*REVISED AGENDA

CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY

February 16, 2010

STUDY SESSION – 6:00 P.M.

City Council Closed Session
First Tuesday of each month – 6:00 p.m.
City Council Study Sessions
Third Tuesday of each month – 6:00 p.m.
City Council Meetings
Second and Fourth Tuesdays – 6:30 p.m.

City Hall Council Chamber - 14177 Frederick Street

Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, in compliance with the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to Mel Alonzo, ADA Coordinator at 951.413.3027 at least 48 hours before the meeting. The 48-hour notification will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Bonnie Flickinger, Mayor

Robin N. Hastings, Mayor Pro Tem
Jesse L. Molina, Council Member
Richard A. Stewart, Council Member
William H. Batey II, Council Member

*REVISED AGENDA
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY

STUDY SESSION - 6:00 PM
FEBRUARY 16, 2010

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

INTRODUCTIONS

PUBLIC COMMENTS ON MATTERS UNDER THE JURISDICTION OF THE CITY COUNCIL

There is a three-minute time limit per person. Please complete and submit a BLUE speaker slip to the City Clerk. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council Member, staff member or other person.

SPECIAL ORDER OF BUSINESS

1. Charitable Car Washes (Community Development Department/ 10 Min.)

2. Public Safety Building Programming, Conceptual Design and Incremental Growth Plan Presentation - Project No. 07-50182327 (Public Works Department/ 20 Min.)

3. Project Recommendations for Graham Street Crossing State Route 60 Between Sunnymead Boulevard and Hemlock Avenue - Project No. 06-41683125 (Public Works Department/ 20 Min.)

4. Banner Program Recognizing Military Service (City Manager's Office/ 10 Min.)

5. Sunnymead Boulevard Revitalization Project Banner Program - Project No. 04-89280221-3 (Public Works Department/ 15 Min.)

6. Presentation of Municipal Law Guidebook (City Attorney/ 30 Min.)

7. City Council Requests and Communications

(Times shown are only estimates for staff presentation. Items may be deferred by Council if time does not permit full review.)

❖ Oral Presentation only – No written material provided

***Materials related to an item on this Agenda submitted to the City Council/Community Services District/Community Redevelopment Agency after distribution of the agenda packet are available for public inspection in the City Clerk's office at 14177 Frederick Street during normal business hours.**

*CLOSED SESSION

A Closed Session of the City Council, Community Services District and Community Redevelopment Agency of the City of Moreno Valley will be held in the City Manager's Conference Room, Second Floor, City Hall. The City Council will meet in Closed Session to confer with its legal counsel regarding the following matter(s) and any additional matter(s) publicly and orally announced by the City Attorney in the Council Chamber at the time of convening the Closed Session.

• PUBLIC COMMENTS ON MATTERS ON THE CLOSED SESSION AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL

There is a three-minute time limit per person. Please complete and submit a BLUE speaker slip to the City Clerk. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

The Closed Session will be held pursuant to Government Code:

*1 SECTION 54956.9(a) - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

a Case: *ENCO Utility Services v. City of Moreno Valley*
Court: Riverside Superior Court
Case No: RIC 478023

2 SECTION 54956.9(b)(1) - CONFERENCE WITH LEGAL COUNSEL - SIGNIFICANT EXPOSURE TO LITIGATION

Number of Cases: 2

3 SECTION 54956.9(c) - CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

Number of Cases: 2

4 SECTION 54957 - PUBLIC EMPLOYEE APPOINTMENT/PUBLIC EMPLOYMENT

a) City Attorney Recruitment

b) City Manager Recruitment

*5 SECTION 54957 - PUBLIC EMPLOYMENT

a) Public Employee Performance Evaluation: Interim City Manager

REPORT OF ACTION FROM CLOSED SESSION, IF ANY, BY CITY ATTORNEY

ADJOURNMENT

***Revision**

APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

Report to City Council

TO: Mayor and City Council

FROM: Kyle Kollar, Interim Community Development Director

AGENDA DATE: February 16, 2010

TITLE: Charitable Car Washes

RECOMMENDED ACTION

Staff recommends that the City Council provide direction relative to enforcing regulations involving charitable car washes.

BACKGROUND

The City Council last discussed this topic at a Study Session which occurred on February 17, 2009 (see attached staff report presented at that meeting). At that meeting, the general consensus of the Council was that staff should continue its historically subdued, accommodating approach to 'policing' charitable carwash events.

DISCUSSION

Council members Batey and Hastings have requested agendizing of this topic for further discussion.

ATTACHMENTS/EXHIBITS

Staff report to City Council dated February 17, 2009

Prepared By:
Kyle Kollar
Interim Director of Community Development

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

APPROVALS	
BUDGET OFFICER	caf
CITY ATTORNEY	
CITY MANAGER	

Report to City Council

TO: Mayor and City Council

FROM: Kyle Kollar, Community Development Director

AGENDA DATE: February 17, 2009

TITLE: Charitable Car Washes

BACKGROUND

The City's Code and Neighborhood Services Division has received complaints from licensed commercial car wash businesses concerning certain charitable car wash events which occur on a regular, on-going basis. These complaints have reflected concern about alleged unfair business practices (including failure to obtain a City Business License or Temporary Use Permit) as well as excessive water usage and non-compliance with waste water drainage requirements.

Complaints received involve several business locations within the City where charitable car wash events are occurring every weekend and sometimes during the workweek. Code and Neighborhood Services staff have verified that charitable car wash events are occurring at some business locations on a regular, recurring basis. Staff is working with the owners of these businesses to either: obtain a Temporary Use Permit in order to legally host charitable car wash events; or decrease the frequency of these events to a negligible level.

DISCUSSION

Historically, the City has not actively 'policed' charitable car wash events. Generally, these events have been occasional only, and have not—until recently—generated concern or complaint from the business community or public at large. The only means available to the City at present to regulate charitable car wash events is as a "special event". The City's Municipal Code defines special events as temporary uses which are secondary to the primary business activity on a given site. Any business within the City

is eligible to apply for a Temporary Use Permit for up to fourteen (14) days per calendar year. The City charges a fee of $72 for issuance of a Temporary Use Permit.

In addition to the fee, an applicant for a TUP must comply with the following requirements per the Moreno Valley Municipal Code Section 9.02.150;

- Applications for temporary use permits shall be filed a minimum of thirty (30) days prior to the date of the proposed event.
- Applications must be accompanied by all appropriate fees and deposits, as determined by resolution of the city council.
- A site plan identifying the area to be occupied, all pedestrian areas, parking lot areas and/or drive aisles proposed to be closed, blocked, obstructed and/or barricaded and their proximity to major circulation aisles, public rights-of-way and buildings.
- Written authorization from the property owner or the property owner's duly authorized agent.
- Written operational/environmental statement identifying the proposed dates, defining the nature of the event or use and containing such other information as the community development director or designee shall consider necessary to determine the expected effects and impacts of the event or use.
- Proof of an applicable city business license. Currently, The Business License Division is waiving the Business License fee and the processing fee to all institutions or groups that show proof of non-profit status per Section 5.02.370 of the City's Municipal Code.

Prepared By: Al Brady Department Head Approval: Kyle Kollar

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

APPROVALS	
BUDGET OFFICER	caf
CITY ATTORNEY	Rut
CITY MANAGER	WBS

Report to City Council

TO: Mayor and City Council

FROM: Chris A. Vogt, P.E., Public Works Director/City Engineer

AGENDA DATE: February 16, 2010 (Study Session)

TITLE: PUBLIC SAFETY BUILDING PROGRAMMING, CONCEPTUAL DESIGN AND INCREMENTAL GROWTH PLAN PRESENTATION -- PROJECT NO. 07-50182327

RECOMMENDED ACTION

Staff recommends that the City Council:

1. Review and discuss the findings of the Public Safety Building Programming, Conceptual Design and Incremental Growth Plan.

BACKGROUND

The City retained Roesling Nakamura Terada Architects (RNT) to develop a conceptual design and incremental growth plan based on the Building Program Final Report prepared by LPA, Inc. Architects with Daniel C. Smith and Associates dated March 10, 2006. This document will provide the basis for incremental growth of the Public Safety Building to meet the City's needs at build-out.

DISCUSSION

In mid-2005 the City retained the services of LPA, Inc. Architects with Daniel C. Smith and Associates to develop a comprehensive Building Program to address the City's future needs until full build-out (anticipated by the City's Planning Department for 2050 according to the 2006 report) for the Public Safety Building based on population growth. LPA, Inc./Daniel C. Smith and Associates met with several City staff members and Public Safety officials to develop a detailed program identifying population growth and incremental need for additional public safety staff. A final draft of the report was prepared and presented to the City Council at its Study Session on February 21, 2006. The final report was submitted on March 10, 2006.

To continue this planning effort for the future, the City retained the services of Roesling Nakamura Terada Architects (RNT) on February 3, 2009, following a competitive selection process.

RNT reviewed and analyzed the 2006 LPA, Inc./Daniel C. Smith and Associates report; conducted interviews with representatives from each Public Safety department; discussed, reviewed, and analyzed needs for additional staffing in a full build-out scenario; and developed a conceptual design and incremental growth plan based on the LPA, Inc./Daniel C. Smith and Associates' 2006 Final Report. The build-out design addresses future parking requirements, including the need for a secure parking structure. In addition RNT analyzed the existing Public Safety Building space and developed an interface matrix that identifies the departments required to move from the existing building to the proposed new building and rearranges existing building space to assure a fully functional public safety facility without impacting day-to-day operations. The conceptual design takes a conservative approach by assuming the City will operate the public safety function, allowing the proposed building to meet all future needs.

When additional funding sources are identified, the conceptual design provides for the incremental preparation of construction and bid documents. This approach gives the City the option to build the facility on an "as-needed" basis based on funding availability.

RNT has completed the conceptual design and has recommended construction phasing and cost estimates for future phases. Cost estimates are in 2009 dollars and will need adjustments in future years based on inflation and future construction market conditions. A presentation (see Attachment "B") has been prepared to provide an overview of the PSB facility's program area analysis, conceptual design, and project phasing. The presentation includes the following:

- Program Area Summary
- Program Growth Requirements
- Site Analysis
- Conceptual Design
- Incremental Growth Plan
- Staffing and Budget Comparison
- Conceptual Level Project Cost

Staff recommends that the City to move forward with approving the concept design and incremental growth plan.

ALTERNATIVES

1. Review and discuss the findings of the Public Safety Building Programming, Conceptual Design and Incremental Growth Plan. *This alternative will allow the Council to review the concept, concur with the phasing of the facility and direct staff to proceed with initial design plans for the first phase when funding is available.*

2. Do not review and discuss the findings of the Public Safety Building Programming, Conceptual Design and Incremental Growth Plan. *This alternative will delay the initial design of plans for the first phase of the Public Safety Building expansion and require alternate temporary solutions to meet the space needs of PSB staff.*

FISCAL IMPACT

The conceptual design portion of the project is funded using 2005 Lease Revenue Bonds (Fund 501). Sufficient funds exist in project budget to complete the programming and conceptual design of the PSB Facility Expansion project.

The 2005 Lease Revenue Bonds (Fund 501) allocated for the Public Safety Building are funded by developer impact fees specifically collected for the Public Safety Building expansion and must be used for its intended purpose only. There is no impact on the General Fund.

ESTIMATED COSTS (501.82327):

Conceptual Design and Programming	$900,000
Project Administration*	$100,000
Total Estimated Cost	**$1,000,000**

**Includes City project administration, printing, and other miscellaneous costs.*

ANTICIPATED PROJECT SCHEDULE:

Complete Programming and Conceptual Design..... June 2010

CITY COUNCIL GOALS

POSITIVE ENVIRONMENT: Create a positive environment for the development of Moreno Valley's future.

COMMUNITY IMAGE, NEIGHBORHOOD PRIDE, AND CLEANLINESS: Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts, including home rehabilitation and neighborhood restoration.

SUMMARY

The Public Safety Building programming, conceptual design and incremental growth plan will be finalized after receipt of City Council comments and making appropriate changes to the design. This document will become the basis for incremental growth of the PSB facility. The City Council is being asked to review and discuss the PSB facility conceptual design and direct staff to initiate design plans for the first phase when funding is available.

ATTACHMENTS/EXHIBITS

Attachment “A” – Location Map
Attachment “B” – PowerPoint Presentation

Prepared By:
Jack Shah, RA, MS (Civil)

Department Head Approval:
Chris A. Vogt, P.E., Public Works Director/City Engineer

Concurred By:
Prem Kumar, P.E., Deputy Public Works Director/
Assistant City Engineer

Concurred by:
John Anderson, Chief of Police

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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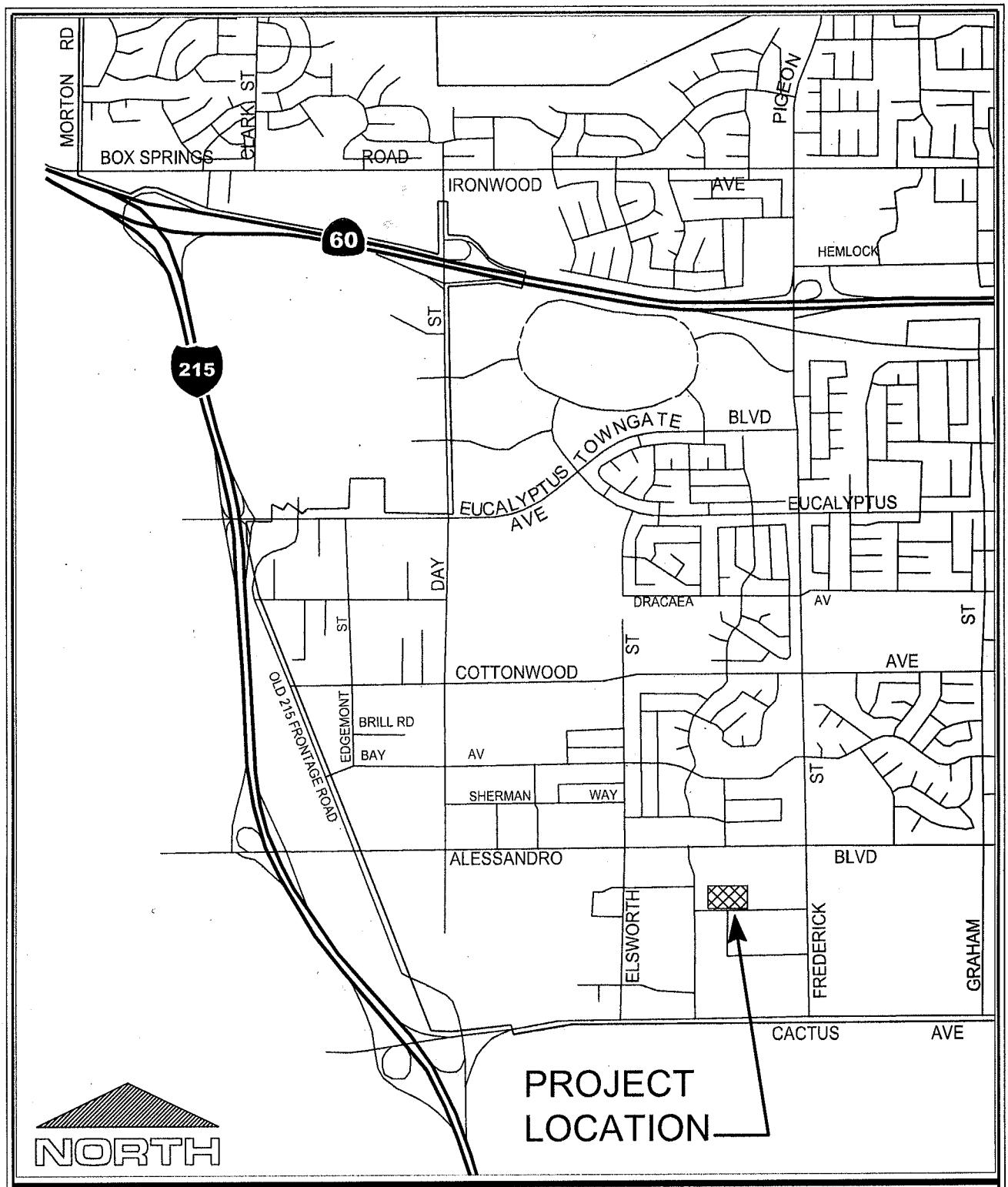


LOCATION MAP

Public WorksDepartment
Capital Projects Division

Scale: None

ATTACHMENT "A"

PUBLIC SAFETY BUILDING PHASE II
PROJECT NUMBER 07-50182327

Public Safety Building Expansion

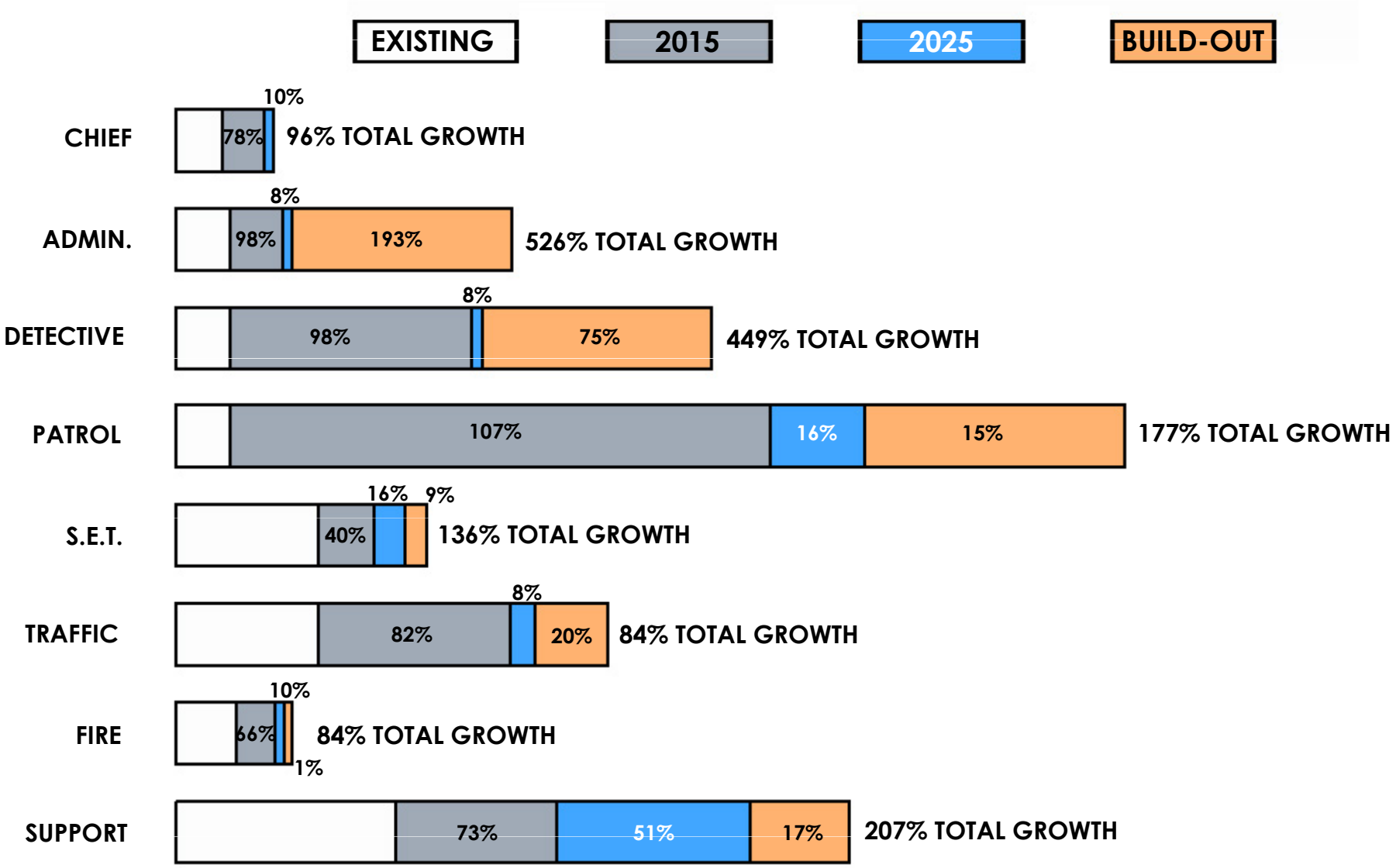
PROGRAM SUMMARY

ROESLING NAKAMURA TERADA ARCHITECTS
ROTH SHEPPARD ARCHITECTS
gafcon

GROWTH ASSUMPTIONS

- Staff and support space growth projections are based on the original program by LPA Inc. /Daniel C. Smith and Associates in 2006.
- Original Program was presented by Police Chief on Feb 21, 2006 at City Council Study Session.
- 2006 program projected 167,783 gsf at Build-out.
- The latest validation and design projected 168,200 gsf at Build-out. This assumes City Operated facility.
- If PD remains under County Contract, the program requires152,124 gsf at Build-out.
- For Planning purpose, the design team is using City Operated scenario for more conservative approach.

PERCENTAGE GROWTH BY DIVISION AND PERIOD



ROESLING NAKAMURA TERADA ARCHITECTS
ROTH SHEPPARD ARCHITECTS
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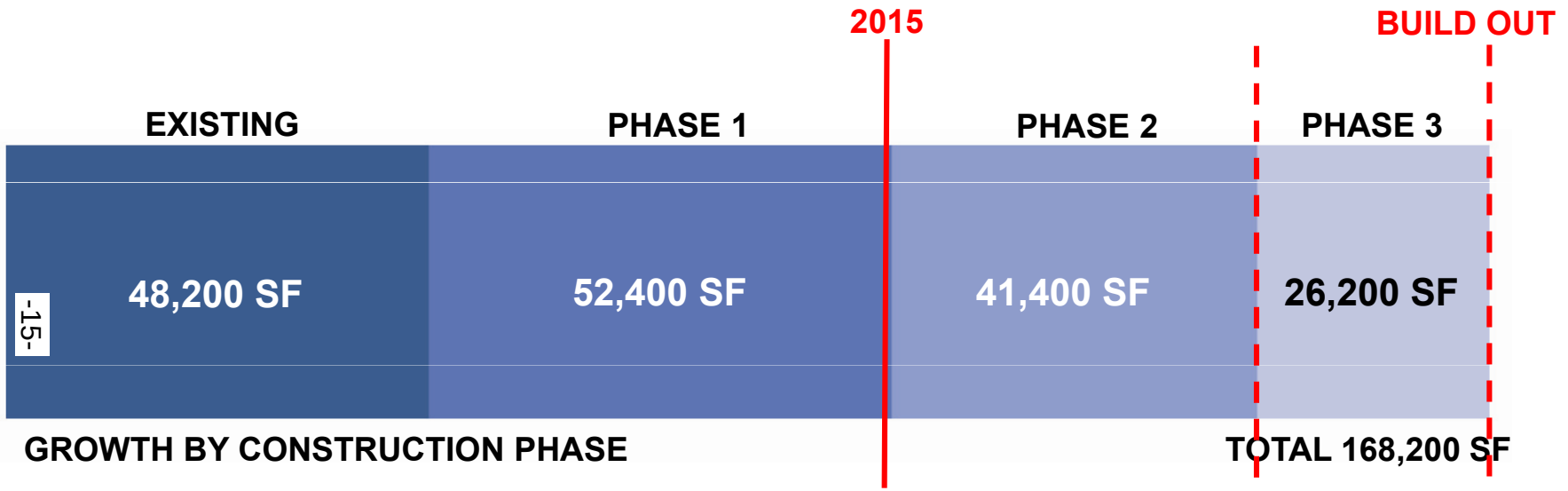
TOTAL GROWTH BY CONSTRUCTION PHASE AND PERIOD



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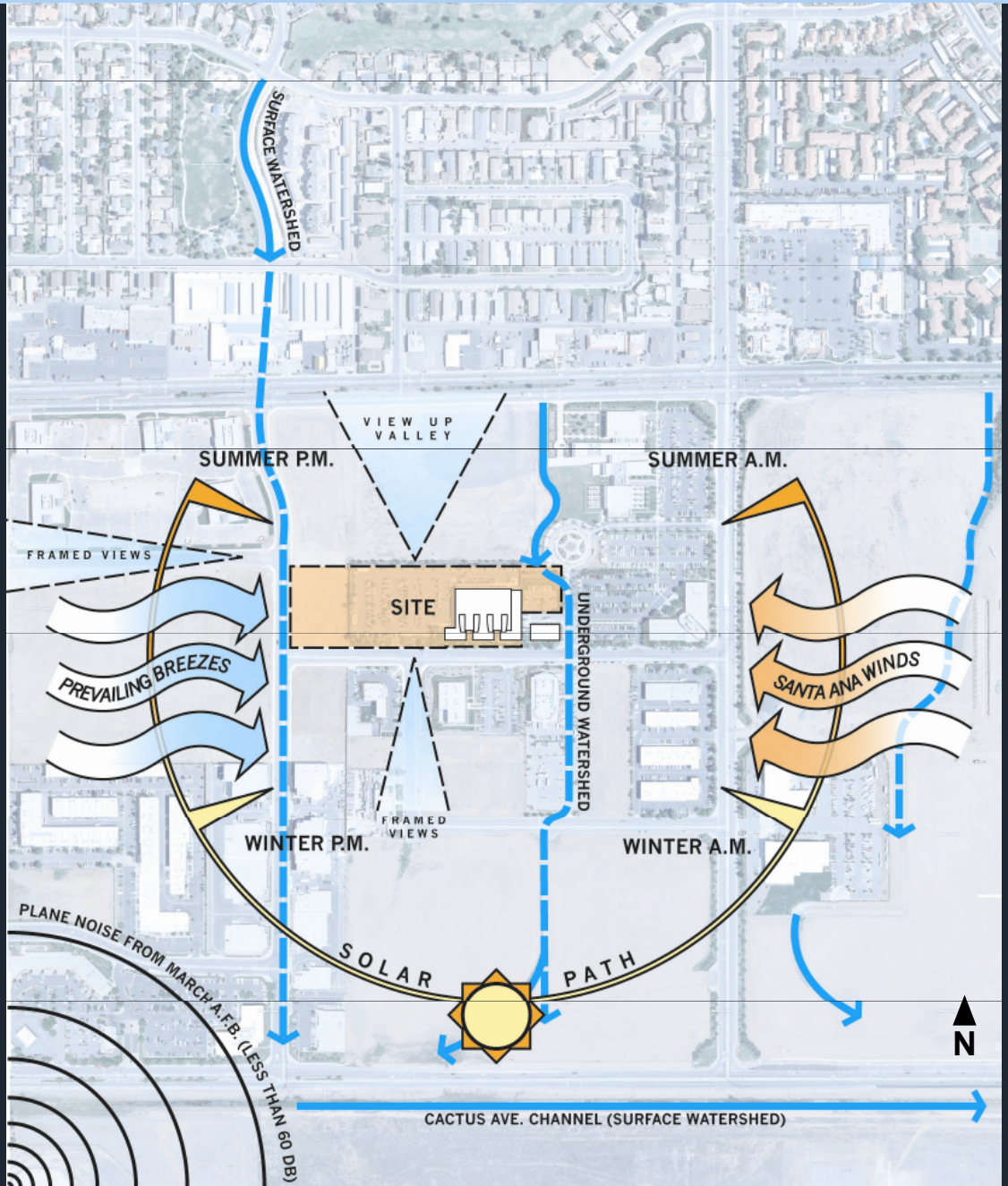
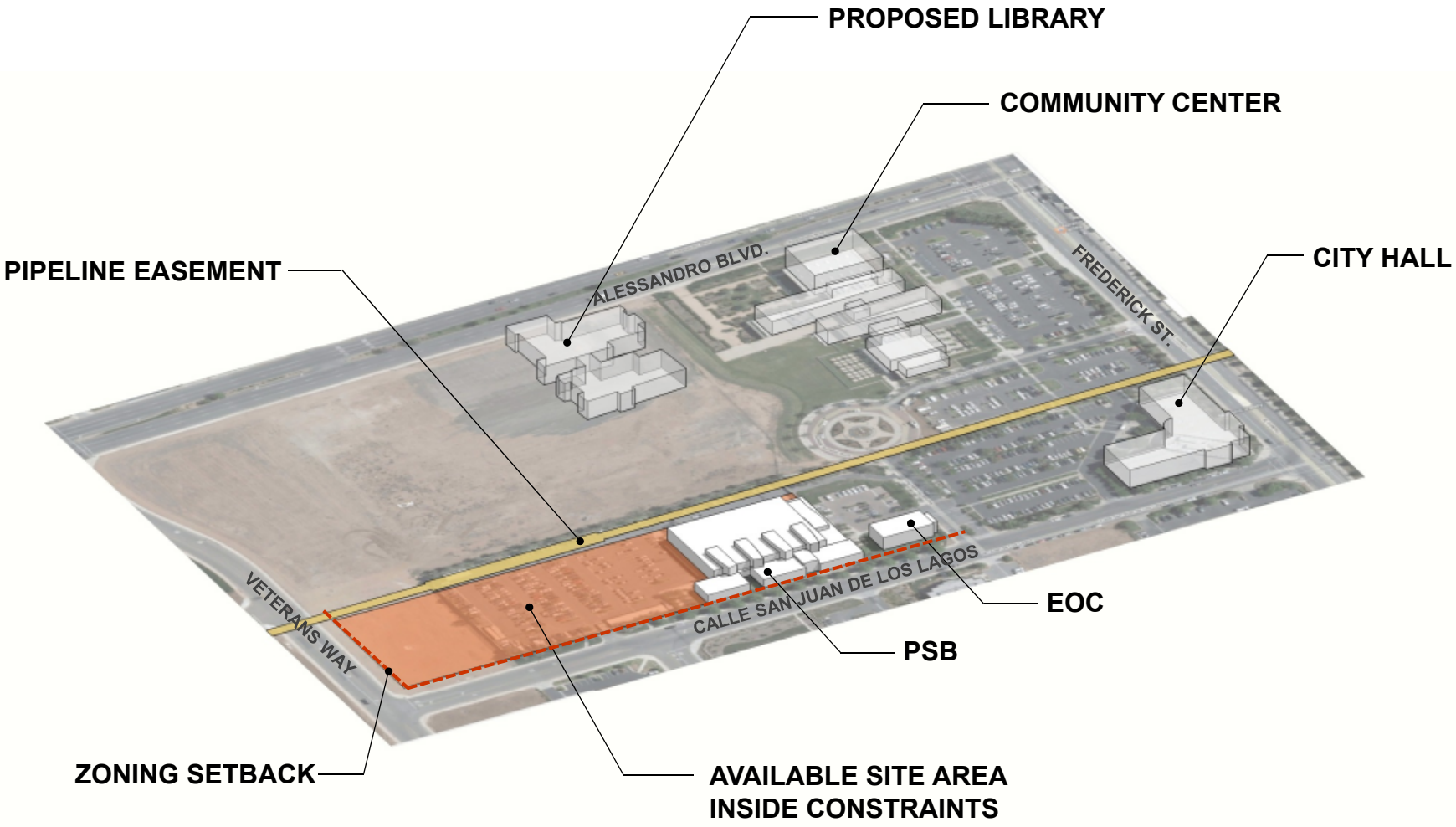
ROTH SHEPPARD ARCHITECTS gafcon

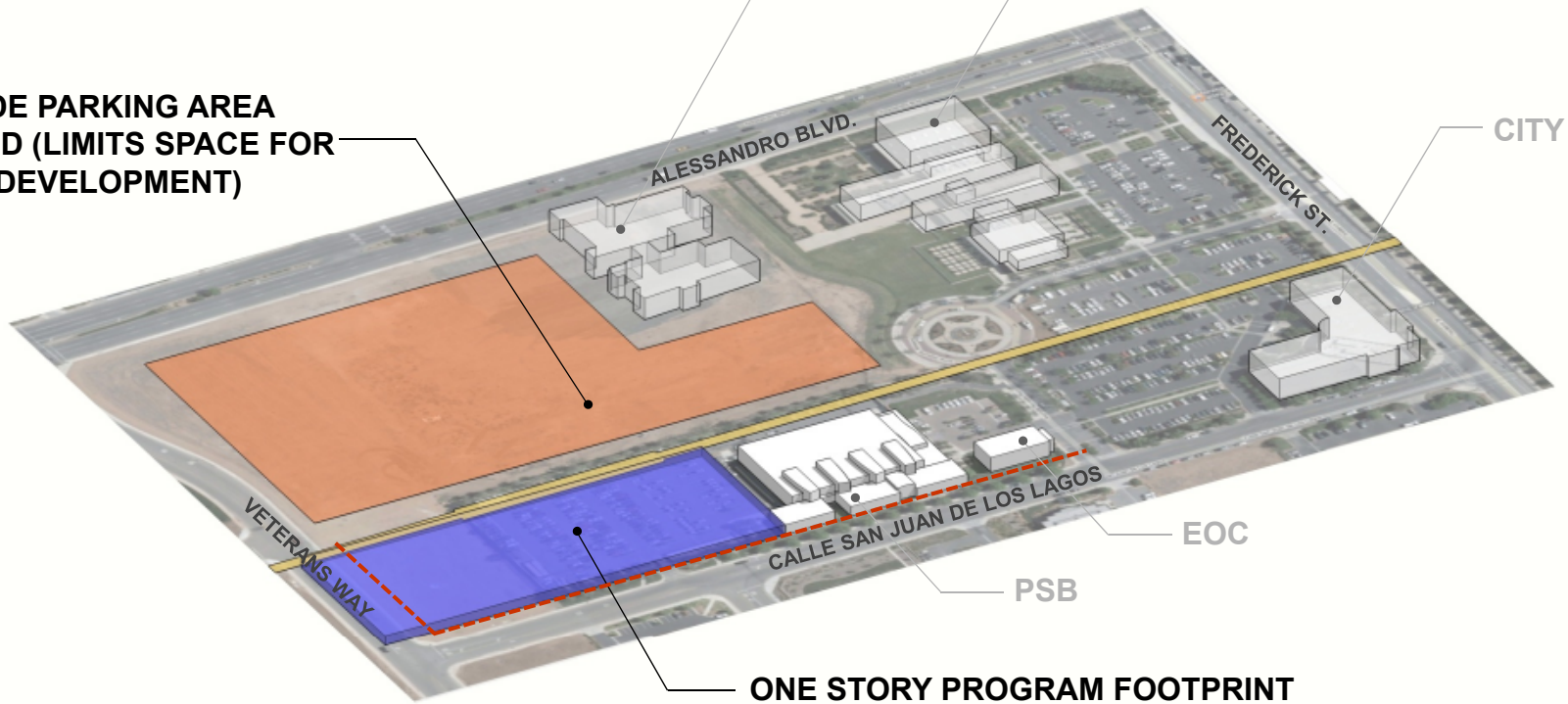
PROJECT LOCATION


SURFACE WATERSHED
VIEW UP VALLEY
SUMMER P.M.
SUMMER A.M.
FRAMED VIEWS
SITE
UNDERGROUND WATERSHED
PREVAILING BREEZES
SANTA ANA WINDS
FRAMED VIEWS
WINTER P.M.
WINTER A.M.
PLANE NOISE FROM MARCH A.F.B. (LESS THAN 60 DB)
SOLAR PATH
N
CACTUS AVE. CHANNEL (SURFACE WATERSHED)

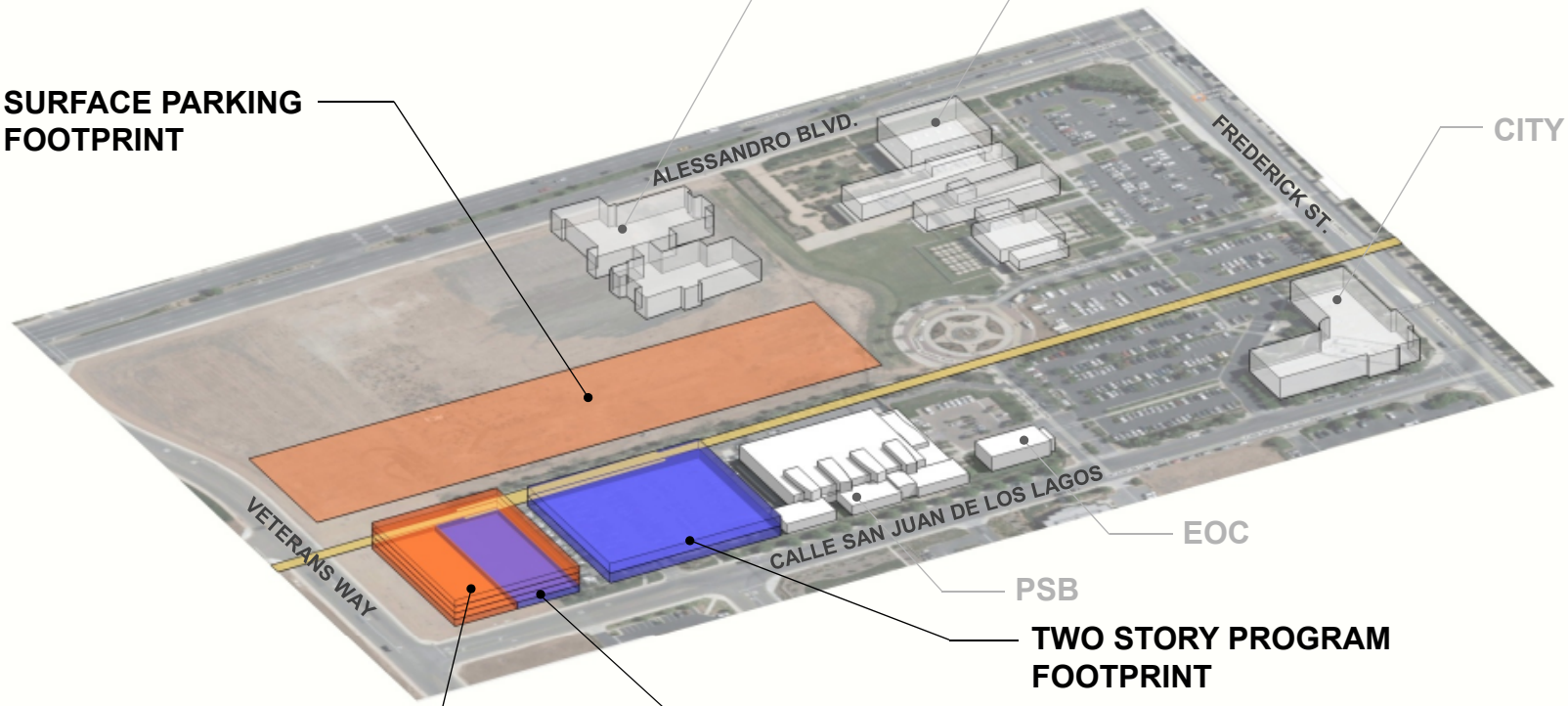
PROGRAM AREA TO SITE AREA RELATIONSHIP



PROGRAM AREA TO SITE AREA RELATIONSHIP



PROGRAM AREA TO SITE AREA RELATIONSHIP



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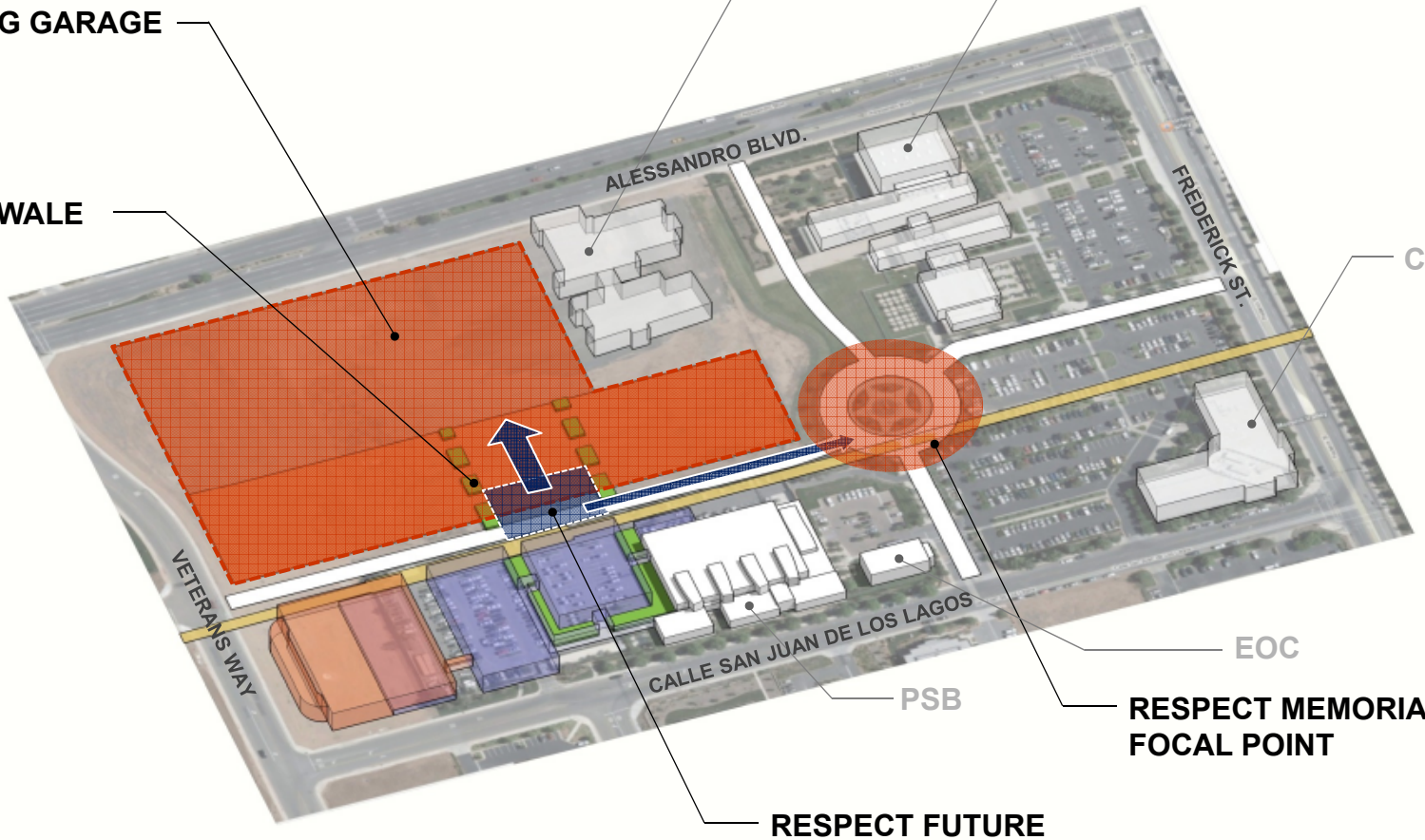
ROTH SHEPPARD ARCHITECTS gafcon

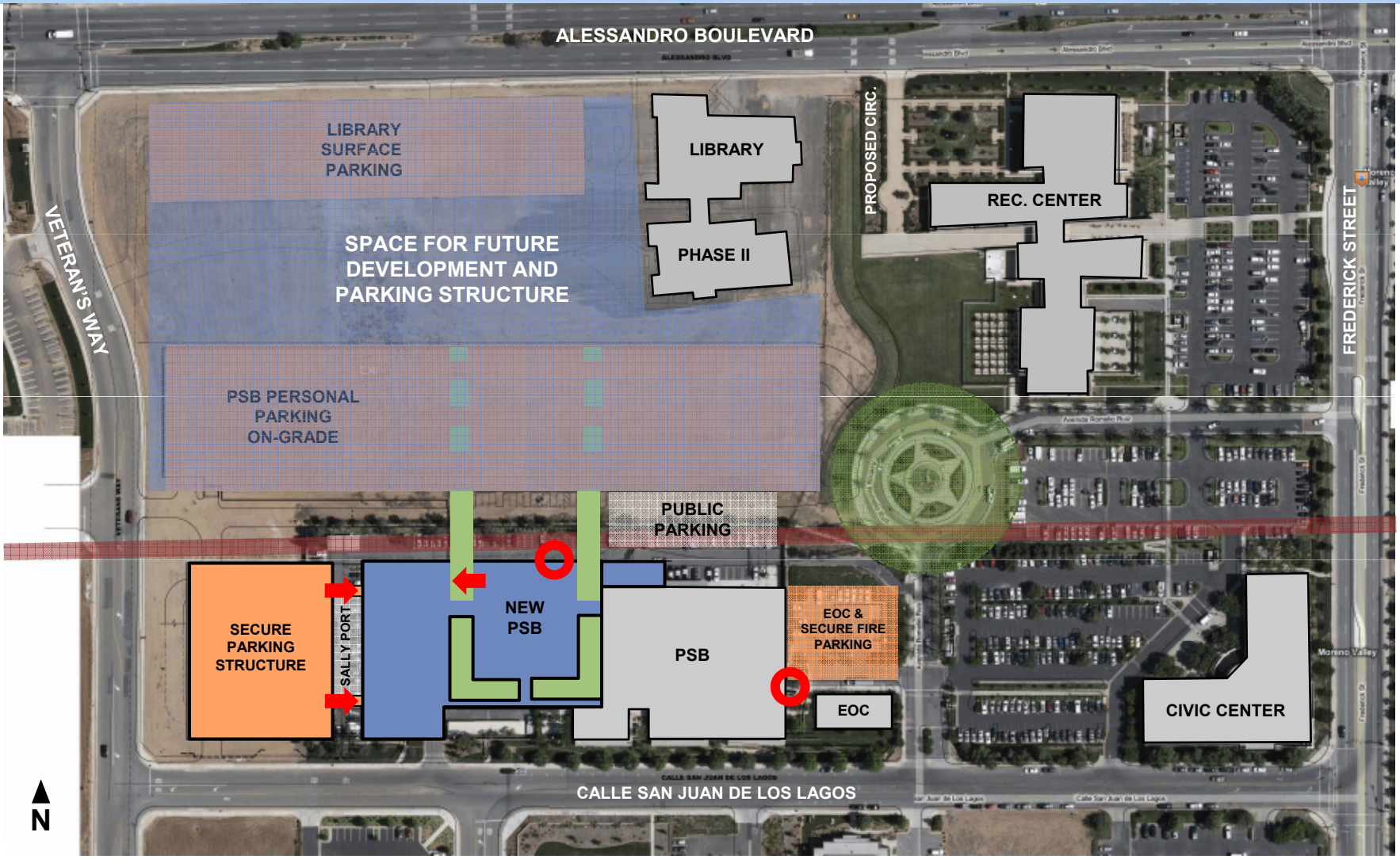
PROGRAM AREA TO SITE AREA RELATIONSHIP



ROESLING NAKAMURA TERADA ARCHITECTS

ROTH SHEPPARD ARCHITECTS gafcon

FUTURE DEVELOPMENT



LEGEND

- PUBLIC ENTRY
- STAFF SECURE ENTRY
- PUBLIC PARKING AREA

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ROTH SHEPPARD ARCHITECTS
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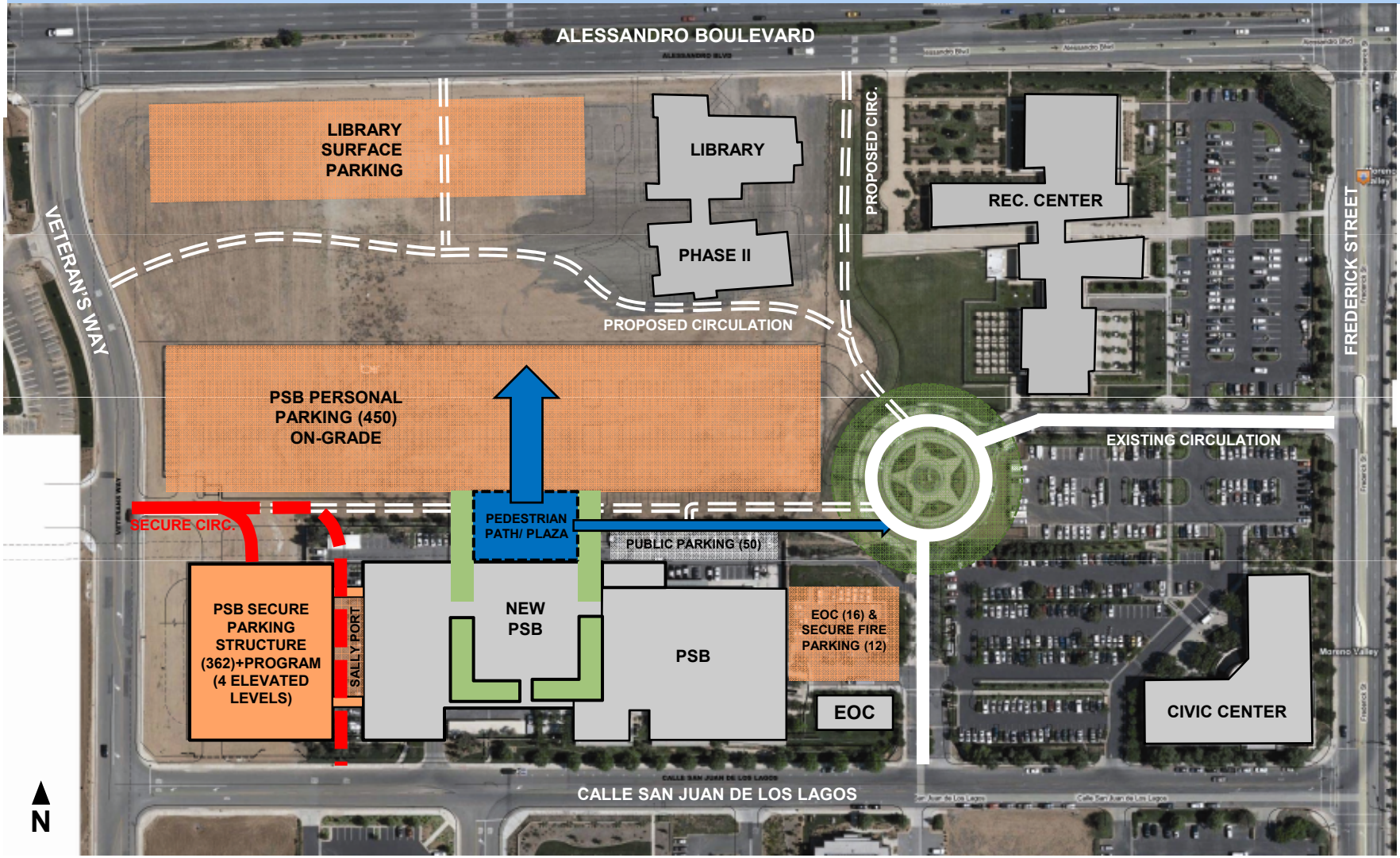
FUTURE DEVELOPMENT



LEGEND

- SECURE CIRCULATION TO SALLY PORT
- SECURE CIRCULATION TO PARKING STRUCTURE
- PUBLIC PARKING AREA

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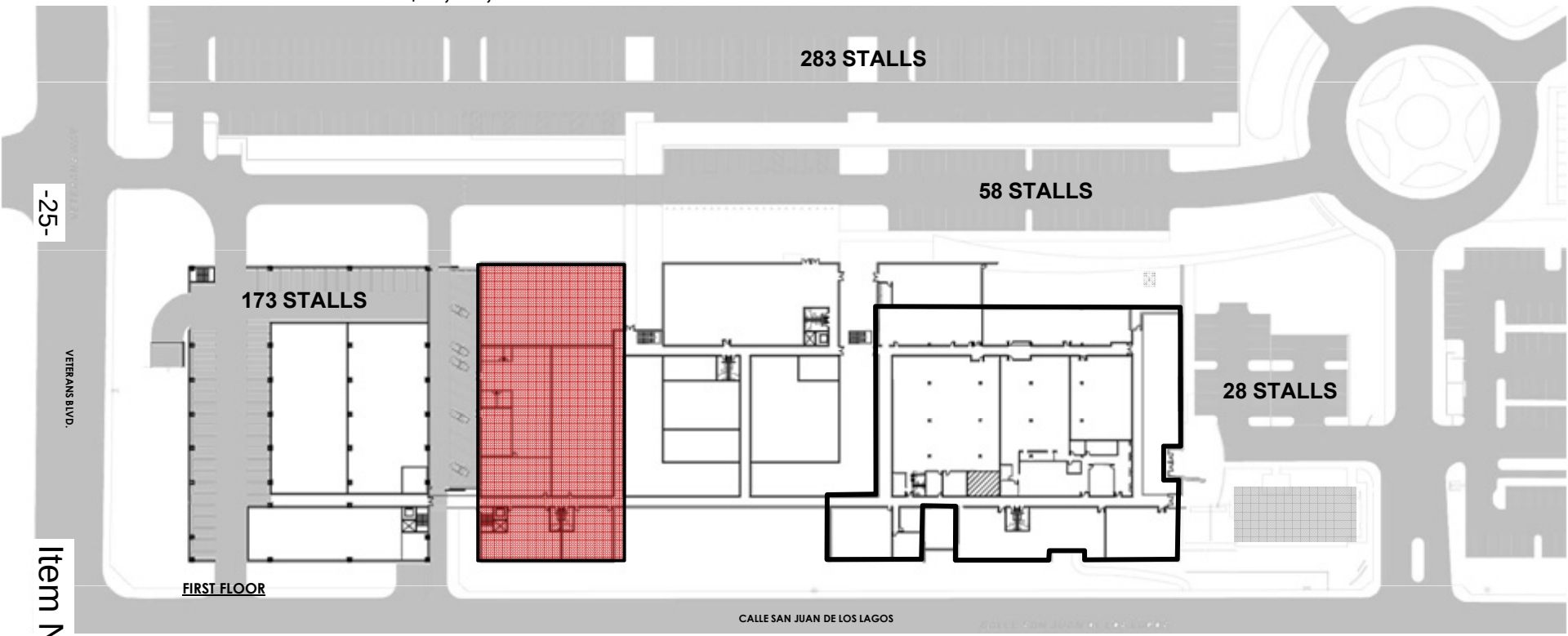
INCREMENTAL GROWTH PLAN– PHASE 1

PHASE 1
Patrol and Traffic

AREA GROWTH W/O PARKING STRUCTURE	**52,393 SF**
PARKING COUNT	**542 STALLS**
PROJECT COST	**$44,200,000**
TOTAL PROJECT COST	**$44,200,000**



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ROTH SHEPPARD ARCHITECTS
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INCREMENTAL GROWTH PLAN– PHASE 2

	PHASE 1 Patrol and Traffic	PHASE 2 POP, Volunteer, Admin
AREA GROWTH W/O PARKING STRUCTURE	52,393 SF	41,384 SF
PARKING COUNT	542 STALLS	603 STALLS
PROJECT COST	$44,200,000	$32,300,000
TOTAL PROJECT COST	$44,200,000	$76,500,000

ROESLING NAKAMURA TERADA ARCHITECTS
ROTH SHEPPARD ARCHITECTS
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INCREMENTAL GROWTH PLAN– PHASE 3

	PHASE 1 Patrol and Traffic	PHASE 2 POP, Volunteer, Admin	PHASE 3 Evidence, Logistics, Property
AREA GROWTH W/O PARKING STRUCTURE	52,393 SF	41,384 SF	26,243 SF + Parking Structure
PARKING COUNT	542 STALLS	603 STALLS	871 STALLS
PROJECT COST	$ 44,200,000	$ 32,300,000	$27,900,000
TOTAL PROJECT COST	$ 44,200,000	$ 76,500,000	$104,400,000

ROESLING NAKAMURA TERADA ARCHITECTS
ROTH SHEPPARD ARCHITECTS
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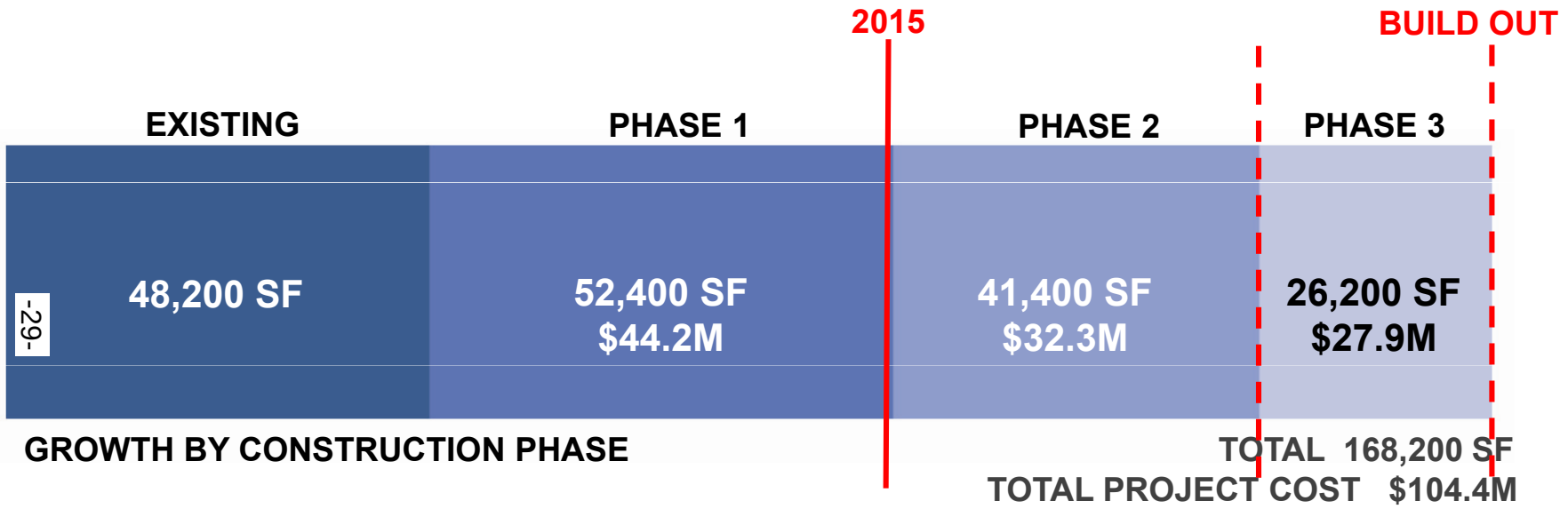
CONCEPTUAL PROJECT COSTS

PHASE & DESCRIPTION	STAFF	BUILDING		COSTS *	
Area Cost (Including Construction & Soft Costs)	Staff Growth	New Area (SF)	Remodel	Construction Cost	Project Cost **
Current Staff	**260**				
Phase 1					
New 2 Story Building (Sally Port and Related,	139	52,393		$ 30.6 million	$ 38.2 million
Remodel Existing PSB			**56.9 %**	$ 4.8 million	$ 6.0 million
Subtotal	**399**				
Phase 2					
New 2 Story Building (Lobby & Admin)	57	38,106		$ 19.2 million	$ 25.0 million
Remodel 2 Story Building from Phase 1			**11.5 %**	$ 1.3 million	$ 1.6 million
Courtyard w/ Community + Conference Rooms	0	3,278		$ 1.5 million	$ 1.9 million
Remodel Portion of Existing PSB			**30.1 %**	$ 3.0 million	$ 3.8 million
Subtotal	**456**				
Phase 3					
Parking Structure +	224	26,243		$ 5.3 million	$ 6.6 million
Crime Scene, Logistics, Evidence				$ 15.0 million	$ 18.8 million
Remodel 2 Story Building from Phase 1			**18.4 %**	$ 2.0 million	$ 2.5 million
Subtotal	**680**				
TOTAL	**680**	**120,020 SF**	**56.8 %**	**$ 83.7 million**	**$ 104.4 million**

*Costs include hard building, hard construction (materials and labor) and related surface parking and landscape
** Project Cost = Construction Cost x 25% for Soft Costs, include fees, insurance, overhead, FF&E & 10% contingency

ROESLING NAKAMURA TERADA ARCHITECTS
ROTH SHEPPARD ARCHITECTS gafcon

TOTAL GROWTH BY CONSTRUCTION PHASE AND PERIOD



- At final build-out, PSB is 3x larger than existing PSB
  Each Phases can be built in sub-phases.

Why Phase I by 2015?

- Community is expected to grow.
- Community growth requires new sworn staff.
- Increased staff requires new program space.
- New area for Phase 1 is 52,000sf.
- Total Project Cost for Phase 1 is $44.2 M

APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

Report to City Council

TO: Mayor and City Council

FROM: Chris A. Vogt, P.E., Public Works Director / City Engineer

AGENDA DATE: February 16, 2010

TITLE: PROJECT RECOMMENDATIONS FOR GRAHAM STREET CROSSING STATE ROUTE 60 BETWEEN SUNNYMEAD BOULEVARD AND HEMLOCK AVENUE
PROJECT NO. 06-41683125

RECOMMENDED ACTION

Staff recommends that the City Council:

Review and discuss the project recommendations for the Graham Street Crossing State Route 60 capital improvement project.

BACKGROUND

State Route 60 (SR-60) limits north-south circulation access within the City. When the City prepared its 2006 General Plan update, it considered the comprehensive transportation needs for the entire City including existing crossings and possible new crossings of SR-60. The Graham Street freeway crossing was included in the Circulation Element of the General Plan to facilitate north-south access.

Applicable General Plan Circulation Element Goals are expressed in Objective 5.3 which states in part: *"Maintain Level of Service (LOS) "C" on roadway links, wherever possible, and LOS "D" in the vicinity of SR 60 and high employment centers."* This Graham Street Crossing State Route 60 project is explicitly addressed in related Policy 5.3.8 which reads *"Pursue arterial improvements that link and/or cross State Route 60 (SR-60) Freeway, including an additional over-crossing at Graham Street."*

On June 10, 2008 City Council awarded to TY Lin International, Inc. an Agreement for Professional Services for Graham Street Crossing State Route 60, Phase One Part 1,

which included a focused traffic study, analysis of alternatives, preliminary environmental documentation and early assessment of funding opportunities.

DISCUSSION

A project specific traffic study was prepared which projects that by 2030 traffic through the adjacent intersections/SR-60 interchanges (Pigeon Pass/Frederick Street and Heacock Street) will meet acceptable levels of service (LOS) only with the construction of a Graham Street Crossing. The analysis considered various alternatives for Graham Street Crossing SR-60 plus consideration of a "no-build" scenario. The Consultant recommends an over-crossing at Graham Street which would span the ultimate width of the SR-60 freeway. The recommended alternative requires the acquisition of right-of-way including the full take of several adjacent parcels on the east side of Graham Street. This alternative avoids a major Eastern Municipal Water District (EMWD) facility on the north side of SR-60. A preliminary environmental analysis was prepared which anticipates that an Initial Study/ Mitigated Negative Declaration (IS/MND) will be the required California Environmental Quality Act (CEQA) document. Additionally an early study to identify potential funding opportunities was undertaken. The subsequent project development phases include a Caltrans project report, environmental documentation, engineering design, completion of construction documents, right-of-way acquisition, utility relocation and construction which can take 5 to 6 years of continuous uninterrupted effort.

The benefits of the Graham Street Crossing can be summarized as follows:

- Improves north - south pedestrian and vehicular circulation within the City;
- Provides marked improvement in primary and secondary paramedic/ fire department response times;
- Relieves traffic congestion at Pigeon Pass Road/ Frederick Street and Heacock Street intersections/ interchanges (improved level of service (LOS) in the vicinity of SR-60 and improved regional air quality);
- Enhanced pedestrian and vehicular access to the Sunnymead Boulevard commercial corridor (reduced vehicle miles traveled (VMT), reduced vehicle hours traveled (VHT), and easier access to local businesses).

The complete study is summarized in a City Project Study Report (CPSR) on file in the City Engineer's Office. Attached is a PowerPoint presentation summarizing relevant applicable findings.

ALTERNATIVES

1. Review and discuss the project recommendations for the Graham Street Crossing State Route 60 capital improvement project. *This alternative would facilitate, if funded, the preparation of preliminary design and environmental documents (PA&ED) that would allow this project identified in the General Plan to progress on schedule.*

2. Do not review and do not discuss the project recommendations for the Graham Street Crossing State Route 60 capital improvement project. *This alternative could delay the progress of this project identified in the General Plan.*

FISCAL IMPACT

The project is funded (Fiscal Year 2009/2010) under the Development Impact Fee (DIF) program (Account No. 416.83125) in the amount of $157,000 for the completion of this analysis. Funding for future phases of work will be presented to City Council as part of the annual capital improvement plan budget.

The funding for this project is restricted to capital improvements for arterial streets and traffic signals. There is no impact on the General Fund.

CITY COUNCIL GOALS

PUBLIC FACILITIES AND CAPITAL PROJECTS:
Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

PUBLIC SAFETY:
Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

POSITIVE ENVIRONMENT:
Create a positive environment for the development of Moreno Valley's future.

SUMMARY

This project when implemented will improve north-south vehicular and pedestrian circulation in the City; it will reduce traffic congestion that is projected to occur at two adjacent intersections which provide access to SR-60 and it will provide marked improvement in paramedic/ fire department response time.

Completion of this project will implement the City's General Plan Circulation Element Policy 5.3.8 which states: *"Pursue arterial improvements that link and/or cross State Route 60 (SR-60) Freeway, including an additional over-crossing at Graham Street".*

ATTACHMENTS

Attachment "A" - Location Map
Attachment "B" – Power Point Presentation – Freeway Crossing Recommendations

Prepared By:
Michael D. Myers, P.E.
Consultant Project Manager

Department Head Approval:
Chris A. Vogt, P.E.
Public Works Director/City Engineer

Concurred By:
Prem Kumar, P.E.
Deputy Public Works Director/Assistant City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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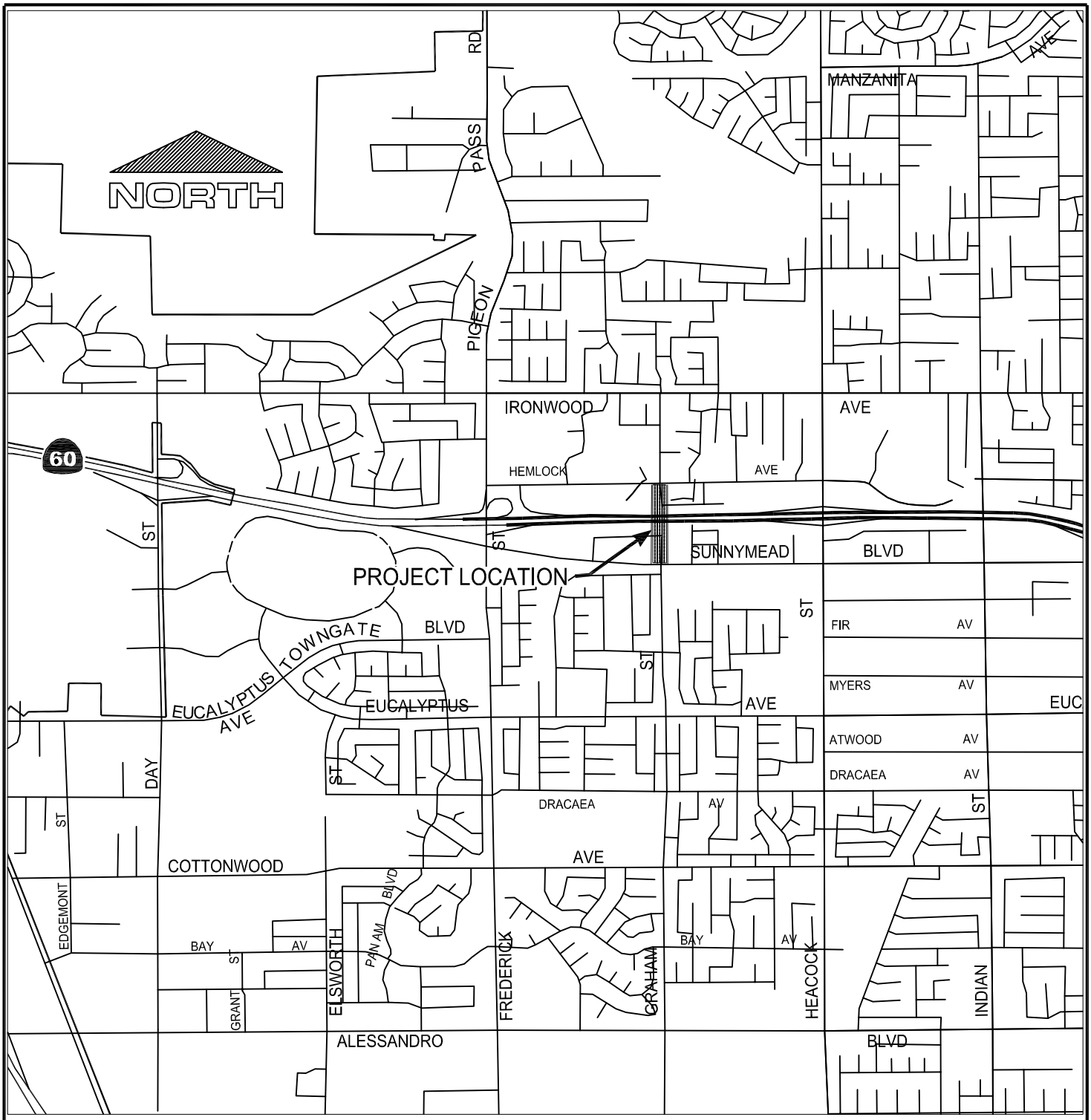


CITY OF MORENO VALLEY
DECEMBER 3, 1984

Public Works Department
Capital Projects Division

SCALE: NONE

ATTACHMENT "A"

LOCATION MAP

PROJECT No. 06-4168125

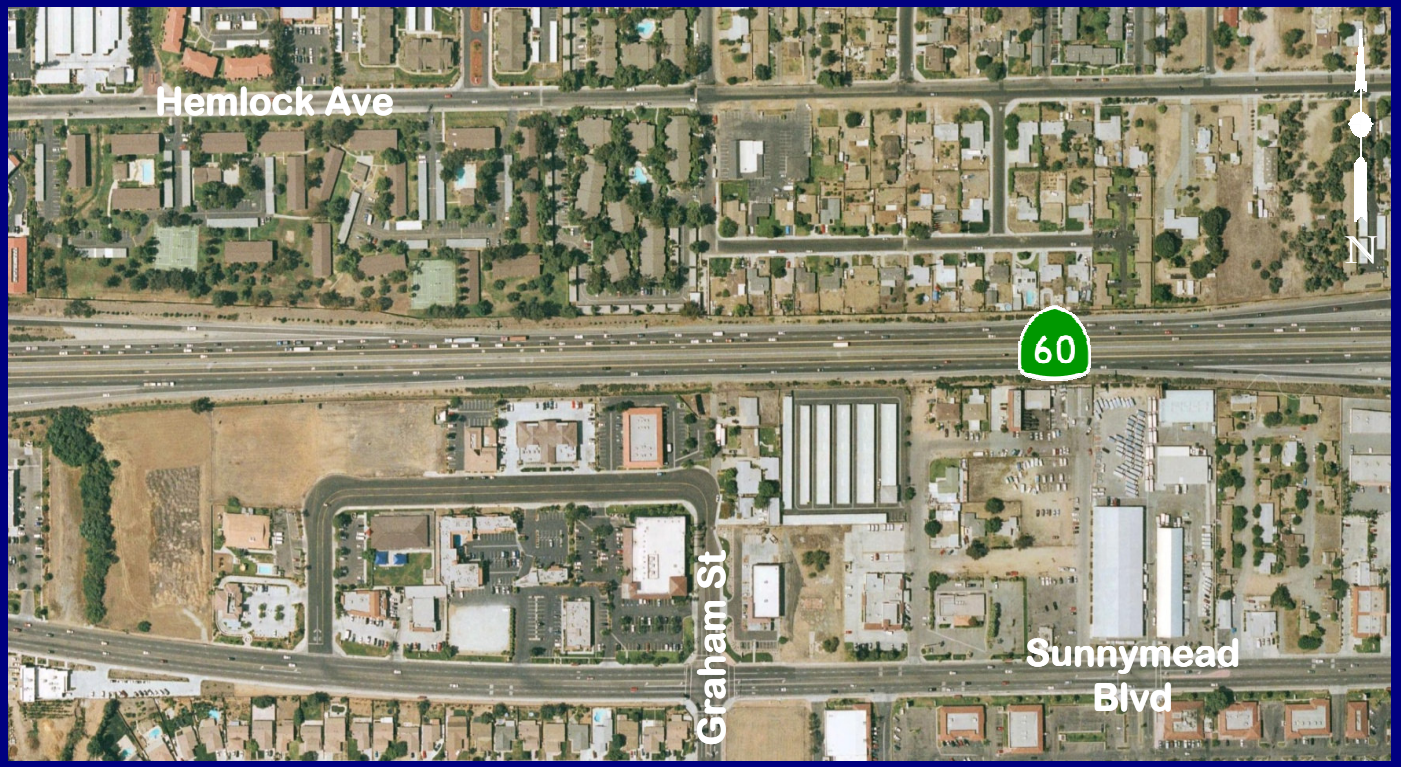
GRAHAM STREET CROSSING

BETWEEN SUNNYMEAD BLVD. & HEMLOCK AVE.

Graham Street Crossing SR-60

Sunnymead Blvd to Hemlock Ave

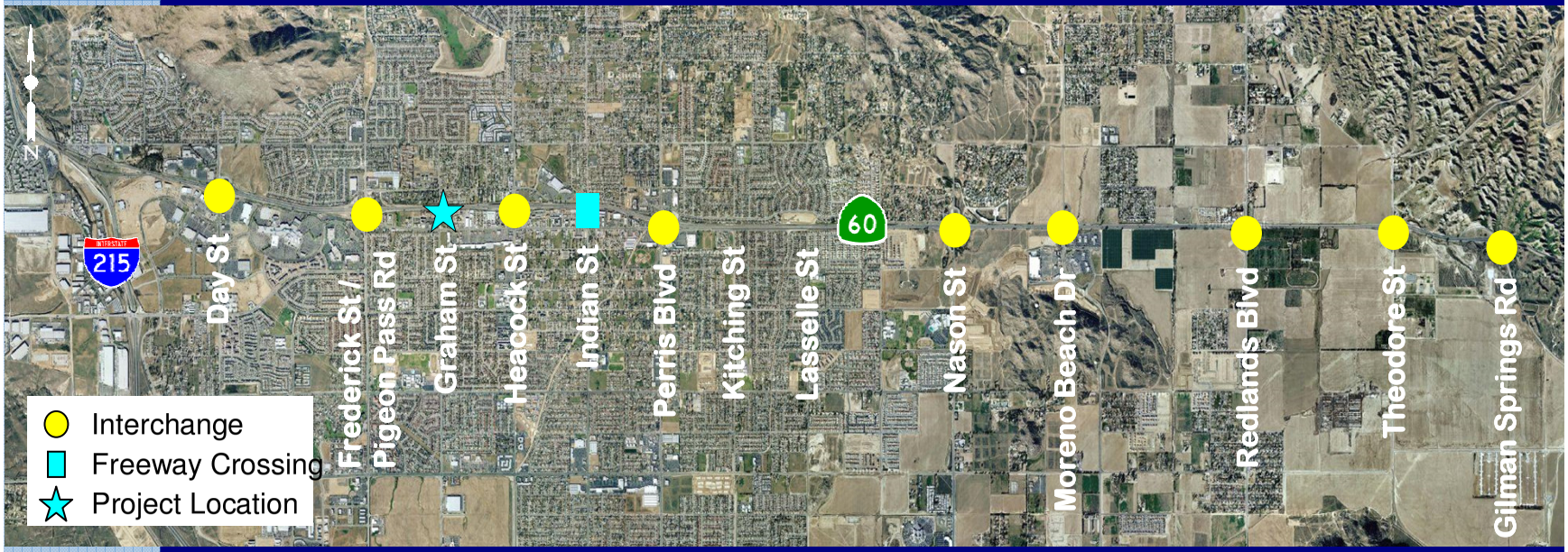
Freeway Crossing Recommendations



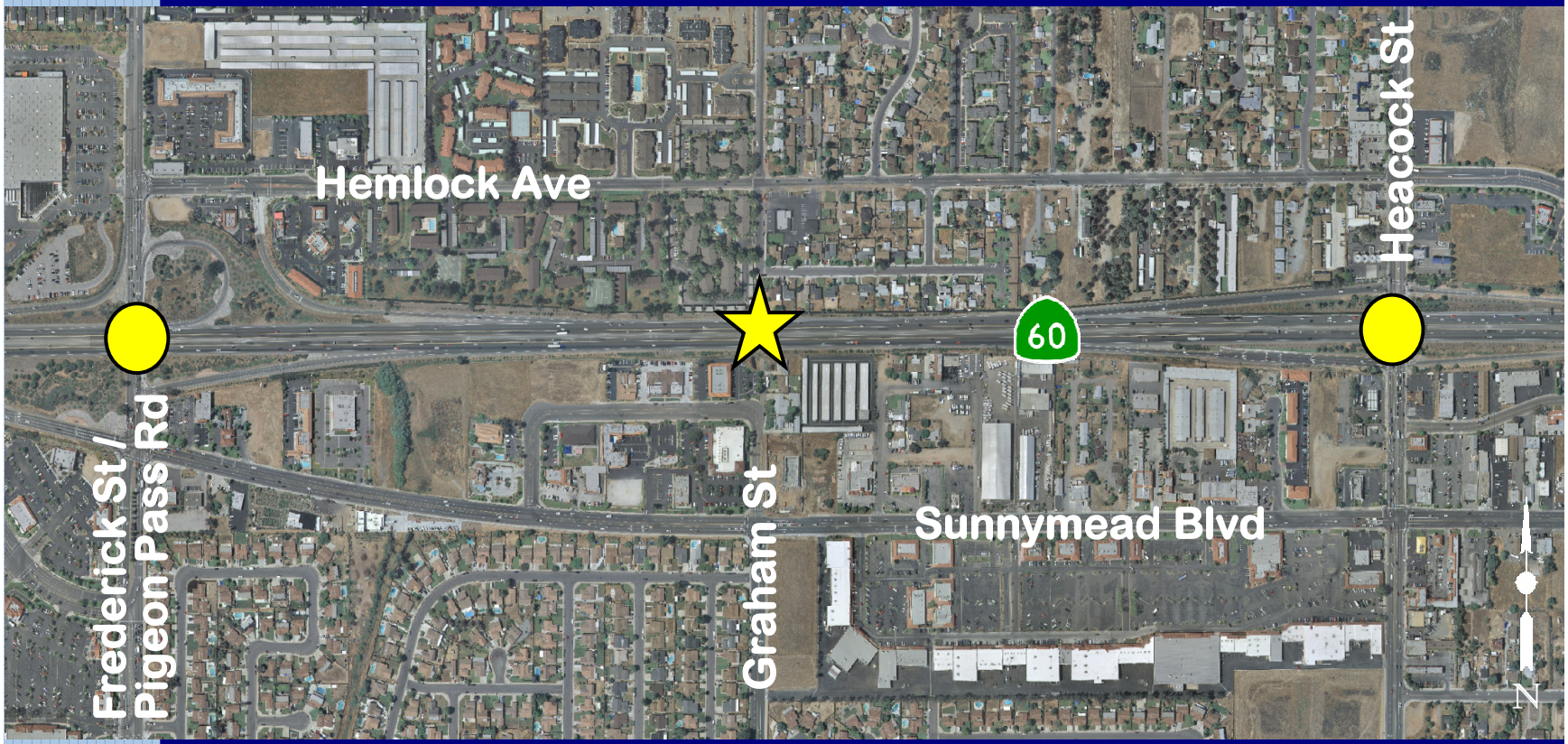
Agenda

- Project Setting
- Projected Traffic Conditions
- Potential Solutions
- Recommended Alternative
- Funding Opportunities
- Conclusion

State Route 60 – Moreno Valley



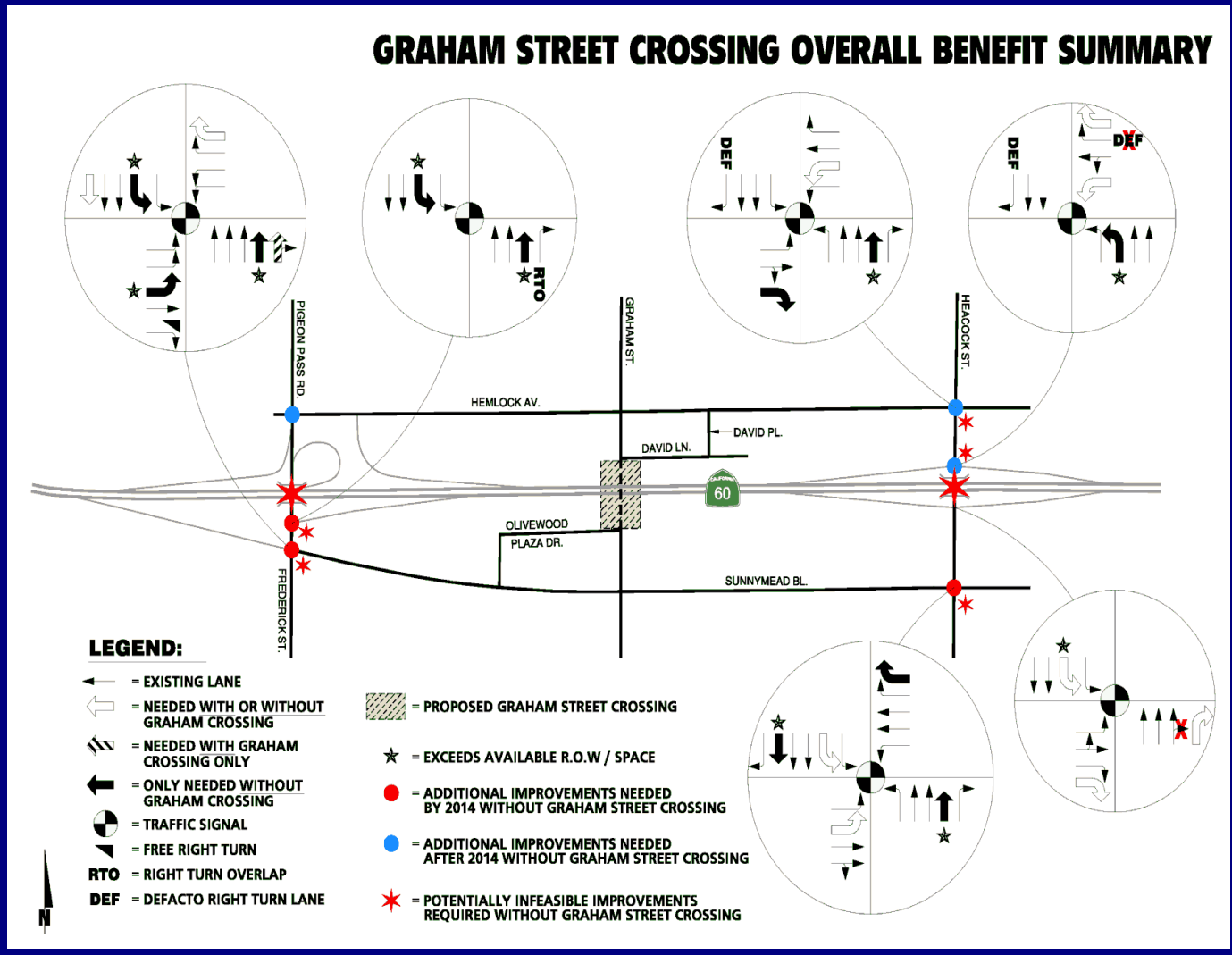
Project Location



Traffic Background

- Recent General Plan Update (July 11, 2006) identified Long Term Need
- Adjacent streets (Pigeon Pass Rd / Frederick St & Heacock St) currently carry 30,000 to 40,000 vehicles per day (VPD)
- Volumes almost double (+74%) due to growth (over 60,000 VPD on each adjacent street) without Graham Street Crossing
- Graham St Crossing provides relief to both adjacent streets by taking 10,000 to 15,000 VPD of the traffic growth from each adjacent street (over 25,000 VPD total)

Projected Traffic Conditions

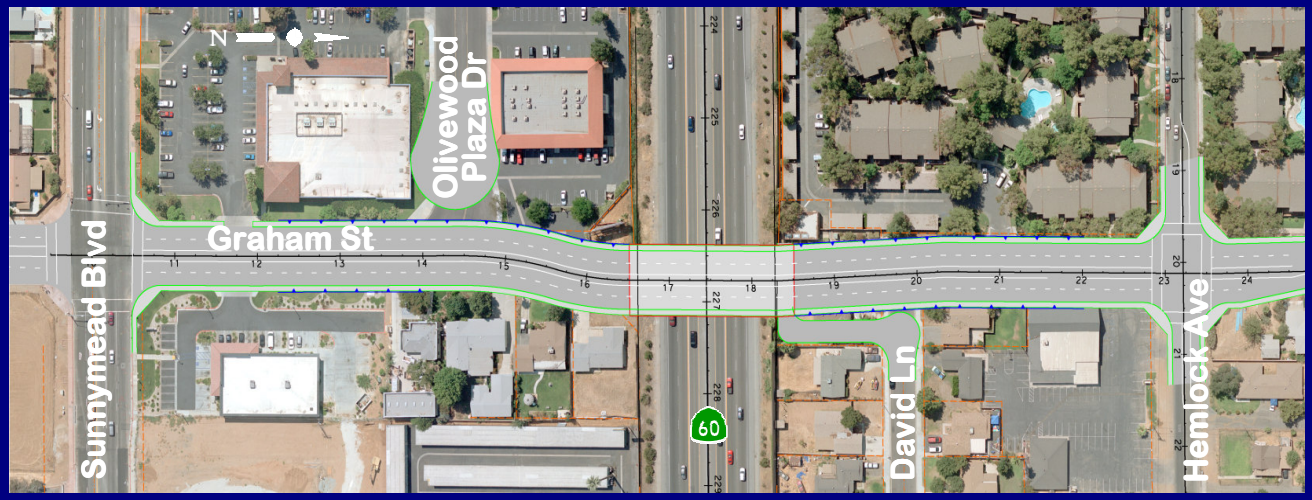


Project Traffic Study Findings Summary

- Existing operational deficiencies already occur along Frederick St
- Future deficiencies will expand to include ALL intersections studied along Pigeon Pass Rd / Frederick St and Heacock St corridors
- Needed improvements without the Graham St crossing would exceed General Plan designation for both adjacent arterials
- Proposed Graham St Crossing delays (Heacock) or eliminates (Pigeon Pass / Frederick) improvements that would require SR-60 bridge widening

Potential Solutions

- Overcrossing at Graham Street
- Undercrossing at Graham Street
- Local Street Improvements in the Project Area and Improvements to the Frederick St/Pigeon Pass Rd & Heacock St Interchanges



Recommended Alternative

- Construct New Overcrossing
  - 200’ long bridge that will span the ultimate freeway facility
  - Two lanes in each direction with sidewalks on both sides
  - An estimated ten properties will be affected
    - Six Full Takes
    - Four Partial Takes
- Overcrossing projected cost ~$20 million
  - Substantial savings when compared to improving adjacent interchanges
  - Requires ~$80 million for interchange improvements to achieve same regional circulation benefits

Project Benefits

- Improves north-south circulation
- Marked improvement in primary Fire/Paramedic response time, as well as secondary response time
- Relieves current and future traffic congestion at adjacent interchanges and major intersections
- Enhances access to Sunnymead Blvd commercial corridor
- Implements Circulation Element Policy 5.3.8 from Chapter 9 of the General Plan

"Pursue arterial improvements that link and/or cross the State Route 60 (SR-60) Freeway, including an additional over-crossing at Graham Street"

Potential Considerations

- Residential neighborhood
- Utilities (EMWD Water Booster Station)
- SR-60 Freeway Ultimate Section
- Access to apartment complex
- Access for emergency vehicles during construction
- Right-of-Way Acquisition
  - Six full takes will be necessary due to the raised vertical profile of Graham Street which removes access to the parcels

Next Steps

- Caltrans Project Development Process will be required

Milestones	Delivery Date
PA&ED (Ph 1, Part 2)	26 Months from Start
PS&E (Ph 2)	46 Months from Start
ROW Certification (Ph 2)	50 Months from Start
Begin Construction (Ph 3)	52 Months from Start
Complete Construction (Ph 3)	66 Months from Start

Funding Opportunities

- Federal
  - Surface Transportation Program (STP)
- State
  - Proposition 1B: Local Streets and Roads
- Regional
  - Riverside County Transportation Commission (RCTC): Measure A
- Local
  - Development Impact Fees (DIF)

Conclusion

- Project will enhance quality of life
- Needed to address immediate traffic circulation demands
- Improves emergency response time
- Alleviates congestion at adjacent interchanges and intersections
- Staff recommends proposed overcrossing

Comments & Feedback

APPROVALS	
BUDGET OFFICER	caf
CITY ATTORNEY	Rut
CITY MANAGER	WB

Report to City Council

TO: Mayor and City Council

FROM: Michelle Dawson, Assistant to the City Manager

AGENDA DATE: February 16, 2010

TITLE: Banner Program Recognizing Military Service

RECOMMENDED ACTION

Staff recommends that the City Council receive information and provide direction regarding the development of a banner program recognizing Moreno Valley residents serving in the military.

BACKGROUND

Moreno Valley resident PFC Marcus Tynes was killed on November 22, 2009 while serving our country in Afghanistan. PFC Tynes' family recently contacted the City Council Office with a request that the City consider implementing a banner program recognizing Moreno Valley servicemen and women.

DISCUSSION

City Staff has researched a number of cities' military banner programs honoring their residents serving in the armed forces. There are numerous options to be considered if the City wishes to implement a military recognition banner program:

Eligibility: Typical considerations for inclusion in military banner programs taken from other cities' programs include the following:

- City residents currently deployed in Iraq or Afghanistan (or any designated combat zone);
- City residents currently deployed or on active duty, outside of the United States;
- City residents in active military service;
- City residents in active or reserve military service.

Most cities require the honoree to be a resident, some allow immediate family members of city residents to be included.

Design: All of the cities researched install banners on existing street lights. Designs can range from text only ("Burbank Thanks Joe Smith for Serving the U.S.A.") to text and a photograph (Rancho Cucamonga's banners read "Rancho Cucamonga Honors Joe Smith, Air Force" and includes a photograph of the service person in his/her military uniform). Some programs honor military personnel killed in action and use a slightly different design to distinguish them from the other banners.

Location: Some of the streetlights on Frederick Street are equipped with the hardware necessary to hang banners, this street would be one possible location. There is already a banner program planned for Sunnymead Boulevard that incorporates the theme and design associated with the recent improvement project on that street. Other possible locations for the banners include the streets in the vicinity of March Air Reserve Base (Heacock, Graham, Cactus, John F. Kennedy, Veterans Way). The City would need to enter into a joint use license agreement to install banners on the streetlight poles owned by Southern California Edison.

Cost: Program costs vary significantly depending on such factors as the size and design of the banners, the number of banners, and installation. Hardware for each pole and banner is approximately $160 each; banners range in price from $80 to $200; installation costs depend upon whether this service is performed by City crews or a contractor, as well as how frequently the banners are installed. The City of Rancho Cucamonga, which is similar in population size (177,000) to Moreno Valley, currently has 335 banners. Assuming a similar number (300), hardware costs would be approximately $48,000; the hardware can be used again as banners are replaced. Depending on size and design, 300 banners would cost between $24,000 and $60,000.

Implementation/administration and funding: The implementation of a military banner program can be very time consuming, particularly at start up. Staff met recently with the Moreno Valley Chamber of Commerce's Military Affairs Committee (MAC) and they are very interested in administering a banner program. Funding may be provided through various sources including the City, the MAC, or other government or community resources. PFC Tynes' family has indicated that some of the funds donated in his memory might be available for a banner program. In some cities the families of the servicemember pays for the banner.

SUMMARY

When the idea of a Veterans Memorial was being discussed several years ago, the City established a committee to develop procedures and design the project. Should the City Council wish to pursue the development and implementation of a military recognition banner program, the establishment of a banner program committee is one option the City could consider, with possible members to include City Staff, MAC members, and a representative from the March Air Reserve Base.

Prepared By:
Michelle Dawson
Assistant to the City Manager

Department Head Approval:
Rick C. Hartmann
Interim Assistant City Manager

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

Report to City Council

TO: Mayor and City Council, acting in their respective capacities as the Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley, and the President and Members of the Board of Directors of the Moreno Valley Community Services District

FROM: Chris A. Vogt, P.E., Public Works Director/City Engineer
Barry Foster, Economic Development Director

AGENDA DATE: February 16, 2010 (Study Session)

TITLE: SUNNYMEAD BOULEVARD REVITALIZATION PROJECT BANNER PROGRAM
PROJECT NO. 04-89280221-3

RECOMMENDED ACTION

Staff recommends that the Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley:

Review and discuss the banner designs and direct staff to proceed with the vendor agreements for the Sunnymead Boulevard Banner Program.

BACKGROUND

In the 1988 General Plan, Sunnymead Boulevard was identified as the major commercial focal point of the City. In 1998, the Village Specific Plan was adopted to help in improving and revitalizing the commercial and residential areas in this part of the community. Through the Redevelopment Plan, Sunnymead Boulevard was designated as a target area for rehabilitation and redevelopment efforts by the City's Redevelopment Agency (RDA). In the Fiscal Year 2001/2002 Budget, the Sunnymead Boulevard Revitalization Project was formulated with a variety of improvements including the initial idea of the installation of banners along the two mile boulevard.

At the June 17, 2003 Study Session, the Community and Economic Development Department presented a broad ranging plan to help revitalize Sunnymead Boulevard including installing decorative banners on the Sunnymead Boulevard streetlights, which would help establish a theme for the Sunnymead Boulevard business community. At

that Study Session, the Chairman and Members of the Board of Directors of the Community Redevelopment Agency recommended that the banner program be initiated after the landscape and enhancements were completed.

At the July 12, 2005 City Council meeting, the Economic Development Department presented the proposed Strategic Plan for the Sunnymead Boulevard Revitalization Project, which included the banner installation program, with a generic banner used for illustration purposes only (as shown in Attachment "B").

At the December 13, 2005 meeting, the City Council acting in their capacity as President and Board Members of the Moreno Valley Community Services District (CSD), verified and accepted the mail ballot proceedings, which resulted in the establishment of Zone S. The property owners fronting Sunnymead Boulevard agreed, by mail ballot, to approve Zone S so that the property owners will pay a charge collected through their property tax bills, for the maintenance of the Sunnymead Boulevard improvements, including the replacement of banners.

A respected professional graphics design firm, Graphic Solutions, was retained to provide a design for a year-round banner (Attachment "C") and a design for a seasonal/holiday banner (Attachment "D"). After looking at numerous design concepts, the recommended versions were presented to City Council by the City Manager and the Economic Development Department in one-on-one meetings in the Summer of 2008. The meetings with City Council also included the revised design for the gateway arch and corner monuments.

At the January 26, 2010 meeting, the City Council approved a licensing agreement with Southern California Edison Company (SCE) which provides permission for the installation of banners and signs on SCE's streetlights, within SCE's specific parameters.

DISCUSSION

The primary objectives for installation of the decorative streetlight banners along Sunnymead Boulevard is to aesthetically enhance the boulevard and create a consistent design theme for the corridor. The long term goal of the revitalization plan is to re-energize Sunnymead Boulevard as a commercial corridor. The installation of the banners will help establish a theme for the boulevard and enhance the newly constructed improvements. The strategy for the design of the banners, by Graphic Solutions, was coordinated with the design for the gateway arch sign, gateway median sign, and the monument signs.

The banners will be vinyl material, with print on both sides, in a 30" x 60" size. A 4-color process utilizing Ultra Violet (UV) stabilizing inks will be used on the banners, which is estimated to have a life expectancy of five seasons. When installed, the bottom of the banners will provide a minimum clearance of 13' 9" from the ground elevation.

The brackets will be adjustable single banner bracket sets with fiberglass rod arm, and come with a lifetime factory warranty. All metal portions of the bracket are cast aluminum and they are attached to the pole with stainless steel bands. No holes will be punched, drilled, or burned into the Southern California Edison (SCE) streetlight poles. The bracket design has been approved by SCE. Please note that Sunnymead Boulevard can be a high wind area (up to 90 mph winds), therefore, break-away or bend-away banner supports will be used. The banners will be installed on the 81 bell-shaped streetlight poles (approximately 30' high) on Sunnymead Boulevard between Frederick Street and Perris Boulevard.

The year-round banners will be used for eight months, but swapped out for the seasonal/holiday banners during the first week in October. The season/holiday banners will be swapped out for the year-round banners during the first week in February. Moreno Valley's banners will be stored at the proposed vendor's warehouse. The banners will be cleaned and stored when not in use, so that they are not damaged, or exposed to the elements of weather and sun.

The vendor will replace any worn, tattered, torn, ripped, or vandalized banners or brackets, within 24 hours (including holidays and weekends) of notification. Service calls for replacement of damaged banners are included in the annual cost.

Two agreements will be used for the banner work. One agreement will be for the manufacture and initial installation of the banners. The second agreement will be for the annual installation and storage, which will also include replacement of damaged banners, for a two year period. A Request for Proposals process was used and included a posting on the City's web site, including soliciting proposals from eleven banner vendors, resulting in receiving five proposals. Most of the proposals were for both the manufacture with initial installation, and the annual installation with storage. Six staff members reviewed the proposals and a potential vendor has been determined.

ALTERNATIVES

1. Review and discuss the banner designs and direct staff to proceed with the vendor agreements for the Sunnymead Boulevard Banner Program. *This alternative will allow the Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley to review the banner designs and then direct staff to proceed with banner manufacturing, installation, and storage agreements.*

2. Do not review and discuss the banner designs and direct staff to proceed with the vendor agreements for the Sunnymead Boulevard Banner Program. *This alternative will not allow the Chairman and Members of the Board of Directors of the Community Redevelopment Agency of the City of Moreno Valley to review the banner designs and then direct staff to proceed with banner manufacturing, installation, and storage agreements.*

FISCAL IMPACT

The manufacturing and initial installation of the banners will be funded by the Redevelopment Agency of the City of Moreno Valley (Account No. 892-80221). It is anticipated that the initial manufacture and installation will cost approximately $30,000.

The annual installation and storage of banners will be funded and maintained through the Community Services District Zone S program, and will be maintained through Special Districts Administration. Therefore, the continued annual installation and storage cost are being borne by the Sunnymead Boulevard property owners. The annual installation, damaged banner replacement, cleaning, and storage of banners are expected to cost approximately $6,000 a year. The initial contract for annual installation and storage will be for a two year period.

The funding for this project is restricted for this use only.

CITY COUNCIL GOALS

PUBLIC FACILITIES AND CAPITAL PROJECTS:
Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

POSITIVE ENVIRONMENT:
Create a positive environment for the development of Moreno Valley's future.

COMMUNITY IMAGE, NEIGHBORHOOD PRIDE AND CLEANLINESS:
Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts (including home rehabilitation) and neighborhood restoration.

SUMMARY

The primary objectives for installation of the decorative streetlight banners along Sunnymead Boulevard is to aesthetically enhance the boulevard. The long term goal of the revitalization plan is to re-energize Sunnymead Boulevard as a commercial corridor. The installation of the banners will help establish a theme for the boulevard and enhance the newly constructed improvements. The strategy for the design of the banners was coordinated with the design for the gateway arch sign, gateway median sign, and the monument signs to create a consistent graphic theme.

ATTACHMENTS

Attachment "A" – Location Map
Attachment "B" – Generic Banner Illustration
Attachment "C" – Year-Round Banner
Attachment "D" – Seasonal/Holiday Banner

Prepared By:
Christopher L. Wiberg
Senior Engineer, P.E.

Department Head Approval:
Barry Foster
Economic Development Director

Concurred By:
Prem Kumar, P.E.
Deputy Public Works Director/Assistant City Engineer

Department Head Approval:
Chris A. Vogt, P.E.
Public Works Director/City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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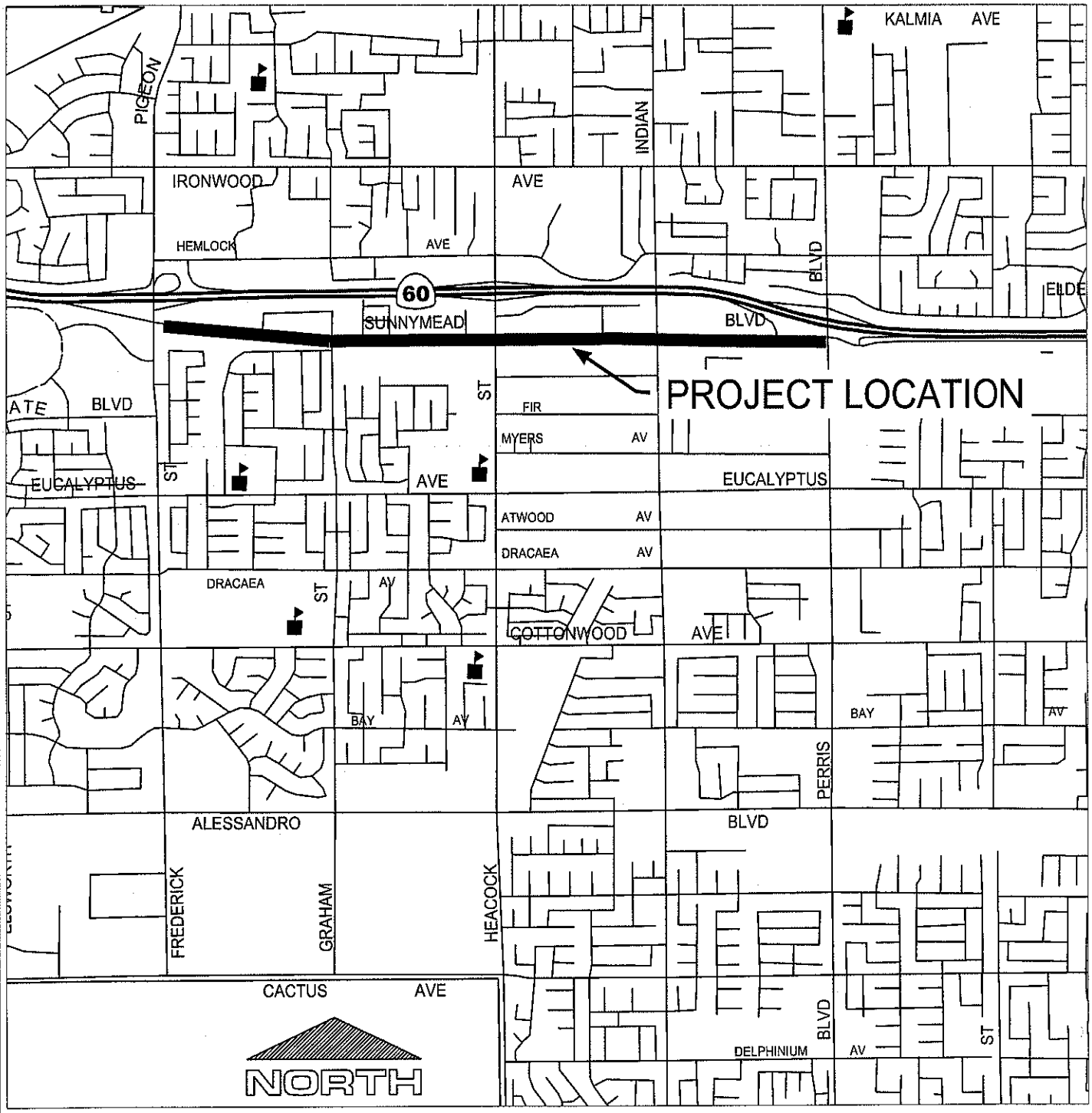
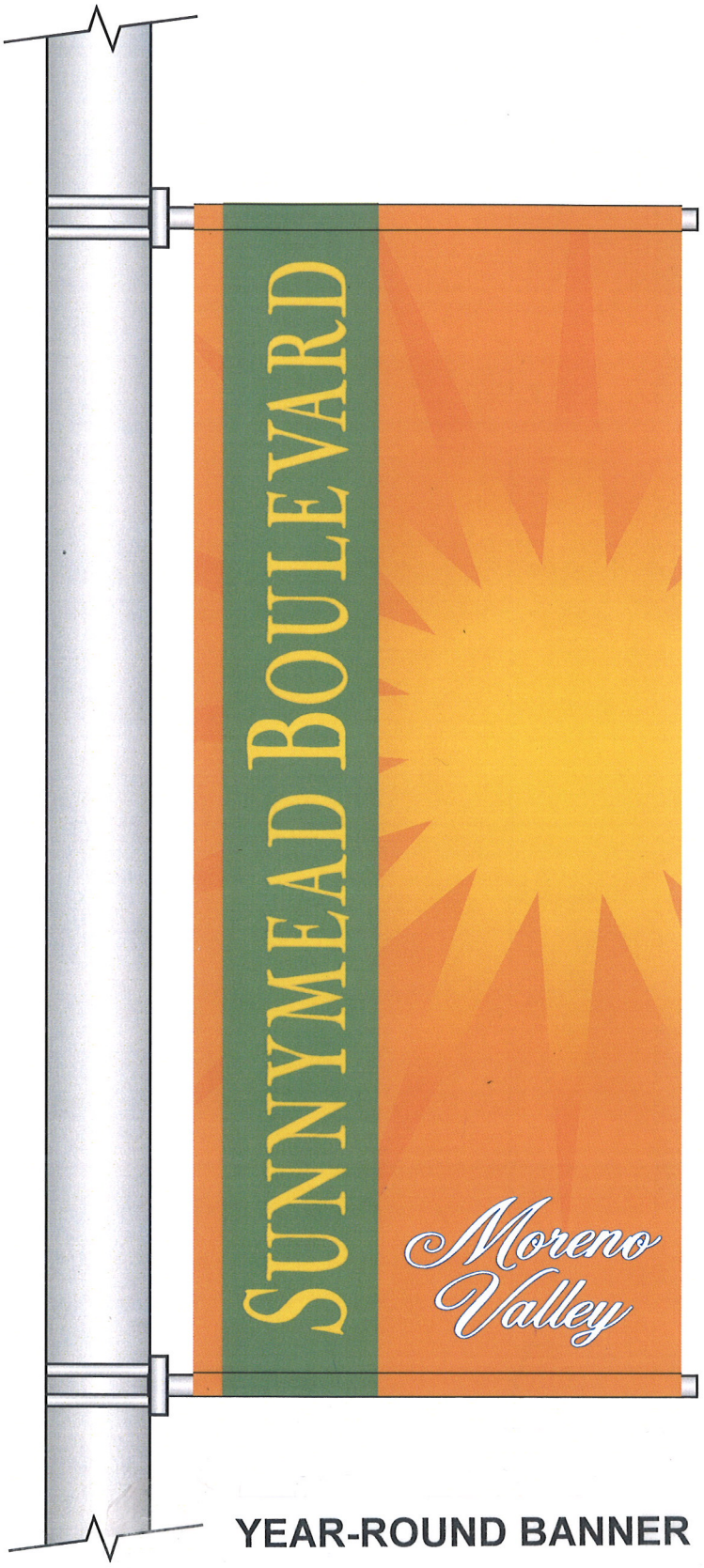


LOCATION MAP

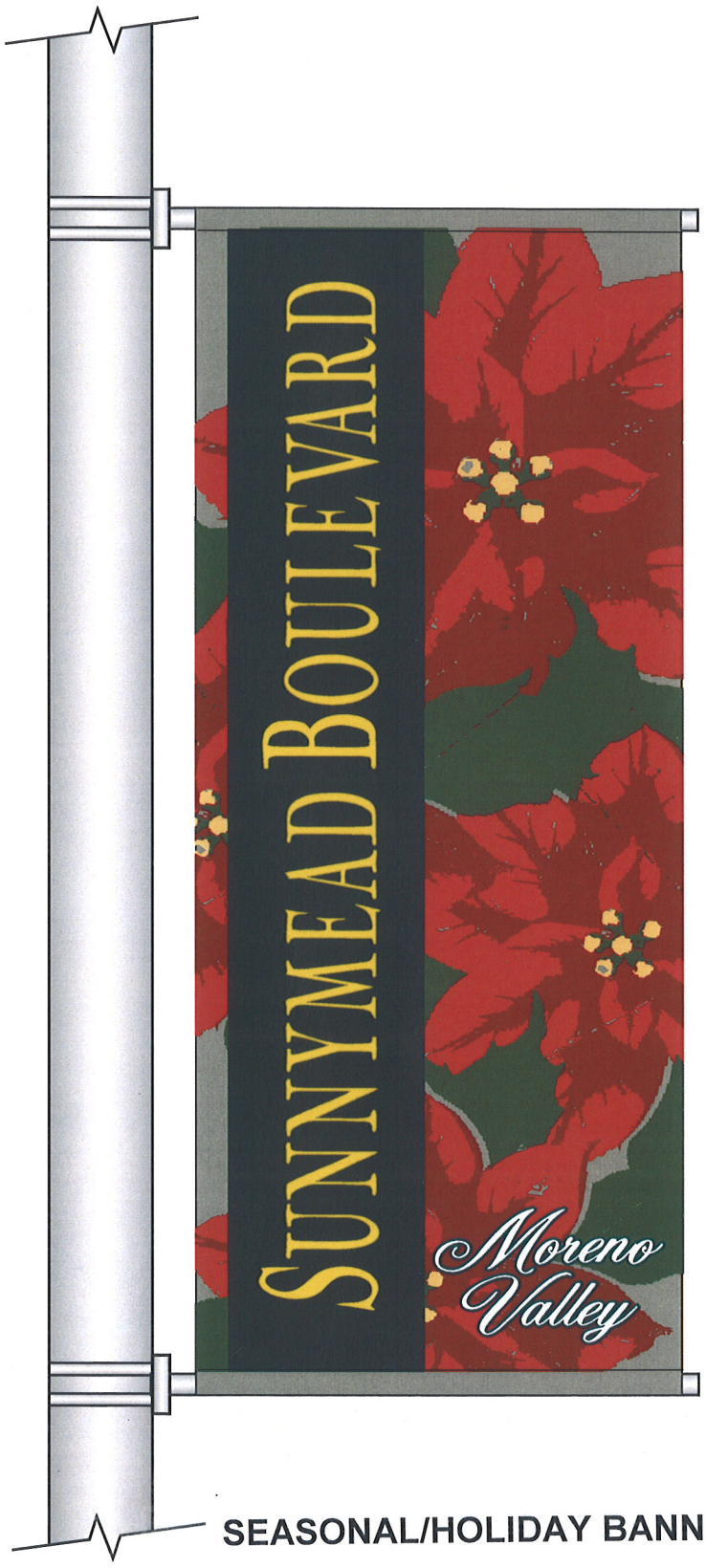
Public Works Department Capital Projects Division	SUNNYMEAD BOULEVARD REVITALIZATION PROJECT NO. 04-89280221-3
ATTACHMENT "A"	

Banners
MORENO VALLEY
DAVID EVANS AND ASSOCIATES INC.
NO STOPPING ANY TIME
GENERIC BANNER ILLUSTRATION
Attachment "B"



YEAR-ROUND BANNER

Attachment "C"



SEASONAL/HOLIDAY BANNER

Attachment "D"

APPROVALS	
BUDGET OFFICER	caf
CITY ATTORNEY	RH
CITY MANAGER	

Report to City Council

TO: Mayor and City Council

FROM: Robert L. Hansen, Interim City Attorney

AGENDA DATE: February 16, 2010

TITLE: Presentation of Municipal Law Guidebook

RECOMMENDED ACTION

Staff recommends that the City Council review the Municipal Law Guidebook prepared by the City Attorney's Office and provide comments and suggestions to improve its usability prior to distribution to the Council, staff, boards and commissions

ADVISORY BOARD/COMMISSION RECOMMENDATION

N/A

BACKGROUND

It has long been a goal of the City Attorney's Office to produce a Municipal Law Guidebook for the City. We are aware of a small handful of cities that have such Guidebooks. Their City Attorneys have indicated that it has been a significant tool in improving the efficiency of legal services and avoiding legal liability for the City. In light of the reduced staffing of the City, including the City Attorney's Office, we felt it vital to push this project forward at this time.

The purpose of the Guidebook is to provide a resource to the City Council and City staff to help them in carrying out their day to day duties within the law and in recognizing potential legal issues. It is not intended to replace consultation with the City Attorney's Office, but to make delivery of legal services more cost effective by educating those who use them. It is hoped that through use of the Guidebook by our "clients", the attorneys will be able to focus on the more complex legal issues rather than repetitively answering simpler day to day legal questions for multiple questioners. Also, we hope that Council and staff will be better able to recognize when legal advice should be

sought and thereby avoid litigation and other legal problems before they become more expensive to deal with.

DISCUSSION

The Guidebook is not intended to be an exhaustive manual of laws relating to the City. Rather, it contains the basic rules and summaries of their application in day to day operations in many, but not all, areas of the law pertaining to City operations and duties of public officials. It is intended that it will be added to and amended from time to time as experience shows need and the law changes by legislation or court decision. The City Attorney's Office welcomes input from the Council, boards and commissions and the City Staff regarding what would be most helpful for them for us to include in future revisions.

FISCAL IMPACT

Reproduction in CD form and posting on City Intranet will result in minimal cost within current budgets.

ATTACHMENTS/EXHIBITS

Draft Municipal Law Guidebook

Prepared By Robert D. Herrick

Department Head Approval Robert L. Hansen

Concurred By Robert L. Hansen

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

CITY OF MORENO VALLEY

MUNICIPAL LAW GUIDEBOOK

Robert L. Hansen
Interim City Attorney
City of Moreno Valley
2009

TABLE OF CONTENTS

Page

INTRODUCTION

This Municipal Law Guidebook ("Guidebook") is intended to provide an overview of some of the basic laws and legal procedures affecting the City of Moreno Valley. The Guidebook serves as an introduction to municipal law and reference resource for City Officials and employees. We hope that it will provide a basic understanding of the legal issues facing Cities in their day-to-day operations, while assisting officials and employees to know when to turn to the City Attorney's Office for legal analysis and advice. This Guidebook is meant only as a broad and general overview of laws and procedures. The Laws affecting the City are many and complex. Their correct application requires both professional legal analysis and a thorough and accurate understanding of the facts in each set of circumstances. Therefore, this Guidebook is not intended to replace legal advice based on the facts of particular circumstances. Rather, it is intended to familiarize City Officials and employees with basic legal guidelines and help them to recognize important legal issues that might affect the City and determine when to seek legal advice from our office.

This is particularly true in the area of conflicts of interest. While there are basic rules all officials must be aware of, most decisions in the conflict of interest area must be made on a case by case basis. It is important to note that newly elected officials are affected by some of these laws even before they take office. For example, newly elected officials who have not yet assumed office are subject to the open meeting requirements of the Brown Act. A meeting of any combination of newly elected and holdover Councilmembers totaling three where , any matter under the Council's authority is discussed is illegal and can result in prosecution of the participants. Similarly, restrictions on gifts and income received within twelve months of a decision apply to Councilmembers-elect.. As discussed in Section 4 of this Guidebook, income and gifts received twelve months prior to an elected official's consideration of a matter may require disclosure and disqualification.

It is our hope that this Guidebook will be a valuable basic resource as you carry out your duties and responsibilities on behalf of the City of Moreno Valley. We encourage you to contact the City Attorney's Office for any questions you may have.

SECTION 1 – ADMINISTRATION OF CITY GOVERNMENT

GENERAL LAW CITY

Moreno Valley is a general law city. General law cities derive their legal power and authority from state laws enacted by the legislature, primarily in the California Government Code. State law also establishes the organizational structure of general law cities. The Council also promulgates laws by ordinances codified in the Moreno Valley Municipal Code and by resolution. However, in a general law city, local laws and ordinances may only exercise those powers granted by the State Legislature in state statutes and may not enact ordinances where the state has "pre-empted" or superseded local authority.

COUNCIL-MANAGER FORM OF GOVERNMENT

While the powers of City government are vested by Government § 36501 in the city council as a body, the city clerk, the city treasurer, police chief and fire chief, most cities throughout the state have adopted the Council-Manager form of government. Pursuant to Government Code sections 34851 *et seq*. the voters of the City of Moreno Valley established the council-manager form of city government at the time of incorporation.. The Council-Manager form of government may not be changed without voter approval. In general, under the Council-Manager form of government, the City Manager has the power to administer the day-to-day affairs of the city, hire and fire city employees and manage the programs, facilities and properties of the City.

The City Council appoints the City Manager and holds him or her accountable for job performance. The City Council also appoints the City Attorney, and the City Clerk. All of these appointed officers serve at the pleasure of the City Council. While the Council has the authority to hire and fire these officers at will, generally a negotiated, written agreement governs the employment relationship and determines compensation, benefits, and performance review and termination procedures. The City Council may also choose to appoint, or to allow the City Manager authority to appoint, the City Treasurer, Fire Chief and Police Chief.

POWERS OF THE CITY

A general law city has only those powers expressly granted by the constitution or the legislature, and those powers necessary to carry out the expressly granted powers and purposes of the City. . In the absence of express legislative sanction, a city has no authority to engage in any independent business enterprise or occupation such as is usually pursued by private individuals.

The City may, subject to state and federal laws and constitutions:

- make and enforce within its limits all local police, public safety, sanitary and other ordinances and regulations.
- regulate the permitted uses of land within its jurisdiction.
- levy taxes to raise revenue for public purposes.
- establish, purchase, and operate public works, such as libraries, government buildings, roads, parks, utilities, etc..
- expend public funds for public purposes.
- acquire and own land, buildings and other property for public purposes.

POWERS AND DUTIES OF CITY COUNCIL

The powers of the City Council are held by the Council as a body and not by any individual Council member. Other than certain limited and ceremonial powers of the Mayor, members of the Council as individuals have no more power or authority than any other citizen of the City. However, acting as a body, the Council has specific powers, including the following:

- To make all laws involving municipal affairs subject to the state and federal laws and constitutions.
- To appropriate money, set investment policy, adopt budgets and otherwise direct the financial affairs of the City.
- To appoint and remove the City Manager, the City Attorney and the City Clerk.
- To appoint or delegate to the City Manager the authority to appoint, the Treasurer, Fire Chief and Police Chief. Historically, the City Manager has made these appointments, but has included the City Council in interviews for the Police and Fire Chief positions.
- To direct the City's legal business and proceedings.
- To establish and uniformly apply rules for the conduct of its proceedings
- To evict any member or other person for disorderly conduct at any of its meetings
- To require and administer oaths and affirmations in any investigation or proceeding pending before the Council.
- To make or modify policies for the conduct of city business, subject to state and federal law.
- To appoint boards, commissions and committees to advise them or to exercise delegated powers unless limited by state law. The powers, duties, and method of appointment should also be clearly established by the Council in its authorizing act, whether ordinance or resolution, which should also state whether the City Council's review of board or commission actions is de novo or based solely on the record developed by the board or commission.

POWERS AND DUTIES OF MAYOR

The Mayor is the official head of the City for all ceremonial purposes and is the presiding officer at all meetings of the City Council. The Mayor may also nominate persons for appointments to Boards and Commissions advisory to the Council, subject to the approval of the Council. Other than these limited roles, the Mayor has only the same power and authority as any other member of the Council. At Council meetings, the Mayor may make or second any motion and present and discuss any matter as a member of the council and has one vote.

LIMITATIONS ON POWERS AND DUTIES OF COUNCIL AND MAYOR

Under the Council-Manager form of government, the City Manager has the power to administer the day to day affairs of the City. The City Manager has the power to hire and fire all city employees (except the City Clerk and the City Attorney and their deputies) and to direct the workforce of the City and operations of City departments, facilities, buildings, etc.

City Council members as individuals are not empowered to make administrative decisions or to give directions to City employees. The Council acting in a legal meeting by majority vote can direct the Manager to implement changes in policy and procedure and can hold the Manager accountable for his or her performance. However, acting individually or even collectively outside of a legal meeting, Council members have no more legal authority than any other citizen of the City. In fact, Council members can create serious and significant personal civil and criminal liability for themselves by attempting to exercise authority they do not possess.

In particular:

- Council members may not do anything to interfere with any city employee in carrying out official duties of his or her office or employment. Doing so may subject the Council member to criminal charges of interfering with a public officer under the California Penal Code. If a Council member questions the actions of an employee, his or her questions should be directed to the City Manager, not to the individual employee.

- Council members must refrain from attempting to influence any City inspector, enforcement officer, police officer, prosecuting attorney, hearing officer, judge or jury with respect to any citation or other code or law enforcement proceeding. Such activities are commonly referred to as "ticket-fixing". They are an illegal abuse of office and can subject the Council member to both political embarrassment and criminal prosecution for obstruction of justice or interference with a public officer.

  Council members are frequently approached by members of the community and asked to intervene in a municipal code or other law enforcement proceeding. Council members

must refrain from doing so. Even if a Council member believes that the enforcement officer or prosecuting attorney has made a mistake in bringing the enforcement action, the Council member must not attempt to direct a "fix." Attached as Exhibit A is a compilation of newspaper stories from around the country where public officials have become involved in "ticket fixing." These articles show the significant damage done to personal and political lives by engaging in "ticket fixing", and are attached as a resource for public officials to show others when inappropriate requests are made for their intervention.

Of course, if a Council member knows about or suspects malfeasance, fraud, corruption or other inappropriate activity on the part of a City employee, he or she should report that suspicion and all known facts to the City Manager, City Attorney, Police Chief and/or District Attorney as may be appropriate. The City Attorney can advise on appropriate reporting actions. However, the Council member must not attempt to interfere directly in the enforcement proceeding. Once a report is made, those officially charged with prosecutorial discretion and the hearing officer, judge or jury must be permitted to carry out their responsibility. A Council member may testify at the hearing or trial if he or she is a direct witness of relevant events, but only as a "percipient" witness (one who actually was present and saw the events first hand), not as an "expert" to give an opinion on whether or not the actions did or should have constituted a violation, nor as a "Council Member" or representing the Council.

This is not to say that the City Council has no role in setting enforcement policy, but their role is to act as a body in a legal meeting adopting general laws, rules and policies, not in intervening in particular cases. If poor performance or inappropriate activities by City employees are an issue, the Council as a body may hold the City Manager accountable to correct it.

- Council members are not authorized to represent to the public, the media, other public agencies or any other person or entity that they speak, write or otherwise communicate on behalf of the City or the City Council unless authorized to do so in the specific matter by majority vote of the City Council at a legal meeting. Of course, Council members may communicate on their own behalf, but should avoid giving the impression that they speak for the City or Council without such express authority. Such actions, while normally not criminal, do give rise to confusion and can result in the City's interests being harmed. In turn, the Council member may experience political embarrassment, loss of respect and even public censure by the Council. If the representation is made in official government proceedings such as to a judge, jury, or legislative body, they may be criminally punishable.

- Council members as individuals have no authority to enter into oral or written agreements, contracts or other commitments on behalf of the City or the City Council without express authority by majority vote of the City Council. When a Council member gives assurances of City commitment without such authority, he or she may give rise to accusations of illegal action by themselves or by the City Council (such as a violation of the Brown Act). Further, the City may face and have to expend public funds to defend claims of contractual rights by outside parties. The Mayor and the City Manager are authorized by statute and

city ordinance to sign any document approved by the Council, but have no authority to sign any document not so approved unless authority is specifically delegated. The City Council has by ordinance and resolution delegated to the City Manager the authority to sign certain contracts, warrants, etc. in the ordinary course of City business. Any questions in this regard should be directed to the City Attorney.

- Neither Council members nor the Council as a body, have authority or right to access confidential personnel files of employees other than their own appointees. These files are confidential by state law and may only be shown to those specifically authorized by law.

Any Council member having a question about his or her proper role in a particular matter should contact the City Attorney for legal advice prior to taking any action.

POWERS AND DUTIES OF CITY MANAGER

Under the Council-Manager form of government, the City Manager has the power to administer the day to day operations of the City. The City Manager has the power to hire most city department heads and employees. The City Manager may discipline, suspend or remove such department heads and employees. The City Clerk and the City Attorney are appointed by the City Council. The Fire Chief and Police Chief are typically appointed by the City Manager, but state law and the Municipal Code permit the City Council to retain authority to make those appointments if they so choose. Deputy Clerks and Attorneys are appointed by the City Clerk and City Attorney respectively, the Fire Marshall is appointed by the Fire Chief). The City Manager is responsible to the City Council for the proper administration of all operations of the City. The Council does not have authority to deal directly with employees under the City Manager's authority except through the City Manager.

Under the Council-Manager form of government, the City Manager traditionally has the authority and duty to (among other things):

- Prepare, submit to City Council, and be responsible for the administration of the budget after its adoption.
- Prepare and submit to City Council as of the end of the fiscal year a comprehensive report on the finances and administrative activities of the City for such fiscal year.
- Keep the City Council advised of the financial condition and future needs of the City.
- Hire, fire, manage and direct the City staff in carrying out the decisions of the City Council, managing the City's property, facilities and programs, and enforcing the City's laws and ordinances.

Specifically, under 2.08.060 of the Municipal Code the City Manager has power and responsibility to:

- Enforce all laws and ordinances of the city and to see that all franchises, contracts, permits and privileges granted by the city council are faithfully observed;
- Appoint, remove, promote and demote any and all officers and employees of the city except those who are elected or appointed by the city council, subject to personnel rules and regulations adopted by the city council;
- Appoint, with the consent of the city council, the planning director;
- Control, order and give directions to all department heads who are subject to his appointment and removal authority, and to subordinate officers and employees of the city under his jurisdiction through their department heads;
- Conduct studies and reorganize the city staff in the interest of efficient, effective and economical conduct of the city's business;
- Recommend to the city council such measures and ordinances as he deems necessary;
- Attend all meetings of the city council unless excused therefrom by the mayor or the city council;
- Prepare and submit the proposed annual budget and the proposed annual salary plan to the city council for its approval;
- Direct and supervise all the purchasing activities of the city;
- Keep the city council at all times fully advised as to the financial condition and needs of the city;
- Make investigations into the affairs, operations or obligations of the city or its contractors or into complaints concerning the administration of the city government or the service maintained by public utilities in the city;
- Exercise general supervision over all city buildings, parks and other public properties;
- Have the same authority as the mayor, as convenience may dictate, to sign warrants, contracts, conveyances and other documents requiring the city seal which have been approved by the city council.
- Perform such other responsibilities and exercise such other powers as may be delegated to him by official action of the city council.

POWERS AND DUTIES OF THE CITY ATTORNEY

PROFESSIONAL ETHICS

The City Attorney is subject to the ethical standards for all California lawyers, which are derived mainly from the Rules of Professional Conduct of the State Bar of California. Rule 3-600 governs the ethical obligations of a lawyer who represents an entity rather than a natural person. The rule makes it clear that for the City Attorney the client is the City, as embodied in "its highest authorized officer, employee, body or constituent overseeing the particular engagement" (constituent here meaning part of the City organization, not a voter or resident of the City). Generally, this will be the City Council as a body. Therefore, by legal definition there is no attorney-client relationship between the City Attorney and individual employees or individual Council members not acting as that "highest authorized officer".

ATTORNEY-CLIENT PRIVILEGE

Legal advice and analysis provided by the City Attorney is confidential and subject to legal protection under the attorney-client privilege. The attorney-client privilege is held by the City Council as a body, but may sometimes include boards or commissions and officials of the City or individual employees to whom the City legally owes a defense, but *only* in their official capacities. The City Attorney cannot undertake to represent the individual interests of particular employees or Council members. No Council member, employee or other person has the legal authority to disclose attorney-client privileged information to any person or entity without the express authority of the City Council as a body. Unauthorized disclosure of such information is a crime in California. In particular, it is a misdemeanor under state law for any person to disclose confidential information from a closed session of the City Council with its attorney to any person not under the attorney-client privilege.

POWERS AND DUTIES

Under 2.16.010 and 2.16.030 of the Municipal Code, the City Attorney has the authority and responsibility to:

- Retain or employ other attorneys, assistants or special counsel as may be needed to take charge of any litigation or other legal matters or to assist the city attorney.
- Advise the council and all city officers in all matters of law pertaining to their offices;
- Furnish legal service at all meetings of the council, except when excused or disabled, and give advice or opinions on the legality of all matters under consideration by the council or by any of the boards and commissions or officers of the city;
- Prepare and/or approve all ordinances, resolutions, agreements, contracts and other legal instruments as shall be required for the proper conduct of the business of the city and approve the form of all contracts and agreements and bonds given to the city;
- Prosecute on behalf of the people cases for violation of city ordinances; and

- Perform such other legal duties as may be required by the council or as may be necessary to complete the performance of the foregoing functions.

POWERS AND DUTIES OF THE CITY CLERK

The City Clerk is the local official for elections, local legislation, the Public Records Act, the Political Reform Act, and the Brown Act. The City Clerk is the legal Custodian of Records for the City. Before and after the City Council takes action, the City Clerk ensures that actions are in compliance with all federal, state and local statutes and regulations and that all actions are properly executed, recorded, and archived. Generally, the Government Code and the Election Code provide the procedures to follow.

Under the Municipal Code, the primary duties of the City Clerk are to:

- Attend all meetings of the city council and be responsible for the recording and maintaining of a record of all the actions of the council;
- Keep all ordinances and resolutions of the council in such a manner that the information contained therein will be readily accessible and open to the public. The city clerk shall attach to the original copy of each ordinance a certificate which shall state the date the ordinance was adopted and, as to an ordinance requiring publication, that the ordinance has been published or posted in accordance with law;
- Keep all records of the council and of the office of the city clerk in such manner that the information contained therein will be readily accessible and open to the public until such time as any of the records may be destroyed, or reproduced and the original destroyed, in accordance with state law;
- Serve as the official custodian of all city records;
- Be the custodian of the seal of the city;
- Prepare the council agendas, in conjunction with and under the direction of the city manager;
- Perform the duties prescribed by the Elections Code of the state in conducting municipal elections;
- Perform the duties imposed upon city clerks by the California Political Reform Act;
- Be responsible for the publication of all the official advertising of the city;
- Be responsible for the maintenance and distribution of the municipal code;

- Process all claims filed against the city and its officers, agents, or employees, pursuant to the provisions of Chapter 1 of Part 3 of Division 3.6 of Title 1 of the Government Code of the state and Chapter 3.16 of this code; and

- Perform such other duties consistent with this code as may be required of the city clerk, by the city council.

CITY COUNCIL MEETINGS

Government Code section 36805 requires that the City Council hold regular meetings at least once a month at times fixed by ordinance or resolution. It may adjourn any regular or adjourned meeting to a date specified in the order of adjournment. When so adjourned, the adjourned meeting is a regular meeting for all purposes. In Moreno Valley, the City Council has adopted rules and procedures for its meetings. A copy of those Rules and Procedures is attached to this Guidebook for your convenience as Exhibit B. They provide for regular City Council meetings on the second and fourth Tuesdays of each month, a regular closed session meeting on the first Tuesday and a regular Study Session (where by Council rules no formal action is taken), on the third Tuesday.

SECTION 2 – PUBLIC MEETINGS AND THE BROWN ACT

The Ralph M. Brown Act[1] is commonly referred to as the "Brown Act" and is also known as the "Open Meetings Law." It applies to all local governmental agencies. The basic principles of the Brown Act were incorporated into the California Constitution by voter approval of Proposition 59 in November of 1994. The Brown Act is the primary procedural guide for conducting City business. It attempts to strike a balance between the public benefit that results from public access to meetings and, public participation in government decisions and the public benefit that results from government leaders' being fully informed and candid in deliberations on sensitive matters where confidentiality protects either the public's best interests or the privacy rights of individuals, such as litigation, certain negotiations and hiring, firing and discipline of employees.

Since the basic mission of the Brown Act is to ensure that decisions are made in public wherever reasonable to do so, there are very specific rules on how meetings must be noticed and conducted, on agenda requirements, and on public access at Council meetings. The City Clerk and City Attorney work with the Council to ensure that Brown Act requirements are met. The City Clerk is responsible at the agenda and notice stage and the City Attorney is responsible for guiding the Council at meetings.

The Brown Act contains various rules designed to prevent the circumvention of its open meeting requirements. All meetings must be publicly noticed for a specific time and location. All meetings except authorized closed sessions, must be open to the public. Any meeting held inviolation of Brown Act requirements is illegal. Officials participating in such an illegal meeting may be criminally prosecuted. All actions taken at an illegal meeting can be declared null and void by the Courts.

WHO DOES THE BROWN ACT APPLY TO?

The Brown Act applies to all "legislative bodies" of local agencies in California. It applies not only to the City Council, but also to all standing committees of the Council even if they comprise less than a quorum, to advisory boards, commissions, and committees appointed by the Council, and even to certain private corporations affiliated with the City. For the City of Moreno Valley, this includes the Planning Commission, the Traffic Commission, the Library Board, the Project Area Committee of the Redevelopment Agency, and all other other standing boards and commissions of the City or any of its related agencies. It also includes the boards of the City's private Foundation. Throughout this section of the Guidebook, references to the City Council or to any of its members, include all of these other bodies and their members.

[1] Gov. Code §§ 54950 *et seq.*

WHAT IS A "MEETING" AND "ACTION TAKEN?

The term "meeting" is very broadly defined in the Brown Act as any congregation or consultation of a majority of the members of the Council to hear, discuss or deliberate upon any matter which comes under the subject matter jurisdiction of the Council, regardless of the location, timing or method of communication. Thus, two Councilmembers discussing City business one on one becomes an illegal "serial meeting" when either of them discusses the same matter with a third member of the Council, whether in person, on the phone, by email, through an intermediary or otherwise. A quorum of newly elected but not yet seated Councilmembers may not discuss City business together outside a properly noticed and agendized public meeting, nor may one or more Councilmembers-elect participate in discussions with incumbent Councilmembers if a quorum of the future Council would be involved. A Councilmember's e-mail sent to more than one other Councilmember may be considered an illegal serial meeting.

In a 2001 opinion, the California Attorney General concluded that a majority of the members of the Council may not e-mail each other to develop a collective concurrence as to action to be taken by the Council without violating the Brown Act, even if the e-mails are also sent to the secretary, sent to the chairperson of the agency, posted on the website, and each printed e-mail is reported at the next public meeting.[2]

Brown Act applications are fact intensive, and require a case by case analysis. If any city official is unsure whether a communication or potential communication with other city officials may constitute a "meeting", the City Attorney should be consulted immediately.

"Action taken" is defined in Government Code Section 54952.6 as follows:

> "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 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."

This definition is very broad and includes matters taken up at meetings and away from meetings. Notwithstanding this, the following are not "meetings" subject to Brown Act requirements:

- Individual contacts or conversations between a Councilmember and any other person, provided such a person is not used as an intermediary to convey thoughts and decisions on City business to other Councilmembers.

- Attendance of a majority of the members of the Council at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to

[2] 84 Ops. Cal. Atty. Gen. 30 (2001).

public agencies of the type represented by the Council, provided a majority of the members do not discuss among themselves specific business within the Council's subject matter jurisdiction.

- Attendance of a majority of the members of the Council at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the city, provided a majority of the members do not discuss among themselves specific business within the Council's subject matter jurisdiction.

- Attendance of a majority of the members of the Council at an open and noticed meeting of another body of the local agency, provided a majority of the members do not discuss among themselves specific business within the Council's subject matter jurisdiction.

- Attendance of a majority of the members of the Council at a purely social or ceremonial occasion, provided a majority of the members do not discuss among themselves specific business within the Council's subject matter jurisdiction.

- Members of a legislative body giving testimony in private before a grand jury, either as individuals or as a body.

TYPES OF MEETINGS

There are three types of meetings that can be called under the Brown Act. Those are regular meetings, special meetings and emergency meetings.

REGULAR MEETINGS.

Regular meetings are those that are held at a regular time and place established by local rules. At regular meetings, the only items that can be acted upon are those that are listed on an agenda that is posted at least 72 hours in advance, with certain exceptions. The Brown Act requires only a "brief general description" of each item to be acted on. However, the courts have ruled that the descriptions must sufficiently inform the public as to the nature of the action to be taken to allow a reasonable person to determine what interests are at stake in the action. Items, such as status reports and public information, not described in sufficient detail for action, may appear on the agenda so long as there is no action taken at the meeting except to refer the matter to the Council at another meeting or to staff.

At a regular meeting, items can be added to the agenda by majority vote of the Council if there is a true emergency relating to public health and safety requiring immediate action, such as a crippling natural disaster. The definition of "emergency" is so narrow that agenda items are hardly ever added under the invocation of this exception. Items can be added by a 2/3 vote of the Council (or unanimous vote if less than 2/3 of the Council is present) if there is a need to take "immediate action" on an item and the need to take action was not

known to the City until after the agenda was posted. If staff or certain members of the Council were aware of the item prior to the posting of the agenda, this exception may not be used. The key requirement, the need to take immediate action on the item, must be shown by specific factual findings.

SPECIAL MEETINGS.

Special meetings are those called on an "as needed" basis for special purposes. Special meetings require at least 24 hours written notice to each member of the Council. Also, the media must be notified and the agenda must be posted 24 hours in advance. The most important thing to remember about special meetings is that only those items listed in the agenda may be discussed. No other action may be brought in front of the Council at a special meeting except those items noticed 24 hours ahead of time.[3]

EMERGENCY AND DIRE EMERGENCY MEETINGS.

Council may call an emergency meeting on less than 24 hours notice. An "emergency" is 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 Council. The media must be given one hour advance notice.

An emergency meeting may also be held for a "dire emergency," defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity with peril so immediate and significant that requiring Council to provide one hour advance notice may endanger the public health, safety, or both, as determined by a majority of the Council. Notice of the meeting for a dire emergency shall be given at or near the time the presiding officer notifies the members of the Council of the meeting.[4]

NO ACTION OR DISCUSSION OF NON-AGENDA ITEMS RULE

The basic rule under the Brown Act is that "no action or discussion shall be undertaken on any item not appearing on the posted agenda."[5] The Brown Act's agenda requirements thus cover not only "action" items but also "discussion" items.

As noted above under "Regular Meetings," the Brown Act does contain exceptions to this rule. In addition to the exceptions regarding emergency situations and the need for immediate action, there

[3] Gov. Code § 54956.

[4] Gov. Code §54956.5 -SB 1643.

[5] Gov. Code § 54954.2 (emphasis added).

are a few other narrow exceptions to the "no discussion on non-agenda items rule." Those exceptions are:

- Members of the Council or staff may briefly respond to statements made or questions posed by persons during public comment periods;

- Members of the Council or staff may ask questions for clarification and provide a reference to staff or other resources for factual information;

- Members of the Council or staff may make a brief announcement, ask a question or make a brief report on his/her own activities;

- Members of the Council may, subject to the procedural rules of the legislative body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and

- The Council may itself as a body, subject to its Rules of Protocol, take action to direct staff to place a matter of business on a future agenda.

The exceptions are not meant to swallow the rule. Thus, the Council may not engage in any significant discussion of non-agenda items. This means that long presentations, or wide-ranging questions, answers, and comments among the Council members, between Council members and the public, or between Council members and staff are impermissible. The Brown Act requires that comments under these exceptions be "brief."

Under these exceptions, Council can request information or a report. However, direction to staff to take a specific action is Council "action" which must be placed on the agenda first. When Council is considering whether to direct staff to add an item to a subsequent agenda, these exceptions do not allow Council to discuss the merits of the matter or to engage in a debate about the underlying issue.

In summary, Council can neither take action nor discuss any items unless they are specifically posted on the agenda. Comments under the exceptions to the Brown Act must be brief and non-substantive.

CLOSED SESSIONS

The Brown Act expressly authorizes closed sessions under specific circumstances. Closed sessions are not open to the public, and information acquired during a properly held closed session is confidential and may not be disclosed without authorization by majority vote of the Council. Unauthorized disclosure is punishable as a crime under state law. The City may also address such violations by court-ordered injunction prohibiting disclosure of confidential information, or disciplinary action against an offending employee or Council member. The City may not however, take action against any individual for making a confidential inquiry or complaint to a district

attorney or grand jury concerning a perceived violation of law, expressing an opinion as to the propriety or legality of actions taken by Council in closed session, or disclosing information acquired in closed session that is not confidential information.[6] However, the City Attorney should be consulted before any disclosure of closed session information.

Closed session matters must be noticed on the agenda so that the public can determine why the Council is calling a closed session. In addition, certain final actions taken in closed session must be announced in open session after the vote is taken.

The Brown Act specifies "safe harbor" language for closed session agenda descriptions. An agenda description that follows the "safe harbor" language cannot be challenged as legally insufficient. It is therefore highly recommended that the "safe harbor" language be strictly followed.[7]

The following are the authorized reasons for holding closed sessions:

LITIGATION

The Council may meet in closed session to hear advice from its own legal counsel regarding the handling of active civil or administrative litigation.

The Council may also go into closed session to discuss potential litigation in certain circumstances. Potential litigation may be discussed when:

> "a majority of the Council, on the advice of its attorney, based on existing facts and circumstances, believe there is "a significant exposure to litigation" against the City."[8]

This exception requires that the majority of the Council believe that there is an actual threat of litigation. Also, its attorney must concur in this opinion. A separate section permits closed sessions to discuss liability claims filed with the City. This appears to be a subcategory of potential litigation, and is certainly easier to make the findings for, but requires disclosure of more information. Also, since the Council has delegated to the Risk Manager the authority to consider, grant and deny most claims, this section is unlikely to be used. In most cases, it would be more advantageous to protecting legal strategy to utilize the potential litigation section despite the requirement for specific findings.

The Council may also meet in closed session to decide whether to initiate litigation, or to decide whether the facts and circumstances surrounding a particular issue justify a closed session discussion.

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6 Gov. Code § 54963 -AB 1945, effective January 1, 2003.

7 Gov. Code § 54954.5.

8 Gov. Code § 54956.9(b)(1).

The "safe harbor" agenda descriptions are as follows:

> "CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION
>
> (Subdivision (a) 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 subdivision (b) 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 subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)
>
> Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)
>
> LIABILITY CLAIMS
>
> Claimant: (Specify name unless unspecified pursuant to Section 54961)
>
> Agency claimed against: (Specify name)

At the end of a closed session regarding litigation, the Council must report in open session at the same meeting:

- Any approval given to its legal counsel to defend a lawsuit, appeal or refrain from appealing a judicial decision, or join a suit as amicus curiae. In the report the parties and the substance of the lawsuit must be disclosed.
- Any approval given to initiate or intervene in a suit, but parties and substance of the litigation need not be disclosed until after actual court filings and even then disclosure can be delayed if it would jeopardize either service of process or conclusion of existing settlement negotiations.
- Acceptance of and substance of a settlement offer already approved and signed by the other parties and not subject to court approval. If a settlement is subject to court or other party approval it must be disclosed to any person asking after it has become final.

At the end of a closed session regarding liability claims, the Council must report the disposition of the claim, the claimant, the substance of the claim and any payment approved and agreed to by the claimant.

THREATS TO PUBLIC PROPERTY; SECURITY THREATS.

Closed session may also be held on threats to the security of public buildings or to essential public services or to the public's access to public services or public facilities. Such closed sessions may be held with the Attorney General, district attorney, agency counsel, law enforcement, or a security consultant or security operations manager.[9] Emergency meetings for emergency situations may also be held in closed session if agreed to by 2/3 vote of the members present, or if less than 2/3 of the members are present, by unanimous vote.[10]

The "safe harbor" language is[11]:

> 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)

PERSONNEL.

The Council may call a closed session to discuss "the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints or charges brought against the employee."[12]. The item must be listed on the agenda, along with the job title of the affected position and the purpose of the closed session. Personnel closed sessions may only be called to discuss an employee who is directly under Council control and direction. Discussion or action on proposed compensation is prohibited in closed session under this section, except for reduction of compensation as a result of the imposition of discipline. Oblique references to discussion of salaries as part of the performance evaluation appears permissible, so long as the specific discussions as to the amount of salary increase are reserved for a properly noticed, public meeting.[13] However, the Council may also notice a closed session under labor negotiations, discussed below, to negotiate salary with its appointees.

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9 Gov. Code §§ 54954.5, 54957 -AB 2645, effective January 1, 2003.

10 Gov. Code § 54956.5 -SB 1643, effective January 1, 2003.

11 Gov. Code § 54957

12 Id.

13 *San Diego Union v. City Council*, 146 Cal. App. 3d 947 (1983).

An employee subject to a closed session to hear complaints or charges against him or her has the right to determine whether the session will be held in public or private, and must receive written notice of the session at least 24 hours in advance. Negative performance evaluations are not "complaints or charges" subject to these rules.

The safe harbor language is:

> 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.)

At the end of any closed session regarding personnel actions, Council must report in public session any action taken affecting the employment status of an employee. However, if the report is of a dismissal or nonrenewal of an employment contract, the report shall be deferred until the first public meeting following the exhaustion of any applicable administrative remedies.[14]

CONFERENCE WITH LABOR NEGOTIATOR.

A closed session may be held to discuss issues involving "salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees."[15] At such closed sessions, the purpose is for the Council to give direction to its

[14] Gov. Code § 54957.1(a)(5).

[15] Gov. Code § 54957.6.

authorized negotiators. Those authorized negotiators then meet and confer with employee bargaining representatives. The Council may also meet in closed session with a state conciliator who has intervened in the negotiation proceedings. Once agreement is reached, any contract must be approved in public session. ***The Council may <u>not</u> take final action on the proposed compensation of a non-union represented employee, such as the City Manager, City Attorney or City Clerk, in closed session.***

The safe harbor language is:

> 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)

REAL ESTATE NEGOTIATIONS.

The Council may meet in closed session with its negotiator to discuss the purchase, sale, exchange, lease (including modifications, renewals and extensions) of real property by or for the City. Discussion must be limited to price and terms of payment related to specific sites.

> 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)

At the end of a closed session on real estate negotiations, the Council must report in open session the approval of and the substance of any agreement concluding the negotiations where the Council's approval renders the agreement final. If final approval rests with another party to the agreement, the fact of approval and the substance of the agreement must be disclosed to any person asking after the agreement has become final.

LICENSE APPLICATIONS.

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

BROWN ACT VIOLATIONS

Individual citizens may demand that the Council correct actions taken in violation of the Brown Act. Any citizen may make a written demand that the Council either declare an action null and void or cure the Brown Act defect within 90 days of any alleged violation, unless the action was taken in an open session but in violation of the agenda requirements. In those instances, the written demand shall be made within 30 days. The Council must act on the matter within 30 days of receiving the written notice. If no action is taken by the Council, any citizen may file a suit to have the action of the Council declared null and void.

If any action is successfully brought against the City for a Brown Act violation, the City may be required to pay attorneys' fees and costs. In addition, Council members may be individually liable for Brown Act violations under the criminal law. Certain Brown Act violations are misdemeanors and can be punished by up to one year in jail and/or fines. For these reasons, the City Attorney's Office takes particular care in making sure that the City's business is done in the proper manner to prevent any actual or perceived Brown Act violations.

SECTION 3 – PUBLIC RECORDS AND INFORMATION

Unless legally protected as confidential or subject to another exception to the rule, City records are open and available to the public under the California Public Records Act ("PRA").[16] Any person or entity is legally entitled to request, view and receive copies of any public record or document of the City.

It is the responsibility of the custodian of records, normally the City Clerk, but sometimes another employee in a particular department, to gather and review records in response to PRA requests. The City Attorney's office can, of course, provide legal advice relating to requests.

WHAT IS A PUBLIC RECORD?

The PRA concerns the ability of members of the public to have access to public records maintained by various state and local agencies, including the City. The PRA includes in the definition of local agency, any private entity that must comply with the Brown Act.[17] Public records are "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."[18] The definition of "writing" includes "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]

PUBLIC POLICY FAVORS DISCLOSURE

The general policy of the PRA, like the federal Freedom of Information Act upon which it is modeled,[20] favors disclosure of public records. Indeed, in enacting it, the state legislature found and declared that "access to information concerning the conduct of the people's business is a

[16] Gov. Code §§ 6250 *et seq.*

[17] Gov. Code § 6252 -AB 2937, effective January 1, 2003.

[18] Gov. Code § 6252 (e).

[19] Gov. Code § 6252 -AB 1962, effective January 1, 2003.

[20] 5 U.S.C. §§ 552 *et seq.*

fundamental and necessary right of every person in this state."[21] But, as the court in *Black Panther Party v. Kehoe* [22] noted:

> If citizenship in a functioning democracy requires general access to government files, limited but genuine interests also demand restricted areas of nonaccess. Decisional law on the subject accepts the assumption that a statute calling for general disclosure may validly define reasonably restricted areas of nondisclosure, provided that the latter are justified by genuine public policy concerns.

The PRA thus strikes a balance between "the public's right to know" and the need to maintain areas of nondisclosure for certain types of government records.[23] The PRA basically provides that, except as otherwise provided, public records are to be open to inspection at all times during the office hours of public agencies,[24] and that any person may receive a copy of any identifiable public record upon request and payment of a prescribed fee.[25]

This general right of public inspection, must be considered together with a number of categories of records that are exempt from disclosure.[26] One such category includes records that are exempt from disclosure under federal or state law.[27] To assist members of the public and local agencies, the state legislature created a list of state laws that exempts certain records from disclosure. The list is not meant to be exhaustive.[28] In addition, there is a "residual category" that permits an agency to withhold a record from disclosure, where "on the facts of [a] particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." This balancing test can be very fact intense and challenging. Records should not be withheld from disclosure based on the balancing test without a legal opinion from the City Attorney's office.

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[21] Gov. Code § 6250.

[22] 42 Cal. App. 2d 645, 655 (1974).

[23] 64 Ops. Cal A tty. Gen. 575, 579 (1981).

[24] Gov. Code § 6253, subd. (a).

[25] Gov. Code § 6253, subd. (b); See 69 Ops. Cal. Atty. Gen. 129, 131 (1986); 64 Ops. Cal. Atty. Gen. 575, 579-580.

[26] Gov. Code § 6254; *Black Panther Party v. Kehoe, supra*, 42, Cal. App. 2d at 656.

[27] Gov. Code § 6254(k).

[28] Gov. Code § 6275.

RESPONDING TO PRA REQUESTS

As is apparent, the obligation of the City under the PRA is to produce existing documents (within the meaning of the PRA). Nothing in the PRA requires the City to create documents that do not exist at the time of the request. The PRA requires City staff to assist a member of the public seeking to inspect or copy a public record, to make a focused and effective request that reasonably describes an identifiable record.[29] By state law, City staff must make reasonable efforts to help the member identify records and information that are responsive to the request, or to the purpose of the request, describe the information technology and physical location in which the records exist, and provide suggestions for overcoming any practical basis for denying access to the records or information sought. These additional duties shall not apply if the City makes the requested records available, the records are expressly exempt from disclosure, or an index of the records is made available. The City is required to take the following actions in response to a PRA request:

- Determine within ten days after receipt of request (verbal or written) whether the request, in whole or in part, seeks copies of disclosable records and immediately notify the person making the request of such determination and the reasons for it. City staff must make reasonable efforts to assist a member of the public to make a request that reasonably describes an identifiable public record, as described above.

- Make available all documents for inspection or copying that are responsive to the request and not exempt from disclosure. Nothing in the PRA may be construed as permitting the City to delay or obstruct the inspection or copying of public records.[30]

- Copy and make available all responsive documents upon payment of a fee, which may not exceed the actual cost of copying the record.

- If the person making the request agrees, provide a summary of the information contained in existing documents when these documents are voluminous or in a form that is not easily reproducible.

- If the request is denied, the City must justify withholding any record by demonstrating the record is expressly exempt under the PRA, or the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.[31] Notification of denial of any request for records must set forth the names and titles or positions of each person responsible for the denial.[32]

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[29] See AB 1014, amending Gov. Code § 6253, and adding Gov. Code § 6253.1.

[30] Gov. Code § 6253.

[31] Gov. Code § 6255.

[32] Gov. Code § 6253.

- If the request for inspection or copies of public records is in writing, and the request is denied in whole or in part, the response must be in writing.

The person requesting the public record is obligated to pay for copying costs. The City may only charge a fee to cover the direct cost of duplication.[33] City staff time spent in finding, compiling, and/or reviewing the documents may not be charged for. The amount of the fee is designated in the City of Moreno Valley Fees and Charges Resolution.[34] We recommend that City staff adhere to the following procedures in responding to PRA requests:

- Acknowledge receipt of the request, and if the request is verbal, ask that person to put the request in writing. (The person is not obligated to put the request in writing.)

- Consult the City Attorney's Office whenever there is a question of whether a document is exempt from disclosure, whenever the document is labeled Attorney-Client Privilege or contains any analysis or advice from a lawyer, and whenever the document pertains to litigation, claim or threatened litigation.

- After any consultation with the City Attorney under paragraph 2, advise the requesting party of a time and place when the responsive documents will be available for inspection and/or copying. If copies have been requested advise the requesting party of the approximate cost of copying. The time should not be more than 10 days after receipt of the request. If there are any circumstances which lead you to believe that more than 10 days will be required to assemble the documents, consult the City Attorney's Office immediately. Do not wait for the 10 days to pass.

- If the request is likely to produce voluminous documents, be sure to advise the requesting party of the cost of copying the responsive documents before copying, and give them the option of narrowing their request to reduce costs. A deposit against the costs may be collected prior to copying to avoid wasting time and money if the requesting party fails to return for the copies.

RECORDS IN ELECTRONIC FORMAT

If the public record subject to disclosure is in electronic format, the information shall be made available in any electronic format in which the City holds the information. A copy of an electronic record shall be provided in the format requested, if the City uses that format to make copies for its own use or to other agencies.

[33] Gov. Code § 6253(b); Opinion of the California Attorney General, No. 01-605.

[34] The Fees and Charges Resolution is available from the City Clerk.

The cost of duplication is limited to the direct cost of producing the copy of the record in electronic format. However, 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 if (1) the City is required to produce a copy of an electronic record that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record.

The City is not required to reconstruct a record in an electronic format if the City no longer has the record in electronic format. If the document is in both electronic, and non-electronic format, the City may inform the requester the information is in electronic format. The PRA does not permit the City to make the information available only in electronic format. The requesting party should be given the option of electronic or non-electronic format. The City is not required to release an electronic record in the electronic form held by the City 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.

E. PUBLIC RECORDS ACT VIOLATIONS

The California Supreme Court has ruled that a city may not withhold a requested record and then ask the court to determine if it has the right to withhold it.[35] If the City refuses to supply records, the requesting person may bring an action in Superior Court to compel disclosure. If the court determines the records must be disclosed, the City is required to pay attorneys' fees and court costs. If the City prevails, it is entitled to attorneys' fees only if the court finds that the request was "clearly frivolous." In general, records are seldom exempted from disclosure and a finding of "clearly frivolous" is very rare. Usually, a valid refusal to disclose is based upon the privacy rights of an employee or applicant, or upon clearly defined legal privileges, such as the attorney-client privilege. The City Attorney's Office should be contacted for advice before denying any request for public records.

[35] *Filarsky v. Superior Court*, 28 Cal. 4th 419 (2002).

SECTION 4 – CONFLICT OF INTEREST ISSUES

Conflicts of interest arise in a variety of ways. Because of the myriad of laws in this area, it is sometimes quite difficult to determine if one has a conflict of interest. This section of the Guidebook is intended to assist Council members and the Mayor in recognizing situations that may give rise to a conflict of interest.

The City Attorney's Office is available to discuss conflict of interest issues. However, the duty is on the elected officials to present any information concerning potential conflicts of interest to the City Attorney so that advice can be provided. If we independently know of information that may create a conflict of interest, we will certainly bring it to the official's attention. However, we simply are not privy to all the transactions involving individual elected officials and, therefore, cannot be responsible for raising conflict issues for each elected official. The City Attorney's professional responsibility is to protect the City from legal risk and, when asked in advance, to advise Council members so that the decisions of the Council will be legal. By seeking advice in advance, Council members can protect themselves from the legal and public consequences of violating conflict of interest laws.

Sometimes, it is tempting for a Council member or employee to either withhold or rationalize away facts, or to argue that a particular interest should not disqualify him or her from participating in a particular decision. However, it is both unethical and not in the Council member or employee's own best interest to do so, or to participate in a decision from which he or she is legally disqualified. Failure to disqualify oneself from a decision subject to a conflict of interest can result in a court overturning the decision and the Council member being fined and/or sent to jail. An incorrect legal opinion, or one based on partial or incorrect facts, will not protect a Council member from prosecution for conflict of interest violations. Therefore it is vital that each Council member be both fully open about facts and circumstances and willing to accept and abide by professional legal advice.

The City Attorney's advice may be all that is necessary in many circumstances. However, in more complex situations, the difficulty and changing nature of the law may require advice from the Fair Political Practices Commission. Only an opinion from the FPPC, based upon fully disclosed facts and circumstances, provides a guarantee of legal safety. The City Attorney can and will advise you when FPPC advice should be sought.

Conflict of interest opinions are fact intensive and require significant research and analysis. Quality legal work can take time. For this reason, we request that questions be posed as far in advance as possible of any participation on a particular matter or issue which may give rise to a conflict. Questions raised on the dais as a matter is about to be considered by Council will, of necessity, result in conservative advice usually recommending to the elected official that he or she announces a conflict and disqualify himself or herself from the matter. In matters involving potential conflicts, advance preparation is very important to ensure that participation occurs in an appropriate manner.

The City Attorney serves as legal advisor to the Council and Mayor in their official capacities. It is the City's interests we represent. Because a conflict may affect a decision of the entire Council, our practice is to provide a copy of all legal opinions and memos requested by one elected official to the rest of the elected officials, as we would with any other legal opinion or communication.

COMMON LAW DOCTRINE

In 1928, the California Supreme Court enunciated the common law doctrine[36] against conflicts of interest as follows:

> A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.[37]

Against this backdrop of the common law doctrine, a multitude of conflicts of interest laws have been enacted by citizens' initiative and the state legislature. In addition, the FPPC has adopted regulations implementing these laws. However, these laws and regulations do not eliminate the doctrine of common law conflicts of interest. Council members can technically comply with all of the laws discussed below and still be found by a court to have violated the common law doctrine. It is always best for Council members to err on the side of caution in dealing with potential conflicts of interest.

The statutes adopted by the legislature are detailed and complex. The regulations adopted by the FPPC to implement the statutes add additional complexities. Many of these laws apply to staff members and other city officials in addition to Council members. Any Councilmember, staff member or other city official involved in making any governmental decision should be aware of these laws and should request legal advice in advance whenever there is any possibility of self-interest that could possibly be involved in that government decision.

POLITICAL REFORM ACT

The majority of legislation and regulations relating to conflicts of interest are embodied in the Political Reform Act[38] that was adopted by a vote of the people in a statewide initiative in 1974. The overall purpose of the Political Reform Act was designed to make sure that public officials perform their duties without bias or personal financial interest. Public officials include officers,

[36] The common law has developed through precedential court decisions. It differs from statutory law which has been created through the legislative process.

[37] *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928).

[38] Gov. Code §§ 81000 *et seq*.

employees and certain types of consultants to local government. To accomplish this goal, several levels of regulation have been set up.

DISCLOSURE OF ECONOMIC INTERESTS.

The first major area of regulation deals with **disclosure of economic interests**. The Political Reform Act requires disclosure of economic interests to assure that all economic interests that may color an elected official or employee's judgment in exercising governmental authority are known to public. All incoming elected officials as well as certain City officers and employees must disclose certain types of financial interests on forms provided by the FPPC and which must be available to the public. Those forms must be submitted to the City Clerk within 30 days of assuming office by each new member. Also, on an annual basis, they must update their forms to reflect changes in the previous calendar year. A final disclosure must be made within 30 days of leaving office.

DISQUALIFICATION OF PUBLIC OFFICIALS FROM PARTICIPATING IN GOVERNMENTAL DECISIONS.

A second area of regulations deals with the **disqualification of public officials** from participating in decisions. The Act prohibits any government official from "making, participating in making, or attempting to use his/her official position to influence a governmental decision in which he or she knows, or has reason to know, that he or she has a financial interest." The official is disqualified whether the potential impact on his or her economic interest is positive or negative. The official is legally disqualified from participation even if the official believes that his or her participation can only hurt his or her economic interests.

The Act and the regulations implementing it define a broad range of economic interests that can result in disqualification and contains a series of tests for determining whether or not the interest is material and disqualification is required. The City Attorney's office is available and should always be consulted regarding these matters prior to the decision process beginning.

If the public official has a disqualifying financial interest in a decision, the public official must publicly identify the disqualifying financial interest in detail sufficient to be understood by the public, recuse himself or herself from discussing and voting on the matter, and leave the room until after the discussion, vote, and other disposition of the matter. The public official retains the right to speak on the issue as a member of the public or an affected party during the time that the general public speaks on the issue.[39] However, any such participation should be from the public podium and not the Council dias and only after full disclosure and recusal. After speaking, the official should again remove himself or herself from the meeting room until business on that matter is concluded.

[39] Gov. Code § 87105 -AB 1797, effective January 1, 2003.

8 Step Analysis for Disqualification

The FPPC has adopted an 8 step procedure for analyzing whether or not a public official or employee is disqualified from participating in a decision. The analysis is complex and not all of the rules involved appear logical or intuitive to an untrained person. It is vital that this analysis be done by a trained professional legal advisor in possession of all of the facts. Council members and employees should refer any potential question about whether or not they can legally participate in a decision to the City Attorney.

Economic Interests

The FPPC regulations spell out numerous types of economic interests that may create a disqualifying conflict of interest. An economic interest exists whether the interest is held directly by the official or by his or her spouse, domestic partner, dependent children or any other person acting on their behalf. The categories of economic interests include:

- **Sources of Income**. Any income and/or promise of income from any person or entity involved in or affected by the decision totaling $500 or more within 12 months prior to the decision.

- **Personal Finances**. Any effect on the official's expense, income, assets or liabilities.

- **Real Property**. Any interest worth $2,000 or more in real property, whether the interest is by ownership, lease, option, lien, mortgage, or otherwise.

- **Investments**. Any investment worth $2,000 or more in a business entity.

- **Business Employment or Management**. Service as an officer, director, partner, trustee, employee or other management position of a for-profit business entity, even if not compensated.

- **Related Businesses**. Any business that is a parent or subsidiary of or is otherwise related to a business in which there is an investment or Business Employment or Management interest.

- **Business-Owned Property**. Any real property owned by a business in which there is an investment or business employment or management interest.

- **Loans**. Any loan, unless from a commercial lending institution on the same terms as available to any member of the public, or any guarantee of a loan (such as a co-signer).

- **Gifts**. Any gifts and/or promise of gifts totaling $420 or more in the 12-month period prior to the decision from any one person or entity. [**Note**: the $420 limit is adjusted every few years to reflect changes in the cost of living.]

If any Council member or employee thinks he or she might have one of the economic interests listed above, he or she should consult with the City Attorney PRIOR to any discussion or participation about a City decision either directly or indirectly affecting that interest.

CAMPAIGN REGULATIONS

The Political Reform Act also has **campaign regulations**. These regulations are not discussed in this Guidebook because the City Attorney's Office does not represent or advise elected officials in their roles as candidates. Each council candidate must consult with the FPPC on their own and/or receive legal advice from their own private attorney regarding campaign regulations.

MASS MAILINGS.

The Political Reform Act regulates mass mailings sent at public expense. (See Section 5 of this Guidebook.)

FAIR POLITICAL PRACTICES COMMISSION.

The administration of the Political Reform Act is handled by the Fair Political Practices Commission ("FPPC"). It is an independent statewide body that is made up of members appointed by the Governor and the Legislature. The FPPC has a full-time staff which provides assistance to local elected officials. The FPPC has forms, manuals, and related information available on the Website at www.fppc.ca.gov. The FPPC also provides informal assistance over the telephone to any person with a conflict of interest question. This is a valuable tool that can be used by all elected officials to spot conflict issues prior to a matter coming before them. The telephone advice line is available during normal business hours at (916) 322-5660 or 1 (866) ASK-FPPC [(866) 275-3772].

In addition to informal assistance, the FPPC also offers formal written responses. If one seeks a formal opinion, the FPPC staff will respond in writing, but response may take up to 30 days or longer after the request. A person receiving a formal written opinion from the FPPC may use that opinion as a legal defense to charges of conflict of interest violation if they fully disclosed all relevant facts to the FPPC in their request for the opinion. In some cases, the City Attorney may recommend an FPPC opinion as the only way to provide a reliable answer to a conflicts of interest question.

In the case of a conflict of interest, the elected official in question has the duty to disqualify himself or herself. This duty cannot be delegated to staff members or to an attorney. The duty rests with the officials in question because only they know the extent of their own personal financial dealings.

Attached as Exhibit C is a pamphlet entitled, "*Can I Vote? Conflicts of Interest Overview*" prepared by the FPPC to assist public officials in determining whether a disqualifying conflict or interest exists. Also attached as Exhibit D is a fact sheet prepared by the FPPC entitled, *"Limitations and Restrictions on Gifts, Honoraria, Travel and Loans*" for local officers and employees. These resources provide further guidance on this very complex and important area of law.

CIVIL AND CRIMINAL ENFORCEMENT.

The district attorney, the California Attorney General or the FPPC may bring an action, either civil or criminal to enforce the Political Reform Act where a conflict of interest exists. Also, any person residing in the City bring a civil action to enjoin violations or compel compliance with the Political Reform Act. Finally, a local agency may discipline persons who violate provisions of the Political Reform Act.

A knowing violation of the Political Reform Act is a misdemeanor punishable by a fine and/or imprisonment. A violator may be fined up to $10,000 or three times the amount not properly disclosed, unlawfully contributed, expended, given, or received, for each violation. Finally, any person convicted of a criminal violation of the Act is barred from being a candidate for any elective office or acting as a lobbyist for four years following the conviction.

An official action by the Council with the participation of a disqualified member may also be set aside by a court.

CONFLICTS OF INTEREST IN CONTRACTS (GOVERNMENT CODE §§1090 ET SEQ.)

California Government Code § 1090 prohibits City officers or employees from having any financial interest in any contract made by them in their official capacity, or by the body of which they are members, or by the City if they are considered to have "an opportunity to influence" the contractual decision. This means that even officials and employees who do not make the contractual decision itself, or who may not even be part of the decision making process can be found to have violated this law. For example, Planning Commissioners are deemed by their status as direct appointees of the City Council, to have "an opportunity to influence" any contract approved by the City Council. Therefore, the City is legally precluded from entering into any contract in which any City Council member or planning commissioner has an economic interest. Any contract made in violation of Section 1090 is void.

The penalties for any public official found to have violated § 1090 are severe. He or she must forfeit any benefit they would receive from the contract while still having to provide the benefit to the City. In addition, he or she is subject to fine and imprisonment and is disqualified from holding public office in the State of California forever.

CONSTITUTIONAL PROHIBITION OF PASSES OR DISCOUNTS FROM TRANSPORTATION COMPANIES; FORFEITURE OF OFFICE

The California Constitution contains a very strict prohibition against the acceptance of passes or discounts from transportation companies by public officers. California Constitution Article XII, Section 7 provides that the acceptance of a pass or discount "shall work a forfeiture" of the office held by the recipient. This means that any Council member who accepts such a pass or a discount is removed from office. This prohibition can be seemingly innocently violated with disastrous results. For example, if a flight attendant on an airplane notices that there is an empty seat in first class and offers it to a city official sitting in coach as a courtesy, the Council member must decline or risk being deemed to have resigned from office. If a taxi driver says "its on me, Mr. Mayor" the Mayor must insist on payment or will have forfeited his office.

The prohibition applies to "transportation companies" providing any form of commercial transportation. It does not include publicly owned transportation systems. It also does not include discounts that are offered to the public, such as newspaper coupons or "buy one get one free" sales promotions publicly advertised.

DISCLOSING FINANCIAL INTERESTS IN PROPERTY WITHIN REDEVELOPMENT PROJECT AREAS

While we have devoted a section to California Redevelopment Law (Section 11), it is important to note here that the California Redevelopment Law requires disclosures in addition to the annual disclosure forms required by the FPPC and filed with the City Clerk.

We must emphasize the importance of disclosure. The general rule is that persons who have direct or indirect financial interests in a project area may not participate in any decision that affects the project area. Participating in the decision can render the decision invalid. ***Further, failure to disclose constitutes misconduct in office*** under Health and Safety Code Section 33130. Sanctions may include removal from office, disqualification from future public office, and fines or imprisonment.

SECTION 5 – COMPENSATION, REIMBURSEMENT OF EXPENSES FOR ELECTIVE OFFICERS, AND USE OF

PUBLIC FUNDS

COMPENSATION OF ELECTIVE OFFICES

Under Government Code section 36516 a city council may enact an ordinance providing a salary for each Council member with the amount determined by the population of the city. Subsection (a)(5) provides that in cities over 150,000 up to and including 250,000 in population, based on the last U.S. Census or California Department of Finance estimate, the salary may be up to $800 per month as of January 1, 2006. The voters may set a higher or lower salary by initiative measure at a municipal election. Compensation of council members may also be increased by an ordinance in an amount not to exceed 5% for each calendar year from the operative date of the last salary adjustment. However, this means that if an adjustment is made which is less than the full 5% per year allowable at that time, future 5% increases are calculated based on the actual adjusted salary and not the maximum salary that could have been approved.

No ordinance may be enacted which provides for automatic future increases in salary. No increase in salary adopted by the Council may take effect until after at least one council member has been elected (or reelected) at a regular election and seated for a new term. Any amounts paid by the city for retirement and health benefits are not be included for purposes of determining salary, but council members may not receive any such benefits in excess of other employees. Reimbursements for actual and necessary expenses are also not to be included for purposes of determining salary.

In addition to the salary set by ordinance, each Council member may receive a stipend of not more than $150 for each meeting of a board, commission or committee (other than the Council itself or the Redevelopment Agency Board) he or she attends as a member of that body, not to exceed two meetings of each board in any calendar month. For meetings of the Redevelopment Agency Board, where there is no housing authority (as is the case in Moreno Valley), Council members may received a stipend of up to $75 per meeting, not to exceed two meetings per calendar month.[40]

REIMBURSEMENT FOR EXPENSES

Council members may be reimbursed for "actual and necessary" expenses incurred in conducting City business[41]. However, there are a number of restrictions on such reimbursements.[42]

- Expenses must be both actually incurred and reasonably necessary for the public purpose of the activity involved.

[40] Health & Safety Code § 34130.5
[41] Government Code § 36514.5
[42] Government Code §§ 53232.2 & 53232.3

- The Council must adopt a written reimbursement policy, specifying the ypes of occurrences that qualify for reimbursement relating to travel, meals, lodging and other "actual and necessary" expenses.
- The policy must set reasonable reimbursement rates for such expenses or the City must use the Internal Revenue Service's published rates.
- Lodging for conferences or educational actitities are limited to the group rates offered by the sponsor, if available.
- Council members must use government and group rates when available.
- Expenses not covered by the adopted travel reimbursement policy must be approved by the Council in advance in a public meeting.
- Council members may pay in excess of legally reimbursable rates only at their own expense.
- Council members must report all reimbursable expenses within "a reasonable time after incurring the expense" on a form which must be provided by the City, which must document that the expenses meet the existing policy. The receipts documenting the expenses must be filed with the report.
- Council members must briefly report on any meetings attended at the expense of the City at the next regular meeting of the Council.

USE OF PUBLIC FUNDS

The use of public funds by elective officers begins with the premise that public funds must only be used for authorized public purposes. In an early case, the California Supreme Court stated: "officials are not free to spend public funds for any 'political purpose' they may choose, but must use appropriated funds in accordance with the legislatively designated purpose."[43]

In addition the California Constitution prohibits the use of public funds for private benefit, whether it benefits an elected official or any other private person or entity. This is commonly referred to as a "gift of public funds." Government expenditures may incidentally benefit private parties, but the motivating purpose for the expenditure must be for the benefit of the public or the City. This is referred to as a "public purpose." *Public funds may not be used for campaign or personal purposes*. In fact, unlawful expenditures of public funds can be punishable by fine, imprisonment and/or removal from office.

Once a public purpose is established for the expenditure, there must be legal authority to expend the money. This means that there must be a formal appropriation of the funds by the Council by formal action in a public meeting. No funds may ever be appropriated in closed session or otherwise private actions. Normally, most appropriations for the regular expenses of the City are made in the

[43] *Mines v. Del Valle,* 201 Cal. 273 (1927).

formally adopted annual budget. Expenses not authorized in the budget must be approved by a special appropriation by the Council.

MASS MAILINGS AT PUBLIC EXPENSE

Elected officials must necessarily communicate with their constituents. However, the Political Reform Act discussed above in the Conflict of Interest Section has stringent rules regarding mass mailings (large numbers of substantially similar letters, flyers or other mailings) sent at public expense. "Mass mailing" is somewhat misleading. The prohibition applies to any tangible object or written document ***distributed*** ***in any manner*** (not just by mail) to homes, businesses or post office boxes

The Political Reform Act provides: "No newsletter or other mass mailing shall be sent at public expense."[44] The FPPC adopted Regulation 18901 to implement the statutory provision. California Code of Regulations Title 2, § 18901(a)[45] provides that a mailing is prohibited if all the following apply:

- An item is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. . . .
- The item is tangible object, such as a videotape, CD, DVD, refrigerator magnet or button, or a written document, such as a letter, memo, flyer, information sheet, or newsletter.
- The item either features a Council member (or Mayor) or includes the name, office, photograph, or other reference to a Council member.(or Mayor).
- Any of the costs of distribution is paid for with public moneys; or costs of design, production, and printing exceeding $50.00 are paid with public moneys
- More than two hundred substantially similar items are sent within a single calendar month.

Section 18901 (b) provides for a limited number of exceptions, they are:

- Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms, and/or envelopes of the City or in a roster listing containing the names of all elected officers of the City, provided that, the names of all elected officers appear in the same type size, typeface, type color, and location, and the item does not include the elected officer's photograph, signature, or any other reference to the elected officer
- A press release sent to members of the media.
- An item sent in the normal course of business from one governmental entity or officer to another.
- An intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff.
- Tax bills, checks, and similar documents, where use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds, but it may not include the elected officer's

[44] Gov. Code § 89001.

[45] 2 Cal. Code Regs. § 18901.

photograph, signature, or any other reference to the elected officer if not necessary to the payment or collection.

- Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, where the item does not include the elected officer's photograph; and where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.
- A legal notice or other item required by law, court order, or administrative agency order where use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing.
- inclusion of an elected officer's name on a ballot as a candidate for elective office, or inclusion of an elected officer's name and signature on a ballot argument.
- A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the City, where the name of each elected officer and individual listed appears in the same type size, typeface, and type color, as long as it does not include an elected officer's photograph, signature, or other additional reference to an elected officer.
- An announcement of a public meeting which is ***directly*** related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend, but which does not include the elected officer's photograph or signature, nor more than one mention of the officer's name.
- An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support, but which does not include the elected officer's photograph or signature, nor more than one mention of the officer's name.
- An agenda or other writing that is required to be made available pursuant to sections 11125.1 and 54957.5 of the Government Code.
- A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name.

We urge you to be extremely careful with your mailings and contact the FPPC or this Office if you have any doubt or question as to whether a mailer is appropriate.

MISUSE OF PUBLIC FUNDS

Violations of the laws prohibiting misuse of public funds or other public resources may subject a violator to criminal and civil sanctions, including imprisonment and a bar from holding elective office. They may be required to reimburse the City for the value of the resources used and may have to pay their own attorney's fees, in addition to the attorney's fees of the individual challenging the use of resources.[46] Misuse of public funds for campaign or political purposes may also give rise to reporting requirements under the Political Reform Act, and additional penalties for failure to comply with such reporting requirements.

[46] *Tenwolde v. County of San Diego*, 14 Cal. App. 4th 1083 (1993).

SECTION 6 – LIABILITY OF CITY OFFICIALS FOR CIVIL RIGHTS VIOLATIONS

This section discusses the potential civil rights liability of City officials for their own acts and the operations of local governmental entities. The emphasis is on potential liability under federal law, and the principal immunities available to local officials from federal civil rights liability. It is not a complete treatment on the subject. It does not substitute for professional legal advice based on actual facts and circumstances.

Civil rights liability can arise from virtually any area of City government operations, from animal control and code compliance to land use decisions and police operations. We hope that this brief discussion assists you, as an elected official, to understand when decisions and policies may raise federal civil rights issues. Hopefully, you will then be able to know when you should consult your human resources and legal staffs to minimize the risk of potential civil rights liability for the City and for yourself.

GIST OF A CIVIL RIGHTS VIOLATION

Essentially, a civil rights violation may arise when a municipality, or its officials or employees, deprive a person of a constitutional or federally protected right, while acting under color of law.[47] Acting under "color of law" means acting by state or local authority, rather than as a private person.[48] A city is created by virtue of state law and therefore anyone acting "under color" of a city's authority acts under "color of state law" for purposes of Section 1983.[49] Action under color of state law may encompass implementation or enforcement of a municipal law, regulation, policy or custom.[50] A person need not specifically intend to deprive another of a federal or constitutional right to be liable - he or she need only have intended to do the act.[51]

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[47] 42 U.S.C. § 1983 (sometimes cited as "§ 1983" or "section 1983"). See generally, CALIFORNIA CONTINUING EDUCATION OF THE BAR (CEB), CALIFORNIA GOVERNMENT TORT LIABILITY PRACTICE (4th Ed.) Chapter 13.

[48] *Lugar v. Edmonson Oil*, 457 U.S. 922, 102 S. Ct. 2744 (1982).

[49] *Lugar v. Edmonson Oil Co.,* 457 U.S. 922, 937, 102 S. Ct. 2744 (1982).

[50] See CALIFORNIA CONTINUING EDUCATION OF THE BAR, CALIFORNIA GOVERNMENT TORT LIABILITY PRACTICE, *supra*, at §§ 13.20 and 13.21.

[51] *Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473 (1961) (overruled on other grounds 436 U.S. 658 (1978)); *San Pedro Hotel Co., Inc. v. City of Los Angeles*, 159 F. 3d 470 (9th Cir. 1998).

Although not discussed in detail, California has its own constitutionally protected rights and its own statutes prohibiting various forms of discrimination. Some of these mirror the federal law but in several areas, California law is stricter than federal law.

POTENTIAL PERSONAL LIABILITY OF CITY OFFICIALS FOR CIVIL RIGHTS VIOLATIONS

Ordinarily, Council members acting within the traditional legislative capacity, and city prosecutors acting as advocates in the criminal process, are absolutely immune from liability for damages under Section 1983. Legislators act within the traditional legislative capacity when they formulate laws and policies to be applied in all future cases (e.g., adopt ordinances, rezone property, adopt budgets, levy taxes, adopt broad policies, adopt general plans, etc.), within lawful proceedures.[52]

However, legislators and prosecutors can be sued for court orders prohibiting or undoing violations. Government officials performing ***discretionary*** functions generally have a "qualified immunity". This means that they cannot be sued as long as a reasonable person would have believed that their conduct did not violate clearly-established statutory or constitutional rights.[53] A act is "discretionary" if the actor is free to exercise judgment in determining the manner in which a duty is to be performed. When little or nothing is left to the individual's judgment as to the manner in which to perform the duty, the duty is "ministerial". Qualified immunity applies to officials, but not their governmental entities.

Although legislators are entitled to absolute immunity for legislative acts, this immunity does not apply when acting in an administrative or executive capacity. In other words, Council members only have absolute immunity against civil suits when acting within their legislative roles.[54]

ACTS WHICH MIGHT RESULT IN A CIVIL RIGHTS VIOLATION

The following are some of the situations that can result in civil rights liability:

EMPLOYMENT DISCRIMINATION.

[52] *Strumsky v. San Diego County Employees Retirement Assn.*, 11 Cal. 3d 28, 520 P. 2d 29 (1974); *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 99 S. Ct. 1171 (1979); *Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984 (1976).

[53] *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727 (1982).

[54] *San Pedro, supra,* 159 F. 3d at 482.

Discrimination in hiring, firing, promotion, retention, work assignments of certain classifications of persons, including actions or proceedures that have a disproportionate impact on protected classes of persons. Tests must be job related or justified by business necessity (i.e., a valid measure of job performance).[55] Tests may not be scored or biased on the basis of race, religion, national origin or color.[56]

Title VII of the Civil Rights Act of 1964 is applies to local governments[57] and prohibits discrimination on the basis of race, color, religion, national origin, sex, and certain retaliatory acts. It also applies to job applicants as well as employees.[58]

California Constitution, Article 1, Section 8, prohibits employers from discriminating against any employee, potential employee or contractor because of sex, race, creed, color, national origin or ethnic origin.

The California Fair Employment and Housing Act ("FEHA") applies to all cities and prohibits discrimination on the basis of actual or perceived race, color, national origin, ancestry, sex, pregnancy, childbirth, or related medical condition, marital status, religious creed, physical and mental disability, medical condition (cancer-related or genetic characteristics), age (40 and over), and sexual orientation. It is also unlawful to discriminate against individual because he or she is associated with a person who has, or is perceived to have, any of these characteristics.[59]

PREGNANCY, CHILDBIRTH, AND RELATED MEDICAL CONDITIONS.

The Pregnancy Act of 1978 is part of Title VII and prohibits discrimination on the basis of pregnancy, childbirth, pregnancy disability and related medical conditions.[60]

SEXUAL HARASSMENT.

[55] *Griggs v. Duke Power Company*, 401 U.S. 424, 91 S. Ct. 849 (1971) (overruled on other grounds, as recognized in 914 F. Supp. 1257 (1996)).

[56] 42 U.S.C. § 2000e-2(1).

[57] 42 U.S.C. § 2000e-2, 2000e-3.

[58] 42 U.S.C. § 2000e-2(a).

[59] Gov. Code §§ 12920 - 12927, 12940 - 12948. The FEHA applies to public employers pursuant to Government Code section 12926(d). Implementing regulations have been adopted by the Fair Employment and Housing Commission. See 2 Cal. Code of Regs. §§ 7285 *et seq.*

[60] 42 U.S.C. § 2000e-(k).

Unwelcome sexual advances or requests for sexual favors, or verbal or physical conduct of a sexual nature which interferes with a person's work performance or creates an intimidating or hostile work environment is a form of discrimination under both California and federal law.[61]

AGE DISCRIMINATION.

The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age for persons age 40 and over.[62]

DISABILITY DISCRIMINATION.

The Rehabilitation Act of 1973 applies to local governments receiving certain kinds of federal financial assistance and prohibits discrimination against the handicapped in programs or activities receiving federal financial assistance.[63]

In addition, the Americans with Disabilities Act ("ADA") prohibits discrimination on the basis of disability against a qualified individual with a disability in regard to virtually every aspect of the employment relationship.[64] It also prohibits discrimination in government "programs." The ADA and California law require government facilities to be accessible to individuals with disabilities. A qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.[65]

Title I generally prohibits discrimination against a qualified individual with a disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.[66]

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[61] 29 U.S.C. § 2000e-(a)(1); Gov. Code §§ 12940(h) and (i), and 12950.

[62] 29 U.S.C. §§ 621, *et seq.*

[63] 29 U.S.C. §§ 701-7961.

[64] 42 U.S.C. §§ 12101 *et seq*. The ADA supplements the Rehabilitation Act of 1973 (29 U.S.C. §§ 791 *et seq*).

[65] 42 U.S.C. §§ 12131, *et seq.*

[66] 42 U.S.C. § 12112. The effective date for Title I of the ADA was July 26, 1992.

NATIONAL ORIGIN AND CITIZENSHIP.

The Immigration Reform and Control Act of 1986 prohibits discrimination based upon national origin and citizenship by employers with more than three employees.[67]

PROTECTED SPEECH.

There is some protection for employees (although not absolute constitutional protection) who speak out on matters affecting public concern, or who are "whistleblowers", meaning that they report to certain government authorities illegal activities of their employers.[68]

LAND USE DECISIONS AND ACTIONS AFFECTING PRIVATE LAND.

City decisions and actions regulating the development and permissible uses of land can result in liability under the Fifth and Fourteenth Amendments if they go beyond the legitimate exercise of the regulatory powers of the City. The City may not "take" property for public use without payment of just compensation and Due Process of Law. Such a "taking" can happen by the City directly taking possession or ownership of the land or an interest in the land. If the City occupies or uses property it does not own or require dedications in excess of what is needed to mitigate the impacts of the development project, the City can be found to have condemned the property and be required to pay damages. On the other hand, if the City regulates beyond its constitutional powers and thereby impermissibly diminishes the value of the land, or regulates without due process of law, it can be liable for "inverse condemnation" and be required to pay damages to the landowner. If the City regulates in a way that discriminates on the basis of race, religion, gender or other impermissible grounds, such regulations can be overturned as unconstitutional and the City can be liable for damages under various civil rights laws.

IMPROPER PRE-CONDEMNATION BEHAVIOR

The City and its officials, must take care when contemplating the use of eminent domain powers. If the City announces its intent to condemn property and then unreasonably delays the eminent domain action thereby hurting the property value or the owner's business, or if it otherwise acts unreasonably to diminish the value of the property before condemnation, it may be liable for damages in inverse condemnation. Such unreasonable actions could be

[67] 8 U.S.C. § 1324b, *et seq.*

[68] *Pickering v. Board of Education*, 391 U.S. 563, 88 S. Ct. 1731 (1968); *Chico Police Officers Association v. City of Chico*, 232 Cal. App. 3d 635, 283 Cal. Rptr. 610 (1991).

decisions affecting zoning or other regulations, enforcement actions or decisions regarding public improvements nearby.

CITY ACTIONS IMPERMISSIBLY SEEKING TO REGULATE CONDUCT.

Ordinances, resolutions, executive orders, regulations, and other actions may be set aside on civil rights grounds if they are too vague to enforce, or if they are overbroad and limit both protected (freedom of speech, press and religion, etc.) as well as unprotected conduct. This is sometimes the case with certain vagrancy, curfew, public assembly, and other ordinances.[69]

ENFORCEMENT OF PERMISSIBLE ORDINANCES IN AN IMPERMISSIBLE MANNER.

Similarly, otherwise valid ordinances may not be enforced in an arbitrary manner against classes of people, particularly protected classifications such as race, religion, gender, national origin, etc. Ordinances must bear a rational relationship to a legitimate state purpose. Where protected classifications or fundamental rights are affected ordinances must be "narrowly tailored to promote a compelling state interest,"[70] which is a very difficult standard to meet.

ILLEGAL SEARCH AND SEIZURE

When an enforcement or other city officer or employee enters private real property or searches or seizes private personal property to find evidence for an enforcement action, but does so without Constitutional authority, the officer and the City may be liable for violation of Constitutional rights. Officers must obtain a warrant or other court order, permission from the property owner or resident, or be within certain very specific and narrow exceptions to those requirements prior to entering, searching or seizing any property

FAILURE TO (ADEQUATELY) TRAIN.

The failure to train or adequately train employees which results in discriminatory acts showing deliberate indifference to the rights of persons with whom the employee comes in contact may give rise to liability.[71] This situation most often arises in the case of enforcement personnel such as police officers, rangers, guards, etc.

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[69] *Connally v. General Construction*, 269 U.S. 385, 46 S. Ct. 126 (1926); *Coates v. Cincinnati*, 402 U.S. 611, 91 S. Ct. 1686 (1971).

[70] *Weber v. City Council of Thousand Oaks*, 9 Cal. 3d 950, 513 P. 2d 601 (1973).

[71] *City of Canton v. Harris*, 489 U.S. 378, 109 S. Ct. 1197 (1989).

FAILURE TO (ADEQUATELY) SUPERVISE.

The failure to supervise or adequately supervise which amounts to deliberate indifference to the rights of persons with whom the employee comes in contact may give rise to liability.[72] When a history of widespread abuse puts the responsible supervisor on notice of the need for improved training or supervision and the official fails to take corrective action, the supervisor may be liable if the failure causes "constitutional" injury to others.[73]

FAILURE TO INTERVENE OR PREVENT AN ACT (INACTION).

A local governmental entity may be liable under Section 1983 "if it has a policy of inaction and such inaction amounts to a failure to protect constitutional rights."[74]

To impose liability on a local governmental entity for failing to act to preserve constitutional rights, a Section 1983 plaintiff must establish that he or she possessed a constitutional right of which he or she was deprived, that the municipality had a policy that "amounts to deliberate indifference" to the plaintiff's constitutional right, and that the policy is the "moving force behind the constitutional violation."[75]

A person may be liable for a wrongful act by a person he or she supervises of which he or she was aware, but which he or she failed to prevent,[76] or for the wrongful act of another which he or she is capable of preventing, but fails to intervene to prevent.[77]

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[72] *Davis v. City of Ellensburg*, 869 F. 2d 1230 (9th Cir. 1989).

[73] *Johnson v. Duffy*, 588 F. 2d 740 (9th Cir. 1978); *Fundiller v. City of Cooper City*, 777 F. 2d 1436 (11th Cir. 1985).

[74] *Oviattt v. Pearce*, 954 F. 2d 1470, 1474 (9th Cir. 1992).

[75] *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S. Ct. 1197 (1989).

[76] *Taylor v. List*, 880 F. 2d 1040 (9th Cir. 1989).

[77] *Meehan v. County of Los Angeles*, 856 F. 2d 102 (9th Cir. 1988).

FEDERAL FAIR HOUSING ACT.

The Federal Fair Housing Act ("FFHA") of 1968, as amended, contains broad language barring housing practices that discriminate on the basis of race, disability, handicap, and other factors. In addition, the FFHA requires housing providers, including entities like the City who make housing rehabilitation and CDBG loans and grants, to make reasonable accommodations when necessary to afford handicapped and other persons equal opportunity to housing programs. The FFHA further prohibits discrimination in the processing review or making denial of loans.[78]

ACCESS TO FACILITIES AND SERVICES.

The ADA (discussed above), has broad implications for potential local government liability if its requirements are not observed. For example, the ADA generally requires, among other things, that: programs and services be provided in an integrated setting, unless separate or different measures are needed to ensure equal opportunity; reasonable modifications in policies, practices, and procedures that would otherwise deny equal access to disabled individuals, unless fundamental alteration in the program would result; auxiliary aids and services when needed to ensure effective communication, unless an undue burden or fundamental alteration would result; and operation of city programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.[79] Under Title II of the ADA, public entities may not discriminate against or deny access or services to any "qualified individual with a disability" when providing services, including public transportation.[80] Title II of the ADA establishes detailed requirements for accessibility and usability of public transportation vehicles, trains, or commuter rail cars and for transportation facilities or stations.[81]

Title II of the ADA also prohibits local governmental agencies from excluding qualified individuals from participating in or receiving the benefits of the entity's services, programs or activities on the basis of a disability.[82] The regulations prohibit discrimination on the basis of disability in employment under any service, program or activity conducted by a public entity.[83]

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78 42 U.S.C. §§ 3600, *et seq.*

79 See generally, U.S. Department of Justice, Civil Rights Division, Title II Highlights, http://www.usdoj.gov/crt/ada/t2hlt95.htm.

80 42 U.S.C. §§ 12131 *et seq*.

81 42 U.S.C. §§ 12131 *et seq.*; see also 28 C.F.R. §§ 35.101 - 35.190.

82 42 U.S.C. § 12132.

83 28 C.F.R. § 35.140.

Both cities are prohibited from purchasing rapid transit equipment which is not accessible to individuals with disabilities.[84] If state law prescribes higher accessibility standards than federal law, state law requirements must be followed.[85]

FIRST AMENDMENT ACCESS TO PUBLIC FACILITIES

The First Amendment precludes a local government from taking sides in any political or social debate or election by making public facilities available to only one side. Once a public forum has been established, free speech and equal protection principles prohibit discrimination based solely on content or subject matter.[86] Reasonable restrictions on the time, place and manner of the speech or other expressive activity (such as picketing, parading, art, performance, etc.) may be imposed so long as they are not content-based, provide adequate alternative means of reaching the intended audience and are "narrowly tailored" to protect a legitimate governmental interest, such as public safety, traffic circulation, etc.

The law related to speech, signs, art, performance, etc. on public property is very complex and requires professional analysis and advice. There are different sets of rules for different types of City property. If any questions in this area or any challenges to existing City policies are made by members of the public, the City Attorney's Office should be contacted immediately and before any decision or action by City officials or employees.

THE CONSEQUENCES TO AN OFFICIAL OR A CITY OF BEING FOUND LIABLE FOR A CIVIL RIGHTS VIOLATION

If the City loses a civil rights lawsuit, it may be liable to the successful plaintiff for compensatory damages. Where the harm is continuing or will take place in the future, the court may issue an injunction and/or a declaration that the local governmental action, policy or decision violates the civil rights law. Punitive damages may also be awarded, in addition to compensatory, declaratory and injunctive relief.[87] Finally, plaintiffs are typically awarded attorneys' fees, often in significant amounts.[88]

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[84] Gov. Code § 4500(a).

[85] Gov. Code § 4500(b).

[86] *Lehman v. City of Shaker Heights*, 418 U.S. 298, 315-316, 94 S. Ct. 2714 (1974).

[87] *Martinez v. Procunier*, 354 F. Supp. 1092 (1973), aff'd 416 U.S. 396 (1974) (overruled on other grounds, as recognized in 802 F. Supp. 606 (1992)).

[88] 42 U.S.C. § 1988.

A public official or employee who is found liable for a civil rights violation is entitled to indemnification for compensatory damages.[89] To receive indemnification, the official or employee must request indemnification in writing before trial, obtain the City's defense of the claim and reasonably cooperate in good faith in the defense of the action.[90] Even where a conflict between the City and the official may arise, the City may be required to indemnify the employee or official subject to a written reservation of rights. However, where defense of the official would create "an actual and specific conflict of interest," then the City may refuse to provide a defense.[91] The City may even indemnify the official or employee for punitive damages, if the Council makes findings that it is in the best interests of the City to do so.[92] The findings may only be made after a judgment has been rendered in the case.

.In addition to potential civil liability for a violation of civil rights, any evidence found through an illegal search is inadmissible in Court to prove to the crime alleged to have been committed. Often such an exclusion from evidence results in the dismissal of the underlying enforcement action or a reversal of any conviction obtained by the City officer's prosecution.

[89] Gov. Code §§ 825 *et seq*.; *Williams v. Horvath*, 16 Cal. 3d 834, 843, 548 P. 2d 1125 (1976) (distinguished on other grounds 105 Cal. App. 3d 876 (1980)).

[90] Gov. Code § 825(a). Public entities must defend employees and former employees in civil actions if the employee's act or omission was within the scope of his employment, the employee did not act with actual fraud, corruption or actual malice and the defense of the action would not create a specific conflict of interest between the entity and the employee. (Gov. Code §§ 995 and 995.2.) Special rules regarding indemnification of elected officials who tortiously interfere in a judicial proceeding, commit an intentional tort not directly related to the official's performance of official duties or violate specified Government Code and Penal Code sections relating to official misconduct are found in Government Code §§ 815.3, 825(f) and 825.6.

[91] Gov. Code § 995.2.

[92] Gov. Code § 825.

SECTION 7 – PROCUREMENT AND PUBLIC WORKS CONTRACTS

This section is intended as general legal guidance to assist in contracting for the procurement of goods and public works projects.

COMPETITIVE PROCUREMENT

Purchase of Goods. The Moreno Valley Municipal Code establishes rules and procedures for the procurement of supplies, materials and equipment. Competitive open market bidding is required for all such procurements above $50,000. City Council approval is required to award a contract for goods exceeding $100,000. The Code permits sole source contracts only in limited circumstances. The code also permits "piggyback" contracts in certain circumstances, where the City uses the results of a purchasing arrangement already completed by another governmental agency to receive a competitive price.

Public Works Contracts. By state law, public works contracts must be awarded to the lowest responsible and responsive bidder. Public works include construction and renovation of buildings, roads, pipelines, powerlines, parks, and related facilities and installation of major equipment and fixtures. It also includes painting, carpet installation and other forms of work sometimes thought to be maintenance. The Moreno Valley Municipal Code provide that all contracts for work on a public project shall be advertised, bid, and awarded in conformity with the Uniform Public Construction Cost Accounting Act commencing with Government Code section 22000. City Council approval is required to award a public works contract exceeding $100,000. The Council may reject all bids and either cancel the project or re-bid the project where circumstances indicate it is not in the City's best interest to award a contract.

QUALIFICATIONS-BASED PROCUREMENT

Architectural, engineering, or other professional consultant services ("Professional Services") are procured through a qualification-based selection. Professional Services contracts are awarded on the basis of a firm's demonstrated competence and professional qualifications and fair and reasonable prices per section 4526 of the Government Code.

EXECUTION OF CONTRACTS; PERSONS AUTHORIZED; LIMITATIONS

According to state law and Moreno Valley Municipal Code section 3.12.025, the City is not bound by any contract unless the contract is in writing, approved by the City Council and signed on behalf of the City by the mayor or by such other officer or officers as shall be designated by the City Council and attested by the city clerk. The City Council (by ordinance or resolution) may authorize the city manager to bind the City. The City Council has delegated to the City Manager the power to execute and bind the City to contracts of $100,000 or less.
All contracts must be approved as to form by the City Attorney.

REDEVELOPMENT AGENCY CONTRACTS

Article 43.1 of the Local Agency Public Construction Act[93] sets forth the competitive bidding requirements for contracts awarded by redevelopment agencies. Section 20688.2 provides:

> Any work of grading, clearing, demolition, or construction undertaken by the agency shall be done by contract after competitive bids if the cost of such work exceeds the amount specified in Section 20162 as that section presently exists or may be hereafter amended. With respect to work of grading, clearing, demolition, or construction which is not in excess of that amount, the agency may contract the work without competitive bids, and in contracting such work may give priority to the residents of such redevelopment project areas and to persons displaced from such areas as a result of redevelopment activities.

Public Contract Code Section 20162 sets the amount at $5,000. Thus, work of grading, clearing, demolition, or construction undertaken by the Redevelopment Agency of the City of Moreno Valley ("Agency") shall require competitive bidding if the cost of such work exceeds $5,000.

The authority to establish a redevelopment agency and the authority for the agency to function as a redevelopment agency is granted by the Community Redevelopment Law of the State of California.[94] Redevelopment agencies are, therefore, creations of the state and must abide by state law.

Community redevelopment is of statewide concern and preempted by the state legislature. Community Redevelopment Law specifically states that:

> For these reasons it is declared to be a policy of the state:
>
> . . . (c) That the redevelopment of blighted areas and the provisions for appropriate continuing land use and construction policies in them constitute public uses and purposes for which public money may be advanced or

[93] Public Contract Code §§ 20688.1 - 20688.4.

[94] Health and Safety Code §§ 33000 *et seq.*

> expended and private property acquired, and are governmental functions of state concern in the interest of health, safety, and welfare of the people of the State and of the communities in which the areas exist.[95]

Consistent with the state's intention to preempt the field in the area of redevelopment, the $5,000 limit for redevelopment agency contracts as set forth in Public Contract Code Section 20688.2 is the controlling statutory limit.

[95] Health and Safety Code § 33037 (emphasis added).

SECTION 8 – CODE ENFORCEMENT

The City's Code Compliance Division, a division of the Community Development Department, is primarily responsible for enforcing the Moreno Valley Municipal Code to maintain and improve the safety, cleanliness, and aesthetic attractiveness of Moreno Valley neighborhoods. The major code enforcement effort over the years has been driven by citizen complaints, with proactive project areas as determined from time to time. Although a majority of Municipal Code violation cases are investigated by the Code Compliance Division, cases may be initiated by any department including Police, Building and Safety, Fire Prevention, Public Works and Animal Services within their respective areas of authority.

CODE ENFORCEMENT AUTHORITY

Cities are granted a broad police power by the California Constitution which authorizes the City Council to enact laws to protect the local health, safety and welfare so long as those laws are not in conflict with state laws.[96]

The Moreno Valley Municipal Code provides that it is unlawful to violate any provision of the code or any condition of any approval or permit issued pursuant to the code and that any such violation constitutes a misdemeanor.[97] The City Attorney has authority to prosecute cases as infractions rather than misdemeanors when appropriate. In addition the Municipal Code declares all conditions existing in violation of the code to be public nuisances.[98]

ROLE OF THE CITY ATTORNEY

In general, City staff investigates reports of alleged violations and attempts to resolve matters with the property owner. The City is usually successful in obtaining compliance at the administrative level. However, there are a number of violations each year which are not quickly resolved and are referred to the City Attorney's Office for resolution. While the City Attorney's Office also tries to obtain voluntary compliance where appropriate, these cases may result in the institution of legal action to obtain compliance, including warrants for abatement, injunctions to restrict or prohibit certain actions, receiverships to place the property in the hands of a professional manager to renovate certain problem properties and/or criminal prosecution of the persons responsible.

[96] Cal. Const. art XI, §7.
[97] MVMC §1.01.200(A).
[98] MVMC §1.01.250(A).

The City Attorney's Office has undertaken a number of Municipal Code revisions to aid in code enforcement. These have been for the purpose of streamlining the process, updating the Code to comply with state and federal law, and adding additional subject areas for enforcement.

The City Attorney's Office also provides staff training and is available to provide advice and counsel to staff and to Councilmembers concerned about code enforcement issues.

PROSECUTORIAL DISCRETION

Once a matter is referred to the City Attorney's Office, its character changes. In the City of Moreno Valley, the City Attorney is the prosecutor for all violations of city ordinances[99] and the Riverside County District Attorney is the prosecutor for all state offenses (except where the City Attorney has been designated specific authority). By operation of State law, when functioning as a prosecutor, the City Attorney no longer represents the City of Moreno Valley, but the People of the State of California. As such, the prosecutor of a criminal case must remain independent of the governing body of the jurisdiction in the prosecution of any offense. The City Attorney, while acting as prosecutor, cannot take direction on the handling of the case from any other person, employee or Council Member. The City Council has no authority to access case files, determine if a criminal case should or should not be filed, or decide the terms on which a criminal case will be resolved short of trial or otherwise direct prosecutorial decisions. As a courtesy, the City Attorney endeavors to keep the Council informed where cases are likely to receive publicity or cause public concern, but the Council is not briefed on the details of prosecutions or asked for direction. This preserves the City Attorney's independence as a prosecutor and protects the Council from accusations of ticket fixing or other inappropriate involvement with enforcement matters.

State law provides that local prosecutor has broad discretion in charging and managing criminal cases.[100] The prosecutor can choose which charges to file or not to file at all; to set up an office conference or reach a civil compromise; to file as a misdemeanor or an infraction; and to negotiate and execute a plea bargain. The City Attorney also has the discretion to reduce or waive fines, including civil citations, as part of a settlement.[101]

As a body, the Council can decide to repeal or modify existing laws, budget enforcement resources, etc.; however, even if the Council changes the law alleged to be violated in a particular case, the prosecutor retains the sole discretion to either dismiss or amend the charges in light of the legislative action, or prosecute under the law applicable at the time of the criminal act.

TYPES OF CODE ENFORCEMENT CASES

Code Enforcement Cases can originate from several different sources, involve many different factual issues and various codes. Any violation of the Municipal Code or any state law adopted by the Municipal Code or any condition of any permit or approval required by the Municipal Code is a potential code enforcement case. Once the violation is investigated by the proper department and attempts at voluntary compliance have failed, these cases may be referred to the City Attorney's

[99] MVMC §2.16.010.
[100] Cal. Govt. Code §26500-26501.
[101] MVMC §6.04.120(H).

Office for further enforcement. The following list is just a sampling of the most common types of code enforcement cases.

STATE LAWS

Some state laws provide that the City shall be the enforcement agency and authorize the City to prosecute violations of such laws. Examples of these include the abatement of drug[102] or prostitution[103] houses; state housing laws[104]; or certain unfair competition or deceptive business practices[105].

PROPERTY MAINTENANCE

Typically enforced by the Code Compliance Division, these violations include landscaping, accumulations of junk, trash or debris, faulty weather protection and other property maintenance related offenses prohibited by the Municipal Code.[106]

BUILDINGS AND STRUCTURES

Whether hazardous or simply unpermitted, these offenses are generally investigated by the Building and Safety Division. Cases include illegal patio covers and room additions or hazardous or unpermitted electrical, plumbing or remodeling.[107]

PUBLIC WORKS/LAND DEVELOPMENT

These cases typically involve illegal grading or stormwater system violations and are typically investigated by the Public Works Department.

PLANNING/ZONING

When individuals are engaging in a use of land that is either prohibited or contrary to permits or approvals issued for the use, the Planning Division may investigate and initiate a case. Examples include businesses operating illegally in a residential zone or businesses that have expanded their use beyond their current approvals or permits.

FIRE

Violations of local fire prevention ordinances and the state fire code may be investigated by the Fire Prevention Division. Cases may include occupancy violations, locked doors, dry or dead vegetation,

[102] Cal. Health & Safety Code §11570 et seq.
[103] Cal. Penal Code §11225 et seq.
[104] Cal. Health & Safety Code §17920.3.
[105] Cal. Bus. Prof. Code §17200 et seq.
[106] MVMC §6.04.040.
[107] MVMC 6.04.040(A).

and obstructing required fire lanes.

ANIMAL CONTROL

The Animal Services Division investigates cases involving animals and may initiate cases for violations ranging from dogs at large to animal cruelty.

POLICE

The Police Department may investigate violations of the municipal code that are more transitory in nature, such as trespass, drinking in public, illegal vending, illegal dumping or off-road vehicle riding. These cases are generally handled by both the Police Department and the City's Code Compliance Division.

BUSINESS LICENSE

The Business License Division investigates violations of the Municipal Code related to failure to obtain a business license, to file the required returns or fraud in reporting and payment of business license taxes. The Business License Division may also be involved in investigating highly regulated businesses such as massage parlors, street vendors, or taxis.

INVESTIGATIONS

INITIAL COMPLAINT

Most code enforcement investigations are reactive, rather than proactive. That is, most cases begin with the filing of a complaint by a member of the public. This complaint may be anonymous. Some targeted enforcement is proactive, such as the City's foreclosure team targeting abandoned or vacant houses, or illegal vendor sweeps. Cases may also be initiated by inspectors noticing a violation while on a property for a different reason. However, a majority of all code enforcement cases are initiated through the complaint process.

IDENTIFICATION OF RESPONSIBLE PERSONS

Before any notices, citations or orders can be issued, the person responsible for the violation must be identified. For certain offenses, like illegal dumping or drinking in public, this is as simple as obtaining identification from the individual. When the offenses are property related, however, additional research is required.

The Municipal Code defines a 'Responsible Person' as "the owner of record of real property, any occupant, agent, custodian, lessee, manager, user or interested holder in property or premises, including, but not limited to, a trustee or beneficiary who holds a deed of trust to abandoned property; or any other person determined to have caused, committed, or permitted a violation of this

code, or any other law, statue, regulation or rule regulating public nuisances."[108]

The enforcement official must determine any and all such responsible parties and attempt to make contact and send notice to each person or entity. In a foreclosure scenario, a bank or other institution becomes a 'responsible party' when they have begun the foreclosure process by issuing a Notice of Default and/or Notice of Trustees sale and the owners have vacated the property. A financial institution need not complete the foreclosure and take possession to become a responsible party.

SEARCHES AND INSPECTION WARRANTS

Once a complaint has been received, enforcement officers will investigate the allegation by visiting the subject property. If the violations are visible from the public right-of-way, they will take photos of the violation. If, however, the violations are not readily visible, enforcement officers will need to get consent from the property owner or tenant to enter the property. This consent is often given voluntarily. When consent is refused, the enforcement officer, with the assistance of the City Attorney's Office, prepares an administrative inspection warrant[109] which is then served on the property owner. This warrant is similar to a search warrant and authorizes officials to enter private property to inspect for regulatory violations.

In order to obtain an inspection warrant the enforcement officer prepares a declaration of probable cause describing the facts known to the officer that lead them to believe that a violation of local building, health or safety laws exist on the property. An inspection warrant application must also set forth that an attempt was made to get consent to inspect and that consent was withheld.[110] If the judge feels that there is probable cause to inspect the property, a warrant will issue setting forth the areas that may be inspected and that the inspection must occur between 8:00 am and 6:00 pm.[111] The property is posted with the warrant typically 48 hours in advance of the actual inspection. Inspection warrants are valid for fourteen (14) days from the date signed by the judge.[112] Due to the lack of consent, it is customary for enforcement officials to be accompanied by sworn police officers when serving and executing a warrant. After completing the inspection, enforcement officers prepare a report, called a Return on Warrant describing their findings. This return must be filed with the court.

STRICT LIABILITY

Many crimes involve both a prohibited act and criminal intent to commit the act.[113] However, in the code enforcement context, most violations do not depend on criminal intent. It is irrelevant if the responsible party had any intent to violate the City's codes. This is particularly true when it comes to violations related to conditions on real property. This is known as "strict liability". Therefore, property owners do not escape liability for the conditions of their property because they were

[108] MVMC §6.04.020.
[109] Cal. Civ. Proc. Code §1822.50 et seq.
[110] Cal. Civ. Proc. Code §1822.51.
[111] Cal. Civ. Proc. Code §1822.56.
[112] Cal. Civ. Proc. Code §1822.55.
[113] Cal. Penal Code §20.

unaware of the unlawful condition, or because they cannot afford to remediate a substandard condition or because they never meant to break the law. However, except in egregious cases or special circumstances, the City Attorney's office by prosecutorial discretion does not criminally prosecute a property owner who accepts responsibility for the violations and cooperates in correcting them.

NOTICE OF VIOLATION

After a violation has been confirmed, enforcement officers issue a Notice of Violation, detailing the code section being violated, a course of correction and a time period for correction. These Notices may be personally delivered to the property owner but are more commonly mailed to the address recorded on the property deed where tax statements are to be mailed and posted on the subject property.[114] Although the Notice of Violation is a requirement before any city abatement [direct physical action to eliminate the condition causing the nuisance or code violation] can occur, it is not required before issuing a civil citation or filing of a civil action or criminal complaint.[115]

STOP WORK ORDER

Whenever unpermitted or hazardous construction is found, the Building Official or City Engineer can issue a Stop Work Order preventing any additional work from being done until approved and permitted by the Department of Building and Safety. A violation of a Stop Work Order is a misdemeanor and contractors or homeowners can be arrested or cited immediately upon commencing work after such an Order has been issued. This helps stop illegal work in progress and makes it easier to get the property back on course before additional work is completed.

OFFICER NOTES AND REPORT

Enforcement Officers are encouraged to take notes of inspections and to place those notes into the City's code and permit tracking system. Photos should be taken of all violations and those photos retained and date stamped. Photos should include wide shots of the property as a whole, as well as close up shots of any alleged violations. If the case needs to be referred to the City Attorney's Office for further enforcement action, these notes and photos are used to help the officer write a City Attorney Case Referral Report, which is used as the basis for any future court action.

CITY ATTORNEY REFERRAL

When an enforcement officer is unable to gain voluntary compliance through notices or administrative citations, the case may be referred to the City Attorney's Office. At that point, the officer must gather all photographic evidence and write a report detailing the dates of inspection and the officer's observations along with a listing of the relevant Municipal Code Sections being violated. If a violation is particularly egregious or a property has been the subject of repeat

[114] MVMC §6.04.080(C).
[115] MVMC §6.04.080(E).

violations, the Enforcement Officer may, if properly trained[116], issue a misdemeanor notice to appear in court at any point in the investigation. This citation is then sent to the City Attorney's office for processing.

The City Attorney's Office reviews cases and citations which have been referred by Enforcement Officers and determines what the most effective and appropriate action would be for that particular matter. Some cases may need immediate filing in criminal court, where others may be resolved through a simple office conference. The City Attorney retains discretion on handling those matters but continues to work with the Enforcement Officer for follow-up inspections or courtroom testimony.

PUBLIC RECORDS ACT

In Moreno Valley, Code Enforcement cases may begin administratively but when compliance is not achieved, the City Attorney routinely files criminal charges against violators. For this reason, code enforcement investigations are like police investigations in that they are criminal investigatory files. Such files are exempt from disclosure under the Public Records Act. Accordingly, investigatory files are not available to the public or Council Members while the investigation is pending. Note, however, that once the case is closed the files become public records. Likewise, once a case is filed in court, those documents are also available to the public.

CODE ENFORCEMENT ALTERNATIVES

ADMINISTRATIVE ENFORCEMENT

The first step in most code compliance cases is an attempt to gain voluntary compliance through administrative means. In Moreno Valley, this includes a warning notice and/or Notice of Violation letter issued to the violator and a time period to correct before additional remedies are sought. Although this warning notice is not legally required for all remedial actions, some legal remedies do require that proper notice first be given. Accordingly, we encourage City staff to issue warning notices and Notices of Violation on most code violation cases to ensure that the City has the widest selection of alternative enforcement options. If attempts to gain voluntary compliance are unsuccessful, the investigating department may issue civil citations.

LIENS

When a code violation is related to a particular parcel of real property, it is common for the City to record an informational lien known as a "Notice of Substandard Property." This lien places all future purchasers or lenders of the property on notice that the parcel is in violation of the Municipal Code. In order to complete the transfer or refinance of the property, this lien will need to be removed. The lien may be removed when the property owner pays all outstanding fines and fees and has remediated the code violations on the property or, alternatively, the lien may be removed

[116] Cal. Penal Code §836.5.

upon the execution of a Nuisance Abatement Agreement by the prospective purchasers and the payment of all fines and fees through escrow.

CIVIL CITATIONS

Chapter 1.10 of the MVMC authorizes the issuance of civil citations by an enforcement officer to any person violating a provision of the code.[117] These citations are similar to a traffic ticket in that the failure to pay results in civil collection efforts. Civil Citations are issued in escalating amounts, the first violation being $100.00, the second $200.00 and the third $500.00. Failure to pay the citation within thirty (30) days also results in a penalty equal to 100% of the base fine amount.[118] If citations remain unpaid they may be collected through court proceedings or through collection on lien releases.

Any person issued a civil citation may appeal that citation by depositing the fine amount and requesting a hearing in writing within thirty (30) days of issuance of the citation.[119] In such an event, a hearing is conducted by a neutral hearing officer to either uphold or cancel the citation.

MISDEMEANOR CITATIONS

If administrative attempts at compliance fail or the violations are severe or recurring in nature, an individual may be issued a misdemeanor citation or a Notice to Appear in court to answer to a misdemeanor complaint. Misdemeanor charges carry a maximum penalty of $1000.00 per charge and/or up to six months in jail.[120] Individuals charged with misdemeanor offenses are entitled to a public defender if they cannot afford an attorney as well as a trial by a jury of their peers.

Misdemeanor charges are particularly effective and efficient in gaining code compliance. The criminal court process is much swifter than the civil court process. Typically, the costs of correcting a violation are less than the cost of hiring an attorney to defend the case. The City Attorney's Office frequently offers to dismiss the charges upon correction of the violation (if correctable) and payment of any outstanding fines and/or fees. The result in 99% of misdemeanor cases is voluntary compliance and a dismissal of the complaint by the second or third court appearance.

The misdemeanor process begins with the filing of a complaint and the setting of a hearing date for the defendant to enter a plea. This first appearance is known as the arraignment. The defendant is entitled to have a trial within 45 days of their arraignment, unless they waive that right. In a typical code enforcement prosecution, there may be two or three additional hearings, known as trial readiness conferences or pretrials to determine if the defendant has met all the City's requirements and paid all fines and fees. For those misdemeanor defendants that do not voluntarily comply with City codes, a trial date is set. Upon conviction, the City Attorney seeks fines, restitution (to collect all the City's costs of enforcement) and a term of probation. Probation is a term of court supervision accepted by the defendant in lieu of jail time. In code violation cases, that term is typically three (3)

[117] MVMC §1.10.020(A).
[118] MVMC §1.10.080(C).
[119] MVMC §1.10.140.
[120] MVMC §1.01.230(A).

years and includes orders to correct any outstanding violations within agreed upon time periods. Failure to obey court orders of probation could result in actual jail time for the defendant.

INFRACTION CITATIONS

Although all violations of the Municipal Code constitute misdemeanors, there is discretion allowing for those charges to be reduced by the City Attorney to an infraction in the interest of justice.[121] Infraction citations carry a maximum penalty of $500[122] and cannot result in jail time. Individuals charged with infractions may challenge these citations in traffic court and are not entitled to a public defender or a jury trial. Infraction reductions are particularly suited to those violations that are transitory in nature and not recurring such as trespass, drinking in public, animals at large, illegal vending, or illegal dumping.

ABATEMENT

For certain property related offenses, abatement is an effective tool. The Municipal Code authorizes the abatement, or removal, of a public nuisance condition when certain procedures are followed.[123] In order to perform an abatement, proper notice of the nuisance condition must be given to the property owner.[124] The property owner then has a right to an appeal hearing on whether or not the condition on their property constitutes a public nuisance as defined by the code.[125] If the owner has failed to correct the violation pursuant to the Notice and has not been successful on appeal, if appealed, the City may enter the property, with either consent or a warrant, and remove the nuisance condition at City expense.[126]

Abatement is obviously a very effective tool in that it provides for a speedy resolution to the nuisance condition on the property. The City frequently uses abatement to remove hazardous weed growth from vacant parcels, or to demolish dangerous or illegal structures. Although the City pays for the contractors and expenses involved in abatement, the Code authorizes the City to recover all costs and expenses of the abatement from the responsible party by placing a lien on the property and a special assessment on the tax roles for the parcel.[127] Abatement is, however, limited to budgeted and available funds for abatement during the fiscal year.

CIVIL INJUNCTION

California statutes[128] and case law[129] provide that violations of local ordinances may be enforced by a civil injunction, or court order, requiring the abatement of the nuisance condition. This process

[121] MVMC § 1.01.200(D).
[122] MCMV §1.01.230(B).
[123] MVMC §6.04.050.
[124] MVMC §6.04.080.
[125] MVMC §6.04.090.
[126] MVMC §6.04.100.
[127] MVMC §6.04.120.
[128] Cal. Code Civ. Proc. §731.
[129] See, e.g. *City of Stockton v. Frisbie & Latta*, 93 Cal. App. 277, 289-90.

includes the filing of a petition in civil court and a series of hearings. If the City is successful in proving to the court that a nuisance condition exists, the court may issue an injunction ordering the property owner to take remedial action within a specified time period or prohibiting the individual from engaging in unlawful conduct. Individuals violating a court order are subject to contempt proceedings subjecting them to fines of up to $1,000.00 and/or up to six months in jail.[130]

The ultimate punishment of an individual violating a civil injunction or a misdemeanor probation order is the same. However, the civil injunction process requires a great deal more time and expense to litigate, resulting in higher cost assessments against the violator. Because the criminal system is much more efficient for handling multiple cases, results in quicker compliance, and results in lower expenses to the City, and lower restitution costs to the defendant, civil injunction cases are rarely filed in the City of Moreno Valley.

RECEIVERSHIP

Complex cases involving properties requiring extreme rehabilitation where the responsible parties are unable or unwilling to correct the problems themselves or where the property owner is unknown, are candidates for receivership.[131] In a receivership case, the City files a petition with the court requesting that a trustee be appointed to take over the property. Once granted, the receiver is empowered to rehabilitate the property in accordance with the courts instructions and is granted the power to borrow against the property to pay contractors. Once the rehabilitation is complete, the property owner either pays the costs of rehabilitation, including attorney fees and receiver fees, or the property is sold at auction to pay off all costs.

Receivership petitions require a significant amount of attorney time to file and monitor; however, they do typically result in significant rehabilitation of problem properties. Because the contractors, attorneys and the receiver must be compensated for their efforts and the end result is almost always the sale of the property. For this reason, receiverships are only used on the most difficult code enforcement cases.

COST RECOVERY

Whenever a person creates, causes, commits or maintains a public nuisance in the City of Moreno Valley, and fails to correct the condition, that person is responsible for all costs and expenses incurred by the City.[132] Costs include direct costs of abatement, salaries and benefits, operational overhead, rent, interest, fees for experts or consultants, research fees, legal costs or expenses or costs of collection.[133] Furthermore, the City is entitled to its reasonable attorneys fees in any action in any court, including criminal, where the City is the prevailing party.[134]

[130] Cal. Penal Code §166(a)(4) for criminal contempt; Cal. Civ. Proc. Code §1218 for civil contempt.
[131] Cal. Health & Safety Code §17980 et seq.
[132] MVMC §6.04.120(A).
[133] MVMC §6.04.120 (B).
[134] MVMC §6.04.120 (C).

Costs and expenses may be recovered by recording a lien on the property and collected at the time of sale or refinance. This method is ineffective in a declining market where the City's lien priority is subservient to 1st and 2nd mortgages. Therefore, costs are routinely collected through when the City places a special assessment on the County tax rolls for the parcel and collects the unpaid amount when taxes are collected.[135] This method is preferred since it becomes a higher priority during time of sale. Finally, the City could collect by filing a civil court case for the unpaid amounts due and owing to the City as a debt.[136]

[135] MVMC §6.04.120(E).
[136] MVMC §6.04.120(I).

SECTION 9 – REDEVELOPMENT AGENCY LAW

This section describes the general powers of any California redevelopment agency, describes the City of Moreno Valley Redevelopment Agency ("Agency"), describes the redevelopment plan adoption process, and some basic redevelopment activities, such as selecting developers, assisting private and public redevelopment projects, acquiring and disposing property, financing redevelopment, and meeting low and moderate-income housing responsibilities.

AGENCY INCOME AND FINANCING (DEBT)

TAX INCREMENT.

The Agency's primary source of income and primary financing toos is called "tax increment." Tax increment is the increased property tax revenue generated by increases in property values within a Redevelopment Project Area.

Conditions to receiving tax increment.

For the Agency to receive tax increment from a Project Area, the redevelopment plan must specifically provide for tax increment financing and the Agency must incur debt. The Agency incurs debt by borrowing money or committing funding to development or redevelopment projects within the Project Area. This can occur by issuing bonds, accepting advances, entering into various types of agreements with business or property owners, letting public works contracts and/or incurring other debt to carry out the redevelopment plan.

Spending tax increment.

The Agency must expend tax increment for redevelopment purposes that primarily benefit the Project Area. The Agency may not use tax increment to pay for employee or contractual services of any local governmental agency, unless these services directly relate to redevelopment purposes.

Housing Set-Aside Funds

The Agency is required to "set aside" 20% of its tax increment revenue for projects that increase, enhance and/or preserve housing affordable to person of low and moderate family income. These funds may be spent only for these purposes. Under SB 211 effective January 2002, the percentage went up to 30 percent for any plan, adopted before December 31, 1993, if the Agency amends the plan to expand the plan's effect or to extend the time to receive tax increment and pay debt.

ASSESSMENT OR COMMUNITY FACILITIES DISTRICTS.

Notwithstanding the Agency's power to help with public improvements, it may not form an assessment district or community facilities district to provide infrastructure. The Agency may agree to help pay the special taxes levied against benefited private lands and developments under an agreement with property owners or developers. For the Agency to pay or reimburse special taxes, it must follow the same procedures that apply to public improvements, and the expenditure is subject to the same limitations.

BOND FINANCING.

The Agency may sell bonds, such as tax allocation bonds, secured by the pledge of net tax increment (net of certain obligations such as Housing Set Aside, and the County's tax administration fees). The Agency may finance activities through lease revenue bonds or certificates of participation where the lease payments from the City or the Agency equal or pay the debt service.

OTHER.

Other sources of redevelopment financing may include, without limitation, borrowing from lenders and developers, developer advances, land sale proceeds, and loans from the City or other public resources.

GENERAL POWERS OF A REDEVELOPMENT AGENCY

A REDEVELOPMENT AGENCY IS A STATE AGENCY, EXERCISING LOCAL GOVERNMENTAL FUNCTIONS, AND DERIVING ITS AUTHORITY AND POWER FROM STATE LAW.

A redevelopment agency is a creature of statute - a state agency exercising local governmental functions. It is a legal entity distinct from its sponsoring community,

having its own assets, income, and obligations. Its authority and powers are derived from the California Community Redevelopment Law (the "CRL").[137] Its jurisdictional boundaries are the same as its sponsoring community.

An agency must account to the local legislative body and to the state, and is subject to many of the same laws and regulations as other public entities. It must prepare an annual financial report, present it to the local legislative body, and file the report with the State Controller that describes the agency's financial condition and a summary of its activities during the prior year, including its use of Housing Set Aside Funds.

Agency activities are subject to many of the same laws and regulations that apply to other public entity activities. An agency is also subject to local laws and regulations that may be unique to the sponsoring community. An agency must present its proposed activities and transactions to certain reviewing bodies for recommendation, approval, or adoption. Reviewing bodies include the agency's governing body, the local legislative body, project area committees ("PACS"), and the planning commission.

AN AGENCY HAS GENERAL CORPORATE OR BUSINESS POWERS, POWERS TO ASSIST PUBLIC AND PRIVATE REDEVELOPMENT PROJECTS, AND BROAD POWERS FOR INCREASING, IMPROVING, AND PRESERVING LOW AND MODERATE INCOME HOUSING.

An agency may appoint officers, acquire, sell, and lease property to private parties, contract for public works projects in a redevelopment project area, prepare redevelopment sites, rehabilitate property, manage acquired property until it disposes of it for redevelopment, and review development actions for consistency with redevelopment plans. It is obligated to use Housing Set Aside Funds to increase, improve, and preserve the community supply of low and moderate income housing.

AN AGENCY CARRIES OUT ITS BASIC OBJECTIVE, BLIGHT ELIMINATION, AND THE BULK OF ITS ACTIVITIES WITHIN REDEVELOPMENT PROJECT AREAS.

The primary objective of redevelopment agencies is to eliminate blight. An agency generally carries out its powers within the geographical confines of survey areas covered by redevelopment plans ("Project Areas") that the local legislative body adopts by ordinance. Project Areas must be in urbanized areas and be blighted, as that term is defined in the CRL. Agency activities outside Project Areas primarily

[137] Health and Safety Code §§ 33000 - 34160, and related statutes.

relate to low and moderate housing and to public improvements that benefit the project area.

THE CITY OF MORENO VALLEY REDEVELOPMENT AGENCY

THE COUNCIL IS THE AGENCY'S GOVERNING BOARD.

An agency's governing board may be a separate agency, the sponsoring community's legislative body, or a separate community development commission. For the Agency, the Council serves as the governing board. All matters of business associated with or required for administering a redevelopment project, or which are within the Agency's powers require final Agency board action.

In addition to state law, the Agency is governed by its bylaws, City ordinances, Council resolutions and ordinances, and administrative orders that do not conflict with the California Redevelopment Law (CRL). The CRL is the primary body of law governing the Agency. The Agency is also subject to local law, regulations, and rules that are consistent with the CRL. Bylaws, adopted by the Agency Board, require the Agency to conduct all its business according to the rules and regulations that govern City business, whether in the Moreno Valley Municipal Code, in Council resolutions, or other applicable law.

THE AGENCY BOARD APPROVES AN ANNUAL BUDGET FOR THE AGENCY'S ACTIVITIES WITHIN ADOPTED PROJECT AREAS.

The Agency prepares an annual budget that the Agency Board reviews and adopts. This budget is separate from the City budget.

ADOPTING REDEVELOPMENT PLANS

THE PLAN ADOPTION PROCESS IS STATUTORILY MANDATED. THE FOCUS IS BLIGHT ELIMINATION.

The CRL establishes a process for adopting redevelopment plans. The Council initiates the process by resolution and ultimately adopts the ordinance approving a redevelopment plan. The primary focus is blight elimination. The initial process includes the following:

- Designating a survey area for a feasibility study.

- A feasibility study that focuses on blighted conditions within the survey area boundaries, potential land uses, market demand, and financial feasibility.

- Determining blight - the survey area must have physical and economic blighting conditions, and be predominantly urbanized.

    - Physical blight includes unsafe buildings, adjacent incompatible uses, and subdivided lots of irregular shape and inadequate size.

    - Economic blight includes depreciated or stagnant property, abnormally high business vacancies, a lack of necessary commercial facilities, residential overcrowding, and a high crime rate.

    - "Predominantly urbanized," means that at least 80 percent of the land in the survey area, must either be developed or have been developed for urban uses, or be an integral part of one or more areas developed for urban uses and surrounded or substantially surrounded by land that has been developed for urban uses.

AFFECTED TAXING ENTITIES,[138] AFFECTED PROPERTY OWNERS AND TENANTS, PARTICIPATE IN THE PROCESS.

If a feasibility study determines that a redevelopment project area is feasible, the Planning Commission designates the survey area, the Agency and Planning Commission prepare a preliminary plan that the Agency Board accepts, and a lengthy review and comment review period begins, that includes the following:

- The Agency notifies affected taxing agencies, and the State Board of Equalization of its intent to adopt a redevelopment plan.

- The County's fiscal officer and the State Board of Equalization prepare a report to the Agency on the assessed valuation of taxable property within the proposed project area.

- The Agency prepares a preliminary report to all affected taxing agencies, identifying the blighting conditions, the scope and purpose of the redevelopment plan, and how the Agency will alleviate the blighting conditions.

[138] Those taxing entities which receive taxes derived from property within the Project Area.

- A PAC may be required.

  - *If* the proposed plan gives the Agency eminent domain authority applicable to property on which anyone resides, and a substantial number of low or moderate income persons live within the project area, a PAC is required.

  - *If* the proposed plan contains one or more public projects that will displace a substantial number of low or moderate income persons, a PAC is required.

  - Moreno Valley is currently under a court order that requires its PAC to remain in existence for the life of the Project Area, even though in general state law permits the PAC to be dissolved earlier in the life of the Plan.

- If a PAC is required, the Council calls on the residents, tenants, and existing community organizations in the proposed project area to form a PAC, and establishes procedures governing PAC formation and member selection.

- The Planning Commission reviews the plan and submits a report and recommendation to the Council.

THE COUNCIL, BY ORDINANCE, ADOPTS A REDEVELOPMENT PLAN AT A NOTICED PUBLIC HEARING, AFTER CONSIDERING RECOMMENDATIONS FROM THE REVIEWING BODIES, AND ALL EVIDENCE, INCLUDING PUBLIC TESTIMONY.

After receiving the reports and recommendations of the reviewing bodies, the Agency Board and Council consider the plan at a noticed joint public hearing,[139] and the Council adopts the approving ordinance. The process includes the following:

- At the hearing, the Agency presents a report to Council that includes, among other things, an environmental impact report, and a five-year implementation plan showing how the Agency intends to carry out the redevelopment plan. The report explains why private enterprise acting alone or the Council, using financing other than tax increment, cannot reasonably be expected to accomplish redevelopment in the project area and eliminate blight.

[139] In addition to noticing the hearing, if any property in the project area would be subject to acquisition whether by purchase or condemnation, the Agency must send a statement to that effect to each property assessee with the notice of hearing. The Agency may attach a list or map of the properties that will be subject to acquisition or condemnation under the plan.

- If affected property owners or taxing entities submit written objections, the Council must address the objections in detail and give reasons for not accepting the objections.

- Council adopts the approving ordinance by a majority vote, unless the Planning Commission or the PAC recommends against approval, then adoption requires a two-thirds vote of the entire Council.

- After adoption, the City Clerk sends a copy of the ordinance to the Agency, and records notice of the adopted plan, with a legal description of the Project Area, in the Official Records of Riverside County.[140]

After plan adoption, and using substantially the same process, the Council and Agency may amend the redevelopment plan and, for financial purposes, may merge the redevelopment Project Area with one or more other redevelopment Project Areas. The Agency is charged with carrying out the adopted plan.

IMPLEMENTING THE REDEVELOPMENT PLAN

OWNER/TENANT PARTICIPATION.

Property owners may participate in redevelopment ("owner participation") within the Project Area. The Agency must extend reasonable preferences to displaced businesses who wish to reenter business within the Project Area. Participation and preferences are governed by Agency-adopted owner participation and preference rules that define participants, methods of participating, limitations on participation, factors given priority in considering participation, and the procedure for submitting participation proposals.

PROPERTY ACQUISITION.

Voluntary acquisition

The Agency may acquire property within a Project Area by any voluntary means, such as negotiated purchase, gift, or bequest. If the Council approves the action, the Agency may begin acquiring property after the Planning Commission formulates the preliminary plan and before the

[140] This puts all property owners within the project area on record notice of the plan.

Council adopts the redevelopment plan. All property acquisitions must be for redevelopment purposes.

In negotiated purchases, the Agency usually appraises the property first, and offers to purchase the property at fair market value (not less than the appraised value). If an owner offers to sell property to the Agency for a price, even a price less than fair market value, the Agency may acquire the property at the offered price. An appraisal is still beneficial to ascertain that the Agency is not paying too much for the property and, thereby, making a gift of or wasting public funds. The Agency may not acquire property from its members or officers, unless the acquisition is by eminent domain.

Eminent Domain.

The Agency may acquire property by eminent domain if the adopted redevelopment plan provides for eminent domain. Moreno Valley's adopted redevelopment plan does ***not*** provide for eminent domain, and therefore the Agency may not currently exercise the power of eminent domain. However, in common practice, a plan will limit any eminent domain authority to a 12-year period that may be extended by a plan amendment. In exercising its eminent domain powers, the Agency must strictly comply with the California Eminent Domain Law[141] and the CRL. Its eminent domain powers may be restricted by the redevelopment plan.

The Agency, like the City, must take care when exercising eminent domain powers to avoid inverse condemnation charges. It may not take unreasonable action that diminishes property value before condemnation. In certain circumstances where the Agency has condemnation powers, it may be subject to inverse condemnation charges for failing to timely respond to an owner's offer to sell his/her property to the Agency for fair market value.

RELOCATION.

When the Agency displaces persons or businesses it generally must provide state mandated relocation assistance and pay relocation benefits to persons displaced from the property.[142] This can occur when the Agency acquires occupied property, transfers occupied property to a developer, or subsidizes a project on occupied

[141] California Code of Civil Procedure §§ 1230.010 *et seq.*

[142] Gov. Code §§ 7260 *et seq.* and California Health & Safety Code § 33415. If the project involves any federal money, then the Agency must also comply with federal relocation assistance and payment requirements.

property by agreement with a developer, or in some cases where it uses City code enforcement or nuisance abatement powers to displace occupants, By agreement, however, the Agency may require the developer to reimburse the Agency for relocation payments.

State regulations generally require the Agency to prepare a relocation plan specific to the project soon after the Agency initiates negotiations to acquire property and before proceeding with any phase of a project that will displace persons. The relocation plan determines the needs of the persons being displaced, the available replacement housing, projects the dates that persons will be displaced, and estimates the Agency's costs for providing relocation assistance and payments.

REPLACEMENT HOUSING PLAN.

When a project will cause removal of low and moderate income housing from the market, the Agency must also adopt a replacement housing plan. The plan must include the general location of replacement housing, show how the housing will be financed, contain a finding that the replacement housing does not require voter approval under State Constitution Article XXXIV, state the number of replacement dwelling units planned, and the time table for carrying out the plan.

PROPERTY DISPOSITION.

Generally, Agency disposal of acquired property must be for redevelopment purposes. Disposition may include selecting a developer or an owner participant, entering an exclusive negotiations agreement, entering an owner participation or a disposition and development agreement, and obtaining Council and/or Agency Board approval of the transaction. Approval may include hearings, reports,[143] resolutions, and findings. The Agency may dispose of property for less than its acquisition costs, and for less than a fair market value. If it does, it must justify the land write down.[144] When the Agency sells or leases property it must also obligate

[143] For example, see Health & Safety Code § 33433. To sell or lease property for development that the Agency acquired directly or indirectly with tax increment, the Agency must prepare a report, and make the report and the proposed agreement with the developer available for public review under § 33433. The Council considers the agreement and the property disposition at a noticed public hearing and must make certain findings, including that the consideration for the property is not less than the fair reuse value of the property, considering the use, the covenants, conditions, and criteria imposed under the agreement. Agency controls that affect property value may include imposing a specific use, limitations on design, a requirement that the project be begun and completed within a specific time, or other limitations or affirmative acts specific to the project.

[144] Land write down can be viewed as an indirect use of public monies, triggering prevailing wage requirements.

the purchaser or lessee to comply with nondiscrimination laws and limitations or restrictions of the CRL.

Selecting a developer.

The Agency need not use a competitive process to select a developer or owner participant. The Agency may negotiate with a single developer, or may send out requests for qualifications or requests for proposal. The Agency may choose to use a master developer or to use multiple developers.

If a project requires land assembly, the Agency must comply with its owner participation and business preference rules. Failure to comply with these rules can have serious legal consequences.

Agreements with developers.

The agreement between the developer and the Agency for a project will depend on the circumstances, the developer, and the project. Before the Agency Board and/or Council approve it, the agreement may be subject to review by the PAC, other community organizations, and to other public review, noticed hearings,[145] reports, findings, and compliance with CEQA.

If the Agency sells or leases property, the agreement must obligate the purchaser or lessee to comply with nondiscrimination laws and must contain limitations or restrictions set forth in the CRL. Developer-Agency agreements may include the following:

- Exclusive negotiations agreement. Used to identify bench marks, requirements, and conditions that each party must meet, establishes time lines, permits terminating negotiations upon certain performance failures, and may require the developer to put up a good faith deposit.

- Disposition and development agreement. Used when the Agency will acquire and/or transfer property to the developer. It defines the developer's obligations to construct a project, and the time within which the developer must complete the project.

[145] For instance, if the Agency is agreeing to dispose of property it acquired directly or indirectly with tax increment, it must comply with Health & Safety Code § 33433, including preparing a special report, and present evidence to Council on which it will make certain findings

- Owner participation agreement. Used when the developer is a property owner, agreeing to improve or develop the owner's property.

- A development lease. Usually long-term agreements where the Agency leases improved property for substantial rehabilitation, or leases vacant property for development.

Agency assistance.[146]

The Agency may assist private and public developers in a variety of ways,[147] including site assembly, land write down consistent with project economics, site preparation, relocation, demolition, off-site public improvements,[148] shared use facilities, public financing, commercial rehabilitation loans, industrial/manufacturing equipment loans, and cleaning up contaminated property.[149]

[146] Under Health & Safety Code § 33333.10, redevelopment agencies with "significant remaining blight" may extend their time limits 10 years under certain qualifying conditions. During the 10-year extension an agency may spend tax increment only in that part of the project area identified in the report to council as having blighted parcels, and any area identified as containing necessary and essential parcels for plan purposes. (Health & Safety Code § 33333.10(e).) The State Department of Finance, Department of Housing and Community Development and the Attorney General have oversight authority.

[147] The passage of SB 975 in 2001 significantly expanded the definition of public works and the application of the state prevailing wage requirements. The bill expanded the definition of public funds to cause more public/private projects to be subject prevailing wages. SB 972 (2002) excluded certain housing projects from certain public works and prevailing wage laws.

[148] With some limitations, the Agency may pay all or part of the land value or cost of installing or constructing any building facility structure or other improvement that will be publicly owned, if it follows the procedures, obtains the consent, and the Council makes the findings required in Health & Safety Code § 33445. If the public improvements are improvements that a developer would otherwise be required to provide, the Council must consent to the Agency installation. (Health & Safety Code § 33421.1.)

[149] Redevelopment agencies have certain authority to clean up or pay for cleaning up contaminated sites within a Project Area under the Polanco Act (the "Act"). Subject to following the Act's complex provisions, the Agency may clean up contaminated property and in return the Agency, the property developer, and subsequent owners may receive limited immunity from further clean up liability

PUBLIC IMPROVEMENTS[150] AND OTHER ASSISTANCE.

The Agency may assist or provide public improvements and other improvements within a Project Area, and subject to the limitations and procedural requirements of the CRL. Some of the circumstances, limitations, and procedural requirements are as follows:

- Public improvements.
    - The public improvement must be generally or specifically described in the redevelopment plan if the plan or plan amendment adding territory was adopted after October 1, 1976.[151]
    - It must be linked to blight elimination.
    - It must primarily benefit the Project Area.
    - If the Agency is paying any land value for, and the cost of installing or constructing, any facility, structure or other improvement that will be publicly owned, the action is subject to Council determinations or findings,152 and a report and noticed public hearing may be required.153
    - If the owner or operator of the site would otherwise be obligated to provide the public facilities, the Council must consent to the Agency expenditure, and the public improvements must be necessary for carrying out the redevelopment plan.
- Other Improvements. The Agency may do the following:
    - Construct and lease school buildings to a school district, with title vesting in the school district at lease termination.

[150] The Agency is subject to the provisions of the Public Contract Code requiring competitive bidding if the Agency spends in excess of $5,000. If the contract is less than $5,000, the Agency need not competitively bid the contract, and may give priority to residents within the Project Area or to persons displaced from the Project Area as a result of redevelopment activities.

[151] Health & Safety Code § 33445(b).

[152] Health & Safety Code § 33445.

[153] Health & Safety Code § 33679.

- Construct foundations, platforms or other structures that provide for using air rights sites for structures or buildings, the uses of which are permitted under the redevelopment plan.

- The Agency may not do the following:

  - Pay the normal maintenance and operations costs of public improvements.

  - Use tax increment, directly or indirectly, to pay for constructing or rehabilitating a building that will be used as a city hall or county administration building.[154]

  - Provide any direct assistance to an automobile dealership on land not previously developed for urban purposes.

  - Assist a development on five acres or more if the land has not been previously developed for urban use and, after development, the property will generate sales taxes, unless the principal use is for office, hotel, manufacturing, or industrial.

[154] Some very limited exceptions exist.

SECTION 10 – LAND USE LAW AND ENVIRONMENTAL REVIEW

INTRODUCTION

Along with streets and public safety services, land use control is often seen as among a city's most important functions. The City has power to regulate the use of land to protect public health, safety and welfare. This means that the City Council can set standards for what types of businesses and housing is permitted in various areas of the City and for building set backs, ingress and egress, landscaping, public improvements, etc. However, land use review also represents a very complex area of the law. State and federal laws and constitutional restrictions are frequently involved in land use decisions by local governments. In addition, both state and federal case law and local ordinances and regulations previously adopted govern and limit the City's land use powers.

CONSTITUTIONAL LIMITATIONS

UNITED STATES CONSTITUTION

The United States Constitution places restrictions on the powers of the City by virtue of the Fourteenth Amendment, which has been deemed by the Supreme Court to incorporate the protections of the Bill of Rights and make them applicable to the States and local governments. The most important provisions for land use law are the First, Fifth and Fourteenth Amendments.

First Amendment – Free Speech and other Expressive Activity.

The First Amendment prohibits the federal government (and by "incorporation", state and local governments) from infringing rights of freedom of speech, press, and religion. Because of First Amendment law, cities are limited in their ability to regulate land uses involving speech and expressive activities or religion. In particular, the regulation of art, theatre, adult entertainment, churches, religious use of homes and related uses is subject to significant limitations and strict scrutiny by the courts.

Fifth Amendment – Inverse Condemnation Liability

The Fifth Amendment protects the right of due process of law and just compensation for taking of property. Due process requires fair and unbiased processes and decisionmaking, hearings before depriving persons of liberty or property rights and similar guarantees of fairness. The just compensation clause not only prohibits the government from taking possession of property without paying for it (as by condemnation), but has been interpreted to prohibit the

government from "inverse condemnation" - making decisions that have the effect of diminishing a property owners reasonable expectations of value for purposes unrelated or disproportionate to the impacts on the community of developing the property. Thus, even decisions which merely regulate the use of the land, but do not transfer ownership to the government, may create liability to pay for decreased property value under the Fifth Amendment in certain circumstances. This is particularly true if the government regulation or decision eliminates all economically viable uses of the land, but can also occur where dedications for public improvements are disproportionate to the impact of the project on public facilities, or where the regulation diminishes value but has no legitimate governmental purpose. This doctrine of "inverse condemnation" requires that cities study and document the nexus between fees, exactions and dedications required of developers of real property and the impacts those requirements are meant to address.

Fourteenth Amendment – Equal Protection of the Laws.

The Fourteenth Amendment provides that no state shall deny any person due process of law or equal protection of the law, or abridge the privileges or immunities of any citizen of the United States. This provision protects equal rights and has been the basis for the adoption of federal civil rights legislation prohibiting discrimination on the basis of race, gender, ethnicity, religion or national origin. In addition, this provision of the Constitution has been held by the courts to limit the authority of cities to regulate based upon marital status or family relationships. These principles apply to local governments making land use decisions. For example, cities are limited in trying to regulate what forms of relationships may constitute a "family" for purposes of residential habitation.[155]

CALIFORNIA CONSTITUTION

The California Constitution contains provisions that essentially parallel the federal Constitutional protections outlined above. However, there are additional limitations on local authority in the state constitution.

Proposition 218 Limitation on Taxes.

Proposition 218 amended the state constitution to require voter or landowner approval for taxes, assessments and property related fees. Such exactions are often a part of the conditions placed on new development, which may include participation in assessment districts or payment of parcel fees for public services under the Community Services District. The requirements of Prop 218 must be complied with in establishing such conditions.

[155] Moore v. City of East Cleveland, Ohio,431 U.S. 494 (1977); Cities may, however, regulate "boarding houses" where unrelated persons live together in a for-profit business relationship.

Prohibition Against Gifts of Public Funds.

The state constitution prohibits gifts of public funds. This means public funds cannot be given to private parties or spent for private benefit unless the primary motivation is public benefit. Cities facing land use decisions are sometimes presented with requests for subsidies, private use of public parks, streets or other facilities, etc. These requests must be examined in light of the gift of public funds restrictions.

Prohibition Against Unreasonable Restraint on Alienation of Real Property.

The state constitution prohibits government actions that place unreasonable limitations on the right of a landowner to transfer his or her property rights. Cities sometimes find that in making land use decisions they are favorably inclined to a use by the proposed developer, but would not trust other future owners to act responsibly. They wish to limit the right of the landowner to transfer the property in the future. The state constitution severely limits the authority to impose such regulations. Where subsidies are given cities can by contract impose a requirement of a right to review and approve any transfers based on reasonable criteria, but may not eliminate the right to sell, lease, mortgage or otherwise transfer real property rights.

Right to Privacy.

California's constitution contains an express right of personal privacy. In some cases, this right can affect certain land use decisions and limit City authority to regulate, particularly regarding residential land uses.

STATUTORY LAW

STATUTORY PREEMPTION

Before discussing the adoption and implementation of plans and zoning ordinances, it is important to know that while cities have some rather broad areas of discretion in land use law, there are also many areas that are "preempted" by state and/or federal law. Local control is preempted wherever the state or federal law regulates the same area significantly enough that it shows an intent to control that area of law. Sometimes preemption is specifically stated by the state or federal law. Other times it is inferred from the comprehensive nature of the regulation. Where the City is preempted, it cannot regulate and its ordinances are unenforceable and void.

FEDERAL LAWS

Federal law preempts local decisionmaking authority on several specific issues, including, but not limited to:

- Telecommunications facilities such as radio and cellular telephone towers, satellite dishes, cable television facilities, telephone lines, etc.
- Federal facilities such as post offices, military bases, federal office buildings, etc.
- Fair employment and housing regulations prohibiting discrimination
- Accessibility standards under the Americans With Disabilities Act
- Storm water quality facilities
- Indian lands

STATE LAWS

The power of cities to regulate land use within their jurisdictions is highly regulated by state law. A number of statutes set forth procedures that must be followed, required actions, time frames and regulations the City must follow. Among the more important of these state laws are:

- The California Environmental Quality Act, commonly referred to as "CEQA", which requires study and review of the environmental impacts of proposed development projects (including the City's own projects) prior to approval, and which can be used by the Courts to overturn the City's land use decisions if not complied with.
- The Corteze-Knox annexations laws, which govern the addition of land to the City's jurisdiction.
- The State Planning Act which requires cities to adopt and adhere to a General Plan and procedures and requirements for specific plans, development agreements, zoning ordinances, etc.
- The Subdivision Map Act, which regulates the division of land into parcels by recording of maps, and the conditions and requirements cities can place on their development, as well as providing time frames for the procedures and for the effective life of the map approvals
- The Permit Streamlining Act, which sets strict time limits on the time the City may take to make certain discretionary land use decisions, or else the project is deemed to be automatically approved. Its provisions interplay with CEQA provisions which also set times for taking action on environmental review of discretionary project approvals, and which precludes automatic approval of projects subject to certain levels of environmental review.
- Numerous laws pertaining to fair and affordable housing, which require:
    - Density bonuses and other incentives for low income housing projects
    - Second dwelling units for senior housing in single family zones
    - Approval of certain multi-family and low-income housing projects where cities would otherwise have discretion to deny approval
- Laws governing various kinds of group homes and treatment facilities

  - Require permitting certain drug, alcohol and mental health rehabilitation facilities in residential areas
  - Require group homes with 6 or fewer residents to be treated as single family homes
- Fire, Building and Housing codes, which set the standards for the actual construction of buildings and other improvements on the land, and regulate the handling of toxic and flammable materials, and numbers of legal occupants of both residential and non-residential structures, etc.

Some of these state laws will be discussed in greater detail below.

LOCAL ORDINANCES AND POLICIES

While the City has power to adopt its own ordinances and policies where permitted under state and federal law, once it does so, it must follow those ordinances and policies. Cities cannot selectively choose to apply them in one case and not in another. Doing so has been found to violate the constitutional guarantees of Due Process of Law. Certainly a city can amend or change its ordinances and policies, but such changes must also be applied equally to all affected persons. In some cases, it might be desirable for various reasons to change a policy or waive an ordinance in a particular case. Doing so brings legal risk to the City and may result in the City being unable to apply such a policy or ordinance in future cases where it might wish to.

CEQA AND ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) requires that prior to the City approving either a private or a public project that has any potential impact on the physical environment, the potential environmental impacts of the project must be thoroughly reviewed, except in the case of certain small scale projects that are expressly exempted from CEQA review. That environmental review must be documented and the document approved by the decisionmaking body prior to approving the project itself. If the appropriate environmental document is not adopted prior to the approval of the project itself, the City's approval of the project can be challenged in court and the court can overturn the decision of the City, and award attorneys' fees to the successful challenger.

CEQA requires review not only for physical projects, such as buildings, streets, etc., but also prior to adoption of ordinances, regulations or policies that will change the way land is used or will otherwise govern or impact changes to the physical environment in the future. Every "potentially significant" environmental impact must be analyzed. The project must be conditioned to mitigate such impacts to a level of insignificance. Likewise, cumulative impacts of the proposed project and other reasonably foreseeable projects must be analyzed and mitigated. In certain cases, alternatives to the project must be analyzed as well. If an impact cannot be mitigated to a level of insignificance, the City Council must make specific findings, called a "Statement of Overriding Considerations," that spells out why the project is more beneficial to the City than the detriment caused by its environmental impacts.

There are four basic levels of environmental review documents under CEQA, a finding of

exemption, a negative declaration, a mitigated negative declaration, or an Environmental Impact Report.

FINDING OF EXEMPTION

If the project qualifies for one of the narrow and limited statutory exemptions, or if the project clearly has no potential to impact the physical environment, then the City can simply make a written finding to that effect and proceed with the project.

NEGATIVE DECLARATION

If the project is not exempt, but after an initial study of all potential environmental impacts of the proposed project it is clear that there are no potentially significant impacts to the environment from the proposed project, the City may approve a Negative Declaration. However, notice must be given to the public, to affected property owners, affected public agencies and to persons who requested notice. There must be an opportunity for them to comment on or challenge the conclusions of the proposed Negative Declaration.

MITIGATED NEGATIVE DECLARATION

If the initial study shows that the project may have potentially significant environmental impacts, but it is clear that specific mitigation measures would reduce those impacts to a level of insignificance, a Mitigated Negative Declaration may be adopted for the project. The necessary mitigation measures must be compiled into a Mitigation Monitoring Plan that provides for implementation and monitoring of those mitigation measures as the project proceeds. Again notice and hearing are required prior to adoption.

ENVIRONMENTAL IMPACT REPORT

If the project may have potentially significant environmental impacts that cannot be mitigated to a level of insignificance, an Environmental Impact Report ("EIR") must be prepared. An EIR is required even if the City believes there is a significant chance that adequate mitigation measures can be constructed. All that is necessary for an EIR to be required is for there to be a "fair argument" that there may be a potentially significant impact that cannot be mitigated to insignificance.

An EIR is generally a much bigger undertaking than a Negative Declaration or Mitigated Negative Declaration and the time frames for notice, comments and hearings are expanded. In addition to potentially affected persons and agencies, notice of EIRs must be sent to the state Environmental Clearinghouse for review by other state agencies and environmental groups. While a Mitigated Negative Declaration can usually be done in a few months, an EIR generally takes a year or more for preparation, processing and hearing.

INDEPENDENT JUDGMENT TEST

The City is required to exercise "independent judgment" in making CEQA determinations. The City may not defer to the developer's consultants in compiling determining the scope or adequacy of an environmental document or mitigation measures. For this reason, many cities require the developer to pay to city the cost of developing the environmental review, and then directly hire the necessary expert consultants, rather than allowing the developer to select and employ the experts. However, if a city allows the experts to be employed by the developer, it must still retain the authority to approve or disapprove of the consultants, and must thoroughly review their work and exercise independent judgment in approving or disapproving it. The courts look very closely at the level of independent review and judgment exercised by the city in such cases and have overturned project approvals for lack of sufficient independence by the city.

ANNEXATION OF LAND

The process of changing the boundaries of the city to include land not previously in the City is called "annexation." Annexations are a locally important urban planning-related area preempted by State law. The rate at which the City expands geographically is determined pursuant to processes under state law. All annexations of land to the City are reviewed and approved by the Local Area Formation Commission ("LAFCO"). Each county has its own LAFCO. In Riverside County, both the board composition and annexation proposal processes are statutorily established. LAFCO is important to planning in Moreno Valley because LAFCO must approve not only annexations, but the City's "sphere of influence", or the area planned to be annexed to the City over time and over which it has some limited statutory land-use authority before annexation.

STATE PLANNING ACT

The State Planning Act sets statewide procedures and standards for land use planning. It specifies the notice and hearing requirements for each land use procedure and outlines the various types of land use decisions cities may make.

GENERAL PLAN.

Each city must have a General Plan[156], consisting of specified required elements, including land use, traffic circulation, housing, public safety, noise, conservation and open space[157]. In addition, cities may add other elements to address local goals and concerns. The General Plan becomes the "constitution" for land use planning within the City. Every other land use and public infrastructure decision must be "consistent" with the General Plan.[158] Certain elements, in particular the housing element, must be

[156] Gov. Code §§ 65300, *et seq*.

[157] Gov. Code § 65300.

[158] *Friends of B Street v. City of Hayward*, 106 Cal. App. 3d 988 (1980).

updated every few years and must be reviewed and approved by certain state agencies or the City's eligibility for state funding and certain legal protections are lost.

Plan amendments may be initiated by any one of four mechanisms: Council or Planning Commission action; the Planning Department Director's written action; or, by application of the property owner or representative. The Planning Commission must then hold a hearing on the amendment and make a recommendation on the same to the Council. The Council's decision on the plan amendment is final. The City cannot amend any element of its General Plan more than four times in any one year.

SPECIFIC PLANS.

Cities may also adopt Specific Plans for large projects or areas of the city. These specific plans may be more detailed than the General Plan but cannot be inconsistent with it.

ZONING ORDINANCES

Zoning is a tool to implement adopted plans. Under the most basic definition of zoning:

> Zoning is simply the division of a city into zones and the prescription and application of different regulations in each district. These zoning regulations are generally divided into two classes: (1) those which regulate the height or bulk of buildings within certain designated zones --- in other words, those regulations which have to do with structural and architectural design of the buildings and (2) those which prescribe the use to which buildings within certain designated zones may be put.[159]

General and specific plans normally set categories of land uses for areas of land, but specific permitted uses are established by zoning ordinances. For example, the General Plan may specify that a certain area should be residential. A specific plan for that area may specify that it should be low density residential. The zoning ordinance may then divide that area into smaller pieces and designate some as R-1 (one acre minimum lot size), some as R-2 (half-acre minimum), some as R-5 (5 units per acre), etc. In addition, zoning ordinances set for the development standards, permitted uses and other regulations for each type of land use permitted in each zone classification.

Each parcel in the City limits is assigned a zone. The term "rezone," as applied to any given parcel, technically refers to any change in the zone which is reflected for the given parcel on the Zoning Map. The Zoning Ordinance, with the associated map, sets forth regulations which are legally enforceable against land uses.

[159] Longtin, CALIFORNIA LAND USE, § 3.02[1], summarizing *Miller v. Board of Public Works*, 195 Cal. 477, 486 (1925) (emphasis added).

Development Standards.

Development standards include, but are not limited to, setback, building height, landscaping and minimum parking space requirements. The MVMC also provides for a large number of zones organized into general use categories (such as residential or industrial), which are then broken into separate zones (such as R-5, R-10).

Listed Uses.

Each zone contains separate identified uses which enumerate permitted, conditionally permitted, or prohibited uses or activities.

Permitted Uses.

The core character of each zone is defined by its list of permitted uses.

Conditional Uses.

The second type of listed uses in each zone are conditionally permitted uses. These uses and activities are permitted only where the City has issued a conditional use permit. They are uses which the Council has found may, but only on a case-by-case basis, be found to be consistent with a particular zone and neighborhood.

Prohibited Uses.

Some uses and activities, called "prohibited uses," are expressly prohibited in each zone.

Police Power.

The Council's authority to zone is based on the City's police power. This authority is very broad and empowers the City to determine what the City will look like, what types of amenities there are, and how activities are arranged in the urban landscape. Numerous cases could be cited to illustrate the breadth of the Council's authority in zoning. To give just one important example, a land use restriction with no purpose other than to improve the appearance of the streetscape, has been repeatedly upheld as a substantial

government goal; it is only in the manner in which such restriction is applied that is subject to the court's review.[160]

Plan consistency.

Zoning actions must be generally consistent with the General Plan or any applicable community or specific plan. Any zoning action - - whether it be a rezone or a text amendment - - must be consistent with an operable plan, including maps, diagrams, and textual goals and policies.

Zoning Procedures.

Like plan amendments, rezones affecting particular parcels may be initiated by Council or Planning Commission action, by the Planning Director's written action, or by application of the property owner or representative. The Planning Commission must then hold a hearing and make a recommendation to the Council, which the Council is required to consider as a part of its deliberations. The Council's decision on a rezone application is final.

OTHER LAND USE DECISIONS

The Planning Act also sets procedures and standards for Variances, Development Agreements, and development moratoria. Each of these land use regulatory devices will be discussed further below.

Variances.

Variances are exceptions to development standards. Variances can be granted where a property cannot be developed under existing standards due to a difference between the size, shape, or topography of the property compared to neighboring properties similarly zoned. Variances may not be granted to permit a different use of the property, but only to allow a relaxation of a physical restraint on the development of the property for the uses for which it is zoned. Changing the use requires a zone change.

Development Agreements.[161]

State law permits cities to enter into development agreements with property owners and developers. Under a development agreement, a developer receives "vested" development rights (rights that the city cannot change during the term

[160] *Metromedia, Inc. v. City of San Diego,* 453 U.S. 490 (1981)

[161] California Government Code §65864 et seq.

of the agreement) in exchange for providing the city with additional benefits (public improvements, financial contributions, etc.) beyond those which the City could otherwise require.[162] A development agreement must be adopted by ordinance after a public hearing process.

Development Moratoria.

The City may adopt a "moratorium" temporarily prohibiting particular types of development while it studies the impacts and appropriateness of such development. While commonly called a moratorium, the state law actually refers to such an enactment as an "interim ordinance adopted as an urgency measure." An interim urgency ordinance may be adopted without following the normal notice and hearing procedures and time frames for zoning or other ordinances, but must be adopted by a four-fifths vote. It becomes effective immediately upon adoption. However, it is effective only for 45 days. It may, during the 45 days, be extended after proper notice and hearing for an additional 10 months and 15 days and then again for an additional year. If proper notice and hearing took place prior to initial adoption, it may be extended within the initial 45 day period for 22 months and 15 days all at one time. No further extensions are permitted. In order to adopt such an ordinance, the City Council must make findings based on evidence that "to protect the public health, safety and welfare" it is necessary to prohibit

> "uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time."[163]

SUBDIVISION MAP ACT

Subdivision mapping a process whereby large parcels of land are divided into smaller parcels, or smaller parcels are combined into larger ones for purposes of transferring legal title to land or building on the land. It is a highly technical subject area involving a complex interplay of land use and real property law and civil engineering. State law preempts many of the procedures and substantive requirements for subdivisions through the Subdivision Map Act.

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[162] California Government Code §65865.2 provides:

> A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.
>
> The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

[163] California Government Code §65858.

MAP REQUIRED FOR ALL SUBDIVISIONS.

As a general rule, the California Subdivision Map Act requires that either a parcel map or tentative tract map is required before undertaking any real estate transaction which will result in the division of land into separate units, or parcels, for the purpose of sale, lease, financing and/or building. An approved map divides the landscape into different parcels which are delineated by a subdivision map which memorializes the official lots of record for title purposes at the County Recorder's office.

Land Use Planning Tool.

The courts have declared that an overriding purpose of the Subdivision Map Act is to give local authorities maximum control over the design of subdivisions and uses of land. Subdivision maps are one of the main vehicles the City uses to implement its various planning policies and regulations. As with special permits, each map is accompanied by detailed conditions of approval which define the extent of which the City chooses control over the land use. Also as with both rezones and conditional use permits, every subdivision map must be consistent with the operable plans.

Types of Maps.

Subject to limited exceptions, both a tentative tract map and a final tract map are required for every subdivision which creates five or more parcels. However, only a single parcel map is required for any subdivision of four parcels or less. Sometimes applicants opt for both a tentative and final parcel map. Vesting tentative maps and vesting tentative parcel maps are also authorized and allow the developer to "freeze" development standards and conditions of approval for a certain period of time.

Exemptions.

There are several exemptions, the most significant of which are conveyances of land to and from the City and agricultural, industrial, commercial and residential apartment building leases (in practice, this means most leases are exempt). Condominium and cooperative developments are, however, subject to mapping requirements. Lot line adjustments are allowed without a map because they do not create new parcels.

SUBDIVISION REVIEW PROCESS.

Hearings and Appeals.

The Planning Commission reviews all parcel maps and tentative maps, which are then subject to appeal to the Council. Like conditional use permits, subdivision map proceedings entail quasi-judicial decisionmaking and can be either approved or denied only when supported by findings based on substantial evidence.

Scope of Final Map Approval.

Once a tentative map is approved, a final map package is assembled for Council approval. Final maps are ordinarily placed on the consent calendar. The overriding issue before the Council when acting on a final map is whether final map is in substantial compliance with the tentative map. It is important to remember that rarely can Council impose additional conditions on a final map that were not imposed at the tentative map stage. Generally, provided the final map is substantially compliant with the conditions of approval of the tentative map, the Council must approve the final map.

LAND USE PROCESS, GENERALLY

The following is a brief summary of some of the more significant procedural issues that regularly arise.

RULES GOVERNING HEARING PROCESSES.

Four sources of law generally govern the conduct of Council and Planning Commission hearings on land use matters: the Zoning Ordinance, the Brown Act, Council meeting rules, Planning Commission Rules and Regulations, and Constitutional Due Process.

CONSTITUTIONAL DUE PROCESS.

In addition to Planning Commission Rules and Regulations and the Brown Act, Constitutional Due Process applies at public hearings in certain land use matters.[164] A significant consideration is the type of project application which is being considered. Generally, legislative actions (general or specific plan amendments and rezones) do not

[164] *Horn v. Ventura County,* 24 Cal. 3d 605, 619 (1979).

implicate due process procedures. In contrast, quasi-judicial actions, such as the conditional use permits described above do. The California Supreme Court has stated that conditional use permits "involve entirely different constitutional considerations" from rezones.[165]

Notice and Opportunity to Be Heard.

Where a conditional use permit or subdivision map is to be heard, due process, including a reasonable opportunity to be heard, must be provided to project neighbors.[166] Generically, the formula for adequate constitutional due process entails the following: 1) notice of pending action; and 2) a reasonable opportunity to be heard at a public hearing.

Unbiased Decisionmaker.

Another key consideration in any land use proceeding is the need to remain unbiased. This is especially the case for quasi-judicial actions, such as conditional use permits. Due process requires, generally, that the decisionmaker approach each hearing with an open mind, and that the decision be based on the information and facts discussed at the hearing. To accomplish this requirement, decisionmakers must not have a personal, financial interest in the outcome of a matter, nor should the decisionmaker become embroiled in the controversy of a matter. Additionally, ex parte contacts -- that is, off-the-record discussions between the decisionmaker and one interested party – are, in principle, prohibited in quasi-judicial proceedings. In practice, this principle does not bar Councilmembers or Planning Commissioners from visiting a project site or otherwise investigating the facts of a project first-hand. However, facts which are crucial to decision – such as might form the decisionmaker's basis for approving or denying a conditional use permit – should be stated on-the-record. As a general rule, every decision should be approached with a fresh mind, free of influences which might affect objectivity. One rule of thumb for assuring consistency and objectivity in decision-making is to adhere to the facts, to required Code findings, to applicable plan policies, and to the law.

REQUIRED VOTES AND TIE VOTES.

With only a few exceptions, a land use action is accomplished by a motion supported by a majority of those decisionmakers present to act on the matter. If a

[165] *Horn, supra,* 24 Cal. 3d at 619.

[166] *Horn, supra*, 24 Cal. 3d at 619.

motion is made to approve the project, and that motion fails, the project is disapproved and matter is concluded. The issue of tie votes occasionally arises. The general rule is that a tie vote results in the failure of Council or the Planning Commission to enact, grant, or approve a Project and therefore, constitutes a denial of the matter.

TYPES OF LAND USE DECISIONS

There are four basic types of land use decisions:

- Legislative
- Discretionary
- Quasi-Judicial
- Ministerial

Each type of decision has a different set of rules and procedures that must be followed.

Legislative Decisions

Legislative decisions are broad policy decisions and regulations of general application. Legislative decisions are not specific to individual development proposals. The City Council is always the final decision maker. Applicants generally do not have a legal right to compel a legislative decision and the City Council has broad discretion.

The City Council's discretion on legislative decisions is limited by the State and Federal Constitution, State and Federal Laws, and the requirement of consistency with the General Plan, but these limitations are relatively weak and general.

With respect to legislative decisions, the City professional staff's role is to provide factual information, technical advice and analysis and to propose policy alternatives and professional advice. The Planning Commission's role is purely advisory. The final decision must be made only by the Council.

Legislative decisions include:

- General Plan and amendments
- Specific Plans and amendments
- Zoning Ordinances & Zone Changes
- Development standards
- Development Agreements

Discretionary Decisions

A discretionary decision is one where the City is granted discretion by a statute or ordinance with regard to a specific development project rather than a broad policy issue or regulation of general application.

Again, the City's discretion is limited by the State and Federal Constitutions and statutes and the requirement for General Plan consistency, but these limitations are stronger and the statutory limitations can be quite specific. In addition, the City may be limited by its own Municipal Code in the exercise of its discretion.

The Planning Commission is generally the decision-maker, but any party may appeal to the City Council. The staff's role is again technical and professional analysis and advice and factual information. However, in some cases, the Municipal Code may actually delegate decision making authority to a staff member, generally either the City Manager, a department head or the City Planning Official. In those cases, generally any appeal is first to the Planning Commission and then to the City Council. The City Council generally only hears appeals, unless the discretionary decision is dependent upon an accompanying legislative decision, such as a rezone or plan amendment.

Discretionary decisions include:

- Conditional Use Permits. The City has discretion to permit or deny the proposed use of the property, but may not use that discretion to deny Constitutionally protected uses without complying with constitutional standards.
- Variances. The City has discretion to waive or modify *development standards* on individual parcels, but the decision must be based on unusual size, shape, geology or topography of the parcel which denies benefits of a use similarly situated landowners have without a variance.
- Plot Plans (with hearing). The City has discretion to approve or condition design and layout of a permitted use, but may not deny a permitted use itself.

Quasi-Judicial Decisions

Quasi-judicial decisions involve weighing evidence presented by parties on both sides of an issue, determining the facts, and then applying existing law or regulations to those facts. The decision maker is not exercising discretion in the decision. If the facts support it, the proposal must be approved. If the facts do not support it, it must be denied. A court can review the decision and overturn it if it is not based on adequate factual evidence in the record of the decision making proceeding.

Generally, the Planning Commission will be the decision maker, unless the proposal is coupled with a legislative decision. The staff's role is generally

technical and professional analysis, but can be the decision maker by ordinance or statute, such as for some plot plans and parcel maps.

The Council's role is generally to hear appeals.

Quasi-Judical decisions include:

- Tentative Tract Maps
- Parcel Maps
- Plot Plans (without hearing)

Ministerial Approvals

Ministerial approvals are those which the City is required to grant upon the applicant making a basic showing of certain specific facts. The City has no discretion, but is legally compelled to grant the approval if the required factual showing is made. In most cases, ministerial approvals are granted at the Staff level. The Council's role is to set the policies and procedures for granting the approvals, within the requirements of state and federal law, and to grant the approval of final maps under the Subdivision Map Act. The Planning Commission has no role at all in ministerial approvals. Examples of ministerial approvals include:

- Final Maps
- Grading Permits
- Building Permits
- Sign Permits
- Certificates of Occupancy
- Home Occupation Permits
- Temporary Use Permits
- Accessory Dwelling Units

REQUIRED DENIALS AND APPROVALS

There are certain basic rules that either prohibit the City from approving a project or require it to approve a project. The most common ones are summarized below:

City cannot legally approve any project if:

- Environmental documents, studies and mitigation measures are not legally adequate
- Project is not consistent with General Plan
- Land is not properly zoned for the proposed use

City cannot legally deny any project if:

- The decision is *ministerial* and the project meets requirements
- The project is an affordable housing project and it meets state requirements
- Local authority is preempted by state or federal law, such as for certain group homes
- The project is for a Constitutionally protected use and it meets requirements
- The decision is *quasi-judicial* and the applicant proves facts at hearing that justifies approval
- The decision is *discretionary* and the grounds for denial are improper under federal or state law or constitution
- The decision is *legislative* and denial would be made on a discriminatory or illegal basis

TAKINGS AND EXACTIONS (PROJECT CONDITIONS AND FEES)

TAKINGS.

The United States and California Constitutions prohibit the government from "taking" property for public purposes without "just compensation." This means that government cannot use its zoning authority to inversely condemn property in order to avoid the expense of instituting eminent domain proceedings and paying for the property. This is a very complex area of constitutional law. The essential test is whether the government's actions deprive an owner of substantially all economically viable use of the subject property. The underlying philosophy is that the constitution bars government from making a private property owner suffer the burdens of a public improvement which the public as a whole should shoulder. Of course, merely restricting allowable uses or development on a site, or the amount of profits an owner can make, will not, in and of itself, amount to a taking. For this reason, keeping property zoned at the very low-density residential zoning found in the rural parts of a city does not amount to a taking; economically viable use can still be made by developing the property at the allowable, rural density. There is also no taking where development is prohibited because to allow it would create a public nuisance. At the other end of the spectrum, however, barring all development on a site – such as by downzoning property to an "open space" district without allowing any development – may amount to a taking because under such a district the owner may not be able to make any economically viable use of the site.

LAND USE EXACTIONS (PROJECT CONDITIONS AND FEES).

Land use exactions - - in the form of project conditions or mitigation fees -- are the chief means by which the City assures that land uses are consistent with the surrounding community. These exactions are subject to takings rules.

"Nexus."

As a general rule, with respect to project-specific conditions, there must be a reasonable relationship between the project's impacts; a reasonable relationship is defined by what the courts call the essential nexus and rough proportionality between a condition and project impacts.

Dolan Test.

Any requirement that the land be reserved or set aside for a specific purpose amounts to a possessory dedication of real property which the United States Supreme Court has held is subject to heightened scrutiny under a particular test devised by that court.[167] In *Dolan v. City of Tigard ("Dolan"),*[168] the essence of the U.S. Supreme Court's test was set forth as follows:

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[167] *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1988); *Ehrlich v. Culver City*, 12 Cal. 4th 854 (1996). In *Ehrlich*, the California Supreme Court explained the Supreme Court's rationale for imposing "heightened" judicial scrutiny as follows:

> [T]he heightened standard of scrutiny is triggered by a relatively narrow class of land use cases-those exhibiting circumstances which increase the risk that the local permitting authority will seek to avoid the obligation to pay just compensation. Neither *Nollan* nor *Dolan is*, after all, a conventional regulatory takings case. Rather, as the court's rationale for its result in *Nollan* demonstrates, both are cases in which the local government attached a condition to the issuance of a development permit which, but for the claim that the exaction is justified by the greater power to deny a permit altogether, would have amounted to an uncompensated requisition of private property.
>
> As Justice Scalia's opinion in *Nollan, supra*, 483 U.S. 825, makes clear, such a discretionary context presents an inherent and heightened risk that local government will manipulate the police power to impose conditions unrelated to legitimate land use regulatory ends, thereby avoiding what would otherwise be an obligation to pay just compensation. In such a context, the heightened *Nollan-Dolan* standard of scrutiny works to dispel such concerns by assuring a constitutionally sufficient link between ends and means. It is the imposition of land-use conditions in individual cases, authorized by a permit scheme which by its nature allows for both the discretionary deployment of the police power and an enhanced potential for its abuse, that constitutes the sine qua non for application of the intermediate standard of scrutiny formulated by the court in *Nollan* and *Dolan*. (*Ehrlich*, 12 Cal. 4th at 868-869.)

[168] 512 U.S. 374, 129 L. Ed. 2d 854, 114 S. Ct. 2309 (1994).

> . . . we must first determine whether the "essential nexus" exists between the "legitimate state interest" and the permit condition exacted by the city. [Citation omitted.] If we find that a nexus exists, we must then decide the required degree of connection between the exactions and the projected impact of the proposed development.[169]. . . We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development . . [n]o precise mathematical calculation is required, but the city must make some effort to quantify its findings in support of the dedication . . . .[170]

Development Fees.

Fees can be imposed only by following procedures set forth in the Mitigation Fee Act,[171] which the California Supreme Court has held requires as much constitutional scrutiny by the courts as do land dedications.

The Test.

For any project exaction, regardless of form, there must be:

(i) A legitimate city interest in the purpose of the condition;

(ii) An essential nexus between the city's interest and the condition;

(iii) A roughly proportionate connection between the condition imposed and the project's impacts.

[169] 512 U.S. at 380.

[170] *Dolan, supra*, 512 U.S. at 391 and 395.

[171] Government Code §§ 66000, *et seq*.

Fact-Based Analysis.

Before imposing any condition, the decisionmaker must be assured that the facts in the record support the determination. Conditions imposed in connection with rezones are not necessarily quasi-judicial. Nonetheless, decisionmakers are advised to support any condition imposed in connection with a rezone with substantial evidence of the rough proportionality between the project's impacts and the conditions. Assuming the City is able to find the essential nexus, the City must make an individualized determination that the specific condition being imposed is implicated by the project.[172] Under *Dolan*, rough proportionality requires that there be more than just the essential nexus, but also enough facts demonstrating that the value, size, amount or degree of the condition is caused by the specific proposal being reviewed. In *Dolan*, the U.S. Supreme Court struck down a requirement that a hardware store owner dedicate land for a bicycle path in order to offset what the city in that case found "could" be traffic impacts generated by the development; the Court dismissed the city's general recitation of project traffic trip figures and street capacities, calling such analysis "conclusory."

Legislative Property Development Standards.

The California Supreme Court has upheld requirements cities impose upon developers to adhere to basic development standards, such as requirements to build sidewalks or to adhere to setbacks.[173] If the conditions apply to all property owners in a district, no rough proportionality analysis is required.

[172] *Dolan, supra*, 512 U.S. at 391.

[173] *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996).

SECTION 11 – LABOR RELATIONS

The vast majority of City employees are represented by employee organizations or unions. A limited number of top level management and confidential employees along with officials appointed by the Council are not represented by employee organizations. Generally, labor relations between City employees and Council are governed by the Meyers-Milias-Brown Act ("MMBA") which is found in Government Code Sections 3500 *et seq*.

The purpose of the MMBA is to grant employees the right to form, to join, and to participate in the activities of the employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. The MMBA also gives employees the right to refuse to join or participate in employee organizations.

DUTIES OF THE CITY IN EMPLOYEE RELATIONS

When dealing with employee organizations, the City has a requirement to "meet and confer" with recognized bargaining groups. This meet and confer requirement mandates that the City sit down and discuss in good faith, issues regarding wages, hours and other terms and conditions of employment with representatives of recognized employee organizations. Prior to taking any action, the City must fully consider such presentations as are made by the employee organization on behalf of its members. This full consideration must be done prior to arriving at a determination of policy or a course of action on issues involving wages, hours or other terms and conditions of employment.

In order to meet and confer in good faith with employee organizations, the Council must designate its representative to meet with those representatives of recognized employee organizations. Both sides have the obligation to meet and confer promptly upon request of the other party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals. Each party must attempt to reach agreement on matters within the scope of representation (wages, hours and other terms and conditions of employment). The process must include adequate time for resolution of impasses where specific procedures for such resolution are contained in local rules or by mutual consent of the parties. If either side refuses to bargain in good faith, the other side must file an unfair practice charge with the Public Employment Relations Board prior to seeking judicial action to enforce the good faith bargaining requirement.

IMPASSE PROCEDURES

In the meet and confer process, the parties may be unable to resolve issues and reach an agreement. One method of impasse resolution is called mediation. Mediation procedures are non-binding and

at times are used when the parties have trouble finding a middle ground in an area in which they feel a settlement could be reached.

After impasse procedures are completed, Council may take a final step without agreement called unilateral action. Unilateral action allows the Council to implement its "last, best and final offer." Unilateral action is a step that is rarely taken and should only be considered after a long negotiating process followed by failure of impasse procedures to allow agreement to be reached.

MEMORANDUM OF UNDERSTANDING

Once agreement is reached by the negotiators, the agreement is put into writing in a document called a Memorandum of Understanding ("MOU"). The MOU is the basic contract between the employee organization and the City. Its term is subject to negotiation but usually covers one, two or three years.

During the term of the agreement, the City and employee organization must follow the agreements reached in the MOU in their labor negotiations. To the extent that procedures are specified in the MOU, the parties are bound by those procedures. Negotiations, during the term of an MOU, cannot be reopened without following the procedures set out in the MOU.

Once the agreement is reached between the negotiating teams, the MOU is then submitted to the respective bodies for approval. The employee organization usually holds a vote of its membership on the agreement. In addition, Council will be asked to approve the final document. Until the Council approves the final document, it will not be effective.

SECTION 12 – GLOSSARY OF MUNICIPAL LAW TERMS

In order to provide a helpful reference form for the meanings of some of the words and phrases which are most often used in municipal law, we have prepared the following glossary.

Abuse of discretion. The legal basis for a judicial overturning of a Council decision. It is established in one of three ways: (1) Council failure to proceed in a manner required by law; (2) Council fails to support its decision by findings where required; or (3) Council findings are not supported by substantial evidence.

Adjourn, adjournment. Action terminating and closing a meeting entirely. If another and subsequent meeting has been previously set to take place (or is set to take place with the motion to adjourn), the adjournment may act to continue business to the subsequent meeting.

Affected taxing entity. An entity which levied property taxes within a redevelopment project area before the redevelopment plan was adopted, which may include one or more cities, counties, school districts, and/or other special purpose agencies.

Affordable Housing has the meaning set forth at Cal. H. & S. C. § 50052.5.

Agreement. A coming together or meeting of the minds creating an obligation respecting some property right or benefit, or the performance of an act.

Annexation. The completion of an administrative process that brings about the attaching, joining or adding of an area of land (usually contiguous) to a City's existing territory.

Answer. A pleading filed with a court by which the defendant responds to a complaint by denying facts, alleging facts, and raising defenses and immunities to the matters or claims alleged.

Assessment. In a general sense, the process of ascertaining and adjusting the costs respectively to be contributed by several persons towards a common beneficial object (such as a park, street, landscaping service) according to the benefit received or burden created.

Attorney Work Product, work product. "General" work product is the work or result of efforts by an attorney (including those persons engaged by the attorney) on behalf of a client on a matter, whether in litigation or not. "Classic" work product is any writing that reflects an attorney's impression, conclusions, opinions, or legal research or theories. General work product is conditionally privileged, while classic work product is absolutely privileged. The attorney by law is regarded as the holder of the work product privilege.

Attorney Client, Attorney-Client Communication. Information transmitted between a client and his/her lawyer. Every communication in the course of the attorney client relationship is presumed to be in confidence. The communication must be made by a means which, so far as the client is aware, does not disclose the information to any third parties other than those who are present to further the interests of the client in the consultation, or to whom disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer is consulted. It includes a legal opinion formed and the advice given by the lawyer in the course of that relationship. The communication is confidential even if transmitted by fax, telephone, e-mail or other electronic means.

Blight. For redevelopment purposes, blight is established by certain physical and economic conditions within the survey area for which the plan is adopted, and by meeting the urbanization requirement.[174]

[174] Health & Safety Code § 33031.

City. An incorporated town or municipality. A municipal corporation deriving its powers from the state. In California, there are two types: general law city and charter city. The City of Moreno Valley is a general law city.

Claim, tort claim, claim for damages. A writing demanding payment of monetary compensation or reimbursement, for an act, omission or occurrence by a public entity or its employee. Claims must contain the information required by law, and must be presented within the time and in the manner provided by law (in writing and sufficient to apprise the public entity of the nature of the claim).

Code. A compilation of existing ordinances systematically arranged into chapters, subheads, table of contents, indices, and revisions. It serves to clarify and make a complete body of laws designed to regulate completely the subjects to which they relate. The City of Moreno Valley has compiled its codified ordinances in the Moreno Valley Municipal Code ("MVMC").

Codification. The process of collecting and arranging the laws or ordinances of a governmental body into a code or adding new enactments to the code. (See Code.)

Complaint. The (first) document initiating a civil action and filed with a court. The document is a pleading wherein a plaintiff alleges facts entitling him/her to some relief, which is typically money damages, an injunction, a declaration of rights, cancellation of a contract or other document, etc.

Condemnation. (See eminent domain and inverse condemnation.)

Cross-complaint. A complaint brought by a defendant against a plaintiff or against a third party. It concerns matters reasonably related to questions, facts, or matters raised in the initial complaint, and seeks contribution or indemnification in the defense of the initial action; or it brings in parties necessary or desirable for the full determination of the controversies raised in the initial complaint or to resolve all disputes between the parties to the initial complaint.

Declaration. Statements of fact or opinion over a disputed fact or issue, and concerning a lawsuit or proceeding, sworn or attested to under penalty of perjury. A declaration is not normally notarized.

Dedication. The transfer of title to land to a public agency, giving or devoting the land to a specific public use by some action of the owner, normally done in exchange for rights to develop the property.

Deed. A transfer of title to, or an interest in, real property by a writing signed by a person with an interest in it.

Defendant. The person named in, and against whom, a complaint has been filed.

Discovery. The ascertainment of facts and documents by a party to a lawsuit through the use of interrogatories, requests for production, and depositions, and similar devices provided for in state

and federal codes of civil procedure. The phase in litigation to gather relevant evidence for a case. Such evidence may or may not be admissible as evidence at a hearing or at trial.

Discretionary. An act which requires exercise in judgment and choice as to what is just and proper under the circumstances.

Eminent domain. The power of the government to take private property for public use. Private property cannot be taken except for fair compensation, and only under strict compliance with the letter of the law.

Fair argument. A determination under the California Environmental Quality Act ("CEQA") which, when made, requires that an Environmental Impact Report ("EIR") must be prepared before a project can proceed. An agency must consider the entire record and decide whether it can be fairly argued on the basis of substantial evidence in that record that the project may have a significant environmental impact on the environment. This process requires a weighing of the evidence on both sides of a question, and if substantial evidence of a significant environmental effect impact exists, evidence to the contrary does not dispense with the need for an EIR when it can still be fairly argued that the project may have an environmental impact. The mere expression of project opponents' fears and desires lacking any objective basis for a challenge does not constitute substantial evidence supporting a fair argument. (See substantial evidence.)

Fee. Generally, the requirement for the payment of a monetary amount. Fees are generally imposed in exchange for a service or the processing of an application. Fees are of a broad range and when imposed are a legislative act. When imposed in connection with a land use development, they are subject to state law requirements concerning prior notice to the public, written justification, reasonableness of the amount, segregation and/or accounting, etc. Fees cannot exceed the estimated reasonable cost of providing the service for which they are charged, otherwise they are subject to challenge as a tax.

Findings. The determinations of fact supporting the approval or denial of a project; an explanation of how the City processed raw evidence to reach its decision. The subconclusions that support the City's method of analyzing the facts and regulations, and of applying its policies. Findings are not generally required for legislative acts, unless required by statute or ordinance. Findings are usually required as to administrative (quasi-judicial) acts.

General law city. A municipal corporation existing under the general laws of the state, without a charter. A general law city is required to comply with all state laws. Moreno Valley is a general law city.

Gift of public funds. An unreasonable, destructive or improper use of property, or mismanagement or omission of duty as to the use of public funds by a public body or official.

Hearing. A proceeding with some degree of formality for the determination of issues of fact or law or both. Parties responding to it generally have a right to notice, to be heard at or prior to it, and to introduce evidence or argument or both.

Immunity, immunity from suit. The right to be free from suit for taking, or failing to take, certain action.

Implementation plan. A plan that the Agency must adopt every five years, and that identifies the methods and means by which the Agency intends to achieve its goals and objectives for the project area in the ensuing five years. It describes programs and expenditures and explains how the Agency will achieve its goals and objectives, eliminate blight, and achieve its housing objectives.

Interrogatories. A form of discovery. Written questions, from one party to a lawsuit to another party, which must be answered under oath, using due diligence in preparing the answers. Appropriate objections are permitted.

Inverse condemnation. A remedy for the breach of the constitutional requirement that property not be taken or damaged for public use unless just compensation has first been paid to the private property owner. Inverse is often described as the "reverse" side of eminent domain, as a procedural device for ensuring that the constitutional proscription is not violated. There are many theories which can support a claim of inverse condemnation, the most common being a zoning or land use regulation that denies a property owner all viable economic use of his/her property and physical damage to, or invasion of, property.

Legislative. Pertaining to the function of determining what the laws shall be, relating to subjects of permanent or general character. A legislative act refers to an act which applies generally. The opposite of a legislative act is a judicial act (in a municipal context called a "quasi-judicial" act). The distinction is important because it controls what kind of due process is required for the action, whether findings are required, and what kind of standard of review a court will apply to the action in reviewing it.

License. Authority granted to do or refrain from doing any act. The certificate itself which gives permission.

Lien. A charge or security or encumbrance upon property, usually evidencing a debt, obligation or duty.

Low Income Person/Household has the meaning set forth at Cal. Health & Safety Code § 50093.

Mandatory. An obligatory law which is required to be performed. A law is usually considered mandatory where its operation affects a third party. The opposite of mandatory is directory.

Ministerial. A governmental decision which does not require discretion but only the application of already established standards to given facts.

Minutes. A written summary record of all the proceedings of Council by the City Clerk.

Moderate Income Person/Household has the meaning set forth at Cal. Health & Safety Code § 50093.

Motion. A formal proposal of a Councilmember at a Council meeting that the Council take action or not take action.

Move, moving an item. (See also, Motion.) The act of making a motion, or that a specific motion be acted upon.

Negligence. The failure to use ordinary or due care. The breach of a duty of care by acting, or failing to act, as would a reasonable person in the same or similar circumstances.

Nuisance. In the sense of code enforcement, a continuing or unabated violation of a code provision; in a broader legal sense, everything that endangers life or health, gives offense to the senses, violates the laws of decency, or obstructs reasonable and comfortable use of property.

Ordinance. The enactments of the legislative body of a municipality (Council) having the force and effect of law within its boundaries.

Plaintiff. A person filing a complaint seeking some relief provided under law.

Preemption, state preemption. The preemptive authority of the state. The supervening power of the state exercised by legislating on a subject or in a field with the intent to preclude municipalities from acting on the same subject. State law supplants municipal ordinances.

Prima facie case. Evidence presented in favor of a claim or argument that would be sufficient to support a judgment or order if the opponent cannot provide evidence to rebut it, and which therefore places the burden of proof on the opponent.

Privileged communications. Communications, whether oral or written, by or between persons (including the Council) which the law protects as confidential as to all other persons.

Proceeding. Any action, hearing, investigation, or inquiry (by a court, administrative agency, hearing officer, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be given.

Project area committee ("PAC"). A PAC is an organized group comprised of property owners, tenants, business owners, and representatives of community organizations, that reside within a redevelopment project area, and are elected by project area property owners, tenants, business owners, and community organizations. The Agency must consult with the PAC during and after plan adoption on specified matters affecting the project area.

Public purpose. A motivation or intent to promote the public health, safety, morals, general welfare, security, prosperity, and contentment of its residents and inhabitants, which justifies a city decision or action.

Rezoning. Changing the zoning classification of property from one to another, affecting the types of uses and structures permitted on it.

Recess. A brief intermission within a meeting which does not end it or destroy its continuity as a single gathering, and after which business is resumed.

Request for Production. A form of Discovery. A written request to a party to a lawsuit by another party that it produce described documents or categories of documents.

Resolution. An expression of opinion, a declaration of will or intent by the Council which can have the effect of law. It usually relates to matters of special and temporary character, while an ordinance prescribes a permanent rule of conduct or government. The document reflecting such action by the Council.

Risk Manager. The position created to investigate, manage and compromise certain claims, claims adjustment and related functions of the City.

Statute. An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted by the legislature according to the forms necessary to constitute the law of the state.

Subpoena. A process to cause a witness to appear and give testimony.

Subpoena duces tecum. ("SDT"). A subpoena which also requires the witness to bring with him or her at the time of giving testimony described documents or other objects relevant to the lawsuit.

Substantial evidence. Enough relevant information and reasonable inferences from this information to support a finding or conclusion. Evidence is staff reports, written testimony and oral testimony. Substantial evidence may be present to support a conclusion even though other conclusions may be reached from the same evidence. Under federal and California case law, whether substantial evidence exists is determined by looking at the whole record, and, if the contrary evidence is sufficiently strong, then it can overcome other evidence which may be substantial but for the other evidence. The substantial evidence test is considered a deferential one for purposes of judicial review. One modification of the substantial evidence test is less deferential which applies to decisions to prepare a negative declaration instead of an environmental impact report. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment, is not substantial evidence. Substantial evidence includes facts, reasonable assumptions predicated upon facts and expert opinion supported by facts. Uncorroborated opinion or rumor is not substantial evidence.

Summons. The document advising a person that a legal proceeding has been filed against him and requiring a response within a prescribed period.

Supremacy. The highest level of authority of the sovereign; the paramount authority of the federal government to act in specified situations, to which state and local authority must yield.

Taking. When local government adopts regulations or takes action which amount to appropriating or denying to the owner all economic use of the property. The taking of action or application of regulations that deny a property owner all economically viable use of his/her property or that cause physical damage to, or invasion of, property.

Tax. A pecuniary burden laid upon individuals or property to support the government, and is payment exacted by a legislative authority. There are many types of taxes, but two major categories under the California Constitution. "General taxes" are taxes which are imposed to provide revenue for general governmental purposes with no legal restrictions as to which governmental purpose they must be expended for. "Special taxes" are imposed to fund specific programs and purposes and may only be legally expended for the specified purposes. General taxes must be approved by a majority of the voters of the jurisdiction imposing the tax. Special taxes must be approved by a two-thirds vote of the voters of the jurisdication.

Tax Increment generally means the increase in property tax revenue caused by increases in property value over the life of a Redevelopment Plan, and has the more specific legal meaning set forth at Health & Safety Code § 33334.2.

Text amendment. An ordinance adding, repealing or changing the text of the Moreno Valley Municipal Code.

Tort. The violation of a duty created, imposed or recognized by the law which gives the wronged party a right to be awarded money for damages.

Ultra vires. An act beyond the scope of the legal power or authority of person or entity.

Very Low Income Person/Household has the meaning set forth at Health & Safety Code § 50105.

Waiver. An act intentionally waiving, relinquishing, or abandoning a known right, claim or privilege.

SECTION 13 – LIST OF EXHIBITS

A NEWSPAPER ARTICLES RE "TICKET FIXING"

B CITY COUNCIL RULES AND PROCEDURES

C "CAN I VOTE? CONFLICTS OF INTEREST OVERVIEW" PREPARED BY THE FPPC

D "LIMITATIONS AND RESTRICTIONS ON GIFTS, HONORARIA, TRAVEL AND LOANS" PREPARED BY THE FPPC

Newark official guilty in traffic stop

By Vinessa Erminio

December 13, 2007, 11:06AM

Official pulled rank on a college cop

Newark Councilwoman Dana Rone was found guilty yesterday of interfering at a traffic stop involving her nephew last year.

Fairfield Municipal Court Judge Frank Pomaco said Rone was pulling rank as a councilwoman when she confronted a Rutgers-Newark police officer who pulled Jameel Grant over in Newark on the evening of Dec. 20, 2006.

"As a public official, you are held to a higher standard," Pomaco said, as he rendered his verdict. "This sends the wrong message. You would've been much better off if you didn't show up at the scene."

Rone said she was shocked by the verdict. She acknowledged during the trial she showed up at the scene, but only because she was worried about the safety of her nephew in light of shootings and mistreatment of young black men by police. At one point during the trial, she cited the case of Sean Bell, a young black man killed in a hail of bullets by New York City police last year.

Rone also was found guilty of blocking traffic on Broad Street during the incident and failure to carry a license at the time. She will not serve any jail time, but will be forced to pay $694 in court fines.

Her nephew, Grant, was found guilty of failing to wear a seat belt, but the judge did not find him guilty of making an illegal lane change without signaling. The trial was held in Fairfield to avoid any conflicts of interest because the Newark city council votes on matters involving the Newark Municipal Court.

The verdict was rendered after an eight-hour trial during which six people testified about a routine traffic stop that spiraled out of control, with Newark police showing up at the scene because of Rone. Both Rone and Grant took the witness stand.

The most damaging evidence, though, was a one-hour video recorded from officer Vincent Wilson's patrol car. Wilson was the officer who pulled Grant over shortly after 10 p.m.

The video, played in court, features an extensive and animated exchange between Wilson and Rone after she was placed in handcuffs and seated in the back seat. Rone had identified herself several times as a Newark councilwoman and was driving her city-issued sport utility vehicle at the time.

"It's a shame you guys don't know me," she said. "That's pretty bad."

Later she said, "Call Chief Campos and come down," she said, referring to Newark Police Chief Anthony Campos. "Wherever he is, he'll come down."

The episode unfolded when Grant was heading to a club in Montclair with a friend. He had just left Rone's house and was on his way to pick up another friend. Wilson spotted Grant's white Dodge changing lanes on Washington Street without signaling. As he pulled behind the car, Wilson testified that he could see Grant was not wearing a seat belt.

Grant was pulled over on Broad Street, near the intersection with Washington and in the vicinity of Bears & Eagles Riverfront Stadium. According to the videotape, Wilson stopped Grant at 10:14 p.m. When he approached the car, Wilson said Grant and the passenger were laughing, and Grant pulled out his cell phone to call Rone.

Wilson said he asked Grant to hang up the phone several times, but he refused. Grant told the officer that his aunt was a councilwoman and she would be arriving. Wilson went back to his car so he could start writing a summons for Grant.

At 10:21 p.m., the video showed Rone's SUV pulling up in front of the police car and directly next to Grant's car. When Wilson approached the SUV, Rone's voice could be heard on tape sounding very animated.

She got out of the SUV and is seen on the video wearing house slippers and her winter coat.

According to Wilson she yelled, "Why did you stop this car? I'm a councilwoman. Why did you stop this car?"

Wilson ordered her to move the SUV, but she refused. He called for a supervisor, acting Sgt. Joe Churchill. When Churchill appeared at the scene and spoke to Rone, she moved the SUV out of the way - eight minutes after she arrived. Three officers testified they heard Rone say, "I'm calling the real police - the Newark police."

The video showed various Newark police officers at the scene, but it is unclear how many showed up. Wilson, who had been on the force for only a year at the time and was overwhelmed, called his police chief for advice. Wilson said Rone also had mentioned she had a connection with the provost of the Rutgers-Newark campus.

"I was nervous, I was intimidated, I was scared," Wilson said. "I didn't want to lose my job. I have a family at home."

During her testimony, Rone offered a different version of events. She said Wilson was excited and irate. She said she was worried that he would hurt her nephew, which is why she called for Newark police. She said she never intended to block a ticket.

"Two weeks prior to that, Sean Bell was shot several times," she said. "You want to believe police officers are going to be acting their best to protect and serve, and sometimes it doesn't go that way," she said.

Judge Pomaco said he didn't doubt Rone's concern for her nephew. The problem, he said, was her reaction to the situation. Pulling her SUV in between the patrol car and her nephew's was a clear obstruction of justice.

"She should not have injected herself in the middle of this mess," he said. "She should've left the scene."

Katie Wang covers Newark City Hall. She may be reached at kwang@starledger.com or (973) 392-1504.

Judge: Newark councilwoman must give up post

By Laura Craven

August 05, 2008, 1:03PM

Essex County's top judge ruled today that Newark councilwoman Dana Rone must give up her seat because of her attempts to interfere with a nephew's 2006 traffic stop.

Assignment Judge Patricia K. Costello chided Rone for abusing her office to intercede in an "inconsequential traffic stop" and accused the Essex County Prosecutor's Office of "abuse of discretion" for reversing its decision to seek Rone's removal.

"This is a sad day and I take no pleasure in doing this," Costello said, reading from a **written decision** during a hearing to decide Rone's fate.

Rone's lawyers asked the judge for a stay on the ruling, and county prosecutors joined in, but Costello denied the request, saying Rone's chance at success upon appeal was not likely. Videotape evidence showing Rone's behavior at the traffic stop was " devastating," Costello said.

"Your client sealed her fate on the street that night," Costello told Rone's lawyer, Ray Hamlin.

In her ruling, Costello criticized Essex County Prosecutor Paula Dow's decision to reverse her initial request for Rone's removal.

Dow had originally sought Rone's dismissal because the case fit the stipulations of a state law that requires officials to forfeit their positions if they have been convicted of a crime in which

they abused their powers of office. But in a follow-up letter to Costello last week, one of Dow's assistant prosecutors said there were "mitigating considerations" that made her change her mind. Dow called Rone's conduct an "emotional response" and noted that no one was injured and it seemed to be an "isolated instance of poor judgment."

Costello disagreed. "The state seems to draw inferences that are strained and not supported by facts in other places," the judge said.

During a Dec. 20, 2006, traffic stop involving her nephew Jameel Grant, Rone introduced herself as a councilwoman, drove a city-is sued vehicle and used her status as a councilwoman to call Newark police.

"You know you wasn't treating me with any level of respect. Even after I told you I was a councilwoman," Rone said according to a transcript of the incident.

Later, she urged the officer to call Newark Police Chief Anthony Campos.

"You can call Chief Campos. Call him and have him come down or whatever. Wherever he is, he'll come down," Rone said.

Rone was convicted in Fairfield Municipal Court on Dec. 12 of obstruction of justice. She lost an appeal to state Superior Court on June 27.

After Judge Patricia Costello concluded her remarks, some of Rone's supporters gasped.

"We feel its unfair what's going on now," said Juana Edmond, a resident of the North Ward. "Its unbelievable that a small crime like that can affect a job."

The hearing was attended by five of Rone' council colleagues including Council President Mildred Crump. They huddled with shocked faces after the hearing, and refused to comment.

Previous Star-Ledger coverage:

7/31/08: **Prosecutor won't ask for Rone to forfeit position**

12/13/07: **Newark official guilty in traffic stop**

12/23/06: **Police arrest Newark official**

LAW.COM

California Ticket-Fixing Judge Guilty on All Counts

Shannon Lafferty
The Recorder
05-03-2004

Superior Court Judge William Danser of California's Santa Clara County was found guilty on all counts Friday in his obstruction of justice trial.

The judge was found guilty on one count of felony conspiracy to obstruct justice, plus eight misdemeanor counts of obstruction, attempted obstruction and conflict of interest.

"This is really a flagrant case, but not completely isolated, and that's disturbing," said juror Don Crede, a San Jose, Calif., software engineer.

Retired Santa Cruz County Superior Court Judge William Kelsay, who presided over the trial, set a May 24 hearing to schedule sentencing. Danser faces up to three years in prison.

Danser was indicted in September along with former Los Gatos, Calif., Police Det. Randall Bishop. The judge was accused of improperly dismissing 20 traffic tickets for professional athletes and acquaintances, and of transferring two DUI cases to himself so he could hand out lenient sentences.

Deputy District Attorney David Pandori had painted Danser as a power-hungry man who broke the law so he could help his buddies.

"Judge Danser was so enamored with his own power and his need to impress friends, he'd just take cases from traffic court and from other judges really under false pretenses," Pandori had said.

Pandori called 90 witnesses, including several other superior court judges and commissioners.

Danser's defense attorney, Kenneth Robinson of San Jose, had argued that Danser was just the dupe in a cop's scheme to get traffic tickets fixed. Robinson said the judge received nothing in return for his handling of the cases, and that his client was simply being made a scapegoat by a prosecutor's office that didn't like the way he conducted business.

Testifying in his own defense, Danser acknowledged he had never spoken with the officers who issued the tickets or heard argument in court before dismissing them. He said he had dismissed the tickets in the interest of justice, relying on Bishop. He said he considered Bishop an honest cop and claimed not to know that Bishop moonlighted as a security officer for the San Jose Sharks hockey team.

"The way I interpreted it was whatever I believed to be fair under the circumstances was in the interest of justice," Danser testified.

"I don't need to call any witnesses," Robinson had said before the trial. "I will win with the prosecution's."

The defense called just one witness aside from Danser. Deputy DA John Schon had testified that in his experience, Danser always gave no-jail sentences to first-time DUI defendants, even though most judges sentence them to six days of weekend work.

Los Angeles Times

Judge Must Answer Charges in Alleged Ticket-Fixing Case

September 16, 1987

A Beverly Hills judge must answer charges of obstruction of justice stemming from an alleged traffic ticket-fixing scheme, an Orange County Superior Court judge ruled Tuesday.

Judge Frank Domenicini rejected Municipal Judge Charles D. Boags' claim that the two misdemeanor charges against him should be dismissed.

Prosecutors alleged in January that Boags improperly suspended fines on 207 parking tickets issued to friends of his son.

When the charges were filed in January, Los Angeles Dist. Atty. Ira Reiner said Boags was "fixing tickets for his son and his sons' friends." The case was transferred to Orange County after Los Angeles County judges disqualified themselves because they knew Boags.

None of Boags' three lawyers could be reached for comment.

Ex-prosecutor faces more charges in ticket-fixing case

Posted: May. 4, 2009

Smithfield, N.C. — A Johnston County grand jury on Monday indicted a former prosecutor on dozens of charges related to an alleged scheme to illegally dismiss traffic cases, including citations for driving while impaired.

Cyndi Jaeger, a former Johnston County assistant district attorney, was indicted on 81 misdemeanor counts of failure to perform duty of office. She previously was charged with three felony counts of obstruction of justice.

Along with Jaeger, former deputy court clerk Portia Snead and defense lawyers Chad Lee, Lee Hatch, Vann Sauls and Jack McLamb were indicted in March on charges that they altered court records and knowingly used illegal dismissal forms to get traffic cases against 37 people dropped.

The indictments show that 70 dismissal forms with Jaeger's signature were filed after she left her job in September 2007. The dismissal forms were filed for clients of the four defense attorneys charged. Snead is accused of deleting the attorneys' names from at least two cases from the courthouse computer system.

The majority of the defendants involved were clients of Lee, a former Johnston County prosecutor.

All six made their initial court appearance Monday morning, and all declined to comment as they left the courthouse.

"It is a humiliating experience to go through," said attorney David Freedman, who represents Jaeger.

District Attorney Susan Doyle asked the State Bureau of Investigation a year ago to look into the high rate of dismissed drunken-driving cases in the county. A tracking system installed in October 2007 found several discrepancies in cases that were scheduled for trial but had been dismissed months earlier, she said.

A WRAL News investigation found that 46 percent of the DWI charges filed in Johnston County in 2006 were dismissed, compared with 21 percent statewide and 20 percent in neighboring Wake County.

DWI cases require two signed forms before they are dismissed, and dismissals are filed with the court clerk's office.

A 2006 state law requires specific information be listed on dismissal sheets in DWI cases, including the driver's blood-alcohol concentration, any other pending impairment charges and an explanation for the dismissal. A copy of the dismissal is supposed to be sent to the district attorney and the head of the law enforcement agency that brought the charge.

Thirty-three cases that were part of the SBI probe involved alcohol-related charges, primarily DWI. Some of the defendants had alcohol levels in their system that were more than double the 0.08 level at which drivers are considered intoxicated in North Carolina.

Eleven of the defendants had been charged previously with drunken driving or have had subsequent DWI arrests.

After the court appearances, prosecutors handed over boxes of evidence to defense attorneys.

Because of the complex issues involved in the case, the judge classified it as "exceptional," allowing prosecutors and defense attorneys to determine when to schedule future court hearings.

- Reporter: Mike Charbonneau
- Web Editor: Matthew Burns

mlive.com
Everything Michigan

Dearborn police officer charged in ticket-fixing

By Scott Thorn

March 14, 2009, 2:40PM

A Dearborn police officer and a 20-year-old man have been charged in what authorities say was a ticket-fixing scheme.

The Detroit Free Press and The Detroit News report Alex Brian Ramirez was arraigned Friday on charges of embezzlement and bribery by a public official, misconduct in office, obstruction of justice and conspiracy to obstruct justice.

The 42-year-old faces up to 10 years in prison. He was ordered held on bond.

A message seeking information on whether Ramirez had a lawyer was left Saturday with police.

Hassan Hojaije is facing charges of obstruction of justice, conspiracy to obstruct justice and bribery. The Dearborn man was released on bond. He faces up to five years in prison.

Hojaije's lawyer Majed Moughni says his client is cooperating.

RULES OF PROCEDURE
FOR
COUNCIL MEETINGS AND RELATED FUNCTIONS AND ACTIVITIES

1. MEETINGS

1.1. REGULAR MEETINGS

1.1.1. TIME AND PLACE.

1.1.1.1. *Regular Time and Place*.
Regular meetings of the City Council shall be held on the second and fourth Tuesdays of each month at 6:30 p.m. in the City Council Chambers of City Hall or such other time and place as shall be specified by resolution of the City Council.

1.1.2. AGENDA.

1.1.2.1. ORDER OF BUSINESS.

The order of business of each regular meeting of the City Council shall be as set forth in the agenda prepared by the City Clerk. The agenda shall be a listing by topic of the subjects, numbered as designated by the City Clerk and taken up for consideration in substantially the following order:

Special Recognition/Presentations (6:00 p.m., if necessary)*
Call to Order (6:30 p.m.)
Pledge of Allegiance
Invocation
Roll Call
Introductions
Public Comments on Matters on the Agenda**
A-C. Consent Calendars ***
City Council
Moreno Valley Community Services District
Community Redevelopment Agency of the City of Moreno Valley
D. Public Hearings
E. Items Pulled from Consent Calendars for Discussion or Separate Action
F. Reports
G. Legislative Actions

Public Comments on Matters Not on the Agenda****
City Council Reports and Closing Comments
Public Comments on Matters on the Closed Session Agenda*****
Closed Session, if needed
Report of Action from Closed Session

Adjournment

*See Section 1.2 below

** *The Presiding Officer will announce that public comments on matters on the agenda will be taken up as the item is called for business [Subsection 2.2.2 below], between staff's report and City Council deliberation.*

***Consent calendars will begin immediately after introductions (and special presentations, if any), with the remaining items taken in the order of the agenda. Any consent calendar item(s), pulled for discussion or separate action will be heard immediately following the public hearings.

**** Public Comments on Matters Not on the Agenda are governed by Subsection 2.2.1 below and will be heard prior to City Council Reports and Closing Comments. Following public comments on matters not on the agenda, the Presiding Officer may request that staff respond to legal or factual issues raised during the public comments. In the event that the agenda item for such public comments has not been called by 9:00 p.m., it shall be called as the next item of business following the conclusion of any item being heard at 9:00 p.m.

*****Public Comments on matters on the closed session agenda (if a closed session is held) are governed by Section 2.7 below.

1.1.2.2. CHANGES IN AGENDA.

Except with the consent of the majority of the City Council, items shall not be taken out of the order prescribed above. No matters other than those listed on the agenda shall be acted upon by the City Council except as permitted under applicable state law.

1.1.2.3. DELIVERY AND POSTING OF AGENDA

Barring insurmountable difficulties, the agenda for each regular meeting of the City Council, and reports and other documentation related thereto, shall be delivered to the Council members and made available to the public on the Thursday preceding the Tuesday meeting to which the agenda pertains. The agenda shall conform to, and be posted in accordance with, applicable requirements of the California Government Code. Agendas shall be posted at least 72 hours prior to the time scheduled for the meeting on the bulletin board outside the City Council Chambers at City Hall and at such other places within the City as the City Council has designated for posting

notices of City Council meetings.

1.1.3. ROLL CALL

Before proceeding with the business of the City Council, the City Clerk shall call the roll of the Council members and the names of those present shall be entered in the minutes. The order of roll call shall be alphabetical, except that the Mayor shall be called last.

1.1.4. APPROVAL OF MINUTES:

Unless requested by a majority of the City Council, minutes of the previous meeting may be approved without public reading if the City Clerk has previously furnished each Council member with a copy thereof.

1.1.5. PUBLIC HEARINGS

1.1.5.1. ORDER OF PROCEEDINGS.

Generally, public hearings, other than those of a quasi-judicial nature, shall be conducted in the following order:

Staff Review and Report
Questions of Staff by City Council
Hearing Opened by Mayor
Presentation by Proponent, Applicant or Appellant
Questions of Proponent, Applicant or Appellant by Council and/or Staff
Public Testimony
Rebuttal by Proponent, Applicant or Appellant
If Desired, Hearing Closed
Questions by City Council
Discussion by City Council
Action by City Council

1.1.5.2. PUBLIC TESTIMONY.

1.1.5.2.1. Time Limits.

Questions, comments, and testimony from the public shall be limited to the subject under consideration. Depending upon the extent of the agenda, and the number of persons desiring to speak on an issue, the presiding officer may, at the beginning of the hearing, limit testimony from the public, but in no event to less than 5 minutes per individual and no less than 20 minutes per hearing item. Any person may speak for a longer period of time, upon approval of the City Council, when this is deemed necessary in such cases as when a person is speaking as a representative of a group or has graphic or slide presentations requiring more time.

1.1.5.2.2. Testimony After Closure of Hearing.

Once the hearing has been closed, no additional public testimony will be taken without a majority vote of the City Council to reopen the hearing, even in cases where the item is continued to a future date for Council consideration. However, after the hearing has been closed, the Council may direct questions to the applicant or any other person who has testified during the hearing, and receive their answers, which shall be deemed to be part of the record of testimony at the hearing. In the event that public testimony is reopened to allow additional information or additional speakers, the proponent, applicant or appellant shall be permitted a reasonable time for rebuttal. Any request for reopening of the hearing shall be submitted in writing to the bailiff or to the City Clerk, who shall deliver it to the presiding officer in a manner calculated to be least disruptive to any proceedings under way.

1.1.5.2.3. Written Testimony.

Testimony submitted in written form may be added to the record of the hearing by motion and majority vote or consent of the City Council.

1.1.5.2.4. Testimony Under Oath.

In any hearing before the City Council, notice of which is to be published or posted, if the City Council or any member thereof, or a proponent or opponent of the matter, requests that any or all participants in the proceedings testify under oath or affirmation, the making of such request shall be set forth in the notice of hearing. Additionally, the notice of hearing shall state that the giving of testimony under oath or affirmation shall be voluntary as to each person wishing to be heard in the matter, and that any persons having a question or concern regarding the giving of testimony under oath or affirmation should consult an attorney of their own choosing and at their own expense. Each person testifying under oath or affirmation in any such proceeding shall, before so testifying, state on the record agreement to testify under oath or affirmation in the matter and has had an opportunity to choose and to consult with an attorney in respect thereto. Upon request to the City Clerk, each Council member will receive sufficient notice, by phone, memo, fax or electronic mail prior to the time of publishing or posting of any hearing notice in order to make such a request.

1.1.5.3. QUASI-JUDICIAL HEARINGS.

Quasi-judicial hearings shall be conducted in accordance with the principles of due process, and the City Attorney shall advise the City

Council in this regard.

1.1.6. CONSENT AGENDA

Items of routine nature, not anticipated to be controversial, may be placed on the consent calendar by the City Manager. All items may be approved by one blanket motion upon unanimous consent. Any Council member may request that any item be withdrawn from the consent agenda for separate consideration. Any Council member may abstain from voting on any consent agenda item without requesting its removal from the consent agenda, by orally stating intent to abstain as to a particular item. The City Clerk shall record such abstentions in the minutes.

1.1.7. CITY COUNCIL REPORTS AND COMMENTS

The Mayor or any Council member may, during the time for reports and comments by Council members, report on activities in representing the Council or the City on boards, committees, commissions, task forces, and other official bodies, before other governmental agencies and at public events. Each Council member may also bring to City Council's attention any item of new business under this portion of the agenda. Action on any matter of business not listed on the agenda shall be deferred until properly listed on the agenda for a subsequent City Council meeting unless properly added to the agenda due to a need for immediate action pursuant to state law. If two Council members concur that an item should be added to a future agenda, the Council shall give direction to staff as to whether the matter should be placed on the agenda for a regular Council meeting, a study session or a special meeting.

1.2. SPECIAL PRESENTATIONS.

In order to promote efficiency in handling the business of the City and to provide for proper recognition of those making a contribution to the community, the City Council shall, from time to time, absent special circumstances such as scheduling issues precluding a recipient from attending at that time, convene at 6:00p.m. prior to a regular City Council Meeting for ceremonial purposes. Such a session shall be posted on the agenda for the regular Council Meeting as "Special Presentations". Agenda items for a Special Presentations session shall include only ceremonial matters, including but not limited to, giving or receiving of gifts and awards, proclamations or previously adopted resolutions.

1.3. ADJOURNED MEETINGS.

Any meeting may be adjourned to a time, place, and date certain, but not beyond the next regular meeting. Once adjourned, the meeting may not be reconvened.

1.4. STUDY SESSIONS

1.4.1. NOTICE AND AGENDA.

A study session is a meeting of the City Council, provided a quorum is

present. Regular study sessions shall be noticed, agendized and conducted in compliance with state laws governing regular meetings of the City Council. Special study sessions may be called in accordance with the procedures for special meetings of the City Council and shall be noticed, agendized and conducted in accordance with state law governing special meetings of the City Council.

1.4.2. LACK OF QUORUM

In the event that a quorum is lacking for a study session, the meeting may proceed as a briefing at the request of the council members present, but shall not be considered a meeting of the City Council and no direction shall be given to staff by majority consent except to place an item on a future agenda. The proceedings shall continue to be open to the public, public comments shall be taken as for regular study sessions, and all other rights of the public with respect to City Council meetings shall be observed.

1.4.3. LIMITED ACTIONS.

Notwithstanding that a study session is a meeting of the City Council, the Council by these rules has determined that study sessions are limited purpose meetings and that no formal vote or final action of the City Council shall be taken. The Council members may individually express their opinions and ask questions concerning a study session item, and may, by majority consent, give general direction to staff concerning further action to be taken prior to formal City Council consideration of the item, but any final action or formal motions or vote required to effect Council approval or denial shall take place at a regular Council meeting. However, Council members shall not express opinions, nor give directions to staff indicative of any opinions, regarding the approval, disapproval, granting or denial of any item for which a subsequent public hearing will be required prior to final action.

1.4.4. TIME AND PLACE.

Regular study sessions of the City Council shall be held on the third Tuesday of each month at 6:00 p.m. in the City Council Chambers of City Hall or such other time and place as specified by resolution of the City Council.

1.4.5. SPECIAL STUDY SESSIONS

Study sessions may be held at times or places other than the regular time and place if noticed and agendized as a special meeting and designated as a study session. A special meeting designated as a study session shall be subject to this Section 1.4.

1.5. SPECIAL MEETINGS.

1.5.1. NOTICE.

The Mayor or a majority of the members of the Council may call special

meetings of the City Council upon not less than 24 hours notice and in accordance with Section 54956 of the California Government Code, and other applicable state statutes, as amended from time to time.

1.5.2. MATTERS CONSIDERED.

Only matters contained in the notice of the special meeting may be considered. No ordinance, other than an urgency ordinance, may be adopted at a special meeting. Matters may be placed on the notice of special meeting only with the prior approval of the Mayor or of a majority of the members of the Council.

1.6. SPECIAL JOINT MEETINGS

1.6.1. CALLING OF MEETING.

Special Joint Meetings of the City Council and the governing board of another governmental agency (other than those whose governing boards are comprised of the City Council members) may be called and noticed in accordance with the rules for calling special meetings of the City Council.

1.6.2. RULES OF PROCEDURE.

The rules of procedure governing such joint meetings shall be agreed to by the Mayor and the chairperson of the other governing body or bodies and shall be listed on the agenda for the Special Joint Meeting. The agenda shall include ratification of the agenda by each body as the first order of business after roll calls and ceremonial openings such as the flag salute and invocation, if any. Ratification of the agenda shall be deemed to be adoption of any rules and agenda formats contained therein for the purposes of that meeting only. However, all rules and agenda formats shall conform to all applicable state and federal laws and regulations.

1.6.3. WITH OTHER COUNCIL MEETINGS.

A Special Joint Meeting may be called and noticed even if a regular Council meeting or study session would have ordinarily been scheduled for the same time and place. However, if agenda items are included for the consideration of the Council separately from the other attending body(ies), the meeting shall be deemed both a special joint meeting and a regular Council meeting or study session as applicable, and the rules of procedure applicable to each type of meeting shall apply respectively to those agenda items to be considered jointly or separately or to each portion of the meeting so designated on the agenda.

1.7. CLOSED SESSIONS.

1.7.1. REGULAR CLOSED SESSIONS.

Regular closed sessions shall be held at 6 p.m. on the first Tuesday of each

month, and immediately following Regular City Council Meetings and Study Sessions, unless no closed session items are scheduled for that meeting.

1.7.2. SPECIAL CLOSED SESSIONS.

Special closed sessions may be called in accordance with the provisions of these rules and state laws for calling special meetings of the City Council.

1.7.3. IMMEDIATE CLOSED SESSIONS.

The City Council may, subject to the requirements of state law, recess an open meeting to an immediate closed session when the issues raised in the open session give reason to do so.

1.7.4. MINUTES.

Pursuant to Section 54957.2 of the California Government Code, the City Clerk may from time to time be required to attend a closed session of the City Council and keep and enter in a minute book a record of topics discussed and decisions made at each meeting. The confidentiality of such minutes shall be maintained pursuant to said section of the Government Code.

1.7.5. AGENDAS.

Agendas for regular closed sessions shall be noticed, agendized and conducted in compliance with state laws governing regular meetings of the City Council and the provisions of §1.1.2.3 above.

1.7.6. ANNOUNCEMENTS OF ACTION TAKEN.

When required by state law, actions taken in closed session shall be announced in open session promptly after the closed session. For closed sessions held immediately before any City Council meeting, announcement shall be made during the subsequent meeting. A place may be listed on the agenda for such announcements. After closed sessions held after any City Council meeting or not in conjunction with any other meeting of the City Council, the members of the Council shall reconvene in open session and make such announcements prior to final adjournment of the meeting.

1.8. EMERGENCY MEETINGS.

Upon finding by majority vote that an emergency situation exists where prompt action is necessary due to the disruption or threatened disruption of public facilities due to either a work stoppage or other activity which severely impairs public health or safety, or a crippling disaster which severely impairs public health or safety, the Council may convene an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement for special meetings provided that all provisions of Section 94956.5 of the California Government Code, and other applicable law, are complied with.

2. PUBLIC COMMENTS AND ADDRESSING THE COUNCIL

2.1. PUBLIC COMMENTS GOVERNED BY THIS SECTION; EXCEPTIONS

The rules and procedures set forth in this Section 2 shall govern each opportunity for the public to address the City Council during its meetings except as expressly set forth elsewhere or as otherwise required by law. These rules and procedures shall govern public testimony during public hearings except as to those matters set forth in Subsection 1.1.5 above. Public comments are also governed by the rules of decorum set forth in Subsection 5.8 below.

2.2. MANNER OF ADDRESSING THE CITY COUNCIL

2.2.1. SPEAKER FORMS.

Any member of the public desiring to address the City Council shall fill out and present to the bailiff or, in the absence of the bailiff, the City Clerk, a form of request to speak prior to the presiding officer calling the item of business which the person desires to address and when called by the presiding officer, shall proceed to the podium. After being recognized, the individual shall state the individual's name and address for the record. Any person having reason not to publicly reveal address information shall instead state whether that person is or is not a resident of the City of Moreno Valley.

2.2.2. ADDRESS PRESIDING OFFICER.

All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person. No person shall enter into any discussion without being recognized by the presiding officer. It shall be the Presiding Officer's prerogative to determine the order of speakers on any agenda or non-agenda items, except to the extent that the order of speakers for public hearing development projects is determined by other policies.

2.2.3. SUBJECT UNDER DISCUSSION.

During public comments on matters on the agenda and public hearings, all remarks shall be limited to the subject under consideration.

2.2.4. COUNCIL MEMBER RESPONSES.

Any member of the City Council who has been recognized by the presiding officer of the City Council for such purpose may address or respond to a member of the public who has addressed the City Council pursuant hereto. Such address or response shall be exercised only once for each member of the public, shall not exceed three minutes in length, shall be deemed to express the individual position or opinion of the Council member offering the same, and shall not be construed to bind the City Council or the city in any manner. Unless otherwise directed by the City Council, the restrictions imposed by this Subsection 2.2.4 shall apply only to those portions of the City Council agenda during which members of the public are permitted to make oral communications to the City Council.

2.2.5. ADDRESSING THE CITY COUNCIL AFTER THE PUBLIC COMMENT PERIOD.

After the public comment period has been concluded for any item, no member of the public shall address the City Council without first securing permission by a majority vote of the City Council. Any request for such permission shall be submitted in writing to the bailiff or to the City Clerk, who shall deliver it to the presiding officer in a manner calculated to be least disruptive to any proceedings under way.

2.2.6. CHANNELING COMMUNICATIONS TO STAFF.

After the oral communication is presented, the presiding officer may, if he deems it desirable, request that the communication also be made either to the City Manager or other appropriate staff member during regular business hours, or in writing for subsequent submittal to Council members, pursuant to Subsection 2.2.8.

2.2.7. LIMITATIONS ON PUBLIC COMMENTS

The making of oral communications to the City Council by any member of the public during the "Public Comments" portions of the agenda shall be subject to the following limitations:

2.2.7.1. ISSUES TO BE HEARD IN A DIFFERENT PROCEEDING

The following limitations shall apply in circumstances where the presiding officer is aware or is informed by the City Manager or other staff member that they apply:

2.2.7.1.1. Issues Pending Before Other Bodies.

No speaker shall be permitted to address the City Council on a topic which is currently before or about to be submitted for consideration by the Planning Commission at a public hearing before which the speaker should make his presentation, until that latter body has completed its deliberations and taken its final action.

2.2.7.1.2. Public Hearing

No speaker shall be permitted to address the City Council on a topic that is scheduled to be heard and determined by the Council in a public hearing at a subsequent time. Any speaker indicating a desire to speak on such a matter shall be informed of the date, time and place of the hearing and directed to make comments during the public testimony portion of the public hearing, or, alternatively, to submit comments in writing and request that they be included in the record of such hearing.

2.2.7.1.3. Issues Subject to Appeal

Where an appeal to the City Council is or may become available to the speaker, no public comments shall be taken on the subject

outside of the appeal hearing. Rather, the presiding officer should direct the person to follow the appeal procedure and present comments and evidence in the appeal hearing.

2.2.7.2. MULTIPLE SPEAKERS.

If it appears that several speakers desire to speak regarding a single topic, the presiding officer may reasonably limit the number speaking as to each side of an issue. In this regard, preference may be given to speakers who represent groups of persons who have designated a spokesman. In the presiding officer's discretion, if beneficial to the Council's understanding of an issue or more efficient in conducting Council business, the presiding officer may, but shall not be required to, allow grouping of speakers into a coordinated presentation.

2.2.7.3. REPETITIOUS AND IRRELEVANT COMMENTARY

Irrespective of any time limits, the presiding officer may regulate or terminate the comments of a speaker when the presiding officer reasonably determines that the speaker is being unduly repetitious or engaging in extended discussion of irrelevancies. The presiding officer shall first issue a warning to the speaker and explain the reasons for the warning prior to terminating the speaker's time.

2.2.8. WRITTEN CORRESPONDENCE

2.2.8.1. INCLUDED IN AGENDA PACKET.

Any written communication relating to a matter pending, or to be brought before the City Council shall, whenever possible, be included in the agenda packet for the meeting at which such item is to be considered. If received after the delivery of the agenda packet, it shall be distributed to all persons receiving the agenda packet and all others requesting such information as soon as practicable after receipt.

2.2.8.2. LETTERS OF APPEAL.

Letters of appeal from administrative or commission decisions shall be processed under applicable provisions of the municipal code, or other ordinances.

2.2.8.3. WRITTEN PUBLIC COMMENTS.

Public comments submitted in written form shall be copied and distributed to all members of the City Council, the City Manager, and the City Attorney.

2.3. PERSONS AUTHORIZED TO BE WITHIN PLATFORM AREA

While the City Council is in session, no person except city officials shall be permitted within the area of the Council Chambers forward of the speaker's podium

without the invitation or consent of the presiding officer.

2.4. PUBLIC COMMENTS AT REGULAR AND ADJOURNED REGULAR MEETINGS.

2.4.1. PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

Each person addressing the City Council during Public Comments on Matters Not on the Agenda shall be permitted three minutes to address the Council, but in cases where it appears that a large number of persons desire to address the Council on one subject, the presiding officer may limit public comments on any one subject to an aggregate of 15 minutes. Public comments on matters not on the agenda shall be taken in accordance with the Order of Business set forth in paragraph 1.1.2.1 above.

2.4.2. PUBLIC COMMENTS ON MATTERS ON THE AGENDA

Public comments shall be taken as to each item as the presiding officer calls that item for consideration; however, speakers who wish to address the City Council on any consent calendar item may only speak once prior to Council consideration of the consent calendar. Each member of the public requesting to speak shall be allowed three (3) minutes to complete comments and all speakers on any one item shall be limited to a total aggregate time of 15 minutes.

2.5. PUBLIC COMMENTS AT SPECIAL MEETINGS

At special meetings of the City Council, no public comments will be taken on matters not on the agenda. Public comments on matters on the agenda shall be taken as to each item as the presiding officer calls that item for consideration. However, with respect to Special Joint Meetings with other Agencies, public comments on matters on the agenda shall be taken in any manner consistent with state law and agreed to under Subsection 1.6.2 above. Each member of the public requesting to speak shall be allowed three (3) minutes to complete comments and all speakers on any one item shall be limited to a total aggregate time of 15 minutes, except with respect to public hearings, where speakers shall be governed by the rules pertaining to public hearings at regular meetings.

2.6. PUBLIC COMMENTS AT STUDY SESSIONS.

A public comment period, entitled “Public Comments on Matters Either on the Agenda or Not on the Agenda Under the Jurisdiction of the City Council” shall be included as part of the study session agenda. Such public comments shall be taken prior to the Council taking up any business items. A limitation of three minutes shall be imposed upon each person so desiring to address the Council during the public comment period, with a total aggregate time for public comments of thirty (30) minutes. The City Council may, by majority consent, extend the thirty (30) minute time period.

2.7. PUBLIC COMMENTS ON MATTERS ON CLOSED SESSION AGENDAS.

The public shall be permitted to make comments on matters on the closed session

agendas prior to the holding of each closed session in accordance with the following procedures:

2.7.1. CLOSED SESSIONS AFTER MEETINGS.

For Closed Sessions held immediately after an open session of any City Council meeting, public comments shall be taken immediately prior to the Council adjourning the open session.

2.7.2. CLOSED SESSIONS BEFORE MEETINGS AND SEPARATE CLOSED SESSIONS.

For Closed Sessions held immediately before any City Council meeting, or not in conjunction with any other meeting of the City Council, the Council shall convene in the Council Chambers or such other place as noted on the Agenda for the Closed Session, and receive public comments on matters on the Closed Session Agenda prior to retiring to the Closed Session.

2.7.3. TIME LIMITS.

Each speaker shall be limited to 3 minutes and aggregate time for all speakers shall be limited to 15 minutes.

3. CONDUCTING BUSINESS AT MEETINGS

3.1. AGENDA ITEMS.

Items may be placed on the agenda of any regularly scheduled meeting of the City Council by the Mayor, or by any member of the City Council with the concurrence of one other member of the Council, or by the City Manager, City Attorney, or City Clerk. Items may be placed on the agenda of any special meeting with the consent of a majority of the City Council.

3.2. NOTICE OF MEETINGS

Notice of regular meetings or regular study sessions need be given only under circumstances required by state law. Notice of Special Meetings and adjourned meetings shall be given in accordance with state law. Posted notice of all meetings shall be given as required by state law at the locations specified by resolution of the City Council. Inadvertent failure of the Clerk to post notice at any location so specified shall not invalidate any meeting so long as the posting actually done by or under the direction of the Clerk complies with state law for posted notices.

3.3. QUORUM AND REQUIRED MAJORITIES

3.3.1. MAJORITY QUORUM AND MAJORITY VOTE.

Unless otherwise provided for in the Municipal Code or by state law, a majority of the City Council shall be a quorum sufficient to do business and motions may be passed 2-1 if only 3 attend.

3.3.2. MATTERS REQUIRING THREE VOTES.

The following matters, however, require three affirmative votes: (a) adoption of ordinances; (b) resolutions granting franchises, (c) resolutions amending

the general plan; and (d) orders or appropriations for payment or expenditure of money.

3.3.3. EMERGENCY ITEMS.

Discussion and action on an item not appearing on the posted agenda of regular meetings, regular study sessions and closed sessions may occur if an emergency situation as defined in California Government Code Section 54956.5 is determined to exist by a majority vote of the Council.

3.3.4. NEED FOR IMMEDIATE ACTION.

Discussion and action on an item not appearing on the posted agenda may occur if the legislative body determines by a two-thirds vote of the members of the legislative body present at the meeting (or a unanimous vote if less than two-thirds of the members are present) there is both: a) the need to take action immediately, and; b) that the need for action came to the attention of responsible officers of the City after the agenda was posted.

3.3.5. OTHER MATTERS REQUIRING SUPER-MAJORITY VOTES.

Where state or federal law requires a vote greater than a majority for valid action or approvals, the required vote for passage or approval shall be in accordance with the applicable statute. These matters include, but are not limited to:

a) Adoption of a general tax (two-thirds majority of Council prior to public vote)

b) An urgency ordinance for the immediate preservation of the public peace, health or safety, which must contain a declaration of the facts constituting the urgency (four-fifths vote)

c) Interim ordinances effective immediately prohibiting land uses which may be in conflict with a contemplated zoning proposal which is or will be studied within a reasonable time (four-fifths vote)

d) Adoption of a resolution of necessity for a proposed taking of property by power of eminent domain (two-thirds vote of all members of the city council)

e) Conversion of land purchased for park purposes or land used for park purposes to other uses (four-fifths vote with special findings after a public hearing)

f) Award of contracts without competitive bidding (finding by a four-fifths vote that an emergency exists)

g) Resolution finding that a project can be performed more economically by day labor or through open market purchases of materials and supplies and dispensing with further public bidding after all bids are rejected (four fifths vote)

h) Override of a decision of an Airport Land Use Commission "ALUC" (two-thirds vote including adoption of findings required by state statute)

i) Override of an adverse determination of an ALUC concerning the city's proposed amendment of its general plan (two-thirds vote)

j) Adoption of a redevelopment plan if either the Planning Commission or Project Area Committee has recommended against approval (two-thirds vote of the entire Council)

k) Adoption of a resolution to authorize immediate expenditure of public money to safeguard life, health or property in case of emergency or disaster (four-fifths vote)

l) Agreements to share sales and use tax proceeds among cities and/or counties (two thirds vote or voter-approval)

m) Declaration of emergency setting an election to approve a general tax other than at a regularly-scheduled general city election (unanimous vote of the governing body)

3.3.6. LEGALLY REQUIRED PARTICIPATION

If a majority of the City Council shall be disqualified to vote on a matter by reason of a conflict of interest, the City Council shall select by lot or other means of random selection, or by such other impartial and equitable means as the City Council shall determine, that number of its disqualified members which, when added to the members eligible to vote, shall constitute a quorum. Any disqualified member so chosen shall not participate in any discussion of the item and shall participate in voting only to the minimum extent required for a lawful and legal decision.

3.4. MEETINGS TO BE PUBLIC

Study sessions and all regular, adjourned or special meetings of the City Council shall be open to the public; however, the City Council may hold closed sessions from which the public may be excluded for the consideration of any matter for which a closed session is permitted under applicable state law.

3.5. CONCLUSION OF MEETINGS

The Council shall endeavor to adjourn all regular, adjourned or special meetings of the City Council including study sessions at 11:00 p.m. or as soon thereafter as any matter then being considered is concluded. The Council may, by motion and majority vote, continue the meeting after such time. However, continuing the meeting after such time without such motion or vote shall not invalidate any action taken.

4. PRESIDING OFFICER

4.1. MAYOR AND MAYOR PRO TEM

4.1.1. MAYOR AS PRESIDING OFFICER.

The Mayor shall be the presiding officer at all meetings of the City Council. In the absence of the Mayor, the Mayor Pro Tem shall preside. In the absence of both the Mayor and the Mayor Pro Tem, the City Clerk shall preside temporarily and shall immediately call for the Council to elect one of their number as a temporary presiding officer to serve until the arrival of the Mayor or the Mayor Pro Tem or until adjournment, whichever first occurs. A temporary presiding officer so elected shall be referred to by the Council and City Staff as “Mister Chairman” or “Madame Chairman” as appropriate to gender.

4.2. SELECTION OF MAYOR AND MAYOR PRO TEM.

4.2.1. ANNUAL SELECTION.

The City Council shall meet annually at its first regular meeting in December to choose one of its number as Mayor and another of its number as Mayor Pro Tem. The new Mayor and Mayor Pro Tem shall be installed and sworn in during a special ceremonial meeting on the first Tuesday of January and shall assume their offices at the regular City Council meeting on the second Tuesday of January. However, in the event of a need for a special meeting between the special ceremonial meeting and the regular meeting on the second Tuesday, the newly sworn Mayor shall preside.

4.2.2. CITY CLERK PRESIDES.

The City Clerk shall convene and preside at the special ceremonial meeting for the installation and swearing in of the Mayor and Mayor Pro Tem. The City Clerk shall then administer the oaths of office. Each Council member shall have an opportunity for brief comments and the meeting shall be adjourned. No other business shall be conducted at such ceremonial meeting.

4.2.3. SELECTION PROCESS.

Nominations for the office of Mayor or Mayor Pro Tem may be made by any member of the City Council and need not be seconded in order to be effective. Each selection shall be by three or more affirmative votes. In the event that no person receives three or more votes in the selection process for one or both offices, the selection process shall be repeated immediately; provided, however, that the two persons receiving the highest number of votes in the preceding selection process shall be the only nominees for the office to be filled. If, upon repeating the selection process for Mayor or Mayor Pro Tem, no person has yet received three affirmative votes for such office, the City Council may either repeat the selection process until the officer has been duly selected or may continue the selection to the next

regular meeting of the City Council.

4.2.4. WRITTEN BALLOT.

Voting in the selection of Mayor and Mayor Pro Tem shall be by written ballot unless the City Council, by three or more affirmative votes, determines to conduct the selection process by voice vote. If conducted by written ballot, the vote of each Council member shall remain undisclosed until all votes have been cast and have been lodged with the City Clerk. The City Clerk shall then read aloud into the minutes of the City Council the identity of the voting Council member and the name of the person for whom such person is voting. The written ballots shall be public documents and shall be retained in the records of the City Council. The Standard Code of Parliamentary Procedure, third edition, as revised or approved from time to time by the American Institute of Parliamentarians, shall apply to resolve any question of procedure arising during the selection process, which is not governed by this Section.

4.2.5. TERM OF OFFICE.

Except as provided in this Section, the Mayor and Mayor Pro Tem selected pursuant hereto shall serve until the next meeting scheduled for selection of Mayor and Mayor Pro Tem pursuant to this Section, and thereafter until their successors have been duly selected.

4.3. VACANCIES.

4.3.1. OCCURRENCE OF VACANCY.

The offices of Mayor and Mayor Pro Tem shall be deemed vacant upon the happening of any of the following:

a) The death of the holder of such office;
b) The loss or resignation from membership on the City Council by the holder of such office; or
c) The acceptance by the City Council of the resignation from such office by the holder thereof.

4.3.2. FILLING VACANCY.

At its first regular meeting after the occurrence of a vacancy created by any of the foregoing events, the City Council shall select a successor to such office pursuant to the selection procedures established by this Section.

4.4. CALL TO ORDER

The meeting of the City Council shall be called to order by the Presiding Officer. In the absence of both the Mayor and the Mayor Pro Tem, the meeting shall be called to order by the City Clerk, whereupon the City Clerk shall immediately call for the selection of a temporary presiding officer as provided above.

4.5. PARTICIPATION OF PRESIDING OFFICER

The presiding officer (except the City Clerk, when acting as presiding officer) may move, second, and debate from the chair, subject only to such limitations of debate as are imposed on all Council members. The presiding officer shall not be deprived of any of the rights and privileges of a Council member by reason of acting as presiding officer. However, the presiding officer is primarily responsible for the conduct of the meeting. If the presiding officer believes that personally engaging in the making or seconding of motions or extended debate on questions before the City Council would jeopardize the presiding officer's ability to fairly and efficiently conduct the meeting, the presiding officer may, but shall not be required to, turn the responsibility of presiding over to the Mayor Pro Tem or, in the absence or inability to act of the Mayor Pro Tem, to the City Clerk for the election of another Council member as temporary presiding officer.

4.6. QUESTION TO BE STATED

The presiding officer should restate or cause to be restated each question immediately prior to Council debate and discussion and again prior to calling for the vote. Following the vote, the presiding officer should announce whether the question carried or was defeated and the vote totals. Before proceeding to the next item of business, the presiding officer may also state the effect of the vote for the benefit of the audience.

4.7. SIGNING OF DOCUMENTS

After approval as to form by the City Attorney or his deputy, the Mayor, or Mayor Pro Tem in the absence of the Mayor, shall sign ordinances, resolutions and proclamations adopted by and letters, contracts and other documents and instruments approved by the City Council. The City Clerk or Assistant City Clerk shall attest to the signature of the Mayor or Mayor Pro Tem.

5. RULES, DECORUM, AND ORDER

5.1. MAINTENANCE OF ORDER

The presiding officer is responsible for the maintenance of order and decorum at all times.

5.2. POINTS OF ORDER

The presiding officer shall determine all points of order subject to the right of any Council member to appeal to the City Council. If any appeal is taken, the question shall be "Shall the decision of the presiding officer be sustained" in which event a majority vote shall govern and conclusively determine such question of order.

5.3. LANGUAGE

All Council members, staff members and members of the public should speak respectfully and avoid the use of profanity, vulgarity and slanderous comments. Recognizing that the First Amendment precludes the City Council from prohibiting speakers from speaking based upon the content of speech, the presiding officer shall use his best efforts, short of enforcement action, to remind and encourage all

participating in the meeting to keep their speech respectful towards others and within bounds appropriate for children and persons of sensitivity toward coarse language as a courtesy to others present or otherwise viewing Council meetings.

5.4. ENFORCEMENT OF DECORUM

5.4.1. SERGEANT-AT-ARMS.

The Chief of Police or his designee shall be ex-officio sergeant-at-arms of the City Council. At meetings where a Bailiff is assigned and present, the bailiff shall act as Sergeant-at-Arms, but shall remain subject to the direction of the Police Chief. The Sergeant-at-arms shall carry out all legal and valid orders and instructions given him by the presiding officer for the purpose of maintaining order and decorum in the Council Chambers. Upon instructions from the presiding officer, it shall be the duty of the sergeant-at-arms to remove any disorderly person from the Council Chambers or place the disorderly person under arrest or both.

5.4.2. FAILURE TO YIELD, DISRUPTIONS.

Any person who refuses to relinquish the floor after their allotted time or while speaking or while attending the City Council meeting engages in conduct which disrupts the business of the meeting shall be removed from the room if the sergeant-at-arms is so directed by the presiding officer. Disruptive remarks from the audience, stamping of feet, whistles, yells and similar demonstrations shall not be permitted by the presiding officer who may direct the sergeant-at-arms to remove such offenders from the room. Aggravated cases shall be prosecuted on appropriate complaint signed by the presiding officer.

5.4.3. CLEARING THE ROOM.

As set forth in Government Code Section 54957.9, in the event that any meeting is willfully interrupted by a person or group 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 City Council may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited 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 City Council from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

5.5. DECORUM AND ORDER – COUNCIL MEMBERS

5.5.1. MANNER OF SPEAKING.

Any Council member desiring to speak shall activate the light signaling to the presiding officer a request to speak. In the event such signal lights are not available or functional, the Council member shall first address the presiding officer. Upon recognition by the presiding officer, the Council member shall speak only to the question under debate.

5.5.2. QUESTIONING STAFF.

A Council member desiring to question the staff should address his question to the City Manager, or, in appropriate cases, the City Clerk or City Attorney, who shall be entitled either to answer the inquiry or to designate some staff member for that purpose. Such a designation may be made at the time of any staff presentation or on the agenda listing for the item.

5.5.3. INTERRUPTIONS.

Once recognized, a Council member shall not be interrupted while speaking unless called to order by the presiding officer; unless a point of order is raised by another Council member, or unless the speaker chooses to yield to questions from another Council member.

5.5.4. PERSONAL PRIVILEGE.

The right of a Council member to address the City Council on a question of personal privilege shall be limited to cases in which that Council member's integrity, character, or motives are assailed, questioned, or impugned.

5.5.5. CONFLICT OF INTEREST AND DISCLOSURE

5.5.5.1. APPLICABLE LAW.

All Council members are subject to the provisions of California law, including, but not limited to, Chapter 7, Title 9, of the California Government Code, Section 87100, et seq., relative to conflicts of interest, and to conflicts of interest codes adopted by the City Council.

5.5.5.2. NO PARTICIPATION.

Any Council member prevented from voting because of a conflict of interest shall refrain from any participation with respect to that item, including but not limited to questions, comments, debate and voting. Such Council member shall leave the Council Chambers during debate and voting on the issue.

5.5.5.3. CONTACTS AND CONSULTATIONS WITH INTERESTED PARTIES.

At the time that each matter is taken up by the City Council for action in public session and prior to participation in the consideration of that matter, each member of the City Council shall identify by name (or if sufficient legal reason exists not to disclose the name, by the general description of the person and the person's interest in the matter) each

person with a material interest in the matter who has consulted with that Council member regarding the matter since the application or other proposal was actually presented to the City. Such disclosure may be oral and shall be supplemented, as required, if the matter is continued from one meeting to another. Failure to make a disclosure of consultation shall be deemed to be a representation that no disclosable consultation took place in respect to a matter coming before the City Council for action. For items requiring a public hearing as to which any party is entitled to due process of law, each Council member should discourage such contacts and consultations outside of the hearing and shall, in addition to the disclosure required above, generally describe on the public record, the content of any such communication received outside of the public hearing.

5.5.6. LIMITATION OF DEBATE

No Council member shall speak for more than five minutes each time that Council member has the floor, without the approval of a majority vote of the City Council. No Council member normally should speak more than once upon any one subject until every other Council member choosing to speak thereon has spoken. The five-minute limit set forth herein shall not apply to remarks by a Council member under Council Member Reports and Closing Comments.

5.5.7. DISSENTS, PROTESTS, AND COMMENTS

Any Council member shall have the right to express dissent from, or protest to, or comment upon, any action of the City Council and have the reason entered in the minutes. If such dissent, protest or comment is desired to be entered in the minutes, this should be made clear by language such as, "I would like the minutes to show that I am opposed to this action for the following reasons . . ."

5.6. PROCEDURES IN ABSENCE OF RULES

In the absence of a rule herein or in a written policy adopted by the City Council, to govern a point or procedure, The Standard Code of Parliamentary Procedure, third edition, shall be used as a guide, unless the Council, by majority vote or consent adopts an interim rule for that point or procedure by motion and majority vote.

5.7. RULINGS OF PRESIDING OFFICER FINAL UNLESS OVERRULED BY COUNCIL

In presiding over City Council meetings, the presiding officer shall, with due consultation with the City Attorney, decide all questions of interpretation of these rules, points of order or other questions of procedure requiring rulings. Any such decision or ruling shall be final unless overridden or suspended by a majority vote of the Council members present and voting and shall be binding and legally effective (even if clearly erroneous) for purposes of the matter under consideration.

5.8. DECORUM AND ORDER - PUBLIC

Decorum of public speakers during public comments shall be governed by Section 2 of these rules. Members of the audience shall not address the Council, the presiding officer, the staff or other members of the public except during public comment periods. When a member of the audience has important information, answers to questions raised during Council deliberations, or new evidence for Council consideration after the closing of the public comment period applicable to that item, the member of the public shall request to be recognized by the presiding officer by silently standing and/or raising a hand. Persons unable to stand or raise a hand may use such other means, including speaking out loud, if necessary, as are reasonably calculated to attract the attention of the presiding officer with the least disruption to the proceedings. The presiding officer shall have discretion to deny the request or briefly question the person regarding the general nature of the information held by the audience member, and/or the relevance and importance of the information. If the presiding officer deems the answers to such questions worthy of Council consideration the presiding officer shall ask for the Council to indicate, by majority consent, whether they wish to hear and consider the comments.

5.9. DECORUM AND ORDER - EMPLOYEES

The City Manager shall insure that all city employees observe proper rules of decorum. Any staff members, including the City Manager, desiring to address the City Council or members of the public shall first be recognized by the presiding officer. All remarks shall be addressed to the presiding officer or to the City Council and not to any one individual Council member or member of the public.

6. MOTIONS

6.1. WITHDRAWAL OF MOTIONS

Once a motion is made and seconded, it shall not be withdrawn by the mover without the consent of the person seconding it.

6.2. MOTIONS OUT OF ORDER

The presiding officer may at any time, by majority consent of the City Council, permit a Council member to introduce an ordinance, resolution, or motion out of the regular agenda order.

6.3. DIVISION OF QUESTION

If the question contains two or more divisible propositions, the presiding officer may, and upon request of a Council member shall, divide the same.

6.4. PRECEDENCE OF MOTIONS

When a motion is before the City Council, no motion shall be entertained except the following, which shall have precedence in the following order:

Adjourn

Fix hour of adjournment
Table
Limit or terminate discussion
Amend
Postpone

6.5. MOTION TO ADJOURN

A motion to adjourn shall be in order at any time, except as follows:

a) When repeated without intervening business or discussion;
b) When made as an interruption of a member while speaking;
c) When discussion has been ended, and vote on motion is pending; and
d) While a vote is being taken.

A motion to adjourn without specifying another time if adopted shall adjourn the meeting to the next regular meeting or next regular study session, whichever first occurs and shall not be debatable. A motion to adjourn to a specific time shall be debatable only as to the time to which the meeting is adjourned.

6.6. MOTION TO TABLE

A motion to table shall be used to temporarily bypass the subject. A motion to table shall not be debatable and shall not be subject to amendment. Such a motion shall immediately terminate any further debate of the subject under consideration until the motion is determined. If the motion shall prevail, the matter may be "taken from the table" by motion and majority vote at any time, subject to agenda posting and any notice requirements.

6.7. MOTION TO LIMIT OR TERMINATE DISCUSSION

Such a motion shall be used to limit or close debate on, or further amendments to, the main motion and shall not be debatable. If the motion fails, debate shall be reopened; if the motion passes, a vote shall be taken on the main motion.

6.8. MOTION TO AMEND

A motion to amend shall be debatable only as to content of the amendment. A motion to amend an amendment shall be in order, but a motion to amend an amendment to an amendment shall not be in order. An amendment modifying the intention of a motion shall be in order, but an amendment relating to a different matter shall not be in order. Amendments shall be voted first and then the main motion, as amended.

6.9. MOTION TO SUBSTITUTE

A motion to substitute a new motion for a pending motion or to amend the pending motion by substitution shall be debatable only as to the content of the substituted motion. A motion to substitute or to amend by substitution shall be germane to the general subject matter of the pending motion but may differ in wording, purpose and/or effect. If the motion prevails, the new motion shall take the place of the former motion and any amendments previously adopted, which shall no longer be

on the floor. If the motion fails, the original motion remains pending. Such a motion shall be voted on before voting on any proposed amendments not already approved.

6.10. MOTION TO CONTINUE

Motions to continue to a definite time shall be amendable and debatable as to propriety of postponement and time set.

7. VOTING PROCEDURE

7.1. VOTING PROCEDURE

In acting upon every motion, the vote shall be taken by voice or roll call or any other method by which the vote of each Council member present can be clearly ascertained. The vote on each motion shall then be entered in full upon the record. The order of voting shall be alphabetical by surname with the presiding officer voting last. The clerk shall call the names of all members seated when a roll call vote is ordered or required. Members shall respond "aye," "no," or "abstain;" provided that when a vote is collectively taken by voice or when a method of voting other than by voice or roll call is used, any Council member not audibly and clearly responding "no" or "abstain" or otherwise registering an objection shall be recorded as voting "aye."

7.2. ROLL CALL VOTING

A roll call vote shall be used for all ordinances, resolutions and orders for franchises or payments of money. Any other question before the City Council shall not require a roll call vote unless requested by any member. It shall not be in order for members to explain their votes during roll call. Council members may change their votes before the next order of business is called.

7.3. ABSTENTIONS DISCOURAGED

Every Council member should vote "aye" or "nay" on each item unless disqualified for cause.

7.4. RECONSIDERATION

Any Council member who voted with the majority may move for reconsideration of any action at the same meeting or at the next regular meeting, so long as the item is duly listed and posted on the agenda for the subsequent meeting. After a motion for reconsideration has once been acted upon, no other motion for reconsideration thereof shall be made without unanimous consent of the City Council.

7.5. TIE VOTES

Tie votes shall be lost motions. When all Council members are present, a tie vote on whether to grant an appeal from official action shall be considered a denial of such appeal, unless the City Council takes other action to further consider the matter. If a tie vote results at a time when less than all members of the City Council are present, the matter shall automatically be continued to the agenda of

the next regular meeting of the City Council, unless otherwise ordered by the City Council.

8. LEGISLATIVE AND ADMINISTRATIVE ACTIONS

8.1. DEFINITIONS.

8.1.1. ORDINANCE

An "Ordinance" is a formal legislative act of the City Council having the force of law and has the meaning generally attributed to ordinances under the California Government Code. Ordinances are memorized in documents so designated and executed with the formalities required by the Government Code.

8.1.2. RESOLUTION

"Resolution" means a formal action of the City Council memorialized by a separate document, numbered in sequence, and preserved in a separate set of books. A resolution documents both the action taken by the Council and the reasons for the action and may contain findings of fact and/or recitations of legal or policy reasons for the action. "Resolutions" are used when specifically required by law, when needed as a separate evidentiary document to be transmitted to another governmental agency, when needed for legal reasons to document important Council decisions, when documenting important policy or administrative decisions with long-term effects, or where the frequency of future reference back to its contents warrants a separate document.

8.1.3. MINUTE ORDER.

A "minute order" as used locally denotes a decision of the City Council entered in the minutes and documenting the reasons (findings of fact and policy considerations) for the decision at the request of a member of the City Council or for legal reasons at the request of the City Attorney. A "minute order" is drafted far more briefly than a "resolution" and is distinguished from a mere minute entry only by the detail entered in explaining findings of facts and policy considerations behind the Council's decision.

8.1.4. MINUTE ENTRY.

The "minute entry", is an entry in the minutes of the meeting recording a City Council action.

8.2. ORDINANCES

8.2.1. INTRODUCTION AND ADOPTION OF ORDINANCES

8.2.1.1. INTRODUCTION AND READING.

Except for urgency ordinances, ordinances shall not be passed within five days of their introduction, nor at other than a regular meeting or at

an adjourned regular meeting. However, an urgency ordinance may be passed immediately upon introduction and either at a regular or special meeting. Except when, after reading the title, further reading is waived by regular motion adopted by unanimous vote of the Council members present, all ordinances shall be read in full either at the time of introduction or passage. Waiver of further reading of all ordinances on the agenda of any meeting may be done in advance as a consent calendar item.

8.2.1.2. ALTERED ORDINANCES.

When ordinances, other than urgency ordinances, are altered after introduction, they shall be introduced again and shall be passed only at a regular or at an adjourned regular meeting held at least five days after alteration and reintroduction. Corrections of typographical or clerical errors are not alterations within the meaning of this section.

8.2.2. EFFECTIVE DATE

All ordinances, except as provided in Section 36937 of the Government code, shall take effect thirty (30) days after adoption but may be made operative at such later date as may be designated in the ordinance.

8.2.3. PUBLISHING

It shall be the duty of the City Clerk to post or publish all ordinances in accordance with Section 36933 of the Government Code within fifteen (15) days after adoption.

8.2.4. URGENCY ORDINANCES

All urgency ordinances must receive four (4) affirmative votes to be adopted and to become effective immediately. If such an ordinance fails to receive a four-fifths (4/5) majority, it may thereafter be considered and passed in the same manner and with the same effect as regular ordinances.

8.3. RESOLUTIONS

8.3.1. RESOLUTIONS PREPARED IN ADVANCE

If a resolution has been prepared in advance, the procedure shall be: motion, second, discussion, vote pursuant to methods prescribed in Section 7.1, and result declared. It shall not be necessary to read a resolution in full or by title except to identify it. Any member may require that the resolution be read in full.

8.3.2. RESOLUTIONS NOT PREPARED IN ADVANCE

If a resolution has not been prepared in advance, the procedure shall be to instruct the City Manager or the City Attorney to prepare a resolution for presentation at a subsequent City Council meeting.

8.3.3. URGENCY RESOLUTIONS

8.3.3.1. ORAL PRESENTATION.

In matters of urgency, a resolution may be presented orally in motion form together with instructions for written preparation for later execution. After the resolution has been verbally stated, the voting procedure in Section 8.2 above shall be followed.

8.3.3.2. DISFAVORED.

Urgency resolutions shall be avoided except when absolutely necessary; and they shall not be used when resolutions are required by law, including, but not limited to actions related to public financing, improvement acts, eminent domain, general plan and zoning matters, force account work on public projects and other matters where state statutes specify that action must be taken by formal resolution. If the resolution has been drafted in written form, either before or during the meeting, this section shall not be deemed applicable.

8.4. POLICIES

The City Council may, by resolution or by motion, adopt written policies governing administrative and other routine matters, providing ongoing direction to City staff regarding particular subjects, or setting standards for City involvement in particular types of activities such as public financing, investment, economic development, influencing action by other governmental bodies, and such other matters as the Council may determine from time to time. Such policies shall be compiled in the City's administrative policy handbook together with policies issued by the City Manager for the direction of the City Staff.

9. COMMITTEES

9.1. FINANCE COMMITTEE

There shall be a standing committee of the City Council known as the finance committee, whose duties shall be those as prescribed in the City of Moreno Valley Municipal Code, or as otherwise assigned by the City Council. The committee shall consist of two (2) Council members appointed by the Mayor and confirmed by the City Council.

9.2. PUBLIC SAFETY COMMITTEE

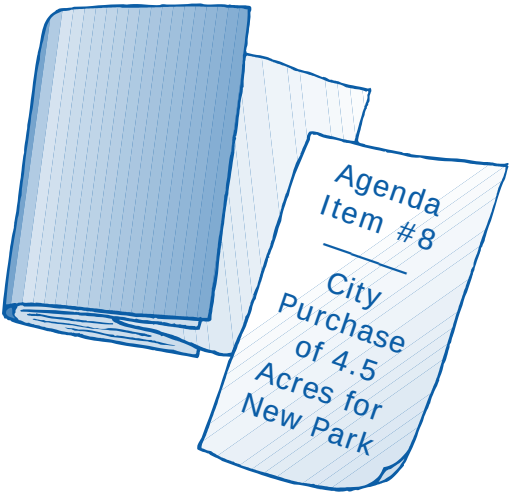
There shall be a standing committee of the City Council known as the public safety committee. The committee shall consist of two (2) members who shall be Council members appointed by the Mayor and confirmed by the City Council. The public safety committee shall study matters relating to law enforcement, fire services, traffic safety, animal control, and related matters referred to it by the City Council, and shall make recommendations to the City Council.

9.3. OTHER COMMITTEES

The City Council may by resolution create other standing committees and by motion or resolution may appoint ad hoc committees for particular temporary purposes.

Can I vote?

A Basic Overview Of Public Officials' Obligations Under the Political Reform Act's Conflict-of-Interest Rules



California Fair Political Practices Commission

"My home is near the proposed new shopping mall. Can I vote on the issue at next month's Planning Commission meeting?"

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act's conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the "big picture" level and to help guide you to more detailed resources.

Stripped of legal jargon:

➢You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that

Fair Political Practices Commission

Toll-free Advice Line: 1-866-ASK-FPPC

the outcome of the decision will have an important impact on your economic interests, **and**

➢a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act "on general principles" or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

An important note…

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code §§81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC's web site, http://www.fppc.ca.gov. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line — **1-866-ASK-FPPC** — as far in advance as possible.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most — if not all — mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**
- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

On the next page are the eight steps:

Eight steps to help you decide

Step One: Are you a "public official" within the meaning of the rules?

Step Two: Are you making, participating in making, or influencing a governmental decision?

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

Step Six: The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

Step Seven: If you have a conflict of interest, does the "public generally" exception apply?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

Public Official

Step One — Are you a "public official," within the meaning of the rules?

The Act's conflict-of-interest rules apply to "public officials" as defined in the law. This first step in the analysis is usually a formality — you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency's conflict-of-interest code, you are a "public official." If you file a Statement of Economic Interests (Form 700) each year, you are a "public official" under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency's legal counsel or the FPPC.

Governmental Decision

Step Two — Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the

conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- ***Make*** a governmental decision (for example, by voting or making an appointment).

- ***Participate*** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).

- ***Influence*** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion* or *judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

When you have a conflict — Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Library and Publications section of the FPPC's website at http://www.fppc.ca.gov.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must pub-

licly identify in detail the economic interest that creates the conflict, step down from the dais **and must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any nonpublic information regarding the decision.

- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.

- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

— The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.

— Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she ***may not*** *sit in the public area and listen to the discussion.*

— Supervisor Robertson rents a home to a county employee. The county employee is the sub-

ject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session ***but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him.*** *He may not attend the closed session or obtain any non-public information from the closed session.*

Economic Interests

Step Three — What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment**. You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested $2,000 or more.

- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.

- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested $2,000 or more, and also in certain leasehold interests.

"The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise."

- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) $500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income — a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent of more of a business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.

- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has

given you gifts which total $360 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the "personal financial effects" rule. If these expenses, income, assets or liabilities are likely to go up or down by $250 or more in a 12-month period as a result of the governmental decision, then the decision has a "personal financial effect" on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.

FPPC
Toll-free Advice Line:
1-866-ASK-FPPC
(1-866-275-3772)

Directly or Indirectly Involved?

Step Four — Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in — and therefore directly affected by — a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations

if you have questions as each case arises. Note also that the next step in the analysis — applying the right standard to determine whether an impact is material — depends in part on whether the interest is directly or indirectly involved. The regulations — Sections 18704 through 18704.5 — and other helpful information can be found on the FPPC's web site, http://www.fppc.ca.gov.

Materiality (Importance)

Step Five — What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your

"Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them."

-- California Political Reform Act of 1974

agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.

- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.

- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.

- The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a $20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards

distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six — Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does "sufficiently likely" mean? Put another way, how "likely" is "likely enough?" The Political Reform Act uses the words "reasonably foreseeable." The FPPC has interpreted these words to mean "substantially likely." Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are

met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

"Public Generally" Exception

Step Seven — If you have a conflict of interest, does the "public generally" exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the "public generally" exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific seg-

ments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the "public generally" exception can be found on the FPPC website at http://www.fppc.ca.gov under regulations 18707-18707.9.

Are you required to participate?

Step Eight — Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.

- Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.

- Understand the "big picture" of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.

- Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much — if not more — on the facts of your particular situation as it does on the law.

- Don't try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the "big picture." You'll then be able to look up or ask about the particular rules you need to apply to any given case.

- Don't be afraid to ask for advice. It is available from your agency's legal counsel and from the FPPC.

How To Contact Us:

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Enforcement hot-line:
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Fair Political Practices Commission

Limitations and Restrictions on Gifts, Honoraria, Travel and Loans

A Fact Sheet for

- Elected State Officers and Candidates for Elective State Office
- Members of State Boards and Commissions
- Designated Employees of State Government Agencies
- State Officials Who Manage Public Investments

California Fair Political Practices Commission

Toll-free advice line: 1 (866) ASK-FPPC
Web site: *www.fppc.ca.gov*

January 2007

Introduction

The Political Reform Act[1] (the "Act") imposes limits on gifts, prohibits honoraria payments,[2] and imposes limits and other restrictions on the receipt of travel payments and personal loans by the following state officials:

- Elected state officers, candidates for elective state office, and other state officials specified in Government Code section 87200[3]
- Members of state boards and commissions
- Designated employees of state agencies (i.e., officials and employees of state agencies who file statements of economic interests (Form 700) under their agency's conflict of interest code)

This fact sheet summarizes the major provisions of the Act concerning gifts, honoraria, travel, and loans. You should not, however, rely on the fact sheet alone to ensure compliance with the Act. If you have any questions, contact the Fair Political Practices Commission at (866) ASK-FPPC or visit our web site at www.fppc.ca.gov. Commission advice letters from 1986 to present are available on Lexis-Nexis at "CA FAIR" under California Library or on Westlaw at "CA-ETH."

[1] Government Code sections 81000-91014. Commission regulations appear at 2 California Code of Regulations section 18000, *et seq*.

[2] The gift limit and honoraria prohibition do not apply to judges (although they do apply to candidates for judicial office) or to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official. (Sections 89502 and 89503.)

[3] State officials specified in section 87200 include elected state officers, candidates for elective state office, members of the Public Utilities Commission, Energy Resources Conservation and Development Commission, Fair Political Practices Commission, and California Coastal Commission, and officials who manage public investments.

Gifts

Limitations

Elected state officers, candidates for elective state office, and other state agency officials and employees are subject to two gift limits:

1. Elected state officers, candidates for elective state office, and designated employees of the legislature may not accept gifts aggregating more than $10 in a calendar month from any single lobbyist or lobbying firm. State agency officials, including board and commission members, officials who manage public investments, and employees, may not accept gifts aggregating more than $10 in a calendar month from a single lobbyist or lobbying firm if the lobbyist or firm is registered to lobby the official or employee's agency. (Sections 86201-86204.)

2. Gifts from any other single source may not exceed $390 in a calendar year. For officials and employees who file statements of economic interests (Form 700) under a state agency's conflict of interest code ("designated employees"), this limit applies only if the official or employee would be required to report income or gifts from that source on the Form 700, as outlined in the "disclosure category" portion of the agency's conflict of interest code. (Section 89503.)[4]

What is a "Gift"?

A "gift" is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public. (Section 82028.) (See FPPC Regulation 18946.1 for valuation guidelines.)

Except as discussed below, you have "received" or "accepted" a gift when you know you have actual possession of the gift or when you take any action exercising direction or control over the gift, including discarding the gift or turning it over to another person. (Regulation 18941.)

Exceptions

The Act and Commission regulations provide exceptions for certain types of gifts. (Section 82028; Regulations 18940-18946.5.) **The following are not subject to any gift limit and are not required to be disclosed on a statement of economic interests (Form 700):**

1. Gifts which you return (unused) to the donor, or for which you reimburse the donor, within 30 days of receipt. (Section 82028(b)(2); Regulation 18943.)

2. Gifts which you donate (unused) to a non-profit, tax-exempt (501(c)(3)) organization or a government agency within 30 days of receipt without claiming a deduction for tax purposes. (Section 82028(b)(2); Regulation 18943.)

3. Gifts from your spouse, child, parent, grandparent, grandchild, brother, sister,

[4] Section 89503 provides for a biennial adjustment to the gift limit to reflect changes in the Consumer Price Index. For 2007-2008, the gift limit is $390. (Section 89503; Regulation 18940.2.) Gifts from a single source that aggregate $50 or more must be disclosed, and gifts aggregating $390 or more received by an official may subject the official to disqualification with respect to the source (Section 87103(e).) Designated employees should obtain a copy of their conflict of interest code from their agency. Some conflict of interest codes require very limited disclosure of income and gifts. If your agency's conflict of interest code requires you to disclose income and gifts only from specified sources, gifts from sources that are not required to be disclosed are not subject to the $390 gift limit.

parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. (Section 82028(b)(3); Regulation 18942 (a)(3).)

4. Gifts of hospitality including food, drink, or occasional lodging that you receive in an individual's home when the individual or a member of his or her family is present. (Regulation 18942(a)(7).) Such hospitality provided by a lobbyist is a gift if it is paid for or reimbursed by the lobbyist employer or if the lobbyist deducts the cost as a business expense. (Regulation 18630.)

5. Gifts approximately equal in value exchanged between you and another individual (other than a lobbyist) on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. (Regulation 18942 (a)(8).)

6. Informational material provided to assist you in the performance of your official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free admission or discounts to informational conferences or seminars.

"Informational material" may also include scale models, pictorial representations, maps, and other such items, provided that if the item's fair market value is more than $390, you have the burden of demonstrating that the item is informational. In addition, on-site demonstrations, tours, or inspections designed specifically for public officials are considered informational material, but this exception does not apply to meals or to transportation to the site unless the transportation is not commercially available. (Section 82028(b)(1); Regulations 18942(a) (1) and 18942.1.)

7. A devise or inheritance. (Section 82028(b)(5); Regulation 18942(a)(5).)

8. Campaign contributions, including rebates or discounts received in connection with campaign activities. (Section 82028(b) (4); Regulation 18942(a)(4).) However, campaign contributions must be reported in accordance with the campaign disclosure provisions of the Act and may be subject to the contribution limitations imposed by the Act.

9. Personalized plaques and trophies with an individual value of less than $250. (Section 82028(b)(6); Regulation 18942(a) (6).)

10. Tickets to attend fundraisers for campaign committees or other candidates, and tickets to fundraisers for organizations exempt from taxation under Section 501(c) (3) of the Internal Revenue Code. (Regulation 18946.4.)

11. Free admission, refreshments, and similar non-cash nominal benefits provided to you at an event at which you give a speech, participate in a panel or seminar, or provide a similar service. Transportation within California, and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or similar service, are also not considered gifts. (Regulation 18942(a)(11).)

12. Passes or tickets that provide admission or access to facilities, goods, services, or other benefits (either on a one-time or repeated basis) that you do not use and do not give to another person. (Regulation 18946.1.)

13. Gifts provided directly to members of your family unless: a) you receive a direct benefit from the gift (other than a benefit of nominal value); b) you use the gift (and your use is more than nominal or incidental); or c) you exercise discretion or control over the use or disposition of the gift. Factors used to determine the recipient of a gift include the relationship between the donor and family member, nature of the gift, and the manner in

which the gift was offered. (Regulation 18944.) (Note: In most cases, the full amount of a gift made to you and your spouse must be counted for purposes of disclosure and the gift limits. However, see the discussion below regarding wedding gifts.)

14. Gifts provided to your government agency. This may include passes or tickets to facilities, goods, or services, travel payments, and other benefits. However, certain conditions must be met before a gift received by an official through his or her agency would not be considered a gift to the official. (Regulations 18944.1-18944.2.) Contact the FPPC for detailed information.

15. Generally, payments made by a third party to co-sponsor an event that is principally legislative, governmental, or charitable in nature. Payments made by a single source totaling $5,000 or more in a calendar year for this type of event must be reported if the payments are made at the behest of (at the request of, or in consultation or coordination with) an elected official. The report must be made to the elected official's agency, and then forwarded to the Fair Political Practices Commission. (Section 82015(b)(2)(B)(iii).)

16. Leave credits (e.g., sick leave or vacation credits) received under a bona fide catastrophic or emergency leave program established by your employer and available to all employees in the same job classification or position. Donations of cash are gifts and are subject to limits and disclosure. (Regulation 18942(a)(9).)

17. Food, shelter, or similar assistance received in connection with a disaster relief program. The benefits must be received from a governmental agency or charity and must be available to the general public. (Regulation 18942(a)(10).)

Reportable Gifts Not Subject to Limits

The following exceptions are also applicable to gifts, but you may be required to report these items on a statement of economic interests (Form 700) and they can subject you to disqualification:[5]

1. Certain payments for transportation, lodging, and subsistence. Travel payments are discussed below.

2. Wedding gifts are not subject to the $390 gift limit, but they are subject to the $10 lobbyist/lobbying firm gift limit. In addition, wedding gifts are reportable. However, for purposes of valuing wedding gifts, one-half of the value of each gift is attributable to each spouse, unless the gift is intended exclusively for the use and enjoyment of one spouse, in which case the entire value of the gift is attributable to that individual. (Regulation 18946.3.)

3. A prize or award received in a bona fide competition not related to your official status is not subject to the gift limit, but must be reported as income. Therefore, it is reportable if the value of the prize or award is $500 or more. (Section 87207; Regulation 18946.5.)

[5] Designated employees should consult the "disclosure category" portion of their agency's conflict of interest code to determine if a particular source of income or gifts must be disclosed.

Honoraria

The Prohibition

State officials specified in Government Code section 87200 (see page 1) are prohibited from receiving honoraria payments. Officials and employees of state agencies who file statements of economic interests (Form 700) under the agency's conflict of interest code ("designated employees") may not receive honoraria payments from any source if the employee would be required to report income or gifts from that source on the Form 700, as outlined in the "disclosure category" portion of the conflict of interest code. (Section 89502.)

What is an "Honorarium"?

An "honorarium" is 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. (Section 89501.)

A "speech given" means a public address, oration, or other form of oral presentation, including participation in a panel, seminar, or debate. (Regulation 18931.1.)

An "article published" means a nonfictional written work: 1) that is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and 2) that is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication. (Regulation 18931.2.)

"Attendance" means being present during, making an appearance at, or serving as host or master of ceremonies for any public or private conference, convention, meeting, social event, meal, or like gathering. (Regulation 18931.3.)

Exceptions

The Act and Commission regulations provide certain exceptions to the prohibition on honoraria. (Section 89501; Regulations 18930-18933.) **The payments described below are not prohibited and are not required to be disclosed on a statement of economic interests (Form 700):**

1. An honorarium that you return (unused) to the donor or the donor's agent or intermediary within 30 days. (Section 89501 (b); Regulation 18933.)

2. An honorarium that is delivered to the State Controller within 30 days for donation to the General Fund for which you do not claim a deduction for income tax purposes. (Section 89501(b); Regulation 18933.)

3. A payment that is not delivered to you but is made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organization. However:

- You may not make the donation a condition for your speech, article, or attendance;
- You may not claim the donation as a deduction for income tax purposes;
- You may not be identified to the non-profit organization in connection with the donation; and
- The donation may have no reasonably foreseeable financial effect on you or on any member of your immediate family. (Regulation 18932.5.)

4. A payment received from your 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 that would be considered an honorarium is

prohibited if one of these persons is acting as an agent or intermediary for someone else. (Regulation 18932.4(b).)

5. Items 6, 8, 9, and 11 under "Exceptions to the Definition of 'Gift'," discussed earlier in this fact sheet. (Regulation 18932.4.)

Exceptions That May Be Reportable as Income or Gifts

The following payments are not considered "honoraria" but may be reportable and can subject you to disqualification:[6]

1. Payments received for a comedic, dramatic, musical, or other similar artistic performance, and payments received for the publication of books, plays, or screenplays. (Regulation 18931.1-18931.2.) However, such payments are reportable income.

2. Income earned for your personal services if the services are provided in connection with 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.

This exception does not apply if the sole or predominant activity of the business, trade, or profession is making speeches. In addition, you must meet certain criteria to establish that you are a bona fide business, trade, or profession (such as maintenance of business records, licensure, proof of teaching position) before a payment received for personal services that may meet the definition of honorarium would be considered earned income and not an honorarium. (Section 89501(b); Regulations 18932-18932.3.) Earned income is required to be reported. Contact the FPPC for detailed information.

3. Free admission, food, beverages, and other non-cash nominal benefits provided to you at any public or private conference, convention, meeting, social event, meal, or similar gathering, whether or not you provide any substantive service at the event. (Regulation 18932.4(f).) Although these items are not considered honoraria, they may be reportable gifts and subject to the gift limit.

4. Certain payments for transportation, lodging, and subsistence are not considered honoraria but may be reportable and subject to the gift limit. (Sections 89501(c) and 89506.) Travel payments are discussed below.

[6] Designated employees should consult the "disclosure category" portion of their agency's conflict of interest code to determine if a particular source of income or gifts must be disclosed.

Travel Payments

The Act and Commission regulations provide exceptions to the gift limit and honoraria prohibition for certain types of travel payments. (Section 89506; Regulations 18950-18950.4.)

The term "travel payment" includes payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence. (Section 89506(a).)

Exceptions

The following types of travel payments are not prohibited or subject to any limit and are not reportable on a statement of economic interests (Form 700):

1. Transportation within California provided to you directly in connection with an event at which you give a speech, participate in a panel or seminar, or provide a similar service. (Regulation 18950.3.)

2. Free admission, refreshments, and similar non-cash nominal benefits provided to you during the entire event (inside or outside California) at which you give a speech, participate in a panel or seminar, or provide a similar service. (Regulation 18950.3.)

3. Necessary lodging and subsistence (inside or outside California), including meals and beverages, provided to you directly in connection with an event at which you give a speech, participate in a panel or seminar, or provide a similar service. In most cases, the exclusion for meals and beverages is limited to those provided on the day of the activity. (Regulation 18950.3.)

4. Travel payments provided to you by the State of California or by any state, local, or federal government agency which would be considered income and not a gift (i.e., payments for which you provide equal or greater consideration). (Section 89506(d)(2); Regulation 18950.1(d).)

5. Reimbursements for travel expenses provided to you by a bona fide non-profit, tax-exempt (501(c)(3)) entity for which you provide equal or greater consideration. (Section 82030(b)(2).)

6. Travel payments provided to you directly in connection with campaign activities. However, these payments must be reported in accordance with the campaign disclosure provisions of the Act. (Regulations 18950.1(c); 18950.4.)

7. Any payment for travel that is excluded from the definition of "gift" as discussed earlier in this fact sheet.

Reportable Payments Not Subject to Limit

The following travel payments are not prohibited or subject to the $390 gift limit but may be reportable on a statement of economic interests (Form 700).[7] If the travel payment would otherwise be considered a gift under the Act (i.e., you did not provide equal or greater consideration for the payment), the payment would be subject to the $10 lobbyist/lobbying firm gift limit.[8]

1. Travel that is reasonably necessary in connection with a bona fide business, trade,

[7] Designated employees should consult the "disclosure category" portion of their agency's conflict of interest code to determine if a particular source of income or gifts must be disclosed.

[8] Under Article IV, Section 4(a), and Article V, Section 14(a), of the California Constitution, elected state officers are prohibited from receiving salary, wages, commissions or other earned income from a lobbyist, lobbying firm or person who, during the previous 12 months, has been under a contract with the Legislature.

or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code. (Section 89506(d)(3); Regulation 18950.1 (e).) For reporting purposes, these travel payments would be considered part of the salary, wages, and other income received from the business entity and would be reported on Schedule A-2 or C of Form 700.

2. Travel within the United States that is reasonably related to a legislative or governmental purpose — or to an issue of state, national, or international public policy — in connection with an event at which you give a speech, participate in a panel or seminar, or provide a similar service. Lodging and subsistence expenses in this case are limited to the day immediately preceding, the day of, and the day immediately following the speech, panel, or other similar service. (Section 89506(a)(1); Regulation 18950.1(a)(2).)

Note that this exception is different than travel payments described earlier. Under the circumstances described in this paragraph, transportation outside California but within the United States is not subject to the $390 gift limit but is reportable and can subject a public official to disqualification. On the other hand, transportation inside California in connection with a speech is not limited, reportable, or disqualifying. (Regulation 18950.3.)

In addition, the lodging and subsistence payments described in this paragraph can be provided both the day before and the day after a speech without being subject to the $390 limit. However, payments for lodging and subsistence <u>are reportable</u> and subject to the lobbyist gift limit unless they are received directly in connection with the speech.

3. Travel **not** in connection with giving a speech, participating in a panel or seminar, or providing a similar service but which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, and which is provided by:

- A government, governmental agency, foreign government, or government authority;
- A bona fide public or private educational institution defined in Section 203 of the California Revenue and Taxation Code;
- A non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; or
- A foreign organization that substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(Section 89506(a)(2); Regulation 18950.1(b).)

Loans

Personal loans received by certain state officials are subject to limits and other restrictions and, in some circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.

Limitations on Loans from Agency Officials, Consultants, and Contractors

If you are an elected official, an official specified in Section 87200 (see page 1), or you are exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), or (g) of Section 4 of Article VII of the Constitution, you may not receive a personal loan that exceeds $250 at any given time from an officer, employee, member, or consultant of your government agency or an agency over which your agency exercises direction and control. (Section 87460(a) and (b).)

In addition, you may not receive a personal loan that exceeds $250 at any given time from any individual or entity that has a contract with your government agency or an agency over which your agency exercises direction and control. This limitation does not apply to 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 your official status. (Section 87460(c) and (d).)

Loan Terms Applicable Only to Elected Officials

In addition to the limitations above, if you are an elected official, you 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. (Section 87461.)

The following loans are not subject to these limits and documentation requirements:

1. Loans received by an elected officer's or candidate's campaign committee.

2. Loans received from your 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.

3. Loans made, or offered in writing, prior to January 1, 1998. (Sections 87460 and 87461.)

Loans as Gifts

Under the following circumstances, a personal loan received by **any** public official (elected and other officials specified in Section 87200, as well as any other state official or employee required to file statements of economic interests) may become a gift and subject to gift reporting and limitations:

1. 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.

2. 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 you have made payments aggregating to less than $250 during the previous 12 months. (Section 87462.)

The following loans will not become gifts:

1. A loan made to an elected officer's or candidate's campaign committee. This loan would, however, be a campaign contribution. Consult the FPPC campaign manual for state candidates (Manual 1) for more details.

2. A loan described above on which the creditor has taken reasonable action to collect the balance due.

3. 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.)

4. A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

5. A loan that would not be considered a gift as outlined earlier in this fact sheet (e.g., loans from certain family members). (Section 87462.)