



AGENDA

REGULAR MEETING

*** * ***

CLAYTON CITY COUNCIL

*** * ***

TUESDAY, August 17, 2021

7:00 P.M.

***** NEW LOCATION*****

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19 and the Governor's Executive Orders N-25-20 and N-29-20 that allow members of the City Council, City staff and the public to participate and conduct a meeting by teleconference, videoconference or both. In order to comply with public health orders, the requirement to provide a physical location for members of the public to participate in the meeting has been suspended.

Mayor: Carl Wolfe

Vice Mayor: Peter Cloven

Council Members

Jim Diaz

Holly Tillman

Jeff Wan

- A complete packet of information containing staff reports and exhibits related to each public item is available for public review on the City's website at www.ci.clayton.ca.us
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- Any writings or documents provided to a majority of the City Council after distribution of the Agenda Packet and regarding any public item on this Agenda is available for review on the City's website at www.ci.clayton.ca.us
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7300.

Instructions for Virtual City Council Meeting – August 17

To protect our residents, officials, and staff, and aligned with the Governor’s executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

To follow or participate in the meeting:

1. **Videoconference:** to follow the meeting on-line, click here to register:

https://us02web.zoom.us/webinar/register/WN_bVID0Hu8Q_qaj8HU0uQ23A

After clicking on the URL, please take a few seconds to submit your first and last name, and e-mail address then click “Register”, which will approve your registration and a new URL to join the meeting will appear.

Phone-in: Once registered, you will receive an e-mail with instructions to join the meeting telephonically, and then dial Telephone: 877 853 5257 (Toll Free)

2. using the *Webinar ID* and *Password* found in the e-mail.

E-mail Public Comments: If preferred, please e-mail public comments to the City Clerk, Ms. Calderon at icalderon@ci.clayton.ca.us by 5 PM on the day of the City Council meeting. All E-mail Public Comments will be forwarded to the entire City Council.

For those who choose to attend the meeting via videoconferencing or telephone shall have 3 minutes for public comments.

Location:

Videoconferencing Meeting (this meeting via teleconferencing is open to the public)

To join this virtual meeting on-line click here:

https://us02web.zoom.us/webinar/register/WN_bVID0Hu8Q_qaj8HU0uQ23A

To join on telephone, you must register in the URL above, which sends an e-mail to your inbox, and then dial (877) 853-5257 using the *Webinar ID* and *Password* found in the e-mail.

*** CITY COUNCIL ***

August 17, 2021

1. **CALL TO ORDER AND ROLL CALL** – Mayor Wolfe.

2. **MEETING PROTOCOL VIDEO**– City Clerk

3. **PLEDGE OF ALLEGIANCE** – led by Councilmember Diaz.

4. **CONSENT CALENDAR**

Consent Calendar items are typically routine in nature and are considered for approval by one single motion of the City Council. Members of the Council, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question, discussion or alternative action may request so through the Mayor.

(a) Approve the minutes of the City Council's regular meeting of August 3, 2021.
(City Clerk) ([View here](#))

(b) Approve the Financial Demands and Obligations of the City. (Finance) ([View here](#))

(c) Adopt A Resolution: 1) Approving the Purchase of Thirty-One Portable and Mobile Radios for the City's Police Department to Replace the Existing Radios; 2) Approving the Non-Competitive Procurement due to Exemptions; 3) Authorizing the City Manager to Execute a Lease Agreement in the Amount of \$234,673.46; and 4) Appropriating \$33,525 from the Rainy-Day Fund in FY2021/22 for the First Lease Payment. (Police Chief) ([View here](#))

(d) Adopt Resolution ##-2021 Designating City Personnel Authorized to Invest Monies in the Local Agency Investment Fund (LAIF) and Resolution ##-2021 Designating City Personnel Authorized to Invest Monies in the UBS Account.
(Interim Finance Director) ([View here](#))

5. **RECOGNITIONS AND PRESENTATIONS** – None.

6. **REPORTS**

(a) City Manager/Staff

(b) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

7. PUBLIC COMMENT ON NON - AGENDA ITEMS

Members of the public may address the City Council on items within the Council's jurisdiction, (which are not on the agenda) at this time. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Mayor's discretion. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Council may respond to statements made or questions asked, or may at its discretion request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the City Council.

8. PUBLIC HEARINGS – None.

9. ACTION ITEMS

- (a) Designation of Voting Delegate and Alternate Delegate for League of California Cities 2021 Annual Conference being held September 22 through 24, in Sacramento and the City's position on the two (2) League Conference General Resolutions. (City Clerk) ([View here](#))
- (b) Resolution of the City Council of the City of Clayton, CA Adopting a General Fund Reserve Policy. (City Manager) ([View here](#))
- (c) Presentation, Discussion & Direction to Staff Regarding Use of the American Rescue Plan Act Funds. (City Manager) ([View here](#))

10. COUNCIL ITEMS – limited to Council requests and directives for future meetings.

- 11. ADJOURNMENT** - the City Council meeting of September 7, 2021 has been canceled.
- The next regularly scheduled meeting of the City Council will be September 21, 2021 -

#

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL
TUESDAY, August 3, 2021

1. **CALL TO ORDER THE CITY COUNCIL** – The meeting was called to order at 7:00 p.m. by Mayor Wolfe on a virtual web meeting and telephonically (877) 853-5257. Councilmembers present: Mayor Wolfe, Vice Mayor Cloven, and Councilmembers Diaz, Tillman, and Wan (joined at 7:01 p.m.). Councilmembers absent: None. Staff present: City Manager Reina Schwartz, City Attorney Mala Subramanian, and City Clerk/HR Manager Janet Calderon.
2. **MEETING PROTOCOL VIDEO** – City Clerk.
3. **PLEDGE OF ALLEGIANCE** – led by Councilmember Diaz.
4. **CONSENT CALENDAR**

It was moved by Councilmember Diaz, seconded by Vice Mayor Cloven, to approve the Consent Calendar items as submitted. (Passed 5-0).
 - (a) Approved the minutes of the City Council’s regular meeting of July 20, 2021. (City Clerk)
 - (b) Approved the Financial Demands and Obligations of the City. (Finance)
 - (c) Adopted Resolution No. 49-2021 Authorizing the Levy for Fiscal Year 2021/22 for Community Facility District No. 1990-1R, 2007 Special Tax Revenue Refunding Bonds (Middle School). (Assistant to the City Manager).
 - (d) Adopted Resolution No. 50-2021 Authorizing the Third Amendment to an Existing Agreement with Harris & Associates for Professional Engineering Services Including Designating a New City Engineer. (City Manager)
5. **RECOGNITIONS AND PRESENTATIONS** – None.
6. **REPORTS**
 - (a) City Manager/Staff

City Manager Reina Schwartz provided information on Councilmember Diaz’ request at the last City Council meeting regarding the Clayton Pioneer payment and provided some brief information regarding the Clayton Business and Community Association.

Councilmember Diaz also provided a brief statement regarding the Clayton Business and Community Association.

(b) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Diaz attended the memorial service for Richard Rainey, the Wednesday Classic Car Show and DJ event, the Concerts in The Grove, met with the City Manager, and met with the Police Chief.

Vice Mayor Cloven attended the Cal Cities East Bay Division meeting, the Clayton Business and Community Association mixer, thanked Howard Geller and Jim Diaz for their efforts with the Concerts in The Grove, met with Senator Glazer along with Councilmember Tillman regarding SB9 and SB10, met with city staff and the City Manager.

Councilmember Tillman attended the Cal Cities East Bay Division meeting, met with the Mt Diablo Unified School District Board along with the City Manager and Mayor, attended the Clayton Business and Community Association mixer, met with Senator Glazer, met with neighboring Councilmember Edi Birsan and Councilmember Carlyn Obringer, and will be meeting with other Elected Officials, School Board members, and the District Attorney.

Councilmember Wan called and emailed constituents.

Mayor Wolfe attended the Cal Cities East Bay Division meeting, met with the City Manager, met with Vice Mayor Cloven, attended the Concerts in The Grove, attended the Clayton Community Library book sale, met with the Mount Diablo Unified School District Board along with the Mayors and City Managers within the district, and met with Concord Mayor McGallian who has postponed in person City Council meetings in Concord until further notice.

Councilmember Diaz advised developer of The Olivia project has listed its property for sale.

7. PUBLIC COMMENT ON NON - AGENDA ITEMS

Keith Haydon provided a brief update to current County Connection promotions.

Terri Denslow, Clayton Business and Community Association Treasurer, provided an update regarding recent allegations, noting an extension to October 15 was requested for filing of the 2020 tax documents.

Edward Hartley clarified some allegations made regarding the Clayton Business and Community Association.

Frank Gavidia expressed his concerns with the Clayton Business and Community Association's financial documents.

Keith Haydon, member of Clayton Business and Community Association expressed his concerns regarding the misleading allegations.

Bassam Altwal expressed his concerns of a Planning Commissioner actions and accused a Councilmember of sharing confidential information.

Councilmember Wan responded to Mr. Altwal's remarks

Councilmember Diaz responded to Mr. Altwal's remarks.

Councilmember Tillman requested clarification of the City's financial role regarding Concerts in The Grove and 4th of July Parade.

Scott Denslow expressed his dissatisfaction with a couple of Councilmembers actions.

Councilmember Diaz responded to Mr. Denslow's remarks.

Mayor Wolfe closed public comment.

8. **PUBLIC HEARINGS** – None.

9. **ACTION ITEMS**

- (a) Adopt a Resolution of the City Council Establishing City Protocol for the Honoring and Recognition of Citizens, Volunteers, Employees and Elected Officials. (City Manager)

City Manager Reina Schwartz presented the report.

Following questions by City Council, Mayor Wolfe opened the item to public comment.

Frank Gavidia expressed support of the policy and recommended Elected Officials who receive a monthly stipend should not receive additional recognition.

Bassam Altwal expressed his dissatisfaction with a Planning Commissioner.

Karen Amos expressed support of the guidelines and inquired on donations made by community members toward recognition gifts for Elected Officials.

Mayor Wolfe closed public comment.

Vice Mayor Cloven moved to adopt the policy as written.

Councilmember Wan is not supportive of the policy as written and suggested Elected Officials receive nothing from tax dollars.

Councilmember Diaz seconded Vice Mayor Cloven's motion.

After further discussion, Councilmember Diaz withdrew his second.

Vice Mayor Cloven modified his motion sans Exhibit A.

It was moved by Vice Mayor Cloven, seconded by Councilmember Tillman to Adopt Resolution No. 51-2021 Establishing City Protocol for the Honoring and Recognition of Citizens, Volunteers, and Employees to be administered by the City Manager and City Clerk, as amended. (5-0; Passed)

- (b) Discussion of Rejection of Liability Claim Filed by Maryam Maheri for the Alleged Property Damage. (Councilmember Diaz)

City Manager Reina Schwartz presented the report.

Following questions by City Council, Mayor Wolfe opened the item to public comment; no comments were offered.

City Council provided direction to staff.

- (c) Update to Recognition of Cultural Heritage Months and Other Significant Celebrations. (City Manager)

City Manager Reina Schwartz presented the report.

Following questions by City Council, Mayor Wolfe opened the item to public comment; no comments were offered.

It was moved by Councilmember Wan, seconded by Councilmember Diaz to remove Columbus Day and Juneteenth from the Recognition of Cultural Heritage Months and Other Significant Celebrations as they are recognized as Federal Holidays and add Cesar Chavez Day and Armenian Genocide Remembrance Day (5-0; Passed)

- (d) Discussion Regarding Potential Changes to the City's Sign Ordinance. (Councilmember Diaz)

Councilmember Diaz presented the report.

Following questions by City Council, Mayor Wolfe opened the item to public comment.

Frank Gavidia supports First Amendment Rights and encouraged the City Council to make the right decision.

Karen Amos inquired if there are regulations regarding size and placement of signs.

Scott Denslow expressed support of First Amendment Rights.

Mayor Wolfe closed public comment.

No action taken.

- 10. RECESS THE CITY COUNCIL MEETING – Mayor Wolfe**
(until after the conclusion of the Oakhurst Geological Hazard Abatement District meeting)

Mayor Wolfe announced the City Council will adjourn to a Oakhurst Geological Hazard Abatement District Meeting [9:04 p.m.].

- 11. RECONVENE THE CITY COUNCIL MEETING – Mayor Wolfe**

Mayor Wolfe announced the City Council will reconvene the City Council meeting [9:09 p.m.].

12. COUNCIL ITEMS

Councilmember Wan requested the City's website should include scheduled work, including completion dates, and specify areas of responsible in the Landscape Maintenance District.

13. ADJOURNMENT— on call by Mayor Wolfe, the City Council adjourned its meeting at 9:11 p.m.

The next regularly scheduled meeting of the City Council will be August 17, 2021.

#

Respectfully submitted,

Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL

Carl Wolfe, Mayor

#



STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: JENNIFER GIANTVALLEY, ACCOUNTING TECHNICIAN

DATE: 8/17/21

SUBJECT: FINANCIAL DEMANDS AND OBLIGATIONS OF THE CITY

RECOMMENDATION:

It is recommended the City Council, by minute action, approve the financial demands and obligations of the City for the purchase of services and goods in the ordinary course of operations.

Attached Report	Purpose	Date	Amount
Open Invoice Report	Accounts Payable	8/6/2021	\$ 414,456.50
Payroll Reconciliation Summary	Payroll, Taxes	8/6/2021	\$ 83,818.05
		Total Required	\$ 498,274.55

Attachments:

1. Open Invoice Report, dated 8/6/21 (3 pages)
2. Payroll Reconciliation Summary report PPE 8/8/21 (1 page)

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
All-Guard Systems, Inc.								
All-Guard Systems, Inc.	8/1/2021	8/1/2021	AG23835	Annual Fire Alarm test 8/1/21-7/31/22	\$663.12	\$0.00		\$663.12
				<i>Totals for All-Guard Systems, Inc.</i>	<u>\$663.12</u>	<u>\$0.00</u>		<u>\$663.12</u>
Concord Uniforms								
Concord Uniforms	6/28/2021	6/28/2021	18365	PD uniform	\$916.85	\$0.00		\$916.85
				<i>Totals for Concord Uniforms</i>	<u>\$916.85</u>	<u>\$0.00</u>		<u>\$916.85</u>
Contra Costa County - Office of the Sheriff								
Contra Costa County - Office of the She	6/30/2021	6/30/2021	CLPD-2106	Toxicology June 2021	\$150.00	\$0.00		\$150.00
Contra Costa County - Office of the She	6/30/2021	6/30/2021	CLPD-221	Blood withdrawals April-June 2021	\$109.20	\$0.00		\$109.20
				<i>Totals for Contra Costa County - Office of the Sherif.</i>	<u>\$259.20</u>	<u>\$0.00</u>		<u>\$259.20</u>
Contra Costa County Animal Svcs Dept								
Contra Costa County Animal Svcs Dept	7/27/2021	7/27/2021	ASD M7060	Animal Control Q1FY21	\$19,244.56	\$0.00		\$19,244.56
				<i>Totals for Contra Costa County Animal Svcs Dept</i>	<u>\$19,244.56</u>	<u>\$0.00</u>		<u>\$19,244.56</u>
Creative Supports Inc								
Creative Supports Inc	8/2/2021	8/2/2021	27761	Arm caps for chair	\$65.09	\$0.00		\$65.09
				<i>Totals for Creative Supports Inc</i>	<u>\$65.09</u>	<u>\$0.00</u>		<u>\$65.09</u>
Digital Services								
Digital Services	8/5/2021	8/5/2021	11943	IT services 7/7/21-8/4/21	\$1,300.00	\$0.00		\$1,300.00
				<i>Totals for Digital Services</i>	<u>\$1,300.00</u>	<u>\$0.00</u>		<u>\$1,300.00</u>
East Contra Costa County Habitat Conservancy								
East Contra Costa County Habitat Conse	8/2/2021	8/2/2021	1078	Plan Dev Fee - Civic Clayton, LLC/DeNova H	\$291,492.43	\$0.00		\$291,492.43
				<i>Totals for East Contra Costa County Habitat Conservancy</i>	<u>\$291,492.43</u>	<u>\$0.00</u>		<u>\$291,492.43</u>
Galaxy Press								
Galaxy Press	7/27/2021	7/27/2021	34615	PD Business cards	\$116.34	\$0.00		\$116.34
				<i>Totals for Galaxy Press</i>	<u>\$116.34</u>	<u>\$0.00</u>		<u>\$116.34</u>
Geoconsultants, Inc.								
Geoconsultants, Inc.	8/5/2021	8/5/2021	19198	Well monitoring July 2021	\$1,546.50	\$0.00		\$1,546.50
				<i>Totals for Geoconsultants, Inc.</i>	<u>\$1,546.50</u>	<u>\$0.00</u>		<u>\$1,546.50</u>
Greenpoint Ag Holdings, LLC								
Greenpoint Ag Holdings, LLC	8/3/2021	8/3/2021	3349	Refund, business license fee	\$69.00	\$0.00		\$69.00
				<i>Totals for Greenpoint Ag Holdings, LLC</i>	<u>\$69.00</u>	<u>\$0.00</u>		<u>\$69.00</u>
Harris & Associates, Inc.								
Harris & Associates, Inc.	4/23/2021	4/23/2021	48231	Project engineering 2/28/21-4/3/21	\$3,000.00	\$0.00		\$3,000.00
Harris & Associates, Inc.	4/23/2021	4/23/2021	48232	CIP Engineering svcs 2/28/21-4/3/21	\$3,800.00	\$0.00		\$3,800.00
Harris & Associates, Inc.	4/23/2021	4/23/2021	48230	Engineering svcs 2/28/21-4/3/21	\$10,004.03	\$0.00		\$10,004.03

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
<i>Totals for Harris & Associates, Inc.</i>					<i>\$16,804.03</i>	<i>\$0.00</i>		<i>\$16,804.03</i>
HdL Coren & Cone								
HdL Coren & Cone	8/1/2021	8/1/2021	SIN010197	Property Tax Svcs Q1FY22	\$1,822.50	\$0.00		\$1,822.50
<i>Totals for HdL Coren & Cone</i>					<i>\$1,822.50</i>	<i>\$0.00</i>		<i>\$1,822.50</i>
Health Care Dental Trust								
Health Care Dental Trust	6/30/2021	6/30/2021	296203	Dental June 2021	\$1,803.46	\$0.00		\$1,803.46
Health Care Dental Trust	7/31/2021	7/31/2021	298396	Dental July 2021	\$1,683.43	\$0.00		\$1,683.43
Health Care Dental Trust	8/31/2021	8/31/2021	299695	Dental August 2021	\$1,683.43	\$0.00		\$1,683.43
<i>Totals for Health Care Dental Trust</i>					<i>\$5,170.32</i>	<i>\$0.00</i>		<i>\$5,170.32</i>
Moore Iacofano Golstman, Inc								
Moore Iacofano Golstman, Inc	6/30/2021	6/30/2021	70715	Housing element svcs June 2021	\$9,440.82	\$0.00		\$9,440.82
<i>Totals for Moore Iacofano Golstman, Inc</i>					<i>\$9,440.82</i>	<i>\$0.00</i>		<i>\$9,440.82</i>
MSR Mechanical, LLC								
MSR Mechanical, LLC	8/5/2021	8/5/2021	SVC002265	CH HVAC Maint 7/26/21	\$350.00	\$0.00		\$350.00
MSR Mechanical, LLC	8/5/2021	8/5/2021	SVC02264	Library HVAC Maint 7/26/21	\$527.17	\$0.00		\$527.17
MSR Mechanical, LLC	8/5/2021	8/5/2021	SVC002266	EH HVAC maint 7/26/21	\$295.00	\$0.00		\$295.00
<i>Totals for MSR Mechanical, LLC</i>					<i>\$1,172.17</i>	<i>\$0.00</i>		<i>\$1,172.17</i>
PG&E								
PG&E	6/25/2021	6/25/2021	062521	Energy 5/17/21-6/15/21	\$19,246.13	\$0.00		\$19,246.13
PG&E	7/27/2021	7/27/2021	072721	Energy 6/16/21-7/15/21	\$19,591.33	\$0.00		\$19,591.33
PG&E	6/23/2021	6/23/2021	062321	Energy 5/21/21-6/21/21	\$5,344.97	\$0.00		\$5,344.97
PG&E	7/16/2021	7/16/2021	071621	Energy 6/17/21-7/16/21	\$5,457.30	\$0.00		\$5,457.30
<i>Totals for PG&E</i>					<i>\$49,639.73</i>	<i>\$0.00</i>		<i>\$49,639.73</i>
Julie Pierce								
Julie Pierce	8/5/2021	8/5/2021	073121	Concert supplies, band pizza	\$90.80	\$0.00		\$90.80
<i>Totals for Julie Pierce</i>					<i>\$90.80</i>	<i>\$0.00</i>		<i>\$90.80</i>
Scan Nataoa								
Scan Nataoa	7/1/2021	7/1/2021	100.21.153	Scan membership FY 22	\$100.00	\$0.00		\$100.00
<i>Totals for Scan Nataoa</i>					<i>\$100.00</i>	<i>\$0.00</i>		<i>\$100.00</i>
Site One Landscape Supply, LLC								
Site One Landscape Supply, LLC	7/20/2021	7/20/2021	111320689-001	Irrigation parts	\$164.21	\$0.00		\$164.21
<i>Totals for Site One Landscape Supply, LLC</i>					<i>\$164.21</i>	<i>\$0.00</i>		<i>\$164.21</i>
Sprint Comm (PD)								
Sprint Comm (PD)	7/29/2021	7/29/2021	703335311-236	PD cell phones 6/26/21-7/25/21	\$710.72	\$0.00		\$710.72
<i>Totals for Sprint Comm (PD)</i>					<i>\$710.72</i>	<i>\$0.00</i>		<i>\$710.72</i>

City of Clayton

Open Invoice Report

Obligations

Vendor Name	Due Date	Invoice Date	Invoice Number	Invoice Description	Invoice Balance	Potential Discount	Discount Expires On	Net Amount Due
Staples Business Credit								
Staples Business Credit	7/25/2021	7/25/2021	1636936721	Office supplies	\$353.48	\$0.00		\$353.48
				<i>Totals for Staples Business Credit</i>	<u>\$353.48</u>	<u>\$0.00</u>		<u>\$353.48</u>
Stericycle Inc								
Stericycle Inc	8/1/2021	8/1/2021	3005640057	Medical waste disposal	\$68.25	\$0.00		\$68.25
				<i>Totals for Stericycle Inc</i>	<u>\$68.25</u>	<u>\$0.00</u>		<u>\$68.25</u>
TRC Environmental Corporation								
TRC Environmental Corporation	6/30/2021	6/30/2021	486087	Planning svcs FY 2021	\$2,481.35	\$0.00		\$2,481.35
TRC Environmental Corporation	8/4/2021	8/4/2021	486195	Planning svcs through 7/26/21	\$4,595.09	\$0.00		\$4,595.09
				<i>Totals for TRC Environmental Corporation</i>	<u>\$7,076.44</u>	<u>\$0.00</u>		<u>\$7,076.44</u>
Underground Service Alert Of N.CA & NV								
Underground Service Alert Of N.CA & N	8/2/2021	8/2/2021	21DIG112766	CA state fee for regulatory costs	\$299.44	\$0.00		\$299.44
				<i>Totals for Underground Service Alert Of N.CA & NV</i>	<u>\$299.44</u>	<u>\$0.00</u>		<u>\$299.44</u>
Wells Fargo Bank (Trustee Fees)								
Wells Fargo Bank (Trustee Fees)	8/1/2021	8/1/2021	1997486	Lydia Lane Sewer admin fees 8/7/21-8/6/22	\$500.00	\$0.00		\$500.00
				<i>Totals for Wells Fargo Bank (Trustee Fees)</i>	<u>\$500.00</u>	<u>\$0.00</u>		<u>\$500.00</u>
Workers.com								
Workers.com	7/23/2021	7/23/2021	130407	Seasonal workers week end 7/18/21	\$1,672.82	\$0.00		\$1,672.82
Workers.com	7/30/2021	7/30/2021	130459	Seasonal workers week end 7/25/21	\$2,697.68	\$0.00		\$2,697.68
				<i>Totals for Workers.com</i>	<u>\$4,370.50</u>	<u>\$0.00</u>		<u>\$4,370.50</u>
Roberto Zepeda								
Roberto Zepeda	7/30/2021	7/30/2021	BP48-2021	C&D refund	\$1,000.00	\$0.00		\$1,000.00
				<i>Totals for Roberto Zepeda</i>	<u>\$1,000.00</u>	<u>\$0.00</u>		<u>\$1,000.00</u>
GRAND TOTALS:					\$414,456.50	\$0.00		\$414,456.50

PAY-BL070-008 V7.1
GENRECSM BRANCH 31
CURRENT DATE 08/06/2021

2021-008-01
18:52:45

BL070 CITY OF CLAYTON
PAYROLL RECONCILIATION SUMMARY

PAGE 1
PERIOD ENDING 08/08/2021
CHECK DATE 08/11/2021

FEDERAL ID: 94-1568979	EMPLOYER TAX ID	TOTAL GROSS	SUBJECT GROSS	TAXABLE GROSS	RATE %	EMPLOYEE TAX WITHHELD	EMPLOYER TAX	THIRD PARTY SICK	TOTAL TAXES DUE
FEDERAL INC TAX - EMPLOYEE	94-1568979	95,870.91	81,827.89	81,827.89		11,340.82	0.00		11,340.82
SOCIAL SECURITY - EMPLOYEE	94-1568979	95,870.91	92,141.01	2,350.00	6.2000	145.70	0.00		145.70
MEDICARE - EMPLOYEE	94-1568979	95,870.91	92,141.01	92,141.01	1.4500	1,336.07	0.00		1,336.07
SOCIAL SECURITY - EMPLOYER	94-1568979	95,870.91	92,141.01	2,350.00	6.2000	0.00	145.70		145.70
MEDICARE - EMPLOYER	94-1568979	95,870.91	92,141.01	92,141.01	1.4500	0.00	1,336.07		1,336.07
FEDERAL SUB-TOTAL						12,822.59	1,481.77		14,304.36
FEDERAL UNEMPLOYMENT TAX	94-1568979	95,870.91	92,141.01	0.00	.6000	0.00	0.00		0.00
STATE INCOME TAX WITHHOLDING									
CA STATE	69813822	95,870.91	81,827.89	81,827.89		4,007.19	0.00		4,007.19
STATE W/H SUB-TOTAL						4,007.19	0.00		4,007.19
STATE UNEMPLOYMENT TAXES (EMPLOYER)									
CA SUTA	69813822	95,870.91	92,141.01	7,272.67	2.6000	0.00	189.09		189.09
SUTA SUB-TOTAL						0.00	189.09		189.09
COUNTY INCOME TAX WITHHOLDING									
COUNTY W/H SUB-TOTAL						0.00	0.00		0.00
CITY WITHHOLDING TAXES									
CITY W/H SUB-TOTAL						0.00	0.00		0.00
ALL OTHER TAXES									
Calif Training		95,870.91	92,141.01	7,272.67	.1000	0.00	7.27		7.27
OTHER W/H SUB-TOTAL						0.00	7.27		7.27
TOTAL TAX LIABILITY						16,829.78	1,678.13		18,507.91
PAYROLL LIABILITY TOTALS									
TOTAL NET DIRECT DEPOSITS					28	56,373.40			
TOTAL PARTIAL DIRECT DEPOSITS					3	2,200.00			
** YOUR ACCOUNT 0982504799	AT BANK 121000358 HAS BEEN DEBITED FOR					58,573.40	**		
TAX LIABILITY FROM ABOVE						18,507.91			
** YOUR ACCOUNT 0982504799	AT BANK 121000358 HAS BEEN DEBITED FOR					18,507.91	**		
TOTAL NET CHECKS					3	6,073.24			
TOTAL VENDOR ACH PAYMENTS					10	663.50			
** YOUR ACCOUNT 0982504799	AT BANK 121000358 HAS BEEN DEBITED FOR					663.50	**		
GRAND TOTAL PAYROLL CASH						83,818.05			



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Elise Warren, Chief of Police

DATE: August 17, 2021

SUBJECT: Adopt A Resolution: 1) Approving the Purchase of Thirty-One Portable and Mobile Radios for the City's Police Department to Replace the Existing Radios; 2) Approving the Non-Competitive Procurement due to Exemptions; 3) Authorizing the City Manager to Execute a Lease Agreement in the Amount of \$234,673.46; and 4) Appropriating \$33,525 from the Rainy-Day Fund in FY2021/22 for the First Lease Payment

RECOMMENDATION

It is recommended that the City Council adopt Resolution ____-2021 and approve the purchase of thirty-one Motorola radios to replace the police departments Motorola APX6000 portable and mobile radios that are end-of-life, no longer supported by Motorola, and do not meet current California Department of Justice security requirements. The total replacement cost is \$234,673.46: (\$203,067.28 plus 3.69% interest (\$31,606.18)).

BACKGROUND

On March 6, 2007, at a regular public meeting the City Council officially committed the City to be a participant in the East Bay Regional Communications System Authority (EBRCSA). On February 7, 2012, at a regular public meeting the City Council approved the purchase of 38 Motorola radios (APX6000), to be used by the police department and the maintenance department (Attachment 1).

In 2016, Motorola evolved the APX6000 to support newer technology, and the enhanced models required a revision of software. In December of 2019, Motorola ended support of the APX6000 family of radios. This means that when an APX6000 radio becomes inoperable, it cannot be fixed and must be replaced with a newer model (Attachment 2). The Clayton Police Department elected not to upgrade its radios at that time, as they were in good operational condition, and not in need of upgrade or repair.

In October of 2020, the California Department of Justice (CA DOJ) issued bulletin 20-09-CJIS (Attachment 3). This bulletin gave notice to all Law Enforcement agencies that:

*“Law enforcement and criminal justice agencies authorized by the California Department of Justice (CA DOJ) to access the CLETS must adhere to the requirements detailed in the CLETS Policies, Practices and Procedures (PPP) and in the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy to ensure the confidentiality and integrity of the data therein. ¹ More specifically, and as detailed further below, access to certain Criminal Justice Information (CJI) and Personally Identifiable Information (PII) must be limited to authorized personnel; and the transmission of such information must be encrypted. Although generally applicable, the information in this bulletin is particularly relevant to the **radio transmission** of protected data.”*

To be in compliance with these new regulations all police radios must be upgraded to ensure all confidential radio transmissions are encrypted. The encryption is to prevent unauthorized parties from monitoring radio transmissions containing confidential information, such as social security numbers, driver's license numbers, passport numbers etc. No EBRCSA radios are capable of compliance without costly upgrades.

On December 16, 2020, Tom McCarthy, Executive Director EBRCSA, sent a memo to all EBRCSA members outlining Scope of Work to Encrypt Radios for EBRCSA Members (Attachment 4). His memo explains that:

“Consistent with the direction provided by the California Department of Justice Information Services Division Bulletin No. 20-09-CJIS, CA-DOJ is mandating that CJI and PII information be transmitted via a minimum of 128-bit encrypted radios. **EBRCSA does not have any member agency with encrypted channels meeting the requirements of DOJ at this time.**”

On December 22, 2020, I (along with other Chiefs from EBRCSA member agencies) sent a letter to CA DOJ outlining the steps we are taking to come into compliance with the new directives, which includes encrypting our radios (Attachment 5).

DISCUSSION

While the City's current radios could be upgraded to accept the new security software requirements, the upgrade is costly, and not transferable to a new radio once the upgraded radio goes out of service. The cost to upgrade the existing radios would be \$25,358 (software and installation). Given that the radios are 10 years old, and have reached end-of-life, it is recommended that the City purchase new upgraded radios that comply with current standards; otherwise, the City would likely be paying to upgrade old radios that are past their useful life and without the ability to transfer the new required software to a new radio. Motorola is currently offering a discount on the required encryption upgrades (on new radios as well as upgrades) until September 17, 2021.

While the purchase of new radios is costly, police radios are an essential and fundamental tool used by officers, and as such, must be reliable and meet current industry standards. Bob Antony, from Contra Costa County Department of Information and Technology is the lead radio technician in the county, and agrees that it would be in the best interest of Clayton to purchase new radios rather than just upgrade the current radios due to their age (Attachment 6). The radios currently used by the City's maintenance department do not transmit confidential information and do not need to be upgraded at this time; those can be replaced over time as they become inoperable.

The quote for the purchase of new radios was obtained from Red Cloud, Inc. Red Cloud is a Motorola Manufacturers representative. Motorola has provided a purchasing contract to EBRCSA users and subscribers (Attachment 7), which gives users a 25% discount on Motorola products and services.

Under the City's Purchasing Guidelines (Resolution No. 54-2020), the City Council can approve purchases that exceed \$30,000 without following the Purchasing Guidelines if there are applicable exceptions. There are two applicable exceptions from the Purchasing Guidelines, Exceptions B and E. Exception B, applies if it is in the City's best interest to rely upon a contract procured by another public agency that was competitively procured and the price and terms to the City are equal or better. Here, the contract was competitively procured by EBRCSA, a joint powers agency for its users, including the City. Exception E, also applies as the City completing a new competitive procurement would not produce an advantage since EBRCSA has already competitively procured the contract and obtained a significant discount from Red Cloud.

The quote from Red Cloud Inc, includes hardware, software and installation. The total cost is \$203,067.28, and includes a \$10,202 discount incentive for previously purchased upgraded software, and a \$3,100 trade-in credit (Attachment 8). Motorola has a Municipal Lease Purchase Agreement (tax exempt) (Attachment 9), which allows for three (3) payment options, with no pre-payment penalty:

1. 7 year term, 3.69% lease rate, for an annual payment of \$33,524.78
2. 5 year term, 3.58% lease rate, for an annual payment of \$45,153.23
3. 3 year term, 3.96% lease rate, for an annual payment of \$73,220.38

It is recommended that the City of Clayton take advantage of the 7-year lease agreement option. Radios, like other technology, are a depreciating asset, and as such, their replacement should be budgeted annually in a depreciation fund. Using the lease terms will set the stage to budget annually for future radio replacement. The recommended Resolution approves the proposed lease and authorizes the City Manager to execute the lease upon City Council approval.

FISCAL IMPACTS

The total purchase price is \$234,673.46: (\$203,067.28 plus 3.69% interest (\$31,606.18)), which includes hardware, software and installation. For a 7-year lease term, the annual cost would be \$33,525. For FY2021/22, the recommendation would be to appropriate the funds from the Rainy-Day Fund (110), which currently has a balance of \$181,475. The balance after this expenditure would be \$147,950. The annual lease/depreciation cost would then need to be included in the City's annual budget beginning in FY2022/23.

ATTACHMENTS

Resolution

Attachment 1: 2012 Police Radio Staff Report

Attachment 2: Motorola APX6000 AN End-of-Support Notice

Attachment 3: CLETS CJIS Encryption Bulletin

Attachment 4: EBRCSA Scope of Work Outline
Attachment 5: Clayton PD DOJ Response Letter
Attachment 6: Email from CCC DOIT Radio Technician
Attachment 7: Motorola Purchasing Contract Agreement
Attachment 8: Motorola Quote
Attachment 9: Motorola Municipal Lease Purchase Agreement

RESOLUTION NO. ##-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON: 1) APPROVING THE PURCHASE OF THIRTY-ONE PORTABLE AND MOBILE RADIOS FOR THE CITY'S POLICE DEPARTMENT TO REPLACE THE EXISTING RADIOS; 2) APPROVING THE NON-COMPETITIVE PROCUREMENT DUE TO EXEMPTIONS; 3) AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT IN THE AMOUNT OF \$234,673.46; AND 4) APPROPRIATING \$33,525 FROM THE RAINY-DAY FUND IN FY2021/22 FOR THE FIRST LEASE PAYMENT

THE CITY COUNCIL City of Clayton, California

WHEREAS, the Clayton Police Department's existing police radios are in need of replacement due to age and unserviceability;

WHEREAS, the existing police radios are not compliant with current California Department of Justice (CA DOJ) security requirements; and

WHEREAS, the City Council determines that there are applicable exceptions to the City's Purchasing Guidelines that do not require the City to complete a separate competitive purchasing process for the purchase of the radios due to using another agency's competitively procured agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Clayton, California does hereby formally approve as follows:

Section 1: The City Council (Governing Body of the Lessee) has determined that a true and very real need exists for the acquisition of the Equipment or other personal property described in the Lease between City of Clayton (Lessee) and Motorola Solutions, Inc. (Lessor) and approves the purchase.

Section 2: The City Council (Governing Body of the Lessee) has determined that the Lease, substantially in the form presented to this meeting, is in the best interests of the Lessee for the acquisition of such Equipment or other personal property, and the Governing Board hereby approves the entering into of the Lease by the Lessee and hereby designates and authorizes the following person(s) referenced in the Lease to execute and deliver the Lease on Lessee's behalf with such changes thereto as such person deems appropriate, and any related documents, including any escrow agreement, necessary to the consummation of the transactions contemplated by the Lease.

Section 3: A purchase contract is herein awarded to Motorola via Red Cloud Inc in the multi-year amount of \$234,673.46: (\$203,067.28 plus 3.69% interest (\$31,606.18)) and approve of the non-competitive procurement as meeting certain exceptions to the

Purchasing Guidelines. This law enforcement expense is spread over seven years as follows:

Years 1-7: \$33,524.78
Total: \$234,673.46

Section 4: The City Council hereby authorizes the City Manager to execute a lease for \$234,673.46 (\$203,067.28 plus 3.69% interest (\$31,606.18)) in substantially the same form as show in Attachment 9 to the Staff Report.

Section 5: The City Council hereby appropriates \$33,525 from the Rainy-Day Fund in FY2021/22 to fund the first lease payment.

PASSED, APPROVED AND ADOPTED by the City Council of Clayton, California, at a regular public meeting thereof held on the 17th day of August 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk



Agenda Date: 2-7-12

Agenda Item: 9b

Approved:



Gary A. Napper
City Manager

AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CHIEF OF POLICE

DATE: FEBRUARY 7, 2012

SUBJECT: APPROVE THE PURCHASE OF THIRTY-EIGHT PORTABLE AND MOBILE RADIOS REQUIRED FOR THE CITY'S POLICE AND MAINTENANCE DEPARTMENTS TO OPERATE WITH-IN THE PROPOSED TWO-COUNTY RADIO INTEROPERABILITY SYSTEM FOR EMERGENCY SERVICES

RECOMMENDATION

It is recommended that the City Council, by minute motion, formally approve the purchase of thirty-eight portable and mobile radios in the amount of \$154,176.61 from Motorola Government Solutions, Inc. as competitive sole provider using interest earnings from the City's Trust & Agency Account to provide the City's police and maintenance personnel with the capability to participate in the new two-county radio interoperability emergency radio system.

BACKGROUND

On March 6, 2007 at a regular public meeting, the City Council officially committed the City to be a participant in the East Bay Regional Communications System Authority's (EBRCSA) project. The Authority's purpose is to develop and provide a regional interoperability communications system for Alameda and Contra Costa Counties for public safety and emergency services. The EBRCSA was created as a Joint Powers Authority (JPA) on September 2007 with the goal of developing and operating a state-of-the-art radio communications system that would provide regional radio interoperability. The new system will replace a patchwork of radio systems currently in use by public agencies in both counties. Virtually all of the radios and older systems are in need of replacement or upgrading, and most lack adequate capacity. The current communications current systems utilize four different frequency bands allowing for no interoperability between agencies operating in different frequency bands during emergency and civil disasters.

The EBRCSA currently has 37 member agencies consisting of two counties, 29 cities, four special districts, the University of California, and the California State Department of Transportation. During the system development phase, the EBRCSA required member agencies to determine the number of radios each would need to operate on the newly designed and enhanced regional system. City staff previously determined that our City would need at least 38 radios, mobile and handheld portable, for use by both the police and maintenance personnel. This figure was provided to the EBRCSA. The number of radios required and identified by each participating agency becomes the basis for determining future recurring maintenance costs. As a result, the City Council, on September 7, 2010, adopted a Resolution confirming the City's participation in the EBRCSA and authorized the City Manager to sign the EBRCSA's Operating Agreement for recurring radio maintenance costs once the system is operational.

DISCUSSION

The target date for the completion of the EBRCSA interoperability project is July 1, 2012. This date is also the anticipated operational start, or activation, of the new system. During the period of time leading up to the target date, EBRCSA anticipates all participating agencies will have purchased their new digital radio equipment and be able to go operational by the target date. During this same period, the older systems are still operational. Many participating agencies with older and unserviceable radios, including Concord and Brentwood, had to purchase dual-band radios sooner. This option allowed those agencies to continue on the older system, and the flexibility to utilize their new dual-band radios upon activation of the new system. Because our City police department's current mobile and portable radios are still serviceable and capable of operating on the old system, staff decided to delay the purchase of thirty-eight single-band radios until a time closer to the target start date instead of purchasing dual-band radios, a decision which saved approximately \$800 per radio (approximately \$30,000).

The EBRCSA conducted a competitive bid with several radio manufacturers and determined the Motorola Government Solutions, Inc. was the most economical cost per radio coupled with the ability to operate effectively on the new single-band Interoperability Communication System. The following are the City's cost quotes for both Mobile and Portable radios:

- | | |
|---|---------------------|
| • 22 Mobile Radios (includes one for the motorcycle) | \$91,879.25 |
| • 16 Portable Radios (handheld) | \$62,296.36 |
| • Total Cost (quotes attached as Exhibits A & B) | \$154,175.61 |

The total purchase price is for thirty-eight single-band digital radios and includes radio

Subject: Approve the purchase of thirty-eight radios to participate in the Interoperability Emergency Communication System.

Date: February 7, 2012

Page 3 of 3

equipment, software, sales tax, installation and warranty for five years.

If approved, the new single-band digital radios will be purchased and installed prior to the EBRCSA system activation date of July 1, 2012. During a 6-month "over-lap" period, following the activation of the Interoperability Communication System, it is anticipated that some participating agencies will still be in the process of purchasing and installing their new radios. In addition, other agencies may experience problems and will have the time to work out "kinks" that may occur with the conversion from the "Old System" to the "New Interoperability System."

However, on January 1, 2013, the new communications narrow-banding Interoperability Radio System will be fully operational with older systems shut down and no longer operational.

FISCAL IMPACT

Total purchase and installation price for thirty-eight mobile and portable radios is \$154,175.61. There are no additional costs associated with this purchase. Under the new operational communication system, EBRCSA will provide software support for the new digital radios, while Motorola Government Solutions, Inc. will repair equipment under the equipment warranty. Under the new system, Clayton and Concord police officers will continue to be dispatched by Concord Police Dispatchers at no additional cost to the City for this upgrade in communications equipment.

The source of funds for this unbudgeted capital equipment purchase is recommended as the interest earnings in the City's Trust & Agency Account, which fund has currently \$287,546 available in it for discretionary use.

Attachments: Exhibit A: Portable Radio Quote.
Exhibit B: Mobile Radio Quote.



MOTOROLA
intelligence everywhere™

EXHIBIT A

Clayton Police Department
Sergeant Richard McEachin

COST AND EQUIPMENT REQUIREMENTS
P25 Interoperable Portable - 700/800 MHz

QTY	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
16	APX6000 I 700/800 MHz 3 watt P25 Trunked Portable Radio with: 1200 channels, Ultra-high Capacity <i>iMPRES</i> LiIon Battery (2900 mAh), Emergency Alert button, 8 character top display, Digital software, belt carry clip, low battery alert and antenna	\$ 1,520.00	\$ 24,320.00
16	ENH: ASTRO DIGITAL CAI OPERATION	\$ 412.00	\$ 6,592.00
16	ADD: SMARTZONE SYSTEM SOFTWARE	\$ 960.00	\$ 15,360.00
16	ENH: PROJECT 25 9600 BAUD TRUNKING SOFTWARE	\$ 240.00	\$ 3,840.00
16	ADD: RADIO PACKET DATA	\$ 160.00	\$ 2,560.00
16	ADD: PROGRAMMING OVER P25	\$ 80.00	\$ 1,280.00
16	ADD: ADVANCED SYSTEM KEY	\$ -	
16	ALT: 1/4 WAVE 7/800 GPS STUBBY	\$ 19.00	\$ 304.00
16	ALT: LIION IMPRES IP67 2900 MAH BATTERY	\$ 80.00	\$ 1,280.00
16	ENH: ENHANCED ZONE BANK 1200 CHANNELS	\$ 60.00	\$ 960.00
ACCESSORIES:			
3	APX6000 Spare Battery - <i>iMPRES</i> LiIon Battery (2900 mAh) NNTN7038	\$ 112.00	\$ 336.00
16	APX6000 Remote Spkr/mic with 3.5 mm ear jack PMMN4062	\$ 85.60	\$ 1,369.60
6	APX6000 multi (6) unit rapid <i>iMPRES</i> charger NNTN7065	\$ 631.00	\$ 3,786.00
1	APX6000 multi (6) unit <i>iMPRES</i> charger w Display NNTN7073	\$ 1,080.00	\$ 1,080.00
16	APX6000 Single unit rapid <i>iMPRES</i> charger WPLN7080	\$ 100.00	\$ 1,600.00
13	APX6000 Leather carrying case with swivel PMLN5658	\$ 53.00	\$ 689.00
16	4 Year Repair Service Advantage	\$ 162.00	\$ 2,592.00
16	EBRCSA Promotion APX6500 (Valid through 12/22/11)	\$ (450.00)	\$ (7,200.00)
16	Radio Trade-In (incentive good until 12/22/11)	\$ (200.00)	\$ (3,200.00)
		Equipment:	\$ 57,548.60
		Shipping:	*
		8.25% Sales Tax:	\$4,747.76
		System Total:	\$62,296.36

*Prices do not include installation & programming
800 MHz programming done by Contra Costa County
Pricing Per Contra Costa County Bid 0904-018*

TERMS: Net 30 days from shipment
VALIDITY: Prices valid until 10/31/11
SHIPPING: **FOB Destination - Pre-paid and delivered by Motorola ***
DELIVERY: Shipment approximately 35 days ARO

PHONE: Mike: (916) 201-5670 Bob: 415-720-0424

QUOTED BY Mike Marraccini & Bob Luhrs
DATE: 12/23/2011

Motorola is providing this quotation for budgetary [informational] purposes only and it does not constitute an offer for sale.
[If you wish to purchase the quoted products, Motorola will be pleased to provide you with our standard terms and conditions of sale, or alternatively, receive your purchase order, which will be acknowledged with a letter enclosing the Motorola standard terms and conditions.]



EXHIBIT B

Clayton Police Department
Sergeant Richard McEachin

COST AND EQUIPMENT REQUIREMENTS
Single Band P25 Interoperable Mobile - 700/800 MHz

QTY	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
21	APX6500 700/800 MHz 35 watt Mobile P25 Radio with: 870 c	\$ 1,519.00	\$31,899.00
21	ENH: ASTRO DIGITAL CAI OP APX	412.00	\$8,652.00
21	ENH: SMARTZONE OPERATION APX6500	960.00	\$20,160.00
21	ADD: ADVANCED SYSTEM KEY, SOFTWARE KEY	-	\$0.00
21	ADD: P25 TRUNKING SOFTWARE	240.00	\$5,040.00
21	ADD: APX05 CONTROL HEAD	345.00	\$7,245.00
21	ADD: CONTROL HEAD SOFTWARE	-	\$0.00
21	ADD: REMOTE MOUNT MID POWER	237.00	\$4,977.00
21	ADD: ANTENNA 1/4 WAVE	11.00	\$231.00
21	ADD: PALM MICROPHONE	57.00	\$1,197.00
21	ADD: AUXILIARY SPEAKER 7.5 WATT	48.00	\$1,008.00
21	ADD: RS232 PACKET DATA INTERFACE	160.00	\$3,360.00
21	ENH: OVER THE AIR PROVISIONING	80.00	\$1,680.00
1	APX7500 Single Band Mid Power Mobile Radio for Motorcycle	\$ 1,818.00	\$ 1,818.00
1	ADD: 7/800MHz PRIMARY BAND	\$ -	
1	ADD: ASTRO DIGITAL CAI OPERATION	\$ 412.00	\$ 412.00
1	ADD: SMARTZONE OPERATION	\$ 1,200.00	\$ 1,200.00
1	ADD: P25 9600 BAUD TRUNKING	\$ 240.00	\$ 240.00
1	ADD: ADVANCED SYSTEM KEY - SOFTWARE KEY	\$ -	\$ -
1	ADD: PROGRAMMING OVER P25 (OTAP)	\$ 80.00	\$ 80.00
1	ADD: RADIO PACKET DATA	\$ 160.00	\$ 160.00
1	ADD: APX 05 CONTROL HEAD	\$ 345.00	\$ 345.00
1	ADD: CONTROL HEAD SOFTWARE	\$ -	\$ -
1	ADD: REMOTE MOUNT MOTORCYCLE	\$ 320.00	\$ 320.00
1	ADD: MOTORCYCLE PALM MIC	\$ 58.00	\$ 58.00
1	ADD: AUXILIARY SPEAKER MOTORCYCLE	\$ 48.00	\$ 48.00
1	ADD: ANTENNA, 1/4 WAVE 762-870MHZ MOTORCYCLE	\$ 11.00	\$ 11.00
Optional:			
22	Service Advantage - Motorola depot repair 4 YR added stan	\$ 246.00	\$ 5,412.00
21	EBRCSA Promotion APX6500 (Valid through 12/22/11)	\$ (550.00)	\$ (11,550.00)
1	EBRCSA Promotion APX7500 (Valid through 12/22/11)	\$ (800.00)	\$ (800.00)
22	Trade-In Incentive (One for one radio, valid through 12/22/11)	\$ (200.00)	\$ (4,400.00)
		Equipment:	\$78,803.00
800 MHz programming done by Contra Costa County		Shipping:	*
		Installation	\$ 6,575.00
		8.25% Sales Tax:	\$ 6,501.25
		System Total:	\$ 91,879.25

TERMS: Net 30 days from shipment
VALIDITY: Prices valid until 12/22/2011
SHIPPING: *FOB Destination - Pre-paid and delivered by Motorola **
DELIVERY: Shipment approximately 35 days ARO on APX7500
PHONE: Mike (916) 201-5670 Bob (415)-720-0424

QUOTED BY Mike Marraccini and Bob Luhrs
DATE: 12/23/2011

Motorola is providing this quotation for budgetary [informational] purposes only and it does not constitute an offer for sale.
[If you wish to purchase the quoted products, Motorola will be pleased to provide you with our standard terms and conditions of sale, or alternatively, receive your purchase order, which will be acknowledged with a letter enclosing the Motorola standard terms and conditions.]

APX™ 6000

"AN" RADIO MODELS END-OF-SUPPORT NOTICE

OVERVIEW

In 2016, the APX 6000 family (APX 6000, APX 6000Li, APX 6000XE, APX 5000, and SRX2200) evolved to support newer technologies. These enhancements required a revision in hardware from an "AN" model suffix to a "BN" model suffix.

The purpose of this notification is to inform customers of an end of support of the APX 6000 family AN, or legacy, radio models on December 31, 2019. The APX 6000 family legacy models are no longer orderable. The APX 6000 family can continue to be purchased on the BN, or "Enhanced," models listed below.

END-OF-SUPPORT DATE:

To align with 5-year support: December 31, 2021 (or while supplies last).

NEW FEATURE REQUEST/DEVELOPMENT:

To conclude December 31, 2019.

REPLACEMENT PRODUCT:

The APX 6000 family BN models are available for order. They offer the same features, functionalities and options as the APX 6000 legacy AN models, but with new features for an evolving customer need.

HARDWARE IMPACT:

Be advised that product repair support of the AN models is dependent on the availability of replacement parts. Motorola will make commercially reasonable efforts to repair products until the end of their respective support dates. Aftermarket product support will be available for the APX 6000 family AN radio models via commercially reasonable efforts through Customer Fulfillment Centers (CFC).

SOFTWARE IMPACT:

New features and enhancements will no longer be offered on AN models after December 31, 2019. The BN models do not share the same codeplugs as the AN models. There will be no additional new features developed on the AN models after December 31st, 2019.



MOTOROLA SOLUTIONS

MODELS/OPTIONS END-OF-SUPPORT

Listed below are the APX 6000/XE/Li models —

APX 6000 MODELS

END-OF-SUPPORT RADIO MODEL	DESCRIPTION	REPLACEMENT RADIO MODEL
H98UCD9PW5AN, H98UCD9PW5_N	APX 6000 7/800 MHZ MODEL 1.5 PORTABLE	H98UCD9PW5BN
H98UCF9PW6AN, H98UCF9PW6_N	APX 6000 7/800 MHZ MODEL 2.5 PORTABLE	H98UCF9PW6BN
H98UCH9PW7AN, H98UCH9PW7_N	APX 6000 7/800 MHZ MODEL 3.5 PORTABLE	H98UCH9PW7BN
H98KGD9PW5AN, H98KGD9PW5_N	APX 6000 VHF MHZ MODEL 1.5 PORTABLE	H98KGD9PW5BN
H98KGF9PW6AN, H98KGF9PW6_N	APX 6000 VHF MHZ MODEL 2.5 PORTABLE	H98KGF9PW6BN
H98KGH9PW7AN, H98KGH9PW7_N	APX 6000 VHF MHZ MODEL 3.5 PORTABLE	H98KGH9PW7BN
H98QDD9PW5AN, H98QDD9PW5_N	APX 6000 UHF R1 MODEL 1.5 PORTABLE	H98QDD9PW5BN
H98QDF9PW6AN, H98QDF9PW6_N	APX 6000 UHF R1 MODEL 2.5 PORTABLE	H98QDF9PW6BN
H98QDH9PW7AN, H98QDH9PW7_N	APX 6000 UHF R1 MODEL 3.5 PORTABLE	H98QDH9PW7BN
H98SDD9PW5AN, H98SDD9PW5_N	APX 6000 UHF R2 MODEL 1.5 PORTABLE	H98SDD9PW5BN
H98SDF9PW6AN, H98SDF9PW6_N	APX 6000 UHF R2 MODEL 2.5 PORTABLE	H98SDF9PW6BN
H98SDH9PW7AN, H98SDH9PW7_N	APX 6000 UHF R2 MODEL 3.5 PORTABLE	H98SDH9PW7BN

ORDERED WITH OR WITHOUT—

OPTION	DESCRIPTION
QA02006	ENH: APX 6000XE RUGGED RADIO
Q811	ENH: LI DIGITAL CONVENTIONAL
QA02829	ENH: LI ANALOG CONVENTIONAL
Q443	ENH: LI ANALOG 3600 TRUNKING
QA02756	ENH: LI 9600 OR 3600 SINGLE SYSTEM DIGITAL TRUNKING
QA02812	ENH: LI P25 9600 BAUD TRUNKING W/ INTEROPERABILITY

APX 5000 MODELS

END-OF-SUPPORT RADIO MODEL	DESCRIPTION	REPLACEMENT RADIO MODEL
H98UCD9PW5ANI, H98UCD9PW5_NI	APX 5000 7/800 MHZ MODEL 1.5 PORTABLE	H98UCD9PW5BNI
H98UCF9PW6ANI, H98UCF9PW6_NI	APX 5000 7/800 MHZ MODEL 2.5 PORTABLE	H98UCF9PW6BNI
H98UCH9PW7ANI, H98UCH9PW7_NI	APX 5000 7/800 MHZ MODEL 3.5 PORTABLE	H98UCH9PW7BNI
H98KGD9PW5ANI, H98KGD9PW5_NI	APX 5000 VHF MHZ MODEL 1.5 PORTABLE	H98KGD9PW5BNI
H98KGF9PW6ANI, H98KGF9PW6_NI	APX 5000 VHF MHZ MODEL 2.5 PORTABLE	H98KGF9PW6BNI
H98KGH9PW7ANI, H98KGH9PW7_NI	APX 5000 VHF MHZ MODEL 3.5 PORTABLE	H98KGH9PW7BNI
H98QDD9PW5ANI, H98QDD9PW5_NI	APX 5000 UHF R1 MODEL 1.5 PORTABLE	H98QDD9PW5BNI
H98QDF9PW6ANI, H98QDF9PW6_NI	APX 5000 UHF R1 MODEL 2.5 PORTABLE	H98QDF9PW6BNI
H98QDH9PW7ANI, H98QDH9PW7_NI	APX 5000 UHF R1 MODEL 3.5 PORTABLE	H98QDH9PW7BNI
H98SDD9PW5ANI, H98SDD9PW5_NI	APX 5000 UHF R2 MODEL 1.5 PORTABLE	H98SDD9PW5BNI
H98SDF9PW6ANI, H98SDF9PW6_NI	APX 5000 UHF R2 MODEL 2.5 PORTABLE	H98SDF9PW6BNI
H98SDH9PW7ANI, H98SDH9PW7_NI	APX5000 UHF R2 MODEL 3.5 PORTABLE	H98SDH9PW7BNI

SRX2200 MODELS

END-OF-SUPPORT RADIO MODEL	DESCRIPTION	REPLACEMENT RADIO MODEL
H99UCD9PW5AN, H99UCD9PW5_N	SRX2200 7/800 MHZ MODEL 1.5 PORTABLE	H99UCD9PW5BN
H99UCH9PW7AN, H99UCH9PW7_N	SRX2200 7/800 MHZ MODEL 3.5 PORTABLE	H99UCH9PW7BN
H99KGD9PW5AN, H99KGD9PW5_N	SRX2200 VHF MHZ MODEL 1.5 PORTABLE	H99KGD9PW5BN
H99KGH9PW7AN, H99KGH9PW7_N	SRX2200 VHF MHZ MODEL 3.5 PORTABLE	H99KGH9PW7BN
H99QDD9PW5AN, H99QDD9PW5_N	SRX2200 UHF R1 MODEL 1.5 PORTABLE	H99QDD9PW5BN
H99QDH9PW7AN, H99QDH9PW7_N	SRX2200 UHF R1 MODEL 3.5 PORTABLE	H99QDH9PW7BN

ORDERED WITH OR WITHOUT—

OPTION	DESCRIPTION
H553	ADD: ULTRA LOW POWER RADIO TRIGGER


CONTACT INFORMATION

If you have specific questions regarding this notification, please contact your Motorola Solutions Account Representative.



Motorola Solutions, Inc. 500 West Monroe Street, Chicago, IL 60661 U.S.A. motorolasolutions.com

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California Department of Justice CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION Joe Dominic, Chief		INFORMATION BULLETIN	
<i>Subject:</i> Confidentiality of Information from the California Law Enforcement Telecommunications System (CLETS)	<i>No.</i> 20-09-CJIS <i>Date:</i> 10-12-2020	<i>Contact for information:</i> CLETS Administration Section CAS@doj.ca.gov (916) 210-4240	

TO: ALL CLETS SUBSCRIBING AGENCIES

Law enforcement and criminal justice agencies authorized by the California Department of Justice (CA DOJ) to access the CLETS must adhere to the requirements detailed in the CLETS Policies, Practices and Procedures (PPP) and in the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Policy to ensure the confidentiality and integrity of the data therein.¹ More specifically, and as detailed further below, access to certain Criminal Justice Information (CJI) and Personally Identifiable Information (PII) must be limited to authorized personnel; and the transmission of such information must be encrypted. Although generally applicable, the information in this bulletin is particularly relevant to the radio transmission of protected data.

Allowable "access" to CJI and PII, derived from CLETS, is described in CLETS PPP section 1.6.4:

Only authorized law enforcement, criminal justice personnel or their lawfully authorized designees may use a CLETS terminal or have access to information derived from CLETS. Any information from the CLETS is confidential and for official use only. Access is defined as the ability to hear or view any information provided through the CLETS.

The FBI and the CA DOJ establish policies and procedures related to the usage and protection of CJI that govern the usage of the CLETS. The policies define CJI, classify them as restricted or unrestricted, and limit the amount and types of information that can be broadcast over unencrypted radio channels in order to protect sensitive CJI and PII.

Generally, PII is information that can be used to distinguish or trace an individual's identity, such as an individual's first name, or first initial, and last name in combination with any one or more specific data elements (see FBI CJIS Security Policy section 4.3.). Data elements include Social Security number, passport number, military identification (ID) number and other unique ID numbers issued on a government document. The most common data elements encountered during field operations include a driver license number or ID number.

The transmission of sensitive CJI and PII must be encrypted pursuant to the FBI CJIS Security Policy sections 5.10 and 5.13; and access may only be provided to authorized individuals as defined under the CLETS PPP and the FBI CJIS Security Policy.

¹ For reference, please refer to the CLETS PPP at <https://oag.ca.gov/sites/default/files/clets-ppp%2012-2019.pdf> and the FBI CJIS Security Policy at https://www.fbi.gov/file-repository/cjis_security_policy_v5-9_20200601.pdf/view. See also Government Code section 15150 et seq. and California Code of Regulations, title 11, section 703.

Compliance with these requirements can be achieved using any of the following:

- Encryption of radio traffic pursuant to FBI CJIS Security Policy sections 5.10.1.2, 5.10.1.2.1, and 5.13.1. This will provide the ability to securely broadcast all CJI (both restricted and unrestricted information) and all combinations of PII.
- Establish policy to restrict dissemination of specific information that would provide for the protection of restricted CJI database information and combinations of name and other data elements that meet the definition of PII. This will provide for the protection of CJI and PII while allowing for radio traffic with the information necessary to provide public safety.

If your agency is not currently in compliance with the requirements outlined herein, please submit an implementation plan to the CA DOJ, CLETS Administration Section, no later than December 31, 2020. The plan must be on agency letterhead and signed by the Agency Head (e.g., Sheriff, Chief); include a detailed description of how radio communications will be brought into compliance (e.g., encryption), or how the risks will be mitigated through policy if unable to implement the required technology; and must include the projected timeline as to when the issue will be resolved.

For questions about this bulletin, contact the CLETS Administration Section at CAS@doj.ca.gov or (916) 210-4240.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe", followed by a horizontal line.

JOE DOMINIC, Chief
California Justice Information Services Division

For XAVIER BECERRA
Attorney General



East Bay Regional Communications System Authority



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

925-803-7802

December 16, 2020

To: Alameda and Contra Costa County Chief's of Police and Sheriff's

From: Tom McCarthy, Executive Director EBRCSA

Subject: Scope of Work to Encrypt Radios for EBRCSA Members

SUBJECT: Providing Direction to the Alameda and Contra Costa Counties Chiefs of Police and Sheriff's concerning Encryption of Law Enforcement Radios for Members of the East Bay Regional Communications System Authority (EBRCSA). The steps necessary, estimated timeline, and fiscal impact to the EBRCSA Members and EBRCSA.

RECOMMENDATIONS: Request Law Enforcement utilizing the California Department of Justice (CA DOJ) to access the California Law Enforcement Telecommunications System (CLETS) for Criminal Justice Information (CJI) and Personally Identifiable Information (PII) to only authorized personnel. In addition work with EBRCSA, the Alameda County Radio Shop and the Contra Costa County Radio Shop to encrypt the radio channels this information is transmitted over to AES 256 Encrypted.

SUMMARY/DISCUSSION: Consistent with the direction provided by the California Department of Justice Information Services Division Bulleting No. 20-09-CJIS, CA-DOJ is mandating that CJI and PII information be transmitted via a minimum of 128 bit encrypted radios. EBRCSA does not have any member agency with encrypted channels meeting the requirements of DOJ at this time. We have been working to establish a timeline and cost for encryption to be added to approximately 14,000 of the 22,000 radios and 208 consoles which comprise the EBRCSA Radio System.

The EBRCSA Public Safety Land Mobile Radio (LMR) system members are every City and County Law Enforcement Agency in Alameda and Contra Costa Counties, except for BART (Bay Area Rapid Transit). In addition, there are federal and State agencies that utilize the EBRCSA LMR system to speak with City and County Law Enforcement Agencies.

The transition to encryption for the EBRCSA members requires that each of the radios be touched by an EBRCSA authorized technician. The Technician will utilize specialized equipment known as a KVL 5000 Key Variable Loader to install the AES Encryption, Multi Key so various encryption keys can be on the radio, and OTAR (Over-the-air Rekeying) for future updates to the encryption.

**Alameda County Office of Homeland Security and Emergency Services
4985 Broder Blvd, Dublin CA 94568 • (925) 803-7802 • www.ebrcsa.org**

The AES 256 Encryption is the only option available to encrypt the radio as this is a universal encryption that will allow EBRCSA Encrypted radios to communicate with all EBRCSA Members. The EBRCSA LMR system is designed and operates so every Law Enforcement Member of EBRCSA can share their channels so in an emergency or major event they can communicate with each other. The radios are programmed with every Law Enforcement Agency's radio channel.

The transition to Encrypted radio is a complex project requiring the upgrades and changes are performed on a live public safety system which cannot be taken offline during the transition. Law Enforcement Agencies will have to be scheduled to have the AES 256 Encryption installed on their dispatch consoles and radios and then transition at a prescheduled time to ensure all radios will be able to transmit to the Dispatch Center consoles. A Radio Technician will have to be onsite as this is transitioned to make any necessary changes. Prior to any work being completed, a comprehensive inspection of each radio and Dispatch Console must be done so the correct equipment is ordered to complete each Law Enforcement Agency.

POLICY REQUIREMENTS.

The DOJ Bulleting requires the transmission of sensitive CJI and PII be encrypted and EBRCSA is recommending the use of AES 256 Encryption. Due to the number of "Apps" that are available for smart phone users to monitor Law Enforcement transmissions, any information broadcast by Law Enforcement is being rebroadcast through the Apps which can lead to a situation where unauthorized individuals not defined by the CLETS PPP and the FBI CJIS Security Policy can "hear" the CJIS and PII information in violation of the CLETS and FBI CJIS Security Policy.

The DOJ Bulletin 20-09-CJIS states, "Compliance with these requirements can be achieved using any of the following":

- *Encryption of radio traffic pursuant to FBI CJIS Security Policy sections 5.10.1.2, 5.10.2.1, and 5.13.1. This will provide the ability to securely broadcast all CJI (both restricted and unrestricted information) and all combinations of PII.*
- *Establish policy to restrict dissemination of specific information that would provide for the protection of restricted CJI database information and combinations of names and other data elements that meet the definition of PII. This will provide for the protection of CJI and PII while allowing for radio traffic with the information necessary to provide public safety.*

We have been discussing with the Alameda and Contra Costa Counties' Radio Shops, and Motorola what it will take to encrypt the 14,000 radios, mobile and portable, and the 208 dispatch consoles. EBRCSA just upgraded the system to Phase II and updated radios necessary to support the encryption, multi key, and OTAR. The upgrade of the 22,000 member radios took approximately 27 months to touch each radio. We are anticipating obtaining the encryption, multi key, OTAR and installing on every radio and dispatch console will take approximately 30 months to complete the project. Unfortunately, we cannot anticipate when the funding will be available to each agency for the project.

FISCAL IMPACT:

The Counties and Cities that are members of EBRCSA are all being impacted by the Covid-19 and revenue predictions to the Counties and Cities are much lower due to Covid-19. In addition, our communities are requesting that Law Enforcement be defunded and reduce Law Enforcement budgets.

It is estimated the cost to the Counties and Cities to encrypt their radios will be approximately \$10,500,000.00. Motorola Solutions has provided a quote for the cost of the encryption, multi key, and OTAR which each mobile and portable radio will require and that is \$743 per radio plus the bench time to add it to the radio. The bench time is approximately \$125.00 per hour, with completion of 2-3 radios per hour.



CONFIDENTIAL

2021 EBRCSA MEMBER AGENCY SPECIAL PRICING FOR SUBSCRIBER RADIO ENCRYPTION

QTY	MODEL	DESCRIPTION	UNIT LIST PRICE	SPECIAL DISCOUNT PRICE
1	CA00182AR	ADD: AES ENCRYPTION SOFTWARE	\$633	\$317
1	Q498AX	ENH: ASTRO 25 OTAR W/ MULTIKEY	\$851	\$426

For informational purposes only, agencies may request individual quotes.

In addition, some Counties and Cities are on two-year budgets and if anything is added during the budget cycle, there need to be adjustments to cover the cost of the new project.

Motorola Solutions, Inc. is the only provider which can supply the encryption for the Motorola System as the engineering is proprietary and Motorola is the Sole Source Provider. Motorola has provided two options for the encryption of the consoles and Master Site. The first option requires that in the future, any changes to the encryption key will require re-touching the radio and the cost is \$974,392, see attached Motorola Proposal AES Encryption Consoles. Option two includes technology which allows updates be done over the radio airway automatically and not have to touch the radio. Option two costs \$2,131,807. EBRCSA is managed by a 23 Member Board of Directors that will decide which option to choose.

CURRENT ENCRYPTION STATUS:

The City of Antioch and Brentwood are the only EBRCSA member cities that have encrypted radio channels. The channels are ADP encrypted which is 40 bit encryption and does not meet the DOJ Standard of 128 bit encryption. The other member agencies do not have encryption as the Policy of EBRCSA has been to not encrypt the main channels so that the Law Enforcement Agencies can communicate in emergencies or joint operations.

RECOMMENDATION:

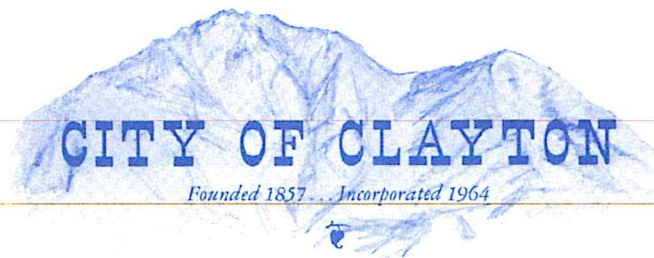
EBRCSA is recommending to its members to encrypt their radios and work with EBRCSA as it will have to develop a plan outlining the encryption of the network, consoles, mobiles, and portables. The Board of Directors will be presented a Staff Report for discussion and recommendations as to how it to proceed, at its March 2021 meeting. A draft updated Policy and Procedure regarding encryption of the main channels will also be presented for approval at the EBRCSA Board of Directors meeting in March 2021.

QUESTIONS:

Please contact Tom McCarthy, Executive Director, EBRCSA at 925-803-7802 or Tmccarthy@acgov.org.

ATTACHMENTS:

- Motorola Proposal AES Encryption Consoles
- EBRCSA Radio Encryption Pricing



POLICE DEPARTMENT
6000 HERITAGE TRAIL • CLAYTON, CALIFORNIA 94517
TELEPHONE (925) 673-7350
FAX (925) 672-1429

December 22, 2020

To: CLETS Administration Section

The letter and attached information from East Bay Regional Communications System (EBRCSA), is our response concerning the California Justice Information Services Division Bulletin No. 20-09-CJIS dated October 12, 2020, regarding confidentiality of information from the California Law Enforcement Telecommunications System (CLETS). Our agency does not currently comply as outlined in the Information Bulletin, FBI CJIS Security Policy, version 6/10/19, sections 5.10.1.2, 5.10.1.2.1 and 5.13.1.

We are a member of EBRCSA which is a two-county Land Mobile Radio System under a Joint Powers Agreement (JPA), between Alameda and Contra Costa Counties. We are a member of the JPA, however, EBRCSA is responsible for ownership and management of the system. EBRCSA is a trunked digital phase II system digital P25 compliant Land Mobile Radio System (LMR) with Dispatch Consoles provided by EBRCSA.

The Clayton Police Department is not compliant with the above sections for day-to-day operations. Only our special operations channels are currently encrypted with AES 256 digital encryption. The AES 256 Encryption is only on a select number of radios used by the Special Operations Group. The Clayton Police Department plans to encrypt the remaining radios and channels; however, it is estimated it will take approximately 30 months for all of EBRCSA to be completed.

We will be working to come into compliance with Bulletin 20-09-CJIS. However, due to estimated cost and the number of radios and Dispatch Consoles, we will on occasion be required to communicate the information over our radio to dispatch while the work is being completed. Department policy and procedures will be updated to include the word "hear" as outlined in DOJ Bulletin 20-09-CJIS. Our Policy and Procedure will outline, whenever possible an alternate method of secure communication will be utilized when accessing Criminal Justice Information (CJI) and Personally Identifiable Information (PII). The encryption will be added as soon as possible and in the interim, we will attempt to use our MDTs, Departmental Cellular Phones, or Land Line Telecommunications to transmit and receive PII information. In the situation where this is not feasible, PII information on an unencrypted radio will be as follows:

- Elements of protected information should be broken up into multiple transmission to minimally separate as individual's combined last name and any identifying number associated with the individual, from either first name or first initial.
- Additional information regarding the individual including date of birth, home address, or physical descriptors, should be relayed in separate transmissions.
- Whenever possible, utilize a secondary channel for part of the transmission.

Due to Covid-19, we are anticipating budget shortfalls in our projected revenue for projects such as this. Due to limited funding the transition to encrypted radios will require us to identify funds which may not be immediately available. In addition, the community is asking to reduce our budgets.

EBRCSA has approximately 14,000 radios which need to be touched and approximately 190 consoles that require a programming technician to implement encryption. Careful coordination among all law enforcement and cooperating agencies is critical to maintain interoperability. The EBRCSA Executive Director has been providing information regarding the transition to encryption. While we work through adding encryption to all radios, EBRCSA has committed to providing monthly updates to DOJ as we proceed and when completed. Should this plan be delayed, we will notify the CLETS Administrative Section.

For questions, please contact Elise Warren, Clayton Police Department, Chief at elise.warren@claytonpd.com or (925) 673-7350.

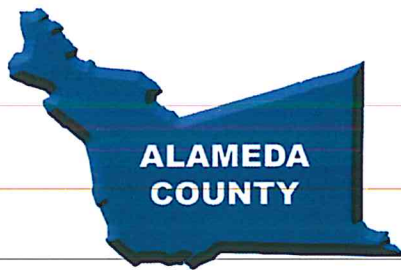
Sincerely,



Elise Warren
Chief of Police
Clayton Police Department

Attachments:

EBRCSA Outline
EBRCSA Console Quote
EBRCSA Radio Encryption Pricing
Lexipol CA Policy 806



East Bay Regional Communications System Authority



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Berkeley, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Lafayette, Livermore, Martinez, Moraga, Newark, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Moraga-Orinda Fire District, Rodeo-Hercules Fire District, San Ramon Valley Fire District, University of California, Berkeley and California Department of Transportation

925-803-7802

December 16, 2020

To: Alameda and Contra Costa County Chief's of Police and Sheriff's

From: Tom McCarthy, Executive Director EBRCSA

Subject: Scope of Work to Encrypt Radios for EBRCSA Members

SUBJECT: Providing Direction to the Alameda and Contra Costa Counties Chiefs of Police and Sheriff's concerning Encryption of Law Enforcement Radios for Members of the East Bay Regional Communications System Authority (EBRCSA). The steps necessary, estimated timeline, and fiscal impact to the EBRCSA Members and EBRCSA.

RECOMMENDATIONS: Request Law Enforcement utilizing the California Department of Justice (CA DOJ) to access the California Law Enforcement Telecommunications System (CLETS) for Criminal Justice Information (CJI) and Personally Identifiable Information (PII) to only authorized personnel. In addition work with EBRCSA, the Alameda County Radio Shop and the Contra Costa County Radio Shop to encrypt the radio channels this information is transmitted over to AES 256 Encrypted.

SUMMARY/DISCUSSION: Consistent with the direction provided by the California Department of Justice Information Services Division Bulleting No. 20-09-CJIS, CA-DOJ is mandating that CJI and PII information be transmitted via a minimum of 128 bit encrypted radios. EBRCSA does not have any member agency with encrypted channels meeting the requirements of DOJ at this time. We have been working to establish a timeline and cost for encryption to be added to approximately 14,000 of the 22,000 radios and 208 consoles which comprise the EBRCSA Radio System.

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**Alameda County Office of Homeland Security and Emergency Services
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The AES 256 Encryption is the only option available to encrypt the radio as this is a universal encryption that will allow EBRCSA Encrypted radios to communicate with all EBRCSA Members. The EBRCSA LMR system is designed and operates so every Law Enforcement Member of EBRCSA can share their channels so in an emergency or major event they can communicate with each other. The radios are programmed with every Law Enforcement Agency's radio channel.

The transition to Encrypted radio is a complex project requiring the upgrades and changes are performed on a live public safety system which cannot be taken offline during the transition. Law Enforcement Agencies will have to be scheduled to have the AES 256 Encryption installed on their dispatch consoles and radios and then transition at a prescheduled time to ensure all radios will be able to transmit to the Dispatch Center consoles. A Radio Technician will have to be onsite as this is transitioned to make any necessary changes. Prior to any work being completed, a comprehensive inspection of each radio and Dispatch Console must be done so the correct equipment is ordered to complete each Law Enforcement Agency.

POLICY REQUIREMENTS.

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MOTOROLA SOLUTIONS

CONFIDENTIAL

2021 EBRCSA MEMBER AGENCY SPECIAL PRICING FOR SUBSCRIBER RADIO ENCRYPTION

QTY	MODEL	DESCRIPTION	UNIT LIST PRICE	SPECIAL DISCOUNT PRICE
1	CA00182AR	ADD: AES ENCRYPTION SOFTWARE	\$633	\$317
1	Q498AX	ENH: ASTRO 25 OTAR W/ MULTIKEY	\$851	\$426

For informational purposes only, agencies may request individual quotes.

In addition, some Counties and Cities are on two-year budgets and if anything is added during the budget cycle, there need to be adjustments to cover the cost of the new project.

Motorola Solutions, Inc. is the only provider which can supply the encryption for the Motorola System as the engineering is proprietary and Motorola is the Sole Source Provider. Motorola has provided two options for the encryption of the consoles and Master Site. The first option requires that in the future, any changes to the encryption key will require re-touching the radio and the cost is \$974,392, see attached Motorola Proposal AES Encryption Consoles. Option two includes technology which allows updates be done over the radio airway automatically and not have to touch the radio. Option two costs \$2,131,807. EBRCSA is managed by a 23 Member Board of Directors that will decide which option to choose.

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RECOMMENDATION:

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QUESTIONS:

Please contact Tom McCarthy, Executive Director, EBRCSA at 925-803-7802 or Tmccarthy@acgov.org.

ATTACHMENTS:

- Motorola Proposal AES Encryption Consoles
- EBRCSA Radio Encryption Pricing

EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

AES ENCRYPTION – BUDGETARY ESTIMATES

NOVEMBER 23, 2020



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SYSTEM DESCRIPTION

Budgetary Estimate Reference #:

PS-000109742

November 23, 2020

1.1 INTRODUCTION

To satisfy the requirements of California DOJ Information Bulletin of October 12, 2020 regarding encrypting radio transmissions of protected data Motorola Solutions, Inc. ("Motorola") provides these budgetary estimates to East Bay Regional Communications System Authority (EBRCSA). This proposal has two alternative approaches. First alternative is the system enablement of AES encryption and encryption for the existing ASTRO 25 MCC 7500 consoles and Archiving Interface Servers. The second alternative includes the same as the first, except for the inclusion of new KVL5000 devices, plus enables system wide Over the Air Rekeying ("OTAR") and use of multiple encryption keys.

Both alternatives prevent radio transmissions being monitored by unauthorized parties with end-to-end AES encryption with current Project 25 algorithms and are fully compliant with all Federal Information Processing Standards (FIPS).

The MCC 7500 dispatch console enables end-to-end encryption from the operator position to the ASTRO 25 network, so that at no point will EBRCSA's communications be undermined by unencrypted transmissions. Each dispatch operator will be able to fully participate in secure communications while being confident that sensitive, vital information will not be heard by unauthorized individuals. A diagram is shown below in Figure 1-1.

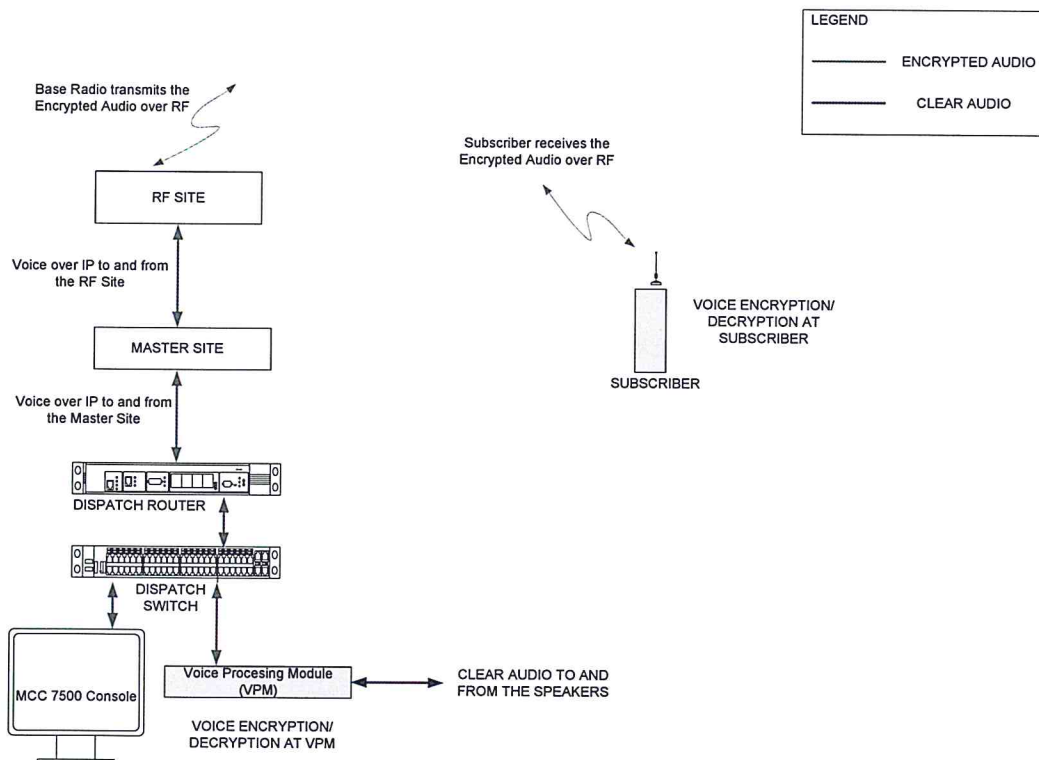


Figure 1-1 : Encrypted Voice Path between console to subscriber unit

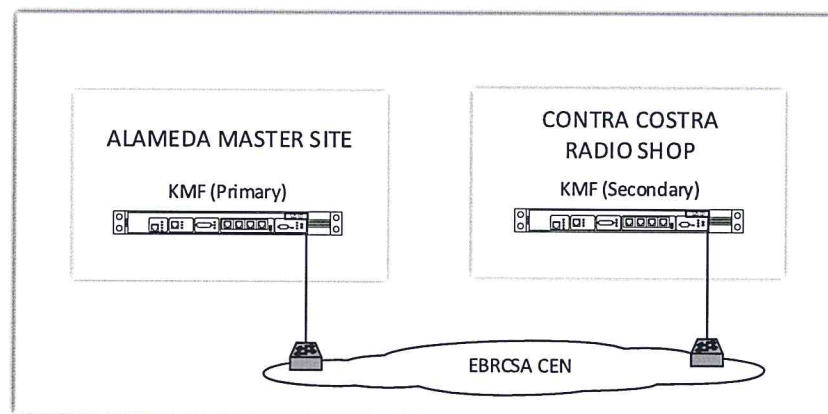
Two options are proposed to EBRCSA.

Option 1:

- Upgrade of 180 MCC 7500 consoles and Archiving Interface Servers (AIS) to support AES Encryption
- Upgrade of 165 MCC 7500 consoles and Archiving Interface Servers (AIS) with Secure Operation Licenses
- Upgrade of 3 existing KVL 4000 – Key Variable Loader with AES Encryption
- Reuse of EBRCSA/Radio Shops 3 existing KVL 5000 – Key Variable Loader with AES and ADP Encryption
- Provide 10 new KVL 5000 - Key Variable Loader with AES and ADP Encryption

Option 2:

- Upgrade of 180 MCC 7500 consoles and Archiving Interface Servers (AIS) to support AES Encryption
- Upgrade of 165 MCC 7500 consoles and Archiving Interface Servers (AIS) with Secure Operation Licenses
- Upgrade of 3 existing KVL 4000 – Key Variable Loader with AES Encryption
- Reuse of EBRCSA/Radio Shops 3 existing KVL 5000 – Key Variable Loader with AES and ADP Encryption
- Upgrade of 210 MCC 7500 consoles and Archiving Interface Servers (AIS) with Over-the-Ethernet Key Management feature (OTЕК)
- Provide two (2) Key Management Facility (Primary and Secondary KMF) to enable fleet wide, coordinated changing of AES encryption keys (OTAR/OTЕК)



SECURE COMMUNICATIONS AT THE CONSOLE

The console itself encrypts and decrypts radio voice messages. Thus, radio voice messages are encrypted end-to-end, from the field radio user to the dispatch console. The console operator can choose whether or not to encrypt their transmissions on a particular trunked resource. Console operators can interface with agencies that have different encryption configurations without any manual intervention or delay. The MCC 7500 Console can support up to 60 calls simultaneously, using up to four different algorithms and multiple encryption keys.

To help reduce potential errors when managing encrypted communications, the MCC 7500 interface provides alerts when the console mode does not match that of a received call, and when a patch or multi-select group is being set up between a mix of clear and secure channels.

Currently, the majority of the MCC 7500 dispatch consoles have no AES encryption except for approximately 30 MCC 7500 which currently have AES encryption.

OPTION 1

KVL 5000 KEY VARIABLE LOADER

The KVL 5000 allows programmers to generate, transport, and load encryption keys, securely and efficiently into secure communication products thereby enabling secure encrypted communications. Packaged in an easy to use one-handed design with an intuitive UI, the KVL 5000 integrates with Motorola's Key Management Facility (KMF) by provisioning radios to use Over-The-Air Rekeying (OTAR).

Designed to meet the requirements of two-way radio programmers, the purpose-built KVL 5000 delivers a quick start and snappy response for easy and efficient key loading - without interrupting the rest of their workflow. The only keyloader that can protect keys with hardware protected keystore, the KVL 5000 provides users with the highest level of secure programming and information protection.

KVL 5000 FEATURES

- FIPS 140-2 Level 2 keyloader
- HSM to protect keys
- Automatic key load
- Dead battery operation
- AES included



KVL 5000

- Store and forward included
- Hardened out of the box

Ten (10) KVL 5000 with AES and ADP encryptions and all the appropriate cables are included in this budgetary for Option 1.

OPTION 2

OVER-THE-ETHERNET KEY MANAGEMENT (OTEK)

The Over-the-Ethernet Key Management feature (OTEK) provides the ability to distribute encryption keys to MCC 7500 Dispatch Consoles and AISs. OTEK supports end-to-end encryption by enabling remote, centralized key management and rekeying of dispatch consoles and the AIS over the network.

With OTEK, the KMF Server can send key management messages to update console/AIS keys, poll the console/AIS, and erase the console/AIS's keys. A console or AIS can also send key management messages to the KMF Server to acknowledge events.

KMF uses OTEK to remotely transfer key management messages to/from the MCC 7500 Console and AIS.

Before new keys can be distributed to the consoles or AIS using OTEK, the console or AIS secure card must have a Unique Key Encryption Key (UKEK), Message Number Period, Radio Set Identifier (RSI), and KMF RSI used to protect the OTEK messages (encryption keys) during distribution. These parameters are usually provided once using the KVL along with the IP address and appropriate port information of the KMF.

To employ the OTEK feature, new keys are assigned to the CKRs that are used by the MCC 7500 consoles and AIS servers and are established as an inactive keyset in the KMF database. (Note: The MCC 7500 console and the AIS server store the associations of talkgroups/multi-groups and CKRs.) The distribution of OTEK messages is initiated to all MCC 7500 consoles that are configured with the affected CKRs.

Upon receiving the OTEK messages, the console or AIS stores the new keys in the inactive keyset of their own key storage database. Voice communications using keys from the active keyset are not interrupted when the new keys in the inactive keyset are distributed. When successful distribution is complete, the KMF displays the OTEK update confirmation. Once the confirmation is displayed, a keyset changeover can be initiated to all consoles or AIS servers in a designated crypto group. When the keyset changeover is done, the KMF instructs the consoles and/or AIS servers to activate the previously inactive keyset and the new keys become currently active.

The MCC 7500 consoles of EBRCSA are VPM-based consoles (an MCC 7500 console interfacing with the secure-capable Voice Processor Module). The KMF equipment is installed on an external customer network. All key management traffic is passed through the network interface barrier to reach the MCC 7500 dispatch console and AIS.

This budgetary includes optional OTEK in all the MCC 7500 console positions and AIS servers located at EBRCSA's Dispatch Centers and the Master Site.



OVER-THE-AIR REKEYING

Over-the-Air Rekeying (OTAR) is enabled via Motorola's FIPS 140-2 certified Key Management Facility; this allows system operators to easily and securely change encryption keys on a regular basis, making the keys a moving target, and thus more difficult for adversaries to crack.

If one of the radios is compromised, you have the ability to:

- **Remote inhibit** – Securely prevent radios from gaining access to the network from a distance
- **Remote enable** – Securely re-establish a radio's network access from a distance
- **Zero-ize** – Securely remove a radio's key material
- **Change-over** – Securely switch a radio's keyset to another keyset for use

**EASILY AND SECURELY
CHANGE ENCRYPTION KEYS
TO ENSURE THE SAFETY OF
YOUR RESPONDERS**

OTAR, like POP25, sends updates to radios over the air, so users do not have to bring their radios in for manual service. This is especially important for encryption keys, because a manual change out could take days or weeks to accomplish.

Upgrading existing EBRCSA member agency subscriber units with AES encryption, OTAR or multikey is not included in this budgetary and can be quoted to member agencies directly.

KEY MANAGEMENT FACILITY (KMF)

The Key Management Facility (KMF), a centralized key manager, is the essential key management controller for Motorola's Project 25 Over-The-Air-Rekeying (OTAR) feature. Using the KMF, information can easily be created, inventoried, archived, and distributed to end-users. Combining centralized key management with our standards-based OTAR capability enables effective planning, implementation, and execution of robust security procedures.

KMF Web-Based Thin Client

The Key Management Facility (KMF) is a robust encryption key management solution that supports Motorola Solutions specific and P25 features, including Over-the-Air-Rekeying (OTAR). Utilizing the KMF, information can be created, inventoried, and distributed to encrypted endpoints including consoles and radios.

The KMF Web-Based Thin Client application provides KMF users with a modern, web-based client interface with improvements to installation, network traffic, and graphical reporting capabilities. This application enables personnel to generate detailed reports, receive at-a-glance status updates via a web-based interface, and monitor data visualizations to analyze system key material information.

**ENABLE EFFECTIVE
PLANNING,
IMPLEMENTATION, AND
EXECUTION OF ROBUST
SECURITY PROCEDURES**

The below figure provides examples of the at-a-glance status and data visualization screens.



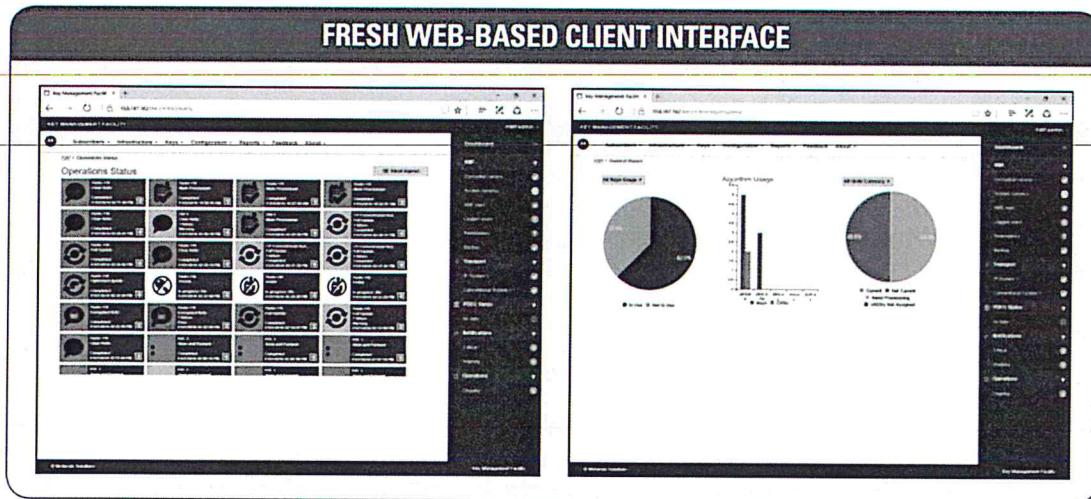


Figure 1-3: KMF Web Based Thin Client Sample Screens

Two (2) KMF Servers are included in this budgetary as Option 2. EBRCSA will provide the laptops for the Web-based KMF Thin Client Application.

The proposed KMF supports 19,000 devices, 4 agency partitioning and 65 KMF Thin Client Applications.

DESIGN AND IMPLEMENTATION ASSUMPTIONS

- New KVL5000 with AES and ADP encryptions will be provided for Option 1.
- Existing three (3) KVL 5000 and three (3) KVL 4000 will be used in both options. AES encryption is already available in all KVL 5000.
- All subscriber units must support OTAR with Multi-keying and AES encryption. No subscriber programming or modifications are included.
- All existing sites or equipment locations will have sufficient space available for the system described as required/specified by R56.
- All existing sites or equipment locations will have adequate electrical power (and backup power, if necessary) in the proper phase and voltage and site grounding to support the requirements of the system described by R56.
- Any site/location upgrades or modifications are the responsibility of the EBRCSA.
- Approved local, State, or Federal permits as may be required for the installation and operation of the proposed equipment, are the responsibility of the EBRCSA.
- Any required system interconnections not specifically outlined here will be provided by EBRCSA, including but not limited to dedicated phone circuits or microwave links.
- Additional AIS, IP logging recorder and control stations are excluded in this budgetary and will be proposed separately if needed.
- Additional licenses of the existing IP Logging Recorder/s are not included in this budgetary.
- There is an existing Customer Enterprise Network (CEN) LAN with the needed Firewall to connect the proposed KMF Servers.

- There is an existing CEN to CEN connectivity between Contra Costa County Radio Shop and the Alameda County Master Site. EBRCSA will ensure this connectivity is in place to support this project.
- Motorola Solutions no longer certifies a specific hardware platform for KMF Client. The workstation for KMF Client must meet the specification listed below. KMF customers can provide their own PC client hardware as long as it meets the MSI specifications.
 - KMF Client Hardware Specifications:
 - Windows 10 OS
 - Modern web browser (Microsoft Chromium Edge, IE11)
 - Minimum 8GB RAM
 - Minimum 1024x768 resolution color display
 - An optional CD/DVD drive
- Any necessary demarcation points are defined as the Motorola Solutions-provided equipment. This includes demarcation for the following services:
 - 120VAC/ -48DC Power & Circuits
 - Backup Power
 - Grounding
 - Communication Circuits and backhaul links between sites
- Where necessary, the EBRCSA will provide a dedicated delivery point—such as a warehouse— for receipt, inventory, and storage of equipment prior to delivery to the sites.
- Work is performed during normal business hours on non-holidays, Monday – Friday, 8am –5pm.
- Union labor and Prevailing Wage labor are not requirements.
- No performance bond is required.
- The Motorola System Technologist will enter a total of 210 operator positions and AIS into the KMF if this option is purchased. No additional subscribers will be configured as part of this budgetary.
- Rack space and power are available at the proposed site locations (Contra Costa Radio Shop and Alameda County Master Site) to install two (2) G10 servers and two (2) CryptR rack shelves.
- This budgetary assumes a new installation of KMF servers. No existing KMF database or application data is proposed to be migrated.
- The AES algorithm is the only encryption algorithm required.
- The Contra Costa County Radio Shop and Alameda County Shop will be responsible for fleetmapping, codeplug generation and subscriber re-programming, as necessary.
- Motorola will review the county shop provided codeplugs.



SECTION 2

EQUIPMENT LIST

2.1.1 Option 1

BLOCK	QTY	NOMENCLATURE	DESCRIPTION
OP_POS_LIC	165	BLN1304	SECURE OPERATION FIELD-ADD LICENSE
OP_POS_LIC	2	T8063	MCC 7500 SECURE VPM ALGORITHM UPGRA
OP_POS_LIC	180	CA00182AB	ADD: AES ALGORITHM
KVL5000	10	T8476B	KVL 5000
KVL5000	10	CA00182AW	ADD: AES ENCRYPTION SOFTWARE
KVL5000	10	CA03358AA	ADD: ASTRO 25 MODE
KVL5000	10	CA03467AA	ADD: NORTH AMERICA MICRO USB CHARGE
KVL5000	10	CA00243AJ	ADD: ADP PRIVACY
KVL5000	10	CB000262A01	CABLE,MICRO USB PROGRAMMING CABLE
KVL5000	10	DQUUSBOTG	STARTECH.COM 5IN MICRO USB TO USB O
KVL5000	10	DQPSA1UB1EE	PORTSMITH USB TO ETHERNET RUGGED EN
KVL5000	10	NNTN7869B	ADAPTER,APX SURVEILLANCE KEYLOAD AD
KVL5000	10	TKN8531C	CABLE FOR RNC, DIU MGEG
KVL5000	10	HKN6182B	CABLE KEYLOADING ADAPTER CGAI
KVL5000	3	T7586	KVL 4000 FLASHPORT UPGRADE
KVL4000	3	CA02010AA	ENH: KVL RADIO AUTHENTICATION UPGRA
KVL4000	3	CA01639AA	ADD: AES ENCRYPTION
KVL4000	3	CA01635AA	ENH: SW UPGRADE TO CURRENT ASTRO 25



2.1.2 Option 2

BLOCK	QTY	NOMENCLATURE	DESCRIPTION
KMF	1	T8749	ASTRO KEY MANAGEMENT FACILITY
KMF	1	ZA01180AA	ADD: KMF SERVER AND WEB CLIENT SW
KMF	1	CA03651AA	ADD: 15,000 CAPACITY
KMF	1	CA01229AA	ADD: KMF REDUNDANCY SOFTWARE
KMF	2	T8698	KMF DL360 G10 SERVER
KMF	2	T7885	MCAFFEE WINDOWS AV CLIENT
KMF	2	SQM01SUM0222	KMF CRYPTR
KMF	2	CA00147AG	ADD: BASIC SOFTWARE OPTION
KMF	2	CA00182AV	ADD: AES 256 ENCRYPTION KIT
KMF	2	CA02066AA	AC Line Cord, North America
KMF	2	TKN9285	RACK MOUNT KIT FOR CRYPTR II
KMF	2	DSUSR5637MODEM	U.S. ROBOTICS USB FAX MODEM - REQD FOR KVL- KMF REMOTE COMMUNICATION
KMF	10	DQUUSBOTG	STARTECH.COM 5IN MICRO USB TO USB OTG HOST ADAPTER M/F - USB ADAPTER
KMF	2	DSRMP615A	SPD, TYPE 3, 120V RACK MOUNT, 15A PLUG-IN W/ (6) 15A NEMA 5-15 OUTLETS
CONSOLES	210	BLN1302	OVER THE ETHERNET KEYING (OTEK) OPERATION FIELD-ADD LICENSE
CONSOLES	165	BLN1304	SECURE OPERATION FIELD-ADD LICENSE
CONSOLES	2	T8063	MCC 7500 SECURE VPM ALGORITHM UPGRADE FOR KVL 4000
CONSOLES	180	CA00182AB	ADD: AES ALGORITHM
KVL4000	3	T7586	KVL 4000 FLASHPORT UPGRADE
KVL4000	3	CA02010AA	ENH: KVL RADIO AUTHENTICATION UPGRADE
KVL4000	3	CA01639AA	ADD: AES ENCRYPTION
KVL4000	3	CA01635AA	ENH: SW UPGRADE TO CURRENT ASTRO 25



STATEMENT OF WORK

Motorola is proposing to East Bay Regional Communications System Authority the installation and configuration of the following equipment at the specified locations.

Site Name	Major Equipment
Alameda Master Site	KMF Primary Server (Option 2)
Contra Costa Radio Shop	KMF Backup Server (Option 2)

The sections below delineate the general responsibilities between Motorola and East Bay Regional Communications System Authority as agreed to by contract.

3.1 MOTOROLA RESPONSIBILITIES

Motorola's general responsibilities include the following:

- Perform the installation of the Motorola supplied equipment described above
- Schedule the implementation in agreement with East Bay Regional Communications System Authority
- Coordinate the activities of all Motorola personnel and subcontractors under this contract
- Installation, optimization, and programming of Key Management Facility to support Console Encryption (Option 2)
- Network integration into the EBRCSA system and existing CEN (Option 2)
- Administer safe work procedures for installation
- Acceptance Testing of KMF equipment (Option 2)
- Project Management, System Technologist, Post Sale Engineering Support
- Secure Communications Training
- Documentation modifications

NOTE: No subscriber flashes, programming, or implementation is included

3.2 EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY RESPONSIBILITIES

East Bay Regional Communications System Authority will assume responsibility for the installation and performance of all other equipment and work necessary for completion of this project that is not provided by Motorola. General responsibilities for East Bay Regional Communications System Authority include the following:

- Provide all buildings and equipment shelters required for system installation
- Insure communications sites meet space, grounding, power, and connectivity requirements for the installation of all equipment.
- Obtain site access required for project implementation.
- EBRCSA will provide a dedicated delivery point, such as a warehouse, for receipt, inventory and storage of equipment prior to delivery to the site(s).



- Coordinate the activities of all East Bay Regional Communications System Authority vendors or other contractors.

SECTION 4

PRICING SUMMARY

4.1 LIST PRICING FOR OPTION 1

Description	Quantity	List Price
KVL4000 Software Upgrade and AES Encryption	3	\$2,850
KVL5000 with AES Encryption Software	10	\$69,850
MCC7500 Secure Operation Licenses	165	\$643,750
MCC7500 AES Licenses	180	\$162,250
Equipment SUBTOTAL:		\$878,700
System Integration Services		\$95,692
Total:		\$974,392

4.2 LIST PRICING FOR OPTION 2

Description	Quantity	List Price
KVL4000 Software Upgrade and AES Encryption	3	\$2,850
MCC7500 Secure Operation Licenses	165	\$643,750
MCC7500 AES Licenses	180	\$162,250
MCC7500 OTEK Licenses	210	\$844,200
Redundant KMF with AES	1	\$172,746
Equipment SUBTOTAL:		\$1,825,796
System Integration Services		\$306,011
Total:		\$2,131,807

** Both Options are List Price Budgetary Estimates. A Firm Fixed Offer may be requested where discounted special pricing may be applied. Sales Tax not included.*

4.3 ESTIMATED PRICING FOR SUPPORT AND MAINTENANCE SERVICES (OPTION 2)

The below table summarized the pricing for post-warranty Maintenance Services after Warranty (Year 1).

Description	Price
Year 2	\$4,098
Year 3	\$4,098



MOTOROLA SOLUTIONS

CONFIDENTIAL

2021 EBRCSA MEMBER AGENCY SPECIAL PRICING FOR SUBSCRIBER RADIO ENCRYPTION

QTY	MODEL	DESCRIPTION	UNIT LIST PRICE	SPECIAL DISCOUNT PRICE
1	CA00182AR	ADD: AES ENCRYPTION SOFTWARE	\$633	\$317
1	Q498AX	ENH: ASTRO 25 OTAR W/ MULTIKEY	\$851	\$426

For informational purposes only, agencies may request individual quotes.

Protected Information

806.1 PURPOSE AND SCOPE

Best Practice **MODIFIED**

The purpose of this policy is to provide guidelines for the access, transmission, release and security of protected information by members of the [agencyName]. This policy addresses the protected information that is used in the day-to-day operation of the [DepartmentOffice] and not the public records information covered in the Records Maintenance and Release Policy.

806.1.1 DEFINITIONS

Best Practice

Definitions related to this policy include:

Protected information - Any information or data that is collected, stored or accessed by members of the [agencyName] and is subject to any access or release restrictions imposed by law, regulation, order or use agreement. This includes all information contained in federal, state or local law enforcement databases that is not accessible to the public.

806.2 POLICY

Best Practice

Members of the [agencyName] will adhere to all applicable laws, orders, regulations, use agreements and training related to the access, use, dissemination and release of protected information.

806.3 RESPONSIBILITIES

Best Practice **MODIFIED**

The [agencyHead] shall select a member of the [DepartmentOffice] to coordinate the use of protected information.

The responsibilities of this position include, but are not limited to:

- (a) Ensuring member compliance with this policy and with requirements applicable to protected information, including requirements for the National Crime Information Center (NCIC) system, National Law Enforcement Telecommunications System (NLETS), Department of Motor Vehicle (DMV) records and California Law Enforcement Telecommunications System (CLETS).
- (b) Developing, disseminating and maintaining procedures that adopt or comply with the U.S. Department of Justice's current Criminal Justice Information Services (CJIS) Security Policy.
- (c) Developing, disseminating and maintaining any other procedures necessary to comply with any other requirements for the access, use, dissemination, release and security of protected information.
- (d) Developing procedures to ensure training and certification requirements are met.

Protected Information

- (e) Resolving specific questions that arise regarding authorized recipients of protected information.
- (f) Ensuring security practices and procedures are in place to comply with requirements applicable to protected information.

806.4 ACCESS TO PROTECTED INFORMATION

Best Practice CALEA - 82.1.7

Protected information shall not be accessed in violation of any law, order, regulation, user agreement, [agencyName] policy or training. Only those members who have completed applicable training and met any applicable requirements, such as a background check, may access protected information, and only when the member has a legitimate work-related reason for such access.

Unauthorized access, including access for other than a legitimate work-related purpose, is prohibited and may subject a member to administrative action pursuant to the Personnel Complaints Policy and/or criminal prosecution.

806.4.1 PENALTIES FOR MISUSE OF RECORDS

State

It is a misdemeanor to furnish, buy, receive or possess Department of Justice criminal history information without authorization by law (Penal Code § 11143).

Authorized persons or agencies violating state regulations regarding the security of Criminal Offender Record Information (CORI) maintained by the California Department of Justice may lose direct access to CORI (11 CCR 702).

806.5 RELEASE OR DISSEMINATION OF PROTECTED INFORMATION

Best Practice CALEA - 82.1.7, 82.1.2

Protected information may be released only to authorized recipients who have both a right to know and a need to know.

A member who is asked to release protected information that should not be released should refer the requesting person to a supervisor or to the [recordsHead] for information regarding a formal request.

Unless otherwise ordered or when an investigation would be jeopardized, protected information maintained by the [DepartmentOffice] may generally be shared with authorized persons from other law enforcement agencies who are assisting in the investigation or conducting a related investigation. Any such information should be released through the [recordsBureau] to ensure proper documentation of the release (see the Records Maintenance and Release Policy).

806.5.1 TRANSMISSION GUIDELINES

State MODIFIED

Protected information, such as restricted Criminal Justice Information (CJI), which includes Criminal History Record Information (CHRI), should not be transmitted via unencrypted radio.

Protected Information

When circumstances reasonably indicate that the immediate safety of [officers_deputies], other [departmentoffice] members, or the public is at risk, only summary information may be transmitted.

In cases where the transmission of protected information, such as Personally Identifiable Information, is necessary to accomplish a legitimate law enforcement purpose, and utilization of an encrypted radio channel is infeasible, a [MDT] or [departmentoffice]-issued cellular telephone should be utilized when practicable. If neither are available, unencrypted radio transmissions shall be subject to the following:

- Elements of protected information should be broken up into multiple transmissions, to minimally separate an individual's combined last name and any identifying number associated with the individual, from either first name or first initial.
- Additional information regarding the individual, including date of birth, home address, or physical descriptors, should be relayed in separate transmissions.

Nothing in this policy is intended to prohibit broadcasting warrant information.

806.5.2 REVIEW OF CRIMINAL OFFENDER RECORD

State

Individuals requesting to review their own California criminal history information shall be referred to the Department of Justice (Penal Code § 11121).

Individuals shall be allowed to review their arrest or conviction record on file with the [DepartmentOffice] after complying with all legal requirements regarding authority and procedures in Penal Code § 11120 through Penal Code § 11127 (Penal Code § 13321).

806.6 CALIFORNIA RELIGIOUS FREEDOM ACT

State

MODIFIED

Members shall not release personal information from any agency database for the purpose of investigation or enforcement of any program compiling data on individuals based on religious belief, practice, affiliation, national origin or ethnicity (Government Code § 8310.3).

806.7 SECURITY OF PROTECTED INFORMATION

Federal

CALEA - 82.1.7

The [agencyHead] will select a member of the [DepartmentOffice] to oversee the security of protected information.

The responsibilities of this position include, but are not limited to:

- (a) Developing and maintaining security practices, procedures and training.
- (b) Ensuring federal and state compliance with the CJIS Security Policy and the requirements of any state or local criminal history records systems.
- (c) Establishing procedures to provide for the preparation, prevention, detection, analysis and containment of security incidents including computer attacks.

Protected Information

- (d) Tracking, documenting and reporting all breach of security incidents to the [agencyHead] and appropriate authorities.

806.7.1 MEMBER RESPONSIBILITIES

Best Practice

Members accessing or receiving protected information shall ensure the information is not accessed or received by persons who are not authorized to access or receive it. This includes leaving protected information, such as documents or computer databases, accessible to others when it is reasonably foreseeable that unauthorized access may occur (e.g., on an unattended table or desk; in or on an unattended vehicle; in an unlocked desk drawer or file cabinet; on an unattended computer terminal).

806.8 TRAINING

Best Practice CALEA - 82.1.7

All members authorized to access or release protected information shall complete a training program that complies with any protected information system requirements and identifies authorized access and use of protected information, as well as its proper handling and dissemination.

From: Bob Antony <Bob.Antony@doit.cccounty.us>
Sent: Monday, July 12, 2021 11:07 AM
To: Warren, Elise (Clayton PD)
Subject: RE: Motorola Radio encryption software installation

"EXTERNAL EMAIL: This email originated from outside of the organization. Do not follow guidance, click links, or open attachments unless you recognize the sender and know the content is safe."

Elise,

Wasn't exactly living life large, as I was working on a new deck in 100 degree heat in Grass Valley.
Fortunately for the most part I was able to stay in the shade.

The information that Dick provided you is accurate. If Clayton PD has the funding to replace all 30 of their APX radios, that would probably serve them best in the long run. Motorola is currently offering a discount on the required encryption upgrades (on new radios as well as upgrades) until September 17th of this year. However, although no guarantees I anticipate that date being extended out further. The best estimate for requiring the AES encryption will be some time around July 2023, so you should have a couple of budget cycles to purchase the new radios. Clayton Public Works has six APX6500 mobile radios and two APX6000 portable radios. They currently don't have any EBRCS talkgroups in those radios that would require them to be upgraded with AES encryption. If you just want to hang on to a few PD radios for PWS spares, those PWS radios wouldn't need to be replaced anytime soon.

On another note, we are getting closer to turning the EBRCS system over to TDMA. Clayton PD still has three Bluetooth portables that need those upgrades This isn't because of a lack of effort by the Radio Shop or Red Cloud, as Motorola initially sent the wrong upgrades and now has proceeded to lose track of those upgrade when they were sent back for exchange. I do have assurance from Tom McCarthy that the EBRCS system will not be cut over to TDMA until all known upgrades are completed.

Please let me know if you have any other questions or concerns at this time.

Bob

From: Warren, Elise (Clayton PD) <Elise.Warren@claytonpd.com>
Sent: Friday, July 9, 2021 8:29 AM
To: Bob Antony <Bob.Antony@doit.cccounty.us>
Subject: RE: Motorola Radio encryption software installation

Thanks for your response while on vacation, enjoy the rest of it! Any info/guidance you can provide is appreciated!

I reached out to Dick Fasi (Red Cloud) for a quote and info and this is what he shared with me regarding our radios. We purchased our in 2012/13 according to my records:

Hi Elise

Thanks for contacting me regarding your radio equipment.

With respect to your question about radio life expectancy, that's a difficult question. Motorola suggest that the useful life of a radio is 5 years old. Many Motorola radios last for 10 or more years.

The issue here is repair support for your radios. I believe you radio models are the APX6000 portable and the APX6500 mobile. These were the first in the APX line. These radios are "AN" models. In 2016 Motorola introduced the "BN" model. Support on the APX6000 AN model ends at the end of this year. That means that there will be no parts or repair available from Motorola.

As radios age they develop repair issues more frequently. Adding encryption to old radios that may be failing is not cost effective.

I would recommend replacing the portables and mobiles. I have attached the APX6000 end of life notice.

From: Bob Antony <Bob.Antony@doit.cccounty.us>
Sent: Thursday, July 08, 2021 9:54 PM
To: Warren, Elise (Clayton PD) <Elise.Warren@claytonpd.com>
Subject: Re: Motorola Radio encryption software installation

Elise,

I am on vacation until Monday. I want to check on what model radios you have and when the Motorola support will end for them. Motorola was wanting to set up a temporary Radio Management Server system for all County radios in need of the encryption upgrades and charge a fee for each radio. I'm not sure what that price would be. If the Radio Shop does the upgrades, I have been estimating the labor costs at \$75/radio.

Hope all is well in Clayton.

Bob

Sent from my iPhone

On Jul 8, 2021, at 12:30 PM, Warren, Elise (Clayton PD) <Elise.Warren@claytonpd.com>

wrote:

Hello,

I am in the process of deciding whether to upgrade our current Motorola radios (APX6000's) with the encryption software or to purchase new radios. If we decide to just purchase the upgrade software, will DoIT be able to install these, and what is the installation cost? We have 16 handheld radios and 15 mobile radios.

Also, if we purchase new radios (ours were originally purchased in 2012), what would be the cost to configure them/install necessary software.

Thank you,

Elise

Elise Warren
Chief of Police
Clayton Police Department
6000 Heritage Trail
Clayton CA 94517
(925) 673-7350

<image001.png>

<REMINDER ENCRYPTION SPECIAL PRICING 063021.pdf>

Amendment No# 4 to Communications System Agreement

This Amendment No# 4 to Communications System Agreement (this "Amendment") is made by and between Contra Costa County, a political subdivision of the State of California (the "County" or "Customer") and Motorola Solutions, Inc., formerly Motorola, Inc. ("Motorola").

The Customer and Motorola previously entered into a Communications System Agreement dated May 27, 2009 (the "CSA"). Section 3.4 of the CSA permits the County to make additional purchases of Equipment or Software under the CSA for a three year period from the Effective Date (as defined in the, CSA).

For the mutual benefit of the County and Motorola, the County and Motorola amended the CSA by Amendment No# 1, effective May 20, 2012, the purpose of which was to extend the rights of the County under Section 3.4 of the CSA for an additional three (3) years (through May 31, 2015) and to extend the term of the contract under Section 3.3 of the CSA to coincide with this time period or until the expiration of any unexpired warranty period, whichever occurs last.

For the mutual benefit of the County and Motorola, the County and Motorola further amended the CSA by Amendment No# 2, effective as of May 31, 2015, the purpose of which was to further extend the rights of the County under Section 3.4 of the CSA for an additional three (3) years (through May 31, 2018) and to extend the term of the CSA under Sections 3.3 of the CSA until May 31, 2018 or until expiration of any unexpired warranty period, as set forth in Section 9, whichever occurs last.

For the mutual benefit of the County and Motorola, the County and Motorola further amended the CSA by Amendment No# 3, effective as of June 26, 2018, the purpose of which was to further extend the rights of the County under Section 3.4 of the CSA for an additional two (2) years (through May 31, 2020) and to extend the term of the CSA under Sections 3.3 of the CSA until May 31, 2020 or until expiration of any unexpired warranty period, as set forth in Section 9, whichever occurs last.

The parties now wish to further amend the contract to extend the term of the CSA and Section 3.4 for an additional three (3) years.

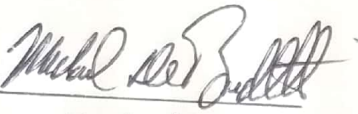
Therefore, the County and Motorola hereby agree to amend the CSA as follows:

1. Section 3.3 of the CSA is hereby deleted in its entirety and replaced with:
"TERM. Unless otherwise terminated in accordance with the provisions of this Agreement or extended by mutual agreement of the parties, the term of this Agreement shall begin on the Effective Date (i.e., May 20, 2009) and shall continue until May 31, 2023 or until expiration of any unexpired warranty period, as set forth in Section 9, whichever occurs last."
2. The first sentence of Section 3.4 of the CSA is hereby deleted in its entirety and replaced with:
"Through and including May 31, 2023, Customer may order additional Equipment or Software, provided that it is then available, and related services." The remainder of Section 3.4 of the CSA is unchanged.

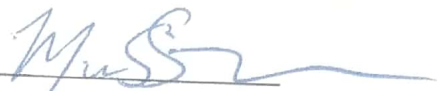
4. This Amendment is effective as of May 31, 2020.

Except as amended by this Amendment, the CSA remains unmodified and in full force and effect.

Motorola Solutions, Inc.

By: 
Name: Michael De Benedetti
Title: Area Sales Manager
Date: June 5, 2020

Contra Costa County

By: 
Name: Marc Shorr
Title: Chief Information Officer
Date: May 29, 2020



8/2/21

City of Clayton
6000 Heritage Trail
Clayton CA 94517

RE: Municipal Lease # 25129

Enclosed for your review, please find the **Municipal Lease** documentation in connection with the solution to be leased from Motorola. The interest rate and payment streams outlined in Equipment Lease-Purchase Agreement #25129 are valid for contracts that are executed and returned to Motorola on or before **August 30, 2021**. After **8/30/21**, the Lessor reserves the option to re-quote and re-price the transaction based on current market interest rates.

Please have the documents executed where indicated and forward the documents to the following address:

Motorola Solutions Credit Company LLC
Attn: Bill Stancik / 44th Floor
500 W. Monroe
Chicago IL 60661

Should you have any questions, please contact me at 847-538-4531.

Thank You,

MOTOROLA SOLUTIONS CREDIT COMPANY LLC
Bill Stancik

LESSEE FACT SHEET

Please help Motorola provide excellent billing service by providing the following information:

1. Complete Billing Address City of Clayton
6000 Heritage Trail
Clayton, CA 94517

- E-mail Address: Claytonpolice@claytonpd.com
- Attention: Chief of Police
- Phone: (925) 673-7350
2. Lessee County Location: Contra Costa County
3. Federal Tax I.D. Number 941568979
4. Purchase Order Number to be referenced on invoice (if necessary) or other “descriptions” that may assist in determining the applicable cost center or department: _____
5. Equipment description that you would like to appear on your invoicing: Police mobile radios

Appropriate Contact for Documentation / System Acceptance Follow-up:

6. Appropriate Contact & Mailing Address City of Clayton
Chief of Police, Elise Warren
6000 Heritage Trail
Clayton, CA 94517

- Phone: (925) 673-7350
- Fax: (925) 672-1429
7. Payment remit to address: **Motorola Solutions Credit Company LLC**
P.O. Box 71132
Chicago IL 60694-1132

Thank you

EQUIPMENT LEASE-PURCHASE AGREEMENT

Lease Number: 25129

LESSEE:

City of Clayton
6000 Heritage Trail
Clayton CA 94517

LESSOR:

Motorola Solutions, Inc.
500 W. Monroe
Chicago IL 60661

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the equipment and/or software described in Schedule A attached hereto ("Equipment") in accordance with the following terms and conditions of this Equipment Lease-Purchase Agreement ("Lease").

1. TERM. This Lease will become effective upon the execution hereof by Lessor. The Term of this Lease will commence on date specified in Schedule A attached hereto and unless terminated according to terms hereof or the purchase option, provided in Section 18, is exercised this Lease will continue until the Expiration Date set forth in Schedule B attached hereto ("Lease Term").

2. RENT. Lessee agrees to pay to Lessor or its assignee the Lease Payments (herein so called), including the interest portion, in the amounts specified in Schedule B. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment Date as set forth in Schedule B and thereafter on each of the Lease Payment Dates set forth in Schedule B. Any payments received later than thirty (30) days from the due date will bear interest at the lesser of six percent (6%) per annum or the highest lawful rate from the due date. Except as specifically provided in Section 5 hereof, the Lease Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever. Lessee reasonably believes that funds can be obtained sufficient to make all Lease Payments during the Lease Term and hereby covenants that a request for appropriation for funds from which the Lease Payments may be made will be requested each fiscal period, including making provisions for such payment to the extent necessary in each budget submitted for the purpose of obtaining funding. It is Lessee's intent to make Lease Payment for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

3. DELIVERY AND ACCEPTANCE. Lessor will cause the Equipment to be delivered to Lessee at the location specified in Schedule A ("Equipment Location"). Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment either (a) by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form provided by Lessor; or (b) by executing and delivering the form of acceptance provided for in the Contract (defined below).

Even if Lessee has not executed and delivered to Lessor a Delivery and Acceptance Certificate or other form of acceptance acceptable to Lessor, if Lessor believes the Equipment has been delivered and is operational, Lessor may require Lessee to notify Lessor in writing (within five (5) days of Lessee's receipt of Lessor's request) whether or not Lessee deems the Equipment (i) to have been delivered and (ii) to be operational, and hence be accepted by Lessee. If Lessee fails to so respond in such five (5) day period, Lessee will be deemed to have accepted the Equipment and be deemed to have acknowledged that the Equipment was delivered and is operational as if Lessee had in fact executed and delivered to Lessor a Delivery and Acceptance Certificate or other form acceptable to Lessor.

4. REPRESENTATIONS AND WARRANTIES. Lessor acknowledges that the Equipment leased hereunder is being manufactured and installed by Lessor pursuant to contract (the "Contract") covering the Equipment. Lessee acknowledges that on or prior to the date of acceptance of the Equipment, Lessor intends to sell and assign Lessor's right, title and interest in and to this Agreement and the Equipment to an assignee ("Assignee").

LESSEE FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN LESSEE AND THE ASSIGNEE, THE PROPERTY SHALL BE ACCEPTED BY LESSEE "AS IS" AND "WITH ALL FAULTS". LESSEE AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH LESSOR AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE ASSIGNEE. NEITHER LESSOR NOR THE ASSIGNEE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE LEASE OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY LESSEE OR ANY THIRD PARTY. NOTHING CONTAINED HEREIN SHALL PRECLUDE THE LESSEE FROM ENFORCING ANY WARRANTIES AFFORDED UNDER THE CONTRACT, AGAINST MOTOROLA SOLUTIONS, INC. AS THE EQUIPMENT VENDOR.

Lessor is not responsible for, and shall not be liable to Lessee for damages relating to loss of value of the Equipment for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties).

5. NON-APPROPRIATION OF FUNDS. Notwithstanding anything contained in this Lease to the contrary, Lessee has the right to not appropriate funds to make Lease Payments required hereunder in any fiscal period and in the event no funds are appropriated or in the event funds appropriated by Lessee's governing body or otherwise available by any lawful means whatsoever in any fiscal period of Lessee for Lease Payments or other amounts due under this Lease are insufficient therefor, this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments or other amounts herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. The Lessee will immediately notify the Lessor or its Assignee of such occurrence. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its Assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment. Non-appropriation of funds shall not constitute a default hereunder for purposes of Section 16.

6. LESSEE CERTIFICATION. Lessee represents, covenants and warrants that: (i) Lessee is a state or a duly constituted political subdivision or agency of the state of the Equipment Location; (ii) the interest portion of the Lease Payments shall be excludable from Lessor's gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"); (iii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; (iv) this Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; (v) Lessee will comply with the information reporting requirements of Section 149(e) of the Internal Revenue Code of 1986 (the "Code"), and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (vi) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code; (vii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Lease to be a private activity bond within the meaning of Section 141(a) of the Code; (viii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Lease Payment to be or become includible in gross income for Federal income taxation purposes under the Code; and (ix) Lessee will be the only entity to own, use and operate the Equipment during the Lease Term.

Lessee represents, covenants and warrants that: (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all laws relative to public bidding where necessary, and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

If Lessee breaches the covenant contained in this Section, the interest component of Lease Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, notwithstanding anything to the contrary contained in Section 11 of this Agreement, Lessee agrees to pay promptly after any such determination of taxability and on each Lease Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without

limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Section 6 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

7. TITLE TO EQUIPMENT; SECURITY INTEREST. Upon shipment of the Equipment to Lessee hereunder, title to the Equipment will vest in Lessee subject to any applicable license; provided, however, that (i) in the event of termination of this Lease by Lessee pursuant to Section 5 hereof; (ii) upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing; or (iii) in the event that the purchase option has not been exercised prior to the Expiration Date, title will immediately vest in Lessor or its Assignee, and Lessee shall immediately discontinue use of the Equipment, remove the Equipment from Lessee's computers and other electronic devices and deliver the Equipment to Lessor or its Assignee. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; (ii) agrees that this Lease may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

8. USE; REPAIRS. Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies, the Contract, any licensing or other agreement, and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the Equipment. Lessee, at its expense will keep the Equipment in good repair and furnish and/or install all parts, mechanisms, updates, upgrades and devices required therefor.

9. ALTERATIONS. Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

10. LOCATION; INSPECTION. The Equipment will not be removed from, [or if the Equipment consists of rolling stock, its permanent base will not be changed from] the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

11. LIENS AND TAXES. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, licensing, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefor within ten days of written demand.

12. RISK OF LOSS: DAMAGE; DESTRUCTION. Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair (an "Event of Loss") , Lessee at the option of Lessor will: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor the sum of : (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in Schedule B.

In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Balance Payment (as set forth in Schedule B) to be made by Lessee with respect to that part of the Equipment which has suffered the Event of Loss.

13. INSURANCE. Lessee will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, Lessee may self-insure against any or all such risks. All insurance covering loss of or damage to the Equipment shall be carried in an amount no less than the amount of the then applicable Balance Payment with respect to such Equipment. The initial amount of insurance required is set forth in Schedule B. Each insurance policy will name Lessee as an insured and Lessor or its Assigns as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its Assigns as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

14. INDEMNIFICATION. Lessee shall, to the extent permitted by law, indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorneys' fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, licensing, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon.

15. ASSIGNMENT. Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment or; (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Lessee covenants and agrees not to assert against the Assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Lessor. No assignment or reassignment of any Lessor's right, title or interest in this Lease or the Equipment shall be effective unless and until Lessee shall have received a notice of assignment, disclosing the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of certificates of participation in the Lease, it shall thereafter be sufficient that a copy of the agency agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency agreement is no longer in effect. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code, and the regulations, proposed or existing, from time to time promulgated thereunder. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested.

After notice of such assignment, Lessee shall name the Assignee as additional insured and loss payee in any insurance policies obtained or in force. Any Assignee of Lessor may reassign this Lease and its interest in the Equipment and the Lease Payments to any other person who, thereupon, shall be deemed to be Lessor's Assignee hereunder.

16. EVENT OF DEFAULT. The term "Event of Default", as used herein, means the occurrence of any one or more of the following events: (i) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of the Lease when funds have been appropriated sufficient for such purpose, and any such failure continues for thirty(30) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (iv) proceedings under

any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or (v) an attachment, levy or execution is threatened or levied upon or against the Equipment.

17. REMEDIES. Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Lessee, declare all amounts then due under the Lease, and all remaining Lease Payments due during the fiscal period in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (ii) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly discontinue use of the Equipment, remove the Equipment from all of Lessee's computers and electronic devices, return the Equipment to Lessor in the manner set forth in Section 5 hereof, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (iii) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other amounts due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by Lessee hereunder; (iv) promptly return the Equipment to Lessor in the manner set forth in Section 5 hereof; and (v) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of the Equipment Location or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

18. PURCHASE OPTION. Upon thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to purchase the Equipment on the Lease Payment dates set forth in Schedule B by paying to Lessor, on such date, the Lease Payment then due together with the Balance Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that the Equipment is free and clear of any liens created by Lessor.

19. NOTICES. All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to such mailing.

20. SECTION HEADINGS. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

21. GOVERNING LAW. This Lease shall be construed in accordance with, and governed by the laws of, the state of the Equipment Location.

22. DELIVERY OF RELATED DOCUMENTS. Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

23. ENTIRE AGREEMENT; WAIVER. This Lease, together with Schedule A Equipment Lease-Purchase Agreement, Schedule B, Evidence of Insurance, Statement of Essential Use/Source of Funds, Certificate of Incumbency, Certified Lessee Resolution (if any), Information Return for Tax-Exempt Governmental Obligations and the Delivery and Acceptance Certificate and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitutes the entire agreement between the parties with respect to the Lease of the Equipment, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

24. EXECUTION IN COUNTERPARTS. This Lease may be executed in several counterparts, either electronically or manually, all of which shall constitute but one and the same instrument. Lessor reserves the right to request receipt of a manually-executed counterpart from Lessee. Lessor and Lessee agree that the only original counterpart for purposes of perfection by possession shall be the original counterpart manually executed by Lessor and identified as "Original", regardless of whether Lessee's execution or delivery of said counterpart is done manually or electronically.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day of August, 2021.

LESSEE:
City of Clayton

LESSOR:
MOTOROLA SOLUTIONS, INC.

By: _____

By: _____

Printed Name: _____
Title: _____

Uygar Gazioglu
Title Treasurer

CERTIFICATE OF INCUMBENCY

I, _____ do hereby certify that I am the duly elected or
(Printed Name of Secretary/Clerk)

appointed and acting Secretary or Clerk of the City of Clayton, an entity duly organized and existing under the laws of the **State of California** that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) executing this agreement is/are the duly elected or appointed officer(s) of such entity holding the office(s) below his/her/their respective name(s). I further certify that (i) the signature(s) set forth above his/her/their respective name(s) and title(s) is/are his/her/their true and authentic signature(s) and (ii) such officer(s) have the authority on behalf of such entity to enter into that certain Equipment Lease Purchase Agreement number **25129**, between City of Clayton and Motorola Solutions, Inc. If the initial insurance requirement on Schedule B exceeds \$1,000,000, attached as part of the Equipment Lease Purchase Agreement is a Certified Lessee Resolution adopted by the governing body of the entity.

IN WITNESS WHEREOF, I have executed this certificate and affixed the seal of City of Clayton, hereto this ____ day of August, 2021.

By: _____
(Signature of Secretary/Clerk)

SEAL

OPINION OF COUNSEL

With respect to that certain Equipment Lease-Purchase Agreement 25129 by and between Motorola Solutions, Inc. and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a state or a fully constituted political subdivision or agency of the State of the Equipment Location described in Schedule A hereto; (ii) the execution, delivery and performance by the Lessee of the Lease have been duly authorized by all necessary action on the part of the Lessee, (iii) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; and (iv) Lessee has sufficient monies available to make all payments required to be paid under the Lease during the current fiscal year of the Lease, and such monies have been properly budgeted and appropriated for this purpose in accordance with State law. This opinion may be relied upon by the Lessor and any assignee of the Lessor's rights under the Lease.

Attorney for City of Clayton

**SCHEDULE A
EQUIPMENT LEASE-PURCHASE AGREEMENT**

Schedule A 25129
Lease Number:

This Equipment Schedule is hereby attached to and made a part of that certain Equipment Lease-Purchase Agreement Number **25129** ("Lease"), between Lessor and Lessee.

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following items of Equipment

QUANTITY	DESCRIPTION (Manufacturer, Model, and Serial Nos.)
	Refer to attached Equipment List.
Equipment Location:	

Initial Term: 84 Months

Commencement Date: 9/1/2021

First Payment Due Date: 9/1/2022

7 annual payments as outlined in the attached Schedule B, plus Sales/Use Tax of \$0.00, payable on the Lease Payment Dates set forth in Schedule B.

City of Clayton (Schedule B)						
Compound Period:			Monthly			
Nominal Annual Rate:			3.690%			
CASH FLOW DATA						
	Event	Date	Amount	Number	Period	End Date
1	Lease	9/1/2021	\$ 203,067.28	1		
2	Lease Payment	9/1/2022	\$ 33,524.78	7	Annual	9/1/2028
AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year						
	Date	Lease Payment	Interest	Principal	Balance	
Lease	9/1/2021				\$203,067.28	
1	9/1/2022	\$ 33,524.78	\$ 7,621.08	\$ 25,903.70	\$177,163.58	
2	9/1/2023	\$ 33,524.78	\$ 6,648.92	\$ 26,875.86	\$150,287.72	
3	9/1/2024	\$ 33,524.78	\$ 5,640.27	\$ 27,884.51	\$122,403.21	
4	9/1/2025	\$ 33,524.78	\$ 4,593.77	\$ 28,931.01	\$ 93,472.20	
5	9/1/2026	\$ 33,524.78	\$ 3,508.00	\$ 30,016.78	\$ 63,455.42	
6	9/1/2027	\$ 33,524.78	\$ 2,381.47	\$ 31,143.31	\$ 32,312.11	
7	9/1/2028	\$ 33,524.78	\$ 1,212.67	\$ 32,312.11	\$ -	
Grand Totals		\$ 234,673.46	\$ 31,606.18	\$203,067.28		

INITIAL INSURANCE REQUIREMENT: \$203,067.28

Except as specifically provided in Section five of the Lease hereof, Lessee agrees to pay to Lessor or its assignee the Lease Payments, including the interest portion, in the amounts and dates specified in the above payment schedule.

EVIDENCE OF INSURANCE

Fire, extended coverage, public liability and property damage insurance for all of the Equipment listed on Schedule A number **25129** to that Equipment Lease Purchase Agreement number **25129** will be maintained by the City of Claytonas stated in the Equipment Lease Purchase Agreement.

This insurance is provided by:

Name of insurance provider

Address of insurance provider

City, State and Zip Code

Phone number of local insurance provider

E-mail address

In accordance with the Equipment Lease Purchase Agreement Number **25129** , City of Clayton , hereby certifies that following coverage are or will be in full force and effect:

Type	Amount	Effective Date	Expiration Date	Policy Number
Fire and Extended Coverage	_____	_____	_____	_____
Property Damage	_____	_____	_____	_____
Public Liability	_____	_____	_____	_____

Certificate shall include the following:

Description: All Equipment listed on Schedule A number 25129 to that Equipment Lease Purchase Agreement number 25129. Please include equipment cost equal to the Initial Insurance Requirement on Schedule B to Equipment Lease Purchase Agreement number 25129 and list any deductibles.

Certificate Holder:

MOTOROLA SOLUTIONS, INC. and or its assignee as additional insured and loss payee
1303 E. Algonquin Road
Schaumburg, IL 60196

If self insured, contact Motorola representative for template of self insurance letter.

STATEMENT OF ESSENTIAL USE/SOURCE OF FUNDS

To further understand the essential governmental use intended for the equipment together with an understanding of the sources from which payments will be made, please address the following questions by completing this form or by sending a separate letter:

1. What is the specific use of the equipment?

The radios will be used to transmit and receive public safety radio communications. The radio transmissions are part of the East Bay Regional Communications System Authority (EBRCSA) network, which provide radio communications interoperability between local law enforcement agencies as well as other emergency services providers.

2. Why is the equipment essential to the operation of **City of Clayton**?

Police Radios are an essential tool used by Officers to transmit and receive public safety information. The radios are a tool that allow officers in the field to communicate with dispatch, other officers and other emergency providers. The radios are the officer's primary method of communication.

3. Does the equipment replace existing equipment? YES

If so, why is the replacement being made?

The current radios, APX6000, are no longer supported by Motorola.

4. Is there a specific cost justification for the new equipment? No

If yes, please attach outline of justification.

5. What is the expected source of funds for the payments due under the Lease for the current fiscal year and future fiscal years?

City of Clayton Rainy Day Fund (110)

EQUIPMENT LEASE PURCHASE AGREEMENT DELIVERY AND ACCEPTANCE CERTIFICATE

The undersigned Lessee hereby acknowledges receipt of the Equipment described below ("Equipment") and Lessee hereby accepts the Equipment after full inspection thereof as satisfactory for all purposes of lease Schedule A to the Equipment Lease Purchase Agreement executed by Lessee and Lessor.

Equipment Lease Purchase Agreement No.: 25129

Lease Schedule A No. : 25129

EQUIPMENT INFORMATION

QUANTITY	MODEL NUMBER	EQUIPMENT DESCRIPTION
		Equipment referenced in lease Schedule A# 25129. See Schedule A for a detailed Equipment List.

LESSEE:

City of Clayton

By: _____

Date: _____

CERTIFIED LESSEE RESOLUTION

At a duly called meeting of the Governing Body of the Lessee (as defined in the Lease) held on August _____, 2021, the following resolution was introduced and adopted.

BE IT RESOLVED by the Governing Board of Lessee as follows:

1. Determination of Need. The Governing Body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment or other personal property described in the Lease between City of Clayton(Lessee) and Motorola Solutions, Inc. (Lessor).
2. Approval and Authorization. The Governing body of Lessee has determined that the Lease, substantially in the form presented to this meeting, is in the best interests of the Lessee for the acquisition of such Equipment or other personal property, and the Governing Board hereby approves the entering into of the Lease by the Lessee and hereby designates and authorizes the following person(s) referenced in the Lease to execute and deliver the Lease on Lessee's behalf with such changes thereto as such person deems appropriate, and any related documents, including any escrow agreement, necessary to the consummation of the transactions contemplated by the Lease.
3. Adoption of Resolution. The signatures in the Lease from the designated individuals for the Governing Body of the Lessee evidence the adoption by the Governing Body of this Resolution.



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Sandra Sato, Interim Finance Director

DATE: August 17, 2021

SUBJECT: Adopt Resolution ##-2021 Designating City Personnel Authorized to Invest Monies in the Local Agency Investment Fund (LAIF) and Resolution ##-2021 Designating City Personnel Authorized to Invest Monies in the UBS Account

RECOMMENDATION

Motion to adopt Resolutions Designating City Staff Authorized to Invest City monies in LAIF and the UBS Brokerage Account.

BACKGROUND

The Attached Resolutions are necessary to document Authorized Officers of the City to invest City monies in LAIF and the UBS Brokerage Account. LAIF is a program that offers local agencies the opportunity to participate in a major portfolio, which invests hundreds of millions of dollars, using the investment expertise of the State Treasurer's Office investment staff at no additional cost to the taxpayer. UBS is the City's investment account for longer-term investments; LAIF investments can be liquidated more quickly to address cash flow needs.

DISCUSSION

Due to turnover in the last several years the Resolutions identifying staff authorized to invest money on the City's behalf in LAIF and via UBS have become outdated and need to be revised. In addition, due to the size of the staff it is prudent to add an additional authorized position to LAIF. The UBS investment brokerage account was established in 2014 and according to the authorization documentation requires a formal Resolution by the governing board (City Council) to update the authorized signatures.

The City's current investment policy identifies that the City Manager is the Chief Fiscal Officer and shall appoint staff to handle the day-to-day activities of investments. The proposed Resolutions name the Finance Director, Assistant to the City Manager and the City Clerk as

staff authorized to sign related to investment actions. The City Manager is not named in order to preserve adequate separation of duties and internal controls.

FISCAL IMPACTS

No direct fiscal impact but the resolutions are required to allow the City to continue to manage and invest City resources.

ATTACHMENTS

Resolutions

RESOLUTION NO. -2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON
DESIGNATING CITY PERSONNEL AUTHORIZED TO INVEST MONIES IN THE
LOCAL AGENCY INVESTMENT FUND (LAIF)**

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, Pursuant to Chapter 730 of the statutes of 1976 Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

WHEREAS, the City of Clayton does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein as in the best interests of the City of Clayton.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Clayton does hereby authorize the deposit and withdrawal of City of Clayton monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein, and verification by the State Treasurer's Office of all banking information provided in that regard.

BE IT FURTHER RESOLVED, that the following City of Clayton officers or their successors in office shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund.

Finance Director

Assistant to the City Manager

City Clerk

Passed, Approved and adopted by the City Council of the City of Clayton at a regular meeting of said Council held on August 17, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk

RESOLUTION NO. ##-2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON
DESIGNATING CITY PERSONNEL AUTHORIZED TO
INVEST MONIES IN THE CITY'S UBS INVESTMENT ACCOUNT**

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, Investment of the City's idle cash is necessary to get the highest return considering safety and liquidity;

WHEREAS, the City of Clayton maintains an Investment Policy to guide Investments;

WHEREAS the Investment Policy provides that the City Manager, as the Chief Fiscal Officer, shall appoint staff to assist in the day-to-day Investments activities; and

WHEREAS, the City has been handling its investments through UBS for some time and UBS requires a formal Resolution to update those authorized to handle Investments with UBS.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Clayton does hereby authorize the deposit and withdrawal of City of Clayton monies with UBS in accordance with its Investment Policy as it now exists or is amended from time to time.

BE IT FURTHER RESOLVED, that the following City of Clayton officers or their successors in office shall be authorized to order the investment, deposit or withdrawal of monies with UBS.

Finance Director

Assistant to the City Manager

City Treasurer

Passed, Approved and adopted by the City Council of the City of Clayton at a regular meeting of said Council held on August 17, 2021 by the following vote:

AYES:

NOES:

ABSENT:

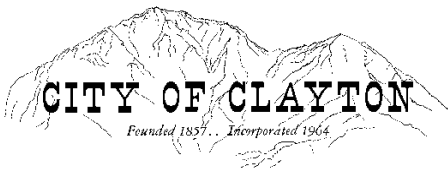
ABSTAIN:

CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST:

Janet Calderon, City Clerk



STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: Janet Calderon, City Clerk

DATE: August 17, 2021

SUBJECT: Designation of Voting Delegate and Alternate Delegate for League of California Cities 2021 Annual Conference being held September 22 through 24, in Sacramento and the City's position on the two (2) League Conference General Resolutions

RECOMMENDATION

Consider designating a City Council member as the Voting Delegate and one member as the Alternate to represent the City of Clayton during the 2021 League of California Cities Annual Business Meeting.

BACKGROUND

The League of California Cities' Annual Conference is scheduled for Wednesday, September 22 through Friday, September 24 in Sacramento. A Business Meeting will take place on Friday, September 24, 2021 at 12:30 pm.

League Bylaws provide that each City is entitled to one vote in matters affecting municipal or League policy. Per the attached Annual Conference Voting Procedures, a City official must have in possession the City's Voting Card and be registered with the Credentials Committee to cast that City's vote. A voting card will be issued to the City officials designated by the City Council on the attached Voting Delegate Form.

Conference registration is required for voting delegates. There are two (2) General Resolutions that have been submitted in advance (Attachment B) and will be voted on at the Conference.

FISCAL IMPACT

During the last 12 fiscal years the vast majority of conference and training budget for all personnel of the City, including the City Council, was eliminated or significantly curtailed, except for League Division and Mayors' Conference attendance. If the Council wishes to send a delegate, there are funds budgeted to cover the cost of Registration; all other conference expenses would be paid by the individual member.

The cost of conference registration is \$600 per person for the full event. The Fiscal Year 2021/22 Budget, adopted on June 29, 2021, included in Legislative Department 01 account number 7372 Conferences/Meetings a budget of \$1,700. In the past the City has not paid for lodging expenses at an Annual Conference when it is held in the northern California or Bay Area vicinity.

Attachment – A. League of California Cities Annual Conference Voting Procedures (4 pages)

B. League of California Cities Annual Conference Resolutions (68 pages)



Council Action Advised by August 31, 2021

June 16, 2021

TO: City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference & Expo – September 22-24, 2021**

Cal Cities 2021 Annual Conference & Expo is scheduled for September 22-24, 2021 in Sacramento. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, September 24. At this meeting, Cal Cities membership considers and acts on resolutions that establish Cal Cities policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to Cal Cities office no later than Wednesday, September 15. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note: Our number one priority will continue to be the health and safety of participants. We are working closely with the Sacramento Convention Center to ensure that important protocols and cleaning procedures continue, and if necessary, are strengthened. Attendees can anticipate updates as the conference approaches.

- **Action by Council Required.** Consistent with Cal Cities bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open mid-June at www.cacities.org. In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.
- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but

only between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.

- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, September 22, 8:00 a.m. – 6:00 p.m.; Thursday, September 23, 7:00 a.m. – 4:00 p.m.; and Friday, September 24, 7:30 a.m.– 11:30 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Wednesday, September 15. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the Cal Cities Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: _____

**2021 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to Cal Cities office by Wednesday, September 15, 2021. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

To vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____

Email: _____

Mayor or City Clerk _____
(circle one) (signature)

Date: _____ Phone: _____

Please complete and return by Wednesday, September 15, 2021 to:

Darla Yacub, Assistant to the Administrative Services Director

E-mail: dyacub@cacities.org

Phone: (916) 658-8254



*Annual Conference
Resolutions Packet*

2021 Annual Conference Resolutions



September 22 - 24, 2021

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League of California Cities (Cal Cities) bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

POLICY COMMITTEES: Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

CLOSING LUNCHEON AND GENERAL ASSEMBLY: This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a petition resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond mdesmond@calcities.org.

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing Cal Cities policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number Key Word Index Reviewing Body Action

		1	2	3
--	--	---	---	---

1 - Policy Committee Recommendation
to General Resolutions Committee
2 - General Resolutions Committee
3 - General Assembly

HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

KEY TO ACTIONS TAKEN ON RESOLUTIONS *(Continued)*

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

ACTION FOOTNOTES

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

KEY TO ACTIONS TAKEN

- | | |
|-----|---|
| A | Approve |
| D | Disapprove |
| N | No Action |
| R | Refer to appropriate policy committee for study |
| a | Amend+ |
| Aa | Approve as amended+ |
| Aaa | Approve with additional amendment(s)+ |
| Ra | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+ |
| Da | Amend (for clarity or brevity) and Disapprove+ |
| Na | Amend (for clarity or brevity) and take No Action+ |
| W | Withdrawn by Sponsor |

Procedural Note:

The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.

1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

Source: City of Rancho Cucamonga

Concurrence of five or more cities/city officials:

Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento

Referred to: Revenue and Taxation Policy Committee

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center's sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background Information to Resolution

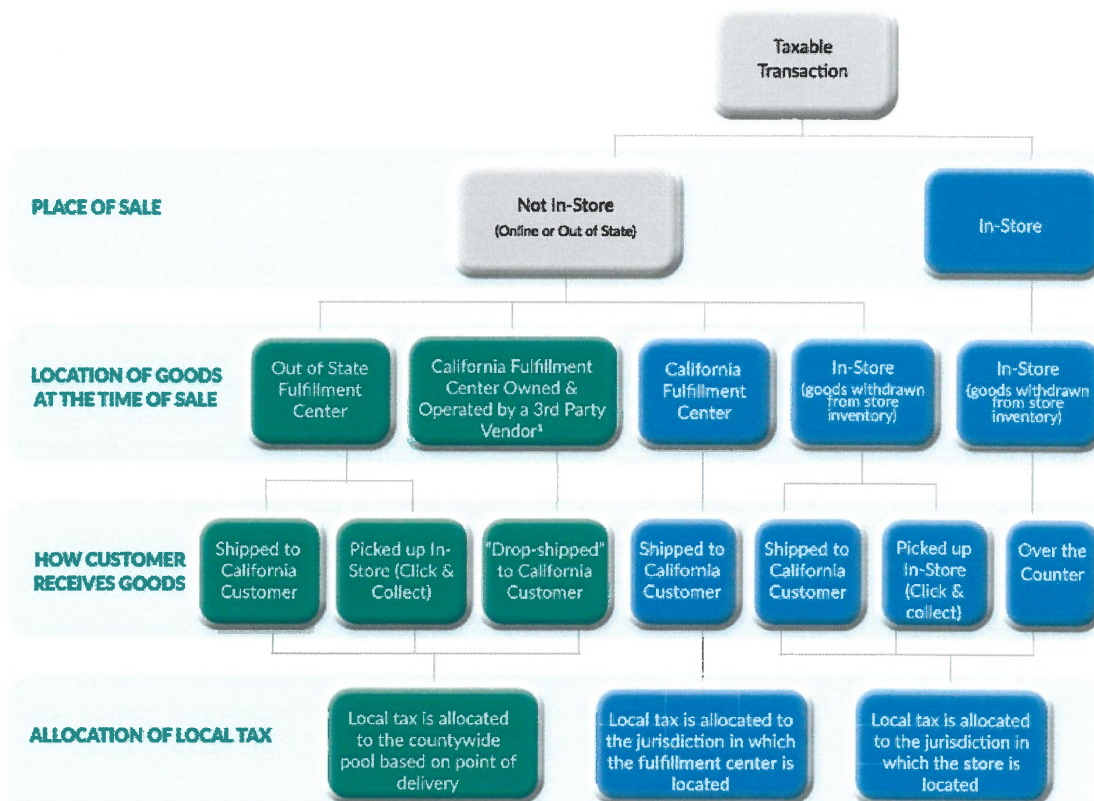
Source: City of Rancho Cucamonga

Background:

Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:



¹ In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax

growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21st century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.

LETTERS OF CONCURRENCE
Resolution No. 1

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The Town of Apple Valley strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool. Now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents.

We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the Town of Apple Valley concurs that the resolution should go before the General Assembly. If you have any questions regarding the Town's position in this matter, please do not hesitate to contact the Town Manager at 760-240-7000 x 7051.

Sincerely,

A handwritten signature in cursive script, appearing to read "Curt Emick".

Curt Emick
Mayor

July 21, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Letter of Support for the City of Rancho Cucamonga's Resolution for Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax

Dear President Walker:

The City of El Cerrito supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Previously, all sales tax revenue generated by this retailer's sales went into a countywide pool and was distributed amongst the jurisdictions in the pool; now the revenue from in-state sales goes entirely to the city where the fulfillment center is located and the packages are shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities such as El Cerrito who have no chance of ever obtaining a fulfillment center as we are a built out, four square mile, small city. Additionally, cities not situated along major travel corridors and no/low property tax cities that rely on sales tax revenue are especially impacted, as well as cities struggling to build much needed affordable housing that may require rezoning commercial parcels in order to meet their RHNA allocations.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies serve to divide local agencies, exacerbate already difficult municipal finances, and in the end results in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of El Cerrito concurs that the resolution should go before the General Assembly.

Sincerely,



Paul Fadelli, Mayor
City of El Cerrito

cc: El Cerrito City Council
City of Rancho Cucamonga



City Council
Terry Walker, Mayor
Keith Eich, Mayor Pro Tem
Jonathan C. Curtis
Michael T. Davitt
Richard B. Gunter III

July 14, 2021

Ms. Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of La Cañada Flintridge strongly supports the City of Rancho Cucamonga's effort to introduce a resolution for consideration by the General Assembly at CalCITIES' 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1% Bradley Burns local tax revenue (sales tax) from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool, as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as an out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the jurisdiction where the fulfillment center is located and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state transactions even though their packages are delivered to locations within those cities' borders and paid for by residents in those locations. Cities that abut jurisdictions with fulfillment centers experience fulfillment centers' impacts just as much, such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers, that was once spread amongst all cities in countywide pools, is now concentrated in select cities fortunate enough to host a fulfillment center. This benefits only those few hosting jurisdictions and is particularly unfair to cities who have no chance of ever hosting a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely heavily on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably eager to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances and, in the end, result in a net loss of local government sales tax proceeds that simply serve to make private

Ms. Cheryl Viegas Walker, President

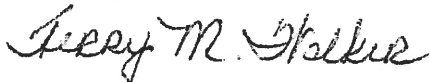
July 14, 2021

Page 2

sector businesses even more profitable at the expense of cities' residents. We should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Cañada Flintridge concurs that the proposed resolution should go before the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "Terry M. Walker".

Terry Walker

Mayor



CITY OF LA VERNE CITY HALL

3660 "D" Street, La Verne, California 91750-3599
www.cityoflaverne.org

July 19, 2021

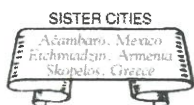
Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of La Verne strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities which have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are



General Administration 909/596-8726 • Water Customer Service 909/596-8744 • Community Services 909/596-8700
Public Works 909/596-8741 • Finance 909/596-8716 • Community Development 909/596-8706 • Building 909/596-8713
Police Department 909/596-1913 • Fire Department 909/596-5991 • General Fax 909/596-8737

especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exacerbate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Verne concurs that the resolution should go before the General Assembly.

Sincerely,



Bob Russi
City Manager
City of La Verne

Steve Croft
Vice Mayor

Ariel Pe
Council Member

Vicki L. Stuckey
Council Member

Todd Rogers
Council Member



Jeff Wood
Mayor

July 15, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Lakewood strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities that have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Lakewood concurs that the resolution should go before the General Assembly.

Sincerely,

Jeff Wood
Mayor

Lakewood



CITY OF MOORPARK

799 Moorpark Avenue, Moorpark, California 93021
Main City Phone Number (805) 517-6200 | Fax (805) 532-2205 | moorpark@moorparkca.gov

July 14, 2021

TRANSMITTED ELECTRONICALLY

Cheryl Viegas-Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Moorpark strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies of the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates both as an in-state online retailer and as an out-of-state online retailer. Whereas all sales tax revenues generated by this retailer's sales previously went into countywide pools and were distributed amongst the jurisdictions in the pool, sales tax revenues from in-state sales now go entirely to the city where the fulfillment center is located and the package is shipped from. Cities that do not have a fulfillment center now receive no sales tax revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and deteriorating road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenues from large online retailers that were once spread amongst all cities in countywide pools are now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted, as well as

cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone limited commercial properties for residential land uses.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and ultimately result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses more profitable at the expense of everyone's residents. We can do better than this, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Moorpark concurs that the resolution should go before the General Assembly at the 2021 Annual Conference in Sacramento.

Sincerely,



Janice S. Parvin
Mayor

cc: City Council
City Manager

The People are the City

Mayor

CRAIG S. GREEN

Mayor Pro Tem

CHAD P. WANKE

Councilmembers:

RHONDA SHADER

WARD L. SMITH

JEREMY B. YAMAGUCHI



City Clerk:

ROBERT S. MCKINNELL

City Treasurer

KEVIN A. LARSON

City Administrator

DAMIEN R. ARRULA

401 East Chapman Avenue – Placentia, California 92870

July 14, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Placentia strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent (1%) Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

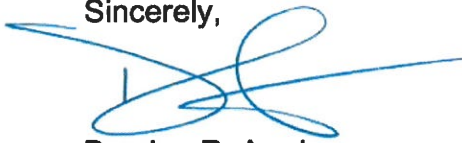
This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The

current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Placentia concurs that the resolution should go before the General Assembly. Should you have any questions regarding this letter, please contact me at (714) 993-8117 or via email at administration@placentia.org.

Sincerely,



Damien R. Arrula
City Administrator

SACRAMENTO
Office of the City Manager

Leyne Milstein
Assistant City Manager

City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814-2604
916-808-5704

July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Sacramento strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment

City of
SACRAMENTO
Office of the City Manager

Leyne Milstein
Assistant City Manager

City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814-2604
916-808-5704

center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Sacramento concurs that the resolution should go before the General Assembly.

Sincerely,



Leyne Milstein (Jul 19, 2021 14:48 PDT)

Leyne Milstein
Assistant City Manager

League of California Cities Staff Analysis on Resolution No. 1

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

Summary:

This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background:

The City of Rancho Cucamonga is sponsoring this resolution to *“address the issues in how sales and use taxes are distributed in the 21st century.”*

The City notes that *“sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.*

Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer’s fulfillment centers.”

The City’s resolution calls for action on an unspecified solution that *“rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,”* which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.

Ultimately, sponsoring cities believe *“that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.”*

Sales and Use Tax in California

The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as a *situs-based system*. A retailer's physical place of business—such as a retail store or restaurant—is generally the place of sale. “Sourcing” is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as “transactions and use taxes” or “add-on sale and use taxes”). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:

- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller's business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. *This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.*
- If the business' sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under \$500,000 is allocated

via the county pools. The tax from transactions over \$500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. *For many large online retailers, this has been the traditional path.*

Online Sales and Countywide Pools

While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives – either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

Concentration of Online Sales Tax Revenue and Modernization

Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.

For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoupment for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

For more on sales and use tax sourcing please see Attachment A.

State Auditor Recommendations

In 2017, the California State Auditor issued a report titled, "[The Bradley-Burns Tax and Local Transportation Funds](#)", noting that:

"Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.

The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."

The Auditor's report makes the following recommendation:

"To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale."

In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

Cal Cities Revenue and Taxation Committee and City Manager Working Group

In 2015 and 2016, Cal Cities' Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (*situs*) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See "Existing Cal Cities Policy" section below.

Cal Cities City Manager Sales Tax Working Group Recommendations

In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities' Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

Further Limiting Rebate Agreements: The consensus of the Group was that:

- Sales tax rebate agreements involving online retailers should be prohibited *going forward*. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited *going forward*. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group's recommendation is based first on the principle of "*situs*" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from \$5 million to \$100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.

The Resolution places further demands on data collected by CDTFA to establish a “fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.” Such data is proposed to be collected by [SB 792 \(Glazer, 2021\)](#). More discussion on this topic can be found in the “Staff Comments” section.

Staff Comments:

Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager’s working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

More Data is Needed to Achieve Equity Based Approach

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in [SB 792 \(Glazer, 2021\)](#), which would require retailers with online sales exceeding \$50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

Impact of Goods Movement Must Be Considered

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):

“Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013) Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997).”

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: [California Office of Environmental Health Hazard Assessment \(OEHHA\) CalEnviroScreen](#). City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. *To review the proposed changes, please see Attachment B.*

Fiscal Impact:

Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

Existing Cal Cities Policy:

- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

Support:

The following letters of concurrence were received:

Town of Apple Valley
City of El Cerrito
City of La Canada Flintridge
City of La Verne
City of Lakewood

City of Moorpark
City of Placentia
City of Sacramento

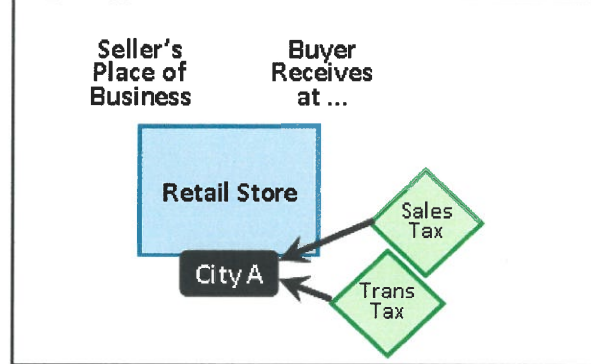
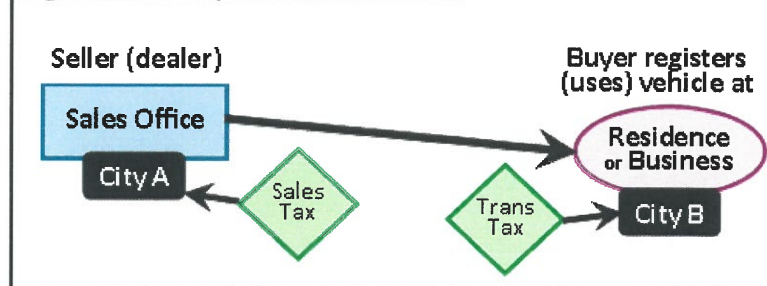
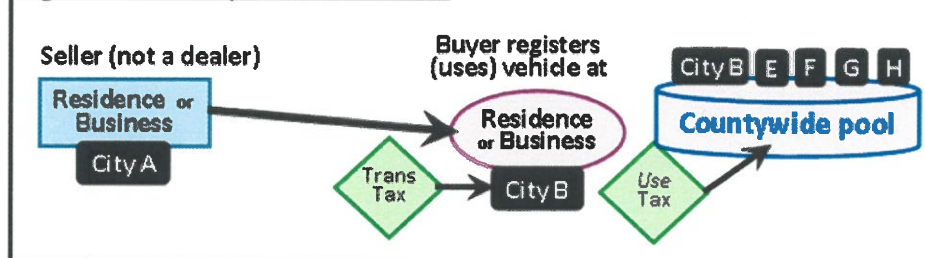
Fig1: Typical "Over the Counter" Transaction**Fig2: Dealership Automobile Sale****Fig3: Private Party Automobile Sale**

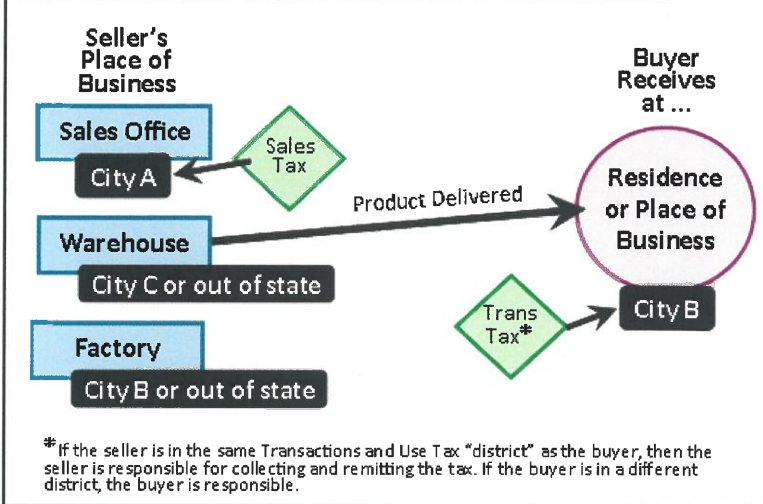
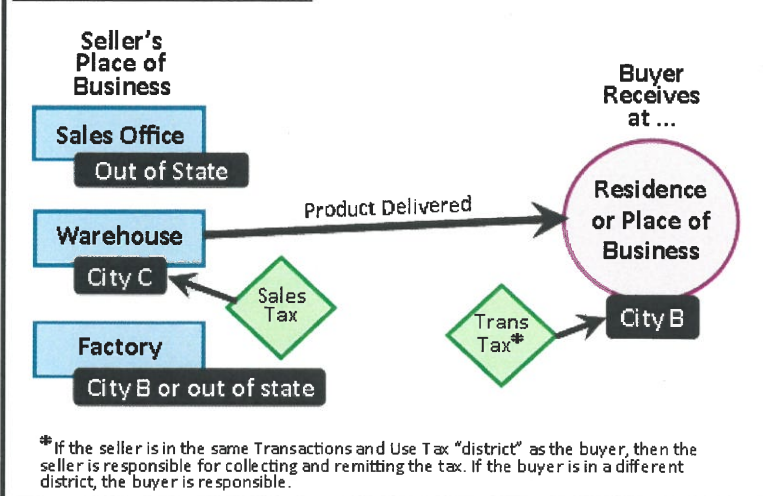
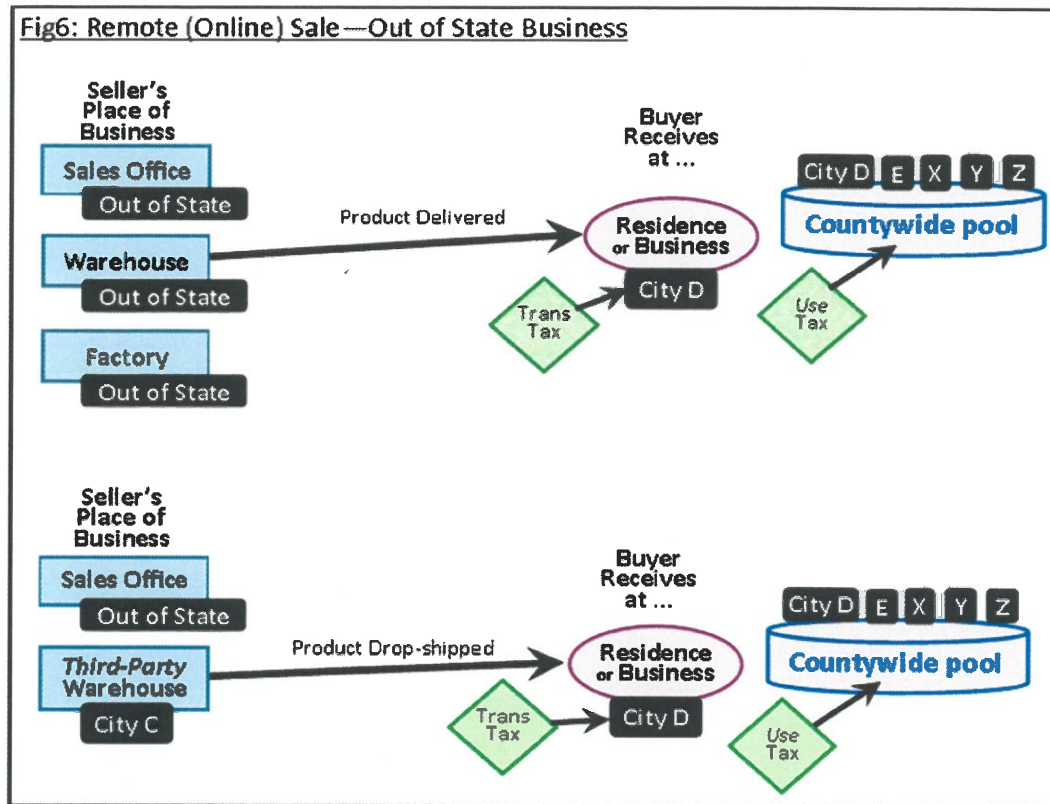
Fig4: Remote (Online) Sale—In-State Business Office**Fig5: Remote (Online) Sale—In-State Warehouse, Out-of-State Sales Office**

Fig6: Remote (Online) Sale —Out of State Business

GUIDELINES FOR ALLOCATION OF LOCAL TAX - ONLINE AND IN-STORE			
Place of Sale	Location of Goods at the Time of Sale	How Customer Receives Goods	Allocation of Tax
Online -- Order is placed or downloaded outside California	California Fulfillment Center	Shipped to California Customer	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online -- Order is placed or downloaded in California	California Fulfillment Center	Shipped to California Customer	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfillment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfillment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

Courtesy of HdL Companies

CaliforniaCityFinance.com

Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California's odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.⁶

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over \$1 billion per year.

The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California's "warehouse rule" origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

Moving to Destination Sourcing: The Concept⁷

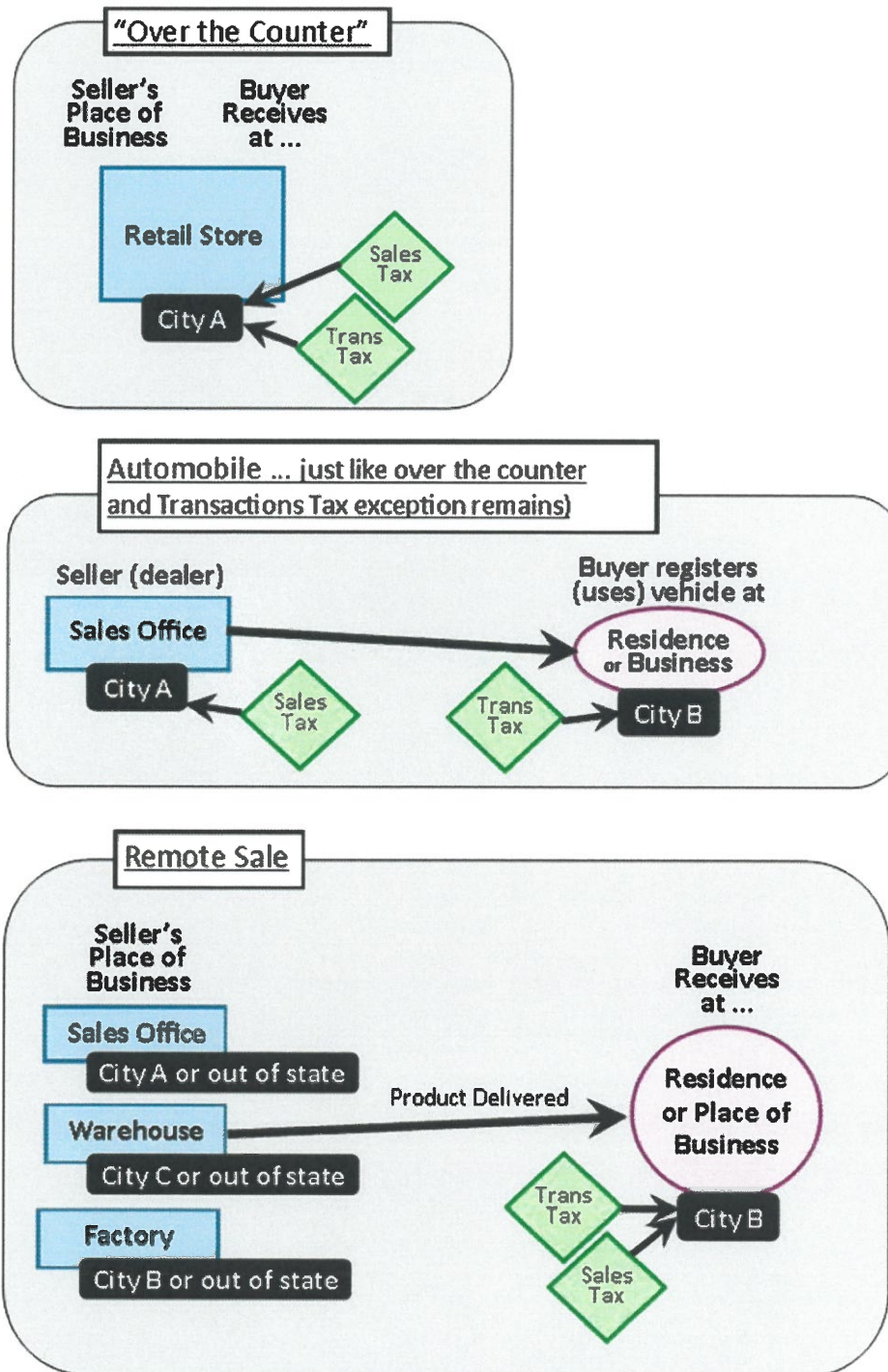
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

⁶ See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

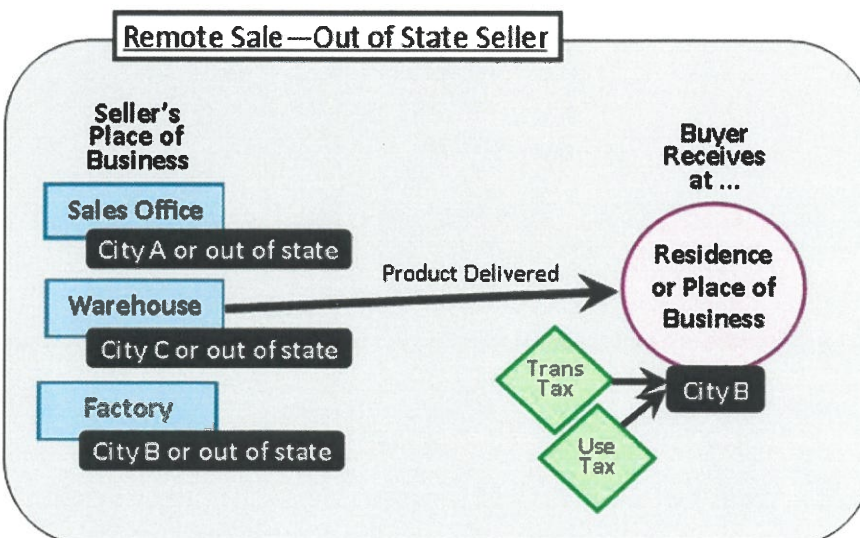
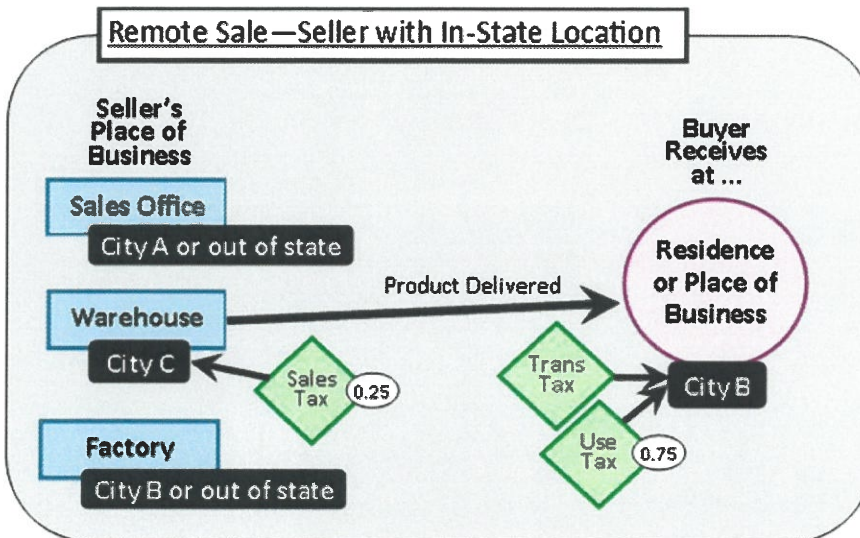
⁷ The same issues that are of concern regarding the local sales tax do not apply to California's Transactions and Use Taxes ("Add-on sales taxes") as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.

Destination Sourcing Scenario 1: Full-On



Destination Sourcing Scenario 2: Split Source

- Same as now for "over the counter" and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.



mjgc

RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES")
CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES
FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL
SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE
PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO
CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST
CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT
AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

WHEREAS, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being ~~entirely~~ allocated to ~~the specific city~~ cities where ~~the~~ warehouse fulfillment centers ~~is~~ are located as opposed to going into ~~a~~ countywide pools that ~~is~~ are shared with all jurisdictions in ~~those counties that County~~, as was done previously; and

WHEREAS, this all-or-nothing ~~change for the~~ allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue ~~from the retailer~~ that was once spread amongst all cities in countywide pools is now concentrated in select cities that host ~~a~~ fulfillment centers; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting ~~a 1 million square foot~~ fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from those that centers now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by the m center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials:

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

WHEREAS, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

Background Information to Resolution

Source: City of South Gate

Background:

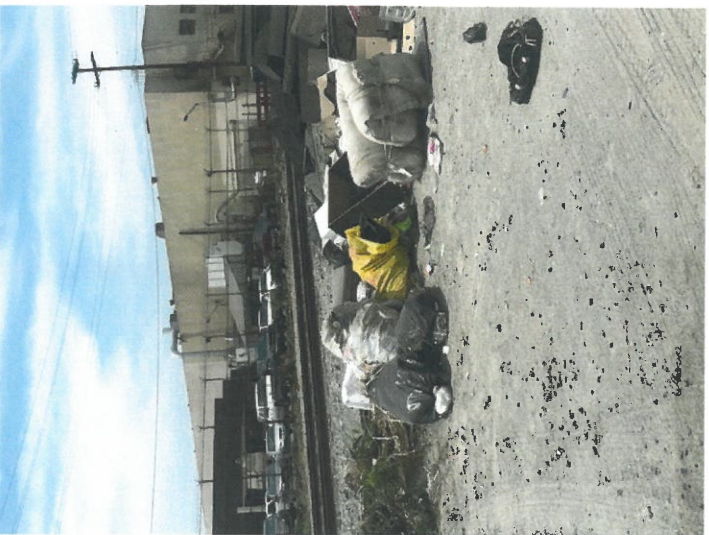
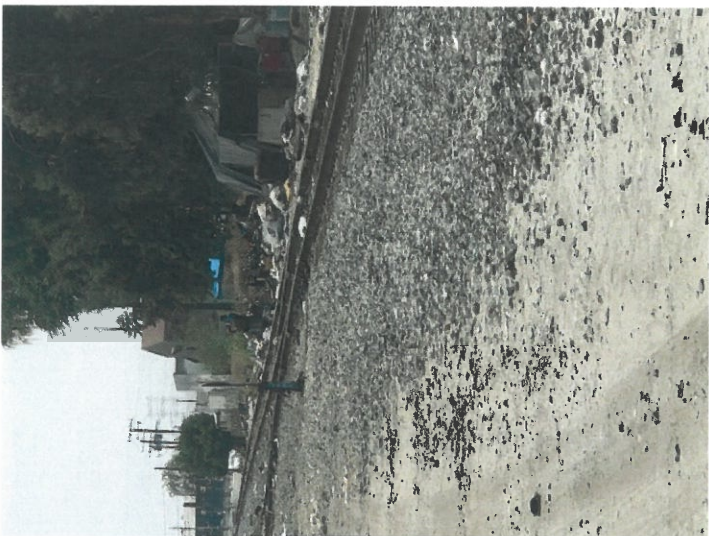
The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over \$13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just \$50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.



LETTERS OF CONCURRENCE
Resolution No. 2



City of
BELL GARDENS

7100 Garfield Avenue • Bell Gardens, CA 90201 • 562-806-7700 • www.bellgardens.org

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Bell Gardens supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Marco Barcena at 562-7761 if you have any questions.

Sincerely,

Marco Barcena
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



City of
BELL GARDENS

7100 Garfield Avenue • Bell Gardens, CA 90201 • 562-806-7700 • www.bellgardens.org

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

As a Councilwoman with the City of Bell Gardens, I support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Lisseth Flores at (562) 806-7763 if you have any questions.

Sincerely,

Lisseth Flores

Lisseth Flores
Councilwoman

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 15, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The city of Bell supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Paul Philips, City Manager at 323-588-6211, if you have any questions.

Sincerely,

Alicia Romero
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division,



CITY OF COMMERCE

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Railroad Oversight Annual Conference Resolution

President Walker:

The City of Commerce supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' ("League") 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially disadvantaged communities of color that are home to the State's freight rail lines. While I am supportive of the economic base the railroad industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Edgar Cisneros, City Manager, via email at ecisneros@ci.commerce.ca.us or at 323-722-4805, should you have any questions.

Sincerely,



Mayor Leonard Mendoza

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



CITY OF CUDAHY CALIFORNIA

Incorporated November 10, 1960

5220 Santa Ana Street
Cudahy, California 90201
(323)773-5143

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

Dear President Walker:

The City of Cudahy supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. If you have any questions, please do not hesitate to call my office at 323-773-5143.

Sincerely,

Jose Gonzalez
Mayor

CC: Chris Jeffers, City Manager, City of South Gate



City of El Segundo

Office of the Mayor

July 16, 2021

Elected Officials:

Drew Boyles,
Mayor
Chris Pimentel
Mayor Pro Tem
Carol Pirezutuk,
Council Member
Scot Nicol,
Council Member
Lance Giroux,
Council Member
Tracy Weaver,
City Clerk
Matthew Robinson,
City Treasurer

Appointed Officials:

Scott Mitnick,
City Manager
Mark D. Hensley,
City Attorney

Department Directors:

Barbara Voss
Deputy City Manager
Joseph Lillo,
Finance
Chris Donovan,
Fire Chief
Charles Mallory,
Information Technology
Services
Melissa McCollum,
Community Services
Rebecca Redyk,
Human Resources
Doris Cook,
Interim Development Services
Jamie Bermudez,
Interim Police Chief
Elias Sassoon,
Public Works

www.elsegundo.org
www.elsegundobusiness.com
www.elsegundo100.org

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of El Segundo supports the Los Angeles County Division's City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact El Segundo Public Works Director Elias Sassoon at 310-524-2356, if you have any questions.

Sincerely,

Drew Boyles
Mayor of El Segundo

CC: City Council, City of El Segundo
Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
Jeff Kiernan, League Regional Public Affairs Manager (via email)

350 Main Street, El Segundo, California 90245-3813
Phone (310) 524-2302 Fax (310) 322-7137



CITY OF GLENDORA CITY HALL

(626) 914-8200

116 East Foothill Blvd., Glendora, California 91741
www.ci.glendora.ca.us

July 14, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

**SUBJECT: SUPPORT FOR THE CITY OF SOUTH GATE'S ANNUAL
CONFERENCE RESOLUTION**

Dear President Walker:

The City of Glendora is pleased to support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue that many communities, small and large, are experiencing along active transportation corridors, particularly rail lines. Given the importance and growth of the ports and logistics sector, and the economic support they provide, we need to do more to ensure that conflicts are appropriately addressed and mitigated to ensure they do not become attractive nuisances. Our cities are experiencing increasing amounts of illegal dumping (trash and debris) and the establishment of encampments by individuals experiencing homelessness along roadways, highways and rail lines. Such situations create unsafe conditions – safety, health and sanitation – that impact quality of life even as we collectively work to address this challenge in a coordinated and responsible manner.

As members of the League of California Cities, Glendora values the policy development process provided to the General Assembly and strongly support consideration of this issue. Your attention to this matter is greatly appreciated. Should you have any questions, please feel free to contact Adam Raymond, City Manager, at araymond@cityofglendora.org or (626) 914-8201.

Sincerely,

Karen K. Davis
Mayor

C: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

PRIDE OF THE FOOTHILLS



July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Re: Resolution No. 2021-18 Supporting City of South Gate Annual Conference Resolution

President Walker:

The City of Huntington Park (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Enclosed is Resolution No. 2021-18 adopted by the City Council of the City of Huntington Park.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively affect our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, Ricardo Reyes, at 323-582-6161, if you have any questions.

Sincerely,

Graciela Ortiz
Mayor, City of Huntington Park

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Enclosure(s)



CITY OF LA MIRADA
DEDICATED TO SERVICE

13700 La Mirada Boulevard
La Mirada, California 90638
P.O. Box 828
La Mirada, California 90637-0828
Phone: (562) 943-0131 Fax: (562) 943-1464
www.cityoflamirada.org

July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

**SUBJECT: LETTER OF SUPPORT FOR CITY OF SOUTH GATE'S PROPOSED
RESOLUTION AT CALCITIES ANNUAL CONFERENCE**

President Walker:

The City of La Mirada supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities that are home to the State's freight rail lines. While the City of La Mirada is supportive of the economic base the railroad industry serves to the State, the rail lines have become places where illegal dumping and a growing homeless population are significant problems. The negative impact of these illegal activities decreases the quality of life for the La Mirada community, increases blight and unhealthy sanitation issues, and negatively impacts the City's ability to meet State water quality standards under the MS4 permits.

As members of the League, the City of La Mirada values the policy development process provided to the General Assembly. We appreciate your consideration on this issue. Please feel free to contact Assistant City Manager Anne Haraksin at (562) 943-0131 if you have any questions.

Sincerely,

CITY OF LA MIRADA

Ed Eng
Mayor

cc: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Ed Eng, EdD
Mayor

Anthony A. Otero, DPPD
Mayor Pro Tem

Steve De Ruse, D. Min.
Councilmember 56

John Lewis, Esq.
Councilmember

Andrew Sarega
Councilmember

Jeff Boynton
City Manager

July 22, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Support for City of South Gate Resolution—Cleanup Activities on Rail Operator Properties

Dear President Walker,

On behalf of the City of Long Beach, I write to support the City of South Gate's proposed resolution for the League of California Cities' (League) 2021 Annual Conference. This resolution seeks to direct the League to adopt a policy urging State and federal governments to increase oversight of rail operators' land maintenance. The City is a proponent of increased maintenance along railways and believes a League advocacy strategy would help expedite regional responses.

The COVID-19 pandemic has exacerbated the public health and safety concerns on rail rights-of-way, as trash, debris, and encampments have increased exponentially. These challenges erode the quality of life for our communities, increase blight, and contribute to public health and sanitation issues. To address these concerns, the City has engaged directly with regional partners to prioritize ongoing maintenance and cleanups, and has invested \$4 million in the Clean Long Beach Initiative as part of the City's Long Beach Recovery Act to advance economic recovery and public health in response to the COVID-19 pandemic.

The City of South Gate's proposed resolution would further advance these efforts for interjurisdictional coordination. The increased oversight proposed by the resolution will help support better coordination and additional resources to address illegal dumping and encampments along private rail operator property. This is a critical measure to advance public health and uplift our most vulnerable communities. For these reasons, the City supports the proposed League resolution.

Sincerely,



THOMAS B. MODICA
City Manager

cc: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



OFFICE OF THE
MAYOR
MARISELA SANTANA

City of
LYNWOOD

Incorporated 1921

11330 Bullis Road, Lynwood, CA 90262
(310) 603-0220 x 200



CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Lynwood supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Ernie Hernandez at (310) 603-0220 ext. 200, if you have any questions.

Sincerely,



Marisela Santana, Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Resolution in Support of City of South Gate Annual Conference Resolution

President Walker:

The City of Montebello (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Attached is the Resolution to be considered for adoption by the City Council of the City of Montebello at our July 28, 2021, City Council meeting.

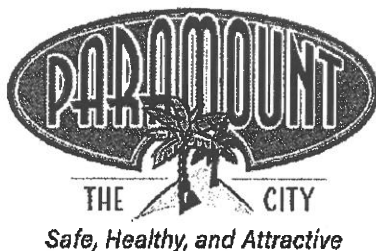
The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, René Bobadilla, at 323-887-1200, if you have any questions.

Sincerely,

Kimberly Cobos-Cawthorne
Mayor, City of Montebello

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org



BRENDA OLMOS
Mayor

VILMA CUELLAR STALLINGS
Vice Mayor

ISABEL AGUAYO
Councilmember

LAURIE GUILLEN
Councilmember

PEGGY LEMONS
Councilmember

July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

**RE: SUPPORT FOR ANNUAL LEAGUE OF CITIES CONFERENCE GENERAL
ASSEMBLY RESOLUTION**

President Walker:

The City of Paramount supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. The proposed resolution is attached

South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic boon the freight industry serves to the State, their rail line rights of way have often become places where illegal dumping is a constant problem and where our growing homeless populations reside. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As a member of the California League of Cities, the City of Paramount values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact City Manager John Moreno at (562) 220-2222 if you have any questions.

Dedicated to providing fiscally responsible services that maintain a vibrant community.

16400 Colorado Avenue • Paramount, CA 90723-5012 • Ph: 562-220-2000 • paramountcity.com
 facebook.com/CityofParamount | instagram.com/paramount_posts | youtube.com/CityofParamount



Steve Carmona
City Manager

City of Pico Rivera
OFFICE OF THE CITY MANAGER
6615 Passons Boulevard · Pico Rivera, California 90660
(562) 801-4371

Web: www.pico-rivera.org e-mail: scaastro@pico-rivera.org

City Council
Raul Elias
Mayor
Dr. Monica Sánchez
Mayor Pro Tem
Gustavo V. Camacho
Councilmember
Andrew C. Lara
Councilmember
Erik Lutz
Councilmember

CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 14, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Pico Rivera supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantaged communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Steve Carmona at (562) 801-4405 if you have any questions.

Sincerely,

City Manager
City of Pico Rivera

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

League of California Cities Staff Analysis on Resolution No. 2

Staff: Damon Conklin, Legislative Affairs, Lobbyist
Jason Rhine, Assistant Director, Legislative Affairs
Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works
Housing, Community, and Economic Development

Summary:

The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

Background:

California Public Utilities Commission (CPUC) Railroad Oversight

The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

CPUC's Ability to Address Homelessness on Railroads

Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of [Commission GO 118-A](#), which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of

[Commission GO 26-D](#), which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

Homelessness in California

According to the [2020 Annual Homeless Assessment Report \(AHAR\)](#) to Congress, there has been an increase in unsheltered individuals since 2019. More than half ([51 percent or 113,660 people](#)) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the [Federal Railroad Administration](#) over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad's private property. It can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

State Budget Allocations – Homelessness

The approved State Budget includes a homelessness package of \$12 billion. This consists of a commitment of \$1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- \$2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- \$50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- \$2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided \$2.2 billion specifically for Homekey with \$1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included \$1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

Cities Railroad Authority

A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city

must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company's expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to [compel railroad companies](#) to increase their efforts to address homeless encampments on their railroads or [grant a local authority's application](#) for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad's right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad's right-of-way.

Fiscal Impact:

If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

Existing League Policy:

Public Safety:

Graffiti

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

Transportation, Communications, and Public Works

Transportation

The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety

Housing, Community, and Economic Development

Housing for Homeless

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

Staff Comments:

Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

Support:

The following letters of concurrence were received:

City of Bell Gardens

City of Bell

City of Commerce

City of Cudahy

City of El Segundo

City of Glendora

City of La Mirada

City of Paramount

City of Pico Rivera

City of Huntington Park

City of Long Beach

City of Lynwood

City of Montebello

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECCESARY~~ **NECESSARY** FUNDING FOR ~~CUPC~~ **THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)** TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULTY~~ **QUALITY** OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ **SAFETY** CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the ~~California Public Utilities Commission~~ **CPUC** for operational safety and maintenance; and

WHEREAS, the ~~California Public Utilities Commission~~ **(CPUC)** is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Cal Cities Annual Conference on September 24, 2021, in Sacramento, that ~~the~~ Cal Cities League calls for the Governor and the Legislature to work with ~~the~~ Cal Cities League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. ~~The~~ Cal Cities League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Reina J. Schwartz, City Manager

DATE: August 17, 2021

SUBJECT: Resolution of the City Council of the City of Clayton, CA Adopting a General Fund Reserve Policy

RECOMMENDATION

Adopt Resolution ##-2021 establishing General Fund Reserve Policy.

BACKGROUND

Currently, the City of Clayton's adopted Investment Policy establishes a minimum General Fund reserve that has been set at \$250,000 for "never to be expended catastrophic purposes", while the "practicing policy goal is to establish and retain an undesignated reserve of 50% relative to the annual General Fund budget". However, there is no specific or complete reserve policy adopted for the City.

DISCUSSION

At the July 20, 2021 City Council meeting, the City Council reviewed a preliminary draft General Fund Reserve Policy. The City Council discussed the proposed policy and provided direction to staff to return with proposed modifications related to:

- Stronger controls around spending of reserve funds
- More process description
- Comparisons with reserve amounts from other jurisdictions

The Government Finance Officers Association (GFOA) recommends that an operating reserve of at least two months or 16.67% of operating expenditures be established. Due to the current economic situation and the relatively small size of Clayton's budget which could easily be overwhelmed with a single catastrophic event, staff recommends a series of reserves to address potential expected and unexpected costs. In surveying other cities, Staff

determined that most City reserves policies incorporate the recommended practice of at least two months of operating expenditures as a minimum reserve, while also incorporating as part of the reserves, amounts for other contingencies such as revenue volatility, and extreme events such as natural disasters and other public safety emergencies and unexpected infrastructures repair and replacement.

A sampling of reserve policies in other cities in Contra Costa County is shown below:

- San Ramon: 36% of General Fund Operating Expenditures in a Reserve for unforeseen situations
- Pleasant Hill: \$5 million Reserve for Working Capital (intended to maintain adequate liquidity); \$5 million Budget Stabilization Reserve for exceptional circumstances related to significant revenue shortfall, unanticipated expenditure, or other budget stabilization issue.
- Concord: Goal of an aggregate reserve of 30%, consisting of a 10% operating contingency and a 20% reserve of designated operating expenditures.
- San Pablo: 50% Catastrophic Reserve; 5% Budget Stabilization Reserve; 1% City Manager's Contingency; Annual Designation of Excess Audited Fund Balance for Specific Projects.
- Moraga: 50% General Purpose Reserve; any net revenue at each fiscal year end above the amount needed for the General Purpose Reserve transferred to an Asset Replacement Fund.
- Pittsburg: 30% General Fund Reserve; 5% Budget Stabilization Fund.
- Walnut Creek: 10% Catastrophic Emergency reserve; Fiscal Emergency reserve equal to 5% of budgeted specified revenue sources, plus 5% of PERS and Medical cost expenditures.
- Brentwood: 30% Unassigned Fund Balance.

The revised Reserve policy proposed this evening shows the changes made since the July 20th discussion. In particular, the policy now describes what the vote requirements are for spending from each of the reserves, either for the purposes set out in the specific reserve or for changing to allow spending on other purposes. For purposes contemplated in the establishment of the reserve, the policy requires the Council to appropriate the funds by majority vote. If the Council wishes to change the use of the funds from the original stated purpose of the reserve, the policy requires a 4/5 or supermajority vote.

Further, the policy emphasizes that reserve amounts should typically not be spent on day-to-day operations, but should be used for high-priority unanticipated needs or projects.

Once a Reserve Policy is approved, the City will bring forward an update to the City's Investment Policy (included here as Attachment 1).

FISCAL IMPACTS

The current estimated fund balance for the General Fund at June 30, 2022 is \$5,623,072. Staff is recommending that the City Council adopt a formal reserve policy which establishes the following General Fund Reserves (FY2021/22 amount):

- Catastrophic Reserve – Equal to 50 percent of General Fund Operating Expenditures (\$2,588,742)
- Budget Stabilization Reserve – Equal to five percent (5%) of General Fund Operating Expenditures (\$258,874)
- Undesignated Fund Balance – Remaining fund balance after other reserves are established (\$2,775,456)

In addition to the reserves noted above, the following additional specified reserves are in place and recommended to be continued:

- Rainy Day Fund Reserve – that portion of audited fund balance surplus identified to be allocated to special projects or other one-time expenses (\$181,475).
- Pension Rate Stabilization Fund – reserve to help mitigate potential increases in City pension costs (\$293,531). Staff is still completing analysis of the City's outstanding pension and OPEB (Other Post Employment Benefit) liabilities, with the intent to bring a recommendation regarding any potentially needed changes at the Midyear Budget Review in February 2022.
- Capital Equipment Replacement Fund – established/replenished annually to meet anticipated capital equipment replacement needs (\$190,339 – net of capital assets).
- Self-Insurance Fund – reserve to help cover costs of meeting the City's self-insured retention ("deductible") for unexpected losses due to claims or accidents (\$21,708).

To the extent that the Council wishes to increase the level of any of the designated reserves, or create additional reserve categories (for example, a technology reserve), the current Undesignated Fund Balance of \$2,775,456 could be used for that purpose.

ATTACHMENTS

Resolution

Exhibit A to the Resolution– General Fund Reserve Policy
Attachment 1 – Clayton Investment Policy (November 2018)

RESOLUTION NO. ##-2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAYTON
ADOPTING A GENERAL FUND RESERVE POLICY**

WHEREAS, the City Council desires to manage city funds in a sustainable and prudent manner;

WHEREAS, the Government Finance Officers Association (GFOA), a nationally recognized financial organization and the National Advisory Council on State and Local Budgeting recommend that cities maintain a prudent level of reserves to protect against reducing service levels due to temporary dips in revenue or unexpected one-time expenses;

WHEREAS, cities typically set aside reserves from fifteen to fifty-five percent of their General Fund; and

WHEREAS, the level of reserves should be based on the unique characteristics and vulnerabilities of Clayton.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON, CA DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Clayton, California, finds that the above recitals are true and correct.

SECTION 2. The City Council hereby adopts the General Fund Reserve Policy dated August 17, 2021, attached as Exhibit A.

ADOPTED ON August 17, 2021 by the City Council of the City of Clayton by the following vote count:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

Carl Wolfe, Mayor

ATTEST

Janet Calderon, City Clerk

DRAFT

CITY OF CLAYTON

GENERAL FUND RESERVE POLICY

Purpose

To provide guidelines for establishing, maintaining, and reviewing minimum target General Fund reserves for the City of Clayton. This policy is developed to consider the minimum level necessary to maintain the City's creditworthiness and to adequately provide for:

- Economic uncertainties and other financial hardships or downturns in the local or national economy
- Extreme events
- Future debt or capital obligations
- ~~Cash flow requirements~~
- Legal requirements

The General Reserve Policy is an integral part of the City's multi-year financial business plan. The City General Fund Reserve Policy was approved by City Council Resolution No. ##-2021.

Introduction

One of the key components of a financially stable organization is the adherence to a policy of maintaining an appropriate level of reserves. Establishing a target minimum General Fund reserve is a mechanism that governments can implement to help ensure adequate levels of fund balance are available to help mitigate current and future risks. A minimum General Fund reserve is generally considered a prudent and conservative fiscal policy to deal with unforeseen situations. Some examples of unforeseen situations include, but are not limited to:

- Extreme Events
- Economic Downturns
- Reduced Revenues
- Federal/State/County Budget Cuts
- Unfunded Legislative or Judicial Mandates
- ~~Cash Flow Requirements~~
- Capital Obligations
- One-Time City Council Approved Expenditures
- Innovative Opportunities for the Betterment of the Community

DRAFT

The Government Finance Officers Association (GFOA), an international organization that promotes the professional management of governments for the public interest, recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted fund balance in their General Fund of no less than two months of operating revenues or operating expenditures or a minimum of approximately 16.67% of General Fund operating expenditures. The GFOA further recommends that reserve levels be directly related to the degree of uncertainty the local government faces, specifically, the greater the uncertainty, the greater the financial resources necessary. Given the fact that the City of Clayton budget is overall relatively limited, the City should plan for a catastrophic reserve well in excess of the minimum two months of expenses, except in years in which the reserve is being re-built due to the need to use the reserve to manage an emergency.

Most cities choose General Fund Operating Expenditures as the basis for reserve. Typically, there is less fluctuation and risk in forecasting future expenditures. The General Fund Operating Expenditures methodology is also typically considered the more conservative basis for establishing a General Fund reserve.

There are additional benefits to establishing a minimum General Fund reserve. Credit rating agencies carefully monitor levels of fund balance and unreserved fund balance in a government's General Fund to evaluate a government's continued creditworthiness. Finally, fund balance levels are a crucial consideration in long-term financial planning.

Policy

For purposes of this policy, the term "reserve" includes unrestricted fund balance as well as certain designated reserves.

It ~~is~~shall be the policy of the City of Clayton to maintain a minimum target reserve for unforeseen situations that impact the City, and whenever fiscally possible and financially prudent to maintain a greater target reserve. This reserve will be referred to as the Catastrophic Reserve Fund. The City will continue to maintain ~~reserve the Catastrophic Reserve~~ funds to:

- a) Stabilize the fiscal base by anticipating fluctuations in revenues and expenditures;
- b) Provide for non-recurring, unanticipated expenditures, including those potentially associated with a natural disaster;

~~Provide for innovative opportunities for the betterment of the community.~~

The minimum target reserve of the General Fund Catastrophic Reserves will be maintained at fifty percent (50%) of General Fund Operating Expenditures.

DRAFT

The minimum Catastrophic Reserve level will be calculated annually using the prior fiscal year's estimated General Fund Operating Expenditures. General Fund Catastrophic Reserve levels will be evaluated as part of the annual budget process or more often if needed. Staff recommendations will be made to City Council on the available funds and the appropriate reserve levels at those times. In the event the Catastrophic Reserve fund must be used, the balance must be restored to the 50% amount within the next three fiscal years. General Fund reserve balance drops below the minimum reserve target, a response plan will be developed to return the General Fund reserves back to the minimum reserve level. In general, if used, the Catastrophic Reserve should be restored to the 50 percent level within three fiscal years.

The ~~minimum~~ General Fund Catastrophic Reserve Policy is intended to be a prudent and conservative fiscal policy, which should help contribute to the fiscal security of the City. Nothing in this policy shall prohibit the City Council from maintaining a higher level of reserves than the established minimum General Fund reserve target of fifty percent (50%). Funds may be appropriated from the Catastrophic Reserve only for the purposes identified in this Policy and requires a majority vote of the City Council.

Additional General Fund Reserves

In addition to the Catastrophic Reserve Fund, the City shall establish additional reserves as follows:

1. Budget Stabilization Reserve – equal to five percent (5%) of General Fund Operating Expenditures. These funds are held in case of smaller budget-related needs, unanticipated expenses or reduced revenues. Any use of the Budget Stabilization Reserve in a given fiscal year shall be replenished the following fiscal year, except with a 4/5 vote of the City Council to delay such replenishment.
2. Rainy Day Fund Reserve – that portion of audited fund balance surplus identified to be allocated to special projects or other one-time expenses.
3. Pension Rate Stabilization Fund – reserve to help mitigate potential increases in City pension costs.
4. Capital Equipment Replacement Fund – established/replenished annually to meet anticipated capital equipment replacement needs.
5. Self-Insurance Fund – reserve to help cover costs of meeting the City's self-insured retention ("deductible") for unexpected losses due to claims or accidents.

As with the Catastrophic Reserve, the funds in these reserves may only be used for the purposes identified herein and require a majority vote of the City Council for appropriation. Appropriation for any other purpose requires a 4/5 majority vote of the City Council.

Fund Balance

Undesignated Fund Balance – remaining fund balance after other reserves are established. The Undesignated Fund Balance should not be appropriated for day-to-day expenses, but

rather should be considered conservatively and used for high priority one-time or mandatory purposes. Appropriation of these funds requires a majority vote of the City Council.

Monitoring and Maintenance of Reserves

General Fund Reserve Levels will be monitored annually at the time of budget preparation or more often if needed. For the budget process, projected ending reserve levels shall be measured against the Reserve Policy thresholds.

If, at the time of the budget, total ending reserves actually fall below, or are estimated to fall below fifty percent (50%), the City Manager shall prepare an action plan to restore reserves to the fifty percent (50%). This action plan shall be presented to the City Council within sixty (60) days of determining that the reserve level will fall below the target percentage. The City Council will consider the City Manager's recommended corrective actions.

INVESTMENT POLICY

CITY OF CLAYTON, CALIFORNIA

I. POLICY

It is the policy of the City of Clayton [and the Redevelopment Agency of the City of Clayton] {together, referred to as the "City"} to meet the short and long-term cash flow demands of the City in a manner which will provide for the safety of principal monies with sufficient liquidity, while providing a reasonable investment return. The purpose of this Investment Policy is to identify and outline various methods and procedures for the prudent and systematic investment of public funds.

II. SCOPE

This Investment Policy applies to all investment activities and financial assets of the City {hereinafter, the "Funds"}. The following Funds are covered by this Investment Policy and are accounted for in the City's Comprehensive Annual Financial Report:

- (A) General Fund
- (B) Special Revenue Fund
- (C) Debt Service Fund
- (D) Capital Project Funds
- (E) Enterprise Funds
- (F) Internal Services Funds
- (G) Trust and Agency Funds
- (H) Any new funds created by the City Council.

Bond proceeds shall be invested in accordance with the requirements and restrictions outlined in the bond documents. Bond proceeds are not considered part of the Funds nor subject to this Investment Policy.

III. DELEGATION OF AUTHORITY

The City Treasurer is expressly authorized to invest the City's Funds, pursuant to California Government Code Sections 53600, 16429.1 and 53684 et seq. The City Treasurer will meet with, and obtain the approval of, the City Manager prior to investment of the Funds. Investments made routinely by the Finance Manager are restricted to the State Pool [Local Agency Investment Fund, LAIF], California Asset Management Program (CAMP), or to securities maturing within six (6) months. Prior to investing in securities, the Finance Manager will consider the cash flow requirements of the City and may invest in securities maturing over six (6) months if directed by the City Treasurer or the City Manager in writing or verbally, if confirmed in writing within thirty (30) days.

IV. ASSIGNMENTS AND DUTIES

- A. **City Council.** The City Council is elected by the registered voters of Clayton. The Council establishes policies for the City and approves the expenditure of City Funds.
- B. **City Manager.** The City Manager is appointed by the City Council and implements policies established by the City Council. The City Manager is responsible for all City departments and is also the Chief Fiscal Officer and is responsible for general management of all investments of Funds.
- C. **City Treasurer.** The City Treasurer is appointed by the City Council and serves at the will and pleasure of the Council. Pursuant to the California Government Code, the City Treasurer is primarily responsible for the proper and prudent investment of Funds, and periodically reviews, makes recommendations regarding, and approves the investments of Funds and investment policies.
- D. **Finance Manager.** The Finance Manager is appointed by the City Manager and is responsible for the daily supervision of all financial transactions of the City, including but not limited to the administration, monitoring, reporting and the restricted placement of Fund investments.

Together, the City Treasurer, City Manager and the Finance Manager function and operate as a check-and-balance system for the prudent and proper investment of all Funds.

V. PRUDENCE

Investments shall be made pursuant to the “Prudent Investor” standard, mandated by California Government Code Section 53600.3, which states:

“When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the City. Within the limitations of this section and considering individual investments as part of an overall strategy, a trustee is authorized to acquire investments as authorized by law.”

The “Prudent Investor” standard shall be applied in the context of managing the Funds. The City Treasurer and each investment employee, acting within the intent and scope of this Investment Policy and other written procedures and exercising due diligence, shall

be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.

VI. INVESTMENT OBJECTIVES

The objective of the investment portfolio is to meet the short and long-term cash flow demands of the City. To achieve this objective, the portfolio will be structured to provide Safety of Principal, Liquidity and Return on Investments.

A. Safety of Principal.

Safety of the City's investments is the primary objective. Investments of the Funds shall be undertaken in a manner that seeks to ensure that capital losses are minimized, whether from institution default, broker-dealer default, or erosion of the market value of securities. The City shall seek to preserve principal by mitigating two types of risk, in order of importance:

1. Credit Risk. Credit risk, defined as the risk of loss due to failure of an issuer of a security, shall be mitigated by purchasing Treasuries or high-grade securities. All investments beyond Treasury securities will be diversified so that the failure of any one issuer would not unduly harm the City's cash flow. Credit risk shall also be mitigated by pre-qualifying financial institutions, broker-dealers, intermediaries and advisors with which the City does business.
2. Market or Interest Rate Risk. Interest rate risk is the risk the market value of securities in the portfolio will fall due to changes in general interest rates. Interest rate risk may be mitigated by structuring Funds so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity, and by investing operating funds primarily in shorter-term securities. The cash flow is updated on a daily basis and will be considered prior to investment of securities in order to limit the need to sell investments for liquidity purposes.

Long-term securities shall not be purchased for the sole purpose of short-term speculation. Securities shall not be sold prior to maturity with the following exceptions: 1). A declining credit security would be sold early to minimize loss of principal; 2). A security swap would improve the quality, yield, or target duration in the portfolio; or 3). Liquidity needs of the portfolio require the security be sold.

The weighted average maturity of the Funds is limited to three (3) years or less. Purchases of investments will be restricted to securities with a final stated maturity not to exceed five (5) years.

B. Liquidity.

Liquidity is the second most important objective of City investments. The Funds shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Since all possible cash demands cannot be anticipated, the Funds will maintain a liquidity buffer and invest primarily in securities with active secondary or resale markets (dynamic liquidity).

C. Return on Investments.

Return on investment should be considered and maximized after the basic objectives of safety and liquidity have been met. The Funds shall be designed to attain a return on investments through budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed.

VII. AUTHORIZED INVESTMENTS

The investments set forth in this section are authorized investments pursuant to Section 53601 of the California Government Code and are herewith authorized investments for City Funds:

- A. The State of California Investment Pool, known as the Local Agency Investment Fund (LAIF);
- B. Passbook savings accounts, demand deposits;
- C. Certificate of Deposit placed with insured banks, savings and loans, or credit unions up to a maximum of \$250,000 per insured depository institution for each account ownership category;
- D. Bonds issued by the City, including bonds payable solely out of, controlled, or operated by the City or by an agency or authority of the City;
- E. United States Treasury notes, bonds bills or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest;

- F. Registered state warrants or treasury notes or bonds of the State of California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency or authority of the state; and/or
- G. Mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, or U. S. corporate bond of a maximum of five (5) years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an “A’ or higher rating for the issuers debt, as provided by a nationally recognized rating service and rated in a rating category of “AA” or its equivalent or better by a nationally recognized rating service.

Purchase of securities authorized by this subdivision may not exceed twenty percent (20%) of the City’s surplus money that may be invested pursuant to this Section.

- H. Federal Agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises. There are no limits on the dollar amount or percentage that the City may invest in government-sponsored enterprises.
- I. Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (q), inclusive, and including but not limited to CAMP. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issued the shares shall have retained an investment adviser that meets all of the following criteria:
 - 1. The adviser is registered or exempt from registration with the Securities and Exchange Commission.
 - 2. The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (q), inclusive.
 - 3. The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

For all other recommended investment of Funds by the City Treasurer and the City Manager, the City Council shall adopt the individual authorized instrument by resolution at a regular public meeting thereof.

VIII. PROHIBITED INVESTMENTS AND TRANSACTIONS

- A. The City shall not invest any Funds in inverse floaters, range notes, or interest-only strips that are derived from a pool of mortgages or reverse purchase agreements.
- B. The City shall not purchase or sell securities on margin.
- C. The City shall not invest any Funds in any security that could result in zero interest accrual if held to maturity date.

IX. ALLOCATION OF INTEREST EARNINGS

When a single investment is made from a single Fund, interest on that investment is to be credited to that source Fund. When an investment represents multiple Funds, the interest shall be distributed based on the proportionate share of each Fund included in the aggregate investment.

When investments result in interest paid for a period greater than one (1) month, the interest shall be distributed proportionately based on the average of the monthly beginning balances of each involved Fund.

X. DIVERSIFICATION

The investment portfolio will be diversified to avoid incurring unreasonable and avoidable risks regarding specific security types or individual financial institutions. In a diversified portfolio it is recognized that occasional measured losses are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented.

XI. PUBLIC TRUST

All participants in the investment process shall act as custodians of the public trust. Investment officials shall recognize the investment portfolio is subject to public review, scrutiny and evaluation. The overall program shall be designed and managed with a degree of professionalism that is worthy of the highest ideals of the public trust.

XII. ETHICS AND CONFLICTS OF INTEREST

The City Treasurer and other employees or elected officials involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair their ability to make impartial investment decisions. The City Treasurer and investment employees and elected

officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio and shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of their entity.

During the course of the year, if there is an event subject to disclosure that could impair the ability of the City Treasurer or investment employees to make impartial decisions, the City Council shall be notified in writing within ten (10) days of the event.

XIII. REPORTING REQUIREMENTS

The Finance Manager shall submit a quarterly investment report to the City Council. This report will include the following elements:

- A. Type of each investment.
- B. Financial institution.
- C. Date of Maturity.
- D. Amount of deposit or cost of security.
- E. Current market value of securities.
- F. Rate of Interest
- G. Weighted average maturity of the investments.

XIV. INTERNAL CONTROLS

The City Manager shall ensure the development of a system of internal investment controls and a segregation of duties and responsibilities of investment functions in order to assure an adequate system of internal control over the investment function. This segregation of duties will take into account the authorized staffing levels of the City. Internal control procedures shall address wire controls, separation of duties, delivery of securities to a third party for custodial safekeeping, and written procedures for placing investment transactions.

XV. GENERAL FUND RESERVE CONTINGENCY

The City Manager shall set aside Funds designated as *General Fund Reserve Contingency (GFRC)* to protect the City from unexpected financial expenses and to absorb the impact of deficiencies in cash flow not anticipated at the time the fiscal year budget was adopted.

The General Fund Reserves of the City shall include \$250,000.00 (two hundred fifty thousand dollars) designated as *GFRC – Emergency Component*. Further, the City will make every effort to maintain a *GFRC*, cash flow component, in an amount not less than fifty percent (50%) of the adopted annual General Fund budget. The amounts of

the *GFRCs* will be reviewed annually prior to adoption of the General Fund budget. City Council approval shall be required for any expenditure that would decrease the amount of the *GFRC* below the level established at the time of budget adoption.

XVI. POLICY REVIEW

The Investment Policy shall be reviewed at least annually by the City Treasurer and the City Council to ensure its consistency with the overall objectives of preservation of principal, liquidity, and return on investments, along with its relevance to current law, financial and economic trends, and meets the needs of the City.

* * * * *

Established: 30 July 2002

City Council adopted revisions: 21 April 2015
03 August 2010
05 May 2005
06 August 2002
21 April 2015
20 November 2018



AGENDA REPORT

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: Reina J. Schwartz, City Manager

DATE: August 17, 2021

SUBJECT: Presentation, Discussion & Direction to Staff Regarding Use of the American Rescue Plan Act Funds

RECOMMENDATION

Receive presentation, discuss and provide direction to staff on potential projects, priorities and next steps.

BACKGROUND

In March 2021 the Federal Government passed the American Rescue Plan (ARP), which had total funding of \$1.9 trillion. This included \$350 billion in funding to States, Localities, and Tribal Governments. This program is separate from Federal grants targeting both institutions and businesses that were impacted by the COVID-19 Pandemic. Attachment A provides a high-level overview of the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) including: its objectives, high level examples of how the funds can be used; and some of the eligible and ineligible uses.

DISCUSSION

The CSLFRF portion of the ARP provides for spending authority only for specified purposes, as discussed below.

- A)** Costs incurred as direct result of responding to COVID-19 and / or addressing the negative economic impact.
- Response Costs include – Health care expenditures, capital investments in public facilities to meet pandemic operational needs; Behavioral Healthcare; Payroll for public health and safety (which may include payroll and covered benefits.)

Addressing Negative Economic Impact includes: mitigation / prevention measures to impacted industries to enable safe resumption of tourism, travel, and hospitality; Rebuilding Public Sector staffing to pre-pandemic levels; small business support; and investments addressing disparities in the hardest hit communities.

B) Premium Pay For Eligible Workers

This category allows for payments to both employees of the jurisdiction as well as grants to private employers in industries deemed to have essential workers. Examples include janitors; food production; grocery stores; etc. Premium pay is to be prioritized for “lower income workers” and it excludes workers who telecommute. The Interim Final Rule also contain provisions to ensure that the pay is targeted to workers that faced or would face heightened risks due to the character of their work. The eligibility is limited to essential work involving regular in-person interactions or regular physical handling of items that were also handled by others.

C) Government Services to the Extent of Lost Revenue

This category would provide the most flexibility in terms of what could be funded with the ARPA funds. Each City must determine the amount of revenue loss in accordance with a formula put forth by the Federal Government. The funds can then be used for whatever can be classified as “government services”. Examples provided include: services provided to aid citizens; pay as you go funding for capital projects; cybersecurity; public safety costs; etc. Unfortunately, at least in the first year, Clayton will not have any qualifying revenue loss and so will not be able to allocate any funds in the initial allocation toward general government purposes not otherwise specified in the Act. For the second tranche of funding, there may be eligible revenue losses that allow some ARPA funds to be used for this more flexible category.

D) Infrastructure Investments in Broadband, Water, Sewer and Storm Drainage

The FAQ document issued by the Department of Treasury describes the Broadband infrastructure as projects designed to serve unserved or underserved households and businesses, specifically defined as those not served by a wireline connection that reliably delivers at least 25 Mbps download and 3 Mbps upload. There may not be any areas within the City of Clayton that are eligible under the Broadband category of ARPA uses.

Community Engagement: From a process standpoint, local governments receiving ARPA funds are encouraged to engage their communities in discussions around potential projects and priorities. Some cities, such as Lafayette, have done surveys targeted at their local business community. Others, like Santa Ana and Fairfield, are using a variety of methods to solicit input from their communities. Staff would recommend developing two surveys, one targeted specifically to businesses, and one more general for the community and use a variety of means of alerting our community to complete the surveys. The results of the survey will be brought back to the Council in conjunction with recommendations on specific programs.

FY2021/22 City Council Priority Areas: In considering what programs or projects the City should undertake with the ARPA funds, the currently adopted City Council Priority Areas should also be considered (see Attachment 2). An initial evaluation suggests that there are few Council priority items already identified that would be eligible uses for ARPA funds.

Nonetheless, the Council Priority Areas should remain a consideration in selecting programs and projects.

FISCAL IMPACTS

The City of Clayton has been allocated \$2,934,049 under the ARPA. The City has already received the first of two tranches in the amount of \$1,467,024. The balance (second tranche) will be allocated to the City in July 2022. All funds must be encumbered by December 2024 and spent no later than December 2026. Any unspent funds must be returned to the federal government.

ATTACHMENTS

1. CSLFRF Quick Reference Guide
2. FY2021/22 City Council Priority Areas
3. PowerPoint Presentation



Coronavirus State and Local Fiscal Recovery Funds

The American Rescue Plan will deliver \$350 billion for state, local, territorial, and Tribal governments to respond to the COVID-19 emergency and bring back jobs.

The Coronavirus State and Local Fiscal Recovery Funds provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.

Funding Objectives

- **Support urgent COVID-19 response efforts** to continue to decrease spread of the virus and bring the pandemic under control
- **Replace lost public sector revenue** to strengthen support for vital public services and help retain jobs
- **Support immediate economic stabilization** for households and businesses
- **Address systemic public health and economic challenges** that have contributed to the inequal impact of the pandemic

Eligible Jurisdictions & Allocations

Direct Recipients

- States and District of Columbia (\$195.3 billion)
- Counties (\$65.1 billion)
- Metropolitan cities (\$45.6 billion)
- Tribal governments (\$20.0 billion)
- Territories (\$4.5 billion)

Indirect Recipients

- Non-entitlement units (\$19.5 billion)



Support Public Health Response

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff



Address Negative Economic Impacts

Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector



Replace Public Sector Revenue Loss

Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic



Premium Pay for Essential Workers

Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors



Water and Sewer Infrastructure

Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure



Broadband Infrastructure

Make necessary investments to provide unserved or underserved locations with new or expanded broadband access



For More Information: Please visit www.treasury.gov/SLFRP

For Media Inquiries: Please contact the U.S. Treasury Press Office at (202) 622-2960

For General Inquiries: Please email SLFRP@treasury.gov for additional information



Example Uses of Funds



Support Public Health Response

- **Services to contain and mitigate the spread of COVID-19**, including vaccination, medical expenses, testing, contact tracing, quarantine costs, capacity enhancements, and many related activities
- **Behavioral healthcare services**, including mental health or substance misuse treatment, crisis intervention, and related services
- **Payroll and covered benefits** for public health, healthcare, human services, and public safety staff to the extent that they work on the COVID-19 response



Replace Public Sector Revenue Loss

- **Ensure continuity of vital government services** by filling budget shortfalls
- **Revenue loss is calculated** relative to the expected trend, beginning with the last full fiscal year pre-pandemic and adjusted annually for growth
- **Recipients may re-calculate revenue loss** at multiple points during the program, supporting those entities that experience revenue loss with a lag



Water & Sewer Infrastructure

- **Includes improvements to infrastructure**, such as building or upgrading facilities and transmission, distribution, and storage systems
- **Eligible uses aligned to Environmental Protection Agency project categories** for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund



Equity-Focused Services

- **Additional flexibility for the hardest-hit communities and families** to address health disparities, invest in housing, address educational disparities, and promote healthy childhood environments
- **Broadly applicable** to Qualified Census Tracts, other disproportionately impacted areas, and when provided by Tribal governments



Address Negative Economic Impacts

- **Deliver assistance to workers and families**, including support for unemployed workers, aid to households, and survivor's benefits for families of COVID-19 victims
- **Support small businesses** with loans, grants, in-kind assistance, and counseling programs
- **Speed the recovery of impacted industries**, including the tourism, travel, and hospitality sectors
- **Rebuild public sector capacity** by rehiring staff, replenishing state unemployment insurance funds, and implementing economic relief programs



Premium Pay for Essential Workers

- **Provide premium pay to essential workers**, both directly and through grants to third-party employers
- **Prioritize low- and moderate-income workers**, who face the greatest mismatch between employment-related health risks and compensation
- **Key sectors include** healthcare, grocery and food services, education, childcare, sanitation, and transit
- **Must be fully additive** to a worker's wages



Broadband Infrastructure

- **Focus on households and businesses** without access to broadband and those with connections that do not provide minimally acceptable speeds
- **Fund projects that deliver reliable service** with minimum 100 Mbps download / 100 Mbps upload speeds unless impracticable
- **Complement broadband investments** made through the Capital Projects Fund



Ineligible Uses

- **Changes that reduce net tax revenue** must not be offset with American Rescue Plan funds
- **Extraordinary payments into a pension fund** are a prohibited use of this funding
- **Other restrictions apply** to eligible uses

The examples listed in this document are non-exhaustive, do not describe all terms and conditions associated with the use of this funding, and do not describe all the restrictions on use that may apply. The U.S. Department of the Treasury provides this document, the State and Local contact channels, and other resources for informational purposes. Although efforts have been made to ensure the accuracy of the information provided, the information is subject to change or correction. Any Coronavirus State and Local Fiscal Recovery Funds received will be subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which shall incorporate the provisions of the Interim Final Rule and/or Final Rule that implements this program.

Attachment 1

FY2021/22 COUNCIL PRIORITY AREAS

Land Use and Housing

- Complete a state required Housing Element Update (Mandated; \$)
- ADU Ordinance (2020; \$)
- General Plan Safety and Circulation Element Updates (New; \$)

Public Safety

- Update Local Hazard Mitigation Plan (2020; \$)
- Update Emergency Operations Plan (New; \$)
- Implement Nixle – for improved emergency communication with the community (New; \$)
- Improve pedestrian/traffic safety (2020; \$)

Financial Stability

- Develop long-term financial plan (2020)
- Adopt a Finance Reserve policy (2020)
- Improve Capital Improvement Project (CIP) information and planning (2020)

Quality of Life

- Consider joint fireworks event in conjunction with Concord/in Concord (New; \$)
- Consider a Community Survey (New; \$)
- Review Cannabis Ordinance (2021)

Good Governance

- Install technology to provide Closed Captioning of Council Meetings (2020; \$)
- Update Purchasing Policy (2020)
- Update Employee Handbook (New)
- Update City IT infrastructure (including continued digitizing of records) (2020; \$)
- Create annual City Manager contingency for small unforeseen events/needs (New; \$)
- Improve employee recruitment and retention (2020; \$)

Planning for One-Time American Rescue Plan Fiscal Recovery Funds

August 17, 2021

Presentation Overview

First opportunity for discussion of options and a process for programming these funds

Focus will be on an overview of the program and key considerations

Requesting direction on key focus areas and a process to bring back to Council for further action

ARPA Funding for Clayton

City is scheduled to receive a total of \$2,934,048

Half of the funding has already been received: \$1,467,024

Balance of the funding will be available in July 2022

While our primary focus will be on the funds directly allocated to state and local governments, including Clayton, the ARPA also included many other programs to assist individuals and businesses including direct assistance, rental assistance, funding for expanded unemployment and health-related services and more.

What are requirements for spending funds?

U.S. Treasury issued [Interim Final Rule](#), [FAQs](#), and [Fact Sheet](#)

- Rule sets criteria and FAQ gives plain language guidance

Funds must be obligated by December 31, 2024 and fully spent by December 31, 2026 or they must be returned to the federal government

Can only cover costs from March 3, 2021 forward – with the exception of some premium pay components

There are recordkeeping and reporting requirements

- Smaller cities report annually, first report due October 31

ARP Act Gives Allowed Uses, Treasury Rule Provides Additional Detail

To respond to the **public health** emergency or its negative **economic impacts**, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

To respond to workers performing essential work during the COVID-19 public health emergency by providing **premium pay** to eligible workers;

For the provision of **government services to the extent of the reduction in revenue due** to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

To make necessary investments in **water, sewer, stormwater or broadband infrastructure**.

Allowed Public Health Uses

Rule provides a non-exclusive list, other uses would need to address a health need related to COVID.

Some of the identified uses most applicable to cities

- Support for quarantine or health access
- Enforcement or communication of health orders
- Capital investments like ventilation, glass, and spacing
- Behavioral health, including addiction treatment

Payroll for public health and public safety is more limited than CARES Act

- Only portion of time spent on COVID is eligible unless employee/unit is primarily dedicated to responding to health emergency

Economic Support for Individuals

Only eligible if addresses economic harm “resulting from or exacerbated by” COVID, and be proportional to harm experienced

Presumption that COVID affected unemployed, food/housing insecure, or low- or moderate-income

Some of the identified uses most applicable to cities

- Assistance to unemployed
- Food, rent, mortgage, or utility assistance
- Counseling or legal aid to keep folks housed
- Cash assistance (with restrictions)

Economic Support – Small Business/ Nonprofits

Only eligible if addresses economic harm “resulting from or exacerbated by” COVID, and be proportional to harm experienced and could include:

Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs

Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and

Technical assistance, counseling, or other services to assist with business planning needs

Additional Guidance on Economic Support

Rehiring public sector staff to pre-pandemic levels is also considered an eligible economic support expense. Clayton had no full-time FTE reductions; may be able to recoup costs for staffing back up on temporary help for landscape maintenance.

Certain uses are called out as **not allowed** in this category

- General infrastructure would typically not qualify
- Payment of outstanding debt or fees or costs to issue new debt
- Settlements or judgments
- Replenishing rainy day or reserve funds

Premium Pay for Essential Workers

Up to \$13 per hour bonus pay, maximum of \$25,000 per worker is allowed, can be retroactive, cannot cover telework

Written justification required if pushed wage above 150% of higher of state or county average annual wage

Including but not limited to the following workers:

- Staff at nursing homes, hospitals, and home care settings
- Workers at farms, food production facilities, grocery stores, and restaurants
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff
- Childcare workers, educators, and other school staff
- Social service and human services staff

Revenue Replacement

Cities may use funds for general services “to the extent of the reduction in revenue” due to COVID

Loss is calculated across all revenue streams as lump sum based on a specific formula

Revenue includes taxes, state shared revenues, current charges, and miscellaneous general revenue

Revenue excludes public utility revenues, trust revenues, correcting transactions, sales or investments, and federal transfers

Using the formula defined in the Act, **Clayton does not have any revenue loss that qualifies for replacement using ARPA funds**, at least in the first year. Because of how the formula in the Act is structured and how Clayton’s revenues typically grow, there may be the ability to use some of the second tranche of ARPA funds for general revenue replacement.

Water, Sewer & Stormwater Infrastructure Investments

“Wide latitude” to identify highest priority projects, including privately-owned infrastructure

Priority given to health, environmental safety, and projects to help the most households, but cities can apply additional criteria

Aligns with projects eligible for EPA’s Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)

Wastewater uses include construction, improvement or repair of plants, improved resilience, green infrastructure, or pollution reduction

Drinking water includes installation and replacement of failing treatment and distribution systems, replacing lead pipes, and more

Stormwater management, treatment, and reuse also eligible

* Funds may not be used as local match on CWSRF and DWSRF due to program restrictions against use of federal funds for that purpose

Broadband Infrastructure Investments

Goal is adequate speeds and has a focus on underserved households

Projects expected to deliver 100 Mbps symmetrical, but 20 Mbps upload can also qualify with conditions

Should focus on locations with current service less than 25 Mbps download and 3 Mbps upload

Cities have flexibility to choose locations but encouraged to think about last-mile connections and municipal/non-profit providers

There may be limited, if any, locations in Clayton that qualify for use of funds to expand Broadband.

General Restrictions on Use

Pension deposits are not allowed

Treasury interprets to mean extraordinary payments, to pay down an accrued unfunded liability

If paying payroll under an allowed use normal pension contributions as a part of a benefit package for that worker is allowed

Offset of tax reductions is not allowed

Cutting taxes puts a city at risk of having to repay funds if reduction is from change in “law, regulation, or administrative interpretation”

Does not include phase in of current law or changes outside the control of the jurisdiction

Recommended Considerations for Selecting Projects

- One-time projects rather than ongoing expenses
- Can be completed by 2026.
- Opportunity to address critical repairs/needs that will save money in the future such as deferred maintenance
- Unfunded CIPs
- Align with City Council FY2021/22 Priority Areas to the extent possible
- Focus on benefits specifically to Clayton residents and businesses

FY2021/22 City Council Priority Areas

Land Use and Housing

- Complete a state required Housing Element Update (Mandated; \$)
- ADU Ordinance (2020; \$)
- General Plan Safety and Circulation Element Updates (New; \$)

Public Safety

- Update Local Hazard Mitigation Plan (2020; \$)
- Update Emergency Operations Plan (New; \$)
- Implement Nixle – for improved emergency communication with the community (New; \$)
- Improve pedestrian/traffic safety (2020; \$)

Financial Stability

- Develop long-term financial plan (2020)
- Adopt a Finance Reserve policy (2020)
- Improve Capital Improvement Project (CIP) information and planning (2020)

FY2021/22 City Council Priority Areas

Quality of Life

- Consider a Community Survey (New; \$)
- Review Cannabis Ordinance (2021)

Good Governance

- Install technology to provide Closed Captioning of Council Meetings (2020; \$)
- Update Purchasing Policy (2020)
- Update Employee Handbook (New)
- Update City IT infrastructure (including continued digitizing of records) (2020; \$)
- Create annual City Manager contingency for small unforeseen events/needs (New; \$)
- Improve employee recruitment and retention (2020; \$)

Most Likely Areas for ARPA Investments

Responding to Negative Economic Impacts of the Pandemic

- Loans or Grants to local small businesses upon demonstration of impact/loss
- Premium pay for impacted essential employees

Invest in Stormwater Infrastructure

- Identify priority projects

Invest in Broadband Infrastructure

There may be limited opportunities in Clayton for such investment given the focus on underserved households. Need to determine if there are areas of the City that are not served by higher speed access.

Revenue Loss

No Revenue Loss under ARPA calculation for Year 1. There may be up to ~\$375,000 in Year 2. ARPA Funds used for Revenue Loss can be used for any general government purposes.

Community Engagement

From a process standpoint, local governments receiving ARPA funds are encouraged to engage their communities in discussions around potential projects and priorities.

Some cities, such as Lafayette, have done surveys targeted at their local business community.

Others, like Santa Ana and Fairfield, are using a variety of methods to solicit input from their communities.

Staff would recommend developing two surveys, one targeted specifically to businesses, and one more general for the community and use a variety of means of alerting our community to complete the surveys. The results of the survey will be brought back to the Council in conjunction with recommendations on specific programs.

Next Steps

Discuss and provide direction to staff

- High Priority Areas for spending
- Desired Community Engagement
- General Program goals/guidance

Recommend hiring an Economic Development Consultant/Business Consultant to help develop and administer the City's program.