address at what point a suggested search in response to a PRA request would become an unwarranted invasion on the privacy of a local agency employee or official.[198] In responding to requests for communications sent or received on an individual's nongovernmental account, it is advisable to consult with your legal counsel. Counsel should also be consulted if an agency requires access to potentially responsive documents or communications that are on an employee's private device and not accessible to the agency (for example, documents saved on an employee's home computer hard drive). Our office is also available to help draft policies on how to reduce the likelihood that public records will be held in an agency employee's or official's private nongovernmental account, how to conduct searches into nongovernmental accounts when necessary, and how to work with employees so the employees properly search their private, nongovernmental computers and smartphones, when necessary.[199]

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[192] *Id*. at 628.
[193] *Id*.
[194] *Id*.
[195] *Id*.
[196] *Id*.
[197] *Id*. at 618.
[198] *Id*. at 627.
[199] Private, nongovernmental devices should never be seized by the agency, or accessed without the employee's consent, even if the agency believes the device contains material responsive to a PRA request.

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B. Some Email may be Protected by the Deliberative Process Privilege or Mental Process Principle

Emails differ from traditional printed documents: they may be prepared quickly and sent without proofreading, they may be conversational, or they may substitute for face-to-face or telephone communications. As described by the California Supreme Court, "the ease and immediacy of electronic communication has encouraged a commonplace tendency to share fleeting thoughts and random bits of information, with varying degrees of import, often to broad audiences."[200] As a result, they often reflect preliminary ideas and concepts, and may be subject to the deliberative process privilege, which was mentioned earlier in the discussion on the Public Records Act.[201] Alternatively, the mental process principle may provide a basis for withholding emails. Before applying the deliberative process privilege to emails sent to a legislative body member, you should familiarize yourself with the Brown Act requirements regarding disclosure, discussed below in Section G.

The deliberative process privilege and the mental process principle are very similar, and sometimes courts blur the distinction. Generally speaking, the deliberative process privilege is targeted at protecting from disclosure the decision making process of governmental agencies. Without that protection, candid discussion may be discouraged within an agency, thus undermining its ability to perform its functions.[202] It is sometimes referred to as the "executive privilege,"[203] but has been applied to records of both the executive branch (e.g., the governor) and the legislative branch (e.g., a city council).[204] The mental process principle, on the other hand, appears to apply only to the members of an agency's legislative body when those members are enacting legislation, and protects from disclosure those records that would allow an inquiry into the "subjective motives or mental processes of legislators."[205] The deliberative process privilege uses a balancing test, whereas the mental process principle does not, making the mental process principle exemption less subjective.[206]

(1) Deliberative Process Privilege

Although the Public Records Act does not expressly contain a deliberative process exemption, the California Supreme Court held in 1991 that public records

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[200] *Id*. at 618.

[201] See pages 20 and 24 of this Handbook.

[202] *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1342 (1991).

[203] *Sutter's Place v. Superior Court (City of San Jose)*, 161 Cal. App. 4th 1370, 1378 (6 Dist. 2008).

[204] *Times Mirror Co.*, 53 Cal. 3d at 1345-46 (governor's calendars and schedule); *Rogers v. Superior Court (City of Burbank)*, 19 Cal. App. 4th 469, 479 (2 Dist. 1993) (city council phone records).

[205] *Sutter's Place*, 161 Cal. App. 4th at 1377.

[206] *Id.* at 1377, 1379.

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may be withheld on deliberative process grounds.[207] The deliberative process privilege arises under the "catch-all" exemption contained in Section 7922.540 of the Government Code. Under the "catch-all" exemption, a public agency may justify nondisclosure by showing "that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." To apply the deliberative process privilege:

- First, consider whether the record falls within the scope of the privilege. Generally, records that are predecisional and deliberative (opinion) fall within the scope, but some courts have not strictly applied a predecisional requirement and have permitted purely factual material that exposes the deliberative process to fall within the privilege.[208]

- Second, identify the public interest served by nondisclosure of the record. Four public interests that have been identified by the courts are:

  (1) Protection of the agency's decision-making process so that candid discussion within the agency is not discouraged;[209]

  (2) Protection of certain limited communications with members of the public to ensure that the local agency receives the information it needs to make decisions and otherwise function;[210]

  (3) Protection against confusion caused by premature exposure of the public to internal agency discussions before a policy is finalized;[211]

  (4) Protection of the integrity of the decision-making process itself by confirming that "officials should be judged by what they decided, not for matters they considered before making up their minds."[212]

- Third, identify the public interest served by disclosure of the record. Courts have emphasized that a primary benefit of disclosing a local agency's records to the public is to promote government accountability. The public and the media have a legitimate need to

[207] *Times Mirror Co.*, 53 Cal. 3d at 1347.

[208] *Rogers*, 19 Cal. App. 4th at 479-480 (rejecting a predecisional requirement and withholding from disclosure pure facts, that is, telephone numbers called by staff and city council members).

[209] *Times Mirror Co.*, 53 Cal. 3d at 1342.

[210] *Id.* at 1344-45 (disclosure of governor's schedule and appointment calendar would "chill the flow of information" to the governor and inhibit the free exchange of ideas in private meetings).

[211] *California First Amendment Coalition v. Superior Court (Pete Wilson)*, 67 Cal. App. 4th 159, 170 (3 Dist. 1998).

[212] *Id.* (internal quotations and citations omitted).

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know whether government officials are performing their duties in a responsible and diligent manner.[213] "Such access permits checks against the arbitrary exercise of official power and secrecy in the political process."[214]

- Fourth, balance the two public interests, and withhold the record from disclosure only if the identified public interest justifying nondisclosure "clearly outweighs" the public interest justifying disclosure.[215] In balancing the scales, the weight of an identified public interest in disclosure is "proportionate to the gravity of the governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate."[216] Because the public interest in nondisclosure must "clearly outweigh" the public interest in disclosure, if the interests are just about equal, the scales tip in favor of disclosure.

In *California First Amendment Coalition v. Superior Court (Wilson)*, the plaintiffs sought disclosure of records containing the names and qualifications of applicants for a temporary appointment to a local board of supervisors.[217] The Governor's office looked extensively into the applicants' backgrounds to determine whether they were qualified for the position. The court upheld nondisclosure of the records under the deliberative process privilege. It reasoned that if the deliberative process privilege did not apply, the Governor would never be able to perform background checks, which is an essential part of selecting an applicant for a government position.[218] In balancing the interests, the court concluded that the public's interest in disclosure of background information revealed in confidence by unsuccessful applicants was not significant and that the public interest in learning about the successful applicant's background would be satisfied after the appointment.[219]

The *First Amendment Coalition* case shows that the deliberative process privilege can apply to communications where the public interest in disclosure of deliberations prior to a decision is not significant and the outcome of those deliberations is a matter of public knowledge. For instance, the public could ultimately learn a council member's views about an item the City council is deliberating by attending the public meeting on the item. In such a case, emails

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[213] *Times Mirror Co.*, 53 Cal. 3d at 1345.

[214] *CBS v. Block*, 42 Cal. 3d 646, 651 (1986).

[215] Gov't Code §7922.000.

[216] *Citizens for a Better Environment v. Department of Food & Agriculture*, 171 Cal. App. 3d 704, 715 (3 Dist. 1985).

[217] *California First Amendment Coalition*, 67 Cal. App. 4th at 164.

[218] *Id.* at 171-72 (quoting *Times Mirror Co.,* 53 Cal. 3d 1325, 1345).

[219] *Id.* at 173-74.

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discussing preliminary ideas and concepts about the item may be subject to the deliberative process privilege.

Another example is provided by *Times Mirror Co. v. Superior Court*.[220] In that case, the Los Angeles Times sought copies of the governor's appointment calendars and argued that "in a democratic society, the public is entitled to know how [the governor] performs his duties . . . ."[221] Disclosure of who the governor met with would reveal who was influencing his decisions. The governor argued disclosure of his calendar would reveal his deliberative process, and could discourage certain people from meeting with him. In balancing these interests, the California Supreme Court concluded that nondisclosure was justified, reasoning that "if the public and the governor were entitled to precisely the same information, neither would likely receive it."[222] The court added that the "massive weight" of the request (five years' worth of calendars), outweighed whatever merit there was in favor of disclosure.[223] The court noted, however, that there may be circumstances under which the public interest in specific information is more compelling, and such a specific, focused request might tip the scales in favor of disclosure.[224]

Courts have emphasized the need for evidence in order to satisfy the local agency's burden of proof. In *Citizens for Open Government v. City of Lodi*, the City of Lodi withheld from the administrative record emails between City staff and the City's consultants regarding preparation of a revised EIR.[225] Citizen groups sued, challenging in part the administrative record. Lodi argued the emails were exempt from disclosure pursuant to the deliberative process privilege because disclosure would hamper "candid dialogue and a testing and challenging of the approaches to be taken."[226]

The Court of Appeal disagreed, finding that Lodi had failed to establish the conditions for creating the privilege, because Lodi had done nothing more than cite the policy behind the deliberative process privilege without explaining why the facts in this particular case justified invocation of the privilege.[227] However, because the Court of Appeal was deciding the case under the California Environmental Quality Act ("CEQA"), and not the Public Records Act, the Court found there was no prejudice and refused to reverse the lower court's ruling.[228]

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[220] *Times Mirror Co.*, 53 Cal. 3d at 1344.
[221] *Id.*
[222] *Id.* at 1345.
[223] *Id.*
[224] *Id.* at 1345-1346.
[225] *Citizens for Open Government v. City of Lodi*, 205 Cal. App. 4th 296, 305 (3 Dist. 2012).
[226] *Id.* at 306.
[227] *Id.* at 307.
[228] *Id.* at 311.

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In comparison, the public entity in *Humane Society of the United States v. Superior Court*, provided detailed declarations from an employee and expert explaining why disclosing certain research documents would harm the research process.[229] The Humane Society sought disclosure of certain records and communications related to the preparation of a study by the University of California involving housing of egg-laying hens, and the University claimed various privileges including deliberative process.

The detailed declarations of the research project director submitted by the University seemed to sway the court; the court quoted them at length in the decision.[230] One declaration explained how researchers at the University tried new ideas and approaches, frequently brainstorming by email, using shorthand expressions of incomplete thoughts. To be efficient, the researchers did not keep detailed records of how they communicated, and some lines of inquiry that began in email were further discussed and dismissed as part of hallway conversations. Because of that, much of what they said in emails would be easily misinterpreted. Additionally, mistakes along the way are part of the research process. The quality and quantity of work would be stifled if researchers were aware that their informal communications would be made available broadly. While the Humane Society tried to characterize the declaration as mere speculation, the court credited the declarant as an expert in the field, giving the declaration great weight.[231] In balancing the public interests, the court concluded that disclosure of the emails "would fundamentally impair the academic research process."[232]

Given the pervasiveness of email today, the deliberative process privilege seems well-suited to protect predecisional email communications from disclosure. Nevertheless, California courts have approved the use of the deliberative process privilege sparingly, and require local agencies to provide particularized factual evidence in support of its use. Prior to invoking this privilege, it is advisable to consult your legal counsel.

(2) Mental Process Principle

The Public Records Act exempts from disclosure those records that are exempted or prohibited from disclosure pursuant to federal or state law.[233] Under California state common law, a court is prohibited from inquiring into the motives or

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[229] *Humane Society of the United States v. Superior Court (Regents of the University of California)*, 214 Cal. App. 4th 1233, 1240 (3 Dist. 2013).

[230] *Id.* at 1241-1244.

[231] *Id.* at 1258.

[232] *Id.* at 1263.

[233] Gov't Code § 7927.705.

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subjective mental processes of legislators in enacting a particular piece of legislation except as those motives may be disclosed on the face of the legislative acts, or inferred from their operation.[234] This "mental process principle" permits a local agency to withhold public records that would reveal the mental processes or subjective motives of its legislative body members when they are acting in a legislative capacity. Unlike the deliberative process privilege, which relies on a balancing test,[235] records reflecting the "mental processes" of legislators are not subject to a balancing test.[236]

Under applicable circumstances, the mental process principle may be used to justify nondisclosure of emails of legislative body members, such as city council members. For example, emails sent or received by a city council member could arguably be withheld under the mental process principle when they: (1) discuss the reason the member voted for or against a particular ordinance, (2) involve the gathering of information on which the member based their legislative decision, or (3) expose the motives for the member's vote on a legislative matter.

C. Exception for Notes, Drafts and Interagency/Intra-agency Memoranda

The deliberative process privilege may help a local agency keep sensitive emails from public disclosure, but a far more effective tool is to simply have a policy in place to regularly purge intra-agency or interagency emails that are not subject to the local agency's records retention schedule. Under the Public Records Act, "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business" may not be subject to disclosure.[237] A written policy of deleting emails more than 120 days old (or some similar duration) would help establish that emails are not retained "in the ordinary course of business." A software modification that automatically deletes older emails would ensure that they are not retained, provided staff is notified of the pending purge and takes steps to retain those emails that, based on their content, must be retained under the local agency's records retention schedule.

There are a few caveats, however. First, note that deleting an email is not the end of the story. Popular email programs such as Microsoft Outlook have "deleted items" folders that retain messages for a time after "deletion," in order to give the user an opportunity to "undo" an accidental deletion. If a local agency received a request for an email that had been deleted, but was still on the computer in the "deleted items" folder, it technically would still be in the

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[234] *Sutter's Place*, 161 Cal. App. 4th at 1375.

[235] Gov't Code § 7922.540.

[236] *See Times Mirror Co.*, 53 Cal. 3d at 1339 fn. 9-10 (noting that these records might arguably be exempt under the mental process principle through operation of Section 7927.705).

[237] Gov't Code § 7927.500. For a discussion on the conditions that must be met to utilize Section 7927.500, see pages 10-12 of this Handbook.

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possession of the agency and may be subject to disclosure. To eliminate this potential issue from arising, an agency must ensure that the deletion becomes final and irreversible. If the agency desires or is required to save a copy of certain emails, then it should print and file such emails, or store them electronically in a location that is not subject to automatic purging.

Second, note that the Section 7927.500 exemption is not absolute. The full text of the exemption provides that drafts, notes, and inter/intra-agency memoranda are nondisclosable "provided that the public interest in withholding those records clearly outweighs the public interest in disclosure." Accordingly, even emails "that are not retained by the public agency in the ordinary course of business" may be subject to disclosure, if the records were not deleted prior to receipt of the Public Records Act request, and a reviewing court concludes that the public interest in disclosure is not "clearly outweighed" by the interest in nondisclosure. This is a significant hurdle for a public agency to overcome.

D. Additional Exemptions that may be Applicable to Email

In addition to those described above, there are a number of other exemptions that may be applicable to emails exchanged between employees or officials of a public agency. For example, emails to and from legal counsel may be protected by the evidentiary privileges recognized under Section 7927.705; certain personal financial data may be exempt under Section 7925.005; and personnel and medical files may be withheld under Section 7927.700. The same care should be used in reviewing responsive emails as any other material that may be subject to disclosure, and Part One, Section IX (What Public Records are Exempt from Disclosure under the Public Records Act?) of this Handbook should be consulted for additional information.

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E. The Problem with Threads

Emails elicit a response. The response typically elicits another response. If multiple people received the message, responses from all of the recipients are common. And, in all of those responses, the original message is typically quoted, either in part or in full, generating a "thread" of messages. The question necessarily arises, when there is a thread of 20 messages, and one of them is responsive to a public records request, must the other 19 messages also be produced? For example, a resident makes a request for all emails discussing the possible construction of a new library and locates the following thread:

```
Original Message
From:     City Clerk
To:       Joe Employee, Jane Employee, City
          Manager
Date:     April 2, 2022 12:15 p.m.
Subject:  RE: Question

More money and lots more money.

Original Message
From:     City Manager
To:       Joe Employee, Jane Employee, City
          Clerk
Date:     April 2, 2022 12:10 p.m.
Subject:  RE: Question

I didn't know we were discussing
compensation.  What are the proposals?

Original Message
From:     City Clerk
To:       Joe Employee, Jane Employee, City
          Manager
Date:     April 2, 2022 12:05 p.m.
Subject:  RE: Question

I think the study session on the new library
is next month.  It will be at the same
meeting as we discuss Council compensation.

Original Message
From:     Joe Employee
To:       Jane Employee, City Clerk, City
          Manager
Date:     April 2, 2022 12:00 p.m.
Subject:  Question

Do you know when the Council is going to
have a study session on possibly
constructing a new library?
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Only the oldest two messages (sent at 12:00 and 12:05) refer to the study session on the library construction. The rest of the messages are on a different topic, a topic that may be politically sensitive. Nevertheless, all of the responses to the original message included a copy of the original message and every message that followed it, and so they all contain a reference to the library construction. As a result, it would be difficult to argue that only the 12:00 and 12:05 messages should be disclosed if this is the only copy of the email available.

On the other hand, if an earlier version of the email containing only the oldest two messages is available, a local agency could argue that the thread containing all five messages may be withheld. So long as the earlier version of the two responsive emails is disclosed, the email discussing employee compensation is only a duplicate of the oldest two messages. The subsequent messages are not responsive to the request. The Public Records Act does not require disclosure of all duplicates of a responsive record. Keep in mind, however, two important considerations. First, while one appellate court has ruled that non-responsive information may be redacted from emails exchanged between two agency employees, if challenged in court, a public agency will have to explain in detail

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the information that was redacted.[238] Second, in litigation, a different standard may apply and all versions of the email may have to be disclosed.

One way to avoid the problem is to configure email so previous messages are not quoted in replies sent by staff. Under the example above, if the local agency did not allow quoted messages in replies, the first two messages mentioning the library construction would be disclosed as "stand-alone" emails, but the later messages regarding compensation would not because they would no longer be integrated into the prior emails. Accordingly, a city should balance its concern in avoiding unwanted disclosures against the usefulness of having an entire thread available, and may wish to consider configuring email programs to eliminate quoting emails in replies.

F. Risk of Serial Meetings

Beyond the Public Records Act concerns, the use of email presents a significant opportunity for "serial meetings" prohibited by the Brown Act. A serial meeting is a series of meetings or communications not held at a noticed, public meeting in which ideas are exchanged among a majority of a legislative body directly or through intermediaries to "discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."[239] Prior to January 1, 2009, the Brown Act specifically forbade the use of technological devices to conduct those communications. In interpreting the prior version of this Brown Act provision, the California Attorney General opined that email is one of these "technological devices."[240] The 2009 amendments to the Brown Act provisions regarding serial meetings included the removal of the phrase "technological devices" and other specific types of communications, and the insertion in their place of "a series of communications of any kind, directly or through intermediaries."[241] At the time of the 2009 amendments, it was considered unlikely that the legislature, in omitting the phrase "technological devices" and expanding the scope to any kind of communication, intended to exclude email from coverage under the Brown Act. Subsequently, Assembly Bill 992, passed in 2020 and effective January 1, 2021, amended certain provisions of the Brown Act until January 1, 2026 to clarify allowable uses of social media under the Act. As amended by AB 992, the Brown Act regulates social media posts to prevent serial meetings.[242]

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[238] *American Civil Liberties Union of Northern California v. Superior Court (California Dept. of Corrections and Rehabilitation)*, 202 Cal. App. 4th 55, 82-86 (1 Dist. 2011).

[239] Gov't Code § 54952.2(b)(1).

[240] 84 Ops. Cal. Atty Gen. 30 (2001).

[241] Stat. 2008, c. 63, sec. 3 (S.B. 1732 -- Romero (amending Gov't Code § 54952.2).

[242] Stat. 2020, c. 89, sec. 1 (A.B. 992 -- Mullin (amending Gov't Code § 54952.2). For further discussion of use of social media and the Brown Act, please see the *2023 Brown Act Handbook*, Part One, Section VII(D) (© 2023 Richards, Watson & Gershon).

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The primary mechanism for creating serial meetings via email is through the use of "reply all." For example, if a public employee sends an email to an entire city council, and then one of those council members replies to the entire list of recipients, then a communication would have taken place between a majority of the city council. If the purpose of the council member's reply was to "discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body," the communication would constitute a serial meeting in violation of the Brown Act.[243] Accordingly, public officials must endeavor to use "reply all" sparingly, if at all. A "reply all" congratulating a council member for receiving an award would be permissible; a "reply all" expressing an opinion about an issue within the subject matter jurisdiction of the City council would not.

G. Disclosure Requirements for Documents at Meetings

Although the deliberative process privilege may apply to many emails, note that the privilege is unlikely to apply if an email concerns an issue under consideration by a legislative body and a majority of the body receive the email. The Brown Act states that notwithstanding the "catch-all" exception in the Public Records Act, "or any other law," any writings distributed to a majority of a legislative body in connection with a matter subject to discussion or consideration at an open meeting of the body are disclosable.[244] The statute goes on to clarify that it does not overrule the exceptions for drafts, documents related to pending litigation, personnel files, medical files, and a number of other exceptions, but it does expressly overrule the "catch-all" provision on which the deliberative process privilege is based. Note that Section 7927.705, under which the mental process principle is applied, is not overruled by the Brown Act, and still would be applicable.[245]

Unlike records disclosable under the Public Records Act, which gives public entities ten days to respond to a request and additional time to produce the documents, a public agency must produce documents under this section of the Brown Act "without delay."[246] In addition, if the email is created by the public agency or a member of the legislative body, it must be made available for inspection *at the meeting*.[247] Emails not drafted by the public agency or its legislative body must be made available after the meeting.

This is particularly relevant to emails sent to council members on smartphones, iPads and similar devices, given that a council member could potentially send an

[243] Gov't Code § 54952.2(b)(1).
[244] Gov't Code § 54957.5.
[245] Gov't Code 54957.5(a).
[246] *Id.*
[247] Gov't Code § 54957.5(c).

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email to other council members while a meeting is going on. Under this section of the Brown Act, an attentive member of the public could insist that they be provided a copy of that email, at the meeting, if the council member sent it to a majority of the other council members. Accordingly, members of a legislative body should consider carefully the consequences of sending an email via smartphone, iPad or other device at a public meeting prior to doing so.

The informality of emails makes them particularly prone to statements that would not be put into conventional written documents. The only certain means of avoiding unwanted disclosure, of course, is simply not to write the email in the first place.

II. DOCUMENTS CREATED USING WORD PROCESSORS, GIS AND OTHER SOFTWARE

A. Disclosure Requirements

(1) Public Records Act

Electronic records are subject to disclosure under the Public Records Act pursuant to Sections 7922.570-7922.585 of the Government Code. A public agency that has information constituting a public record in an electronic format must make that information available in electronic form upon request.[248] An agency is not required to reconstruct an electronic record if it is no longer available in that format.[249] An agency may inform a requester that a requested record is available in electronic format, but the agency is prohibited from adopting a policy of only making information available in electronic format.[250]

On the other hand, not every piece of data stored on a computer readily fits the definition of "record." Unlike word processing documents, information stored in a database or a spreadsheet, for example, may only be displayed in response to the user entering a formula or query. For such data, there are special statutory provisions. With conventional (printed) documents, the public agency may only charge for the direct cost of duplication, not including staff time to research, retrieve or compile the records.[251] For electronic records, however, the agency may charge the full cost of reproducing the document if the record is one that is otherwise produced only at regularly scheduled intervals, or the request would

[248] Gov't Code § 7922.570.

[249] Gov't Code § 7922.580.

[250] Gov't Code § 7922.570(c), 7922.580(b).

[251] Gov't Code § 7922.530(a); *North Cnty. Parents Organization v. Dept. of Education*, 23 Cal. App. 4th 144, 147-148 (3 Dist. 1994) (direct costs do not include the ancillary tasks necessarily associated with the retrieval, inspection, and handling of the file from which the copy is extracted).

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require data compilation, extraction, or programming to produce the record.[252] However, in *National Lawyers Guild v. City of Hayward*, the California Supreme Court recently held that the phrase "data extraction" in this context does not cover the costs of redacting exempt material from digital police body camera footage.[253] The court reasoned that data "extraction" is a technical process of retrieving responsive information to construct a new record, while redacting exempt material from electronic records is similar to other redactions for which costs are not recoverable.[254] As such, public agencies may not recover costs for redacting exempt material from otherwise disclosable electronic records.

Many public agencies now possess Geographic Information Systems ("GIS") that allow them to collect, manage and analyze large volumes of geographically referenced information. Whether this electronic information is a public record that is subject to disclosure has been the subject of controversy, mainly because public agencies have charged licensing fees to businesses that wanted a copy. Public agencies have argued that the monies recovered from those licensing fees are necessary to support the development and maintenance of the GIS.

In 2013, the California Supreme Court disagreed with that argument. In *Sierra Club v. Superior Court*, the Court held that a GIS-formatted database is a public record that, unless otherwise exempt from disclosure, must be produced upon request and the local agency may only charge the actual cost of duplication.[255] The County of Orange had argued that its GIS database was not a public record. The court disagreed that former Section 6254.9 (now Section 7922.585) excluded a GIS database from the Public Records Act's disclosure requirements, and concluded that, because the County had not claimed any exemption to justify nondisclosure, the County of Orange could only charge the direct cost of duplication for its GIS database.[256]

Note, however, that the California Supreme Court was careful to distinguish the database from the software – the mapping system itself was exempt from disclosure under another provision in the Public Records Act.[257] The statute expressly exempts computer mapping systems, computer programs, and computer graphic systems, and states that nothing in the statute is intended to

[252] Gov't Code § 7922.575.

[253] 9 Cal. 5th 488 (2020).

[254] *Id.* at 500.

[255] *Sierra Club v. Superior Court (County of Orange)*, 57 Cal. 4th 157, 161 (2013).

[256] *Id.* at 175, 176

[257] Gov't Code § 7922.585(b) ("Computer software developed by a state or local agency is not itself a public record under this chapter.").

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limit any copyright protections. Accordingly, a requester may not seek to obtain the software that creates the records, only the records themselves.[258]

The Public Records Act not only exempts computer software as discussed above, but also a public agency's information security record, if that record has the potential to reveal vulnerabilities or otherwise increase the possibility of an attack on that public agency's information technology system.[259] However, the Public Records Act also requires local agencies (except local educational agencies) to create a catalog of "enterprise systems," that must be publicly available on the local agency's website and updated annually.[260] An enterprise system is defined as a "software application or computer system that collects, stores, exchanges and analyzes information" used by the local agency as a system of record, and acts either across multiple agency departments, or collects information about the public.[261] While Section 7922.710 requires a city to list these enterprise systems as defined, it does not require a city to disclose the information collected, stored, exchanged and analyzed by the software application or computer system if that information is otherwise exempt under the Public Records Act. Further, a number of enterprise systems may be excluded from a local agency's listed catalog, such as systems related to 911 dispatch or emergency services, information technology security systems (including firewalls and other cybersecurity systems) and infrastructure and mechanical control systems (for example, systems that manage water or sewage functions).[262]

Note that the Public Records Act does not contain exceptions for public records created on social media.[263] If a social media post is "prepared, owned, used, or retained by any state or local agency," and contains information "relating to the conduct of the public's business,"[264] it is a public record and is thus subject to disclosure under the Public Records Act, and should also be retained accordingly. This applies to social media posts made by a public entity, including posts by public entity employees and/or officials, and may also apply to posts made by members of the public on social media pages operated by the public entity.

Depending upon the volume of social media posts a public entity produces, it may be difficult to review all posts and comments made on the public entity's social media page to determine whether any given post meets the legal definition of a public record. Additionally, there may be practical issues with

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258 *Sierra Club,* 57 Cal. 4th at 170-171; *see also* Gov't Code § 6254.9(b).

259 Gov't Code § 7929.205.

260 Gov't Code §§ 7922.710 and 7922.715.

261 Gov't Code §§ 7922.700 and 7922.705 (also defining "system of record" as "a system that serves as an original source of data within an agency").

262 See pages 138-139 of this Handbook.

263 Social media is subject to regulation under the Brown Act, pursuant to Assembly Bill 992, enacted in 2020 and effective January 1, 2021 through January 1, 2026. See Stat. 2020, c. 89, sec. 1 (A.B. 992 -- Mullin (amending Gov't Code § 54952.2).

264 Gov't Code § 7920.530.

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retaining social media records. Capturing and archiving images of social media posts may not be a sufficient retention method, because the image would not preserve metadata, subsequent comments, and other interactive features. Archiving these features can be challenging, because social media posts typically are not hosted or archived on storage systems owned by the public entity. Creating independent storage systems for all social media posts may be cost-prohibitive for public entities.

These factors can make it difficult to determine which social media posts need to be retained, and whether a public entity's retention procedures adequately capture an entire social media record. Any concerns about retaining specific social media records should be discussed with the City attorney.

(2) Federal Rule 26

In 2006, revisions to Rule 26 of the Federal Rules of Civil Procedure took effect that require parties in federal court to address the production and preservation of electronic records during the discovery phase of litigation. These rule changes did not require a local agency to alter its routine management or storage of electronic information, but does illustrate the importance of having formal written rules for retention of potentially relevant records and data when litigation occurs. It is firmly established that a duty to preserve evidence arises from the moment litigation is "reasonably anticipated."[265] Once the duty to issue a legal hold is triggered, the party "must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents."[266]

Discovery is the process by which parties involved in litigation in either state or federal courts obtain information from other parties. Under Rule 26, parties in a federal lawsuit may obtain discovery regarding any matter that is relevant to a claim or defense, so long as it is not privileged. According to Rule 26(a) what can be discovered includes "documents," "tangible things," and "electronically stored information," which is broadly defined as "any type of information that is stored electronically."

Rule 26 regulates discovery in three major ways:

a. Parties must address electronic discovery issues at the beginning of litigation, including the form in which electronic information will be

[265] *Rockman Company (USA), Inc. v. Nong Shim Company, Ltd.*, 229 F. Supp. 3d 1109, 1122 (N.D. Cal. 2017).

[266] *Zubulake v. UBS Warburg, LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004); accord *In re Napster Inc. Copyright Litig.*, 462 F. Supp. 2d 1060, 1070 (N.D. Cal. 2006).

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produced to the other party, the preservation of electronic information, and claims of privilege for electronic information;[267]

b. Parties must produce relevant information from electronic sources that are "reasonably accessible," but may not have to produce information from older or backup systems if production would impose an undue burden or cost. The requesting party can, however, overcome a showing of undue burden or cost if they can establish "good cause" for doing so;[268] and

c. Privileges are retained for documents inadvertently disclosed. Such documents may be recalled by the disclosing party. In such cases, the privilege is not waived.[269]

The discovery rule does not require a local agency to alter its routine handling of electronically stored information prior to when litigation can reasonably be anticipated. The drafters of the rules recognized that electronic information might be routinely altered, purged or overwritten as part of a system's operation. Under 2006 revisions to Rule 37, the routine purging of outdated electronic information, including the "alteration or overwriting of information…to meet the party's technical and business needs" was permissible, if it was done in accordance with other laws, such as the records retention laws in Government Code Sections 34090-34090.8. Those sections permit a city, for example, to destroy certain city records that are "no longer required" and are more than two years old if authorized by a city council resolution and the written consent of the city attorney. Records that may not be destroyed include: real property title records, court records, records required to be kept by statute, records less than two years old, and the minutes, ordinances, or resolutions of the legislative body, city board, or commissions.

In 2015, the "routine, good faith operation" language was deleted from Rule 37. The revised rule provides limited sanctions for parties who inadvertently cause electronically stored information to be lost because of their failure to take reasonable steps to preserve the information. However, the Advisory Committee Notes to Rule 37(e) point out that "the routine, good-faith operation of an electronic information system would be a relevant factor for the court to consider in evaluating whether a party failed to take reasonable steps to preserve lost information."

Once litigation can be reasonably anticipated, a local agency has a duty to preserve potentially relevant information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems in

[267] Fed. R. Civ. P. 26(f)(3)(C).
[268] Fed. R. Civ. P. 26(b)(2)(B).
[269] Fed. R. Civ. P. 26(b)(5)(B).

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order to preserve information potentially relevant to the litigation. In such cases, it must take "reasonable steps" to prevent the loss of electronically stored information. In evaluating whether a city's preservation attempts were reasonable, courts should take into account the limited staff and resources that governmental parties may have to devote to preservation efforts.[270] Note that electronically stored information lost despite a city's reasonable preservation efforts—such as through the failure of a cloud-based storage service, a malignant software attack, or accidental damage to physical hardware—will not give rise to sanctions under Rule 37.

These rules on document preservation highlight the importance of having a written document retention policy. A written policy will show what operations are routine. This will help protect a local agency from sanctions if litigation occurs and allow its attorneys to discuss its routine computer operations with the court and other parties. Such a policy should set specific limits for how long information is retained and specific procedures for the routine destruction of electronic data. The policy should also address the steps that the agency will take to preserve potentially relevant information when litigation is reasonably anticipated. These policies should be in accordance with Government Code Sections 34090-34090.8 and any other applicable laws governing the preservation of city records.

The other discovery rules further illustrate how a written policy will aid a local agency in litigation. When litigation begins in federal court, Rule 26(f) requires the parties' lawyers to confer about "any issues about disclosure, discovery, or preservation of electronically stored information." No part of electronic discovery is more important for determining the scope of the preservation obligation than the pre-scheduling conference meet and confer provided under Rule 26(f). Rule 26(f) explicitly directs the parties to discuss the form in which electronic information will be produced, how it will be preserved, and how to address claims that certain information is privileged.

The pre-scheduling conference meet and confer can be the single most important factor to reduce costs and burdens of discovery. In order for a local agency's counsel to be prepared to discuss these issues, the rules note that it is "important for counsel to become familiar with those systems before the conference." In some cases, counsel may have to identify and interview individuals with special knowledge of the agency's computer systems.

Rule 26(b) requires the parties to identify whether "reasonably accessible" electronic sources can provide all of the relevant, non-privileged, information. Parties will need to distinguish these "reasonably accessible" sources from those

[270] Fed. R. Civ. P. 37(e) Advisory Committee Note.

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that are not "reasonably accessible" because of undue burden or cost. Examples of information that might not be reasonably accessible include:

- deleted items,
- fragmented or damaged data,
- information kept on some back-up tape systems for disaster recovery purposes, and
- legacy data remaining from systems no longer in use.

Under Rule 26(a), the parties must produce all of the relevant, non-privileged information from the "reasonably accessible" sources within 14 days of the initial conference during the "initial disclosure," a requirement unique to federal court where relevant information is disclosed at the outset of the civil discovery period. Discovery from sources that a party deems not "reasonably accessible" can still occur if the requesting party can show that there is no undue burden or cost or upon a showing of "good cause."

Once discovery begins in federal court a local agency must be prepared to explain how their electronic information systems work, which systems contain information potentially relevant to the litigation, how those systems are accessed, and the costs of accessing archival or older systems. Having a written policy in place will reduce the costs and staff time associated with complying with these discovery rules. It will also aid staff in familiarizing themselves with the operations of the agency's computer data and storage systems as well as any external storage and backup systems, and in explaining these operations to agency counsel and opposing parties. Finally, having a written policy will minimize the likelihood of destroying discoverable materials and thus dramatically reduce the chance that an agency will be hit with discovery sanctions during litigation.

Taken together, these federal discovery rules make it advisable for a local agency to put in writing its procedures for managing electronic information.

In light of these rules and obligations and as a first step to forming or maintaining an already-created written policy on electronically stored information, public agencies should review their operating systems to ensure they understand how electronic information is currently stored and retained. In addition, public agencies should examine their data recovery systems and archival data to determine the type of information contained in these systems, and to understand the costs associated with retrieving such data. Agencies should also regularly review their written policies once implemented to ensure that they remain up to date as new technologies and systems replace old ones.

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(3) The California Civil Discovery Act Contains a Process for Electronic Discovery in State Court

In 2009, the California Legislature adopted federal-style procedural rules to permit the discovery of electronically stored information in state court cases pursuant to Assembly Bill ("AB") 5, following the 2006 amendments to the Federal Rules of Civil Procedure.[271] Electronically stored information is broadly defined by AB 5[272] as any information that is stored in an electronic medium, and includes emails, documents, spreadsheets and any other information stored in computers and other electronic devices.[273] These rules make the creation of the above-mentioned written policy on electronically stored information just as applicable to state court litigation as federal court litigation.

Similar to the Federal Rules, a safe harbor exists for spoliation caused by "routine, good faith operation of an electronic information system."[274] The state discovery rules specifically provide that a court shall not impose sanctions on a party for failing to provide electronically stored information that has been lost, damaged, altered or overwritten as the result of the routine, good faith operation of an electronic information system, absent exceptional circumstances.[275] Accordingly, public agencies should ensure electronically stored information is retained or deleted only in accordance with the adopted policy. Agencies should thus train employees to make sure the document retention policies are appropriately followed at all times.[276]

Further, as with federal court litigation, once state court litigation is reasonably anticipated, public agencies have a duty to stop automatic destruction processes and preserve potentially relevant electronically stored information in the format in which it currently exists, notwithstanding the normal document retention policy that might otherwise permit destruction.[277] In the event litigation is reasonably anticipated, public agencies should ensure that "litigation holds" are applied to electronically stored information potentially relevant to the litigation, so that it is not deleted, whether intentionally or by automatic computer processes. The retention of information that may be potentially relevant to

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[271] AB 5, Stat. 2009, c. 5 (amending Code of Civ. Proc. §§ 2016.020, 2031.010 through 2031.060, and 2031.210 through 2031.320, and adding Code of Civ. Proc. §§ 1985.8 and 2031.285).

[272] *See* Code of Civ. Proc. §§ 1985.8, 2016.020, and 2031.010 et seq.

[273] Code of Civ. Proc. § 2016.020(e).

[274] Code of Civ. Proc. § 2031.320(d).

[275] Code of Civ. Proc. § 2031.060(i)(1).

[276] Code of Civ. Proc. § 2031.060(i)(2).

[277] *Coca-Cola Bottling Co. v. Superior Court (Jones)*, 233 Cal. App. 3d 1273, 1293 n. 10 (4 Dist. 1991) (party litigant has a duty not to lose or destroy relevant evidence).

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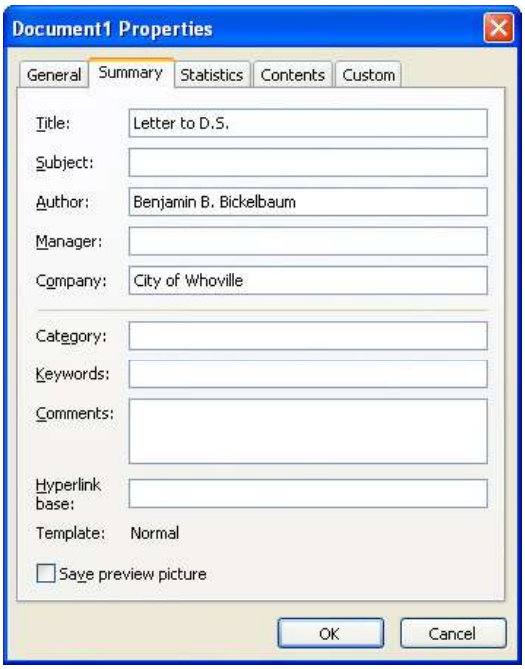
anticipated litigation should also be a part of the agency's written policy on electronically stored information.

In light of a 2017 California Supreme Court decision outlining the broad scope of discovery, agencies are advised to consult legal counsel in determining the breadth of a litigation hold. Documents and information that the agency believes to be protected under a right to privacy argument should still be preserved, if even potentially relevant to the litigation. In *Williams v. Superior Court*, the Court stated that "the right to discovery in this state is a broad one, to be construed liberally so that parties may ascertain the strength of their case and at trial the truth may be determined."[278] The Court determined that the defendant in *Williams* was obligated to disclose the personal information of individuals who may have had no bearing on or relation to the claims asserted by the plaintiff. It further stated that the party opposing discovery has the burden of showing that a privacy right exists that outweighs the potential relevance of the information requested. The same burden applies when the party opposing discovery argues undue hardship. In both instances, the burden is a high one. Agencies should therefore be mindful that they may have to produce a broader scope and larger volume of documents and electronically stored information than was required in prior years, and accordingly should, in consultation with counsel, broaden the scope of their document retention policy and litigation holds.

When instituting a legal hold, or responding to discovery requests in litigation, attorneys and clients must work together to understand how and where electronic documents, records (including social media posts), and emails are maintained and to determine how best to locate, review, and retain responsive documents.



B. Metadata

Word processing documents most readily fit the definition of "record," and they also present the greatest potential for inadvertent disclosures. A modern word processing document is comprised of far more than simple words on a page. Microsoft Word documents typically contain information about the author or editor, the author's organization, the time the document was created, modified or accessed, the amount of time spent editing the document, and even what earlier versions of the document looked like. This

[278] *Williams v. Superior Court (Marshalls of CA, LLC)*, 3 Cal. 5th 531, 538 (2017).

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"metadata," which literally means data about data, is automatically attached to documents by modern word processors. For instance, some metadata appears in Microsoft Word under the "Home" menu, by selecting "Properties."

Although metadata can be useful information, it can also result in unwanted disclosures. For instance, as the dialog box above shows, Microsoft Word automatically inserts the name and company of the author of the document, and there are numerous other fields that can be filled in. If a local agency does not want this sort of information disclosed as a general rule, the word processor should be configured to not record this information.

More significantly, many word processors have a "tracked changes" function. When public officials and employees work with multiple drafts of a document, especially when multiple people work on the same document, they frequently make use of a feature that highlights every change made to the document. That way, when a party to a proposed contract wants to delete a provision or insert a line, it is easy for the other party to see the change. It is simple to turn this feature on and off, but it is also simple to turn the display of tracked changes on and off, while still having the word processor keep track of the changes. As a result, it is not uncommon for documents to be transmitted electronically with changes tracked, without the knowledge of the author. If the author deleted a paragraph, the person reviewing the tracked changes could restore that paragraph. The implications become particularly significant if the author had deleted the text because it was deemed inaccurate or sensitive.

Moreover, recall that drafts are only nondisclosable if it is the public agency's policy to not retain them in the course of business. If a city routinely saves documents with changes tracked, then arguably it has preserved the earlier drafts of the document. This could thwart a city's policy to avoid preserving drafts. Consequently, it should be common practice to remove any tracking from a document upon finalization, or better yet, to not use tracking in the first place.

Similarly, most word processors have an "undo" button, which is useful for correcting typos or to recover inadvertently deleted text. Many word processors can "undo" a string of actions, and can even "undo" actions repeatedly until the document is a blank page. If a city official sends that document to someone making a public records request, the individual could click on "undo" repeatedly to see every step that the author took in drafting the document. This presents the same problems as with "tracked changes" – sensitive or inaccurate information that the author meant to delete could be included in the metadata. Accordingly, in using word processors, public agencies should ensure that they are configured to eliminate the "undo" trail when a document is saved.

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In addition to all of the above strategies, there are several programs available that can remove metadata after a document has been completed, or at the time it is emailed. However, the use of such programs on documents that are subject to a public records request would be of questionable legality. Under the Public Records Act, a request for a public document must include the exact document, and on the face of it, stripping metadata from a document that is requested in electronic form potentially would violate this requirement.[279] Depending on your document retention schedule, you may be able to strip metadata from some older documents upon archiving them, but deleting metadata from documents that the city is required to retain may violate document retention requirements.

If the requester does not expressly ask that the document be provided in electronic format, the statute does not prohibit the agency from supplying it in printed form. Accordingly, a local agency may wish to adopt a policy of providing electronic records in printed form unless a requester expressly asks for an electronic version, and providing records in .pdf format when requesters ask for electronic versions. If the requester expressly asks for the original document format, the City attorney should be consulted.

It is unclear how the new federal electronic document discovery rules would apply to metadata. Rule 26 does not specifically address metadata, but the comment to the revision mentions metadata and states that "[w]hether this information should be produced may be among the topics discussed in the Rule 26(f) conference." Consequently, there is the potential for the disclosure of metadata in litigation, which further highlights the importance of establishing standard practices for creating and handling metadata. During litigation, it is often advisable to maintain sources of electronically stored information in native formats with metadata, to preserve the ability to produce the data if necessary.

III. CITY WEBSITES

With the rapid integration of the internet into American culture, a significant percentage of California cities now provide at least basic information about their government on city-run websites. Posting certain commonly requested information on a web page is a way to reduce the staff time necessary to respond to public records requests. City websites also provide a method to increase public participation in local government, such as more recent requirements for posting of public meeting agendas electronically. However, city website practices may have legal ramifications, and it is advisable for a city to draft and implement a policy on the permitted uses of its website to avoid violating legal restrictions such

[279] *See* Gov't Code § 7922.530(a) ("Upon request, an *exact* copy shall be provided unless impracticable to do so."); *Rosenthal v. Hansen*, 34 Cal. App. 3d 754 (3 Dist. 1973).

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as those related to mass mailings and use of public funds for "express advocacy," and also to avoid creating a "public forum."

A. Websites and the "Mass Mailing" Prohibitions

The Political Reform Act prohibits the sending of newsletters and other so-called "mass mailings" at public expense.[280] A "mass mailing" is defined as the mailing or distribution at public expense of 200 or more items within a calendar month featuring the name, office, photograph or other reference to an elected officer of the agency.[281] The underlying intent is to preclude elected officials from using newsletters as indirect campaign flyers for themselves.

In brief, Section 89002 of the Government Code provides a four-prong test to determine the legality of mass mailings. A mass mailing is prohibited if each of the following elements is present:

a. a delivery of a tangible item,

b. that "features" or includes reference to, an elected official,

c. distributed at public expense regardless of the cost, or produced at public expense where the cost of production exceeds $50.00, or

d. in a quantity of 200 or more per calendar month.[282]

On the face of it, the regulation would not apply to web pages, because they would not constitute "a delivery of a tangible item."

The FPPC, which interprets the Political Reform Act, has yet to render an official opinion on the applicability of the mass mailing rule to websites. However, numerous advice letters issued by the FPPC have concluded that the prohibitions on publicly funded mass mailings contained in Government Code Sections 89001 and 89002 do not apply to websites or web pages because they do not constitute a tangible item.

In 1998, the FPPC responded to an inquiry as to whether a committee, advocating the passage of a bond measure expected to be placed on the ballot by a school board, may obtain a link from a "school district website to a web page" advocating the passage of the bond measure. The FPPC advised that,

> According to [former] Regulation 18901(a)(1) [now Section 89002 of the Government Code], a publicly-funded mailing is a prohibited

[280] Gov't Code § 89001.

[281] Gov't Code § 89002(a).

[282] *Id.*

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> mass mailing if it is delivered as a tangible item to the recipient at his or her residence, place of employment or business, or post office box. Consistent with [former] Regulation 18901, the ban is applicable to tangible items only. Since distribution over the Internet is not a distribution of a tangible item, Internet pages are not prohibited mass mailings under the [Political Reform] Act.[283]

Even though providing a link to an express advocacy website may not qualify as a "mass mailing," it could violate other laws, as will be discussed below in Section B.

A second advice letter similarly concluded that web pages are not covered under the mass mailing prohibitions of the Political Reform Act. That advice letter was issued by the FPPC in 1999 in response to a request for advice by the County of Lake. The inquiry was whether the County could include on its web page photographs and a short biography for each member serving on its board of supervisors.[284] The FPPC letter reiterated that former FPPC Regulation 18901 did not apply to the actions listed above because "web pages are not considered tangible items" and not subject to mass mailing restrictions.[285]

Since those advice letters were issued, the FPPC has continued to reaffirm its conclusion that distribution of information over the Internet, including websites, is not distribution of tangible items. In 2013, a city attorney requested advice regarding whether the mass mailing provisions prohibit City staff from listing the mayor's bed and breakfast business on the city's website along with other places of lodging in the city. The FPPC advised that the mass mailing provision does not prohibit the listing of the mayor's business on the city's website because providing information over the Internet is not distribution of a tangible item.[286] The FPPC also recommended a review of laws pertaining to use of public resources.[287] In 2019, the FPPC issued an informal advice letter concluding that the mass mailing prohibition does not apply to "tag" members of the Fountain Valley City Council on the City's Facebook page because the mass mailing provision does not apply to distribution over the Internet, this includes Facebook.[288]

Given the foregoing, city web pages provide a unique opportunity for elected officials to communicate with their constituents. Council members could each maintain their own page on the website, drawing attention to issues of interest to

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[283] *Foote Advice Letter*, No. A-98-114, 1998 WL 289895 (1998) (citation omitted).

[284] *Peterson Advice Letter,* No. A-99-013, 1999 WL 100857 (1999).

[285] *Id*.

[286] *Pierik Advice Letter*, No. A-13-012 (2013).

[287] *Id*.

[288] *Burns Informal Assistance*, No. I-19-145, 2019 WL 6458461 (2019). The FPPC cautioned, however, that Facebook "tagging" should also be analyzed to make sure that it did not result in a contribution under the Political Reform Act.

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the community. There are, however, some limitations on what the web pages can contain, as discussed below.

B. Avoiding Express Advocacy

Although websites and web pages are not currently covered under the mass mailing restrictions of FPPC Regulation Section 18901, public agencies must still be mindful of other regulations and laws that might be violated by its decisions to permit links from official websites. For example, the Political Reform Act prohibits the use of public moneys for election campaigns.[289] Consequently, a city's web page must not indicate support or approval of, or advocate for, a candidate for elective office or a ballot measure.

The leading California case setting forth the basic rule with respect to government involvement in political campaigns is *Stanson v. Mott*.[290] In *Stanson*, the California Supreme Court addressed the question of whether the State Director of Beaches and Parks was authorized to expend public funds in support of certain state bond measures for the enhancement of state and local recreational facilities. The court concluded that the Director of Beaches and Parks lacked such authority and set forth the basic rule that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign."[291] Only impartial "informational" communications would be permissible, such as a fair presentation of the facts in response to a citizen's request for information.[292]

The *Stanson* Court also recognized that the line between improper "campaign" expenditures and proper "informational" activities is not always clear. "[T]he determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case."[293] The California legislature also codified the holding of *Stanson* in Government Code Section 54964.[294]

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[289] Gov't Code § 85300. See also *Howard Jarvis Taxpayer Assn. v. Newsom*, 39 Cal. App. 5th 158, 161-162 (3 Dist. 2019) (invalidating limited exception to this prohibition).

[290] *Stanson v. Mott*, 17 Cal. 3d 206 (1976).

[291] *Id.* at 209-10.

[292] *Id.* at 221.

[293] *Id.* at 222 (citations omitted).

[294] Government Code Section 54964 prohibits the expenditure of public funds "to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters." The statute does not prohibit expenditures to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency, if the informational activities are not otherwise prohibited by the Constitution or state law and the information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

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The *Stanson* test was reaffirmed by the California Supreme Court in *Vargas v. City of Salinas*.[295] Prior to *Vargas*, courts attempting to interpret and apply *Stanson* used varying tests to determine the permissibility of expenditures. For example, in *California Common Cause v. Duffy*, an appellate court held that a local sheriff's use of public facilities and personnel to distribute postcards critical of then-Supreme Court Justice Rose Bird was "political" and not "informational" as permitted by *Stanson* because the cards presented only one side of Justice Bird's fitness to be retained in office.[296] In another appellate decision, *Schroeder v. City Council of Irvine*, Irvine's "Vote 2000" Program was upheld.[297] The program encouraged voter registration, without specifically advocating a particular position on any measure. Although the city had taken a public position in favor of the proposed ballot measure, the materials it distributed did not advocate any particular vote on the measure and rarely mentioned the measure at all. The *Schroeder* court held that the funds spent on the Vote 2000 program would be political expenditures and unlawful under *Stanson* only if the communications expressly advocated, or taken as a whole unambiguously urged, the passage or defeat of the measure.[298] Because the city presented a neutral position on "Measure F," at least in the campaign materials, the court upheld the program as valid.

However, in *Vargas v. City of Salinas*, the California Supreme Court decided that "express advocacy" is an insufficient standard. In *Vargas*, proponents of a local ballot initiative to repeal the city's utility users tax ("Measure O") sued the city alleging improper government expenditures. The court held that even if a communication does not expressly advocate for either side of an issue, a *Stanson* analysis must nonetheless be conducted to determine whether the activity was for informational or campaigning purposes based on its style, tenor, and timing.[299] Although the court did not specifically refer to the *Schroeder* analysis in its opinion, the court clearly stated that the "express advocacy" standard does not meaningfully address potential constitutional problems arising from the use of public funds for campaign activities that were identified in *Stanson*. Thus, local governments must look to *Vargas* rather than *Schroeder* for the proper standard to evaluate whether an expenditure is permissible.

A variety of factors led to the *Vargas* court's conclusion that the communications were informational, including the fact that the publications avoided argumentative or inflammatory rhetoric and did not urge citizens to vote in a particular manner. The challenged expenditures were made pursuant to general appropriations in the city's regular annual budget pertaining to the maintenance

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[295] *Vargas v. City of Salinas,* 46 Cal. 4th 1 (2009).

[296] *California Common Cause v. Duffy*, 200 Cal. App. 3d 730, 746-747 (4 Dist. 1987).

[297] *Schroeder v. City Council of Irvine*, 97 Cal. App. 4th 174, 187-188 (4 Dist. 2002).

[298] *Id.*

[299] *Vargas*, 46 Cal. 4th at 8.

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of the city's website, the publication of the city's regular quarterly newsletter, and the ordinary provision of information to the public regarding the city's operations. The Supreme Court found that the city engaged in informational rather than campaign activity when it posted on the city's website the minutes of city council meetings relating to the council's action along with reports prepared by various municipal departments and presented by officials at city council meetings.[300] Similarly, the city did not engage in campaign activity by producing a one-page document listing the program reductions that the city council voted to implement should Measure O be approved, or in making copies of the document available to the public at the city clerk's office and public libraries.[301] The court reasoned that viewed from the perspective of an objective observer, the document clearly constituted an informational statement that merely advised the public of specific plans that the city council voted to implement should Measure O be approved.

Finally, the court found that the city engaged in permissible informational activity by mailing to city residents the fall 2002 "City Round-Up" newsletter containing articles describing proposed reductions in city services. Although under some circumstances the mailing of material relating to a ballot measure to a large number of voters shortly before an upcoming election would constitute campaign activity, a number of factors supported the court's conclusion that the mailing of the newsletter constituted informational rather than campaign activity: it was a regular edition of the newsletter that was mailed to all city residents as a general practice, the style and tenor of the publication was entirely consistent with an ordinary municipal newsletter and readily distinguishable from traditional campaign material, and the article provided residents with important information about the tax in an objective and nonpartisan manner.[302]

The Supreme Court illustrated the insufficiency of the "express advocacy" standard by suggesting that if the City of Salinas were to post billboards throughout the City prior to an election stating, "'IF MEASURE O IS APPROVED, SIX RECREATION CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE,' it would defy common sense to suggest that the City had not engaged in campaign activity even though such advertisements would not have violated the express advocacy standard."[303]

Vargas and *Stanson* reflect that local agencies must exercise caution when communicating to voters about local measures. The same prohibitions on the use

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[300] *Id.* at 37.

[301] *Id.* at 37-38 (stating, "not only [did] the document in question not advocate or recommend how the electorate should vote on the ballot measure, but its style and tenor [was] not at all comparable to traditional campaign material"). The fact that the City only made the document available at the City clerk's office and in public libraries to people who sought it out reinforced the document's informational nature.

[302] *Id.* at 38.

[303] *Id.* at 32.

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of public moneys to support or oppose a ballot measure or a candidate for political office would likely also apply to public agency websites. This is because the time and expense of maintaining a website and adding links to other websites may result in a form of "in kind" contribution from the public agency to the particular candidate or campaign committee. "Professional services, including the creation and maintenance of a website for a candidate, could conceivably result in a contribution from the county to the candidate."[304]

Public officials must ensure that there is no inclusion of information or links on their websites that contain words of express advocacy or that unambiguously promote or suggest a particular position in a campaign. Public officials must also avoid any actions which, based on their "style, tenor and timing", may lead to a determination that a city website contains impermissible advocacy. Unfortunately, there is no hard and fast rule to assist public officials in distinguishing improper partisan campaign expenditures from permissible expenditures for "informational activities." Whether a communication is permissible will be based on a combination of these factors, and public officials should therefore seek the advice of the city attorney on a case-by-case basis. Assistance may also be obtained from the FPPC.

Note also that public officials could potentially face personal liability if a court concluded that they used public funds for a partisan campaign. The *Stanson* opinion concluded that public officials "may properly be held to a higher standard than simply the avoidance of 'fraud, corruption or actual malice' in their handling of public funds."[305] Instead, public officials must exercise "'due care,' i.e., reasonable diligence, in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of such due care."[306] If public officials published a web page that conveyed a partisan slant, a court could conclude that the officials failed to exercise this due care.

C. Public Forum

In addition to the mass mailing and express advocacy considerations, the existence of city websites also raises the issue of whether a website constitutes a "public forum" in which any member of the public would have a right to post information or links, or engage in debate or discourse. The decisions of public agencies on what sort of content to include on web pages, whether to allow external links to be posted, and what type of links to permit, have the potential to infringe upon rights guaranteed by the First Amendment of the United States

[304] *Peterson Advice Letter,* No. A-99-013, 1999 WL 100857 (1999).
[305] *Stanson*, 17 Cal. 3d at 226.
[306] *Id.* at 226-27.

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Constitution, the California Constitution's "Liberty of Speech Clause," and other legal principles.

In relevant part, the First Amendment provides that, "Congress shall make no law … abridging the freedom of speech."[307] Similarly, the "Liberty of Speech Clause" provides that, "A law may not restrain or abridge liberty of speech or press."[308]

The United States Supreme Court uses the "public forum" doctrine to evaluate the constitutionality of government regulation of private speech on public property. This doctrine classifies public property according to three categories of public forum status: (i) traditional public forums - areas traditionally used for expressive activity such as streets, sidewalks and parks; (ii) designated public forums - areas dedicated by the government for expressive activity, either generally or for limited purposes; and (iii) nonpublic forums.

"Public forum" status directly impacts the degree to which a public agency may regulate private expression on public property. For example, if a public agency's website were deemed a "nonpublic forum," then the agency would have considerable discretion in determining which applications for website links to accept. By contrast, if a public agency's website was deemed a "traditional public forum" or a "designated public forum," then the agency's discretion would be substantially diminished.

Two cases addressing whether city websites constitute public forums are discussed below.

(1) Putnam Pit, Inc. v. City of Cookeville

The case of *Putnam Pit, Inc. v. City of Cookeville* provides an example of how the First Amendment may limit a public agency's authority to control external links on its website. *Putnam Pit* is a federal case discussing the validity of a website link policy under the First Amendment.[309] This case involved a free speech claim by a small, free website newspaper publisher, against the City of Cookeville, Tennessee.

The case arose from Cookeville's refusal to establish a link from its website to the website of the publisher's on-line newspaper, the "*Putnam Pit*." The "*Putnam Pit*" website focused on commentary critical of the City of Cookeville and its officials and staff. At the time that the publisher initially requested and was denied the link, "several for-profit and non-profit entities were linked to the . . . [Cookeville]

[307] U.S. CONST. amend I.

[308] CAL. CONST. art. 1, § 2(a).

[309] *Putnam Pit, Inc. v. City of Cookeville*, 221 F.3d 834 (6th Cir. 2000).

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Web site, including a local technical college, two Internet service providers, a law firm, a local computer club, a truck product manufacturer and distributor, and a site with information about Cookeville."[310] However, prior to the publisher's request, Cookeville "had no stated policy" on who could be linked to the city's website.[311] Upon learning of the publisher's request, the city manager decided to permit links only "from the Cookeville Website to other sites, which would promote the economic welfare, tourism, and industry of the city."[312] Pursuant to this policy, the city manager subsequently denied the publisher's request for a link from the Cookeville website to the "*Putnam Pit*" website and then removed several links to other websites from the Cookeville website.[313]

The Sixth Circuit Court of Appeals ruled that based on the facts presented, the city's website was a nonpublic forum under the First Amendment, and that the city could impose reasonable restrictions but could not engage in viewpoint discrimination.[314] The court also ruled the publisher was entitled to a trial regarding whether Cookeville discriminated against him based upon viewpoint when the city manager denied him a link on the website. Facts that could potentially constitute viewpoint discrimination included statements by the city manager that he thought the "*Putnam Pit*" consisted only of the publisher's "opinions," "which he didn't care for" and actions by the city manager who indicated to the publisher that he would not be permitted a link even if the "*Putnam Pit*" were a non-profit entity.[315]

(2) Vargas v. City of Salinas

In *Vargas v. City of Salinas*, the California Supreme Court also considered whether a city website constituted a public forum.[316] In *Vargas*, city residents placed an initiative on the ballot to repeal the city's long-standing utility users tax. The city staff prepared a series of reports addressing the impact the loss of the tax would have on the city's budget, including the reduction and elimination of services and programs, and posted those reports on the city's web page. The initiative supporters contended that they had a right to provide their own information on the web page, which the city rejected.

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[310] *Id.* at 841.

[311] *Id.*

[312] *Id.*

[313] *Id.*

[314] *Id.* at 843-845.

[315] The court further concluded that, "[t]he city's actions, some of which appear to be tied to the city's interests, and others which appear less clearly relevant to the purpose of the city's Web site, lead us to REVERSE the district court's grant of summary judgment because [the publisher] has raised a material issue of fact regarding whether the city discriminated against him and his Web site based upon viewpoint." *Putnam Pit, Inc.,* 221 F.3d at 846.

[316] *Vargas*, 46 Cal. 4th at 37, n.18.

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The Supreme Court concluded that the city's web page was not a public forum because the city had not opened its website to permit others to post material of their choice.[317]

D. Public Forum Analysis

The *Putnam Pit* and *Vargas* courts applied the public forum analysis of the First Amendment to the city's action with respect to the website, treating the website as analogous to physical public property. As previously mentioned, the United States Supreme Court has established that, for such analyses, the extent of permissible government restrictions on expressive activity are governed by whether the activity occurs in (i) a traditional public forum; (ii) a designated public forum; or (iii) a nonpublic forum.[318]

(1) Traditional public forum

Traditional public forums are "places which by long tradition or by government fiat have been devoted to assembly and debate." Typically such places have included public streets, sidewalks and parks.[319] Government regulations that restrict the "content" of expressive activity in such forums "must withstand strict scrutiny."[320] This means that if the government wishes to restrict expressive activity based on content, such restrictions must serve a "compelling state interest" and must be "narrowly tailored" to serve that interest. However, if the government imposes content-neutral restrictions on the "time, place and manner" of expressive activity in public forums, then such restrictions must serve a "significant public interest," must be "narrowly tailored" to that interest and must leave open "alternative avenues of communication."[321]

(2) Designated public forum

The Supreme Court has held that "[i]n a designated public forum, the government 'intentionally opens a nontraditional public forum for public discourse.'"[322] An example of a designated public forum is the public comment session at a city council meeting. In a designated public forum, the government may restrict the content of the expressive activity to that which is within the scope of the public

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[317] *Id.*

[318] *Perry Ed. Ass'n v. Perry Local Ed. Ass'n,* 460 U.S. 37, 45-46 (1983).

[319] *Putnam Pit, Inc.,* 221 F.3d at 842 (citing *Perry*, 460 U.S. at 45).

[320] *Id.* at 843.

[321] *Id.* (citing *Perry*, 460 U.S. at 45).

[322] *Id*. (citing *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc*., 473 U.S. 788, 802 (1985)).

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forum. For example, in the case of a city council meeting, the government may restrict speech to only permit discussion of city business.[323]

Once the government opens a nontraditional public forum to a class of persons, the restrictions applicable to those to whom the forum is opened must also withstand strict scrutiny. Thus, as in the case of public forums, regulations governing designated speakers in designated public forums must serve a "compelling state interest" and must be "narrowly tailored" to serve that interest.[324] Accordingly, it is important for a city to avoid creating a designated public forum on its website so as not to establish rights where none previously existed, or at least to have a clear policy on who may post on the city's website.

(3) Nonpublic forum

Nonpublic forums are those places that are not typically used for public debate or the free exchange of ideas. Accordingly, "the First Amendment does not forbid a viewpoint-neutral exclusion of speakers who would disrupt a nonpublic forum and hinder its effectiveness for its intended purpose."[325]

Examples of nonpublic forums include highway rest areas and advertising on a municipal bus.[326] In a nonpublic forum government may prohibit speech or expressive activity, so long as such restrictions are reasonable in light of the government's interest and do not attempt to suppress the speaker's activity based on disagreement with the speaker's views.[327]

(4) Public entity websites as nonpublic forums

The Sixth Circuit Court of Appeals in *Putnam Pit* concluded that the City of Cookeville's website was a "nonpublic" forum under the First Amendment because the website was not open to the public, and before and after the city adopted a website link policy, links had been established on an individualized basis.[328] This determination is significant because a government entity, as previously discussed, has more discretion to regulate public expression in a nonpublic forum than it does in a "traditional public forum" (such as a park) or in a "designated public forum" (a place expressly opened for free speech by the public). The court also emphasized that the city had legitimate interests "in

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[323] *See White v. City of Norwalk*, 900 F. 2d 1421, 1425 (9th Cir. 1990) (concluding that city councils have authority to limit speech through the imposition of agendas and rules of order and decorum).

[324] *Perry*, 460 U.S. at 46.

[325] *Putnam Pit,* 221 F. 3d at 845 (quoting *Cornelius,* 473 U.S. at 811).

[326] *Jacobson v. Bonine*, 123 F. 3d 1272, 1274 (9th Cir. 1997); *Children of the Rosary v. City of Phoenix*, 154 F. 3d 972, 978 (9th Cir. 1998).

[327] *Perry,* 460 U.S. at 46.

[328] *Putnam Pit, Inc.,* 221 F.3d at 844.

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keeping links that are consistent with the purpose of the site—providing information about city services, attractions and officials."[329]

Despite the fact that the court in *Putnam Pit* determined that the city's website was a nonpublic forum, giving the city broad discretion to limit access to its website links, the court stated that the city could not deny links "solely based on the controversial views" the publisher espouses.[330] The court concluded that the city's "requirement that websites eligible to be linked to the city's site promote the city's tourism, industry and economic welfare gives broad discretion to city officials, raising the possibility of discriminatory application of the policy based on viewpoint."[331] Accordingly, the court remanded the case to the district court for further proceedings on the issue of whether the city improperly exercised its authority to restrict access to links on its website in a discriminatory manner in violation of the publisher's First Amendment rights.

The *Vargas* court also concluded that the city's website was a nonpublic forum, and the city could exclude the initiative proponents from posting information on the site.[332] In contrast to *Putnam Pit*, in *Vargas* the city did not permit access to the web page by either proponents or opponents of the ballot initiative.[333]

Limiting use of a city website only to city-related activities may result in a court finding that the public forum analysis is not appropriate under the facts, and that the issue should be evaluated instead under the doctrine of governmental speech.[334] The U.S. Supreme Court has ruled that the Free Speech clause does not apply to government speech, because the Free Speech Clause restricts government regulation of private speech and does not regulate government speech.[335] Under the government speech doctrine, the government has the right to speak for itself and a government entity may exercise this same freedom to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message.[336]

In *Sutliffe v. Epping School District*, an advocacy group challenged the Town of Epping after the town refused to include the group's hyperlink on the town's website.[337] The group wanted to present opinions countering the town's budget proposals regarding town and school activities. The group contended its hyperlink should have been allowed because the town had included a hyperlink

[329] *Id.* at 845.
[330] *Id.*
[331] *Id.* at 845-46 (citations omitted).
[332] *Vargas*, 46 Cal. 4th at 37 n.18.
[333] *See Id.*
[334] *Pleasant Grove City v. Summum,* 555 U.S. 460, 467 (2009).
[335] *Id.*
[336] *Id*. at 468.
[337] *Sutliffe v. Epping School District*, 584 F.3d 314, 333 (1st Cir. 2009).

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to a one-day event put on by "SUE", which was part of a state university-sponsored program and was to be held among town residents to foster community spirit, civic discourse, and the organization of community-defined projects and action groups. By unwritten practice, the town had previously allowed only hyperlinks that would promote providing information about the town, and did not permit links that were political or advocated for certain candidates. A written policy established after the group's request limited hyperlinks to those for governmental agencies or events and programs coordinated or sponsored by the town.

The federal appeals court ruled in *Sutliffe* that a government entity has the right to express itself on means of communication that the government owned. The town engaged in government speech because the town created the website and selected which hyperlinks to place on its website to convey information about the town to its citizens and the outside world and, by choosing only certain hyperlinks to place on that website, communicated an important message about itself.[338] Hyperlinks were added only with approval by the Board of Selectmen. The court also rejected the group's claim that the town engaged in viewpoint discrimination, because the SUE event was a town-sponsored and financially-supported event, and nonpartisan.[339] The court also concluded that a public forum analysis did not apply under the facts, because the town's website is not a traditional public forum, and the website was not a designated public forum because there was no evidence that the town intentionally opened a nontraditional public forum for public discourse.[340]

Accordingly, in drafting and administering website link policies, a public agency should be mindful that "nonpublic forum status does not mean that the government can restrict speech in whatever way it likes."[341] A public agency may not deny requests to post information and links simply because they do not agree with a requesting party's views or the views espoused on the requesting party's website, but an across-the-board policy that does not discriminate on the basis of viewpoint should withstand judicial scrutiny. Reserving the website only for the public agency's activities and purposes may also help the public agency demonstrate that it is engaging in government speech, and has not created a public forum.

E. Chat Rooms, Forums, and Social Media

Note that the conclusion would have likely been different in *Vargas* if the website had contained a chat room, or other technology promoting open public

[338] *Id*. at 331.

[339] *Id*. at 331-332.

[340] *Id*. at 333-334.

[341] *Putnam Pit Inc.*, 221 F.3d at 846 (citations omitted).

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discussion. The term "chat room" generally refers to an area of a website that allows for a real-time interactive discussion between whoever wishes to participate, with every participant seeing what every other participant types in. Chat rooms allow visitors to access web pages to state their views on a topic of discussion, and in unmoderated chat rooms, to say anything about any subject. Many popular social media services, including Facebook, Twitter, and Instagram, include a system of public comment threads that similarly promote public discussion.

In *Vargas*, the California Supreme Court did not address chat rooms or social media services. However, in the prior appellate court decision, which was superseded on other grounds by the California Supreme Court, the appellate court had little trouble concluding that a chat room on a city web page would constitute a public forum:

> As noted above, "electronic communication media may constitute public forums. Websites that are accessible free of charge to any member of the public where members of the public may read the views and information posted, and post their own opinions, meet the definition of a public forum . . . ."[342]

Ampex Corp. v. Cargle and *ComputerXpress, Inc. v. Jackson*, were "anti-SLAPP" motions brought by defendants in defamation and libel actions, which are motions to strike a "Strategic Lawsuit Against Public Participation." In order to have a viable anti-SLAPP motion, the statements at issue must be made in a public forum, and both opinions concluded that chat rooms on the websites were public forums.

The federal courts increasingly hold that chat rooms and other forms of social media may constitute public forums. In 2017, the U.S. Supreme Court described cyberspace, and social media, as follows: "While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general [citation omitted], and social media in particular."[343]

In a 2022 decision, *Garnier v. O'Connor-Ratcliff*, the Ninth Circuit Court of Appeals ruled that Facebook and Twitter pages set up by two members of a local school

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[342] *Vargas v. City of Salinas*, 37 Cal. Rptr. 3d 506, 527 (2005) (citing *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1576 (1 Dist. 2005); *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1006-07 (4 Dist. 2001)).

[343] See *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735–36 (2017) (Supreme Court ruled that a North Carolina statute prohibiting sex offenders from accessing social networking websites violated the First Amendment because even assuming that the statute was content neutral, the statute could not survive intermediate scrutiny because it was not narrowly tailored to serve a significant governmental interest).

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board violated two parents' First Amendment rights by deleting their comments and then eventually blocking the parents from their social media pages entirely.[344]

As reflected in the circuit court's recitation of the facts, the two trustees created public Facebook and Twitter pages to promote their re-election campaigns.[345] The trustees were eventually elected to the school board, but continued to use their social media pages to publicize information about the school board and its board of trustees. The plaintiff parents frequently posted comments critical of the board of trustees, including 226 identical replies within a 10-minute period, which the trustees repeatedly deleted or hid. The trustees eventually blocked the parents entirely from their social media pages.

The Ninth Circuit concluded that the trustees' social media pages were designated public fora because initially they were "open and available to the public without any restriction on the form or content of comments."[346] Further, the trustees would solicit feedback from their constituents and responded to posts left in their comment sections.[347] The trustees violated the parents' First Amendment rights by blocking only them from the social media pages when the parents' critical posts had not actually disrupted the comment sections.[348] Reasonable rules of etiquette addressing repetitive or lengthy posts could have addressed the trustees' purported concerns.[349]

A similar conclusion would likely result when evaluating a "forum" or "message board" on a city web page, which are similar to chat rooms but do not occur in real-time; instead, people post messages one at a time that are typically grouped by topic and preserved on the web page in chronological order, for anyone to read. As their names suggests, a "forum" or "message board" on a city web page would potentially constitute a "public forum."

F. Accessibility Requirements

One other concern in designing a local agency's website is whether it is accessible to individuals with disabilities. Under the Americans with Disabilities Act (the "ADA"), local governments must ensure that they provide qualified

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[344] *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158 (9th Cir. 2022). See also *Knight First Amendment Institute v. Trump*, 928 F. 3d 226, 237-238 (2nd. Cir. 2019), cert. granted, judgment vacated by *Biden v. Knight First Amendment Institute At Columbia University*, 141 S.Ct. 1220, (Apr. 05, 2021); dismissed as moot, 2021 WL 5548367 (2nd Cir., May 26, 2021). In the vacated opinion, the Second Circuit previously held that President Trump unconstitutionally excluded individuals from a public forum by blocking individual users who criticized him or his policies from his Twitter account, thus preventing them from "viewing, retweeting, replying to, and liking his tweets".

[345] *Id.* at 1163.

[346] *Id.* at 1178.

[347] *Id.*

[348] *Id.* at 1181.

[349] *Id.* at 1182.

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individuals with disabilities equal access to their programs and services, including by making reasonable modifications to rules, policies, or practices; removing architectural, communication, or transportation barriers; or providing auxiliary aids or services, unless doing so would fundamentally alter the nature of their programs or services or would impose an undue burden.[350] Local governments must take appropriate steps to ensure that their communications with applicants, participants, members of the public, and companions are as effective as communications with others, and furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of a government service, program or activity.[351]

Based on these requirements, the U.S. Department of Justice takes the position that state and local government websites must be designed to be accessible to individuals with disabilities. In March 2022, the U.S. Department of Justice issued guidance describing how state and local governments and businesses open to the public can make sure that their websites are accessible to people with disabilities as required by the ADA.[352] The DOJ will pursue enforcement actions, settlements and consent decrees to ensure that governmental websites are accessible.[353] In designing and maintaining an agency's web page to ensure compliance with First Amendment and Brown Act requirements, an agency should make sure it is designed for accessibility as well, in order to minimize the potential for litigation and adverse decisions.

There are currently no federal regulations addressing website accessibility requirements for state and local governments. In July 2022, the U.S. Department of Justice announced its intention to initiate the rule-making process in April 2023, with a comment period ending June 2023.[354] Pending adoption of federal standards, many state and local governments have used draft regulations issued during a prior Department of Justice rule-making process that started in 2010, but

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[350] 42 U.S.C. § 12131 et seq.

[351] 28 C.F.R. 35.160(a) and (b)(1).

[352] See U.S. Department of Justice Guidance on Guidance on Web Accessibility and the ADA (issued March 18, 2022), DOJ 22-262 (D.O.J.), 2022 WL 820126; also available at https://www.ada.gov/resources/web-guidance/.

[353] *See* U.S. Dep't of Justice, Accessibility of State and Local Government Websites to People with Disabilities (available at http://www.ada.gov/websites2.htm or https://www.ada.gov/websites2_prnt.pdf; U.S. Dep't of Justice, ADA Best Practices Tool Kit for State and Local Governments, Chapter 5, "Website Accessibility Under Title II of the ADA" (available at https://www.ada.gov/pcatoolkit/chap5toolkit.htm or https://www.ada.gov/pcatoolkit/ch3_toolkit.pdf). See *Barden v. City of Sacramento*, 292 F. 3d 1073, 1076-1077 (9th Cir. 2002) (holding that the ADA must be construed broadly to apply to normal functions of a municipal entity in order to effectively implement the ADA's fundamental purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities).

[354] The notice is available in the Department of Justice's Unified Agenda at: https://www.reginfo.gov/public/do/eAgendaViewRule?RIN=1190-AA79&pubId=202204&utm_medium=email&utm_source=govdelivery.

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was ended in 2017.[355] Those draft standards are often used by state and local governments as a guide for best practices in considering accessibility issues. In addition, even without specific technical standards applicable to local governments, there are a number of regulations and guidelines that may be used to design accessible public websites. Other federal laws may impose accessibility requirements on local government websites, depending on the circumstances. For example, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability by federal agencies and recipients of federal assistance, and consequently recipients of federal funds may need to meet federal accessibility requirements.[356] Section 508 of the Workforce Rehabilitation Act of 1973, as amended, also requires programs and activities funded by federal agencies to be accessible to people with disabilities, including federal employees and members of the public, and covers ICT developed, procured, maintained, or used by federal agencies.[357] The Telecommunications Act of 1996 requires in part that telecommunications products and services be accessible to people with disabilities.[358] Potential sources of website design standards include:

- The Federal Information and Communications Technology (ICT) Final Standards and Guidelines, set forth at 36 C.F.R. parts 1193 and 1194;[359] and

- The World Wide Web Consortium (W3C) Web Content Accessibility Guidelines.[360]

While these sources do not expressly apply to city websites, they provide various methods of ensuring that a web page is accessible, including providing text equivalents for graphics, ensuring that information conveyed with color is also available without color, and using high contrast color choices. Many state and

[355] See 75 Fed. Reg. 43460 (July 26, 2010), 2010 WL 2888003(F.R.); 81 Fed. Reg. 28658 (May 9, 2016), 2016 WL 2609932(F.R.); and 82 Fed. Reg. 60932 (December 26, 2017), 2017 WL 6555806(F.R.).

[356] 29 U.S.C. § 794.

[357] 29 U.S.C. § 794d; see 36 C.F.R. Part 1194; Appendix A to Part 1194—Section 508 of the Rehabilitation Act: Application and Scoping Requirements; Appendix C to Part 1194—Functional Performance Criteria and Technical Requirements; and Appendix D to Part 1194—Electronic and Information Technology Accessibility Standards as Originally Published on December 21, 2000.

[358] 47 U.S.C. §§ 153 and 255.

[359] 82 Fed. Reg. 5790-01 (1/18/17), 2017 WL 168818, as amended 83 Fed. Reg. 2912 (1/22/18), 2018 WL 488398. These federal regulations were enacted pursuant to Section 508 of the Workforce Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and the Telecommunications Act of 1996 (47 U.S.C. §§ 153 and 255).

[360] Available at http://www.w3.org/. The revised Section 508 standards contained in the federal regulations are based on WCAG 2.0 developed by the World Wide Web Consortium (W3C).

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local agencies have incorporated the federal requirements into the design of their information technology systems, including their websites.[361]

Providing accommodations for persons with disabilities to use public websites is not particularly onerous; in fact, the Department of Justice has stated that "implementing accessibility features is not difficult and will seldom change the layout or appearance of web pages."[362]

IV. CONCLUSIONS

The law related to electronic documents continues to evolve as computer technology advances and public officials respond and adapt to those advances. The advent of email, text messages, and other forms of social media has expanded the opportunities for collaboration greatly, but has simultaneously expanded the potential for inadvertent Brown Act violations, as well as unwanted disclosure of preliminary or sensitive information when emails and text messages must be disclosed in response to a Public Records Act request. When using email, public officials should refrain from using "reply all" to avoid serial meetings, and should be aware of the disclosure requirements of the Brown Act for documents related to items discussed at a public meeting. Public officials should also be sensitive to the risk that the Public Records Act may require disclosure of emails or text messages in which they discuss public business, and not treat them as casual conversation. While the deliberative process privilege may apply to protect some such emails or text messages, the doctrine has been applied sparingly by California courts. A clear policy regarding the deletion of emails and text messages will also help to reduce unwanted exposure, although an agency must be able to suspend its usual deletion procedures to preserve electronic records potentially relevant to state or federal litigation.

Although federal and state laws continue to develop, electronic documents and information other than emails (for example, posts on social media websites, such as Facebook[363] or Twitter,[364] that are deemed to be a public forum or otherwise relate to an agency's public business) may be subject to disclosure under the California Public Records Act, California discovery rules, and Federal Rules of Civil

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[361] In California, state websites must meet both the web accessibility standards in California Government Code §§ 7405 and 11135, which adopted the Section 508 standards and the Priority 1 and 2 level checkpoints of the Web Content Accessibility Guidelines 2.0 (WCAG 2.0 "AA" Conformance Level) developed by the World Wide Web Consortium (W3C).

[362] U.S. Dep't of Justice, Accessibility of State and Local Government Websites to People with Disabilities, http://www.ada.gov/websites2.htm.

[363] See discussion in Part III(G), above, regarding *Davison v. Randall*, 912 F. 3d 666 (county official's Facebook page deemed a public form). See also *German v. Eudaly*, 2018 WL 3212020 (D. Ore. 2018) [on facts presented, judge ruled that a city commissioner did not violate a public activist's right to petition the government when the commissioner blocked the activist from seeing the commissioner's nonofficial Facebook page and denied a public records request to see the Facebook page, but granted the activist leave to amend her complaint to show that the commissioner acted in her official capacity when using her nonofficial Facebook page].

[364] See discussion in Part III(E), fn. 350, above, regarding *One Wisconsin Now v. Kremer*, 354 F. Supp. 3d 940 (interactive portions of state legislators' Twitter accounts constituted a designated public forum under the First Amendment).

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Procedure 26(a). An agency must make electronic records available in an electronic format if requested in response to a Public Records Act request. An agency may also have to disclose electronic records in litigation and even metadata may be discoverable. Thus, it is important to avoid the automatic creation of metadata, to the extent possible. Public officials should also consult with their information technology departments to ensure that metadata is not inadvertently inserted into electronic records when they are created.

With respect to websites, caution must be taken to ensure a public agency's website does not indicate support or approval of, or promote or advocate for, a candidate for elective office. Likewise, a public agency website cannot be used to advocate for or against an initiative election. In addition to avoiding express advocacy that unambiguously suggests a particular position in a campaign, public officials must also avoid any actions which, based on their "style, tenor and timing," may lead to a determination that a public agency website contains impermissible advocacy.

The content of a website link policy, and the manner in which such a policy is implemented, are critical in a public agency's ability to regulate the information and links that will be permitted on its website. It is important that a public agency does not arbitrarily discriminate in denying requests for website links. The establishment and adherence to a specific written policy regarding website links would likely assist a public agency in avoiding the litigation challenges faced by the City of Cookeville in the *Putnam Pit* case, and should assist generally in avoiding violations of the First Amendment. A uniform policy, such as that upheld in the *Vargas* opinion, may serve as a viable defense to such challenges.

We have several recommendations for drafting website policies. First, the website link policy should contain a "statement of purpose" indicating that neither the public agency's website nor its links list are "forums" for expressive activity by the public. The following is our suggested language for that portion of the policy, for the hypothetical City of Anytown:

> "This policy governs the establishment of external links on the City of Anytown's official website. For purposes of this policy, an 'external link' is a hyperlink from the City of Anytown's website to a website maintained by another party. Neither the City of Anytown's website nor the external links listed on such website constitute a forum for expressive activity by members of the public. Rather, the purpose of the City of Anytown's website and the external links list is to provide information about officials, services, and attractions related to City of Anytown. This policy is declaratory of the City of Anytown's existing

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> administrative practice regarding the establishment of external links on its website."

Second, the website link policy should specifically designate the types of organizations that are eligible to have a link established to their website. We think eligibility may be limited to nonprofit entities (as Cookeville chose to do), but it does not have to be so restricted. We also recommend that the website specifically exclude links to sites that have as their purpose the election or defeat of specific candidates or the passage or defeat of specific ballot measures, regardless of political position. In our opinion, implementation of these suggestions will strengthen a public agency's position if it ever becomes necessary to defend a decision to deny a request for a link from a public agency's website.

Finally, the agency should ensure that its web page complies with the accessibility requirements of the ADA, such as providing text equivalents for graphics, ensuring that information conveyed with color is also available without color, and using high contrast color choices.

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PART THREE.

THE CALIFORNIA PUBLIC RECORDS ACT

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The California Public Records Act

DIVISION 10. ACCESS TO PUBLIC RECORDS

PART 1. GENERAL PROVISIONS

CHAPTER 1. Preliminary Provisions

Article 1. Short Titles

7920.000. This division shall be known and may be cited as the California Public Records Act.

7920.005. This division recodifies the provisions of former Chapter 3.5 (commencing with Section 6250) of Division 7 of this title. The act that added this division, and the act that consists of conforming revisions to reflect the addition of this division, shall be known and may be cited as the "CPRA Recodification Act of 2021."

Article 2. Effect of Recodification

7920.100. Nothing in the CPRA Recodification Act of 2021 is intended to substantively change the law relating to inspection of public records. The act is intended to be entirely nonsubstantive in effect. Every provision of this division and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.

7920.105. (a) A provision of this division, or any other provision of the CPRA Recodification Act of 2021, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.

(b) A reference in a statute to a previously existing provision that is restated and continued in this division, or in any other provision of the CPRA Recodification Act of 2021, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.

(c) A reference in a statute to a provision of this division, or any other provision of the CPRA Recodification Act of 2021, which is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.

7920.110. (a) A judicial decision interpreting a previously existing provision is relevant in interpreting any provision of this division, or any other provision of the

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CPRA Recodification Act of 2021, which restates and continues that previously existing provision.

(b) However, in enacting the CPRA Recodification Act of 2021, the Legislature has not evaluated the correctness of any judicial decision interpreting a provision affected by the act.

(c) The CPRA Recodification Act of 2021 is not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by the act.

7920.115. (a) An opinion of the Attorney General interpreting a previously existing provision is relevant in interpreting any provision of this division, or any other provision of the CPRA Recodification Act of 2021, which restates and continues that previously existing provision.

(b) However, in enacting the CPRA Recodification Act of 2021, the Legislature has not evaluated the correctness of any Attorney General opinion interpreting a provision affected by the act.

(c) The CPRA Recodification Act of 2021 is not intended to, and does not, reflect any assessment of any Attorney General opinion interpreting any provision affected by the act.

7920.120. (a) A judicial decision or Attorney General opinion on the constitutionality of a previously existing provision is relevant in determining the constitutionality of any provision of this division, or any other provision of the CPRA Recodification Act of 2021, which restates and continues that previously existing provision.

(b) However, in enacting the CPRA Recodification Act of 2021, the Legislature has not evaluated the constitutionality of any provision affected by the act, or the correctness of any judicial decision or Attorney General opinion on the constitutionality of any provision affected by the act.

(c) The CPRA Recodification Act of 2021 is not intended to, and does not, reflect any determination of the constitutionality of any provision affected by the act.

Article 3. Effect of Division

7920.200. The provisions of this division shall not be deemed in any manner to affect the status of judicial records as it existed immediately before the effective date of the provision that is continued in this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of

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discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

CHAPTER 2. Definitions

7920.500. For purposes of Article 3 (commencing with Section 7928.200) of Chapter 14 of Part 5, "elected or appointed official" includes, but is not limited to, all of the following:

(a) A state constitutional officer.

(b) A Member of the Legislature.

(c) A judge or court commissioner.

(d) A district attorney.

(e) A public defender.

(f) A member of a city council.

(g) A member of a board of supervisors.

(h) An appointee of the Governor.

(i) An appointee of the Legislature.

(j) A mayor.

(k) A city attorney.

(l) A police chief or sheriff.

(m) A public safety official.

(n) A state administrative law judge.

(o) A federal judge or federal defender.

(p) A member of the United States Congress or appointee of the President of the United States.

7920.505. (a) The following provisions are continuations of provisions that were included in former Section 6254 as that section read when it was repealed by the CPRA Recodification Act of 2021:

(1) Section 7921.500.

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(2) Sections 7923.600 to 7923.625, inclusive.

(3) Section 7923.700.

(4) Sections 7923.800 and 7923.805.

(5) Section 7924.505.

(6) Section 7925.000.

(7) Section 7925.005.

(8) Section 7925.010.

(9) Section 7926.000.

(10) Section 7926.100.

(11) Section 7926.200.

(12) Section 7926.210.

(13) Section 7926.220, except the continuation of former Section 6254.14(b).

(14) Section 7926.225, except the continuation of former Section 6254.14(b).

(15) Section 7926.230, except the continuation of former Section 6254.14(b).

(16) Section 7926.235.

(17) Section 7927.000.

(18) Section 7927.100.

(19) Section 7927.200.

(20) Section 7927.300.

(21) Section 7927.500.

(22) Section 7927.700.

(23) Section 7927.705.

(24) Section 7928.000.

(25) Section 7928.100.

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(26) Sections 7928.405 and 7928.410.

(27) Section 7928.705.

(28) Section 7929.000.

(29) Section 7929.200.

(30) Section 7929.205.

(31) Chapter 18 (commencing with Section 7929.400) of Part 5.

(32) Section 7929.605.

(b) The provisions listed in subdivision (a) may be referred to as "former Section 6254 provisions."

(c) Subdivision (a) does not include any provision that was first codified in one of the specified numerical ranges after the effective date of the CPRA Recodification Act of 2021.

7920.510. As used in this division, "local agency" includes any of the following:

(a) A county.

(b) A city, whether general law or chartered.

(c) A city and county.

(d) A school district.

(e) A municipal corporation.

(f) A district.

(g) A political subdivision.

(h) Any board, commission, or agency of the foregoing.

(i) Another local public agency.

(j) An entity that is a legislative body of a local agency pursuant to subdivision (c) or (d) of Section 54952.

7920.515. As used in this division, "member of the public" means any person other than a member, agent, officer, or employee of a federal, state, or local agency

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who is acting within the scope of that membership, agency, office, or employment.

7920.520. As used in this division, "person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

7920.525. (a) As used in this division, "public agency" means any state or local agency.

(b) As used in Article 5 (commencing with Section 7926.400) of Chapter 5 of Part 5, "public agency" means an entity specified in subdivision (c) of Section 7926.400.

7920.530. (a) As used in this division, "public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(b) "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

7920.535. As used in this division, "public safety official" means the following parties, whether active or retired:

(a) A peace officer as defined in Sections 830 to 830.65, inclusive, of the Penal Code, or a person who is not a peace officer, but may exercise the powers of arrest during the course and within the scope of the person's employment pursuant to Section 830.7 of the Penal Code.

(b) A public officer or other person listed in Section 1808.2 or 1808.6 of the Vehicle Code.

(c) An "elected or appointed official" as defined in Section 7920.500.

(d) An attorney employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender, the United States Attorney, or the Federal Public Defender.

(e) A city attorney and an attorney who represents cities in criminal matters.

(f) An employee of the Department of Corrections and Rehabilitation who supervises inmates or is required to have care or custody of a prisoner.

(g) A sworn or nonsworn employee who supervises inmates in a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, or a local detention facility, or a local juvenile hall, camp,

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ranch, or home, and a probation officer as defined in Section 830.5 of the Penal Code.

(h) A federal prosecutor, a federal criminal investigator, and a National Park Service Ranger working in California.

(i) The surviving spouse or child of a peace officer defined in Section 830 of the Penal Code, if the peace officer died in the line of duty.

(j) State and federal judges and court commissioners.

(k) An employee of the Attorney General, a district attorney, or a public defender who submits verification from the Attorney General, district attorney, or public defender that the employee represents the Attorney General, district attorney, or public defender in matters that routinely place that employee in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts.

(l) A nonsworn employee of the Department of Justice or a police department or sheriff's office that, in the course of employment, is responsible for collecting, documenting, and preserving physical evidence at crime scenes, testifying in court as an expert witness, and other technical duties, and a nonsworn employee that, in the course of employment, performs a variety of standardized and advanced laboratory procedures in the examination of physical crime evidence, determines their results, and provides expert testimony in court.

7920.540. (a) As used in this division, "state agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) Notwithstanding subdivision (a) or any other law, "state agency" also means the State Bar of California, as described in Section 6001 of the Business and Professions Code.

7920.545. As used in this division, "writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

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PART 2. DISCLOSURE AND EXEMPTIONS GENERALLY

CHAPTER 1. Right of Access to Public Records

7921.000. In enacting this division, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

7921.005. A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this division.

7921.010. (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this division to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this division.

(b) Nothing in this section requires a state or local agency to use the State Printer to print public records.

(c) Nothing in this section prevents the destruction of a public record pursuant to law.

(d) This section shall not apply to contracts entered into before January 1, 1996, between the County of Santa Clara and a private entity, for the provision of public records subject to disclosure under this division.

CHAPTER 2. General Rules Governing Disclosure

Article 1. Nondiscrimination

7921.300. This division does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

7921.305. (a) Notwithstanding the definition of "member of the public" in Section 7920.515, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

(b) This section does not constitute a change in, but is declaratory of, existing law.

7921.310. Notwithstanding Section 7921.305 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a

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writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

Article 2. Voluntary Disclosure

7921.500. Unless disclosure is otherwise prohibited by law, the provisions listed in Section 7920.505 do not prevent any agency from opening its records concerning the administration of the agency to public inspection.

7921.505. (a) As used in this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of that membership, agency, office, or employment.

(b) Notwithstanding any other law, if a state or local agency discloses to a member of the public a public record that is otherwise exempt from this division, this disclosure constitutes a waiver of the exemptions specified in:

(1) The provisions listed in Section 7920.505.

(2) Sections 7924.510 and 7924.700.

(3) Other similar provisions of law.

(c) This section, however, does not apply to any of the following disclosures:

(1) A disclosure made pursuant to the Information Practices Act (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) or a discovery proceeding.

(2) A disclosure made through other legal proceedings or as otherwise required by law.

(3) A disclosure within the scope of disclosure of a statute that limits disclosure of specified writings to certain purposes.

(4) A disclosure not required by law, and prohibited by formal action of an elected legislative body of the local agency that retains the writing.

(5) A disclosure made to a governmental agency that agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes that are consistent with existing law.

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(6) A disclosure of records relating to a financial institution or an affiliate thereof, if the disclosure is made to the financial institution or affiliate by a state agency responsible for regulation or supervision of the financial institution or affiliate.

(7) A disclosure of records relating to a person who is subject to the jurisdiction of the Department of Business Oversight, if the disclosure is made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Business Oversight.

(8) A disclosure made by the Commissioner of Business Oversight under Section 450, 452, 8009, or 18396 of the Financial Code.

(9) A disclosure of records relating to a person who is subject to the jurisdiction of the Department of Managed Health Care, if the disclosure is made to the person who is the subject of the records for the purpose of corrective action by that person, or, if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

Article 3. Disclosure to District Attorney and Related Matters

7921.700. A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this division when requested by a district attorney.

7921.705. (a) If a district attorney makes a request to a state or local agency to inspect or receive a copy of a public record or class of public records not exempted by this division, and the state or local agency fails or refuses to allow inspection or copying within 10 working days of that request, the district attorney may petition a court of competent jurisdiction to require the state or local agency to allow the requested inspection or copying.

(b) Unless the public interest or good cause in withholding the requested records clearly outweighs the public interest in disclosure, the court may require the public agency to allow the district attorney to inspect or copy those records.

7921.710. Disclosure of records to a district attorney under the provisions of this division shall effect no change in the status of the records under any other provision of law.

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CHAPTER 3. General Rules Governing Exemptions from Disclosure

Article 1. Justification for Withholding of Record

7922.000. An agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Article 2. Social Security Numbers and Related Matters

7922.200. (a) It is the intent of the Legislature that, in order to protect against the risk of identity theft, a local agency shall redact social security numbers from a record before disclosing the record to the public pursuant to this division.

(b) Nothing in this division shall be construed to require a local agency to disclose a social security number.

(c) This section does not apply to a record maintained by a county recorder.

7922.205. Nothing in this division shall be construed to require the disclosure by a county recorder of any "official record," if a "public record" version of that record is available pursuant to Article 3.5 (commencing with Section 27300) of Chapter 6 of Part 3 of Division 2 of Title 3.

7922.210. Nothing in this division shall be construed to require the disclosure by a filing office of any "official filing," if a "public filing" version of that record is available pursuant to Section 9526.5 of the Commercial Code.

PART 3. PROCEDURES AND RELATED MATTERS

CHAPTER 1. Request for a Public Record

Article 1. General Principles

7922.500. Nothing in this division shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.

7922.505. Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this division.

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Article 2. Procedural Requirements Generally

7922.525. (a) Public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, exempted as otherwise provided.

(b) Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

7922.530. (a) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(b) A requester who inspects a disclosable record on the premises of the agency has the right to use the requester's equipment on those premises, without being charged any fees or costs, to photograph or otherwise copy or reproduce the record in a manner that does not require the equipment to make physical contact with the record, unless the means of copy or reproduction would result in either of the following:

(1) Damage to the record.

(2) Unauthorized access to the agency's computer systems or secured networks by using software, equipment, or any other technology capable of accessing, altering, or compromising the agency's electronic records.

(c) The agency may impose any reasonable limits on the use of the requester's equipment that are necessary to protect the safety of the records or to prevent the copying of records from being an unreasonable burden to the orderly function of the agency and its employees. In addition, the agency may impose any limit that is necessary to maintain the integrity of, or ensure the long-term preservation of, historic or high-value records.

7922.535. (a) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. If the agency determines that the request seeks disclosable public records, the agency shall also state the estimated date and time when the records will be made available.

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(b) In unusual circumstances, the time limit prescribed in this article and Article 1 (commencing with Section 7922.500) may be extended by written notice from the head of the agency or a designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days.

(c) As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

7922.540. (a) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

(b) The notification of denial shall set forth the names and titles or positions of each person responsible for the denial.

(c) An agency shall justify withholding any record by complying with Section 7922.000.

7922.545. (a) In addition to maintaining public records for public inspection during its office hours, a public agency may comply with Section 7922.525 by posting any public record on its internet website and, in response to a request for a public record posted on the internet website, directing a member of the public to the location on the internet website where the public record is posted.

(b) However, if after the public agency directs a member of the public to the internet website, the member of the public requesting the public record requests a copy of the public record due to an inability to access or reproduce the public

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record from the internet website, the public agency shall promptly provide a copy of the public record pursuant to subdivision (a) of Section 7922.530.

Article 3. Information in Electronic Format

7922.570. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this division that is in an electronic format shall make that information available in an electronic format when requested by any person.

(b) When applicable, the agency shall do the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) The agency shall provide a copy of an electronic record in the format requested if the requested format is one that the agency has used to create copies for its own use or for provision to other agencies.

(c) If a request is for information in other than electronic format, and the information also is in electronic format, an agency may inform the requester that the information is available in electronic format.

7922.575. (a) The cost of duplication of an electronic record pursuant to paragraph (2) of subdivision (b) of Section 7922.570 shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with subdivisions (a) and (b) of Section 7922.570, the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

7922.580. (a) Nothing in Section 7922.570 or 7922.575 shall be construed to require a public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(b) Nothing in Section 7922.570 or 7922.575 shall be construed to permit an agency to make information available only in an electronic format.

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(c) Nothing in Section 7922.570 or 7922.575 shall be construed to require a public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(d) Nothing in Section 7922.570 or 7922.575 shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

7922.585. (a) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(b) Computer software developed by a state or local agency is not itself a public record under this division. The agency may sell, lease, or license the software for commercial or noncommercial use.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this division.

(e) Nothing in this section is intended to limit any copyright protections.

Article 4. Duty to Assist in Formulating Request

7922.600. (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information

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after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Article 1 (commencing with Section 7922.500) or Article 2 (commencing with Section 7922.525).

7922.605. This article shall not apply to a request for public records if any of the following applies:

(a) The public agency makes the requested records available pursuant to Article 1 (commencing with Section 7922.500) and Article 2 (commencing with Section 7922.525).

(b) The public agency makes an index of its records available.

(c) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 7920.505.

CHAPTER 2. Agency Regulations, Guidelines, Systems, and Similar Matters

Article 1. Agency Regulations and Guidelines

7922.630. Every agency may adopt regulations in accordance with this article stating the procedures to be followed when making its records available.

7922.635. (a) The following state and local bodies shall establish written guidelines for accessibility of records:

(1) All regional water quality control boards.

(2) Bay Area Air Pollution Control District.

(3) California Coastal Commission.

(4) Department of Business Oversight.

(5) Department of Consumer Affairs.

(6) Department of Corrections and Rehabilitation.

(7) Department of General Services.

(8) Department of Industrial Relations.

(9) Department of Insurance.

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(10) Department of Justice.

(11) Department of Managed Health Care.

(12) Department of Motor Vehicles.

(13) Department of Parks and Recreation.

(14) Department of Real Estate.

(15) Department of Toxic Substances Control.

(16) Department of Veterans Affairs.

(17) Department of Water Resources.

(18) Division of Juvenile Justice.

(19) Employment Development Department.

(20) Golden Gate Bridge, Highway and Transportation District.

(21) Los Angeles County Air Pollution Control District.

(22) Office of Environmental Health Hazard Assessment.

(23) Public Employees' Retirement System.

(24) Public Utilities Commission.

(25) San Francisco Bay Area Rapid Transit District.

(26) San Francisco Bay Conservation and Development Commission.

(27) Secretary of State.

(28) State Air Resources Board.

(29) State Board of Equalization.

(30) State Department of Developmental Services.

(31) State Department of Health Care Services.

(32) State Department of Public Health.

(33) State Department of Social Services.

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(34) State Department of State Hospitals.

(35) State Water Resources Control Board.

(36) Teachers' Retirement Board.

(37) Transportation Agency.

(b) A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request, free of charge, to any person requesting that body's records.

7922.640. (a) Guidelines and regulations adopted pursuant to this article shall be consistent with all other sections of this division and shall reflect the intention of the Legislature to make the records accessible to the public.

(b) Guidelines and regulations adopted pursuant to this article shall not operate to limit the hours public records are open for inspection as prescribed in Article 1 (commencing with Section 7922.500) and Article 2 (commencing with Section 7922.525).

Article 2. Internet Resources

7922.680. If a local agency, except a school district, maintains an internet resource, including, but not limited to, an internet website, internet web page, or internet web portal, which the local agency describes or titles as "open data," and the local agency voluntarily posts a public record on that internet resource, the local agency shall post the public record in an open format that meets all of the following requirements:

(a) Retrievable, downloadable, indexable, and electronically searchable by commonly used internet search applications.

(b) Platform independent and machine readable.

(c) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the public record.

(d) Retains the data definitions and structure present when the data was compiled, if applicable.

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Article 3. Catalog of Enterprise Systems

7922.700. For purposes of this article:

(a) "Enterprise system" means a software application or computer system that satisfies all of the following conditions:

(1) It collects, stores, exchanges, and analyzes information that the agency uses.

(2) It is a multidepartmental system or a system that contains information collected about the public.

(3) It is a system of record.

(b) An "enterprise system" does not include any of the following:

(1) Information technology security systems, including firewalls and other cybersecurity systems.

(2) Physical access control systems, employee identification management systems, video monitoring, and other physical control systems.

(3) Infrastructure and mechanical control systems, including those that control or manage street lights, electrical, natural gas, or water or sewer functions.

(4) Systems related to 911 dispatch and operation or emergency services.

(5) Systems that would be restricted from disclosure pursuant to Section 7929.210.

(6) The specific records that the information technology system collects, stores, exchanges, or analyzes.

7922.705. For purposes of this article, "system of record" means a system that serves as an original source of data within an agency.

7922.710. (a) In implementing this division, each local agency, except a local educational agency, shall create a catalog of enterprise systems.

(b) The local agency shall complete and post the catalog as required by this article by July 1, 2016, and thereafter shall update the catalog annually.

7922.715. (a) The catalog of enterprise systems required by Section 7922.710 shall be made publicly available upon request in the office of the person or officer designated by the agency's legislative body.

(b) If the agency has an internet website, the catalog shall be posted in a prominent location on the agency's internet website.

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7922.720. (a) The catalog of enterprise systems required by Section 7922.710 shall disclose a list of the enterprise systems utilized by the agency.

(b) For each system, the catalog shall also disclose all of the following:

(1) Current system vendor.

(2) Current system product.

(3) A brief statement of the system's purpose.

(4) A general description of categories or types of data.

(5) The department that serves as the system's primary custodian.

(6) How frequently system data is collected.

(7) How frequently system data is updated.

(c) If, on the facts of the particular case, the public interest served by not disclosing the information described in paragraph (1) or (2) of subdivision (b) clearly outweighs the public interest served by disclosure of the record, the local agency may instead provide a system name, brief title, or identifier of the system.

7922.725. (a) This article shall not be interpreted to limit a person's right to inspect public records pursuant to this division.

(b) Nothing in this article shall be construed to permit public access to records held by an agency to which access is otherwise restricted by statute or to alter the process for requesting a public record, as set forth in this division.

PART 4. ENFORCEMENT

CHAPTER 1. General Principles

7923.000. Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right under this division to inspect or receive a copy of any public record or class of public records.

7923.005. In a proceeding under Section 7923.000, the court shall set the times for hearings and responsive pleadings with the object of securing a decision as to the matters at issue at the earliest possible time.

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CHAPTER 2. Enforcement Procedure

Article 1. Petition to Superior Court

7923.100. Whenever it is made to appear, by verified petition to the superior court of the county where the records or some part thereof are situated, that certain public records are being improperly withheld from a member of the public, the court shall order the officer or other person charged with withholding the records to disclose those records or show cause why that person should not do so.

7923.105. The court shall decide the case after the court does all of the following:

(a) Examine the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code.

(b) Examine any papers filed by the parties.

(c) Consider any oral argument and additional evidence as the court may allow.

7923.110. (a) If the court finds that the public official's decision to refuse disclosure is not justified under Section 7922.000 or any provision listed in Section 7920.505, the court shall order the public official to make the record public.

(b) If the court finds that the public official was justified in refusing to make the record public, the court shall return the record to the public official without disclosing its content, together with an order supporting the decision refusing disclosure.

7923.115. (a) If the requester prevails in litigation filed pursuant to this chapter, the court shall award court costs and reasonable attorney's fees to the requester. The costs and fees shall be paid by the public agency and shall not become a personal liability of the public official involved.

(b) If the court finds that a requester's case pursuant to this chapter is clearly frivolous, the court shall award court costs and reasonable attorneys' fees to the public agency.

(c) This article does not limit a requester's right to obtain fees and costs pursuant to this section or any other law.

Article 2. Writ Review and Contempt

7923.500. (a) An order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately

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reviewable by petition to the appellate court for the issuance of an extraordinary writ.

(b) Upon entry of any order pursuant to this chapter, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon the party of a written notice of entry of the order, or within a further time, not exceeding an additional 20 days, as the trial court may for good cause allow.

(c) If the notice is served by mail, the period within which to file the petition shall be increased by five days.

(d) A stay of an order or judgment shall not be granted unless the petitioning party demonstrates that the party will otherwise sustain irreparable damage and probable success on the merits.

(e) Any person who fails to obey the order of the court shall be cited to show cause why that person is not in contempt of court.

PART 5. SPECIFIC TYPES OF PUBLIC RECORDS

CHAPTER 1. Crimes, Weapons, and Law Enforcement

Article 1. Law Enforcement Records Generally

7923.600. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.

(b) A customer list that an alarm or security company provides to a state or local police agency at the agency's request is a record subject to this article.

7923.605. (a) Notwithstanding Section 7923.600, a state or local law enforcement agency shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny,

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robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger either of the following:

(1) The safety of a witness or other person involved in the investigation.

(2) The successful completion of the investigation or a related investigation.

(b) However, this article does not require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

7923.610. Notwithstanding any other provision of this article, a state or local law enforcement agency shall make public all of the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(a) The full name and occupation of every individual arrested by the agency.

(b) The individual's physical description including date of birth, color of eyes and hair, sex, height, and weight.

(c) The time and date of arrest.

(d) The time and date of booking.

(e) The location of the arrest.

(f) The factual circumstances surrounding the arrest.

(g) The amount of bail set.

(h) The time and manner of release or the location where the individual is currently being held.

(i) All charges the individual is being held upon, including any outstanding warrants from other jurisdictions, parole holds, and probation holds.

7923.615. (a) (1) Notwithstanding any other provision of this article, a state or local law enforcement agency shall make public the information described in paragraph (2), except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.

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(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, paragraph (1) applies to the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded:

(A) The time, date, and location of occurrence.

(B) The time and date of the report.

(C) The name and age of the victim.

(D) The factual circumstances surrounding the crime or incident.

(E) A general description of any injuries, property, or weapons involved.

(b) (1) The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 287, 288, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of, or former Section 288a of, the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor.

(2) When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this article may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this section.

(c) (1) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete.

(2) For purposes of this article, "immediate family" has the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

7923.620. (a) Notwithstanding any other provision of this article, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions

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Code, a state or local law enforcement agency shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) Subject to the restrictions of Section 841.5 of the Penal Code and this article, the current address of every individual arrested by the agency.

(2) Subject to the restrictions of Section 841.5 of the Penal Code and this article, the current address of the victim of a crime. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 287, 288, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of, or former Section 288a of, the Penal Code shall remain confidential.

(b) Address information obtained pursuant to this section shall not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(c) This section shall not be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this section.

7923.625. Notwithstanding any other provision of this article, commencing July 1, 2019, a video or audio recording that relates to a critical incident, as defined in subdivision (e), may be withheld only as follows:

(a) (1) During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this section, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

(2) After 45 days from the date the agency knew or reasonably should have known about the incident, and up to one year from that date, the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident,

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the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. If an agency delays disclosure pursuant to this paragraph, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

(b) (1) If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.

(2) Except as provided in paragraph (3), if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction as described in paragraph (1) and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted as provided in paragraph (1) or unredacted, shall be disclosed promptly, upon request, to any of the following:

(A) The subject of the recording whose privacy is to be protected, or the subject's authorized representative.

(B) If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected.

(C) If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject whose privacy is to be protected.

(3) If disclosure pursuant to paragraph (2) would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure

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would substantially interfere with the investigation, and provide the estimated date for the disclosure of the video or audio recording. Thereafter, the recording may be withheld by the agency for 45 calendar days, subject to extensions as set forth in paragraph (2) of subdivision (a).

(c) An agency may provide greater public access to video or audio recordings than the minimum standards set forth in this section.

(d) For purposes of this section, a peace officer does not include any peace officer employed by the Department of Corrections and Rehabilitation.

(e) For purposes of this section, a video or audio recording relates to a critical incident if it depicts any of the following incidents:

(1) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(2) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

(f) This section does not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident as described in subdivision (e).

7923.630. (a) Immediately before the CPRA Recodification Act of 2021, the other provisions in this article comprised a single subdivision of former Section 6254 (subdivision (f) of Section 29 of Chapter 385 of the Statutes of 2019).

(b) Dividing the substance of those provisions into multiple code sections was not intended to affect the construction of those provisions or their relation to each other.

Article 2. Obtaining Access to Law Enforcement Records

7923.650. The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under Article 1 (commencing with Section 7923.600) shall not apply when a district attorney requests inspection of those records.

7923.655. (a) A state or local law enforcement agency shall not require a victim of an incident, or an authorized representative of a victim, to show proof of the victim's legal presence in the United States in order to obtain the information required to be disclosed by that law enforcement agency pursuant to Article 1 (commencing with Section 7923.600).

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(b) If, for identification purposes, a state or local law enforcement agency requires a victim of an incident, or an authorized representative of a victim, to provide identification in order to obtain information required to be disclosed by that law enforcement agency pursuant to Article 1 (commencing with Section 7923.600), the agency shall at a minimum accept any of the following:

(1) A current driver's license or identification card issued by any state in the United States.

(2) A current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship.

(3) A current Matricula Consular card.

Article 3. Records of Emergency Communications to Public Safety Authorities

7923.700. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of a record obtained pursuant to paragraph (2) of subdivision (f) of Section 2891.1 of the Public Utilities Code.

Article 4. Records Specifically Relating to Crime Victims

7923.750. (a) This division does not require disclosure of a video or audio recording that was created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording. An agency shall justify withholding that type of video or audio recording by demonstrating, pursuant to Section 7922.000 and subdivision (a) of Section 7922.540, that on the facts of the particular case, the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording.

(b) When balancing the public interests as required by this section, an agency shall consider both of the following:

(1) The constitutional right to privacy of the person or persons depicted in the recording.

(2) Whether the potential harm to the victim caused by disclosing the recording may be mitigated by redacting the recording to obscure images showing intimate body parts and personally identifying characteristics of the victim or by distorting portions of the recording containing the victim's voice, provided that the redaction does not prevent a viewer from being able to fully and accurately perceive the events captured on the recording. The recording shall not otherwise be edited or altered.

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(c) A victim of a crime described in subdivision (a) who is a subject of a recording, the parent or legal guardian of a minor subject, a deceased subject's next of kin, or a subject's legally authorized designee, shall be permitted to inspect the recording and to obtain a copy of the recording. Disclosure under this subdivision does not require that the record be made available to the public pursuant to Section 7921.505.

(d) Nothing in this section shall be construed to affect any other exemption provided by this division.

7923.755. (a) This division does not require disclosure of a record of the California Victim Compensation Board that relates to a request for assistance under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2.

(b) This section shall not apply to a disclosure of the following information, if no information is disclosed that connects the information to a specific victim, derivative victim, or applicant under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2:

(1) The amount of money paid to a specific provider of services.

(2) Summary data concerning the types of crimes for which assistance is provided.

Article 5. Firearm Licenses and Related Records

7923.800. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of any of the following information contained in an application for a license to carry a firearm, issued by the sheriff of a county or the chief or other head of a municipal police department pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code:

(a) Information that indicates when or where the applicant is vulnerable to attack.

(b) Information that concerns the applicant's medical or psychological history, or that of members of the applicant's family.

7923.805. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of the home address or telephone number of any of the following individuals, as set forth in an application for a license to carry a firearm, or in a license to carry a firearm, issued by the sheriff of a county or the chief or other head of a municipal police department, pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code:

(a) A prosecutor.

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(b) A public defender.

(c) A peace officer.

(d) A judge.

(e) A court commissioner.

(f) A magistrate.

CHAPTER 2. Election Materials and Petitions

Article 1. Voter Information

7924.000. (a) Except as provided in Section 2194 of the Elections Code, both of the following are confidential and shall not be disclosed to any person:

(1) The home address, telephone number, email address, precinct number, or other number specified by the Secretary of State for voter registration purposes.

(2) Prior registration information shown on an affidavit of registration.

(b) The California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on an affidavit of registration, or added to the voter registration records to comply with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.), are confidential and shall not be disclosed to any person.

(c) The signature of the voter that is shown on an affidavit of registration is confidential and shall not be disclosed to any person.

(d) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

7924.005. (a) Notwithstanding Sections 7920.510, 7920.515, 7920.520, 7920.530, 7920.540, 7920.545, 7922.545, subdivision (a) of Section 7920.525, subdivision (b) of Section 7922.540, and Sections 7922.500 to 7922.535, inclusive, information compiled by a public officer or public employee that reveals the identity of a person who has requested a bilingual ballot or ballot pamphlet, in accordance with any federal or state law, or other data that would reveal the identity of the requester, is not a public record and shall not be provided to any person other than a public officer or public employee who is responsible for receiving the request and processing it.

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(b) Subdivision (a) does not prohibit a person, otherwise authorized by law, from examining election materials, including, but not limited to, an affidavit of registration, provided that a request for a bilingual ballot or ballot pamphlet is subject to the restrictions in subdivision (a).

Article 2. Initiative, Referendum, Recall, and Other Petitions and Related Materials

7924.100. As used in this article, "petition" means any petition to which a registered voter has affixed the voter's own signature.

7924.105. As used in this article, "proponent of the petition" means the following:

(a) For a statewide initiative or referendum measure, the person who submits a draft of a petition proposing the measure to the Attorney General with a request that the Attorney General prepare a title and summary of the chief purpose and points of the proposed measure.

(b) For other initiative and referendum measures, the person who publishes a notice of intention to circulate a petition, or, where publication is not required, who files the petition with an elections official.

(c) For a recall measure, the person defined in Section 343 of the Elections Code.

(d) For a petition circulated pursuant to Section 5091 of the Education Code, the person having charge of the petition who submits the petition to the county superintendent of schools.

(e) For a petition circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of Division 3 of Title 2 of the Education Code, the person designated as chief petitioner under Section 35701 of the Education Code.

(f) For a petition circulated pursuant to Part 46 (commencing with Section 74000) of Division 7 of Title 3 of the Education Code, the person designated as chief petitioner under Section 74102, 74133, or 74152 of the Education Code.

7924.110. (a) Notwithstanding Sections 7920.510, 7920.515, 7920.520, 7920.530, 7920.540, 7920.545, 7922.545, subdivision (a) of Section 7920.525, subdivision (b) of Section 7922.540, and Sections 7922.500 to 7922.535, inclusive, the following are not public records:

(1) A statewide, county, city, or district initiative, referendum, or recall petition.

(2) A petition circulated pursuant to Section 5091 of the Education Code.

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(3) A petition for reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of Division 3 of Title 2 of the Education Code.

(4) A petition for reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of Division 7 of Title 3 of the Education Code.

(5) A memorandum prepared by a county elections official in the examination of a petition, indicating which registered voters signed that particular petition.

(b) The materials described in subdivision (a) shall not be open to inspection except by the following persons:

(1) A public officer or public employee who has the duty of receiving, examining, or preserving the petition, or who is responsible for preparation of the memorandum.

(2) If a petition is found to be insufficient, by the proponent of the petition and a representative of the proponent as may be designated by the proponent in writing, in order to determine which signatures were disqualified and the reasons therefor.

(c) Notwithstanding subdivisions (a) and (b), the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a city attorney, a school district attorney, and a community college district attorney shall be permitted to examine the materials described in subdivision (a) upon approval of the appropriate superior court.

(d) If the proponent of a petition is permitted to examine a petition and a memorandum pursuant to subdivision (b), the examination shall commence not later than 21 days after certification of insufficiency, and the county elections official shall retain the documents as prescribed in Section 17200 of the Elections Code.

CHAPTER 3. Environmental Protection, Building Standards, and Safety Requirements

Article 1. Pesticide Safety and Efficacy Information Disclosable Under the Federal Insecticide, Fungicide, and Rodenticide Act

7924.300. If both of the following conditions are satisfied, nothing in this division exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under Section 10(d)(1) of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)):

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(a) The individual requesting the information is not an officer, employee, or agent specified in subdivision (a) of Section 7924.310.

(b) The individual signs the affirmation specified in subdivision (b) of Section 7924.310.

7924.305. (a) The Director of Pesticide Regulation, upon the director's initiative, or upon receipt of a request pursuant to this division for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment before the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(b) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(c) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(d) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to this division of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to Section 7924.300.

(e) This article does not prohibit any person from maintaining a civil action for wrongful disclosure of a trade secret.

(f) "Trade secret" means data that is nondisclosable under Section 10(d)(1) of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)).

7924.310. (a) Unless the applicant or registrant consents to disclosure of information that the applicant or registrant submits to the state pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code, the Director of Pesticide Regulation shall not knowingly disclose any of that information to any of the following:

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(1) An officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in a country other than the United States, or in a country in addition to the United States.

(2) Any other person who intends to deliver this information to any foreign or multinational business or entity.

(b) To implement this section, the director shall require a person requesting information described in subdivision (a) to sign the following affirmation:

AFFIRMATION OF STATUS

This affirmation is required by Article 1 (commencing with Section 7924.300) of Chapter 3 of Part 5 of Division 10 of Title 1 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent, engaged in the production, sale, or distribution of pesticides in a country other than the United States or in a country in addition to the United States, or to an officer, employee, or agent of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

Name of Requester

Name of Requester's Organization

Signature of Requester

Address of Requester

Date

Request No.

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Telephone Number of Requester

Name, Address, and Telephone Number of Requester's Client, if the requester has requested access to the information on behalf of someone other than the requester or the requester's organization listed above.

(c) Section 118 of the Penal Code applies to any affirmation made pursuant to this article.

7924.315. Notwithstanding any other provision of this article, if the Director of Pesticide Regulation determines that information submitted by an applicant or registrant is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment, the director may disclose that information to any person in connection with a public proceeding conducted under law or regulation.

7924.320. The Director of Pesticide Regulation shall maintain records of the names of persons to whom data is disclosed pursuant to this article and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

7924.325. The Director of Pesticide Regulation may limit an individual to one request per month pursuant to this article if the director determines that a person has made a frivolous request within the past 12-month period.

7924.330. (a) Any officer or employee of the state, or former officer or employee of the state, who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this article, and who, knowing that disclosure of this material is prohibited by this article, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

(b) For purposes of this section, any contractor with the state who is furnished information pursuant to this article, or any employee of any contractor, shall be considered an employee of the state.

7924.335. This article shall be operative only so long as, and to the extent that, enforcement of Section 10(d)(1) of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)) has not been enjoined by federal court order. If a final and unappealable federal court judgment or decision holds that paragraph invalid, this article shall become inoperative, to the extent of the invalidity.

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Article 2. Pollution

7924.500. Nothing in this division requires the disclosure of records that relate to volatile organic compound or chemical substance information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

7924.505. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of financial data contained in an application for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, if an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain a guarantee from the United States Small Business Administration.

(b) The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this division.

7924.510. (a) Any information, analysis, plan, or specification that discloses the nature, extent, quantity, or degree of an air contaminant or other pollution that any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, is a public record.

(b) All air or other pollution monitoring data, including data compiled from a stationary source, are public records.

(c) Except as otherwise provided in subdivision (d) and Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code, a trade secret is not a public record under this section or Section 7924.700.

(d) Notwithstanding any other provision of law, all air pollution emission data, including those emission data that constitute trade secrets as defined in subdivision (f), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data that constitute trade secrets and that are used to calculate emission data are not public records.

(e) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant

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consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

(f) As used in this section, "trade secret" may include, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that satisfies all of the following requirements:

(1) It is not patented.

(2) It is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value.

(3) It gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Article 3. Building Standards and Safety Requirements

7924.700. (a) A record of a notice or an order that is directed to the owner of any building and relates to violation of a housing or building code, ordinance, statute, or regulation that constitutes a violation of a standard provided in Section 1941.1 of the Civil Code is a public record.

(b) A record of subsequent action with respect to a notice or order described in subdivision (a) is a public record.

Article 4. Enforcement Orders

7924.900. (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity's internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this division.

(b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

(3) The State Water Resources Control Board, and each California regional water quality control board.

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(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

(c) (1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.

(2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that entity at a public meeting.

(d) An order posted pursuant to this section shall be posted for not less than one year.

(e) The California Environmental Protection Agency shall oversee the implementation of this section.

CHAPTER 4. Financial Records and Tax Records

7925.000. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of information required from any taxpayer in connection with the collection of local taxes if that information is received in confidence and disclosure of it to other persons would result in unfair competitive disadvantage to the person supplying the information.

7925.005. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of a statement of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish the applicant's personal qualification for the license, certificate, or permit requested.

7925.010. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of any of the following records:

(a) Financial data contained in an application for registration, or registration renewal, as a service contractor, which is filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth.

(b) Financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

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7925.015. This division does not require the disclosure of records that the Controller and third-party auditors obtain the possession of as a result of an examination of records pursuant to Section 1571 of the Code of Civil Procedure, other than records of property that should have been reported to the Controller as unclaimed property.

CHAPTER 5. Health Care

Article 1. Accreditation

7926.000. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of a final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Public Health pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

Article 2. Advance Health Care Directive and Related Matters

7926.100. (a) Except as provided in subdivision (b) and in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of any information that a person provides to the Secretary of State for the purpose of registration in the Advance Health Care Directive Registry.

(b) The information described in subdivision (a) shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

Article 3. Contracts and Negotiations

7926.200. The provisions listed in Section 7920.505 do not prevent any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158).

7926.205. (a) Nothing in this division or any other provision of law requires disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed.

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(b) Transmission of the records described in subdivision (a), or the information contained therein in an alternative form, to the board of supervisors is not a waiver of exemption from disclosure. The records and information once transmitted to the board of supervisors remain subject to the exemption described in subdivision (a).

(c) (1) This section does not prevent the Joint Legislative Audit Committee from accessing any records in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2.

(2) This section does not prevent the Department of Managed Health Care from accessing any records in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

7926.210. (a) Except as provided in subdivision (b) or in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4, that relate to a contract with an insurer or a nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code.

(b) A record described in subdivision (a) shall be open to inspection within one year after the contract is fully executed.

7926.215. (a) Except as provided in Sections 7924.510, 7924.700, and the provisions listed in Section 7920.505, this division does not require disclosure of records of the Department of Corrections and Rehabilitation that relate to health care services contract negotiations, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations, such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance Commission, or its staff, who act in consultation with, or on behalf of, the department.

(b) (1) Except for the portion that contains the rates of payment, a contract for health services entered into by the Department of Corrections and Rehabilitation or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after it is fully executed.

(2) If a contract for health services was entered into before July 1, 1993, and amended on or after July 1, 1993, the amendment, except for any portion

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containing rates of payment, shall be open to inspection one year after it is fully executed.

(c) Three years after a contract or amendment is open to inspection under this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) (1) Notwithstanding any other provision of law, including, but not limited to, Section 1060 of the Evidence Code, the entire contract or amendment shall be open to inspection by the California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office.

(2) The California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office shall maintain the confidentiality of each contract or amendment until the contract or amendment is fully open to inspection by the public.

(e) It is the intent of the Legislature that the confidentiality of health care provider contracts, and of the contracting process as provided in this section, shall protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.

7926.220. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of a state agency related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), or Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

(b) (1) Except for the portion containing the rates of payment, a contract for inpatient services entered into pursuant to one of these articles, on or after April 1, 1984, shall be open to inspection one year after it is fully executed.

(2) If a contract for inpatient services was entered into before April 1, 1984, and amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed.

(3) If the California Medical Assistance Commission enters into a contract with a health care provider for other than inpatient hospital services, the contract shall be open to inspection one year after it is fully executed.

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(c) Three years after a contract or amendment is open to inspection under this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) (1) Notwithstanding any other law, the entire contract or amendment shall be open to inspection by the California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office.

(2) The California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office shall maintain the confidentiality of each contract or amendment until the contract or amendment is fully open to inspection by the public.

7926.225. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services that relate to activities governed by former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), former Part 6.6 (commencing with Section 12739.5), or former Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, and that reveal any of the following:

(1) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or the department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or the department provides, receives, or arranges services or reimbursement.

(2) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff or the department or its staff, or records that provide instructions, advice, or training to their employees.

(b) (1) Except for the portion that contains the rates of payment, a contract entered into pursuant to former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), former Part 6.6 (commencing with Section 12739.5), or former Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, on or after July 1, 1991, shall be open to inspection one year after its effective date.

(2) If a contract was entered into before July 1, 1991, and amended on or after July 1, 1991, the amendment, except for any portion containing the rates of

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payment, shall be open to inspection one year after the effective date of the amendment.

(c) Three years after a contract or amendment is open to inspection pursuant to this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) (1) Notwithstanding any other law, the entire contract or amendment to a contract shall be open to inspection by the California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office.

(2) The California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office shall maintain the confidentiality of each contract or amendment until the contract or amendment is open to inspection pursuant to subdivision (c).

7926.230. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, if the records reveal any of the following:

(1) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or department provides, receives, or arranges services or reimbursement.

(2) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, or records that provide instructions, advice, or training to employees.

(b) (1) Except for the portion that contains the rates of payment, a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code shall be open to inspection one year after its effective date.

(2) If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the

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Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

(c) Three years after a contract or amendment is open to inspection pursuant to this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) (1) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office.

(2) The California State Auditor's Office, the Joint Legislative Audit Committee, and the Legislative Analyst's Office shall maintain the confidentiality of each contract or amendment until the contract or amendment is open to inspection pursuant to subdivision (b) or (c).

(e) The exemption from disclosure provided pursuant to this section for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code.

7926.235. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the Managed Risk Medical Insurance Board that relate to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(b) Except for the portion that contains the rates of payment, a contract for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after it has been fully executed.

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(c) (1) Notwithstanding any other law, the entire contract or amendment to a contract shall be open to inspection by the Joint Legislative Audit Committee.

(2) The committee shall maintain the confidentiality of each contract or amendment until the contract or amendment is open to inspection pursuant to subdivision (b).

Article 4. In-Home Supportive Services and Personal Care Services

7926.300. (a) Notwithstanding any other provision of this division, information regarding persons paid by the state to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code or personal care services pursuant to Section 14132.95, 14132.952, 14132.956, or 14132.97 of the Welfare and Institutions Code, and information about persons who have completed the form described in subdivision (a) of Section 12305.81 of the Welfare and Institutions Code for the provider enrollment process, is not subject to public disclosure pursuant to this division, except as provided in subdivision (b).

(b) Copies of names, addresses, home telephone numbers, personal cellular telephone numbers, written or spoken languages, if known, and personal email addresses of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to subdivision (c) of Section 12301.6, or Section 12302.5, of the Welfare and Institutions Code or Chapter 10 (commencing with Section 3500) of Division 4. This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.

(c) This section applies solely to individuals who provide services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code), the Personal Care Services Program pursuant to Section 14132.95 of the Welfare and Institutions Code, the In-Home Supportive Services Plus Option Program pursuant to Section 14132.952 of the Welfare and Institutions Code, the Community First Choice Option Program pursuant to Section 14132.956 of the Welfare and Institutions Code, or the Waiver Personal Care Services Program pursuant to Section 14132.97 of the Welfare and Institutions Code.

(d) This section does not alter the rights of parties under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4) or any other labor relations law.

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Article 5. Reproductive Health Services Facility

7926.400. For purposes of this article, the following terms have the following meanings:

(a) "Contractor" means an individual or entity that contracts with a reproductive health services facility for services related to patient care.

(b) "Personal information" means any of the following information related to an individual that is maintained by a public agency:

(1) Social security number.

(2) Physical description.

(3) Home address.

(4) Home telephone number.

(5) Statements of personal worth or personal financial data filed pursuant to Section 7925.005.

(6) Personal medical history.

(7) Employment history.

(8) Electronic mail address.

(9) Information that reveals any electronic network location or identity.

(c) "Public agency" means all of the following:

(1) The Department of Consumer Affairs.

(2) The Department of Managed Health Care.

(3) The State Department of Health Care Services.

(4) The State Department of Public Health.

(d) "Reproductive health services facility" means the office of a licensed physician and surgeon whose specialty is family medicine, obstetrics, or gynecology, or a licensed clinic, where at least 50 percent of the patients of the physician or the clinic are provided with family planning or abortion services.

7926.405. This division does not require disclosure of any personal information received, collected, or compiled by a public agency regarding the employees,

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volunteers, board members, owners, partners, officers, or contractors of a reproductive health services facility who have notified the public agency pursuant to Section 7926.415 if the personal information is contained in a document that relates to the facility.

7926.410. (a) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to obtain access to employment history information of a reproductive health services facility pursuant to Part 4 (commencing with Section 7923.000).

(b) If the court finds, based on the facts of a particular case, that the public interest served by disclosure of employment history information of a reproductive health services facility clearly outweighs the public interest served by not disclosing the information, the court shall order the officer or person charged with withholding the information to disclose employment history information or show cause why that officer or person should not disclose pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4.

7926.415. (a) In order for this article to apply to an individual who is an employee, volunteer, board member, officer, or contractor of a reproductive health services facility, the individual shall notify the public agency to which the individual's personal information is being submitted or has been submitted that the individual falls within the application of this article.

(b) Notification pursuant to subdivision (a) is valid if it complies with all of the following:

(1) It is on the official letterhead of the facility.

(2) It is clearly separate from any other language present on the same page and is executed by a signature that serves no other purpose than to execute the notification.

(3) It is signed and dated by both of the following:

(A) The individual whose information is being submitted.

(B) The executive officer of the reproductive health services facility or designee of the executive officer.

(c) A reproductive health services facility shall retain a copy of all notifications submitted pursuant to this article.

7926.420. The privacy protections for personal information authorized pursuant to this article are effective from the time of notification pursuant to Section 7926.415 until either one of the following occurs:

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(a) Six months after the date of separation from a reproductive health services facility for an individual who has served for not more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

(b) One year after the date of separation from a reproductive health services facility for an individual who has served for more than one year as an employee, contractor, volunteer, board member, or officer of the reproductive health services facility.

7926.425. Within 90 days of separation of an employee, contractor, volunteer, board member, or officer of the reproductive health services facility who has provided notice to a public agency pursuant to Section 7926.415, the facility shall provide notice of the separation to the relevant agency or agencies.

7926.430. This section does not prevent a government agency from disclosing data regarding the age, race, ethnicity, national origin, or gender of individuals whose personal information is protected pursuant to this article if the data does not contain individually identifiable information.

Article 6. Websites and Related Matters

7926.500. In implementing this division, each health care district shall maintain an internet website in accordance with subdivision (b) of Section 32139 of the Health and Safety Code.

CHAPTER 6. Historically or Culturally Significant Matters

7927.000. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any of the following:

(a) Records of Native American graves, cemeteries, and sacred places.

(b) Records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code, which are maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

7927.005. Nothing in this division requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency.

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CHAPTER 7. Library Records and Similar Matters

7927.100. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes.

(b) The exemption in this section does not apply to records of fines imposed on the borrowers.

7927.105. (a) As used in this section, the term "patron use records" includes both of the following:

(1) Any written or electronic record that is used to identify a library patron and is provided by the patron to become eligible to borrow or use books and other materials. This includes, but is not limited to, a patron's name, address, telephone number, or email address.

(2) Any written record or electronic transaction that identifies a patron's borrowing information or use of library information resources. This includes, but is not limited to, database search records, borrowing records, class records, and any other personally identifiable uses of library resources, information requests, or inquiries.

(b) This section does not apply to either of the following:

(1) Statistical reports of patron use.

(2) Records of fines collected by a library.

(c) All patron use records of a library that is in whole or in part supported by public funds shall remain confidential. A public agency, or a private actor that maintains or stores patron use records on behalf of a public agency, shall not disclose those records to any person, local agency, or state agency, except as follows:

(1) By a person acting within the scope of the person's duties within the administration of the library.

(2) By a person authorized in writing to inspect the records. The authorization shall be from the individual to whom the records pertain.

(3) By order of the appropriate superior court.

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CHAPTER 8. Litigation Records and Similar Matters

7927.200. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any of the following records:

(a) Records pertaining to pending litigation to which the public agency is a party, until the pending litigation has been finally adjudicated or otherwise settled.

(b) Records pertaining to a claim made pursuant to Division 3.6 (commencing with Section 810), until the pending claim has been finally adjudicated or otherwise settled.

7927.205. Nothing in this division or any other provision of law requires disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (e) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum is protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

CHAPTER 9. Miscellaneous Public Records

7927.300. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

7927.305. (a) Notwithstanding any other provision of this division to the contrary, information regarding family childcare providers, as defined in subdivision (b) of Section 8431 of the Education Code, shall not be subject to public disclosure pursuant to this division, except as provided in subdivisions (b) and (c).

(b) Consistent with Section 8432 of the Education Code, copies of names, home and mailing addresses, county, home, if known, work, and cellular telephone numbers, and email addresses of persons described in subdivision (a) shall be made available, upon request, to provider organizations that have been determined to be a provider organization pursuant to subdivision (a) of Section 8432 of the Education Code. Information shall be made available consistent with the deadlines set in Section 8432 of the Education Code. This information shall not be used by the receiving entity for any purpose other than for purposes of organizing, representing, and assisting family childcare providers.

(c) Consistent with Section 8432 of the Education Code, copies of names, home and mailing addresses, county, home, if known, work, and cellular telephone numbers, and email addresses of persons described in subdivision (a) shall be made available to a certified provider organization, as defined in subdivision (a)

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of Section 8431 of the Education Code. Information shall be made available consistent with the deadlines set in Section 8432 of the Education Code. This information shall not be used by the receiving entity for any purpose other than for purposes of organizing, representing, and assisting family childcare providers.

(d) This section does not prohibit or limit the disclosure of information otherwise required to be disclosed by the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70) of, Chapter 3.5 (commencing with Section 1596.90) of, and Chapter 3.6 (commencing with Section 1597.30) of, Division 2 of the Health and Safety Code), or to an officer or employee of another state public agency for performance of their official duties under state law.

(e) All confidentiality requirements applicable to recipients of information pursuant to Section 1596.86 of the Health and Safety Code shall apply to protect the personal information of providers of small family daycare homes, as defined in Section 1596.78 of the Health and Safety Code, that is disclosed pursuant to subdivisions (b) and (c).

(f) A family childcare provider, as defined by subdivision (b) of Section 8431 of the Education Code, may opt out of disclosure of their home and mailing address, home, work, and cellular telephone numbers, and email address from the lists described in subdivisions (c) and (d) of Section 8432 of the Education Code by complying with the procedure set forth in subdivision (k) of Section 8432 of the Education Code.

CHAPTER 10. Personal Information and Customer Records

7927.400. Nothing in this division requires the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, that is received, collected, or compiled by a state agency.

7927.405. Nothing in this division requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

7927.410. Nothing in this division requires the disclosure of the name, credit history, utility usage data, home address, or telephone number of a utility customer of a local agency, except that disclosure of the name, utility usage data, and the home address of a utility customer of a local agency shall be made available upon request as follows:

(a) To an agent or authorized family member of the person to whom the information pertains.

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(b) To an officer or employee of another governmental agency when necessary for the performance of its official duties.

(c) Upon court order or the request of a law enforcement agency relative to an ongoing investigation.

(d) Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.

(e) Upon determination by the local agency that the utility customer who is the subject of the request is an elected or appointed official with authority to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without the official's consent.

(f) Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

7927.415. Except as provided in Sections 7924.510 and 7924.700, nothing in this division requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

7927.420. Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the Welfare and Institutions Code, after the death of a foster child who is a minor, the name, date of birth, and date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to this division.

7927.425. This division does not require the disclosure of the following records and information provided to the Controller's office:

(a) Records related to statements of personal worth or personal financial data, including, but not limited to, wills, trusts, account statements, earnings statements, or other similar records.

(b) Personal information, as defined by subdivision (a) of Section 1798.3 of the Civil Code, within records, including, but not limited to:

(1) Social security number.

(2) Date of birth.

(3) Federal employer identification number, until the Controller has made payment of the property in full to the owner.

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(4) Account number, until the Controller has made payment of the property in full to the owner.

(5) Check number, until the Controller has made payment of the property in full to the owner.

7927.430. A Judicial Council form provided to request service pursuant to Section 26666.10, and the information contained therein, is confidential and shall not be disclosed pursuant to this division.

CHAPTER 11. Preliminary Drafts and Similar Materials

7927.500. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by a public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

CHAPTER 12. Private Industry

7927.600. Whenever a city and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the United States Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

7927.605. (a) Nothing in this division requires the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California.

(b) Except as provided in subdivision (c), incentives offered by a state or a local government agency, if any, shall be disclosed upon communication to the agency or the public of a decision to stay, locate, relocate, or expand, by a company, or upon application by that company to a governmental agency for a general plan amendment, rezone, use permit, building permit, or any other permit, whichever occurs first.

(c) Before publicly disclosing a record that describes state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand

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the business within California, the agency shall delete information that is exempt pursuant to this section.

CHAPTER 13. Private Records, Privileged Materials, and Other Records Protected by Law From Disclosure

7927.700. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

7927.705. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

CHAPTER 14. Public Employee or Official

Article 1. The Governor

7928.000. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary.

(b) Public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this division.

7928.005. (a) When the Governor leaves office, either voluntarily or involuntarily, public records in the custody or control of the Governor shall be transferred to the State Archives as soon as practical.

(b) Notwithstanding any other law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings the Governor may transfer that have not already been made accessible to the public.

(c) With respect to public records, public access, as otherwise provided for by this division, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later, nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases that have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section or Section 7928.010, the Secretary of State, as custodian of the State Archives, shall make all those public records and other writings available to the public as otherwise provided for in this division.

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7928.010. (a) (1) For a Governor who held office between 1974 and 1988, Section 7928.005 does not apply to public records or other writings that were in the Governor's direct custody or control at the time of leaving office, except to the extent that the Governor may voluntarily transfer those records or other writings to the State Archives.

(2) Subdivision (a) does not apply to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition.

(b) (1) Notwithstanding any other law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California. With respect to public records, however, public access, as otherwise provided for by this division, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later.

(2) Records or writings shall not be transferred pursuant to this subdivision unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards.

(3) An institution receiving public records pursuant to this subdivision shall not destroy any of those records without first receiving the written approval of the Secretary of State, as custodian of the State Archives. The Secretary of State may require that the records be placed in the State Archives rather than being destroyed.

(4) An institution receiving records or writings pursuant to this subdivision shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records that the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the originals.

7928.015. (a) The Secretary of State may appraise and manage new or existing records that are subject to Section 7928.005 or 7928.010 to determine whether the records are appropriate for preservation in the State Archives.

(b) For purposes of this section, the Secretary of State shall use professional archival practices, including, but not limited to, appraising the historic value of the records, arranging and describing the records, rehousing the records in appropriate storage containers, or providing any conservation treatment that the records require.

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Article 2. The Legislature

7928.100. (a) Except as provided in subdivision (b) and in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any records that are in the custody of, or maintained by, the Legislative Counsel.

(b) Subdivision (a) does not apply to records in the public database maintained by the Legislative Counsel that are described in Section 10248.

Article 3. Online Posting or Sale of Personal Information of Elected or Appointed Official

7928.200. (a) Nothing in this article is intended to preclude punishment instead under Section 69, 76, or 422 of the Penal Code, or any other law.

(b) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this article unless the service or provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.

7928.205. No state or local agency shall post the home address or telephone number of any elected or appointed official on the internet without first obtaining the written permission of that individual.

7928.210. (a) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child, on the internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual.

(b) A violation of this section is a misdemeanor.

(c) A violation of this section that leads to the bodily injury of the official, or the official's residing spouse or child, is a misdemeanor or a felony.

7928.215. (a) For purposes of this section, "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(b) No person, business, or association shall publicly post or publicly display on the internet the home address or telephone number of any elected or appointed official if that official has, either directly or through an agent designated under Section 7928.220, made a written demand of that person, business, or association to not disclose the official's home address or telephone number.

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(c) A written demand made under this section by a state constitutional officer, a mayor, or a Member of the Legislature, a city council, or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.

(d) A written demand made under this section by an elected official shall be effective for four years, regardless of whether the official's term has expired before the end of the four-year period.

(e) (1) A person, business, or association that receives the written demand of an elected or appointed official pursuant to this section shall remove the official's home address or telephone number from public display on the internet, including information provided to cellular telephone applications, within 48 hours of delivery of the written demand, and shall continue to ensure that this information is not reposted on the same internet website, subsidiary site, or any other internet website maintained by the recipient of the written demand.

(2) After receiving the elected or appointed official's written demand, the person, business, or association shall not transfer the appointed or elected official's home address or telephone number to any other person, business, or association through any other medium.

(3) Paragraph (2) does not prohibit a telephone corporation, as defined in Section 234 of the Public Utilities Code, or its affiliate, from transferring the elected or appointed official's home address or telephone number to any person, business, or association, if the transfer is authorized by federal or state law, regulation, order, or tariff, or necessary in the event of an emergency, or to collect a debt owed by the elected or appointed official to the telephone corporation or its affiliate.

7928.220. (a) An elected or appointed official may designate in writing the official's employer, a related governmental entity, or any voluntary professional association of similar officials to act, on behalf of that official, as that official's agent with regard to making a written demand pursuant to this article.

(b) An appointed official who is a district attorney, a deputy district attorney, or a peace officer, as defined in Sections 830 to 830.65, inclusive, of the Penal Code, may also designate the official's recognized collective bargaining representative to make a written demand on the official's behalf pursuant to this article.

(c) A written demand made by an agent pursuant to Section 7928.215 shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address.

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7928.225. (a) An official whose home address or telephone number is made public as a result of a violation of Section 7928.215 may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction.

(b) If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorneys' fees.

(c) A fine not exceeding one thousand dollars ($1,000) may be imposed for a violation of the court's order for an injunction or declarative relief obtained pursuant to this section.

7928.230. (a) No person, business, or association shall solicit, sell, or trade on the internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official's home address.

(b) Notwithstanding any other law, an official whose home address or telephone number is solicited, sold, or traded in violation of subdivision (a) may bring an action in any court of competent jurisdiction.

(c) If a jury or court finds that a violation has occurred, it shall award damages to that official in an amount up to a maximum of three times the actual damages but in no case less than four thousand dollars ($4,000).

Article 4. Personal Information of Agency Employee

7928.300. (a) The home addresses, home telephone numbers, personal cellular telephone numbers, and birthdates of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another public agency when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and any phone numbers on file with the employer of employees performing law enforcement-related functions, and the birthdate of any employee, shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to public agencies and their enrolled

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dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) (1) Unless used by the employee to conduct public business, or necessary to identify a person in an otherwise disclosable communication, the personal email addresses of all employees of a public agency shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(2) This subdivision shall not be construed to limit the public's right to access the content of an employee's personal email that is used to conduct public business, as decided by the Supreme Court in City of San Jose v. Superior Court (2017) 2 Cal.5th 608.

(c) Upon written request of any employee, a public agency shall not disclose the employee's home address, home telephone number, personal cellular telephone number, personal email address, or birthdate pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address, home telephone number, and personal cellular telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

Article 5. Employment Contracts of Government Employees and Related Matters

7928.400. Every employment contract between a state or local agency and any public official or public employee is a public record that is not subject to Section 7922.000 and the provisions listed in Section 7920.505.

7928.405. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, and Article 19.5 (commencing with Section 8430) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters.

(b) This section shall not be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this section.

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7928.410. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of records of local agencies related to activities governed by Chapter 10 (commencing with Section 3500) of Division 4, that reveal a local agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under that chapter.

(b) This section shall not be construed to limit the disclosure duties of a local agency with respect to any other records relating to the activities governed by the employee relations act referred to in this section.

CHAPTER 15. Public Entity Spending, Finances, and Oversight

Article 1. Access in General

7928.700. Notwithstanding any contract term to the contrary, a contract entered into by a state or local agency subject to this division, including the University of California, that requires a private entity to review, audit, or report on any aspect of that agency shall be public to the extent the contract is otherwise subject to disclosure under this division.

7928.705. (a) Except as provided in subdivision (b) and in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of the contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by a state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained.

(b) This section does not affect the law of eminent domain.

7928.710. (a) For purposes of this section, the following definitions apply:

(1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.

(3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.

(4) "Public investment fund" means any public pension or retirement system, any public endowment or foundation, or a public bank, as defined in Section 57600.

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(b) Notwithstanding any provision of this division or other law, the following records regarding alternative investments in which public investment funds invest are not subject to disclosure pursuant to this division, unless the information has already been publicly released by the keeper of the information:

(1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.

(2) Quarterly and annual financial statements of alternative investment vehicles.

(3) Meeting materials of alternative investment vehicles.

(4) Records containing information regarding the portfolio positions in which alternative investment funds invest.

(5) Capital call and distribution notices.

(6) Alternative investment agreements and all related documents.

(c) Notwithstanding subdivision (b), the following information contained in records described in subdivision (b) regarding alternative investments in which public investment funds invest is subject to disclosure pursuant to this division and shall not be considered a trade secret exempt from disclosure:

(1) The name, address, and vintage year of each alternative investment vehicle.

(2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.

(3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.

(4) The dollar amount, on a fiscal year-end basis, of cash distributions received by the public investment fund from each alternative investment vehicle.

(5) The dollar amount, on a fiscal year-end basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.

(6) The net internal rate of return of each alternative investment vehicle since inception.

(7) The investment multiple of each alternative investment vehicle since inception.

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(8) The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis, by the public investment fund to each alternative investment vehicle.

(9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.

7928.715. Nothing in this division requires disclosure of an identification number, alphanumeric character, or other unique identifying code that a public agency uses to identify a vendor or contractor, or an affiliate of a vendor or contractor, unless the identification number, alphanumeric character, or other unique identifying code is used in a public bidding or an audit involving the public agency.

7928.720. Notwithstanding Sections 7920.510, 7920.515, 7920.520, 7920.530, 7920.540, and 7920.545, and subdivision (a) of Section 7920.525, an itemized statement of the total expenditures and disbursements of any agency provided for in Article VI of the California Constitution shall be open for inspection.

Article 2. Requirements Specific to Online Access

7928.800. In implementing this division, each independent special district shall maintain an internet website in accordance with Section 53087.8.

CHAPTER 16. Regulation of Financial Institutions and Securities

7929.000. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records contained in, or related to, any of the following:

(a) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(b) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in subdivision (a).

(c) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in subdivision (a).

(d) Information received in confidence by any state agency referred to in subdivision (a).

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7929.005. (a) Any information reported to the North American Securities Administrators Association/Financial Industry Regulatory Authority and compiled as disciplinary records that are made available to the Department of Business Oversight through a computer system constitutes a public record.

(b) Notwithstanding any other provision of law, upon written or oral request pursuant to Section 25247 of the Corporations Code, the Department of Business Oversight may disclose any of the following:

(1) The information described in subdivision (a).

(2) The current license status of a broker-dealer.

(3) The year of issuance of the license of a broker-dealer.

7929.010. (a) For purposes of this section, the following definitions apply:

(1) "Customer" means a person or entity that has transacted or is transacting business with or has used or is using the services of a public bank or a person or entity for whom the public bank has acted as a fiduciary with respect to trust property.

(2) "Investment recipient" means an entity in which the public bank invests.

(3) "Loan recipient" means an entity or individual that has received a loan from the public bank.

(4) "Personal data" means social security numbers, tax identification numbers, physical descriptions, home addresses, home telephone numbers, statements of personal worth or any other personal financial data, employment histories, electronic mail addresses, and information that reveals any electronic network location or identity.

(5) "Public bank" has the same meaning as defined in Section 57600.

(b) Notwithstanding any other provision of this division, the following information and records of a public bank and the related decisions of the directors, officers, and managers of a public bank are not subject to disclosure pursuant to this division, unless the information has already been publicly released by the custodian of the information:

(1) Due diligence materials that are proprietary to the public bank.

(2) A memorandum or letter produced and distributed internally by the public bank.

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(3) A commercial or personal financial statement or other financial data received from an actual or potential customer, loan recipient, or investment recipient.

(4) Meeting materials of a closed-session meeting, or a closed-session portion of a meeting, of the board of directors, a committee of the board of directors, or executives of a public bank.

(5) A record containing information regarding a portfolio position in which the public bank invests.

(6) A record containing information regarding a specific loan amount or loan term, or information received from a loan recipient or customer pertaining to a loan or an application for a loan.

(7) A capital call or distribution notice, or a notice to a loan recipient or customer regarding a loan or account with the public bank.

(8) An investment agreement, loan agreement, deposit agreement, or a related document.

(9) Specific account information or other personal data received by the public bank from an actual or potential customer, investment recipient, or loan recipient.

(10) A memorandum or letter produced and distributed for purposes of meetings with a federal or state banking regulator.

(11) A memorandum or letter received from a federal or state banking regulator.

(12) Meeting materials of the internal audit committee, the compliance committee, or the governance committee of the board of directors of a public bank.

(c) Notwithstanding subdivision (b), the following information contained in records described in subdivision (b) is subject to disclosure pursuant to this division and is not a trade secret exempt from disclosure:

(1) The name, title, and appointment year of each director and executive of the public bank.

(2) The name and address of each current investment recipient in which the public bank currently invests.

(3) General internal performance metrics of the public bank and financial statements of the bank, as specified or required by the public bank's charter or as required by federal law.

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(4) Final audit reports of the public bank's independent auditors, although disclosure to an independent auditor of any information described in subdivision (b) shall not be construed to permit public disclosure of that information provided to the auditor.

7929.011. (a) Notwithstanding any other provision of this chapter, the following information and records of a bank, as defined in Section 63010, shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the custodian of the information:

(1) A commercial or personal financial statement or other financial or project data received from an actual or potential applicant to the bank, loan recipient, or investment recipient.

(2) A record containing information regarding a specific financial assistance, bond or loan amount or term, or information received from an applicant or customer pertaining to a contract for financial assistance, bond or loan or an application related thereto, including an investment agreement, loan agreement, or a related document.

(3) Due diligence materials, or information related to customers, and competitors, including summaries, reports, analyses, recommendations, projections, or estimates related thereto.

(4) Any record containing information claimed to be a trade secret, confidential or proprietary, or to be otherwise exempt from disclosure under this chapter, or under other applicable provisions of law as identified in writing by the information provider.

(b) This section shall apply to the bank solely in relation to the administration of the Climate Catalyst Revolving Loan Fund Act of 2020 (Article 6.7 (commencing with Section 63048.91) of Chapter 2 of Division 1 of Title 6.7), the Venture Capital Program pursuant to Section 63089.99, and the financing of economic development facilities and public development facilities, but only when a participating party is seeking financial assistance with the support of a sponsor, as those terms are defined in Section 63010.

(c) This section shall does not exempt disclosure of bank-produced documents or materials, including staff reports and terms sheets, that are presented to the bank's board of directors for consideration and approval, even if such documents or materials are produced from original information and documents that are otherwise exempted under this section. Any further information or document requested by the bank's board of directors in connection with these bank-produced documents or materials this is provided during, or prior to, the bank

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board meeting, are also not exempt from disclosure and shall be publicly available in the form provided to the board.

(d) This section shall only apply to documents and information provided to the bank on and after August 1, 2022, and prior to July 1, 2025, and shall continue to apply to those documents and information going forward.

CHAPTER 17. Security Measures and Related Matters

7929.200. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of a document prepared by or for a state or local agency that satisfies both of the following conditions:

(a) It assesses the agency's vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operation.

(b) It is for distribution or consideration in a closed session.

7929.205. (a) As used in this section, "voluntarily submitted" means submitted without the Office of Emergency Services exercising any legal authority to compel access to, or submission of, critical infrastructure information.

(b) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who, or entity that, voluntarily submitted the information.

(c) This section does not affect the status of information in the possession of any other state or local governmental agency.

7929.210. (a) Nothing in this division requires the disclosure of an information security record of a public agency, if, on the facts of the particular case, disclosure of that record would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of a public agency.

(b) Nothing in this section limits public disclosure of records stored within an information technology system of a public agency that are not otherwise exempt from disclosure pursuant to this division or any other law.

7929.215. Nothing in this division or any other law requires disclosure of a risk assessment or railroad infrastructure protection program filed with the Public Utilities Commission, the Director of Homeland Security, and the Office of Emergency Services pursuant to Article 7.3 (commencing with Section 7665) of Chapter 1 of Division 4 of the Public Utilities Code.

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CHAPTER 18. State Compensation Insurance Fund

7929.400. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund that relate to claims pursuant to Chapter 1 (commencing with Section 3200) of Part 1 of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

7929.405. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund that relate to discussions, communications, or any other portion of negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

7929.410. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund that relate to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

7929.415. Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, all of the following:

(a) Any medical claims information.

(b) Policyholder information, provided that this section shall not be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker.

(c) Information on rates, pricing, and claims handling received from brokers.

7929.420. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of records of the State Compensation Insurance Fund that are trade secrets pursuant to Section 7930.205, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including, without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and

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informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(b) Notwithstanding subdivision (a), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

7929.425. (a) Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of internal audits of the State Compensation Insurance Fund containing proprietary information, or the following records of the State Compensation Insurance Fund that are related to an internal audit:

(1) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that the person's papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(2) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(b) Notwithstanding subdivision (a), the portions of records containing proprietary information, or any information specified in subdivision (a), shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

7929.430. (a) For purposes of this section, "fully executed" means the point in time when all of the necessary parties to a contract have signed the contract.

(b) Except as provided in subdivision (d), records of the State Compensation Insurance Fund that are contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(c) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

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(d) Three years after a contract or amendment is open to inspection pursuant to this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(e) Notwithstanding any other law, the entire contract or amendment to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contract or amendment thereto until the contract or amendment is open to inspection pursuant to this section.

(f) This section does not apply to a document related to a contract with a public entity that is not otherwise expressly confidential as to that public entity.

CHAPTER 19. Test Materials, Test Results, and Related Matters

7929.600. Nothing in this division requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

7929.605. Except as provided in Sections 7924.510, 7924.700, and 7929.610, and in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code, this division does not require disclosure of test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination.

7929.610. (a) Notwithstanding the provisions listed in Section 7920.505, upon the request of any Member of the Legislature or upon request of the Governor or the Governor's designee, test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program of pupils enrolled in the public schools shall be disclosed to the requester.

(b) The questions or materials described in subdivision (a) may not include an individual examination that has been administered to a pupil and scored.

(c) The requester may not take physical possession of the questions or materials described in subdivision (a), but may view the questions or materials at a location selected by the department.

(d) Upon viewing this information, the requester shall keep the materials that the requester has seen confidential.

PART 6. OTHER EXEMPTIONS FROM DISCLOSURE

CHAPTER 1. Introductory Provisions

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7930.000. (a) It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to Section 7927.705 shall be listed and described in Chapter 2 (commencing with Section 7930.100) pursuant to a bill authorized by a standing committee of the Legislature to be introduced during the first year of each session of the Legislature.

(b) The statutes and constitutional provisions listed in Chapter 2 (commencing with Section 7930.100) may operate to exempt certain records, or portions thereof, from disclosure. The statutes and constitutional provisions listed and described may not be inclusive of all exemptions. The listing of a statute or constitutional provision in Chapter 2 (commencing with Section 7930.100) does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute or constitutional provision to determine the extent to which it, in light of the circumstances surrounding the request, exempts public records from disclosure.

7930.005. Records or information not required to be disclosed pursuant to Section 7927.705 may include, but shall not be limited to, records or information identified in statutes listed in Chapter 2 (commencing with Section 7930.100).

CHAPTER 2. Alphabetical List

7930.100. The following constitutional provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Crime victims, confidential information or records, The Victims' Bill of Rights Act of 2008: Marsy's Law, Section 28 of Article I of the California Constitution.

Privacy, inalienable right, Section 1 of Article I of the California Constitution.

7930.105. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Acquired immunodeficiency syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired immunodeficiency syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired immunodeficiency syndrome, confidentiality of personal data of patients in State Department of Public Health programs, Section 120820, Health and Safety Code.

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Acquired immunodeficiency syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired immunodeficiency syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired immunodeficiency syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired immunodeficiency syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired immunodeficiency syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired immunodeficiency syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired immunodeficiency syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired immunodeficiency syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired immunodeficiency syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, financial audits or program evaluations, Section 121085, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, violations, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, personally identifying research records not to be disclosed, Section 121075, Health and Safety Code.

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Acquired Immune Deficiency Syndrome Research and Confidentiality Act, permittee disclosure, Section 121080, Health and Safety Code.

Administrative procedure, adjudicatory hearings, interpreters, Section 11513, this code.

Adoption records, confidentiality of, Section 102730, Health and Safety Code.

Advance Health Care Directive Registry, exemption from disclosure for registration information provided to the Secretary of State, Section 7926.100, this code.

7930.110. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Aeronautics Act, reports of investigations and hearings, Section 21693, Public Utilities Code.

Agricultural producers marketing, access to records, Section 59616, Food and Agricultural Code.

Aiding disabled voters, Section 14282, Elections Code.

Air pollution data, confidentiality of trade secrets, Sections 7924.510 and 7924.700, this code, and Sections 42303.2 and 43206, Health and Safety Code.

Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code.

Alcohol and drug abuse records and records of communicable diseases, confidentiality of, Section 123125, Health and Safety Code.

Alcoholic beverage licensees, confidentiality of corporate proprietary information, Section 25205, Business and Professions Code.

Ambulatory Surgery Data Record, confidentiality of identifying information, Section 128737, Health and Safety Code.

Apiary registration information, confidentiality of, Section 29041, Food and Agricultural Code.

Archaeological site information and reports maintained by state and local agencies, disclosure not required, Section 7927.005, this code.

Arrest not resulting in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

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Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Assessor's records, confidentiality of information in, Section 408, Revenue and Taxation Code.

Assessor's records, confidentiality of information in, Section 451, Revenue and Taxation Code.

Assessor's records, display of documents relating to business affairs or property of another, Section 408.2, Revenue and Taxation Code.

Assigned risk plans, rejected applicants, confidentiality of information, Section 11624, Insurance Code.

Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2, Business and Professions Code.

Attorney applicant, information submitted by applicant and State Bar admission records, confidentiality of, Section 6060.25, Business and Professions Code.

Attorney-client confidential communication, Section 6068, Business and Professions Code, and Sections 952 and 954, Evidence Code.

Attorney, disciplinary proceedings, confidentiality before formal proceedings, Section 6086.1, Business and Professions Code.

Attorney, disciplinary proceeding, State Bar access to nonpublic court records, Section 6090.6, Business and Professions Code.

Attorney, law corporation, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney work product confidentiality in administrative adjudication, Section 11507.6, this code.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4, Code of Civil Procedure.

Automated forward facing parking control devices, confidentiality of video imaging records from the devices, Section 40240, Vehicle Code.

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Automated traffic enforcement system, confidentiality of photographic records made by the system, Section 21455.5, Vehicle Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Avocado handler transaction records, confidentiality of information, Section 44984, Food and Agricultural Code.

7930.115. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Bank and Corporation Tax, disclosure of information, Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2, Revenue and Taxation Code.

Bank employees, confidentiality of criminal history information, Section 4990, Financial Code.

Bank reports, confidentiality of, Section 459, Financial Code.

Basic Property Insurance Inspection and Placement Plan, confidential reports, Section 10097, Insurance Code.

Beef Council of California, confidentiality of fee transactions information, Section 64691.1, Food and Agricultural Code.

Bids, confidentiality of, Section 10304, Public Contract Code.

Birth, death, and marriage licenses, confidential information contained in, Sections 102100, 102110, and 102230, Health and Safety Code.

Birth defects, monitoring, confidentiality of information collected, Section 103850, Health and Safety Code.

Birth, live, confidential portion of certificate, Sections 102430, 102475, 103525, and 103590, Health and Safety Code.

Blood tests, confidentiality of hepatitis and AIDS carriers, Section 1603.1, Health and Safety Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

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Business and professions licensee exemption for social security number, Section 30, Business and Professions Code.

7930.120. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Cable television subscriber information, confidentiality of, Section 637.5, Penal Code.

CalFresh, disclosure of information, Section 18909, Welfare and Institutions Code.

California AIDS Program, personal data, confidentiality, Section 120820, Health and Safety Code.

California Apple Commission, confidentiality of lists of persons, Section 75598, Food and Agricultural Code.

California Apple Commission, confidentiality of proprietary information from producers or handlers, Section 75633, Food and Agricultural Code.

California Asparagus Commission, confidentiality of lists of producers, Section 78262, Food and Agricultural Code.

California Asparagus Commission, confidentiality of proprietary information from producers, Section 78288, Food and Agricultural Code.

California Avocado Commission, confidentiality of information from handlers, Section 67094, Food and Agricultural Code.

California Avocado Commission, confidentiality of proprietary information from handlers, Section 67104, Food and Agricultural Code.

California Cherry Commission, confidentiality of proprietary information from producers, processors, shippers, or grower-handlers, Section 76144, Food and Agricultural Code.

California Children's Services Program, confidentiality of factor replacement therapy contracts, Section 123853, Health and Safety Code.

California Cut Flower Commission, confidentiality of lists of producers, Section 77963, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of proprietary information from producers, Section 77988, Food and Agricultural Code.

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California Date Commission, confidentiality of proprietary information from producers and grower-handlers, Section 77843, Food and Agricultural Code.

California Egg Commission, confidentiality of proprietary information from handlers or distributors, Section 75134, Food and Agricultural Code.

California Forest Products Commission, confidentiality of lists of persons, Section 77589, Food and Agricultural Code.

California Forest Products Commission, confidentiality of proprietary information from producers, Section 77624, Food and Agricultural Code.

California Iceberg Lettuce Commission, confidentiality of information from handlers, Section 66624, Food and Agricultural Code.

California Kiwifruit Commission, confidentiality of proprietary information from producers or handlers, Section 68104, Food and Agricultural Code.

California Navel Orange Commission, confidentiality of proprietary information from producers or handlers and lists of producers and handlers, Section 73257, Food and Agricultural Code.

California Pepper Commission, confidentiality of lists of producers and handlers, Section 77298, Food and Agricultural Code.

California Pepper Commission, confidentiality of proprietary information from producers or handlers, Section 77334, Food and Agricultural Code.

California Pistachio Commission, confidentiality of proprietary information from producers or processors, Section 69045, Food and Agricultural Code.

California Salmon Council, confidentiality of fee transactions records, Section 76901.5 of the Food and Agricultural Code.

California Salmon Council, confidentiality of request for list of commercial salmon vessel operators, Section 76950 of the Food and Agricultural Code.

California Seafood Council, confidentiality of fee transaction records, Section 78553, Food and Agricultural Code.

California Seafood Council, confidentiality of information on volume of fish landed, Section 78575, Food and Agricultural Code.

California Sheep Commission, confidentiality of proprietary information from producers or handlers and lists of producers, Section 76343, Food and Agricultural Code.

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California State University contract law, bids, questionnaires, and financial statements, Section 10763, Public Contract Code.

California State University Investigation of Reported Improper Governmental Activities Act, confidentiality of investigative audits completed pursuant to the act, Section 89574, Education Code.

California Table Grape Commission, confidentiality of information from shippers, Section 65603, Food and Agricultural Code.

California Tomato Commission, confidentiality of lists of producers, handlers, and others, Section 78679, Food and Agricultural Code.

California Tomato Commission, confidentiality of proprietary information, Section 78704, Food and Agricultural Code.

California Tourism Marketing Act, confidentiality of information pertaining to businesses paying the assessment under the act, Section 13995.54, this code.

California Victim Compensation Board, disclosure not required of records relating to assistance requests under Article 1 (commencing with Section 13950) of Chapter 5 of Part 4 of Division 3 of Title 2 of this code, Section 7923.755, this code.

California Walnut Commission, confidentiality of lists of producers, Section 77101, Food and Agricultural Code.

California Walnut Commission, confidentiality of proprietary information from producers or handlers, Section 77154, Food and Agricultural Code.

California Wheat Commission, confidentiality of proprietary information from handlers and lists of producers, Section 72104, Food and Agricultural Code.

California Wheat Commission, confidentiality of requests for assessment refund, Section 72109, Food and Agricultural Code.

California Wine Commission, confidentiality of proprietary information from producers or vintners, Section 74655, Food and Agricultural Code.

California Winegrape Growers Commission, confidentiality of proprietary information from producers and vintners, Section 74955, Food and Agricultural Code.

7930.125. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

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Cancer registries, confidentiality of information, Section 103885, Health and Safety Code.

Candidate for local nonpartisan elective office, confidentiality of ballot statement, Section 13311, Elections Code.

Child abuse information, exchange by multidisciplinary personnel teams, Section 830, Welfare and Institutions Code.

Child abuse report and those making report, confidentiality of, Sections 11167 and 11167.5, Penal Code.

Child care liability insurance, confidentiality of information, Section 1864, Insurance Code.

Child concealer, confidentiality of address, Section 278.7, Penal Code.

Child custody investigation report, confidentiality of, Section 3111, Family Code.

Child day care facility, nondisclosure of complaint, Section 1596.853, Health and Safety Code.

Child health and disability prevention, confidentiality of health screening and evaluation results, Section 124110, Health and Safety Code.

Child sexual abuse reports, confidentiality of reports filed in a contested proceeding involving child custody or visitation rights, Section 3118, Family Code.

Child support, confidentiality of income tax return, Section 3552, Family Code.

Child support, promise to pay, confidentiality of, Section 7614, Family Code.

Childhood lead poisoning prevention, confidentiality of blood lead findings, Section 124130, Health and Safety Code.

Children and families commission, local, confidentiality of individually identifiable information, Section 130140.1, Health and Safety Code.

Cigarette tax, confidential information, Section 30455, Revenue and Taxation Code.

Civil actions, delayed disclosure for 30 days after complaint filed, Section 482.050, Code of Civil Procedure.

Closed sessions, document assessing vulnerability of state or local agency to disruption by terrorist or other criminal acts, Section 7929.200, this code.

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Closed sessions, meetings of local governments, pending litigation, Section 54956.9, this code.

Colorado River Board, confidential information and records, Section 12519, Water Code.

Commercial fishing licensee, confidentiality of records, Section 7923, Fish and Game Code.

Commercial fishing reports, Section 8022, Fish and Game Code.

Community care facilities, confidentiality of client information, Section 1557.5, Health and Safety Code.

Community college employee, candidate examination records, confidentiality of, Section 88093, Education Code.

Community college employee, notice and reasons for non-reemployment, confidentiality, Section 87740, Education Code.

7930.130. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Conservatee, confidentiality of the conservatee's report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator's birthdate and driver's license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509, this code.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

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Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Controlled Substance Law violations, confidential information, Section 818.7, this code.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Section 54453, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Section 27491.8, this code.

County aid and relief to indigents, confidentiality of investigation, supervision, relief, and rehabilitation records, Section 17006, Welfare and Institutions Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees' Retirement, confidential statements and records, Section 31532, this code.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

County special commissions, disclosure of health care peer review and quality assessment records not required, Section 14087.58, Welfare and Institutions Code.

County special commissions, disclosure of records relating to the commission's rates of payment for publicly assisted medical care not required, Section 14087.58, Welfare and Institutions Code.

Court files, access to, restricted for 60 days, Section 1161.2, Code of Civil Procedure.

Court files, access to, restricted for 60 days, Section 1708.85, Civil Code.

Court reporters, confidentiality of records and reporters, Section 68525, this code.

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Court-appointed special advocates, confidentiality of information acquired or reviewed, Section 105, Welfare and Institutions Code.

Crane employers, previous business identities, confidentiality of, Section 7383, Labor Code.

Credit unions, confidentiality of investigation and examination reports, Section 14257, Financial Code.

Credit unions, confidentiality of employee criminal history information, Section 14409.2, Financial Code.

Criminal defendant, indigent, confidentiality of request for funds for investigators and experts, Section 987.9, Penal Code.

Criminal offender record information, access to, Sections 11076 and 13202, Penal Code.

Crop reports, confidential, Section 7927.300, this code.

Customer list of chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, the quantities and dates of shipments, and the proportion of a specified chemical within a mixture, confidential, Section 147.2, Labor Code.

Customer list of employment agency, trade secret, Section 16607, Business and Professions Code.

Customer list of telephone answering service, trade secret, Section 16606, Business and Professions Code.

7930.135. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Dairy Council of California, confidentiality of ballots, Section 64323, Food and Agricultural Code.

Death, report that physician's or podiatrist's negligence or incompetence may be cause, confidentiality of, Section 802.5, Business and Professions Code.

Dental hygienist drug and alcohol diversion program, confidentiality of records pertaining to treatment, Section 1966.5, Business and Professions Code.

Dentist advertising and referral contract exemption, Section 650.2, Business and Professions Code.

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Dentist, alcohol or dangerous drug rehabilitation and diversion, confidentiality of records, Section 1698, Business and Professions Code.

Department of Consumer Affairs licensee exemption for alcohol or dangerous drug treatment and rehabilitation records, Section 156.1, Business and Professions Code.

Department of Human Resources, confidentiality of pay data furnished to, Section 19826.5, this code.

Department of Motor Vehicles, confidentiality of information provided by an insurer, Section 4750.4, Vehicle Code.

Department of Motor Vehicles, confidentiality of the home address of specified persons in the records of the Department of Motor Vehicles, Section 1808.6, Vehicle Code.

Developmentally disabled conservatee, confidentiality of reports and records, Sections 416.8 and 416.18, Health and Safety Code.

Developmentally disabled person, access to information provided by family member, Section 4727, Welfare and Institutions Code.

Developmentally disabled person and person with mental illness, access to and release of information about, by protection and advocacy agency, Section 4903, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of patient records, state agencies, Section 4552.5, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of records and information, Sections 4514 and 4518, Welfare and Institutions Code.

Diesel Fuel Tax information, disclosure prohibited, Section 60609, Revenue and Taxation Code.

Disability compensation, confidential medical records, Section 2714, Unemployment Insurance Code.

Disability insurance, access to registered information, Section 789.7, Insurance Code.

Discrimination complaint to Division of Labor Standards Enforcement, confidentiality of witnesses, Section 98.7, Labor Code.

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Dispute resolution participants confidentiality, Section 471.5, Business and Professions Code.

Division of Medi-Cal Fraud and Elder Abuse, confidentiality of complaints, Section 12528, this code.

Division of Workers' Compensation, confidentiality of data obtained by the administrative director and derivative works created by the division, Sections 3201.5, 3201.7, and 3201.9, Labor Code.

Division of Workers' Compensation, individually identifiable information and residence addresses obtained or maintained by the division on workers' compensation claims, confidentiality of, Section 138.7, Labor Code.

Division of Workers' Compensation, individually identifiable information of health care organization patients, confidentiality of, Section 4600.5, Labor Code.

Division of Workers' Compensation, individual workers' compensation claim files and auditor's working papers, confidentiality of, Section 129, Labor Code.

Division of Workers' Compensation, peer review proceedings and employee medical records, confidentiality of, Section 4600.6, Labor Code.

Domestic violence counselor and victim, confidentiality of communication, Sections 1037.2 and 1037.5, Evidence Code.

Driver arrested for traffic violation, notice of reexamination for evidence of incapacity, confidentiality of, Section 40313, Vehicle Code.

Driving school and driving instructor licensee records, confidentiality of, Section 11108, Vehicle Code.

7930.140. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Educational psychologist-patient, privileged communication, Section 1010.5, Evidence Code.

Electronic and appliance repair dealer, service contractor, financial data in applications, Section 7925.010, this code.

Electronic Recording Delivery Act of 2004, exemption from disclosure for computer security reports, Section 27394, this code.

Emergency Care Data Record, exemption from disclosure for identifying information, Section 128736, Health and Safety Code.

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Emergency Medical Services Fund, patient named, Section 1797.98c, Health and Safety Code.

Emergency medical technicians, confidentiality of disciplinary investigation information, Section 1798.200, Health and Safety Code.

Emergency Medical Technician-Paramedic (EMT-P), exemption from disclosure for records relating to personnel actions against, or resignation of, an EMT-P for disciplinary cause or reason, Section 1799.112, Health and Safety Code.

Eminent domain proceedings, use of state tax returns, Section 1263.520, Code of Civil Procedure.

Employment agency, confidentiality of customer list, Section 16607, Business and Professions Code.

Employment application, nondisclosure of arrest record or certain convictions, Sections 432.7 and 432.8, Labor Code.

Employment Development Department, furnishing materials, Section 307, Unemployment Insurance Code.

Enteral nutrition products, confidentiality of contracts by the State Department of Health Care Services with manufacturers of enteral nutrition products, Section 14105.8, Welfare and Institutions Code.

Equal wage rate violation, confidentiality of complaint, Section 1197.5, Labor Code.

Equalization, State Board of, prohibition against divulging information, Section 15619, this code.

Escrow Agents' Fidelity Corporation, confidentiality of examination and investigation reports, Section 17336, Financial Code.

Escrow agents' confidentiality of reports on violations, Section 17414, Financial Code.

Escrow agents' confidentiality of state summary criminal history information, Section 17414.1, Financial Code.

Estate tax, confidential records and information, Section 14251, Revenue and Taxation Code.

Excessive rates or complaints, reports, Section 1857.9, Insurance Code.

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Executive Department, closed sessions and the record of topics discussed, Sections 11126 and 11126.1, this code.

Executive Department, investigations and hearings, confidential nature of information acquired, Section 11183, this code.

7930.145. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Family court records, Section 1818, Family Code.

Farm product processor license, confidentiality of financial statements, Section 55523.6, Food and Agricultural Code.

Farm product processor licensee, confidentiality of grape purchases, Section 55601.5, Food and Agricultural Code.

Fee payer information, prohibition against disclosure by the State Board of Equalization and others, Section 55381, Revenue and Taxation Code.

Financial institutions, issuance of securities, reports and records of state agencies, Section 7929.000, this code.

Financial statements of insurers, confidentiality of information received, Section 925.3, Insurance Code.

Financial statements and questionnaires, of prospective bidders for the state, confidentiality of, Section 10165, Public Contract Code.

Financial statements and questionnaires, of prospective bidders for California State University contracts, confidentiality of, Section 10763, Public Contract Code.

Firearms, centralized list of exempted federal firearms licensees, disclosure of information compiled from, Sections 28475 and 28480, Penal Code.

Firearms, centralized list of dealers and licensees, disclosure of information compiled from, Section 26715, Penal Code.

Firearm license applications, Sections 7923.800 and 7923.805, this code.

Firearm sale or transfer, confidentiality of records, Section 28060, Penal Code.

Fishing and hunting licenses, confidentiality of names and addresses contained in records submitted to the Department of Fish and Wildlife to obtain recreational fishing and hunting licenses, Section 1050.6, Fish and Game Code.

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Foreign marketing of agricultural products, confidentiality of financial information, Section 58577, Food and Agricultural Code.

Forest fires, anonymity of informants, Section 4417, Public Resources Code.

Foster homes, identifying information, Section 1536, Health and Safety Code.

Franchise Tax Board, access to Franchise Tax Board information by the State Department of Social Services, Section 11025, Welfare and Institutions Code.

Franchise Tax Board, auditing, confidentiality of, Section 90005, this code.

Franchises, applications, and reports filed with Commissioner of Business Oversight, disclosure and withholding from public inspection, Section 31504, Corporations Code.

7930.150. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Gambling Control Act, exemption from disclosure for records of the California Gambling Control Commission and the Department of Justice, Sections 19819 and 19821, Business and Professions Code.

Genetically Handicapped Persons Program, confidentiality of factor replacement therapy contracts, Section 125191, Health and Safety Code.

Governor, correspondence of and to Governor and Governor's office, Section 7928.000, this code.

Governor, transfer of public records in control of, restrictions on public access, Sections 7928.005 and 7928.010, this code.

Grand jury, confidentiality of request for special counsel, Section 936.7, Penal Code.

Grand jury, confidentiality of transcription of indictment or accusation, Section 938.1, Penal Code.

Group Insurance, public employees, Section 53202.25, this code.

Guardianship, confidentiality of report regarding the suitability of the proposed guardian, Section 1543, Probate Code.

Guardianship, disclosure of report and recommendation concerning proposed guardianship of person or estate, Section 1513, Probate Code.

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7930.155. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25509, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25512, 25512.1, and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, Section 25358.2, Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste recycling, information clearinghouse, confidentiality of trade secrets, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health authorities, special county, confidentiality of records, Sections 14087.35, 14087.36, and 14087.38, Welfare and Institutions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

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Health commissions, special county, confidentiality of peer review proceedings, rates of payment, and trade secrets, Section 14087.31, Welfare and Institutions Code.

Health facilities, patient's rights of confidentiality, subdivision (c) of Section 128745 and Sections 128735, 128736, 128737, 128755, and 128765, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Section 127780, Health and Safety Code.

Health plan governed by a county board of supervisors, exemption from disclosure for records relating to provider rates or payments for a three-year period after execution of the provider contract, Sections 7926.205 and 54956.87, this code.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, Section 7926.210, this code.

Hospital final accreditation report, Section 7926.000, this code.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

7930.160. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

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Improper governmental activities reporting, confidentiality of identity of person providing information, Section 8547.5, this code.

Improper governmental activities reporting, disclosure of information, Section 8547.6, this code.

Industrial loan companies, confidentiality of financial information, Section 18496, Financial Code.

Industrial loan companies, confidentiality of investigation and examination reports, Section 18394, Financial Code.

Influenza vaccine, trade secret information and information relating to recipient of vaccine, Section 120160, Health and Safety Code.

In forma pauperis litigant, rules governing confidentiality of financial information, Section 68633, this code.

Infrastructure information, exemption from disclosure for information voluntarily submitted to the Office of Emergency Services, Section 7929.205, this code.

In-Home Supportive Services Program, exemption from disclosure for information regarding persons paid by the state to provide in-home supportive services, Section 7926.300, this code.

Initiative, referendum, recall, and other petitions, confidentiality of names of signers, Sections 7924.100, 7924.105, and 7924.110, this code.

Insurance claims analysis, confidentiality of information, Section 1875.16, Insurance Code.

Insurance Commissioner, confidential information, Sections 735.5, 1067.11, 1077.3, and 12919, Insurance Code.

Insurance Commissioner, informal conciliation of complaints, confidential communications, Section 1858.02, Insurance Code.

Insurance Commissioner, information from examination or investigation, confidentiality of, Sections 1215.8, 1433, and 1759.3, Insurance Code.

Insurance Commissioner, writings filed with nondisclosure, Section 855, Insurance Code.

Insurance fraud reporting, information acquired not part of public record, Section 1873.1, Insurance Code.

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Insurance licensee, confidential information, Section 1666.5, Insurance Code.

Insurer application information, confidentiality of, Section 925.3, Insurance Code.

Insurer financial analysis ratios and examination synopses, confidentiality of, Section 933, Insurance Code.

Department of Resources Recycling and Recovery information, prohibition against disclosure, Section 45982, Revenue and Taxation Code.

International wills, confidentiality of registration information filed with the Secretary of State, Section 6389, Probate Code.

Intervention in regulatory and ratemaking proceedings, audit of customer seeking and award, Section 1804, Public Utilities Code.

Investigation and security records, exemption from disclosure for records of the Attorney General, the Department of Justice, the Office of Emergency Services, and state and local police agencies, Sections 7923.600 to 7923.630, inclusive, this code.

Investigative consumer reporting agency, limitations on furnishing an investigative consumer report, Section 1786.12, Civil Code.

7930.165. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Joint Legislative Ethics Committee, confidentiality of reports and records, Section 8953, this code.

Judicial candidates, confidentiality of communications concerning, Section 12011.5, this code.

Judicial proceedings, confidentiality of employer records of employee absences, Section 230.2, Labor Code.

Jurors' lists, lists of registered voters and licensed drivers as source for, Section 197, Code of Civil Procedure.

Juvenile court proceedings to adjudge a person a dependent child of court, sealing records of, Section 389, Welfare and Institutions Code.

Juvenile criminal records, dissemination to schools, Section 828.1, Welfare and Institutions Code.

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Juvenile delinquents, notification of chief of police or sheriff of escape of minor from secure detention facility, Section 1155, Welfare and Institutions Code.

Labor dispute, investigation and mediation records, confidentiality of, Section 3601, this code.

Lanterman-Petris-Short Act, mental health services recipients, confidentiality of information and records, mental health advocate, Sections 5540, 5541, 5542, and 5550, Welfare and Institutions Code.

Law enforcement vehicles, registration disclosure, Section 5003, Vehicle Code.

Legislative Counsel records, Section 7928.100, this code.

Library circulation records and other materials, Sections 7925.000 and 7927.105, this code.

Life and disability insurers, actuarial information, confidentiality of, Section 10489.15, Insurance Code.

Litigation, confidentiality of settlement information, Section 68513, this code.

Local agency legislative body, closed sessions, disclosure of materials, Section 54956.9, this code.

Local government employees, confidentiality of records and claims relating to group insurance, Section 53202.25, this code.

Local summary criminal history information, confidentiality of, Sections 13300 and 13305, Penal Code.

Local agency legislative body, closed session, nondisclosure of minute book, Section 54957.2, this code.

Local agency legislative body, meeting, disclosure of agenda, Section 54957.5, this code.

Long-term health facilities, confidentiality of complaints against, Section 1419, Health and Safety Code.

Long-term health facilities, confidentiality of records retained by State Department of Public Health, Section 1439, Health and Safety Code.

Los Angeles County Tourism Marketing Commission, confidentiality of information obtained from businesses to determine their assessment, Section 13995.108, this code.

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7930.170. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Managed Risk Medical Insurance Board, negotiations with entities contracting or seeking to contract with the board, Sections 7926.225 and 7926.230, this code.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Sections 1603.1, 1603.3, and 121022, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015, Health and Safety Code.

Manufactured home, mobilehome, floating home, confidentiality of home address of registered owner, Section 18081, Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987, Evidence Code.

Market reports, confidential, Section 7927.300, this code.

Marketing of commodities, confidentiality of financial information, Section 58781, Food and Agricultural Code.

Marketing orders, confidentiality of processors' or distributors' information, Section 59202, Food and Agricultural Code.

Marriage, confidential, certificate, Section 511, Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2, Welfare and Institutions Code.

Medi-Cal Benefits Program, request of department for records or information, Section 14124.89, Welfare and Institutions Code.

Medi-Cal managed care program, exemption from disclosure for financial and utilization data submitted by Medi-Cal managed care health plans to establish rates, Section 14301.1, Welfare and Institutions Code.

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Medi-Cal program, exemption from disclosure for best price contracts between the State Department of Health Care Services and drug manufacturers, Section 14105.33, Welfare and Institutions Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16, Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30, Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157, Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828, Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5, Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1, this code.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620, Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.15, 5328.2, 5328.4, 5328.8, and 5328.9, Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443, Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121, Food and Agricultural Code.

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Milk, market milk, confidential records and reports, Section 62243, Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946, Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716, Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207, Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1, Penal Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5, Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5, Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167, Penal Code.

Missing persons' information, disclosure of, Sections 14204 and 14205, Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330, Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014, Vehicle Code.

Motor Vehicles, Department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3, Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628, Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8, this code.

7930.175. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

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Narcotic and drug abuse patients, confidentiality of records, Section 11845.5, Health and Safety Code.

Native American graves, cemeteries, and sacred places, records of, Section 7927.000, this code.

Notary public, confidentiality of application for appointment and commission, Section 8201.5, this code.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

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7930.180. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Parole revocation proceedings, confidentiality of information in reports, Section 3063.5, Penal Code.

Passenger fishing boat licenses, records, Section 7923, Fish and Game Code.

Paternity, acknowledgment, confidentiality of records, Section 102760, Health and Safety Code.

Patient-physician confidential communication, Sections 992 and 994, Evidence Code.

Patient records, confidentiality of, Section 123135, Health and Safety Code.

Payroll records, confidentiality of, Section 1776, Labor Code.

Peace officer personnel records, confidentiality of, Sections 832.7 and 832.8, Penal Code.

Penitential communication between penitent and clergy, Sections 1032 and 1033, Evidence Code.

Personal Care Services Program, exemption from disclosure for information regarding persons paid by the state to provide personal care services, Section 7926.300, this code.

Personal Income Tax, disclosure of information, Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2, Revenue and Taxation Code.

Personal information, Information Practices Act, prohibitions against disclosure by state agencies, Sections 1798.24 and 1798.75, Civil Code.

Personal information, subpoena of records containing, Section 1985.4, Code of Civil Procedure.

Personal representative, confidentiality of personal representative's birthdate and driver's license number, Section 8404, Probate Code.

Persons formerly classified as mentally abnormal sex offenders committed to a state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Persons with mental health disorders, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

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Persons with mental health disorders, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Persons with mental health disorders voluntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.15, 5328.2, 5328.4, 5328.8, and 5328.9, Welfare and Institutions Code.

Persons with mental health disorders, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Petition signatures, Section 18650, Elections Code.

Petroleum supply and pricing, confidential information, Sections 25364 and 25366, Public Resources Code.

Pharmacist, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 4372, Business and Professions Code.

Physical therapist or assistant, records of dangerous drug or alcohol diversion and rehabilitation, confidentiality of, Section 2667, Business and Professions Code.

Physical or mental condition or conviction of controlled substance offense, records in Department of Motor Vehicles, confidentiality of, Section 1808.5, Vehicle Code.

Physician assistant, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 3534.7, Business and Professions Code.

Physician competency examination, confidentiality of reports, Section 2294, Business and Professions Code.

Physicians and surgeons, confidentiality of reports of patients with a lapse of consciousness disorder, Section 103900, Health and Safety Code.

Physician Services Account, confidentiality of patient names in claims, Section 16956, Welfare and Institutions Code.

Pilots, confidentiality of personal information, Section 1157.1, Harbors and Navigation Code.

Pollution Control Financing Authority, financial data submitted to, Section 7924.505, this code.

Postmortem or autopsy photos, Section 129, Code of Civil Procedure.

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7930.185. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Pregnancy tests by local public health agencies, confidentiality of, Section 123380, Health and Safety Code.

Pregnant women, confidentiality of blood tests, Section 125105, Health and Safety Code.

Prehospital emergency medical care, release of information, Sections 1797.188 and 1797.189, Health and Safety Code.

Prenatal syphilis tests, confidentiality of, Section 120705, Health and Safety Code.

Prescription drug discounts, confidentiality of corporate proprietary information, Section 130506, Health and Safety Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

Prisoners, transfer from county facility for mental treatment and evaluation, confidentiality of written reasons, Section 4011.6, Penal Code.

Private industry wage data collected by public entity, confidentiality of, Section 7927.600, this code.

Private railroad car tax, confidentiality of information, Section 11655, Revenue and Taxation Code.

Probate referee, disclosure of materials, Section 8908, Probate Code.

Probation officer reports, inspection of, Section 1203.05, Penal Code.

Produce dealer, confidentiality of financial statements, Section 56254, Food and Agricultural Code.

Products liability insurers, transmission of information, Section 1857.9, Insurance Code.

Professional corporations, financial statements, confidentiality of, Section 13406, Corporations Code.

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Property on loan to museum, notice of intent to preserve an interest in, not subject to disclosure, Section 1899.5, Civil Code.

Property taxation, confidentiality of change of ownership, Section 481, Revenue and Taxation Code.

Property taxation, confidentiality of exemption claims, Sections 63.1, 69.5, and 408.2, Revenue and Taxation Code.

Property taxation, confidentiality of property information, Section 15641, Government Code and Section 833, Revenue and Taxation Code.

Proprietary information, availability only to the director and other persons authorized by the operator and the owner, Section 2778, Public Resources Code.

Psychologist and client, confidential relations and communications, Section 2918, Business and Professions Code.

Psychotherapist-patient confidential communication, Sections 1012 and 1014, Evidence Code.

Public employees' home addresses and telephone numbers, confidentiality of, Section 7928.300, this code.

Public Employees' Medical and Hospital Care Act, confidentiality of data relating to health care services rendered by participating hospitals to members and annuitants, Section 22854.5, this code.

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20230, this code.

Public investment funds, exemption from disclosure for records regarding alternative investments, Section 7928.710, this code.

Public school employees organization, confidentiality of proof of majority support submitted to Public Employment Relations Board, Sections 3544, 3544.1, and 3544.5, this code.

Public social services, confidentiality of digest of decisions, Section 10964, Welfare and Institutions Code.

Public social services, confidentiality of information regarding child abuse or elder or dependent persons abuse, Section 10850.1, Welfare and Institutions Code.

Public social services, confidentiality of information regarding eligibility, Section 10850.2, Welfare and Institutions Code.

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Public social services, confidentiality of records, Section 10850, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies, Section 10850.3, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies regarding deceased applicant or recipient, Section 10850.7, Welfare and Institutions Code.

Public utilities, confidentiality of information, Section 583, Public Utilities Code.

Pupil, confidentiality of personal information, Section 45345, Education Code.

Pupil drug and alcohol use questionnaires, confidentiality of, Section 11605, Health and Safety Code.

Pupil, expulsion hearing, disclosure of testimony of witness and closed session of district board, Section 48918, Education Code.

Pupil, personal information disclosed to school counselor, confidentiality of, Section 49602, Education Code.

Pupil record contents, records of administrative hearing to change contents, confidentiality of, Section 49070, Education Code.

Pupil records, access authorized for specified parties, Section 49076, Education Code.

Pupil records, disclosure in hearing to dismiss or suspend school employee, Section 44944.3, Education Code.

Pupil records, release of directory information to private entities, Sections 49073 and 49073.5, Education Code.

7930.190. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Radioactive materials, dissemination of information about transportation of, Section 33002, Vehicle Code.

Railroad infrastructure protection program, disclosure not required for risk assessments filed with the Public Utilities Commission, the Director of Emergency Services, or the Office of Emergency Services, Section 7929.215, this code.

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Real estate broker, annual report to Bureau of Real Estate of financial information, confidentiality of, Section 10232.2, Business and Professions Code.

Real property, acquisition by state or local government, information relating to feasibility, Section 7928.705, this code.

Real property, change in ownership statement, confidentiality of, Section 27280, this code.

Records described in Section 1620, Penal Code.

Records of contract purchasers, inspection by public prohibited, Section 85, Military and Veterans Code.

Records of persons committed to a state hospital pursuant to Section 4135, Welfare and Institutions Code.

Registered public obligations, inspection of records of security interests in, Section 5060, this code.

Registration of exempt vehicles, nondisclosure of name of person involved in alleged violation, Section 5003, Vehicle Code.

Rehabilitation, Department of, confidential information, Section 19016, Welfare and Institutions Code.

Reinsurance intermediary-broker license information, confidentiality of, Section 1781.3, Insurance Code.

Relocation assistance, confidential records submitted to a public entity by a business or farm operation, Section 7262, this code.

Rent control ordinance, confidentiality of information concerning accommodations sought to be withdrawn from, Section 7060.4, this code.

Report of probation officer, inspection, copies, Section 1203.05, Penal Code.

Repossession agency licensee application, confidentiality of information, Sections 7503, 7504, and 7506.5, Business and Professions Code.

Reproductive health facilities, disclosure not required for personal information regarding employees, volunteers, board members, owners, partners, officers, and contractors of a reproductive health services facility who have provided requisite notification, Sections 7926.400 to 7926.430, inclusive, this code.

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Residence address in any record of Department of Housing and Community Development, confidentiality of, Section 7927.415, this code.

Residence address in any record of Department of Motor Vehicles, confidentiality of, Section 7927.405, this code, and Section 1808.21, Vehicle Code.

Residence and mailing addresses in records of Department of Motor Vehicles, confidentiality of, Section 1810.7, Vehicle Code.

Residential care facilities, confidentiality of resident information, Section 1568.08, Health and Safety Code.

Residential care facilities for the elderly, confidentiality of client information, Section 1569.315, Health and Safety Code.

Resource families, identifying information, Section 16519.55, Welfare and Institutions Code.

Respiratory care practitioner, professional competency examination reports, confidentiality of, Section 3756, Business and Professions Code.

Restraint of trade, civil action by district attorney, confidential memorandum, Section 16750, Business and Professions Code.

Reward by Governor for information leading to arrest and conviction, confidentiality of person supplying information, Section 1547, Penal Code.

7930.195. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Safe surrender site, confidentiality of information pertaining to a parent or individual surrendering a child, Section 1255.7, Health and Safety Code.

Sales and use tax, disclosure of information, Section 7056, Revenue and Taxation Code.

Santa Barbara Regional Health Authority, exemption from disclosure for records maintained by the authority regarding negotiated rates for the California Medical Assistance Program, Section 14499.6, Welfare and Institutions Code.

Savings association employees, disclosure of criminal history information, Section 6525, Financial Code.

Savings associations, inspection of records by shareholders, Section 6050, Financial Code.

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School district governing board, disciplinary action, disclosure of pupil information, Section 35146, Education Code.

School employee, merit system examination records, confidentiality of, Section 45274, Education Code.

School employee, notice and reasons for hearing on non-reemployment of employee, confidentiality of, Sections 44948.5 and 44949, Education Code.

School meals for needy pupils, confidentiality of records, Section 49558, Education Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex change, confidentiality of birth certificate, Section 103440, Health and Safety Code.

Sex offenders, registration form, Section 290.021, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Shorthand reporter's complaint, Section 8010, Business and Professions Code.

Small family day care homes, identifying information, Section 1596.86, Health and Safety Code.

Social security number, applicant for driver's license or identification card, nondisclosure of, Section 1653.5, Vehicle Code, and Section 7922.200, this code.

Social security number, official record or official filing, nondisclosure of, Section 9526.5, Commercial Code, and Sections 7922.205 and 7922.210, this code.

Social Security Number Truncation Program, Article 3.5 (commencing with Section 27300) of Chapter 6 of Part 3 of Division 2 of Title 3, this code.

Social security numbers within records of local agencies, nondisclosure of, Section 7922.200, this code.

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7930.200. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

State agency activities relating to unrepresented employees, Section 7928.405, this code.

State agency activities relating to providers of health care, Section 7927.500, this code.

State Auditor, access to barred records, Section 8545.2, this code.

State Auditor, confidentiality of records, Sections 8545, 8545.1, and 8545.3, this code.

State civil service employee, confidentiality of appeal to State Personnel Board, Section 18952, this code.

State civil service employees, confidentiality of reports, Section 18573, this code.

State civil service examination, confidentiality of application and examination materials, Section 18934, this code.

State Compensation Insurance Fund, exemption from disclosure for various records maintained by the State Compensation Insurance Fund, Sections 7929.400 to 7929.430, inclusive, this code.

State Contract Act, bids, questionnaires and financial statements, Section 10165, Public Contract Code.

State Contract Act, bids, sealing, opening, and reading bids, Section 10304, Public Contract Code.

State Energy Resources Conservation and Development Commission, confidentiality of proprietary information submitted to, Section 25223, Public Resources Code.

State hospital patients, information and records in possession of Superintendent of Public Instruction, confidentiality of, Section 56863, Education Code.

State Long-Term Care Ombudsman, access to government agency records, Section 9723, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, confidentiality of records and files, Section 9725, Welfare and Institutions Code.

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State Long-Term Care Ombudsman office, disclosure of information or communications, Section 9715, Welfare and Institutions Code.

State Lottery Evaluation Report, disclosure, Section 8880.46, this code.

State prisoners, exemption from disclosure for surveys by the California Research Bureau of children of female prisoners, Section 7443, Penal Code.

State summary criminal history information, confidentiality of information, Sections 11105, 11105.1, 11105.3, and 11105.4, Penal Code.

State Teachers' Retirement System, confidentiality of information filed with the system by a member, participant, or beneficiary, Section 22306, Education Code.

Sterilization of disabled, confidentiality of evaluation report, Section 1955, Probate Code.

Strawberry marketing information, confidentiality of, Section 63124, Food and Agricultural Code.

Structural pest control licensee records relating to pesticide use, confidentiality of, Section 15205, Food and Agricultural Code.

Student driver, records of physical or mental condition, confidentiality of, Section 12661, Vehicle Code.

Student, community college, information received by school counselor, confidentiality of, Section 72621, Education Code.

Student, community college, records, limitations on release, Section 76243, Education Code.

Student, community college, record contents, records of administrative hearing to change contents, confidentiality of, Section 76232, Education Code.

Student, sexual assault on private higher education institution campus, confidentiality of information, Section 94385, Education Code.

Student, sexual assault on public college or university, confidentiality of information, Section 67385, Education Code.

Sturgeon egg processors, records, Section 10004, Fish and Game Code.

7930.205. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

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Taxpayer information, confidentiality, local taxes, Section 7925.000, this code.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tobacco products, exemption from disclosure for distribution information provided to the State Department of Public Health, Section 22954, Business and Professions Code.

Tow truck driver, information in records of the Department of the California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic Substances Control, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of Pesticide Regulation, Sections 7924.300 to 7924.335, inclusive, this code.

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Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 25358.2 and 25358.7, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Tribal-state gaming compacts, exemption from disclosure for records of an Indian tribe relating to securitization of annual payments, Section 63048.63, this code.

Trust companies, disclosure of private trust confidential information, Section 1602, Financial Code.

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000. Superseded on January 1, 2024; see amendment by Stats. 2022, Ch. 258.)

7930.205. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Taxpayer information, confidentiality, local taxes, Section 7925.000, this code.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

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Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tobacco products, exemption from disclosure for distribution information provided to the State Department of Public Health, Section 22954, Business and Professions Code.

Tow truck driver, information in records of the Department of the California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic Substances Control, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of Pesticide Regulation, Sections 7924.300 to 7924.335, inclusive, this code.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 78480 to 78495, inclusive, and Section 78930, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

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Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Tribal-state gaming compacts, exemption from disclosure for records of an Indian tribe relating to securitization of annual payments, Section 63048.63, this code.

Trust companies, disclosure of private trust confidential information, Section 1602, Financial Code.

(Amended by Stats. 2022, Ch. 258, Sec. 19. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

7930.210. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Unclaimed property, Controller records of, disclosure, Section 1582, Code of Civil Procedure.

Unemployment compensation, disclosure of confidential information, Section 2111, Unemployment Insurance Code.

Unemployment compensation, information obtained in administration of code, Section 1094, Unemployment Insurance Code.

Unemployment fund contributions, publication of annual tax paid, Section 989, Unemployment Insurance Code.

University of California, exemption from disclosure for information submitted by bidders for award of best value contracts, Section 10506.6, Public Contract Code.

Unsafe working condition, confidentiality of complainant, Section 6309, Labor Code.

Use fuel tax information, disclosure prohibited, Section 9255, Revenue and Taxation Code.

Utility systems development, confidential information, Section 7927.300, this code.

Utility user tax return and payment records, exemption from disclosure, Section 7284.6, Revenue and Taxation Code.

Vehicle registration, confidentiality of information, Section 4750.4, Vehicle Code.

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Vehicle accident reports, disclosure of, Sections 16005, 20012, and 20014, Vehicle Code and Section 27177, Streets and Highways Code.

Vehicular offense, record of, confidentiality five years after conviction, Section 1807.5, Vehicle Code.

Veterans Affairs, Department of, confidentiality of records of contract purchasers, Section 85, Military and Veterans Code.

Veterinarian or animal health technician, alcohol or dangerous drugs diversion and rehabilitation records, confidentiality of, Section 4871, Business and Professions Code.

Victims' Legal Resource Center, confidentiality of information and records retained, Section 13897.2, Penal Code.

Voter, affidavit or registration, confidentiality of information contained in, Section 7924.000, this code.

Voter, registration by confidential affidavit, Section 2194, Elections Code.

Voting, secrecy, Section 1050, Evidence Code.

7930.215. The following provisions may operate to exempt certain records, or portions thereof, from disclosure pursuant to this division:

Wards and dependent children, inspection of juvenile court documents, Section 827, Welfare and Institutions Code.

Wards, petition for sealing records, Section 781, Welfare and Institutions Code.

Winegrowers of California Commission, confidentiality of producers' or vintners' proprietary information, Sections 74655 and 74955, Food and Agricultural Code.

Workers' Compensation Appeals Board, injury or illness report, confidentiality of, Section 6412, Labor Code.

Workers' compensation insurance, dividend payment to policyholder, confidentiality of information, Section 11739, Insurance Code.

Workers' compensation insurance fraud reporting, confidentiality of information, Section 1877.4, Insurance Code.

Workers' compensation insurer or rating organization, confidentiality of notice of noncompliance, Section 11754, Insurance Code.

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Workers' compensation insurer, rating information, confidentiality of, Section 11752.7, Insurance Code.

Workers' compensation, notice to correct noncompliance, Section 11754, Insurance Code.

Workers' compensation, release of information to other governmental agencies, Section 11752.5, Insurance Code.

Workers' compensation, self-insured employers, confidentiality of financial information, Section 3742, Labor Code.

Workplace inspection photographs, confidentiality of, Section 6314, Labor Code.

Youth Authority, parole revocation proceedings, confidentiality of, Section 1767.6, Welfare and Institutions Code.

Youth Authority, release of information in possession of Youth Authority for offenses under Sections 676, 1764.1, and 1764.2, Welfare and Institutions Code.

PART 7. Operative Date

7931.000. This division shall become operative on January 1, 2023.

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APPENDIX C

SUMMARY OF CONFLICT OF INTEREST LAWS

2023

Conflicts of Interest HANDBOOK

Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

› Updated including changes effective January 1, 2023

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INTRODUCTION

This Handbook is prepared to provide you with a summary of the major provisions of California's principal conflicts of interest laws and regulations. The text of the laws and regulations referenced in this Handbook can be found on the websites for the California Legislature (http://leginfo.legislature.ca.gov/faces/codes.xhtml) and the Fair Political Practices Commission ("FPPC") (http://www.fppc.ca.gov/the-law.html).

This Handbook is designed to familiarize city officials and staff with California's principal conflicts of interest laws and regulations. Because the laws and regulations change frequently, we recommend that you use this Handbook to become familiar with the basic principles of the conflict laws and regulations, but we also recommend that you contact your city attorney or agency counsel as soon as you think that you may have a potential conflict of interest. We would be glad to help you analyze a potential conflict of interest and/or contact the FPPC for guidance.

We hope you find this Handbook useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact us.

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Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

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Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

I. LAWS AND REGULATIONS AFFECTING DECISION-MAKING

A. The Political Reform Act

In 1974, California voters approved Proposition 9, a statewide initiative titled "the Political Reform Act" (the "Act" or the "PRA"). Gov't Code § 81000 *et seq.*[1] At the time, the measure was the most detailed disclosure law in the nation, and it included new requirements for reporting campaign and lobbying activities. Although the Act was initially written before the Watergate scandal broke, by the time Proposition 9 appeared on the ballot, the drama had unfolded, and nationwide reform proposals were being drafted.

The Act passed by an overwhelming majority, and one of its provisions created a new state agency called the Fair Political Practices Commission ("FPPC"). The FPPC was charged with interpreting and enforcing the Act, and pursuant to this authority, the agency drafted a series of regulations. Since the Act went into effect in 1975, the FPPC has issued new regulations and amendments to existing regulations almost every year.

The Act covers numerous topics germane to ethical behavior in public office—financial data reporting obligations, lobbying restrictions, required campaign disclosures, limitations on campaign financing, proscriptions on mass mailings, restrictions on gifts and honoraria, and most significantly, prohibitions on conflicts of interest in the making of governmental decisions. The Act also contains reporting procedures for financial interests and campaign contributions, as well as disqualification requirements when certain financial interests or campaign contribution standards are satisfied.

Please note that this Handbook is general in nature and may not cover all aspects of an actual conflicts of interest issue. Thus, it is not intended to constitute advice on specific conflicts of interest questions. In the event you have concerns about a possible conflict of interest, you should contact your city attorney or agency counsel for further advice.

[1] All statutory references are to the California Government Code unless otherwise indicated. Regulations of the FPPC are referred to as "Regulation."

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1. Disclosure Requirements Under the Political Reform Act

a. Statements of Economic Interests

The Act requires public officials to disclose assets and income that may be materially affected by their official actions by filing a "Statement of Economic Interests" (also known as a "Form 700"). § 87202; Regulation 18115. The requirement applies to council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. § 87200. If a public official holds multiple positions subject to reporting requirements, the public official may choose to complete a separate Form 700 for each position or a single "Expanded Statement of Economic Interests." Regulation 18723.1.

Officials must file the Form 700 within 30 days after assuming office, and candidates must file no later than the final filing date of a declaration of candidacy. §§ 87201-02. An official must file annually thereafter until he or she leaves office, at which point he or she must file a final statement. §§ 87202-04. The required disclosures on the Form 700 include:

- Investments in business entities (e.g., stock holdings, owning a business, a partnership) that are located or do business in the jurisdiction;
- Interests in real estate (real property) in the jurisdiction, but not including the official's home address;
- Sources of personal income,[2] including gifts, loans, and travel payments;[3] and
- Positions of management or employment with business entities that do business in the jurisdiction.

§ 87203. If the official no longer holds certain investments and real property interests at the time of filing, but held them during the 12 months prior to filing, he or she must still disclose those interests on the Form 700. *Id*. The Form 700 is a public document open to inspection and duplication.

For public officials not covered by the requirements of Section 87203, including employees of state and local government agencies, it is up to the agencies that employ them to decide what their disclosure requirements are. Each state and local agency must adopt a conflicts of interest code tailoring the disclosure requirements for

[2] In some instances, an official may need to disclose the sources of income to a business entity in which the official has an ownership interest if the official owns at least 10 percent of a business. In that case, the official would be required to disclose a source of income to the business as a source of income to the official if the official's pro rata share of gross receipts from that source exceeds $10,000 in aggregate during the reporting period. § 87207(b). In those cases, the official must report the name, address, and a general description of the business activity of the business entity, as well as the name of the source of income that aggregates to $10,000 or more. *Id*.

[3] As of January 1, 2016, if an official receives a gift that is a travel payment, advance, or reimbursement valued at $50 or more, the official must also disclose the travel destination. § 87207(a)(4).

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each position within the agency to the types of governmental decisions a person holding that position would make. For example, an employee who approves contracts for goods or services purchased by his or her agency would not be required to disclose real estate interests, but would be required to disclose investments in and income from individuals and entities that supply equipment, materials, or services to the agency. §§ 87301-02.

A city that maintains an internet website must post a list of the elected officers who file a Form 700 with that city. A statement must also be posted on the website indicating that these Form 700s may be obtained by visiting the FPPC office or the city clerk's office. The statement must include the physical address for both the FPPC and the city clerk's office. Finally, a link to the FPPC website must be posted with a statement that indicates that Form 700 "for some state and local government agency elected officers may be available in electronic format" on the FPPC's internet website. § 87505.

A local agency may establish a system for the electronic filing of Form 700s, in accordance with State law. § 87500.2; Regulation 18756. Public officials should seek guidance from the local filing officer as to the appropriate procedure and format for filing a Form 700.

b. Behested Payments

There are also disclosure requirements for certain fundraising activities that elected officials perform for others, including in their capacity as employees or board members of nonprofit organizations. Elected officials who successfully solicit one or more contributions for "legislative, governmental, or charitable purposes" that equal or exceed $5,000 in the aggregate from the same source during a single calendar year must file a report with the official's agency (typically the city clerk) within 30 days of reaching the $5,000 threshold. § 84224(a).

The report must contain the following information:

- The contributor's name and address;
- The amount of the contribution;
- The date or dates on which the payments were made;
- The name and address of the contribution recipient;
- If goods or services were contributed, a description of those goods and services; and
- A description of the purpose or event for which the contribution was used.

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The report must also include the following information to the extent known to the elected official:

- A brief description[4] of the relationship between the nonprofit organization and the elected official, their family member, member of their campaign, or member of their staff; and

- A brief description of any proceedings before the elected official's agency at the time of the payment or 12 months before the payment, in which the nonprofit organization is a named party or subject of the decision.

Regulation 18424. The statute does not define the term "legislative, governmental, or charitable purposes," but charitable purposes typically involve 501(c)(3) organizations. Examples of "governmental" purposes include fundraising for a new city hall roof, an inaugural celebration committee,[5] litigation expenses,[6] a breakfast honoring public safety personnel,[7] and youth conferences.[8] The term "legislative purpose," in turn, refers to a 1996 FPPC opinion in which a state senator asked a private party to pay for a witness's airfare and expenses to testify at a legislative hearing.[9]

These reporting requirements also apply if the payment is "made at the behest of" the elected officer, even if the officer did not actively solicit contributions. §§ 82004.5, 82041.3. A payment is "made at the behest of" an elected officer when it is made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" that officer. *Id*.

This disclosure requirement does not apply to a behested payment made by a local, state, or federal governmental agency for a principally legislative or governmental purpose. § 84224(b)(4).

2. Conflicts of Interest Under the Political Reform Act

In addition to the disclosure requirements, the Act requires public officials to disqualify themselves from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. § 87100; Regulation 18700. An official has a disqualifying financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, directly on the official or a member of the official's immediate family, or on certain listed financial interests. The listed financial interests are:

[4] A "brief description" includes any decision making capacity within the organization, salaried employment, status as a founding member, and honorary or advisory board positions. Regulation 18424(a).
[5] *Sutton* Advice Letter, No. A-05-256, 2005 WL 3693740 (2005).
[6] *Stoen* Advice Letter, No. A-03-185, 2004 WL 334564 (2004) (district attorney's expenses in suing a private company when governing body withdrew funding for effort).
[7] *Gallegos* Advice Letter, No. A-00-059, 2000 WL 311529 (2000).
[8] *Gallegos* Advice Letter, No. A-98-192, 1998 WL 671296 (1998).
[9] *Schmidt* Advice Letter, No. A-96-098, 1996 WL 779579 (1996).

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- Any business entity in which the public official has a direct or indirect investment worth $2,000 or more.
- Any real property in which the public official has a direct or indirect interest worth $2,000 or more.
- Any source of income, including commission income or incentive income, aggregating to at least $500 within 12 months prior to the time when the decision is made. The $500 must be provided or promised to, or received by, the official during the 12 months before the decision.
- Any business entity (excluding nonprofit corporations) in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $590 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

§ 87103; Regulations 18700 and 18940.2. The FPPC regulations interpret and provide guidance for most of the terms used in the Act. The FPPC also provides standards for determining if each element of the Act's prohibitions has been satisfied.

3. The FPPC's Test for Analyzing Conflicts of Interest

In the past few years, the FPPC has reorganized and revised the conflict of interest regulations in a comprehensive manner. Under the old regulations, a public official was advised to follow an eight-part test to analyze a potential conflict of interest. The newly revised regulations establish a new four-part test, as stated in Regulation 18700(d).

The new FPPC four-part test assumes that an official already has determined whether he or she is a public official within the meaning of the Act. The new test also assumes that the official has identified the financial interests that may be affected by a particular governmental decision. Since these two steps are necessary for a complete analysis, we recommend that public officials follow the seven steps described below, which incorporate these two initial steps as well as the FPPC's new four-part test.

STEP ONE: IS A PUBLIC OFFICIAL INVOLVED?

Determine whether the individual is a public official within the meaning of the Act.

The Act applies only to "public officials." Regulation 18700(b). A "public official" is defined to include a "member, officer, employee, or consultant" of a state or local government agency. § 82048; Regulation 18700(c). The regulations define "member" and "consultant" as follows:

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- A "member" does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decision-making authority. A board or commission possesses decision-making authority if: (i) it may make a final governmental decision, (ii) it may compel or prevent a governmental decision by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden, or (iii) it makes substantive recommendations, which, over an extended period of time, have been regularly approved without significant amendment or modification by another official or agency. Regulation 18700(c)(2).

- A "consultant"[10] includes an individual who, pursuant to a contract with a state or local government agency, makes specific kinds of governmental decisions or serves in a staff capacity with the agency and either participates in governmental decisions or performs the same or substantially all of the same duties that would otherwise be performed by a person in a position listed in the agency's conflict of interest code. Regulation 18700.3.

STEP TWO: WHAT ARE THE PUBLIC OFFICIAL'S FINANCIAL INTERESTS?

Identify the public official's financial interests.

A public official's financial interests include certain business entities, real property, sources of income, and donors of gifts (as well as intermediaries and agents of such donors). Regulation 18700(c)(6). More specifically, a public official has a financial interest in any of the following:

- A business entity in which the official has a direct or indirect investment worth at least $2,000.[11] (Note: In certain situations, this can include a parent,[12] subsidiary,[13] or otherwise related[14] business entity.[15])

[10] For more on who constitutes a "consultant" subject to the Act, see, e.g., *Ennis* Advice Letter, FPPC No. A-15-006, 2015 WL 1781144 (2015).

[11] The FPPC has determined that membership in a country club is a financial interest in the club as a business entity when the membership is transferrable and can be resold for profit or loss. *Gee* Advice Letter, FPPC No. A-17-249, 2018 WL 723401 (2018).

[12] A business entity is a "parent" if it is a corporation that controls more than 50 percent of the voting stock of another corporation; the parent corporation is also a parent to any subsidiaries of the corporation that it controls. Regulation 18700.2 (b)(1).

[13] A business entity is a "subsidiary" if it is a corporation whose voting stock is more than 50 percent controlled by another corporation; the subsidiary corporation is also a subsidiary to any corporation that controls its parent corporation. Regulation 18700.2 (b)(2).

[14] Business entities, other than a parent corporation, are "otherwise related" if (1) the same person or persons together direct or control each business entity, or (2) the same person or persons together have a 50 percent or greater ownership interest in each business entity. Regulation 18700.2 (b)(3).

[15] An official with a financial interest in a business entity also has an interest in a parent or subsidiary of the business entity or an otherwise related business entity, unless (1) the official's only interest is that of a shareholder and the official is a passive shareholder with less than 5 percent of the shares of the corporation, and (2) the parent corporation is required

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- Any real property in which the public official has a direct or indirect interest worth at least $2,000.[16] Real property interests include all leases except month-to-month leases and leases with terms shorter than a month. Regulation 18233.

- Any "source of income" of at least $500 that is provided or promised to the public official, or received by the public official within 12 months prior to a governmental decision, not including gifts and loans by banks available to the general public. Income is "promised to" the official if he or she has a "legally enforceable right to the promised income." Regulation 18700(c)(6)(C). The term "source of income" may include individuals, organizations, and businesses. If the "source of income" is a business that provides or promises the official at least $500 within 12 months prior to a governmental decision, the official also has a source-of-income interest in: (1) any individual owning at least a 50 percent interest in that business, and (2) any individual who has the power to direct or cause the direction of management and policies of the business. Regulation 18700.1(a)(2).

- Any business entity in which the public official is a director, officer, partner, trustee, or employee, or holds any position of management. (Note: Again, this may include a parent, subsidiary, or otherwise related business entity.)

- Any donor of gifts, or any intermediary or agent for a donor of gifts, amounting to at least $590 where that amount is provided to, received by, or promised to the official in the 12 months prior to a governmental decision. Regulation 18700(c)(6)(E).

- The personal finances of the public official and immediate family.[17] This is a sort of "catch-all" provision that is meant to address economic interests of a public official and his or her immediate family that do not qualify as investments, property, or business entities, but are nonetheless potentially affected by government decisions.

§§ 82047, 87103; Regulations 18700, 18940.2. The terms "indirect investment" and "indirect interest" are used to indicate investments and interests owned by the spouse or dependent child of the public official, an agent of the public official, or a business entity or trust in which the official, or his or her agent(s), spouse, or dependent children, has at least a 10 percent ownership interest. Regulation 18700(c)(6)(F).

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to file annual Form 10-K or 20-F Reports with the Securities and Exchange Commission and has not identified the subsidiary on those forms or its annual report. Regulation 18700.2 (c)-(d).

[16] The FPPC has determined that membership in a country club is a financial interest in real property when the member would be entitled to a proportionate share of the value of the club's assets if the club were dissolved. *Gee* Advice Letter, FPPC No. A-17-249, 2018 WL 723401 (2018).

[17] The FPPC determined that a public official had a financial interest in his personal finances when considering a decision to award a contract for waste hauling services at a facility located near his mobile home. *Brady* Advice Letter, FPPC No. A-22-027, 2022 WL 16725545 (2022).

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STEP THREE: IS IT REASONABLY FORESEEABLE THAT THE GOVERNMENTAL DECISION WILL HAVE A FINANCIAL EFFECT ON ANY OF THE OFFICIAL'S FINANCIAL INTERESTS?

Determine whether the governmental decision will have a reasonably foreseeable financial effect on any of the public official's financial interests.

Regulation 18701 draws a distinction between a financial interest that is "explicitly involved" in a decision, on the one hand, and a financial interest that is not "explicitly involved" in a decision, on the other hand.

Financial interests are considered to be explicitly involved in a decision if the interest is a "named party in, or the subject of, a governmental decision before the official or the official's agency." Regulation 18701(a). A financial interest is the "subject" of a proceeding "if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1) – (6)." Regulation 18701(a). In those cases, the financial effect is presumed to be reasonably foreseeable.

Even if a financial interest is not explicitly involved in a decision, the effect may still be considered reasonably foreseeable. Regulation 18701 states that a financial effect need not be "likely" to be considered "reasonably foreseeable" for purposes of the FPPC's regulations. If the financial effect can be "recognized as a realistic possibility" and if the effect is "more than hypothetical or theoretical," it will be considered reasonably foreseeable. Regulation 18701(b). The financial effect will not be considered reasonably foreseeable if the "the financial result cannot be expected absent extraordinary circumstances" that are not subject to the official's control.

The FPPC also provides the following list of non-exclusive factors that should be considered when determining whether a governmental decision will have a reasonably foreseeable effect on a financial interest that is not explicitly involved in the decision:

- The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

- Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

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- Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.

- Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's financial interest might compromise a public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public.

- Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.

- Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position.

Possession of a real estate, brokerage license, or other professional license does not automatically constitute a reasonably foreseeable effect on the official's financial interest. Regulation 18701.1. The official's likely business activity must be considered to determine whether the governmental decision will have a reasonably foreseeable effect on one of the official's financial interests.

If it is not reasonably foreseeable that the governmental decision will have a financial effect on any of the official's financial interests, there is no conflict under the Act. If it is determined that it is reasonably foreseeable that the governmental decision will have a financial effect, however, the official must determine whether the effect is material.

STEP FOUR: WILL THE REASONABLY FORESEEABLE EFFECT BE MATERIAL?

Determine whether the reasonably foreseeable financial effect will be material.

If the effect is "nominal, inconsequential, or insignificant," the financial effect will not be considered material. Regulation 18702(b). Otherwise, however, the provisions in Regulations 18702.1 through 18702.5 determine – for each type of financial interest – whether the effect is material. Regulation 18702(a).

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a. Business Entities

Regulation 18702.1 provides that the reasonably foreseeable effect of a decision on a business entity in which the official has an investment interest or holds an employment or management position is material whenever the business entity is a named party in, or the subject of, the decision, including any decision in which the entity:

- Initiates the proceeding by filing an application, claim, appeal, or other request for action concerning the entity with the official's agency;
- Offers to sell a product or service to the official's agency;
- Bids on or enters into a contract with the official's agency, or is identified as a subcontractor on a bid or contract with the agency;
- Is the named or intended manufacturer or vendor of any products to be purchased by the official's agency with an aggregate cost of $1,000 or more in any 12-month period;
- Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement from the official's agency;
- Is the subject of any inspection, action, or proceeding under the regulatory authority of the official's agency; or
- Is otherwise subject to an action taken by the official's agency that is directed at the entity.

The reasonably foreseeable effect of a decision on a business entity in which the official has an investment interest or holds an employment or management position is also material if any of the following criteria are met:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or more than:
  - ✓ $1,000,000; or
  - ✓ Five percent of the entity's annual gross revenues and the increase or decrease is at least $10,000.
- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than:
  - ✓ $250,000; or
  - ✓ One percent of the entity's annual gross revenues and the change in expenses is at least $2,500.

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- The official knows, or has reason to know, that the entity has an interest in real property and:
  - ✓ The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) - (6); or
  - ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

There is also a "small shareholder" exception that allows officials to participate in decisions explicitly involving a business entity where the official's only interest in that business entity is an investment interest worth no more than $25,000. Regulation 18702.1(b). To qualify for this exception, the interest also must be less than one percent of the business entity's shares. However, meeting these thresholds does not automatically allow the official to participate in the decision. The official still must analyze the decision's potential effect on the business entity's annual gross revenues, assets and liabilities, expenses, and real property interests. Under this rule, even where an official has only a small investment in a business entity, the impact of a decision might be so significant that the official still has a conflict of interest.

b. Real Property – Modified "500-Foot Rule" and Other Criteria

The traditional "500-foot" rule has been replaced with an extensive list of criteria that must be analyzed to determine whether a decision will have a material financial effect on an official's real property interest. Regulation 18702.2. There are now eight materiality standards that must be evaluated when an official has an ownership interest in real property, and four materiality standards that must be evaluated when an official has a leasehold interest in real property (i.e., as the lessee of the property).

Regulation 18702.2 now provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property economic interest, other than a leasehold interest, is material whenever the governmental decision:

- Involves the adoption of, or amendment to, a development plan or criteria applying to the parcel;
- Determines the parcel's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in, or exclusion from, any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries;
- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel;
- Authorizes the sale, purchase, or lease of the parcel;
- Involves the issuance, denial or revocation of a license, permit, or other land use entitlement authorizing a specific use of or improvement to the

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parcel or any variance that changes the permitted use of, or restrictions placed on, that real property;

- Involves construction of, or improvements to, streets, water, sewer, storm drainage, or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services;

- Involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property; or

- Involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

  - ✓ Development potential;

  - ✓ Income producing potential;

  - ✓ Highest and best use;

  - ✓ Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or

  - ✓ Market value.

Regulation 18702.2(b) clarifies that the financial effect of a governmental decision on a parcel of real property in which an official has an ownership interest is presumed <u>not</u> to be material whenever the governmental decision involves property located 1,000 feet or more from the property line of the official's property. This presumption may be rebutted, however, with clear and convincing evidence that the governmental decision would have a substantial effect on the official's property.

The FPPC has relaxed the rules with respect to real property economic interests that stem from having an ownership interest in the common area of a common interest development. Previously, in addition to evaluating whether the decision concerned a project located within 500 feet of the public official's real property, it was necessary to evaluate whether the decision was within 500 feet of any homeowner association common area in which the official had an ownership interest. Now, Regulation 18702.2 excludes common areas in common interest developments from the definition of "real property" for the purpose of conducting a conflict of interest analysis. Thus, the proximity of homeowner association common areas to a project is no longer a factor in the conflict of interest analysis.

With respect to an official's leasehold interests, i.e., where the official is the lessee of the property, Regulation 18702.2(c) now provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property economic interest is material only if the governmental decision will:

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- Change the termination date of the lease;
- Increase or decrease the potential rental value of the property;
- Change the official's actual or legally allowable use of the property; or
- Impact the official's use and enjoyment of the property.

There are a few exceptions in Regulation 18702.2(d) by which the effect of a decision on an official's real property interest will not be considered material. The following decisions will not be considered to have a material effect on an official's real property interest:

- The decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage, or similar facilities.
- The decision solely concerns the adoption or amendment of a general plan and all of the following apply:
  - ✓ The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is a financial interest to the public official, or by a person representing either the public official or a financial interest to the public official.
  - ✓ The decision requires a further decision or decisions by the public official's agency before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.
  - ✓ The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and the economic interests of the official are not singled out.
  - ✓ The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

These rules replace the old "500-foot rule" that applied before 2014. Of special interest to many local public officials, these provisions appear to allow public officials to

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participate in most decisions relating to slurry sealing, asphalt paving, curb and sidewalk repairs, or tree replacement, even if the work occurs within 500 feet of their property, due to the exception for repairs and replacement of existing infrastructure.

c. Sources of Income

The FPPC regulations also provide materiality standards for sources of income. Regulation 18702.3. A "source of income," as discussed above, is any person from whom a public official has received at least $500 in the twelve months prior to the relevant governmental decision. Regulation 18700.1. A "person" includes individuals, organizations, and business entities. § 82047.

The regulations provide that any reasonably foreseeable financial effect on an individual, organization, or business entity[18] that is a source of income to an official or an official's spouse is material if:

- The source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party; or
- The decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official, or the official's spouse, receives or is promised the income for achieving the purpose or goal. This is known as the "Nexus" test.

Regulation 18702.3(a)(1), 18702.3(b). In addition to these general standards, the regulations provide further guidance that separately analyzes a source of income depending on whether the source is an individual, non-profit organization, or business entity. If the source is an ***individual***, a reasonably foreseeable financial effect on the source is material if:

- The decision may affect the individual's income, investments, or other assets or liabilities (other than an interest in a business entity or real property) by $1,000 or more;
- The official knows, or has reason to know, that the individual has an interest in a business entity that will be financially affected under the materiality standards in Regulation 18702.1; or
- The official knows, or has reason to know, that the individual has an interest in real property, and either:
  - ✓ The property is a named party in, or the subject of, the decision as defined in Regulations 18701(a) and 18702.2(a)(1) - (6); or

[18] The materiality standards for sources of income provided in this section do not apply where a government entity qualifies as a source of income, including where a public official is paid by the entity as a consultant or contractor. Regulation 18702.3(d). An official with an interest in a governmental entity is disqualified from taking part in a decision only if there is a unique effect on that official. *Id.*

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- ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

If the source is a ***nonprofit organization***, a reasonably foreseeable financial effect on the source is material if:

- The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than (1) $1,000,000, or (2) five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than $10,000;

- The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than (1) $250,000, or (2) one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than $2,500; or

- The official knows, or has reason to, know that the organization has an interest in real property and either:

  - ✓ The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) - (6); or

  - ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

If the source is a ***business entity***, a reasonably foreseeable financial effect on the source is material if that business entity will be financially affected under the standards as applied to a financial interest in Regulation 18702.1 (see ***Business Entities*** above). Regulation 18702.3(a). The regulation also includes additional provisions to help officials who receive income from retail sales of a business entity in determining when a retail customer becomes a source of income to the public official directly. § 87103.5. This regulatory provision, which is intended to replace prior Regulation 18707.5, provides that:

- The retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public, and provides goods or services to customers that comprise a broad base of persons representative of the jurisdiction; and

- Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the general clientele of the business. An official is unable to recognize a significant monetary difference when: (1) the business is of the type that sales to any one customer will not have a significant impact on the business's annual net sales; or (2) the business has no records that distinguish customers by

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amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer.

Regulation 18702.3(c). If you own 10 percent or more of a business entity that is engaged in the retail sale of goods or services, we recommend that you review this provision in order to determine whether individual retail customers will be considered sources of income to you for the purpose of analyzing conflicts under the Act.

d. <u>Sources of Gifts</u>

The FPPC regulations also provide materiality standards for sources of gifts. Regulation 18702.4. For the purpose of analyzing potential conflicts under the Political Reform Act, a donor becomes a "source of gifts" by providing or promising a public official with gifts valued at $590 or more in the aggregate in the 12 months prior to a governmental decision. Regulations 18700(c)(6)(E), 18940.2. A person may also be a source of a gift by being an "intermediary or agent for a donor of" a similar gift. Regulation 18700(c)(6)(E).

Under the FPPC regulations, a financial effect on a source of a gift is material if:

- The source is a claimant, applicant, respondent, contracting party, or otherwise named or identified as the subject of the proceeding;

- The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5 (see ***Personal Finances*** below), or the official knows, or has reason to know, that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively;

- The source is a nonprofit organization that will be financially affected under the materiality standards applied to a nonprofit source of income interest in Regulation 18702.3 (see ***Sources of Income*** above); or

- The source is a business entity that will be financially affected under the standards as applied to a financial interest in Regulation 18702.1 (see ***Business Entities*** above).

Regulation 18702.4. Like with sources of income, the analysis of materiality for sources of gifts may depend on whether the source is an individual, a nonprofit, or a business entity. If the source of a gift is the "claimant, applicant, respondent, contracting party, or … otherwise named or identified as the subject of the proceeding," the financial effect will be deemed material, regardless of whether the source is an individual, a nonprofit, or a business entity. If the source of a gift is not the "claimant, applicant, respondent, contracting party, or … otherwise named or identified as the subject of the proceeding," the official will need to apply the other standards in Regulation 18702.4(b) – (d), depending on whether the source of the gift is an individual, a nonprofit, or a business entity.

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e. Personal Finances

Finally, the regulations provide materiality standards for effects on personal finances. Regulation 18702.5. A reasonably foreseeable financial effect on an official's or his or her immediate family's personal finances is considered material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of $500 or more in any 12-month period due to the decision. Regulation 18702.5(a).

However, a financial effect is ***not*** considered material under Government Code Section 87103 if the decision would do any of the following:

- Affect only the salary, per diem, or reimbursement for expenses of the public official, or a member of his or her immediate family receives from a federal, state, or local government agency unless the decision is to appoint (other than an appointing decision otherwise permitted under Regulation 18702.5), hire, fire, promote, demote, suspend without pay, or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official's immediate family member is the only person in the job classification or position.

- Appoint the official to be a member of any group or body created by law or formed by the official's agency for a special purpose. However, if the official will receive a stipend for attending meetings of the group or body aggregating $500 or more in any 12-month period, the effect on the official's personal finances is material unless the appointing body posts specified information on its website.[19]

- Appoint the official to be an officer of the governing body of which the official is already a member, such as a decision to appoint a city councilmember to be the city's mayor.

- Establish or change the benefits or retirement plan of the official or the official's immediate family member, and the decision applies equally to all employees or retirees in the same bargaining unit or other representative group.

- Result in the payment of any travel expenses incurred by the official or the official's immediate family member while attending a meeting as an authorized representative of an agency.

[19] Specifically, the appointing body must post all of the following information on its website: (1) a list of each appointed position and its term; (2) the amount of the stipend for each appointed position; (3) the name of the official who has been appointed to the position; and (4) the name of any official who has been appointed to be an alternate for the position. Regulation 18702.5(b)(2).

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- Permit the official's use of any government property, including automobiles or other modes of transportation, mobile communication devices, or other agency-provided equipment for carrying out the official's duties, including any nominal, incidental, negligible, or inconsequential personal use while on duty.

- Result in the official's receipt of any personal reward from the official's use of a personal charge card or participation in any other membership rewards program, so long as the reward is associated with the official's approved travel expenses and is no different from the reward offered to the public.

Regulation 18702.5(b). Any effect on the interests noted above would not constitute a material effect on personal finances for the purpose of the Political Reform Act.

Regulation 18702.5 clarifies that if a decision only affects a business entity or real property in which the official has a financial interest, the regulation regarding personal finances does not apply. Regulation 18702.5(c). Under those circumstances, the official should analyze the applicable materiality standards for those types of interests in Regulations 18702.1 and 18702.2 to determine whether a conflict exists.

STEP FIVE: DOES THE "PUBLIC GENERALLY" EXCEPTION APPLY?

Determine if the official can demonstrate that the material financial effect on the official's interest is indistinguishable from the decision's effect on the public generally.

Once it is determined that it is reasonably foreseeable that a decision will have a material financial effect on an official's financial interest, it is necessary to evaluate whether an exception to the disqualification requirement is applicable. One exception, known as the "public generally" exception, provides that even if a governmental decision will have a reasonably foreseeable material financial effect on the official's financial interest, disqualification will not be required if the effect on the public official's financial interest is indistinguishable from the decision's effect on the financial interests of the public generally. Regulation 18703.

In order to use this exception, the official must be able to demonstrate two core elements. First, the governmental decision must affect a "significant segment" of the public in the jurisdiction of the public agency. Second, the governmental decision's effect on the official's financial interest must not be unique as compared to the effect on the significant segment. Regulation 18703(a).

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The FPPC has simplified the regulation to determine what constitutes a sufficiently "significant segment" of the public. Regulation 18703(b). A significant segment of the public is:

- At least 25 percent of any of the following:
  - ✓ All businesses or nonprofit entities within the official's jurisdiction;
  - ✓ All real property, commercial real property, or residential real property within the official's jurisdiction; or
  - ✓ All individuals within the official's jurisdiction.
- At least 15 percent of residential real property within the official's jurisdiction, if the official's only interest in a government decision is the official's primary residence.

Regulation 18703(b).

To determine whether a decision's effect on the official's financial interest is "unique" as compared to the effect on the significant segment of the public, the FPPC requires that an official determine whether the decision has a "disproportionate" effect on:

- The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
- An official's business entity or real property resulting from the proximity of a project that is the subject of a decision.
- An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests[20] in similar entities or properties that is substantially greater than the effect on a single interest.
- An official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.
- A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.
- An official's personal finances or those of his or her immediate family.

Regulation 18703(c).

[20] Ownership of only two residential properties apparently would not constitute "multiple interests … in properties that is substantially greater than the effect on a single interest." *Peake* Advice Letter, FPPC No. A-15-227, 2015 WL 9680333 (2015).

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The official's "jurisdiction" for the purposes of this regulation constitutes the "jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected." Regulation 18703(d). Real property is considered to be within a "jurisdiction" if the "property or any part of it is located within, or not more than, two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency." § 82035.

The FPPC Regulations include a number of specialized "public generally" exceptions. Regulation 18703(e). The financial effect on an official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes:

- The decision sets or adjusts the amounts of assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate. However, the exception does not apply if the decision imposes assessments, taxes, or fees, determines the boundaries of a property, or determines who is subject to the assessments, taxes, or fees. Under this exception, these factors must already be determined.

- The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction.

- The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.

- The decision is limited to establishing, eliminating, amending, or otherwise affecting the rights or liabilities of tenants and owners of residential real property, including rent control or tenant protection matters. Officials may participate if: (1) the decision is applicable to all residential rental properties within the official's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act; (2) the official owns three or fewer residential units; and (3) the only interests affected by the decision are the official's interest in residential real property as a landlord or the official's interest in a primary residence as owner or lessee.

- The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a

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representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented.

- The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency.

- The decision affects a federal, state, or local governmental entity in which the official has an interest.

Regulation 18703(e).

STEP SIX: MAY THE OFFICIAL MAKE OR PARTICIPATE IN MAKING A DECISION?

Determine whether the public official will be making, participating in the making, or using or attempting to use his/her official position to influence a governmental decision.

The Act applies when a public official is "making, participating in making, or using or attempting to use official position to influence a government decision." Regulation 18704. If the official will be called upon to make, participate in making, or use his or her official position to influence a governmental decision in which the official has a financial interest, the official will have a prohibited conflict of interest. The FPPC regulations define each of these actions for purposes of applying the Act:

- A public official "makes" a governmental decision when the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. Regulation 18704(a).[21]

- A public official "participates in" a governmental decision when the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. Regulation 18704(b).

- A public official "uses an official position to influence" a decision if the official: (i) contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or (ii) contacts or appears

[21] A public official's "determination not to act" does not constitute participating in "making" a governmental decision when the public official is abstaining from a decision due to a personal financial interest.

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> before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

Regulation 18704(c).

There are limited exceptions to this rule. A public official is not making, participating in making, or influencing a government decision when the official acts in a solely ministerial, secretarial, or clerical manner. Regulation 18704(d)(1).

In addition, an official is not making, participating in making, or influencing a government decision when the official appears before the public agency as a member of the general public to represent specific and limited "personal interests" or when the official negotiates his or her compensation or terms of employment. Regulation 18704(d). With respect to negotiating the terms of employment, however, "an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or the official's immediate family, or set a salary for the official or the official's immediate family different from salaries paid to other employees of the government agency in the same job classification or position." Regulation 18704(d)(3).

Making, participating in, or influencing a governmental decision also does not include communications to either the press or the general public. Regulation 18704(d)(4). Nor does it include academic decisions. Regulation 18704(d)(5). Limited actions in an official's professional capacity as an architect or engineer also are not considered to be making, participating in, or influencing a governmental decision. Regulation 18705(d)(6). Finally, an official who serves as a consultant will not be participating in a decision by making a recommendation regarding additional services if the agency has already contracted with the consultant – for an agreed upon price – to make recommendations concerning services of the type offered by the consultant. Regulation 18704(d)(7).

STEP SEVEN: IS THE PUBLIC OFFICIAL'S PARTICIPATION LEGALLY REQUIRED?

Determine if the public official's participation is legally required despite a conflict of interest.

A public official also is permitted to participate in making a governmental decision, despite having a conflict of interest in the decision, if no alternative source of decision exists that would be consistent with the purposes and terms of the statute authorizing the decision. Regulation 18700(e), 18705(a).

This exception is applied when a quorum of a legislative body cannot be convened due to the disqualifying conflicts of interests of its members. In that situation, as many

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members as are needed to create the minimum number for the quorum may be selected at random to participate. In these situations, stringent disclosure requirements apply, not only regarding the basis of the selected member's conflict of interest, but also the reason why there is no alternative source of decision-making authority. Regulation 18705(b). For the purposes of this section, a "quorum" means "the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item, the "quorum" shall be that minimum number of members needed for that adoption." Regulation 18705(d).

Note that this rule is construed narrowly and may not be invoked to permit an official who is otherwise disqualified to vote to break a tie or to vote if a quorum can be convened of other members of the agency who are not disqualified, whether or not such other members are actually present at the time of the decision. Regulation 18705(c).

4. Abstention

When a public official has a conflict of interest under the Act, he or she is required to abstain from making, participating in making, or using or attempting to use his or her official position to influence the local agency's decision. Abstention avoids a violation of the conflict of interest provisions of the Act.

The Act establishes specific procedures that most public officials must follow when they have a conflict of interest and are required to abstain from a decision. § 87105; Regulation 18707. Immediately prior to the consideration of the matter, the official must: (i) identify each financial interest that gives rise to the conflict in detail sufficient to be understood by the public (except that disclosure of the exact street address of a residence is not required); (ii) publicly state his or her recusal from the matter; and (iii) leave the room until after the disposition of the matter unless the matter appears on a consent calendar, or other similar portion of an agenda for uncontested matters, or the official is speaking as a member of the public regarding an applicable personal interest. § 87105; Regulations 18707, 18704(d)(2). The FPPC recently clarified the procedure required and precise information that must be disclosed, as described in new Regulation 18707. This includes additional information regarding rules for closed sessions and matters on the consent calendar. Public officials may not avoid disclosure through partial absences and must disclose financial interests either immediately prior to consideration of an item or if the official arrives after consideration, immediately after the official joins the meeting.

The procedure stated in Regulation 18707(a) must be followed by all council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. §§ 87105, 87200. The Act does not require other public officials who must file financial disclosure forms under local conflict of interest codes to follow the same procedure, but the FPPC has now prescribed specific rules for those public officials. Regulation 18707(b).

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Depending on the nature of his or her interest, a public official who must abstain from a decision may comment on the item as a member of the public during the public comment period on a matter related to his or her "personal interests." The term "personal interest" is defined to include an interest in real property or a business entity that is wholly owned by the official or his or her immediate family. Regulations 18704(d)(2)(A) and (B). It also includes business entities over which the official, or the official and his or her immediate family, exercise sole direction and control. Regulation 18704(d)(2)(C).

If a public official wishes to speak on a matter related to his or her "personal interests," the official must publicly identify the financial interest (including all of the specific details required by the regulation). Regulation 18707(a)(1)(A). The public identification must be made orally and be included in the official public record. Regulation 18707(a)(1)(B). Subsequently, the official must recuse himself or herself and leave the dais to speak from the same area as the members of the public. Regulation 18707(a)(3)(B). Like other members of the public, the official may listen to the comments of other speakers on the matter. *Id.*

Note that when a public official abstains from a decision, his or her presence does not count toward achieving a quorum. Regulation 18707(a)(3). Accordingly, if several officials must abstain from a decision under the Political Reform Act, there may not be sufficient members of the body present to consider a matter under the Brown Act. In such a circumstance, it may be possible to use the exception for legally required participation, as discussed above.

5. Penalties for Violation

Administrative, civil, and criminal penalties exist for violations of the conflict of interest provisions of the Act. The FPPC may levy administrative penalties after a hearing and may impose a fine of up to $5,000 per violation, a cease and desist order, and an order to file reports. § 83116. The FPPC recently updated regulations providing for streamlined administrative enforcement procedures and specific penalties for various types of violations. Regulations 18360, 18360.1, 18360.2, 18360.3.

Civil penalties include injunctive relief that may be sought by the district attorney or any person residing in the jurisdiction. § 91003. In the event a court finds that the actions would not have been taken but for the action of the official with the conflict of interest, the court is empowered to void the decision. § 91003. Misdemeanor criminal penalties are provided in situations where a knowing or willful violation of the act occurs, and generally, persons convicted of violating the Act may not be a candidate for elective office or act as a lobbyist for four years after the conviction. §§ 91000, 91002. The statute of limitations for civil and criminal enforcement actions is four years from the date of the violation. §§ 91000(c), 91011(b). The statute of limitations for administrative actions brought by the FPPC is five years from the date of the violation. § 91000.5.

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6. Seeking Advice on Conflict of Interest Questions

It is important to note that only a formal advice letter from the FPPC staff can immunize a public official from potential enforcement by the FPPC or the District Attorney in the event the public official participates in a decision and someone subsequently alleges the public official had a prohibited conflict of interest. A formal advice letter usually takes the FPPC staff at least a month to prepare, is only provided if the request relates to prospective acts (as distinguished from past acts), and if it contains sufficient facts upon which the FPPC is able to render a decision. Informal written advice (without immunity from potential enforcement action) may also be requested from the FPPC staff as well as informal telephonic advice through their technical assistance division at 1 866 ASK FPPC (1 866 275 3772). Based on the time frames required to obtain formal or informal written advice from the FPPC, it is important for public officials to consult their city attorney or local agency counsel as early as possible so as to provide adequate time to gather all relevant facts, draft a letter to the FPPC, and respond to the advice once given.

B. Government Code Section 1090

Government Code Section 1090 provides in relevant part: "[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

The purpose of the prohibition contained in Section 1090 is to preclude a public official from using his or her position to obtain business or financial advantage through the approval of contracts by the public entities which he or she serves. As more fully explained below, the prohibition applies to not only preclude a member of the body or board that approves the contract from directly contracting with that same public entity, but it also applies when the public official has a financial or other specified relationship to the entity that seeks to contract with the public entity. The intent of the law is to remove the possibility of any personal influence that might bear on an official's decision-making activities on contracts executed by his or her public entity.

Upon the enactment of the Act in 1974, questions arose as to whether that new law impliedly repealed or preempted the provisions of Section 1090. The California Attorney General addressed this issue first, concluding in a 1976 opinion that the Act did not implicitly repeal or preempt Section 1090. 59 Ops. Cal. Att'y Gen. 604, 671 (1976). Since that time, the courts and the Attorney General have consistently considered Section 1090 as having continuing effect. For example, in *People v. Honig*, 48 Cal. App. 4th 289, 328-29 (1996), the defendant in a criminal case for violations of Section 1090 argued that the Act superseded Section 1090. The California Court of Appeal declined to so rule, holding instead that the term "financially interested" in Section 1090 has a different meaning than the term "material financial effect" in the Act. In another case, the California Court of Appeal again held that the Act and Section 1090 are "two different statutory schemes." *City of Vernon v. Central Basin Mun. Water Dist.*, 69 Cal. App. 4th 508, 513 (1999); see also *Fraser-Yamor Agency, Inc. v. County of Del Norte*, 68

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Cal. App. 3d 201 (1977); *People v. Vallerga*, 67 Cal. App. 3d 847 (1977); *City Council v. McKinley*, 80 Cal. App. 3d 204 (1978); *City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191 (1980); *Thomson* v. Call, 38 Cal. 3d 633 (1985); *Campagna v. City of Sanger*, 42 Cal. App. 4th 533 (1996); 67 Ops. Cal. Att'y Gen. 369, 375 (1984); 69 Ops. Cal. Att'y Gen. 102 (1986); 70 Ops. Cal. Att'y Gen. 45, 47 (1987); 73 Ops. Cal. Att'y Gen. 191, 194-95 (1990).

Both the Act and the common law (meaning court-made) doctrine against conflicts of interest require the public official with a conflict of interest to abstain from participation in the decision. Section 1090, by contrast, also prohibits the public entity from entering into a contract in which one of its officers or employees has a financial interest, unless certain exceptions apply.

If the conflicted official is a member of a board or commission that executes the contract, he or she is conclusively presumed to be involved in the making of his or her agency's contracts. *Thomson v. Call*, 38 Cal. 3d at 649. This absolute prohibition applies regardless of whether the contract is found to be fair and equitable or the official abstains from all participation in the decision. *Thomson*, 38 Cal. 3d at 649-50; *Fraser-Yamor Agency*, 68 Cal. App. 3d at 211-12; *City of Imperial Beach*, 103 Cal. App. 3d at 195. The only way a public entity could still enter into such a contract – i.e., in which an official who is a member of the board or commission that executes the contract has a financial interest – would be if that interest qualifies as a "remote interest" or "non-interest" within the meaning of specified provisions discussed below.

1. Three Principal Components of Section 1090

The prohibition contained in Section 1090 involves three principal components: (1) the person subject to the prohibition must be an officer or employee of one of the types of governmental entities listed in Section 1090; (2) the public officer or employee must be "financially interested" in a contract; and (3) the contract must be made by either the public official in his or her official capacity or by the body or board of which the official is a member.

a. <u>Officer or Employee of Listed Government Entity</u>

The first element is whether the person subject to the prohibition is a member of the Legislature or an officer or employee of the state, a county, a district, a judicial district, or a city. Virtually every officer or employee of a municipality or local governmental district is subject to the prohibition of Section 1090. In 2018, the Attorney General concluded that a California charter school's governing body is also subject to Section 1090. 101 Ops. Cal. Atty. Gen. 92.

In recent years, the courts also have concluded that consultants may be considered "employees" for the purpose of civil liability under Section 1090. In 2017, the California Supreme Court held that Section 1090 applies to independent contractors "when they have duties to engage in or advise on public contracting that they are expected to carry out on the government's behalf." *People v. Superior Court (Sahlolbei)*, 3 Cal. 5th 230 (2017); see also, *California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc.*, 148 Cal. App. 4th 682, 691 (2007); see also,

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Hub City Solid Waste Services, Inc. v. City of Compton, 186 Cal. App. 4th 1114, 1124-1125 (2010). Moreover, the courts have held that even private companies may be subject to Section 1090 where the company has the potential to exert considerable influence over the agency's contracting decision. *Davis v. Fresno Unified School District*, 237 Cal. App. 4th 261 (2015); *McGee v. Balfour Beatty Construction*, LLC, 247 Cal. App. 4th 235, 261 (2016). In 2019, the California Court of Appeal clarified that a consultant's mere provision of services to a public agency does not create a *per se* conflict of interest precluding future contracts, if, in the initial transaction, the consultant was not entrusted with acting on behalf of the public agency. *California Taxpayers Action Network v. Tabor Construction, Inc.*, 42 Cal. App. 5th 824 (2019).

As such, we advise that both public agencies and independent contractors carefully evaluate whether their duties and obligations include engaging in or advising on public contracting. If so, their involvement in those contracting decisions must be evaluated for compliance with Section 1090.

b. <u>Financial Interest in a Contract</u>

The second element of the prohibition is the existence of a direct or indirect financial interest in a contract. The courts have interpreted the term "financially interested" as including any direct interest, such as that involved when a public official enters directly into a contract with the body of which he is a member. *Thomson v. Call*, 38 Cal. 3d 633 (1985). The courts have also interpreted "financially interested" as including indirect financial interests in a contract, where, for example, a public official has a business relationship with the entity that would be contracting with the public entity, or when the public official would gain something financially by the making of the contract. *Fraser-Yamor Agency*, 68 Cal. App. 3d 201 (1977); *Finnegan v. Schrader*, 91 Cal. App. 4th 572, 579 (2001). In *Thomson v. Call*, the California Supreme Court described the breadth of the statute this way:

> "Section 1090 forbids city officers . . . from being 'financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.' The proscribed interest certainly includes any direct interest, such as that involved when an officer enters directly into a contract with the body of which he is a member. California courts have also consistently voided such contracts where the public officer was found to have an indirect interest therein. . . . Neither the absence of actual fraud nor the possibility of a 'good faith' mistake on [the officer's] part can affect the conclusion that this contract violates section 1090 and is therefore void."

38 Cal. 3d at 645-46 (citations omitted).

In *Thomson*, a council member sold certain real property to a third party, knowing that the city was negotiating a deal to acquire multiple parcels of property in that area for a public park. The third party then conveyed the council member's property to the city, in an apparent attempt to evade the provisions of Section 1090. The court essentially "unwound" and invalidated the entire transaction based on the council member's

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interest in the transaction. The court refused to focus on the isolated contract between the city and the third party that bought the property from the council member, but rather viewed all of the successive contracts as one complex multi-party agreement. The court ordered the council member to disgorge all funds he received in the transaction and ordered that the city retain title to the property. The court noted that this type of severe remedy was necessary to discourage violations of Section 1090.

Other decisions have followed this same broad reading of "indirect interests." In *People v. Vallerga*, the California Court of Appeal summarized court decisions addressing financial interests under Section 1090 as follows: "However devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void." 67 Cal. App. 3d 847, 867 (1977); see also *People v. Honig*, 48 Cal. App. 4th 289, 315 (1996) (stating the same rule). The scope of indirect interests that could form a "devious and winding chain" back to a public contract is broad, but this reflects the judicial stance of vigilant enforcement of Section 1090. See, e.g., *Thomson*, 38 Cal. 3d at 652 ("[T]he policy of strict enforcement of conflict-of-interest statutes . . . provides a strong disincentive for those officers who might be tempted to take personal advantage of their public offices, and it is a bright-line remedy which may be appropriate in many different factual situations."); *Berka v. Woodward*, 125 Cal. 119, 128 (1899) (noting the need for "strict enforcement" of the conflict of interest statutes).

Although Section 1090 traditionally has been interpreted broadly, a California appellate decision warned against an overly broad interpretation of the term "financial interest" for the purpose of Section 1090. See *Eden Township Healthcare District v. Sutter Health*, 202 Cal. App. 4th 208, 228 (2011). The court acknowledged the general principle that the "defining characteristic of a prohibited financial interest is whether it has the potential to divide an official's loyalties and compromise the undivided representation of the public interest the official is charged with protecting." *Id.* at 221. The court concluded that the salaried CEO of a non-profit medical center, who also served on the board of a hospital district, was not financially interested in contracts between the medical center and the hospital district, despite the clear potential effect on his employer. *Id.* at 222. The court noted that there was "nothing in the record to support the inference that the [agreements] bear any relationship to [the CEO's] continued employment" with the medical center. *Id.* at 223-224. Moreover, the court noted that there was "no evidence that [the CEO would] derive any financial benefit arising from the" agreements in question. *Id.* at 226. The court stated broadly:

> In our view, if the contract itself offers no benefit to the official, either directly or indirectly, then the official is not financially interested in the contract and any explicit legislative exemption for such a circumstance would be unnecessarily redundant.

Id. at 228. The court distinguished the case of *Miller v. City of Martinez*, 28 Cal. App. 2d 364 (1938), in which the complaint alleged that a council member had a financial interest in a contract with a company that employed him and in which he also held stock. *Id.* at 226.

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The ruling in *Eden Township* could be construed to suggest that an official is only "financially interested" in a contract that affects the official's compensation or continued employment.[22] In light of subsequent FPPC advice letters, however, there is continued uncertainty regarding the application and interpretation of the court's holding in *Eden Township*.[23] As such, we recommend that public officials seek legal assistance whenever a potential Section 1090 conflict arises.

In addition to a "financial interest," there must be a contract in order for Section 1090 to apply, as described below. General contract principles apply to this determination and include such arrangements as purchase and service contracts as well as development agreements between a city and a developer (78 Ops. Cal. Att'y Gen. 230 (1995)); 82 Ops. Cal. Att'y Gen. 126, 129 n.4 (1999)), joint powers agreements (*People v. Gnass*, 101 Cal. App. 4th 1271, 1301 (2002)), and payments for conference attendance expenses (75 Ops. Cal. Att'y Gen. 20 (1992)).

c. A Contract "Made" by the Official or by a Body or Board of which the Official Is a Member

The third element necessary for a Section 1090 violation is that the contract has to be "made" either by the official or employee acting in his or her official capacity, or by any body or board of which the official is a member. The "making" of a contract is most commonly implicated by a city council's approval of a simple purchase order as part of the approval of a demand warrant registrar; this is likely to constitute the making of a contract within the scope of Section 1090. The courts have construed the term "made" as encompassing such elements in the formation of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, and drawing of plans or specifications and solicitation for bids. *Millbrae Ass'n for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 237 (1968). For example, in *City Council of San Diego v. McKinley*, 80 Cal. App. 3d 204, 212 (1978), a court of appeal found a Section 1090 violation when a city council entered into an agreement with a landscape architectural firm, of which the president, a stockholder, was also a member of the city's parks and recreation board. The board investigated and advised the city council on parks and recreation development issues, and it approved plans for a Japanese garden for which the board member's company ultimately received the development contract. Even though the board member was not a member of the city council, which awarded the contract to his company, the board member's participation in the planning for the garden was sufficient to constitute participation in "making" the contract:

> "[T]here is ample authority the negotiations, discussions, reasoning, planning, and give and take which go beforehand in the making of a decision to commit oneself must all be deemed to be a part of the making of an agreement in the broad sense. [Citation omitted.] Thus, the

[22] See also, *Ansolabehere* Advice Letter, FPPC No. A-15-180, 2015 WL 9680325 (2015); *Devaney* Advice Letter, FPPC No. A-15-213, 2015 WL 7252462 (2015); but cf. Carney Advice Letter, FPPC No. A-16-073, 2016 WL 3212417 (2016) and *Diaz* Advice Letter, FPPC No. A-16-214, 2016 WL 7033000 (2016).

[23] See, e.g., *Diaz* Advice Letter, FPPC No. A-16-214, 2016 WL 7033000 (2016) and *Roy* Advice Letter, FPPC No. A-16-157, 2016 WL 6565871 (2016).

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> final execution of a contract, which is the time when the contract is technically made, is not the only time when a conflict of interest may be presented."

80 Cal. App. 3d at 212.

Similarly, in *Stigall v. City of Taft*, 58 Cal. 2d 565, 569-70 (1962), the California Supreme Court held that an impermissible conflict existed in a contract with a plumbing company owned by a council member, even though the council member resigned before the plumbing company's bid was accepted. The court recognized that activities prior to the signing of a contract can be integral to the decision to accept the contract. *Id.* at 569; see also *Campagna v. City of Sanger*, 42 Cal. App. 4th 533, 538 (1996).

2. Exceptions to Section 1090

a. "Remote Interest" Exception

There are two categories of exceptions to Section 1090. The first, encompassing what are commonly referred to as "remote interests," is set forth in Section 1091. If an official has only a remote interest in a contract, then the local agency may enter into the contract as long as the official abstains from participating in the making of the contract in any way. Although this is not an exhaustive list of the "remote interest" exceptions, a few examples of "remote interest" exceptions include the following:

- Remote interest exception for a compensated officer or employee of a nonprofit corporation (Section 1091 (b)(1));
- Remote interest exception for a person receiving a government salary, per diem, or reimbursement for expenses, even when the contract involves the department of the government entity that employs the board member (Section 1091 (b)(13));
- Remote interest exception for a litigation settlement agreement between an officer that is a party to litigation involving the body or board of which the officer is a member (Section 1091 (b)(15); and
- Remote interest exception for the owner or partner of a firm who serves as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from: (1) providing any advice to the contracting agency regarding the contract between the firm and the contracting agency; and (2) any participation in reviewing a project that results from that contract (Section 1091 (b)(17)).

The "remote interest" exception applies only if the interest is disclosed to the body that approves the contract, the disclosure is noted in that body's official records, and the official abstains from voting. Further, members with a "remote interest" may not

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attempt to influence any other member of the body or board of which they are members to enter into the contract.

b. <u>"Non-Interest" Exception</u>

The second category of exceptions is found in Section 1091.5. These are called "non-interest" exceptions and apply to a type of interest that is completely exempt from Section 1090 and, if held by the official, does not require abstention. Unlike the "remote interest" exceptions in Section 1091, most of the "non-interest" exceptions listed in Section 1091.5 are available to both board members and employees who are covered by the general prohibition in Section 1090. Although this is not an exhaustive list, examples of some of those exceptions are listed below:

- Non-interest exception for government salary, per diem, or reimbursement of expenses when the contract does not involve the department of the government entity that employs the officer or employee (Section 1091.5 (a)(9));

- Non-interest exception for government salary to an officer's or employee's spouse when the spouse was employed by the government entity for at least one year prior to the officer's or employee's election or appointment (Section 1091.5 (a)(6));

- Non-interest exception for a non-compensated officer of a nonprofit corporation that supports the functions of the public entity or to which the public entity is required to give particular consideration (Section 1091.5 (a)(8));

- Non-interest exception for non-salaried members of a nonprofit corporation (Section 1091.5 (a)(7));

- Non-interest exception involving the receipt of public services on the same terms as would be provided if the officer were not a member of the governmental body or board (Section 1091.5(a)(3)); and

- Non-interest exception for contracts for public services between a special district and its board members if the special district requires board members to be landowners or representatives of a landowner and the contract is made on the same terms and conditions granted to everyone else. (Section 1091.5(a)(14)). For purposes of the exception, "public services" include the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.

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3. A Contract Made in Violation of Section 1090 is Void and Officials Violating Section 1090 Are Subject to Severe Penalties

Finally, it is important to note the extreme consequences of a Section 1090 violation and thus the caution with which persons must act to ensure compliance with this law. A public official who willfully violates any of the provisions of Section 1090 "is punishable by a fine of not more than $1,000, or by imprisonment in the state prison, and is forever disqualified from holding any office in this state." § 1097. The civil fines applicable to Section 1090 violations now can be up to the greater of $10,000 or three times the value of the financial benefit received by the defendant for each violation. § 1097.3(a). In addition, a contract made in violation of Section 1090 is void under Section 1092. *People ex rel. State v. Drinkhouse*, 4 Cal. App. 3d 931, 935 (1970) ("[A] contract in which a public officer is interested is void, rather than voidable as the statute indicates."). As with the Political Reform Act, acting on the advice of counsel is not a defense to a Section 1090 violation. See *People v. Chacon*, 40 Cal. 4th 558 (2007); *Chapman v. Superior Court*, 130 Cal. App. 4th 261 (2005).

Given these consequences, it is advisable for public officials to be very cautious in deciding whether they may participate in a contracting decision based on the existence of a "non-interest exception," whether they must abstain from those decisions based on the application of a "remote interest" exception, or whether their financial interest lies outside any exception and therefore precludes the public entity from entering into the contract altogether.

4. Aiding and Abetting Section 1090 Violations

In 2014, the California Legislature adopted Senate Bill 952, which added a subsection (b) to Government Code Section 1090, which now reads: "An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a)" of Section 1090. The Legislature added a similar provision to Section 1093 such that a person "shall not aid or abet the Treasurer, Controller, a county or city officer, or their deputy or clerk" in purchasing or selling "warrants, scrip, orders, demands, claims, or other evidences of indebtedness" for personal gain. § 1093. The Legislature also added a penalty for these crimes to Section 1097, which applies when a person "willfully aids or abets an officer or person in violating" Section 1090 or certain other conflict provisions. In light of these new provisions, city officers and employees must be careful to avoid "aiding and abetting" a Government Code Section 1090 violation.

5. Seeking FPPC Advice on Section 1090

In 2013, the State Legislature adopted Assembly Bill 1090, which amended the enforcement provisions applicable to Government Code Section 1090. With the adoption of AB 1090, a person who is subject to the prohibition in Government Code Section 1090 may request advice and/or a formal opinion from the FPPC. § 1097.1(c). Opinions or advice must be requested prior to any action being taken, as the FPPC cannot issue options or advice based on past conduct. § 1097.1(c)(2). Such advice is admissible as evidence of good faith conduct by the requester if the requester truthfully

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disclosed all material facts and relied on the advice or opinion of the FPPC. § 1097.1(c). In addition, the FPPC is now authorized to enforce the prohibition in Government Code Section 1090 through administrative or civil actions. § 1097.1(a).

6. Statute of Limitations for Section 1090 Violations

The statute of limitations for bringing a criminal prosecution under Section 1090 is three years from the discovery of the violation. *People v. Honig*, 48 Cal. App. 4th 289, 304 (fn. 1) (1996); Penal Code §§ 801, 803(c). However, under Government Code Section 1092, a four-year statute of limitations applies to actions brought under Section 1090 to invalidate a contract. This four-year statute of limitations begins to run from the date that the plaintiff has discovered the violation, or in the exercise of reasonable care, should have discovered the violation. A four-year statute of limitations also applies to civil actions brought by the FPPC. § 1097.3(c).

C. Common Law Doctrine Against Conflicts of Interest

The common law doctrine against conflicts of interest constitutes the courts' expression of the public policy against public officials using their official positions for their private benefit. See *Terry v. Bender*, 143 Cal. App. 2d 198, 206 (1956). This doctrine provides an independent basis for requiring public officials and employees to abstain from participating in matters in which they have a financial interest. Violation of the doctrine can amount to official misconduct and can result in loss of office. *Nussbaum v. Weeks*, 214 Cal. App. 3d 1589 (1989).

By virtue of holding public office, an elected official "is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928). An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of a private interest. *Id.*

The common law doctrine against conflicts of interest has been primarily applied to require a public official to abstain from participation in cases where the official's private financial interest may conflict with his or her official duties. 64 Ops. Cal. Att'y Gen. 795, 797 (1981). However, the doctrine also applies when specific circumstances preclude a public official from being a disinterested, unbiased decision maker for a quasi-judicial matter. In one case, a council member who voted to deny permits for a condominium project near his house was deemed to have a common law conflict of interest (i.e., bias) due to his interest in preserving his ocean view and his personal animosity toward the applicants. *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996).

However, a more recent court decision creates some uncertainty as to whether the common law doctrine should be applied when statutory conflict of interest laws already address the particular situation. In *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1233 (2000), the court declined to construe allegations of an official's bias in a decision to constitute a conflict of interest at common law when the applicable statutes already had been construed not to create a conflict of interest in that situation. In *BreakZone*, the court indicated, "[w]e continue to be cautious in

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finding common law conflicts of interest . . . . We reject the application of the doctrine in this case, assuming, arguendo, it exists." 81 Cal. App. 4th at 1233.

II. OTHER SPECIALIZED CONFLICTS OF INTEREST LAWS AND REGULATIONS

A. Doctrine Against Holding Incompatible Offices

1. The Common Law Doctrine Against Holding Incompatible Offices

In addition to Government Code Section 1099 (discussed below), a common law doctrine (that is, legal principles established over time by court decisions) applies to prevent public officials from holding multiple public offices simultaneously. The common law doctrine against incompatibility of offices arose from a concern that the public interest would suffer when one person holds two public offices which might possibly come into conflict. The California Supreme Court set forth the following test for incompatibility of offices in People ex rel. *Chapman v. Rapsey*, 16 Cal. 2d 636 (1940):

> "Two offices are said to be incompatible when the holder cannot in every instance discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both."

16 Cal. 2d at 641-42. Incompatibility of offices is not measured only by conflicts which do exist, but also by those conflicts which might arise. *Chapman*, 16 Cal. 2d 636, 641-42 (1940); 66 Ops. Cal. Att'y Gen. 382, 384 (1983); 64 Ops. Cal. Att'y Gen. 288, 289 (1981).

In order to determine whether two positions are in conflict, it is necessary to determine first whether the two positions are both public offices within the scope of the doctrine. No statutory definition is given to the term "public officer." However, in *Chapman*, the court stated:

> "[A] public office is said to be the right, authority, and duty, created and conferred by law — the tenure of which is not transient, occasional, or incidental — by which for a given period an individual is invested with power to perform a public function for public benefit . . . .
>
> One of the prime requisites is that the office be created by the Constitution or authorized by some statute. And it is essential that the incumbent be clothed with a part of the sovereignty of the state to be exercised in the interest of the public."

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16 Cal. 2d at 640 (citation omitted).

Incompatibility can be triggered if the duties of the two offices "overlap so that their exercise may require contradictory or inconsistent action, to the detriment of the public interest." *People ex rel. Bagshaw v. Thomson*, 55 Cal. App. 2d 147, 150 (1942). Only one significant clash of duties and loyalties is required to make offices incompatible. 37 Ops. Cal. Att'y Gen. 21, 22 (1961). The policy set forth in *Chapman* includes prospective as well as present clashes of duties and loyalties. 63 Ops. Cal. Att'y Gen. 623 (1980).

Abstention has not been recognized as a remedy for incompatible offices. The general rule provides:

> "The existence of devices to avoid . . . [conflicts] neither changes the nature of the potential conflicts nor provides assurances that they would be employed. Accordingly, the ability to abstain when a conflict arises will not excuse the incompatibility or obviate the effects of the doctrine."

66 Ops. Cal. Att'y Gen. 176, 177 (1983) (citation omitted).

The effect of the doctrine of incompatibility of offices is that a public official who enters into the duties of a second office is deemed to have automatically vacated the first office if the two are incompatible. *Chapman*, 16 Cal. 2d at 644.

A list of some of the offices that the California Attorney General has found to be incompatible are as follows:

- County board of supervisors member and community college board member. 78 Ops. Cal. Att'y Gen. 316 (1995).
- Fire chief and board of supervisors member. 66 Ops. Cal. Att'y Gen. 176 (1983).
- Public utility district member and county board of supervisors member. 64 Ops. Cal. Att'y Gen. 137 (1981).
- School district trustee and council member. 73 Ops. Cal. Att'y Gen. 354 (1990).
- School board member and council member. 65 Ops. Cal. Att'y Gen. 606 (1982).
- County planning commissioner and council member. 63 Ops. Cal. Att'y Gen. 607 (1980).
- Fire chief and council member. 76 Ops. Cal. Att'y Gen. 38 (1993).
- County planning commissioner and city planning commissioner. 66 Ops. Cal. Att'y Gen. 293 (1983).

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- County planning commissioner and county water district director. 64 Ops. Cal. Att'y Gen. 288 (1981).
- City planning commissioner and school district board member. 84 Ops. Cal. Att'y Gen. 91 (1997).
- City manager and school district board member. 80 Ops. Cal. Att'y Gen. 74 (1997).
- School district board member and community services district board member. 75 Ops. Cal. Att'y Gen 112 (1992).

2. The Statutory Codification of the Common Law Doctrine of Incompatible Offices – Government Code Section 1099

Government Code Section 1099 is intended to create a statutory rule against holding incompatible offices. This section is not intended to expand or contract the common law rule and is intended to be interpreted based on precedent created through court decisions under the common law doctrine. Stats. 2005, c. 254 (S.B. 274), § 2.

Section 1099 provides that a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee or other body, shall not simultaneously hold two public offices that are incompatible as defined by the statute. Section 1099 provides that offices are incompatible when:

- Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;
- Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties and loyalties between the offices; or
- Public policy considerations make it improper for one person to hold both offices.

As is the case under the common law doctrine, Section 1099 provides that when two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second office. However, Section 1099 recognizes that certain state laws or possibly local ordinances may expressly provide for the simultaneous holding of particular offices and that result would not be precluded by Section 1099.[24] Section 1099 does not apply if one of the positions is a mere position of

[24] See, e.g., *People ex rel. Lacey v. Robles*, 2020 WL 467582 (2020), which held that Section 1099's exception to the rule against holding incompatible offices if "simultaneous holding of the particular offices is compelled or expressly authorized by law" did not apply to an official serving as a mayor and a member of the board of directors for a water replenishment district, despite the fact that the city council and the water replenishment district adopted an ordinance and resolution, respectively, authorizing the official to simultaneously hold both offices. The court reasoned that (1) the Legislature's reference to "law" is "best understood as a reference to state, not local, law"; and (2) even if the reference to "law" could be understood to allow local jurisdictions to deem offices compatible notwithstanding a possible conflict in duties or loyalties, the water replenishment district lacked the authority to authorize its board members to hold incompatible offices.

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employment rather than a public office. It also does not apply when one of the positions is a member of a legislative body that has only advisory powers. § 1099(c), (d).

B. Incompatible Outside Activities

Government Code Section 1126(a) provides, in relevant part:

> "[A] local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. . . ."

The provisions of Section 1126 prohibit officials and employees of a local government agency from engaging in outside employment or activities where any part of the employment or activity will be subject to approval by any other officer, employee, board or commission of the local agency. Exceptions are created to permit a public official to engage in outside employment by a private business, and to permit an attorney employed by a local agency in a non-elective position to serve on an appointed or elected governmental board of another agency. §§ 1127, 1128.

However, the court in *Mazzola v. City and County of San Francisco*, 112 Cal. App. 3d 141 (1980) ruled that Section 1126 provides only authorization to implement standards for incompatibility pursuant to paragraph (b) of Section 1126. The court ruled that the restrictions of Section 1126 are not self-executing because existing and future employees should have notice that specific outside activities are, or are not compatible with their duties as an officer or employee of the local agency. Thus, Section 1126 would not bar a public official from holding a position outside his or her public agency unless the public agency in which he or she serves as a public official adopts an ordinance in compliance with the requirements of Section 1126 that specifies that the two positions or activities are incompatible. Many cities have not adopted such ordinances.

In light of the court's decision in *Mazzola*, the Attorney General ruled that Section 1126 did not apply to any elected official, such as a council member, since elected officials do not have an "appointing power" that can promulgate guidelines for their activities pursuant to Section 1126. However, if a local agency adopts such guidelines, they can be made applicable to officers and employees subordinate to the legislative body of the local agency, including members of advisory boards and commissions. § 1126(a).

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C. Successor Agency and Oversight Board Conflicts

1. Form 700s for Successor Agency and Oversight Board Members

Regarding any city that adopted a resolution establishing a successor agency to the former redevelopment agency as a separate legal entity, an official who already files an annual Form 700 in his or her capacity as a city official does not need to file an Assuming Office Statement ("Assuming Office Form 700") within 30 days of assuming his or her position with the successor agency as long as these same city officials are already required to disclose all categories of economic interests. The successor agency official or employee will, however, have to file an Assuming Office Form 700 if he or she is not already required to disclose as a city official all categories of economic interests.

With respect to those successor agency officers and employees who do have an obligation to file an Assuming Office Form 700, the 30-day deadline for completing those filings is likely 30 days from the date he or she was appointed rather than 30 days after the officer or employee is sworn in to office or starts to perform duties. This means that if the successor agency was formed as a separate governmental entity, the date that the official was appointed to his or her position would be the date that the successor agency adopted its rules and regulations, established successor agency positions in those rules, and designated specific city officials to fill those positions. However, if the successor agency appointed certain city officials to those positions at a later point in time, that later date would be the date from which the 30-day period would commence to run.

Members of an oversight board are subject to the Political Reform Act. This means oversight board members must comply with both the Act's conflict of interest disqualification and disclosure requirements. Oversight board members who do not also hold a concurrent city position need to file an Assuming Office Form 700 within 30 days of their appointment. For example, the appointees of the county, superintendent of schools, and other non-city representatives who do not concurrently hold a city position, should file an Assuming Office Form 700 as an oversight board member with the city clerk. Similarly, if one or both of the mayor's appointees do not concurrently hold a position with the city requiring disclosure of economic interests in all categories, they should file an Assuming Office Form 700 within 30 days of their appointment. However, if a person appointed by the mayor to represent the city on the oversight board or any other appointee to the oversight board concurrently holds a position with the city that is already required to broadly disclose in all categories, these persons would not be required to file an Assuming Office Form 700 under the FPPC staff rationale noted above.

2. Obligation of Successor Agencies to Adopt Conflict of Interest Codes

The Act requires that local government agencies must adopt a conflict of interest code. An exception applies for those agencies where all of its officials and employees are already required to file Statements of Economic Interests as city officials. In the

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case of a successor agency, some members of its oversight board will not be city officials or employees. For example, the county, school district, county superintendent, and community college appointees are most likely not going to be current city officials or employees. Consequently, the successor agency must adopt a conflict of interest code that includes the oversight board.

3. City Councils are the Code Reviewing Bodies for the Successor Agency's Conflict of Interest Code

Section 82011(c) provides that for "city agencies," the code reviewing body is the city council.

The term "city agencies" is not defined in the Act but has been interpreted by the FPPC to mean local government agencies located solely within the boundaries of one city. In the past, the FPPC has interpreted a redevelopment agency as being a "city agency" and the city council as being the code reviewing body for the redevelopment agency. In the case of a successor agency of a former redevelopment agency that operates solely within the boundaries of one city, the successor agency will not have a jurisdictional boundary that extends beyond the boundary of the city. Consequently, the city council of the city in which the former redevelopment agency operated will be the code reviewing body for the successor agency.

The city council, as the code reviewing body, is required to review and approve the successor agency's conflict of interest code not later than six months from the date the successor agency came into existence. § 87303. However, we recommend that this step be completed prior to that deadline for reasons mentioned below. Thus, it is appropriate to place the successor agency's conflict of interest code on a city council agenda for approval soon after the successor agency has adopted it.

4. The City Council May Designate the City Clerk as the Filing Officer for the Successor Agency's Statements of Economic Interests

The term "filing officer" is defined in the Act to be the office or officer with whom any statement or report is required to be filed under this title. § 82027, Regulation 18115. In determining where Form 700s are to be filed for officials of a successor agency, the city council, as the code reviewing body, may designate whether the "agency" (successor agency) or the "code reviewing body" (city council) is to be the entity with which Form 700s are filed. § 87500(p). Once that designation is made, the duty to perform the functions of filing officer must be delegated to an individual in either entity such as the city clerk, pursuant to Regulation 18227. The person designated becomes the "filing officer." Regulation 18227 provides that every entity with whom forms are filed shall assign to a specific official the responsibility for receiving and forwarding reports filed pursuant to Section 87500 (including Form 700s). Once assigned, the filing officer has a duty to supply Form 700s, review submitted Form 700s for completeness, and notify all persons who have failed to file forms and report violations to appropriate agencies. See § 81010, Regulations 18115, 18115.1, 18115.2.

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Thus, the city clerk or the successor agency secretary will most likely be the filing officer for the successor agency but such designation will ultimately be determined by the city council when acting as the code reviewing body for the successor agency's conflict of interest code. In the action to approve the successor agency's conflict of interest code, the city council should approve the successor agency's designation of the city clerk or successor agency secretary to be the filing officer for the successor agency's officials. In the meantime, it is appropriate for the city clerk or successor agency secretary to begin performing the duties of the filing official for the successor agency even though such designation will not be finalized until approved by the city council as the code reviewing body.

It is recommended that one of the first steps for the city clerk or successor agency secretary to undertake is to make a record of the appointment date for each officer of the successor agency and each member of the oversight board. With respect to those officials of the successor agency and oversight board that are not otherwise exempt from filing Assuming Office Form 700s for their position with the successor agency, city clerks should provide forms to those persons and facilitate the filing of those forms within the 30-day time period required. City clerks should be mindful of the more explicit obligations now set forth in Regulations 18104, 18115, 18115.1, and 18115.2.

D. Discount Passes on Common Carriers

Article XII, Section 7 of the California Constitution states:

> "A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission."

The Attorney General has explained this provision applies in the following manner:

- The prohibition applies to public officers, both elected and non-elected, but not employees.
- The prohibition applies to interstate and foreign carriers as well as domestic carriers, and to transportation received outside California.
- The prohibition applies irrespective of whether the pass or discount was provided in connection with personal or public business.
- Violation of the prohibition is punishable by forfeiture of office.

There have only been a few decisions that address this constitutional prohibition. In one opinion, the Attorney General granted leave to sue two members of a city council who accepted free airline tickets to London given by Laker Airlines as part of the airline's promotion of its new Los Angeles to London service. Despite the fact that the council

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members were unaware of the prohibition, the Attorney General allowed a quo warranto suit that subsequently settled before judgment. *See, e.g.,* 76 Ops. Cal. Atty. Gen. 1, 3 (1993).

In another opinion, the mayor of a city received an upgrade from a coach seat to a first class seat on Hawaiian Airlines. 76 Ops. Cal. Atty. Gen. 1 (1993). There, the mayor's ticket was one of 20 first-class upgraded tickets that the airline was allowed to provide to "high profile, prominent members of the community." At issue was whether that situation fit within an exception to the constitutional prohibition for situations when the free transportation or discount is provided to a public officer as a member of a larger group unrelated to the official's position. The Attorney General ruled that the facts did not satisfy the exception and that a violation of the prohibition had occurred.

The exception considered in that opinion stemmed out of a 1984 opinion of the Attorney General which held that a public officer could accept first-class ticket upgrades by virtue of the airline's policy to do so for all persons on their honeymoon. In 67 Ops. Cal. Atty. Gen. 81 (1984), the Attorney General concluded that a public officer, whose spouse was a flight attendant, could accept a free transportation pass or discount when such was offered to all spouses of flight attendants without distinction to the official status of the recipient.

Consequently, if the pass or discount is provided to the official because of his or her position as a governmental official, the prohibition applies. If it is provided to the official as a member of a larger group that is not related to the functions of his or her office, the prohibition may not be applicable.

E. Conflicts upon Leaving Office – the "Revolving Door"

Former elected officials and former city managers are restricted from receiving compensation for lobbying their city for one year after they leave public office. This restriction also applies to elected county and district officials and their chief administrative officers or general managers, but not to department directors or other public officials and employees. § 87406.3(a). A violation of the statute constitutes a misdemeanor, and the FPPC is authorized to impose administrative fines and penalties for its violation. § 91000.

The type of lobbying subject to the ban includes both formal and informal appearances before a local agency and making any oral or written communication to the agency. The statute proscribes the appearances and communications if they are made to influence administrative or legislative action, or affect the issuance, amendment, awarding or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. § 87406.3(a).

The term "administrative actions" within the scope of the lobbying ban includes "the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial." However, matters that are "solely ministerial" are expressly excluded from the

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prohibition. § 87406.3(d)(1). The type of "legislative action" within the scope of the ban includes:

> "the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in the member or employee's official capacity."

§ 87406.3(d)(2). The lobbying ban does not apply to any public official who is appearing or communicating on behalf of another local governing body or public agency of which the individual is a board member, officer or employee. § 87406.3(b)(1). Therefore, if such former elected city official or former city manager is contacting his or her city on behalf of the state, a county, a school district or some other governmental entity (in his or her capacity as a board member, officer, or employee), such activity is not precluded by the ban. However, the lobbying ban ***does*** apply for the initial year if the former elected city official or former city manager serves another public agency ***as an independent contractor*** and appears or communicates on behalf of that agency in front of the agency that the person originally served. § 87406.3(b)(2). Such activity would be prohibited for the first year after leaving office or employment with the original agency.

Some cities have their own preexisting "revolving door" ordinances that regulate the lobbying activities of their former public officials. This state law expressly does not preempt those ordinances or prevent cities from adopting additional ordinances on the subject in the future, provided those ordinances are more restrictive than the state law. § 87406.3(c). Thus, the law merely sets a minimum standard applicable to all cities.

F. Laws Prohibiting Bribery

A number of state statutes prohibit bribery of public officials. Specifically, it is illegal to give or offer to give a bribe to a public official, or for a public official to ask for, receive, or agree to receive any bribe. Penal Code §§ 67, 68. Under a strict reading of these statutes, Penal Code Section 68 applies to bribery of a "ministerial officer, employee, or appointee," and Penal Code Section 67 applies only to bribery of an "executive officer in this state," but the courts have interpreted both statutes as having a broad scope applicable to public officials generally. *People v. Hallner*, 43 Cal. 2d 715, 717 (1954) (observing that Penal Code Section 67, despite its wording, is "all inclusive" and includes city officials, and that "[b]y the sixty-seventh section the offense defined is that of one who offers; by the sixty-eighth, that of one who receives a bribe"); *People v. Strohl*, 57 Cal. App. 3d 347, 360 (1976) ("Numerous California Supreme Court and appellate court decisions since 1954 have held that 'executive officers' of various levels of local government, including the county level, as herein involved, come within [Penal Code] Section 67.").

The Legislature also expressly made bribery of council members and supervising officials a crime, as well as solicitation of bribes by council members and supervisors. Penal

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Code § 165. Another statute makes it a crime for anyone to attempt to bribe "any person who may be authorized by law to hear or determine any question or controversy." Penal Code § 92. Considered together, these statutes cover the spectrum of public officials.

The term "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity. Penal Code § 7(6). Note that under all of the bribery statutes, it is not only the actual giving or accepting of a bribe that is criminal; merely offering to give or receive a bribe constitutes a violation of law. See, e.g., *People v. Pic'l* (1982) 31 Cal. 3d 731, 739 (noting that a "meeting of the minds" is unnecessary for a bribery conviction).

A public officer forfeits his office if he requests, receives, or agrees to receive a bribe. Penal Code § 68. In addition, every officer convicted of any crime defined in the Penal Code sections pertaining to bribery and corruption is forever disqualified from holding any office in the state. Penal Code § 98.

Note also that bribery and soliciting bribery potentially violate not only the Penal Code, but also the conflict of interest statutes. For example, in *Terry v. Bender*, 143 Cal. App. 2d 198 (1956), a court of appeal held that a council member violated Government Code Section 1090 when he solicited and received a bribe from an attorney in exchange for the council member's vote to employ the attorney with the city. 143 Cal. App. 2d at 207 (observing that by accepting the bribe, the council member "had placed himself in a position of economic servitude" in violation of Section 1090). Because the bribe "restricted the free exercise of the discretion vested in him for the public good," there was an impermissible conflict of interest.

G. Campaign Contributions

1. Conflicts of Interests Arising for Elected and Appointed Officials

The Political Reform Act contains restrictions on the receipt and solicitation of campaign contributions. Under a portion of the Act known as the "Levine Act," a public agency official may not participate in decisions affecting individuals or entities who have given the official more than $250 in campaign contributions within the past 12 months. § 84308. This disqualification provision applies to appointed ***and*** local elected officials under new legislation[25] that significantly changed the rules regarding campaign contributions to local elected officials.[26] As of January 1, 2023, a local elected official cannot: (i) solicit, accept or direct a campaign donation over $250 from a party or a participant involved in a matter presently before the local agency and during the 12 months following the final decision; or (ii) participate in a proceeding

[25] Senate Bill ("SB") 1439.

[26] The FPPC determined that the disqualification provision under the Levine Act does not apply retroactively to campaign contributions that local elected officials received in 2022. The Act similarly does not apply retroactively to prohibit local elected officials from accepting campaign donations based on proceedings in 2022. *Kendrick* Advice Letter, No. O-22-002, 2022 WL _____ (2022).

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involving a party or a participant from whom the local elected official accepted over $250 within the preceding 12 months. § 84308. Importantly, in addition to now applying to local elected officials, the restrictions in Government Code Section 84308 still apply to planning commissioners and other officers of a public entity who are not directly elected by the voters.

Also, under the new law, an official who receives a prohibited donation may cure the violation depending on when the contribution was received. If a prohibited contribution was received during the 12 months *before* the final decision, then the contribution may be returned within 30 days from the time the official "knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use." Doing so cures the violation and allows the official to participate in the proceeding. Contributions of more than $250 may not be accepted *during* the proceeding and there is no "cure" for that violation. An official who unwillingly or unknowingly receives a contribution during the 12 months *after* the final decision may cure the violation by returning the excess amount "within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest." The official or a controlled campaign committee must also maintain records of curing such violations. § 84308.

The Act classifies campaign contributions differently than other financial interests. As discussed previously, the Act requires that public officials abstain from government decisions in which they have a financial interest, with certain exceptions. § 87100. A public official generally has a proscribed financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on (among other things): (i) a source of income aggregating $500 or more in value during the 12 months prior to the decision; or (ii) a donor of a gift or gifts aggregating $590 or more in value during the 12 months prior to the decision. § 87103(c), (e); Regulations 18700, 18940.2. Campaign contributions, however, are not considered a "financial interest" for purposes of this disqualification because they are neither "income" nor a "gift" within the meaning of the statute. §§ 82028(b)(4), 82030(b)(1). This disqualification therefore is not triggered as a result of a council member's receipt of a campaign contribution.

2. Application of Federal Corruption Laws to the Offer or Solicitation of Illegal Campaign Contributions Tied to an Official Act

Federal corruption laws apply to situations where the receipt of illegal, laundered or unreported campaign contributions are tied to an official act. In one case arising out of the City of San Diego, two council members were charged and convicted of wire fraud for conspiring to change the city's ordinance regulating adult-oriented businesses in exchange for campaign contributions from an adult-oriented business that had been illegally "laundered" through contributions made by residents of the city or which had been unreported and which constituted bribes. See *United States v. Inzunza*, 303 F. Supp. 2d 1041, 1043 (S.D. Cal. 2004) for a list of the charges; the case was referred to in the press as the San Diego "Strippergate" case. The charges included the alleged use of wire communications in interstate commerce in furtherance of the alleged conspiracy to defraud the public of their intangible right to honest service, in violation of 18 U.S.C. §§ 1951 (the Hobbs Act) and 1952 (Interstate Transportation in Aid of

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Racketeering). One of those convictions was later overturned. However, the case points out that direct connections between official acts and illegal or unreported campaign contributions may result in charges of bribery under California law and a violation of certain federal wire fraud and racketeering laws.

3. Ban on Local Agency Officials and Employees Soliciting Campaign Contributions from Officials and Employees of the Same Agency

In an effort to avoid local agency public employees being drawn into local political campaigns or having their positions become the subject of political reward or retribution, California law contains a prohibition on the solicitation of campaign contributions by a local agency official or employee of other officials or employees within the same local agency. Section 3205 prohibits an officer or employee of a local agency from soliciting political contributions from an officer or employee of that same local agency. The prohibition applies to incumbents seeking re-election and to non-incumbent candidates for local agency office. An exception exists for broad general public solicitations to a "significant segment of the public" that also include some local agency officials and employees of that agency. § 3205(c). No definition exists as to what constitutes a significant segment of the public. In the context of conflict of interest provisions in the Political Reform Act, that term now is defined to include segments of the local agency population such as 25 percent of all individuals within an official's jurisdiction (Regulation 18703), and, in the absence of any court interpretation of the law, that standard provides some guidance on what may be a sufficiently broad solicitation to come within the scope of the exception. Violation of the prohibition is punishable as a misdemeanor and may be prosecuted only by the County District Attorney. § 3205(d).

4. Nepotism

One other potential source of a conflict of interest is a governmental decision that affects a family member. If a public official's relative has an application before the government agency on which the public official serves, the public official would potentially have an improper incentive to approve the relative's application. Because the financial interests of a public official's spouse and dependent children (children under 18 years of age who are dependent financially on their parents) are attributed to the public official under the Political Reform Act and Section 1090, participation in decisions financially benefiting spouses and dependent children is limited. §§ 82030, 87103; *Thorpe v. Long Beach Community College Dist.*, 83 Cal. App. 4th 655 (2000) (holding that Section 1090 prohibited a community college district board from voting to approve the promotion of the spouse of a board member). If the approval did not require a decision by the legislative body, however, the public entity could still potentially approve an application or make a decision if the related public official did not participate.

With respect to adult children and more extended family members, the Political Reform Act and Section 1090 would not automatically apply in the absence of some financial relationship between the public official and the adult child or extended family

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members.[27] Currently, state law only prohibits such "extended family" interests for the governing boards of school districts. Educ. Code § 35107(e). Under that statute, a school board member must abstain from participating in personnel matters that uniquely affect his or her relative. "Relative" is defined as an adult who is related to the official by blood or affinity within the third degree, or in an adoptive relationship within the third degree. There is no comparable statute for cities and counties, but some local governments have established similar restrictions through ordinances or policies.

The issue of familial relations comes up more frequently in the context of personnel decisions, as when a public entity prohibits the hiring of relatives of public officials or employees. Such anti-nepotism policies are generally upheld by the courts. For example, in *Parsons v. County of Del Norte*, 728 F. 2d 1234 (9th Cir. 1984), the Ninth Circuit upheld a county policy prohibiting spouses from working in the same department. The Ninth Circuit held that the policy did not violate the Equal Protection and Due Process clauses of the U.S. Constitution and was rationally related to a legitimate government interest: avoidance of conflicts of interest and favoritism in employee hiring, supervision and allocation of duties. See also *Kimura v. Roberts*, 89 Cal. App. 3d 871, 875 (1979) (upholding a policy prohibiting spouses from serving on both the city council and planning commission, reasoning that "the finding of the mayor and the city council that an actual or implied conflict of interest existed, is eminently rational, practical and legally sound").

Note, however, that state law prohibits the application of anti-nepotism rules to spouses in some circumstances. The Fair Employment and Housing Act prohibits an employer from making an employment decision based on whether an employee or applicant has a spouse presently employed, except in two specific situations:

- For business reasons of supervision, safety, security or morale, an employer may refuse to place one spouse under the direct supervision of the other spouse.
- For business reasons of supervision, security or morale, an employer may refuse to place both spouses in the same department, division or facility if the work involves potential conflicts of interest or other hazards greater for married couples than for other persons.

2 C.C.R. § 11057(a) (emphasis added).

Accordingly, any anti-nepotism policy that a city or county adopts must not apply to the hiring of spouses, except in cases of direct supervision, where greater conflicts or hazards occur for married persons, or where a conflict of interest statute applies.

[27] *Davies* Advice Letter, No. I-90-329, 1990 WL 698051 (1990).

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III. LAWS AND REGULATIONS AFFECTING RECEIPT OF GIFTS, HONORARIA AND LOANS

The PRA provisions and other conflict of interest laws discussed above do not prohibit a public official from having an interest in a business or real property. Instead, they merely limit the official's ability to participate in governmental decisions that would materially affect those interests.

There are additional restrictions in the PRA, however, with regard to certain gifts, honoraria and loans. The statute precludes local officials (including council members and planning commissioners) from receiving certain gifts, honoraria and loans. These prohibitions apply whether or not the source of the gift, honorarium or loan is or will ever be affected by a decision of the official's agency. This section outlines these prohibitions.

A. Limitations on Receipt of Gifts

1. General Gift Limitation

Government Code Section 89503(a) provides: "No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than [$590]." (The gift limit amount has been adjusted in accordance with Regulation 18940.2.) Officials listed in Section 87200, in turn, include mayors, council members, planning commissioners, city managers, city attorneys, city treasurers, chief administrative officers and other public officials who manage public investments, and candidates for any of these offices.

A similar limitation prohibits a city employee designated in a local conflict of interest code from accepting gifts from a single source totaling more than $590 in value in any calendar year, if the gifts would be required to be reported on his or her statement of economic interests. § 89503(c).

2. Biennial Gift Limit Adjustment

The Act authorizes the FPPC to make an inflationary adjustment of the gift limitations set forth in Section 89503 every two years. § 89503(f). The most recent adjustment became effective on January 1, 2023, wherein the gift limit increased to $590. Regulation 18940.2. This figure will be further adjusted in future odd-numbered years.

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3. Exceptions to Gifts

None of the following is a gift and none is subject to any limitation on gifts (Regulation 18942):

a. Informational Materials

Informational materials such as books, reports, calendars, audio and video recordings, scale models, maps, free or discounted admission to informational conferences or seminars, and on-site demonstrations, tours or inspections that are provided to convey information for the purpose of assisting the official in the performance of official duties are not considered gifts. The cost of transportation for on-site demonstrations, tours or inspections may fall into this exception in particular situations. Regulations 18942(a)(1), 18942.1.

b. Returned Gifts

Except for passes and tickets as provided for in Regulation 18946.1 that must be ultimately used or transferred to have value, a gift that is not used and that, within 30 days of receipt, is returned, donated, or for which reimbursement is paid pursuant to Regulation 18941, is not a gift. Regulation 18942(a)(2). First, an unused gift returned to the donor, the donor's agent, or the donor's intermediary for which the returning party does not receive anything of value in exchange for the returned payment, does not constitute a gift. Regulation 18941(c)(1). Next, an unused donation of a gift under this exception must be to either a 501(c)(3) charitable organization with which the official or a member of his or her family holds no position or to a government agency, without being claimed as a tax deduction, also does not constitute a gift. Regulation 18941(c)(2). Lastly, a gift fully reimbursed to the donor, agent, or intermediary from the recipient official is not a gift, but a partial reimbursement will result in a reduced gift amount. Regulation 18941(c)(3).

c. Family Gifts

A payment from an individual's family member is not considered a gift unless the donor is acting as an agent or intermediary for any other person. The family members included in this exception are a spouse or former spouse, child or step-child, parent, grandparent, grandchild, brother, sister, current or former parent-in-law, current or former brother-in-law, current or former sister-in-law, nephew, niece, aunt, uncle, grand nephew, grand niece, grand aunt, grand uncle, first cousin or first cousin once removed, or the current or former spouse of any such person other than a former in-law. Regulation 18942(a)(3).

d. Campaign Contributions

Campaign contributions that are reported in accordance with separate provisions of the Act are not considered gifts. Regulation 18942(a)(4).

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e. Inherited Money or Property

Devises or inheritances of any kind are not considered gifts. Regulation 18942(a)(5).

f. Awards

A personalized plaque or trophy with an individual value of less than $250 is not a gift. Regulation 18942(a)(6).

g. Home Hospitality

The cost of home hospitality is not considered a gift unless any part of the cost is paid directly or reimbursed by another person, any person deducts any part of the cost as a business expense on a tax return, or the host has an understanding with someone else that any amount of compensation the host receives from that person includes a portion to be utilized to provide gifts of hospitality. Regulation 18942(a)(7). "Home hospitality" is defined as any benefit received by the official, and the official's spouse and family members when accompanying the official, which is provided by an individual with whom the official has a relationship, connection, or association unrelated to the official's position and the hospitality is provided as part of that relationship, connection, or association in the individual's home when the individual is present. Regulation 18942.2. Home hospitality includes entertainment, occasional overnight lodging, and any food, including food provided by other guests at the event and benefits received by the official when the official serves as the host.

A "home" includes a vacation home owned, rented, or leased by the individual for use as his or her residence, including in some cases a timeshare or a motor home or boat owned, rented, or leased by the individual for use as his or her residence. "Home" also includes any facility in which the individual has a right-to-use benefit by his or her home residency, such as a community clubhouse. Regulation 18942.2.

In determining where this exception is available, the official is to presume that the cost of the hospitality is paid by the host unless the host discloses to the official or it is clear from the surrounding circumstances that someone other than the host paid the cost or part of the cost of the hospitality. Regulation 18942(a)(7). The cost of providing hospitality must also not include any part of the value or rental cost of the home nor any depreciation value on the home where the hospitality is extended for the exception to apply. *Id.*

h. Presents on Personal or Family Occasions

Benefits commonly exchanged between an official and an individual, other than a lobbyist, on holidays, birthdays, or similar occasions are not gifts as long as the presents exchanged are not substantially disproportionate in value. For purposes of this exception, "benefits commonly exchanged" includes food, entertainment, and nominal benefits provided to guests at an event by an honoree or other individual, other than a lobbyist, hosting the event. Regulation 18942(a)(8)(A).

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i. Reciprocal Exchanges

Reciprocal exchanges made in a social relationship between an official and another individual who is not a lobbyist and with whom the official participates in repeated social events are not gifts where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities. The repeated social events may include lunches, dinners, rounds of golf, attendance at entertainment or sporting events, or any other such event so long as the total value of payments received by the official within the year is not substantially disproportionate to the amount paid by the official. If the official receives much more than what he or she paid, the official has received a gift for the excess amount. This exception does not apply to any single payment that is equal to or greater than $590. Regulation 18942(a)(8)(B).

j. Leave Credits Donated to an Official

Leave credits, including vacation, sick leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer are not gifts as long as they are available to all employees in the same job classification or position. This exception does not include donations of cash. Regulation 18942(a)(9).

k. Disaster Assistance

Payments received under a government agency program or a program established by a 501(c)(3) organization designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients are not gifts as long as such payments are available to members of the public regardless of official status. Regulation 18942(a)(10).

l. Admission when "Speech" Made

Payment of the official's admission by the organizer of an event is exempt from the gift limitations if the official makes a "speech" at the event. Regulation 18942(a)(11). This exemption applies if the official is "making a speech, participating on a panel, or making a substantive formal presentation at a seminar or similar event." Regulation 18950(b)(2). For the purpose of the exemption, the price of admission can include food and "nominal items" including things like pens, stress balls, note pads, etc. Regulation 18942(a)(11).

m. Campaign Travel

The payments made to an elected officer or candidate for his or her transportation, lodging, or subsistence provided in direct connection with campaign activities, including attendance at political fundraisers, are exempt from the gift limitations. Payments made during the six-month period prior to an election are considered "in direct connection" with the campaign activities if the payment is for necessary transportation, lodging, or subsistence and used for the officer's or candidate's participation in forums, debates or other speaking events or attendance at campaign strategy meetings with staff or consultants. Beyond this six-month period, the payment

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is considered a gift unless it is clear from the surrounding circumstances that the payment was made directly in connection with campaign activities. Regulations 18942(a)(12), 18950.3.

n. Ticket for Ceremonial Role

A ticket which is provided to an official and one guest of the official for his or her admission to an event where the official performs a ceremonial role on behalf of the agency is not a gift, so long as the agency reports the ticket on its Form 802. The term "ceremonial role" means an act performed at an event by the official as a representative of the official's agency at the request of the holder of the event where, for a period of time, the focus of the event is the act performed by the official. Examples include throwing out the first pitch at a baseball game, cutting a ribbon at a library opening, or presenting a certificate or award. A city may adopt specific policies to either limit or expand the permissible ceremonial roles for an official in that city, the full list of which must be forwarded to the FPPC. Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event. Regulations 18942(a)(13), 18942.3.

o. Prize or Award in Bona Fide Contest or Competition

A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance is not a gift. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery. Regulation 18942(a)(14).

p. Weddings Benefits

Benefits received as a guest attending a wedding or civil union are not gifts if the benefits are substantially the same as the benefits received by the other guests attending the event. Regulation 18942(a)(15).

q. Bereavement Offerings

Bereavement offerings typically provided in memory of and at the time of the passing of a spouse, parent, child, or sibling or other relative of the official are not gifts. Regulation 18942(a)(16).

r. Acts of Neighborliness

A service performed as an act of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances is not a gift. Examples of such services include the loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away. Individuals need not be actual neighbors for this exception to apply. Regulation 18942(a)(17).

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s. Bona Fide Date or Dating Relationship

Personal benefits commonly exchanged between people on a date or in a dating relationship are not gifts. However, such benefits are gifts if the individual providing the benefit to the official is a lobbyist or otherwise has particular interests in the official's role in the agency within 12 months of the date. Even if the benefit is from such an individual, the gift is still not reportable or subject to limits but the aggregate value is subject to the conflict of interest provisions if the value is $590 or greater. Regulation 18942(a)(18)(A).

t. Acts of Human Compassion

Payments provided to an official or his or her family member by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity are not gifts. Payments provided to an official or his or her family member to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child are also not gifts. However, under this exception, the source of the donation must be an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment must be made without regard to official status under other circumstances in which it would be common to receive community outreach. In any case, the individual providing the benefit to the official cannot be a lobbyist or otherwise have particular interests in the official's role in the agency within 12 months of the payment. Regulation 18942(a)(18)(B).

u. Best Friends Forever

A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency is not a gift. However, the individual providing the benefit to the official cannot be a lobbyist or otherwise have particular interests in the official's role in the agency within 12 months of the payment. Regulation 18942(a)(18)(C).

v. Catch-All

Any other payment that would otherwise meet the definition of gift is not a gift where the payment is made by an individual who is not a lobbyist and it is clear that the payment was made because of an existing personal or business relationship unrelated to the official's position. Additionally, there can be no evidence whatsoever at the time the payment is made that the official makes or participates in the type of governmental decisions that may have a foreseeable material financial effect on the individual who is the source of the payment. Regulation 18942(a)(19).

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4. Gifts to an Agency

Regulation 18944 provides a narrow exception to the normal gift reporting requirements and value limitations for gifts made directly to a public agency. A payment made to a state or local government agency that is used for official agency business is not considered a gift or income to an individual public official who is the end recipient, even though the official receives an incidental personal benefit from the payment. As such, the gift does not have to be reported by the individual and is not subject to the annual value limitation.

A payment shall be considered a gift to the public official's agency and not a gift to the public official if all of the following requirements are met: the payment must be used for official agency business; the agency head must determine and control the agency's use of the payment, including the selection of the official who will use the payment; and the agency must report the payment on a Form 801. The Form 801, which must be signed by the agency head and maintained as a public record in accordance with Government Code Section 81008, must include the following information:

- **Donor Information**: The reporting form requires not only the donor's name, but also his or her address, and must identify any other persons who contributed to the gift, as well as the amount each person contributed. If the donor is not an individual, the report must describe the business activity or nature of the entity giving the gift.

- **Description of Payment**: The form requires a description of the payment, the date it was received, the intended purpose and the amount of the payment or the actual or estimated fair market value of the goods or services provided, if the amount is unknown.

- **Recipient Information**: The form also requires that the agency specify the name, title, and department of the agency official who used the payment.

Regulation 18944(c)(3). For any quarter year period in which the payments received by the agency aggregate to $2,500 or more since the last filing, a local agency must submit a copy of the form or a detailed summary of the information to its filing officer within 30 days after the close of the quarter. Thereafter, the filing officer must post a copy of the form or the information in a "prominent fashion" on its website within 30 days after the close of the quarter. If the local agency does not maintain a website, the agency must send its Form 801 to the FPPC, which will post the document on its own website. Regulation 18944(d).

5. Gifts to an Official's Family

Regulation 18943 governs gifts to an official's or candidate's family. This regulation was substantially revised in late 2009 and again in 2011. Regulation 18943 adds new definitions and requirements that public officials should carefully review.

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Regulation 18943 adds definitions for an official's "family member," which includes an official's spouse or registered domestic partner, a dependent child, and an official's child. "Dependent child" means a child (including an adoptive child or stepchild) of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return. Regulation 18229.1. An "official's child" (including an adoptive child or stepchild) means a child who meets all of the following criteria:

- The child is at least 18 but no more than 23 years old and is a full-time or part-time student;
- The child has the same principal residence as the official. For purposes of this provision, a place, located away from the official's residence, at which the child resides for the purpose of attending school is not the child's "principal place of residence"; and
- The child does not provide more than one-half of his or her own support.

Gifts to Both an Official and One or More Family Members. A single gift to both an official and one or more members of the official's family is a gift to the official for the full value of the gift. See "Wedding Gifts" section below for a particular exception to this rule.

Gifts Solely to Family Members. A gift given solely to a member of an official's family is a gift to the official, when there is no established working, social, or similar relationship between the donor and the official's family member that would suggest an appropriate association for making such a payment. A gift given to a member of an official's family is also a gift to the official if there is evidence to suggest the donor had a purpose to influence the official, such as when:

- The donor is a lobbyist, lobbying firm, lobbyist employer, or other similar person and is registered to lobby the official's state agency;
- The donor is involved in an action or decision before the local or state government agency in which the official will reasonably foreseeably participate, or in an action in which he or she has participated within the last 12 months; or
- The donor has a contract with the official's agency or the donor engages in a business that regularly seeks contracts with, or licenses, permits or other entitlements from, and the official may reasonably foreseeably make or participate in such a decision or has participated in such a decision within 12 months of the time the gift is made, unless the donor has less than 10 percent interest in the business contracting with or appearing before the agency.

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6. Invitation-Only Events

When an official and one of his or her guests attends an invitation-only event such as a banquet, party, gala, celebration, or other similar function, other than a nonprofit or political fundraiser as set forth in Regulation 18946.4, the value received is the official's and the guest's pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest that is available to all guests attending the event. Regulation 18946.2(b). A calculation of the pro-rata share means the total cost of the list expenses above, divided by the number of acceptances or the number of attendees at the event. Any other specific benefit provided to the official and guest at the event, such as golf green fees, is valued at fair market value. Regulation 18946.2(b).

a. Official or Ceremonial Functions

When an official performs an official or ceremonial function at an invitation-only event in which the official is invited to participate by the event's sponsor or organizer to perform an official or ceremonial function, the value received is the pro-rata cost of any meal provided to the official and guest, plus the value of any specific item that is presented to the official and his or her guest at the event. Regulation 18946.2(d).

b. Drop-In Visit

Except for an event sponsored by a lobbyist, lobbying firm, or lobbyist employer, if an official attends an invitation-only event and does not stay for any meal or entertainment otherwise provided at the event, receiving only minimal appetizers or drinks, the value of the gift received is the value of any specific item, other than food, that is presented to the official and his or her guest at the event. For purposes of this regulation, "entertainment" means a feature show or performance intended for an audience and does not include music provided for background ambiance. Regulation 18946.2(e).

c. Lobbyists, Lobbying Firms, and Lobbyist Employers

Where an official attends an invitation-only event sponsored by a lobbyist, lobbying firm, or lobbyist employer, the value of the gift is the pro-rata share of the cost of the event. Regulation 18946.2(b), 18640. If the official notifies the lobbyist, lobbying firm, or lobbyist employer that the official attended the event but that he or she did not stay for any meal or entertainment, receiving only minimal appetizers and drinks, the value of the gift received is the value of any specific item (other than food) that is presented to the official and the official's guest at the event. Regulation 18640(b). Again, the term "entertainment" means a feature show or performance intended for an audience and does not include music provided for background ambiance. Regulation 18640.

7. Tickets to Political and Charitable Fundraisers

Regulation 18946.4 provides special rules for tickets provided to public officials to fundraisers for nonprofit and political organizations. Such tickets are not considered

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gifts to a public official if certain requirements are met. This exception applies only to two tickets provided to an official, and only if it is provided directly by the charity or campaign committee; additional tickets are treated as gifts. The requirements vary depending on whether the organization is a 501(c)(3) nonprofit, a non-501(c)(3) nonprofit, or a political organization.

a. Non-501(c)(3) Nonprofit Fundraiser

Regulation 18946.4(a) provides that a ticket to a fundraising event for a nonprofit, tax-exempt organization that is neither a political campaign committee nor a 501(c)(3) nonprofit shall be valued as follows:

- Where the ticket to the fundraiser clearly states that a portion of the ticket price is a donation to the organization, or the organization provides information indicating the portion of the admission price that constitutes the donation, then the value of the gift is the face value of the ticket or admission reduced by the amount of the donation – i.e., the "nondeductible portion" of the price of admission.

- If there is no ticket or other official information provided by the organization indicating the value of the nondeductible portion of admission, the value of the gift is the pro-rata share of the cost of any food, catering service, entertainment, and any other item provided to the official that is available to the other guests. A calculation of the pro-rata share means the total cost of the listed expenses, divided by the number of acceptances or the number of attendees. Any other specific benefit provided to the official at the event, such as golf green fees, is valued at fair market value.

b. Fundraiser for a 501(c)(3) Religious, Charitable, Scientific, Literary or Educational Organization

Where the event is a fundraising event for an organization exempt from taxation under Internal Revenue Code Section 501(c)(3), such an organization may provide two tickets per event to an official, and the ticket shall have no value. Regulation 18946.4(b). Any additional tickets or admissions provided by the 501(c)(3) organization, any tickets provided to or controlled by the official, and any tickets not provided directly by the 501(c)(3) are valued as tickets from a non-501(c)(3) nonprofit. Regulation 18946.4(b).

c. Political Fundraiser

For the gift of a ticket, pass, or other admission privilege to a political fundraising event for a "campaign committee" or a comparable committee regulated under federal law or the laws of another state, the committee or candidate may provide two tickets per event to an official that shall be deemed to have no value. A "campaign committee" is any person or persons who directly or indirectly receives contributions totaling two thousand dollars ($2,000) or more in a calendar year (note: this was increased from $1,000 in 2015), makes independent expenditures totaling one thousand dollars ($1,000)

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or more in a calendar year, or makes contributions totaling ten thousand dollars ($10,000) or more in a calendar year to or at the behest of candidates or committees. § 82013.

8. Tickets or Passes to Events Given to Officials by their Agency

a. Gift Exception

FPPC Regulation 18944.1 provides that a ticket or pass to an event or function provided to an official by his or her agency and distributed and used in accordance with a written policy adopted by the agency is not a gift under the Political Reform Act if: (1) the ticket or pass is not earmarked by an outside source for use by a specific agency official; (2) the agency determines, in its sole discretion, who uses the ticket or pass; (3) the distribution of the ticket or pass is reported on Form 802 as described below; and (4) the distribution of the ticket or pass by the agency is made in accordance with a written policy adopted by the agency that meets all of the requirements as described below. Regulation 18944.1(a).

- **Application**: FPPC Regulation 18944.1 applies only to the benefits the official receives from a ticket or pass to an event or function that are provided to all members of the public with the same class of ticket or pass, when the ticket or pass is provided by an agency to an official of the agency, or at the behest of an agency official. The regulation does not apply to: (1) an admission to an event or function in which the official performs a ceremonial role; or, (2) admission provided to a school, college or university district official, coach, athletic director or employee to attend an amateur event performed by students, which are neither gifts nor income. Regulation 18944.1(f).

b. Written Policy for Distribution of Tickets.

- **Policy Requirements**: The distribution of tickets and passes described above must be made pursuant to a written policy duly adopted by the agency's legislative or governing body that must contain the following: (1) a provision setting forth the public purposes of the agency for which tickets or passes may be distributed; (2) a provision requiring that the distribution of any ticket or pass to, or at the behest of, an official accomplish a stated public purpose of the agency; (3) a provision prohibiting the transfer of any ticket received by an agency official, except to his or her immediate family or no more than one guest solely for their attendance at the event; and (4) a provision prohibiting the disproportionate use of tickets or passes by a member of the governing body, chief administrative officer, political appointee, or department head. Regulation 18944.1(b).

- **Public Purpose**: The agency's legislative or governing body must determine whether the distribution of tickets or passes serves a legitimate public purpose of the agency, consistent with state law. Tickets or passes

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given to officials (other than a member of the governing body, chief administrative officer, political appointee or department head) to support general employee morale, retention or to reward public service is deemed to have a public purpose. Regulation 18944.1(e).

- **Public Record**: The policy must be maintained as a public record, subject to inspection and copying. The agency must post the policy on the agency website within 30 days of adoption or amendment and send to the FPPC, by email, the agency's website link that displays the policy for posting on the FPPC's website. Regulation 18944.1(c).

c. <u>Form 802 for Reporting Distribution of Tickets and Passes</u>.

Within 45 days of distributing a ticket or pass, the head of the agency must fill out and certify a Form 802 describing the distribution of tickets or passes to an official. The Form 802 requires: (1) the name of the official who received the ticket or pass, (2) a description and date of the event, (3) the fair value of each ticket or pass, (4) the number of tickets or passes distributed to the official, (5) if the ticket or pass is behested, the name of the official who behested the ticket, (6) if the official gave the ticket or pass to another person (limited to an immediate family member or no more than one guest), the name of that person, (7) the specific public purpose under which the distribution was made, and (8) a written inspection report of findings and recommendations by the official who received the ticket or pass if it was received for the oversight or inspection of facilities. This form must be maintained as a public record, subject to inspection and copying. The agency must post the form, or a summary of its contents, on its website and send the FPPC, by email, the agency's website link for posting on the FPPC's website. Regulation 18944.1(d).

d. <u>Other Exceptions</u>.

- **Reimbursement**. The ticket or pass is not considered a gift if the official reimburses the agency for the ticket within 30 days of receipt. Regulation 18944.1(h).

- **Treated as Income**. The ticket or pass is not considered a gift if the official treats the ticket or pass as taxable income. Regulation 18944.1(g).

9. Gifts from a Government Agency to an Official in That Agency

A payment by an agency that provides food, beverage, entertainment, goods or services of more than a nominal value to an official in that agency is a gift to that official, unless the payment is a "lawful expenditure of public moneys." Regulation 18944.3.

Several commentators have questioned the need or usefulness of this regulation because a public agency is already prohibited from making a payment that is not a "lawful expenditure of public moneys." Boiled down, the regulation states that it is illegal for an agency to give a gift unless the gift is legal. Until the FPPC issues some

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formal opinions or advice letters clarifying the regulation, or revises the text, its immediate application is unclear.

10. Wedding Gifts

The value to an official of a wedding gift given to an official and his or her spouse or spouse-to-be is one-half of the gift's total value. Regulation 18946.3. This is an exception to the general rule, described above in "Gifts to an Official's Family," that a single gift to both an official and one or more members of the official's family is a gift to the official for the full value of the gift. The value of a wedding gift may exceed the gift limit, currently set at $590. Regulation 18942(b)(2).

11. Certain Gifts of Travel

Payments for travel for a public official are generally subject to the annual gift limit, unless the payment is otherwise exempt. FPPC regulations define a "payment for travel" as "any payment that provides transportation to an official from one location to another location as well as a payment for lodging and food connected with the travel." Regulation 18950(b).

For reporting purposes, payments of air travel are valued in accordance with FPPC regulation 18946.5, as follows. Air travel is valued as the price the carrier charges the public for the same class seat on the flight provided to the official in the case of a commercial flight. The value of all other air transportation is the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, divided by the number of passengers aboard the flight.

Exceptions for certain gifts of travel are found in both the Act and the FPPC regulations, which are discussed below. Public officials should review these exceptions closely and consult with the agency's legal counsel before relying on them.

a. Travel Payments Related to Speeches that Serve a Governmental Purpose

Section 89506(a)(1) exempts from the gift limit any payments, advances, or reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if made in connection with a speech given by the official in the U.S. § 89506(a)(1); Regulation 18950(b). These types of payments for travel are not subject to the gift limit, but they must still be reported on a public official's Form 700. § 89506(a)(1); Regulation 18950(a).

b. Travel Payments Related to a Governmental Purpose Made by Government Agencies and Certain Non-Profits

Section 89506(a)(2) exempts from the gift limit any payments, advances, and reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if provided by a governmental agency, a 501(c)(3)

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nonprofit,[28] and a few other limited organizations/persons. § 89506(a)(2). These types of payments for travel are generally not subject to the gift limit, but they must still be reported on a public official's Form 700. § 89506(a)(2); Regulation 18950(a). However, Section 89506(f)(3) now clarifies that if a nonprofit is acting as an intermediary or agent of a donor, then the $590 gift limitation would apply and the original donor must be listed as the source of the gift to the official, as well as considered a financial interest for the purpose of conflicts analysis. § 89506(f)(3).

c. Travel for Education, Training, or Intra-Agency Purposes

Any payment for travel and per diem expenses received from a state, local, or federal agency is not a gift or income if used by the official for "education, training, or other inter-agency programs or purposes." Regulation 18950(c)(2).

d. Travel in a Vehicle or Plane Owned by Another Official or Agency

Regulation 18950(c)(3) provides that "transportation provided to an official in a vehicle or aircraft owned by another official or agency when each official is traveling to or from the same location for an event as a representative of their respective offices" does not constitute a "payment" and therefore does not count as a gift. Regulation 18950(c)(3).

e. Travel Made in Conjunction with Official Agency Business

Regulation 18950.1 provides an exception for travel payments that do not confer a personal benefit on an official, when made by sources other than local, state, or federal agencies, are for the purpose of facilitating the public's business, and are therefore not gifts or income because the payment is made for an official agency purpose in lieu of using agency funds. This exemption applies only to travel payments that meet all of the following requirements:

(1) The payment is made directly to or coordinated with the government employer and not made to the employee using the travel;

(2) The payment is used for official agency business;

(3) The government employer determines which official will use the payment for travel;

(4) The payment provides no personal benefit to the official who uses the payment;

[28] With respect to nonprofit organizations that regularly organize and host travel for elected officials and that make payments, advances, or reimbursements totaling more than $10,000 in a calendar year or $5,000 to an individual person, the Act now requires the nonprofits to disclose the names of donors responsible for funding the travel costs. § 89506(f). An organization "regularly organizes and hosts travel" if the organization's expenses for travel, study tours, or conferences constitutes more than one third of its total expenses. *Id.* In that case, the nonprofit must disclose the names of donors who contributed $1,000 or more to the nonprofit organization and who accompanied the elected official, either in person or through an agent, for any portion of the travel. § 89506(f).

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(5) The duration of travel is limited to that necessary to accomplish the purposes for which the travel was provided; and

(6) The government employer reports the payment, as specified below.

The first requirement above – that the payment is made directly to or coordinated with the government employer – is satisfied if the payment is made directly to the government employer or by arranging with the government employer any payments for transportation and lodging that are made directly to the provider of those services. Food may be accepted for attendance at an event where food is provided as part of the admission to the event. All other payments for food must be made to the government employer pursuant to the employer's per diem travel policy. Regulation 18950.1(b).

The second requirement above – that the payment be used for official agency business – is satisfied under any of the following circumstances:

- The payment is made pursuant to a provision in a contract requiring the contracting party to pay any expenses associated with any required governmental travel resulting from the government agency's participation in the contract and the payment is used for that purpose;

- The payment is made for the travel expenses of an official for the purpose of performing a regulatory inspection or auditing function that the governmental employer is mandated to perform;

- The payment is made for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental employer's functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members;

- The payment is made for the travel expenses of an official to an educational conference directly related to the governmental employer's functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event;

- The payment is made for the travel expenses of an official for the purpose of receiving training directly related to the official's job duties and the payment is provided by an organization that commonly provides such training;

- The payment is made for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group meeting under his

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or her officially assigned job duties and the agency is authorized to provide an official to attend the meeting; or

- The payment is for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially enhance an official's knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase of the product pursuant to the jurisdictional authority of the official's governmental employer. Regulation 18950.1(c).

The third requirement is satisfied if the governmental employer selects the official who will make use of the payment. However, if the payment is for expenses related to an oral presentation to either provide training on a subject on which the governmental employer provides training, or discuss policy and direction in implementing the functions of the governmental employer, the donor may request the official who is most qualified to make the presentation. Regulation 18950.1(d).

The fourth requirement above – that the payment of travel does not provide a personal benefit to the official – is satisfied under Regulation 18950.1(e) if both of the following requirements are met:

- The travel is for purposes approved by the governmental employer under the same requirements applicable to travel using its own funds, and the official is representing his or her governmental employer in the course and scope of his or her official duties; and

- Travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at agency expense.

The latter requirement does not apply to either of the following:

- Payment for food where food is provided as part of the admission to the event. Otherwise, any payments for food must be made to the government employer pursuant to the employer's per diem travel policy. Regulation 18950.1(b).

- Payment for any lodging or food if the lodging and food is provided at a site where the official attends a widely attended meeting or conference and the value is substantially equivalent in value to the lodging or food typically made available to the other attendees. Regulation 18950.1(g).

The sixth requirement above – that the payment is reported – is satisfied by the agency reporting the payment on a quarterly basis on a form prescribed by the FPPC. Regulation 18950.1(f). All such forms must be maintained as a public record and subject to inspection and copying under Government Code Section 81008, and posted on the agency's website, if it has one.

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f. Travel in Connection with Bona Fide Business

The FPPC regulations reiterate the general rule in Government Code Section 89506(d)(3), whereby a payment for transportation, lodging, or food, made in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Internal Revenue Code Sections 162 and 274, is not an honorarium or gift, unless the sole or predominant activity of the business, trade, or profession is making speeches. Regulation 18950.2.

g. Travel Paid from Campaign Funds

A payment made to an official who is a candidate to cover his or her transportation, lodging or food, in connection with campaign activities, is a contribution to the campaign committee of that official. Regulation 18950.3(a). A payment made to an official by or at the behest of a committee for the official's actual travel expenses (including food and lodging), or for other actual and allowable campaign expenses, is neither income nor a gift to the official so long as the expenses are reportable by the committee under the relevant sections of the Political Reform Act (Government Code Sections 84100 *et seq.*) or applicable federal law. Regulation 18950.3(b). Any other payment for travel from a committee to an official that is not covered by Regulation 18950.3(a) and (b) described above is considered income or a gift. Regulation 18950.3.

12. Lobbyists Arranging Gifts

A lobbyist or lobbying firm may not make gifts[29] to one person aggregating more than ten dollars ($10) in a calendar month, act as an agent or intermediary in the making of any gift, or arrange for the making of any gift by any other person. § 86203. It is likewise unlawful for any person to knowingly receive any such prohibited gift. § 86204.

A lobbyist "arranges for the making of a gift" within the meaning of Government Code Section 86203 if the lobbyist does any of the following either directly or through an agent:

- Delivers a gift to the recipient.
- Acts as the representative of the donor, if the donor is not present at the occasion of a gift, excepting a situation where the lobbyist accompanies the recipient to an event where the donor will be present.
- Invites or sends an invitation to an intended recipient regarding the occasion of a gift.
- Solicits responses from an intended recipient concerning the lobbyist's attendance or nonattendance at the occasion of a gift.

[29] Government Code Section 86201 provides that a "gift" for purposes of this section is a "gift made directly or indirectly to any state candidate, elected state officer, or legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist."

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- Is the donor's designated representative to receive responses from an intended recipient concerning the lobbyist's attendance or nonattendance at the occasion of a gift.

- Acts as an intermediary in connection with the reimbursement of a recipient's expenses.

Regulation 18624. On the other hand, a lobbyist does not "arrange for the making of a gift" if the lobbyist, either directly or through an agent, solely recommends or provides information to the lobbyist's employer, "including information obtained from a third party for that purpose," regarding gifts to a public official. *Id*.

B. Prohibitions on Receipt of Honoraria

Government Code Section 89502 provides that an elected officer of a local government agency and any official listed in Section 87200 shall not accept an honorarium. This prohibition also applies to candidates for elective office in a local government agency. § 89502(b). An "honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. § 89501.

1. Exceptions to the Prohibition on Honoraria

a. <u>Earned Income Exception</u>

"Honorarium" does not include income earned for personal services if:

- The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting; and

- The services are customarily provided in connection with the business, trade, or profession.

Regulation 18932.

b. <u>Informational Materials</u>

"Honorarium" does not include informational materials such as books, calendars, videotapes, or free or discounted admission to educational conferences that are provided to assist the official in the performance of official duties. Regulation 18932.4(a).

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c. Family Payments

"Honorarium" does not include a payment received from one's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such person. However, a payment from any such person is an honorarium if the donor is acting as an agent or intermediary for any person not listed in this paragraph. Regulation 18932.4(b).

d. Campaign Contributions

"Honorarium" does not include a campaign contribution that is required to be reported. Regulation 18932.4(c).

e. Personalized Plaque or Trophy

"Honorarium" does not include a personalized plaque or trophy with an individual value of less than $250. Regulation 18932.4(d).

f. Admission and Incidentals at Place of Speech

"Honorarium" does not include free admission, refreshments and similar non-cash nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. Regulation 18932.4(e).

g. Incidentals at Private Conference

Likewise, "honorarium" does not include any of the following items, when provided to an individual who attends any public or private conference, convention, meeting, social event, meal, or like gathering without providing any substantive service:

- Benefits, other than cash, provided at the conference, convention, meeting, social event, meal, or gathering; or
- Free admission and food or beverages provided at the conference, convention, meeting, social event, meal, or gathering.

However, the foregoing may be reportable as gifts. Regulation 18932.4(f).

h. Travel that Is Exempt from Gifts

Any payment made for transportation, lodging, and subsistence that is exempt by the gift exceptions listed in Section 89506 and Regulation 18950 *et seq.* also does not constitute an honorarium. Regulation 18932.4(g).

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C. Prohibitions on Receipt of Certain Types of Loans

1. Prohibition on Loans Exceeding $250 from Other City Officials, Employees, Consultants, and Contractors

Elected officials and other city officials specified in Section 87200, including council members, may not receive a personal loan that exceeds $250 at any given time from an officer, employee, member, or consultant of their city or any local government agency over which their city exercises direction and control. § 87460(a), (b). In addition, elected officials and other city officials specified in Section 87200 may not receive a personal loan that exceeds $250 at any given time from any individual or entity that has a contract with their city or any agency over which their city exercises direction and control. § 87460(c), (d).

2. Requirement for Loans of $500 or More from Other Persons and Entities to be in Writing

Elected local officials may not receive a personal loan of $500 or more unless the loan is made in writing and clearly states the terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan document must also include the date or dates when payments are due and the amount of the payments. § 87461(a).

3. Exceptions to Loan Limits and Documentation Requirements

The following loans are not subject to the limits and documentation requirements specified in paragraphs 1 and 2 above:

- Loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to official status. Regulation 18730.

- Loans received by an elected officer's or candidate's campaign committee. § 87461(b)(1).

- Loans received from the elected or appointed official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption. § 87461(b)(2)

- Loans made, or offered in writing, prior to January 1, 1998. § 87461(b)(3)

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4. Loans that Become Gifts are Subject to the Gift Prohibition

Under the following circumstances, as stated in Government Code Section 87462, a personal loan received by any public official (elected and other officials specified in Section 87200, as well as any other local government official or employee required to file a Statement of Economic Interests) may become a gift and subject to gift and reporting limitations:

- If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.

- If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of: the date the loan was made; the date the last payment of $100 or more was made on the loan; or the date upon which the official has made payments aggregating to less than $250 during the previous 12-month period.

5. Exceptions – Loans that Do Not Become Gifts

The following loans will not become gifts to an official:

- A loan made to an elected officer's or candidate's campaign committee.

- A loan on which the creditor has taken reasonable action to collect the balance due.

- A loan described above on which the creditor, based on reasonable business considerations, has not undertaken collection action. (However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)

- A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

- A loan that would not be considered a gift as outlined in paragraph 3 above (e.g., loans from family members). § 87462(b).

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IV. PROHIBITION AGAINST MASS MAILINGS

The Political Reform Act also prohibits the sending of newsletters and other so-called "mass mailings" at public expense. §§ 89001, 89002.[30] A "mass mailing" is defined as the mailing or distribution at public expense of 200 or more items within a calendar month featuring the name, office, photograph or other reference to an elected officer of the agency. § 82041.5. The Government Code also prohibits a mass mailing from being sent within the 60 days preceding an election by or on behalf of a candidate whose name appears on the ballot. § 89003. The underlying intent of the Government Code provision and the implementing FPPC Regulation is to preclude elected officials from using public agency newsletters as indirect campaign flyers for themselves. The law and regulations are intended to clamp down on prior abuses of newsletters so that elected officials cannot use publicly funded newsletters to bolster their name or accomplishments while in office.

A. Test for Prohibited Mass Mailing

The FPPC regulations previously included a four prong test to determine the legality of mass mailings. Under the statutory text, which now incorporates the requirements from the prior regulation, a mass mailing is prohibited if each of the following elements is present:

- It includes the delivery of a tangible item;
- It "features" an elected officer, or includes a reference to, an elected officer and is sent in cooperation with the elected officer;
- It is sent at public expense; and
- A quantity of more than 200 substantially similar items are sent in a single calendar month.

§ 89002. Most public agencies that publish newsletters attempt to avoid the prohibition by ensuring that the newsletter does not meet the second element of the test. Each of the four elements is discussed in numerical order below.

1. Delivery of Tangible Item

First, a court will determine whether any "item sent is delivered, by any means, to the recipient at the recipient's residence, place of employment or business, or post office box. The item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document." § 89002(a)(1). This means that if a city intends to deliver a written document, such as a city newsletter, by U.S. mail or by hand to residents or businesses, this element is satisfied.

[30] Section 89002 incorporates Regulation 18901 into the statutory language to clarify the circumstances when a mailing would be prohibited by the general rule in Section 89001 and to identify certain situations when the prohibition would not apply. The FPPC has repealed Regulation 18901 now that the statute includes the same text.

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2. Features or Includes Reference to an Elected Official

The second part of the test is the most important and requires that the item sent either:

- Features an elected officer affiliated with the agency which produces or sends the mailing, or
- Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

§ 89002(a)(2). The term "features an elected officer" is defined to mean that "the item mailed includes the elected officer's photograph or signature or singles out the elected officer by the manner of display of the elected officer's name or office in the layout of the document, such as by headlines, captions, type size, type face, or type color." § 89002(c)(2). And the term "elected officer affiliated with the agency" in this manner means "an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency or appoints one or more members of the agency." § 89002(c)(1).

This means that if the written document includes the photograph of a council member, even if it just shows the council member cutting a ribbon on a civic project or giving out a plaque to a member of the community, this element would be satisfied. It also precludes articles about an elected city official or articles in which they are "singled out" for discussion or reference.

The other way this second part of the mass mailing test can be satisfied is if an elected city official's "name, office, photograph, or other reference" is included in a written document and the document, or any part of it "is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer." This restriction presents elected officials with a choice. If the elected official involves him or herself in the preparation of the document, then even the official's name is excluded from appearing in the document pursuant to this second subpart. If, on the other hand, the elected official does not involve him or herself in the preparation of the document, his or her name may appear in the document, but not in a way that it is "featured" by way of headlines, captions, type size, type face, or type color.

3. Public Expense

The third part of the test is whether:

- Any of the costs of distribution are paid for with public money, or
- Costs of design, production, and printing exceeding $50 are paid with public money, and the design, production, or printing is done with the intent of sending the item other than as permitted by the statute.

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§ 89002(a)(3). This part of the test precludes the city from either paying the costs of mailing a mass mailing, or paying more than $50 of the cost of having it produced if another person or entity pays for the cost of distributing the mailing.

4. More than 200 Copies of the Item

The fourth and final element of the test to determine whether a mass mailing is prohibited is whether "[m]ore than 200 substantially similar items are sent in a single calendar month, excluding any item sent in response to an unsolicited request…." § 89002(a)(4). This means that if more than 200 copies of the same written document, such as a city newsletter, are sent to the public in the same month, this element will be satisfied, with minor exceptions discussed below.

A city newsletter is particularly prone to violating the mass mailing proscriptions, especially the first, third and fourth elements of the test. The key to a lawful newsletter is to ensure that each issue of the newsletter fully avoids meeting the criteria of the second element of the test. This means that the newsletter cannot "feature" an elected city official and cannot include an elected official's name or reference if that official participates in the preparation of the newsletter, as discussed above. For example, many cities issue proclamations and awards at council meetings, and it is customary for an honoree to be photographed with the mayor. In order to comply with the mass mailing restrictions, the cities take two photographs: one of the honoree shaking the mayor's hand, for distribution to non-city publications such as a local newspaper, and one of the honoree standing alone, for publication in the city newsletter.

B. Exceptions to the Mass Mailing Prohibition

The statute now contains a list of certain types of documents that are exempt from the prohibition of mass mailings. The first of these documents is a letter on city letterhead where the elected official's name only appears in the letterhead along with a list of all other elected officers of the city and the letter does not contain other references to the elected official. § 89002(b)(1). Under this exemption, a non-elected official, such as the city manager, may send a letter on city letterhead at city expense to members of the community but an elected officer, such as the mayor, cannot do the same because the signature on the letter will be considered a separate reference to the elected official. If a letter signed by the mayor is to be sent to the community, a private individual or group would have to pay for the cost of producing and sending that letter.

Other exemptions include press releases to the media, inter-agency communications, intra-agency communications, tax statements and bills, telephone directories, limited meeting or event announcements, and meeting agendas. § 89002(b). All of these items are subject to their own specific limitations, as set forth in the statutory text.

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V. EXPENDITURES TO SUPPORT OR DEFEAT A BALLOT MEASURE

A local government may not spend public funds to assist with the passage or defeat of an initiative or other ballot measure or to contribute to a campaign for or against a candidate. § 54964. Public monies may not be spent on commercials, announcements, banners or any other promotional materials. This is based on the theory that it would be unfair to voters with opposing views to use public funds in this way. The prohibition also serves to prevent elected officials from using government funds to promote themselves or their allies in office. *Stanson v. Mott*, 17 Cal. 3d 206, 217 (1976); *League of Women Voters v. County-Wide Criminal Justice Coordinating Comm'n*, 203 Cal. App. 3d 529 (1988). However, this section does not prohibit the expenditure of city funds to provide information to the public about the possible effects of the ballot measure on the activities, operations, or policies of the city, as long as these activities are otherwise allowed under California law, and the information is factual, accurate, fair, and impartial. § 54964(c).

The leading California case setting forth the basic rule with respect to government involvement in political campaigns is *Stanson v. Mott*, 17 Cal. 3d 206 (1976). In *Stanson*, the California Supreme Court addressed the question of whether the State Director of Beaches and Parks was authorized to expend public funds in support of certain state bond measures for the enhancement of state and local recreational facilities. The court concluded that the Director lacked such authority and set forth the basic rule that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign." *Id.* at 209-210. Only impartial "informational" communications would be permissible, such as a fair presentation of the facts in response to a citizen's request for information.

The *Stanson* court also recognized that the line between improper "campaign" expenditures and proper "informational" activities is not always clear. "[T]he determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor, and timing of the publication; no hard and fast rule governs every case." *Id.* at 221-222. The *Stanson* test was reaffirmed by the California Supreme Court in *Vargas v. City of Salinas*, 46 Cal. 4th 1 (2009).

Prior to *Vargas*, courts attempting to interpret and apply *Stanson* used varying tests to determine the permissibility of expenditures. For example, in *California Common Cause v. Duffy*, an appellate court held that a local sheriff's use of public facilities and personnel to distribute postcards critical of then-Supreme Court Justice Rose Bird was "political" and not "informational" as permitted by *Stanson* because the cards presented only one side of Justice Bird's fitness to be retained in office. 200 Cal. App. 3d 730, 747-748 (1987). In another appellate decision, *Schroeder v. City Council of Irvine*, the court upheld Irvine's "Vote 2000" Program. 97 Cal. App. 4th 174 (2002). The program encouraged voter registration, without specifically advocating a particular position on any measure. Although the city had taken a public position in favor of the

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proposed ballot measure, the materials it distributed did not advocate any particular vote on the measure and rarely mentioned the measure at all. The *Schroeder* court held that the funds spent on the Vote 2000 Program would be political expenditures and unlawful under *Stanson* only if the communications expressly advocated, or taken as a whole unambiguously urged, the passage or defeat of the measure. Because the city presented a neutral position on "Measure F," at least in the campaign materials, the court upheld the program as valid.

However, in *Vargas v. City of Salinas*, the California Supreme Court decided that "express advocacy" is an insufficient standard. In *Vargas*, proponents of a local ballot initiative to repeal the city's utility users tax ("Measure O") sued the city alleging improper government expenditures, the court held that even if a communication does not expressly advocate for either side of an issue, a *Stanson* analysis must nonetheless be conducted to determine whether the activity was for informational or campaigning purposes based on its style, tenor, and timing. Although the court did not specifically refer to the *Schroeder* analysis in its opinion, the court clearly stated that the "express advocacy" standard does not meaningfully address potential constitutional problems arising from the use of public funds for campaign activities that were identified in *Stanson*. Thus, local governments must look to *Vargas* rather than *Schroeder* for the proper standard to evaluate whether an expenditure is permissible.

A variety of factors led to the *Vargas* court's conclusion that the communications were informational, including the fact that the publications avoided argumentative or inflammatory rhetoric and did not urge citizens to vote in a particular manner. The challenged expenditures were made pursuant to general appropriations in the city's regular annual budget pertaining to the maintenance of the city's website, the publication of the city's regular quarterly newsletter, and the ordinary provision of information to the public regarding the city's operations. The Supreme Court found that in posting on the city's website the minutes of city council meetings relating to the council's action along with reports prepared by various municipal departments and presented by officials at city council meetings, the city engaged in informational rather than campaign activity. Similarly, the city did not engage in campaign activity in producing a one-page document listing the program reductions that the city council voted to implement should Measure O be approved, or in making copies of the document available to the public at the city clerk's office and public libraries. The court reasoned that viewed from the perspective of an objective observer, the document clearly constituted an informational statement that merely advised the public of specific plans that the city council voted to implement should Measure O be approved.

Finally, the court found that the city engaged in permissible informational activity by mailing to city residents the fall 2002 "City Round-Up" newsletter containing articles describing proposed reductions in city services. Although under some circumstances the mailing of material relating to a ballot measure to a large number of voters shortly before an upcoming election would constitute campaign activity, a number of factors supported the court's conclusion that the mailing of the newsletter constituted informational rather than campaign activity: it was a regular edition of the newsletter that was mailed to all city residents as a general practice, the style and tenor of the

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publication was entirely consistent with an ordinary municipal newsletter and readily distinguishable from traditional campaign material, and the article provided residents with important information about the tax in an objective and nonpartisan manner.

The Supreme Court illustrated the insufficiency of the "express advocacy" standard by suggesting that if the city were to post billboards throughout the city prior to an election stating, "IF MEASURE O IS APPROVED, SIX RECREATION CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE," it would defy common sense to suggest that the city had not engaged in campaign activity even though such advertisements would not have violated the express advocacy standard. *Vargas v. City of Salinas*, 46 Cal. 4th 1, 32 (2009).

Vargas and *Stanson* reflect that local agencies must exercise caution when communicating to voters about local measures. Unfortunately, there is no hard and fast rule to assist public officials in distinguishing improper partisan campaign expenditures from permissible expenditures for "informational activities." Whether a communication is permissible will be based on a combination of these factors, and public officials should therefore seek the advice of the city attorney on a case-by-case basis. Assistance may also be obtained from the FPPC.

Last, public officials should also be aware of a fairly new mass mailing rule that regulates communications pertaining to candidates and ballot measures. In 2009, the FPPC adopted a new regulation to prohibit government agencies from paying for mass mailings that expressly advocate or "unambiguously urge" a particular result in an election. Regulation 18901.1 prohibits a mailing if all of the following criteria are met:

- A delivery of a tangible item such as a written document, video tape, record, or button and is delivered to the recipient at his or her residence, place of employment or business, or post office box;
- The item sent expressly advocates or unambiguously urges a particular result in an election;
- The public agency (1) pays to distribute the item or (2) pays costs, exceeding $50, reasonably related to designing, producing, printing or formulating the content of the item including, but not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, or consultants with the intention of sending the item; and
- More than 200 substantially similar items are sent during the course of the election including items sent during the qualification drive or in anticipation of an upcoming election.

A mailing "unambiguously urges a particular result in an election" if the communication can be reasonably characterized as campaign material or activity and is not a fair presentation of facts serving only an informational purpose when taking into account the style, tenor, and timing of the communication.

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There are exceptions to this rule, and the following are not considered campaign related mass mailings: (1) an agency report providing the agency's internal evaluation of a measure sent to a member of the public upon the individual's request; (2) a written argument sent to a voter in the voter information pamphlet; and (3) a communication clearly and unambiguously authorized by law. Regulation 18901.1(b). Essentially, this regulation utilizes the standards articulated by the Supreme Court in the *Vargas* case and provides that communications that violate those standards are prohibited mass mailings.

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VI. PROHIBITION ON GIFTS OF PUBLIC FUNDS

Article XVI, Section 6 of the California Constitution prohibits state and local governments from making gifts of public funds or property. A transfer of property without consideration is a gift. Civ. Code § 1146. However, where property is transferred for a "public purpose," it will not be considered a gift of public funds. There, "the benefit to the [government] from an expenditure for a 'public purpose' is in the nature of consideration and the funds expended are therefore not a gift even though private persons are benefited therefrom." 69 Ops. Cal. Att'y Gen. 168 (1986) (citing *California Employment Stabilization Comm'n v. Payne*, 31 Cal. 2d 210, 216 (1947); *Alameda County v. Janssen*, 16 Cal. 2d 276, 281 (1940)).

In determining whether a legislative body has made a gift of public funds, courts will look first at "whether the money is to be used for a public or a private purpose." *City of Oakland v. Garrison*, 194 Cal. 298, 302 (1941). "If it is for a public purpose within the jurisdiction of the appropriating board or body, it is not, generally speaking, to be regarded as a gift." *Id.* As the California Court of Appeal explained in *Board of Supervisors v. Dolan*, it is settled that if a public purpose is served by the expenditure of public funds, the constitutional prohibition is not violated "even though there may be incidental benefits to private persons." 45 Cal. App. 3d 237, 243 (1975). However, to avoid violating the constitutional prohibition, public financial assistance must be tailored or "directly related" to a public purpose. *California Housing Finance Authority v. Elliott*, 17 Cal. 3d 575 (1976). Thus, financial assistance that does not directly further the proffered public purpose may still be found to be unconstitutional.

Courts defer to the legislative body's determination of what constitutes a "public purpose." The concept of public purpose has been liberally construed by the courts, and a city council's determination of public purpose will be upheld unless it is totally arbitrary. *County of Alameda v. Carleson*, 5 Cal. 3d 730, 746 (1971). Where a city acts pursuant to or in furtherance of a state statute, courts will defer to the state legislature in determining whether a public purpose exists.

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VII. CONCLUSION

More often than not, determining the application of conflicts of interest laws in particular circumstances requires complicated analysis. Because the consequences for a violation of these laws can be very serious, it is important that potential conflicts be identified as soon as possible to ensure that the appropriate analysis can be performed. To that end, we recommend that public agency staff prepare maps of council member residences and other real property interests (and those of other public officials, such as planning commissioners) so that such officials may be alerted to projects that are located within 500 and 1,000 feet of their real property interests. Even though the materiality standards for real property interests have changed over the years, this is still an important starting point for a conflicts analysis.

We encourage all public officials to keep in mind that it is the individual responsibility of each public official to determine whether he or she has a conflict in a particular decision.

We encourage officials and staff to seek advice from the city attorney when in doubt about a conflicts of interest issue. Because only a formal, written opinion from the FPPC can immunize someone from prosecution, we strongly encourage officials and staff to seek advice from the city attorney as early as possible, so that, if necessary, the public agency may request a formal opinion from the FPPC prior to any participation in a decision where a public official may have a conflict.

In addition, the Legislature has enacted a statute that requires public officials to take at least two hours of ethics training every two years if the local agency provides that official with any type of compensation, salary, or stipend or provides reimbursement for necessary and reasonable expenses incurred by that official in the performance of his or her official duties. § 53235(a). Ethics training would also be required of any employee designated by the local agency to receive such training. § 53234(c). Please seek advice from the city attorney regarding further details about ethics training.

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