CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
JULY 2, 2019

WELCOME to a meeting of the Ontario City Council.

- **All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.**
- **Anyone wishing to speak during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time.**
- **Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.**
- **In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.**
- **Remarks from those seated or standing in the back of chambers will not be permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.**

ORDER OF BUSINESS The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 6:00 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

(EQUIPMENT FOR THE HEARING IMPAIRED AVAILABLE IN THE RECORDS MANAGEMENT OFFICE)

CALL TO ORDER *(OPEN SESSION)* 6:00 p.m.

ROLL CALL

Valencia, Wapner, Bowman, Dorst-Porada, Mayor/Chairman Leon

CLOSED SESSION PUBLIC COMMENT The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to a maximum of 3 minutes for each speaker and comments will be limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

CLOSED SESSION

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
  Property: Chino Basin Non-Agricultural Pool Water rights; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: Jonathan A. Sacks; Under negotiation: Price and terms of payment.

In attendance: Valencia, Wapner, Bowman, Dorst-Porada, Mayor/Chairman Leon

PLEDGE OF ALLEGIANCE

Council Member Dorst-Porada

INVOCATION

Pastor Ernest Benion Jr., The Church of God

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS 6:30 p.m.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Council votes on them, unless a member of the Council requests a specific item be removed from the Consent Calendar for a separate vote.

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 3 minutes.

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of May 21, 2019, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills May 31, 2019 through June 13, 2019 and **Payroll** May 26, 2019 through June 8, 2019, when audited by the Finance Committee.

3. A RESOLUTION OF INTENTION TO ESTABLISH THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT AND TO LEVY AND COLLECT ASSESSMENTS WITHIN SUCH DISTRICT

That the City Council consider and adopt a Resolution of Intention to establish the Downtown Ontario Community Benefit District and to levy and collect assessments within such District pursuant to California Streets and Highways Code 36600; and direct the City Clerk to mail ballots to all affected property owners within the proposed district boundaries.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, STATING ITS INTENTION TO ESTABLISH THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT AND TO LEVY AND COLLECT ASSESSMENTS WITHIN SUCH DISTRICT PURSUANT TO THE ESTABLISHMENT OF PROPERTY BUSINESS IMPROVEMENT DISTRICTS – SECTION 36600 OF THE CALIFORNIA STREETS AND HIGHWAY CODE - AND APPOINTING A TIME AND PLACE FOR HEARING OBJECTIONS THERETO.

4. A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CALTRANS FOR THE PREPARATION OF THE ONTARIO MULTIMODAL TRANSPORTATION CENTER NEEDS ASSESSMENT AND SITING CRITERIA

That the City Council adopt a resolution authorizing the City Manager to execute an agreement with the California Department of Transportation (Caltrans) for the City to accept grant funds for the preparation of the Ontario Multimodal Transportation Center Needs Assessment and Siting Criteria.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR THE ONTARIO MULTIMODAL TRANSPORTATION CENTER NEEDS ASSESSMENT AND SITING CRITERIA.

5. A CONSTRUCTION CONTRACT FOR THE 2019 FALL PAVEMENT REHABILITATION PROJECT/HARDY & HARPER INC.

That the City Council approve the plans and specifications and award a construction contract (on file in the Records Management Department) to Hardy & Harper Inc. of Lake Forest, California, for the 2019 Fall Pavement Rehabilitation Project for the bid amount of $4,261,000 plus a 15% contingency of $639,150 for a total authorized amount of $4,900,150; and authorize the City Manager to execute related documents necessary and file a notice of completion at the conclusion of all construction related activities.

6. A DESIGN SERVICES AGREEMENT FOR ATP CYCLE 4 PEDESTRIAN IMPROVEMENTS AROUND RICHARD HAYNES ELEMENTARY, VISTA GRANDE ELEMENTARY AND OAKS MIDDLE SCHOOL/HERNANDEZ, KROONE & ASSOCIATES

That the City Council approve a Design Services Agreement (on file in the Records Management Department) with Hernandez, Kroone & Associates of San Bernardino, California, to provide engineering design services for pedestrian improvements around three local schools prepared as part of Active Transportation Program (ATP) Cycle 4 for $399,600 plus a 12% contingency of $47,952 for a total authorized expenditure of $447,552; and authorize the City Manager to execute said agreement and future amendments within the authorization limits.

7. RESOLUTIONS UPDATING AUTHORIZED DEPUTY CITY TREASURERS

That the City Council adopt resolutions rescinding previous resolutions and amending the list of Deputy City Treasurers authorized to invest City funds in the Local Agency Investment Fund (LAIF) and other eligible investment securities.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, PROVIDING FOR THE INVESTMENT OF INACTIVE FUNDS IN THE LOCAL AGENCY INVESTMENT FUND OF THE CALIFORNIA STATE TREASURY AND HEREBY RESCINDING RESOLUTION NO. 2019-008.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE INVESTMENT OF CITY FUNDS AND HEREBY RESCINDING RESOLUTION NO. 2019-009.

8. A PROFESSIONAL SERVICES AGREEMENT FOR THIRD PARTY LIABILITY CLAIMS ADMINISTRATOR SERVICES/CARL WARREN & COMPANY

That the City Council authorize the City Manager to execute a three-year Professional Services Agreement (on file in the Records Management Department) with Carl Warren & Company of Riverside, California, for third party liability claims administration services for an annual amount of $72,235 for the first year and escalation not to exceed 3.2% for each subsequent year.

9. AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA19-001, REVISING PORTIONS OF ONTARIO DEVELOPMENT CODE CHAPTERS 2 (ADMINISTRATION AND PROCEDURES), 4 (PERMITS ACTIONS AND DECISIONS), 5 (ZONING AND LAND USE), AND 9 (DEFINITIONS AND GLOSSARY), AS THEY APPLY TO WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FACILITIES QUALIFYING AS ELIGIBLE FACILITIES REQUESTS

That the City Council consider and adopt an ordinance approving File No. PDCA19-001, a Development Code Amendment revising portions of Ontario Development Code Chapters 2 (Administration and Procedures), 4 (Permits Actions and Decisions), 5 (Zoning and Land Use), and 9 (Definitions and Glossary), as they apply to Wireless Telecommunications Facilities in the public right-of-way and facilities qualifying as Eligible Facilities Requests.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA19-001, A DEVELOPMENT CODE AMENDMENT REVISING PORTIONS OF ONTARIO DEVELOPMENT CODE CHAPTERS 2 (ADMINISTRATION AND PROCEDURES), 4 (PERMITS ACTIONS AND DECISIONS), 5 (ZONING AND LAND USE), AND 9 (DEFINITIONS AND GLOSSARY), AS THEY APPLY TO WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FACILITIES QUALIFYING AS ELIGIBLE FACILITIES REQUESTS, AND MAKING FINDINGS IN SUPPORT THEREOF.

10. A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF ONTARIO LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA")

That the City Council consider and adopt a resolution approving the 2019 amendment to the "City of Ontario Local Guidelines for Implementing the California Environmental Quality Act" (on file in the Records Management Department).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING AND ADOPTING LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUBLIC RESOURCES CODE §§ 21000 ET SEQ.).

11. APPROVAL OF PRE-AUTHORZIED VENDORS TO PROVIDE SERVICES AND PARTS FOR SPECIALIZED FLEET AND EQUIPMENT

That the City Council approve pre-authorized vendors to provide parts and maintenance services for the following specialized fleet and equipment: Cummins engines, police motorcycles, vactor trucks, Case forklifts, Bobcat equipment, paving equipment, Integrated Waste vehicles, and Toro mowers.

12. AN AMENDMENT TO THE AGREEMENT WITH STEELBRIDGE SOLUTIONS FOR CHANGE MANAGEMENT SUPPORT ON THE CIS INFINITY UTILITY BILLING IMPLEMENTATION PROJECT

That the City Council authorize the City Manager to execute an amendment to the existing agreement (on file with the Records Management Department) with SteelBridge Solutions, Inc, of Atlanta, Georgia for Change Management Support on the CIS Infinity Utility Billing Implementation Project adding $169,750 plus a 25% project contingency of $42,437, for a revised authorized contract total of $302,187.

13. AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH WESTIN TECHNOLOGY SOLUTIONS FOR PROJECT MANAGEMENT SUPPORT ON CIS INFINITY UTILITY BILLING IMPLEMENTATION

That the City Council authorize the City Manager to execute an amendment to the existing agreement (on file with the Records Management Department) with Westin Technology Solutions, of Milwaukee, Wisconsin, for project management support on the CIS Infinity Utility Billing Implementation adding $97,240 to their existing contract raising the not to exceed limit to $195,380.

14. AWARD OF DESIGN SERVICE AGREEMENTS FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES/COMMUNITY WORKS DESIGN GROUP/DAVID VOLZ DESIGN/RJM DESIGN GROUP, INC./WITHERS & SANDGREN

That the City Council and Housing Authority approve and authorize the City Manager to execute three-year Design Service Agreements (on file in the Records Management Department) with: Community Works Design Group of Riverside, California; David Volz Design of Costa Mesa, California; RJM Design Group, Inc. of San Juan Capistrano, California; and Withers & Sandgren, Ltd. of Chatsworth, California; and authorize the City Manager to extend the agreements for up to two additional years consistent with City Council approved budgets.

15. A RESOLUTION APPROVING AN APPLICATION FOR THE USED OIL PAYMENT PROGRAM CYCLE 10 (FISCAL YEAR 2019-20) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

That the City Council adopt a resolution approving a grant application for an estimated $49,000 from the Used Oil Payment Program Cycle 10 (Fiscal Year 2019-20) through the State of California Department of Resources Recycling and Recovery (CalRecycle); and authorize the City Manager or his designee to execute all necessary documents to participate in the program.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE SUBMITTAL OF AN ANNUAL APPLICATION TO PARTICIPATE IN THE USED OIL PAYMENT PROGRAM CYCLE 10 (FISCAL YEAR 2019-20) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE).

16. A PROFESSIONAL SERVICES AGREEMENT FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO WATER AND WASTEWATER MATTERS/NOSSAMAN LLP

That the City Council approve and authorize the City Manager to execute an agreement (on file with Records Management) with Nossaman LLP of Los Angeles, California, for legal and technical services with respect to matters relating to sewer disposal, water supply and water rights; and authorize up to four one-year extensions consistent with City Council approved budgets.

PUBLIC HEARINGS

Pursuant to Government Code Section 65009, if you challenge the City's zoning, planning or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the public hearing.

17. A PUBLIC HEARING TO RECEIVE AND RESPOND TO PUBLIC COMMENT ON THE REPORT OF THE CITY'S WATER QUALITY RELATIVE TO PUBLIC HEALTH GOALS

That the City Council receive and respond to public comment on the Report of the City's Water Quality Relative to Public Health Goals.

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

Written communication.
Oral presentation.
Public hearing closed.

18. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING AN AMENDMENT TO THE CITY OF ONTARIO MUNICIPAL CODE, REVISING SECTION 4-6.1009 TO ADD PROVISIONS PROHIBITING THE OVERNIGHT PARKING OF COMMERCIAL VEHICLES IN RESIDENTIAL ZONING DISTRICTS

Item continued to the City Council Meeting of July 16, 2019, at 6:30 p.m.

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Valencia
Council Member Wapner
Council Member Bowman
Council Member Dorst-Porada

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // *(GC 54957.1)*
July 2, 2019

ROLL CALL: Valencia _, Wapner _, Bowman _, Dorst-Porada_, Mayor / Chairman Leon _.

STAFF: City Manager / Executive Director __, City Attorney __

In attendance: Valencia _, Wapner _, Bowman _, Dorst-Porada_, Mayor / Chairman Leon _.

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
  Property: Chino Basin Non-Agricultural Pool Water rights; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: Jonathan A. Sacks; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by:

_____
City Attorney / City Manager / Executive Director

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION OF INTENTION TO ESTABLISH THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT AND TO LEVY AND COLLECT ASSESSMENTS WITHIN SUCH DISTRICT

RECOMMENDATION: That the City Council consider and adopt a Resolution of Intention to establish the Downtown Ontario Community Benefit District and to levy and collect assessments within such District pursuant to California Streets and Highways Code 36600; and direct the City Clerk to mail ballots to all affected property owners within the proposed district boundaries.

COUNCIL GOALS: **Invest in the Growth and Evolution of the City's Economy**
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The use of Special Benefit District financing is estimated to generate approximately $461,405 for Fiscal Year 2019-20 to fund improvements and services in the Downtown area. There is no immediate fiscal impact to the City associated with the subject recommendation and action. As a property owner in the District, the future assessments on City of Ontario owned properties within the district boundaries is estimated at $150,000 for FY 2019-20. Assessments in future years may increase by no more than 5% annually for the life of the District. If approved and the District is established, the associated revenue and appropriations will be included in the FY 2019-20 First Quarter Budget Report to the City Council.

BACKGROUND: For many years, the City of Ontario has been working to provide for a broad-based and comprehensive revitalization of the Downtown area and unlock its economic potential. The objective of the proposed Downtown Ontario Community Benefit District (CBD) is to provide services and improvements specially benefiting downtown property owners by increasing economic activity; customer, retail and business experience; and enhancing value of commercial and retail property. As a key component of the overall revitalization strategy, the implementation of this Downtown CBD will increase commerce, attract new business, and aid in the transformation of Downtown into a vibrant hub of residential and commercial activity.

STAFF MEMBER PRESENTING: John P. Andrews, Executive Director Economic Development

Prepared by:	Karla Tavera	Submitted to Council/O.H.A.	07/02/2019
Department:	Economic Development	Approved:	
		Continued to:	
City Manager Approval:		Denied:	
			3

Special Benefit Districts are authorized by State Law under California Streets and Highway Code 36600 in order to fund improvements and services that are over and beyond what City services currently provide. Any special benefit assessments paid by property owners solely fund improvements to the public rights of way directly surrounding those properties within the district, and by law, these funds cannot be used outside of the district boundaries or to replace existing City services.

In 2018, the City of Ontario contracted with New City America, a firm specializing in the formation and management of Special Benefit Districts across the country, to investigate the viability of establishing a benefit district in Downtown. A survey was sent to Downtown property owners in November 2018 and again in January 2019 to gauge support and prioritize the concerns of property owners and to identify key elements of the proposed Downtown CBD. Property owners were also invited to participate on a steering committee, to help guide the types of services and improvements the proposed district could offer. The input of the steering committee was essential for the creation of a Management District Plan, included as Attachment A, which establishes the district boundaries (Attachment B), the method of calculating property assessment values, a district budget, and the types of services and improvements to be funded by the district. The engineer's report supporting the assessment has been prepared by an assessment engineer, certified by the State of California as required by state law, and reviewed by the City Attorney. The assessment engineer's report is attached as Attachment C.

Upon completion of the Management District Plan, a plan summary was mailed to each property owner in the proposed district, along with individual parcel assessment values and a petition to establish the CBD. With the support of property owners which represent at least 50% of the assessed valuation within the district, the City Council is able to adopt this Resolution of Intention to establish the Downtown CBD and direct the City Clerk to mail ballots to each property owner within the district.

Upon the adoption of this Resolution of Intention, a public hearing will be scheduled for August 20, 2019 in order to receive written communication and hear public testimony regarding the formation of the district and to calculate the results of the mail ballot. If the weighted majority of returned, signed ballots support formation of the district, the City Council may adopt a Resolution of Formation to create the Downtown CBD and vote to levy the assessments on the benefitting parcels. A Management Corporation will be formed to operate the CBD, and the first set of assessments will be collected in December 2019 as part of the annual property tax bill.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, STATING ITS INTENTION TO ESTABLISH THE DOWNTOWN ONTARIO COMMUNITY BENEFIT DISTRICT AND TO LEVY AND COLLECT ASSESSMENTS WITHIN SUCH DISTRICT PURSUANT TO THE ESTABLISHMENT OF PROPERTY BUSINESS IMPROVEMENT DISTRICTS – SECTION 36600 OF THE CALIFORNIA STREETS AND HIGHWAY CODE - AND APPOINTING A TIME AND PLACE FOR HEARING OBJECTIONS THERETO.

WHEREAS, the Property Business Improvement District Ordinance of 1994, (the "Law") authorizes cities to establish, in perpetuity, Property Business Improvement Districts (PBID) to promote the economic revitalization and physical maintenance of mixed use and business districts in Ontario; and

WHEREAS, the Law authorizes cities to levy and collect assessments on real property within such districts for the purpose of providing improvements and promoting activities that specially benefit real property within such districts; and

WHEREAS, Articles XIIIC and XIIID of the California Constitution and Section 53753 of the California Government Code impose certain procedural and substantive requirements relating to the levy of new or increased assessments; and

WHEREAS, written petitions have been submitted by district property owners requesting the City Council to initiate proceedings pursuant to the Law to establish the District for a undetermined term; and

WHEREAS, such petitions were signed by property owners in the proposed district who will pay more than fifty percent (50%) of the assessments proposed to be levied; and

WHEREAS, no real properties deriving special benefit within the proposed Downtown Ontario Community Benefit District (CBD) will be exempted from payment into the District; and

WHEREAS, a Management District Plan entitled the "Downtown Ontario CBD Management District Plan" (the "Management District Plan") has been prepared and submitted to the City Clerk, containing all of the information required by Section 36622 of the California Streets and Highway Code, Section 36600, and the local Law, including a description of the boundaries of the District, the improvements and activities proposed for the District, and the cost of such improvements and activities.

NOW THEREFORE, the City of Ontario City Council hereby resolves the following:

SECTION 1. Pursuant to the local Law and Section 36621(a) of the California Streets and Highway Code declares its intention to establish the Downtown Ontario Community Benefit District and to levy and collect assessments against lots and parcels of real property within the District commencing with Fiscal Year 2019-20.

SECTION 2. The City Council hereby approves the Management District Plan, on file in the office of the City Clerk.

SECTION 3. The City Clerk shall make the Management District Plan and the Assessment Engineer's report and other documents related to the District available to the public for review during normal business hours.

SECTION 4. NOTICE IS HEREBY GIVEN that the City Council shall conduct a public hearing on the establishment of the District and the levy and collection of assessments for Fiscal Year 2019-20 on August 20th, 2019 at 5:00 p.m. or as soon thereafter as the matter may be heard, in the City Council Chambers located at 303 East B St, Ontario, California 91764. At the public hearing, the City Council will consider all objections or protests, if any, to the proposed establishment of the District and the proposed assessment. Any interested person may present written or oral testimony at the public hearing. At the conclusion of the public testimony portion of the public hearing, the City Clerk shall open and tabulate all ballots received and not withdrawn at that time. Results of the ballot procedure will be announced, and, provided a weighted majority in opposition to the District establishment does not occur, the City Council may then establish the District by adopting a resolution to that effect.

SECTION 5. The boundaries of the proposed District generally include all properties listed within the boundaries of the map on file in the Management District Plan filed in the Clerk's office.

SECTION 6. The proposed activities for the District may include sidewalk cleaning, private security, beautification, marketing and promotional activities, administration of the services, public space development and enhancement for residential property owners in the CBD and contingency/reserves. All proposed services and improvements benefit real property owners located in the District.

SECTION 7. The assessment proposed to be levied and collected for Fiscal Year 2019-20 is $461,405.00. The amount to be levied and collected for subsequent years may be increased, by an amount not to exceed five (5) percent per year.

SECTION 8. The City Clerk is hereby authorized and directed to give notice of the public hearing as provided in Section 53753 of the Government Code and Article XIIID, Section 4 of the California Constitution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of July 2019.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
COLE HUBER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2019- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held July 2, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2019- duly passed and adopted by the Ontario City Council at their regular meeting held July 2, 2019.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The Proposed Downtown Ontario Community Benefit District (DOCBD)

MANAGEMENT DISTRICT PLAN

Being Established for a 5-year Term Pursuant to

California Streets and Highways Code Section 36600 et seq.

Property & Business Improvement District Act of 1994, as amended

APRIL 15, 2019

Corporate Office ▪710 W. Ivy Street ▪ San Diego, CA 92101 ▪ 888-356-2726 ▪ 619-233-5009 ▪ Fax 619-239-7105
San Francisco Bay Area Office ▪ 954 Lee Avenue, ▪ San Leandro, CA 94577
New England Office: 42 Pearl Street, ▪ New Bedford, MA ▪ 02740
mail@newcityamerica.com ▪ www.newcityamerica.com ▪ Facebook: New City America, Inc.

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MANAGEMENT DISTRICT PLAN SUMMARY

Background:

Beginning in the summer of 2018, the City of Ontario worked with a group of motivated property owners to gauge support within the community for a new *Special Benefits District* for both the Downtown property owners and business community alike. The City of Ontario has hired New City America – a company specializing in *Special Benefits District* formation and district management - to work with the Downtown property owners to investigate the viability of a new Community Benefit District (CBD) in Downtown.

Since its initiation last summer, New City America has worked with City staff to mail out a survey to Downtown property owners – one in November and another in January – informing them that once a reasonable number of survey responses had been tallied, updates would then be sent out regarding the survey results. The results were finalized in February with the Committee planning to meet regularly through late April to come up with a preliminary plan to present to the property owners. This newsletter outlines the key elements of the proposed **Downtown Ontario Community Benefit District (DOCBD).**

Survey results

Since all properties (commercial as well as tax-exempt) would be included in the proposed CBD, the basis for support was analyzed reviewing parcel linear frontage, lot square footage, and building square footage. These figures are used because they are what each property has in common. In California, one cannot use assessed valuation to determine support since assessed valuation of a property is 1) based upon when someone bought the property, not upon its actual market value, and 2) not relevant to public parcels, which don't have an assessed valuation per se, but which will also be assessed due to the services they would be receiving.

The responses demonstrated that strong base of the responding property owners thought there was merit in the CBD concept. This proposed Downtown Ontario Community Benefit District can only be formed by a mail-in vote of the majority of *weighted property owners* within the proposed district boundaries.

Priority Special Benefit Services – According to the Survey

The survey asked a variety of specific questions regarding property owner-funding of services over and above what the City was currently providing. The priority services outlined by the **responding property owners** prioritized the following:

- By an almost a 9 to 1 margin, survey respondents believed that **Downtown** was "*relatively safe; however, suffered an unsafe image*" OR was *unsafe*

- By an 8 to 1 margin, property owners supported special benefit services which responded to issues including **homelessness, panhandling,** and **loitering** in Downtown

- By a 4 to 1 margin, property owners supported reoccurring, property owner-funded sidewalk and gutter sweeping in Downtown

- By a 4 to 1 margin, property owners supported services related to planting, trimming and maintenance of trees, plants, flowers, lighting installation, street furniture, and other amenities in Downtown Ontario

- By almost an 8 to 1 margin, property owner supported services for public relations and social media and events to support the branding of Downtown

Based upon these results, the Steering Committee determined that there was enough support to come up with a preliminary plan.

Proposed Plan:

The *Downtown Ontario CBD* is a Property and Community Benefit District (DOCBD) being established for a 5-year period by a consortium of property and business owners within the CBD area. The DOCBD was originally discussed in a series of meetings of property owners along Downtown Ontario Blvd. in the summer of 2018. Understanding that the timeline for formation in time for Fiscal Year 2020 would be very challenging, property owners felt that the time had come for such a special benefits district and that these services would be needed to accommodate hundreds of new apartments and new businesses opening in 2019, and these services would be needed by the beginning of 2020.

The purpose of establishing this CBD is to provide and manage supplemental services and improvements for this important, historic and growing business center, including landscaping, beautification, marketing, district identity, safety, and administration services, programs and improvements. The DOCBD is a unique benefit assessment district that will enable the DOCBD property owners and businesses working as a unit, to fund needed property and business-related improvement programs, services and programs above what is provided by the City of Ontario.

Management Plan at a Glance:

Name: The name of the CBD is the Downtown Ontario Community Benefit District (DOCBD).

Location: The proposed DOCBD is in the Downtown Ontario community run along both sides of Euclid Avenue from the underpass just south of W. Emporia Street northward to the parcels to the south side of G Street. The western most boundary is predominantly along North Palm Avenue and the eastern boundary is predominantly along North Lemon Avenue.

Benefit Zones: There is one benefit zone within the proposed DOCBD. The boundaries of the benefit zone are coterminous with the boundaries of the proposed DOCBD.

Services: Civil Sidewalks, District Identity and Placemaking, Administration services, and Contingency. These services are proposed to be performed in the first year, and in each subsequent year, of the proposed DOCBD. 80% of the revenue generated by the proposed district will directly fund services to the property owners with less than 20% allocated to the oversight and administration of those services.

Finance: The financing of the CBD is based upon a benefit assessment of real property (204 parcels with 99 property owners). No bonds shall be issued to fund DOCBD programs.

Budget: CBD assessment revenue for Year 1 is projected to be $ 461,405.00. It is noted that the Assessment Engineer has determined that general benefits equate to 2% of the total adjusted CBD program costs of $470,821.00 or $ 9,416. General benefit costs shall be derived from non-assessment revenue sources such as grants, program income, credits, interest, memberships and other sources. Revenues from the assessment will increase by a maximum of 5% each year.

Year 1 – PROPOSED BUDGET (ASSESSMENT REVENUES/SPECIAL BENEFIT COSTS)

Category of Special Benefit Services 2020	Approximate Annual Amount, First Year	Approximate Percentage of total budget
Civil Sidewalks	$ 275,000	60%
District Identity/Placemaking	$ 92,000	20%
Administration	$ 75,000	16%
Contingency	$ 19,405	4%
Total	***$ 461,405.00***	***100%***

Benefits: "General Benefit" is defined as: *"A benefit to properties in the area and in the surrounding community or benefit to the public in general resulting from the improvement, activity, or service to be provided by the assessment levied"*. "Special Benefit" as defined by the California State Constitution means a distinct benefit over and above general benefits conferred on real property located in the DOCBD or to the public at large.

Formula: There is one benefit zone in the DOCBD. (A map showing the DOCBD boundaries is shown in Chapter 2 of this Plan). Year 1 property assessment rates per parcel are as follows:

YEAR 1 –Assessment Rates

Benefit Zone	*Annual Building Square Footage Cost*	*Annual Lot Size Cost*	*Annual Linear Frontage Cost*
All parcels	$0.16	$0.06	$ 6.00
Residential Condos	$0.25	0	0

Assessments for the County of San Bernardino Property Tax Year fiscal beginning July 1, 2019 and ending June 30, 2023, are proposed to be collected at the same time and in the same manner as ad valorem taxes paid to the County of San Bernardino (Operation Years 2020-2024). The District assessments shall appear as a separate line item on the property tax bills issued by the San Bernardino County Assessor. The City of Ontario is authorized to collect any assessments not placed on the County tax rolls, or to place assessments, unpaid delinquent assessments, or penalties on the County tax rolls as appropriate to implement this Management District Plan.

Cap: Assessment increases are capped at a maximum of 5% per year, subject to approval by the DOCBD Property Owner Association Board of Directors.

Establishment:

CBD Established is a two-step process. First, petitions signed by CBD property owners representing at least 50% of the total assessment to be levied must be secured. Second, property owners will be sent a ballot to vote on forming the CBD and levying the assessment. Returned ballots in support of the CBD Established must outweigh those in opposition based on the amount of assessment to be levied. Ballots are weighted based on the total assessment attributable to each parcel.

Duration

As allowed by State PBID Law, the District will have a five (5) year operational term from January 1, 2020 to December 31, 2024. The proposed established District operation is expected to begin services on January 1, 2020. If the District is not renewed, services will end on December 31, 2024.

II. CBD BOUNDARIES

General: The proposed Downtown Ontario CBD is located along Euclid Avenue (SR83) in Downtown Ontario,. just south of Interstate 10 and north of Highway 60. The DOCBD is a grid based commcerial district with its eastern boundary proposed as predominantly on North Lemon Avenue and its west boundary proposed as predominantly along S. Palm Avenue. The district boundaries run the underpass just south of Emporia Street northward to the south side of G Street.

All of the property owners along this corridor have been sent two mailings in the process of this investigation process. The first, sent in early November, was to determine their support for the establishment of a special benefits district and the response to this survey was used to determine the final boundaries of the proposed district. The second mailing, sent in early January, was a property verification form to verify the property data that New City America had obtained from the County records and have them compare it with the data the property owners had.

Boundary Description

The Downtown Ontario CBD encompasses approximately 23 square blocks centered by Euclid Avenue.

Benefit Zones

The District consists of one benefit zone.

District Boundary Rationale

The Downtown Ontario CBD boundaries are comprised of the commercial core parcels where the main economic activity of Downtown Ontario Blvd. is centered. The commercial parcels fronting Euclid Avenue are the historic heart of the commercial core of the city of Ontario. These parcels showcase an array of commercial retailers, restaurants, retailers, service stores, the vast Town Center block, churches and soon will be home to a full block of market rate housing and a full block of a new university. After years of little if any new development, the corridor is now experiencing a renaissance of new market rate housing development in the form of new mixed use, market rate housing. Its proximity to Interstate 10, Highway 60, the Ontario Airport and the Metrolink station in Upland makes it an ideal place to live in and conduct commerce in the region. The new housing and excellent historic and contemporary housing surrounding Downtown is evolving into an emerging 21st century mixed use community. New retail in the form of stores, restaurants and coffee shops are following the growth of high density residential on the Euclid Avenue.

Northern Boundary

The northern boundary of the CBD is defined by the commercial parcels which are located just south of G Street from the east side of North Laurel Avenue on the west and the west side of North Lemon Avenue on the east. The District will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No District programs and services will be provided north of the northern District boundary.

Western Boundary

The western boundary of the Downtown Ontario CBD is at the southeastern corner parcel at the intersection of West G Street and North Laurel Avenue (parcel 1048-356-01) and runs south along the eastern side of North Laurel to the intersection of West D Street and North Laurel Avenue. The boundary then runs straight west along the south side of West D Street to the intersection of North Palm Avenue and West G Street. From there, the boundary runs south along the east side of North Palm Avenue from parcel 1048-561-13 southward to parcel 1049-056-06 at the intersection of West Emporia Street and North Palm Avenue. The boundary then runs west along the south side of West Emporia Street to include the western most parcel 1049-059-07.

The District will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No District programs and services will be provided west of the western District boundary.

Southern Boundary

The southern boundary of the CBD is begins at parcel 1049-059-07 on West Emporia Street and runs on the south side of all the parcels on West Emporia Street to the parcel at the west side of the intersection of West Emporia Street and North Plum Street, ending at parcel 1049-064-14.

The District will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No District programs and services will be provided south of the southern District boundary.

Eastern Boundary

The eastern boundary of the CBD begins at the parcel at the west side of the intersection of West Emporia Street and North Plum Street, at parcel 1049-064-14 and runs northward along the west side of North Plum Avenue to the parcel at the southwestern corner of the intersection of East Holt Blvd and North Plum Avenue, parcel 1049-063-05. The boundary then runs westward for one block on the south side of East Holt Blvd. to the southeastern parcel of the intersection of South Lemon Avenue and East Holt Blvd., parcel 1049-063-01, and then runs northward along the western side of North Lemon Avenue up to the parcel at the southwestern corner of the intersection of East G Street and North Lemon Avenue, ending at parcel 1048-361-05.

The District will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No District programs and services will be provided east of the eastern District boundary.

Summation:

A list of all parcels included in the proposed DOCBD are shown as Appendix 1, attached to this report identified by their respective San Bernardino County assessor parcel numbers. The boundary of the proposed DOCBD is shown on the map of the DOCBD is to be found on page 10 of this report.

All identified assessed parcels within the above-described boundaries shall be assessed to fund supplemental programs, services and improvements that provide a special benefit to assessed parcels, as outlined in this Management District Plan. All DOCBD funded services, programs and improvements shall be provided within the above described boundaries and no services shall be provided outside of the DOCBD. Each assessed parcel within the DOCBD will specially benefit from the District funded programs and services (i.e. Civil Sidewalks, District Identity and Place Making, Administration and Contingency).

These services, programs and improvements are intended to improve commerce, employment, rents and occupancy rates and investment viability of individually assessed parcels and businesses within the DOCBD. The DOCBD confers special benefits on each individually assessed parcel by reducing crime, improving aesthetics and marketing goods and services available from individually assessed parcels and the businesses and residential rental units within the District, all considered supplemental in a competitive properly managed Downtown district.

All District funded services programs and improvements are supplemental, above normal base level services provided by the City of Ontario and are only provided for the special benefit of assessed parcels within the boundaries of the proposed established DOCBD.

The District includes 204 parcels of which all are identified as assessable which are listed in the Assessment Roll included as Appendix 1.


Ontario District
NEW CITY America, Inc.
E H St
E el Morado Ct
W G St
E G St
W F St
E F St
W E St
E E St
W D St
E D St
W C St
E C St
E B St
W Holt Blvd
E Holt Blvd
E Transit St
W Emporia St
E Main St
S Vine Ave
N Vine Ave
N Fern Ave
S Fern Ave
N Palm Ave
S Palm Ave
N Laurel Ave
S Laurel Ave
Euclid Ave
N Lemon Ave
S Lemon Ave
N Plum Ave
N Cherry Ave
S Cherry Ave
N Sultana Ave
1048-356
1048-361
1048-355
1048-362
1048-354
1048-363
1048-551
1048-561
1048-566
1048-562
1048-565
1048-552
1048-563
1048-564
1048-553
1049-055
1049-057
1049-063
1049-061
1049-056
1049-058
1049-062
1049-064
1049-059
0 125 250 500 Feet
LEGEND
District Parcel
Parcel

III. PROPOSED FIVE-YEAR CBD WORK PLAN AND BUDGET

Overview

The Programs and activities to be funded by the DOCBD may include Civil Sidewalks, District Identity and Place Making, Administration services, and Contingency. The property uses within the boundaries of the District that will receive special benefits from District funded programs, services and improvements are currently a unique mix of retail, office, grocery, restaurant, ecumenical, banking, public space, mixed use housing developments, service and other commercial uses. District funded activities are primarily designed to provide special benefits as described below to identified assessed parcels and array of land uses within the boundaries of the District.

These benefits are distinct to each identified assessed parcel within the DOCBD and are not provided to non-assessed parcels outside of the District. These programs, services and improvements will only be provided to each individual assessed parcel within the District boundaries and, in turn, confer proportionate "special benefits" to each assessed parcel.

In the case of the DOCBD, the very nature of the purpose of this District is to fund supplemental programs, services and improvements to assessed parcels within the District boundaries above and beyond what is being currently funded either via normal tax supported methods or other funding sources. The City of Ontario does not provide these supplemental programs and services. All benefits derived from the assessments to be levied on assessed parcels within the District are for services, programs and improvements directly benefiting each individual assessed parcel within the District. No District funded services, activities or programs will be provided outside of the District boundaries.

The projected program special benefit cost allocation of the District assessment revenues for the 5-year District term assuming a 5% maximum annual assessment rate increase is shown in the Table on page 14 of this Plan.

Work Plan Details

The services to be provided by the DOCBD are all designed to contribute to the cohesive commercial fabric and to ensure economic success and vitality of the District. The assessed parcels in the CBD will specially benefit from the District programs in the form of increasing commerce and improving economic success and vitality through meeting the CBD goals: to improve sanitation, beautification, landscaping, and to attract new and retain existing businesses and services, and ultimately to increase commerce and improve the economic viability of each individual assessed parcel. The following programs, services and improvements are proposed by the DOCBD to specially benefit each individually assessed parcel within the District boundaries. DOCBD services, programs and improvements will not be provided to parcels outside the District boundary.

Year 1 – PROPOSED BUDGET (ASSESSMENT REVENUES/SPECIAL BENEFIT COSTS)

The proposed "bundles" of special benefit services are listed below.

CIVIL SIDEWALKS:

Examples of this category of special benefit services and costs may include, but is not limited to:

- Regular sidewalk and gutter sweeping
- Regular sidewalk steam cleaning
- Beautification of the district
- Enhanced trash emptying (over and above city services)
- Timely graffiti removal, within 24 hours as necessary
- Tree and vegetation maintenance (over and above city services)
- Maintenance of existing and new public spaces supplemental to what is current being provided by the City of Ontario
- Installation of and maintenance of hanging plants, planting flowers throughout the district
- Private security or case workers to respond to homeless issues, aggressive panhandling and mentally ill people behaving poorly in the public rights of way, including possible hiring of Ontario PD Bike patrols and/or a camera system

DISTRICT IDENTITY AND PLACEMAKING:

Examples of this category of special benefit services and costs may include, but is not limited to:

- Web site development and updating
- Management and coordination of special events
- Social media
- Public relations firm
- Holiday and seasonal decorations
- Branding of the Downtown Ontario CBD properties so a positive image is promoted to the public
- Banner programs
- Public art displays
- Logo development
- Public space design and improvements

ADMINISTRATION/PROGRAM MANAGEMENT

Examples of this category of special benefit services and costs may include, but is not limited to:

- Staff and administrative costs
- Directors and Officers Insurance, General Liability and other insurance coverages
- Office related expenses
- Rent
- Financial reporting and accounting, and legal services

CONTINGENCY/CITY AND COUNTY FEES/RESERVE

As with other plans in similar CBDs, this management plan sets aside a 4% contingency/reserve which provides for costs related to operating the district. Those costs may include, but not be limited to:

- City and/or County fees associated with their oversight and implementation of the District,
- the implementation of the Management District Plan and the Engineer's Report.
- City fees to collect and process the assessments, delinquencies and non-payments. A percent of the budget is held in reserve to offset delinquent and/or slow payment from both public and private properties. This component also funds the expenses charged by the County of San Bernardino for collection and distribution of DOCBD revenue.
- Other unanticipated costs related to the compliance of the Management District Plan and Engineer's report.
- Funding for renewal of the District;

METHOD OF FINANCING:

The financing of the Downtown Ontario CBD is based upon the levy of special assessments upon real property that receive special benefits from the improvements and activities. There will be five factors used in the determination of proportional benefit to the parcels in the CBD. Those four factors are:

- Linear frontage
- Lot size or the footprint of the parcel
- Building square footage (excluding parking structures built within the building that predominantly serve the tenants of the building and are not open to the public) and
- New Residential condominiums built within the District boundaries

PROGRAM & ACTIVITY BUDGET

Each identified assessed parcel within the DOCBD will be assessed the full amount of the proportionate special benefit conferred upon it based on the level of District funded services provided, except those tax-exempt owner-occupied parcels which shall only for the direct special benefits they will be receiving along the frontage of their parcels facing streets within the DOCBD. The projected District program special benefit (assessment) cost allocation budget for Year 1 is shown in the following Table:

Year 1 – PROPOSED BUDGET (ASSESSMENT REVENUES/SPECIAL BENEFIT COSTS)

Category of Special Benefit Services 2020	Approximate Annual Amount, First Year	Approximate Percentage of total budget
Civil Sidewalks	$ 275,000	60%
District Identity/Placemaking	$ 92,000	20%
Administration	$ 75,000	16%
Contingency	$ 19,405	4%
Total	***$ 461,405.00***	***100%***

To carry out the District programs outlined in the previous section, a Year 1 assessment budget of $461,405.00 is projected. Since the District is planned for a 5-year term, projected program costs for future years (Years 2-5) are set at the inception of the District. While future inflationary, new development assessments and other program cost increases are unknown at this point, a built-in maximum increase of 5% per annum, commensurate to special benefits received by each assessed parcel, is incorporated into the projected program costs and assessment rates for the 5-year District term. The District shall adhere to the budget and Management District Plan. While some variation is permissible to account for unexpected circumstances, the funding allocated to each funding category expressed as a percentage of the total budget, shall not vary by more than 10% of total budget from each year's percentage in the Management District Plan. Any proposed variation that exceeds 10% of total budget shall be subject to review and approval of the City Clerk's office. Any surplus or unspent funds, per category, may accumulate year to year over the life of the CBD. A 5-year projected DOCBD budget is shown in the following Table:

YEAR 1-5 PROJECTED DISTRICT ASSESSMENT BUDGET SUMMARY (Special Benefit Costs)

(Assumes 5% max rate increase per year)

Year	Civil Sidewalks	District Identity and Placemaking	Administration	Contingency	Total
%	60%	20%	16%	4%	
1	$ 275,000.00	$ 92,000.00	$ 75,000.00	$ 19,405.00	$461,405
2	$ 288,750.00	$ 96,600.00	$ 78,750.00	$ 20,375.00	$484,475
3	$ 303,187.00	$ 101,430.00	$ 82,687.00	$ 21,394.00	$508,699
4	$ 318,346.00	$ 106,501.00	$ 86,821.00	$ 22,464.00	$534,132
5	$ 334,264.00	$ 111,826.00	$ 91,162.00	$ 23,586.00	$560,840

The Assessment Engineer (see attached Engineer's Report) has found that the general benefits (i.e. general benefits to assessed parcels within the District, the general public and surrounding parcels outside the DOCBD) of the proposed programs, services and improvements (i.e. Civil Sidewalks, District Identity and Placemaking, Administration services, and Contingency) represent 2% of the total benefits generated and, in turn, 2% ($ 9,416) of the total adjusted costs of the DOCBD funded improvements, activities and services provided.

Total Year 1 adjusted costs are estimated at $ 470,821.00. General benefits are factored at 2% of the total adjusted costs (**see Finding 2 in the attached Engineer's Report)** with special benefits set at 98%. Article XIIID Section 4(b) of the California Constitution limits the levy of property assessments to costs attributed to special benefits only. The 2% general benefit cost is computed to be $ 9,416 with a resultant 98% special benefit limit computed at $ 461,405.00. *Based on current property data and land uses, this is the maximum amount of Year 1 revenue that can be derived from property assessments from the subject District.*

All program costs associated with general benefits will be derived from sources other than District assessments. Sample "other" revenue sources are shown in the following Table:

Special and General Benefit Revenue Sources

Revenue Source	Revenue	% of Total
District Assessments	$ 461,405.00	98%
Grants, donations, sponsors, program income, etc.	$9,416.00	2%
TOTAL	**$ 470,821.00**	**100.0%**

The DOCBD assessments may increase for each individual parcel each year during the 5-year effective operating period, but not to exceed 5% per year, commensurate to special benefits received by each assessed parcel, and must be approved by the Owners' Association Board of Directors, included in the Annual Planning Report and adopted by the Ontario City Council.

Any accrued interest and delinquent payments will be expended within the budgeted categories. The Owners' Association Board of the Directors (Property Owner's Association of the DOCBD) shall determine the percentage increase to the annual assessment and the methodology employed to determine the amount of the increase. The Owners' Association Executive Director or staff shall communicate the annual increase to the City each year in which the District operates at a time determined in the Administration Contract held between the Owners' Association and the City of Ontario.

No bonds are to be issued in conjunction with the proposed established District.

Pursuant to Section 36671 of the Streets and Highways Code, any funds remaining after the 5th year of operation will be rolled over into the renewed budget or returned to stakeholders. District assessment funds may be used to pay for costs related to the following District established term. If the District is not established or terminated for any reason, unexpended funds will be returned to the property owners in the same proportion in which they were collected.

Manner of Collection

Assessments for the County of San Bernardino Property Tax Year fiscal beginning July 1, 2019 and ending June 30, 2023, are proposed to be collected at the same time and in the same manner as ad valorem taxes paid to the County of San Bernardino (Operation Years 2020-2024). The District assessments shall appear as a separate line item on the property tax bills issued by the San Bernardino County Assessor. The City of Ontario is authorized to collect any assessments not placed on the County tax rolls, or to place assessments, unpaid delinquent assessments, or penalties on the County tax rolls as appropriate to implement this Management District Plan.

IV PROPOSED ASSESSMENT FORMULA

The CBD programs and services described in this Management District Plan will be funded through benefit assessments against real property in the CBD and non-assessment revenues to fund the costs associated with general benefits conferred on assessed parcels within the District, the public at large and surrounding parcels outside of the DOCBD boundaries. The assessment formula has been developed to ensure that no parcel will be assessed an amount that exceeds the cost of the proportional special benefit that parcel derives from the programs, services and improvements to be funded by the proposed benefit assessments. The assessment rates are based on the anticipated benefit to be derived by each individual parcel within the boundary of the DOCBD.

Based on the specific needs and corresponding nature of the program activities to be funded by the proposed established DOCBD (i.e. Civil Sidewalks, District Identity and Placemaking, Administration services, and contingency), the assessment factors on which to base assessment rates relate directly to the proportionate amount of land area and street frontage within district boundaries.

The "Basic Benefit Units" will be expressed as a combined function of land square footage (Benefit Unit "A"), street frontage (Benefit Unit "B") and building square footage, (Benefit unit "C"). Based on the shape of the proposed established DOCBD, as well as the nature of the District program elements, it is determined that all identified assessed properties will gain a direct and proportionate degree of special benefit based on the respective amount of land area, street frontage and building square footage.

For the array of land uses within the District, the interactive application of land area, street frontage and building square footage quantities are a proven method of fairly and equitably spreading special benefit costs to these beneficiaries of District funded services, programs and improvements. Each of these factors directly relates to the degree of special benefit each assessed parcel will receive from District funded activities.

Land area is a direct measure of the current and future development capacity of each parcel and its corresponding impact or draw on District funded activities. The targeted weight of this factor, land area, should generate approximately 26% of the total first year District revenue.

Linear Frontage is a direct measure of the static utilization of each parcel and its corresponding impact or draw on District funded activities, many of which are linear in nature (i.e. Landscaping, Sanitation and Beautification). The targeted weight of this factor, street frontage, should generate approximately 36% of the total District revenue.

Building Square Footage is a direct measure of the current and future improvements to the building square footage of each parcel and its corresponding impact or draw on District funded activities. The targeted weight of this factor, building square footage, should generate approximately 38% of the total District revenue. Assessing for building square footage is an appropriate gauge of the impact of employees, visitors, shopper and clients to a specific parcel. Currently the Downtown Ontario CBD ratio of building to land is roughly .50% to 1, which is well below a thriving commercial corridor in a Downtown environment. With all the new mixed-use development underway in the Downtown Ontario CBD area, it is anticipated that the ratio of building to land area will reach 1 to 1 by the end of the first term of the district. There is currently 1,094,440 building square footage in the proposed CBD area and doubling that building square footage will increase the building assessment component from approximately $175,000 per year to $350,000 per year. Over the five-year period. This is over and above any percentage increase proposed by the Owners Association as is allowable under this plan.

Building square footage that is allocated to parking solely for tenants and is NOT available to the public at any time, at market rates, shall have that portion of the building square footage exempted from the individual parcel's gross building square footage. This reduction or exemption only applies to the building square footage of structured parking that is not available to public access and use. The individual parcel owner has the responsibility to inform the Management Corporation (Owners Association) if such deductions are applicable since County records to not reveal this information via County tax records.

Enhanced Residential Condominium Unit Improvements: *(currently don't exist within the boundaries of the District)*

Future residential condominium development within the boundaries of the District will be assessed separately due to their unique characteristics and special benefit needs. Residential condominiums or town homes will have the following special benefit services conferred on the frontage their parcels. These services may include, but will not be limited to:

- Installation, stocking and upkeep of pet waste stations on the frontages adjacent to high concentrations of residential condominium individually assessed parcels;
- Enhancement and beautification of sidewalks on the frontages adjacent to high concentrations of residential individually assessed parcels;
- Installation of hanging plants and enhanced upkeep of the sidewalks surrounding frontages adjacent to residential condominiums;
- Other services requested by residents that confer special benefits to the areas directly adjacent to parcels with high concentrations of residential condominiums;
- Proportional share of the Administrative and Contingency costs to cover the oversight of enhanced beautification special benefit services.

Considering all identified specially benefiting parcels within the District and their respective assessable benefit units, the rates, cumulative quantities and assessment revenues by factor and zone are shown in the following tables:

Data generated from County records and validated by request of owner verification by mail:

Land Area/Lot size:	**2,035,879 feet of assessable land area square footage**
Linear Frontage:	**27,357 linear feet of assessable linear frontage**
Gross Building Square footage	**1,094,440 feet of assessable building square footage**
Residential Condominiums	**0**

Note: Tax-exempt owner-occupied parcels will only be assessed for the lot square footage and linear frontage of the individual parcels fronting on any street within the boundaries of the DOCBD since *civil sidewalks and administration* are the only special benefit services that will be provided to those individual parcels according to this Management Plan. The lot square footage and linear frontage will be calculated along the same property lines as adjacent parcels.

Year 1 – Projected DOCBD Assessment Revenue

	LAND AREA ASSMT REVENUE	LINEAR FRONTAGE ASSMT REVENUE	BUILDING SQUARE FOOTAGE ASSMT. REVENUE	RESIDENTIAL CONDOMINIUM UNIT REVENUE	SUBTOTAL ASSMT REVENUE
Revenue	$122,153	$ 164,142	$ 175,110	0	$ 461,405
Percentage of total	26%	36%	38%	0%	100%

The number of Benefit Units for each identified benefiting parcel within the proposed DOCBD was computed from data extracted from County Assessor records and maps as well as property verification forms mailed out to each parcel owner in the proposed District. These data sources delineate current land uses, property areas and dimensions of record for each tax parcel.

The assessment formula for the proposed established DOCBD is as follows:

Assessments = Land Area (Unit A) Sq Ft x Unit A Rate, plus
Street Frontage (Unit B) Lin Ft x Unit B Rate, plus
Building Square footage (Unit C) Sq Ft x Unit C rate

YEAR 1 – Assessment Rates

Land Area annual assessment Unit A	Linear Frontage annual assessment Unit B	Building square forage annual assessment Unit C	Residential Condominiums
$ 0.06 per square foot	$ 6.00 per linear foot	$0.16 per square foot	$0.25 per square foot for building square footage

Changes to Frontage, Building or Lot Parcel Size

Any changes in frontage, building and lot parcel size as a result of all three land adjustments including but not limited to lot splits, consolidations, subdivisions, street dedications, right of way setbacks shall have their assessment adjusted upon final City approval of such parcel adjustments.

Other Future Development

Other than future maximum rates with the frontage, building or parcel size assessment methodology delineated in this report, per State Law (Government Code Section 53750), future assessments may increase for any given parcel if such an increase is attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land. Any change in assessment formula methodology or rates other than as stipulated in this Plan would require a new Proposition 218 ballot procedure in order to approve any such changes.

Future Residential Condominium Unit Parcels Defined:

Future residential condominium units building square footage is defined as the livable building square footage within the walls of the condominium residential unit parcel. They are included in a special category to designate their unique special benefits relative to the other commercial parcels within the Downtown Ontario CBD. Unlike the other commercial parcels in the district, including commercially operated apartment buildings, residential condominium parcels are assessed for building square footage only, and are not assessed for linear frontage and lot square footage.

Future residential condominium individually assessed parcels are assessed as a separate category. These future residential condominium individual parcels will be assessed for their building square footage only at the rate of $0.25 per square foot per year, commencing the first year of their completion, *if the assessment rate has not been adjusted annually as allowed in this plan.* The rationale for assessing future residential condominiums only for the building square footage rate is provided below and its cost will be based upon the year that the residential condominium may be completed, (please see chart on page 23).

Residential condominium parcels are assessed differently than multi-unit, for-rent apartment buildings, due to the frequency of special benefit services required by each parcel as described below. The multi-unit apartment buildings are commercial properties in which the tenant and landlord have an economic relationship as opposed to residential condominium buildings where individual property owners own separate “air space parcels” on a single floor. Future residential apartment buildings can be bought or sold just as like commercial buildings whereas residential condominium units are separately owned and must be individually bought and sold.

Distinctions between residential apartment buildings with tenants and residential condominium building with individual parcel owners are as follows:

1. *The Davis Sterling Act establishes rules and regulations for residential condominium owners based upon "separate interests" (i.e. ownership rights), as opposed to renters who only have a possessory interest.*
2. *Generally, residential condominium unit owners demonstrate greater care for their property and concerns about quality of life issues due to their investment in real estate.*
3. *Residential owners have the right to vote in a Proposition 218 hearing, tenants do not have that right.*
4. *Residential condominium owners are required to contribute to legally established Homeowners Associations to oversee building maintenance, tenants are not.*
5. *Residential tenants may have their dwelling units sold or have their rent raised arbitrarily due the lack of ownership of their residential units.*

The assessment methodology has been written to confer special benefits to future residential condominium individual assessed parcels since future residential condominium owners have unique investment backed expectations about the care and maintenance of the building and its surroundings compared to the interest of residential tenants who have a possessory not an ownership interest. The future residential condominiums' special assessment methodology ensures that a fund will be established to maintain high levels of special benefit services that apply directly and proportional to the blocks that demand virtually seven days per week, 365 days per year special benefits.

DOCBD – 5-year Maximum Assessment Rates

(Includes a 5%/Yr. Maximum Increase)

Year	Lot Square Foot Assessment Rate	Linear Frontage Assessment Rate	Building Square Footage Assessment Rate	Residential Condominium (only assessed for building sq. ft.)
1	$ 0.10000	$ 8.00	$ 0.15000	$ 0.25000
2	$ 0.10500	$ 8.40	$ 0.15750	$ 0.26250
3	$ 0.11025	$ 8.82	$ 0.16538	$ 0.27563
4	$ 0.11576	$ 9.26	$ 0.17364	$ 0.28941
5	$ 0.12155	$ 9.72	$ 0.18233	$ 0.30388

SAMPLE DOCBD FIRST YEAR ANNUAL ASSESSMENT CALCULATION:

A 5,000 sq. ft. lot with 50 linear feet in Downtown Ontario in street frontage and a 2,500 square foot building

Land/Lot size square footage: 5,000 x $.06 cents per square foot = $300.00 plus

Liner Frontage: 50 linear feet x $6.00 per linear foot = $300.00 plus

Building Square Footage 2,500 x $.16 cents per square foot = $400.00

TOTAL YEAR 1 ASSESSMENT: $ 1,000.00

Cost Per Month: $ 83.33

Cost Per Day: $ 2.74

A residential condominium, once built, would pay as follows: ***(based upon the chart above if no annual increases have been applied to the overall budget)***

Building Square footage: 1,000 square feet x $0.25 per sq. ft. =$250.00

The complete Year 1 – assessment roll of all parcels to be assessed by this CBD is included in this Plan as Appendix I.

V. PUBLICLY OWNED PARCELS

The State Constitution - Article 13D (Proposition 218) states that "parcels within a District that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly-owned parcels in fact receive no special benefit."

There are 67 publicly owned parcels within the District, all of which are identified as assessable and for which special benefit services will be provided. 46 identified assessed parcels are owned by the City of Ontario, 19 are owned by the City of Ontario Housing Authority, one is owned by the US Postal Service and one is owned by the San Bernardino County Housing Authority. All publicly owned parcels will be assessed as all other commercial parcels are assessed in accordance to this plan, that is on their parcel lot size, linear frontage and building square footage.

Each of these publicly owned parcels will directly receive special benefit from improved Civil Sidewalks, District Identity and Placemaking, Administration services, and contingency.

These 67 identified assessed publicly owned parcels/facilities will specially benefit from DOCBD funded programs and services from cleaner and safer facility entrances and street frontages as well as serve for a better, improved district for the hundreds of City employees and residents in the City, Housing Authority and Postal Service owned parcels.

In the opinion of the Assessment Engineer, there is no evidence that these 67 publicly owned parcels will not proportionately specially benefit from District services, programs and improvements; therefore, each publicly owned parcel will be assessed at the rates with assessments to be based on the lot square footage area, street linear frontage and building square footage of each parcel.

The Table below lists all publicly owned parcels within the proposed established DOCBD and their Year 1 assessment amounts:

City of Ontario, Ontario Housing Authority, San Bernardino County Housing Authority and US Postal Service Publicly owned parcels

APN	Legal Owner	Site Street	Annual Assessment
1048-354-12-0000	CITY OF ONTARIO	D ST	$ 3,455.28
1048-354-13-0000	CITY OF ONTARIO	LAUREL AVE	$ 814.80
1048-355-02-0000	CITY OF ONTARIO		$ 796.14
1048-355-11-0000	CITY OF ONTARIO		$ 961.02
1048-356-08-0000	CITY OF ONTARIO	603 N. EUCLID AVE	$ 731.60
1048-356-11-0000	CITY OF ONTARIO	F ST	$ 917.94

1048-363-02-0000	CITY OF ONTARIO	LEMON AVE	$	4,751.16
1048-363-03-0000	CITY OF ONTARIO	LEMON AVE	$	2,034.72
1048-363-04-0000	CITY OF ONTARIO	404 N. EUCLID AVE	$	3,514.80
1048-363-05-0000	CITY OF ONTARIO	414 N. EUCLID AVE	$	8,589.74
1048-551-10-0000	CITY OF ONTARIO	116 E. D ST	$	5,376.12
1048-552-13-0000	CITY OF ONTARIO	126 E. C ST	$	5,350.74
1048-552-14-0000	CITY OF ONTARIO	124 E. C ST	$	1,727.76
1048-552-18-0000	CITY OF ONTARIO	N. EUCLID AVE	$	131.34
1048-553-02-0000	CITY OF ONTARIO	118 E. B ST	$	1,509.76
1048-553-03-0000	CITY OF ONTARIO	B ST	$	797.76
1048-553-04-0000	CITY OF ONTARIO	127 N. LEMON AVE	$	1,859.76
1048-553-16-0000	CITY OF ONTARIO	126 N. EUCLID AVE	$	1,237.24
1048-553-17-0000	CITY OF ONTARIO	128 N. EUCLID AVE	$	3,665.40
1048-563-06-0000	CITY OF ONTARIO	HOLT BLVD	$	1,917.90
1048-564-06-0000	CITY OF ONTARIO	121 N. EUCLID AVE	$	834.72
1048-564-13-0000	CITY OF ONTARIO	LAUREL AVE	$	725.94
1048-564-14-0000	CITY OF ONTARIO	LAUREL AVE	$	1,140.72
1048-565-13-0000	CITY OF ONTARIO	LAUREL AVE	$	950.16
1048-565-14-0000	CITY OF ONTARIO	LAUREL AVE	$	506.88
1048-566-01-0000	CITY OF ONTARIO	123 W. D ST	$	1,176.00
1048-566-08-0000	CITY OF ONTARIO	301 W. C ST	$	144.00
1048-566-09-0000	CITY OF ONTARIO	W. C ST.	$	1,479.72
1048-566-10-0000	CITY OF ONTARIO	LAUREL AVE	$	1,859.76
1048-566-11-0000	CITY OF ONTARIO	324 N. LAUREL AVE	$	1,037.04
1049-056-01-0000	CITY OF ONTARIO	221 W. TRANSIT ST	$	2,437.50
1049-056-02-0000	CITY OF ONTARIO	211 W. TRANSIT ST	$	580.32
1049-056-03-0000	CITY OF ONTARIO	W. TRANSIT ST	$	580.32
1049-056-04-0000	CITY OF ONTARIO	200 S. LAUREL AVE	$	1,220.40
1049-056-05-0000	CITY OF ONTARIO	208 W. EMPORIA ST	$	4,813.50
1049-056-06-0000	CITY OF ONTARIO	228 W. EMPORIA ST	$	2,413.50
1049-057-06-0000	CITY OF ONTARIO	W. TRANSIT ST	$	1,272.00
1049-057-07-0000	CITY OF ONTARIO	206 W. TRANSIT ST	$	523.38
1049-058-02-0000	CITY OF ONTARIO	W. TRANSIT ST	$	712.62
1049-059-14-0000	CITY OF ONTARIO	EMPORIA ST	$	4,794.18
1049-062-01-0000	CITY OF ONTARIO	225 S. EUCLID AVE.	$	6,815.22
1049-062-02-0000	CITY OF ONTARIO	TRANSIT ST	$	4,804.80
1049-063-02-0000	CITY OF ONTARIO	214 E. HOLT BLVD	$	3,218.88
1049-064-12-0000	CITY OF ONTARIO		$	483.84
1049-064-13-0000	CITY OF ONTARIO	217 S. LEMON AVE	$	2,588.08
1049-064-14-0000	CITY OF ONTARIO	204 E. TRANSIT ST	$	7,611.64
		TOTAL	$	104,866.10
1048-551-11-0000	ONTARIO HOUSING AUTHORITY	312 N. EUCLID AVE	$	3,887.16
1048-551-12-0000	ONTARIO HOUSING AUTHORITY	N. EUCLID AVE	$	2,996.40
1048-551-13-0000	ONTARIO HOUSING AUTHORITY	334 E. C ST	$	1,621.80

1048-552-15-0000	ONTARIO HOUSING AUTHORITY	C ST	$	206.34
1048-552-16-0000	ONTARIO HOUSING AUTHORITY	N. EUCLID AVE	$	3,147.60
1048-552-17-0000	ONTARIO HOUSING AUTHORITY	240 N. EUCLID AVE	$	3,055.58
1048-553-01-0000	ONTARIO HOUSING AUTHORITY	E. B ST	$	1,556.04
1048-553-05-0000	ONTARIO HOUSING AUTHORITY	115 N. LEMON AVE	$	585.60
1048-553-06-0000	ONTARIO HOUSING AUTHORITY	127 E. HOLT BLVD	$	1,170.60
1048-553-07-0000	ONTARIO HOUSING AUTHORITY	123 E. HOLT BLVD	$	449.46
1048-553-08-0000	ONTARIO HOUSING AUTHORITY	121 E. HOLT BLVD	$	721.86
1048-553-09-0000	ONTARIO HOUSING AUTHORITY	E. HOLT BLVD	$	381.36
1048-553-10-0000	ONTARIO HOUSING AUTHORITY	E. HOLT BLVD	$	1,027.20
1048-553-11-0000	ONTARIO HOUSING AUTHORITY	N. EUCLID AVE	$	420.36
1048-553-12-0000	ONTARIO HOUSING AUTHORITY	110 N. EUCLID AVE	$	420.36
1048-553-13-0000	ONTARIO HOUSING AUTHORITY	112 N. EUCLID AVE	$	2,440.72
1048-553-14-0000	ONTARIO HOUSING AUTHORITY	118 N. EUCLID AVE	$	448.08
1048-553-15-0000	ONTARIO HOUSING AUTHORITY	122 N. EUCLID AVE	$	1,037.44
1049-059-07-0000	ONTARIO HOUSING AUTHORITY	303 W. EMPORIA ST	$	680.16
		TOTAL	$	26,254.12
1049-058-03-0000	SAN BERNARDINO COUNTY HOUSING AUTH	200 S. EUCLID AVE	$	5,096.76
1049-057-01-0000	UNITED STATES POSTAL SERVICE	123 W. HOLT BLVD	$	3,937.92

VI. CBD District Governance

The governance or management of a CBD typically requires an "Owners' Association" to carry out the CBD services and activities. State CBD Law (36600 Streets & Highways Code) also requires that the Owner's Association carry out specific additional functions. This includes preparation of an Annual Report to the City Council on the CBD activities for the past fiscal year and those proposed for the next fiscal year. The Owner's Association may also recommend to the City Council from time to time, changes to the CBD boundaries, benefit zones, assessment formula or CBD programs and activities, all subject to public notification and, in some cases petition/balloting requirements.

Meetings of the Owners' Association and its standing Committees shall be subject to the State of California "Brown Act" open meeting law.

VII. Proposed Rules and Regulation Applied to the District

There are no specific rules or regulations applied to this CBD or its Owners' Association.

VIII. Other Items

No bonds will be issued for any DOCBD projects in conjunction with this formation.

IX. IMPLEMENTATION TIMETABLE

Task	Estimated Deadline
The Downtown CBD Steering Committee approves the rough draft CBD Management Plan	The Steering Committee approves the preliminary plan in March or early April, including boundaries, benefit zones, budget and the percentage allocation of each special service category.
Management District Plan (MDP) submitted to City and Assessment Engineer	The state constitution requires that the Management District Plan be certified as compliant with Proposition 218 by an Assessment Engineer. The Plan must also be approved by the City Attorney and City Manager. **Estimated time for completion of this process is the middle of April.**
Management District Plan is approved by the City Attorney and Assessment Engineer and petition drive is launched	We anticipate the petition drive to be launched by the CBD Steering Committee in mid-April, **with the target completion date by the end of May. 50% of the assessment amount paid by property owners must sign a petition endorsing the CBD Plan to initiate a mail balloting procedure of property owners**
Resolution of Intent	**In early July**, the City Council will receive a staff report and consider and adopt a "Resolution of Intent" to form the Downtown CBD. The requisite number of weighted petitions must be submitted to the City to trigger this process and allow the balloting to proceed. The City Council would then instruct the City Clerk to mail ballots to all affected property owners within the CBD boundaries. The ballots will be due by the public hearing date and will allow each property owner to vote yes or no on the mail ballot.
Public Hearing	It is anticipated that the public hearing will be held the **last Council meeting in August.** Testimony will be given by property owners and the City Clerk will open and calculate the ballots. **The CBD may be formed if the *weighted majority of returned, signed ballots* support the formation of the district.**
Resolution of Formation	Once the weighted return ballots are calculated and demonstrate support for the formation of the Downtown CBD, the City Council may then adopt a "Resolution of Formation" to create the CBD. The City Council may vote to levy the assessments on the benefitting parcels.
Management Corporation set up	**Between August and November**, a new non-profit district management corporation will be created from the CBD Steering Committee members. They will elect interim officers, create articles of incorporation, incorporate with the state, adopt bylaws, and enter into a contract with the City to administer the new CBD on behalf of the property owners. This new district management corporation will be open to business or property owners wishing to participate in the CBD funded improvement to Downtown.

First assessments transferred	The first assessment billings would be due with the December 2019 property tax bills. Sometime in the Fall, the City will enter into a contract with the new property owner-controlled district management corporation. The first assessments will be transferred from the City to the new CBD District Management Corporation after the first installments of assessments were collected by the County and the City in December 2019. *(If the timeline is set back a few months, the City may decide to manually bill the property owners for the first year of the district. Revenues would still come in by the end of 2019; however, the assessments would only then be collected through the County property tax bills from 2020 through 2024.)*

APPENDIX 1

YR 1
ASSESSMENT ROLL

APN	Annual Assessment
1048-354-01-0000	$1,809.48
1048-354-02-0000	$3,724.44
1048-354-03-0000	$3,041.60
1048-354-04-0000	$1,038.50
1048-354-05-0000	$306.00
1048-354-06-0000	$401.40
1048-354-07-0000	$1,724.60
1048-354-08-0000	$655.20
1048-354-09-0000	$1,038.50
1048-354-10-0000	$916.36
1048-354-11-0000	$3,937.00
1048-354-12-0000	$3,455.28
1048-354-13-0000	$814.80
1048-355-02-0000	$796.14
1048-355-03-0000	$2,177.32
1048-355-04-0000	$1,268.56
1048-355-05-0000	$687.06
1048-355-06-0000	$870.40
1048-355-07-0000	$1,708.48
1048-355-08-0000	$1,329.94
1048-355-09-0000	$1,781.48
1048-355-10-0000	$2,087.32
1048-355-11-0000	$961.02
1048-355-13-0000	$912.28
1048-355-15-0000	$4,170.16
1048-356-01-0000	$3,689.28
1048-356-02-0000	$3,254.16
1048-356-03-0000	$1,190.84
1048-356-04-0000	$1,264.76
1048-356-05-0000	$2,824.72
1048-356-06-0000	$700.68
1048-356-07-0000	$420.36
1048-356-08-0000	$731.60
1048-356-09-0000	$1,162.00
1048-356-10-0000	$447.12
1048-356-11-0000	$917.94
1048-356-12-0000	$2,657.52
1048-356-13-0000	$3,595.44
1048-361-01-0000	$3,315.24
1048-361-02-0000	$748.86
1048-361-03-0000	$715.80
1048-361-04-0000	$1,897.12
1048-361-05-0000	$1,101.60
1048-361-06-0000	$849.12
1048-361-07-0000	$2,048.48
1048-361-08-0000	$2,559.84
1048-361-09-0000	$2,638.02
1048-361-10-0000	$1,682.80
1048-361-11-0000	$840.72
1048-361-12-0000	$843.30
1048-362-02-0000	$764.52
1048-362-03-0000	$4,140.72
1048-362-04-0000	$1,330.24
1048-362-05-0000	$1,646.16
1048-362-06-0000	$1,122.80
1048-362-07-0000	$2,621.12
1048-362-08-0000	$3,036.44
1048-362-09-0000	$5,189.80
1048-362-10-0000	$2,264.10
1048-363-01-0000	$1,284.16
1048-363-02-0000	$4,751.16
1048-363-03-0000	$2,034.72
1048-363-04-0000	$3,514.80
1048-363-05-0000	$8,589.74
1048-551-10-0000	$5,376.12
1048-551-11-0000	$3,887.16
1048-551-12-0000	$2,996.40
1048-551-13-0000	$1,621.80
1048-552-13-0000	$5,350.74
1048-552-14-0000	$1,727.76
1048-552-15-0000	$206.34
1048-552-16-0000	$3,147.60
1048-552-17-0000	$3,055.58
1048-552-18-0000	$131.34
1048-552-19-0000	$2,785.94
1048-553-01-0000	$1,556.04
1048-553-02-0000	$1,509.76
1048-553-03-0000	$797.76
1048-553-04-0000	$1,859.76
1048-553-05-0000	$585.60
1048-553-06-0000	$1,170.60
1048-553-07-0000	$449.46
1048-553-08-0000	$721.86
1048-553-09-0000	$381.36
1048-553-10-0000	$1,027.20
1048-553-11-0000	$420.36
1048-553-12-0000	$420.36
1048-553-13-0000	$2,440.72
1048-553-14-0000	$448.08
1048-553-15-0000	$1,037.44
1048-553-16-0000	$1,237.24
1048-553-17-0000	$3,665.40
1048-561-07-0000	$2,406.48
1048-561-08-0000	$2,221.34
1048-561-09-0000	$1,023.96
1048-561-10-0000	$797.76
1048-561-11-0000	$1,432.40
1048-561-12-0000	$1,182.24
1048-561-13-0000	$24,568.08
1048-562-01-0000	$8,404.20
1048-562-02-0000	$2,528.24
1048-562-03-0000	$7,451.34
1048-562-06-0000	$806.28
1048-562-07-0000	$2,623.68
1048-563-01-0000	$1,606.80
1048-563-02-0000	$797.76
1048-563-03-0000	$2,678.24

1048-563-04-0000	$1,344.00
1048-563-05-0000	$3,956.40
1048-563-06-0000	$1,917.90
1048-563-07-0000	$1,564.80
1048-563-08-0000	$4,266.24
1048-563-09-0000	$785.76
1048-563-10-0000	$1,859.76
1048-563-11-0000	$552.40
1048-564-01-0000	$2,618.88
1048-564-02-0000	$3,473.60
1048-564-03-0000	$4,209.20
1048-564-04-0000	$1,402.50
1048-564-05-0000	$887.64
1048-564-06-0000	$834.72
1048-564-07-0000	$2,866.20
1048-564-08-0000	$791.62
1048-564-09-0000	$1,319.52
1048-564-10-0000	$2,089.40
1048-564-11-0000	$1,383.72
1048-564-12-0000	$3,203.32
1048-564-13-0000	$725.94
1048-564-14-0000	$1,140.72
1048-565-01-0000	$3,149.28
1048-565-02-0000	$642.00
1048-565-03-0000	$7,429.56
1048-565-04-0000	$620.16
1048-565-05-0000	$2,487.36
1048-565-06-0000	$2,090.64
1048-565-07-0000	$1,019.28
1048-565-08-0000	$969.60
1048-565-09-0000	$1,315.60
1048-565-10-0000	$2,866.80
1048-565-11-0000	$7,021.20
1048-565-12-0000	$1,436.96
1048-565-13-0000	$950.16
1048-565-14-0000	$506.88
1048-566-01-0000	$1,176.00
1048-566-02-0000	$1,775.52
1048-566-03-0000	$797.76
1048-566-04-0000	$3,759.04
1048-566-05-0000	$7,535.56
1048-566-06-0000	$1,633.12
1048-566-07-0000	$3,937.56
1048-566-08-0000	$144.00
1048-566-09-0000	$1,479.72
1048-566-10-0000	$1,859.76
1048-566-11-0000	$1,037.04
1049-055-01-0000	$3,146.08
1049-055-02-0000	$1,074.36
1049-055-03-0000	$1,259.42
1049-055-04-0000	$1,202.26
1049-055-05-0000	$1,238.32
1049-055-06-0000	$1,080.06
1049-055-07-0000	$532.98
1049-055-08-0000	$546.06
1049-055-09-0000	$4,231.76
1049-056-01-0000	$2,437.50
1049-056-02-0000	$580.32
1049-056-03-0000	$580.32
1049-056-04-0000	$1,220.40
1049-056-05-0000	$4,813.50
1049-056-06-0000	$2,413.50
1049-057-01-0000	$3,937.92
1049-057-02-0000	$1,310.16
1049-057-03-0000	$2,098.72
1049-057-04-0000	$1,466.00
1049-057-05-0000	$4,314.00
1049-057-06-0000	$1,272.00
1049-057-07-0000	$523.38
1049-058-01-0000	$3,224.00
1049-058-02-0000	$712.62
1049-058-03-0000	$5,096.76
1049-058-04-0000	$2,471.68
1049-058-05-0000	$2,651.96
1049-059-07-0000	$680.16
1049-059-08-0000	$1,398.00
1049-059-09-0000	$824.40
1049-059-14-0000	$4,794.18
1049-059-21-0000	$7,062.30
1049-061-01-0000	$13,042.62
1049-061-02-0000	$3,773.76
1049-061-03-0000	$557.28
1049-062-01-0000	$6,815.22
1049-062-02-0000	$4,804.80
1049-063-01-0000	$2,567.02
1049-063-02-0000	$3,218.88
1049-063-03-0000	$358.64
1049-063-04-0000	$699.28
1049-063-05-0000	$1,380.96
1049-063-06-0000	$1,664.16
1049-063-07-0000	$819.04
1049-063-08-0000	$1,117.26
1049-063-09-0000	$1,131.54
1049-063-10-0000	$1,195.54
1049-064-12-0000	$483.84
1049-064-13-0000	$2,588.08
1049-064-14-0000	$7,611.64

Ontario District

Attachment B

DOWNTOWN ONTARIO
COMMUNITY BENEFIT DISTRICT
ESTABLISHMENT

ASSESSMENT ENGINEER'S REPORT

Being Established for a 5 Year Term Pursuant to
California Streets and Highways Code Section 36600 et seq.
Property & Business Improvement District Act of 1994, as amended

Prepared by
Edward V. Henning
California Registered Professional Engineer # 26549
Edward Henning & Associates

APRIL 11, 2019

V 1.1

ASSESSMENT ENGINEER'S REPORT

To Whom It May Concern:

I hereby certify to the best of my professional knowledge and experience that each of the identified benefiting properties located within the proposed Downtown Ontario Community Benefit District ("DOCBD") being established for a five (5) year term will receive a special benefit over and above the benefits conferred on the public at large and that the amount of the proposed assessment is proportional to, and no greater than the benefits conferred on each respective property.

Prepared by Edward V. Henning, California Registered Professional Engineer # 26549

RPE #26549 **April 11, 2019**

Edward V. Henning Date

(NOT VALID WITHOUT SIGNATURE AND CERTIFICATION SEAL HERE)

Introduction

This report serves as the "detailed engineer's report" required by Section 4(b) of Article XIIID of the California Constitution (Proposition 218) to support the benefit property assessments to be levied within the proposed DOCBD in the City of Ontario, California being established for a five (5) year term. The discussion and analysis contained within this Report constitutes the required "nexus" of rationale between assessment amounts levied and special benefits derived by real properties within the proposed DOCBD.

Background

The DOCBD is a is a property-based benefit assessment type district being established for a five (5) year term pursuant to Section 36600 et seq. of the California Streets and Highways Code (as amended), also known as the Property and Business Improvement District Law of 1994 (the "Act"). Due to the benefit assessment nature of assessments levied within a property and business improvement district ("PBID"), district program costs are to be distributed amongst all identified benefiting properties based on the proportional amount of special program benefit each property is expected to derive from the assessments levied. Within the Act, frequent references are made to the concept of relative "benefit" received from District programs and activities versus amount of assessment paid. Only those properties expected to derive special benefits from District funded programs and activities may be assessed and only in an amount proportional to the relative special benefits expected to be received.

Supplemental Article XIIID Section 4(b) California Constitution
Proposition 218 Procedures and Requirements

Proposition 218, approved by the voters of California in November of 1996, adds a supplemental array of procedures and requirements to be carried out prior to levying a property-based assessment like the DOCBD. These requirements are in addition to requirements imposed by State and local assessment enabling laws. These requirements were "chaptered" into law as Article XIIID Section 4(b) of the California Constitution.

Since Article XIIID provisions will affect all subsequent calculations to be made in the final assessment formula for the DOCBD, these supplemental requirements will be taken into account. The key provisions of Article XIIID along with a description of how the DOCBD complies with each of these provisions are delineated below.

(Note: All section references below pertain to Article XIII of the California Constitution):

Finding 1. From Section 4(a): "Identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed".

Setting:
The proposed Downtown Ontario CBD is located along Euclid Avenue (SR83) in Downtown Ontario, just south of Interstate 10 and north of Highway 60. (See attached map in Appendix 2).

General Boundary Description
The Downtown Ontario CBD encompasses approximately 23 blocks centered along Euclid Street in Downtown Ontario generally between N. Lemon/N. Plum Avenues on the east, N. Laurel/N. Palm Avenues on the west, W. D/W. G Streets on the north and the transit line on the south, just south of Emporia Street.

Benefit Zones
There is one benefit zone within the proposed District.

District Boundary Rationale
The Downtown Ontario CBD boundaries are comprised of the commercial core parcels where the main economic activity of Downtown Ontario Blvd. is centered. The commercial parcels fronting Euclid Avenue are the historic heart of the commercial core of the city of Ontario. These parcels showcase an array of commercial retailers, restaurants, service stores, the vast Town Center block, churches and soon will be home to a full block of market rate housing and a full block of a new university. After years of little if any new development, the corridor is now experiencing a renaissance of new market rate housing development in the form of new mixed use, market rate housing. Its proximity to Interstate 10, Highway 60, the Ontario Airport and the Metrolink station in Upland makes it an ideal place to live in and conduct commerce in the region. The new housing and excellent historic and contemporary housing surrounding Downtown is evolving into an emerging 21st century mixed use community. New retail in the form of stores, restaurants and coffee shops are following the growth of high density residential on the Euclid Avenue.

Northern Boundary
The northern boundary of the CBD is defined by the commercial parcels which are located just south of G Street from the east side of North Laurel Avenue on the west and the west side of North Lemon Avenue on the east.

The District will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No District programs and services will be provided north of the northern District boundary.

Eastern Boundary
The eastern boundary of the CBD begins at the parcel at the west side of the intersection of West Emporia Street and North Plum Street, at parcel 1049-064-14 and runs northward along the west side of North Plum Avenue to the parcel at the southwestern corner of the intersection of East Holt Blvd and North Plum Avenue, parcel 1049-063-05. The boundary then runs westward for one block on the south side of East Holt Blvd. to the southeastern parcel of the intersection of South Lemon Avenue and East Holt Blvd., parcel 1049-063-01, and then runs northward along the western side of North Lemon

Avenue up to the parcel at the southwestern corner of the intersection of East G Street and North Lemon Avenue, ending at parcel 1048-361-05.

The District will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No District programs and services will be provided east of the eastern District boundary.

Southern Boundary

The southern boundary of the CBD is begins at parcel 1049-059-07 on West Emporia Street and runs on the south side of all the parcels on West Emporia Street to the parcel at the west side of the intersection of West Emporia Street and North Plum Street, ending at parcel 1049-064-14.

The District will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No District programs and services will be provided south of the southern District boundary.

Western Boundary

The western boundary of the Downtown Ontario CBD is at the southeastern corner parcel at the intersection of West G Street and North Laurel Avenue (parcel 1048-356-01) and runs south along the eastern side of North Laurel to the intersection of West D Street and North Laurel Avenue. The boundary then runs straight west along the south side of West D Street to the intersection of North Palm Avenue and West G Street. From there, the boundary runs south along the east side of North Palm Avenue from parcel 1048-561-13 southward to parcel 1049-056-06 at the intersection of West Emporia Street and North Palm Avenue. The boundary then runs west along the south side of West Emporia Street to include the western most parcel 1049-059-07.

The District will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No District programs and services will be provided west of the western District boundary.

Summation:

A list of all parcels included in the proposed DOCBD are shown as Appendix 1, attached to this Report identified by their respective San Bernardino County assessor parcel numbers. The boundary of the proposed DOCBD is shown on the map of the DOCBD found on Appendix 1, of this Report.

All identified assessed parcels within the above-described boundaries shall be assessed to fund supplemental special benefit programs, services and improvements as outlined in the Management District Plan and this Report. All DOCBD funded services, programs and improvements provided within the above described boundaries shall confer special benefit to identified assessed parcels inside the District boundaries and none will be provided outside of the District. Each assessed parcel within the DOCBD will proportionately and specially benefit from the District funded programs and services (i.e. Civil Sidewalks, District Identity and Place Making, Administration and Contingency).

These services, programs and improvements are intended to improve commerce, employment, rents and occupancy rates and investment viability of individually assessed parcels and businesses within the DOCBD. The DOCBD confers special benefits on each individually assessed parcel by reducing crime,

improving aesthetics and marketing goods and services available from individually assessed parcels and the businesses and residential rental units within the District, all considered supplemental in a competitive properly managed Downtown district.

All District funded services programs and improvements are supplemental, above normal base level services provided by the City of Ontario and are only provided for the special benefit of assessed parcels within the boundaries of the proposed established DOCBD.

The District includes 204 parcels of which all are identified as assessable which are listed in the Assessment Roll included as Appendix 1.

Finding 2. From Section 4(a): "Separate general benefits (if any) from the special benefits conferred on parcel(s). Only special benefits are assessable. "

QUANTITATIVE BENEFIT ANALYSIS

As stipulated in Article XIIID Section 4(b) of the California Constitution, assessment district programs and activities confer a combination of general and special benefits to properties, but the only program benefits that can be assessed are those that provide special benefit to the assessed properties. For the purposes of this analysis, a "general benefit" is hereby defined as: "A benefit to properties in the area and in the surrounding community or benefit to the public in general resulting from the improvement, activity, or service to be provided by the assessment levied". "Special benefit" as defined by the California State Constitution means a distinct benefit over and above general benefits conferred on real property located in the district or to the public at large.

The property uses within the boundaries of the District that will receive special benefits from District funded programs and services are currently a unique mix of retail, office, grocery, restaurant, ecumenical, mixed use housing developments, auto service and other neighborhood serving retail uses. Services, programs and improvements provided and funded by the District (i.e. Civil Sidewalks, District Identity and Place Making, Administration and Contingency) are designed to provide special benefits to identified assessed parcels and the array of land uses within the boundaries of the DOCBD as described in the Work Plan Details starting on page 10 of this Report.

The proposed District programs, improvements and services and Year 1 – 2020 budget allocations are shown in the Table below:

Year 1 – 2020 District Special Benefit Budget (Assessment Revenue Only)

WORK PLAN CATEGORY	ALLOCATION	%
Civil Sidewalks	$275,000	60%
District Identity/Placemaking	$92,000	20%
Administration	$75,000	16%
Contingency	$19,405	4%
TOTAL	$461,405	100%

The special benefits conferred on assessed parcels within the DOCBD are particular and distinct to each and every identified assessed parcel within the DOCBD and are not provided to non-assessed parcels outside of the DOCBD. These programs, services and improvements will only be provided to each individual assessed parcel within the District boundaries and, in turn, confer proportionate "special benefits" to each assessed parcel.

In the case of the DOCBD, the very nature of the purpose of this DOCBD is to fund supplemental programs, services and improvements to assessed parcels within the District boundaries above and beyond what is being currently funded either via normal tax supported methods or other funding sources. The City of Ontario does not provide these programs and services. All benefits derived from the assessments to be levied on assessed parcels within the District are for services, programs and improvements directly benefiting each individual assessed parcel within the District. No District funded services, activities or programs will be provided outside of the District boundaries.

While every attempt is made to provide District services and programs to confer benefits only to those identified assessed parcels within the District, the California State Constitution was amended via Proposition 218 to stipulate that general benefits exist, either by design or unintentional, in all assessment districts and that a portion of the program costs must be considered attributable to general benefits and assigned a value. General benefits cannot be funded by assessment revenues. General benefits might be conferred on parcels within the DOCBD, or "spillover" onto parcels surrounding the DOCBD, or to the public at large who might be passing through the DOCBD with no intention of transacting business within the DOCBD or interest in the DOCBD itself.

Empirical assessment engineering analysis throughout California has found that general benefits within a given business improvement district tend to range from 2-6% of the total costs. There are three methods that have been used by this Engineer for determining general and special benefit values within assessment districts:

(1) The parcel by parcel allocation method
(2) The program/activity line item allocation method, and
(3) The composite district overlay determinant method.

A majority of PBIDs in California for which this Assessment Engineer has provided assessment engineering services since the enactment of Proposition 218, (Article XIIID Section 4(b) of the California Constitution) have used Method #3, the composite district overlay determinant method which will be used for the DOCBD. This method of computing the value of general benefit involves a composite of three distinct types of general benefit – general benefit to assessed parcels within the DOCBD, general benefit to the public at large within the DOCBD and general benefit to parcels outside the DOCBD.

<u>General Benefit – Assessed Parcels within District</u>

DOCBD funded programs are narrowly designed and carefully implemented to specially benefit the assessed District parcels and are only provided for the special benefit to each and every assessed parcel within the District. Based on empirical data derived from hundreds of California assessment districts that are similar in assessment methodology and focused scope of funded programs and activities, it has

been determined that nearly 100% of benefits conferred on assessed parcels within the District are distinct and special. In the case of the DOCBD, it is projected that there are 0.25% general benefits conferred on these assessed parcels. This high ratio of special benefits to general benefits is because the DOCBD funded programs and services are specially geared to the unique needs of each assessed parcel within the DOCBD and are directed specially only to these assessed parcels within the DOCBD. This concept is further reinforced by the proportionality of special benefits conferred on each assessed parcel within the District as determined by the special benefit assessment formula as it is applied to the unique and varying property characteristics of each assessed parcel. The computed 0.25% general benefit value on the 204 assessed parcels within the DOCBD equates to $1,154 or (.25% x $461,405).

General Benefit – Public At Large

While the DOCBD funded programs are narrowly designed and carefully implemented to specially benefit the assessed District properties and are only provided for the special benefit to each and every assessed parcel within the District, these District funded programs may also provide an incidental general benefit to the public at large within the District. Assessment Engineering experience and detailed intercept surveys conducted in various California cities, has found that generally well over 95% of people moving about within District boundaries are engaged in business related to assessed parcels and businesses contained on them within the District, while the public at large "just passing through" is typically much less than 5%. Based on this experience curve and empirical data derived from hundreds of California assessment districts that are similar in assessment methodology and focused scope of funded programs and activities, it has been determined that general benefit factors for each of the District funded special benefit program element costs that might provide an immediate general benefit to the public at large are as shown in the chart below. These factors are applied to each program element costs in order to compute the dollar and percent value of general benefits to the public at large. The total dollar value of this general benefit type equates to $5,038 as delineated in the Table below:

GENERAL BENEFITS TO "PUBLIC AT LARGE"

	A	B	C	E
Program Element	**Dollar Allocation**	**General Benefit Percent**	**General Benefit Factor**	**General Benefit Value (A x C)**
Civil Sidewalks	$275,000	1.50%	0.0150	$4,125
District Identity & Placemaking	$92,000	0.50%	0.0050	$460
Administration	$75,000	0.50%	0.0050	$375
Contingency	$19,405	0.40%	0.0040	$78
Total	$461,405			$5,038

Spillover General Benefits to Parcels Outside of District

While District programs and services will not be provided directly to parcels outside the District boundaries, it is reasonable to conclude that District services may confer an indirect general benefit on

parcels immediately adjacent to the District boundaries. An inventory of the District boundaries finds that the District is surrounded by 51 parcels, of which 20 are commercial uses and 31 are residential or public uses adjacent to or across a street or alley from the proposed DOCBD. There are 0 non-identified (i.e. not assessed) exempt parcels within the proposed DOCBD.

The 51 parcels outside the District boundaries adjacent to or across streets or alleys from assessed parcels within the District can reasonably be assumed to receive some indirect general benefit as a result of District funded programs, services and improvements. Based on empirical data derived from hundreds of California assessment districts that are similar in assessment methodology and focused scope of funded programs and activities, it has been determined that a benefit factor of 1.0 be attributed to the 204 identified assessed parcels within the District; a benefit factor of 0.05 be attributed to general benefits conferred on the 20 commercial parcels adjacent to or across a street or alley from the proposed DOCBD; and a benefit factor of 0.007 be attributed to general benefits conferred on the 31 residential and public parcels adjacent to or across a street or alley from the proposed DOCBD. The cumulative dollar value of this general benefit type equates to $2,760 ($2,262 + $498) as delineated in the Table below.

"Spillover" General Benefits

Parcel Type	Quantity	Benefit Factor	Benefit Units	Benefit Percent	Benefit Value
Assessed Parcels Inside BID	204	1.000	204.00	99.4055%	$461,405
Commercial Perimeter Parcels Outside BID	20	0.050	1.00	0.4873%	$2,262
Other Perimeter Parcels Outside BID	31	0.007	0.22	0.1072%	$498
TOTAL			205.22	100.00%	$464,164

Composite General Benefit

Based on the general benefit values delineated in the three sections above, the total value of general benefits conferred on assessed parcels within the District, the public at large and parcels outside the District equates to $8,952 ($1,154 + $5,038 + $2,760) or 1.90% of the total adjusted costs. This general benefit factor of 1.90% will be conservatively rounded up to 2% ($9,416). This leaves a value of 98% assigned to special benefit related costs. The general benefit value of $9,416 when added to the special benefit value of $461,405 (Year 1 –2020 assessments) equates to a total adjusted Year 1 – 2020 program cost of $470,821. Remaining costs that are attributed to general benefits, will need to be derived from other sources. A comparison of special and general benefit funding sources is shown in the Table below.

Special and General Benefit Revenue Sources

Revenue Source	Revenue	% of Total
District Assessments	$461,405	98 %
Grants, donations, sponsors, program income, etc.	$9,416	2%
TOTAL	**$470,821**	**100.0%**

A breakdown of projected special and general benefit costs for each year of the 5-year renewal term is shown in the Table below:

5 Year Special + General Benefit Costs

YR	PROGRAM CATEGORY	SPECIAL BENEFIT ASSESSMENT COSTS	GENERAL BENEFIT NON-ASSESSMENT COSTS	TOTAL ADJUSTED COSTS	% OF TOTAL
1	Civil Sidewalks	$275,000	$5,650	$280,650	60%
	District Identity & Placemaking	$92,000	$1,883	$93,883	20%
	Administration	$75,000	$1,507	$76,507	16%
	Contingency	$19,405	$377	$19,782	4%
	Total	$461,405	$9,416	$470,822	100%
2	Civil Sidewalks	$288,750	$5,933	$294,683	60%
	District Identity & Placemaking	$96,600	$1,977	$98,577	20%
	Administration	$78,750	$1,582	$80,332	16%
	Contingency	$20,375	$396	$20,771	4%
	Total	$484,475	$9,888	$494,363	100%
3	Civil Sidewalks	$303,188	$6,230	$309,418	60%
	District Identity & Placemaking	$101,430	$2,076	$103,506	20%
	Administration	$82,688	$1,661	$84,349	16%
	Contingency	$21,394	$416	$21,810	4%
	Total	$508,700	$10,383	$519,083	100%
4	Civil Sidewalks	$318,347	$6,542	$324,889	60%
	District Identity & Placemaking	$106,502	$2,180	$108,682	20%
	Administration	$86,822	$1,744	$88,566	16%
	Contingency	$22,464	$437	$22,901	4%
	Total	$534,135	$10,903	$545,038	100%
5	Civil Sidewalks	$334,264	$6,869	$341,133	60%
	District Identity & Placemaking	$111,827	$2,289	$114,116	20%
	Administration	$91,163	$1,831	$92,994	16%
	Contingency	$23,587	$459	$24,046	4%
	Total	$560,841	$11,448	$572,289	100%

DISTRICT WORK PLAN

Overview

The Programs and activities to be funded by the DOCBD include Civil Sidewalks, District Identity and Place Making, Administration services, and Contingency. The property uses within the boundaries of the District that will receive special benefits from District funded programs, services and improvements are currently a retail, office, grocery, restaurant, ecumenical, banking, public space, mixed use housing developments, service and other commercial uses. District funded activities are primarily designed to provide special benefits as described below to identified assessed parcels and array of land uses within the boundaries of the District.

These benefits are particular and distinct to each and every identified assessed parcel within the DOCBD and are not provided to non-assessed parcels outside of the District. These programs, services and improvements will only be provided to each individual assessed parcel within the District boundaries and, in turn, confer proportionate "special benefits" to each assessed parcel.

In the case of the DOCBD, the very nature of the purpose of this District is to fund supplemental programs, services and improvements to assessed parcels within the District boundaries above and beyond what is being currently funded either via normal tax supported methods or other funding sources. The City of Ontario does not provide these supplemental programs and services. All benefits derived from the assessments to be levied on assessed parcels within the District are for services, programs and improvements directly benefiting each individual assessed parcel within the District. No District funded services, activities or programs will be provided outside of the District boundaries.

The projected program special benefit cost allocation of the District assessment revenues for the 5-year District term assuming a 5% maximum annual assessment rate increase is shown in the Table on page 13 of this Report.

WORK PLAN DETAILS

The services to be provided by the DOCBD are all designed to contribute to the cohesive commercial fabric and to ensure economic success and vitality of the District. The assessed parcels in the CBD will specially benefit from the District programs in the form of increasing commerce and improving economic success and vitality through meeting the CBD goals: to improve sanitation, beautification, landscaping, and to attract new and retain existing businesses and services, and ultimately to increase commerce and improve the economic viability of each individual assessed parcel.

The following programs, services and improvements are proposed by the DOCBD to specially benefit each individually assessed parcel within the District boundaries. DOCBD services, programs and improvements will not be provided to parcels outside the District boundary.

CIVIL SIDEWALKS:

Examples of this category of special benefit services and costs may include, but is not limited to:

- Regular sidewalk and gutter sweeping
- Regular sidewalk steam cleaning
- Beautification of the district

- Enhanced trash emptying (over and above city services)
- Timely graffiti removal, within 24 hours as necessary
- Tree and vegetation maintenance (over and above city services)
- Maintenance of existing and new public spaces supplemental to what is current being provided by the City of Ontario
- Installation of and maintenance of hanging plants, planting flowers throughout the district
- Private security or case workers to respond to homeless issues, aggressive panhandling and mentally ill people behaving poorly in the public rights of way, including possible hiring of Ontario PD Bike patrols and/or a camera system

.

The goal of the Civil Sidewalks work plan component is to ensure that all identified assessed parcels are clean and well maintained, thereby creating an attractive District for the special benefit of each and every assessed District parcel. These supplemental services will assist in creating a clean and orderly environment for the special benefit of each assessed parcel in the District. A dirty environment deters commerce and may fail to attract patrons and visitors, and reduce commercial rents and commercial occupancies. For the array of land uses within the District (i.e. retail, office, grocery, restaurant, auto service, offices, parking, mixed-use residential), this work plan component is designed to increase pedestrian traffic, increase commerce and customer activity, attract and retain new business and patrons, and may increase commercial rents and commercial occupancies for the assessed parcels within the DOCBD boundaries. Each assessed parcel will specially benefit from the Sidewalk Operations programs which will only be provided to, and for the direct benefit of, each identified assessed parcel within the District boundaries.

DISTRICT IDENTITY AND PLACEMAKING:

Examples of this category of special benefit services and costs may include, but is not limited to:

- Web site development and updating
- Management and coordination of special events
- Social media
- Public relations firm
- Holiday and seasonal decorations
- Branding of the Downtown Ontario CBD properties so a positive image is promoted to the public
- Banner programs
- Public art displays
- Logo development
- Public space design and improvements

The District Identity program is also designed with the intent to increase the public's awareness of the DOCBD as a single destination in order to attract consumers to the rich collection of attractions, events, and services which will ultimately lead to increased commerce. For example, the District may publish a regular e-newsletter to keep property owners informed of upcoming events and services. The Owners' Association will continue to use its website to promote the assessed DOCBD parcels in an effort to increase awareness of the District as a destination for consumers and tenants and increase occupancy and commerce on the assessed parcels. The website is designed to provide visitors information about the DOCBD and comply with the open meetings and records provisions of the Brown Act.

ADMINISTRATION

Examples of this category of special benefit services and costs may include, but is not limited to:

- Staff and administrative costs
- Directors and Officers Insurance, General Liability and other insurance coverages
- Office related expenses
- Rent
- Financial reporting and accounting, and legal services

The Administration component is key to the proper expenditure of District assessment funds and the administration of District programs and activities for the special benefit of all parcels and land uses within the DOCBD. The Administration work plan component exists only for the purposes of the District and directly relates to the implementation of cleaning and beautification, district identity and improvement programs and services, which specially benefit each identified assessed parcel within the District boundaries.

CONTINGENCY

As with other plans in similar CBDs, the Management Plan sets aside a 4% contingency/reserve which provides for costs related to operating the district. Those costs may include, but not be limited to:

- City and/or County fees associated with their oversight and implementation of the District,
- the implementation of the Management District Plan and the Engineer's Report.
- City fees to collect and process the assessments, delinquencies and non-payments. A percent of the budget is held in reserve to offset delinquent and/or slow payment from both public and private properties. This component also funds the expenses charged by the City of Ontario and County of San Bernardino for collection and distribution of DOCBD revenue.
- Other unanticipated costs related to the compliance of the Management District Plan and Engineer's report.
- Funding for renewal of the District;

In summary, all District funded services, programs and improvements described above confer special benefits to identified assessed parcels inside the District boundaries and none will be provided outside of the District. Each assessed parcel within the DOCBD will proportionately specially benefit from the Civil Sidewalks, District Identity & Placemaking, Administration and Contingency components of the Management Plan. All District funded services programs and improvements are considered supplemental, above normal base level services provided by the City of Ontario and are only provided for the special benefit of each assessed parcel within the boundaries of the DOCBD.

WORK PLAN BUDGET

Each identified assessed parcel within the DOCBD will be assessed the full amount of the proportionate special benefit conferred upon it based on the level of District funded services provided. The projected District program special benefit (assessment) cost allocation budget for Year 1 (2020) is shown in the Table below:

DOCBD Year 1 (2020) Special Benefit Assessment Budget

WORK PLAN CATEGORY	ALLOCATION	%
Civil Sidewalks	$275,000	60%
District Identity/Placemaking	$92,000	20%
Administration	$75,000	16%
Contingency	$19,405	4%
TOTAL	$461,405	100%

In order to carry out the District programs outlined in the previous section, a Year 1 assessment budget of $461,405 is projected. Since the District is planned for a 5-year term, projected program costs for future years (Years 2-5) are set at the inception of the District. While future inflationary and other program cost increases are unknown at this point, a built in maximum increase of 5% per annum, commensurate to special benefits received by each assessed parcel, is incorporated into the projected program costs and assessment rates for the 5-year District term. It is noted that the 5% maximum annual rate increase is deemed necessary in order to offset substantial service and improvement cost increases projected over the next several years and to provide levels of service and types of improvements expected and requested by District stakeholders. Carryovers, if any, may be reapportioned the following year for related programs, services and improvements. Detailed annual budgets will be prepared by the Owner's Association Board and included in an Annual Plan for the City Council's review and approval.

It is recognized that market conditions may cause the cost of providing goods and services to fluctuate from year to year during the 5-year term of the proposed District. Accordingly, the Owners' Association shall have the ability to reallocate up to 10% of any budget line item within the budget categories based on such cost fluctuations subject to the review and approval by the Owners' Association Board and included in the Annual Planning Report that will be approved by the Ontario City Council pursuant to Streets and Highways Code Section 36650. Any accrued interest or delinquent payments may be expended in any budget category. A 5-year projected DOCBD budget is shown in the Table below:

YEAR 1-5 PROJECTED DISTRICT ASSESSMENT BUDGET SUMMARY (Special Benefit Costs)
(Assumes 5% max rate increase per year)

Year	Civil Sidewalks	District Identity and Placemaking	Administration	Contingency	Total
	60%	20%	16%	4%	
1	$ 275,000.00	$ 92,000.00	$ 75,000.00	$ 19,405.00	$461,405
2	$ 288,750.00	$ 96,600.00	$ 78,750.00	$ 20,375.00	$ 484,475
3	$ 303,187.00	$ 101,430.00	$ 82,687.00	$ 21,394.00	$508,698
4	$ 318,346.00	$ 106,501.00	$ 86,821.00	$ 22,464.00	$534,132
5	$ 334,264.00	$ 111,826.00	$ 91,162.00	$ 23,586.00	$560,838

The DOCBD assessments may increase for each individual parcel each year during the 5-year effective operating period, but not to exceed 5% per year, commensurate to special benefits received by each assessed parcel, and must be approved by the Owners' Association Board of Directors, included in the Annual Planning Report and adopted by the City of Ontario City Council. Any accrued interest and delinquent payments will be expended within the budgeted categories. The Owners' Association Board of the Directors ("Property Owner's Association of the DOCBD) shall determine the percentage increase to the annual assessment and the methodology employed to determine the amount of the increase. The Owners' Association Executive Director shall communicate the annual increase to the City each year in which the District operates at a time determined in the Administration Contract held between the Owners' Association and the City of Ontario.

No bonds are to be issued in conjunction with the proposed District.

Pursuant to Section 36671 of the Streets and Highways Code, any funds remaining after the 5th year of operation will be rolled over into the renewal budget or returned to stakeholders. District assessment funds may be used to pay for costs related to the following District renewal term. If the District is not renewed or terminated for any reason, unexpended funds will be returned to the property owners.

<u>Finding 3.</u> From Section 4(a): "(Determine) the proportionate special benefit derived by each parcel in relationship to the entirety of the.....cost of public improvement(s) or the maintenance and operation expenses.....or the cost of the property related service being provided.

Each identified assessed parcel within the district will be assessed based on property characteristics unique only to that parcel. Based on the specific needs and corresponding nature of the program activities to be funded by the proposed DOCBD (i.e. Civil Sidewalks, District Identity and Place Making, Administration and Contingency). It is the opinion of this Assessment Engineer that the assessment factors on which to base assessment rates relate directly to the proportionate amount of building area, land area and street frontage within one benefit zone, except as noted otherwise, herein.

The calculated assessment rates are applied to the actual measured parameters of each parcel and thereby are proportional to each and every other identified assessed parcel within the district. Larger buildings and parcels and/or ones with larger frontages are expected to impact the demand for services and programs to a greater extent than smaller building, land and/or street frontages and thus, are assigned a greater proportionate degree of assessment program and service costs. The proportionality is further achieved by setting targeted formula component weights for the respective parcel by parcel identified property attributes.

The proportionate special benefit cost for each parcel has been calculated based on proportionate formula components and is listed as an attachment to the Management District Plan and this Report. The individual percentages (i.e. proportionate relationship to the total special benefit related program and activity costs) is computed by dividing the individual parcel assessment by the total special benefit program costs.

Finding 4. From Section 4(a): "No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."

Not only are the proposed program costs reasonable due to the benefit of group purchasing and contracting which would be possible through the proposed DOCBD, they are also considerably less than other options considered by the DOCBD Renewal Committee. The actual assessment rates for each parcel within the District directly relate to the level of service and, in turn, special benefit to be conferred on each parcel based on the respective building area, land area and street frontage of each parcel within one benefit zone, except as noted otherwise herein.

Finding 5. From Section 4(a): "Parcels.....that are owned or used by any (public) agency shall not be exempt from assessment....."

The State Constitution - Article 13D (Proposition 218) states that "parcels within a District that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly-owned parcels in fact receive no special benefit."

There are 67 publicly owned parcels within DOCBD, all of which are identified and assessable for which CBD funded special benefit programs, services and improvements will be provided. 46 of the assessed publicly owned parcels are owned by the City of Ontario, 19 by the City of Ontario Housing Authority, 1 by the San Bernardino County Housing Authority and 1 by the United States of America (Post Office).

Each identified and assessable publicly owned parcel and facility within DOCBD will proportionately specially benefit as delineated herein from the DOCBD funded supplemental services, programs and improvements, but differently than privately owned parcels. It is the opinion of this Assessment Engineer that publicly owned parcels and public facilities do not specially benefit to the same extent as privately owned parcels from District funded services, programs and improvements. To offset this special benefit differential, publicly owned parcels with public facilities on them will not be assessed for public building areas located on these parcels. Publicly owned parcels with non-government facilities/uses on them (16 parcels), will be assessed for building areas not occupied by government uses and facilities.

DOCBD services are designed to improve the cleanliness and image of assessed publicly owned parcels and facilities for visitors, their employees and users of public facilities on publicly owned parcels within the District by reducing litter and debris, each considered detractions to employment, visitation and use of public facilities if not contained and properly managed. In turn, these services will serve to enhance the public purpose provided by public facilities and parcels within DOCBD.

There is no compelling evidence that these identified assessable publicly owned parcels and facilities would not proportionately specially benefit from DOCBD funded programs, services and improvements as delineated herein and, thus, will be assessed similar to privately owned parcels, except as noted herein.

The Table below lists all publicly owned parcels within the proposed DOCBD and their Year 1 assessment amounts:

District Publicly Owned parcels

APN	Legal Owner	Site Street	Annual Assessment
1048-354-12-0000	CITY OF ONTARIO	D ST	$ 3,455.28
1048-354-13-0000	CITY OF ONTARIO	LAUREL AVE	$ 814.80
1048-355-02-0000	CITY OF ONTARIO		$ 796.14
1048-355-11-0000	CITY OF ONTARIO		$ 961.02
1048-356-08-0000	CITY OF ONTARIO	603 N. EUCLID AVE.	$ 731.60
1048-356-11-0000	CITY OF ONTARIO	F ST	$ 917.94
1048-363-02-0000	CITY OF ONTARIO	LEMON AVE.	$ 4,751.16
1048-363-03-0000	CITY OF ONTARIO	LEMON AVE.	$ 2,034.72
1048-363-04-0000	CITY OF ONTARIO	404 N. EUCLID AVE.	$ 3,514.80
1048-363-05-0000	CITY OF ONTARIO	414 N. EUCLID AVE.	$ 8,589.74
1048-551-10-0000	CITY OF ONTARIO	116 E. D ST.	$ 5,376.12
1048-552-13-0000	CITY OF ONTARIO	126 E. C ST.	$ 5,350.74
1048-552-14-0000	CITY OF ONTARIO	124 E. C ST.	$ 1,727.76
1048-552-18-0000	CITY OF ONTARIO	N. EUCLID AVE.	$ 131.34
1048-553-02-0000	CITY OF ONTARIO	118 E. B ST.	$ 1,509.76
1048-553-03-0000	CITY OF ONTARIO	B ST.	$ 797.76
1048-553-04-0000	CITY OF ONTARIO	127 N. LEMON AVE.	$ 1,859.76
1048-553-16-0000	CITY OF ONTARIO	126 N. EUCLID AVE.	$ 1,237.24
1048-553-17-0000	CITY OF ONTARIO	128 N. EUCLID AVE.	$ 3,665.40
1048-563-06-0000	CITY OF ONTARIO	HOLT BLVD.	$ 1,917.90
1048-564-06-0000	CITY OF ONTARIO	121 N. EUCLID AVE.	$ 834.72
1048-564-13-0000	CITY OF ONTARIO	LAUREL AVE.	$ 725.94
1048-564-14-0000	CITY OF ONTARIO	LAUREL AVE.	$ 1,140.72
1048-565-13-0000	CITY OF ONTARIO	LAUREL AVE.	$ 950.16
1048-565-14-0000	CITY OF ONTARIO	LAUREL AVE.	$ 506.88
1048-566-01-0000	CITY OF ONTARIO	123 W. D ST	$ 1,176.00
1048-566-08-0000	CITY OF ONTARIO	301 W. C ST	$ 144.00
1048-566-09-0000	CITY OF ONTARIO	W. C ST.	$ 1,479.72
1048-566-10-0000	CITY OF ONTARIO	LAUREL AVE.	$ 1,859.76
1048-566-11-0000	CITY OF ONTARIO	324 N. LAUREL AVE	$ 1,037.04
1049-056-01-0000	CITY OF ONTARIO	221 W. TRANSIT ST	$ 2,437.50
1049-056-02-0000	CITY OF ONTARIO	211 W. TRANSIT ST	$ 580.32
1049-056-03-0000	CITY OF ONTARIO	W. TRANSIT ST	$ 580.32
1049-056-04-0000	CITY OF ONTARIO	200 S. LAUREL AVE	$ 1,220.40
1049-056-05-0000	CITY OF ONTARIO	208 W. EMPORIA ST	$ 4,813.50
1049-056-06-0000	CITY OF ONTARIO	228 W. EMPORIA ST	$ 2,413.50
1049-057-06-0000	CITY OF ONTARIO	W. TRANSIT ST	$ 1,272.00
1049-057-07-0000	CITY OF ONTARIO	206 W. TRANSIT ST	$ 523.38

1049-058-02-0000	CITY OF ONTARIO	W. TRANSIT ST	$	712.62
1049-059-14-0000	CITY OF ONTARIO	EMPORIA ST	$	4,794.18
1049-062-01-0000	CITY OF ONTARIO	225 S. EUCLID AVE.	$	6,815.22
1049-062-02-0000	CITY OF ONTARIO	TRANSIT ST	$	4,804.80
1049-063-02-0000	CITY OF ONTARIO	214 E. HOLT BLVD	$	3,218.88
1049-064-12-0000	CITY OF ONTARIO		$	483.84
1049-064-13-0000	CITY OF ONTARIO	217 S. LEMON AVE	$	2,588.08
1049-064-14-0000	CITY OF ONTARIO	204 E. TRANSIT ST	$	7,611.64
		TOTAL	$	104,866.10
1048-551-11-0000	ONTARIO HOUSING AUTHORITY	312 N. EUCLID AVE.	$	3,887.16
1048-551-12-0000	ONTARIO HOUSING AUTHORITY	N. EUCLID AVE.	$	2,996.40
1048-551-13-0000	ONTARIO HOUSING AUTHORITY	334 E. C ST.	$	1,621.80
1048-552-15-0000	ONTARIO HOUSING AUTHORITY	C ST.	$	206.34
1048-552-16-0000	ONTARIO HOUSING AUTHORITY	N. EUCLID AVE.	$	3,147.60
1048-552-17-0000	ONTARIO HOUSING AUTHORITY	240 N. EUCLID AVE.	$	3,055.58
1048-553-01-0000	ONTARIO HOUSING AUTHORITY	E. B ST	$	1,556.04
1048-553-05-0000	ONTARIO HOUSING AUTHORITY	115 N. LEMON AVE.	$	585.60
1048-553-06-0000	ONTARIO HOUSING AUTHORITY	127 E. HOLT BLVD.	$	1,170.60
1048-553-07-0000	ONTARIO HOUSING AUTHORITY	123 E. HOLT BLVD.	$	449.46
1048-553-08-0000	ONTARIO HOUSING AUTHORITY	121 E. HOLT BLVD.	$	721.86
1048-553-09-0000	ONTARIO HOUSING AUTHORITY	E. HOLT BLVD	$	381.36
1048-553-10-0000	ONTARIO HOUSING AUTHORITY	E. HOLT BLVD	$	1,027.20
1048-553-11-0000	ONTARIO HOUSING AUTHORITY	N. EUCLID AVE	$	420.36
1048-553-12-0000	ONTARIO HOUSING AUTHORITY	110 N. EUCLID AVE.	$	420.36
1048-553-13-0000	ONTARIO HOUSING AUTHORITY	112 N. EUCLID AVE.	$	2,440.72
1048-553-14-0000	ONTARIO HOUSING AUTHORITY	118 N. EUCLID AVE.	$	448.08
1048-553-15-0000	ONTARIO HOUSING AUTHORITY	122 N. EUCLID AVE.	$	1,037.44
1049-059-07-0000	ONTARIO HOUSING AUTHORITY	303 W. EMPORIA ST	$	680.16
		TOTAL	$	26,254.12
1049-058-03-0000	SAN BERNARDINO COUNTY HOUSING AUTH	200 S. EUCLID AVE	$	5,096.76
1049-057-01-0000	UNITED STATES OF AMERICA	123 W. HOLT BLVD	$	3,937.92
	TOTAL – ALL PUBLICLY OWNED PARCELS	**67 PARCELS**	**$**	**140,154.90**

<u>Finding 6.</u> From Section 4(b): "All assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California".

This report serves as the "detailed engineer's report" to support the benefit property assessments proposed to be levied within the proposed DOCBD.

Finding 7. From Section 4(c): "The amount of the proposed assessment for each parcel shall be calculated (along with) the total amount thereof chargeable to the entire district, the duration of such payments, the reason for such assessment and the basis upon which the amount of the proposed assessment was calculated."

The individual and total parcel assessments attributable to special property benefits are shown in Appendix 1 to the Management District Plan and this Report. The proposed District and resultant assessment levies will continue for 5-years and may be renewed again at that time. The reasons (purposes) for the proposed assessments are outlined in Finding 2 above as well as in the Management District Plan. The calculation basis of the proposed assessment is attributed to building area, land area and street frontage, except as otherwise noted herein.

Assessment Formula Methodology

Step 1. Select "Basic Benefit Unit(s)"

Background - Assessment Formula Development

The method used to determine special benefits derived by each identified assessed property within a PBID (generic for the CBD) begins with the selection of a suitable and tangible basic benefit unit. For property related services, such as those proposed in the DOCBD, the benefit unit may be measured in linear feet of street frontage or parcel size in square feet or building size in square feet or any combination of these factors. Factor quantities for each parcel are then measured or otherwise ascertained. From these figures, the amount of benefit units to be assigned to each property can be calculated. Special circumstances such as unique geography, land uses, development constraints etc. are carefully reviewed relative to specific programs and improvements to be funded by the District in order to determine any levels of different benefit that may apply on a parcel-by-parcel or categorical basis.

Based on the factors described above such as geography and nature of programs and activities proposed, an assessment formula is developed which is derived from a singular or composite basic benefit unit factor or factors. Within the assessment formula, different factors may be assigned different "weights" or percentage of values based on their relationship to programs/services to be funded.

Next, all program and activity costs, including incidental costs, District administration and ancillary program costs, are estimated. It is noted, as stipulated in Article XIIID Section 4(b) of the California Constitution, and now required of all property-based assessment Districts, indirect or general benefits costs may not be incorporated into the assessment formula and levied on the District properties; only direct or "special" benefits and costs may be considered. Indirect or general benefit costs, if any, must be identified and, if quantifiable, calculated and factored out of the assessment cost basis to produce a "net" cost figure. In addition, Article XIIID Section 4(b) of the California Constitution also no longer automatically exempts publicly owned property from being assessed unless the respective public agency can provide clear and convincing evidence that their property does not specially benefit from the programs and services to be funded by the proposed special assessments. If special benefit is determined to be conferred upon such properties, they must be assessed in proportion to special benefits conferred in a manner similar to privately owned property assessments. (See pages 15-17 of this Report for discussion regarding assessment of publicly owned parcels within the DOCBD).

From the estimated net program costs, the value of a basic benefit unit or "basic net unit cost" can be computed by dividing the total amount of estimated net program costs by the total number of benefit units. The amount of assessment for each parcel can be computed at this time by multiplying the Net Unit Cost times the number of Basic Benefit Units per parcel. This is known as "spreading the assessment" or the "assessment spread" in that all costs are allocated proportionally or "spread" amongst all benefitting properties within the District.

The method and basis of spreading program costs varies from one District to another based on local geographic conditions, types of programs and activities proposed, and size and development complexity of the district.

DOCBD Assessment Formula

Based on the specific needs and corresponding nature of the program activities to be funded by the proposed DOCBD (i.e. maintenance, safety, image enhancement, streetscape beautification and operations) it has been determined that the assessment factors on which to base assessment rates relate directly to the proportionate amount of building area, land area and street frontage within one benefit zone except as noted herein.

The "Basic Benefit Units" will be expressed as a combined function of gross building square footage (Benefit Unit "A"), land square footage (Benefit Unit "B"), street frontage (Benefit Unit "C"), and in the case of Residential Condominiums, building square footage (Unit D). Based on the shape of the proposed DOCBD, as well as the nature of the District program elements, it is determined that all identified properties will gain a direct and proportionate degree of special benefit based on the respective amount of building area, land area and street frontage within one benefit zone, except as noted herein.

For the array of land uses within the District, the interactive application of building and land areas and street frontage quantities are a proven method of fairly and equitably spreading special benefit costs to these beneficiaries of District funded services, programs and improvements. Each of these factors directly relates to the degree of special benefit each assessed parcel will receive from District funded activities. There are no parcels zoned solely residential within DOCBD.

Building area is a direct measure of the static utilization of each parcel and its corresponding impact or draw on District funded activities. In the opinion of this Assessment Engineer, the targeted weight of this factor, building area, should generate approximately 40% of the total District revenue (37.95147% when adjusted for precise parcel measurements and program costs).

Land area is a direct measure of the current and future development capacity of each parcel and its corresponding impact or draw on District funded activities. In the opinion of this Assessment Engineer, the targeted weight of this factor, land area, should generate approximately 25% of the total District revenue (26.47414% when adjusted for precise parcel measurements and program costs).

Street Frontage is a direct measure of the current and future development capacity of each parcel and its corresponding impact or draw on District funded activities. Street frontage includes all public street

frontages of a parcel. In the opinion of this Assessment Engineer, the targeted weight of this factor, street frontage, should generate approximately 35% of the total District revenue (35.57439% when adjusted for precise parcel measurements and program costs).

Special Circumstances

1. Structured Parking
It has been determined that building square footage that is allocated to parking solely for tenants and is NOT available to the public at any time, at market rates, shall have that portion of the building square footage exempted from the individual parcel's gross building square footage. This reduction or exemption only applies to the building square footage of structured parking that is not available to public access and use. The individual parcel owner has the responsibility to inform the Assessment Engineer if such deductions are applicable since County records to not reveal this information via County tax records.

2. Publicly Owned-Occupied Parcels
It has been determined that the assessment for publicly owned-occupied parcels will only be based on the land area and street frontage of the individual parcels fronting on any street within the boundaries of the DOCBD since those are the only special benefit services that will be provided to those individual parcels per this Report and the Management Plan. The land areas and street frontages will be calculated along the same property lines as adjacent parcels. Building areas on such parcels will not be assessed.

3. Residential Condominiums
It has been determined that land area and street frontage quantities do not relate precisely to the building orientation and configurations of multi-unit and/or multi floor residential condominium complexes. Thus, it is the opinion of this Engineer that the assessment for residential condominiums shall be based on a building area rate per unit which is a proven method of fairly and equitably spreading special benefit costs to these unique property ownerships and land uses. This assessment factor directly relates to the proportionate amount of special benefit each residential condominium parcel will receive from DOCBD funded services, programs and improvements for this land use.

4. Commercial Condominiums
It has been determined that commercial condominium units, if and when built, when located on ground floors shall be assessed based on actual land area covered, condo building area and direct street frontage or pro-rated street frontage as determined by the Assessment Engineer for each unit. Upper floor commercial condominiums shall be assessed on condo building area and pro-rated land area and street frontage as determined by the Assessment Engineer.

5. Changes to Building or Parcel Size
Any changes in building size, parcel size and street frontage(s) as a result of new construction or demolition or land adjustments including but not limited to lot splits, consolidations, subdivisions, street dedications, right of way setbacks shall have their assessment adjusted upon final City approval of such parcel adjustments.

6. Other Future Development
Other than future maximum rates and the assessment methodology delineated in this Report, per State

Law (Government Code Section 53750), future assessments may increase for any given parcel if such an increase is attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land. Any change in assessment formula methodology or rates other than as stipulated in this Plan would require a new Proposition 218 ballot procedure in order to approve any such changes.

Step 2. Quantify Total Basic Benefit Units

Taking into account all identified specially benefiting parcels within the District and their respective assessable benefit units, the rates, cumulative quantities and assessment revenues by factor are shown in the Tables below:

Year 1 – 2019/2020 - Assessable Benefit Units

BLDG AREA (SF)	LAND AREA (SF)	STREET FRONTAGE (LF)	# OF ASSESABLE PARCELS
1,094,440	2,035,879	27,357	204

Year 1 – 2019/20 Projected Assessment Revenue

BLDG ASSMT $	LAND ASSMT $	STREET FRONTAGE ASSMT REVENUE	SUBTOTAL ASSMT REVENUE
$175,110	$122,153	$164,142	$461,405
37.95147%	26.47414%	35.57439%	100.00%

Step 3. Calculate Benefit Units for Each Property.

The number of Benefit Units for each identified benefiting parcel within the proposed DOCBD was computed from data extracted from County Assessor records and maps. These data sources delineate current land uses, building areas, property areas and dimensions of record for each tax parcel. While it is understood that this data does not represent legal field survey measurements or detailed title search of recorded land subdivision maps or building records, it does provide an acceptable basis for the purpose of calculating property-based assessments. All respective property data being used for assessment computations will be provided to each property owner in the District for their review. If a property owner believes there is an error on a parcel's assessed footages, the District may confirm the data with the County Assessor's office. If District data matches Assessor's data, the property owner may opt to work with the Assessor's office to correct the data so that the District assessment may be corrected.

Step 4. Determine Assessment Formula

Based on the nature of the programs to be funded as well as other rationale outlined in Step 1 above, it is the opinion of this Engineer that the DOCBD assessments will be based on building area, land area, and street frontage, except as noted herein.

The proposed assessment formula is as follows:

Assessment = Building Area (Unit A) Sq Ft x Unit A Rate, plus
Land Area (Unit B) Sq Ft x Unit B Rate, plus
Street Frontage (Unit C) Lin Ft x Unit C Rate

YEAR 1 –2019/20 Assessment Rates

BLDG ASSMT RATE ($/SF)	LAND ASSMT RATE ($/SF)	STREET FRONTAGE ASSMT RATE ($/LF)
$0.16	$0.06	$6.00

The complete Year 1 – 2019-20 assessment roll of all parcels to be assessed by this District is included in this Plan as Appendix I.

Assessment Formula Unit Rates

Using figures from the Assessable Benefit Units Table and the Projected Assessment Revenue Table on page 21 of this Report, the assessment rates and weighted multipliers for each factor are calculated as follows:

Building Area Rate (Unit A)

($461,405 x 37.95147%)/1,094,440 units = $0.16/sq ft building area

Land Area Rate (Unit B)

($461,405 x 35.60674%)/1,246,824 units = $0.06/sq ft land area

Street Frontage Rate (Unit C)

($461,405 x 43.31913%)/18,961 units = $6.00/lin ft street frontage

Residential Condo Building Area Rate (Unit D) = $0.25/sq ft building area

Step 5. Estimate Total District Costs

The total projected 5-year special benefit costs for 2020 – 2024 of the District are shown in the Table on page 13 of this Report assuming a maximum increase of 5% per year, commensurate to special benefits received by each assessed parcel.

Step 6. Separate General Benefits from Special Benefits and Related Costs (Article XIIID Section 4(b) of the California Constitution – Proposition 218)

Total Year 1 adjusted costs are estimated at $470,821. General benefits are factored at 2% of the total adjusted costs (see Finding 2 on pages 5-9 of this Report) with special benefits set at 98%. Article XIIID Section 4(b) of the California Constitution limits the levy of property assessments to costs attributed to special benefits only. The 2% general benefit cost is computed to be $9,416 with a resultant 98% special benefit limit computed at $461,405. *Based on current property data and land uses, this is the maximum amount of Year 1 (2019-20) revenue that can be derived from property assessments from the subject District.*

All program costs associated with general benefits will be derived from sources other than District assessments. Sample "other" revenue sources are shown in the Table below:

Special and General Benefit Revenue Sources

Revenue Source	Revenue	% of Total
District Assessments	$461,405	98%
Grants, donations, sponsors, program income, etc.	$9,416	2%
TOTAL	**$470,821**	**100.0%**

Step 7. Calculate "Basic Unit Cost"

With a YR 1 - 2020 assessment revenue portion of the budget set at $461,405 (special benefit only), the Basic Unit Costs (rates) are shown earlier in Step 4. Since the District is proposed to be established for a 5-year term, maximum assessments for future years (2021-2024) must be set at the inception of the proposed District. An annual inflationary assessment rate increase of up to 5%, commensurate to special benefits received by each assessed parcel, may be imposed for future year assessments, on approval by the District Property Owner's Association. The maximum assessment rates for the 5-year proposed District term of 2020-2024 are shown in the Table below. The assessment rates listed constitute the maximum assessment rates that may be imposed for each year of the proposed District term (2020-2024).

DOCBD – 5 Year Maximum Assessment Rates
(Includes a 5%/Yr. Max Increase)

YEAR	BLDG ASSMT RATE ($/SF)	LAND ASSMT RATE ($/SF)	FRONTAGE ASSMT RATE ($/LF)
1	$0.160	$0.10	$6.00
2	$0.1680	$0.1050	$6.3000
3	$0.1764	$0.1103	$6.6150
4	$0.1852	$0.1158	$6.9458
5	$0.1945	$0.1216	$7.2931

Step 8. Spread the Assessments
The resultant assessment spread calculation results for each parcel within the District are shown in Appendix I to this Report and were determined by applying the District assessment formula to each identified specially benefiting property.

Miscellaneous District Provisions

Time and Manner of Collecting Assessments:
Assessments for the Property Tax Year beginning July 1, 2019 and ending June 30, 2023, shall be collected at the same time and in the same manner as ad valorum taxes paid to the San Bernardino County (Operation Years 2020-2024). The District assessments shall appear as a separate line item on the property tax bills issued by the San Bernardino County Assessor. The City of Ontario is authorized to collect any assessments not placed on the County tax rolls, or to place assessments, unpaid delinquent assessments, or penalties on the County tax rolls as appropriate to implement the Management District Plan.

Bonds:
No bonds are to be issued in conjunction with this proposed District.

Duration
As allowed by State PBID Law, the District will have a five (5) year operational term from January 1, 2020 to December 31, 2024. The proposed District operation is expected to begin services on January 1, 2020. If the District is not renewed at the end of its proposed 5 year term, services will end on December 31, 2024.

APPENDIX 1

DOCBD
YR 1 – 2019/2020
ASSESSMENT ROLL

APN	Year 1 Assessment
1048-354-01-0000	$1,809.48
1048-354-02-0000	$3,724.44
1048-354-03-0000	$3,041.60
1048-354-04-0000	$1,038.50
1048-354-05-0000	$306.00
1048-354-06-0000	$401.40
1048-354-07-0000	$1,724.60
1048-354-08-0000	$655.20
1048-354-09-0000	$1,038.50
1048-354-10-0000	$916.36
1048-354-11-0000	$3,937.00
1048-354-12-0000	$3,455.28
1048-354-13-0000	$814.80
1048-355-02-0000	$796.14
1048-355-03-0000	$2,177.32
1048-355-04-0000	$1,268.56
1048-355-05-0000	$687.06
1048-355-06-0000	$870.40
1048-355-07-0000	$1,708.48
1048-355-08-0000	$1,329.94
1048-355-09-0000	$1,781.48
1048-355-10-0000	$2,087.32
1048-355-11-0000	$961.02
1048-355-13-0000	$912.28
1048-355-15-0000	$4,170.16
1048-356-01-0000	$3,689.28
1048-356-02-0000	$3,254.16
1048-356-03-0000	$1,190.84
1048-356-04-0000	$1,264.76
1048-356-05-0000	$2,824.72
1048-356-06-0000	$700.68
1048-356-07-0000	$420.36
1048-356-08-0000	$731.60
1048-356-09-0000	$1,162.00
1048-356-10-0000	$447.12
1048-356-11-0000	$917.94
1048-356-12-0000	$2,657.52
1048-356-13-0000	$3,595.44
1048-361-01-0000	$3,315.24
1048-361-02-0000	$748.86
1048-361-03-0000	$715.80
1048-361-04-0000	$1,897.12
1048-361-05-0000	$1,101.60
1048-361-06-0000	$849.12
1048-361-07-0000	$2,048.48
1048-361-08-0000	$2,559.84
1048-361-09-0000	$2,638.02
1048-361-10-0000	$1,682.80
1048-361-11-0000	$840.72
1048-361-12-0000	$843.30
1048-362-02-0000	$764.52
1048-362-03-0000	$4,140.72
1048-362-04-0000	$1,330.24
1048-362-05-0000	$1,646.16
1048-362-06-0000	$1,122.80
1048-362-07-0000	$2,621.12
1048-362-08-0000	$3,036.44
1048-362-09-0000	$5,189.80
1048-362-10-0000	$2,264.10
1048-363-01-0000	$1,284.16
1048-363-02-0000	$4,751.16
1048-363-03-0000	$2,034.72
1048-363-04-0000	$3,514.80
1048-363-05-0000	$8,589.74
1048-551-10-0000	$5,376.12
1048-551-11-0000	$3,887.16
1048-551-12-0000	$2,996.40
1048-551-13-0000	$1,621.80
1048-552-13-0000	$5,350.74
1048-552-14-0000	$1,727.76
1048-552-15-0000	$206.34
1048-552-16-0000	$3,147.60
1048-552-17-0000	$3,055.58
1048-552-18-0000	$131.34
1048-552-19-0000	$2,785.94
1048-553-01-0000	$1,556.04
1048-553-02-0000	$1,509.76
1048-553-03-0000	$797.76
1048-553-04-0000	$1,859.76
1048-553-05-0000	$585.60
1048-553-06-0000	$1,170.60
1048-553-07-0000	$449.46
1048-553-08-0000	$721.86
1048-553-09-0000	$381.36
1048-553-10-0000	$1,027.20
1048-553-11-0000	$420.36
1048-553-12-0000	$420.36
1048-553-13-0000	$2,440.72
1048-553-14-0000	$448.08
1048-553-15-0000	$1,037.44
1048-553-16-0000	$1,237.24
1048-553-17-0000	$3,665.40
1048-561-07-0000	$2,406.48
1048-561-08-0000	$2,221.34
1048-561-09-0000	$1,023.96
1048-561-10-0000	$797.76
1048-561-11-0000	$1,432.40
1048-561-12-0000	$1,182.24
1048-561-13-0000	$24,568.08
1048-562-01-0000	$8,404.20
1048-562-02-0000	$2,528.24
1048-562-03-0000	$7,451.34
1048-562-06-0000	$806.28
1048-562-07-0000	$2,623.68
1048-563-01-0000	$1,606.80
1048-563-02-0000	$797.76
1048-563-03-0000	$2,678.24

1048-563-04-0000	$1,344.00
1048-563-05-0000	$3,956.40
1048-563-06-0000	$1,917.90
1048-563-07-0000	$1,564.80
1048-563-08-0000	$4,266.24
1048-563-09-0000	$785.76
1048-563-10-0000	$1,859.76
1048-563-11-0000	$552.40
1048-564-01-0000	$2,618.88
1048-564-02-0000	$3,473.60
1048-564-03-0000	$4,209.20
1048-564-04-0000	$1,402.50
1048-564-05-0000	$887.64
1048-564-06-0000	$834.72
1048-564-07-0000	$2,866.20
1048-564-08-0000	$791.62
1048-564-09-0000	$1,319.52
1048-564-10-0000	$2,089.40
1048-564-11-0000	$1,383.72
1048-564-12-0000	$3,203.32
1048-564-13-0000	$725.94
1048-564-14-0000	$1,140.72
1048-565-01-0000	$3,149.28
1048-565-02-0000	$642.00
1048-565-03-0000	$7,429.56
1048-565-04-0000	$620.16
1048-565-05-0000	$2,487.36
1048-565-06-0000	$2,090.64
1048-565-07-0000	$1,019.28
1048-565-08-0000	$969.60
1048-565-09-0000	$1,315.60
1048-565-10-0000	$2,866.80
1048-565-11-0000	$7,021.20
1048-565-12-0000	$1,436.96
1048-565-13-0000	$950.16
1048-565-14-0000	$506.88
1048-566-01-0000	$1,176.00
1048-566-02-0000	$1,775.52
1048-566-03-0000	$797.76
1048-566-04-0000	$3,759.04
1048-566-05-0000	$7,535.56
1048-566-06-0000	$1,633.12
1048-566-07-0000	$3,937.56
1048-566-08-0000	$144.00
1048-566-09-0000	$1,479.72
1048-566-10-0000	$1,859.76
1048-566-11-0000	$1,037.04
1049-055-01-0000	$3,146.08
1049-055-02-0000	$1,074.36
1049-055-03-0000	$1,259.42
1049-055-04-0000	$1,202.26
1049-055-05-0000	$1,238.32
1049-055-06-0000	$1,080.06
1049-055-07-0000	$532.98
1049-055-08-0000	$546.06
1049-055-09-0000	$4,231.76
1049-056-01-0000	$2,437.50
1049-056-02-0000	$580.32
1049-056-03-0000	$580.32
1049-056-04-0000	$1,220.40
1049-056-05-0000	$4,813.50
1049-056-06-0000	$2,413.50
1049-057-01-0000	$3,937.92
1049-057-02-0000	$1,310.16
1049-057-03-0000	$2,098.72
1049-057-04-0000	$1,466.00
1049-057-05-0000	$4,314.00
1049-057-06-0000	$1,272.00
1049-057-07-0000	$523.38
1049-058-01-0000	$3,224.00
1049-058-02-0000	$712.62
1049-058-03-0000	$5,096.76
1049-058-04-0000	$2,471.68
1049-058-05-0000	$2,651.96
1049-059-07-0000	$680.16
1049-059-08-0000	$1,398.00
1049-059-09-0000	$824.40
1049-059-14-0000	$4,794.18
1049-059-21-0000	$7,062.30
1049-061-01-0000	$13,042.62
1049-061-02-0000	$3,773.76
1049-061-03-0000	$557.28
1049-062-01-0000	$6,815.22
1049-062-02-0000	$4,804.80
1049-063-01-0000	$2,567.02
1049-063-02-0000	$3,218.88
1049-063-03-0000	$358.64
1049-063-04-0000	$699.28
1049-063-05-0000	$1,380.96
1049-063-06-0000	$1,664.16
1049-063-07-0000	$819.04
1049-063-08-0000	$1,117.26
1049-063-09-0000	$1,131.54
1049-063-10-0000	$1,195.54
1049-064-12-0000	$483.84
1049-064-13-0000	$2,588.08
1049-064-14-0000	$7,611.64
TOTAL	**$461,405.14**

APPENDIX 2

DOCBD
BOUNDARY MAP


Ontario District
NEW CITY America, Inc.
E H St
E el Morado Ct
W G St
E G St
W F St
E F St
W E St
E E St
W D St
E D St
W C St
E C St
E B St
W Holt Blvd
E Holt Blvd
E Transit St
W Emporia St
E Main St
N Vine Ave
N Fern Ave
N Laurel Ave
N Palm Ave
Euclid Ave
N Lemon Ave
N Plum Ave
N Cherry Ave
N Sultana Ave
S Cherry Ave
S Vine Ave
S Fern Ave
S Laurel Ave
S Palm Ave
S Lemon Ave
1048-356
1048-361
1048-355
1048-362
1048-354
1048-363
1048-551
1048-561
1048-566
1048-552
1048-562
1048-565
1048-563
1048-564
1048-553
1049-055
1049-057
1049-061
1049-063
1049-056
1049-058
1049-062
1049-064
1049-059
0 125 250 500 Feet
LEGEND
District Parcel
Parcel

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CALTRANS FOR THE PREPARATION OF THE ONTARIO MULTIMODAL TRANSPORTATION CENTER NEEDS ASSESSMENT AND SITING CRITERIA

RECOMMENDATION: That the City Council adopt a resolution authorizing the City Manager to execute an agreement with the California Department of Transportation (Caltrans) for the City to accept grant funds for the preparation of the Ontario Multimodal Transportation Center Needs Assessment and Siting Criteria.

COUNCIL GOALS: **Invest in the Growth and Evolution of the City's Economy**
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: The grant with Caltrans will provide $735,000 in State funds on a reimbursement basis for the Ontario Multimodal Transportation Center Needs Assessment and Siting Criteria. The local match for the project is $95,227. If approved, appropriations of $735,000 in General Fund Grants and $95,227 in Gas Tax will be included in the first Quarterly Budget Update Report to the City Council.

BACKGROUND: The City has been awarded a $735,000 Sustainable Transportation Planning Grant for the preparation of an Ontario Multimodal Transportation Center Needs Assessment and Siting Criteria. This project will analyze the facility needs of a multimodal transportation center (MTC) and identify potential sites near Ontario International Airport (ONT) terminals that might be suitable. Short and long-term concept plans will be prepared for the two most preferred sites which will be reviewed by stakeholders and the community at large before being presented to the City Council for consideration and adoption of a preferred location.

The grant requires the City Council adopt a resolution authorizing the City Manager to enter into an agreement with Caltrans to accept the grant funds.

STAFF MEMBER PRESENTING: Scott Murphy, AICP, Executive Director Development Agency

Prepared by: Melanie Mullis
Department: Engineering

City Manager Approval:

Submitted to Council/O.H.A. 07/02/2019
Approved:
Continued to:
Denied:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR THE ONTARIO MULTIMODAL TRANSPORTATION CENTER NEEDS ASSESSMENT AND SITING CRITERIA.

WHEREAS, preparation of the Multimodal Transportation Center Needs Assessment and Siting Criteria will analyze the facility needs of and potential sites for a multimodal transportation center near Ontario International Airport (ONT) terminals and prepare short and long-term concept plans for the two most preferred sites; and

WHEREAS, preparation of the Multimodal Transportation Center Needs Assessment and Siting Criteria and future improvements associated with it will result in improved access for passengers to the Ontario International Airport and improved multimodal opportunities for the community at large; and

WHEREAS, improving multimodal options for residents, employees and visitors in Ontario will result in improved air quality, a reduction of greenhouse gas emissions and a reduction in traffic congestion; and

WHEREAS, the City is eligible to receive Federal and/or State funding for certain transportation planning related plans, through the California Department of Transportation; and

WHEREAS, the City of Ontario applied for $750,000 for a FY 2019-20 Sustainable Transportation Planning Grant to prepare the Ontario Multimodal Transportation Center Needs Assessment and Siting Criteria; and

WHEREAS, on May 17, 2019 the City was notified by the California Department of Transportation (Caltrans) that the City was awarded $735,000 to prepare the Ontario Multimodal Transportation Center Needs Assessment and Siting Criteria; and

WHEREAS, a Restricted Grant Agreement is needed to be executed with the California Department of Transportation before such funds can be claimed through the Transportation Planning Grant Programs; and

WHEREAS, the City is required to enter into a contract with Caltrans which will, in part, specify that the City provide a local match of $95,227; and

WHEREAS, the City must specify, through a local resolution, who is authorized to sign the contract.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED, by the City Council of the City of Ontario, as follows:

SECTION 1. The above recitals are true and correct, and are incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. The City Council hereby authorizes the City Manager to execute all Restricted Grant Agreements and any amendments thereto with the California Department of Transportation for the preparation of the Ontario Multimodal Transportation Center Needs Assessment and Siting Criteria.

SECTION 3. This Resolution shall become effective upon its adoption. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of July 2019.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
COLE HUBER, LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2019- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held July 2, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2019- duly passed and adopted by the Ontario City Council at their regular meeting held July 2, 2019.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: A CONSTRUCTION CONTRACT FOR THE 2019 FALL PAVEMENT REHABILITATION PROJECT

RECOMMENDATION: That the City Council approve the plans and specifications and award a construction contract (on file in the Records Management Department) to Hardy & Harper Inc. of Lake Forest, California, for the 2019 Fall Pavement Rehabilitation Project for the bid amount of $4,261,000 plus a 15% contingency of $639,150 for a total authorized amount of $4,900,150; and authorize the City Manager to execute related documents necessary and file a notice of completion at the conclusion of all construction related activities.

COUNCIL GOALS: **Maintain the Current High Level of Public Safety**
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Adopted Fiscal Year 2019-20 Budget includes appropriations from Measure I Funds to cover the total recommended expenditure authorization of $4,900,150 consisting of the bid amount of $4,261,000 plus a 15% contingency of $639,150. There is no impact to the General Fund.

BACKGROUND: The scope of services for the 2019 Fall Pavement Rehabilitation Project includes grinding, removal and replacement of damaged pavement, construction of Asphalt Rubber Hot Mix (ARHM) overlay, construction of ADA compliant access ramps, traffic signal upgrades, concrete pavement pads, and placement of traffic striping, pavement markings, and raised markers.

The project locations include: rehabilitation of Mission Boulevard from Grove Avenue to Baker Avenue (Project No. ST1906), Fourth Street from Cucamonga Avenue to El Dorado Avenue (Project No. ST1904), Dupont Avenue from Jurupa Street to Francis Street (Project No. ST1903), Vintage Avenue from Francis Street to Jurupa Street (Project No. ST1901), Philadelphia Street from San Antonio Avenue to Euclid Avenue (Project No. ST1909), Cucamonga Avenue from Riverside Drive to Chino Avenue (Project No. ST1902), Ontario Avenue from Riverside Drive to Schaefer Avenue (Project No. ST1907), Parco Avenue from Philadelphia Street to Francis Street (Project No. ST1908),

STAFF MEMBER PRESENTING: Scott Murphy, AICP, Executive Director Development Agency

Prepared by:	Bill Braun	Submitted to Council/O.H.A.	07/02/2019
Department:	Engineering	Approved:	
		Continued to:	
City Manager Approval:		Denied:	

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Francis Street from Wineville Avenue to Etiwanda Avenue (Project No. ST1905), Santa Ana Street from Wineville Avenue to Etiwanda Avenue (Project No. ST1911), and Wineville Avenue from Santa Ana Street to Airport Drive (Project No. ST1910). Location maps are attached for reference (Exhibits 1 through 12). This project will extend the lifespan of the streets by 15 to 20 years. It is anticipated that construction will start in August 2019 and be completed by December 2019.

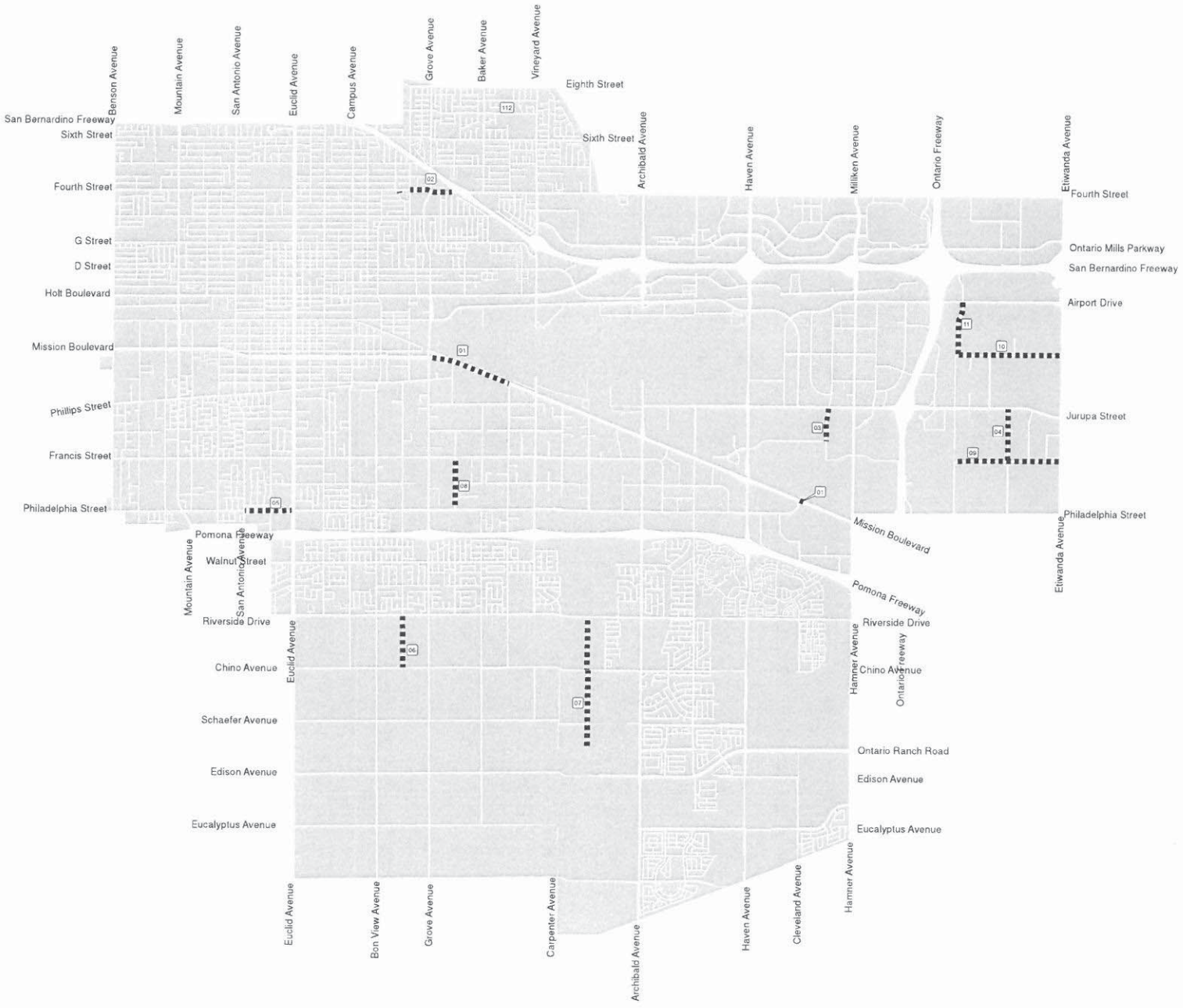
In May 2019, the City solicited bids for this project and three bids were received. The bid results are:

COMPANY	LOCATION	AMOUNT
Hardy and Harper, Inc.	Lake Forest, CA	$ 4,261,000
All American Asphalt	Corona, CA	$ 4,348,000
R. J. Noble Company	Orange, CA	$ 4,894,920

Hardy & Harper, Inc. submitted the lowest responsive bid. Hardy & Harper, Inc. has previously performed similar work for the City of Ontario in a satisfactory manner.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were reviewed and staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to § 15301 (Class 1, Existing Facilities) of the State CEQA Guidelines.

Overlay Project 2019 Overall Map

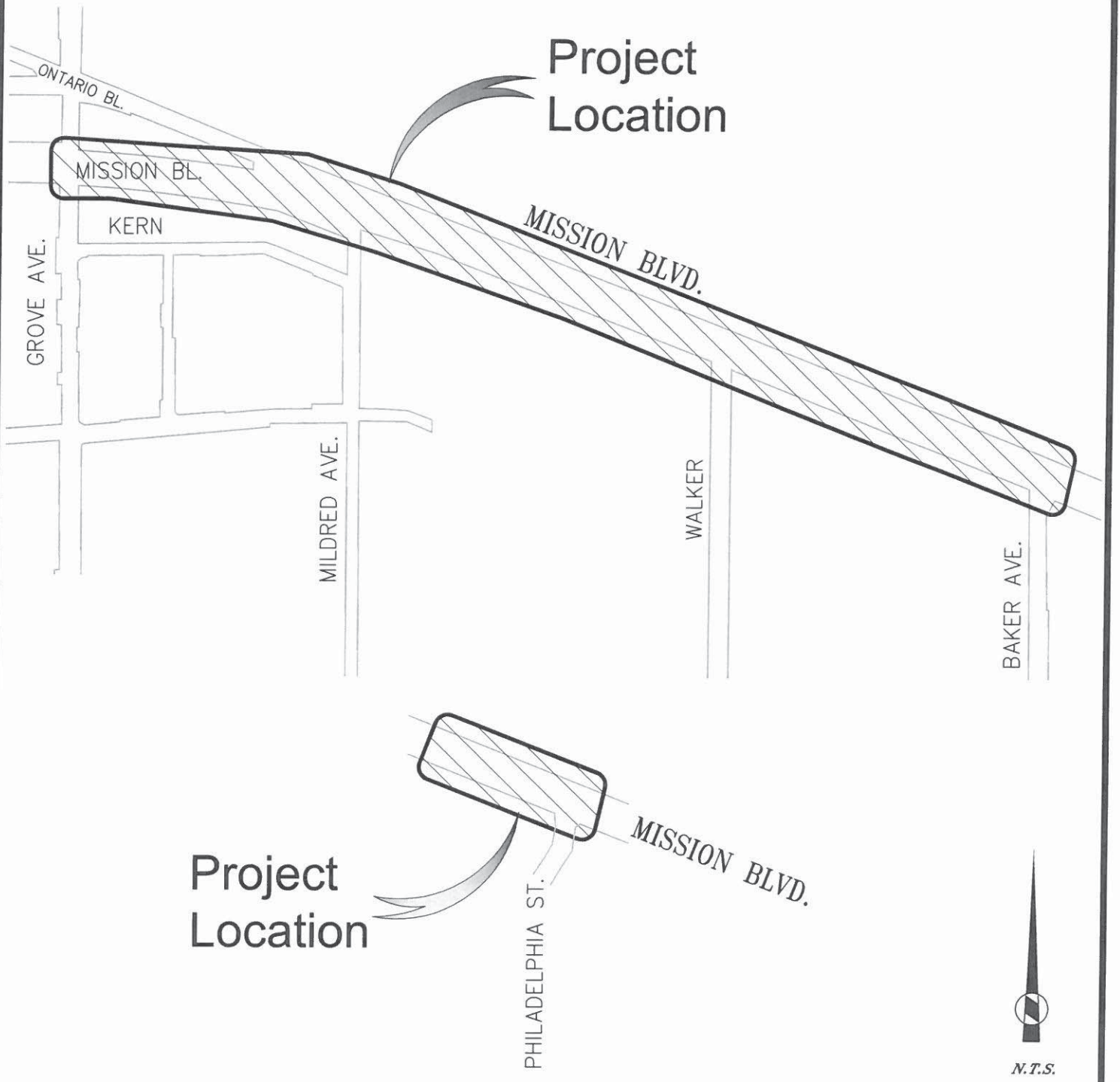


ID Number	Proposed Project Title (FY 19-20)
01	Mission Boulevard Pavement Rehabilitation (Grove Ave. to Baker Ave.)
02	Fourth Street Pavement Rehabilitation (Cucamonga Ave. to El Dorado Ave.)
03	Dupont Avenue Pavement Rehabilitation (Jurupa St. to Francis St.)
04	Vintage Avenue Pavement Rehabilitation (Francis St. to Jurupa Ave.)
05	Philadelphia Boulevard Pavement rehabilitation (San Antonio Ave. to Euclid Ave.)
06	Cucamonga Avenue Pavement Rehabilitation (Riverside Dr. to Chino Ave.)
07	Ontario Avenue Pavement Rehabilitation (Riverside Dr. to South End)
08	Parco Avenue Pavement Rehabilitation (Philadelphia St. to Francis St.)
09	Francis Street Pavement Rehabilitation (Wineville Ave. to Etiwanda Ave.)
10	Santa Ana Street Pavement Rehabilitation (Etiwanda Ave. to Wineville Ave.)
11	Wineville Avenue Pavement Rehabilitation (Santa Ana St. to Airport Dr.)

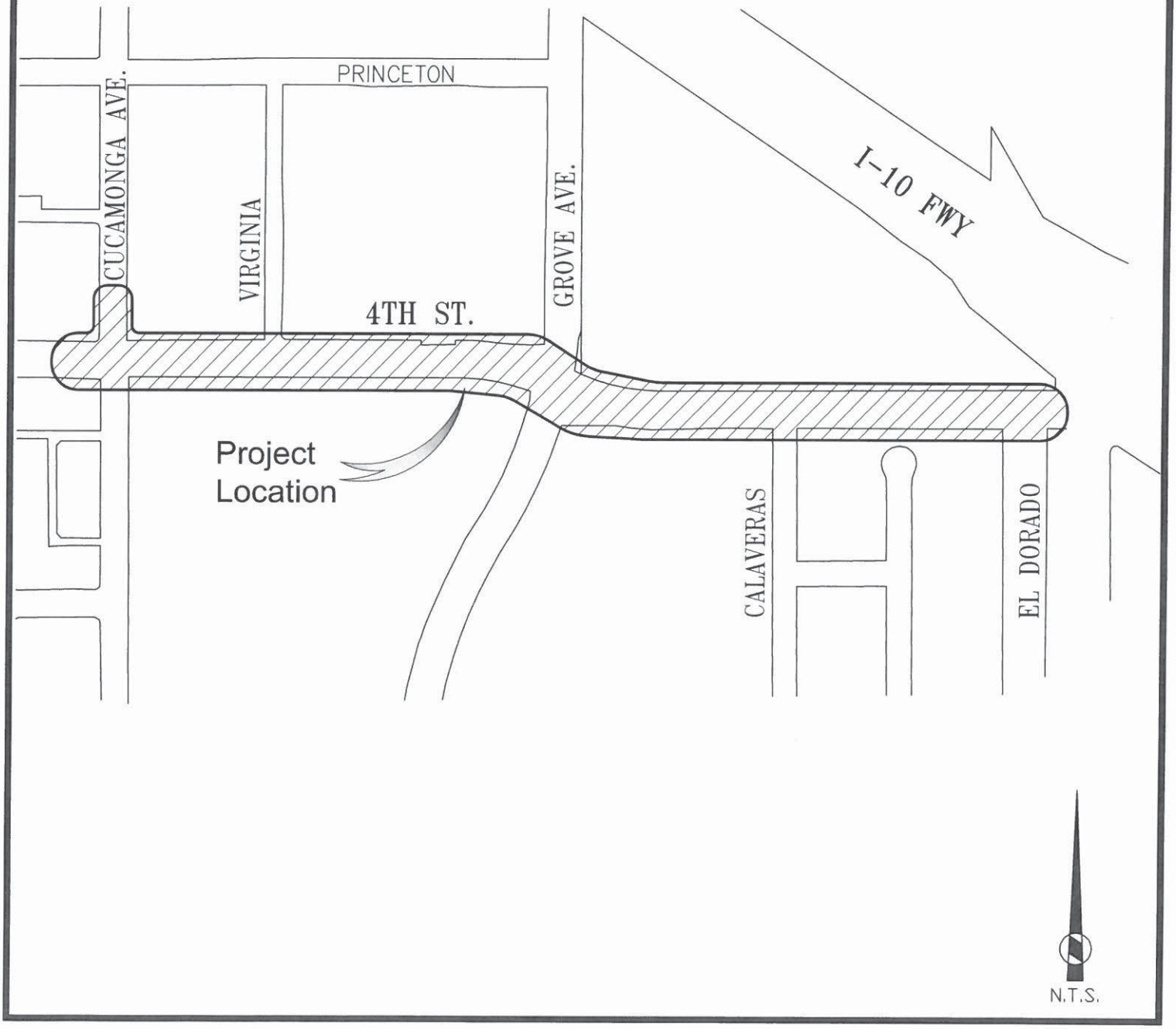
Legend:

Proposed CIP Projects Street Rehabilitation (Including Storm Drain) 2019

MISSION BOULEVARD
PAVEMENT REHABILITATION
Contract No. ST1906
GROVE AVENUE TO BAKER AVENUE



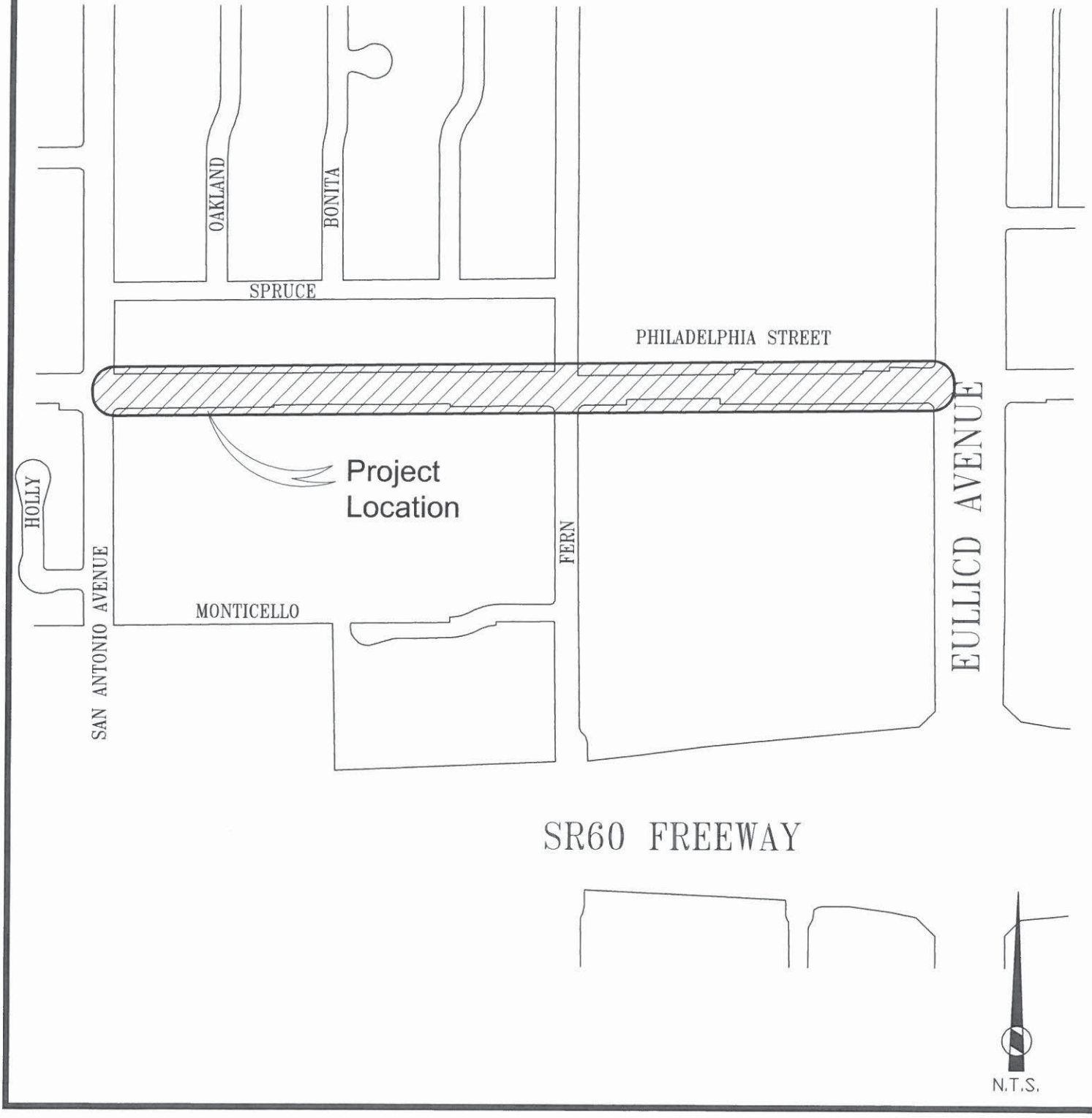
FOURTH STREET
PAVEMENT REHABILITATION
Project No. ST1904
CUCAMONGA AVENUE TO EL DORADO AVENUE



DUPONT AVENUE
PAVEMENT REHABILITATION
Project No. ST1903
JURUPA STREET TO FRANCIS STREET

VINTAGE AVENUE
PAVEMENT REHABILITATION
Project No. ST1901
FRANCIS STREET TO JURUPA STREET

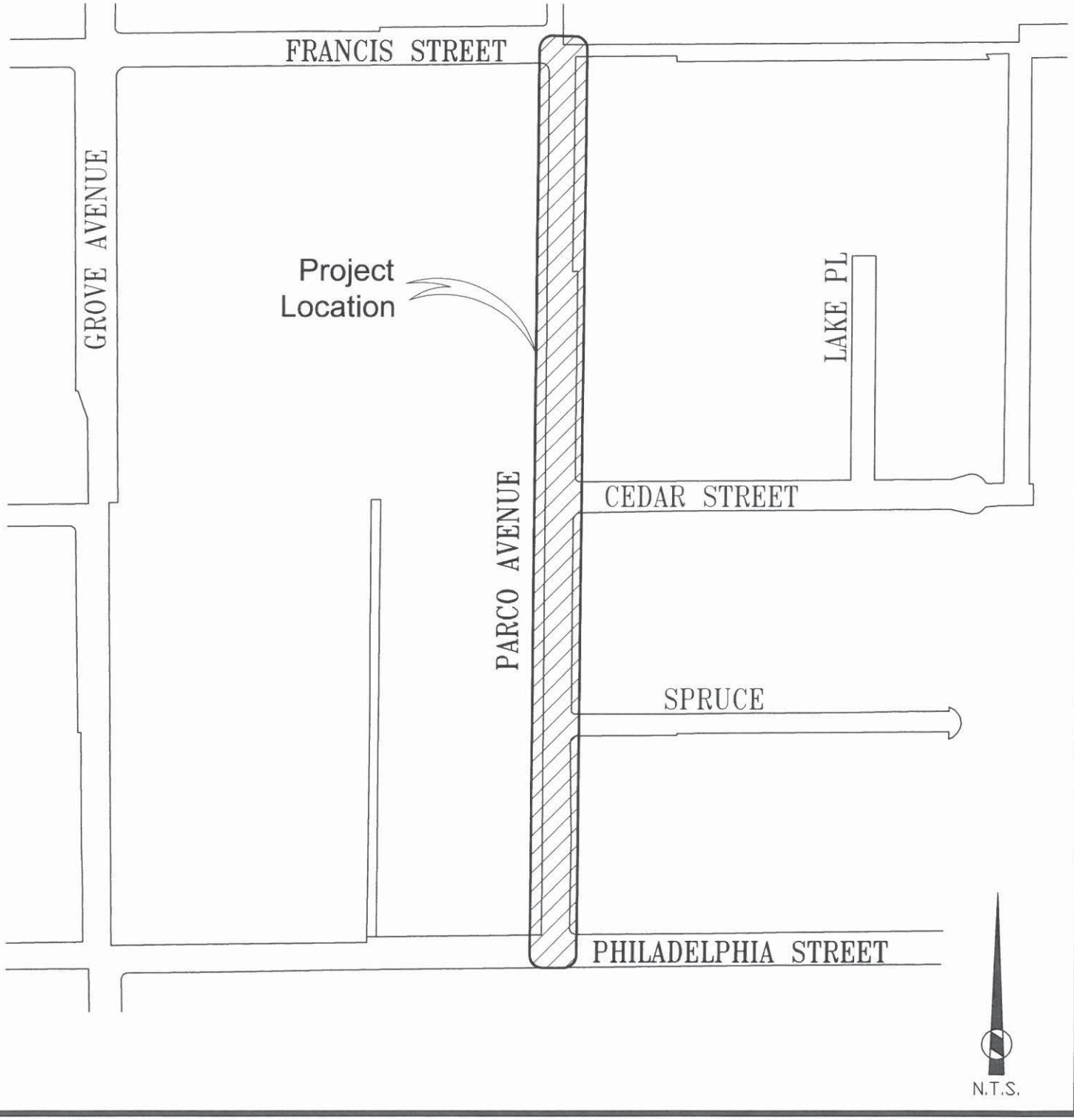
PHILADELPHIA STREET
PAVEMENT REHABILITATION
Project No. ST1909
SAN ANTONIO AVENUE TO EUCLID AVENUE



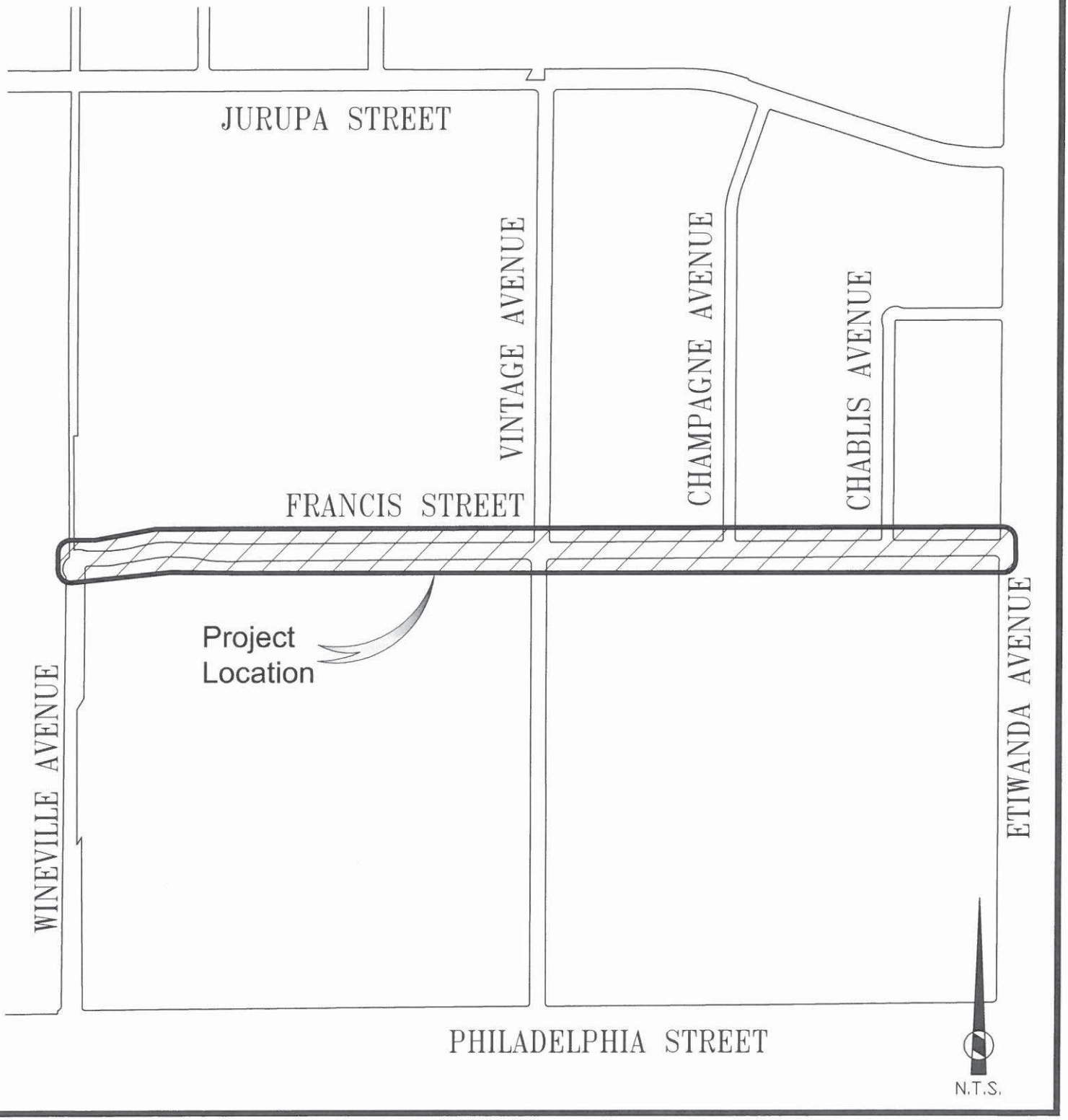
CUCAMONGA AVENUE
PAVEMENT REHABILITATION
Project No. ST1902
RIVERSIDE DRIVE TO CHINO AVENUE

ONTARIO AVENUE
PAVEMENT REHABILITATION
Project No. ST1907
RIVERSIDE DRIVE TO SCHAEFER AVENUE (SOUTH END)

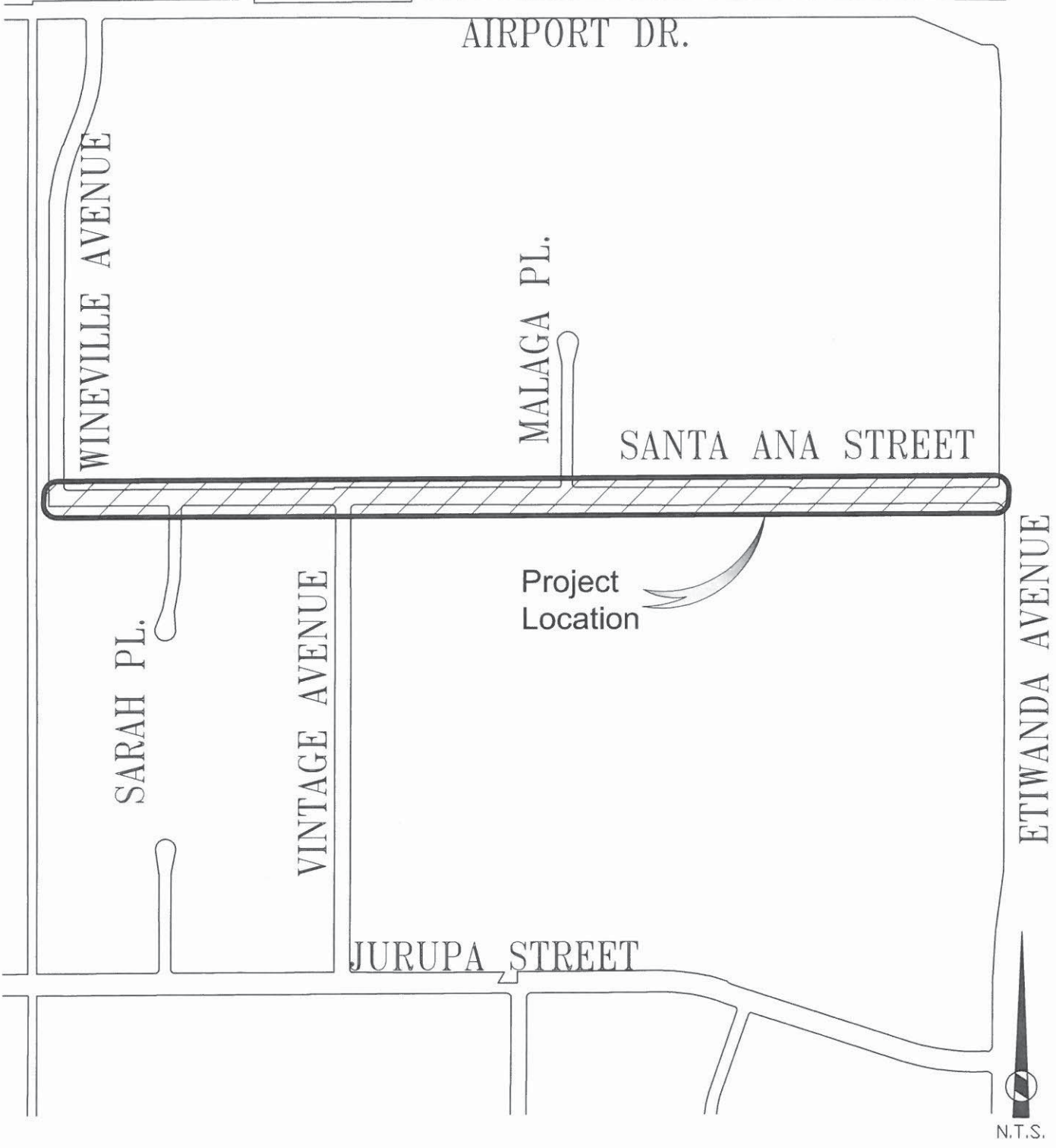
PARCO AVENUE
PAVEMENT REHABILITATION
Project No. ST1908
PHILADELPHIA STREET TO FRANCIS STREET



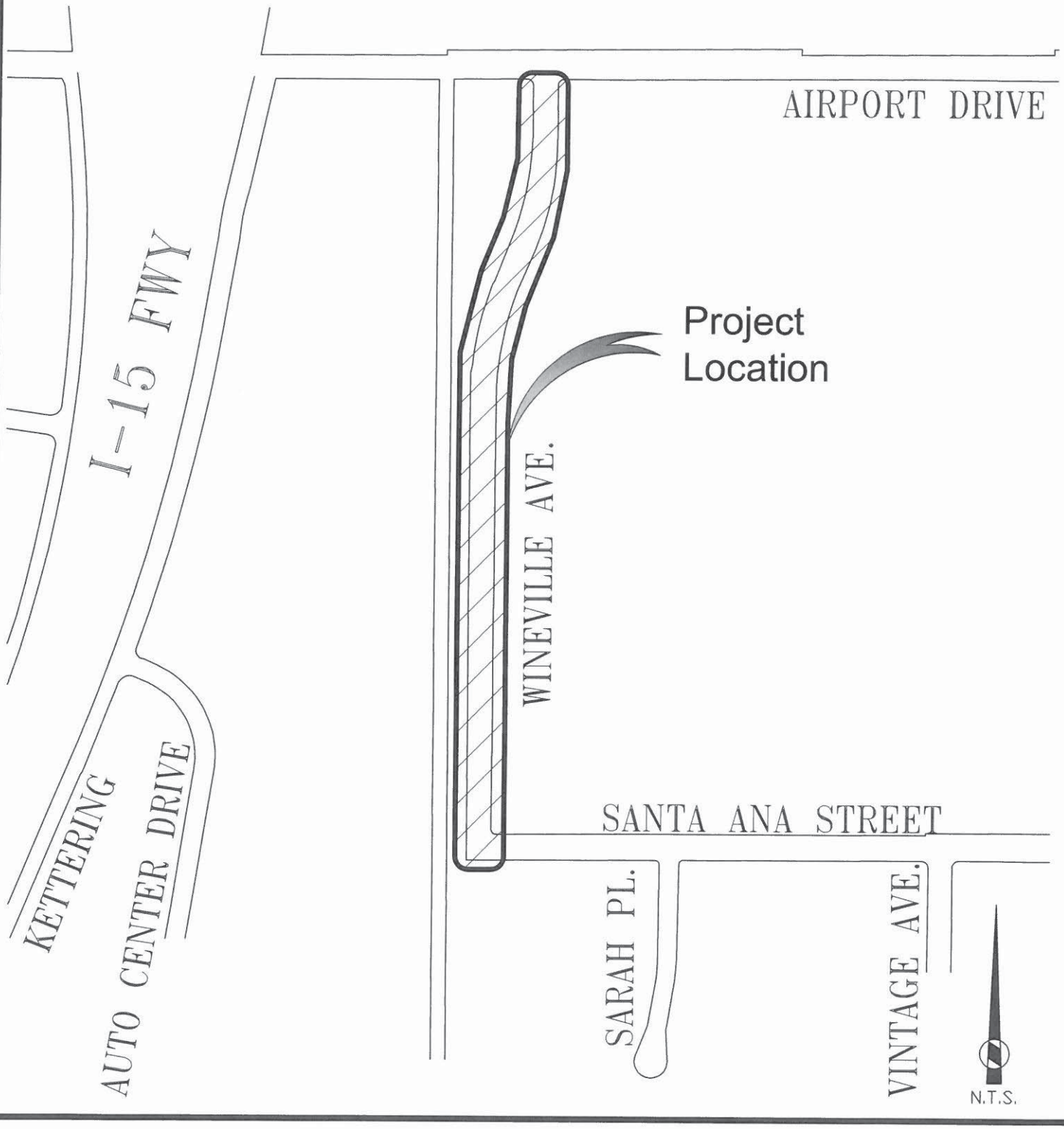
FRANCIS STREET
PAVEMENT REHABILITATION
Project No. ST1905
WINEVILLE AVENUE TO ETIWANDA AVENUE



SANTA ANA STREET
PAVEMENT REHABILITATION
Project No. ST1911
WINEVILLE AVENUE TO ETIWANDA AVENUE



WINEVILLE AVENUE
PAVEMENT REHABILITATION
Project No. ST1910
SANTA ANA STREET TO AIRPORT DRIVE



CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: A DESIGN SERVICES AGREEMENT FOR ATP CYCLE 4 PEDESTRIAN IMPROVEMENTS AROUND RICHARD HAYNES ELEMENTARY, VISTA GRANDE ELEMENTARY AND OAKS MIDDLE SCHOOL

RECOMMENDATION: That the City Council approve a Design Services Agreement (on file in the Records Management Department) with Hernandez, Kroone & Associates of San Bernardino, California, to provide engineering design services for pedestrian improvements around three local schools prepared as part of Active Transportation Program (ATP) Cycle 4 for $399,600 plus a 12% contingency of $47,952 for a total authorized expenditure of $447,552; and authorize the City Manager to execute said agreement and future amendments within the authorization limits.

COUNCIL GOALS: **Maintain the Current High Level of Public Safety**
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The adopted Fiscal Year 2019-20 Budget includes appropriations of $450,000 from the Road Repair and Accountability Act – Senate Bill SB 1 – for the design phase of the project. The 12% contingency is considered adequate for this effort. There is no impact to the General Fund.

BACKGROUND: The agreement will provide for engineering design services for preparation of plans, specifications, estimates (PS&E), permit and utility coordination, design support during construction and an optional task of legal and plat preparation for the pedestrian improvements around Richard Haynes Elementary, Vista Grande Elementary and Oaks Middle School under ATP Cycle 4.

On May 22, 2019, the City solicited proposals and received five responses. A selection team of City staff reviewed the proposals and interviewed the top three scoring firms on June 4, 2019. After evaluation of the firms, the selection team recommends Hernandez, Kroone & Associates based upon the quality of their proposal, past performance on similar projects, and favorable references. Hernandez,

STAFF MEMBER PRESENTING: Scott Murphy, AICP, Executive Director Development Agency

Prepared by: Tricia Espinoza, P.E.
Department: Engineering

City Manager Approval:

Submitted to Council/O.H.A. 07/02/2019
Approved:
Continued to:
Denied:

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Kroone & Associates has agreed to a base fee of $399,600, which is deemed a fair and reasonable fee for the specified scope of work.

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: RESOLUTIONS UPDATING AUTHORIZED DEPUTY CITY TREASURERS

RECOMMENDATION: That the City Council adopt resolutions rescinding previous resolutions and amending the list of Deputy City Treasurers authorized to invest City funds in the Local Agency Investment Fund (LAIF) and other eligible investment securities.

COUNCIL GOALS: **Operate in a Businesslike Manner**

FISCAL IMPACT: None.

BACKGROUND: The recent hiring of the Departmental Administrator within the Financial Services Agency has resulted in the need to update resolutions identifying those individuals authorized to invest City funds and to transact with the State of California Local Agency Investment Fund (LAIF). The recommended actions do not remove any names of staff members, and all other resolution provisions remain unchanged to ensure continuity in the City Treasury Management operations. The authorized individuals will be as follows: City Treasurer, Chief Investment/Bond Officer, Assistant City Manager, Executive Director of Finance, and Departmental Administrator (Financial Services Agency).

STAFF MEMBER PRESENTING: Armen Harkalyan, Executive Director of Finance

Prepared by: Jason M. Jacobsen
Department: Financial Services

City Manager Approval:

Submitted to Council/O.H.A. 07/02/2019
Approved:
Continued to:
Denied:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, PROVIDING FOR THE INVESTMENT OF INACTIVE FUNDS IN THE LOCAL AGENCY INVESTMENT FUND OF THE CALIFORNIA STATE TREASURY AND HEREBY RESCINDING RESOLUTION NO. 2019-008.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES HEREBY RESOLVE AND FIND AS FOLLOWS:

SECTION 1. The California State Legislature has, pursuant to Chapter 730 of the Statutes of 1976, Sections 16429.1 et seq., added to the Government Code and created the Local Agency Investment Fund as a special fund in the California State Treasury. The pooling of funds by many California local agencies will create a fund allowing for high rates of return due to the use of large denomination instruments.

SECTION 2. The City of Ontario has money in its treasury not required for immediate needs and it is in the best interest of the city to place said money in approved investments yielding maximum returns.

SECTION 3. The City of Ontario, 303 East "B" Street, Civic Center, Ontario, California 91764-4196, will participate in the Local Agency Investment Fund of the California State Treasury.

SECTION 4. The City of Ontario agrees to deposit or withdraw money in the Local Agency Investment Fund in the California State Treasury in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein.

SECTION 5. The following persons are authorized to order the deposit or withdrawal of money in the Local Agency Investment Fund or their successors.

James R. Milhiser, City Treasurer
Guy A. Boccasile, Deputy City Treasurer
Al C. Boling, Deputy City Treasurer
Armen Harkalyan, Deputy City Treasurer
Jason M. Jacobsen, Deputy City Treasurer

SECTION 6. Resolution No. 2019-008 is hereby rescinded.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of July 2019.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
COLE HUBER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2019- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held July 2, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2019- duly passed and adopted by the Ontario City Council at their regular meeting held July 2, 2019.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE INVESTMENT OF CITY FUNDS AND HEREBY RESCINDING RESOLUTION NO. 2019-009.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES HEREBY RESOLVE AND FIND AS FOLLOWS:

SECTION 1. That the City Treasurer and/or any duly-appointed Deputy City Treasurers whose names appear in this resolution are hereby authorized to open investment accounts for the City of Ontario with any bank, savings and loan association, broker dealer or other financial institution, hereinafter referred to as "broker", to purchase, sell and or deal in such notes, bonds, bills, certificates of indebtedness, warrants or registered warrants and/or other investments as are authorized for general law cities in the State of California by Chapter 4 of Part 1 Division 2 of Title 5 of the Government Code (commencing with section 53600) (hereinafter "authorized investments"), and as limited by the current investment policy of the City Council of the City of Ontario, a copy of which is attached to and made a part of this resolution, and/or such other investment policy which may be adopted by said City Council, and that all orders and instructions, written or oral, which may be given by either the City Treasurer or a duly-appointed Deputy City Treasurer; and each of whom is hereby authorized and directed to purchase, sell and/or deal in authorized investment instruments through said broker on behalf of the City of Ontario, which they may deem necessary or advisable for the City of Ontario for cash and also to make payment and to sign checks or drafts drawn upon the funds of the City of Ontario and also, to withdraw from said broker from time to time, to deliver or accept delivery of, and/or to endorse, and/or to direct the transfer of record title of, all authorized investments, and/or assets or funds that may be carried by said broker for the account of the City of Ontario, and

SECTION 2. That each of the aforesaid officers of the City of Ontario be and hereby authorized and directed to execute and deliver on behalf of the City of Ontario any customer's agreement required by broker and to enter into, execute, and deliver, any and all other agreements, documents, releases, and writings that may be required by said broker for the opening and/or continuing of said account in connection with any transaction relating to said account or to any securities or moneys of the City of Ontario whether or not in said account, provided, however, that no customer's agreement shall authorize investment in other than authorized investments, and

SECTION 3. That until broker shall receive duly written notices of change or rescission of these resolutions, said broker may rely upon the authority contained in this resolution as continuing fully effective, and the said broker may rely upon any certified copy of resolutions, specimen signatures or other writings, signed on behalf of the City of Ontario by any officer thereof; the acceptance of any other form of notice shall not constitute a waiver, of this provision, nor shall the fact that any person hereby empowered ceases to be an officer or becomes an officer under some other title, in any way affect the powers hereby conferred, until broker shall receive due written notice of change or rescission, as aforesaid, and

SECTION 4. That in the event of any change in the office or powers of persons hereby empowered, the City Council shall certify those changes to broker in writing, in the manner herein above specified, which notification, when received, shall be adequate both to terminate the powers of the person theretofore authorized, and to empower the persons thereby substituted, and

SECTION 5. That any and all orders and instructions heretofore given to said broker on behalf of the City of Ontario by any officer of the City of Ontario, are hereby in all respects ratified, confirmed and approved, and

SECTION 6. That the foregoing resolutions and the certificates actually furnished to broker by any officer of the City of Ontario, be and they hereby are made irrevocable, and shall be fully effective as to any transaction for the account of the City of Ontario notwithstanding that the account may have been temporarily closed or inactive, until written notice of the revocation thereof shall have been received by broker.

SECTION 7. That Resolution No. 2019-009 is hereby rescinded.

I DO FURTHER CERTIFY that the following are the signatures and titles of the persons authorized and empowered to act on behalf of the City of Ontario, pursuant to the foregoing resolutions, and this resolution is in accordance with and does not conflict with the existing ordinances and/or resolutions.

James R. Milhiser, City Treasurer

Al C. Boling, Deputy City Treasurer

Guy A. Boccasile, Deputy City Treasurer

Armen Harkalyan, Deputy City Treasurer

Jason M. Jacobsen, Deputy City Treasurer

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of July 2019.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
COLE HUBER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2019- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held July 2, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2019- duly passed and adopted by the Ontario City Council at their regular meeting held July 2, 2019.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR THIRD PARTY LIABILITY CLAIMS ADMINISTRATOR SERVICES

RECOMMENDATION: That the City Council authorize the City Manager to execute a three-year Professional Services Agreement (on file in the Records Management Department) with Carl Warren & Company of Riverside, California, for third party liability claims administration services for an annual amount of $72,235 for the first year and escalation not to exceed 3.2% for each subsequent year.

COUNCIL GOALS: **Operate in a Businesslike Manner**

FISCAL IMPACT: The Adopted Fiscal Year 2019-20 Operating Budget includes appropriations of $72,235 in the Self Insurance Fund for third party administrator (TPA) services for the current fiscal year. By contracting for a three-year term, the City and TPA were able to negotiate a lower escalation rate (3.2% annually) compared to the price rate increases under the current agreement which saw a 3.9% average increase during the past two years. If approved, appropriations future years' services will be added to respective years' budgets for City Council consideration.

BACKGROUND: The City of Ontario operates a self-funded general liability insurance program and requires the services of a TPA to handle the day-to-day operations of the City's liability claims program.

The scope of services for the TPA includes the processing and tracking of liability claims information, arranging investigations, providing notices to claimants, assisting with monitoring litigation, setting and updating reserves, and ensuring reporting requirements are met with the City's excess insurance carrier.

For the past seven years, Carl Warren & Company has demonstrated a consistent value in providing their expertise and services as the City's TPA. Specifically, the depth of experience in managing claims for cities in California, the knowledge and skills of individual staff members and examiners assigned to the City's account, and the proper management of claims information—all of which gives reason to continue the existing operations model using a TPA. The recommended agreement will run through June 30, 2022.

STAFF MEMBER PRESENTING: Angela C. Lopez, Executive Director Human Resources

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Prepared by: Jeannette Chavez
Department: Human Resources

City Manager Approval:

Submitted to Council/O.H.A. 07/02/2019
Approved:
Continued to:
Denied:

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CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: **AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA19-001, REVISING PORTIONS OF ONTARIO DEVELOPMENT CODE CHAPTERS 2 (ADMINISTRATION AND PROCEDURES), 4 (PERMITS ACTIONS AND DECISIONS), 5 (ZONING AND LAND USE), AND 9 (DEFINITIONS AND GLOSSARY), AS THEY APPLY TO WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FACILITIES QUALIFYING AS ELIGIBLE FACILITIES REQUESTS**

RECOMMENDATION: That the City Council consider and adopt an ordinance approving File No. PDCA19-001, a Development Code Amendment revising portions of Ontario Development Code Chapters 2 (Administration and Procedures), 4 (Permits Actions and Decisions), 5 (Zoning and Land Use), and 9 (Definitions and Glossary), as they apply to Wireless Telecommunications Facilities in the public right-of-way and facilities qualifying as Eligible Facilities Requests.

COUNCIL GOALS: **Invest in the Growth and Evolution of the City's Economy**
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: None.

BACKGROUND: On June 18, 2019, the City Council introduced and waived further reading of an ordinance approving the Development Code Amendment. In September 2018, the FCC released its Declaratory Ruling and Third Report and Order directed at the deployment of a nation-wide 5G wireless broadband network utilizing Small Wireless Facilities, or Small Cell Sites. This Order has required that the City initiate a Development Code Amendment to revise the City's current regulations governing Wireless Telecommunications Facilities, as contained in Development Code Chapters 2

STAFF MEMBER PRESENTING: Scott Murphy, AICP, Executive Director Development Agency

Prepared by:	Charles Mercier	Submitted to Council/O.H.A.	07/02/2019
Department:	Planning	Approved:	
		Continued to:	
City Manager Approval:		Denied:	

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(Administration and Procedures), 4 (Permits Actions and Decisions), 5 (Zoning and Land Use), and 9 (Definitions and Glossary).

Additionally, in 2014, the FCC adopted wireless infrastructure orders pertaining to the processing of alterations, expansions and collocations to existing macrocell facilities, such as towers and base stations (identified by this Development Code Amendment as "Eligible Facilities Requests"). Staff has been processing wireless applications consistent with the 2014 FCC orders and is taking this opportunity to bring the City's Wireless Telecommunications Facilities provisions into full consistency with the orders.

The 2018 FCC orders extend to the City's terms for granting access and use of its rights-of-way, including areas on, below, or above public streets, sidewalks, and other similar property. It also addresses terms for use of, or attachment to, City-owned property installed within its rights-of-way, such as light poles, traffic lights, and utility poles; establishes new shot clocks (the timeframes in which the City must act on wireless facilities applications) for action on wireless facilities; and provides guidance on the adoption of aesthetic requirements.

Consistent with FCC orders, staff is recommending several changes to the Development Code, generally described as follows:

- Add several pertinent definitions;
- Establish an approval process for wireless facilities proposed in the public right-of-way;
- Establish "Wireless Permits," which are processed as a Development Plan that is subject to Zoning Administrator approval;
- Wireless Permit approval is required for facilities qualifying as Eligible Facilities Requests (EFRs) or any other type of wireless facility allowed in the public right-of-way by state or federal law;
- Add appeal procedures for Wireless Permits: The Zoning Administrator's decision may be appealed to the Planning Commission and the appeal must be filed within two days following issuance of the Zoning Administrator's written decision;
- No public hearing would be required to act on a Wireless Permit or the appeal of a Wireless Permit; and
- All wireless facilities in the public right-of-way and facilities qualifying as EFRs would be subject to design standards and guidelines published and amended, from time to time, by the Zoning Administrator.

FCC orders pertaining to the shot clocks and deployment of wireless facilities in public rights-of-way became effective on January 14, 2019. However, additional time was granted to allow localities time to establish and publish aesthetic standards. Staff is currently preparing design standards and guidelines for wireless facilities located in the public right-of-way. Upon approval and enactment of the proposed Development Code Amendment, the design standards and guidelines will be subject to review and approval by the Zoning Administrator.

The Planning Commission conducted a public hearing to consider the proposed Development Code Amendment on February 26, 2019, and voted unanimously (6-0) to issue a resolution recommending the City Council approve the project. However, following the Planning Commission's action, at the recommendation of the City Attorney, staff made several changes to the proposed Development Code Amendment. On May 28, 2019, the Planning Commission considered the revised Development Code

Amendment and unanimously (6-0) approved a new resolution recommending the City Council approve the project.

ENVIRONMENTAL REVIEW: The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

PLANNING COMMISSION STAFF REPORT

May 28, 2019

FILE NO.: PDCA19-001

SUBJECT: A Development Code Amendment revising portions of Ontario Development Code Chapters 2 (Administration and Procedures), 4 (Permits Actions and Decisions), 5 (Zoning and Land Use), and 9 (Definitions and Glossary), as they apply to Wireless Telecommunications Facilities in the public right-of-way and facilities qualifying as Eligible Facilities Requests.

PROPERTY OWNER: N/A

RECOMMENDED ACTION: That the Planning Commission recommend that the City Council approve File No. PDCA19-001, as amended, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT SETTING: The proposed Development Code Amendment is of Citywide impact, affecting approximately 50 square miles (31,789 acres) of land, which is generally bordered by Benson Avenue and Euclid Avenue on the west; Interstate 10 Freeway, Eighth Street, and Fourth Street on the north; Etiwanda Avenue and Hamner Avenue on the east; and Merrill Avenue and the San Bernardino County/Riverside County boundary on the south (see Figure 1—Location Map, below). The City of Ontario is substantially built-out with residential, commercial, industrial, agricultural, airport, institutional/public, and recreational land uses. According to the California Department of Finance, the City of Ontario's 2018 estimated population is 177,589 persons, and it is ranked the 26th largest city in the State in terms of population.

Figure 1—LOCATION MAP

PROJECT ANALYSIS: On February 26, 2019, the Planning Commission voted unanimously to issue a resolution recommending the City Council approve a Development Code Amendment, File No. PDCA19-001, revising Development Code Section 5.03.420.A.1 for the purpose of adding provisions governing small cell wireless facilities and the alteration and/or expansion of existing wireless telecommunications facilities, consistent with published FCC Orders. Following the Planning Commission's action, at the recommendation

Case Planner:	Charles Mercier
Planning Director Approval:	Cally
Submittal Date:	N/A

Hearing Body	*Date*	*Decision*	*Action*
PC	5/28/2019	Approval	Recommend
CC	6/18/2019		Introduction
CC	7/2/2019		Final

of the City Attorney, Staff made several substantive changes and adjustments to the Development Code Amendment and is now bringing the revised Development Code Amendment back to the Planning Commission for review and action.

As previously reviewed by the Planning Commission, the Development Code Amendment was narrow in its scope, adding provisions governing only the design and placement of small cell wireless facilities within public rights-of-way, and the alteration or expansion of existing wireless telecommunications facilities (Eligible Facilities Requests). The changes proposed by Staff consist of the following:

- Establishes relevant definitions;
- Scope is expanded to address all wireless telecommunications facilities located in public rights-of-way and Eligible Facilities Requests (EFRs);
- Establishes "Wireless Permits," which are processed as a Development Plan and are subject to Zoning Administrator approval;
- Wireless Permit approval is required for facilities qualifying as EFRs, or any other type of wireless telecommunications facility expressly allowed in the public right-of-way by state or federal law;
- The Zoning Administrator's decision on a Wireless Permit may be appealed to the Planning Commission. An appeal must be filed within two days following issuance of the Zoning Administrator's written decision;
- No public hearing is required to act on a Wireless Permit, or the appeal of a Wireless Permit;
- All wireless telecommunications facilities located in public rights-of-way and facilities qualifying as EFRs are subject to Location Criteria, and Design and Development Standards published and amended, from time to time, by the Zoning Administrator. The Location Criteria, and Design and Development Standards will address the following:

[1] Design and development standards for all wireless facilities in the public right-of-way, including:

- Visual Criteria (such as minimizing view impacts to surrounding properties, compatibility with support structure and surroundings, height limitations, coloring, materials, and equipment stealthing);
- Location Criteria (includes preferred and discouraged locations, prohibited locations, design preferences, and setback requirements);
- Equipment Criteria (for antennas, accessory equipment, electric service, and cables and wiring);
- Security;
- Safety;
- Noise;
- Lighting;
- Signs;
- Landscaping; and
- Modifications to Existing Facilities.

[2] Design and development standards for pole-mounted facilities, including:

- General Requirements (such as maximum dimension of pole-mounted equipment, antenna placement, accessory equipment placement, cable placement, maximum antenna height, and owner authorization);
- Standards for Street Light/Traffic Signal Poles (equipment placement);
- Standards for Utility Poles (equipment placement);
- Standards for Replacement Poles (placement and design); and
- Standards for New Poles (placement and design, and prohibition of new wooden poles).

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). More specifically, the goals and policies of TOP that are furthered by the proposed project are as follows:

[1] City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Maintain the Current High Level of Public Safety
- Operate in a Businesslike Manner
- Pursue City's Goals and Objectives by Working with Other Governmental Agencies
- Focus Resources in Ontario's Commercial and Residential Neighborhoods

[2] Governance.

Decision Making:

- Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.

  - G1-2 Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision

[3] Policy Plan (General Plan)

Land Use Element:

- Goal LU1: A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

- LU1-1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, and foster the development of transit.

- LU1-2 Sustainable Community Strategy. We integrate state, regional and local Sustainable Community/Smart Growth principles into the development and entitlement process.

- Goal LU2: Compatibility between a wide range of uses.

- LU2-6: Infrastructure Compatibility: We require infrastructure to be aesthetically pleasing and in context with the community character.

Community Economics Element:

- Goal CE1: A complete community that provides for all incomes and stages of life.

- CE1-5 Business Attraction. We proactively attract new and expanding businesses to Ontario in order to increase the City's share of growing sectors of the regional and global economy.

- Goal CE2: A City of distinctive neighborhoods, districts, and corridors, where people choose to be.

- CE2-4 Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

- CE2-5 Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

Community Design Element:

- Goal CD1: A dynamic, progressive city containing distinct neighborhoods and commercial districts that foster a positive sense of identity and belonging among residents, visitors, and businesses.

- CD1-1 City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing the diverse character of our existing viable neighborhoods.

- CD1-2 Growth Areas. We require development in growth areas to be distinctive and unique places within which there are cohesive design themes.

- Goal CD3: Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

  - CD3-4 Ground Floor Usage of Commercial Buildings. We create lively pedestrian streetscapes by requiring the location of uses, such as shopping, galleries, restaurants, etc., on ground floors adjacent to sidewalks.

- Goal CD5: A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.

  - CD5-1 Maintenance of Buildings and Property. We require all public and privately owned buildings and property (including trails and easements) to be properly and consistently maintained.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The project affects properties located within the Airport Influence Area of the Ontario International Airport, and has been found to be consistent with the policies and criteria set forth within the Ontario International Airport Land Use Compatibility Plan.

ENVIRONMENTAL REVIEW: The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

RESOLUTION NO. PC19-034

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PDCA19-001, A DEVELOPMENT CODE AMENDMENT REVISING PORTIONS OF ONTARIO DEVELOPMENT CODE CHAPTERS 2 (ADMINISTRATION AND PROCEDURES), 4 (PERMITS ACTIONS AND DECISIONS), 5 (ZONING AND LAND USE), AND 9 (DEFINITIONS AND GLOSSARY), AS THEY APPLY TO WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FACILITIES QUALIFYING AS ELIGIBLE FACILITIES REQUESTS, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario ("Applicant") has initiated a Development Code Amendment, File No. PDCA19-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, in September 2018, the Federal Communications Commission (“FCC”) adopted rules regarding the deployment of Wireless Telecommunication Facilities within public rights-of-way. The FCC’s rulemaking extends to the City’s terms for access and use of its rights-of-way, including areas on, below, or above public roadways, highways, streets, sidewalks, and other similar property. It also addresses terms for use of, or attachment to, City-owned property installed within its rights-of-way, such as light poles, traffic lights, utility poles, and other similar property suitable for hosting wireless facilities; and

WHEREAS, the FCC’s declaratory ruling focuses primarily on fees the City may charge for authorization to deploy small cells. However, it also establishes new shot clocks for action on small cells, establishes a new remedy for missed shot clocks, and codifies shot clocks previously established by the FCC’s 2014 Wireless Infrastructure Order, which are applicable to collocations on existing wireless facilities and other types of modification to existing wireless facilities that meet certain size limitations (Eligible Facilities Requests); and

WHEREAS, the FCC’s declaratory ruling provides guidance on aesthetic requirements, concluding that they are not preempted if they are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; and (3) objective and published in advance. Aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to advoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible; and

WHEREAS, revisions have been proposed to the Development Code provisions pertaining to wireless telecommunications facilities that are consistent with the FCC's declaratory ruling; and

WHEREAS, the proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendation to the City Council on the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan, which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written

and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense (general rule) exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment; and

(2) The proposed Development Code Amendment will not have a significant effect on the environment, and is not, therefore, subject to CEQA.

SECTION 3: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as "ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan. The proposed standards under which wireless telecommunications facilities located in public rights-of-way and Eligible Facilities

Requests will be required to be constructed and maintained have been reviewed for consistency with applicable TOP components, and have been established so as to be consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan; and

(2) The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City, as the proposed Development Code Amendment will revise current land use provisions addressing wireless telecommunications facilities, bringing City standards into consistency with recently adopted FCC orders by adding provisions governing the installation of wireless telecommunications facilities within public rights-of-way, as-well-as adding provisions that govern Eligible Facilities Requests.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby RECOMMENDS THAT THE CITY COUNCIL APPROVE the herein described Development Code Amendment, as shown in "Attachment A" of this Resolution, and incorporated herein by this reference.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2019, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Jim Willoughby
Planning Commission Chairman

ATTEST:

Cathy Wahlstrom
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC19-034, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2019, by the following roll call vote, to wit:

AYES: DeDiemar, Downs, Gage, Gregorek, Reyes, Willoughby

NOES: None

ABSENT: None

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDCA19-001
Development Code Amendment
Draft Ordinance

Please Note: All additions to existing Development Code text are shown in yellow highlighted text and all deletions are shown in ~~red strikethrough~~ text.

(The draft ordinance follows this page)

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA19-001, A DEVELOPMENT CODE AMENDMENT REVISING PORTIONS OF ONTARIO DEVELOPMENT CODE CHAPTERS 2 (ADMINISTRATION AND PROCEDURES), 4 (PERMITS ACTIONS AND DECISIONS), 5 (ZONING AND LAND USE), AND 9 (DEFINITIONS AND GLOSSARY), AS THEY APPLY TO WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FACILITIES QUALIFYING AS ELIGIBLE FACILITIES REQUESTS, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario, California, a municipal corporation ("City"), has initiated a Development Code Amendment, File No. PDCA19-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, by virtue of the police powers delegated to it by the California Constitution, the City has the authority to enact laws which promote the public health, safety, and general welfare of its citizens, including within the public right-of-way; and

WHEREAS, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

WHEREAS, on February 26, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue a resolution recommending the City Council approve the Application. Following the Planning Commission's action, at the recommendation of the City Attorney, several substantive changes and adjustments were made to the Development Code Amendment. On May 28, 2019, the Planning Commission conducted a public hearing to consider the revised Development Code Amendment, and concluded said hearing on that date, voting to issue a resolution recommending the City Council approve the Application; and

WHEREAS, on June 4, 2019, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1: The foregoing Recitals are adopted as findings of the City Council as though set forth in fully within the body of this Ordinance.

SECTION 2: ***Development Code Amendment.*** Section 9.02.010.E (Definitions of Words Beginning with the Letter "E") of the Development Code is amended to add the following definition in correct alphanumeric order:

"**Eligible Facilities Request.** Has meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision."

SECTION 3: ***Development Code Amendment.*** Section 9.02.010.P (Definitions of Words Beginning with the Letter "P") of the Development Code is amended to add the following definition:

"**Public Right-of-Way.** Any public street, alley, sidewalk, street island, median, or parkway that is owned or granted by easement, operated, or controlled by the City."

SECTION 4: ***Development Code Amendment.*** Section 9.02.010.S (Definitions of Words Beginning with the Letter "S") of the Development Code is amended to add the following definition:

"**Small Cell Facility.** Has the same meaning as "small wireless facility" in 47 CFR 1.6002(l), or any successor provision, which is a personal wireless services facility that meets the conditions that, solely for convenience, have been set forth below.

1) The facility:

a) is mounted on a structure 50 FT or less in height, including antennas, as defined in 47 CFR Section 1.1320(d), or

b) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

c) does not extend an existing structure on which it is located, to a height of more than 50 FT or by more than 10 percent, whichever is greater;

2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR Section 1.1320(d)), is no more than 3 cubic feet in volume;

3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

4) The facility does not require antenna structure registration under 47 CFR Part 17;

5) The facility is not located on Tribal lands, as defined under 36 CFR Section 800.16(x); and

6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR Section 1.1307(b)."

SECTION 5: ***Development Code Amendment.*** Section 9.02.010.W (Definitions of Words Beginning with the Letter "W") of the Development Code is amended to add the following definition:

"**Wireless Telecommunications Facility.** The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s)."

SECTION 6: ***Development Code Amendment.*** The City Development Code Chapter 5 is hereby amended as set forth in Exhibit A, attached hereto.

SECTION 7: ***Development Code Amendment.*** The City Development Code Chapter 4 is hereby amended as set forth in Exhibit B, attached hereto.

SECTION 8: ***Development Code Amendment.*** The City Development Code Chapter 2 is hereby amended as set forth in Exhibit C, attached hereto.

SECTION 9: **Ordinance Implementation.** The City Manager, or his or her delegate, is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 10: ***Environmental Determination.*** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines Section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the common sense exemption (general rule) that CEQA applies only to projects that have the potential for causing a significant effect on the environment. (State CEQA Guidelines Section 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of

the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino within five working days of the passage and adoption of the Ordinance.

SECTION 11: ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The adoption of this Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Furthermore, when and if an application for installation is submitted, the City will at that time conduct a review of the application in accordance with the ALUCP.

SECTION 12: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 3, above, the City Council hereby concludes as follows:

(3) *The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.* The proposed standards under which wireless telecommunications facilities within public rights-of-way and additions/expansion to existing wireless facilities will be required to be constructed and maintained have been reviewed for consistency with applicable TOP components, and have been established so as to be consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.

(4) *The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.* The proposed Development Code Amendment will amend current land use provisions addressing wireless telecommunications facilities, bringing City standards into consistency with recently adopted FCC orders by adding provisions governing the installation of wireless facilities within public rights-of-way, as-well-as adding provisions that govern the processing of alterations and/or expansions to existing wireless telecommunications facilities.

SECTION 13: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Code Amendment.

SECTION 14: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any

claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 15: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 16: ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 17: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 18: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2019.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

5.03.420: Wireless Telecommunications Facilities.

The following regulations shall govern the establishment and operation of wireless telecommunications facilities:

A. Review of Wireless Telecommunications Facilities. All applications for wireless telecommunication facilities are subject to a 3-tier review process established by this Section. The Planning Director shall have the discretion to determine the design and level of review requirements for projects proposed in specific plan areas, based upon the similarity of the specific plan's land use designation to the citywide zoning districts.

1. Tier 1 Review. Applications for wireless telecommunications facilities that propose an integrated building/structure design or a roof-mounted design that is less than 10 FT in height, is architecturally screened from view, and is located within a nonresidential zoning district, shall be reviewed and acted upon utilizing the Building Department's plan check review process.

2. Tier 2 Review.

a. A proposed wireless telecommunications facility meeting each of the following criteria shall require Development Plan approval pursuant to Section 4.02.025 (Development Plans) of this Development Code:

(1) The facility is located within a commercial, nonresidential zoning district;

(2) The facility is more than 500 FT from a residential zoning district, as measured in a straight line from any point along the outer boundaries of the property containing the wireless telecommunications facility;

(3) The facility complies with all development standards of this Section and the applicable zoning district;

(4) The facility is of a stealth design so as not to be recognized as a telecommunications facility; and

(5) All support equipment to the proposed facility is located within a completely enclosed structure or is otherwise screened from public view.

b. A new wireless telecommunications facility proposed within a nonresidential zoning district, which is to be collocated with an existing wireless telecommunications facility, and complies with all development standards of this Section

and the applicable zoning district, shall be reviewed and acted upon by the Development Advisory Board.

c. A proposed wireless telecommunications facility located in the public right-of-way shall require Development Plan approval pursuant to Section 4.02.025 (Development Plans) of this Development Code. Except for small cell facilities, facilities qualifying as Eligible Facilities Requests (EFRs), or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless telecommunications facilities shall be permitted in the public right-of-way.

d. EFRs shall require Development Plan approval pursuant to Section 4.02.025 of this Development Code.

3. Tier 3 Review. A proposed wireless telecommunications facility meeting one or more of the following criteria shall require Development Plan approval pursuant to Section 4.02.035 (Development Plans) and special public notification pursuant to Division 2.03 (Public Hearings) of this Development Code:

a. Wireless telecommunications facilities not meeting the above-stated Tier 1 or Tier 2 review criteria;

b. Wireless telecommunications facilities located within, or 500 FT or less from (as measured in a straight line from any point along the outer boundaries of the property containing the wireless telecommunications facility), a residentially zoned property;

c. All nonstealth wireless telecommunications facilities;

d. Wireless telecommunications facilities proposed in the AG overlay district, excepting those facilities meeting the above-stated Tier 1 review criteria;

e. Wireless telecommunications facilities creating more than a minimal visual impact on surroundings, as determined by the Planning Director. In determining whether more than a minimal visual impact exists, the Planning Director shall consider the facility's location and size, the view of the facility from the public street and neighboring properties, and the contrast between the facility and other external structural equipment. The applicant may be required to perform tests that would replicate the height of a proposed facility in order to adequately assess potential visual impacts;

f. Wireless telecommunications facilities located within line-of-sight of any scenic corridor identified by the Policy Plan component of The Ontario Plan; and

g. Wireless telecommunications facilities that include a request for an increase in height, which exceeds the maximum height provisions established by Paragraph E.5 of this Section. The Reviewing Authority may consider an increase in height if the strict application of Paragraph E.5 of this Section would result in a provider

of wireless telecommunications services not being able to provide adequate coverage to a service area due to practical difficulties beyond the control of the service provider. The service provider shall clearly demonstrate the nature of the problem, and that no other feasible alternative is available to provide adequate coverage.

B. Additional Submittal Requirements.

1. In addition to the general submittal requirements for plan checks, Development Plans, and/or Conditional Use Permits contained in the *Minimum Filing Requirements Checklist* of the City's *Discretionary Permits/Actions Application Packet*, all applications for wireless telecommunication facility approval must include the additional information required by the *Plan Preparation Guidelines and Minimum Plan Contents Checklist* of the *Discretionary Permits/Actions Application Packet* or any additional application materials issued by the City.

2. The City may contract with an independent radio frequency engineering consultant, or other qualified professional with knowledge and expertise regarding wireless telecommunication systems, to verify applicant's technical assertions. Such verification may include, but is not limited to, issues related to transmission coverage requirements, required height of facilities, technical limitations related to co-locating facilities, evaluation of new technologies that are available and the potential for interference with other facilities, such as public safety radio communications systems. All costs associated with verification shall be borne by the applicant.

C. Performance Standards for Wireless Telecommunications Facilities. The operator of a wireless telecommunications facility and/or the owner of the property upon which the facility is located is responsible for compliance with the following:

1. No existing or future wireless telecommunications facility shall interfere with any public safety radio communications system including, but not limited to, the 800 MHz radio system operated by the West End Communication Authority (WECA), which provides public safety communications during emergencies and natural disasters. Pursuant to GC Section 38771, a violation of this standard constitutes a public nuisance.

2. If any wireless telecommunications facility is found to interfere with a public safety radio communications system, or any system facilitating the transmission or relay of voice or data information for public safety, the carrier and/or property owner shall immediately cease operation of the radio channel(s) causing system interference. Operation of an offending wireless telecommunications facility shall only be allowed to resume upon removal, or other resolution, of the interference, to the satisfaction of the City. Any request for an increase in antenna height that would exceed the maximum height provisions established by Paragraph E.6 of this Section in order to resolve interference conflicts with a public safety radio communications system, shall only be considered by the City after the facility operator and/or property owner have sufficiently demonstrated that all feasible methods of eliminating the conflict have been considered.

3. A wireless telecommunications facility, including poles, antennas, materials used to camouflage or stealth the facility, and equipment buildings and enclosures, shall be maintained in a manner so as to ensure that the facility will maintain its original appearance. In the event that over time, with exposure to wind, rain, sunlight, etc., any part of the facility begins to flake, pit, fade, discolor, disintegrate, or otherwise not maintain its original appearance as initially constructed, as determined by the Planning Director, it shall be repaired/replaced at the sole expense of the carrier.

4. The inspection and approval of a wireless telecommunications facility must be received from the Planning Department prior to Building Department final inspection and the establishment/release of permanent electrical power to the facility.

5. Wireless telecommunications facilities, including landscaping and surface areas, shall be continuously maintained free of weeds, debris, litter and temporary signage. All graffiti shall be removed from the premises within 48 hours of discovery.

D. Location Guidelines and Criteria. All applications for wireless telecommunications facilities are subject to the ~~following~~ location guidelines and criteria listed below. Wireless telecommunications facilities located in the public right-of-way and facilities qualifying as EFRs are subject to the location criteria, and design and development standards published and amended, from time to time, by the Zoning Administrator.

1. The preferred order of location for wireless telecommunications facilities is: industrial zoning districts, followed by commercial zoning districts, and then residential zoning districts. If proposed within an established specific plan area, the preferred order of location is: industrial land use districts, followed by business park land use districts, and then commercial land use districts.

2. Wireless communications facilities located within residential zoning districts shall only be allowed in conjunction with a non-residential land use, such as a church, fire station, park, or school, or a multiple-family building or structure.

3. Wireless telecommunications facilities may be located in close proximity to each other; provided, they utilize a stealth design, meet the height requirements of this Section, and are compatible with surrounding development. Wireless telecommunication facilities that are nonstealth in design shall be located a minimum of 1,000 FT from any other nonstealth wireless telecommunication facility, as measured in a straight line from any point along the outer boundaries of the property containing the wireless telecommunications facility.

4. Wireless telecommunication facilities shall not be located within any front or street side setback area.

5. Wireless telecommunications facilities shall not be located so as to create a nonconforming condition, such as reductions in parking, landscaping, loading zones or other applicable development standards.

6. Wireless telecommunications facilities shall be located where existing vegetation, structures, and/or topography provide the greatest amount of screening. Where insufficient screening exists, additional screening shall be provided through the installation of dense landscaping, installation of enhanced architectural treatments, or relocation of the facility so that the massing of existing buildings or vegetation will provide adequate screening. Support structures shall be constructed of galvanized steel and painted an unobtrusive color to neutralize and blend with surroundings, or be of a stealth design.

E. Development Standards. It is a goal of the City that wireless telecommunications facilities be developed in harmony with the surrounding environment so as to be as unobtrusive as possible. This is especially true when located in visually prominent locations (e.g., along major thorough-fares, at entry points into the City, near high activity areas, etc.). The ~~following~~ guidelines ~~listed below~~ are intended to ensure that the design of wireless telecommunications facilities are compatible with the community. The guidelines below do not apply to wireless telecommunications facilities in the public right-of-way or facilities qualifying as EFRs, which are subject to the design and development standards published and amended, from time to time, by the Zoning Administrator.

1. Wireless telecommunications facilities should:

a. Be collocated with another facility, where possible;

b. Be stealth in design, or building/structure or roof-mounted as an integral architectural element on an existing structure; and

c. Utilize state-of-the-art wireless technology.

2. Wireless telecommunications facilities shall meet all applicable zoning and setback regulations of the zoning district in which they are located.

3. Wireless telecommunications facilities shall be installed and maintained in full compliance with all Federal, State and local codes and standards.

4. All proposed nonstealth facilities shall be designed to accommodate co-location of 2 or more service providers. To the extent possible, stealth facilities shall also be designed to accommodate co-location of facilities.

5. The height of wireless telecommunications facility support structures shall be the minimum necessary to provide adequate user coverage; however, an antenna or its support structure shall not exceed the maximum allowed height for wireless telecommunications facilities set forth below, except as provided for in Subparagraph

A.3.f of this Section. The height of stealth design “tree” monopoles shall be measured to the top of the antenna arrays, with the branches/fronds extending above antenna arrays, to create a natural appearance.

6. The maximum height for wireless telecommunications facilities shall be as follows:

a. Freestanding single-carrier facilities shall not exceed 55 FT in height;

b. Freestanding collocated facilities (two or more carriers) shall not exceed 75 FT within the IL (Light Industrial), IG (General Industrial), and IH (Heavy Industrial) zoning districts, and 65 FT in height within all other zoning districts; and

c. Roof-mounted or building-mounted facilities shall not exceed 10 FT above the height of the building.

7. Prior to the issuance of a building permit for a wireless telecommunications facility, the carrier shall submit a Federal Aviation Administration determination for the proposed facility. Safety lighting or colors, if prescribed by the City or other approving agency, such as the Federal Aviation Administration, may be required for support structures.

8. Wireless communications facilities located within residential zoning districts shall be of stealth design.

9. All accessory equipment associated with the wireless telecommunications facility shall be screened from public view by a decorative fence, wall, landscaping, berming or a combination thereof, or shall be located within a building, enclosure or underground vault, which is designed, colored and textured to match the architecture of adjacent buildings or blend in with surrounding development.

10. All utilities associated with wireless telecommunications facilities shall be undergrounded. Cable connections from equipment structures to any antennae shall not be visible by the public.

11. The design of stealth wireless telecommunications facilities shall be compatible with the surrounding neighborhood. Stealth designs include building mounted designs and freestanding designs. Examples of building mounted designs include architecturally screened roof mounted facilities, facilities attached to a building/structure, bell towers, clock towers, or steeples, installation behind false windows, or other types of architectural features that are designed to camouflage the facility and are integrated into the building design. Examples of stealth freestanding wireless telecommunications facilities include facilities that are camouflaged as freestanding signage, flagpoles, light poles, or "tree" monopoles (such as “monopalms” and “monopines”) that are blended with groupings of real trees. The use of “monopalms” should not be the default design if no other live palms are within the immediate surroundings. Wireless telecommunications

facilities may be designed as, or within, a piece of public art or a historical monument for public benefit.

12. The use of whip and/or microwave dish antennas shall be permitted only if integrated into the design of a structure and/or if fully screened from public view.

13. Chainlink fencing is not permitted for containment of wireless telecommunications facilities, unless the fencing is located in the rear portion of property, is not visible from a public area, and is installed with tennis court screening material on all exterior sides of the fence.

14. The use of lattice-type towers shall not be permitted within the City.

15. Planning Department approval must be received prior to any modification or addition to any existing wireless telecommunications facility.

16. Stealth wireless telecommunications facilities utilizing a flagpole monopole design shall comply with the following:

a. The flag to be placed on the flagpole monopole shall be proportionate in size to the height and diameter of the pole, and shall be maintained at all times and replaced when needed due to weathering, as determined necessary by the Planning Director.

b. Only the National, State, County or City flags shall be flown on the flagpole. A flag shall be flown on the flagpole at all times, which shall be properly lighted.

c. Covers concealing antenna arrays shall be painted to match the flagpole.

17. Stealth wireless telecommunications facilities utilizing a monopine design shall comply with the following:

a. The branch count shall be a minimum of 3 branches per lineal FT of trunk height. Branches shall be randomly dispersed and of differing lengths to provide a natural appearance.

b. Simulated bark shall extend the entire length of the pole (trunk), or the branch count shall be increased so that the pole is not visible.

c. Branches and foliage shall extend beyond an antenna array a minimum of 2 FT horizontally and 7 FT vertically, in order to adequately camouflage the array, antennas and bracketry. In addition, antennas and supporting bracketry shall be wrapped in artificial pine foliage.

d. The size and spread of antenna arrays shall be the minimum necessary to ensure that they are adequately camouflaged.

e. A minimum of 2 live pine trees shall be planted for each proposed monopine, which shall have the same growth habit as the pine tree being simulated by the monopine, and shall be in scale with the height of the monopine. The pine trees may be planted adjacent to the proposed monopine, or elsewhere on the site as deemed appropriate by the Planning Director.

18. Stealth wireless telecommunications facilities utilizing a monopalm design shall comply with the following:

a. All antennas shall be fully concealed within a “pineapple ball” (also referred to as “growth ball” or “terminal bud ball”) located at the end of the trunk. Furthermore, all wires and connectors shall be fully concealed within the trunk, and all unused ports (for co- location) shall have covers installed.

b. Simulated bark shall extend the entire height of the pole (trunk).

c. A minimum of 2 live palm trees shall be planted for each proposed monopalm, which shall have the same growth habit as the type of palm tree being simulated by the monopalm, and shall be in scale with the height of the monopalm. The palm trees may be planted adjacent to the proposed monopalm, or elsewhere on the site as deemed appropriate by the Planning Director.

19. A sign measuring 2 FT high by 2 FT wide shall be posted at the exterior entrance of wireless telecommunications facilities, and clearly visible to the public, identifying the carrier(s) and contact telephone number(s) for reporting emergency and maintenance issues.

Exhibit B

4.02.025: Development Plans.

A. Purpose. The purpose of this Section is to:

1. Establish a review process whereby the integrity and character of the physical fabric of the City will be protected in a manner consistent with the goals and policies of The Ontario Plan. This is ensured through the review of:

a. The suitability of building location;

b. Location and design of off-street parking and loading facilities;

c. Location, design and dedication of streets and alleys (public and private facilities);

d. Location and design of pedestrian and vehicular entrances and exits;

e. Location, design, materials and colors of walls and fences;

f. Location, design, size and type of landscaping (public and private facilities);

g. Location, design and materials of hardscape areas, such as patios, sidewalks and walkways (public and private facilities);

h. Drainage and off-site improvements (public and private facilities);

i. Compatibility with the surrounding area;

j. Exterior building architectural design, materials and colors;

k. Quality of proposed design and construction;

l. Location, type, design, colors, and materials of signs; and

m. Any conditions affecting the public health, safety, welfare, and general aesthetic of the community.

2. Protect and preserve the value of properties and to encourage high quality development throughout the City, whereas adverse effects would otherwise result from excessive uniformity, dissimilarity, poor exterior quality and appearance of buildings and structures; inadequate and poorly planned landscaping; and failure to preserve, where feasible, natural landscape features, and open spaces.

3. Recognize the interdependence of land values and aesthetics, and to provide a method to implement this interdependence in order to maintain the values of surrounding properties and improvements consistent with The Ontario Plan, with due regard to the public and private interests involved.

4. Ensure that the public benefits derived from expenditures of public funds for improvement and beautification of streets and public facilities are protected by the exercise of reasonable controls over the character and design of private buildings, structures, parking and loading facilities, landscaped areas, recreation amenities and open spaces.

5. Ensure the design of landscaping and irrigation that shades parking facilities and other paved areas, buffers or screens undesirable views and compliments building architecture and overall site design.

6. Ensure reasonable controls over the character, design and location of signs, and the appropriate use of well-designed signs that complement the architecture of surrounding buildings, while considering the public and private interests involved and the exercise of control over the undesirable use of excessive signage.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Development Plan application, and to impose reasonable conditions upon a Development Plan approval.

2. Development Plan approval shall be required for the physical alteration of a lot, the construction of a building, or the addition or significant alteration of an existing building, as follows:

a. The development of 3 or more dwelling units on a single lot;

b. The development of 5 or more lots within a residential subdivision;

c. The development of 5 or more dwelling units, regardless of the number of lots involved;

d. The development of a nonresidential building within a residential zoning district, or an addition thereto, which is in excess of 25 percent of the original structure GFA or 500 SF (cumulative), whichever is less;

e. The development of a vacant lot within a nonresidential zoning district;

f. The conversion of a commercial structure to a residential structure, or conversion of a residential structure to a commercial structure;

g. The remodel of, or addition to, an existing nonresidential building, which results in an overall change in the architectural integrity, as determined by the Planning Director;

h. The remodel of, or addition to, a nonresidential building, which would result in the demolition and replacement/reconstruction of more than 50 percent of the existing building;

i. The conversion of a gasoline or fueling station to facilitate another allowed land use (see standards contained in Subsection 5.03.040,C (Conversion of Gasoline and Fueling Stations) of this Development Code);

j. An addition to an institutional facility (including religious assembly and places of worship, government services, healthcare services, and educational services), which is in excess of 25 percent of the original structure GFA or 500 SF (cumulative), whichever is less;

k. The development of a permanent building within the CIV, OS-R, OS-C, or UC zoning district, which is in excess of 500 SF of GFA (cumulative), or an addition thereto, which is in excess of 25 percent of the original structure GFA or 500 SF (cumulative), whichever is less;

l. The development of a permanent building within the AG zoning district, which is in excess of 5,000 SF of GFA (cumulative), or an addition thereto, which is in excess of 25 percent of the original structure GFA or 5,000 SF (cumulative), whichever is ss;

m. The relocation (move-on) of a building within any zoning district;

n. The addition of dwelling units to a multiple-family residential development project, when such addition would result in 3 or more dwelling units on a single lot after the addition;

o. An addition to a previously developed site within a commercial zoning district, which does not exceed 25 percent of the original structure GFA or 2,000 SF (cumulative), whichever is less;

p. An addition to a previously developed site within an industrial zoning district, which does not exceed 25 percent of the original structure GFA or 10,000 SF (cumulative), whichever is less;

q. A Tier 2 or Tier 3 wireless telecommunications facility pursuant to Section 5.03.420 (Wireless Telecommunications Facilities) of this Development Code; and

r. Other projects, which, in the opinion of the Planning Director, require such level of review prior to issuance of a building permit, due to the size, nature and/or complexity of the project, or because the project could cause significant environmental impacts or generate significant neighborhood opposition or controversy.

3. A Development Plan shall remain in effect for the life of the affected development project, which shall be developed and maintained in substantial conformance with the plans as approved by the Approving Authority, and maintained on file with the City.

C. Application Filing, Processing and Hearing. A Development Plan application, except for wireless telecommunications facilities in the public right-of-way and facilities qualifying as Eligible Facilities Requests (EFRs), shall be filed, processed and heard pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section. Applications to install wireless telecommunications facilities in the public right-of-way and for facilities qualifying as EFRs shall be filed and processed pursuant to the following:

1. Scope. There shall be a type of permit entitled a "Wireless Permit," which shall be subject to all of the requirements of this Section. Unless exempted, every person who desires to place a wireless telecommunications facility in the public right-of-way, modify an existing wireless telecommunications facility in the public right-of-way, or perform work as part of an EFR must obtain a Wireless Permit authorizing the placement or modification in accordance with this Section. Except for small cell facilities, facilities qualifying as EFRs, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless telecommunications facilities shall be permitted pursuant to this Section.

2. Approving Authority. The Zoning Administrator is the approving authority for wireless telecommunications facilities in the public right-of-way and facilities qualifying as EFRs.

3. Application Submittal. Applications shall be submitted on a City application form issued and amended, from time-to-time, by the Zoning Administrator.

4. Review and Action.

a. The Zoning Administrator shall review the application and then approve, approve in modified form, or deny the application. The decision of the Approving Authority shall be final and conclusive in the absence of an appeal filed pursuant to Paragraph C.5 (Appeals), below.

b. The wireless regulations and decisions on applications for placement of wireless telecommunications facilities in the public right-of-way and facilities qualifying as EFRs shall, at a minimum, ensure that the requirements of this Section are satisfied, unless it is determined that Applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Development Code may be waived by the Zoning Administrator, but only to the minimum extent required to avoid the prohibition or violation.

c. There will be no public hearings.

5. Appeals. The Applicant may appeal the decision to the Planning Commission, which may decide the issue *de novo*, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility. Where the Zoning Administrator grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the Planning Commission. All appeals must be filed within 2 business days of the written decision of the Zoning Administrator, unless the Zoning Administrator extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

D. Findings and Decision. A Development Plan shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below listed findings cannot be clearly established. Findings 1-4 do not apply to applications for wireless telecommunications facilities in the public right-of-way or facilities qualifying as EFRs, which are subject to the findings set forth by Paragraph 5, below.

1. The proposed development at the proposed location is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan;

2. The proposed development is compatible with those on adjoining sites in relation to location of buildings, with particular attention to privacy, views, any physical constraint identified on the site and the characteristics of the area in which the site is located;

3. The proposed development will complement and/or improve upon the quality of

existing development in the vicinity of the project and the minimum safeguards necessary to protect the public health, safety and general welfare have been required of the proposed project;

4. The proposed development is consistent with the development standards and design guidelines set forth in the Development Code, or applicable specific plan or planned unit development.

5. Required findings for wireless telecommunications facilities in the public right-of-way and facilities qualifying as EFRs are as follows:

a. Except for EFRs, the Zoning Administrator or Planning Commission, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

(1) The facility is not detrimental to the public health, safety, and welfare;

(2) The facility complies with this Development Code and all applicable design and development standards; and

(3) The facility meets applicable requirements and standards of state and federal law.

b. For EFRs, the Zoning Administrator or Planning Commission, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

(1) That the application qualifies as an eligible facilities request; and

(2) That the proposed facility will comply with all generally-applicable laws.

E. Conditions of Approval.

1. In approving a Development Plan application, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. Conditions of approval imposed upon a Development Plan approval may include, but is not limited to, provisions concerning building height, bulk or mass;

setbacks; lot coverage; lighting; private and common open space, and/or recreation amenities; screening, including garages, trash receptacles, mechanical and roof-mounted equipment and appurtenances; landscaping; walls and fences; vehicular parking, access and circulation; pedestrian circulation; on-site security; grading; street dedication and improvements (public and private); on and off-site public improvements (public and private) necessary to service the proposed development; project timing/phasing; loading and outdoor storage; architectural treatment; signage; vehicular trip reduction; graffiti removal; sound attenuation; reparation and recordation of covenants, conditions and restrictions, mutual access agreements, maintenance agreements and other similar agreements; property disclosure pursuant to BPC Section 11000 et seq.; and other conditions the Approving Authority may deem appropriate and necessary to carry out the purposes of the Development Code.

3. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code.

F. Development Plan Modifications/Revisions.

1. Development Plans and/or their conditions of approval may be modified/revised upon application by a project applicant or property owner if different from the applicant. The request shall be submitted to the Planning Department on a City application form pursuant to Division 2.02 (Application Filing and Processing) of this Development Code.

2. Modifications/revisions that are minor in nature may be processed administratively, without notice or public hearing, provided the proposed changes are consistent with the intent of the original approval and there are no resulting inconsistencies with this Development Code. Modifications/revisions are considered minor in nature if in the opinion of the Planning Director, they do not involve substantial changes to the approved plans or the conditions of approval, and would in no way affect surrounding properties.

3. Modifications/revisions to an approved plan or conditions of approval that, in the opinion of the Planning Director, are not minor in nature, shall be processed as a revised Development Plan, following the procedures set forth in this Section for Development Plan approval, except that modification/revision approval shall not alter the expiration date established by the original application approval.

Exhibit C

Table 2.02-1: Review Matrix (applicable portions)

Applications, Actions, Decisions and Processes	*Reviewing Authorities* [4]									
	Planning Director	*City Engineer*	*Building Official*	*Zoning Administrator* [2]	*Development Advisory Board*	*Historic Preservation Subcommittee* [2]	*Historic Preservation Commission*	*Planning Commission*	*City Council*	*Ontario International Airport Authority*
B. DISCRETIONARY PERMITS AND ACTIONS										
5. Development Plans (Ref: ODC Section 4.02.025)										
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code										
(1) Tier 2 facilities										
(a) Outside of the public right-of-way					**X**			**A**	**A**	
(b) In the public right-of-way				**X**				**A**		
(c) Eligible Facilities Requests (EFRs)				**X**				**A**		
(2) Tier 3 facilities **[1]**					**R**			**X**	**A**	

Notes:

[1] A public hearing is required pursuant to the procedures set forth in Division 2.03 (Public Hearings) of this Development Code; however, public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[2] The Approving Authority may refer any application subject to their review to the next higher authority (Appeal Authority).

[4] An application submitted for concurrent review and action with another application, action or decision requiring review and action by a higher Reviewing Authority shall be subject to concurrent review and action by that higher Reviewing Authority.

Exhibit C (continued)

Table 2.03-1: Notification Matrix (applicable portions)

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
B. DISCRETIONARY PERMITS AND ACTIONS				
5. Development Plans (Ref: ODC Section 4.02.025)				
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code				
(1) Tier 2 facilities				
(a) Outside of the public right-of-way		**X**		
(b) In the public right-of-way	**X**			
(c) Eligible Facilities Requests (EFRs)	**X**			
(2) Tier 3 facilities **[1]**		**X**	**X**	

Notes:

[1] Public hearing notification is required pursuant to Section 2.03.010 (Public Hearing Notification) of this Division.

[2] Public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA19-001, A DEVELOPMENT CODE AMENDMENT REVISING PORTIONS OF ONTARIO DEVELOPMENT CODE CHAPTERS 2 (ADMINISTRATION AND PROCEDURES), 4 (PERMITS ACTIONS AND DECISIONS), 5 (ZONING AND LAND USE), AND 9 (DEFINITIONS AND GLOSSARY), AS THEY APPLY TO WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FACILITIES QUALIFYING AS ELIGIBLE FACILITIES REQUESTS, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario, California, a municipal corporation ("City"), has initiated a Development Code Amendment, File No. PDCA19-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, by virtue of the police powers delegated to it by the California Constitution, the City has the authority to enact laws which promote the public health, safety, and general welfare of its citizens, including within the public right-of-way; and

WHEREAS, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

WHEREAS, on February 26, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date, voting to issue Resolution No. PC19-011 recommending the City Council approve the Application; and

WHEREAS, following the Planning Commission’s action, at the recommendation of the City Attorney, staff made several changes to the proposed Development Code Amendment, which was subsequently reviewed by the Planning Commission on May 28, 2019, at which time the Commission voted unanimously (6-0) to issue a new Resolution No. PC19-034 recommending the City Council approve the project; and

WHEREAS, on June 18, 2019, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. The foregoing Recitals are adopted as findings of the City Council as though set forth in fully within the body of this Ordinance.

SECTION 2. ***Development Code Amendment.*** Section 9.02.010.E (Definitions of Words Beginning with the Letter "E") of the Development Code is amended to add the following definition in correct alphanumeric order:

"**Eligible Facilities Request.** Has meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision."

SECTION 3. ***Development Code Amendment.*** Section 9.02.010.P (Definitions of Words Beginning with the Letter "P") of the Development Code is amended to add the following definition:

"**Public Right-of-Way.** Any public street, alley, sidewalk, street island, median, or parkway that is owned or granted by easement, operated, or controlled by the City."

SECTION 4. ***Development Code Amendment.*** Section 9.02.010.S (Definitions of Words Beginning with the Letter "S") of the Development Code is amended to add the following definition:

"**Small Cell Facility.** Has the same meaning as "small wireless facility" in 47 CFR 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

1) The facility—

a) is mounted on a structure 50 FT or less in height, including antennas, as defined in 47 CFR Section 1.1320(d), or

b) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

c) does not extend an existing structure on which it are located to a height of more than 50 FT or by more than 10 percent, whichever is greater;

2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR Section 1.1320(d)), is no more than 3 cubic feet in volume;

3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

4) The facility does not require antenna structure registration under 47 CFR Part 17;

5) The facility is not located on Tribal lands, as defined under 36 CFR Section 800.16(x); and

6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR Section 1.1307(b)."

SECTION 5. ***Development Code Amendment.*** Section 9.02.010.W (Definitions of Words Beginning with the Letter "W") of the Development Code is amended to add the following definition:

"**Wireless Telecommunications Facility.** The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s)."

SECTION 6. ***Development Code Amendment.*** The City Development Code Chapter 5 is hereby amended as set forth in Exhibit A, attached hereto.

SECTION 7. ***Development Code Amendment.*** The City Development Code Chapter 4 is hereby amended as set forth in Exhibit B, attached hereto.

SECTION 8. ***Development Code Amendment.*** The City Development Code Chapter 2 is hereby amended as set forth in Exhibit C, attached hereto.

SECTION 9. **Ordinance Implementation.** The City Manager, or his or her delegate, is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 10. ***Environmental Determination.*** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines Section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the common sense exemption (general rule) that CEQA applies only to projects that have the potential for causing a significant effect on the environment. (State CEQA Guidelines Section 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State

CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino within five working days of the passage and adoption of the Ordinance.

SECTION 11. ***Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The adoption of this Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Furthermore, when and if an application for installation is submitted, the City will at that time conduct a review of the application in accordance with the ALUCP.

SECTION 12. ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 3, above, the City Council hereby concludes as follows:

(1) *The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.* The proposed standards under which wireless telecommunications facilities within public rights-of-way and additions/expansion to existing wireless facilities will be required to be constructed and maintained have been reviewed for consistency with applicable TOP components, and have been established so as to be consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.

(2) *The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.* The proposed Development Code Amendment will amend current land use provisions addressing wireless telecommunications facilities, bringing City standards into consistency with recently adopted FCC orders by adding provisions governing the installation of wireless facilities within public rights-of-way, as-well-as adding provisions that govern the processing of alterations and/or expansions to existing wireless telecommunications facilities.

SECTION 13. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Code Amendment.

SECTION 14. ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 15. ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 16. ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 17. ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 18. ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 2nd day of July 2019.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3129 was duly introduced at a regular meeting of the City Council of the City of Ontario held June 18, 2019 and adopted at the regular meeting held July 2, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3129 duly passed and adopted by the Ontario City Council at their regular meeting held July 2, 2019 and that Summaries of the Ordinance were published on June 25, 2019 and July 9, 2019, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

5.03.420: Wireless Telecommunications Facilities.

The following regulations shall govern the establishment and operation of wireless telecommunications facilities:

A. Review of Wireless Telecommunications Facilities. All applications for wireless telecommunication facilities are subject to a 3-tier review process established by this Section. The Planning Director shall have the discretion to determine the design and level of review requirements for projects proposed in specific plan areas, based upon the similarity of the specific plan's land use designation to the citywide zoning districts.

1. Tier 1 Review. Applications for wireless telecommunications facilities that propose an integrated building/structure design or a roof-mounted design that is less than 10 FT in height, is architecturally screened from view, and is located within a nonresidential zoning district, shall be reviewed and acted upon utilizing the Building Department's plan check review process.

2. Tier 2 Review.

a. A proposed wireless telecommunications facility meeting each of the following criteria shall require Development Plan approval pursuant to Section 4.02.025 (Development Plans) of this Development Code:

(1) The facility is located within a commercial, nonresidential zoning district;

(2) The facility is more than 500 FT from a residential zoning district, as measured in a straight line from any point along the outer boundaries of the property containing the wireless telecommunications facility;

(3) The facility complies with all development standards of this Section and the applicable zoning district;

(4) The facility is of a stealth design so as not to be recognized as a telecommunications facility; and

(5) All support equipment to the proposed facility is located within a completely enclosed structure or is otherwise screened from public view.

b. A new wireless telecommunications facility proposed within a nonresidential zoning district, which is to be collocated with an existing wireless telecommunications facility, and complies with all development standards of this Section and the applicable zoning district, shall be reviewed and acted upon by the Development Advisory Board.

c. A proposed wireless telecommunications facility located in the public right-of-way shall require Development Plan approval pursuant to Section 4.02.025 (Development Plans) of this Development Code. Except for small cell facilities, facilities qualifying as Eligible Facilities Requests (EFRs), or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless telecommunications facilities shall be permitted in the public right-of-way.

d. EFRs shall require Development Plan approval pursuant to Section 4.02.025 of this Development Code.

3. Tier 3 Review. A proposed wireless telecommunications facility meeting one or more of the following criteria shall require Development Plan approval pursuant to Section 4.02.035 (Development Plans) and special public notification pursuant to Division 2.03 (Public Hearings) of this Development Code:

a. Wireless telecommunications facilities not meeting the above-stated Tier 1 or Tier 2 review criteria;

b. Wireless telecommunications facilities located within, or 500 FT or less from (as measured in a straight line from any point along the outer boundaries of the property containing the wireless telecommunications facility), a residentially zoned property;

c. All nonstealth wireless telecommunications facilities;

d. Wireless telecommunications facilities proposed in the AG overlay district, excepting those facilities meeting the above-stated Tier 1 review criteria;

e. Wireless telecommunications facilities creating more than a minimal visual impact on surroundings, as determined by the Planning Director. In determining whether more than a minimal visual impact exists, the Planning Director shall consider the facility's location and size, the view of the facility from the public street and neighboring properties, and the contrast between the facility and other external structural equipment. The applicant may be required to perform tests that would replicate the height of a proposed facility in order to adequately assess potential visual impacts;

f. Wireless telecommunications facilities located within line-of-sight of any scenic corridor identified by the Policy Plan component of The Ontario Plan; and

g. Wireless telecommunications facilities that include a request for an increase in height, which exceeds the maximum height provisions established by Paragraph E.5 of this Section. The Reviewing Authority may consider an increase in height if the strict application of Paragraph E.5 of this Section would result in a provider of wireless telecommunications services not being able to provide adequate coverage to a service area due to practical difficulties beyond the control of the service provider. The service provider shall clearly demonstrate the nature of the problem, and that no other feasible alternative is available to provide adequate coverage.

B. Additional Submittal Requirements.

1. In addition to the general submittal requirements for plan checks, Development Plans, and/or Conditional Use Permits contained in the *Minimum Filing Requirements Checklist* of the City's *Discretionary Permits/Actions Application Packet*, all applications for wireless telecommunication facility approval must include the additional information required by the *Plan Preparation Guidelines and Minimum Plan Contents Checklist* of the *Discretionary Permits/Actions Application Packet* or any additional application materials issued by the City.

2. The City may contract with an independent radio frequency engineering consultant, or other qualified professional with knowledge and expertise regarding wireless telecommunication systems, to verify applicant's technical assertions. Such verification may include, but is not limited to, issues related to transmission coverage requirements, required height of facilities, technical limitations related to co-locating facilities, evaluation of new technologies that are available and the potential for interference with other facilities, such as public safety radio communications systems. All costs associated with verification shall be borne by the applicant.

C. Performance Standards for Wireless Telecommunications Facilities. The operator of a wireless telecommunications facility and/or the owner of the property upon which the facility is located is responsible for compliance with the following:

1. No existing or future wireless telecommunications facility shall interfere with any public safety radio communications system including, but not limited to, the 800 MHz radio system operated by the West End Communication Authority (WECA), which provides public safety communications during emergencies and natural disasters. Pursuant to GC Section 38771, a violation of this standard constitutes a public nuisance.

2. If any wireless telecommunications facility is found to interfere with a public safety radio communications system, or any system facilitating the transmission or relay of voice or data information for public safety, the carrier and/or property owner shall immediately cease operation of the radio channel(s) causing system interference. Operation of an offending wireless telecommunications facility shall only be allowed to resume upon removal, or other resolution, of the interference, to the satisfaction of the City. Any request for an increase in antenna height that would exceed the maximum height provisions established by Paragraph E.6 of this Section in order to resolve interference conflicts with a public safety radio communications system, shall only be considered by the City after the facility operator and/or property owner have sufficiently demonstrated that all feasible methods of eliminating the conflict have been considered.

3. A wireless telecommunications facility, including poles, antennas, materials used to camouflage or stealth the facility, and equipment buildings and enclosures, shall be maintained in a manner so as to ensure that the facility will maintain its original appearance. In the event that over time, with exposure to wind, rain, sunlight, etc., any part of the facility begins to flake, pit, fade, discolor, disintegrate, or otherwise not maintain its original appearance as initially constructed, as determined by the Planning Director, it shall be repaired/replaced at the sole expense of the carrier.

4. The inspection and approval of a wireless telecommunications facility must be received from the Planning Department prior to Building Department final inspection and the establishment/release of permanent electrical power to the facility.

5. Wireless telecommunications facilities, including landscaping and surface areas, shall be continuously maintained free of weeds, debris, litter and temporary signage. All graffiti shall be removed from the premises within 48 hours of discovery.

D. Location Guidelines and Criteria. All applications for wireless telecommunications facilities are subject to the location guidelines and criteria listed below. Wireless telecommunications facilities located in the public right-of-way and facilities qualifying as EFRs are subject to the location standards published and amended, from time to time, by the Zoning Administrator.

1. The preferred order of location for wireless telecommunications facilities is: industrial zoning districts, followed by commercial zoning districts, and then residential zoning districts. If proposed within an established specific plan area, the preferred order of location is: industrial land use districts, followed by business park land use districts, and then commercial land use districts.

2. Wireless communications facilities located within residential zoning districts shall only be allowed in conjunction with a non-residential land use, such as a church, fire station, park, or school, or a multiple-family building or structure.

3. Wireless telecommunications facilities may be located in close proximity to each other; provided, they utilize a stealth design, meet the height requirements of this Section, and are compatible with surrounding development. Wireless telecommunication facilities that are nonstealth in design shall be located a minimum of 1,000 FT from any other nonstealth wireless telecommunication facility, as measured in a straight line from any point along the outer boundaries of the property containing the wireless telecommunications facility.

4. Wireless telecommunication facilities shall not be located within any front or street side setback area.

5. Wireless telecommunications facilities shall not be located so as to create a nonconforming condition, such as reductions in parking, landscaping, loading zones or other applicable development standards.

6. Wireless telecommunications facilities shall be located where existing vegetation, structures, and/or topography provide the greatest amount of screening. Where insufficient screening exists, additional screening shall be provided through the installation of dense landscaping, installation of enhanced architectural treatments, or relocation of the facility so that the massing of existing buildings or vegetation will provide adequate screening. Support structures shall be constructed of galvanized steel and painted an unobtrusive color to neutralize and blend with surroundings, or be of a stealth design.

E. Development Standards. It is a goal of the City that wireless telecommunications facilities be developed in harmony with the surrounding environment so as to be as unobtrusive as possible. This is especially true when located in visually prominent locations (e.g., along major thorough-fares, at entry points into the City, near high activity areas, etc.). The guidelines are intended to ensure that the design of wireless telecommunications facilities are compatible with the community. The guidelines below do not apply to wireless telecommunications facilities in the public right-of-way or facilities qualifying as EFRs, which are subject to the design and development standards published and amended, from time to time, by the Zoning Administrator.

1. Wireless telecommunications facilities should:

a. Be collocated with another facility, where possible;

b. Be stealth in design, or building/structure or roof-mounted as an integral architectural element on an existing structure; and

c. Utilize state-of-the-art wireless technology.

2. Wireless telecommunications facilities shall meet all applicable zoning and setback regulations of the zoning district in which they are located.

3. Wireless telecommunications facilities shall be installed and maintained in full compliance with all Federal, State and local codes and standards.

4. All proposed nonstealth facilities shall be designed to accommodate co-location of 2 or more service providers. To the extent possible, stealth facilities shall also be designed to accommodate co-location of facilities.

5. The height of wireless telecommunications facility support structures shall be the minimum necessary to provide adequate user coverage; however, an antenna or its support structure shall not exceed the maximum allowed height for wireless telecommunications facilities set forth below, except as provided for in Subparagraph A.3.f of this Section. The height of stealth design “tree” monopoles shall be measured to the top of the antenna arrays, with the branches/fronds extending above antenna arrays, to create a natural appearance.

6. The maximum height for wireless telecommunications facilities shall be as follows:

a. Freestanding single-carrier facilities shall not exceed 55 FT in height;

b. Freestanding collocated facilities (two or more carriers) shall not exceed 75 FT within the IL (Light Industrial), IG (General Industrial), and IH (Heavy Industrial) zoning districts, and 65 FT in height within all other zoning districts; and

c. Roof-mounted or building-mounted facilities shall not exceed 10 FT above the height of the building.

7. Prior to the issuance of a building permit for a wireless telecommunications facility, the carrier shall submit a Federal Aviation Administration determination for the proposed facility. Safety lighting or colors, if prescribed by the City or other approving agency, such as the Federal Aviation Administration, may be required for support structures.

8. Wireless communications facilities located within residential zoning districts shall be of stealth design.

9. All accessory equipment associated with the wireless telecommunications facility shall be screened from public view by a decorative fence, wall, landscaping, berming or a combination thereof, or shall be located within a building, enclosure or underground vault, which is designed, colored and textured to match the architecture of adjacent buildings or blend in with surrounding development.

10. All utilities associated with wireless telecommunications facilities shall be undergrounded. Cable connections from equipment structures to any antennae shall not be visible by the public.

11. The design of stealth wireless telecommunications facilities shall be compatible with the surrounding neighborhood. Stealth designs include building mounted designs and freestanding designs. Examples of building mounted designs include architecturally screened roof mounted facilities, facilities attached to a building/structure, bell towers, clock towers, or steeples, installation behind false windows, or other types of architectural features that are designed to camouflage the facility and are integrated into the building design. Examples of stealth freestanding wireless telecommunications facilities include facilities that are camouflaged as freestanding signage, flagpoles, light poles, or "tree" monopoles (such as “monopalms” and “monopines”) that are blended with groupings of real trees. The use of “monopalms” should not be the default design if no other live palms are within the immediate surroundings. Wireless telecommunications facilities may be designed as, or within, a piece of public art or a historical monument for public benefit.

12. The use of whip and/or microwave dish antennas shall be permitted only if integrated into the design of a structure and/or if fully screened from public view.

13. Chainlink fencing is not permitted for containment of wireless telecommunications facilities, unless the fencing is located in the rear portion of property, is not visible from a public area, and is installed with tennis court screening material on all exterior sides of the fence.

14. The use of lattice-type towers shall not be permitted within the City.

15. Planning Department approval must be received prior to any modification or addition to any existing wireless telecommunications facility.

16. Stealth wireless telecommunications facilities utilizing a flagpole monopole design shall comply with the following:

a. The flag to be placed on the flagpole monopole shall be proportionate in size to the height and diameter of the pole, and shall be maintained at all times and replaced when needed due to weathering, as determined necessary by the Planning Director.

b. Only the National, State, County or City flags shall be flown on the flagpole. A flag shall be flown on the flagpole at all times, which shall be properly lighted.

c. Covers concealing antenna arrays shall be painted to match the flagpole.

17. Stealth wireless telecommunications facilities utilizing a monopine design shall comply with the following:

a. The branch count shall be a minimum of 3 branches per lineal FT of trunk height. Branches shall be randomly dispersed and of differing lengths to provide a natural appearance.

b. Simulated bark shall extend the entire length of the pole (trunk), or the branch count shall be increased so that the pole is not visible.

c. Branches and foliage shall extend beyond an antenna array a minimum of 2 FT horizontally and 7 FT vertically, in order to adequately camouflage the array, antennas and bracketry. In addition, antennas and supporting bracketry shall be wrapped in artificial pine foliage.

d. The size and spread of antenna arrays shall be the minimum necessary to ensure that they are adequately camouflaged.

e. A minimum of 2 live pine trees shall be planted for each proposed monopine, which shall have the same growth habit as the pine tree being simulated by the monopine, and shall be in scale with the height of the monopine. The pine trees may be planted adjacent to the proposed monopine, or elsewhere on the site as deemed appropriate by the Planning Director.

18. Stealth wireless telecommunications facilities utilizing a monopalm design shall comply with the following:

a. All antennas shall be fully concealed within a “pineapple ball” (also referred to as “growth ball” or “terminal bud ball”) located at the end of the trunk. Furthermore, all wires and connectors shall be fully concealed within the trunk, and all unused ports (for co- location) shall have covers installed.

b. Simulated bark shall extend the entire height of the pole (trunk).

c. A minimum of 2 live palm trees shall be planted for each proposed monopalm, which shall have the same growth habit as the type of palm tree being simulated by the monopalm, and shall be in scale with the height of the monopalm. The palm trees may be planted adjacent to the proposed monopalm, or elsewhere on the site as deemed appropriate by the Planning Director.

19. A sign measuring 2 FT high by 2 FT wide shall be posted at the exterior entrance of wireless telecommunications facilities, and clearly visible to the public, identifying the carrier(s) and contact telephone number(s) for reporting emergency and maintenance issues.

Exhibit B

4.02.025: Development Plans.

A. Purpose. The purpose of this Section is to:

1. Establish a review process whereby the integrity and character of the physical fabric of the City will be protected in a manner consistent with the goals and policies of The Ontario Plan. This is ensured through the review of:

a. The suitability of building location;

b. Location and design of off-street parking and loading facilities;

c. Location, design and dedication of streets and alleys (public and private facilities);

d. Location and design of pedestrian and vehicular entrances and exits;

e. Location, design, materials and colors of walls and fences;

f. Location, design, size and type of landscaping (public and private facilities);

g. Location, design and materials of hardscape areas, such as patios, sidewalks and walkways (public and private facilities);

h. Drainage and off-site improvements (public and private facilities);

i. Compatibility with the surrounding area;

j. Exterior building architectural design, materials and colors;

k. Quality of proposed design and construction;

l. Location, type, design, colors, and materials of signs; and

m. Any conditions affecting the public health, safety, welfare, and general aesthetic of the community.

2. Protect and preserve the value of properties and to encourage high quality development throughout the City, whereas adverse effects would otherwise result from excessive uniformity, dissimilarity, poor exterior quality and appearance of buildings and structures; inadequate and poorly planned landscaping; and failure to preserve, where feasible, natural landscape features, and open spaces.

3. Recognize the interdependence of land values and aesthetics, and to provide a method to implement this interdependence in order to maintain the values of surrounding properties and improvements consistent with The Ontario Plan, with due regard to the public and private interests involved.

4. Ensure that the public benefits derived from expenditures of public funds for improvement and beautification of streets and public facilities are protected by the exercise of reasonable controls over the character and design of private buildings, structures, parking and loading facilities, landscaped areas, recreation amenities and open spaces.

5. Ensure the design of landscaping and irrigation that shades parking facilities and other paved areas, buffers or screens undesirable views and compliments building architecture and overall site design.

6. Ensure reasonable controls over the character, design and location of signs, and the appropriate use of well-designed signs that complement the architecture of surrounding buildings, while considering the public and private interests involved and the exercise of control over the undesirable use of excessive signage.

B. Applicability.

1. Pursuant to Table 2.02-1 (Review Matrix) of this Development Code, the Approving Authority is hereby empowered to approve, approve in modified form, or deny a Development Plan application, and to impose reasonable conditions upon a Development Plan approval.

2. Development Plan approval shall be required for the physical alteration of a lot, the construction of a building, or the addition or significant alteration of an existing building, as follows:

a. The development of 3 or more dwelling units on a single lot;

b. The development of 5 or more lots within a residential subdivision;

c. The development of 5 or more dwelling units, regardless of the number of lots involved;

d. The development of a nonresidential building within a residential zoning district, or an addition thereto, which is in excess of 25 percent of the original structure GFA or 500 SF (cumulative), whichever is less;

e. The development of a vacant lot within a nonresidential zoning district;

f. The conversion of a commercial structure to a residential structure, or conversion of a residential structure to a commercial structure;

g. The remodel of, or addition to, an existing nonresidential building, which results in an overall change in the architectural integrity, as determined by the Planning Director;

h. The remodel of, or addition to, a nonresidential building, which would result in the demolition and replacement/reconstruction of more than 50 percent of the existing building;

i. The conversion of a gasoline or fueling station to facilitate another allowed land use (see standards contained in Subsection 5.03.040,C (Conversion of Gasoline and Fueling Stations) of this Development Code);

j. An addition to an institutional facility (including religious assembly and places of worship, government services, healthcare services, and educational services), which is in excess of 25 percent of the original structure GFA or 500 SF (cumulative), whichever is less;

k. The development of a permanent building within the CIV, OS-R, OS-C, or UC zoning district, which is in excess of 500 SF of GFA (cumulative), or an addition thereto, which is in excess of 25 percent of the original structure GFA or 500 SF (cumulative), whichever is less;

l. The development of a permanent building within the AG zoning district, which is in excess of 5,000 SF of GFA (cumulative), or an addition thereto, which is in excess of 25 percent of the original structure GFA or 5,000 SF (cumulative), whichever is ss;

m. The relocation (move-on) of a building within any zoning district;

n. The addition of dwelling units to a multiple-family residential development project, when such addition would result in 3 or more dwelling units on a single lot after the addition;

o. An addition to a previously developed site within a commercial zoning district, which does not exceed 25 percent of the original structure GFA or 2,000 SF (cumulative), whichever is less;

p. An addition to a previously developed site within an industrial zoning district, which does not exceed 25 percent of the original structure GFA or 10,000 SF (cumulative), whichever is less;

q. A Tier 2 or Tier 3 wireless telecommunications facility pursuant to Section 5.03.420 (Wireless Telecommunications Facilities) of this Development Code; and

r. Other projects, which, in the opinion of the Planning Director, require such level of review prior to issuance of a building permit, due to the size, nature and/or complexity of the project, or because the project could cause significant environmental impacts or generate significant neighborhood opposition or controversy.

3. A Development Plan shall remain in effect for the life of the affected development project, which shall be developed and maintained in substantial conformance with the plans as approved by the Approving Authority, and maintained on file with the City.

C. Application Filing, Processing and Hearing. A Development Plan application, except for wireless telecommunications facilities in the public right-of-way and facilities qualifying as Eligible Facilities Requests (EFRs), shall be filed, processed and heard pursuant to Division 2.02 (Application Filing and Processing) of this Development Code and the provisions of this Section. Applications to install wireless telecommunications facilities in the public right-of-way and for facilities qualifying as EFRs shall be filed and processed pursuant to the following:

1. Scope. There shall be a type of permit entitled a "Wireless Permit," which shall be subject to all of the requirements of this Section. Unless exempted, every person who desires to place a wireless telecommunications facility in the public right-of-way, modify an existing wireless telecommunications facility in the public right-of-way, or perform work as part of an EFR must obtain a Wireless Permit authorizing the placement or modification in accordance with this Section. Except for small cell facilities, facilities qualifying as EFRs, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless telecommunications facilities shall be permitted pursuant to this Section.

2. Approving Authority. The Zoning Administrator is the approving authority for wireless telecommunications facilities in the public right-of-way and facilities qualifying as EFRs.

3. Application Submittal. Applications shall be submitted on a City application form issued and amended, from time-to-time, by the Zoning Administrator.

4. Review and Action.

a. The Zoning Administrator shall review the application and then approve, approve in modified form, or deny the application. The decision of the Approving Authority shall be final and conclusive in the absence of an appeal filed pursuant to Paragraph C.5 (Appeals), below.

b. The wireless regulations and decisions on applications for placement of wireless telecommunications facilities in the public right-of-way and facilities qualifying as EFRs shall, at a minimum, ensure that the requirements of this Section are satisfied, unless it is determined that Applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Development Code may be waived by the Zoning Administrator, but only to the minimum extent required to avoid the prohibition or violation.

c. There will be no public hearings.

5. Appeals. The Applicant may appeal the decision to the Planning Commission, which may decide the issue *de novo*, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility. Where the Zoning Administrator grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the Planning Commission. All appeals must be filed within 2 business days of the written decision of the Zoning Administrator, unless the Zoning Administrator extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

D. Findings and Decision. A Development Plan shall be acted upon by the Approving Authority based upon the information provided in the submitted application, evidence presented in the Planning Department's written report, and testimony provided during the public hearing, only after considering and clearly establishing all of the below-listed findings, and giving supporting reasons for each finding. The application shall be denied if one or more of the below listed findings cannot be clearly established. Findings 1-4 do not apply to applications for wireless telecommunications facilities in the public right-of-way or facilities qualifying as EFRs, which are subject to the findings in number 5 below.

1. The proposed development at the proposed location is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan;

2. The proposed development is compatible with those on adjoining sites in relation to location of buildings, with particular attention to privacy, views, any physical constraint identified on the site and the characteristics of the area in which the site is located;

3. The proposed development will complement and/or improve upon the quality of
existing development in the vicinity of the project and the minimum safeguards necessary to protect the public health, safety and general welfare have been required of the proposed project;

4. The proposed development is consistent with the development standards and design guidelines set forth in the Development Code, or applicable specific plan or planned unit development.

5. Required findings for wireless telecommunications facilities in the public right-of-way and facilities qualifying as EFRs are as follows:

a. Except for EFRs, the Zoning Administrator or Planning Commission, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

(1) The facility is not detrimental to the public health, safety, and welfare;

(2) The facility complies with this Development Code and all applicable design and development standards; and

(3) The facility meets applicable requirements and standards of state and federal law.

b. For EFRs, the Zoning Administrator or Planning Commission, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

(1) That the application qualifies as an eligible facilities request; and

(2) That the proposed facility will comply with all generally-applicable laws.

E. Conditions of Approval.

1. In approving a Development Plan application, the Approving Authority may require certain safeguards and impose certain conditions established to ensure that the purposes of this Development Code are maintained; ensure that the project will not endanger the public health, safety or general welfare; ensure that the project will not result in any significant environmental impacts; ensure that the project will be in harmony with the area in which it is located; and ensure that the project will be in conformity with The Ontario Plan and any applicable specific and/or area plan(s).

2. Conditions of approval imposed upon a Development Plan approval may include, but is not limited to, provisions concerning building height, bulk or mass; setbacks; lot coverage; lighting; private and common open space, and/or recreation amenities; screening, including garages, trash receptacles, mechanical and roof-mounted equipment and appurtenances; landscaping; walls and fences; vehicular parking, access and circulation; pedestrian circulation; on-site security; grading; street dedication and improvements (public and private); on and off-site public improvements (public and private) necessary to service the proposed development; project timing/phasing; loading and outdoor storage; architectural treatment; signage; vehicular trip reduction; graffiti removal; sound attenuation; reparation and recordation of covenants, conditions and restrictions, mutual access agreements, maintenance agreements and other similar agreements; property disclosure pursuant to BPC Section 11000 et seq.; and other conditions the Approving Authority may deem appropriate and necessary to carry out the purposes of the Development Code.

3. All conditions of approval or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Development Code.

F. Development Plan Modifications/Revisions.

1. Development Plans and/or their conditions of approval may be modified/revised upon application by a project applicant or property owner if different from the applicant. The request shall be submitted to the Planning Department on a City application form pursuant to Division 2.02 (Application Filing and Processing) of this Development Code.

2. Modifications/revisions that are minor in nature may be processed administratively, without notice or public hearing, provided the proposed changes are consistent with the intent of the original approval and there are no resulting inconsistencies with this Development Code. Modifications/revisions are considered minor in nature if in the opinion of the Planning Director, they do not involve substantial changes to the approved plans or the conditions of approval, and would in no way affect surrounding properties.

3. Modifications/revisions to an approved plan or conditions of approval that, in the opinion of the Planning Director, are not minor in nature, shall be processed as a revised Development Plan, following the procedures set forth in this Section for Development Plan approval, except that modification/revision approval shall not alter the expiration date established by the original application approval.

Exhibit C

Table 2.02-1: Review Matrix (applicable portions)

Applications, Actions, Decisions and Processes	*Reviewing Authorities* [4]									
	Planning Director	*City Engineer*	*Building Official*	*Zoning Administrator* [2]	*Development Advisory Board*	*Historic Preservation Subcommittee* [2]	*Historic Preservation Commission*	*Planning Commission*	*City Council*	*Ontario International Airport Authority*
B. DISCRETIONARY PERMITS AND ACTIONS										
5. Development Plans (Ref: ODC Section 4.02.025)										
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code										
(1) Tier 2 facilities										
(a) Outside of the public right-of-way					**X**			**A**	**A**	
(b) In the public right-of-way				**X**				**A**		
(c) Eligible Facilities Requests (EFRs)				**X**				**A**		
(2) Tier 3 facilities **[1]**					**R**			**X**	**A**	

Notes:

[1] A public hearing is required pursuant to the procedures set forth in Division 2.03 (Public Hearings) of this Development Code; however, public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

[2] The Approving Authority may refer any application subject to their review to the next higher authority (Appeal Authority).

[4] An application submitted for concurrent review and action with another application, action or decision requiring review and action by a higher Reviewing Authority shall be subject to concurrent review and action by that higher Reviewing Authority.

Exhibit C (continued)

Table 2.03-1: Notification Matrix (applicable portions)

Applications, Actions, Decisions And Processes	*Required Method of Public Notification*			
	Not Required	*Newspaper or Posting [2]*	*First Class Mail or Delivery [2]*	*Newspaper—1/8 page advertisement if the number of property owners to whom notices would be mailed or delivered is greater than 1,000*
B. DISCRETIONARY PERMITS AND ACTIONS				
5. Development Plans (Ref: ODC Section 4.02.025)				
e. Wireless telecommunications facilities pursuant to Section 5.03.415 (Wireless Telecommunications Facilities) of this Development Code				
(1) Tier 2 facilities				
(a) Outside of the public right-of-way		**X**		
(b) In the public right-of-way	**X**			
(c) Eligible Facilities Requests (EFRs)	**X**			
(2) Tier 3 facilities **[1]**		**X**	**X**	

Notes:

[1] Public hearing notification is required pursuant to Section 2.03.010 (Public Hearing Notification) of this Division.

[2] Public notification shall not be required for Development Advisory Board or Historic Preservation Subcommittee hearings when acting in the capacity of an Advisory Authority.

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: **A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF ONTARIO LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA")**

RECOMMENDATION: That the City Council consider and adopt a resolution approving the 2019 amendment to the "City of Ontario Local Guidelines for Implementing the California Environmental Quality Act" (on file in the Records Management Department).

COUNCIL GOALS: **Invest in the Growth and Evolution of the City's Economy**
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: None.

BACKGROUND: The California Environmental Quality Act (CEQA) requires that environmental concerns be considered as a part of all public and private projects. In order to implement the provisions of the Act, all public agencies are required to adopt objectives, criteria and specific procedures consistent with CEQA and the State CEQA Guidelines for evaluating the potential environmental issues that may arise in relation to all projects. Local procedures should be revised periodically to conform to any statutory changes in CEQA, any revisions made to the State Guidelines, and to address environmental concerns that exist at the local level.

The City of Ontario last updated its local guidelines in May 2018. Since that time, the California Legislature has passed bills requiring changes in local procedures for implementing CEQA. In addition to the new legislation, several court cases resulted in procedural changes that need to be included in the updated City local guidelines. Best Best & Krieger prepared the changes to the City of Ontario's Local Guidelines for Implementing CEQA that are necessary in order for the City to comply with the new laws and procedural requirements. A summary of the recommended amendments is provided as Exhibit "A."

STAFF MEMBER PRESENTING: Scott Murphy, AICP, Executive Director Development Agency

Prepared by:	Richard Ayala	Submitted to Council/O.H.A.	07/02/2019
Department:	Planning	Approved:	
		Continued to:	
City Manager Approval:		Denied:	

EXHIBIT "A"

REVISIONS TO LOCAL GUIDELINES

Edits were made throughout the Local Guidelines and the related CEQA forms. This memorandum summarizes the most significant and noteworthy of those edits.

Revised Sections

1. SECTION 1.10 TIME OF PREPARATION

Section 1.10 has been added to the Local Guidelines to reflect existing case law and revisions to the State CEQA Guidelines regarding when CEQA review must be completed. The revision emphasizes the need to complete CEQA review before project approval; it also addresses when CEQA review is necessary for activities preceding project approval.

2. SECTION 3.08 EMERGENCY PROJECTS

Section 3.08 of the Local Guidelines has been amended to clarify the applicability of CEQA's exemption for emergency projects. Among other things, the Section has been amended to explain that exempt emergency repairs may include those repairs that require a reasonable amount of planning to address an anticipated emergency.

3. SECTION 3.19 EXEMPTION FOR INFILL PROJECTS IN TRANSIT PRIORITY AREAS

Section 3.19 has been amended to reflect the statutory exemption set forth in Public Resources Code section 21155.4 and State CEQA Guidelines section 15182. Section 3.19 exempts residential, mixed-use, and certain commercial projects from CEQA where the project is located within a transit priority area, is consistent with a specific plan, and is consistent with regional plans for reducing greenhouse gas emissions.

4. SECTION 3.20 EXEMPTION FOR RESIDENTIAL PROJECTS UNDERTAKEN PURSUANT TO A SPECIFIC PLAN

Section 3.20 reflects the statutory exemption set forth in Government Code section 65457 and State CEQA Guidelines section 15182, which exempt certain residential projects consistent with a specific plan.

5. SECTION 3.22 CATEGORICAL EXEMPTIONS

The Class 1 categorical exemption—set forth in Local Guidelines section 3.22—generally exempts, among other activities, minor alterations to existing facilities, provided the activity involves negligible or no expansion of use. The Class 1 exemption has been revised to clarify that a lead agency may determine whether an activity involves negligible or no expansion of use based on the facility's "existing or former use," not just the use existing at the time of the lead agency's determination.

6. SECTION 4.03 COMPLETION AND ADOPTION OF NEGATIVE DECLARATION

Section 4.03 has been amended to reflect revisions to the State CEQA Guidelines

regarding the time to complete a Negative Declaration. The revision provides that the City must generally complete a Negative Declaration within 180 days of accepting a complete application, but that a one-time 90-day extension is permissible with the project applicant's consent.

7. SECTION 5.01 PREPARATION OF INITIAL STUDY

Section 5.01 has been amended to clarify the various arrangements the City, as Lead Agency, may use to prepare an Initial Study (e.g., preparing an Initial Study with the City's own staff, contracting with another entity to prepare an Initial Study, etc.).

8. SECTION 5.09 DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS

One of the most significant revisions to the State CEQA Guidelines concerns a change in how transportation impacts must be analyzed under CEQA. A new section has been added to the State CEQA Guidelines, Section 15064.3, that provides that "vehicle miles traveled," or VMT, shall be the most appropriate measure of transportation impacts. VMT refers to the amount and distance of automobile travel attributable to a project.

Under Section 15064.3, VMT shall replace a proposed project's effect on automobile delay—generally measured by "level of service" or LOS—as the appropriate measure for transportation impacts. Moreover, a project's effect on automobile delay shall no longer constitute a significant transportation environmental impact under CEQA. Accordingly, a project that makes congestion worse but will not result in significant VMT will not be considered to have a significant environmental impact, and a project with no effect on congestion but with a significant VMT impact will normally be considered to have a significant environmental impact under Section 15064.3. Section 15064.3, however, provides that its provisions will not go into effect until July 1, 2020, unless a lead agency elects to be governed by its provisions earlier.

We have added Section 5.09 to the Local Guidelines to acknowledge and address Section 15064.3. Section 5.09 makes clear that the City does <u>not</u> elect to be governed by the provisions of Section 15064.3 before July 1, 2020. Accordingly, the City may continue to engage in an LOS analysis to determine transportation impacts.

9. SECTION 5.16 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS

Section 5.16 has been amended to reflect the addition of a new subdivision (f) to State CEQA Guidelines section 15155; the new subdivision and Section 5.16 describe the content requirements for a water supply analysis under CEQA.

10. SECTION 5.19 CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS

Section 5.19 has been revised to reflect a series of amendments to Section 15064.4 of the State CEQA Guidelines, which seeks to assist lead agencies in determining whether a project's greenhouse gas emissions will have a significant effect on the environment. The City should review Section 5.19 when analyzing the significance of a project's greenhouse gas emissions.

11. SECTIONS 6.04 & 7.03 CONSULTATION WITH PUBLIC TRANSIT AGENCIES

Sections 6.04 and 7.03 have been supplemented with new language providing that the City should consult with public transit agencies before circulating a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration or a Notice of Preparation of Draft Environmental Impact Report (EIR) where (1) the public transit agency has facilities within one-half mile of the proposed project, and (2) the proposed project is one of statewide, regional, or areawide significance.

12. SECTION 7.19 CONSIDERATION OF ENERGY IMPACTS

Section 7.19 has been supplemented with new language—added to State CEQA Guidelines section 15126.2—requiring analysis of a project's energy impacts. The new language further requires mitigation for significant environmental impacts due to wasteful, inefficient, or unnecessary use of energy or energy resources.

13. SECTION 7.20 ENVIRONMENTAL SETTING

Section 7.20 is a new section that reflects revisions to State CEQA Guidelines section 15125 concerning an EIR's description of the environmental baseline. The new language explains that while the environmental baseline should normally reflect conditions as they exist at the time the Notice of Preparation is published, a lead agency may define the environmental baseline by referencing historic or future conditions in certain circumstances. The new language additionally explains that lead agencies may not use a baseline based on hypothetical allowable conditions, such as those that might be allowed—but have never actually occurred—under existing permits or plans.

14. SECTION 7.22 ANALYSIS OF MITIGATION MEASURES

Section 7.22 has been revised, consistent with revisions to State CEQA Guidelines section 15126.4, to clarify that a lead agency may not defer identification of mitigation measures, but that deferral of specific details of mitigation until after project approval may be permissible under certain circumstances.

15. SECTION 7.30 RESPONSE TO COMMENTS ON DRAFT EIR

Section 7.30 has been revised to clarify the scope of a lead agency's duty to respond to comments on a Draft EIR. In particular, the section has been revised to state that the City may respond to a general comment with a general response. The section has further been revised to provide that a lead agency may provide its proposed written response to a commenting public agency in an electronic format.

Changes to Local Guidelines Form "J"

The comprehensive update to the State CEQA Guidelines included substantial revisions to Appendix "G" – the Initial Study checklist form. In response, we have revised Form "J" of the Local Guidelines. The updated Form "J" should be used to determine whether a proposed project may have a significant environmental impact for which an EIR is required. The most significant revisions to Form "J" are summarized below.

1. SECTION VI. ENERGY

A new section regarding a project's energy impacts has been added to Form "J." As a result, the City must now consider a proposed project's energy impacts at the Initial Study stage.

2. SECTION XVII, TRANSPORTATION SUBDIVISION B.

As discussed above, Section 15064.3 of the State CEQA Guidelines now provides that VMT—not LOS—is the most appropriate measure of transportation impacts. To reflect this change, Appendix "G" of the State CEQA Guidelines has been revised to provide that a project may result in a potentially significant impact if the project conflicts or is inconsistent with Section 15064.3(b)—i.e., if the proposed project results in VMT exceeding an applicable threshold of significance.

Section 15064.3, however, does not apply until July 1, 2020, unless a public agency elects to be governed by its provisions earlier. Accordingly, we have revised the Transportation section of Form "J" to acknowledge Section 15064.3, but to explain that the City has not elected to be governed by its provisions and that a VMT analysis is thus not necessary to determine whether a proposed project will have a significant transportation impact. The City may continue to utilize the LOS analysis traditionally used to determine whether a project will have a significant transportation impact.

3. SECTION XIX. WILDFIRE

A new section regarding a project's potential to result in or exacerbate wildfire impacts has been added to Form "J." The City must analyze the questions posed within this section for any project "located in or near state responsibility areas or lands classified as very high fire hazard severity zones."

Other Changes

Department of Fish and Wildlife. Effective January 1, 2019, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is $2,354.75. For an EIR, the new filing fee is $3,271.00. For an environmental document pursuant to a Certified Regulatory Program, the filing fee has been increased to $1,112.00.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING AND ADOPTING LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUBLIC RESOURCES CODE §§ 21000 ET SEQ.).

WHEREAS, the California Legislature has amended the California Environmental Quality Act ("CEQA") (Pub. Resources Code §§ 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14, §§ 15000 et seq.), and the California courts have interpreted specific provisions of CEQA; and

WHEREAS, Section 21082 of CEQA requires all public agencies to adopt objectives, criteria and procedures for the evaluation of public and private projects undertaken or approved by such public agencies, and the preparation, if required, of environmental impact reports and negative declarations in connection with that evaluation; and

WHEREAS, the City of Ontario must revise its local guidelines for implementing CEQA to make them consistent with the current provisions and interpretations of CEQA and the State CEQA Guidelines.

NOW, THEREFORE, the City Council of the City of Ontario ("City") hereby resolves as follows:

SECTION 1. ***City Council Action.*** Based upon the findings and conclusions set forth above, The City adopts "Local Guidelines for Implementing the California Environmental Quality Act (2019 Revision)," a copy of which is on file in the Records Management/City Clerk's Office and is available for inspection by the public.

NOW, THEREFORE, BE IT RESOLVED that the City Council adopts the amended Local Guidelines for Implementing California Environmental Quality Act.

SECTION 2: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 3. ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of July 2019.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2019- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held July 2, 2019, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2019- duly passed and adopted by the Ontario City Council at their regular meeting held July 2, 2019.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

AMENDED 2019
LOCAL GUIDELINES FOR IMPLEMENTING THE CEQA FOR THE CITY OF ONTARIO

(To follow this page)

2019

LOCAL GUIDELINES

FOR IMPLEMENTING THE

CALIFORNIA ENVIRONMENTAL QUALITY ACT

FOR

CITY OF ONTARIO

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LOCAL GUIDELINES
FOR IMPLEMENTING THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT

(2019 REVISION)

1. GENERAL PROVISIONS, PURPOSE AND POLICY.

1.01 GENERAL PROVISIONS.

These Local Guidelines ("Local Guidelines") are to assist the City of Ontario ("City") in implementing the provisions of the California Environmental Quality Act ("CEQA"). These Local Guidelines are consistent with the Guidelines for the Implementation of CEQA ("State CEQA Guidelines"), which have been promulgated by the California Natural Resources Agency for the guidance of state and local agencies in California. These Local Guidelines have been adopted pursuant to California Public Resources Code Section 21082.

1.02 PURPOSE.

The purpose of these Local Guidelines is to help the City accomplish the following basic objectives of CEQA:

(a) To enhance and provide long-term protection for the environment, while providing a decent home and satisfying living environment for every Californian;
(b) To provide information to governmental decision-makers and the public regarding the potential significant environmental effects of the proposed project;
(c) To provide an analysis of the environmental effects of future actions associated with the project to adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project;
(d) To identify ways that environmental damage can be avoided or significantly reduced;
(e) To prevent significant avoidable environmental damage through utilization of feasible project alternatives or mitigation measures; and
(f) To disclose and demonstrate to the public the reasons why a governmental agency approved the project in the manner chosen. Public participation is an essential part of the CEQA process. Each public agency should encourage wide public involvement, formal and informal, in order to receive and evaluate public reactions to environmental issues related to a public agency's activities. Such involvement should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

1.03 APPLICABILITY.

These Local Guidelines apply to any activity that constitutes a "project," as defined in Local Guidelines Section 11.57, for which the City is the Lead Agency or a Responsible Agency. These Local Guidelines are also intended to assist the City in determining whether a

proposed activity constitutes a project that is subject to CEQA review, or whether the activity is exempt from CEQA.

1.04 REDUCING DELAY AND PAPERWORK.

The State CEQA Guidelines encourage local governmental agencies to reduce delay and paperwork by, among other things:

(a) Integrating the CEQA process into early planning review; to this end, the project approval process and these procedures, to the maximum extent feasible, are to run concurrently, not consecutively;
(b) Identifying projects which fit within categorical or other exemptions and are therefore exempt from CEQA processing;
(c) Using initial studies to identify significant environmental issues and to narrow the scope of Environmental Impact Reports (EIRs);
(d) Using a Negative Declaration when a project, not otherwise exempt, will not have a significant effect on the environment;
(e) Consulting with state and local responsible agencies before and during the preparation of an EIR so that the document will meet the needs of all the agencies which will use it;
(f) Allowing applicants to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a Negative Declaration rather than an EIR;
(g) Integrating CEQA requirements with other environmental review and consultation requirements;
(h) Emphasizing consultation before an EIR is prepared, rather than submitting adverse comments on a completed document;
(i) Combining environmental documents with other documents, such as general plans;
(j) Eliminating repetitive discussions of the same issues by using EIRs on programs, policies or plans and tiering from statements of broad scope to those of narrower scope;
(k) Reducing the length of EIRs by means such as setting appropriate page limits;
(l) Preparing analytic, rather than encyclopedic EIRs;
(m) Mentioning insignificant issues only briefly;
(n) Writing EIRs in plain language;
(o) Following a clear format for EIRs;
(p) Emphasizing the portions of the EIR that are useful to decision-makers and the public and reducing emphasis on background material;
(q) Incorporating information by reference; and
(r) Making comments on EIRs as specific as possible.

1.05 COMPLIANCE WITH STATE LAW.

These Local Guidelines are intended to implement the provisions of CEQA and the State CEQA Guidelines, and the provisions of CEQA and the State CEQA Guidelines shall be fully complied with even though they may not be set forth or referred to herein.

1.06 TERMINOLOGY.

The terms "must" or "shall" identify mandatory requirements. The terms "may" and "should" are permissive, with the particular decision being left to the discretion of the City.

1.07 PARTIAL INVALIDITY.

In the event any part or provision of these Local Guidelines shall be determined to be invalid, the remaining portions that can be separated from the invalid unenforceable provisions shall continue in full force and effect.

1.08 ELECTRONIC DELIVERY OF COMMENTS AND NOTICES.

Individuals may file a written request to receive copies of public notices provided for under these Local Guidelines or the State CEQA Guidelines. The requestor may elect to receive these notices via email rather than regular mail. Notices sent by email are deemed delivered when the staff person sending the email sends it to the last email address provided by the requestor to the City. Any request to receive public notices shall be in writing and shall be renewed annually.

Individuals may also submit comments on the CEQA documentation for a project via email. Comments submitted via email shall be treated as written comments for all purposes. Comments sent to the City via email are deemed received when they actually arrive in an email account of a staff person who has been designated or identified as the point of contact for a particular project.

CEQA also requires the lead agency to make copies of certain environmental documents available in an electronic format (such as Draft Environmental Impact Reports, Draft Negative Declarations and Draft Mitigated Negative Declarations), upon request.

1.09 THE CITY MAY CHARGE REASONABLE FEES FOR REPRODUCING ENVIRONMENTAL DOCUMENTS.

A public agency may charge and collect a reasonable fee from members of the public that request a copy of an environmental document, so long as the fee does not exceed the cost of reproduction. The kinds of "environmental documents" that CEQA specifically allows public agencies to seek reimbursement for include: initial studies, negative declarations, mitigated negative declarations, draft and final EIRs, and documents prepared as a substitute for an EIR, negative declaration, or mitigated negative declaration.

The City may choose to make documents available to the public-at-large on its website or charge a reasonable fee for reproducing the document in hard-copy form, on compact discs, email attachments, or other digital transfers. Requests for documents made pursuant to the California Public Records Act must comply with the Government Code. (See, for example, Government Code Section 6253.9 for information regarding providing documents in electronic format.)

1.10 TIME OF PREPARATION

Before granting any approval of a project subject to CEQA, the Lead Agency or Responsible Agency shall consider a Final EIR, Negative Declaration, Mitigated Negative Declaration, or another document authorized by the State CEQA Guidelines to be used in the place of an EIR or Negative Declaration.

Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs, Negative Declarations, and Mitigated Negative Declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

To implement the above principles, the City shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, the City shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the City has made any final purchase of the site for these facilities, except that the City may designate a preferred site for CEQA review and may enter into land acquisition agreements when the City has conditioned its future use of the site on CEQA compliance.

(B) Otherwise take any action that gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

With private projects, the City shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

While mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, the City shall not grant any vested development entitlements prior to compliance with CEQA. Further, any such pre-approval agreement should, for example:

(A) Condition the agreement on compliance with CEQA;
(B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance;
(C) Not restrict the Lead Agency from considering any feasible mitigation measures and alternatives, including the “no project” alternative; and
(D) Not restrict the Lead Agency from denying the project.

The City's environmental document preparation and review should be coordinated in a timely fashion with the City's existing planning, review, and project approval processes. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively.

1.11 STATE AGENCY FURLOUGHS.

Due to budget concerns, the State may institute mandatory furlough days for state government agencies. Local agencies may also change their operating hours.

Because state and local agencies may enact furloughs that limit their operating hours, if the City has time-sensitive materials or needs to consult with a state agency, the City should check with the applicable state agency office or with the City's attorney to ensure compliance with all applicable deadlines.

1.12 ENVIRONMENTAL COMPLIANCE FOR CITY-INITIATED PROJECTS..

In an effort to provide consistent CEQA review and coordination of City-initiated projects, an Environmental Review Coordinator ("ERC") has been designated within the Planning Department to aid City departments on the ever-changing environmental statutes and to create a CEQA repository. This section 1.11 only applies to City-initiated projects.

To achieve the desired level of review, the project manager for each City-initiated project* will contact the ERC following project inception and provide the ERC with a written description of the project, including any preliminary plans, special studies completed, and other information that may be helpful evaluating the project. The ERC will review the information and determine if 1) existing CEQA documents are sufficient to address the potential impacts of the project; 2) if existing CEQA documents may be used to tier off to provide the necessary CEQA review; 3) if a new CEQA review is necessary for the project, or 4) an exemption from CEQA applies to the project. Additionally, the ERC will provide direction to the project manager on the level of CEQA review required for the project (e.g. Negative Declaration, Environmental Impact Report ("EIR"), etc.).

Once a memorandum on the scope/preliminary plans for a project has been submitted to the ERC, the ERC will work with the project manager to complete the CEQA review in-house to the extent possible. Should the need arise for studies or an EIR beyond staff's ability to complete, the ERC shall work with the project manager to 1) develop a Request for Proposal ("RFP") for the necessary services; 2) review the RFPs with the project manager and assist in the selection of a consultant; 3) prepare the consultant contract for the services; 4) provide coordination between the consultant and the project manager; 5) coordinate preparation of the CEQA document; 6) review and comment on the CEQA document; 7) review invoices/billing by the consultant; and 8) ensure compliance with established legal procedures, filings, etc.

Upon successful completion of the CEQA review, the ERC shall retain copies of pertinent CEQA information, including, but not limited to, CEQA documents and Notice of Determinations. The central CEQA repository will provide ease of access to previous CEQA documents that may be needed for future actions (e.g. grant applications, project modifications, new projects, etc.).

**As determined under CEQA*

(Section added October 2011)

2. LEAD AND RESPONSIBLE AGENCIES

2.01 LEAD AGENCY PRINCIPLE.

The City will be the Lead Agency if it will have principal responsibility for carrying out or approving a project. Where a project is to be carried out or approved by more than one public agency, only one agency shall be responsible for the preparation of environmental documents. This agency shall be called the Lead Agency.

2.02 SELECTION OF LEAD AGENCY.

Where two or more public agencies will be involved with a project, the Lead Agency shall be designated according to the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project will be located within the jurisdiction of another public agency; or

(b) If the project will be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising and approving the project as a whole.

The Lead Agency will normally be the agency with general governmental powers, rather than an agency with a single or limited purpose. (For example, a city that will provide a public service or utility to the project serves a limited purpose.) If two or more agencies meet this criteria equally, the agency that acts first on the project will normally be the Lead Agency.

If two or more public agencies have a substantial claim to be the Lead Agency under either (a) or (b), they may designate one agency as the Lead Agency by agreement. An agreement may also provide for cooperative efforts by contract, joint exercise of powers, or similar devices. If the agencies cannot agree which agency should be the Lead Agency for preparing the environmental document, any of the disputing public agencies or the project applicant may submit the dispute to the Office of Planning and Research. Within 21 days of receiving the request, the Office of Planning and Research will designate the Lead Agency. The Office of Planning and Research shall not designate a Lead Agency in the absence of a dispute. A "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists when each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

2.03 DUTIES OF A LEAD AGENCY.

As a Lead Agency, the City shall decide whether a Negative Declaration, Mitigated Negative Declaration or an EIR will be required for a project and shall prepare, or cause to be prepared, and consider the document before making its decision on whether and how to approve the project. The documents may be prepared by Staff or by private consultants pursuant to a contract with the City. However, the City shall independently review and analyze all draft and final EIRs or Negative Declarations prepared for a project and shall find that the EIR or Negative

Declaration reflects the independent judgment of the City prior to approval of the document. If a Draft EIR or Final EIR is prepared under a contract with the City, the contract must be executed within forty-five (45) days from the date on which the City sends a Notice of Preparation. (See Local Guidelines Section 7.02.)

During the process of preparing an EIR, the City, as Lead Agency, shall have the following duties:

(a) If a California Native American tribe has requested consultation, within 14 days after determining that an application for a project is complete or a decision to undertake a project, the City shall begin consultation with the California Native American tribes (see Local Guidelines Section 7.07);
(b) Immediately after deciding that an EIR is required for a project, the City shall send to the Office of Planning and Research and each Responsible Agency a Notice of Preparation (Form "G") stating that an EIR will be prepared (see Local Guidelines Section 7.03);
(c) Prior to release of an EIR, if the California Native American tribe that is culturally affiliated with the geographic area of a project requests in writing to be informed of any proposed project, the City shall begin consultation with the tribe consistent with California law and Local Guidelines Section 7.07;
(d) The City shall prepare or cause to be prepared the Draft EIR for the project (see Local Guidelines Sections 7.06 and 7.18);
(e) Once the Draft EIR is completed, the City shall file a Notice of Completion (Form "H") with the Office of Planning and Research (see Local Guidelines Section 7.25);
(f) The City shall consult with state, federal and local agencies that exercise authority over resources that may be affected by the project for their comments on the completed Draft EIR (see, e.g., Local Guidelines Sections 5.02, 5.16, Section 7.26);
(g) The City shall provide public notice of the availability of a Draft EIR (Form "K") at the same time that it sends a Notice of Completion to the Office of Planning and Research (see Local Guidelines Section 7.25);
(h) The City shall evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare or cause to be prepared a written response to all comments that raise significant environmental issues and that were timely received during the public comment period. A written response must be provided to all public agencies who commented on the project during the public review period at least ten (10) days prior to certifying an EIR (see Local Guidelines Section 7.30);
(i) The City shall prepare or cause to be prepared a Final EIR before approving the project (see Local Guidelines Section 7.31);
(j) The City shall certify that the Final EIR has been completed in compliance with CEQA and has been reviewed by the City Council (see Local Guidelines Section 7.33); and
(k) The City shall include in the Final EIR any comments received from a Responsible Agency on the Notice of Preparation or the Draft EIR (see Local Guidelines Sections 2.07, 7.30 and 7.31).

As Lead Agency, the City may charge a non-elected body with the responsibility of making a finding of exemption or adopting, certifying or authorizing environmental documents; however, such a determination shall be subject to the City's procedures allowing for the appeal of the CEQA determination of any non-elected body to the City. In the event the City Council has

delegated authority to a subsidiary board or official to approve a project, the City hereby delegates to that subsidiary board or official the authority to make all necessary CEQA determinations, including whether an EIR, Negative Declaration, Mitigated Negative Declaration or exemption shall be required for any project. A subsidiary board or official's CEQA determination shall be subject to appeal consistent with the City's established procedures for appeals.

2.04 PROJECTS RELATING TO DEVELOPMENT OF HAZARDOUS WASTE AND OTHER SITES.

An applicant for a development project must submit a signed statement to the City, as Lead Agency, stating whether the project and any alternatives are located on a site that is included in any list compiled by the Secretary for Environmental Protection of the California Environmental Protection Agency ("California EPA") listing hazardous waste sites and other specified sites located in the City's boundaries. The applicant's statement must contain the following information:

(a) The applicant's name, address, and phone number;
(b) Address of site, and local agency (city/county);
(c) Assessor's book, page, and parcel number; and
(d) The list which includes the site, identification number, and date of list.

Before accepting as complete an application for any development project as defined in Local Guidelines Section 11.17, the City, as Lead Agency, shall consult lists compiled by the Secretary for Environmental Protection of the California EPA pursuant to Government Code Section 65962.5 listing hazardous waste sites and other specified sites located in the City's boundaries. When acting as Lead Agency, the City shall notify an applicant for a development project if the project site is located on such a list and not already identified. In the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (see Local Guidelines Section 6.04) or the Notice of Preparation of Draft EIR (see Local Guidelines Section 7.03), the City shall specify the California EPA list, if any, that includes the project site, and shall provide the information contained in the applicant's statement.

This provision does not apply to projects for which applications have been deemed complete on or before January 1, 1992.

2.05 RESPONSIBLE AGENCY PRINCIPLE.

When a project is to be carried out or approved by more than one public agency, all public agencies other than the Lead Agency that have discretionary approval power over the project shall be identified as Responsible Agencies.

2.06 DUTIES OF A RESPONSIBLE AGENCY.

When it is identified as a Responsible Agency, the City shall consider the environmental documents prepared or caused to be prepared by the Lead Agency and reach its own conclusions on whether and how to approve the project involved. The City shall also both respond to consultation and attend meetings as requested by the Lead Agency to assist the Lead Agency in preparing adequate environmental documents. The City should also review and comment on

Draft EIRs, Negative Declarations, and Mitigated Negative Declarations. Comments shall be limited to those project activities that are within the City's area of expertise or are required to be carried out or approved by the City or are subject to the City's powers.

As a Responsible Agency, the City may identify significant environmental effects of a project for which mitigation is necessary. As a Responsible Agency, the City may submit to the Lead Agency proposed mitigation measures that would address those significant environmental effects. If mitigation measures are required, the City should submit to the Lead Agency complete and detailed performance objectives for such mitigation measures that would address the significant environmental effects identified, or refer the Lead Agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the Lead Agency by the City, when acting as a Responsible Agency, shall be limited to measures that mitigate impacts to resources that are within the City's authority. For private projects, the City, as a Responsible Agency, may require the project proponent to provide such information as may be required and to reimburse the City for all costs incurred by it in reporting to the Lead Agency.

2.07 RESPONSE TO NOTICE OF PREPARATION BY RESPONSIBLE AGENCIES.

Within thirty (30) days of receipt of a Notice of Preparation of an EIR, the City, as a Responsible Agency, shall specify to the Lead Agency the scope and content of the environmental information related to the City's area of statutory responsibility in connection with the proposed project. At a minimum, the response shall identify the significant environmental issues and possible alternatives and mitigation that the City, as a Responsible Agency, will need to have explored in the Draft EIR. Such information shall be specified in writing, shall be as specific as possible, and shall be communicated to the Lead Agency, by certified mail or any other method of transmittal that provides it with a record that the response was received. The Lead Agency shall incorporate this information into the EIR.

2.08 USE OF FINAL EIR OR NEGATIVE DECLARATION BY RESPONSIBLE AGENCIES.

The City, as a Responsible Agency, shall consider the Lead Agency's Final EIR or Negative Declaration before acting upon or approving a proposed project. As a Responsible Agency, the City must independently review and consider the adequacy of the Lead Agency's environmental documents prior to approving any portion of the proposed project. In certain instances, the City, in its role as a Responsible Agency, may require that a Subsequent EIR or a Supplemental EIR be prepared to fully address those aspects of the project over which the City has approval authority. Mitigation measures and alternatives deemed feasible and relevant to the City's role in carrying out the project shall be adopted. Findings that are relevant to the City's role as a Responsible Agency shall be made. After the City decides to approve or carry out part of a project for which an EIR or negative declaration has previously been prepared by the Lead Agency, the City, as Responsible Agency, should file a Notice of Determination with the County Clerk within five (5) days of approval, but need not state that the Lead Agency's EIR or Negative Declaration complies with CEQA. The City, as Responsible Agency, should state that it considered the EIR or Negative Declaration as prepared by a Lead Agency.

2.09 SHIFT IN LEAD AGENCY RESPONSIBILITIES.

The City, as a Responsible Agency, shall assume the role of the Lead Agency if any one of the following three conditions is met:

(a) The Lead Agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency;

(b) The Lead Agency prepared environmental documents for the project, and all of the following conditions apply:

(1) A Subsequent or Supplemental EIR is required;

(2) The Lead Agency has granted a final approval for the project; and

(3) The statute of limitations has expired for a challenge to the action of the appropriate Lead Agency; or

(c) The Lead Agency prepared inadequate environmental documents without providing public notice of a Negative Declaration or sending Notice of Preparation of an EIR to Responsible Agencies and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

3. ACTIVITIES EXEMPT FROM CEQA

3.01 ACTIONS SUBJECT TO CEQA.

CEQA applies to discretionary projects proposed to be carried out or approved by public agencies such as the City. If the proposed activity does not come within the definition of "project" contained in Local Guidelines Section 11.57, it is not subject to environmental review under CEQA.

"Project" does not include:

(a) Proposals for legislation to be enacted by the State Legislature;
(b) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, and general policy and procedure making (except as provided in Local Guidelines Section 11.57);
(c) The submittal of proposals to a vote of the people in response to a petition drive initiated by voters, or the enactment of a qualified voter-sponsored initiative under California Constitution Art. II, Section 11(a) and Election Code Section 9214;
(d) The creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project that may have a potentially significant physical impact on the environment. Government funding mechanisms may include, but are not limited to, assessment districts and community facilities districts;
(e) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment; and
(f) Activities that do not result in a direct or reasonably foreseeable indirect physical change in the environment.

3.02 MINISTERIAL ACTIONS.

Ministerial actions are not subject to CEQA review. A ministerial action is one that is approved or denied by a decision that a public official or a public agency makes that involves only the use of fixed standards or objective measurements without personal judgment or discretion.

When a project involves an approval that contains elements of both a ministerial and discretionary nature, the project will be deemed to be discretionary and subject to the requirements of CEQA. The decision whether the approval of a proposed project or activity is ministerial in nature may involve or require, to some extent, interpretation of the language of the legal mandate, and should be made on a case-by-case basis. The following is a non-exclusive list of examples of ministerial activities:

(a) Issuance of business licenses;
(b) Approval of final subdivision maps and final parcel maps;
(c) Approval of individual utility service connections and disconnections;
(d) Issuance of licenses;
(e) Issuance of a permit to do street work; and
(f) Issuance of building permits where the Lead Agency does not retain significant discretionary power to modify or shape the project.

3.03 EXEMPTIONS IN GENERAL.

CEQA and the State CEQA Guidelines exempt certain activities and provide that local agencies should further identify and describe certain exemptions. The requirements of CEQA and the obligation to prepare an EIR, Negative Declaration or Mitigated Negative Declaration generally do not apply to the exempt activities that are set forth in CEQA, the State CEQA Guidelines and Chapter 3 of these Local Guidelines.

3.04 PRELIMINARY EXEMPTION ASSESSMENT.

If, in the judgment of Staff, a proposed activity is exempt, Staff should so find on the form entitled "Preliminary Exemption Assessment" (Form "A"). The Preliminary Exemption Assessment shall be retained at City Offices as a public record.

3.05 NOTICE OF EXEMPTION.

After approval of an exempt project, a "Notice of Exemption" (Form "B") may be filed by the City or its representatives with the county clerk of each county in which the activity will be located. If the Lead Agency exempts an agricultural housing, affordable housing, or residential infill project under State CEQA Guidelines Sections 15193, 15194 or 15195 and approves or determines to carry out that project, it must file a notice with the Office of Planning and Research ("OPR") identifying the exemption. The Preliminary Exemption Assessment shall be attached to the Notice of Exemption for filing. If filed, the Clerk must post the Notice within twenty-four (24) hours of receipt, and the Notice must remain posted for thirty (30) days. Although no California Department of Fish and Wildlife ("DFW") filing fee is applicable to exempt projects, most counties customarily charge a documentary handling fee to pay for record keeping on behalf of the DFW. Refer to the Index in the Staff Summary to determine if such a fee will be required for the project. The Notice of Exemption must also identify the person undertaking the project, including any person undertaking an activity that receives financial assistance from the City as part of the project or the person receiving a lease, permit, license, certificate, or other entitlement for use from the City as part of the project.

When filing a Notice of Exemption, Staff has different responsibilities for certain types of actions. If the activity is either:

(a) undertaken by a *person* (not a public agency) and is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or

(b) involves the issuance to a *person* (not a public agency) of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies; then

Staff may direct that person to file the Notice of Exemption with the county clerk of each county in which the activity will be located. (See Public Resources Code section 21065 (b) and (c)). A Notice of Exemption filed by a person as described above must have a certificate of determination attached to it issued by the City stating that the action is not subject to CEQA. (See Public Resources Code Sections 21080 and 21152.) The certificate of determination may be in the form of a certified copy of an existing document or record of the City.

The filing of a Notice of Exemption, when appropriate, is recommended for City actions because it starts a 35-day statute of limitations on legal challenges to the City's determination that the activity is exempt from CEQA. The City is encouraged to make postings of all filed notices available in electronic format on the Internet. These electronic postings are in addition to the procedures required by the State CEQA Guidelines and the Public Resources Code. If a Notice of Exemption is not filed, a 180-day statute of limitations will apply. Please see Local Guidelines Sections 3.13 and 3.17 for certain circumstances in which the Lead Agency is required to file a Notice of Exemption. The thirty-day posting requirement excludes the first day of posting and includes the last day of posting. On the 30th day, the Notice of Exemption must be posted for the entire day.

When a request is made for a copy of the Notice prior to the date on which the City determines the project is exempt, the Notice must be mailed, first class postage prepaid, within five (5) days after the City's determination. If such a request is made following the City's determination, then the copy should be mailed in the same manner as soon as possible.

3.06 DISAPPROVED PROJECTS.

Projects that the Lead Agency rejects or disapproves are exempt from CEQA. An applicant shall not be relieved of paying the costs for an EIR, Negative Declaration, or Mitigated Negative Declaration prepared for a project prior to the Lead Agency's disapproval of the project.

3.07 PROJECTS WITH NO POSSIBILITY OF SIGNIFICANT EFFECT.

Where it can be seen with absolute certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA.

3.08 EMERGENCY PROJECTS.

The following types of emergency projects are exempt from CEQA (the term "emergency" is defined in Local Guidelines Section 11.20):

(a) Work in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter a historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of the Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare. Emergency repairs include those that require a reasonable amount of planning to address an anticipated emergency.

(c) Projects necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as

fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. Highway shall have the same meaning as defined in Section 360 of the Vehicle Code. This exemption does not apply to highways designated as official state scenic highways, nor to any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Streets and Highways Code section 180.2.

3.09 FEASIBILITY AND PLANNING STUDIES.

A project that involves only feasibility or planning studies for possible future actions which the City has not yet approved, adopted or funded is exempt from CEQA.

3.10 RATES, TOLLS, FARES AND CHARGES.

The establishment, modification, structuring, restructuring or approval of rates, tolls, fares or other charges by the City that the City finds are for one or more of the purposes listed below are exempt from CEQA.

(a) Meeting operating expenses, including employee wage rates and fringe benefits;
(b) Purchasing or leasing supplies, equipment or materials;
(c) Meeting financial reserve needs and requirements; or
(d) Obtaining funds for capital projects necessary to maintain service within existing service areas.

When the City determines that one of the aforementioned activities pertaining to rates, tolls, fares or charges is exempt from the requirements of CEQA, it shall incorporate written findings setting forth the specific basis for the claim of exemption in the record of any proceeding in which such an exemption is claimed.

3.11 PIPELINES WITHIN A PUBLIC RIGHT-OF-WAY AND LESS THAN ONE MILE IN LENGTH.

Projects that are for the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline and that are:

(a) in a public street or highway or any other public right-of-way; and
(b) less than one mile in length

shall be exempt from CEQA requirements. See Public Resources Code section 21080.21.

"Pipeline" includes subsurface facilities but does not include any surface facility related to the operation of the underground facility.

3.12 PIPELINES OF LESS THAN EIGHT MILES IN LENGTH.

Projects that are for the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline, or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline shall be exempt from CEQA requirements if all of the following conditions are met:

(a) The project is less than eight miles in length.
(b) Notwithstanding the project length, actual construction and excavation activities undertaken to achieve the maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline are not undertaken over a length of more than one-half mile at any one time.
(c) The project consists of a section of pipeline that is not less than eight miles from any section of pipeline that has been subject to an exemption pursuant to CEQA in the past 12 months.
(d) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials, and, to the extent not otherwise expressly required by law, the party undertaking the project immediately informs the lead agency of the discovery of contaminated soil.
(e) To the extent not otherwise expressly required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if determined to be necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project.
(f) Project activities are undertaken within an existing right-of-way and the right-of-way is restored to its condition prior to the project.
(g) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and to otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

If a project meets all of the requirements for this exemption, the person undertaking the project shall do all of the following:

(a) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority of this exemption.
(b) Provide notice to the public in the affected area in a manner consistent with paragraph (3) of Public Resources Code section 21092(b).
(c) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(d) Comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

This exemption does not apply to a project in which the diameter of the pipeline is increased or to a project undertaken within the boundaries of an oil refinery.

For purposes of this exemption, the following definitions apply:

(a) "Pipeline" includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in the state. "Pipeline" does not include the following:

(1) An interstate pipeline subject to Part 195 of Title 49 of the Code of Federal Regulations.
(2) A pipeline for the transportation of a hazardous liquid substance in a gaseous state.
(3) A pipeline for the transportation of crude oil that operates by gravity or at a stress level of 20 percent or less of the specified minimum yield strength of the pipe.
(4) Transportation of petroleum in onshore gathering lines located in rural areas.
(5) A pipeline for the transportation of a hazardous liquid substance offshore located upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream.
(6) Transportation of a hazardous liquid by a flow line.
(7) A pipeline for the transportation of a hazardous liquid substance through an onshore production, refining, or manufacturing facility, including a storage or in plant piping system associated with that facility.
(8) Transportation of a hazardous liquid substance by vessel, aircraft, tank truck, tank car, or other vehicle or terminal facilities used exclusively to transfer hazardous liquids between those modes of transportation.

3.13 CERTAIN RESIDENTIAL HOUSING PROJECTS.

CEQA does not apply to the construction, conversion, or use of residential housing if the project meets all of the general requirements described in Section A below and satisfies the specific requirements for any one of the following three categories: (1) agricultural housing

(Section B below), (2) affordable housing projects in urbanized areas (Section C below), or (3) affordable housing projects near major transit stops (Section D below).

A. General Requirements. The construction, conversion, or use of residential housing units affordable to low-income households (as defined in Local Guidelines Section 11.36) located on an infill site in an urbanized area is exempt from CEQA if all of the following general requirements are satisfied:

(1) The project is consistent with:

(a) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application was deemed complete; and

(b) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete. However, the project may be inconsistent with zoning if the zoning is inconsistent with the general plan and the project site has not been rezoned to conform to the general plan;

(2) Community level environmental review has been adopted or certified;

(3) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees;

(4) The project site meets all of the following four criteria relating to biological resources:

(a) The project site does not contain wetlands;

(b) The project site does not have any value as a wildlife habitat;

(c) The project does not harm any species protected by the federal Endangered Species Act of 1973, the Native Plant Protection Act, or the California Endangered Species Act; and

(d) The project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete;

(5) The site is not included on any list of facilities and sites compiled pursuant to Government Code Section 65962.5;

(6) The project site is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the

following steps must have been taken in response to the results of this assessment:

(a) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements; or

(b) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements;

(7) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code (see Local Guidelines Section 11.28);

(8) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection; unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard;

(9) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties;

(10) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency;

(11) Either the project site is not within a delineated earthquake fault zone, or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard;

(12) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood;

(13) The project site is not located on developed open space;

(14) The project site is not located within the boundaries of a state conservancy;

(15) The project site has not been divided into smaller projects to qualify for one or more of the exemptions for affordable housing, agricultural housing, or residential infill housing projects found in the subsequent sections; and

(16) The project meets the requirements set forth in either Public Resources Code Sections 21159.22, 21159.23 or 21159.24.

B. Specific Requirements for Agricultural Housing. (Public Resources Code Sections 21084 and 21159.22, and State CEQA Guidelines Section 15192.) CEQA does not apply to the construction, conversion, or use of residential housing for agricultural employees that meets all of the general requirements described above in Section A and meets the following additional criteria:

(1) The project either:

(a) Is affordable to lower income households, lacks public financial assistance, and the developer has provided sufficient legal commitments to ensure the continued availability and use of the housing units for lower income households for a period of at least fifteen (15) years; or

(b) If public financial assistance exists for the project, then the project must be housing for very low-, low-, or moderate-income households and the developer of the project has provided sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least fifteen (15) years;

(2) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than forty-five (45) units or provides dormitories, barracks, or other group-living facilities for a total of forty-five (45) or fewer agricultural employees, and either:

(a) The project site is within incorporated city limits or within a census-defined place with a minimum population density of at least five thousand (5,000) persons per square mile; or

(b) The project site is within incorporated city limits or within a census-defined place and the minimum population density of the census-defined place is at least one thousand (1,000) persons per square mile, unless the Lead Agency determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative effects of successive projects of the same type in the same area would, over time, be significant;

(3) If the project is located on a site zoned for general agricultural use, it must consist of twenty (20) or fewer units, or, if the housing consists of dormitories, barracks, or other group-living facilities, the project must not provide housing for more than twenty (20) agricultural employees; and

(4) The project is not more than two (2) acres in area if the project site is located in an area with a population density of at least one thousand (1,000) persons per square mile, and is not more than five (5) acres in area for all other project sites.

C. Specific Requirements for Affordable Housing Projects in Urbanized Areas. (Reference: Public Resources Code Sections 21083 and 21159.23, and State CEQA Guidelines Section 15194.) CEQA does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of one hundred (100) or fewer units that are affordable to low-income households if all of the general requirements described in Section A above are satisfied and the following additional criteria are also met:

(1) The developer of the project provides sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least thirty (30) years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code;

(2) The project site meets one of the following conditions:

(a) Has been previously developed for qualified urban uses;
(b) Is immediately adjacent to parcels that are developed with qualified urban uses; or
(c) At least 75% of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25% of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, the site has not been developed for urban uses and no parcel within the site has been created within ten (10) years prior to the proposed development of the site;

(3) The project site is not more than five (5) acres in area; and

(4) The project site meets one of the following requirements regarding population density:

(a) The project site is within an urbanized area or within a census-defined place with a population density of at least five thousand (5,000) persons per square mile;
(b) If the project consists of fifty (50) or fewer units, the project site is within an incorporated city with a population density of at least twenty-five hundred (2,500) persons per square mile and a total population of at least twenty-five thousand (25,000) persons; or

(c) The project site is within either an incorporated city or a census-defined place with a population density of one thousand (1,000) persons per square mile, unless there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

D. Specific Requirements for Affordable Housing Projects Near Major Transit Stops. (Reference: Public Resources Code Sections 21083 and 21159.24, and State CEQA Guidelines Section 15195.) CEQA does not apply to a residential project on an infill site within an urbanized area if all of the general requirements described above in Section A are satisfied and the following additional criteria are also met:

(1) Within five (5) years prior to the date that the application for the project is deemed complete, community-level environmental review was certified or adopted. This exemption does not apply, however, if new information about the project or substantial changes regarding the circumstances surrounding the project become available after the community-level environmental review was certified or adopted;

(2) The site is not more than four (4) acres in total area;

(3) The project does not contain more than one hundred (100) residential units;

(4) The project meets either of the following criteria:

(a) At least 10% of the housing is sold to families of moderate income or rented to families of low income, or at least 5% of the housing is rented to families of very low income, and the project developer has provided sufficient legal commitments to ensure the continued availability and use of the housing units for very low-, low-, and moderate-income households at monthly housing costs; or

(b) The project developer has paid or will pay in-lieu fees sufficient to pay for the development of the same number of units that would otherwise be sold or rented to families of moderate or very low income pursuant to subparagraph (a);

(5) The project is within one-half mile of a major transit stop;

(6) The project does not include any single-level building that exceeds one hundred thousand (100,000) square feet;

(7) The project promotes higher density infill housing:

(a) A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing; or

(b) A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise;

(8) Exception:

(a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

1. The project is a residential project on an infill site.

2. The project is located within an urbanized area.

3. The project satisfies the criteria of Section 21159.21.

4. Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.

5. The site of the project is not more than four acres in total area.

6. The project does not contain more than 100 residential units.

7. Either of the following criteria are met:

a. At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

b. The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low-, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of the subdivision (h) of Section 65589.5 of the Government Code.

c. The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (7)(a).

8. The project is within one-half mile of a major transit stop.

9. The project does not include any single level building that exceeds 100,000 square feet.

10. The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) The Exemption for Affordable Housing Projects near Major Transit Stops does not apply if any one of the following criteria is met:

1. There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances;
2. Substantial changes have occurred since community-level environmental review was adopted or certified with respect to the circumstances under which the project is being undertaken, and those changes are related to the project; or
3. New information regarding the circumstances under which the project is being undertaken has become available, and that new information is related to the project and was not known and could not have been known at the time of the community-level environmental review;

(c) If a project satisfies any one of the three criteria described above in Section 3.13D(8)(a), the environmental effects of the project must be analyzed in an Environmental Impact Report or a Negative Declaration. The environmental analysis shall be limited to the project-specific effects and any effects identified pursuant to Section 3.13D(8)(a).

E. Whenever the Lead Agency determines that a project is exempt from environmental review based on Public Resources Code Sections 21159.22 [Section 3.13B of these Local Guidelines], 21159.23 [Section 3.13C of these Local Guidelines], or 21159.24 [Section 3.13D of these Local Guidelines], Staff and/or the proponent of the project shall file a Notice of Exemption with the

Office of Planning and Research within five (5) working days after the approval of the project.

3.14 MINOR ALTERATIONS TO FLUORIDATE WATER UTILITIES.

Minor alterations to water utilities made for the purpose of complying with the fluoridation requirements of Health and Safety Code Sections 116410 and 116415 or regulations adopted thereunder are exempt from CEQA.

3.15 BALLOT MEASURES.

The definition of project in the State CEQA Guidelines specifically excludes the submittal of proposals to a vote of the people of the state or of a particular community. This exemption does not apply to the public agency that sponsors the initiative. When a governing body makes a decision to put a measure on the ballot, that decision may be discretionary and therefore subject to CEQA. In contrast, the enactment of a qualified voter-sponsored initiative under California Constitution Art. II, Section 11(a) and Election Code Section 9214 is not a project and therefore is not subject to CEQA review. (See Local Guidelines Section 3.01.)

3.16 TRANSIT PRIORITY PROJECT.

Exemption: Transit Priority Projects (see Local Guidelines Section 11.75) that are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a Sustainable Community Strategy or an alternative planning strategy may be exempt from CEQA. To qualify for the exemption, the decision-making body must hold a hearing and make findings that the project meets all of Public Resources Code Section 21155.1's environmental, housing, and public safety conditions and requirements.

Streamlined Review: A Transit Priority Project that has incorporated all feasible mitigation measures, performance standards or criteria set forth in a prior environmental impact report, may be eligible for streamlined environmental review. For a complete description of the requirements for this streamlined review see Public Resources Code Section 21155.2. Similarly, the environmental review for a residential or mixed use residential project may limit, or entirely omit, its discussion of growth-inducing impacts or impacts from traffic on global warming under certain limited circumstances. Note, however, that impacts from other sources of greenhouse gas emissions would still need to be analyzed. For complete requirements see Public Resources Code Section 21159.28.

Note that neither the exemption nor the streamlined review will apply until: (1) the applicable Metropolitan Planning Organization prepares and adopts a Sustainable Communities Strategy or alternative planning strategy for the region; and (2) the California Air Resources Board has accepted the Metropolitan Planning Organization's determination that the Sustainable Communities Strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets adopted for the region.

3.17 ROADWAY IMPROVEMENTS.

CEQA does not apply to a project or an activity to repair, maintain, or make minor alterations to an existing roadway, as defined in Local Guidelines Section 11.64, if all of the following conditions are met:

A. General Requirements:

(1) The project is carried out by a city or county with a population of less than 100,000 persons to improve public safety.
(2) The project does not cross a waterway as defined in Local Guidelines Section 11.84.
(3) The project involves negligible or no expansion of an existing use beyond that existing at the time of the lead agency's determination.
(4) The roadway is not a state roadway.
(5) The site of the project does not contain wetlands or riparian areas, and does not have "significant value as a wildlife habitat" (as defined in Local Guidelines Section 11.66) and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance.
(6) The project does not impact cultural resources.
(7) The roadway does not affect scenic resources, as provided pursuant to subdivision (c) of Section 21084 of the Public Resources Code.

B. Prior to determining that a project is exempt pursuant to this section, the lead agency shall do both of the following:

(1) Include measures in the project to mitigate potential vehicular traffic and safety impacts and bicycle and pedestrian safety impacts.
(2) Hold a noticed public hearing on the project to hear and respond to public comments. The hearing on the project may be conducted with another noticed lead agency public hearing. Publication of the notice shall be no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area.

C. Whenever the local agency determines that a project is not subject to this exemption, and it approves or determines to or carry out that project, the local agency shall file a notice with the Office of Planning and Research, and with the county clerk in the manner specified in subdivisions (b) and (c) of Public Resources Code Section 21152.

3.18 CERTAIN INFILL PROJECTS

(a) (1) If an environmental impact report was certified for a planning level decision of the city or county, the application of CEQA to the approval of an infill project shall be limited to the effects on the environment that (A) are specific to the project or to the project site and were not addressed as significant effects in the prior environmental impact report or (B) substantial new information shows the effects will be more significant than described in the prior environmental impact report. The attached Form "S" shall be used for this determination. A lead agency's determination pursuant to this section shall be supported by substantial evidence.

(2) An effect of a project upon the environment shall not be considered a specific effect of the project or a significant effect that was not considered significant in a prior environmental impact report, or an effect that is more significant than was described in the prior environmental impact report if uniformly applicable development policies or standards adopted by the city, county, or the lead agency, would apply to the project and the lead agency makes a finding, based upon substantial evidence, that the development policies or standards will substantially mitigate that effect.

(b) If an infill project would result in significant effects that are specific to the project or the project site, or if the significant effects of the infill project were not addressed in the prior environmental impact report, or are more significant than the effects addressed in the prior environmental impact report, and if a mitigated negative declaration or a sustainable communities environmental assessment could not be otherwise adopted, an environmental impact report prepared for the project analyzing those effects shall be limited as follows:

(1) Alternative locations, densities, and building intensities to the project need not be considered.

(2) Growth inducing impacts of the project need not be considered.

(c) This section applies to an infill project that satisfies both of the following:

(1) The project satisfies any of the following:

A) Is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(B) Consists of a small walkable community project located in an area designated by a city for that purpose.

(C) Is located within the boundaries of a metropolitan planning organization that has not yet adopted a sustainable communities strategy or alternative planning strategy,

and the project has a residential density of at least 20 units per acre or a floor area ratio of at least 0.75.

(2) Satisfies all applicable statewide performance standards contained in the guidelines adopted pursuant to Public Resources Code Section 21094.5.5 (Form "R").

(d) This section applies after the Secretary of the Natural Resources Agency adopts and certifies the guidelines establishing statewide standards pursuant to Public Resources Code Section 21094.5.5.

(e) For the purposes of this section, the following terms mean the following:

(1) "Infill project" means a project that meets the following conditions:

(A) Consists of any one, or combination, of the following uses:

(i) Residential.

(ii) Retail or commercial, where no more than one-half of the project area is used for parking.

(iii) A transit station.

(iv) A school.

(v) A public office building.

(B) Is located within an urban area on a site that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

(2) "Planning level decision" means the enactment or amendment of a general plan, community plan, specific plan, or zoning code.

(3) "Prior environmental impact report" means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.

(4) "Small walkable community project" means a project that is in an incorporated city, which is not within the boundary of a metropolitan planning organization and that satisfies the following requirements:

(A) Has a project area of approximately one-quarter mile diameter of contiguous land completely within the existing incorporated boundaries of the city.

(B) Has a project area that includes a residential area adjacent to a retail downtown area.

(C) The project has a density of at least eight dwelling units per acre or a floor area ratio for retail or commercial use of not less than 0.50.

(5) "Urban area" includes either an incorporated city or an unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:

(A) The population of the unincorporated area and the population of the surrounding incorporated cities equal a population of 100,000 or more.

(B) The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

3.19 EXEMPTION FOR INFILL PROJECTS IN TRANSIT PRIORITY AREAS

A residential or mixed-use project, or a project with a floor area ratio of at least 0.75 on commercially-zoned property, including any required subdivision or zoning approvals, is exempt from CEQA if the project satisfies the following criteria:

- The project is located within a transit priority area as defined in Section 11.74 below;
- The project is consistent with an applicable specific plan for which an environmental impact report was certified; and
- The project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted the determination that the sustainable communities strategy or the alternative planning strategy would achieve the applicable greenhouse gas emissions reduction targets.

Further environmental review shall be required for a project meeting the above criteria only if one of the events specified in Section 8.04 below occurs.

3.20 EXEMPTION FOR RESIDENTIAL PROJECTS UNDERTAKEN PURSUANT TO A SPECIFIC PLAN

Where a public agency has prepared an EIR for a specific plan after January 1, 1980, a residential project undertaken pursuant to and in conformity with that specific plan is generally exempt from CEQA. Residential projects covered by this section include, but are not limited to, land subdivisions, zoning changes, and residential planned unit developments.

Further environmental review shall be required for a project meeting the above criteria only if, after the adoption of the specific plan, one of the events specified in Section 8.04 below occurs. In that circumstance, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the Lead

Agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

3.21 OTHER SPECIFIC EXEMPTIONS.

CEQA and the State CEQA Guidelines exempt many other specific activities, including early activities related to thermal power plants, ongoing projects, transportation improvement programs, family day care homes, congestion management programs, railroad grade separation projects, restriping of streets or highways to relieve traffic congestion, restriping of streets in urbanized areas for bicycle lanes, adoption of bicycle transportation plans for urban areas, hazardous or volatile liquid pipelines, and the installation of solar energy systems, including, but not limited to solar panels. Specific statutory exemptions are listed in the Public Resources Code, including Sections 21080 through 21080.35, and in the State CEQA Guidelines, including Sections 15260 through 15285. In addition, other titles of the California Codes provide statutory exemptions from CEQA, including, for example, Government Code Section 12012.70.

Prior to determining that a bicycle transportation plan for an urban area is exempt, the lead agency must hold noticed public hearings in areas affected by the bicycle transportation plan to hear and respond to public comments. Publication of the notice must comply with Government Code Section 6061 and be in a newspaper of general circulation in the area affected by the proposed project. The lead agency must also prepare an assessment of any traffic and safety impacts of the project and include measures in the bicycle transportation plan to mitigate potential vehicular traffic impacts and bicycle and pedestrian safety impacts. See Public Resources Code Sections 21080.20 and 21080.20.5. This exemption shall remain in place until January 1, 2021.

3.22 CATEGORICAL EXEMPTIONS.

The State CEQA Guidelines establish certain classes of categorical exemptions. These apply to classes of projects which have been determined not to have a significant effect on the environment and which, therefore, are generally exempt from CEQA. For any project that falls within one of these classes of categorical exemptions, the preparation of environmental documents under CEQA is not required. The classes of projects are briefly summarized below. (Reference to the State CEQA Guidelines for the full description of each exemption is recommended.)

The exemptions for Classes 3, 4, 5, 6 and 11 below are qualified in that such projects must be considered in light of the location of the project. A project that is ordinarily insignificant in its impact on the environment may, in a particularly sensitive environment, be significant. Therefore, these classes are considered to apply in all instances except when the project may impact an environmental resource of hazardous or critical concern that has been designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

All classes of categorical exemptions are qualified. None of the categorical exemptions are applicable if any of the following circumstances exist:

(1) The cumulative impact of successive projects of the same type in the same place over time is significant;

(2) There is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;

(3) The project may result in damage to a scenic resource or may result in a substantial adverse change to a historical resource; or

(4) The project is located on a site which is included on any hazardous waste site or list compiled pursuant to Government Code Section 65962.5.

However, a project's greenhouse gas emissions do not, in and of themselves, cause an exemption to be inapplicable if the project otherwise complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with State CEQA Guidelines Section 15183.5.

With the foregoing limitations in mind, the following classes of activity are generally exempt from CEQA:

Class 1: Existing Facilities. Activities involving the operation, repair, maintenance, permitting, leasing, licensing, minor alteration of—or legislative activities to regulate— existing public or private structures, facilities, mechanical equipment or other property, or topographical features, provided the activity involves negligible or no expansion of existing or former use. The types of "existing facilities" itemized in State CEQA Guidelines Section 15301 are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of use. (State CEQA Guidelines Section 15301.)

Class 2: Replacement or Reconstruction. Replacement or reconstruction of existing facilities, structures, or other property where the new facility or structure will be located on the same site as the replaced or reconstructed facility or structure and will have substantially the same purpose and capacity as the replaced or reconstructed facility or structure. (State CEQA Guidelines Section 15302.)

Class 3: New Construction or Conversion of Small Structures. Construction of limited numbers of small new facilities or structures; installation of small new equipment or facilities in small structures; and the conversion of existing small structures from one use to another, when only minor modifications are made in the exterior of the structure. This exemption includes structures built for both residential and commercial uses. (The maximum number of structures allowable under this exemption is set forth in State CEQA Guidelines Section 15303.)

Class 4: Minor Alterations to Land. Minor alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, except for forestry or agricultural purposes. (State CEQA Guidelines Section 15304.)

Class 5: Minor Alterations in Land Use Limitations. Minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density. (State CEQA Guidelines Section 15305.)

Class 6: Information Collection. Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. (State CEQA Guidelines Section 15306.)

Class 7: Actions by Regulatory Agencies for Protection of Natural Resources. Actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. (State CEQA Guidelines Section 15307.)

Class 8: Actions By Regulatory Agencies for Protection of the Environment. Actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment. (State CEQA Guidelines Section 15308.)

Class 9: Inspection. Inspection activities, including, but not limited to, inquiries into the performance of an operation and examinations of the quality, health or safety of a project. (State CEQA Guidelines Section 15309.)

Class 10: Loans. Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. (State CEQA Guidelines Section 15310.)

Class 11: Accessory Structures. Construction or replacement of minor structures accessory or appurtenant to existing commercial, industrial, or institutional facilities, including, but not limited to, on-premise signs; small parking lots; and placement of seasonal or temporary use items, such as lifeguard towers, mobile food units, portable restrooms or similar items in generally the same locations from time to time in publicly owned parks, stadiums or other facilities designed for public use. (State CEQA Guidelines Section 15311.)

Class 12: Surplus Government Property Sales. Sales of surplus government property, except for certain parcels of land located in an area of statewide, regional or area-wide concern identified in State CEQA Guidelines Section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife or other environmental purposes; and
(b) Any one of the following three conditions is met:
    1. The property is of such size, shape, or inaccessibility that it is incapable of independent development or use;
    2. The property to be sold would qualify for an exemption under any other class of categorical exemption in the State CEQA Guidelines; or

3. The use of the property and adjacent property has not changed since the time of purchase by the public agency.

(State CEQA Guidelines Section 15312.)

Class 13: Acquisition of Lands for Wildlife Conservation Purposes. Acquisition of lands for fish and wildlife conservation purposes, including preservation of fish and wildlife habitat, establishment of ecological preserves under Fish and Game Code Section 1580, and preservation of access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition. (State CEQA Guidelines Section 15313.)

Class 14: Minor Additions to Schools. Minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more 25% or ten (10) classrooms, whichever is less. The addition of portable classrooms is included in this exemption. (State CEQA Guidelines Section 15314.)

Class 15: Minor Land Divisions. Division(s) of property in urbanized areas zoned for residential, commercial or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20%. (State CEQA Guidelines Section 15315.)

Class 16: Transfer of Ownership of Land in Order to Create Parks. Acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:

(a) The management plan for the park has not been prepared, or
(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources.

CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource. (State CEQA Guidelines Section 15316.)

Class 17: Open Space Contracts or Easements. Establishment of agricultural preserves, making and renewing of open space contracts under the Williamson Act, or acceptance of easements or fee interests in order to maintain the open space character of the area. (The cancellation of such preserves, contracts, interests or easements is not included in this exemption.) (State CEQA Guidelines Section 15317.)

Class 18: Designation of Wilderness Areas. Designation of wilderness areas under the California Wilderness System. (State CEQA Guidelines Section 15318.)

Class 19: Annexations of Existing Facilities and Lots for Exempt Facilities. This exemption applies only to the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or prezoning of either the gaining or losing governmental agency, whichever is more restrictive; provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities; and
(b) Annexations of individual small parcels of the minimum size for facilities exempted by Class 3, New Construction or Conversion of Small Structures.

(State CEQA Guidelines Section 15319.)

Class 20: Changes in Organization of Local Agencies. Changes in the organization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district;
(b) Consolidation of two or more districts having identical powers; and
(c) Merger with a city of a district lying entirely within the boundaries of the city.

(State CEQA Guidelines Section 15320.)

Class 21: Enforcement Actions by Regulatory Agencies. Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use issued, adopted or prescribed by the regulatory agency or enforcement of a law, general rule, standard or objective administered or adopted by the regulatory agency; or law enforcement activities by peace officers acting under any law that provides a criminal sanction. The direct referral of a violation of lease, permit, license, certificate, or entitlement to the City Attorney for judicial enforcement is exempt under this Class. (Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.) (State CEQA Guidelines Section 15321.)

Class 22: Educational or Training Programs Involving No Physical Changes. The adoption, alteration or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods; or
(b) Changes in the trade structure in a school which do not result in changes in student transportation.

(State CEQA Guidelines Section 15322.)

Class 23: Normal Operations of Facilities for Public Gatherings. Continued or repeated normal operations of existing facilities for public gatherings for which the facilities were designed, where there is past history, of at least three years, of the facility being used for the same or similar purposes. Facilities included within this exemption include, but are not limited to, race tracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools and amusement parks. (State CEQA Guidelines Section 15323.)

Class 24: Regulation of Working Conditions. Actions taken by the City to regulate employee wages, hours of work or working conditions where there will be no demonstrable physical changes outside the place of work. (State CEQA Guidelines Section 15324.)

Class 25: Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources. Transfers of ownership of interest in land in order to preserve open space, habitat, or historical resources. Examples include, but are not limited to, acquisition, sale, or other transfer of areas to: preserve existing natural conditions, including plant or animal habitats; allow continued agricultural use of the areas; allow restoration of natural conditions; preserve open space or lands for natural park purposes; or prevent encroachment of development into floodplains. This exemption does not apply to the development of parks or park uses. (State CEQA Guidelines Section 15325.)

Class 26: Acquisition of Housing for Housing Assistance Programs. Actions by a redevelopment agency, housing authority or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units, provided the housing units are either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units. (State CEQA Guidelines Section 15326.)

Class 27: Leasing New Facilities. Leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency when the City determines that the proposed use of the facility:

(a) Conforms with existing state plans and policies and with general, community, and specific plans for which an EIR or Negative Declaration has been prepared;
(b) Is substantially the same as that originally proposed at the time the building permit was issued;
(c) Does not result in a traffic increase of greater than 10% of front access road capacity; and
(d) Includes the provision of adequate employee and visitor parking facilities.

(State CEQA Guidelines Section 15327.)

Class 28: Small Hydroelectric Projects as Existing Facilities. Installation of certain small hydroelectric-generating facilities in connection with existing dams, canals and pipelines, subject to the conditions in State CEQA Guidelines Section 15328. (State CEQA Guidelines Section 15328.)

Class 29: Cogeneration Projects at Existing Facilities. Installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting certain conditions listed in State CEQA Guidelines Section 15329. (State CEQA Guidelines Section 15329.)

Class 30: Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances. Any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing $1 million or less. (State CEQA Guidelines Section 15330.)

(a) No cleanup action shall be subject to this Class 30 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit or the relocation of residences or businesses, or the action involves the potential release into the air of volatile organic compounds as defined in Health and Safety Code Section 25123.6, except for small scale in situ soil vapor extraction and treatment systems which have been permitted by the local Air Pollution Control District or Air Quality Management District. All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, off-site disposal, air quality rules such as those governing volatile organic compounds and water quality standards, and approved by the regulatory body with jurisdiction over the site;

(b) Examples of such minor cleanup actions include but are not limited to:

1. Removal of sealed, non-leaking drums of hazardous waste or substances that have been stabilized, containerized and are designated for a lawfully permitted destination;
2. Maintenance or stabilization of berms, dikes, or surface impoundments;
3. Construction or maintenance or interim of temporary surface caps;
4. Onsite treatment of contaminated soils or sludge provided treatment system meets Title 22 requirements and local air district requirements;
5. Excavation and/or offsite disposal of contaminated soils or sludge in regulated units;
6. Application of dust suppressants or dust binders to surface soils;
7. Controls for surface water run-on and run-off that meets seismic safety standards;
8. Pumping of leaking ponds into an enclosed container;
9. Construction of interim or emergency ground water treatment systems; or
10. Posting of warning signs and fencing for a hazardous waste or substance site that meets legal requirements for protection of wildlife.

Class 31: Historical Resource Restoration/Rehabilitation. Maintenance, repairs, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer. (State CEQA Guidelines Section 15331.)

Class 32: Infill Development Projects. Infill development meeting the following conditions:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;

(c) The project site has no value as habitat for endangered, rare or threatened species;

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and

(e) The site can be adequately served by all required utilities and public services.

(State CEQA Guidelines Section 15332.)

Class 33: Small Habitat Restoration Projects.

This exemption applies to projects to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife, provided that such projects meet the following criteria:

(a) The project does not exceed five acres in size;

(b) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to Section 15065 of the State CEQA Guidelines;

(c) There are no hazardous materials at or around the project site that may be disturbed or removed; and

(d) The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Examples of small habitat restoration projects include, but are not limited to: revegetation of disturbed areas with native plant species; wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat; stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish; projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment; stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation; and culvert replacement conducted in accordance with published guidelines of DFW or NOAA Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation.

(State CEQA Guidelines Section 15333.)

4. TIME LIMITATIONS

4.01 REVIEW OF PRIVATE PROJECT APPLICATIONS.

Staff shall determine whether the application for a private project is complete within thirty (30) days of receipt of the application. No application may be deemed incomplete based on an applicant's refusal to waive the time limitations set forth in Local Guidelines Sections 4.03 and 4.04.

Accepting an application as complete does not limit the authority of the City, acting as Lead Agency or Responsible Agency, to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

4.02 DETERMINATION OF TYPE OF ENVIRONMENTAL DOCUMENT.

Except as provided in Local Guidelines Sections 4.05 and 4.06, Staff's initial determination as to whether a Negative Declaration, Mitigated Negative Declaration or an EIR should be prepared shall be made within thirty (30) days from the date on which an application for a project is accepted as complete by the City. This period may be extended fifteen (15) days with consent of the applicant and the City.

4.03 COMPLETION AND ADOPTION OF NEGATIVE DECLARATION.

For private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the Negative Declaration/Mitigated Negative Declaration shall be completed and approved within one hundred eighty (180) days from the date when the City accepted the application as complete. In the event that compelling circumstances justify additional time and the project applicant and Lead Agency consent thereto, Staff may provide that the 180-day time limit may be extended once for a period of not more than 90 days.

4.04 COMPLETION AND CERTIFICATION OF FINAL EIR.

For private projects, the Final EIR shall be completed and certified by the City within one (1) year after the date the City accepted the application as complete. In the event that compelling circumstances justify additional time and the project applicant consents thereto, the City may provide a one-time extension up to ninety (90) days for completing and certifying the EIR.

4.05 PROJECTS SUBJECT TO THE PERMIT STREAMLINING ACT.

The Permit Streamlining Act requires agencies to make decisions on certain development project approvals within specified time limits. If a project is subject to the Permit Streamlining Act, the City cannot require the project applicant to submit the informational equivalent of an EIR or prove compliance with CEQA as a prerequisite to determining whether the project application is complete. In addition, if requested by the project applicant, the City must begin processing the project application prior to final CEQA action, provided the information necessary to begin the process is available.

Under the Permit Streamlining Act, the Lead Agency must approve or disapprove the development project application within one hundred eighty (180) days from the date on which it certifies the EIR, or within ninety (90) days of certification if an extension for completing and certifying the EIR was granted. If the Lead Agency adopts a Negative Declaration/Mitigated Negative Declaration or determines the development project is exempt from CEQA, it shall approve or disapprove the project application within sixty (60) days from the date on which it adopts the Negative Declaration/Mitigated Negative Declaration or determines that the project is exempt from CEQA.

Except for waivers of the time periods for preparing a joint Environmental Impact Report/Environmental Impact Statement (as outlined in Government Code Sections 65951 and 65957), the City cannot require a waiver of the time limits specified in the Permit Streamlining Act as a condition of accepting or processing a development project application. In addition, the City cannot disapprove a development project application in order to comply with the time limits specified in the Permit Streamlining Act.

4.06 PROJECTS, OTHER THAN THOSE SUBJECT TO THE PERMIT STREAMLINING ACT, WITH SHORT TIME PERIODS FOR APPROVAL.

A few statutes require agencies to make decisions on project applications within time limits that are so short that review of the project under CEQA would be difficult. To enable the City as Lead Agency to comply with both the enabling statute and CEQA, the City shall deem a project application as not received for filing under the enabling statute until such time as the environmental documentation required by CEQA is complete. This section applies where all of the following conditions are met:

(a) The enabling statute for a program, other than development projects under Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the City to take action on an application within a specified period of time of six (6) months or less;
(b) The enabling statute provides that the project is approved by operation of law if the City fails to take any action within the specified time period; and
(c) The project application involves the City's issuance of a lease, permit, license, certificate or other entitlement for use.

In any case, the environmental document shall be completed or certified and the decision on the application shall be made within the period established by the Permit Streamlining Act (Government Code Sections 65920, et seq.).

4.07 WAIVER OR SUSPENSION OF TIME PERIODS.

These deadlines may be waived by the applicant if the project is subject to both CEQA and the National Environmental Policy Act ("NEPA"). (State CEQA Guidelines Sections 15110 and 15224; see Section 5.04 of these Local Guidelines for information about projects that are subject to both CEQA and NEPA.)

An unreasonable delay by an applicant in meeting the City's requests necessary for the preparation of a Negative Declaration, Mitigated Negative Declaration, or an EIR shall suspend

the running of the time periods described in Local Guidelines Sections 4.03 and 4.04 for the period of the unreasonable delay. Alternatively, the City may disapprove a project application where there is unreasonable delay in meeting requests. The City may also allow a renewed application to start at the same point in the process where the prior application was when it was disapproved.

5. INITIAL STUDY

5.01 PREPARATION OF INITIAL STUDY.

If the City determines that it is the Lead Agency for a project which is not exempt, the City will normally prepare an Initial Study to ascertain whether the project may have a substantial adverse effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial. All phases of project planning, implementation and operation must be considered in the Initial Study. An Initial Study may rely on expert opinion supported by facts, technical studies or other substantial evidence. However, an Initial Study is neither intended nor required to include the level of detail included in an EIR.

The City, as Lead Agency, may use any of the following arrangements or combination of arrangements to prepare an Initial Study:

(1) Preparing the Initial Study directly with the City's own staff.

(2) Contracting with another entity, public or private, to prepare the Initial Study.

(3) Accepting a draft Initial Study prepared by the applicant, a consultant retained by the applicant, or any other third person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of an Initial Study by an independent contractor.

(5) Using a previously prepared Initial Study.

The Initial Study sent out for public review, however, must reflect the independent judgment of the Lead Agency.

For private projects, the person or entity proposing to carry out the project shall submit all data and information as may be required by the City to determine whether the proposed project may have a significant effect on the environment. All costs incurred by the City in reviewing the data and information submitted, or in conducting its own investigation based upon such data and information, or in preparing an Initial Study for the project shall be borne by the person or entity proposing to carry out the project.

5.02 INFORMAL CONSULTATION WITH OTHER AGENCIES.

When more than one public agency will be involved in undertaking or approving a project, the Lead Agency shall consult with all Responsible and any Trustee Agencies. Such consultation shall be undertaken in compliance with the notice procedures applicable to the type of CEQA document being prepared. See Section 6.04, Negative Declarations, and Sections 7.03 and 7.25, EIRs.

When the City is acting as Lead Agency, the City may choose to engage in early consultation with Responsible and Trustee Agencies before the City begins to prepare the Initial Study. This early consultation may be done quickly and informally and is intended to ensure that

the EIR, Negative Declaration or Mitigated Negative Declaration reflects the concerns of all Responsible Agencies that will issue approvals for the project and all Trustee Agencies responsible for natural resources affected by the project. The City's early consultation process may include consultation with other individuals or organizations with an interest in the project, if the City so desires. The OPR, upon request of the City or a private project applicant, shall assist in identifying the various Responsible Agencies for a proposed project and ensure that the Responsible Agencies are notified regarding any early consultation. In the case of a project undertaken by a public agency, the OPR, upon request of the City, shall ensure that any Responsible Agency or public agency that has jurisdiction by law with respect to the project is notified regarding any early consultation.

If, during the early consultation process it is determined that the project will clearly have a significant effect on the environment, the City, as Lead Agency, may immediately dispense with the Initial Study and determine that an EIR is required.

5.03 CONSULTATION WITH PRIVATE PROJECT APPLICANT.

During or immediately after preparation of an Initial Study for a private project, the City may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the Initial Study. If the project can be revised to avoid or mitigate effects to a level of insignificance and there is no substantial evidence before the City that the project, as revised, may have a significant effect on the environment, the City may prepare and adopt a Negative Declaration or Mitigated Negative Declaration. If any significant effect may still occur despite alterations of the project, an EIR must be prepared.

5.04 PROJECTS SUBJECT TO NEPA.

Projects that are carried out, financed, or approved in whole or in part by a federal agency are subject to the provisions of NEPA in addition to CEQA. To the extent possible, the State CEQA Guidelines encourage the City, when it is a Lead Agency under CEQA, to use the federally-prepared Environmental Impact Statement ("EIS") or Finding of No Significant Impact ("FONSI") or to prepare a joint CEQA/NEPA document instead of preparing separate NEPA and CEQA documents for a project that is subject to both NEPA and CEQA. (State CEQA Guidelines Section 15220.)

For example, the City should attempt to work in conjunction with the federal agency involved in the project to prepare a combined EIR-EIS or Negative Declaration-FONSI. (State CEQA Guidelines Section 15222.) To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document. The Lead Agency may also enter into a Memorandum of Understanding with the federal agency to ensure that both federal and state requirements are met.

The City is required to cooperate with the federal agency and to utilize joint planning processes, environmental research and studies, public hearings, and environmental documents to the fullest extent possible. (State CEQA Guidelines Section 15226.) However, since NEPA does not require an examination of mitigation measures or growth-inducing impacts, analysis of

mitigation measures and growth-inducing impacts will need to be added before NEPA documents may be used to satisfy CEQA. (State CEQA Guidelines Section 15221.)

For projects that are subject to NEPA, a scoping meeting held pursuant to NEPA satisfies the CEQA scoping requirement as long as notice is provided to the agencies and individuals listed in Local Guidelines Section 7.10, and provided in accordance with these Local Guidelines.

If the federal agency refuses to cooperate with the City with regard to the preparation of joint documents, the City should attempt to involve a state agency in the preparation of the EIR, Negative Declaration, or Mitigated Negative Declaration. Since federal agencies are explicitly permitted to utilize environmental documents prepared by agencies of statewide jurisdiction, it is possible that the federal agency will reuse the state-prepared CEQA documents instead of requiring the applicant to fund a redundant set of federal environmental documents. (State CEQA Guidelines Section 15228.)

Where the federal agency has circulated the EIS or FONSI and the circulation satisfied the requirements of CEQA and any other applicable laws, the City, when it is a Lead Agency under CEQA, may use the EIS or FONSI in place of an EIR or Negative Declaration without having to recirculate the federal documents. The City's intention to adopt the previously circulated EIS or FONSI must be publicly noticed in the same way as a Notice of Availability of a Draft EIR.

Special rules may apply when the environmental documents are prepared for projects involving the reuse of military bases. (See State CEQA Guidelines Section 15225.)

5.05 AN INITIAL STUDY.

The Initial Study shall be used to determine whether a Negative Declaration, Mitigated Negative Declaration or an EIR shall be prepared for a project. It provides written documentation of whether the City found evidence of significant adverse impacts which might occur. The purposes of an Initial Study are to:

(a) Identify environmental impacts;
(b) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is written;
(c) Focus an EIR, if one is required, on potentially significant environmental effects;
(d) Facilitate environmental assessment early in the design of a project;
(e) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;
(f) Eliminate unnecessary EIRs; and
(g) Determine whether a previously prepared EIR could be used for the project.

5.06 CONTENTS OF INITIAL STUDY.

An Initial Study shall contain in brief form:

(a) A description of the project, including the location of the project. The project description must be consistent throughout the environmental review process;

(b) An identification of the environmental setting. The environmental setting is usually the existing physical environmental conditions in the vicinity of the project, as they exist at the time the Notice of Preparation is published, or if no Notice of Preparation is published, such as in the case of a Negative Declaration or Mitigated Negative Declaration, at the time environmental analysis begins. The environmental setting should describe both the project site and surrounding properties. The description should include, but not necessarily be limited to, a discussion of existing structures, land use, energy supplies, topography, water usage, soil stability, plants and animals, and any cultural, historical, or scenic aspects. This environmental setting will normally constitute the baseline physical conditions against which a Lead Agency may compare the project to determine whether an impact is significant;

(c) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries are briefly explained to show the evidence supporting the entries. The brief explanation may be through either a narrative or a reference to other information such as attached maps, photographs, or an earlier EIR or Negative Declaration or Mitigated Negative Declaration. A reference to another document should include a citation to the page or pages where the information is found;

(d) A discussion of ways to mitigate any significant effects identified;

(e) An examination of whether the project is consistent with existing zoning and local land use plans and other applicable land use controls;

(f) The name of the person or persons who prepared or participated in the Initial Study; and

(g) Identification of prior EIRs or environmental documents that could be used with the project.

5.07 USE OF A CHECKLIST INITIAL STUDY.

When properly completed, the Environmental Checklist (Form "J") will meet the requirements of Local Guidelines Section 5.05 for an Initial Study provided that the entries on the checklist are explained. Either the Environmental Checklist (Form "J") should be expanded or a separate attachment should be prepared to describe the project, including its location, and to identify the environmental setting.

California courts have rejected the use of a bare, unsupported Environmental Checklist as an Initial Study. An Initial Study must contain more than mere conclusions. It must disclose supporting data or evidence upon which the Lead Agency relied in conducting the Initial Study. The Lead Agency must augment checklists with supporting factual data and reference information sources when completing the forms. Explanation of all "potential impact" answers should be provided on attached sheets. For controversial projects, it is advisable to state briefly why "no" answers were checked. If practicable, attach a list of reference materials, such as prior EIRs, plans, traffic studies, air quality data, or other supporting studies.

5.08 EVALUATING SIGNIFICANT ENVIRONMENTAL EFFECTS.

In evaluating the environmental significance of effects disclosed by the Initial Study, the Lead Agency shall consider:

(a) Whether the Initial Study and/or any comments received informally during consultations indicate that a fair argument can be made that the project may have a significant adverse environmental impact that cannot be mitigated to a level of insignificance. Even if a fair argument can be made to the contrary, an EIR should be prepared;

(b) Whether both primary (direct) and reasonably foreseeable secondary (indirect) consequences of the project were evaluated. Primary consequences are immediately related to the project, while secondary consequences are related more to the primary consequences than to the project itself. For example, secondary impacts upon the resources base, including land, air, water and energy use of an area, may result from population growth, a primary impact;

(c) Whether adverse social and economic changes will result from a physical change caused by the project. Adverse economic and social changes resulting from a project are not, in themselves, significant environmental effects. However, if such adverse changes cause physical changes in the environment, those consequences may be used as the basis for finding that the physical change is significant;

(d) Whether there is serious public controversy or disagreement among experts over the environmental effects of the project. However, the existence of public controversy or disagreement among experts does not, without more, require preparation of an EIR in the absence of substantial evidence of significant effects;

(e) Whether the cumulative impact of the project is significant and whether the incremental effects of the project are "cumulatively considerable" (as defined in Local Guidelines Section 11.14) when viewed in connection with the effects of past projects, current projects, and probable future projects. The City may conclude that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem. To be used for this purpose, such a plan or program must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process. In relying on such a plan or program, the City should explain which requirements apply to the project and ensure that the project's incremental contribution is not cumulatively considerable; and

(f) Whether the project may cause a substantial adverse change in the significance of an archaeological or historical resource.

The City may use a threshold of significance (as that term is defined in State CEQA Guidelines section 15064.7) to determine whether a project may cause a significant environmental impact. When using a threshold of significance, the City should briefly explain how compliance with the threshold means that the project's impacts are less than significant. Compliance with the threshold, however, does not relieve the City of the obligation to consider substantial evidence indicating that a project's environmental effects may still be significant.

5.09 DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS

On or about December 28, 2018, the California Natural Resources Agency added a new section to the State CEQA Guidelines—Section 15064.3, entitled "Determining the Significance of Transportation Impacts." Section 15064.3(c) of the State CEQA Guidelines provides, in part: "A lead agency may elect to be governed by the provisions of this section immediately. Beginning on July 1, 2020, the provisions of this section shall apply statewide." The City does not elect to be governed by the provisions of Section 15064.3 before July 1, 2020.

For reference purposes only, Section 15064.3 provides:

> (a) Purpose.
>
> This section describes specific considerations for evaluating a project's transportation impacts. Generally, vehicle miles traveled is the most appropriate measure of transportation impacts. For the purposes of this section, "vehicle miles traveled" refers to the amount and distance of automobile travel attributable to a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel. Except as provided in subdivision (b)(2) below (regarding roadway capacity), a project's effect on automobile delay shall not constitute a significant environmental impact.
>
> (b) Criteria for Analyzing Transportation Impacts.
>
> (1) Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be presumed to have a less than significant transportation impact.
>
> (2) Transportation Projects. Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact. For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. To the extent that such impacts have already been adequately addressed at a programmatic level, such as in a regional transportation plan EIR, a lead agency may tier from that analysis as provided in Section 15152.
>
> (3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

(4) Methodology. A lead agency has discretion to choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.

(c) Applicability.

The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. Beginning on July 1, 2020, the provisions of this section shall apply statewide.

As noted above, the City does not elect to be governed by the provisions of Section 15064.3 before July 1, 2020. (State CEQA Guidelines, § 15064.3(c).)

5.10 MANDATORY FINDINGS OF SIGNIFICANT EFFECT.

Whenever there is substantial evidence, in light of the whole record, that any of the conditions set forth below may occur, the Lead Agency shall find that the project may have a significant effect on the environment and thereby shall require preparation of an EIR:

(a) The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of major periods of California history or prehistory;
(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals;
(c) The project has possible environmental effects which are individually limited but cumulatively considerable, as defined in Local Guidelines Section 11.14. That is, the City, when acting as Lead Agency, is required to determine whether the incremental impacts of a project are cumulatively considerable by evaluating them against the back-drop of the environmental effects of the other projects; or
(d) The environmental effects of a project will cause substantial adverse effects on humans either directly or indirectly.

If, before the release of the CEQA document for public review, the potential for triggering one of the mandatory findings of significance is avoided or mitigation measures or project modifications reduce the potentially significant impacts to a point where clearly the mandatory finding of significance is not triggered, preparation of an EIR is not mandated. If the

project's potential for triggering one of the mandatory findings of significance cannot be avoided or mitigated to a point where the criterion is clearly not triggered, an EIR shall be prepared, and the relevant mandatory findings of significance shall be used:

(1) as thresholds of significance for purposes of preparing the EIR's impact analysis;

(2) in making findings on the feasibility of alternatives or mitigation measures;

(3) when found to be feasible, in making changes in the project to lessen or avoid the adverse environmental impacts; and

(4) when necessary, in adopting a statement of overriding considerations.

Although an EIR prepared for a project that triggers one of the mandatory findings of significance must use the relevant mandatory findings as thresholds of significance, the EIR need not conclude that the impact itself is significant. Rather, the City, as Lead Agency, must exercise its discretion and determine, on a case-by-case basis after evaluating all of the relevant evidence, whether the project's environmental impacts are avoided or mitigated below a level of significance or whether a statement of overriding considerations is required.

With regard to a project that has the potential to substantially reduce the number or restrict the range of a protected species, the City, as Lead Agency, does not have to prepare an EIR solely due to that impact, provided the project meets the following three criteria:

(a) The project proponent must be bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan and/or natural communities conservation plan;
(b) The state or federal agency must have approved the habitat conservation plan and/or natural community conservation plan in reliance on an EIR and/or EIS; and
(c) The mitigation requirements must either avoid any net loss of habitat and net reduction in number of the affected species, or preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species below a level of significance.

5.11 MANDATORY PREPARATION OF AN EIR FOR WASTE-BURNING PROJECTS.

Lead Agencies shall prepare or cause to be prepared and certify the completion of an EIR, or, if appropriate, an Addendum, Supplemental EIR, or Subsequent EIR, for any project involving the burning of municipal wastes, hazardous waste or refuse-derived fuel, including, but not limited to, tires, if the project consists of any of the following:

(a) The construction of a new facility;
(b) The expansion of an existing hazardous waste burning facility which would increase its permitted capacity by more than 10%;
(c) The issuance of a hazardous waste facilities permit to a land disposal facility, as defined in Local Guidelines Section 11.32; or
(d) The issuance of a hazardous waste facilities permit to an offsite large treatment facility, as defined in Local Guidelines Sections 11.33 and 11.53.

This section does not apply to projects listed in subsections (c) and (d), immediately above, if the facility only manages hazardous waste that is identified or listed pursuant to Health and Safety Code Section 25140 or 25141 or only conducts activities which are regulated pursuant to Health and Safety Code Sections 25100, et seq.

The Lead Agency shall calculate the percentage of expansion for an existing facility by comparing the proposed facility's capacity with either of the following, as applicable:

(a) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Health and Safety Code Section 25200, or its grant of interim status pursuant to Health and Safety Code Section 25200.5, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of the facility for the burning of hazardous waste granted before January 1, 1990; or

(b) The facility capacity authorized in the facility's original hazardous facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

This section does not apply to any project over which the State Energy Resources Conservation and Development Commission has assumed jurisdiction per Health and Safety Code Sections 25500 et seq.

The EIR requirement is also subject to a number of exceptions for specific types of waste-burning projects. (Public Resources Code Section 21151.1 and State CEQA Guidelines Section 15081.5.) Even if preparation of an EIR is not mandatory for a particular type of waste-burning project, those projects are not exempt from the other requirements of CEQA, the State CEQA Guidelines, or these Local Guidelines. In addition, waste-burning projects are subject to special notice requirements under Public Resources Code Section 21092. Specifically, in addition to the standard public notices required by CEQA, notice must be provided to all owners and occupants of property located within one-fourth mile of any parcel or parcels on which the waste-burning project will be located. (Public Resources Code Section 21092(c); see Local Guidelines Sections 6.12 and 7.27.)

5.12 DEVELOPMENT PURSUANT TO AN EXISTING COMMUNITY PLAN AND EIR.

Before preparing a CEQA document, Staff should determine whether the proposed project involves development consistent with an earlier zoning or community plan to accommodate a particular density for which an EIR has been certified. If an earlier EIR for the zoning or planning action has been certified, and if the proposed project concerns the approval of a subdivision map or development, CEQA applies only to the extent the project raises environmental effects peculiar to the parcel which were not addressed in the earlier EIR. Off-site and cumulative effects not discussed in the general plan EIR must still be considered. Mitigation measures set out in the earlier EIR should be implemented at this stage.

Environmental effects shall not be considered peculiar to the parcel if uniformly applied development policies or standards have been previously adopted by a city or county with a finding based on substantial evidence that the policy or standard will substantially mitigate the

environmental effect when applied to future projects. Examples of uniformly applied development policies or standards include, but are not limited to: parking ordinances; public access requirements; grading ordinances; hillside development ordinances; flood plain ordinances; habitat protection or conservation ordinances; view protection ordinances; and requirements for reducing greenhouse gas emissions as set forth in adopted land use plans, policies or regulations. Any rezoning action consistent with the Community Plan shall be subject to exemption from CEQA in accordance with this section. "Community Plan" means part of a city's general plan which: (1) applies to a defined geographic portion of the total area included in the general plan; (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by referencing each of the mandatory elements specified in Government Code Section 65302; and (3) contains specific development policies adopted for the area in the Community Plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

5.13 LAND USE POLICIES.

When a project will amend a general plan or another land use policy, the Initial Study must address how the change in policy and its expected direct and indirect effects will affect the environment. When the amendments constitute substantial changes in policies that result in a significant impact on the environment, an EIR may be required.

5.14 EVALUATING IMPACTS ON HISTORICAL RESOURCES.

Projects that may cause a substantial adverse change in the significance of a historical resource, as defined in Local Guidelines Section 11.28 are projects that may have a significant effect on the environment, thus requiring consideration under CEQA. Particular attention and care should be given when considering such projects, especially projects involving the demolition of a historical resource, since such demolitions have been determined to cause a significant effect on the environment.

Substantial adverse change in the significance of a historical resource means physical demolition, destruction, relocation or alteration of the resource or its immediate surroundings, such that the significance of a historical resource would be materially impaired.

The significance of a historical resource is materially impaired when a project:

(a) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in, the California Register of Historical Resources;
(b) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources or its identification in a historical resources survey, unless the Lead Agency establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
(c) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by the Lead Agency for purposes of CEQA.

Generally, a project that follows either one of the following sets of standards and guidelines will be considered mitigated to a level of less than significant: (a) the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings; or (b) the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer.

In the event of an accidental discovery of a possible historical resource during construction of the project, the City may provide for the evaluation of the find by a qualified archaeologist or other professional. If the find is determined to be a historical resource, the City should take appropriate steps to implement appropriate avoidance or mitigation measures. Work on non-affected portions of the project, as determined by the City, may continue during the process. Curation may be an appropriate mitigation measure for an artifact that must be removed during project excavation or testing.

5.15 EVALUATING IMPACTS ON ARCHAEOLOGICAL SITES.

When a project will impact an archaeological site, the City shall first determine whether the site is a historical resource, as defined in Local Guidelines Section 11.28 If the archaeological site is a historical resource, it shall be treated and evaluated as such, and not as an archaeological resource. If the archaeological site does not meet the definition of a historical resource, but does meet the definition of a unique archaeological resource set forth in Public Resources Code Section 21083.2, the site shall be treated in accordance with said provisions of the Public Resources Code. The time and cost limitations described in Section 21083.2(c-f) do not apply to surveys and site evaluation activities intended to determine whether the project site contains unique archaeological resources.

If the archaeological resource is neither a unique archaeological resource nor a historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

In the event of an accidental discovery of a possible unique archaeological resource during construction of the project, the City may provide for the evaluation of the find by a qualified archaeologist. If the find is determined to be a unique archaeological resource, the City should take appropriate steps to implement appropriate avoidance or mitigation measures. Work on non-affected portions of the project, as determined by the City, may continue during the process. Curation may be an appropriate mitigation measure for an artifact that must be removed during project excavation or testing.

When an Initial Study identifies the existence of, or the probable likelihood of, Native American human remains within the Project, the City shall comply with the provisions of State CEQA Guidelines Section 15064.5(d). In the event of an accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the City shall comply with the provisions of State CEQA Guidelines Section 15064.5(e).

5.16 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

(a) Projects Subject to Consultation Requirements.

For certain development projects, cities and counties must consult with water agencies. If the City is a municipal water provider, the city or county may request that the City prepare a water supply assessment to be included in the relevant environmental documentation for the project. The City may refer to this section when preparing such an assessment or when reviewing projects in its role as a Responsible Agency. This section applies only to water demand projects as defined by Guideline 11.78. Program level environmental review may not need to be as extensive as project level environmental review. (See Local Guidelines Sections 8.03 and 8.08.)

(b) Water Supply Assessment.

When a city or county as Lead Agency determines the type of environmental document that will be prepared for a water demand project or any project that includes a water demand project, the city or county must identify any public water system (as defined in Local Guidelines Sections 11.59 and 11.83) that may supply water for the project. The city or county must also request that the public water system determine whether the projected demand associated with the project was included in the most recently adopted Urban Water Management Plan. The city or county must also request that the public water system prepare a specified water supply assessment for approval at a regular or special meeting of the public water system governing body.

If no public water system is identified that may supply water for the water demand project, the city or county shall prepare the water supply assessment. The city or county shall consult with any entity serving domestic water supplies whose service area includes the site of the water demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water demand project. The city council or county board of supervisors must approve the water assessment prepared pursuant to this paragraph at a regular or special meeting.

As per Water Code section 10910, the water assessment must include identification of existing water supply entitlements, water rights, or water service contracts relevant to the water supply for the proposed project and water received in prior years pursuant to those entitlements, rights, and contracts, and further information is required if water supplies include groundwater. The water assessment must determine the ability of the public water system to meet existing and future demands along with the demands of the proposed water demand project in light of existing and future water supplies. This supply demand analysis is to be conducted via a twenty-year projection, and must assess water supply sufficiency during normal year, single dry year, and multiple dry year hydrology scenarios. If the public water agency concludes that the water supply is, or will be, insufficient, it must submit plans for acquiring additional water supplies.

The city or county may grant the public water agency a thirty (30) day extension of time to prepare the assessment if the public water agency requests an extension within ninety (90)

days of being asked to prepare the assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the thirty (30) day extension, the city or county may seek a writ of mandamus to compel the governing body of the public water system to comply.

If a water-demand project has been the subject of a water assessment, no additional water assessment shall be required for subsequent water-demand projects that were included in the larger water-demand project if all of the following criteria are met:

(1) The entity completing the water assessment concluded that its water supplies are sufficient to meet the projected water demand associated with the larger water-demand project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses; and

(2) None of the following changes has occurred since the completion of the water assessment for the larger water-demand project:

(A) Changes in the larger water-demand project that result in a substantial increase in water demand for the water-demand project;

(B) Changes in the circumstances or conditions substantially affecting the ability of the public water system identified in the water assessment to provide a sufficient supply of water for the water demand project; and

(C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached its assessment conclusions. The city or county shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. A discussion of water supply availability should be included in the main text of the environmental document. Normally, this discussion should be based on the data and information included in the water supply assessment. In making its required findings under CEQA, the city or county shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.

The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A Lead Agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan (i.e. general plan, specific plan). An analysis of water supply in an environmental document may incorporate by reference information in a water supply assessment, urban water management plan, or other publicly available sources. The analysis shall include the following:

(1) Sufficient information regarding the project's proposed water demand and proposed water supplies to permit the Lead Agency to evaluate the pros and cons of supplying the amount of water that the project will need.

(2) An analysis of the reasonably foreseeable environmental impacts of supplying water throughout all phases of the project.

(3) An analysis of circumstances affecting the likelihood of the water's availability, as well as the degree of uncertainty involved. Relevant factors may include but are not limited to, drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.

(4) If the Lead Agency cannot determine that a particular water supply will be available, it shall conduct an analysis of alternative sources, including at least in general terms the environmental consequences of using those alternative sources, or alternatives to the project that could be served with available water.

For complete information on these requirements, consult Water Code Sections 10910, et seq. For other CEQA provisions applicable to these types of projects, see Local Guidelines Sections 7.03 and 7.25.

5.17 SUBDIVISIONS WITH MORE THAN 500 DWELLING UNITS.

Cities and counties must obtain written verification (see Form "O" for a sample) from the applicable public water system(s) that a sufficient water supply is available before approving certain residential development projects. If the City is a municipal water provider for a project, the city or county may request such a verification from the City. The City should also be aware of these requirements when reviewing projects in its role as a Responsible Agency.

Cities and counties are prohibited from approving a tentative map, parcel map for which a tentative map was not required, or a development agreement for a subdivision of property of more than 500 dwellings units, unless:

(1) The City Council, Board of Supervisors, or the advisory agency receives written verification from the applicable public water system that a sufficient water supply is available; or

(2) Under certain circumstances, the City Council, Board of Supervisors or the advisory agency makes a specified finding that sufficient water supplies are, or will be, available prior to completion of the project.

For complete information on these requirements, consult Government Code Section 66473.7.

5.18 IMPACTS TO OAK WOODLANDS.

When a county prepares an Initial Study to determine what type of environmental document will be prepared for a project within its jurisdiction, the county must determine whether the project may result in a conversion of oak woodlands that will have a significant

effect on the environment. Normally, this rule will not apply to projects undertaken by the City. However, if the City is a Responsible Agency on such a project, the City should endeavor to ensure that the county, as Lead Agency, analyzes these impacts in accordance with CEQA.

5.19 CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS.

A. Estimating or Calculating the Magnitude of the Project's Greenhouse Gas Emissions.

The City shall analyze the greenhouse gas emissions of its projects as required by State CEQA Guidelines section 15064.4. For projects subject to CEQA, the City shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.

In performing analysis of greenhouse gas emissions, the City, as Lead Agency, shall have discretion to determine, in the context of a particular project, whether to:

(1) Quantify greenhouse gas emissions resulting from a project; and/ or

(2) Rely on a qualitative analysis or performance-based standards.

B. Factors in Determining Significance.

In determining the significance of a project's greenhouse gas emissions, the City, when acting as Lead Agency, should focus its analysis on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. A project's incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national, or global emissions. The City's analysis should consider a timeframe that is appropriate for the project. The City's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes.

Once the amount of a project's greenhouse gas emissions have been described, estimated, or calculated, the City should consider the following factors, among others, to determine whether those emissions are significant:

(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting. Physical environmental conditions in the vicinity of the project, as they exist at the time the Notice of Preparation is published or the time when the environmental analysis is commenced, will normally constitute the baseline. All project phases, including construction and operation, should be considered in determining whether a project will cause emissions to increase or decrease as compared to the baseline;

(2) Whether the project emissions exceed a threshold of significance that the Lead Agency determines applies to the project. The Lead Agency may rely on thresholds of significance developed by experts or other agencies, provided that application of the threshold and the significance conclusion

is supported with substantial evidence. When relying on thresholds developed by other agencies, the Lead Agency should ensure that the threshold is appropriate for the project and the project's location; and

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (see, e.g., State CEQA Guidelines Section 15183.5(b)). Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project. In determining the significance of impacts, the Lead Agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change and its conclusion that the project's incremental contribution is not cumulatively considerable.

The Lead Agency may use a model or methodology to estimate greenhouse gas emissions resulting from a project. The Lead Agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change. The Lead Agency must support its selection of a model or methodology with substantial evidence. The Lead Agency should explain the limitations of the particular model or methodology selected for use.

C. Consistency with Applicable Plans.

When an EIR is prepared, it must discuss any inconsistencies between the proposed project and any applicable general plan, specific plans, and regional plans. This includes, but is not limited to, any applicable air quality attainment plans, regional blueprint plans, or plans for the reduction of greenhouse gas emissions.

D. Mitigation Measures Related to Greenhouse Gas Emissions.

Lead Agencies must consider feasible means of mitigating the significant effects of greenhouse gas emissions. Any such mitigation measure must be supported by substantial evidence and be subject to monitoring or reporting. Potential mitigation will depend on the particular circumstances of the project, but may include the following, among others:

(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the Lead Agency's decision;

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in State CEQA Guidelines Appendix F;

(3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;

(4) Measures that sequester greenhouse gases; and

(5) In the case of the adoption of a plan, such as a general plan, long range development plan, or plan for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

E. Streamlined Analysis of Greenhouse Gas Emissions.

Under certain limited circumstances, the legislature has specifically declared that the analysis of greenhouse gas emissions or climate change impacts may be limited. Public Resources Code Sections 21155, 21155.2, and 21159.28 provide that if certain residential, mixed use and transit priority projects meet specified ratios and densities, then the lead agencies for those projects may conduct a limited review of greenhouse gas emissions or may be exempted from analyzing global warming impacts that result from cars and light duty trucks, if a detailed list of requirements is met. However, unless the project is exempt from CEQA, the Lead Agency must consider whether such projects will result in greenhouse gas emissions from other sources, including, but not limited to, energy use, water use, and solid waste disposal.

F. Tiering.

The City may analyze and mitigate the significant effects of greenhouse gas emissions at a programmatic level. Later project-specific environmental documents may then tier from and/or incorporate by reference that existing programmatic review.

G. Plans for the Reduction of Greenhouse Gas Emissions.

Public agencies may choose to analyze and mitigate greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or in a similar document. A plan for the reduction of greenhouse gas emissions should:

(1) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

(2) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(3) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(4) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(5) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels; and

(6) Be adopted in a public process following environmental review.

A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR, or adoption of another environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a plan for the reduction of greenhouse gas emissions for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan for reduction of greenhouse gas emissions, an EIR must be prepared for the project.

H. Analyzing the Effects of Climate Change on the Project.

Where an EIR is prepared for a project, the EIR shall analyze any significant environmental effects the project might cause by bringing development and people into the project area that may be affected by climate change. In particular, the EIR should evaluate any potentially significant impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas. The analysis may be limited to the potentially significant effects of locating the project in a potentially hazardous location. Further, this analysis may be limited by the project's life in relation to the potential of such effects to occur and the availability of existing information related to potential future effects of climate change. Further, the EIR need not include speculation regarding such future effects.

5.20 ENERGY CONSERVATION.

Potentially significant energy implications of a project must be considered in an EIR to the extent relevant and applicable to the project. Therefore, the project description should identify the following as applicable or relevant to the particular project:

(1) Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project;

(2) Total energy requirements of the project by fuel type and end use;

(3) Energy conservation equipment and design features;

(4) Identification of energy supplies that would serve the project; and

(5) Total estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode.

As described in Local Guidelines Section 5.06, above, an initial study must include a description of the environmental setting. The discussion of the environmental setting may include existing energy supplies and energy use patterns in the region and locality. The City may also consider the extent to which energy supplies have been adequately considered in other environmental documents. Environmental impacts may include:

(1) The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed;

(2) The effects of the project on local and regional energy supplies and on requirements for additional capacity;

(3) The effects of the project on peak and base period demands for electricity and other forms of energy;

(4) The degree to which the project complies with existing energy standards;

(5) The effects of the project on energy resources; and/or

(6) The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

As discussed above in Section 5.06, the Initial Study must identify the potential environmental effects of the proposed activity. That discussion must include the unavoidable adverse effects. Unavoidable adverse effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

When discussing energy conservation, alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

5.21 ENVIRONMENTAL IMPACT ASSESSMENT.

The Initial Study identifies which environmental impacts may be significant. Based upon the Initial Study, Staff shall determine whether a proposed project may or will have a significant effect on the environment. Such determination shall be made in writing on the Environmental Impact Assessment Form (Form "C"). If Staff finds that a project will not have a significant effect on the environment, it shall recommend that a Negative Declaration be prepared and adopted by the decision-making body. If Staff finds that a project may have a significant effect on the environment, but the effects can be mitigated to a level of insignificance, it shall

recommend that a Mitigated Negative Declaration be prepared and adopted by the decision-making body. If Staff finds that a project may have a significant effect on the environment, it shall recommend that an EIR be prepared and certified by the decision-making body.

5.22 FINAL DETERMINATION.

The City Council shall have the final responsibility for determining whether an EIR, Negative Declaration or Mitigated Negative Declaration shall be required for any project. The City Council's determination shall be final and conclusive on all persons, including Responsible Agencies and Trustee Agencies, except as provided in Section 15050(c) of the State CEQA Guidelines. Additionally, in the event the City Council has delegated authority to a subsidiary board or official to approve a project, the City Council also hereby delegates to that subsidiary board or official the authority to make all necessary CEQA determinations, including whether an EIR, Negative Declaration, Mitigated Negative Declaration or exemption shall be required for any project. A subsidiary board or official's CEQA determination shall be subject to appeal consistent with the City's established procedures for appeals.

6. NEGATIVE DECLARATION

6.01 DECISION TO PREPARE A NEGATIVE DECLARATION.

A Negative Declaration (Form "E") shall be prepared for a project subject to CEQA when the Initial Study shows that there is no substantial evidence in light of the whole record that the project may have a significant or potentially significant adverse effect on the environment. (See Local Guidelines Sections 11.65 and 11.71.)

6.02 DECISION TO PREPARE A MITIGATED NEGATIVE DECLARATION.

A Mitigated Negative Declaration (Form "E") shall be prepared for a project subject to CEQA when the Initial Study identifies potentially significant effects on the environment, but:

(a) The project applicant has agreed to revise the project or the City can revise the project to avoid these significant effects or to mitigate the effects to a point where it is clear that no significant effects would occur; or
(b) There is no substantial evidence in light of the whole record before the City that the revised project may have a significant effect.

It is insufficient to require an applicant to adopt mitigation measures after final adoption of the Mitigated Negative Declaration or to state that mitigation measures will be recommended on the basis of a future study. The City must know the measures at the time the Mitigated Negative Declaration is adopted in order for them to be evaluated and accepted as adequate mitigation. Evidence of agreement by the applicant to such mitigation should be in the record prior to public review. Except where noted, the procedural requirements for the preparation and approval of a Negative Declaration and Mitigated Negative Declaration are the same.

6.03 CONTRACTING FOR PREPARATION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The City, when acting as Lead Agency, is responsible for preparing all documents required pursuant to CEQA. The documents may be prepared by Staff or by private consultants pursuant to a contract with the City, but they must be the City's product and reflect the independent judgment of the City.

6.04 NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

When, based upon the Initial Study, it is recommended to the decision-making body that a Negative Declaration or Mitigated Negative Declaration be adopted, a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (Form "D") shall be prepared. In addition to being provided to the public through the means set forth in Local Guidelines Section 6.07, this Notice shall also be provided to:

(a) Each Responsible and Trustee Agency;
(b) Any other federal, state, or local agency that has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project; and

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, to the California Department of Water Resources;

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the City to receive these Notices;

(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria of Local Guidelines Section 6.05, to the specified military services contact;

(e) For certain projects that involve the construction or alteration of a facility anticipated to include hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 6.06, to any potentially affected school district;

(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (regarding mandatory preparation of EIR) (see also Local Guidelines Section 7.27), to the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and

(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code Section 33333.3.

Additionally, for a project of statewide, regional, or area-wide significance, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.

A copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study shall be attached to the Notice of Intent to Adopt that is sent to every Responsible Agency and Trustee Agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

The Notice of Intent to Adopt a Negative Declaration (Form "D") must be filed and posted with the County Clerk at least twenty (20) days—or, in cases subject to review by the State Clearinghouse, posted by the County Clerk and the State Office and Planning and Research at least thirty (30) days—before the final adoption of the Negative Declaration or Mitigated Negative Declaration by the decision-making body (see Local Guidelines Section 6.10).

The City requires requests for notices to be in writing and to be renewed annually. If the City is not otherwise required by CEQA or another regulation to provide notice, the City may charge a fee for providing notices to individuals or organizations that have submitted written requests to receive such notices, unless the request is made by another public agency.

If the Negative Declaration or Mitigated Negative Declaration has been submitted to the State Clearinghouse for circulation, the public review period shall be at least as long as the period of review by the State Clearinghouse. (See Local Guidelines Section 6.10.) Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies. If the Lead Agency is submitting a Negative Declaration or Mitigated Negative Declaration to the State Clearinghouse, the Notice of Completion form may be used.

The Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall contain the following information:

(a) The period during which comments shall be received;
(b) The date, time and place of any public meetings or hearings on the proposed project;
(c) A brief description of the proposed project and its location;
(d) The address where copies of the proposed Negative Declaration or Mitigated Negative Declaration and all documents incorporated by reference in the proposed Negative Declaration or Mitigated Negative Declaration are available for review;
(e) A description of how the proposed Negative Declaration or Mitigated Negative Declaration can be obtained in electronic format;
(f) The Environmental Protection Agency ("EPA") list on which the proposed project site is located, if applicable, and the corresponding information from the applicant's statement (see Local Guidelines Section 2.04); and
(g) The significant effects on the environment, if any, anticipated as a result of the proposed project.

6.05 PROJECTS AFFECTING MILITARY SERVICES; DEPARTMENT OF DEFENSE NOTIFICATION.

CEQA imposes additional requirements to provide notice to potentially affected military agencies when:

(a) The project meets one of the following three criteria:

    (1) The project includes a general plan amendment;

    (2) The project is of statewide, regional, or area-wide significance; or

    (3) The project relates to a public use airport or certain lands surrounding a public use airport; and

(b) A "military service" (defined in Section 11.42 of these Local Guidelines) has provided its contact office and address and notified the Lead Agency of the specific boundaries of a "low-level flight path" (defined in Section 11.37 of these Local Guidelines), "military

impact zone" (defined in Section 11.41 of these Local Guidelines), or "special use airspace" (defined in Section 11.67 of these Local Guidelines).

When a project meets these requirements, the City must provide the military service's designated contact with a copy of the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration that has been prepared for the project, unless the project involves the remediation of lands contaminated with hazardous wastes and meets certain other requirements. See Public Resources Code Sections 21080.4 and 21092 and Health and Safety Code Sections 25300, et seq.; 25396; and 25187.

The City must provide the military service with sufficient notice of its intent to adopt a Negative Declaration or Mitigated Negative Declaration to ensure that the military service has no fewer than twenty (20) days to review the documents before they are approved, provided that the military service shall have a minimum of thirty (30) days to review the environmental documents if the documents have been submitted to the State Clearinghouse. See State CEQA Guidelines Sections 15105(b) and 15190.5(c).

6.06 SPECIAL FINDINGS REQUIRED FOR FACILITIES THAT MAY EMIT HAZARDOUS AIR EMISSIONS NEAR SCHOOLS.

Special procedural rules apply to projects involving the construction or alteration of a facility within one-quarter mile of a school/schools when: (1) the facility might reasonably be anticipated to emit hazardous air emissions or to handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the threshold specified in Health and Safety Code Section 25532(j), and (2) the emissions or substances may pose a health or safety hazard to persons who would attend or would be employed at the school. If the project meets both of those criteria, a Lead Agency may not approve a Negative Declaration or a Mitigated Negative Declaration unless both of the following have occurred:

(a) The Lead Agency consulted with the affected school district or districts having jurisdiction over the school regarding the potential impact of the project on the school; and
(b) The school district(s) was given written notification of the project not less than thirty (30) days prior to the proposed approval of the Negative Declaration.

When the City is considering the adoption of a Negative Declaration or Mitigated Negative Declaration for a project that meets these criteria, it can satisfy this requirement by providing the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, the proposed Negative Declaration or Mitigated Negative Declaration, and the Initial Study to the potentially affected school district at least thirty (30) days before the decision-making body will consider the adoption of the Negative Declaration or Mitigated Negative Declaration. See also Local Guidelines Section 6.04.

Implementation of this Guideline shall be consistent with the definitions and terms utilized in State CEQA Guidelines Section 15186.

6.07 CONSULTATION WITH CALIFORNIA NATIVE AMERICAN TRIBES.

Prior to the release of a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration for a project, the Lead Agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if:

(a) The California Native American tribe requested to the Lead Agency, in writing, to be informed by the Lead Agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe; and

(b) The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. The California Native American tribe shall designate a lead contact person when responding to the Lead Agency. If a lead contact is not designated by the California Native American tribe, or it designates multiple lead contact people, the Lead Agency shall defer to the individuals listed on the contact list maintained by the Native American Heritage Commission. Consultation is defined in Local Guidelines Section 11.12.

To expedite the requirements of this section, the Native American Heritage Commission shall assist the Lead Agency in identifying the California American Native tribes that are traditionally and culturally affiliated with the project area.

Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the Lead Agency shall provide formal notification to the designated contact of, or a trial representative of, traditionally and culturally affiliated California Native America tribes that have requested notice, which shall be accomplished by at least one written notification that includes a brief description of the proposed project and its location, the Lead Agency contact information, and a notification that the California Native American tribe has 30 days to request consultation.

The Lead Agency shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.

If consultation is requested, the parties may propose mitigation measures, including those set forth in Public Resources Code Section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommend to the Lead Agency.

The consultation shall be considered concluded when either of the following occurs:

(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

The California Native American tribe is not limited in its ability to submit information to the lead agency regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the impacts. Additionally, the lead agency or project proponent is not limited in its ability to incorporate changes and additions to the project as a result of the consultation, even if not legally required.

6.08 IDENTIFICATION OF TRIBAL CULTURAL RESOURCES AND PROCESSING OF INFORMATION AFTER CONSULTATION WITH THE CALIFORNIA NATIVE AMERICAN TRIBE

After consultation with the California Native American tribe listed above in Local Guidelines Section 6.07, any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the Mitigated Negative Declaration and in an adopted mitigation monitoring and reporting program, if the mitigation measures are determined to avoid or lessen the proposed project's impacts on tribal cultural resources, and if the mitigation measures are enforceable.

If a project may have a significant impact on a tribal cultural resource, the Lead Agency's Mitigated Negative Declaration shall discuss both of the following:

(a) Whether the proposed project has a significant impact on an identified tribal cultural resource;

(b) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to during the consultation, avoid or substantially lessen the impact on the identified tribal cultural resource.

Any information provided regarding the location, description and use of the tribal cultural resource that is submitted by a California Native American tribe during the environmental review process shall not be included in the Negative Declaration or Mitigated Negative Declaration or otherwise disclosed by the Lead Agency or any other public agency to the public, consistent with Governmental Code Sections 6254(r) and 6254.10, and State CEQA Guidelines 15120(d), without the prior consent of the tribe that provided the information. If the Lead Agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the Negative Declaration or Mitigated Negative Declaration unless the tribe provides consent, in writing, to the disclosure of some or all of the information to the public. This does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the Negative Declaration or the Mitigated Negative Declaration.

The exchange of confidential information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the Lead Agency, the California Native American tribe, the project applicant, or the project applicant's agent is not prohibited by Public Resources Code Section 21082.3. The project applicant and the project applicant's legal advisers must use a reasonable degree of care and maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to tribal cultural resources and shall not disclose to a third party confidential information regarding the cultural resource unless the California Native American tribe providing the information consents in writing to the public disclosure of such information.

Public Resources Code Section 21082.3 does not prevent a Lead Agency or other public agency from describing the information in general terms in the Negative Declaration or Mitigated Negative Declaration so as to inform the public of the basis of the Lead Agency's or other public agency's decision without breaching the confidentiality required. In addition, a Lead Agency may adopt a Mitigated Negative Declaration for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:

(a) The consultation process between the California Native American tribe and the Lead Agency has occurred as provided in Public Resources Code Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.

(b) The California Native American tribe has requested consultation pursuant to Public Resources Code Section 21080.3.1 and has failed to provide comments to the Lead agency, or otherwise failed to engage, in the consultation process.

(c) The Lead Agency has complied with subdivision (d) of Section 21080.3.1 of the Public Resources Code and the California Native American tribe has failed to request consultation within 30 days.

If substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource but the decision-makers do not include the mitigation measures recommended by the staff in the Mitigated Negative Declaration, or if there are no agreed upon mitigation measures at the conclusion of the consultation; or if no consultation has occurred, the Lead Agency must still consider the adoption of feasible mitigation.

6.09 SIGNIFICANT ADVERSE IMPACTS TO TRIBAL CULTURAL RESOURCES

Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. If the Lead Agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Public Resources Code section 21080.3.2 and as set forth in Local Guidelines Section 6.07, the following examples of mitigation measures, if feasible, may be considered to avoid or minimize the significant adverse impacts:

(a) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and

natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

(b) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

(1) Protecting the cultural character and integrity of the resource.

(2) Protecting the traditional use of the resource.

(3) Protecting the confidentiality of the resource.

(c) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

(d) Protecting the resource.

6.10 POSTING AND PUBLICATION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The City shall have a copy of the Notice of Intent to Adopt, the Negative Declaration or Mitigated Negative Declaration, and the Initial Study posted at the City's offices and shall make these documents available for public inspection. The Notice must be provided either twenty (20) or thirty (30) days prior to final adoption of the Negative Declaration or Mitigated Negative Declaration. The public review period for a Negative Declaration or Mitigated Negative Declaration prepared for a project subject to State Clearinghouse review must be circulated for at least as long as the review period established by the State Clearinghouse, usually no less than thirty (30) days. Under certain circumstances, a shortened review period of at least twenty (20) days may be approved by the State Clearinghouse as provided for in State CEQA Guidelines Section 15105. See the Shortened Review Request Form "P." The state review period will commence on the date the State Clearinghouse distributes the document to state agencies. The State Clearinghouse will distribute the document within three (3) days of receipt if the Negative Declaration or Mitigated Negative Declaration is deemed complete.

The Notice must also be posted in the office of the Clerk in each county in which the project is located and must remain posted throughout the public review period. The County Clerk is required to post the Notice within twenty-four (24) hours of receiving it.

Notice shall be provided as stated in Local Guidelines Section 6.04. In addition, Notice must be given by at least one of the following procedures:

(a) Publication at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of notice on and off site in the area where the project is to be located; or

(c) Direct mailing to owners and occupants of property contiguous to the project, as shown on the latest equalized assessment roll.

The City, when acting as Lead Agency, shall consider all comments received during the public review period for the Negative Declaration or Mitigated Negative Declaration. For a Negative Declaration or Mitigated Negative Declaration, the City is not required to respond in writing to comments it receives either during or after the public review period. However, the City may provide a written response to all comments if it will not delay action on the Negative Declaration or Mitigated Negative Declaration, since any comment received prior to final action on the Negative Declaration or Mitigated Negative Declaration can form the basis of a legal challenge. A written response that refutes the comment or adequately explains the City's action in light of the comment will assist the City in defending against a legal challenge. The City shall notify any public agency that comments on a Negative Declaration or Mitigated Negative Declaration of the public hearing or hearings, if any, on the project for which the Negative Declaration or Mitigated Negative Declaration was prepared.

6.11 SUBMISSION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION TO STATE CLEARINGHOUSE.

A Negative Declaration or Mitigated Negative Declaration must be submitted to the State Clearinghouse for circulation in the following situations:

(a) The Negative Declaration or Mitigated Negative Declaration is prepared by a Lead Agency that is a state agency;
(b) The Negative Declaration or Mitigated Negative Declaration is prepared by a public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project; or
(c) The Negative Declaration or Mitigated Negative Declaration is for a project identified in State CEQA Guidelines Section 15206 as being of statewide, regional, or area-wide significance.

State CEQA Guidelines Section 15206 identifies the following types of projects as being examples of projects of statewide, regional, or area-wide significance that require submission to the State Clearinghouse for circulation:

(1) Projects that have the potential to cause significant environmental effects beyond the city or county where the project would be located, such as:

(a) Residential development of more than 500 units;
(b) Commercial projects employing more than 1,000 persons or covering more than 500,000 square feet of floor space;
(c) Office building projects employing more than 1,000 persons or covering more than 250,000 square feet of floor space;
(d) Hotel or motel development of more than 500 rooms; or
(e) Industrial projects housing more than 1,000 persons, occupying more than 40 acres of land, or covering more than 650,000 square feet of floor area;

(2) Projects for the cancellation of a Williamson Act contract covering 100 or more acres;

(3) Projects in one of the following Environmentally Sensitive Areas:

(a) Lake Tahoe Basin;
(b) Santa Monica Mountains Zone;
(c) Sacramento-San Joaquin River Delta;
(d) Suisun Marsh;
(e) Coastal Zone, as defined by the California Coastal Act;
(f) Areas within one-quarter mile of a river designated as wild and scenic; or
(g) Areas within the jurisdiction of the San Francisco Bay Conservation and Development Commission;

(4) Projects that would affect sensitive wildlife habitats or the habitats of any rare, threatened, or endangered species;

(5) Projects that would interfere with water quality standards; and

(6) Projects that would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

A Negative Declaration or Mitigated Negative Declaration may also be submitted to the State Clearinghouse for circulation if a state agency has special expertise with regard to the environmental impacts involved.

When the Negative Declaration or Mitigated Negative Declaration is submitted to the State Clearinghouse for review, the review period shall be at least thirty (30) days. The review period begins (day one) on the date that the State Clearinghouse distributes the Negative Declaration or Mitigated Negative Declaration to state agencies. The State Clearinghouse is required to distribute the Negative Declaration or Mitigated Negative Declaration to state agencies within three (3) working days from the date the State Clearinghouse receives the document, as long as the Negative Declaration or Mitigated Negative Declaration is complete when submitted to the State Clearinghouse. If the document submitted to the State Clearinghouse is not complete, the State Clearinghouse must notify the Lead Agency. The review period for the public and all other agencies may run concurrently with the state agency review period established by the State Clearinghouse, but the public review period cannot conclude before the state agency review period does. The review period for the public shall be at least as long as the review period established by the State Clearinghouse.

When a Negative Declaration or Mitigated Negative Declaration is submitted to the State Clearinghouse, a Notice of Completion (Form "H") should be included. A sufficient number of copies of the documents must be sent to the State Clearinghouse for circulation. Staff should contact the State Clearinghouse to find out the correct number of printed copies required for circulation. In addition to the printed copies, a copy of the documents in electronic format shall be submitted on a diskette or by electronic mail transmission if available.

Alternatively, the City may provide copies of draft environmental documents to the State Clearinghouse for state agency review in an electronic format. The document must be on a CD-ROM in a common file format such as Word or Acrobat. Lead Agencies must provide fifteen (15) copies of the CD-ROM to the State Clearinghouse along with a hard copy version of the Notice of Completion (Form "H"). In addition, each CD-ROM must be accompanied by 15 printed copies of the introduction section of a Negative Declaration or Mitigated Negative Declaration. (A Lead Agency may also use Form "Q".) The printed summary allows both the State Clearinghouse and agency CEQA coordinators to distribute the documents quickly without the use of a computer. Form "Q" may be used as a cover sheet.

A shorter review period by the State Clearinghouse for a Negative Declaration or Mitigated Negative Declaration can be requested by the decision-making body. The shortened review period shall not be less than twenty (20) days. Such a request must be made in writing by the Lead Agency to the Office of Planning and Research . The decision-making body may designate by resolution or ordinance an individual authorized to request a shorter review period. (See Form "P"). Any approval of a shortened review period must be given prior to, and reflected in, the public notice. However, a shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional or area-wide environmental significance, as defined by State CEQA Guidelines Section 15206.

6.12 SPECIAL NOTICE REQUIREMENTS FOR WASTE- AND FUEL-BURNING PROJECTS.

For any project that involves the burning of municipal waste, hazardous waste, or refuse-derived fuel (such as tires) and that does not require an EIR, as defined in Local Guidelines Section 5.11, a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall be given to all organizations and individuals who have previously requested it and shall also be given by all three of the procedures listed in Local Guidelines Section 6.07. In addition, Notice shall be given by direct mailing to the owners and occupants of property within one-quarter mile of any parcel or parcels on which such a project is located. (Public Resources Code Section 21092(c).)

These notice requirements apply only to those projects described in Local Guidelines Section 5.11. These notice requirements do not preclude the City from providing additional notice by other means if desired.

6.13 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

Under specific circumstances a city or county acting as Lead Agency must consult with the public water system that will supply the project to determine whether the public water system can adequately supply the water needed for the project. As a Responsible Agency, the City should be aware of these requirements. See Local Guidelines Section 5.16 for more information on these requirements.

6.14 CONTENT OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

A Negative Declaration must be prepared directly by or under contract to the City and should generally resemble Form "E." It shall contain the following information:

(a) A brief description of the project proposed, including any commonly used name for the project;
(b) The location of the project and the name of the project proponent;
(c) A finding that the project as proposed will not have a significant effect on the environment; and
(d) An attached copy of the Initial Study documenting reasons to support the finding.

For a Mitigated Negative Declaration, feasible mitigation measures included in the project to substantially lessen or avoid potentially significant effects must be fully enforceable through permit conditions, agreements, or other measures. Such permit conditions, agreements, and measures must be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law.

The proposed Negative Declaration or Mitigated Negative Declaration must reflect the independent judgment of the City.

6.15 TYPES OF MITIGATION.

The following is a non-exhaustive list of potential types of mitigation the City may consider:

(a) Avoidance;
(b) Preservation;
(c) Rehabilitation or replacement. Replacement may be on-site or off-site depending on the particular circumstances; and/or
(d) Participation in a fee program.

6.16 ADOPTION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

Following the publication, posting or mailing of the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, but not before the expiration of the applicable twenty (20) or thirty (30) day public review period, the Negative Declaration or Mitigated Negative Declaration may be presented to the decision-making body at a regular or special meeting. Prior to adoption, the City shall independently review and analyze the Negative Declaration or Mitigated Negative Declaration and find that the Negative Declaration or Mitigated Negative Declaration reflects the independent judgment of the City.

If new information is added to the Negative Declaration or Mitigated Negative Declaration after public review, the City should determine whether recirculation is warranted. (See Local Guidelines Section 6.19). If the decision-making body finds that the project will not have a significant effect on the environment, it shall adopt the Negative Declaration or Mitigated Negative Declaration. If the decision-making body finds that the proposed project may have a significant effect on the environment that cannot be mitigated or avoided, it shall order the preparation of a Draft EIR and the filing of a Notice of Preparation of a Draft EIR.

When adopting a Negative Declaration or Mitigated Negative Declaration, the City shall specify the location and custodian of the documents or other material that constitute the record of proceedings upon which it based its decision. If adopting a Negative Declaration for a project

that may emit hazardous air emissions within one-quarter mile of a school and that meets the other requirements of Local Guidelines Section 6.06, the decision-making body must also make the findings required by Local Guidelines Section 6.06.

As Lead Agency, the City may charge a non-elected official or body with the responsibility of independently reviewing the adequacy of and adopting a Negative Declaration or a Mitigated Negative Declaration; however, when a non-elected decision-making body adopts a Negative Declaration or Mitigated Negative Declaration, the City must have a procedure allowing for the appeal of that decision to the City Council.

6.17 MITIGATION REPORTING OR MONITORING PROGRAM FOR MITIGATED NEGATIVE DECLARATION.

When adopting a Mitigated Negative Declaration pursuant to Local Guidelines Section 6.13, the City shall adopt a reporting or monitoring program to assure that mitigation measures, which are required to mitigate or avoid significant effects on the environment, will be fully enforceable through permit conditions, agreements, or other measures and implemented by the project proponent or other responsible party in a timely manner, in accordance with conditions of project approval. The City shall also specify the location and the custodian of the documents that constitute the record of proceedings upon which it based its decision. There is no requirement that the reporting or monitoring program be circulated for public review; however, the City may choose to circulate it for public comments along with the Mitigated Negative Declaration. The mitigation measures required to mitigate or avoid significant effects on the environment must be adopted as conditions of project approval.

This reporting or monitoring program shall be designed to assure compliance during the implementation or construction of a project and shall otherwise comply with the requirements described in Local Guidelines Section 7.38. If a Responsible Agency or Trustee Agency has required that certain conditions be incorporated into the project, the City may request that agency to prepare and submit a proposed reporting or monitoring program. The City shall also require that, prior to the close of the public review period for a Mitigated Negative Declaration (see Local Guidelines Section 6.04), the Responsible or Trustee Agency submit detailed performance objectives for mitigation measures, or refer the City to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the City by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

Local agencies have the authority to levy fees sufficient to pay for this program. Therefore, the City can charge the project proponent a fee to cover actual costs of program processing and implementation.

Transportation information resulting from the reporting or monitoring program required to be adopted by the City shall be submitted to the regional transportation planning agency where the project is located and to the Department of Transportation for a project of statewide, regional or area-wide significance according to State CEQA Guidelines Section 15206. The transportation planning agency and the Department of Transportation are required by law to

adopt guidelines for the submittal of these reporting or monitoring programs, so the City may wish to tailor its submittal to such guidelines.

6.18 APPROVAL OR DISAPPROVAL OF PROJECT.

At the time of adoption of a Negative Declaration or Mitigated Negative Declaration, the decision-making body may consider the project for purposes of approval or disapproval. Prior to approving the project, the decision-making body shall consider the Negative Declaration or Mitigated Negative Declaration, together with any written comments received and considered during the public review period, and shall approve or disapprove the Negative Declaration or Mitigated Negative Declaration. In making a finding as to whether there is any substantial evidence that the project will have a significant effect on the environment, the factors listed in Local Guidelines Section 5.08 should be considered. (See Local Guidelines Section 6.06 for approval requirements for facilities that may emit hazardous pollutants or that may handle extremely hazardous substances within one-quarter mile of a school site.)

6.19 RECIRCULATION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

A Negative Declaration or Mitigated Negative Declaration must be recirculated when the document must be substantially revised after the public review period but prior to its adoption. A "substantial revision" occurs when the City has identified a new and avoidable significant effect for which mitigation measures or project revisions must be added in order to reduce the effect to a level of insignificance, or when the City determines that the proposed mitigation measures or project revisions will not reduce the potential effects to less than significant and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

(a) Mitigation measures are replaced with equal or more effective measures, and the City makes a finding to that effect;
(b) New project revisions are added after circulation of the Negative Declaration or Mitigated Negative Declaration or in response to written or oral comments on the project's effects, but the revisions do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect;
(c) Measures or conditions of project approval are added after circulation of the Negative Declaration or Mitigated Negative Declaration, but the measures or conditions are not required by CEQA, do not create new significant environmental effects, and are not necessary to mitigate an avoidable significant effect; or
(d) New information is added to the Negative Declaration or Mitigated Declaration which merely clarifies, amplifies, or makes insignificant modifications to the Negative Declaration or Mitigated Negative Declaration.

If, after preparation of a Negative Declaration or Mitigated Negative Declaration, the City determines that the project requires an EIR, it shall prepare and circulate the Draft EIR for consultation and review and advise reviewers in writing that a proposed Negative Declaration or Mitigated Declaration had previously been circulated for the project.

6.20 NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED.

After final approval of a project for which a Negative Declaration or Mitigated Negative Declaration has been prepared, Staff shall cause to be prepared, filed, and posted a Notice of Determination (Form "F"). The Notice of Determination shall contain the following information:

(a) An identification of the project, including the project title as identified on the proposed Negative Declaration or Mitigated Negative Declaration, location, and the State Clearinghouse identification number for the proposed Negative Declaration or Mitigated Negative Declaration if the Notice of Determination is filed with the State Clearinghouse;
(b) For private projects, identification of the person undertaking a project that is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies;
(c) A brief description of the project;
(d) The name of the City and the date on which the City approved the project;
(e) The determination of the City that the project will not have a significant effect on the environment;
(f) A statement that a Negative Declaration or Mitigated Negative Declaration was adopted pursuant to the provisions of CEQA;
(g) A statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted; and
(h) The address where a copy of the Negative Declaration or Mitigated Negative Declaration may be examined.

The Notice of Determination shall be filed with the Clerk of each county in which the project will be located within five (5) working days of project approval.

The City is encouraged to make copies of filed notices available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of the State CEQA Guidelines and the Public Resources Code. The Clerk must post the Notice of Determination within twenty-four (24) hours of receipt. The Notice must be posted in the office of the Clerk for a minimum of thirty (30) days. Thereafter, the Clerk shall return the notice to the City with a notation of the period it was posted. The City shall retain the notice for not less than twelve (12) months. If the project requires discretionary approval from any State agency, the Notice of Determination shall also be filed with OPR within five (5) working days of project approval along with proof of payment of the DFW fee or a no effect determination form from the DFW (see Local Guidelines Section 6.24). Simultaneously with the filing of the Notice of Determination with the Clerk, Staff shall cause a copy of the Notice of Determination to be posted at City Offices.

If a written request has been made for a copy of the Notice prior to the date on which the City adopts the Negative Declaration or Mitigated Negative Declaration, the copy must be

mailed, first class postage prepaid, within five (5) days of the City's determination. If such a request is made following the City's determination, then the copy should be mailed in the same manner as soon as possible. The recipients of such documents may be charged a fee reasonably related to the cost of providing the service.

For projects with more than one phase, Staff shall file a Notice of Determination for each phase requiring a discretionary approval.

The filing and posting of the Notice of Determination with the County Clerk, and, if necessary, with OPR, usually starts a thirty (30) day statute of limitations on court challenges to the approval under CEQA. When separate notices are filed for successive phases of the same overall project, the thirty (30) day statute of limitations to challenge the subsequent phase begins to run when the second notice is filed. Failure to file the Notice may result in a one hundred eighty (180) day statute of limitations.

6.21 ADDENDUM TO NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The City may prepare an addendum to an adopted Negative Declaration or Mitigated Negative Declaration if only minor technical changes or additions are necessary. The City may also prepare an addendum to an adopted Negative Declaration or Mitigated Negative Declaration when none of the conditions calling for a subsequent Negative Declaration or Mitigated Negative Declaration have occurred. (See Local Guidelines Section 6.22 below.) An addendum need not be circulated for public review but can be attached to the adopted Negative Declaration or Mitigated Negative Declaration. The City shall consider the addendum with the adopted Negative Declaration or Mitigated Negative Declaration prior to project approval.

6.22 SUBSEQUENT NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

When a Negative Declaration or Mitigated Negative Declaration has been adopted for a project, or when an EIR has been certified, no subsequent Negative Declaration, Mitigated Negative Declaration, or EIR shall be prepared for that project unless the Lead Agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(a) Substantial changes are proposed in the project which will require major revisions of the previous EIR, Negative Declaration, or Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(b) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR, Negative Declaration, or Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified or the Negative Declaration was adopted which shows any of the following:

(1) The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration;

(2) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(3) Mitigation measure(s) or alternative(s) previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents declined to adopt the mitigation measure(s) or alternative(s); or

(4) Mitigation measure(s) or alternative(s) which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure(s) or alternative(s).

The City, as Lead Agency, would then determine whether a Subsequent EIR, Supplemental EIR, Subsequent Negative Declaration, Subsequent Mitigated Negative Declaration, or Addendum would be applicable. Subsequent Negative Declarations and Mitigated Negative Declarations must be given the same notice and public review period as other Negative Declarations. The Subsequent Negative Declaration shall state where the previous document is available and can be reviewed.

6.23 PRIVATE PROJECT COSTS.

For private projects, the person or entity proposing to carry out the project shall bear all costs incurred by the City in preparing the Initial Study and in preparing and filing the Negative Declaration or Mitigated Negative Declaration and Notice of Determination.

6.24 FILING FEES FOR PROJECTS THAT AFFECT WILDLIFE RESOURCES.

At the time a Notice of Determination for a Negative Declaration or Mitigated Negative Declaration is filed with the County or Counties in which the project is located, a fee of $2,354.75, or the then applicable fee, shall be paid to the Clerk for projects that will adversely affect fish or wildlife resources. These fees are collected by the Clerk on behalf of DFW pursuant to Fish and Game Code Section 711.4.

Only one filing fee is required for each project unless the project is tiered or phased and separate environmental documents are prepared. (Fish & Game Code Section 711.4(g).) For projects where Responsible Agencies file separate Notices of Determination, only the Lead Agency is required to pay the fee.

Note: County Clerks are authorized to charge a documentary handling fee for each project in addition to the Fish and Game Code fees specified above. Refer to the Index in the Staff Summary to help determine the correct total amount of fees applicable to the project.

For private projects, the City may pass these costs on to the project applicant.

Fish and Game Code fees may be waived for projects with "no effect" on fish or wildlife resources or for certain projects undertaken by the DFW and implemented through a contract with a non-profit entity or local government agency; however, the Lead Agency must obtain a form showing that the DFW has determined that the project will have "no effect" on fish and wildlife. (Fish and Game Code Section 711.4(c)(2)(A)). Projects that are statutorily or categorically exempt from CEQA are also not subject to the filing fee, and do not require a no effect determination. (State CEQA Guidelines Sections 15260 through 15333; Fish and Game Code Section 711.4(d)(1)). The applicable DFW Regional Office's environmental review and permitting staff are responsible for determining whether a project within their region will qualify for a no effect determination and if the CEQA filing fee will be waived.

The request should be submitted when the CEQA document is released for public review, or as early as possible in the public comment period. Documents submitted in digital format are preferred (e.g. compact disk). If insufficient documentation is submitted to DFW for the proposed project, a no effect determination will not be issued.

If the City believes that a project for which it is Lead Agency will have "no effect" on fish or wildlife resources, it should contact the appropriate DFW Regional Office. The project's CEQA document may need to be provided to the appropriate DFW Regional Office along with a written request. Documentation submitted to the appropriate DFW Regional Office should set forth facts in support of the fee exemption. Previous examples of projects that have qualified for a fee exemption include: minor zoning changes that did not lead to or allow new construction, grading, or other physical alterations to the environment; and minor modifications to existing structures, including addition of a second story to single or multi-family residences.

The fee exemption requirement that the project have "no" impact on fish or wildlife resources is more stringent than the former requirement that a project have only "de minimis" effects on fish or wildlife resources. DFW may determine that a project would have no effect on fish and wildlife if all of the following conditions apply:

- The project would not result in or have the potential to result in harm, harassment, or take of any fish and/or wildlife species.

- The project would not result in or have the potential to result in direct or indirect destruction, ground disturbance, or other modification of any habitat that may support fish and/or wildlife species.

- The project would not result in or have the potential to result in the removal of vegetation with potential to support wildlife.

- The project would not result in or have the potential to result in noise, vibration, dust, light, pollution, or an alteration in water quality that may affect fish and/or wildlife directly or from a distance.

- The project would not result in or have the potential to result in any interference with the movement of any fish and/or wildlife species.

Any request for a fee exemption should include the following information:

(1) the name and address of the project proponent and applicant contact information;

(2) a brief description of the project and its location;

(3) site description and aerial and/or topographic map of the project site;

(4) State Clearinghouse number or county filing number;

(5) a statement that an Initial Study has been prepared by the City to evaluate the project's effects on fish and wildlife resources, if any; and

(6) a declaration that, based on the City's evaluation of potential adverse effects on fish and wildlife resources, the City believes the project will have no effect on fish or wildlife.

If insufficient documentation is submitted to DFW for the proposed project, a no effect determination will not be issued. (A sample Request for Fee Exemption is attached as Form "L".) DFW will review the City's finding, and if DFW agrees with the City's conclusions, DFW will provide the City with written confirmation. Retain DFW's determination as part of the administrative record; the City is required to file a copy of this determination with the County after project approval and at the time of filing of the Notice of Determination.

The Lead Agency must have written confirmation of DFW's finding of "no impact" at the time the Lead Agency files its Notice of Determination with the County. The County cannot accept the Notice of Determination unless it is accompanied by the appropriate fee or a written no effect determination from DFW.

7. ENVIRONMENTAL IMPACT REPORT

7.01 DECISION TO PREPARE AN EIR.

An EIR shall be prepared whenever there is substantial evidence in light of the whole record which supports a fair argument that the project may have a significant effect on the environment. (See Local Guidelines Sections 11.65 and 11.71.) The record may include the Initial Study or other documents or studies prepared to assess the project's environmental impacts.

7.02 CONTRACTING FOR PREPARATION OF EIRS.

If an EIR is prepared under a contract with the City, the contract must be executed within forty-five (45) days from the date on which the City sends a Notice of Preparation. The City may take longer to execute the contract if the project applicant and the City mutually agree to an extension of the 45-day time limit.

The EIR prepared under contract must be the City's product. Staff, together with such consultant help as may be required, shall independently review and analyze the EIR to verify its accuracy, objectivity and completeness prior to presenting it to the decision-making body. The EIR made available for public review must reflect the independent judgment of the City. Staff may require such information and data from the person or entity proposing to carry out the project as Staff deems necessary for completion of the EIR.

7.03 NOTICE OF PREPARATION OF DRAFT EIR.

After determining that an EIR will be required for a proposed project, the Lead Agency shall prepare and send a Notice of Preparation (Form "G") to OPR and to each of the following:

(a) Each Responsible Agency and Trustee Agency involved with the project;

(b) Any other federal, state, or local agency which has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project; and

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources;

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the City to receive these Notices;

(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria in Local Guidelines Section 7.04, the specified military services contact;
(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.36, any potentially affected school district;
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (See also Local Guidelines Section 7.27), the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, the agricultural and farm agencies and organizations specified in Health and Safety Code Section 33333.3.

Additionally, for a project of statewide, regional, or area-wide significance, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.

The Notice of Preparation must also be filed and posted in the office of the Clerk in each county in which the project is located for thirty (30) days. The County Clerk must post the Notice within twenty-four (24) hours of receipt.

When submitting the Notice of Preparation to OPR, a Notice of Completion (Form "H") should be used as a cover sheet. Responsible and Trustee Agencies, the State Clearinghouse, and the state agencies contacted by the State Clearinghouse have thirty (30) days to respond to the Notice of Preparation. Agencies that do not respond within thirty (30) days shall be deemed not to have any comments on the Notice of Preparation.

The Lead Agency shall send copies of the Notice of Preparation by certified mail or any other method of transmittal which provides it with a record that the Notice was received.

At a minimum, the Notice of Preparation shall include:

(a) A description of the project;
(b) The location of the project indicated either on an attached map (preferably a copy of the USGS 15' or 7½' topographical map identified by quadrangle name) or by a street address and cross street in an urbanized area;
(c) The probable environmental effects of the project;
(d) The name and address of the consulting firm retained to prepare the Draft EIR, if applicable; and
(e) The Environmental Protection Agency ("EPA") list on which the proposed site is located, if applicable, and the corresponding information from the applicant's statement. (See Local Guidelines Section 2.04.)

7.04 SPECIAL NOTICE REQUIREMENTS FOR AFFECTED MILITARY AGENCIES

CEQA imposes additional requirements to provide notice to potentially affected military agencies when:

(a) A "military service" (defined in Section 11.42 of these Local Guidelines) has provided the City with its contact office and address and notified the City of the specific boundaries of a "low-level flight path" (defined in Section 11.37 of these Local Guidelines), "military impact zone" (defined in Section 11.41 of these Local Guidelines), or "special use airspace" (defined in Section 11.67 of these Local Guidelines); and

(b) The project meets one of the following criteria:

(1) The project is within the boundaries specified pursuant to subsection (a) of this guideline;

(2) The project includes a general plan amendment;

(3) The project is of statewide, regional, or area-wide significance; or

(4) The project relates to a public use airport or certain lands surrounding a public use airport.

When a project meets these requirements, the City must provide the military service's designated contact with any Notice of Preparation, and/or Notice of Availability of Draft EIRs that have been prepared for a project, unless the project involves the remediation of lands contaminated with hazardous wastes and meets certain other requirements. (See Public Resources Code Sections 21080.4 and 21092 and Health and Safety Code Sections 25300, et seq.; 25396; and 25187.)

The City must provide the military service with sufficient notice of its intent to certify an EIR to ensure that the military service has no fewer than thirty (30) days to review the document; or forty-five (45) days to review the environmental documents before they are approved if the documents have been submitted to the State Clearinghouse.

It should be noted that the effect, or potential effect, a project may have on military activities does not itself constitute an adverse effect on the environment pursuant to CEQA.

7.05 ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECT.

Under certain circumstances, a project applicant may choose to apply to the Governor of the State of California to have the project certified as an Environmental Leadership Development Project. Only large, privately funded projects that will result in a minimum investment of $100 million in California upon completion of construction and that create high-wage, highly skilled jobs without resulting in any net additional emission of greenhouse gases, will qualify for certification. All construction workers employed in the execution of the project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Labor Code Sections 1773 and 1773.9. If the project is certified for streamlining, the project applicant shall include this

requirement in all contracts for the performance of the work. The request for certification must be made and granted prior to the release of the Draft EIR. If the Governor certifies the project, the lead agency must make the administrative record available concurrently with the Draft EIR and certify the administrative record within five (5) days of project approval and must make it available in an electronic format. Within 10 days of the Governor certifying an Environmental Leadership Development Project, the Lead Agency shall, at the applicant's expense, issue a public notice. See Public Resources Code Section 21187 for the language to be used in the public notice. If litigation is filed against such a project, certain fast-tracked litigation procedures will apply. Please see Public Resources Code Section 21178 and Sections 21183 through 21187 for a complete description of the requirements for such projects.

7.06 PREPARATION OF DRAFT EIR.

The Lead Agency is responsible for preparing a Draft EIR. The Lead Agency may begin preparation of the Draft EIR without awaiting responses to the Notice of Preparation. However, information communicated to the Lead Agency not later than thirty (30) days after receipt of the Notice of Preparation shall be included in the Draft EIR.

7.07 CONSULTATION WITH CALIFORNIA NATIVE AMERICAN TRIBES.

Prior to the release of a Draft EIR for a project, the Lead Agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if:

(a) The California Native American tribe requested to the Lead Agency, in writing, to be informed by the Lead Agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe; and

(b) The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. The California Native American tribe shall designate a lead contact person when responding to the Lead Agency. If a lead contact is not designated by the California Native American tribe, or if it designates multiple lead contact people, the Lead Agency shall defer to the individuals listed on the contact list maintained by the Native American Heritage Commission. Consultation is defined in Local Guidelines Section 11.12.

To expedite the requirements of this section, the Native American Heritage Commission shall assist the Lead Agency in identifying the California American Native tribes that are traditionally and culturally affiliated with the project area.

Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the Lead Agency shall provide formal notification to the designated contact of, or a trial representative of, traditionally and culturally affiliated California Native America tribes that have requested notice, which shall be accomplished by at least one written notification that includes a brief description of the proposed project and its

location, the Lead Agency contact information, and a notification that the California Native American tribe has 30 days to request consultation.

The Lead Agency shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.

If consultation is requested, the parties may propose mitigation measures, including those set forth in Public Resources Code Section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommend to the lead agency.

The consultation shall be considered concluded when either of the following occurs:

(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

The California Native American tribe is not limited in its ability to submit information to the Lead Agency regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the impacts. Additionally, the Lead Agency or project proponent is not limited in its ability to incorporate changes and additions to the project as a result of the consultation, even if not legally required.

7.08 IDENTIFICATION OF TRIBAL CULTURAL RESOURCES AND PROCESSING OF INFORMATION AFTER CONSULTATION WITH THE CALIFORNIA NATIVE AMERICAN TRIBE

After consultation with the California Native American tribe listed above in Local Guidelines Section 7.07, any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the EIR and in an adopted mitigation monitoring and reporting program, if the mitigation measures are determined to avoid or lessen the proposed project’s impacts on tribal cultural resources, and if the mitigation measures are enforceable.

If a project may have a significant impact on a tribal cultural resource, the Lead Agency's EIR shall discuss both of the following:

(a) Whether the proposed project has a significant impact on an identified tribal cultural resource;

(b) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to during the consultation, avoid or substantially lessen the impact on the identified tribal cultural resource.

Any information provided regarding the location, description and use of the tribal cultural resource that is submitted by a California Native American tribe during the environmental review process shall not be included in the EIR or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Governmental Code Sections 6254(r) and 6254.10, and State CEQA Guidelines 15120(d), without the prior consent of the tribe that provided the information. If the Lead Agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the EIR unless the tribe provides consent, in writing, to the disclosure of some or all of the information to the public. This does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the EIR.

The exchange of confidential information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the Lead Agency, the California Native American tribe, the project applicant, or the project applicant's agent is not prohibited by Public Resources Code Section 21082.3. The project applicant and the project applicant's legal advisers must use a reasonable degree of care and maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to tribal cultural resources and shall not disclose to a third party confidential information regarding the cultural resource unless the California Native American tribe providing the information consents in writing to the public disclosure of such information.

Public Resources Code Section 21082.3 does not prevent a Lead Agency or other public agency from describing the information in general terms in the EIR so as to inform the public of the basis of the Lead Agency's or other public agency's decision without breaching the confidentiality required. In addition, a Lead Agency may certify an EIR for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:

(a) The consultation process between the California Native American tribe and the Lead Agency has occurred as provided in Public Resources Code Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.

(b) The California Native American tribe has requested consultation pursuant to Public Resources Code Section 21080.3.1 and has failed to provide comments to the Lead Agency, or otherwise failed to engage, in the consultation process.

(c) The Lead Agency has complied with subdivision (d) of Section 21080.3.1 of the Public Resources Code and the California Native American tribe has failed to request consultation within 30 days.

If substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource but the decision-makers do not include the mitigation measures

recommended by the staff in the Draft EIR, or if there are no agreed upon mitigation measures at the conclusion of the consultation, or if no consultation has occurred, the Lead Agency must still consider the adoption of feasible mitigation.

7.09 SIGNIFICANT ADVERSE IMPACTS TO TRIBAL CULTURAL RESOURCES

Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. If the Lead Agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Public Resources Code section 21080.3.2 as set forth in Local Guidelines Section 7.07, the following examples of mitigation measures, if feasible, may be considered to avoid or minimize the significant adverse impacts:

(a) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

(b) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to the following:

(1) Protecting the cultural character and integrity of the resource.

(2) Protecting the traditional use of the resource.

(3) Protecting the confidentiality of the resource.

(c) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

(d) Protecting the resource.

7.10 CONSULTATION WITH OTHER AGENCIES AND PERSONS.

To expedite consultation in response to the Notice of Preparation, the Lead Agency, a Responsible Agency, or a project applicant may request a meeting among the agencies involved to assist in determining the scope and content of the environmental information that the involved agencies may require. For any project that may affect highways or other facilities under the jurisdiction of the State Department of Transportation, the Department of Transportation can request a scoping meeting. When acting as Lead Agency, the City must convene the meeting as soon as possible but no later than thirty (30) days after a request is made. When acting as a Responsible Agency, the City should make any requests for consultation as soon as possible after receiving a Notice of Preparation.

Prior to completion of the Draft EIR, the Lead Agency shall consult with each Responsible Agency and any public agency that has jurisdiction by law over the project.

When acting as a Lead Agency, the City may fulfill this obligation by distributing the Notice of Preparation in compliance with Local Guidelines Section 7.03 and soliciting the comments of Responsible Agencies, Trustee Agencies, and other affected agencies. The City may also consult with any individual who has special expertise with respect to any environmental impacts involved with a project. The City may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project, including any interested individuals and organizations of which the City is reasonably aware. The purpose of this consultation is to "scope" the EIR's range of analysis. When a Negative Declaration or Mitigated Negative Declaration will be prepared for a project, no scoping meeting need be held, although the City may hold one if it so chooses. For private projects, the City as Lead Agency may charge and collect from the applicant a fee not to exceed the actual cost of the consultations.

In addition to soliciting comments on the Notice of Preparation, the Lead Agency may be required to conduct a scoping meeting to gather additional input regarding the impacts to be analyzed in the EIR. The Lead Agency is required to conduct a scoping meeting when:

(a) The meeting is requested by a Responsible Agency, a Trustee Agency, OPR, or a project applicant;
(b) The project is one of "statewide, regional or area wide significance" as defined in State CEQA Guidelines Section 15206; or
(c) The project may affect highways or other facilities under the jurisdiction of the State Department of Transportation, and the Department of Transportation has requested a scoping meeting.

When acting as Lead Agency, the City shall provide notice of the scoping meeting to all of the following:

(a) Any county or city that borders on a county or city within which the project is located, unless the City has a specific agreement to the contrary with that county or city;
(b) Any Responsible Agency;
(c) Any public agency that has jurisdiction by law over the project;
(d) A transportation planning agency, or any public agency that has transportation facilities within its jurisdiction, that could be affected by the project; and
(e) Any organization or individual who has filed a written request for the notice.

The requirement for providing notice of a scoping meeting may be met by including the notice of the public scoping meeting in the public meeting notice.

Government Code Section 65352 requires that before a legislative body may adopt or substantially amend a general plan, the planning agency must refer the proposed action to any city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action. CEQA allows that referral procedure to be conducted concurrently with the scoping meeting required pursuant to this section of the Local CEQA Guidelines.

For projects that are also subject to NEPA, a scoping meeting held pursuant to NEPA satisfies the CEQA scoping requirement as long as notice is provided to the agencies and individuals listed above, and in accordance with these Local Guidelines. (See Local Guideline 5.04 for a discussion of NEPA.)

The City shall call the scoping meeting as soon as possible but not later than 30 days after the meeting was requested. If the scoping meeting is being conducted concurrently with the procedure in Government Code Section 65352 for the consideration of adoption or amendment of general plans, each entity receiving a proposed general plan or amendment of a general plan should have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified. The commenting entity may submit its comments at the scoping meeting.

A Responsible Agency or other public agency shall only make comments regarding those activities that are within its area of expertise or that are required to be carried out or approved by the Responsible Agency. These comments must be supported by specific documentation. Any mitigation measures submitted to the City by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

For projects of statewide, area-wide, or regional significance, consultation with transportation planning agencies or with public agencies that have transportation facilities within their jurisdictions shall be for the purpose of obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, overpasses, on-ramps, off-ramps, and rail transit services. Moreover, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project. Any transportation planning agency or public agency that provides information to the Lead Agency must be notified of, and provided with, copies of any environmental documents relating to the project.

7.11 EARLY CONSULTATION ON PROJECTS INVOLVING PERMIT ISSUANCE.

When the project involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the City, upon request of the applicant, shall meet with the applicant regarding the range of actions, potential alternatives, mitigation measures and significant effects to be analyzed in depth in the EIR. The City may also consult with concerned persons identified by the applicant and persons who have made written requests to be consulted. Such requests for early consultation must be made not later than thirty (30) days after the City's decision to prepare an EIR.

7.12 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

For certain development projects, cities and counties must consult with water agencies. If the City is a water provider for the project, the city or county may request consultation with the City. (See Local Guidelines Sections 5.16 and 5.17 for more information on these requirements.)

7.13 AIRPORT LAND USE PLAN.

When the City prepares an EIR for a project within the boundaries of a comprehensive airport land use plan, or, if such a plan has not been adopted, for a project within two (2) nautical miles of a public airport or public use airport, the City shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport or related safety hazards and noise problems.

7.14 GENERAL ASPECTS OF AN EIR.

Both a Draft and Final EIR must contain the information outlined in Local Guidelines Sections 7.17 and 7.18. Each element must be covered, and when elements are not separated into distinct sections, the document must state where in the document each element is covered.

The body of the EIR shall include summarized technical data, maps, diagrams and similar relevant information. Highly technical and specialized analyses and data should be included in appendices. Appendices may be prepared in separate volumes, but must be equally available to the public for examination. All documents used in preparation of the EIR must be referenced. An EIR shall not include "trade secrets," locations of archaeological sites and sacred lands, or any other information subject to the disclosure restrictions of the Public Records Act (Government Code Section 6250, et seq.).

The EIR should discuss environmental effects in proportion to their severity and probability of occurrence. Effects dismissed in the Initial Study as clearly insignificant and unlikely to occur need not be discussed.

The Initial Study should be used to focus the EIR so that the EIR identifies and discusses only the specific environmental problems or aspects of the project that have been identified as potentially significant or important. A copy of the Initial Study should be attached to the EIR or included in the administrative record to provide a basis for limiting the impacts discussed.

The EIR shall contain a statement briefly indicating the reason for determining that various effects of a project that could possibly be considered significant were not found to be significant and consequently were not discussed in detail in the EIR. The City should also note any conclusion by it that a particular impact is too speculative for evaluation.

The EIR should omit unnecessary descriptions of projects and emphasize feasible mitigation measures and alternatives to projects.

7.15 USE OF REGISTERED CONSULTANTS IN PREPARING EIRS.

An EIR is not a technical document that can be prepared only by a registered consultant or professional. However, state statutes may provide that only registered professionals can prepare certain technical studies that will be used in an EIR, or that will control the detailed design, construction, or operation of the proposed project and that will be prepared in support of an EIR.

7.16 INCORPORATION BY REFERENCE.

An EIR, Negative Declaration, or Mitigated Negative Declaration may incorporate by reference all or portions of another document that is a matter of public record or is generally available to the public. Any incorporated document shall be considered to be set forth in full as part of the text of the environmental document. When all or part of another document is incorporated by reference, that document shall be made available to the public for inspection at the City's offices. The environmental document shall state where incorporated documents will be available for inspection.

When incorporation by reference is used, the incorporated part of the referenced document shall be briefly summarized, if possible, or briefly described if the data or information cannot be summarized. The relationship between the incorporated document and the EIR, Negative Declaration, or Mitigated Negative Declaration shall be described. When information from an environmental document that has previously been reviewed through the state review system ("State Clearinghouse") is incorporated by the City, the state identification number of the incorporated document should be included in the summary or text of the EIR.

7.17 STANDARDS FOR ADEQUACY OF AN EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision that takes into account the environmental consequences of the project. The evaluation of environmental effects need not be exhaustive, but must be within the scope of what is reasonably feasible. The EIR should be written and presented in such a way that it can be understood by governmental decision-makers and members of the public. A good faith effort at completeness is necessary. The adequacy of an EIR is assessed in terms of what is reasonable in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a Lead Agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters, but CEQA does require the Lead Agency to make a good faith, reasoned response to timely comments raising significant environmental issues.

There is no need to unreasonably delay adoption of an EIR in order to include results of studies in progress, even if those studies will shed some additional light on subjects related to the project.

7.18 FORM AND CONTENT OF EIR.

The text of the EIR should normally be less than 150 pages. For proposals of unusual scope or complexity, the EIR may be longer than 150 pages but should normally be less than 300 pages. The required contents of an EIR are set forth in Sections 15122 through 15132 of the State CEQA Guidelines. In brief, the EIR must contain:

(a) A table of contents or an index;
(b) A brief summary of the proposed project, including each significant effect with proposed mitigation measures and alternatives, areas of known controversy and issues to be resolved including the choice among alternatives, how to mitigate the significant effects

and whether there are any significant and unavoidable impacts (generally, the summary should be less than fifteen (15) pages);

(c) A description of the proposed project, including its underlying purpose and a list of permit and other approvals required to implement the project (see Local Guidelines Section 7.24 regarding analysis of future project expansion);

(d) A description of the environmental setting, which includes the project's physical environmental conditions from both a local and regional perspective at the time the Notice of Preparation is published, or if no Notice of Preparation is published, at the time environmental analysis begins. (State CEQA Guidelines Section 15125.) This environmental setting will normally constitute the baseline physical conditions by which the Lead Agency determines whether an impact is significant. However, the City, when acting as Lead Agency, may choose any baseline that is appropriate as long as the City's choice of baseline is supported by substantial evidence;

(e) A discussion of any inconsistencies between the proposed project and applicable general, specific and regional plans. Such plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans;

(f) A description of the direct and indirect significant environmental impacts of the proposed project explaining which, if any, can be avoided or mitigated to a level of insignificance, indicating reasons that various possible significant effects were determined not to be significant and denoting any significant effects that are unavoidable or could not be mitigated to a level of insignificance. Direct and indirect significant effects shall be clearly identified and described, giving due consideration to both short-term and long-term effects;

(g) Potentially significant energy implications of a project must be considered to the extent relevant and applicable to the project (see Local Guidelines Section 5.20);

(h) An analysis of a range of alternatives to the proposed project that could feasibly attain the project's objectives as discussed in Local Guidelines Section 7.23;

(i) A description of any significant irreversible environmental changes that would be involved in the proposed action should it be implemented if, and only if, the EIR is being prepared in connection with:

(1) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(2) The adoption by a Local Agency Formation Commission of a resolution making determinations; or

(3) A project that will be subject to the requirement for preparing an Environmental Impact Statement pursuant to NEPA;

(j) An analysis of the growth-inducing impacts of the proposed action. The discussion should include ways in which the project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding

environment. Growth-inducing impacts may include the estimated energy consumption of growth induced by the project;

(k) A discussion of any significant, reasonably anticipated future developments and the cumulative effects of all proposed and anticipated action as discussed in Local Guidelines Section 7.24;

(l) In certain situations, a regional analysis should be completed for certain impacts, such as air quality;

(m) A discussion of any economic or social effects, to the extent that they cause, or may be used to determine, significant environmental impacts;

(n) A statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and, therefore, were not discussed in the EIR;

(o) The identity of all federal, state or local agencies or other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization. To the fullest extent possible, the City should integrate CEQA review with these related environmental review and consultation requirements;

(p) A discussion of those potential effects of the proposed project on the environment that the City has determined are or may be significant. The discussion on other effects may be limited to a brief explanation as to why those effects are not potentially significant; and

(q) A description of feasible measures, as set forth in Local Guidelines Section 7.22, which could minimize significant adverse impacts.

7.19 CONSIDERATION AND DISCUSSION OF SIGNIFICANT ENVIRONMENTAL IMPACTS.

An EIR must identify and focus on the significant effects of the proposed project on the environment. In assessing the proposed project's potential impacts on the environment, the City should normally limit its examination to comparing changes that would result from the project as compared to the existing physical conditions in the affected area as they exist when the Notice of Preparation is published. If a Notice of Preparation is not published for the project, the City should compare the proposed project's potential impacts to the physical conditions that exist at the time environmental review begins. Direct and indirect significant effects of the project on the environment must be clearly identified and described, considering both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the project that may impact resources in the project area, such as water, historical resources, scenic quality, and public services. The EIR must also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area. If applicable, an EIR should also evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified on authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

If analysis of the project's energy use reveals that the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary use of energy, or wasteful use of energy resources, the EIR shall mitigate that energy use. This analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. This analysis is subject to the rule of reason and shall focus on energy use that is caused by the project. This analysis may be included in related analyses of air quality, greenhouse gas emissions, transportation or utilities in the discretion of the Lead Agency.

The EIR must describe all significant impacts, including those that can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

The EIR must also discuss any significant irreversible environmental changes that would be caused by the project. For example, use of nonrenewable resources during the initial and continued phases of a project may be irreversible if a large commitment of such resources makes removal or nonuse thereafter unlikely. Additionally, irreversible commitment of resources may include a discussion of how the project preempts future energy development or future energy conservation. The discussion of irreversible commitment of resources may include a discussion of how the project preempts future energy development or future energy conservation. Irretrievable commitments of resources to the proposed project should be evaluated to assure that such current consumption is justified.

7.20 ENVIRONMENTAL SETTING

An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which the Lead Agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.

(1) Generally, the Lead Agency should describe physical environmental conditions as they exist at the time the Notice of Preparation is published, or if no Notice of Preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, the Lead Agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, the Lead Agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

(2) The Lead Agency may use projected future conditions (beyond the date of project operations) as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.

(3) An existing conditions baseline shall not include hypothetical conditions—such as those that might be allowed, but have never actually occurred, under existing permits or plans—as the baseline.

7.21 ANALYSIS OF CUMULATIVE IMPACTS.

An EIR must discuss cumulative impacts when the project's incremental effect is "cumulatively considerable" as defined in Local Guidelines Section 11.14. When the City is examining a project with an incremental effect that is not "cumulatively considerable," it need not consider that effect significant, but must briefly describe the basis for this conclusion. A project's contribution may be less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure designed to alleviate the cumulative impact. When relying on a fee program or mitigation measure(s), the City must identify facts and analysis supporting its conclusion that the cumulative impact is less than significant.

The City may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program that provides specific requirements that will avoid or substantially lessen the cumulative problem in the geographic area in which the project is located. Such plans and programs may include, but are not limited to:

(1) Water quality control plans;

(2) Air quality attainment or maintenance plans;

(3) Integrated waste management plans;

(4) Habitat conservation plans;

(5) Natural community conservation plans; and/or

(6) Plans or regulations for the reduction of greenhouse gas emissions.

When relying on such a regulation, plan, or program, the City should explain how implementing the particular requirements of the plan, regulation or program will ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.

A cumulative impact consists of an impact that is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts that do not result in part from the project evaluated in the EIR.

The discussion of cumulative impacts in an EIR must focus on the cumulative impacts to which the identified other projects contribute, rather than on the attributes of other projects that do not contribute to the cumulative impact. The discussion of significant cumulative impacts must include either of the following:

(1) A list of past, present, and probable future projects causing related or cumulative impacts including, if necessary, those projects outside the control of the City; or

(2) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or a plan for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Documents used in creating a summary of projections must be referenced and made available to the public.

When utilizing a list, as suggested above, factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined and the location and type of project. Location may be important, for example, when water quality impacts are involved since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

Public Resources Code section 21094 also states that if a Lead Agency determines that a cumulative effect has been adequately addressed in an earlier EIR, it need not be examined in a later EIR if the later project's incremental contribution to the cumulative effect is not cumulatively considerable. A cumulative effect has been adequately addressed in the prior EIR if:

(1) it has been mitigated or avoided as a result of the prior EIR; or

(2) the cumulative effect has been examined in a sufficient level of detail to enable the effect to be mitigated or avoided by site-specific revisions, the imposition of conditions, or other means in connection with the approval of the later project.

Public Resources Code section 21094 only applies to earlier projects that (1) are consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) are consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located and (3) are not subject to Public Resources Code section 21166.

If the Lead Agency determines that the cumulative effect has been adequately addressed in a prior EIR, the Lead Agency should clearly explain the basis for its determination in the current environmental documentation for the project.

The City should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

7.22 ANALYSIS OF MITIGATION MEASURES.

The discussion of mitigation measures in an EIR must distinguish between measures proposed by project proponents and other measures proposed by Lead, Responsible or Trustee Agencies. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

Where several measures are available to mitigate an impact, each should be disclosed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the Lead Agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be disclosed but in less detail than the significant effects of the project itself.

If a project includes a housing development, the City may not reduce the project's proposed number of housing units as a mitigation measure or project alternative if the City determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation without reducing the number of housing units.

Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design. Mitigation measures must also be consistent with all applicable constitutional requirements such as the "nexus" and "rough proportionality" standards—i.e., there must be an essential nexus between the mitigation measure and a legitimate governmental interest, and the mitigation measure must be "roughly proportional" to the impacts of the project.

Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of a historical resource will be conducted in a manner consistent with the Secretary of the Interior's "Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings" (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus not significant.

The City should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following must be considered and discussed in an EIR for a project involving an archaeological site:

(a) Preservation in place is the preferred manner of mitigating impacts to archaeological sites; and
(b) Preservation in place may be accomplished by, but is not limited to, the following:

(1) Planning construction to avoid archaeological sites;

(2) Incorporation of sites within parks, green space, or other open spaces;

(3) Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site; and/or

(4) Deeding the site into a permanent conservation easement.

When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to excavation. Such studies must be deposited with the California Historical Resources Regional Information Center.

Data recovery shall not be required for a historical resource if the City determines that existing testing or studies have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

7.23 ANALYSIS OF ALTERNATIVES IN AN EIR.

The alternatives analysis must describe and evaluate the comparative merits of a range of reasonable alternatives to the project or to the location of the project which would feasibly attain most of the basic objectives of the project, but which would avoid or substantially lessen any of the significant effects of the project. An EIR need not consider every conceivable alternative to a project, and it need not consider alternatives that are infeasible. Rather, an EIR must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation.

Purpose of the Alternatives Analysis: An EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment. For this reason, a discussion of alternatives must focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effect of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.

Selection of a Range of Reasonable Alternatives: The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant

effects, even if those alternatives would be more costly or would impede to some degree the attainment of the project's objectives. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the Lead Agency and rejected as infeasible during the scoping process, and it should briefly explain the reasons for rejecting those alternatives. Additional information explaining the choice of alternatives should be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (a) failure to meet most of the basic project objectives; (b) infeasibility; or (c) inability to avoid significant environmental impacts.

Evaluation of Alternatives: The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. The matrix may also identify and compare the extent to which each alternative meets project objectives. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed but in less detail than the significant effects of the project as proposed.

The Rule of Reason: The range of alternatives required in an EIR is governed by a "rule of reason" which courts have held means that an alternatives discussion must be reasonable in scope and content. Therefore, the EIR must set forth only those alternatives necessary to permit public participation, informed decision-making, and a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones the City determines could feasibly attain most of the basic objectives of the project. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

Feasibility of Alternatives: The factors that may be taken into account when addressing the feasibility of alternatives include: site suitability; economic viability; availability of infrastructure; general plan consistency; other plans or regulatory limitations; jurisdictional boundaries (projects with a regionally significant impact should consider the regional context); and whether the proponent already owns the alternative site or can reasonably acquire, control or otherwise have access to the site. No one factor establishes a fixed limit on the scope of reasonable alternatives.

Alternative Locations: The first step in the alternative location analysis is to determine whether any of the significant effects of the project could be avoided or substantially lessened by putting the project in another location. This is the key question in this analysis. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

The second step in this analysis is to determine whether any of the alternative locations are feasible. If the City concludes that no feasible alternative locations exist, it must disclose its reasons, and it should include them in the EIR. When a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for a project with

the same basic purpose, the City should review the previous document and incorporate the previous document by reference. To the extent the circumstances have remained substantially the same with respect to an alternative, the EIR may rely on the previous document to help it assess the feasibility of the potential project alternative.

The "No Project" Alternative: The specific alternative of "no project" must be evaluated along with its impacts. The purpose of describing and analyzing the no project alternative is to allow decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative may be different from the baseline environmental conditions. The no project alternative will be the same as the baseline only if it is identical to the existing environmental setting and the Lead Agency has chosen the existing environmental setting as the baseline.

A discussion of the "no project" alternative should proceed along one of two lines:

(a) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically, this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan; or

(b) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. This discussion would compare the environmental effects of the property remaining in its existing state against environmental effects that would occur if the project is approved. If disapproval of the project would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed.

After defining the "no project" alternative, the City should proceed to analyze the impacts of the "no project" alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the "no project" alternative is the environmentally superior alternative, the EIR must also identify another environmentally superior alternative among the remaining alternatives.

Remote or Speculative Alternatives: An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

7.24 ANALYSIS OF FUTURE EXPANSION.

An EIR must include an analysis of the environmental effects of future expansion (or other similar future modifications) if there is credible and substantial evidence that:

(a) The future expansion or action is a reasonably foreseeable consequence of the initial project; and

(b) The future expansion or action is likely to change the scope or nature of the initial project or its environmental effects.

Absent these two circumstances, future expansion of a project need not be discussed. CEQA does not require speculative discussion of future development that is unspecific or uncertain. However, if future action is not considered now, it must be considered and environmentally evaluated before it is actually implemented.

7.25 NOTICE OF COMPLETION OF DRAFT EIR; NOTICE OF AVAILABILITY OF DRAFT EIR.

Notice of Completion. When the Draft EIR is completed, a Notice of Completion (Form "H") must be filed with OPR in a printed hard copy or in electronic form on a diskette or by electronic mail transmission. The Notice shall contain:

(a) A brief description of the proposed project;
(b) The location of the proposed project including the proposed project's latitude and longitude;
(c) An address where copies of the Draft EIR are available and a description of how the Draft EIR can be provided in an electronic format; and
(d) The review period during which comments will be received on the Draft EIR.

OPR has developed a model form Notice of Completion. Form H follows OPR's model. To ensure that the documents are accepted by OPR staff, this form should be used when documents are transmitted to OPR.

Notice of Availability. At the same time it sends a Notice of Completion to OPR, the City shall provide public notice of the availability of the Draft EIR by distributing a Notice of Availability of Draft EIR (Form "K"). The Notice of Availability shall include at least the following information:

(a) A brief description of the proposed project and its location;
(b) The starting and ending dates for the review period during which the City will receive comments, the manner in which the City will receive those comments, and whether the review period has been shortened;
(c) The date, time, and place of any scheduled public meetings or hearings to be held by the City on the proposed project, if the City knows this information when it prepares the Notice;
(d) A list of the significant environmental effects anticipated as a result of the project;
(e) The address where copies of the EIR and all documents incorporated by reference in the EIR will be available for public review, and a description of how the Draft EIR can be obtained in electronic format. This location shall be readily accessible to the public during the City's normal working hours ; and
(f) A statement indicating whether the project site is included on any list of hazardous waste facilities, land designated as hazardous waste property, or hazardous waste disposal site, and, if so, the information required in the Hazardous Waste and Substances Statement pursuant to Government Code Section 65962.5.

The Notice of Availability shall be provided to:

(a) Each Responsible and Trustee Agency;

(b) Any other federal, state, or local agency that has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, any transportation agencies or public agencies that have major local arterials or public transit facilities within five (5) miles of the project site; or freeways, highways, or rail transit service within ten (10) miles of the project site that could be affected by the project;

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources; and

(5) For a general plan amendment, a project of statewide, regional, or area-wide significance, or a project that relates to a public use airport, to any "military service" (defined in Section 11.42 of these Local Guidelines) that has provided the City with its contact office and address and notified the City of the specific boundaries of a "low-level flight path" (defined in Section 11.37 of these Local Guidelines), "military impact zone" (defined in Section 11.41 of these Local Guidelines), or "special use airspace" (defined in Section 11.67of these Local Guidelines;

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the City to receive these Notices;

(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria of Local Guidelines Section 7.04, the specified military services contact;

(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.36, any potentially affected school district;

(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (see also Local Guidelines Section 7.27), the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and

(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice and a copy of the Draft EIR shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code Section 33333.3.

The City requires requests for copies of these Notices to be in writing and to be renewed annually; moreover, the City may charge a fee for the reasonable cost of providing these Notices. A project will not be invalidated due to a failure to send a requested Notice provided there has been substantial compliance with these notice provisions.

Staff may also consult with and obtain comments from any person known to have special expertise or any other person or organization whose comments relative to the Draft EIR would be desirable.

In addition, notice shall be given to the public by at least one of the following procedures:

(a) Publication of the Notice of Completion and/or the Notice of Availability at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of the Notice of Completion and/or the Notice of Availability on and off site in the area where the project is to be located; or
(c) Direct mailing of the Notice of Completion and/or the Notice of Availability to owners and occupants of property contiguous to the project, as identified on the latest equalized assessment roll.

The Notice of Completion and Notice of Availability shall be posted in the office of the Clerk in each county in which the project is located for at least thirty (30) days. If the public review period for the Draft EIR is longer than thirty (30) days, the City may wish to leave the Notice posted until the public review period for the Draft EIR has expired.

Copies of the Draft EIR shall also be made available at the City office for review by members of the general public. The City may require any person obtaining a copy of the Draft EIR to reimburse the City for the actual cost of its reproduction. Copies of the Draft EIR should also be furnished to appropriate public library systems.

The City is encouraged to make copies of filed notices available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by the CEQA Guidelines and the Public Resources Code.

7.26 SUBMISSION OF DRAFT EIR TO STATE CLEARINGHOUSE.

A Draft EIR must be submitted to the State Clearinghouse for review by state agencies in the following situations:

(a) A state agency is the Lead Agency for the Draft EIR;
(b) A state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law over resources potentially affected by the project; or
(c) The Draft EIR is for a project identified in State CEQA Guidelines Section 15206 as being a project of statewide, regional, or area-wide significance.

State CEQA Guidelines Section 15206 identifies the following types of projects as being examples of projects of statewide, regional, or area-wide significance that require submission to the State Clearinghouse for circulation:

(1) General plans, elements, or amendments for which an EIR was prepared;

(2) Projects that have the potential for causing significant environmental effects beyond the city or county where the project would be located, such as:

(a) Residential development of more than 500 units;
(b) Commercial projects employing more than 1,000 persons or covering more than 500,000 square feet of floor space;
(c) Office building projects employing more than 1,000 persons or covering more than 250,000 square feet of floor space;
(d) Hotel or motel development of more than 500 rooms; and
(e) Industrial projects housing more than 1,000 persons, occupying more than 40 acres of land, or covering more than 650,000 square feet of floor area;

(3) Projects for the cancellation of a Williamson Act contract covering more than 100 acres;

(4) Projects in one of the following Environmentally Sensitive Areas:

(a) Lake Tahoe Basin;
(b) Santa Monica Mountains Zone;
(c) Sacramento-San Joaquin River Delta;
(d) Suisun Marsh;
(e) Coastal Zone, as defined by the California Coastal Act;
(f) Areas within one-quarter mile of a river designated as wild and scenic; or
(g) Areas within the jurisdiction of the San Francisco Bay Conservation and Development Commission;

(5) Projects that would affect sensitive wildlife habitats or the habitats of any rare, threatened, or endangered species;

(6) Projects that would interfere with water quality standards; and

(7) Projects that would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

A Draft EIR may be submitted to the State Clearinghouse when a state agency has special expertise with regard to the environmental impacts involved.

When the Draft EIR will be reviewed through the State review process handled by the State Clearinghouse, a Notice of Completion (Form "H") should be used as a cover sheet. If the City uses the State Clearinghouse's online process to submit the Notice of Completion form, the form generated on the Internet site satisfies the State Clearinghouse's requirements.

A sufficient number of copies of the documents must be sent to the State Clearinghouse for circulation. Staff should contact the State Clearinghouse to find out the correct number of printed copies required for circulation. Minimally, the City must submit one (1) copy of the Notice of Completion and fifteen (15) copies of the entire document.

The City may submit fifteen (15) hard copies of the entire draft environmental document or fifteen (15) CD-ROMs of the entire document. The document must be on a CD-ROM in a common file format such as Word or Acrobat. In addition, each CD-ROM must be accompanied by fifteen (15) printed copies of the Draft EIR summary (as described in Local Guidelines Section 6.11), executive summary, or introduction section. Form "Q" may be used as a cover sheet for document transmittal. The summary allows both the State Clearinghouse and the various agency CEQA coordinators to distribute the documents quickly without the use of a computer.

Submission of the Draft EIR to the State Clearinghouse affects the timing of the public review period as set forth in Local Guidelines Section 7.28.

7.27 SPECIAL NOTICE REQUIREMENTS FOR WASTE- AND FUEL-BURNING PROJECTS.

For any waste-burning project, as defined in Local Guidelines Section 5.11, in addition to the notice requirements specified in Local Guidelines Sections 7.25 and 7.26, Notice of Availability of the Draft EIR shall be given by direct mailing or any other method calculated to provide delivery of the notice to the owners and occupants of property within one-fourth mile of any parcel or parcels on which the project is located.

7.28 TIME FOR REVIEW OF DRAFT EIR; FAILURE TO COMMENT.

A period of between thirty (30) and sixty (60) days from the filing of the Notice of Completion of the Draft EIR shall be allowed for review of and comment on the Draft EIR, except in unusual situations. When a Draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least forty-five (45) days, unless a shorter period is approved by the State Clearinghouse as discussed below.

If a state agency is a Responsible Agency, or if the Draft EIR is submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. The state agency review period begins (day one) on the date that the State Clearinghouse distributes the Draft EIR to state agencies. The State Clearinghouse is required to distribute the Draft EIR to state agencies within three (3) working days from the date the State Clearinghouse receives the document, as long as the Draft EIR is complete when submitted to the State Clearinghouse. If the document submitted to the State Clearinghouse is not complete, the State Clearinghouse must notify the Lead Agency. The review period for the public and all other agencies may run concurrently with the state agency review period established by the State Clearinghouse.

Under certain circumstances, a shorter review period of the Draft EIR by the State Clearinghouse can be requested by the City; however, a shortened review period shall not be less than thirty (30) days for a Draft EIR. Any request for a shortened review period must be made in writing by the City to OPR. The City may designate a person to make these requests. The City must contact all Responsible and Trustee agencies and obtain their agreement prior to obtaining a shortened review period. (See the Shortened Review Request Form "P.")

A shortened review period is not available for any proposed project of statewide, regional or area-wide environmental significance as determined pursuant to State CEQA Guidelines Section 15206. Any approval of a shortened review period shall be given prior to, and reflected in, the public notices.

In the event a public agency, group, or person whose comments on a Draft EIR are solicited fails to comment within the required time period, it shall be presumed that such agency, group, or person has no comment to make, unless the Lead Agency has received a written request for a specific extension of time for review and comment and a statement of reasons for the request.

Continued planning activities concerning the proposed project, short of formal approval, may continue during the period set aside for review and comment on the Draft EIR.

7.29 PUBLIC HEARING ON DRAFT EIR.

CEQA does not require formal public hearings for certification of an EIR; public comments may be restricted to written communications. (However, a hearing is required to utilize the limited exemption for Transit Priority Projects as explained in Local Guidelines Section 3.16; to adopt a bicycle transportation plan as explained in Local Guidelines Section 3.20; and for certain other actions involving the replacement or deletion of mitigation measures under State CEQA Guidelines Section 15074.1.) However, if the City provides a public hearing on its consideration of a project, the City should include the project's environmental review documents as one of the subjects of the hearing. Notice of the time and place of the hearing shall be given in a timely manner in accordance with any legal requirements applicable to the proposed project. Generally, the requirements of the Ralph M. Brown Act will provide the minimum requirements for the inclusion of CEQA matters on agendas and at hearings. (Gov. Code, § 54950 et seq.) At a minimum, agendas for meetings and hearings before commissions, boards, councils, and other agencies must be posted in a location that is freely accessible to members of the public at least seventy-two (72) hours prior to a regular meeting. The agenda must contain a brief general description of each item to be discussed and the time and location of the meeting. (Gov. Code, § 54954.2.) Additionally, any legislative body or its presiding officer must post an agenda for each regular or special meeting on the local agency's Internet Web site, if the local agency has one.

7.30 RESPONSE TO COMMENTS ON DRAFT EIR.

The Lead Agency shall evaluate any comments on environmental issues received during the public review period for the Draft EIR and shall prepare a written response to those comments that raise significant environmental issues.

As stated below, the City, as Lead Agency, should also consider evaluating and responding to any comments received after the public review period. The written responses shall describe the disposition of any significant environmental issues that are raised in the comments. The responses may take the form of a revision of the Draft EIR, an attachment to the Draft EIR, or some other oral or written response that is adequate under the circumstances. If the City's position is at variance with specific recommendations or suggestions raised in the comment, the

City's response must detail the reasons why such recommendations or suggestions were not accepted. The level of detail contained in the response, however, may correspond to the level of detail provided in the comment (i.e., responses to general comments may be general). A general response may be appropriate when a comment does not contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment.

Moreover, the City shall respond to any specific suggestions for project alternatives or mitigation measures for significant impacts, unless such alternatives or mitigation measures are facially infeasible. The response shall contain recommendations, when appropriate, to alter the project as described in the Draft EIR as a result of an analysis of the comments received.

At least ten (10) days prior to certifying a Final EIR, the Lead Agency shall provide its proposed written response, either in printed copy or in an electronic format, to any public agency that has made comments on the Draft EIR during the public review period. The City, as Lead Agency, is not required to respond to comments received after the public review period. However, the City, as Lead Agency, should consider responding to all comments if it will not delay action on the Final EIR, since any comment received before final action on the EIR can form the basis of a legal challenge. A written response that addresses the comment or adequately explains the City's action in light of the comment may assist in defending against a legal challenge.

7.31 PREPARATION AND CONTENTS OF FINAL EIR.

Following the receipt of any comments on the Draft EIR as required herein, such comments shall be evaluated by Staff and a Final EIR shall be prepared.

The Final EIR shall meet all requirements of Local Guidelines Section 7.18 and shall consist of the Draft EIR or a revision of the Draft, a section containing either verbatim or in summary the comments and recommendations received through the review and consultation process, a list of persons, organizations and public agencies commenting on the Draft, and a section containing the responses of the City to the significant environmental points raised in the review and consultation process.

7.32 RECIRCULATION WHEN NEW INFORMATION IS ADDED TO EIR.

When significant new information is added to the EIR after notice and consultation but before certification, the Lead Agency must recirculate the Draft EIR for another public review period. The term "information" can include changes in the project or environmental setting as well as additional data or other information.

New information is significant only when the EIR is changed in a way that would deprive the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of a project or a feasible way to mitigate or avoid such an effect, including a feasible project alternative, that the project proponents decline to implement. Recirculation is required, for example, when:

(1) New information added to an EIR discloses:

(a) A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented; or

(b) A significant increase in the severity of an environmental impact (unless mitigation measures are also adopted that reduce the impact to a level of insignificance); or

(c) A feasible project alternative or mitigation measure that clearly would lessen the significant environmental impacts of the project, but which the project proponents decline to adopt; or

(2) The Draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation is not required when the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. If the revision is limited to a few chapters or portions of the EIR, the City as Lead Agency need only recirculate the chapters or portions that have been modified. A decision to not recirculate an EIR must be supported by substantial evidence in the record.

When the City determines to recirculate a Draft EIR, it shall give Notice of Recirculation (Form "M") to every agency, person, or organization that commented on the prior Draft EIR. The Notice of Recirculation must indicate whether new comments must be submitted and whether the City has exercised its discretion to require reviewers to limit their comments to the revised chapters or portions of the recirculated EIR. The City shall also consult again with those persons contacted pursuant to Local Guidelines Section 7.25 before certifying the EIR. When the EIR is substantially revised and the entire EIR is recirculated, the City may require that reviewers submit new comments and need not respond to those comments received during the earlier circulation period. In those cases, the City should advise reviewers that, although their previous comments remain part of the administrative record, the final EIR will not provide a written response to those comments, and new comments on the revised EIR must be submitted. The City need only respond to those comments submitted in response to the revised EIR.

When the EIR is revised only in part and the City is recirculating only the revised chapters or portions of the EIR, the City may request that reviewers limit their comments to the revised chapters or portions. The City need only respond to: (1) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (2) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated.

When recirculating a revised EIR, either in whole or in part, the City must, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

7.33 CERTIFICATION OF FINAL EIR.

Following the preparation of the Final EIR, Staff shall review the Final EIR and make a recommendation to the decision-making body regarding whether the Final EIR has been completed in compliance with CEQA, the State CEQA Guidelines and the City's Local

Guidelines. The Final EIR and Staff recommendation shall then be presented to the decision-making body. The decision-making body shall independently review and consider the information contained in the Final EIR and determine whether the Final EIR reflects its independent judgment. Before it approves the project, the decision-making body must certify and find that: (1) the Final EIR has been completed in compliance with CEQA, the State CEQA Guidelines and the City's Local Guidelines; (2) the Final EIR was presented to the decision-making body and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project; and (3) the Final EIR reflects the City's independent judgment and analysis.

Except in those cases in which the City Council is the final decision-making body for the project, any interested person may appeal the certification or denial of certification of a Final EIR to the City Council. Appeals must follow the procedures prescribed by the City.

7.34 CONSIDERATION OF EIR BEFORE APPROVAL OR DISAPPROVAL OF PROJECT.

Once the decision-making body has certified the EIR, it may then proceed to consider the proposed project for purposes of approval or disapproval.

7.35 FINDINGS.

The decision-making body shall not approve or carry out a project if a completed EIR identifies one or more significant environmental effects of the project unless it makes one or more of the following written findings for each such significant effect, accompanied by a brief explanation of the rationale supporting each finding. For impacts that have been identified as potentially significant, the possible findings are:

(a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment as identified in the Final EIR, such that the impact has been reduced to a less-than-significant level;
(b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the City. Such changes have been, or can and should be, adopted by that other agency; or
(c) Specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the Final EIR. The decision-making body must make specific written findings stating why it has rejected an alternative to the project as infeasible.

The findings required by this Section shall be supported by substantial evidence in the record. Measures identified and relied on to mitigate environmental impacts identified in the EIR to below a level of significance should be expressly adopted or rejected in the findings. The findings should include a description of the specific reasons for rejecting any mitigation measures or project alternatives identified in the EIR that would reduce the significant impacts of the project. Any mitigation measures that are adopted must be fully enforceable through permit conditions, agreements, or other measures.

If any of the proposed alternatives could avoid or lessen an adverse impact for which no mitigation measures are proposed, the City shall analyze the feasibility of such alternative(s). If the project is to be approved without including such alternative(s), the City shall find that specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the Final EIR and shall list such considerations before such approval.

The decision-making body shall not approve or carry out a project as proposed unless: (1) the project as approved will not have a significant effect on the environment; or (2) the project's significant environmental effects have been eliminated or substantially lessened (as determined through one or more of the findings indicated above), and any remaining unavoidable significant effects have been found acceptable because of facts and circumstances described in a Statement of Overriding Considerations (see Local Guidelines Section 7.37). Statements in the Draft EIR or comments on the Draft EIR are not determinative of whether the project will have significant effects.

When making the findings required by this Section, the City as Lead Agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which it based its decision.

7.36 SPECIAL FINDINGS REQUIRED FOR FACILITIES THAT MAY EMIT HAZARDOUS AIR EMISSIONS NEAR SCHOOLS.

Special procedural rules apply to projects involving the construction or alteration of a facility within one-quarter mile of a school when: (1) the facility might reasonably be anticipated to emit hazardous air emissions or to handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the threshold specified in Health and Safety Code Section 25532(j); and (2) the emissions or substances may pose a health or safety hazard to persons who would attend or would be employed at the school. If the project meets both of those criteria, the Lead Agency may not certify an EIR or approve a Negative Declaration or Mitigated Negative Declaration unless it makes a finding that:

(a) The Lead Agency consulted with the affected school district or districts having jurisdiction over the school regarding the potential impact of the project on the school; and
(b) The school district was given written notification of the project not less than thirty (30) days prior to the proposed certification of the EIR or approval of the Negative Declaration or Mitigated Negative Declaration.

Implementation of this Local Guideline shall be consistent with the definitions and terms utilized in State CEQA Guidelines section 15186.

Additionally, in its role as a Responsible Agency, the City should be aware that for projects involving the acquisition of a school site or the construction of a secondary or elementary school by a school district, the Negative Declaration, Mitigated Negative Declaration, or EIR prepared for the project may not be adopted or certified unless there is

sufficient information in the entire record to determine whether any boundary of the school site is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

If it is determined that the project involves the acquisition of a school site that is within 500 feet of the edge of the closest traffic lane of a freeway, or other busy traffic corridor, the Negative Declaration, Mitigated Negative Declaration, or EIR may not be adopted or certified unless the school board determines, through a health risk assessment pursuant to Section 44360(b)(2) of the Health and Safety Code and after considering any potential mitigation measures, that the air quality at the proposed project site does not present a significant health risk to pupils.

7.37 STATEMENT OF OVERRIDING CONSIDERATIONS.

Before a project that has unmitigated significant adverse environmental effects can be approved, the decision-making body must adopt a Statement of Overriding Considerations. If the decision-making body finds in the Statement of Overriding Considerations that specific benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

Accordingly, the Statement of Overriding Considerations allows the decision-making body to approve a project despite one or more unmitigated significant environmental impacts identified in the Final EIR. A Statement of Overriding Considerations can be made only if feasible project alternatives or mitigation measures do not exist to reduce the environmental impact(s) to a level of insignificance and the benefits of the project outweigh the adverse environmental effect(s). The feasibility of project alternatives or mitigation measures is determined by whether the project alternative or mitigation measure can be accomplished within a reasonable period of time, taking into account economic, environmental, social, legal and technological factors.

Project benefits that are appropriate to consider in the Statement of Overriding Considerations include the economic, legal, environmental, technological and social value of the project. The City may also consider region-wide or statewide environmental benefits.

Substantial evidence in the entire record must justify the decision-making body's findings and its use of the Statement of Overriding Considerations. If the decision-making body makes a Statement of Overriding Considerations, the Statement must be included in the record of the project approval and it should be referenced in the Notice of Determination.

7.38 MITIGATION MONITORING OR REPORTING PROGRAM FOR EIR.

When making findings regarding an EIR, the City must do all of the following:

(a) Adopt a reporting or monitoring program to assure that mitigation measures that are required to mitigate or avoid significant effects on the environment will be implemented by the project proponent or other responsible party in a timely manner, in accordance with conditions of project approval;
(b) Make sure all conditions and mitigation measures are feasible and fully enforceable through permit conditions, agreements, or other measures. Such permit conditions,

agreements, and measures must be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law; and

(c) Specify the location and the custodian of the documents which constitute the record of proceedings upon which the City based its decision in the resolution certifying the EIR.

There is no requirement that the reporting or monitoring program be circulated for public review; however, the City may choose to circulate it for public comments along with the Draft EIR. Any mitigation measures required to mitigate or avoid significant effects on the environment shall be adopted and made fully enforceable, such as by being imposed as conditions of project approval.

The adequacy of a mitigation monitoring program is determined by the "rule of reason." This means that a mitigation monitoring program does not need to provide every imaginable measure. It needs only to provide measures that are reasonably feasible and that are necessary to avoid significant impacts or to reduce the severity of impacts to a less-than-significant level.

The mitigation monitoring or reporting program shall be designed to assure compliance with the mitigation measures during the implementation and construction of the project. If a Responsible Agency or Trustee Agency has required that certain conditions be incorporated into the project, the City may request that agency to prepare and submit a proposed reporting or monitoring program. The City shall also require that, prior to the close of the public review period for a Draft EIR, the Responsible or Trustee Agency submit detailed performance objectives for mitigation measures, or refer the City to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the City by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

When a project is of statewide, regional, or area-wide significance, any transportation information resulting from the reporting or monitoring program required to be adopted by the City shall be submitted to the regional transportation planning agency where the project is located and to the Department of Transportation. The transportation planning agency and the Department of Transportation are required by law to adopt guidelines for the submittal of these reporting or monitoring programs, so the City may wish to tailor its submittal to such guidelines.

Local agencies have the authority to levy fees sufficient to pay for this program. Therefore, the City may impose a program to charge project proponents fees to cover actual costs of program processing and implementation.

The City may delegate reporting or monitoring responsibilities to an agency or to a private entity that accepts the delegation; however, until mitigation measures have been completed, the City remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The City may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" is defined as a written compliance review that is presented to the Board or an authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. Reporting is suited to projects

that have readily measurable or quantitative mitigation measures or that already involve regular review. "Monitoring" is generally an ongoing or periodic process of project oversight. Monitoring is suited to projects with complex mitigation measures that may exceed the expertise of the City to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

At its discretion, the City may adopt standardized policies and requirements to guide individually adopted programs.

Standardized policies or requirements for monitoring and reporting may describe, but are not limited to:

(a) The relative responsibilities of various departments within the City for various aspects of the program;
(b) The responsibilities of the project proponent;
(c) Guidelines adopted by the City to govern preparation of programs;
(d) General standards for determining project compliance with the mitigation measures and related conditions of approval;
(e) Enforcement procedures for noncompliance, including provisions for administrative appeal; and/or
(f) A process for informing the Board and staff of the relative success of mitigation measures and using those results to improve future mitigation measures.

When a project is of statewide, regional, or area-wide importance, any transportation information generated by a mitigation monitoring or reporting program must be submitted to the transportation planning agency in the region where the project is located, as well as to the Department of Transportation.

7.39 NOTICE OF DETERMINATION.

After approval of a project for which the City is the Lead Agency, Staff shall cause a Notice of Determination (Form "F") to be prepared, filed, and posted. The Notice of Determination shall include the following information:

(a) An identification of the project, including its common name, where possible, and its location. If the notice of determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.
(b) A brief description of the project;
(c) The City's name and the applicant's name (if any). If different from the applicant, the Notice of Determination shall further provide, if applicable, the identity of the person undertaking the project that is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.
(d) The date when the City approved the project;
(e) Whether the project in its approved form with mitigation will have a significant effect on the environment;

(f) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA;
(g) Whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted;
(h) Whether findings were made and/or whether a Statement of Overriding Considerations was adopted for the project; and
(i) The address where a copy of the EIR (with comments and responses) and the record of project approval may be examined by the general public.

The Notice of Determination shall be filed with the Clerk of each county in which the project will be located within five (5) working days of project approval. (To determine the fees that must be paid with the filing of the Notice of Determination, see Local Guidelines Section 7.42 and the Staff Summary of the CEQA Process.) The County Clerk is required to post the Notice of Determination within twenty-four (24) hours of receipt. The Notice must be posted in the office of the Clerk for a minimum of thirty (30) days. Thereafter, the Clerk shall return the notice to the City with a notation of the period it was posted. The City shall retain the notice for not less than twelve (12) months.

Simultaneously with the filing of the Notice of Determination with the Clerk, Staff shall cause a copy of such Notice to be posted at City Offices. If the project requires discretionary approval from a state agency, the Notice of Determination shall also be filed with OPR within five (5) working days of project approval, along with proof that the City has paid the County Clerk the DFW fee or a completed form from DFW documenting DFW's determination that the project will have no effect on fish and wildlife. (If the City submits the Notice of Determination in person, the City may bring an extra copy to be date stamped by OPR.)

When a request is made for a copy of the Notice of Determination prior to the date on which the City approves the project, the copy must be mailed, first class postage prepaid, within five (5) days of the City's approval. If such a request is made following the City's approval of the project, then the copy should be mailed in the same manner as soon as possible. The recipients of such documents may be charged a fee reasonably related to the cost of providing the service.

The City may make copies of filed notices available in electronic format on the Internet. Such electronic notices, if provided, are in addition to the posting requirements of the CEQA Guidelines and the Public Resources Code.

For projects with more than one phase, Staff shall file a Notice of Determination for each phase requiring a discretionary approval. The filing and posting of a Notice of Determination with the Clerk, and, if necessary, with OPR, usually starts a thirty (30) day statute of limitations on court challenges to the approval under CEQA. When separate notices are filed for successive phases of the same overall project, the thirty (30) day statute of limitation to challenge the subsequent phase begins to run when the second notice is filed. Failure to file the Notice may result in a one hundred eighty (180) day statute of limitations.

7.40 DISPOSITION OF A FINAL EIR.

The City shall file a copy of the Final EIR with the appropriate planning agency of any city or county where significant effects on the environment may occur. The City shall also retain one or more copies of the Final EIR as a public record for a reasonable period of time. Finally, for private projects, the City may require that the project applicant provide a copy of the certified Final EIR to each Responsible Agency.

7.41 PRIVATE PROJECT COSTS.

For private projects, the person or entity proposing to carry out the project shall be charged a reasonable fee to recover the estimated costs incurred by the City in preparing, circulating, and filing the Draft and Final EIRs, as well as all publication costs incident thereto.

7.42 FILING FEES FOR PROJECTS THAT AFFECT WILDLIFE RESOURCES.

At the time a Notice of Determination for an EIR is filed with the County or Counties in which the project is located, a fee of $3,271.00, or the then applicable fee, shall be paid to the Clerk for projects that will adversely affect fish or wildlife resources. These fees are collected by the Clerk on behalf of DFW.

Only one filing fee is required for each project unless the project is tiered or phased and separate environmental documents are prepared. For projects where Responsible Agencies file separate Notices of Determination, only the Lead Agency is required to pay the fee.

Note: County Clerks are authorized to charge a documentary handling fee for each project in addition to the Fish and Wildlife fees specified above. Refer to the Index in the Staff Summary to help determine the correct total amount of fees applicable to the project.

For private projects, the City should pass these costs on to the project applicant.

No fees are required for projects with "no effect" on fish or wildlife resources or for certain projects undertaken by the DFW and implemented through a contract with a non-profit entity or local government agency. (See Local Guidelines Section 6.24 for more information regarding a "no effect" determination.)

8. TYPES OF EIRS

8.01 EIRs GENERALLY.

This chapter describes a number of examples of various EIRs tailored to different situations. All of these types of EIRs must meet the applicable requirements of Chapter 7 of these Local Guidelines.

8.02 TIERING.

(a) Tiering Generally.

"Tiering" refers to using the analysis of general matters contained in a previously certified broader EIR in later EIRs, Negative Declarations, or Mitigated Negative Declarations prepared for narrower projects. The later EIR, Negative Declaration, or Mitigated Negative Declaration may incorporate by reference the general discussions from the broader EIR and may concentrate solely on the issues specific to the later project.

An Initial Study shall be prepared for the later project and used to determine whether a previously certified EIR may be used and whether new significant effects should be examined. Tiering does not excuse the City from adequately analyzing reasonably foreseeable significant environmental effects of a project, nor does it justify deferring analysis to a later tier EIR, Negative Declaration, or Mitigated Negative Declaration. However, the level of detail contained in a first-tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed. When the City is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan, specific plan or community plan), the development of detailed, site-specific information may not be feasible. Such site-specific information can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(b) Identifying New Significant Impacts.

When assessing whether there is a new significant cumulative effect for purposes of a subsequent tier environmental document, the Lead Agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects.

A Lead Agency may use only a valid CEQA document as a first-tier document. Accordingly, the City, in its role as Lead Agency, should carefully review the first-tier environmental document to determine whether or not the statute of limitations for challenging the document has run. If the statute of limitations has not expired, the City should use the first-tier document with caution and pay careful attention to the legal status of the document. If the first-tier document is subsequently invalidated, any later environmental document may also be defective.

(c) Infill Projects and Tiering.

Certain "infill" projects may tier off of a previously certified EIR. An "infill" project is defined as a project with residential, retail, and/or commercial uses, a transit station, a school, or a public office building. It must be located in an urban area on a previously developed site or on an undeveloped site that is surrounded by developed uses. The project must be either consistent with land use planning strategies that achieve greenhouse gas ("GHG") emission reduction targets, feature a small walkable community project, or where a sustainable communities or alternative planning strategy has not yet been adopted for the area, include a residential density of at least 20 units per acre or a floor area ratio of at least 0.75. The project must also meet a number of standards related to energy efficiency that are not yet defined but which SB 226 directs the Office of Planning and Research to prepare.

If an EIR was certified for a planning level decision by a city or county (such as a General Plan or Specific Plan), the scope of the CEQA review for a later "infill" project can be limited to those effects on the environment that: 1) are specific to the project or to the project site and were not addressed as significant effects in the prior EIR; or 2) substantial new information shows will be more significant than described in the prior EIR.

When a project meets the definition of "infill" and either of the above conditions exist but a Mitigated Negative Declaration cannot be adopted, then the subsequent EIR for such a project need not consider alternative locations, densities, and building intensities or growth-inducing impacts.

(d) Statement of Overriding Considerations.

A Lead Agency may also tier off of a previously prepared Statement of Overriding Considerations if certain conditions are met. (See Local Guidelines Section 7.37.)

8.03 PROJECT EIR.

The most common type of EIR examines the environmental impacts of a specific development project and focuses primarily on the changes in the environment that would result from the development project.

If the EIR for a redevelopment plan is a Project EIR, all public and private activities or undertakings pursuant to or in furtherance of the Redevelopment Plan shall constitute a single project, which shall be deemed approved at the time of the adoption of the Redevelopment Plan. Although the City will probably not act as a Lead Agency for a Redevelopment Plan, the City may act as a Responsible Agency. (State Guideline Section 15180.)

8.04 SUBSEQUENT EIR.

A Subsequent EIR is required when a previous EIR has been prepared and certified, or a Negative Declaration or Mitigated Negative Declaration has been adopted, for a project and at least one of the three following situations occur:

(a) Substantial changes are proposed in the project which will require major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(b) Substantial changes occur with respect to the circumstances under which the project is to be undertaken which will require major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration/Mitigated Negative Declaration was adopted, becomes available and shows any of the following:

(1) the project will have one or more significant effects not discussed in a previous EIR, Negative Declaration, or Mitigated Negative Declaration;

(2) significant effects previously examined will be substantially more severe than shown in a previous EIR;

(3) mitigation measures or alternatives previously found not to be feasible are in fact feasible and would substantially reduce one or more significant effects, but the project proponent declines to adopt the mitigation measures or alternatives; or

(4) mitigation measures or alternatives which were not considered in a previous EIR would substantially lessen one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measures or alternatives.

A Subsequent EIR must receive the same circulation and review as the previous EIR received.

In instances where the City is evaluating a modification or revision to an existing use permit, the City may consider only those environmental impacts related to the changes between what was allowed under the old permit and what is requested under the new permit. Only if these differential impacts fall within the categories described above may the City require additional environmental review.

When the City is considering approval of a development project that is consistent with a general plan for which an EIR was completed, another EIR is required only if the project causes environmental effects peculiar to the parcel which were not addressed in the prior EIR or substantial new information shows the effects peculiar to the parcel will be more significant than described in the prior EIR.

8.05 SUPPLEMENTAL EIR.

The City may choose to prepare a Supplemental EIR, rather than a Subsequent EIR, if any of the conditions described in Local Guidelines Section 8.04 have occurred but only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. To assist the City in making this determination, the decision-making body should request an Initial Study and/or a recommendation by Staff. The Supplemental EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

A Supplemental EIR shall be given the same kind of notice and public review as is given to a Draft EIR but may be circulated by itself without recirculating the previous EIR.

When the decision-making body decides whether to approve the project, it shall consider the previous EIR as revised by the Supplemental EIR. Findings shall be made for each significant effect identified in the Supplemental EIR.

8.06 ADDENDUM TO AN EIR.

The City shall prepare an Addendum to a previously certified EIR, rather than a Subsequent or Supplemental EIR, only if changes or additions to the EIR are necessary, but none of the conditions described in Local Guidelines Section 8.04 or 8.05 calling for preparation of a Subsequent or Supplemental EIR have occurred. Since significant effects on the environment were addressed by findings in the original EIR, no new findings are required in the Addendum.

An Addendum to an EIR need not be circulated for public review but should be included in or attached to the Final EIR. The decision-making body shall consider the Addendum with the Final EIR prior to making a decision on a project. A brief explanation of the decision not to prepare a Subsequent EIR or a Supplemental EIR should be included in the Addendum, the Lead Agency's findings on the project, or elsewhere in the record. This explanation must be supported by substantial evidence.

8.07 STAGED EIR.

When a large capital project will require a number of discretionary approvals from governmental agencies and one of the approvals will occur more than two years before construction will begin, a Staged EIR may be prepared. The Staged EIR covers the entire project in a general form or manner. A Staged EIR should evaluate a proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of an entire project. The particular aspect of the project before the City for approval shall be discussed with a greater degree of specificity.

When a Staged EIR has been prepared, a Supplemental EIR shall be prepared when a later approval is required for the project and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

8.08 PROGRAM EIR.

A Program EIR is an EIR that may be prepared on an integrated series of actions that are related either:

(a) Geographically;
(b) As logical parts in a chain of contemplated actions;
(c) In connection with the issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or

(d) As individual projects carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

(State CEQA Guidelines Section, 15168.)

An advantage of using a Program EIR is that it can "[a]llow the Lead Agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (State CEQA Guidelines Section 15168(b)(4).) A Program EIR is distinct from a Project EIR, as a Project EIR is prepared for a specific project and must examine in detail site-specific considerations. Program EIRs are commonly used in conjunction with the process of tiering.

Tiering is the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs. (State CEQA Guidelines Section 15385; see also Local Guidelines Sections 8.02 and 11.73.) Tiering is proper "when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports." (Pub. Res. Code, § 21093(a).) For example, the California Supreme Court has ruled that "CEQA does not mandate that a first-tier program EIR identify with certainty particular sources of water for second-tier projects that will be further analyzed before implementation during later stages of the program. Rather, identification of specific sources is required only at the second-tier stage when specific projects are considered." (*In re Bay-Delta etc*. (2008) 43 Cal. 4th 1143.)

Subsequent activities in the program must be examined in light of the Program EIR to determine whether additional environmental documents must be prepared. Additional environmental review documents must be prepared if the proposed later project may arguably cause significant adverse effects on the environment.

8.09 USE OF A PROGRAM EIR WITH SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS.

A Program EIR can be used to simplify the task of preparing environmental documents on later activities in the program. The Program EIR can:

(a) Provide the basis for an Initial Study to determine whether the later activity may have any significant effects;
(b) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives and other factors that apply to the program as a whole; or
(c) Focus an EIR on a later activity to permit discussion solely of new effects which had not been considered before.

If a Program EIR is prepared for a redevelopment plan, subsequent activities in the redevelopment program will be subject to review if they would have effects that were not examined in the Program EIR. Where the later activities involve site-specific operations, the City should use a written checklist or similar device to document the evaluation of the site and the proposed activity to determine whether the environmental effects of the operation were

within the scope of the Program EIR. If a later activity would have effects that were not examined in the Program EIR, a new Initial Study would need to be prepared leading to an EIR, Negative Declaration, or Mitigated Negative Declaration. That later analysis may tier from the Program EIR as provided in State CEQA Guidelines Section 15152.

If the City finds that no Subsequent EIR would be required, the City can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document is required. (See Local Guidelines Section 8.04.) Whether a later activity is within the scope of a Program EIR is a factual question that the Lead Agency determines based on substantial evidence in the record. Factors that the Lead Agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the Program EIR.

8.10 USE OF AN EIR FROM AN EARLIER PROJECT.

A single EIR may be used to describe more than one project when the projects involve substantially identical environmental impacts. Any environmental impacts peculiar to one of the projects must be separately set forth and explained.

8.11 MASTER EIR.

A Master EIR is an EIR which may be prepared for:

(a) A general plan (including elements and amendments);
(b) A specific plan;
(c) A project consisting of smaller individual projects to be phased;
(d) A regulation to be implemented by subsequent projects;
(e) A project to be carried out pursuant to a development agreement;
(f) A project pursuant to or furthering a redevelopment plan;
(g) A state highway or mass transit project subject to multiple reviews or approvals; or
(h) A regional transportation plan or congestion management plan.

A Master EIR must do both of the following:

(a) Describe and present sufficient information about anticipated subsequent projects within its scope, including their size, location, intensity, and scheduling; and
(b) Preliminarily describe potential impacts of anticipated subsequent projects for which insufficient information is available to support a full impact assessment.

The City and Responsible Agencies identified in the Master EIR may use the Master EIR to limit environmental review of subsequent projects. However, the Lead Agency for the subsequent project must prepare an Initial Study to determine whether the subsequent project and its significant environmental effects were included in the Master EIR. If the Lead Agency for the subsequent project finds that the subsequent project will have no additional significant

environmental effect and that no new mitigation measures or alternatives may be required, it may prepare written findings to that effect without preparing a new environmental document. When the Lead Agency makes this finding, it must provide public notice of the availability of its proposed finding for public review and comment in the same manner as if it were providing public notice of the availability of a draft EIR. (See Sections 15177(d) and 15087 of the State CEQA Guidelines and Section 7.25 of these Local Guidelines.)

A previously certified Master EIR cannot be relied upon to limit review of a subsequent project if:

(a) A project not identified in the certified Master EIR has been approved and that project may affect the adequacy of the Master EIR for the subsequent project now under consideration; or

(b) The Master EIR was certified more than five (5) years before the filing of an application for the subsequent project, unless the City reviews the adequacy of the Master EIR and:

(1) Finds that, since the Master EIR was certified, no substantial changes have occurred that would cause the subsequent project to have significant environmental impacts, and there is no new information that the subsequent project would have significant environmental impacts; or

(2) Prepares an Initial Study and either certifies a Subsequent or Supplemental EIR or adopts a Mitigated Negative Declaration that addresses any substantial changes or new information that would cause the subsequent project to have potentially significant environmental impacts. The certified subsequent or supplemental EIR must either be incorporated into the previously certified Master EIR or the City must identify any deletions, additions or other modifications to the previously certified Master EIR in the new document. The City may include a section in the subsequent or supplemental EIR that identifies these changes to the previously certified Master EIR.

When the Lead Agency cannot find that the subsequent project will have no additional significant environmental effect and no new mitigation measures or alternatives will be required, it must prepare either a Mitigated Negative Declaration or an EIR for the subsequent project.

8.12 FOCUSED EIR.

A Focused EIR is an EIR for a subsequent project identified in a Master EIR. It may be used only if the City finds that the Master EIR's analysis of cumulative, growth-inducing, and irreversible significant environmental effects is adequate for the subsequent project. The Focused EIR must incorporate by reference the Master EIR.

The Focused EIR must analyze additional significant environmental effects not addressed in the Master EIR and any new mitigation measures or alternatives not included in the Master EIR. "Additional significant effects on the environment" means those project-specific effects on the environment that were not addressed as significant effects on the environment in the Master EIR.

The Focused EIR must also examine the following:

(a) Significant effects discussed in the Master EIR for which substantial new information exists that shows those effects may be more significant than described in the Master EIR;
(b) Those mitigation measures found to be infeasible in the Master EIR for which substantial new information exists that shows the effects may be more significant than described in the Master EIR; and
(c) Those mitigation measures found to be infeasible in the Master EIR for which substantial new information exists that shows those measures may now be feasible.

The Focused EIR need not examine the following effects:

(a) Those that were mitigated through Master EIR mitigation measures; or
(b) Those that were examined in the Master EIR in sufficient detail to allow project-specific mitigation or for which mitigation was found to be the responsibility of another agency.

A Focused EIR may be prepared for a multifamily residential project not exceeding 100 units or a mixed use residential project not exceeding 100,000 square feet even though the project was not identified in a Master EIR, if the following conditions are met:

(a) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five (5) years of the Focused EIR's certification;
(b) The project does not require the preparation of a Subsequent or Supplemental EIR; and
(c) The parcel is surrounded by immediately contiguous urban development, was previously developed with urban uses, or is within one-half mile of a rail transit station.

A Focused EIR for these projects should be limited to potentially significant effects that are project-specific and/or which substantial new information shows will be more significant than described in the Master EIR. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth-inducing impacts of the project. (See State CEQA Guidelines Section 15179.5.)

8.13 SPECIAL REQUIREMENTS FOR REDEVELOPMENT PROJECTS.

An EIR for a redevelopment plan may be a Master EIR, Program EIR or Project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a Program EIR or a Project EIR. Normally, the City will not be a Lead Agency for a redevelopment plan. However, if the City is a Responsible Agency on such a project, the City should endeavor to ensure that the county and/or applicable city as the case may be, as Lead Agency, analyzes these impacts in accordance with CEQA.

If a Program EIR is prepared for a redevelopment plan, subsequent activities in the redevelopment program will be subject to review if they would have effects that were not examined in the Program EIR. The Lead Agency should use a written checklist or similar device to document the evaluation of the site and the proposed activity to determine whether the environmental effects of the operation were indeed covered in the Program EIR. If the Lead Agency finds that no new effects could occur, no new mitigation measures would be required or

that State CEQA Guidelines Sections 15162 and 15163 do not otherwise apply, the Lead Agency can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document is required.

If the EIR for a redevelopment plan is a Project EIR, all public and private activities or undertakings pursuant to or in furtherance of the Redevelopment Plan shall constitute a single project, which shall be deemed approved at the time of the adoption of the Redevelopment Plan. Once certified, no subsequent EIRs will be needed unless required by State CEQA Guidelines sections 15162 or 15163. (State CEQA Guidelines Section 15180.) If a Master EIR is prepared for a redevelopment plan, subsequent projects will be subject to review if they would have effects that were not examined in the Master EIR. If no new effects could occur or no new mitigation measures would be required, the Lead Agency can approve the activity as being within the scope of the project covered by the Master EIR, and no new environmental document is required.

9. AFFORDABLE HOUSING

9.01 STREAMLINED, MINISTERIAL APPROVAL PROCESS FOR AFFORDABLE HOUSING PROJECTS

The legislature has provided reforms and incentives to facilitate and expedite the approval and construction of affordable housing.

(a) An applicant may submit an application for a development that is subject to the streamlined, ministerial approval process and is not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(i) The development is a multifamily housing development that contains two or more residential units.

(ii) The development is located on a site that satisfies the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

(iii) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

(B) Forty-five years for units that are owned.

(iv) The development satisfies both of the following:

(A) The development is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality

shall remain eligible under this subparagraph until the department's determination for the next reporting period. A locality shall be subject to this subparagraph if it has not submitted an annual housing element report to the department pursuant to paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years before the development submitted an application for approval under this section.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(1) The locality did not submit its latest production report to the department by the time period required by Government Code section 65400, or that production report reflects that there were fewer units of above moderate-income housing approved than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that zoning ordinance applies.

(2) The locality did not submit its latest production report to the department by the time period required by Government Code Section 65400, or that production report reflects that there were fewer units of housing affordable to households making below 80 percent of the area median income that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making below 80 percent of the area median income, unless the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, in which case that ordinance applies.

(3) The locality did not submit its latest production report to the department by the time period required by Government Code Section 65400, or if the production report reflects that there were fewer units of housing affordable to any income level described in clause (i) or (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(v) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the

Density Bonus Law in Government Code section 65915, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards" and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning standards pursuant to this section if the development is consistent with the standards set forth in the general plan.

(vi) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual.

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code Section 51179, or sites that have adopted fire hazard mitigation

measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law, Health and Safety Code section 18901, and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Code of Federal Regulations section 59.1.

(H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Code of Federal Regulations section 60.3(d)(3).

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, Fish and Game Code section 2800, habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act, Fish and Game Code section 2050, or the Native Plant Protection Act, Fish and Game Code section 1900.

(K) Lands under conservation easement.

(vii) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(1) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(2) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(3) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(viii) The applicant has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(1) The entirety of the development is a public work for purposes of Labor Code section 1720.

(2) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Labor Code sections 1773 and 1773.9, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices

registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subsection (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Labor Code section 1776 and make those records available for inspection and copying as provided in therein.

(IV) Except as provided in subsection (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Labor Code section 1741, which may be reviewed pursuant to Labor Code section 1742, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Labor Code section 1771.2. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Labor Code section 1742.1.

(V) Subsections (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in Public Contract Code section 2500(b)(1).

(VI) Notwithstanding Labor Code section 1773.1, subdivision (c), the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Labor Code section 511 or 514.

(B)(1) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units that are not 100 percent

subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(2) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in the Public Contract Code section 2600.

(3) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subdivision (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Public Contract Code section 2600. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act, Government Code section 6250 and shall be open to public inspection. An applicant that fails to provide a monthly

report demonstrating compliance with Public Contract Code section 2600 shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Labor Code section 1741, and may be reviewed pursuant to the same procedures in Labor Code section 1742. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subdivision (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in Public Contract Code section 2500(b)(1).

(C) Notwithstanding subparagraphs (A) and (B) above, a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(1) The project includes 10 or fewer units.

(2) The project is not a public work for purposes of Labor Code section 1720.

(ix) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Government Code section 66410, et seq.) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (viii).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (h).

(x) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law, Civil Code section 798, the Recreational Vehicle Park Occupancy Law, Civil Code section 799.20, the Mobilehome

Parks Act, Health and Safety Code section 18200, or the Special Occupancy Parks Act, Health and Safety Code section 18860.

(b) (i) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(ii) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(c) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(i) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(ii) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(d) (i) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing parking requirements in multifamily developments, shall not impose parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(ii) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) (i) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making below 80 percent of the area median income.

(ii) If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making below 80 percent of the area median income, that approval shall automatically expire after three years except that a project may receive a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(iii) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and process set forth in this section.

(f) A local government shall not adopt any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(g) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of Government Code section 65583.2(i).

(h) For purposes of this section the following definitions shall apply:

(1) "Department" means the Department of Housing and Community Development.

(2) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(3) "Completed entitlements" means a housing development which has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(4) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(5) "Production report" means the information reported pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Government Code Section 65400.

(6) "Subsidized" means units that are price or rent restricted such that the units are permanently affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

(7) "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

(8) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

9.02 HOUSING SUSTAINABILITY DISTRICTS.

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries. The general plan must contain seven mandatory elements, including a housing element. Existing law provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing. Senate Bill 73 authorizes a city, county, or city and county, including a charter agency, to establish by ordinance a housing sustainability district that meets specified requirements, including authorizing residential use within the district through the ministerial issuance of a permit. The agency is authorized to apply to the Department of Housing and Community Development for approval of a zoning incentive payment and requires the agency to provide specified information about the proposed housing sustainability district ordinance. The department is required to approve a zoning incentive payment if the ordinance meets the above-described requirements and the agency's housing element is in compliance with specified law.

A city, county, or city and county with a housing sustainability district would be entitled to a zoning incentive payment, subject to appropriation of funds for that purpose, and require that one-half of the amount be paid when the department approves the zone and one-half of the amount be paid when the department verifies that permits for the construction of the units have issued within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year. If the agency reduces the density of sites within the district from specified levels set forth in the Senate Bill 73, the agency would be required to return the full amount of zoning incentive payments it has received to the department. The bill also authorizes a developer to develop a project in a housing sustainability district in accordance with the already existing land use approval procedures that would otherwise apply to the parcel in the absence of the establishment of the housing sustainability district pursuant to its provisions, as provided.

As it relates specifically to CEQA, a Lead Agency designating a housing sustainability district is required to prepare an EIR pursuant to Government Code section 66201 to identify and mitigate, to the extent feasible, environmental impacts resulting from the designation. The EIR shall identify mitigation measures that may be undertaken by housing projects in the housing sustainability district to mitigate the environmental impacts identified in the EIR. Housing projects undertaken in the housing sustainability districts that meet specified requirements, including if the project satisfies certain design review standards applicable to development projects within the district provided the project is "complementary to adjacent buildings and structures and is consistent with the [agency's] general plan," are exempt under CEQA.

10. CEQA LITIGATION

10.01 TIMELINES.

When a CEQA lawsuit is filed, there are numerous and complex time requirements that must be met. Pressing deadlines begin to run in the days immediately after a CEQA lawsuit has been filed with the Court. For example, within ten (10) business days of the public agency being served with a petition or complaint alleging a violation of CEQA, the City, if it was the Lead Agency, must provide the petitioner with a list of Responsible Agencies and public agencies with jurisdiction by law over any natural resource affected by the project at issue. There are a variety of other deadlines that apply in CEQA litigation.

If a CEQA lawsuit is filed, CEQA counsel should be contacted immediately in order to ensure that all the applicable deadlines are met.

10.02 MEDIATION AND SETTLEMENT.

After Litigation Has Been Filed. The parties in a CEQA lawsuit are required to meet and discuss settlement. Within twenty (20) days of being served with a CEQA legal challenge, the public agency named in the lawsuit must file a notice with the court setting forth the time and place for a settlement meeting. The meeting must be scheduled and held not later than forty-five (45) days from the date of service of the petition or complaint upon the public agency. Usually the main parties to the litigation (such as the Lead Agency, the developer of the project if there is one, and those challenging the project and their respective attorneys) meet to discuss settlement; there is no requirement to hire a professional mediator. The settlement meeting is usually subject to a confidentiality agreement.

If the parties in a CEQA lawsuit are in settlement or mediation, that attempt is intended to occur concurrently with the litigation. This means that the respondent public agency will be required to comply with all existing litigation timelines and requirements (for example, preparing and lodging the administrative record discussed below) while simultaneously conducting settlement or mediation, unless the parties enter into an alternate agreement to stay the litigation and that agreement is approved by the court.

10.03 ADMINISTRATIVE RECORD.

A. Contents of Administrative Record.

When the Lead Agency's CEQA finding(s) and/or action is challenged in a lawsuit, the Lead Agency must certify the administrative record that formed the basis of the Lead Agency's decision. To the extent the documents listed below exist and are not subject to a privilege that exempts them from disclosure, the following items should be included in the administrative record:

(1) All project application materials;

(2) All staff reports and related documents prepared by the public agency with respect to its compliance with the substantive and procedural requirements of CEQA and with respect to the action on the project;

(3) All staff reports and related documents prepared by the public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the public agency pursuant to CEQA or these Local Guidelines;

(4) Any transcript or minutes of the proceedings at which the decision-making body of the public agency heard testimony on or considered any environmental document on the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decision-making body prior to action on the environmental documents or on the project;

(5) All notices issued by the public agency to comply with CEQA or with any other law governing the processing and approval of the project;

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation;

(7) All written evidence or correspondence submitted to, or transferred from, the public agency with respect to compliance with CEQA or with respect to the project;

(8) Any proposed decisions or findings submitted to the decision-making body of the public agency by its staff or the project proponent, project opponents, or other persons, to the extent such documents are subject to public disclosure;

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3) above, cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to CEQA;

(10) Any other written materials relevant to the respondent public agency's compliance with CEQA or to its decision on the merits of the project, including the initial study; any drafts of any environmental document, or portions thereof, that were released for public review; copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the public agency's files on the project; and internal agency communications related to the project or to compliance with CEQA, to the extent such documents are subject to public disclosure; and

(11) The full written record before any inferior administrative decision-making body whose decision was appealed prior to the filing of the lawsuit.

B. Organization of Administrative Record.

The administrative record should be organized as follows:

(1) Index. A detailed index must be included at the beginning of the administrative record listing each document in the order presented. Each entry must include the document's title, date, brief description, and the volume and page where the document begins;

(2) The Notice of Determination;

(3) The resolutions or ordinances adopted by the Lead Agency approving the project;

(4) The findings required by Public Resources Code section 21081, including any statement of overriding considerations;

(5) The Final EIR, including the Draft EIR or a revision of the draft, all other matters included in the Final EIR (such as traffic studies and air quality studies), and other types of environmental documents prepared under CEQA, such as a negative declaration, mitigated negative declaration, or addenda;

(6) The initial study;

(7) Staff reports prepared for the administrative bodies providing subordinate approvals or recommendations to the Lead Agency, in chronological order;

(8) Transcripts and minutes of hearings, in chronological order; and

(9) All other documents appropriate for inclusion in the administrative record, in chronological order.

Each section listed above must be separated by tabs or marked with electronic bookmarks. Oversized documents (such as building plans and maps) must be presented in a manner that allows them to be easily unfolded and viewed.

The court may issue an order allowing the documents to be organized in a different manner.

C. Preparation of Administrative Record.

The administrative record can be prepared: (1) by the petitioner, if the petitioner elects to do so, or (2) by the Lead Agency. The petitioner and the Lead Agency can also agree on any alternative method of preparing the record. However, when a third party such as the project applicant prepares or assists with the preparation of the administrative record, the Lead Agency

may not be able to recover fees incurred by the third party unless petitioner has agreed to this method of preparation.

Notwithstanding the above, upon the written request of a project applicant received no later than 30 days after the date that the Lead Agency makes a determination pursuant to Public Resources Code section 21080.1, 21094.5, or Chapter 4.2 (commencing with Public Resources Code section 21155) and with the written consent of the Lead Agency sent within 10 business days from receipt of the written request, the Lead Agency may prepare the administrative record concurrently with the administrative process. Should the Lead Agency and the project applicant so desire to pursue concurrent record preparation, the parties must comply with the provisions of Public Resources Code section 21167.6.2.

D. Special Circumstances For Environmental Leadership Projects.

Special timing considerations and requirements apply if the Project is certified by the Governor as an Environmental Leadership Project pursuant to the "Jobs and Economic Improvement Through Environmental Leadership Act of 2011." For example, the administrative record must be finished and certified within five (5) days of project approval. See Public Resources Code Section 21186 for a complete discussion of the special requirements related to the preparation of an administrative record for an Environmental Leadership Project.

11. DEFINITIONS

Whenever the following terms are used in these Local Guidelines, they shall have the following meaning unless otherwise expressly defined:

11.01 "Agricultural Employee" means a person engaged in agriculture, which includes farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

This definition does not include any person covered by the National Labor Relations Act as agricultural employees pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code) and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code). This definition does not apply to employees who perform work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 United States Code Section 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation. (State CEQA Guidelines Section 15191(a).)

11.02 "Applicant" means a person who proposes to carry out a project that requires a lease, permit, license, certificate, or other entitlement for use, or requires financial aid from one or more public agencies when applying for governmental approval or assistance.

11.03 "Approval" means a decision by the decision-making body or other authorized body or officer of the City which commits the City to a definite course of action with regard to a particular project. With regard to any project to be undertaken directly by the City, approval shall be deemed to occur on the date when the decision-making body adopts a motion or resolution determining to proceed with the project, which in no event shall be later than the date of adoption of plans and specifications. As to private projects, approval shall be deemed to have occurred upon the earliest commitment to provide service or the issuance by the City of a discretionary contract, subsidy, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project. The mere acquisition of land by the City shall not, in and of itself, be deemed to constitute approval of a project.

For purposes of these Local Guidelines, all environmental documents must be completed as of the time of project approval.

11.04 "Baseline" refers to the pre-project environmental conditions. By comparing the project's potential impacts to the baseline, the Lead Agency determines whether the project's impacts are substantial enough to be significant under the relevant thresholds of significance. Generally, the baseline is the environmental conditions existing on the date the environmental analysis begins, such as the date the Notice of Preparation is published for an EIR or the date the Notice of Intent to Adopt a Negative Declaration is published. However, in certain circumstances, an earlier or later date may provide a more accurate environmental analysis. The City may establish any baseline that is appropriate, including an earlier or later date, as long as the choice of baseline can be supported by substantial evidence.

11.05 "California Native American Tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

11.06 "Categorical Exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary of the Resources Agency that the class of projects does not have a significant effect on the environment.

11.07 "Census-Defined Place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

11.08 "CEQA" means the California Environmental Quality Act, codified at California Public Resources Code Sections 21000, et seq.

11.09 "City" means the City of Ontario.

11.10 "Clerk" means either the "Clerk of the Board" or the "County Clerk" depending upon the county. Please refer to the "Index to Environmental Filing by County" in the Staff Summary to determine which applies.

11.11 "Community-Level Environmental Review" means either (1) or (2) below:

(1) An EIR certified for any of the following:

(a) A general plan;
(b) A revision or update to the general plan that includes at least the land use and circulation elements;
(c) An applicable community plan;
(d) An applicable specific plan; or
(e) A housing element of the general plan, if the Environmental Impact Report analyzed the environmental effects of the density of the proposed project;

(2) A Negative Declaration or Mitigated Negative Declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan or specific plan, provided that the subsequent environmental review document is allowed by

CEQA following a Master EIR or a Program EIR or is required pursuant to Public Resource Section 21166.

11.12 "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

11.13 "Cumulative Impacts" means two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects, whether past, present or future.

The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present and reasonably foreseeable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

11.14 "Cumulatively Considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

11.15 "Decision-Making Body" means the body within the City, e.g. the City Council, which has final approval authority over the particular project.

11.16 "Developed Open Space" means land that meets each of the following three criteria:

(1) Is publicly owned, or financed in whole or in part by public funds;

(2) Is generally open to, and available for use by, the public; and

(3) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed Open Space may include land that has been designated for acquisition by a public agency for developed open space purposes, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

11.17 "Development Project" means any project undertaken for the purpose of development, including any project involving the issuance of a permit for construction or reconstruction but not a permit to operate. It does not include any ministerial projects proposed to be carried out or approved by public agencies. (Government Code Section 65928.)

11.18 "Discretionary Project" means a project for which approval requires the exercise of independent judgment, deliberation, or decision-making on the part of the City. To determine whether a project is discretionary, the key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.

11.19 "EIR" means Environmental Impact Report, a detailed written statement setting forth the environmental effects and considerations pertaining to a project. EIR may mean a Draft or a Final version of an EIR, a Project EIR, a Subsequent EIR, a Supplemental EIR, a Tiered EIR, a Staged EIR, a Program EIR, a Redevelopment EIR, a Master EIR, or a Focused EIR.

11.20 "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, landslide or other natural disaster, as well as such occurrences as riot, war, terrorist incident, accident or sabotage.

11.21 "Endangered, Rare or Threatened Species" means certain species or subspecies of animals or plants. A species or subspecies of animal or plant is "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. A species or subspecies of animal or plant is "Threatened" when it is listed as a threatened species pursuant to the California Endangered Species Act or the Federal Endangered Species Act. A species or subspecies of animal or plant is "Rare" when either:

(1) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(2) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and many be considered "threatened" as that term is used in the Federal Endangered Species Act.

For purposes of analyzing impacts to biological resources, a species of animal or plant shall be presumed to be endangered, rare or threatened if it is listed under the California Endangered Species Act or the Federal Endangered Species Act.

This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by the Director of Food and Agriculture (with regard to economic pests) or the Director of Health Services (with regard to health risks).

11.22 "Environment" means the physical conditions which exist in the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved

shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man-made conditions.

11.23 "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

11.24 "Final EIR" means an EIR containing the information contained in the Draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the City to the comments received.

11.25 "Greenhouse Gases" include, but are not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

11.26 "Guidelines" or "Local Guidelines" means the City's Local Guidelines for implementing the California Environmental Quality Act.

11.27 "Highway" shall have the same meaning as defined in Section 360 of the Vehicle Code.

11.28 "Historical Resources" include:

Resources listed in, or eligible for listing in, the California Register of Historical Resources shall be considered historical resources.

A resource may be listed in the California Register if it meets any of the following National Register of Historic Places criteria:

(a) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
(b) Is associated with the lives of persons important in our past;
(c) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
(d) Has yielded, or may be likely to yield, information important in prehistory or history.

A resource may also be listed in the California Register if it is identified as significant in an historical resource survey that meets all of the following criteria:

(a) The survey has been or will be included in the State Historic Resources Inventory;
(b) The survey and the survey documentation were prepared in accordance with office procedures and requirements; and
(c) The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.

Resources included on a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution, or identified as significant in a historical resource survey (as described above) are presumed to be historically or culturally significant, unless a preponderance of evidence demonstrates that they are not historically or culturally significant.

Any of the following may be considered historically significant: any object, building, structure, site, area, place, record or manuscript which a Lead Agency determines, based upon substantial evidence in light of the whole record, to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California.

The Lead Agency is not precluded from determining that a resource is a historical resource, as defined in Public Resources Code Sections 5020.1(j) or 5024.1, even if it is: (a) not listed in, or is not determined to be eligible for listing in, the California Register of Historical Resources; (b) not included in a local register of historical resources; or (c) not identified in a historical resources survey.

11.29 "Infill Site" means a site in an urbanized area that meets either of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been previously developed for qualified urban uses and both (a) and (b) are met:

(a) the site is immediately adjacent to parcels that are developed with qualified urban uses, or
1. at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with existing qualified urban uses at the time the Lead Agency receives an application for an approval; and
2. the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses;

(b) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(Public Resources Code Section 21061.3.)

11.30 "Initial Study" means a preliminary analysis conducted by the City to determine whether an EIR, a Negative Declaration, or a Mitigated Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR.

11.31 "Jurisdiction by Law" means the authority of any public agency to grant a permit or other entitlement for use, to provide funding for the project in question or to exercise authority over resources which may be affected by the project.

The City will have jurisdiction by law over a project when the City has primary and exclusive jurisdiction over the site of the project, the area in which the major environmental effects will occur, or the area in which reside those citizens most directly concerned by any such environmental effects.

11.32 "Land Disposal Facility" means a hazardous waste facility where hazardous waste is disposed in, on, or under land. (Health and Safety Code Section 25199.1(d).)

11.33 "Large Treatment Facility" means a treatment facility which treats or recycles one thousand (1,000) or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991. (Health and Safety Code Section 25205.1(d).)

11.34 "Lead Agency" means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project when more than one public agency is involved with the same underlying activity.

11.35 "Low- and Moderate-Income Households" means persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code—i.e., persons and families whose income does not exceed 120% of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. (Public Resources Code Section 21159.20(d); State CEQA Guidelines Section 15191(f).)

11.36 "Low-Income Households" means households of persons and families of very low and low income. Low-income persons or families are those eligible for financial assistance from governmental agencies for occupants of state-funded housing. Very low income persons are those whose incomes do not exceed the qualifying limits for very low income families as established and amended pursuant to Section 8 of the United States Housing Act of 1937. Such limits are published and updated in the California Code of Regulations. (Public Resources Code Section 21159.20(c); Health and Safety Code Sections 50105 and 50106; State CEQA Guidelines Section 15191(g).)

11.37 "Low-Level Flight Path" means any flight path for any aircraft owned, maintained, or under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency or its successor.

11.38 "Lower Income Households" is defined in Health and Safety Code Section 50079.5 to mean any of the following:

(1) "Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937;

(2) "Very low income households" means persons and families whose incomes do not exceed the qualifying limits for very low income families as defined in Health and Safety Code 50105; or

(3) "Extremely low income households" means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as defined in Health and Safety Code Section 50106.

11.39 "Major Transit Stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of fifteen (15) minutes or less during the morning and afternoon peak commute periods. (State CEQA Guidelines Section 15191(i).)

11.40 "Metropolitan Planning Organization" or "MPO" means a federally-designated agency that provides transportation planning and programming in metropolitan areas. A MPO is designated for each urban area that has been defined in the most recent federal census as having a population of more than 50,000 people. There are 18 federally-designated MPOs in California. Non-urbanized (rural) areas do not have a designated MPO.

11.41 "Military Impact Zone" means any area, including airspace, that meets both of the following criteria:

(1) Is located within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(2) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

11.42 "Military Service" means the United States Department of Defense or any branch of the United States Armed Forces.

11.43 "Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project

should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee. (Public Resources Code Section 21080(b)(1).)

11.44 "Mitigated Negative Declaration" or "MND" means a Negative Declaration prepared for a Project when the Initial Study has identified potentially significant effects on the environment, but: (1) revisions in the project plans or proposals made, or agreed to, by the applicant before the proposed Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

11.45 "Mitigation" includes avoiding the environmental impact altogether by not taking a certain action or parts of an action, minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying the impact by repairing, rehabilitating or restoring the impacted environment, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, or compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

11.46 "Negative Declaration" or "ND" means a written statement by the City briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and, therefore, does not require the preparation of an EIR.

11.47 "Notice of Completion" means a brief report filed with the Office of Planning and Research by the City when it is the Lead Agency as soon as it has completed a Draft EIR and is prepared to send out copies for review.

11.48 "Notice of Determination" means a brief notice to be filed by the City when it approves or determines to carry out a project which is subject to the requirements of CEQA.

11.49 "Notice of Exemption" means a brief notice which may be filed by the City when it has approved or determined to carry out a project, and it has determined that the project is exempt from the requirements of CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project.

11.50 "Notice of Preparation" means a brief notice sent by a Lead Agency to notify the Responsible Agencies, Trustee Agencies, the Office of Planning and Research, and involved federal agencies that the Lead Agency plans to prepare an EIR for a project.

The purpose of this notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice.

11.51 "Oak" means a native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Public Resources Code Section 4526, and that is five (5) inches or more in diameter at breast height. (Public Resources Code Section 21083.4(a).)

11.52 "Oak Woodlands" means an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover. (Fish & Game Code Section 1361(h).)

11.53 "Offsite Facility" means a facility that serves more than one generator of hazardous waste. (Public Resources Code Section 21151.1(h).)

11.54 "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, city, county, city and county, town, the state, and any of the agencies which may be political subdivisions of such entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions**.**

11.55 "Pipeline" as defined in these Local Guidelines depends on the context. Please see Local Guidelines Sections 3.11 and 3.12 for specific definitions.

11.56 "Private Project" means a project which will be carried out by a person other than a governmental agency, but which will need a discretionary approval from the City. Private projects will normally be those listed in subsections (2) and (3) of Local Guidelines Section 11.57.

11.57 "Project" means the whole of an action or activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment, and is any of the following:

(1) A discretionary activity directly undertaken by the City including but not limited to public works construction and related activities, clearing or grading of land, or improvements to existing public structures;

(2) A discretionary activity which involves a public agency's issuance to a person of a lease, permit, license, certificate, or other entitlement for use, or which is supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance by the City; or

(3) A discretionary project proposed to be carried out or approved by public agencies, including but not limited to the enactment and amendment of local General Plans or elements thereof, the enactment of zoning ordinances, the

issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps.

The presence of any real degree of control over the manner in which a project is completed makes it a discretionary project.

The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

11.58 "Project-Specific Effects" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects. (Public Resources Code Section 21065.3; State CEQA Guidelines Section 15191(j).)

11.59 "Public Water System" means a system for the provision of piped water to the public for human consumption that has 3,000 or more service connections. A public water system includes all of the following: (A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system; (B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system; (C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. (State CEQA Guidelines Section 15155.)

11.60 "Qualified Urban Use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. (Public Resources Code Section 21072; State CEQA Guidelines Section 15191(k).)

11.61 "Residential" means a use consisting of either residential units only or residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project. (State CEQA Guidelines Section 15191(l).) Residential, pursuant to Public Resources Code Section 21159.24, shall mean a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 25 percent of the total building square footage of the project.

11.62 "Responsible Agency" means a public agency which proposes to carry out or approve a project for which a Lead Agency has prepared the environmental documents. For the purposes of CEQA, the term "Responsible Agency" includes all federal, state, regional and local public agencies other than the Lead Agency which have discretionary approval power over the project.

11.63 "Riparian areas" mean those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions,

ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

11.64 "Roadway" means a roadway as defined pursuant to Section 530 of the Vehicle Code and the previously graded and maintained shoulder that is within a roadway right-of-way of no more than five feet from the edge of the roadway.

11.65 "Significant Effect" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the activity including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

11.66 "Significant Value as a Wildlife Habitat" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

11.67 "Special Use Airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency or its successor.

11.68 "Staff" means the General Manager or his or her designee**.**

11.69 "Standard" means a standard of general application that is all of the following:

(1) A quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(2) Adopted for the purpose of environmental protection;

(3) Adopted by a public agency through a public review process;

(4) Governs the same environmental effect which the change in the environment is impacting; and

(5) Governs the jurisdiction where the project is located.

The definition of "standard" includes any thresholds of significance adopted by the City which meet the requirements of this Section.

If there is a conflict between standards, the City shall determine which standard is appropriate based upon substantial evidence in light of the whole record.

11.70 "State CEQA Guidelines" means the Guidelines for Implementation of the California Environmental Quality Act as adopted by the Secretary of the California Natural Resources Agency as they now exist or hereafter may be amended. (California Administrative Code, Title 14, Sections 15000, et seq.)

11.71 "Substantial Evidence" means reliable information on which a fair argument can be based to support an inference or conclusion, even though another conclusion could be drawn from that information. "Substantial evidence" includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. "Substantial evidence" does not include 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.

11.72 "Sustainable Communities Strategy" is an element of a Regional Transportation Plan, which must be adopted by the Metropolitan Planning Organization for the region. (See Local Guidelines Section 11.40.) The Sustainable Communities Strategy is an integrated land use and transportation plan intended to reduce greenhouse gases. The Sustainable Communities Strategy includes various components such as: consideration of existing densities and uses within the region, identification of areas within the region that can accommodate an eight-year projection of the region's housing needs, development of projections for growth in the region, identification of existing transportation networks, and preparation of a forecast for development pattern for the region that can be integrated with transportation networks.

11.73 "Tiering" means the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or Program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR; or

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the Lead Agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

(Public Resources Code Sections 21003, 21061 and 21100.)

11.74 "Transit Priority Area" means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

11.75 "Transit Priority Project" means a mixed use project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the California Air Resources Board has accepted a Metropolitan Planning Organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets. Such a project may be exempt from CEQA if a detailed laundry list of requirements is met. To qualify for the exemption, the Transit Priority Project must:

(1) contain at least 50 percent residential use based on total building square footage;

(2) if the project contains between 26 percent and 50 percent non-residential uses, the floor-to-area ratio (FAR) must be at least 0.75;

(3) have a minimum net density of 20 dwelling units per acre;

(4) be located within a half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan; and

(5) meet all the requirements of Public Resources Code Section 21155.1.

11.76 "Transportation Facilities" includes major local arterials and public transit within five (5) miles of the project site, and freeways, highways, and rail transit service within ten (10) miles of the project site.

11.77 "Tribal Cultural Resources" are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(a) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
(b) Included in a local register of historic resources as defined in subdivision (k) of Public Resources Code Section 5020.1.

(2) A resource determined by the Lead Agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this

definition, the Lead Agency shall consider the significance of the resource to a California Native American tribe.

A cultural landscape that meets the criteria set forth above is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

A historic resource described in Public Resources Code Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Public Resources Code Section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Public Resources Code Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of Tribal cultural resources.

11.78 "Trustee Agency" means a State agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies may include, but are not limited to, the following:

(a) The California Department of Fish and Wildlife ("DFW") with regard to the fish and wildlife of the state, designated rare or endangered native plants, and game refuges, ecological reserves, and other areas administered by DFW;
(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands;
(c) The State Department of Parks and Recreation with regard to units of the State Park System;
(d) The University of California with regard to sites within the Natural Land and Water Reserve System; and/or
(e) The State Water Resources Control Board with respect to surface waters.

11.79 "Urban Growth Boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side of the boundary.

11.80 "Urbanized Area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least one hundred thousand (100,000) persons;

(2) An unincorporated area that meets both of the following requirements:

(a) The unincorporated area is either:
(i) completely surrounded by one or more incorporated cities, has a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and has a population density that at least equals the population density of the surrounding city or cities; or

(ii) located within an urban growth boundary and has an existing residential population of at least five thousand (5,000) persons per square mile. An "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(b) The board of supervisors with jurisdiction over the unincorporated area has taken all three of the following steps:

1. Prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and protects the environment, open space and agricultural areas;
2. Submitted the draft document to the Office of Planning and Research and allowed OPR thirty (30) days to submit comments on the draft finding to the board; and
3. At least thirty (30) days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document.

(Public Resources Code Sections 21083, 21159.20-21159.24; State CEQA Guidelines Section 15191(m).)

11.81 "Water Acquisition Plans" means any plans for acquiring additional water supplies prepared by the public water system or a city or county Lead Agency pursuant to subdivision (a) of section 10911 of the Water Code.

11.82 "Water Assessment" or "Water Supply Assessment" means the water supply assessment that must be prepared by the governing body of a public water system, or a city or county, pursuant to and in compliance with sections 10910 to 10915 of the Water Code, and that includes, without limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.

11.83 "Water Demand Project" means any one of the following:

(A) A residential development of more than 500 dwelling units;

(B) A shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space;

(C) A commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space;

(D) A hotel or motel, or both, having more than 500 rooms;

(E) An industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area;

Except, a proposed photovoltaic or wind energy generation facility approved on or after October 8, 2011, is not a Water Demand Project if the facility would demand no more than 75 acre-feet of water annually.

(F) A mixed-use project that includes one or more of the projects specified in subdivisions (A); (B), (C), (D), (E), or (G) of this section;

(G) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project; or

(H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:

(1) A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or

(2) A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(State CEQA Guidelines Section 15155.)

11.84 "Waterway" means a bay, estuary, lake, pond, river, slough, or a perennial, intermittent, or ephemeral stream, lake, or estuarine-marine shoreline.

11.85 "Wetlands" has the same meaning as that term is construed in the regulations issued by the United States Army Corps of Engineers pursuant to the Clean Water Act. Thus, "wetlands" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (Public Resources Code Section 21159.21(d), incorporating Title 33, Code of Federal Regulations, Section 328.3.)

11.86 "Wildlife Habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection. (Public Resources Code Section 21159.21.)

11.87 "Zoning Approval" means any enactment, amendment, or appeal of a zoning ordinance; granting of a conditional use permit or variance; or any other form of land use, subdivision, tract, or development approval required from the city or county having jurisdiction to permit the particular use of the property.

12. FORMS

See forms A – S which accompany these Guidelines.

13. COMMON ACRONYMS

A. **********

ADEIR – Administrative Draft Environmental Impact Report
AQMD – Air Quality Management District
AQMP – Air Quality Management Plan
AR – Administrative Record
ARB – Air Resources Board

B. **********

BMP – Best Management Practices
BO – Biological Opinion

C. **********

Cal EPA – California Environmental Protection Agency
CAP – Climate Action Plan
CCAA – California Clean Air Act
CCR – California Code of Regulations (Title 14 Sections 15000 et seq. are also known as the State CEQA Guidelines.)
CE – Categorical Exclusion (NEPA)
CESA – California Endangered Species Act
CEQA – California Environmental Quality Act
CFR – Code of Federal Regulations
CMP – Congestion Management Plan
CRWQCB – California Regional Water Quality Control Board

D. **********

DEIR – Draft Environmental Impact Report
DFW – Department of Fish and Wildlife

E. **********

EA – Environmental Assessment (NEPA term)
EIR – Environmental Impact Report
EIS – Environmental Impact Statement (NEPA term)
EPA – Environmental Protection Agency
ESA – Endangered Species Act; Environmental Site Assessment

F. **********

FCAA – Federal Clean Air Act
FEIR – Final Environmental Impact Report
FOIA – Freedom of Information Act (Federal)
FONSI – Finding of No Significant Impact (NEPA term)
FWS – Fish and Wildlife Service

G. **********

GHG – Greenhouse Gas
GW – Ground Water

H. **********

HH&E – Human Health and Environment
HRA – Health Risk Assessment
HS – Hazardous Substance

I. **********

IS – Initial Study

J. **********

K. **********

L. **********

LADD – Lifetime Average Daily Dose; Lowest Acceptable Daily Dose
LEA – Local Enforcement Agency
LESA – Land Evaluation and Site Assessment
LUFT – Leaking Underground Fuel Tank
LUST – Leaking Underground Storage Tanks. Reference Part 213 of Public Act 451 of 1994.

M. **********

MEIR – Master Environmental Impact Report
MMRP – Mitigation Monitoring and Reporting Plan
MPO – Metropolitan Planning Organization
MND – Mitigated Negative Declaration

N. **********

ND – Negative Declaration
NEPA – National Environmental Policy Act
NOA – Notice of Availability
NOC – Notice of Completion
NOD – Notice of Determination
NOE – Notice of Exemption
NOI – Notice of Intent
NOP – Notice of Preparation
NOV – Notice of Violation

O. **********

OPR – Office of Planning and Research

P. **********

PEIR – Program Environmental Impact Report. Sometimes also used to describe a Project Environmental Impact Report
PM – Particulate Matter
PRA – Public Records Act
PSA – Permit Streamlining Act

Q. **********

R. **********

RCRA – Resource Conservation and Recovery Act (1976) Governs definition, handling, and disposal of hazardous waste.

S. **********

SCH – State Clearinghouse
SEIR – Supplemental or Subsequent Environmental Impact Report
SMARA – Surface Mining and Reclamation Act
SWMP – Stormwater Monitoring Program
SWPPP – Stormwater Pollution Prevention Program

T. **********

TCM – Transportation Control Measure
TCP – Transportation Control Plan
TDS – Total Dissolved Solids
TMP – Transportation Management Plan
Title V – refers to Title V of the Clean Air Act related to ambient air quality provisions
TLV – Threshold Limit Value

U. **********

UBC – Uniform Building Code
UFC – Uniform Fire Code
UGST – Underground Storage Tank
USDW – Underground Source of Drinking Water
UWMP – Urban Water Management Plan

V. **********

VOC – Volatile Organic Compounds (Health & Safety Code, Section 25123.6.)
VOS – Vehicle Operating Survey

W. **********

WQS – Water Quality Standard
WSA – Water Supply Assessment
WTP – Water Treatment Plant. A facility designed to provide treatment to water.
WWTP – Wastewater Treatment Plan

X. **********

Y. **********

Z. **********

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: APPROVAL OF PRE-AUTHORZIED VENDORS TO PROVIDE SERVICES AND PARTS FOR SPECIALIZED FLEET AND EQUIPMENT

RECOMMENDATION: That the City Council approve pre-authorized vendors to provide parts and maintenance services for the following specialized fleet and equipment: Cummins engines, police motorcycles, vactor trucks, Case forklifts, Bobcat equipment, paving equipment, Integrated Waste vehicles, and Toro mowers.

COUNCIL GOALS: **Maintain the Current High Level of Public Safety**
Operate in a Businesslike Manner

FISCAL IMPACT: None. The designation of pre-authorized vendors to provide services and parts for specific types of fleet work does not affect appropriations and does not commit the City to any specific level of future expenditures with these vendors.

BACKGROUND: The Public Works Agency maintains the vehicles and equipment used by various City departments. To ensure that the vehicles and equipment are safe to operate, maintenance and repairs are necessary on a regular basis; and undue time delays affect the City's ability to provide services to the community. Due to specialized parts used on these vehicles and equipment, there is a limited number of authorized vendors that can provide them. In many cases, there is only a single authorized vendor in the Southern California area that is qualified or authorized to provide the part or service.

For these reasons, it is not cost-effective for the City to follow its standard purchasing procedures to solicit bids or requests for proposal. Establishing a list of pre-authorized vendors will facilitate the following:

- Ensure that the vehicles and equipment are serviced and repaired when needed;

STAFF MEMBER PRESENTING: Tito Haes, Executive Director Public Works

Prepared by: Michael Johnson
Department: Fleet Services

City Manager Approval:

Submitted to Council/O.H.A. 07/02/2019
Approved:
Continued to:
Denied:

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- Services are performed by qualified vendors who are familiar with Cummins engines, police motorcycles, vactor trucks, Case forklifts, Bobcat equipment, paving equipment, Integrated Waste vehicles and cameras, and Toro mowers; and
- Better maintenance because the vendors are familiar with the service and repair history of the City's vehicles and equipment.

The list of recommended vendors was developed from the manufacturers' (Amrep, Cummins, Case, Bobcat, Ray Gaskin, Pak-Mor, New Way and Toro) list of authorized service centers, and from the City's past experience with certain vendors.

Ontario Municipal Code Section 2-6.23(b) and 2-6.23(c) authorizes the Purchasing Officer to make purchases without following the standard purchasing procedures whenever (1) the goods can be obtained from only one source, and/or (2) a breakdown in machinery, equipment or an essential service which requires an immediate purchase of supplies and equipment to protect pubic health, safety and welfare generates circumstances that a competitive process would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible.

APPROVED LIST OF AUTHORIZED VENDORS
FOR SERVICES AND MAINTENANCE OF FLEET SERVICES

Sole Source Vendors	**Service/Maintenance Performed**
Haaker Equipment 2070 W. White Ave, La Verne, CA 91750	Vactor truck parts and repairs
Sonsray Machinery 10062 Live Oak Avenue, Fontana, CA 92335	Case forklift parts and repairs
Inland Bobcat 5494 Via Ricardo, Riverside, CA 92509	Bobcat vehicle and equipment parts and repairs
Top Mobile Vision 2220 Eastridge Ave, Ste. O, Riverside, CA 92507	Integrated Waste vehicle camera parts, installs and repairs
Turf Star 955 Beacon Street, Brea, CA 92821	Toro mower parts and repairs
Amrep, Inc. 1555 S. Cucamonga, Ontario, CA 91761	Integrated Waste front loader and roll off truck body parts and repairs
Ray Gaskin Service 14572 Rancho Vista Drive, Fontana, CA 92335	Integrated Waste bin delivery, and rear loader Ray Gaskin, Pak-Mor and New Way truck body parts and repairs

Non-Sole Source Vendors	**Service/Maintenance Performed**
Cummins Cal Pacific 3061 S. Riverside Avenue, Bloomington, CA 92316	Cummins engine parts and repairs
Long Beach BMW 1660 E. Spring Street, Long Beach, CA 90755	PD motorcycle parts and repairs
Nixon-Eqil 2044 S. Vineyard Avenue, Ontario, CA 91761	Paving Equipment parts and repairs
HREM, Inc. 15642 Boyle Avenue, Fontana, CA 92337	Integrated Waste truck body parts and repairs for all body types
IGS Refuse Equipment 15362 Arrow Route, Fontana, CA 92335	Integrated Waste truck body parts and repairs for all body types

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: AN AMENDMENT TO THE AGREEMENT WITH STEELBRIDGE SOLUTIONS FOR CHANGE MANAGEMENT SUPPORT ON THE CIS INFINITY UTILITY BILLING IMPLEMENTATION PROJECT

RECOMMENDATION: That the City Council authorize the City Manager to execute an amendment to the existing agreement (on file with the Records Management Department) with SteelBridge Solutions, Inc, of Atlanta, Georgia for Change Management Support on the CIS Infinity Utility Billing Implementation Project adding $169,750 plus a 25% project contingency of $42,437, for a revised authorized contract total of $302,187.

COUNCIL GOALS: **Operate in a Businesslike Manner**

FISCAL IMPACT: The recommended action increases the authorized contract amount to $259,750, (current $90,000 plus $169,750) and adds a project contingency of $42,437, for a total of $302,187. The Fiscal Year 2018-19 Adopted Capital Improvement Program Budget includes appropriations in the amount of $212,187 in the Information Technology Fund for these additional services.

BACKGROUND: The City is in the process of implementing the Infinity Customer Information System for Utility Billing. The Infinity solution is state of the art and will result in many changes both for internal staff and for the utility paying customers of Ontario. Because of these significant changes, staff is proactively preparing a strategy to identify changes and to communicate these in a change management program. It is imperative that a well-prepared and coordinated effort is made to formulate and manage the message going out to both internal staff and the public. Through the original contract scope, SteelBridge Solutions has been part of the core project team since the project first began in late 2017, working to develop our change management plan at the direction of City leadership. The original $90,000 contract executed under the City Manager's signature authority allowed work to begin and provided time to evaluate the totality of the project's scope requirements in terms of timeline and estimated billable hours. Additional work is now required to maintain the current momentum of the Infinity Implementation project and achieve a system "Go Live" of Spring 2020.

STAFF MEMBER PRESENTING: Elliott Ellsworth, Information Technology Director

Prepared by: Peter Witherow
Department: Information Technology

City Manager Approval:

Submitted to Council/O.H.A. 07/02/2019
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Continued to:
Denied:

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH WESTIN TECHNOLOGY SOLUTIONS FOR PROJECT MANAGEMENT SUPPORT ON CIS INFINITY UTILITY BILLING IMPLEMENTATION

RECOMMENDATION: That the City Council authorize the City Manager to execute an amendment to the existing agreement (on file with the Records Management Department) with Westin Technology Solutions, of Milwaukee, Wisconsin, for project management support on the CIS Infinity Utility Billing Implementation adding $97,240 to their existing contract raising the not to exceed limit to $195,380.

COUNCIL GOALS: **Operate in a Businesslike Manner**

FISCAL IMPACT: This amendment increases the total authorized contract amount from $98,140 to $195,380. The Fiscal Year 2018-19 Adopted Capital Improvement Program includes appropriations in the amount of $80,240 in the Enterprise Funds and $115,140 in the Information Technology Fund for these services which will be carried over to Fiscal Year 2019-20 as part of the First Quarter Budget Update Report.

BACKGROUND: In February 2018, the City retained the services of Westin Technology Solutions for the Planning and Design phases of the project for $98,140. Westin's expertise in the Planning and Design phases added value and helped the project stay on track by recommending tighter milestones and deliverables dates for the vendor, AUS, and providing valuable input for mobile (paperless field orders) and customer self-service information design, along with interface development for Finance, GIS, and parts and equipment inventories. These benefits will enhance our utility customers' overall experience.

As the City enters the Test Phase of the project, staff recommends utilizing Westin Technology's services to: assist the Project Team with Implementation Management and Test Preparation Management support in evaluating current "best practices" in utilities; offer testing scenario recommendations; and provide project management support. Completion of the Test Phase is expected to cost $97,240 for Westin's scope of work, bringing the new total contract authority to $195,380 ($98,140 plus $97,240). Through this CIS project implementation, the City is proactively working to improve the utility customer service experience

STAFF MEMBER PRESENTING: Armen Harkalyan, Executive Director of Finance

Prepared by:	Delilah Patterson	Submitted to Council/O.H.A.	07/02/2019
Department:	Revenue Services	Approved:	
		Continued to:	
City Manager Approval:		Denied:	

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and enhance field operations to better serve our citizens and businesses. Westin Technology Solutions has been a key project partner, and extending their work scope to the Test Phase will ensure continuity during the CIS system implementation.

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: AWARD OF DESIGN SERVICE AGREEMENTS FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES

RECOMMENDATION: That the City Council and Housing Authority approve and authorize the City Manager to execute three-year Design Service Agreements (on file in the Records Management Department) with: Community Works Design Group of Riverside, California; David Volz Design of Costa Mesa, California; RJM Design Group, Inc. of San Juan Capistrano, California; and Withers & Sandgren, Ltd. of Chatsworth, California; and authorize the City Manager to extend the agreements for up to two additional years consistent with City Council approved budgets.

COUNCIL GOALS: **Focus Resources in Ontario's Commercial and Residential Neighborhoods**
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities

FISCAL IMPACT: The Adopted Fiscal Year 2019-20 Operating Budget includes appropriations for these services. Consultants will be compensated for on-call, as-needed services at the fixed hourly rates as set forth in their respective agreements. The total compensation paid to any of the consultants in any year under the term of these agreements will be commensurate with the City Council approved work plans and budgets.

All firms have agreed to fixed hourly rates set forth in their respective agreements for three years. At the City's discretion, up to two additional one-year extensions may be executed. Pricing for the option years will be negotiated, and any proposed fee increases will not exceed 3% per year.

BACKGROUND: In the furtherance of City Council goals and priority work program projects, City staff are routinely in need of landscape architectural services that cannot be provided by City staff. The services to be provided by the firms include, but are not limited to, landscape architectural, mechanical engineering, structural engineering, civil engineering, electrical engineering, hydro-engineering, CEQA analysis, topographic and boundary surveying, erosion control and storm water pollution prevention plans, master planning, grant writing support and management support services.

STAFF MEMBER PRESENTING: Tito Haes, Executive Director Public Works

Prepared by: Stacy Orton
Department: Public Works

City Manager Approval:

Submitted to Council/O.H.A. 07/02/2019
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Continued to:
Denied:

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Staff is recommending on-call contracts with four qualified professional landscape architect firms. Contracting with four firms will assure a cost-effective option and sufficient resources are always available for projects and task orders as they may arise. The execution of these agreements does not guarantee any specific level of payment or assignment to any firm. The pre-selection of firms based on qualifications permits the assignment of tasks based on best value or based on specialized expertise or availability, as needed. In addition, staff is recommending that all contracts be executed between the firms and the City and Housing Authority, so that any City agency can make use of these services for their respective projects.

On April 5, 2019, the City solicited request for proposals for professional landscape architectural on-call services; and received ten responses form the following firms:

COMPANY	LOCATION
Architerra Design Group	Rancho Cucamonga, CA
Cornerstone Studios, Inc.	Santa Ana, CA
Community Works Design Group	**Riverside, CA**
David Volz Design	**Costa Mesa, CA**
Hirsch & Associates, Inc.	Anaheim, CA
Integration Design Studio	Carlsbad, CA
Peridian International, Inc.	Newport Beach, CA
RJM Design Group, Inc.	**San Juan Capistrano, CA**
RHA Landscape Architects Planners, Inc.	Riverside, CA
Withers & Sandgren, Ltd.	**Chatsworth, CA**

Using a qualifications-based selection process, the proposals were reviewed and scored by City staff according to the scoring criteria outlined in the RFP. The criteria consisted of the firm's profile, staffing, project experience and references. After reviewing and rating each of the responses, staff from the Public Works Agency interviewed the top five firms.

Community Works Design Group, David Volz Design, RJM Design Group, Inc. and Withers and Sandgren, Ltd., were judged to be the most qualified firms. As such, they are being recommended based on their broad range of expertise as demonstrated by their services provided to municipal agencies and capability to perform the work in a timely manner.

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN APPLICATION FOR THE USED OIL PAYMENT PROGRAM CYCLE 10 (FISCAL YEAR 2019-20) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

RECOMMENDATION: That the City Council adopt a resolution approving a grant application for an estimated $49,000 from the Used Oil Payment Program Cycle 10 (Fiscal Year 2019-20) through the State of California Department of Resources Recycling and Recovery (CalRecycle); and authorize the City Manager or his designee to execute all necessary documents to participate in the program.

COUNCIL GOALS: **Pursue City's Goals and Objectives by Working with Other Governmental Agencies**

FISCAL IMPACT: The City is eligible to receive approximately $49,000 in per capita funding through the Used Oil Payment Program to fund qualifying expenses made between July 1, 2019 and June 30, 2021. There are no additional costs and no matching funds required from the City to participate in this grant program. If approved, the additional appropriations and corresponding revenue will be included in the first quarter budget update report. There is no impact to the General Fund.

BACKGROUND: The California Oil Recycling Enhancement Act provides annual payments to local governments for the implementation of used oil and filter collection programs. The costs covered by this program include, educational and public outreach materials, staff safety training and support for collections and operations at the City's Household Hazardous Waste Collection Facility located at 1430 South Cucamonga Avenue. The program will assist the City in achieving the goals set by the State of California to reduce the amount of waste sent to the landfills by 50%. Used oil recycling and household hazardous waste collection are integral programs that help in attaining this goal.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by:	Thomas Coates	Submitted to Council/O.H.A.	07/02/2019
Department:	MU/Solid Waste	Approved:	
		Continued to:	
City Manager Approval:		Denied:	

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE SUBMITTAL OF AN ANNUAL APPLICATION TO PARTICIPATE IN THE USED OIL PAYMENT PROGRAM CYCLE 10 (FISCAL YEAR 2019-20) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE).

WHEREAS, pursuant to Public Resources Code §48690 the Department of Resources Recycling and Recovery (CalRecycle) has established the Used Oil Payment Program to make payments to qualifying jurisdictions for implementation of their used oil programs; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the administration of the Used Oil Payment Program; and

WHEREAS, CalRecycle's procedures for administering the Used Oil Payment Program require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the Used Oil Payment Program,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario authorizes the submittal of a Used Oil Payment Program application to CalRecycle.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and empowered to execute in the name of the City of Ontario all documents, including but not limited to applications, agreements annual reports including expenditure reports and amendments necessary to secure said payments to support the Used Oil Payment Program.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of July 2019.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
COLE HUBER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2019- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held July 2, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2019- duly passed and adopted by the Ontario City Council at their regular meeting held July 2, 2019.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO WATER AND WASTEWATER MATTERS

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute an agreement (on file with Records Management) with Nossaman LLP of Los Angeles, California, for legal and technical services with respect to matters relating to sewer disposal, water supply and water rights; and authorize up to four one-year extensions consistent with City Council approved budgets.

COUNCIL GOALS: **Invest in the City's Infrastructure** (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The agreement provides for services to be provided on an as-needed basis with expenditures limited to City Council approved budget appropriations each year in the Water/Wastewater Operating Funds. Any increases to the billing rates during the optional extensions of the agreement will be negotiated at the City's discretion and shall not exceed 3 percent per year. There is no impact to the General Fund.

BACKGROUND: The City has historically used Nossaman LLP for legal and technical representation regarding sewer disposal, water supply and water rights matters. There are several critical multi-year efforts in process as well as emerging regional topics planned over the next several years. The proposed agreement will ensure service continuity in dealing with these and other water and sewer related matters critical to preserving and managing Ontario's utility resources and services to the community.

One of the multi-year efforts in process is the update to the Optimum Basin Management Plan (OBMP), which will include a management plan to address groundwater storage issues within the Chino Basin. Another multi-year effort set to begin in Fiscal Year 2019-20 is the resetting of groundwater supply capacity (Safe Yield) and related rights by the Chino Basin Watermaster. This effort is required by the Watermaster Court and is the second time the Safe Yield has been adjusted since the Chino Basin was adjudicated in 1978.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by:	Katie Gienger	Submitted to Council/O.H.A.	07/02/2019
Department:	MU/Water Resources	Approved:	
		Continued to:	
City Manager Approval:		Denied:	

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Another ongoing effort is related to the City's wastewater treatment and water reclamation services. The member agencies of the Inland Empire Utilities Agency (IEUA), including Ontario, executed a Regional Sewer Service Contract with IEUA nearly 50 years ago, which expires in 2022. Among other things, the agreement established the terms for wastewater treatment, recycled water rights and related costs for these services. The member agencies and IEUA are currently engaged in negotiation of a new, updated contract to take effect when the current contract expires. The negotiations address current issues to reflect the needs of IEUA and the member agencies in order to provide reliable and cost-effective services to the public. Continuity of legal and technical services is critical in bringing these, and other water/wastewater matters, to a conclusion.

CITY OF ONTARIO

Agenda Report
July 2, 2019

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO RECEIVE AND RESPOND TO PUBLIC COMMENT ON THE REPORT OF THE CITY'S WATER QUALITY RELATIVE TO PUBLIC HEALTH GOALS

RECOMMENDATION: That the City Council receive and respond to public comment on the Report of the City's Water Quality Relative to Public Health Goals.

COUNCIL GOALS: **Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)**

FISCAL IMPACT: This is an informational item, and there is no impact on the General Fund.

BACKGROUND: The Public Health Goal Report is a requirement of the Calderon-Sher California Safe Drinking Water Act of 1996 and California Health and Safety Code Section 116470 which mandate that all public water systems with 10,000 or more service connections prepare such a written report every three years. The report is designed to provide information on any primary drinking water standards that were detected above the established Public Health Goal (PHG). This report serves as supplemental information to the City's required Annual Water Quality Reports which are made available to the public via the City's website at the end of each June. A comparison of detectable levels of constituents against State and Federally adopted Maximum Contaminant Levels (MCLs) is also included.

Ontario delivers water that meets or exceeds the State Board and US EPA MCLs to all its customers.

This report assesses the quality of the City's drinking water against applicable Public Health Goals (PHGs) published by the California Environmental Protection Agency (Cal EPA), including the Office of Environmental Health Hazard Assessment (OEHHA), State Water Resources Control Board (CA State Board), and nine Regional Water Quality Control Boards. Constituents that do not have a PHG are subjected to Maximum Contaminant Level Goals (MCLGs) as an alternative measure, which are set by the US Environmental Protection Agency (US EPA); and are the federal equivalent to PHGs in California. Ontario strives to meet PHGs and MCLGs when technologically and economically feasible

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by:	Joline Neal	Submitted to Council/O.H.A.	07/02/2019
Department:	MU/Environmental Programs	Approved:	
		Continued to:	
City Manager Approval:		Denied:	

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since those thresholds are below the regulated Maximum Contaminant Levels (MCLs). MCLs are the governing water standards that all public water systems must meet, and Ontario's water system meets or exceeds those water quality standards.

There are over ninety California primary drinking water MCL's and seventy-six Federal primary drinking water MCLs that have been established and set by the CA State Board and US EPA. The CA State Board can choose to enforce the MCLs of drinking water standards at the same concentration levels as US EPA or at a lower concentration level. The CA State Board cannot, however, raise the MCLs of drinking water standards above the concentrations set at the federal level.

The following table summarizes the information provided in the report relative to the four constituents that were detected above the recommended "PHG" (but, again, below the applicable MCL's). It should be noted that in all other of the more than one hundred areas measured, OMUC met the established goals as well as meeting all water quality mandated standards.

Constituent *(Listed Alphabetically)*	**PHG/MCLG** *("Goal")*	**MCL** *(Regulatory Maximum)*	**Ontario Reported Levels**
Arsenic	0.004 part per billion	10.00 parts per billion	Range of 0 to 2.3 parts per billion
1,2-Dibromo-3-chloropropane (DBCP)	1.7 parts per trillion	200 parts per trillion	Range of 0 to 37 parts per trillion
Perchlorate	1.0 part per billion	6.0 parts per billion	Range of 0 to 4.9 parts per billion
Total Coliform Bacteria (Distribution System)	0.0% of positive total coliform samples taken during a single month	5.0% of positive total coliform samples taken during a single month	0.7% of positive total coliform samples taken during a single month

The Ontario Municipal Utilities Company will continue to monitor and operate its wells at levels below the regulatory MCLs, maintain the Domestic Water Supply Permit issued by the CA State Board, and therefore no required actions are recommended at this time.

CITY OF ONTARIO

2019 Public Health Goal Report

PWSID: CA3610034

Prepared by: Ontario Municipal Utilities Company

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INTRODUCTION

The Calderon-Sher Safe Drinking Water Act of 1996 and California Health and Safety Code §116470(b)(2) requires public water systems serving more than 10,000 connections to prepare a report every three years regarding water quality measurements that exceeded a Public Health Goal (PHG). In addition, this report provides cost estimates to remove the contaminant or reduce the concentration of the contaminant to a level at or below the PHG. Further explored are the associated health risks for each detected contaminant that exceeded a PHG.

CALIFORNIA'S DRINKING WATER REGULATORY PROCESS

California Health and Safety Code §116365 requires the State Water Resources Control Board (CA State Board) to adopt primary drinking water standards for contaminants in drinking water that are based upon the following criteria: 1) shall not be less stringent than the national primary drinking water standards adopted by the United States Environmental Protection Agency (US EPA); 2) shall be set at a level that is as close as feasible to the corresponding PHG, which places emphasis on the protection of public health; and 3) is technologically and economically feasible. In some cases, it may not be practical to set a contaminant's Maximum Contaminant Level (MCL) with the same PHG concentration level for the technology may not be available or is not cost-effective.

PUBLIC HEALTH GOALS

PHGs are used to support California's primary drinking water standards (i.e., MCLs) established by the CA State Board for contaminants subject to regulation. Feasibility measures such as cost and available technologies are considered when establishing PHGs. The Calderon-Sher Safe Drinking Water Act further requires OEHHA to publish PHGs based on health risk assessments using the most current scientific methods. PHGs are health risk assessments and are not considered regulatory drinking water standards; non-enforceable goals established by OEHHA. Risk assessment is a four step process used by OEHHA that consists of the following components: hazard identification, exposure assessment, dose-response assessment, and risk characterization.

In the risk characterization process, information developed in the previous steps are brought together to estimate the risk of health effects in an exposed population (e.g., cancer risk versus non-cancer risk). Cancer risk is often expressed as the maximum number of new cases of cancer projected to occur in a population of one million people due to exposure to the cancer-causing substance over a 70-year lifetime. For example, a cancer risk of one in one million means that in a population of one million people, not more than one additional person would be expected to develop cancer as the result of the exposure to the substance causing that risk.[1] This is usually expressed as no more than a one-in-one-million excess cancer risk (1×10^{-6}) level for a lifetime of exposure. Acute and chronic toxicities are also considered in the cancer-risk assessment. Non-cancer risk assumes that a "safe exposure level does exist" (EPA, 2015).

For carcinogens in drinking water, PHGs are set at a concentration that does not pose any *significant* risk to health. PHGs for non-carcinogenic contaminants in drinking water are based on "levels estimated to be

[1]California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. A Guide to Health Assessment, 2001. https://oehha.ca.gov/media/downloads/risk-assessment/document/hrsguide2001.pdf.

without risk of any adverse effects for exposures up to a lifetime, to the general population as well as any significant identifiable sensitive subpopulations" (OEHHA, 2015). These levels are often referred to as health reference levels and are set much lower than the levels of exposure that are usually found during studies.

MAXIMUM CONTAMINANT LEVEL GOALS

Contaminants that do not have an associated PHG shall use the federal Maximum Contaminant Level Goals (MCLGs) which are set by the US Environmental Protection Agency (US EPA). MCLGs are not identical to PHGs and are only the federal equivalent to PHGs in California. MCLGs, like PHGs, are strictly health based and include a margin of safety.

The difference lies with MCLGs for carcinogens. US EPA follows a general procedure when promulgating MCLGs: Group A & B carcinogens (i.e., strong evidence of carcinogenicity) MCLS are set to zero; Group C (i.e., limited evidence of carcinogenicity), uses two different approaches: 1) a reference dose for non-carcinogen and an uncertainty factor is applied, or 2) quantitative methods such as potency or low-dose extrapolation is used and the MCLG is set in the 10^{-5} to 10^{-6} cancer risk range; and Group D (i.e., inadequate or no animal evidence) uses a reference dose approach to promulgate the MCLG. Public water systems are not required to meet MCLGs.

GUIDELINES FOLLOWED

Health risk information for PHG exceedance reports was prepared by OEHHA and published February 2019. This document assists public water systems in providing the required health risk categories and cancer risk values for chemical contaminants in drinking water that have PHGs and where applicable, MCLGs.

The Association of California Water Agencies (ACWA) formed a work group which prepared guidelines for water utilities to use in preparing these required reports. The ACWA guidelines were used in preparation of our report. No further guidance was available from state regulatory agencies.

DETECTION LEVELS

In California, each contaminant is standardized against a quantified level known as the "detection level for purposes of reporting" (DLR). The DLR represents the designated minimum concentration level either at or above which any analytical finding of a contaminant in drinking water, resulting from water quality measurements, is reported to the CA State Board. This allows the DLR for a contaminant's result to be reported with confidence.

Detection is based upon the analytical method's ability to quantify at a concentration level that is reliable and absolute. Analytical results below the DLR are considered "non-detected" even if an analytical method has a lower detection limit. Most contaminants have PHGs that are below the DLR. However, there are a few contaminants that have the same PHG and DLR concentration levels. In the case of MCLGs, these concentration levels are set at zero or equal to the drinking water standard's MCL.

QUALIFYING ANALYTICAL RESULTS

Inorganic and organic contaminants are measured by comparing weight to volume and is commonly expressed as either milligrams per liter (mg/L), micrograms per liter (µg/L), or nanograms per liter (ng/L).

One milligram per liter is one part per million (ppm) which is equivalent to approximately one second in 11.5 days or one drop in 13.5 gallons. Similarly, one part per billion (ppb) is one microgram per liter which is comparable to approximately one second in 32 years or one drop in 13,563 gallons. Lastly, one part per trillion (ppt) is one nanograms per liter and is comparable to one second in 32,000 years or one drop in 13,563,368 gallons.

Total coliforms are qualitative measurements based upon the presence or absence of total coliform bacteria. A percentage is calculated based upon the number of total coliform bacteria present divided by the total number of total coliform bacteriological samples collected for the month.

TREATMENT TECHNOLOGIES AND COSTS

BEST AVALIABLE TECHNOLOGY

Best Available Technologies (BATs) are known treatment methods that reduce a contaminant's concentration level to the MCL. Since PHGs and MCLGs are established at relatively low concentrations, the most available treatment technology may not be able to reduce a contaminant near the PHG or MCLG, especially when many are set at or near a concentration level of absolute zero. Additionally, installation of a treatment technique to reduce the concentrations of a contaminant may have adverse effects on other water quality parameters. To reduce a contaminant to a concentration level at or below the PHG is difficult, if not impossible, and are highly speculative and theoretical. Current analytical methods cannot verify concentration levels at or near absolute zero and therein provides a direction for analytical methods to be further explored.

COST ESTIMATES

Treatment costs are calculated using each well's production capacity operating at 365 days per year. The cost estimates for specific treatment technologies do not include other factors such as permitting and waste disposal. Treatment technologies differ from one another and generate different types of waste. Some waste disposal costs are known and can be estimated as part of routine operation and maintenance. Others that require a direct discharge to the Non-Reclaimable Waste System or hauling of potentially hazardous waste are best suited as a case-by-case scenario.

Furthermore, a treatment system must be approved by the CA State Board and requires the Ontario Municipal Utilities Company to conduct an assessment of potential environmental impacts. Results of the assessment could possibly add significant costs to mitigate potential concerns, or preclude using a specific treatment technology altogether.

CITY OF ONTARIO'S DRINKING WATER

The Ontario Municipal Utilities Company purchases and imports treated surface water from Water Facilities Authority (WFA). Treated groundwater from Chino Basin Desalter Authority (CDA) is also purchased and imported into the City of Ontario. The Ontario Municipal Utilities Company maintains and operates eighteen (18) active local groundwater wells and two treatment facilities. Water quality measurements from WFA and CDA are not included in this report but can be found in our Consumer Confidence Reports from 2016

to 2018 located on the City of Ontario's website at https://www.ontarioca.gov/municipal-utilities-company/utilities/water-quality-report.

CONTAMINANTS EXCEEDING A HEALTH GOAL

The following discussion explores contaminants that were detected in the City of Ontario's drinking water above an applicable PHG or MCLG during the reporting period of January 1st, 2016 to December 31st, 2018. If a PHG has not been established, the MCLG is used to determine if a contaminant's detection exceeded a health goal.

ARSENIC

Arsenic is an element that is found naturally in air, water, soil, rocks and minerals, food, and living organisms at low concentrations. Since arsenic is found everywhere, low concentrations are present in almost all foods and drinking water sources. Weathering of rocks and minerals are the primary sources of arsenic found in drinking water. Arsenic represents 0.0001 percent among the elements in the Earth's crust; however, it is widely distributed and commonly associated with ores of metals (e.g., copper, lead, and gold). Other sources of arsenic that can enter drinking water supplies include urban runoff, pesticides, fly ash from power plants, treated wood, municipal and industrial waste disposal sites, and smelting and mining wastes.[2]

In California, under the Safe Drinking Water and Toxic Enforcement Act (also known as Proposition 65), arsenic was one of the first chemicals listed as known to cause cancer or reproductive harm. The US EPA finalized a regulatory standard for arsenic at an MCL of 10ppb in 2001 (previously, the regulatory MCL standard was 50ppb). The MCL was established at this level in order to protect consumers against the effects of long-term, chronic exposure to arsenic in drinking water.

Arsenic is present as both organic and inorganic arsenic. Organic arsenic is excreted as either unchanged or metabolized in the human body. Inorganic arsenic is absorbed and converted by the liver to more toxic forms and excreted in the urine. Arsenic does not accumulate in the body. Associated health risks with long-term exposure to inorganic arsenic through drinking water are high risks of lung and bladder cancer and, to a lesser extent, increased risk of cancer of the skin, liver, and kidneys. Chronic arsenic exposure may damage the liver and nerves as well as development of skin abnormalities (e.g., discoloration and unusual growths that may become cancerous). Other serious health effects include developmental defects, stillbirth, and spontaneous abortion along with heart attacks, strokes, diabetes mellitus, and high blood pressure.[2] The numerical health risk at the PHG level is one additional theoretical cancer case per one million people whereas the numerical health risk at the MCL level is 2.5 additional theoretical cancer cases per one thousand people.

The PHG concentration level for arsenic is 0.004ppb while the DLR is established at 2ppb. Arsenic concentration levels in the City of Ontario's drinking water are well below the regulatory standard. Water quality measurements ranged from no detections to 2.3ppb; only one well was detected above the DLR for arsenic (Appendix A).

[2]Alexeeff, George V. and Fan, Anna M. "Public Health Goal for Arsenic in Drinking Water." *Office of Environmental Health Hazard Assessment, California Environmental Protection Agency,* April 2004. https://oehha.ca.gov/media/downloads/water/public-health-goal/asfinal.pdf.

BAT options to reduce arsenic below the MCL are coagulation and filtration, ion exchange, and reverse osmosis. Should the Ontario Municipal Utilities Company employ coagulation and filtration as a treatment technology, then the aggregate cost per year would approximately be $766,000. This would result in an increased cost per household per year to $22.26. Implementation of ion exchange technology would provide an aggregate cost approximately at $2.1 million per year, of while the cost per household per year would increase up to $60.68. If reverse osmosis is commissioned, then this would result in an aggregate cost per year to approximately $6.9 million. Each household per year would increase up to $202.77.

Currently, it is unknown if any of these three technologies could actually provide a low level reduction of arsenic to the PHG. It is not practical nor feasible to estimate cost for the reduction of arsenic at this time. The Ontario Municipal Utilities Company will continue to monitor and operate the local groundwater wells at levels below the regulatory MCL as per the Domestic Drinking Water Supply Permit issued by the CA State Board. No further action is required at this time.

1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

DBCP was originally produced by the Dow Chemical Company under the trade name Fumazone. The Shell Development Company also introduced DBCP under the trade name "OS 1897." DBCP was developed as a soil fumigant for the control of plant parasitic nematodes. The major agricultural use was on soybeans. In 1977, the US EPA suspended registration of products containing DBCP and California suspended agricultural usages. It was not until 1985, that the US EPA issued an intent to cancel all registrations for DBCP-containing pesticide products. Today, small amounts are used for research purposes and as an intermediate in organic synthesis.[3]

The US EPA has classified DBCP as a B2 carcinogen; probably carcinogenic to humans. Under Proposition 65, DBCP is listed as a chemical known to cause cancer and male reproductive toxicity. Acute toxic effects in humans is related to exposure of DBCP via inhalation and/or dermal. Symptoms of acute exposure include dyspnea, drowsiness, nausea, vomiting, abdominal cramps, diarrhea, irritations to the eye, skin and respiratory system, central nervous system depression, and death. Chronic toxicity in humans is limited to the reports regarding reproductive and carcinogenic effects. DBCP has a PHG at 17ppt. The numerical health risk at the PHG is one additional theoretical cancer case per one million people. Likewise, the numerical health risk at the MCL level is one additional theoretical cancer case per ten-thousand people.

The regulatory drinking water standard (MCL) for DBCP is 200ppt. Quantifying DBCP analytically is set at a DLR of 10ppt. There are two local groundwater wells that show detections of DBCP at low concentration levels and are treated at the John Galvin Treatment Facility. A final blend is produced prior to entry into the distribution system. DBCP concentration levels in the final blend have ranged from non-detect to 37ppt. These detections have been well below the regulatory standard (Appendix B).

Approved BAT options to reduce DBCP to concentration levels below the MCL are granular activated carbon and packed tower aeration. Should granular activated carbon technology be considered for the John Galvin Treatment Facility, then the aggregate cost per year would range up to $2.8 million. Each household per year would increase up to $82.92 per year. If packed tower aeration were to be

[3]Alexeeff, George V. and Fan, Anna M. "Public Health Goal for 1,2-Dibromo-3-chloropropane (DBCP) in Drinking Water." *Office of Environmental Health Hazard Assessment, California Environmental Protection Agency,* February 1999. https://oehha.ca.gov/media/downloads/water/chemicals/phg/dbcpf.pdf.

considered, then the aggregate cost per year would range up to $522,000. The increased cost for each household per year would range up to $15.18. Although these technologies are approved for contaminant reduction at or below the regulatory MCL, it is currently unknown if reduction to the PHG concentration level can be achieved at this time.

The Ontario Municipal Utilities Company will continue to monitor and operate the John Galvin Treatment Facility below the regulatory MCL as per the Domestic Drinking Water Supply Permit issued by the CA State Board. No further action is required at this time.

PERCHLORATE

Perchlorate is an environmental contaminant that is everywhere. Naturally, perchlorate is formed by sunlight or lightening interacting with oxygen and chlorine in the atmosphere, and falls into the earth via rain. Industrial applications involving perchlorate and its release into the environment are from highway flares, fireworks and other explosives, and rocket fuel. Perchlorate salts have been widely used as an oxidizer in solid propellants for rockets and missiles since the mid-1940s. Populations are most exposed to perchlorate through consumption of water and food.[4]

Perchlorate has been extensively studied in human populations over the past few decades. Prior studies have shown perchlorate inhibits the uptake of iodide in the human thyroid gland, resulting in decreased production levels of thyroid hormones. The thyroid gland uses iodide as a key component to producing thyroid hormones, which are used for "a variety of basic human physiological functions, including controlling basal metabolic rates; protein, carbohydrate, and fat metabolism; protein synthesis; proper differentiation and development of cells; and the cognitive and physical development of the fetus, infant, and child" (OEHHA, 2015).

In February 2015, OEHHA reduced the PHG concentration level from 6ppb (established in 2004) to 1ppb. The 2015 perchlorate PHG provided new information that would consider fetus, infants, and children. Studies published after the established 2004 PHG revealed the following information: 1) infants are significantly more susceptible to perchlorate than healthy adults; 2) for fetuses, infants and children, there exists a potential for abnormal growth and development; and 3) in infants, decreases in thyroid hormone production is related to decreases in IQ. No current numerical health risks at the PHG or MCL concentration level exist at this time. The DLR and MCL has remained unchanged at 4ppb and 6ppb, respectively. Perchlorate concentration levels in the City of Ontario's drinking water have ranged from no detections to 4.9ppb (Appendix C).

BAT options to reduce perchlorate concentration levels below the MCL are Ion Exchange and Biological Fluidized Bed Reactor. The Ontario Municipal Utilities Company already provides well-head treatment using ion exchange for three local groundwater wells that have historically demonstrated perchlorate concentrations near or above eighty percent (80%) of the MCL. If the Ontario Municipal Utilities Company decide to commission additional well-head treatment facilities for all local groundwater wells via ion exchange, then the aggregate costs would increase per year to $17 million. Each household would see an increase per year up to $502.84. If the Ontario Municipal Utilities Company decided to implement fluidized

[4]California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Public Health Goal for Perchlorate in Drinking Water*, February 2015. https://oehha.ca.gov/media/downloads/water/public-health-goal/perchloratephgfeb2015.pdf.

bed reactor as a technology to reduce perchlorate concentrations in the City of Ontario's local groundwater wells, then the aggregate costs would increase up to $38 million per year. Each household per year would see an increase ranging up to $1,106.24. It is well known that ion exchange media has contaminant binding sites that compete with other contaminants, of which provides uncertainty that ion exchange can consistently reduce perchlorate concentrations at or below the 2015 PHG. Furthermore, it is uncertain if fluidized bed reactors can achieve consistent perchlorate reduction at or below the 2015 PHG.

Perchlorate is monitored extensively in all of the City of Ontario's local groundwater wells and treatment facilities. The Ontario Municipal Utilities Company will continue to monitor and operate these local groundwater wells and treatment facilities at levels below the regulatory MCL concentration level as per the Domestic Water Supply Permit issued by the CA State Board. No further action is required at this time.

TOTAL COLIFORMS (DISTRIBUTION SYSTEM)

Water systems that collect over forty (40) samples per month are subjected to the MCL of no more than five percent (5%) of samples collected per month can be positive for total coliforms. California currently does not have an established PHG concentration level for this contaminant group. The MCLG is used instead and is currently established by US EPA at zero percent positive (0%).

A drinking water standard is necessary to improve public health by reducing fecal pathogens to minimal levels through control of total coliform bacteria, including fecal coliform bacteria and *E. coli*. Total coliforms are a group of microorganism used as surrogate indicators for the potential presence of pathogens (organisms that cause waterborne diseases), therefore it is not possible to quantify a numerical health risk.

Total Coliform bacteria are ubiquitous in nature and are generally considered not harmful. They are used because of their ease in monitoring and analysis. If a positive sample is detected, it indicates a potential problem that must be investigated with follow-up monitoring. It is not unusual for a water system to have an occasional positive sample for total coliforms. It is difficult, if not impossible, to assure that a system will never detect a positive sample.

Local groundwater is chlorinated to ensure water served is microbiologically safe for consumption and bodily contact. Chlorine residuals must be monitored and maintained daily in order to provide the best protection to health without causing undesirable taste and odor issues or increasing disinfection byproducts. The addition of chlorine is a crucial balance to the treatment process as well as providing customers with a safe and reliable drinking water supply.

During the 2016 to 2018 reporting period (Appendix D), the Ontario Municipal Utilities Company collected between 147 to 185 samples per month for total coliform bacteria. The highest monthly percentage of positive total coliform bacteria is 0.7%. Fecal coliform bacteria and *E. coli* have never been detected positive in the City of Ontario's drinking water.

Other measures that the Ontario Municipal Utilities Company has implemented include protection of wells from coliform contamination in the form of placement and construction, an effective cross-connection program, maintenance of a disinfectant residual and positive pressure throughout the distribution system, and a monitoring and surveillance program. The Ontario Municipal Utilities Company already performs all best available technologies, treatment techniques, or other means available for achieving compliance with

the total coliform MCL as described in California's Code of Regulations, Title 22, Division 4, Chapter 15, Article 12, §64447. No further actions required at this time.

RECOMMENDATIONS

The Ontario Municipal Utilities Company is committed to providing a safe and reliable supply of high-quality drinking water in an economical, efficient, and responsible manner. The drinking water quality provided to the City of Ontario meets all State and Federal drinking water standards set to protect public health. Further reduction of contaminant concentration levels identified in this report, which are already considerably below the health-based MCL established for "safe drinking water," will significantly increase cost per year for additional treatment processes. Effectiveness of the treatment processes to provide any substantial reduction in contaminant concentration levels to achieve PHG levels or provide further health protection benefits to our customers is uncertain.

REFERENCES

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2. Alexeeff, George V. and Fan, Anna M. "Public Health Goal for Arsenic in Drinking Water." *Office of Environmental Health Hazard Assessment, California Environmental Protection Agency,* April 2004. https://oehha.ca.gov/media/downloads/water/public-health-goal/asfinal.pdf. Accessed 21 March 2019.

3. Association of California Water Agencies. *Suggested Guidelines for Preparation of Required Reports on Public Health Goals (PHGs) to Satisfy Requirement of California Health and Safety Code Section 116470(b)*, March 2016.

4. United States Environmental Protection Agency. *Sustainable Futures / P2 Framework Manual 2012 EPA-748-B12-001*, May 2015. https://www.epa.gov/sites/production/files/2015-05/documents/13.pdf.

5. California's Code of Regulations, Title 22, Division 4, Chapter 15. October 1st, 2018. https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Lawbook.html.

6. California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *A Guide to Health Risk Assessment*, 2001. https://oehha.ca.gov/media/downloads/risk-assessment/document/hrsguide2001.pdf. Accessed 21 March 2019.

7. California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Public Health Goal for Perchlorate in Drinking Water*, February 2015. https://oehha.ca.gov/media/downloads/water/public-health-goal/perchloratephgfeb2015.pdf. Accessed 22 March 2019.

8. City of Ontario's Consumer Confidence Reports. 2016-2018. https://www.ontarioca.gov/municipal-utilities-company/utilities/water-quality-report.

APPENDICES

1. Appendix A: 2016 – 2018 Reporting Period for Arsenic.
2. Appendix B: 2016 – 2018 Reporting Period for 1,2-Dibromo-3-chloropropane (DBCP).
3. Appendix C: 2016 – 2018 Reporting Period for Perchlorate.
4. Appendix D: 2016 – 2018 Reporting Period for Total Coliform (Distribution System).

APPENDIX A

2016 – 2018 REPORTING PERIOD FOR ARSENIC

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ONTARIO MUNICIPAL UTILITIES COMPANY

Arsenic Monitoring Data

Monitoring Location	Monitoring Date	Arsenic
3610034-020: Well 24	07/19/2017	<2.0 ppb
3610034-021: Well 25	07/12/2017	<2.0 ppb
3610034-025: Well 29	07/06/2017	<2.0 ppb
3610034-026: Well 30	07/19/2017	<2.0 ppb
3610034-027: Well 31	07/06/2017	<2.0 ppb
3610034-030: Well 35	04/20/2017	<2.0 ppb
3610034-031: Well 36	07/12/2017	<2.0 ppb
3610034-032: Well 37	07/19/2017	<2.0 ppb
3610034-034: Well 38	07/12/2017	<2.0 ppb
3610034-041: Well 40	07/12/2017	2.3 ppb
3610034-042: Well 41	07/03/2017	<2.0 ppb
3610034-043: Well 44	07/03/2017	<2.0 ppb
3610034-045: Well 45	07/19/2017	<2.0 ppb
3610034-046: Well 46	07/06/2017	<2.0 ppb
3610034-048: Well 47	08/03/2017	<2.0 ppb
3610034-049: Well 49	07/12/2017	<2.0 ppb
3610034-050: Well 50	02/01/2017	<2.0 ppb
3610034-044: Well 52	07/03/2017	<2.0 ppb

Arsenic Regulatory Information	Summary of Arsenic Monitoring	
MCL: 10 ppb	Maximum:	2.3 ppb
PHG: 0.004 ppb	Minimum:	<2.0 ppb
CA State Board DLR: 2.0 ppb	Average:	0.1 ppb

APPENDIX B

2016 – 2018 REPORTING PERIOD FOR 1,2-DIBROMO-3-CHLOROPROPANE (DBCP)

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ONTARIO MUNICIPAL UTILITIES COMPANY

2016 to 2018 Monitoring Data: 1,2-Dibromo-3-chloropropane (DBCP)

Monitoring Location	Monitoring Date	1,2-Dibromo-3-chloropropane (DBCP)
3610034-020: Well 24	07/19/2017	<10 ppt
3610034-021: Well 25	07/12/2017	<10 ppt
3610034-025: Well 29	07/06/2017	<10 ppt
3610034-026: Well 30	07/19/2017	<10 ppt
3610034-027: Well 31	07/06/2017	<10 ppt
3610034-030: Well 35	04/20/2017	<10 ppt
3610034-031: Well 36	07/12/2017	<10 ppt
3610034-032: Well 37	07/19/2017	<10 ppt
3610034-034: Well 38	07/12/2017	<10 ppt
3610034-042: Well 41	07/03/2017	<10 ppt
3610034-045: Well 45	07/19/2017	<10 ppt
3610034-046: Well 46	07/06/2017	<10 ppt
3610034-048: Well 47	08/03/2017	<10 ppt
3610034-049: Well 49	07/12/2017	<10 ppt
3610034-047: IX Final Product Effluent	04/12/2017	27 ppt
3610034-047: IX Final Product Effluent	05/01/2017	26 ppt
3610034-047: IX Final Product Effluent	06/05/2017	12 ppt
3610034-047: IX Final Product Effluent	07/03/2017	22 ppt
3610034-047: IX Final Product Effluent	09/05/2017	21 ppt
3610034-047: IX Final Product Effluent	10/02/2017	11 ppt
3610034-047: IX Final Product Effluent	11/13/2017	23 ppt
3610034-047: IX Final Product Effluent	04/23/2018	30 ppt
3610034-047: IX Final Product Effluent	05/07/2018	21 ppt
3610034-047: IX Final Product Effluent	06/05/2018	<10 ppt
3610034-047: IX Final Product Effluent	12/18/2018	37 ppt

Note: 3610034-047: IX Final Product Effluent is a blend from Wells 44 & 52

DBCP Regulatory Information	Summary of DBCP Monitoring	
MCL: 200 ppt	Maximum:	37 ppt
PHG: 1.7 ppt	Minimum:	<10 ppt
CA State Board DLR: 10 ppt	Average:	8.8 ppt

APPENDIX C

2016 – 2018 REPORTING PERIOD FOR PERCHLORATE

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ONTARIO MUNICIPAL UTILITIES COMPANY

2016 to 2018 Monitoring Data: Perchlorate

Monitoring Location	Monitoring Date	Perchlorate
3610034-020: Well 24	07/05/2016	0.4 ppb
3610034-020: Well 24	07/19/2017	0.4 ppb
3610034-020: Well 24	08/01/2018	0.5 ppb
3610034-021: Well 25	07/14/2016	2.8 ppb
3610034-021: Well 25	07/12/2017	2.0 ppb
3610034-021: Well 25	07/25/2018	3.0 ppb
3610034-025: Well 29	01/13/2016	0.9 ppb
3610034-025: Well 29	06/16/2016	0.8 ppb
3610034-025: Well 29	07/28/2016	0.8 ppb
3610034-025: Well 29	08/09/2016	0.6 ppb
3610034-025: Well 29	08/18/2016	0.6 ppb
3610034-025: Well 29	08/22/2016	0.7 ppb
3610034-025: Well 29	08/29/2016	0.6 ppb
3610034-025: Well 29	09/06/2016	0.7 ppb
3610034-025: Well 29	09/12/2016	0.7 ppb
3610034-025: Well 29	09/20/2016	0.7 ppb
3610034-025: Well 29	09/28/2016	0.6 ppb
3610034-025: Well 29	10/03/2016	0.7 ppb
3610034-025: Well 29	10/11/2016	0.8 ppb
3610034-025: Well 29	10/18/2016	0.7 ppb
3610034-025: Well 29	10/24/2016	0.8 ppb
3610034-025: Well 29	10/31/2016	0.8 ppb
3610034-025: Well 29	11/07/2016	0.6 ppb
3610034-025: Well 29	11/15/2016	0.7 ppb
3610034-025: Well 29	01/25/2017	0.8 ppb
3610034-025: Well 29	04/04/2017	1.0 ppb
3610034-025: Well 29	07/06/2017	1.4 ppb
3610034-025: Well 29	12/28/2017	1.9 ppb
3610034-025: Well 29	01/11/2018	1.1 ppb
3610034-025: Well 29	06/28/2018	<1.9 ppb
3610034-025: Well 29	07/02/2018	1.0 ppb
3610034-025: Well 29	07/12/2018	1.2 ppb
3610034-025: Well 29	07/16/2018	1.2 ppb
3610034-025: Well 29	07/25/2018	1.0 ppb
3610034-025: Well 29	07/30/2018	1.1 ppb
3610034-025: Well 29	08/06/2018	0.9 ppb
3610034-025: Well 29	08/13/2018	0.8 ppb
3610034-025: Well 29	08/20/2018	0.9 ppb

Monitoring Location	Monitoring Date	Perchlorate
3610034-025: Well 29	12/27/2018	1.0 ppb
3610034-026: Well 30	07/14/2016	1.0 ppb
3610034-026: Well 30	07/19/2017	1.5 ppb
3610034-026: Well 30	07/12/2018	2.2 ppb
3610034-027: Well 31	01/13/2016	4.2 ppb
3610034-027: Well 31	06/16/2016	2.9 ppb
3610034-027: Well 31	07/28/2016	2.9 ppb
3610034-027: Well 31	11/02/2016	3.2 ppb
3610034-027: Well 31	01/26/2017	3.0 ppb
3610034-027: Well 31	05/24/2017	2.8 ppb
3610034-027: Well 31	06/15/2017	3.6 ppb
3610034-027: Well 31	06/19/2017	3.1 ppb
3610034-027: Well 31	06/26/2017	3.4 ppb
3610034-027: Well 31	07/06/2017	3.1 ppb
3610034-027: Well 31	07/10/2017	3.9 ppb
3610034-027: Well 31	07/17/2017	3.3 ppb
3610034-027: Well 31	07/25/2017	2.7 ppb
3610034-027: Well 31	12/28/2017	3.2 ppb
3610034-027: Well 31	03/29/2018	3.8 ppb
3610034-027: Well 31	04/04/2018	3.7 ppb
3610034-027: Well 31	09/27/2018	2.9 ppb
3610034-027: Well 31	10/03/2018	2.8 ppb
3610034-029: Well 34	07/14/2016	0.6 ppb
3610034-030: Well 35	12/20/2016	3.3 ppb
3610034-030: Well 35	02/06/2017	2.4 ppb
3610034-030: Well 35	04/20/2017	1.7 ppb
3610034-030: Well 35	04/20/2017	1.8 ppb
3610034-030: Well 35	07/06/2017	2.3 ppb
3610034-030: Well 35	10/04/2017	1.7 ppb
3610034-030: Well 35	01/11/2018	3.9 ppb
3610034-030: Well 35	01/24/2018	1.8 ppb
3610034-030: Well 35	04/11/2018	2.0 ppb
3610034-030: Well 35	07/12/2018	2.0 ppb
3610034-030: Well 35	10/10/2018	1.4 ppb
3610034-031: Well 36	07/05/2016	0.5 ppb
3610034-031: Well 36	07/12/2017	0.6 ppb
3610034-031: Well 36	07/25/2018	0.6 ppb
3610034-032: Well 37	07/14/2016	2.5 ppb
3610034-032: Well 37	07/19/2017	2.7 ppb
3610034-032: Well 37	07/25/2018	3.3 ppb
3610034-034: Well 38	07/14/2016	0.4 ppb

Monitoring Location	Monitoring Date	Perchlorate
3610034-034: Well 38	07/12/2017	0.4 ppb
3610034-034: Well 38	07/12/2018	0.7 ppb
3610034-040: Well 39	05/19/2016	4.0 ppb
3610034-040: Well 39	05/20/2016	4.0 ppb
3610034-040: Well 39	06/03/2016	4.0 ppb
3610034-040: Well 39	06/06/2016	3.7 ppb
3610034-040: Well 39	07/15/2016	4.3 ppb
3610034-040: Well 39	07/18/2016	4.0 ppb
3610034-040: Well 39	07/21/2016	4.2 ppb
3610034-040: Well 39	07/25/2016	4.9 ppb
3610034-040: Well 39	08/04/2016	3.6 ppb
3610034-040: Well 39	08/08/2016	3.8 ppb
3610034-040: Well 39	08/10/2016	3.6 ppb
3610034-040: Well 39	08/23/2016	3.5 ppb
3610034-040: Well 39	08/29/2016	3.6 ppb
3610034-040: Well 39	08/31/2016	3.4 ppb
3610034-040: Well 39	09/02/2016	3.8 ppb
3610034-040: Well 39	09/05/2016	3.9 ppb
3610034-040: Well 39	09/07/2016	3.7 ppb
3610034-040: Well 39	09/09/2016	4.0 ppb
3610034-040: Well 39	09/12/2016	4.0 ppb
3610034-040: Well 39	09/14/2016	3.7 ppb
3610034-040: Well 39	09/16/2016	3.6 ppb
3610034-040: Well 39	09/21/2016	2.0 ppb
3610034-040: Well 39	10/11/2016	3.5 ppb
3610034-040: Well 39	10/31/2018	4.7 ppb
3610034-041: Well 40	01/11/2016	1.4 ppb
3610034-041: Well 40	05/10/2016	1.3 ppb
3610034-041: Well 40	05/18/2016	0.9 ppb
3610034-041: Well 40	05/24/2016	1.0 ppb
3610034-041: Well 40	06/09/2016	1.4 ppb
3610034-041: Well 40	06/14/2016	1.2 ppb
3610034-041: Well 40	06/21/2016	1.0 ppb
3610034-041: Well 40	06/27/2016	1.1 ppb
3610034-041: Well 40	07/07/2016	1.1 ppb
3610034-041: Well 40	07/12/2016	0.9 ppb
3610034-041: Well 40	07/18/2016	1.0 ppb
3610034-041: Well 40	07/28/2016	1.0 ppb
3610034-041: Well 40	08/02/2016	0.8 ppb
3610034-041: Well 40	08/09/2016	0.7 ppb
3610034-041: Well 40	10/27/2016	1.4 ppb

Monitoring Location	Monitoring Date	Perchlorate
3610034-041: Well 40	02/07/2017	1.6 ppb
3610034-041: Well 40	04/19/2017	1.6 ppb
3610034-041: Well 40	07/12/2017	1.3 ppb
3610034-041: Well 40	11/01/2017	1.6 ppb
3610034-041: Well 40	11/06/2017	1.4 ppb
3610034-041: Well 40	11/13/2017	1.6 ppb
3610034-041: Well 40	11/21/2017	1.2 ppb
3610034-041: Well 40	11/28/2017	1.3 ppb
3610034-041: Well 40	12/04/2017	1.2 ppb
3610034-041: Well 40	12/11/2017	1.6 ppb
3610034-041: Well 40	12/18/2017	1.2 ppb
3610034-041: Well 40	12/27/2017	1.0 ppb
3610034-041: Well 40	01/03/2018	1.2 ppb
3610034-041: Well 40	01/08/2018	2.6 ppb
3610034-041: Well 40	01/16/2018	1.2 ppb
3610034-041: Well 40	01/22/2018	1.3 ppb
3610034-041: Well 40	01/29/2018	1.1 ppb
3610034-041: Well 40	02/05/2018	1.4 ppb
3610034-041: Well 40	02/12/2018	1.1 ppb
3610034-041: Well 40	02/20/2018	1.0 ppb
3610034-041: Well 40	02/26/2018	0.9 ppb
3610034-041: Well 40	03/05/2018	1.0 ppb
3610034-041: Well 40	03/12/2018	1.2 ppb
3610034-041: Well 40	03/20/2018	1.2 ppb
3610034-041: Well 40	03/26/2018	1.3 ppb
3610034-041: Well 40	04/02/2018	1.1 ppb
3610034-041: Well 40	04/09/2018	1.1 ppb
3610034-041: Well 40	04/16/2018	1.0 ppb
3610034-041: Well 40	04/23/2018	0.9 ppb
3610034-041: Well 40	04/30/2018	1.0 ppb
3610034-041: Well 40	05/07/2018	1.1 ppb
3610034-041: Well 40	05/14/2018	1.4 ppb
3610034-041: Well 40	05/21/2018	1.1 ppb
3610034-041: Well 40	05/29/2018	1.8 ppb
3610034-041: Well 40	06/04/2018	1.0 ppb
3610034-041: Well 40	06/11/2018	1.0 ppb
3610034-041: Well 40	06/18/2018	0.9 ppb
3610034-041: Well 40	06/25/2018	0.8 ppb
3610034-041: Well 40	07/02/2018	0.9 ppb
3610034-041: Well 40	07/09/2018	1.1 ppb
3610034-041: Well 40	07/16/2018	1.1 ppb

Monitoring Location	Monitoring Date	Perchlorate
3610034-041: Well 40	07/23/2018	1.1 ppb
3610034-041: Well 40	07/30/2018	0.9 ppb
3610034-041: Well 40	08/06/2018	1.2 ppb
3610034-041: Well 40	08/13/2018	0.8 ppb
3610034-041: Well 40	08/20/2018	0.8 ppb
3610034-041: Well 40	09/17/2018	0.9 ppb
3610034-041: Well 40	09/24/2018	0.7 ppb
3610034-041: Well 40	10/01/2018	0.9 ppb
3610034-041: Well 40	10/09/2018	0.6 ppb
3610034-041: Well 40	10/16/2018	0.8 ppb
3610034-045: Well 45	07/05/2016	1.9 ppb
3610034-045: Well 45	07/19/2017	2.0 ppb
3610034-045: Well 45	08/01/2018	2.3 ppb
3610034-046: Well 46	07/05/2016	1.0 ppb
3610034-046: Well 46	07/06/2017	1.3 ppb
3610034-046: Well 46	10/18/2018	1.4 ppb
3610034-048: Well 47	07/05/2016	1.7 ppb
3610034-048: Well 47	08/03/2017	2.1 ppb
3610034-048: Well 47	08/01/2018	2.5 ppb
3610034-049: Well 49	07/14/2016	0.9 ppb
3610034-049: Well 49	07/12/2017	0.8 ppb
3610034-049: Well 49	07/12/2018	1.3 ppb
3610034-047: IX Final Product Effluent	04/12/2017	2.7 ppb
3610034-047: IX Final Product Effluent	04/17/2017	3.4 ppb
3610034-047: IX Final Product Effluent	04/24/2017	1.3 ppb
3610034-047: IX Final Product Effluent	05/01/2017	1.2 ppb
3610034-047: IX Final Product Effluent	05/08/2017	2.3 ppb
3610034-047: IX Final Product Effluent	05/15/2017	2.3 ppb
3610034-047: IX Final Product Effluent	05/22/2017	2.4 ppb
3610034-047: IX Final Product Effluent	05/30/2017	1.8 ppb
3610034-047: IX Final Product Effluent	06/05/2017	1.6 ppb
3610034-047: IX Final Product Effluent	06/12/2017	2.2 ppb
3610034-047: IX Final Product Effluent	06/19/2017	2.1 ppb
3610034-047: IX Final Product Effluent	06/26/2017	3.0 ppb
3610034-047: IX Final Product Effluent	07/03/2017	2.4 ppb
3610034-047: IX Final Product Effluent	07/10/2017	2.6 ppb
3610034-047: IX Final Product Effluent	07/19/2017	2.9 ppb
3610034-047: IX Final Product Effluent	07/25/2017	2.9 ppb
3610034-047: IX Final Product Effluent	07/31/2017	2.3 ppb
3610034-047: IX Final Product Effluent	08/08/2017	2.9 ppb
3610034-047: IX Final Product Effluent	08/14/2017	3.1 ppb

Monitoring Location	Monitoring Date	Perchlorate
3610034-047: IX Final Product Effluent	08/21/2017	2.6 ppb
3610034-047: IX Final Product Effluent	08/28/2017	3.0 ppb
3610034-047: IX Final Product Effluent	09/05/2017	3.2 ppb
3610034-047: IX Final Product Effluent	09/11/2017	2.0 ppb
3610034-047: IX Final Product Effluent	09/18/2017	1.8 ppb
3610034-047: IX Final Product Effluent	09/25/2017	2.0 ppb
3610034-047: IX Final Product Effluent	10/02/2017	1.4 ppb
3610034-047: IX Final Product Effluent	10/10/2017	2.1 ppb
3610034-047: IX Final Product Effluent	10/18/2017	2.5 ppb
3610034-047: IX Final Product Effluent	10/23/2017	1.5 ppb
3610034-047: IX Final Product Effluent	10/30/2017	1.8 ppb
3610034-047: IX Final Product Effluent	11/06/2017	2.4 ppb
3610034-047: IX Final Product Effluent	11/13/2017	3.3 ppb
3610034-047: IX Final Product Effluent	04/19/2018	3.0 ppb
3610034-047: IX Final Product Effluent	04/23/2018	2.5 ppb
3610034-047: IX Final Product Effluent	04/30/2018	2.7 ppb
3610034-047: IX Final Product Effluent	05/07/2018	2.5 ppb
3610034-047: IX Final Product Effluent	05/16/2018	4.1 ppb
3610034-047: IX Final Product Effluent	05/22/2018	3.9 ppb
3610034-047: IX Final Product Effluent	05/30/2018	2.8 ppb
3610034-047: IX Final Product Effluent	06/05/2018	2.6 ppb
3610034-047: IX Final Product Effluent	06/14/2018	2.8 ppb
3610034-047: IX Final Product Effluent	12/18/2018	3.2 ppb
3610034-047: IX Final Product Effluent	12/26/2018	3.4 ppb
3610034-053: Well 41 IX Finished Blend	10/18/2016	2.0 ppb
3610034-053: Well 41 IX Finished Blend	10/24/2016	1.9 ppb
3610034-053: Well 41 IX Finished Blend	06/23/2017	0.7 ppb
3610034-053: Well 41 IX Finished Blend	06/26/2017	0.7 ppb
3610034-053: Well 41 IX Finished Blend	07/03/2017	0.8 ppb
3610034-053: Well 41 IX Finished Blend	07/10/2017	0.7 ppb
3610034-053: Well 41 IX Finished Blend	07/17/2017	1.1 ppb
3610034-053: Well 41 IX Finished Blend	07/25/2017	0.7 ppb
3610034-053: Well 41 IX Finished Blend	07/31/2017	1.1 ppb
3610034-053: Well 41 IX Finished Blend	08/08/2017	0.7 ppb
3610034-053: Well 41 IX Finished Blend	08/14/2017	0.7 ppb
3610034-053: Well 41 IX Finished Blend	08/21/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	08/28/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	09/05/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	09/11/2017	0.7 ppb
3610034-053: Well 41 IX Finished Blend	09/18/2017	0.7 ppb
3610034-053: Well 41 IX Finished Blend	09/25/2017	0.6 ppb

Monitoring Location	Monitoring Date	Perchlorate
3610034-053: Well 41 IX Finished Blend	10/04/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	10/10/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	10/16/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	10/23/2017	0.5 ppb
3610034-053: Well 41 IX Finished Blend	11/01/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	11/06/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	11/13/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	11/21/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	11/28/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	12/04/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	12/11/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	12/18/2017	1.3 ppb
3610034-053: Well 41 IX Finished Blend	12/27/2017	0.6 ppb
3610034-053: Well 41 IX Finished Blend	01/03/2018	0.6 ppb
3610034-053: Well 41 IX Finished Blend	01/08/2018	0.5 ppb
3610034-053: Well 41 IX Finished Blend	01/16/2018	0.6 ppb
3610034-053: Well 41 IX Finished Blend	01/22/2018	0.5 ppb
3610034-053: Well 41 IX Finished Blend	01/29/2018	0.5 ppb
3610034-053: Well 41 IX Finished Blend	02/05/2018	0.7 ppb
3610034-053: Well 41 IX Finished Blend	02/12/2018	0.6 ppb
3610034-053: Well 41 IX Finished Blend	02/20/2018	0.6 ppb
3610034-053: Well 41 IX Finished Blend	02/26/2018	<0.5 ppb
3610034-053: Well 41 IX Finished Blend	03/05/2018	0.6 ppb
3610034-053: Well 41 IX Finished Blend	03/12/2018	1.2 ppb
3610034-053: Well 41 IX Finished Blend	03/20/2018	1.2 ppb
3610034-053: Well 41 IX Finished Blend	03/26/2018	1.2 ppb
3610034-053: Well 41 IX Finished Blend	04/02/2018	2.0 ppb
3610034-053: Well 41 IX Finished Blend	04/30/2018	1.6 ppb
3610034-053: Well 41 IX Finished Blend	05/07/2018	1.3 ppb
3610034-053: Well 41 IX Finished Blend	05/14/2018	1.3 ppb
3610034-053: Well 41 IX Finished Blend	05/21/2018	1.3 ppb
3610034-053: Well 41 IX Finished Blend	05/29/2018	0.9 ppb
3610034-053: Well 41 IX Finished Blend	06/04/2018	1.3 ppb
3610034-053: Well 41 IX Finished Blend	06/11/2018	2.0 ppb
3610034-053: Well 41 IX Finished Blend	06/18/2018	1.2 ppb
3610034-053: Well 41 IX Finished Blend	06/25/2018	1.3 ppb
3610034-053: Well 41 IX Finished Blend	07/02/2018	1.3 ppb
3610034-053: Well 41 IX Finished Blend	07/09/2018	<0.5 ppb
3610034-053: Well 41 IX Finished Blend	07/16/2018	1.3 ppb
3610034-053: Well 41 IX Finished Blend	07/23/2018	1.4 ppb
3610034-053: Well 41 IX Finished Blend	07/31/2018	1.1 ppb

Monitoring Location	Monitoring Date	Perchlorate
3610034-053: Well 41 IX Finished Blend	08/06/2018	1.0 ppb
3610034-053: Well 41 IX Finished Blend	08/13/2018	0.9 ppb
3610034-053: Well 41 IX Finished Blend	08/20/2018	1.1 ppb
3610034-053: Well 41 IX Finished Blend	08/27/2018	1.0 ppb
3610034-053: Well 41 IX Finished Blend	09/04/2018	0.9 ppb
3610034-053: Well 41 IX Finished Blend	09/10/2018	1.0 ppb
3610034-053: Well 41 IX Finished Blend	09/17/2018	0.8 ppb
3610034-053: Well 41 IX Finished Blend	09/24/2018	0.7 ppb
3610034-053: Well 41 IX Finished Blend	10/01/2018	0.9 ppb
3610034-053: Well 41 IX Finished Blend	10/09/2018	0.8 ppb
3610034-053: Well 41 IX Finished Blend	10/16/2018	0.8 ppb

Note: 3610034-047: IX Final Product Effluent is a blend from Wells 44 & 52

Perchlorate Regulatory Information	Summary of Perchlorate Monitoring	
MCL: 6 ppb	Maximum:	4.9 ppb
PHG: 1 ppb	Minimum:	<0.5 ppb
CA State Board DLR: 4 ppb	Average:	1.7 ppb

APPENDIX D

2016 – 2018 REPORTING PERIOD FOR TOTAL COLIFORM (DISTRIBUTION SYSTEM)

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ONTARIO MUNICIPAL UTILITIES COMPANY

2016 to 2018 Monitoring Data: Total Coliforms (Distribution System)

Month / Year	# of Samples / % Positive*	Month / Year	# of Samples / % Positive*	Month / Year	# of Samples / % Positive*
January 2016:	145 / 0.0%	January 2017:	178 / 0.0%	January 2018:	185 / 0.0%
February 2016:	162 / 0.0%	February 2017:	147 / 0.0%	February 2018:	147 / 0.0%
March 2016:	168 / 0.6%	March 2017:	147 / 0.0%	March 2018:	147 / 0.0%
April 2016:	144 / 0.0%	April 2017:	139 / 0.0%	April 2018:	167 / 0.0%
May 2016:	162 / 0.0%	May 2017:	178 / 0.0%	May 2018:	165 / 0.0%
June 2016:	161 / 0.0%	June 2017:	150 / 0.0%	June 2018:	148 / 0.0%
July 2016:	142 / 0.0%	July 2017:	165 / 0.0%	July 2018:	185 / 0.0%
August 2016:	179 / 0.0%	August 2017:	166 / 0.0%	August 2018:	148 / 0.0%
September 2016:	147 / 0.0%	September 2017:	147 / 0.0%	September 2018:	153 / 0.7%
October 2016:	162 / 0.0%	October 2017:	182 / 0.0%	October 2018:	185 / 0.0%
November 2016:	168 / 0.0%	November 2017:	148 / 0.0%	November 2018:	147 / 0.0%
December 2016:	143 / 0.0%	December 2017:	150 / 0.0%	December 2018:	148 / 0.0%

* % Positive is based upon the number of positive detections divided by the amount of samples taken during that month mulitplied by 100%.

Total Coliforms Regulatory Information		Summary of Total Coliforms Monitoring
MCL: No more than 5% positive per month		Maximum: 0.7% (September 2018)
MCLG: Zero	PHG: None	Minimum: 0.0%
CA State Board DLR: Present /Absent		Average: 0.0%

2019 Public Health Goal Report

City Officials

Mayor

Paul S. Leon

Mayor pro Tem

Ruben Valencia

Council Members

Alan D. Wapner

Jim W. Bowman

Debra Dorst-Porada

City Manager

Scott Ochoa

Utilities General Manager

Scott Burton

ONTARIO MUNICIPAL UTILITIES COMPANY

1425 South Bon View Avenue | Ontario, CA 91761 | (909) 395-2600 | http://www.ontarioca.gov/

CITY OF ONTARIO

Agenda Report

July 2, 2019

SECTION:
PUBLIC HEARINGS

SUBJECT: **A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING AN AMENDMENT TO THE CITY OF ONTARIO MUNICIPAL CODE, REVISING SECTION 4-6.1009 TO ADD PROVISIONS PROHIBITING THE OVERNIGHT PARKING OF COMMERCIAL VEHICLES IN RESIDENTIAL ZONING DISTRICTS**

ITEM CONTINUED TO
July 16, 2019

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