ONLINE AGENDA INFORMATION

The online Agenda is not the official Agenda for the El Cajon City Council, but is posted and published five days prior to the City Council Meeting for the convenience of the public. Changes may be made up to 72 hours prior to the meeting; therefore added or deleted items may not appear on the City's website at this time. The City Council's official Agenda is prepared and posted outside City Council Chambers in the kiosk 72 hours prior to every regular meeting, and 24 hours prior to every special meeting. You may call the City Clerk's Office at (619) 441-1763 for information about any changes to this Agenda.

AGENDA BINDER, INCLUDING AGENDA REPORTS, IS AVAILABLE FOR VIEWING AFTER 4:00 P.M., THE FRIDAY BEFORE THE COUNCIL MEETING, AT THE EL CAJON BRANCH OF THE PUBLIC LIBRARY, 201 E. DOUGLAS AVENUE, PHONE (619) 588-3718.

LIBRARY HOURS: Monday – Thursday 9:30 a.m. – 8:00 p.m., Friday & Saturday 9:30 a.m. – 5:00 p.m., and Sunday 12:00 – 5:00 p.m.

SUPPLEMENTAL AGENDA ITEM DOCUMENTS AND/OR MATERIALS RECEIVED AFTER POSTING OF THIS AGENDA, IF ANY, MAY BE VIEWED IN THE CITY CLERK’S OFFICE AT 200 CIVIC CENTER WAY, EL CAJON, MONDAY THROUGH THURSDAY, 7:30 A.M. TO 5:30 P.M. AND ON ALTERNATE FRIDAYS FROM 8:00 A.M. TO 5:00 P.M.

FOR A SCHEDULE OF FRIDAY CITY HALL CLOSURES, VISIT WWW.CITYOFELCAJON.US OR CALL THE CITY CLERK’S OFFICE AT (619) 441-1763.
CITY OF EL CAJON
City Council/Housing Authority/
Successor Agency to the Redevelopment Agency

AGENDA

February 26, 2013

Honoring
and celebrating
the people
who make
El Cajon

The Valley
of
Opportunity

City Council/Housing Authority/
Successor Agency to the Redevelopment Agency

Mark Lewis
Mayor

Bill Wells
Mayor Pro Tem

Tony Ambrose
Councilmember

Gary Kendrick
Councilmember

Bob McClellan
Councilmember

Douglas Williford
City Manager

Morgan Foley
City Attorney

Nancy Palm
Deputy City Manager
Director of Finance

Kathie Rutledge
City Clerk

The Valley of Opportunity
Centennial ‘Incorporated 1912’
City Government 100 Years Ago

October 14, 1914: The City Attorney was instructed to draw an ordinance licensing picture shows, fortune tellers, fishermen, and non-resident peddlers. The City Marshall was instructed to rigidly enforce the ordinance relating to bicycle riding on the sidewalks, speeding, open mufflers, playing ball on Main Street, setting off explosives, and leaving horses untied on the streets.

February 26 - City Council Advisory Meeting – The topic is the Mid-Year Budget Review/Five-Year CIP/Five-Year Business Plan at 1:30 p.m. at 200 Civic Center Way, 5th floor conference room.

February 26 - The East County Chamber will hold its annual Citizen of the Year Luncheon at the Ronald Reagan Community Center, from 12:00 - 2:30 p.m. at 195 E. Douglas Avenue. Join the Chamber as they honor the 2012 Citizen of the Year, Sunshine Horton. The cost is $22 per person. For reservations, please call (619) 440-6161.

March 1, 15 & 29 - Alternate Friday closures for El Cajon City offices. Please go to www.cityofelcajon.us for a full calendar of hours for City offices during 2013.

March 2 – Miss El Cajon Scholarship Pageant will be held at the Cuyamaca College Theater at 4:00 p.m. Several of El Cajon’s finest young women will compete to serve as City Ambassador for six area titles. Cuyamaca College is located at 900 Rancho San Diego Pkwy, El Cajon, CA 92019. For more information, please email misselcajon@cox.net.

March 7 - Journey to Our Historical Past – This Centennial lecture series will feature Tom McGrath, long time announcer at the former Cajon Speedway. His presentation is titled “Saturday Night Lights – and it wasn’t a Football Game.” These historical presentations will be held the 1st & 3rd Thursdays of the month at the Downtown El Cajon Library, 201 E. Douglas Avenue, from 6:30 to 7:30 p.m. For more information, please call (619) 588-3708, or visit www.elcajon100.com.

March 10 – Daylight Savings Time - Spring Forward! This is the time of year when we turn our clocks ahead one hour at 2:00 a.m., or turn your clocks ahead before going to bed the night before. In addition, this is a great opportunity to remember to change the batteries in your smoke and carbon monoxide alarms in your home and/or business. Visit www.heartlandfire.org for more safety tips!

March 12 & 26 - El Cajon City Council Meeting at 3:00 p.m. (7:00 p.m.- as needed) in the City Council Chambers at 200 Civic Center Way. For more information, and to view the full agenda online, please visit www.cityofelcajon.us.

March 21 - El Cajon Farmers’ Market begins at the Prescott Promenade! Our Farmers’ Market will offer a wide variety of fresh, locally-grown fruits and vegetables, including certified organic produce, as well as freshly baked breads, and other specialty foods. The Promenade is located at 201 East Main Street. This event will take place every Thursday from 3:00 to 7:00 p.m., year round, rain or shine. To learn more, visit www.elcajonfarmersmarket.org.

March 21 - Journey to Our Historical Past – Our Centennial lecture series features historical guest speaker Ed Jarrell, a retired El Cajon Fire Chief. His presentation is titled “The El Cajon Fire Department – Then and Now.”

March 24 – The City of El Cajon Recreation Department’s Annual Citywide Dance and Tumbling Recital will be held at Cajon Valley Middle School, 550 E. Park Avenue in El Cajon. This event showcases our participants’ creative talents in tap, jazz, ballet, hip-hop, lyrical and modern dance. For more information, please call (619) 441-1516.

*The City of El Cajon is celebrating 100 years as a City from November 2012 through November 2013! Visit our Centennial website to see a brief video of the Centennial Celebration held on November 12, 2012. To take part in the 100 Hours Honoring 100 Years volunteer program, for historical information about the City, or to submit your own photos and memories of growing up in El Cajon, please visit www.elcajon100.com.
AGENDA

February 26, 2013
3:00 p.m.

The Agenda contains a brief general description of each item to be considered and most items have a RECOMMENDATION from Staff or a Commission, which Council will consider when making a final decision.

Copies of written documentation relating to each item of business on the Agenda are on file in the City Clerk's Office and in the Agenda Book next to the podium in the Council Chambers.

PLEASE COMPLETE A "REQUEST TO SPEAK" FORM FOR EACH ITEM PRIOR TO THE COMMENCEMENT OF THE MEETING AND SUBMIT IT TO THE CITY CLERK if you wish to speak about an Item on the Agenda or under Public Comment.

- CALL TO ORDER: Mayor Mark Lewis
- ROLL CALL: City Clerk Kathie Rutledge

PLEDGE OF ALLEGIANCE TO FLAG AND MOMENT OF SILENCE
(The Courts have concluded that sectarian prayer as part of City Council Meetings is not permitted under the Constitution.)

- POSTINGS: The City Clerk posted Orders of Adjournment of the February 12, 2013, Meeting and the Agenda of the February 26, 2013, Meetings in accordance to State Law and Council/Authority/Successor Agency to the Redevelopment Agency Policy.

- PRESENTATIONS:
  - Nicolosi's Grand Opening
  - Recognition – "Neighborhood Watch"

- AGENDA CHANGES:

*Backup Information Available - Housing Authority and Successor Agency Items are identified

Joint Meeting: El Cajon City Council/ Housing Authority/Successor Agency to the El Cajon Redevelopment Agency -1- February 26, 2013 3:00 p.m. and 7:00 p.m.
CONSENT ITEMS: (1.1 – 1.13)

Consent Items are routine matters enacted by one motion according to the RECOMMENDATION listed below. With the concurrence of the City Council, a Council Member or person in attendance may request discussion of a Consent Item at this time.

*1.1 MINUTES OF CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY MEETINGS

RECOMMENDATION: That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency approve Minutes of the February 12, 2013, Meeting of the El Cajon City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

1.2 WARRANTS

RECOMMENDATION: That the City Council approve payment of Warrants as submitted by the Finance Department.

1.3 APPROVAL OF READING BY TITLE AND WAIVER OF READING IN FULL OF ORDINANCES ON AGENDA

RECOMMENDATION: That the City Council approve the reading by title and waive the reading in full of all Ordinances on the Agenda.

*1.4 RESOLUTIONS: APPROVE PLANS AND SPECS FOR SEWER MAIN FOAMING, Bid No. 017-13, Engineering Job No. 3428
(Report: Deputy Director of Public Works)

RECOMMENDATION: That the City Council adopt the next RESOLUTIONS in order to approve Plans and Specifications and direct a Notice Inviting Sealed Bids to be opened on April 9, 2013.
CONSENT ITEMS: (Continued)

*1.5 EMERGENCY MEDICAL SERVICES (EMS) BILLING
(Report: Purchasing Agent)

RECOMMENDATION: That the City Council authorize the City Manager, or designee, to enter into a Professional Services Agreement and any necessary amendments with Wittman Enterprises, LLC for EMS billing for an initial three-year term with an option to renew for two additional one-year periods.

*1.6 SUPPLEMENTAL HEARTLAND COMMUNICATIONS FACILITY AUTHORITY (HCFA) ASSESSMENT TO PAY PRO-RATA SHARE OF THE CalPERS SIDE FUND
(Report: Deputy City Manager/Director of Finance)

RECOMMENDATION: That the City Council appropriate additional General Funds, up to $75,990, to pay El Cajon's pro-rata share to eliminate the HCFA CalPERS side fund.

*1.7 STORM DRAIN METAL PIPE REPAIR AND REPLACEMENT ON VIEW WAY, Engineering Job No. WW3426, Bid No. 007-13
(Report: Deputy Director of Public Works)

RECOMMENDATION: That the City Council accept the project and authorize the City Clerk to record a Notice of Completion and release the bonds in accordance with the contract terms.

*1.8 OVERLAY THOROUGHFARES 2011, Engineering Job No. PW3340, Bid No. 003-13
(Report: Deputy Director of Public Works)

RECOMMENDATION: That the City Council accept the project and authorize the City Clerk to record a Notice of Completion and release the bonds in accordance with the contract terms.
CONSENT ITEMS:  (Continued)

**1.9**  RESOLUTIONS: APPROVAL OF PLANS AND SPECIFICATIONS FOR STREET RESURFACING 2012, RUBBERIZED SLURRY – VARIOUS STREETS, Engineering Job No. PW3408, Bid No. 019-13  
(Report: Deputy Director of Public Works)

RECOMMENDATION: That the City Council adopt the next RESOLUTIONS in order to approve Plans and Specifications and direct a Notice Inviting Sealed Bids to be opened on March 26, 2013.

**1.10**  APPROPRIATION AND REMITTANCE OF REBATE RECEIVED TO THE U.S. DEPARTMENT OF THE TREASURY FOR FEDERALLY-FUNDED CITY PROJECTS: BUILDING AND STREET LIGHT RETRO-FIT IFM3297, Engineering Job No. PW3287  
(Report: Deputy Director of Public Works)

RECOMMENDATION: That the City Council appropriate and remit $49,500.00 received as a rebate from San Diego Gas & Electric (SDG&E) to the U.S. Department of the Treasury for federally-funded City projects.

**1.11**  RADIO EQUIPMENT PURCHASE  
(Report: Purchasing Agent)

RECOMMENDATION: That the City Council authorize the Purchasing Agent in accordance with Municipal Code 3.20.010.C.5 to execute a purchase agreement with Motorola Solutions, Inc. utilizing San Diego County RCS Contract No. 541947 for the purchase of 60 replacement radios in the amount of $256,564.52.

**1.12**  SPECIAL OPERATION LICENSE – IRON WALL SECURITY SERVICE  
1253 Broadway #429

RECOMMENDATION: That the City Council approve the application submitted by Javid A. Nooristani for a security service business located at 1253 Broadway #429.

**1.13**  SPECIAL OPERATION LICENSE – FYE #2247 – 415 Parkway Plaza #761

RECOMMENDATION: That the City Council approve the application submitted by Monique Martinez for a new and used music, video and software sales business located at 415 Parkway Plaza #761.
3. PUBLIC HEARINGS:

**3.1 RESOLUTION: DELINQUENT REFUSE COLLECTION CHARGES**  
(Report: Deputy Director of Public Works)

RECOMMENDATION: That the City Council
- Open the Public Hearing and receive testimony;
- Close the Public Hearing;
- Adopt the next RESOLUTION in order certifying the list of property owners as delinquent in the payment of their mandatory trash service bills; and
- Authorize the City Clerk to record the amount owed as a lien on the property and forward a list to the County Tax Assessor for billing on the next property tax bill.

[Remainder of Page Intentionally Left Blank]
4. ADMINISTRATIVE REPORTS:

*4.1 ALCOHOL SALES LAND USE STUDY SESSION
(Report: Planning Manager)

RECOMMENDATION: That the City Council:

- Receive comments from the public;
- Discuss the subject matter in this report;

THEN

- Move to adopt the next RESOLUTION in order APPROVING a Resolution of Intention to amend Title 17 (Zoning Code) of the El Cajon Municipal Code;

OR

- Move to provide policy direction to staff.

5. COMMISSION REPORTS: None

6. ACTIVITIES REPORTS OF MAYOR LEWIS

SANDAG (San Diego Association of Governments); SANDAG (Chair, Public Safety Committee); LAFCO (Local Agency Formation Commission) - Member; Indian Gaming Local Community Benefit Committee.

6.1 No Report

ACTIVITIES REPORTS OF COUNCILMEMBERS

7.

MAYOR PRO TEM BILL WELLS

League of California Cities, San Diego Division; METRO Commission/Wastewater JPA; East County Economic Development Council – Alternate; SANDAG (San Diego Association of Governments) – Alternate; Heartland Fire Training JPA – Alternate.

*7.1 Council Activities Report

Joint Meeting: El Cajon City Council/ Housing Authority/Successor Agency to the El Cajon Redevelopment Agency

February 26, 2013
3:00 p.m. and 7:00 p.m.
*7.2 CEASING OPERATION OF RED LIGHT CAMERAS WITHIN THE CITY OF EL CAJON (Continued from February 12th)

RECOMMENDATION: That the City Council direct the City Manager, pursuant to the existing contract with our contractor, Redflex, to immediately cease operation of all red light cameras within the City of El Cajon and to terminate the contract.

*7.3 OPPOSITION TO SENATE BILL 7

RECOMMENDATION: That the City Council direct the City Manager to send a letter to our elected state representatives stating our opposition to Senate Bill 7.

8.

COUNCILMEMBER TONY AMBROSE
Chamber of Commerce – Government Affairs; MTS (Metropolitan Transit System Board) - Alternate; East County Economic Development Council.

*8.1 Council Activities Report

9.

COUNCILMEMBER GARY KENDRICK
Heartland Communications JPA; Heartland Fire Training JPA.

*9.1 Council Activities Report

10.

COUNCILMEMBER BOB McCLELLAN
Harry Griffen Park Joint Steering Committee; Heartland Communications JPA – Alternate; MTS (Metropolitan Transit System Board).

*10.1 Council Activities Report
11. LEGISLATIVE REPORT

*11.1 League of California Cities Legislative Bulletins dated February 6, 7, 8, 12, 13 and 15, 2013 – City Advocate Weekly

12. GENERAL INFORMATION ITEMS FOR DISCUSSION

13. ORDINANCES: FIRST READING – None

14. ORDINANCES: SECOND READING AND ADOPTION - None

15. CLOSED SESSION:

RECOMMENDATION: That the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency adjourn to Closed Sessions as follows:

15.1 CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION – Pursuant to paragraph (1) of subdivision (d) of Government Code Section 54956.9:

Name of Case: In re: Downtown El Cajon Brewing Co., Inc.
United States Bankruptcy Court
Southern District of California
Case No. 12-13390-CL11

16. RECONVENE TO OPEN SESSION:

City Attorney or Representative reports on action taken in Closed Session.

ADJOURNMENT: The Adjourned Regular Joint Meeting of the El Cajon City Council/El Cajon Housing Authority/Successor Agency to the El Cajon Redevelopment Agency held this 26th day of February, 2013, is adjourned to Tuesday, February 26, 2013, at 7:00 p.m.

GENERAL INFORMATION: None
Tuesday, February 26, 2013
7:00 p.m.

COUNCIL CHAMBERS
200 Civic Center Way
El Cajon, California

- CALL TO ORDER: Mayor Mark Lewis
- ROLL CALL: City Clerk Kathie Rutledge

PLEDGE OF ALLEGIANCE TO FLAG AND MOMENT OF SILENCE
(The Courts have concluded that sectarian prayer as part of City Council Meetings is not permitted under the Constitution.)

- AGENDA CHANGES:

- PUBLIC COMMENT:

At this time, any person may address a matter within the jurisdiction of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency that is not on the Agenda. Comments relating to items on today's agenda are to be taken at the time the item is heard. State law prohibits discussion or action on items not on the Agenda; however, Council, Authority and Agency Members may briefly respond to statements or questions. An item may be placed on a future Agenda. In addition to briefly responding to statements or questions from the public, Council members may also address the City Council during this time.

*Backup Information Available – Housing Authority and Successor Agency Items are identified
PUBLIC HEARINGS:

(Report: Planning Manager)

RECOMMENDATION: That the City Council:
- Open the Public Hearing and receive testimony;
- Close the Public Hearing;

THEN

- Move to adopt the next RESOLUTIONS in order APPROVING applicable CEQA Exemptions, Conditional Use Permit No. 2179 and Tentative Parcel Map No. 648, subject to conditions; and
- Move to adopt the next RESOLUTION in order APPROVING Owner Participation and Development Agreement between Sunroad E C Land, Inc. and the City of El Cajon.

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PUBLIC HEARINGS: (Continued)

*101 AMENDMENT TO FY 2012-13 ONE YEAR ACTION PLAN; AND
FY 2013-14 CDBG AND HOME ALLOCATIONS
(Report: City Manager)

RECOMMENDATION: That the City Council

- Open the Public Hearing and accept public testimony;
- Close the Public Hearing;
- Adopt the next RESOLUTION in order to amend the FY 2012-13 One-Year Action Plan and:
  - Allocate and commit previously reserved HOME/CHDO funds to San Diego Habitat for Humanity in the amount of $168,198 for development of the Foundation Lane Phase II project (H0818); and
  - Re-allocate $10,000 from the Housing Programs Pool of Funds (275900-H0720) to the Foundation Lane project (H0818) for legal and other professional services that may be needed for this project; and
  - Allocate CDBG and HOME program income received during the year to the Housing Rehabilitation Program (C0704), the Housing Programs Pool of Funds (H0720), and the CDBG and HOME Administration activities to the maximums allowed (20% for CDBG Administration and 10% of eligible program income for HOME Administration).
- Authorize the City Manager, or designee, to execute a HOME Funding Agreement and any amendments necessary with San Diego Habitat for Humanity governing the use of the HOME funds for the Foundation Lane Phase II project, with terms and conditions recommended by staff and approved by the City Manager; and
- Appropriate FY 2012-13 CDBG program income as follows: 80% to the Housing Rehabilitation Program (C0704), and 20% to CDBG Administration (CADMIN) for preparation of the consolidated plan, fair housing testing, and City personnel expenses (salaries and benefits) of providing services to the CDBG program; and
- Appropriate FY 2012-13 HOME program income as follows: 90% to the Housing Program Pool of Funds (H0720), and 10% to HOME Administration (HADMIN) for preparation of the consolidated plan, fair housing testing, and City personnel expenses (salaries and benefits) of providing services to the HOME program; and
- Allocate funds to projects and programs that will be funded from the FY 2013-14 Community Development Block Grant (CDBG) and HOME grant programs.
ADJOURNMENT: The Adjourned Regular Joint Meeting of the El Cajon City Council/El Cajon Housing Authority/Successor Agency to the El Cajon Redevelopment Agency held this 26th day of February, 2013, is adjourned to Tuesday, March 12, 2013, at 3:00 p.m.
A Regular Joint Meeting of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency of the City of El Cajon, California held Tuesday, February 12, 2013, was called to order by Mayor/Chair Mark Lewis at 3:00 p.m., in the Council Chambers, 200 Civic Center Way, El Cajon, California.

ROLL CALL

Council/Agency members present: Ambrose and Kendrick
McClellan
Wells
Lewis
Rutledge, City Clerk/Secretary
Foley, City Attorney/General Counsel
Williford, City Manager/Executive Director
Griffiths, Deputy Director of Public Works
Ranu, Planning Manager

PLEDGE OF ALLEGIANCE TO FLAG led by Mayor Lewis and MOMENT OF SILENCE. (The Courts have concluded that sectarian prayer as part of City Council Meetings is not permitted under the Constitution).

POSTINGS: The City Clerk posted Orders of Adjournment of the January 22, 2013, meetings and the Agenda of the February 13, 2013, meeting in accordance to State Law and Council/Agency Policy.
PRESENTATIONS:

- Nicolosi's Grand Opening (No one present)
- Commendation – LiaLa and Audrey Sass for efforts on behalf of ACES
- Proclamation – “San Diego Saves”
- Proclamation – “Wear Red Day”
- Presentation – “New Innovations in Permit Processing”

AGENDA CHANGES: None

CONSENT ITEMS: (1.1 – 1.15)

MOTION BY LEWIS, SECOND BY WELLS, to APPROVE Consent Items 1.1 to 1.15.

MOTION CARRIES BY UNANIMOUS VOTE OF THOSE PRESENT. (MCCLELLAN – Absent)

1.1 MINUTES OF CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY MEETINGS

Approve Minutes of the January 22, 2013, meetings of the City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency.

1.2 WARRANTS

Approve payment of Warrants as submitted by the Finance Department.

1.3 APPROVAL OF READING BY TITLE AND WAIVER OF READING IN FULL OF ORDINANCES ON AGENDA

Approve the reading by title and waive the reading in full of all Ordinances on the Agenda.

1.4 COMMUNITY EVENT IN THE RIGHT-OF-WAY: RunEC HALF-MARATHON (Report: Deputy City Manager/Director of Finance)

Concur with the City's Special Events Committee and approve the request for a Community Event in the right-of-way to be held on Sunday, March 17, 2013, with conditions listed in Agenda Report.
CONSENT ITEMS: (Continued)

1.5  NEW CLASSIFICATION SPECIFICATION AND SALARY RANGE FOR EMERGENCY MEDICAL TECHNICIAN
(Report: Director of Human Resources)

Approve the proposed classification specification and salary range of 59.2 ($12.31 - $15.00 per hour) for Emergency Medical Technicians in accordance with the adopted Fiscal Year 2012-13 Budget.

1.6  RESOLUTION: AWARD OF BID NO. 015-13, MOTOR VEHICLES
(Report: Purchasing Agent)

Adopt RESOLUTION NO. 11-13 and award the bid to the lowest responsive, responsible bidders, Raceway Ford for the Ford F-250s and Ford Explorers in the amount of $200,767.53, and Winner Chevrolet for the Chevrolet Impalas and Chevrolet Traverse in the amount of $74,291.15.

1.7  OCTOBER – DECEMBER 2012 QUARTERLY TREASURER’S REPORT
(Report: Deputy City Manager/Director of Finance and Treasurer)

Receive the quarterly Treasurer’s Report for the quarter ending December 31, 2012.

1.8  REALIGNMENT OF STAFFING IN THE CITY MANAGER’S OFFICE AND OTHER DEPARTMENTS;
REVISIONS TO COUNCIL POLICY A-29 RE: COMPENSATION FOR EXECUTIVES, ET AL.
CLASSIFICATION SPECIFICATIONS FOR ASSISTANT CITY MANAGER
(Report: City Manager)

Approve:

1) The elimination of the Deputy City Manager/Director of Public Works and the Director of Community Development positions;
2) The addition of one Assistant City Manager and one Assistant to the City Manager position;
3) The corresponding changes and some technical changes to Council Policy A-29; and
4) The revisions to the classification specifications for the Assistant City Manager classification.
CONSENT ITEMS: (Continued)

1.9 RESOLUTION: AWARD OF BID NO. 011-13, INTERSECTION IMPROVEMENTS AT JAMACHA ROAD AND EAST MAIN STREET FEDERAL-AID PROJECT – HSIP 5211(022), Engineering Job No. 3402 (Report: Purchasing Agent)

- Appropriate $100,000.00 from TransNet Capital Improvement Projects Fund 503 to augment the original budget for Intersection Improvements at Jamacha Road and East Main Street, Project PW3402 in Budget Activity Number 550000; and

- Adopt RESOLUTION NO. 12-13 and award the bid to the lowest responsive, responsible bidder, Just Construction, Inc., in the amount of $339,000.00.

1.10 RESOLUTIONS: APPROVAL OF PLANS AND SPECIFICATIONS FOR BUS STOP IMPROVEMENTS 2012, Bid No. 018-13, Engineering Job No. 3446 (Report: Deputy Director of Public Works)

Adopt RESOLUTION NO. 13-13 to approve the Plans and Specifications and RESOLUTION NO. 14-13 to direct a Notice Inviting Sealed Bids to be opened on March 14, 2013.

1.11 SECOND AMENDMENT TO SUBDIVISION AGREEMENT FOR TENTATIVE SUBDIVISION MAP (TSM) 544 – 436 Emerald Avenue Engineering Job No. 2913 (Report: Deputy Director of Public Works)

Approve a second amendment to the Subdivision Agreement for TSM 544, Final Map No. 15666, approved by the City Council on December 18, 2007, to allow for an additional time extension, setting the new expiration date to December 27, 2013.

1.12 FINAL MAP FOR TENTATIVE SUBDIVISION MAP (TSM) 648 Cary Court/Rancho Terrace Estates, Engineering Job No. 3366 (Report: Deputy Director of Public Works)

Approve the Final Map for Tentative Subdivision Map (TSM) 648 at the terminus of Cary Court.
CONSENT ITEMS: (Continued)

1.13 RESOLUTION: SECOND AMENDMENT TO GROUND LEASE
DOMENICO DONATO
(Report: Community Development Department Housing Manager)

The City Council in its capacity as the governing board of the Successor Agency:

1. Adopt RESOLUTION NO.15-13 to approve a Second Amendment to the Ground Lease between the former El Cajon Redevelopment Agency and Domenico Donato, with terms and conditions set forth in the Agenda Report; and
2. Authorize the City Manager or his designee to execute all documents necessary to implement approved terms and conditions.

1.14 AMEND FISCAL YEAR 2012-13 GENERAL FUND BUDGET FOR REIMBURSEMENT FROM THE CITY ACTING AS SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY
(Report: Deputy City Manager/Director of Finance)

1. Amend the FY 2012-13 budget to increase General Fund revenue for reimbursement of $1,295,102 from the City Acting as Successor Agency to the former El Cajon Redevelopment Agency (“Successor Agency”); and
2. Appropriate funds received from Successor Agency to make a lump sum payment to CalPERS towards the unfunded liability resulting from the former El Cajon Redevelopment Agency employees.

1.15 LOAN MODIFICATION AGREEMENT - LAUREL VILLAGE APARTMENTS,
909-977 Leslie Road
(Report: Community Development Department Housing Manager)

Authorize the City Manager or designee to execute the Loan Modification Agreement between El Cajon Gardens II, L.P. and the City of El Cajon, substantially in the form as presented, with such changes as may be approved by the City Manager.

(Remainder of this page intentionally left blank)
PUBLIC COMMENT:

Riad Yalda, representing several taxi drivers in El Cajon, states they are having problems with MTS (Metropolitan Transit System) and feel they are being treated differently from other taxi drivers. They are seeking some assistance from the City.

Mayor Lewis states that Councilmember McClellan is the City’s representative to MTS, however, he is not present today. He informs Mr. Yalda that he has a right to attend MTS meetings.

City Manager Williford suggests the speaker send to the City Manager’s office written information on the concerns, and the information will be shared with Councilmember McClellan.

In response to questions from Council, City Attorney Foley remarks that some time ago Council felt it would more cost effective to allow MTS to manage issues such as regulations, the permit process, and inspection of vehicles. The recurring concern appears to be the ability of El Cajon taxi drivers to pick up fares outside the City limits. Part of the complaint is that if a fare goes from El Cajon to San Diego, the drivers are not allowed to pick up a return fare in San Diego.

Councilmember Wells offers his assistance to Mr. Yalda and invites him to call him to discuss the issues.

Mayor Lewis states there are a limited number of tags issued to taxi drivers by the City of San Diego, and that El Cajon has no control over that process.

LaVonna Connelly, representing El Cajon Collaborate speaks about an upcoming Resident Leadership Academy, and invites interested citizens to enroll in the Academy.

Monica Zech, Public Information Officer, provides an update on the Centennial Lectures Series held at the El Cajon Library at 201 E. Douglas Avenue, and a program to recognize volunteers in the community. More information can be found at www.elcajon100.com.

Mayor Lewis reads a fact from April 24, 1913, indicating that the Deputy Marshall was paid a salary of $3.00 a day.

2. WRITTEN COMMUNICATIONS: None
3. **PUBLIC HEARINGS:** None

4. **ADMINISTRATIVE REPORTS:** None

5. **COMMISSION REPORTS:** None

6. **ACTIVITIES REPORTS OF MAYOR LEWIS**

   SANDAG (San Diego Association of Governments); SANDAG (Chair, Public Safety Committee); LAFCO (Local Agency Formation Commission) - Member; Indian Gaming Local Community Benefit Committee

   6.1 County of San Diego City Selection Committee - Minutes for Special Meeting of January 14, 2013

   6.2 League of California Cities San Diego Division - Agenda for Executive Committee Meeting of January 14, 2013

   6.3 SANDAG Public Safety Committee Agenda - January 18, 2013

   6.4 Indian Gaming Local Community Benefit Committee – January 23, 2013

   6.5 SANDAG Board of Directors Agenda – January 25, 2013

   6.6 Local Agency Formation Commission Agenda – February 4, 2013

   REPORTS AS STATED.

   *(Remainder of this page intentionally left blank)*
7. **MAYOR PRO TEM BILL WELLS**
League of California Cities, San Diego Division; METRO Commission/Wastewater JPA; East County Economic Development Council - Alternate; SANDAG (San Diego Association of Governments) – Alternate; Heartland Fire Training JPA – Alternate

7.1 Council Activities Report

REPORT AS STATED.
ITEM 7.2 (Continued)

City Manager Williford responds that a study done three years prior and three years after the installation of the red light cameras, which was a little over a decade ago, revealed a decrease in the number of accidents at seven intersections. If added together, the decrease in accidents averaged 31%. Should Council desire, Staff could evaluate recent statistics and report the findings.

Councilmember Ambrose suggests gathering the following information, before town hall meetings are scheduled:
- Cost of the program;
- Cost effectiveness to the City;
- Consistency of signal light timing at both camera and non-camera intersections;
- Perspective from the Police Department;
- Studies performed in last 10 years;
- Type of legal issues raised by the public;
- The reasons for discontinuing the program in other cities.

Mayor Lewis suggests continuing the item until a full council is present. Mayor Pro Tem Wells concurs with the suggestion.

MOTION BY LEWIS, SECOND BY KENDRICK, to CONTINUE Item 7.2 to the next meeting for two weeks or until a full Council is present. MOTION CARRIES BY UNANIMOUS VOTE OF THOSE PRESENT. (MCCLELLAN – Absent)

8.

COUNCILMEMBER TONY AMBROSE
Chamber of Commerce – Government Affairs; MTS (Metropolitan Transit System Board) – Alternate; East County Economic Development Council.

8.1 Council Activities Report

REPORT AS STATED.

9.

COUNCILMEMBER GARY KENDRICK
Heartland Communications JPA; Heartland Fire Training JPA.

9.1 Council Activities Report

REPORT AS STATED.
ACTIVITIES REPORTS OF COUNCILMEMBERS: (Continued)

10. COUNCILMEMBER BOB McCLELLAN
Harry Griffen Park Joint Steering Committee; Heartland Communications JPA – Alternate; MTS (Metropolitan Transit System Board).

10.1 Council Activities Report

11. LEGISLATIVE REPORT

11.1 League of California Cities Legislative Bulletin dated January 18, 22, 23, 24, 25, 28, February 1 and 4, 2013 – City Advocate Weekly

DISCUSSION

Councilmember Wells reports that AB 2312, a bill that would have restricted local control on whether or not marijuana clinics would be allowed in municipalities, seems to have died in committee. A Supreme Court case is being considered by the Justices currently, involving the City of Riverside. If the decision is overturned, which may happen within the next 90 days, Council may need to take another look at the issue.

No further comments made.

NO ACTION TAKEN.

12. GENERAL INFORMATION ITEMS FOR DISCUSSION: None

13. ORDINANCES: FIRST READING - None

14. ORDINANCES: SECOND READING AND ADOPTION - None
15. CLOSED SESSIONS: None

Adjournment: Mayor Lewis adjourned the Regular Joint Meeting of the City Council/ Housing Authority/Successor Agency to the El Cajon Redevelopment Agency held this 12th day of February 12, 2013, at 4:10 p.m. to Tuesday, February 26, 2013 at 3:00 p.m.

KATHIE J. RUTLEDGE, CMC
City Clerk/Secretary
APPROVAL OF READING BY TITLE AND WAIVER OF READING OF ORDINANCES ON THIS AGENDA

The City Council waives the reading of the full text of every ordinance contained in this agenda and approves the reading of the ordinance title only.
TO: Mayor Lewis, Mayor Pro Tem Wells,
Councilmembers Ambrose, Kendrick, McClellan

FROM: Deputy Director of Public Works

SUBJECT: Approval of Plans and Specifications for Sewer Main Foaming
Engineering Job No. 3428, Bid Number 017-13

RECOMMENDATION: That the City Council Adopt the next RESOLUTIONS in order to approve Plans and Specifications and direct a Notice Inviting Sealed Bids to be opened on April 9, 2013.

BACKGROUND: This project will consist of treating specified sewer mains with root infiltration. A root foaming herbicide will be injected into the sewer mains and will kill the roots located in the sewer main though it will not damage the tree, it will significantly inhibit the possibility for tree root regrowth. Specifications are available for review at the City Clerk's Office.

CEQA: The proposed project is exempt from environmental review in accordance with Section 15301 (Existing Facilities). Class 1 provides an exemption for the maintenance of existing public facilities. None of the conditions in Section 15300.2, which provide exceptions for categorical exemptions, exist.

FISCAL IMPACT: The estimated project cost is approximately $50,000. This work is in the approved Fiscal Year 2012-2013 budget as WW3428, funded by wastewater.

PREPARED BY: Michael S. Griffiths
DEPUTY DIRECTOR OF PUBLIC WORKS

APPROVED BY: Douglas Williford
CITY MANAGER
RESOLUTION NO. ___-13

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR SEWER MAIN FOAMING. (Bid No. 017-13, Job No. 3428).

WHEREAS, the City Engineer has submitted plans and specifications for Sewer Main Foaming; and

WHEREAS, it appears to be in the best interests of the City of El Cajon that the plans and specifications for said project be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the plans and specifications submitted by the City Engineer for Sewer Main Foaming are hereby approved and adopted as the official plans and specifications for said project.

2. Said plans and specifications are directed to be filed in the office of the City Engineer of the City of El Cajon.
RESOLUTION NO. ____-13

RESOLUTION ORDERING THE WORK AND DIRECTING PUBLICATION OF NOTICE INVITING BIDS FOR SEWER MAIN FOAMING.
(Bid No. 017-13, Job No. 3428).

WHEREAS, plans and specifications have been submitted for Sewer Main Foaming; and

WHEREAS, it appears to be in the best interests of the City that said work be ordered to be done.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the City Council does hereby order that the Sewer Main Foaming project, be ordered to be done.

2. That Tuesday, April 9, 2013, at 2:00 P.M., in the office designated by the Purchasing Agent of the City of El Cajon, 200 Civic Center Way, El Cajon, California, is hereby fixed as the time and place for the opening of bids for said project.

3. The Purchasing Agent of the City of El Cajon is hereby directed to cause a Notice to Bidders to be published in the newspaper, in accordance with the provisions of law.
TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Purchasing Agent

SUBJECT: Emergency Medical Services (EMS) Billing

RECOMMENDATION:
That the City Council authorize the City Manager to enter into a Professional Services Agreement and any necessary amendments with Wittman Enterprises, LLC for EMS Billing for an initial three-year term with an option to renew for two additional one-year periods.

BACKGROUND:
On January 10, 2012, Council approved the extension of the existing agreement with Wittman Enterprises, LLC ("Wittman") for EMS Billing Services through March 29, 2013, with a one-year renewal option. This action was predicated on the vendor's past performance and the Fire Chief's recommendation. Wittman continues to serve the needs of the City in a highly satisfactory manner.

With the option for one more renewal pending, City staff surveyed other agencies within California to see what vendor and fee structure they were using. An evaluation of the contracts recently awarded showed that the contract awarded by the City of Oceanside most closely mirrored the City of El Cajon's number of annual transports and offered the best fee structure. In addition, the Oceanside contract includes enhanced administrative services not provided in our current contract.

Under the current contract with Wittman, the City pays a flat rate per billing. On October 17, 2012, the City of Oceanside approved a three-year professional services agreement with Wittman, including an option to extend two one-year periods, with compensation based on a fee of 4.95% of net revenue collected. This agreement was based on Wittman's response to the City of Oceanside's Request for Proposal (RFP) for Emergency Services Billing dated August 17, 2012.

Wittman has agreed to offer the same pricing, terms and conditions to the City of El Cajon. By piggybacking the City of Oceanside contract, the annual savings to the City of El Cajon is estimated to be almost 20% based on the current collection rate.
FISCAL IMPACT:
The budget for EMS revenue for Fiscal Year 2012-13 is $2,859,392 and the service fee charged by Wittman is $172,000. Based on a fee of 4.95% of net revenue collected, the charge would be $141,540, an estimated savings of $30,460, or 17.7%. The actual savings will be based on the net revenue collected each fiscal year.

PREPARED BY: Dede Porter
PURCHASING AGENT

REVIEWS BY: Nancy Palm
DEPUTY CITY MANAGER/DIRECTOR OF FINANCE

APPROVED BY: Douglas Williford
CITY MANAGER
TO: Mayor Lewis, Mayor Pro Tem Wells, Councillmembers Ambrose, Kendrick, McClellan

FROM: Deputy City Manager/Director of Finance

SUBJECT: Supplemental Heartland Communications Facility Authority (HCFA) Assessment to Pay Pro-Rata Share of the CalPERS Side Fund

RECOMMENDATION: That the City Council appropriate additional General Funds, up to $75,990, to pay El Cajon’s pro-rata share to eliminate the HCFA CalPERS side fund.

BACKGROUND: On January 24, 2013, the HCFA Board of Commissioners unanimously approved a supplemental assessment in Fiscal Year 2012-13 for all member agencies to eliminate the HCFA CalPERS side fund. Per the attached HCFA Agenda Report dated January 24, and the subsequent memo dated January 29, the projected balance is $362,864. El Cajon’s pro-rata share is shown as $75,990.

CalPERS created a side fund for HCFA at the time of joining the risk pool to account for the difference between the funded status of the pool and HCFA’s plan. Side funds allow plans with varying funded status to participate in the same risk pool. The side fund was subsequently adjusted when HCFA approved plan amendments that enhanced employee benefits. In the absence of subsequent contract amendments or funding changes, the side fund, which is paid as a loan on an installment basis, will disappear at the end of the amortization period, if not paid off earlier. In recent years, many agencies have taken similar action to pay off side funds to avoid paying interest on the outstanding balance.

FISCAL IMPACT: The City’s member assessment to HCFA is included in the Fire Administration Budget Activity 140000-8395. Additional funding is required to pay the City’s pro-rata share of the HCFA CalPERS side fund. The cumulative interest saved by HCFA over the next 11 years is estimated at $177,023, which includes El Cajon’s savings of $37,072.

PREPARED BY: Nancy Palm Deputy City Manager/ Director of Finance

APPROVED BY: Douglas Williford CITY MANAGER
January 29, 2013

To Heartland Communications Facility Authority JPA Members

RE: HCFA CalPERS Side Fund Supplemental Assessment Due by June 30, 2013

At the HCFA Commission meeting, Thursday, January 24, 2013, the Commission unanimously voted to approve a supplemental FY12/13 assessment for all current members, due to CalPERS by June 30, 2013 for their pro-rata share to eliminate the HCFA CalPERS side fund balance.

Below is a payment table specifically showing your agencies pro-rata share:

<table>
<thead>
<tr>
<th>Member Agency</th>
<th>Pro-Rata Share (Percentage)</th>
<th>Supplemental FY 2012-13 Assessment</th>
<th>Projected Accumulative Interest Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alpine Fire Protection District</td>
<td>3.00%</td>
<td>$10,888</td>
<td>($5,312)</td>
</tr>
<tr>
<td>Bonita-Sunnyside Fire Protection District</td>
<td>2.49%</td>
<td>$9,037</td>
<td>($4,409)</td>
</tr>
<tr>
<td>Coronado, City of</td>
<td>4.62%</td>
<td>$16,752</td>
<td>($8,173)</td>
</tr>
<tr>
<td>El Cajon, City of</td>
<td>20.94%</td>
<td>$75,990</td>
<td>($37,072)</td>
</tr>
<tr>
<td>La Mesa, City of</td>
<td>11.20%</td>
<td>$40,633</td>
<td>($19,823)</td>
</tr>
<tr>
<td>Lakeside Fire Protection District</td>
<td>12.35%</td>
<td>$44,797</td>
<td>($21,854)</td>
</tr>
<tr>
<td>Lemon Grove, City of</td>
<td>5.66%</td>
<td>$20,539</td>
<td>($10,020)</td>
</tr>
<tr>
<td>National City, City of</td>
<td>10.95%</td>
<td>$39,738</td>
<td>($19,386)</td>
</tr>
<tr>
<td>San Miguel Fire Protection District</td>
<td>18.36%</td>
<td>$66,607</td>
<td>($32,494)</td>
</tr>
<tr>
<td>Santee, City of</td>
<td>10.44%</td>
<td>$37,882</td>
<td>($18,481)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100.00%</td>
<td>$362,864</td>
<td>($177,023)</td>
</tr>
</tbody>
</table>

Please forward your payment to Heartland by Friday, June 14, 2013. This will allow enough processing time for payment to be generated and sent to CalPERS and meet the June 30, 2013 deadline.

Any questions can be forwarded to Interim Director Mark Ochenduszko at 619-441-5555 or my direct line 619-441-1623.

Valerie Nelli
Administrative Coordinator
Heartland Communications Facility Authority
619-441-1623
vnelliis@sdrecc.org
DATE: January 24, 2013

TO: Board of Commissioners

FROM: HCFA Director Mark Ochenduszko

SUBJECT: LUMP SUM PAY OFF OF CALPERS SIDE FUND

RECOMMENDATION:

That the Heartland Communication Facility Authority Commission takes the following actions:

1. Approve a supplemental Fiscal Year 2012-13 assessment for all current members, due by June 30, 2013, for their pro-rata share to eliminate the HCFA CalPERS side fund balance.

2. Appropriately $362,864 to make a lump sum payment by June 30, 2013, to eliminate the CalPERS side fund which will result in a lower employer contribution rate in future years.

3. Authorize the Interim Director, Mark Ochenduszko to complete the necessary documentation pertaining to such side fund payoff.

BACKGROUND AND ANALYSIS

As part of a plan to address increasing employer contributions, we are recommending HCFA make a lump sum payment to eliminate the CalPERS side fund. Doing so will reduce the rates charged to HCFA for the employer portion of the CalPERS contribution rate in future years and result in some cost avoidance by not "paying" interest on the outstanding side fund balance. A number of agencies across the State have taken similar action in the past several years.

At the time of joining the risk pool, CalPERS created a side fund for HCFA to account for the difference between the funded status of the pool and the funded status of HCFA’s plan. Side funds allow plans with varying funded status to participate in the same risk pool. The side fund was subsequently adjusted when HCFA approved plan amendments that enhanced employee benefits. In the absence of subsequent contract amendments or funding changes, the side fund, which is paid as a loan on an
installment basis, will disappear at the end of the amortization period, if not paid off in a lump sum earlier.

In their annual valuation reports for HCFA, CalPERS reports the amount HCFA owes in the side fund. CalPERS determines the amount paid each year towards the side fund by adding a percentage to HCFA's employer contribution rate based on an annual Risk Pool Actuarial Valuation. HCFA's side fund is estimated at $362,864 as of June 30, 2013, and the Fiscal Year 2013-2014 employer contribution rate of 19.302% includes 3.147% for the side fund amortization.

CalPERS estimated a lump sum payment of $362,864 by June 30, 2013, would pay off the side fund (see copy of CalPERS Actuarial dated January 14, 2013). This would save HCFA and its members approximately $177,023 in interest costs over the next ten to twelve years (see attached cost analysis of side fund payment). The employer contribution rate would be reduced by 3.147% after the lump sum payment.

**FISCAL IMPACT:**

The payoff of the side fund will have a number of fiscal impacts on HCFA and its members, including:

For HCFA,

1. Reduction of the overall retirement liability by approximately $362,864.
2. Projected interest savings of $177,023 over the next ten to twelve fiscal years.

For Members,

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<td><strong>100.00%</strong></td>
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<td><strong>($177,023)</strong></td>
</tr>
</tbody>
</table>

Respectfully submitted,

Mark Ochenduszko  
Director

Nancy Palm  
Treasurer/Controller
January 14, 2013

CalPERS ID: 6495007609
Employer Name: HEARTLAND COMMUNICATIONS FACILITY AUTHORITY
Rate Plan: MISCELLANEOUS PLAN

Re: Lump Sum Payment to reduce 2012-2013 & 2013-2014 pooled employer contribution rates

Dear Requestor:

As requested, 2012-2013 & 2013-2014 employer contribution rate information on your lump sum payment follows.

If you are aware of others interested in this information (i.e. payroll staff, county court employees, port districts, etc.), please inform them.

The information is based on the most recent annual valuation and assumes payment by June 30, 2013 and no further contractual or financing changes taking effect before June 30, 2014. The Side Fund resulting from risk pooling valued at ($362,864) (including any adjustments due to plan amendments, vouchers, golden handshakes, etc.) as of June 30, 2013, will be reduced or eliminated by a lump sum payment in the amount of $362,864. Any later adjustments due to plan amendments, vouchers, golden handshakes, or financing changes could increase or reestablish a negative side fund.

The change in your 2012/2013 & 2013/2014 employer contribution rates after you make the proposed lump sum payment, are displayed in the "Change to Total Employer Rate" line below.

<table>
<thead>
<tr>
<th>Valuation as of June 30, 2010</th>
<th>Pre-Payment</th>
<th>Post-Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected 06/30/13 Side Fund (SF)</td>
<td>($362,864)</td>
<td>$362,864</td>
</tr>
<tr>
<td>Proposed Lump Sum Pmt by 06/30/13</td>
<td>$362,864</td>
<td>$362,864</td>
</tr>
<tr>
<td>Revised projected 07/01/13 SF</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

2012-2013 Employer Contribution Rate

| Risk Pool's Net Employer Normal Cost | 9.981% | 9.981% |
| Risk Pool's Payment on Amortization Bases | 4.544% | 4.544% |
| Surcharges for Class 1 Benefits | 1.120% | 1.120% |
| Phase out of Normal Cost Difference | 0.000% | 0.000% |
| Amortization of Side Fund | 3.249% | 0.000% |

Total Employer Contribution Rate

| 18.894% | 15.645% |

Amortization Period

| 11 years | N/A |

Change to 12/13 Total Employer Contribution Rate

| N/A | N/A |
## Valuation as of June 30, 2011

<table>
<thead>
<tr>
<th>Safe as of June 30, 2011</th>
<th>Pre-Payment</th>
<th>Post-Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013-2014 Employer Contribution Rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Risk Pool's Net Employer Normal Cost</td>
<td>10.222%</td>
<td>10.222%</td>
</tr>
<tr>
<td>Risk Pool's Payment on Amortization Bases</td>
<td>4.842%</td>
<td>4.842%</td>
</tr>
<tr>
<td>Surcharges for Class 1 Benefits</td>
<td>1.091%</td>
<td>1.091%</td>
</tr>
<tr>
<td>Phase out of Normal Cost Difference</td>
<td>0.000%</td>
<td>0.000%</td>
</tr>
<tr>
<td>Amortization of Side Fund</td>
<td>3.147%</td>
<td>0.000%</td>
</tr>
<tr>
<td><strong>Total Employer Contribution Rate</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>19.302%</td>
<td>16.155%</td>
</tr>
<tr>
<td>Amortization Period</td>
<td>10 years</td>
<td>N/A</td>
</tr>
<tr>
<td>Change to 13/14 Total Employer Contribution Rate</td>
<td>(3.147%)</td>
<td></td>
</tr>
</tbody>
</table>

To initiate this change, the enclosed Lump Sum Payment Request must be completed and returned to the Fiscal Services Division with a wire transfer or a check by June 30, 2013. A copy should be sent to us.

If you have questions, please call (888) CalPERS (225-7377).

NANCY E. CAMPBELL, ASA, MAAA  
Enrolled Actuary  
Supervising Pension Actuary, CalPERS
TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Deputy Director of Public Works

SUBJECT: Storm Drain Metal Pipe Repair and Replacement on View Way Engineering Job No. WW3426 / Bid Number 007-13

RECOMMENDATION: That the City Council accept the project and authorize the City Clerk to record a Notice of Completion and release the bonds in accordance with the contract terms.

BACKGROUND: On October 9, 2012, the contract for Storm Drain Metal Pipe Repair and Replacement on View Way was awarded by Council Resolution No. 94-12 to Bert W. Salas, Inc. The project was completed on January 7, 2013. Final quantities and payments have been finalized. There are no pending claims.

FISCAL IMPACT: There is no fiscal impact as a result of this action.

PREPARED BY: APPROVED BY:

Michael Griffiths
DEPUTY DIRECTOR OF PUBLIC WORKS

Douglas Williford
CITY MANAGER
TO: Mayor Lewis, Mayor Pro Tem Wells, Cormcilmembers Ambrose, Kendrick, McClellan

FROM: Deputy Director of Public Works

SUBJECT: Overlay Thoroughfares 2011
Engineering Job No. PW3340 / Bid Number 003-13

RECOMMENDATION: That the City Council accept the project and authorize the City Clerk to record a Notice of Completion and release the bonds in accordance with the contract terms.

BACKGROUND: On August 14, 2012, the contract for Overlay Thoroughfares 2011 was awarded by Council Resolution No. 74-12 to TC Construction Company, Inc. The project was completed on January 22, 2013. Final quantities and payments have been finalized. There are no pending claims.

FISCAL IMPACT: There is no fiscal impact as a result of this action.

PONTRED BY: Michael Griffiths
DEPUTY DIRECTOR OF PUBLIC WORKS

APPROVED BY: Douglas Williford
CITY MANAGER
TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Deputy Director of Public Works

SUBJECT: Approval of Plans and Specifications for Street Resurfacing 12, Rubberized Slurry Various Streets Engineering Job No. PW3408/Bid Number 019-13

RECOMMENDATION: That the City Council: Adopt the next RESOLUTIONS in order to approve Plans and Specifications and direct a Notice Inviting Sealed Bids to be opened on March 26, 2013.

BACKGROUND: This project will resurface approximately 10 miles of residential streets, four (4) parking lots at City parks, and the Public Works Maintenance Facility equipment storage lot with rubberized slurry seal. This will improve the safety and appearance of the road and increase the road surface life expectancy. Plans and specifications are available for review at the City Clerk’s Office.

CEQA: The proposed pavement resurfacing project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) according to Section 15301 (Class 1) (c) of the CEQA Guidelines. Section 15301 provides an exemption for the maintenance of public streets.

FISCAL IMPACT: The estimated construction cost is approximately $490,000 and will be funded using TransNet funds (residential streets) in the amount of $440,000, 55000-PW3408, and General funds (parking lots) in the amount of $50,000, 501000 IFM1302. This work is included in the approved Fiscal Year 2012 – 2013 budget as project PW3408.

PREPARED BY: APPROVED BY:

Michael Griffiths
deputy director
of public works

Douglas Williford
city manager
RESOLUTION NO. ___-13

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR STREET RESURFACING 12, RUBBERIZED SLURRY VARIOUS STREETS. (Bid No. 019-13, Job No. 3408).

WHEREAS, the City Engineer has submitted plans and specifications for Street Resurfacing 12, Rubberized Slurry Various Streets; and

WHEREAS, it appears to be in the best interests of the City of El Cajon that the plans and specifications for said project be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the plans and specifications submitted by the City Engineer for Street Resurfacing 12, Rubberized Slurry Various Streets are hereby approved and adopted as the official plans and specifications for said project.

2. Said plans and specifications are directed to be filed in the office of the City Engineer of the City of El Cajon.
RESOLUTION NO. __________-13

RESOLUTION ORDERING THE WORK AND DIRECTING PUBLICATION
OF NOTICE INVITING BIDS FOR STREET RESURFACING 12, RUBBERIZED
SLURRY VARIOUS STREETS. (Bid No. 019-13, Job No. 3408).

WHEREAS, plans and specifications have been submitted for Street Resurfacing
12, Rubberized Slurry Various Streets; and

WHEREAS, it appears to be in the best interests of the City that said work be
ordered to be done.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
EL CAJON AS FOLLOWS:

1. That the City Council does hereby order that the Street Resurfacing 12,
Rubberized Slurry Various Streets project, be ordered to be done.

2. That Tuesday, March 26, 2013, at 2:00 P.M., in the office designated by the
Purchasing Agent of the City of El Cajon, 200 Civic Center Way, El Cajon, California, is
hereby fixed as the time and place for the opening of bids for said project.

3. The Purchasing Agent of the City of El Cajon is hereby directed to cause a
Notice to Bidders to be published in the newspaper, in accordance with the provisions of
law.

2/26/13 (Item 1.9)
Street Resurfacing 12 Rubberized Slurry ntc
TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Deputy Director of Public Works

SUBJECT: Appropriation and Remittance of Rebate Received to the U.S. Department of the Treasury for Federally-Funded City Projects: Building and Street Light Retro-fit IFM3297/PW3287

RECOMMENDATION: That the City Council appropriate and remit $49,500.00 received as a rebate from San Diego Gas & Electric (SDG&E) to the U.S. Department of the Treasury for federally-funded City projects.

BACKGROUND: In October 2009, the City was awarded an ARRA Federal stimulus grant through the U.S. Department of Energy (DOE) in the amount of $881,000 for energy efficient street light and building lighting retrofits. These projects were 100 percent funded from the Energy Efficiency and Conservation Block Grant (EECBG) Program of the American Recovery & Reinvestment Act (ARRA) of 2009.

Improvements entailed the retro-fit of 900 energy efficient street lights and lighting upgrades at seven (7) City buildings including City Hall. These projects have been completed and accepted by Council.

After the street light retro-fit project was completed, energy efficiency rebates in the amount of $49,500 were received from SDG&E in May 2012. The rebate was received too late in the grant period to develop, obtain approval, and complete another eligible project before the grant expired in November 2012. According to EECBG regulations, if a rebate can no longer be applied to eligible EECBG activities, the amount of the rebate must be returned by check payable to the U.S. Department of the Treasury.

FISCAL IMPACT: Utility rebate funds in the amount of $49,500 were received in Fiscal Year 2011-12 and deposited into the General Fund. An appropriation from the General Fund in the same amount this fiscal year will be required to remit the rebate to the U.S. Department of the Treasury. These EECBG funded City projects have resulted in reduced energy and maintenance costs, predominately in the General Fund.
TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Purchasing Agent

SUBJECT: Radio Equipment Purchase

RECOMMENDATION: That the City Council authorize the Purchasing Agent in accordance with Municipal Code 3.20.010.C.5 to execute a purchase agreement with Motorola Solutions, Inc. utilizing San Diego County RCS Contract No. 541947 for the purchase of 60 replacement radios in the amount of $256,564.52.

BACKGROUND: On June 26, 2012, Council approved the budget to replace police handheld radios with P25 compliant models. The City entered into an agreement with the County of San Diego to participate in the 800Mhz Regional Communications System (RCS) via Resolution No. 163-98. As part of the participation, we are also able to purchase hardware via San Diego County RCS Contract No. 541947 awarded to Motorola Solutions, Inc.

FISCAL IMPACT: $256,564.52.

Sufficient funds are available in Activity/Account No. 615280-9020 (Police Department-Technology Replacement), and No. 215000-9010 (COPS Grant).

PREPARED BY: Dede Porter
PURCHASING AGENT

REVIEWED BY: Nancy Palm
DEPUTY CITY MANAGER /
DIRECTOR OF FINANCE

APPROVED BY: Douglas Williford
CITY MANAGER
APPLICATION FOR
SPECIAL OPERATION LICENSE
(Please type or print in ink. Illegible applications will be returned)

BUSINESS NAME: IRON WALL SECURITY SERVICE

BUSINESS ADDRESS: 1253 BROADWAY # 429

BUSINESS PHONE: 619-201-3926 FAX NUMBER:

DESCRIPTION OF BUSINESS OR SERVICE PERFORMED: SAFE GUARD PRIVATE AND PUBLIC PROPERTIES WHILE PATROLLING ON FOOT AND VEHICLE

EL CAJON LOCATION (If different from above):

NEW BUSINESS ☐ CHANGE LOCATION ☐ NEW OWNER ☐

NAMES AND ADDRESSES OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS:

David A. Nooristan

209 Park Blvd El Cajon CA 92021

PAST CRIMINAL RECORD OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS (IF NONE SO STATE):

NONE

PRINT YOUR NAME:

David Nooristan

I acknowledge receipt of a copy of Chapter 5.16 of the El Cajon Municipal Code. I understand that all applicants must be fingerprinted by the Police Department and employees of businesses listed in Section 5.20.040 of the Municipal Code must secure work permits from the Police Department. I understand that no license will be issued until approved by the City Council. (Ref: ECMC 5.16.040-060; 5.020.040)

I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

EXECUTED AT EL CAJON CALIFORNIA, ON THIS 19 DAY OF DECEMBER 2012

SIGNED

DO NOT WRITE BELOW

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| 6. PRVT PATROL SVC | X 16. CABARET |
| 7. SECOND HAND | 17. PUBLIC DANCE |
| 8. SWAP MEET OPER | 18. SOUND TRUCK |
| 9. VEHICLE FOR HIRE | 19. FORTUNETELLER |
| 10. ALC-TOB FREE DNCE | 20. CARD ROOM |

FT-24-12
CITY OF EL CAJON
APPLICATION FOR
SPECIAL OPERATION LICENSE

200 CIVIC CENTER WAY
EL CAJON, CA 92020

(Please type or print in ink. Illegible applications will be returned)

BUSINESS NAME: IRON WALL SECURITY SERVICE

BUSINESS ADDRESS: 1253 BROADWAY #429

BUSINESS PHONE: 619-201-3926 FAX NUMBER:

DESCRIPTION OF BUSINESS OR SERVICE PERFORMED: SAFE GUARD PRIVATE AND PUBLIC PROPERTIES WHILE PATROLLING ON FOOT AND VEHICLE

EL CAJON LOCATION (If different from above):

NEW BUSINESS [ ] CHANGE LOCATION [ ] NEW OWNER [ ]

NAMES AND ADDRESSES OF ALL PERSONS FINANcialLY INTERESTED IN THE BUSINESS:

Javid A. Nooristani
209 Park Blvd El Cajon CA 92021

PAST CRIMINAL RECORD OF ALL PERSONS FINANcIALLY INTERESTED IN THE BUSINESS (IF NONE SO STATE):

NONE

PRINT YOUR NAME

Javid Nooristani

I acknowledge receipt of a copy of Chapter 5.16 of the El Cajon Municipal Code. I understand that all applicants must be fingerprinted by the Police Department and employees of businesses listed in Section 5.20.040 of the Municipal Code must secure work permits from the Police Department. I understand that no license will be issued until approved by the City Council. (Ref: ECMC 5.16.040-050; 5.20.040)

I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELief.

EXECUTED AT EL CAJON CALIFORNIA, ON THIS 12/18/12 DAY OF December, 2012

SIGNED

DO NOT WRITE BELOW

FOR OFFICE USE ONLY

DATE INITIAL

FEES PAID $10.00

DATE FORWARDED TO POLICE DEPT. 12/19/12

POLICE DEPT. RECOMMENDATION

APPROVAL [X] DENIAL [ ]

COMMUNITY DEVELOPMENT DEPT. RECOMMENDATION

APPROVAL [ ] DENIAL [ ]

CITY MANAGER RECOMMENDATION

APPROVAL [ ] DENIAL [ ]

CITY COUNCIL ACTION

APPROVAL [ ] DENIAL [ ]
**CITY OF EL CAJON**

**APPLICATION FOR SPECIAL OPERATION LICENSE**

(Please type or print in ink. Illegible applications will be returned)

**200 CIVIC CENTER WAY**

**EL CAJON, CA 92020**

---

**BUSINESS NAME:**  
IRON WALL SECURITY SERVICE

**BUSINESS ADDRESS:**  
1253 BROADWAY #429

**BUSINESS PHONE:**  
619-201-3926  
**FAX NUMBER:**

**DESCRIPTION OF BUSINESS OR SERVICE PERFORMED:**  
SAFE GUARD PRIVATE AND PUBLIC PROPERTIES WHILE PATROLLING ON FOOT AND VEHICLE

**EL CAJON LOCATION (If different from above):**

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**NEW BUSINESS □  CHANGE LOCATION □  NEW OWNER □**

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**NAMES AND ADDRESSES OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS:**

**Javid A. Nooristani**  
209 Park Blvd El Cajon CA 92021

---

**PAST CRIMINAL RECORD OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS (IF NONE SO STATE):**

NONE

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**PRINT YOUR NAME**

Javid A. Nooristani

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(Ref: ECMC 5.16.040-060;5.020.040)

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I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

EXECUTED AT EL CAJON CALIFORNIA, ON THIS **15th** DAY OF **DECEMBER** **2012**

SIGNED

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9. VEHICLE FOR HIRE  
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11. POLICE TOW  
12. CLOSE OUT  
13. AMBULANCE  
14. ARCADE  
15. POOLROOM  
16. CABARET  
17. PUBLIC DANCE  
18. SOUND TRUCK  
19. FORTUNETELLER  
20. CARD ROOM

**FT-24-12**
TO: Manjeet Ranu, AICP, Planning Manager

FROM: David Hardy, Planning Intern

DATE: January 8, 2013

SUBJECT: Special Operation License for a private patrol service at 1253 Broadway #429.

The Planning Division has received a request for comment on a special operation license application for a private patrol service at 1253 Broadway #429. The subject property is in the C-G zone and is developed within an existing commercial shopping center. According to the Commercial Land Use Table in Section 17.145.150 of the ECMC, office, administrative, business, and professional uses are permitted by right. There are no active zoning or building code violations on the subject property. Staff has identified no land use issues associated with this license application.
APPLICATION FOR SPECIAL OPERATION LICENSE

(Please type or print in ink. Illegible applications will be returned)

BUSINESS NAME: FYE #2247

BUSINESS ADDRESS: 741 PARKWAY PLAZA EL CAJON CA 92020

BUSINESS PHONE: (619) 447-3316  FAX NUMBER: N/A

DESCRIPTION OF BUSINESS OR SERVICE PERFORMED: MUSIC/VIDEO SOFTWARE SALES INCLUDING USE

EL CAJON LOCATION (if different from above):

NEW BUSINESS ✓  CHANGE LOCATION □  NEW OWNER □

NAMES AND ADDRESSES OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS:

NONIQUE MARTINEZ  4767 214TH ST. #5  SAN DIEGO CA 92116

PAST CRIMINAL RECORD OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS (IF NONE SO STATE):

NONE

PRINT YOUR NAME: NONIQUE MARTINEZ

I acknowledge receipt of a copy of Chapter 5.16 of the El Cajon Municipal Code. I understand that all applicants must be fingerprinted by the Police Department and employees of businesses listed in Section 5.20.040 of the Municipal Code must secure work permits from the Police Department. I understand that no license will be issued until approved by the City Council. (Ref: ECMC 5.16.040-060, 5.20.040)

I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

EXECUTED AT EL CAJON, CALIFORNIA, ON THIS 14TH DAY OF NOVEMBER 2012

SIGNATURE

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APPLICATION FOR SPECIAL OPERATION LICENSE

(Please type or print in ink. Illegible applications will be returned)

BUSINESS NAME: FYE #2247

BUSINESS ADDRESS: 461 PRAIRIE PLAZA, EL CAJON CA 92020

BUSINESS PHONE: (619) 447-3310

DESCRIPTION OF BUSINESS OR SERVICE PERFORMED: MUSIC/VIDEO SOFTWARE SALES

EL CAJON LOCATION (If different from above):

NEW BUSINESS ☐ CHANGE LOCATION ☐ NEW OWNER ☐

NAMES AND ADDRESSES OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS:

NONIQUE MARTINEZ 4707 24TH ST. #5 SAN DIEGO CA 92116

PAST CRIMINAL RECORD OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS (If NONE SO STATE):

NONE

I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

EXECUTED AT EL CAJON, CALIFORNIA, ON THIS 14-TH DAY OF NOVEMBER, 2012.

PRINT YOUR NAME: NONIQUE MARTINEZ

Acknowledged receipt of a copy of Chapter 5.16 of the El Cajon Municipal Code. I understand that all applicants must be fingerprinted by the Police Department and employees of businesses listed in Section 5.20.040 of the Municipal Code must secure work permits from the Police Department. I understand that no license will be issued until approved by the City Council. (Ref: ECMC 5.16.040-060, 5.020.040)

I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

FOR OFFICE USE ONLY

FEES PAID: $10.00

DATE FORWARDED TO POLICE DEPT.: 11/14/12

POLICE DEPT. RECOMMENDATION:

APPROVAL ☐ DENIAL ☐

COMMUNITY DEVELOPMENT DEPT. RECOMMENDATION:

APPROVAL ☐ DENIAL ☐

CITY MANAGER RECOMMENDATION:

APPROVAL ☐ DENIAL ☐

CITY COUNCIL ACTION:

APPROVAL ☐ DENIAL ☐

1. ESCORT SVC ☐

11. ALC-TOB FREE DANCE ☐

2. JUNKYARD ☐

12. POLICE TOW ☐

3. MASSAGE PARLOR ☐

13. CLOSE OUT ☐

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5. PAWNBROKER ☐

15. ARCADE ☐

6. PRVT PATROL SVC ☐

16. POOLROOM ☐

7. SECOND HAND ☐

17. CABARET ☐

8. SWAP MEET OPER ☐

18. PUBLIC DANCE ☐

9. SWAP MEET SALES ☐

19. SOUND TRUCK ☐

10. VEHICLE FOR HIRE ☐

20. FORTUNETELLER ☐

21. OTHER ☐
APPLICATION FOR SPECIAL OPERATION LICENSE

Please type or print in ink. Illegible applications will be returned.

BUSINESS NAME: FYE # 2247

BUSINESS ADDRESS: 191 PLAYWAY PLAZA EL CAJON CA 92020

BUSINESS PHONE: (619) 447-3316 FAX NUMBER: N/A

DESCRIPTION OF BUSINESS OR SERVICE PERFORMED: MUSIC/VINYL SOFTWARE SALES

EL CAJON LOCATION (If different from above): 

NEW BUSINESS □ CHANGE LOCATION □ NEW OWNER □

NAMES AND ADDRESSES OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS:

NONIQUE MARTINEZ 4707 34TH ST. #5 SAN DIEGO CA 92116

PAST CRIMINAL RECORD OF ALL PERSONS FINANCIALLY INTERESTED IN THE BUSINESS (If none so state):

NONE

PRINT YOUR NAME: NONIQUE MARTINEZ

I acknowledge receipt of a copy of Chapter 5.16 of the El Cajon Municipal Code. I understand that all applicants must be fingerprinted by the Police Department and employees of businesses listed in Section 5.20.040 of the Municipal Code must secure work permits from the Police Department. I understand that no license will be issued until approved by the City Council. (Ref:ECMC 5.16.040-060,5.20.040)

I declare under penalty of perjury that the statements made herein are correct and true to the best of my knowledge and belief.

EXECUTED AT EL CAJON, CALIFORNIA, ON THIS 14TH DAY OF NOVEMBER, 2012

FOR OFFICE USE ONLY

DATE FORWARDED TO POLICE DEPT.: 1/1/12 Initial: F

POLICE DEPT. RECOMMENDATION

□ APPROVAL □ DENIAL

COMMUNITY DEVELOPMENT DEPT. RECOMMENDATION

□ APPROVAL □ DENIAL

CITY MANAGER RECOMMENDATION

□ APPROVAL □ DENIAL

CITY COUNCIL ACTION

□ APPROVAL □ DENIAL

Fees Paid: $10,00

Date Forwarded to Police Dept.: 1/1/12

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16. POOLROOM
17. CABARET
18. PUBLIC DANCE
19. SOUND TRUCK
20. FORTUNETELLER
21. OTHER

FT-24-02
To: Melissa Ayres, AICP, Director of Community Development

From: David Hardy, Administrative Intern

Via: Manjeet Ranu, AICP, Planning Manager

Date: November 21, 2012

Re: Special Operation License for a secondhand store at 415 Parkway Plaza, No. 761

The Planning Division has received a request for comment for a special operation license application for a FYE secondhand store to locate at 415 Parkway Plaza, No. 761. The application states the business is retail of new and used music, video, and software products. The subject property is in the C-R zone and is within Special Development Area No. 8, which is implemented by Specific Plan No. 19. According to the Commercial Land Use Table in Section 17.145.150 of the ECMC, secondhand stores are permitted in the C-R zone. Specific Plan No. 19 does not separately regulate secondhand stores. There are no active zoning or building code violations on the subject property. Staff has identified no land use issues associated with this license application.
TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Deputy Director of Public Works

SUBJECT: Delinquent Refuse Collection Charges

RECOMMENDATION: That the City Council

- Open the Public Hearing and receive testimony;
- Close the Public Hearing;
- Adopt the next RESOLUTION in order certifying the list of property owners as delinquent in the payment of their mandatory trash service bills; and,
- Authorize the City Clerk to record the amount owed as a lien on the property and forward a list to the County Tax Assessor for billing on the next property tax bill.

BACKGROUND:

On January 1, 1996, the City of El Cajon began mandatory trash service for all single-family residences in the City. The agreement with Waste Management (WM) allows WM to bill for regular service with the City accepting assignment of all delinquencies. This allows the City to use the enforcement power of a property lien, when necessary, to collect past due amounts.

Based on the El Cajon Municipal Code, the City allows exemption from the mandatory service for only three (3) reasons: the property owner supplies weekly landfill receipts; the property is vacant; or the resident has a commercial trash disposal account within the franchise area (City limits) where they are disposing their residential trash. Additionally, if a resident is on vacation for a minimum of one (1) month, WM will put a hold on service until the resident returns.

Of the approximate 14,000 active single-family accounts, 821 customers were sent a final notice of delinquency asking them to pay a total of $118,639.10. Approximately 262 customers have paid, leaving a balance of 559 delinquent accounts for the City Council to consider.
FISCAL IMPACT: As of February 15, 2013, there are 559 delinquent accounts, totaling $81,099.90. As the City collects a 15% franchise fee, the City’s financial share of these delinquencies is approximately $12,165.

PREPARED BY:

Dennis Davies
DEPUTY DIRECTOR
OF PUBLIC WORKS

APPROVED BY:

Douglas Williford
CITY MANAGER
RESOLUTION NO. __-13

RESOLUTION APPROVING REPORT AND ACCOUNT OF DELINQUENT REFUSE COLLECTION SERVICE FEES AND CHARGES; AND CONFIRMING ASSESSMENTS AS LIENS PURSUANT TO CHAPTER 8.24 OF THE EL CAJON MUNICIPAL CODE.

WHEREAS, pursuant to the provisions of Chapter 8.24 of the El Cajon Municipal Code, a public hearing was held on February 26, 2013, for the purpose of hearing objections or protests to a report and account of delinquent refuse collection service fees and charges; and

WHEREAS, protests and objections of the owners of the property liable to be assessed for said delinquent charges have been heard and considered by said City Council, and said account has been approved as submitted.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. In accordance with the provisions of Title 4, Division 3, Chapter 10, Section 38791 and Title 3, Division 2, Chapter 8, Section 25831 of the Government Code of the State of California, and Section 8.24.090 of Chapter 8.24 of the El Cajon Municipal Code, the report and account of delinquent refuse collection service fees and charges (Exhibit "A") considered at the hearing held on February 26, 2013, on file in the office of the City Clerk, is approved, and the unpaid amounts designated in said report and account shall be a charge to the owners of the property on the next regular tax bill, and shall be a lien upon the property involved.

2. The sums herein assessed remaining unpaid after thirty days from the date of this resolution shall bear interest at the rate of 7% per annum, as set forth in Section 8.24.100 of Chapter 8.24 of the El Cajon Municipal Code.

3. The designation of said parcels is shown by Assessor’s parcel numbers, and the initial amount plus interest to be assessed and imposed as a lien is designated thereafter on Exhibit “A”, on file in the Office of the City Clerk.

4. Said liens shall be of no further force or effect upon the confirmation of the Tax Collector that said assessments have been added to the tax rolls.

5. The City Clerk is hereby directed to record a certified copy of this resolution and Exhibit “A” in the office of the County Recorder of San Diego County.

6. The City Clerk is hereby authorized to discharge and release any such lien when the claim under said lien has been fully satisfied.

(Continued on Page 2)
7. The decision in your matter is final on this date, and by this notice, you have 90 calendar days from the date of the mailing of this notice to seek judicial review of this decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6, and El Cajon Municipal Code Chapter 1.32.

2/26/13 (Item 3.1)
Refuse Liens Feb 2013
NOTE: The list of Delinquent Refuse Collection Charges is available for viewing at:

City Clerk’s Office
City Hall, 1st Floor
200 Civic Center Way
El Cajon, CA 92020

(619) 441-1763
TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Manjeet Ranu, Planning Manager

SUBJECT: Alcohol Sales Land Use Study Session

RECOMMENDATION: That the City Council:

• Receive comments from the public;
• Discuss the subject matter in this report;

THEN
• Move to ADOPT the next RESOLUTION in order APPROVING a Resolution of Intention to amend Title 17 (Zoning Code) of the El Cajon Municipal Code;

OR

• Move to provide policy direction to staff.

1. SUMMARY

At its January 22, 2013, public meeting, the City Council directed staff to research and report back to the Council options for addressing problems associated with the off-sale of alcohol (beer, wine and liquor stores). This agenda item describes the issue, suggests goals for the City to achieve, and outlines alternatives for how to achieve these goals. It involves separate yet related approaches to both existing and future off-sale outlets. The City Council is requested to provide staff direction for either initiating ordinance amendments or other policy direction. Since most of the alternatives would require an amendment to the City’s Zoning Code, a Resolution of Intention has been docketed for Council’s consideration. The resolution will include a scope of work reflecting the direction of the City Council, should it decide to take this step.
2. ISSUE

Introduction
Negative impacts on the community and businesses, along with disproportionate demands on City services, are associated with the off-sale of alcohol.

Public Nuisances
The Police Department hosts community forums throughout the year. Over the last several years, community concerns focused on quality of life issues. Of these, chronic alcoholic homeless and related public nuisance issues rank high.

The Police Department routinely receives public nuisance calls for service on issues such as:

- Urinating in public
- Petty theft
- Pan handling
- Drunk in public

Crime
The chronic alcoholic homeless population almost exclusively commits the below-listed alcohol-related arrests. These arrests usually follow a community complaint received by the Police Department’s communications center. While the population of chronic alcoholic homeless can vary in size, the alcohol-related offenses they commit are prevalent and highly visible.

<table>
<thead>
<tr>
<th>Percentage of arrests that are alcohol-related (excluding DUIs)</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>8.3%</td>
<td>13.2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alcohol-related Arrests in 2012 by Type</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Drunk in public</td>
<td>500</td>
</tr>
<tr>
<td>Drinking in public</td>
<td>88</td>
</tr>
<tr>
<td>Open container on premises</td>
<td>40</td>
</tr>
<tr>
<td>Total arrests</td>
<td>628</td>
</tr>
</tbody>
</table>

The number of alcohol-related arrests is disproportionately high in relation to the location of off-sale alcohol outlets.

<table>
<thead>
<tr>
<th>2009 – 2012 Reporting Period Statistics</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol-related arrests (excluding DUIs) within 600 feet of an off-sale alcohol outlet of less than 15,000 square feet in size</td>
<td>849 arrests</td>
<td>48%</td>
</tr>
</tbody>
</table>
### 2009 – 2012 Reporting Period Statistics

<table>
<thead>
<tr>
<th>Area of City within 600 feet of an off-sale alcohol outlet of less than 15,000 square feet in size</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2.2 square miles</td>
<td>15%</td>
</tr>
<tr>
<td>Alcohol-related arrests (excluding DUls) within Census tracts with an overconcentration (per State ABC regulations) of off-sale alcohol outlets</td>
<td>1,229 arrests</td>
<td>70%</td>
</tr>
<tr>
<td>Alcohol-related arrests (excluding DUls) within High and Very High crime reporting districts</td>
<td>1,207 arrests</td>
<td>69%</td>
</tr>
</tbody>
</table>

Officers are required to drive the prisoner to downtown San Diego and be booked into jail. This is a very time consuming process and taxing on City resources.

**Economic Impacts**

The presence of nuisance and criminal activities has many negative impacts. These impacts affect the economic strength of the City. It depresses business retention and recruitment in impacted areas. A portion of the potential customer base avoids impacted areas. It also negatively affects the City’s overall image and puts the City at a competitive disadvantage.

### 3. BACKGROUND

**Off-sale Alcohol Land Uses in the City**

<table>
<thead>
<tr>
<th></th>
<th>Outlet Under 15,000 square feet</th>
<th>Outlet 15,000 square feet and larger</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type 20 license</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(beer and wine sales)</td>
<td>35</td>
<td>6</td>
<td>41</td>
</tr>
<tr>
<td><strong>Type 21 license</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(liquor)</td>
<td>24</td>
<td>14</td>
<td>38</td>
</tr>
<tr>
<td><strong>Total outlets</strong></td>
<td>59</td>
<td>20</td>
<td>79</td>
</tr>
</tbody>
</table>

Seventy-five percent of these off-sale outlets are legally non-conforming, pursuant to El Cajon Municipal Code Chapter 17.210, which regulates alcohol sales as a land use. These outlets were established prior to amendments to the Zoning Code for off-sale alcohol land use standards. All of these operate in buildings under 15,000 square feet in size. While 18 of these outlets operate under a Conditional Use Permit, the outlets are non-conforming as to distance standards from specified sensitive land uses.

Alcohol is available at restaurants, grocery and drug stores, liquor stores, convenience stores, neighborhood markets, bars, social clubs, and gas stations. There are 138 licensed on- and off-sale locations in the City, representing one alcohol outlet for every 725 residents.
State Alcoholic Beverage Control “Moratorium”
The state Department of Alcoholic Beverage Control has placed the City in a “moratorium” status because the number of Type 20 licenses exceeds a rate of one license per 2,500 residents citywide. Technically, the City exceeds the maximum number of Type 20 licenses by only one license. However, since the location of the vast majority of these licenses is within the core valley area of the City, the practical concentration of liquor sales within this portion of the City is far more than the overall citywide ratio would suggest. As the population of the City grows, which it is forecast to do, or if a license is cancelled or transferred out of the City, El Cajon may be removed from the moratorium list when it is next updated. The moratorium does not prevent new Type 20 outlets from operating in the City. Rather, the ABC requires the City to make a finding of Public Convenience and Necessity for a new Type 20 license to be granted.

Regulation of Alcohol Sales Land Uses in Municipal Code – Past and Present
Before 1988, the Zoning Code did not require a CUP for the off-sale of alcoholic beverages. Off-sale of alcoholic beverages was a permitted land use in the Neighborhood Commercial (C-N), General Commercial (C-G) and Regional Commercial (C-R) zoning districts.

In 1988, the Zoning Code was amended to define liquor stores and to require a CUP for new Type 21 liquor outlets. No operational use and development standards specific to off-sale land uses were included in this amendment.

In 1992, the Zoning Code was amended to require a CUP for Type 20 outlets. The higher level of review was imposed to establish consistency for the off-sale of alcohol and ensure compatibility with adjacent uses. Still, there were no operational use standards in the Zoning Code specific to off-sale.

In 1994, the Zoning Code was amended to require a CUP for all alcohol beverage establishments, including on-sale and nine issues to consider in whether to approve a CUP for an on- and off-sale alcohol business. The considerations deal with crime, other land uses in the area, concentration of alcohol outlets and similar topics, but are generally qualitative in nature. Again, no operational use standards specific to off-sale were included in the Zoning Code.

In 1995, the Zoning Code was amended to specifically exempt a grocery store or drug store greater than 15,000 square feet from the CUP requirement and the newly added distance requirements. The minimum separation requirements pertained to new on-sale establishments, except restaurants with bar areas less than eating areas, to existing on-sale establishments, off-sale outlets, and certain sensitive land uses, such as housing and schools. For new off-sale outlets, the CUP requirement and the separation
requirements only applied to outlets operating out of buildings less than 15,000 square feet in size, Type 21 outlets operating as the principal use regardless of size and as an accessory use exceeding 10 percent of the principal use. The separation requirements prevented new small establishments from locating in most areas of the City. New, small off-sale alcohol outlets could only locate in a few areas near the Westfield Parkway mall.

In 2010, the Zoning Code was comprehensively reorganized. As part of that reorganization, there were numerous incremental changes to the code. One of those changes removed the requirement for Type 20 off-sale alcohol outlets operating out of buildings less than 15,000 square feet in size to meet the separation requirements, provided that the amount of floor area devoted to beer and wine sales did not exceed 10 percent, subject to approval of a CUP. Standalone Type 21 stores, regardless of size, still require a CUP in retail-oriented commercial zoning districts and are subject to the separation requirements. Off-sale of alcohol is prohibited in Specific Plan No. 182 (downtown).

Since the 2010 Zoning Code amendment, four applicants willing to limit beer and wine sales to 10 percent or less of the store have sought CUPs for small Type 20 outlets. Staff’s recommendation has been to deny all of these applications. However, a separate set of operating conditions were recommended by staff, should the Planning Commission or City Council choose to approve the CUP. Notable of these conditions was a recommendation that the applicant purchase two off-sale licenses from high crime areas in over-concentrated Census tracts of the City, cancel one and transfer the other license to the new outlet. Staff’s recommended conditions have not been codified or comprehensively addressed by the City Council. Rather, the conditions were considered with each individual application.

Three small Type 20 outlet CUPs have been approved since the 2010 Zoning Code amendment: On-the-Go, located at the northwest corner North Second Street and East Madison Avenue, in 2010; Ramco, located at the western end of Fletcher Parkway, in 2011; and 7-11, located at Chase and Avocado Avenues, in 2012. A two-for-one license transfer condition was imposed on On-the-Go and Ramco. Neither business has begun alcohol sales. A one-for-one license requirement was imposed on 7-11, which is in the process of transferring a license to begin selling beer and wine. From 1995 through 2012, no new small alcohol outlets opened in the City. New Type 20 and 21 licenses were only successfully obtained by larger establishments during that period. The recently approved 7-11 is anticipated to open with Type 20 off-sale in 2013.

Administrative Alcohol Land Use Policy
In 2010, staff prepared and put into practice an administrative policy to guide how state ABC referrals for a Public Convenience and Necessity finding would be addressed when the off-sale land use does not trigger the requirement for a CUP—outlets 15,000
square feet and larger. This administrative policy applies to Type 20 and Type 21 license requests for which the City must provide a finding of Public Convenience and Necessity for ABC to grant a license because of the Type 20 moratorium status and when a Type 21 outlet would be located in an over-concentrated census tract and/or a high crime district. This administrative policy was not adopted by the City Council, but an appeal of a staff denial of a Public Convenience and Necessity finding subjected the policy to public review—staff’s denial using this policy was ultimately upheld by the Council.

Tools Used by Other Cities and Counties
The City Attorney’s office has canvassed California cities and counties to review land use and other regulations affecting off-sale and on-sale merchants. It has been mentioned in some settings that there are approximately 20 jurisdictions in California with some sort of ordinance regulating pre-existing but nonconforming uses of this type (i.e., “deemed approved” ordinances). It is the City Attorney’s belief that besides these deemed approved ordinances most cities and counties already require some discretionary permit (e.g., a conditional use permit or special use permit) for new off-sale and on-sale merchants.

Those jurisdictions (there may be others) having land use regulations applicable to legal nonconforming uses, which were reviewed by the City Attorney, include:

- Alameda County
- City and County of San Francisco
- Lemon Grove
- Oakland
- Ontario
- Oxnard
- Pasadena
- Petaluma
- Richmond
- Rohnert Park
- San Bernardino
- Santa Cruz
- Santa Rosa
- Vallejo
- Ventura
- Walnut Creek

Of these 16 jurisdictions only one (Ontario) prohibits pre-existing, non-conforming off-sale stores from selling (1) single cans or bottles of beer or malt beverages, wine coolers, beer coolers, or pre-mixed distilled spirit cocktails (the Ontario ordinance requiring sales of such beverages to be in specified multi-unit quantities), (2) wine in bottles or containers having less than 750 ml in capacity, and (3) distilled spirits sold in bottles or containers having less than 375 ml in capacity. One other, Ventura, prohibits the sale of beer or malt beverage products in bottles or cans greater than 32 ounces in volume (excluding kegs or other containers of two gallons or more, clearly intended to dispense multiple servings). Ventura’s prohibition on high volume sales applies to both existing and new off-sale sites. At least two other jurisdictions, the cities of San Bernardino and Lemon Grove, include similar restrictions as possible conditions in the approval of the
discretionary permit for new merchants. Moreover, the city of Vista (and likely others) has adopted a city council policy wherein it recommends conditions of approval for new alcohol beverage establishments. One such recommended condition set forth by Vista’s policy is that beer, malt beverage products, wine coolers, and pre-mixed distilled spirits cocktails (if allowed by license) shall be sold only in manufacturer pre-packing multi-unit quantities.

No jurisdictions within San Diego County, with the exception of Lemon Grove, have adopted a deemed approved-type of ordinance. A review of each of the codes for the County of San Diego and its other 17 cities finds that none of the jurisdictions have ordinances that prohibit off-sale vendors from selling individual cans or bottles, excessively large cans or bottles, fortified beers or wines, or individual servings (i.e., less than 375 ml) of distilled spirits.

4. GOALS

Introduction
Based on the City Council’s general direction, staff has prepared three goals expressing what the City may wish to achieve in addressing the problems associated with off-sale alcohol outlets.

Local Control
A key goal is to have a set of tools that empower the City of El Cajon to manage off-sale alcohol outlets. Exercising land use regulatory authority enables the City to have local control over off-sale alcohol outlets. It is the most fundamental of the goals, as it empowers the City to achieve the outcomes in reducing the problems associated with off-sale alcohol outlets.

Reduction in Overall Crime
A goal to reduce overall crime links the interrelated issues of reducing the chronic alcoholic homeless population and reducing alcohol-related crime. Crime prevention is inherent in this goal. Alcohol fuels other crimes, which increases the overall crime rate.

Improved Quality of Life and Business Environment
The City seeks a high quality of life for its citizens and desires a strong business environment. An approach to achieving this goal would need to address nuisance issues associated with off-sale of alcohol.
5. ALTERNATIVES

Introduction
Based on the three goals and the City Council’s general direction, staff has identified five alternatives with policy and regulatory tools for how to achieve these goals and address the problems associated with the off-sale of alcohol. Elements of multiple alternatives may be blended. The alternatives involve separate yet related approaches to both existing off-sale outlets and future outlets. A list of potential regulations applicable to off-sale alcohol land uses is included in Attachment D.

All of the alternatives only address off-sale alcohol outlets. This is based both on the City Council’s general direction and also on the Police Department’s experience with this issue. The identified problem is most acute and chronic with off-sale, not with on-sale (i.e., bars and restaurants), since it correlates with the chronic alcoholic homeless population. Off-sale alcohol is much more accessible and attainable than on-sale.

Comprehensive and Programmatic – both existing and future outlets
In this alternative, a model Deemed Approved Ordinance would be adopted and implemented. DAO is essentially a retroactive CUP that is applied to all existing, legally nonconforming off-sale alcohol outlets. A CUP would be required for any off-sale use, regardless of store size and irrespective of operating as a principal or accessory use. Operational conditions would be uniformly applied to both existing and future off-sale outlets. Failure to abide by those conditions may result in new or modified terms of operation and potentially revocation of the CUP, which would shut down the business.

Future off-sale outlets with alcohol sales as the principal use or in stores less than 15,000 square feet in size could only be considered in areas with low to average crime rates and in Census tracts that are below the maximum allowable off-sale licenses. These available areas are generally around the periphery of the City and are very limited geographically. Essentially, this option would prohibit any future off-site alcohol sales in store less than 15,000 square feet anywhere within the valley area of the City.

Alcohol sales as an accessory use in stores 15,000 square feet or larger would be considered with a CUP in all C-G, C-N and C-R zoning districts. A license fee would fund a dedicated, full-time equivalent peace officer for education and enforcement, along with funding various administrative support services for the program. This alternative is intended to address the issues associated with off-sale alcohol from multiple angles. It is also intended to bring clarity to the City’s expectations through standardization, including the circumstances under which future outlets could be approved.
Voluntary Program – existing outlets
A voluntary program was initiated in 2011, led by the Alliance for a Better Community organization. This group included representatives of the Neighborhood Market Association whose members include independent retailers, and representation from the City by a Councilmember and the Police Department. This effort began due to concerns raised by the Second Street corridor business community about the problems associated with the off-sale of alcohol. This alternative would resurrect a voluntary program administered by the off-sale alcohol outlet business owners, with support from the City. If this voluntary program does not include full participation and fails to demonstrate satisfactory results after a period of implementation, the City Council could consider a stronger regulatory approach. The voluntary program would be reviewed by the City Council prior to its implementation. This alternative is intended to encourage self-policing by existing off-sale business owners, which can be more flexible than a governmental, regulatory approach.

New Regulations Targeted Only to Specific Problems – future outlets only
This alternative targets only those specific issues that are known to create the most problems and minimize the potential occurrences of those problems in future outlets. The conditions recommended by staff for CUP applications following the 2010 Zoning Code amendment represent most of the new regulations (e.g., no externally visible outdoor advertising of alcohol sales, visibility into the store, clean site, graffiti cleanup, etc.). Additionally, the restrictiveness of regulations would be linked to the severity of crime and nuisance issues, and concentration of licenses in a given area. Future off-sale outlets with alcohol sales as the principal use or in stores less than 15,000 square feet in size could only be considered in areas with low to average crime rates and in Census tracts that are below the maximum allowable off-sale licenses. The administrative policy for a finding of Public Convenience and Necessity would be codified and structured for a ministerial decision on off-sale alcohol outlets in buildings 15,000 square feet or larger in size and for alcohol sales as an allowable accessory use. A one-for-one license transfer from within the City would be required for these eligible outlets in high crime areas and Census tracts with an overconcentration of licenses, so approval of a new off-sale outlet would not result in a net gain of licenses. The intent of this alternative is to standardize operational conditions for future off-sale outlets and designate appropriate areas of the City for new outlets.

Revert to Pre-2010 Zoning Code Amendment – future outlets only
This alternative only involves removing Subsection 17.210.060 A.2 from the Zoning Code, which enabled consideration of small Type 20 outlets with 10 percent or less of the store devoted to beer and wine sales through a CUP. Removal would end the possibility of CUPs for small Type 20 off-sale outlets anywhere in the City except near Westfield Parkway mall due to the separation requirements. Standalone liquor stores, regardless of size, would continue to be subject to a CUP and separation requirements, as is the case under current regulations, and therefore could only be located near
Westfield Parkway mall also. The intent of this alternative is a return to the regulations that succeeded in effectively ending the establishment of new small off-sale outlets from 1995 through 2012. However, Westfield has specifically indicated to staff that they are against additional off-sale outlets within the mall itself, so this option would not be consistent with the Mall’s current policy.

**Maintain Status Quo and Change Nothing – future outlets only**

The City Council may also choose to rely upon the existing regulations in municipal code. The City would rely on ABC to police most issues involving the licensing of off-sale outlets. The intent of this alternative is to explore what it would mean for the City to maintain existing regulations and allow greater discretion in considering future small Type 20 outlets with 10 percent or less of the store devoted to beer and wine sales in any retail-oriented commercial zoning district, with the exception of SP No. 182.

### 6. **ANALYSIS OF ALTERNATIVES**

**Comprehensive and Programmatic – both existing and future outlets**

| Benefits: | Effectively addresses the operations of existing and future off-sale alcohol outlets, small and large  
|           | Alternative most capable of achieving all the goals |
| Weaknesses: | Requires the most administrative resources to implement  
|            | Very difficult to consider shutting down an operating business as a last resort |
| Fiscal impact: | Fully burdened cost of a police is $194,000 annually |

**Voluntary Program – existing outlets**

| Benefits: | Provides an incentive to business owners to police themselves  
|           | Transfers responsibility away from the City |
| Weaknesses: | Lacks regulatory tools that the City would need to effectively step in and intervene, should voluntary compliance fail with one or more outlets  
|            | Does not mandate participation by every off-sale alcohol outlet  
|            | Does not address future off-sale outlets |
| Fiscal impact: | No change |

**New Regulations Targeted Only to Specific Problems – future outlets only**

| Benefits: | Focuses on specific problems only and efficiently directs resources accordingly  
|           | Targets areas of the City with the most problems and minimizes the regulatory burden on well-run businesses in areas of the City with low risk for problems |
Weaknesses:

- Does not effectively address the operations of existing off-sale alcohol outlets, small and large
- Only moderately capable of fully achieving the goals

Fiscal impact:

- Moderate increase in cost to fund administration and enforcement of additional regulations

Revert to Pre-2010 Zoning Code Amendment – future outlets only

Benefits:

- Provides certainty that the only location for new small off-sale outlets is near Westfield Parkway mall
- Effectively limits new, small off-sale outlets

Weaknesses:

- Exposes the Westfield Parkway regional retail and nearby employment centers to potential increase in crime and nuisance issues; this area currently experiences average and very high crime rates
- Does not address potential future larger off-sale outlets
- Does not address existing outlets

Fiscal impact:

- No change

Maintain Status Quo and Change Nothing – future outlets only

Benefits:

- Provides the City Council significant discretion in evaluating CUPs for small off-sale outlets devoting 10 percent or less of the store to alcohol sales throughout retail-oriented commercial areas of the City (excluding SP No. 182)
- Retains few restrictions on larger off-sale outlets

Weaknesses:

- Likely that none of the goals would be meaningfully achieved
- Much more difficult and costly to rely on public nuisance civil remedies to address problems
- Does not address existing outlets

Fiscal impact:

- No change

7. LEGAL CONSIDERATIONS

A “deemed approved” ordinance is a legally valid method to address public nuisances that might be created by an existing Type 20 or Type 21 license holder that has a legal non-conforming use status. This type of ordinance, when used to address specific public nuisances, and the “secondary effects,” such nuisances have on surrounding properties and neighborhoods, is an example of the proper exercise of a City’s police powers to make land use decisions within its jurisdiction.

For existing retailers having legal non-conforming use status, the deemed approved ordinance would place land use restrictions on those retailers that, among other things, could prohibit nuisance activities within the premises or in close proximity thereto, including but not limited to disturbance of the peace, public drunkenness, drinking in
public, harassment of passersby, excessive littering and similar nuisance-type activities, the violation of which would allow the City to conduct proceedings to revoke or modify any legal non-conforming uses previously had by the property owner. Moreover, under a deemed approved ordinance, existing retailers who have not “operated continuously without substantial change in mode or character of operation” could have their deemed approved status revoked and be subject to the requirements of new off-sale businesses.

Accordingly, the City could prohibit a licensee who closed the business for a period greater than, for example 120 days, from re-establishing their business unless it obtained a conditional use permit and was compliant with all applicable regulations, including spatial separation requirements, reasonable conditions of use (such as hours of operation, maintenance of clean and safe operations), and other similar conditions and regulations. Revocation of deemed approved status in such instances, however, may only occur after an administrative hearing is conducted at which the property owner is afforded due process rights, and the administrative body finds that the business has not operated continuously without substantial change in mode or character of operation.

The City does not have the authority to revoke or suspend the sale of alcoholic beverages by an off-sale retailer or an on-site business; however, the revocation of land use entitlements, following proper proceedings giving the property owner proper due process of law, could result in the loss of the right to use the property for alcohol sales.

Outright banning the establishment of new off-sale businesses would be prohibited by the California Constitution and, perhaps, the Commerce Clause of the United States Constitution. Reasonable land use regulations not in conflict with these constitutional issues, however, would be allowed. For new off-sale businesses, these regulations could include spatial separation requirements (e.g., keeping them away from sensitive uses); reasonable conditions of use to prevent public nuisances, such as hours of operation, maintenance of clean and safe operations, etc.; and similar conditions and regulations. Limiting number of, or prohibiting new, off-sale retailers within a specific plan area is an appropriate exercise of the City’s police powers through land use regulations.

It is still uncertain whether complete prohibitions on the sales of specific sizes of alcoholic beverages (see, Tools Used by Other Cities and Counties, above) are within the City’s police powers. However, such prohibitions have a better chance of succeeding where they are being used to address public nuisances found to be caused by the use of property for the sale of alcoholic beverages, and the “secondary effects” such nuisances have on surrounding properties and neighborhoods.
The voluntary use of a “do not sell” list, identifying serial inebriates, is a good tool; however, the City could only make it a condition of approval for new merchants, and a condition for retaining deemed approved status for a non-conforming use, that any violation of the existing State laws (making it a misdemeanor for any person to sell or supply alcoholic beverages to “any habitual or common drunkard or to any obviously intoxicated person”) would be a reason for the revocation of a CUP or deemed approved status.

8. DISCUSSION AND DIRECTION

The City Council is requested to provide direction on its views of the problem to address, the goals to achieve and preferred approach or range of approaches in addressing this issue. With direction from the City Council on its preferred approach, staff will prepare further information and schedule this issue for additional public hearings.

9. COMMUNITY OUTREACH

At its January 22, 2013, public meeting, the City Council discussed this issue and directed staff to return to its February 26 public meeting with background information and potential approaches. A continuation of this process will require public hearings with the Planning Commission and City Council if zoning ordinance amendments are required. Separate stakeholder outreach is an additional approach that may be considered.

10. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Initiation of this amendment is not a project subject to the California Environmental Quality Act (CEQA) because it is a procedural, administrative step in the process, which only directs the Planning Commission and staff to study and prepare potential amendments to multiple titles in the El Cajon Municipal Code for future consideration.

11. ATTACHMENTS

A. Draft Resolution of Intention to Amend the Zoning Code (final resolution to reflect City Council’s direction)
B. City Council’s January 22, 2013 motion
C. City Council’s January 22, 2013 draft meeting minutes excerpt
D. List of potential regulations applicable to off-sale alcohol land uses
E. El Cajon Municipal Code Chapter 17.210 – Alcohol Sales
F. El Cajon Municipal Code Section 17.145.150 – Commercial Land Use Table
G. Administrative policy: public convenience and necessity
The concept of public convenience and necessity
Map: Location of off-sale outlets with alcohol-related arrests (excluding DUIs)
Map: Location of on-sale outlets
Map: Type 20 license concentration by Census tract
Map: Crime reporting districts
Map: Impacted areas: at or above off-sale license concentration limits and high or very high crime reporting districts
Map: Capacity areas: below off-sale license concentration limits and low or average crime reporting districts
Map: Tipping point areas—crime: below off-sale license concentration limits and high or very high crime reporting districts
Map: Tipping point areas—licenses: at or above off-sale license concentration limits and low or average crime reporting districts
Map: C-G, C-N and C-G zoned land
Rate of alcohol-related arrests (excluding DUIs) per quarter mile C-G, C-N and C-R arterial roadway segments
Post-2010 Zoning Code amendment typical CUP conditions recommended by staff
California Department of Alcoholic Beverage Control 2011 Moratorium Counties/Cities
Reducing Community Alcohol Problems Associated with Alcohol Sales: The Case of Deemed Approved Ordinances in California, Alcohol Policy Consultations for Ventura County Behavioral Health Department, 2009
Liquor Stores, Bars and Nightclubs: Conditional Use Permits and Best Practices for Regulating Alcohol Sales, Meyers Nave for League of California Cities, 2011
Alliance for a Better Community Task Force report, 2011

PREPARED BY: Manjeet Ranu
PLANNING MANAGER

APPROVED BY: Douglas Williford
CITY MANAGER
RESOLUTION NO. ___-13

A RESOLUTION OF INTENTION TO INITIATE AN AMENDMENT TO TITLE 17 OF THE EL CAJON MUNICIPAL CODE FOR THE PURPOSE OF ADOPTING REGULATIONS PERTAINING TO __________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

WHEREAS, on January 22, 2013, and February 26, 2013, the City Council heard testimony from the public regarding potential amendments to the City’s regulations for allowing the establishment of locations of businesses holding licenses to sell and distribute alcohol products, which currently apply to off-sale businesses (the “Alcohol Vendors”) either or not subject to the conditional use process, but which are inapplicable to Alcohol Vendors having legal, non-conforming use status; and

WHEREAS, the City experiences public nuisance issues, such as urinating in public, petty theft, panhandling and drunkenness in public in close proximity to off-sale outlet locations; and

WHEREAS, 48% of non-DUI alcohol-related arrests, occurred within 600 feet of off-sale outlets under 15,000 square feet in size for the years 2009 through 2012; and

WHEREAS, for the calendar year 2012, the City experienced a 5% increase in non-DUI alcohol-related arrests from the previous year; and

WHEREAS, the problems associated with the off-sale of alcohol negatively impact the City’s quality of life and business community, and disproportionately demand City services; and

WHEREAS, the City Council desires to reduce the problems associated with the off-sale of alcohol and has determined that local control through land use regulatory authority is necessary to ensure public health, safety and welfare by addressing the effects and impacts to the community; and

WHEREAS, the City Council has an interest in modifying the City’s land use regulations_______________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

; and

WHEREAS, amendments are needed in Title 17 (Zoning Code) of the Municipal Code to accommodate this change and pursuant to Municipal Code Section 17.20.020,
amendments to Title 17, can be initiated by adoption of a resolution of intention by the City Council or the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

1. That the El Cajon City Council hereby directs the Planning Commission to hold a public hearing to consider amendments to Title 17 of the Municipal Code adding new regulations

_________________________________________

________________________________________

________________________________________throughout the City of El Cajon.

Reso of Intent – Title 17 Amendment re alcohol regulations

2/26/13 (Item ___)
City Council’s January 22, 2013 Direction to Staff

- **Task:**
  - Return to the City Council in six weeks with an analysis of the issue, options and pros and cons

- **Motion:**
  - How much police staffing is needed to make it work?
  - Want complete cost recovery
  - Ban the following
    - Fortified wine
    - Tiny alcohol bottles
    - Single serve malt liquor
    - No more new liquor stores
    - No more liquor stores in SP 182 or 1,000-foot buffer
  - Severe penalties including temporary halt to sales for initial violations
  - Do sting operations
  - Penalty for selling to serial inebriates on list
  - Conduct full review of City’s liquor sale policies with focus on off sale

- Council feels that Second Street effort at self-regulation didn’t lead to desired results, so it’s “time for other shoe to drop”

- Need comprehensive overhaul of alcohol related policies and regulations

- Deal with existing and future alcohol sales outlets
9.

COUNCILMEMBER GARY KENDRICK
Heartland Communications JPA; Heartland Fire Training JPA.

9.1 Council Activities Report

REPORT AS STATED. In addition, Councilmember Kendrick adds that he met with the City Attorney on January 18th and participated in a Police ride-along on January 19th.

9.2 DEEMED APPROVED TYPE ORDINANCE – OFF-SITE SALES LIQUOR LICENSES

RECOMMENDATION: That the City Council direct staff to conduct a full review of the City's current policies and ordinances pertaining to liquor sales, focusing on off-site sales. In particular Councilmember Kendrick is recommending that staff analyze the appropriateness and potential value of the City adopting a Deemed Approved type ordinance.

DISCUSSION
Councilmember Kendrick provides a summary of a Deemed Approved Ordinance and explains he would like to address problems with off-site sales liquor licenses, including the following considerations:

- Limiting signage on liquor store windows;
- Charging a fee to enforce the ordinance similar to the tobacco ordinance for full cost recovery;
- Banning single sale malt liquor;
- Banning fortified wine with greater than 15% alcohol content;
- Banning new liquor outlets;
- Limiting liquor in SP 182 and buffer zone;
- Talking with Police Department about what personnel would be needed to make an ordinance work;
- Instituting severe penalties for non-compliance to include selling alcohol to serial inebriates;
- Conducting periodic sting operations.

Katherine Webb, resident of the City of El Cajon, speaks in support of the Deemed Approved Ordinance to help keep the City clean and free of problems.

Mayor Lewis asks City Attorney Foley whether signage regulations could be implemented for windows of liquor stores. City Attorney Foley responds that no CUPs (conditional use permits) could be revoked.

Lorraine Gonzalez speaks in support of the ordinance and provides samples of how alcohol is marketed to entice the youth.

Dana Stevens thanks the City for being proactive in moving forward to adopt an ordinance.

Councilmember Wells recalls that liquor stores were supposed to have been self-regulating, single serving sales. They complied for a while but they have all gone back to doing what they were doing previously.
ITEM 9.2 (Continued)

Councilmember McClellan feels it is time to move forward to what was promised a year ago, with regard to single serving alcohol sales.

Helen Ripple, long-term resident of El Cajon, has seen El Cajon deteriorate due to the number of liquor stores in town.

Daryl Priest speaks in support of strictly limiting liquor stores in El Cajon, particularly in the PBID (Property Business Improvement District) area.

No one else comes forward to speak.

MOTION BY KENDRICK, SECOND BY McCLELLAN, to have the City Manager, City Attorney and Police Chief, working with CASA (Communities Against Substance Abuse), bring back findings to Council in six weeks.

MOTION CARRIES BY UNANIMOUS VOTE.
Representative List of Potential Regulations – Police Example

1. The petitioner shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.

2. No wine shall be sold with an alcoholic content of greater than 15% by volume except for “Dinner Wines” which have been aged two years or more.

3. The sales of beer or malt beverages in quantities of quarts, 22oz., 24oz., 32oz., 40oz., or similar size containers are prohibited.

4. Beer, malt beverages and wine coolers in containers of 16oz. or less cannot be sold by single containers and must be sold in the manufacturer prepackaged multi-unit quantities.

5. For type 21’s include Hard Alcohol Liquor containers of 6oz. or less cannot be sold by single containers and must be sold in the manufacturer prepackaged multi-unit quantities.

6. Wine shall not be sold in bottles or containers smaller than 750 ml. and wine coolers and beer coolers must be sold in manufacture pre-packaged multi-unit quantities.

7. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

8. Not more than 15% of the square footage of the premises will be used for the display of alcoholic beverages.

9. Loitering is prohibited on or around these premises.

10. Sales of alcoholic beverages shall only be permitted between the hours of 10:00 AM and 11:00 PM.

11. A maximum of 10 percent of the retail display area may be devoted to the sale and display of alcoholic beverages limited to off-sale beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers.
Representative list of potential regulations applicable to off-sale alcohol land uses

- **Transparency**
  - Windows shall be open to view from the outside
    - Windows and entry doors shall not be blocked by signs, vending machines, shelves, racks, storage, etc.
    - No exterior advertising of alcoholic products
  - Inspection and right of entry

- **Loitering**
  - The business operator shall prevent the consumption of alcoholic beverages on-site
  - No fixtures or furnishings that encourage loitering and nuisance behavior are permitted on the premises. This includes, but is not limited to chairs, seats, stools, benches, tables, crates, etc.
  - No video or other electronic games shall be located in an off-sale alcoholic beverage establishment
  - No pay phones

- **Litter**
  - Adequate litter receptacles shall be provided on site and in the building
  - The premises shall be kept free of the accumulation of litter and shall be removed no less frequently than once each day the business is open
  - Graffiti removal required

- **Lighting**
  - Require the exterior areas of the premises and adjacent parking lots to provide sufficient lighting in a manner that provides adequate illumination for alcohol outlet patrons while not spilling onto surrounding residential and commercial properties

- **Non-nuisance standards:**
  - No littering, loitering, graffiti, drug dealing, prostitution, gambling, shootings, or other public nuisance activity in or around the premise
  - Security cameras and recording equipment required

- **Location**
  - Keep distance requirements in Section 17.210.060 and add “and to other off-sale outlets”
  - Businesses engaged in the sale or distribution of alcoholic beverages for off-site consumption shall maintain a minimum separation of 600 hundred feet from any other business required to have a conditional use permit for the sale of alcoholic beverages
• **License Transfer Required**
  - Off-sale outlets may be approved in underserved Census tracts with low to average crime rates with the condition that an existing Type 20 off-sale license be obtained from an over-concentrated Census tract and high to very high crime reporting district and transferred to the subject premises

• The operation of the business shall comply fully with all the rules, regulations and orders of the state Alcoholic Beverage Control Department. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit or minor use permit

• **Alcohol sale limitations**
  - No wine shall be displayed, sold or given away in containers of less than seven hundred ml, except multipack containers of wine and wine coolers containing no more than six percent alcohol by volume
  - No distilled spirits shall be displayed, sold or given away in containers of less than two hundred fifty ml, except two-hundred-ml pre-mixed cocktails
  - The display, sale or distribution of fifty ml “airport bottles” and three-hundred-seventy-five ml “hip flask” containers is prohibited
  - No beer, ale or malt liquor shall be offered for sale in a container with a volume greater than thirty-two ounces. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings
  - No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window
  - No display, sale or distribution of beer or wine, wine coolers or similar alcoholic beverages shall be made from an ice tub, barrel or similar container
  - Limit sales of operation
  - No sale of tobacco or drug paraphernalia

• **Display**
  - All display of alcoholic beverages shall be no closer than five feet from the store entrance
- **Training**
  - Each off-sale operator and their employees shall complete the Responsible Beverage Service (RBS) Training component. Proof of completion shall be submitted to the Planning Division
Chapter 17.210 ALCOHOL SALES

17.210.010 Purpose.

The purpose of this chapter is to list regulations pertaining to the establishment and conduct of alcohol sales in the city under simplified headings. (Ord. 4950 § 3, 2010)


The provisions of this section shall apply to establishments for which an application or requested transaction is required to be filed with the state of California, Department of Alcoholic Beverage Control, whereby the laws of the state of California require notice thereof to be filed with the city and allow for the filing of a protest thereon by the city (except for person-to-person transfers of existing licenses, except as otherwise provided) and/or to such existing establishments, including nonconforming uses which shall cease their operation for a period of ninety or more calendar days, and thereafter there is filed any application or requested transaction with the state of California, Department of Alcoholic Beverage Control, whereby the laws of the state of California require notice thereof to be filed with the city, and allow the filing of a protest thereon by the city (including person-to-person transfer of existing license). (Ord. 4950 § 3, 2010)


With the exception of retail stores that have at least 15,000 square feet of gross floor space, and a maximum of 10 percent of the gross floor area devoted to the sales and display of alcoholic beverages, all alcoholic beverage establishments to which this Chapter is applicable shall obtain a conditional use permit pursuant to Chapter 17.50 of this title and satisfy all pertinent conditions prior to the release of the city’s protest. (Ord. 4950 § 3, 2010)


All existing on-sale and off-sale alcoholic beverage establishments for which no valid conditional use permit exists are declared nonconforming uses. (Ord. 4950 § 3, 2010)

17.210.050 Termination of conditional use permit.

Any conditional use permit issued pursuant to the provisions of this section shall be subject to the condition, in addition to any and all other conditions, that it shall terminate and cease to apply to any establishment which:

A. Shall have ceased its operation for a period of 90 or more calendar days, and

   1. If thereafter filed any application or requested transaction with the state of California, Department of Alcoholic Beverage Control, whereby the laws of the state of California require notice thereof to be filed with the city, and allow the filing of a protest thereon by the city (including person-to-person transfer of existing licenses); or

   2. Where after such 90-calendar-day period, the existing license shall have ceased to apply to such establishment; or

B. Where the existing license shall have been surrendered to the Department of Alcoholic Beverage Control for a period exceeding 180 calendar days. (Ord. 4950 § 3, 2010)
17.210.060 Distance requirements

A. No new on-sale or off-sale alcoholic beverage establishment shall be located within 600 feet of residentially zoned property, public or private schools, health care facilities, churches, parks or playgrounds, except:

1. A general retail store, or grocery store, or retail pharmacy with greater than 15,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of off-sale alcoholic beverages;

2. A convenience market with a maximum of 10 percent of the retail display area devoted to the sale and display of alcoholic beverages; limited to off-sale beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers;

3. A restaurant with an ancillary bar with less total square footage than eating area; or

4. On-sale alcoholic beverage sales secondary and incidental to an approved, complementary, principal use within the boundaries of Specific Plan No. 182.

Said distances shall be measured between the closest property lines of the affected locations. For the purposes of this section, “secondary and incidental,” shall mean that the sales of alcoholic beverage shall be limited to not more than 25 percent of the gross annual retail receipts generated by the use on the site, which shall be calculated on a quarterly basis, for the prior 12-month period ending on the last day of the then concluding quarter of year, and shall further mean that sales of alcoholic beverages are not promoted or advertised in any signs, or the name of the business establishment.

For the purposes of this chapter, “principal use,” shall include, but is not limited to, live entertainment, participatory sporting activities, museums, theaters, hotels or motels, or other, similar uses approved by the city council, so long as the location of the sales of alcoholic beverages occurs under the same roof as the principal use, and the owner of the principal use is the owner of the liquor license.

B. No new on-sale alcoholic beverage establishment shall be located within 1,000 feet of an existing on-sale alcoholic beverage establishment and/or within 600 feet of an existing off-sale alcoholic beverage establishment, except:

1. A restaurant with an ancillary bar with less total square footage than the restaurant eating area; or

2. On-sale alcoholic beverage sales secondary and incidental to an approved, complementary, principal use within the boundaries of Specific Plan No. 182.

Said distance shall be measured between the closest property lines of the affected locations. For the purposes of this section, “secondary and incidental,” shall mean that the sales of alcoholic beverage shall be limited to not more than 25 percent of the gross annual retail receipts generated by the use on the site, which shall be calculated on a quarterly basis, for the prior 12-month period ending on the last day of the then concluding quarter of year, and shall further mean that sales of alcoholic beverages are not promoted or advertised in any signs, or the name of the business establishment.

For the purposes of this section, “principal use,” may include, but is not limited to, live entertainment, participatory sporting activities, museums, theaters, hotels or motels, or other, similar uses approved by the city council, so long as the location of the sales of alcoholic beverages occurs under the same roof as the principal use, and the owner of the principal use is the owner of the liquor license.

(Ord. 4950 § 3, 2010)


No video or other electronic games shall be located in an alcoholic beverage establishment that obtained an original or transferred Type 21 license (liquor store) after January 1, 1996. (Ord. 4950 § 3, 2010)

No alcoholic beverage establishment which obtained an original or transferred alcohol license after January 1, 1996 shall display for sale, trade or exchange, any airline- or “shot-” size bottles of alcohol (50 milliliters or less) except in an area under the control of the seller’s employee(s). Three acceptable methods of displaying such bottles shall be:

A. In a completely enclosed cabinet or other storage device which shall be permanently affixed to a building or building structure, and which shall, at all times except during access by authorized representatives, remain securely locked;
B. In an enclosed area behind a sales or service counter which the public is not permitted to enter; or
C. In an area under the direct visual supervision of employees at all times during business hours. (Ord. 4950 § 3, 2010)

17.210.090 Considerations.

In considering the granting of a conditional use permit for any such establishment, the planning commission shall consider the following:

A. The amount of existing or proposed off-street parking facilities, and the distance of such parking facilities from the proposed establishment;
B. Hours of operation of the proposed establishment;
C. The combination of uses proposed within the proposed establishment;
D. The crime rate within the police district where the proposed establishment would be located as compared to the crime rate city- wide; provided that no permit is denied solely upon the basis of such crime rate if it does not exceed specified averages set forth by state law;
E. The total area of all window signs (painted or electric) shall not exceed 33.3 percent of the total window area of the establishment;
F. Whether there is an over-concentration of such businesses within the census tract in which the sale of alcoholic beverages is being proposed;
G. Such other considerations as in the judgment of the planning commission are necessary to assure compliance with the purpose and intent of this title. (Ord. 4968 § 71, 2011; Ord. 4950 § 3, 2010)
The following table lists uses that may be established in commercial zones. Refer to Chapter 17.115 for a general description of the land use tables provided in this title and instructions for interpreting the land use tables.

<table>
<thead>
<tr>
<th>Commercial Uses</th>
<th>O-P</th>
<th>C-N</th>
<th>C-G</th>
<th>C-R</th>
<th>C-M</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult book store, adult theater, and other adult entertainment activities</td>
<td>X</td>
<td>X</td>
<td>A</td>
<td>A</td>
<td>X</td>
<td>1, 2</td>
</tr>
<tr>
<td>Aircraft sales</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Amusement parks including miniature golf, go-cart tracks, mechanized rides, etc.</td>
<td></td>
<td></td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Animal grooming services</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Antique sales</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Appliance repair; large gas and electric appliances including heating and air conditioning systems, parts and supplies</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>P</td>
<td>1</td>
</tr>
<tr>
<td>Appliance sales; large gas and electric appliances including heating and air conditioning systems, parts and supplies</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appliance sales and repair of small electrical appliances</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
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</tr>
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<td>Art galleries, commercial retail</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Artist studios and art restoration services</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Athletic clubs and fitness centers</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Auction house</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>P</td>
<td>1</td>
</tr>
<tr>
<td>Auto parts and accessories; new parts</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Auto parts and accessories; used parts, excludes dismantling</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>3</td>
</tr>
<tr>
<td>Auto rental including the rental of moving vans, trucks and trailers</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>C</td>
<td>1</td>
</tr>
<tr>
<td>Activity</td>
<td>O-P</td>
<td>C-N</td>
<td>C-G</td>
<td>C-R</td>
<td>C-M</td>
<td>Notes</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
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<td>-----</td>
<td>-----</td>
<td>-------</td>
</tr>
<tr>
<td>Auto sales, including: autos, motorcycles, light trucks, and recreational vehicles</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>4</td>
</tr>
<tr>
<td>Automotive body repair</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>C</td>
<td>1</td>
</tr>
<tr>
<td>Automotive service and repair</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>1</td>
</tr>
<tr>
<td>Automotive fueling station</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>5</td>
</tr>
<tr>
<td>Auto washing and detailing, full service carwash</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Auto washing, self-service carwash</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Bail bonds office</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>1</td>
</tr>
<tr>
<td>Beauty salon, nail salon, barber shop, and day spa</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>6</td>
</tr>
<tr>
<td>Beauty supply and cosmetics sales</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Billboard sign</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>7</td>
</tr>
<tr>
<td>Blood banks and blood donation facilities</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Blood plasma centers</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Boat sales including ancillary service and repair</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Book store, including news copy and magazine sales</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Bowling alley</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Camera and photographic sales and related services</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Camping facilities (overnight) including Recreational Vehicle parks</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Card room, non-gambling</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>3, 27</td>
</tr>
<tr>
<td>Carpet and drapery cleaning and repair services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Cemetery, crematory, and mausoleum</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Child activity centers</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Circuses and carnivals</td>
<td>C</td>
<td>C</td>
<td>T</td>
<td>T</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Clothing and apparel store, new</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Clothing and costume rentals</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Clubs: youth clubs, professional organizations, union halls, fraternal organizations, and similar uses</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Cocktail lounge</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>8, 9</td>
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<td>equipment, and supply storage</td>
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<tr>
<td>Dance studio</td>
<td>X</td>
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<td>P</td>
<td>P</td>
<td>P</td>
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<td>P</td>
<td>P</td>
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<td></td>
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<td>and installation</td>
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<td>Employment services</td>
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<td>P</td>
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</tr>
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<td>display</td>
<td></td>
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<td>Equipment rental without outdoor storage</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
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<td>or display</td>
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<td>Escort service</td>
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<td>Firearm and ammunition sales</td>
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<td>X</td>
<td>C</td>
<td>C</td>
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<td>arms or archery</td>
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<td>P</td>
<td>P</td>
<td>P</td>
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<td>Fortune tellers including palm readers,</td>
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<td>phrenologists, spiritual mediums, and</td>
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<td>Funeral parlor and mortuary</td>
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<td>P</td>
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<td>Furniture and home furnishing sales</td>
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<td>P</td>
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<td>Game center and video arcade</td>
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<td>Gift shop, including novelties, souvenirs,</td>
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<td>P</td>
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<td>greeting cards, etc.</td>
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<td>Gunsmith</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
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<td>Hardware store, indoor (includes building</td>
<td>X</td>
<td>P</td>
<td>P</td>
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<td>materials and related services</td>
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<td>Hardware store with outdoor storage or</td>
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<td>X</td>
<td>C</td>
<td>C</td>
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<td>display (includes building materials and</td>
<td></td>
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<tr>
<td>related services</td>
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<td>Headquarters office facility</td>
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<td>X</td>
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<td>Heavy equipment sales including large trucks and tractor-trailer rigs</td>
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<td>X</td>
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<td>Hobby shop</td>
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<td>P</td>
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<tr>
<td>Hotel and motel</td>
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<td>X</td>
<td>P</td>
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<td>Household accessories including bedding, linens, kitchen supplies, etc.</td>
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<td>P</td>
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<td>Kennel</td>
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<td>Kiosk, booth, and stand</td>
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<td>MC</td>
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<td>Laundry and dry cleaning services, retail, including coin operated self-service laundry</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
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<td>Liquor store</td>
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<td>Locksmith and related services</td>
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<td>Manufactured housing sales including modular and mobile home sales</td>
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<td>X</td>
<td>P</td>
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<td>C</td>
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<td>Market</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
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<td>Martial arts instruction and training</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
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<tr>
<td>Massage parlor, steam bath, and sauna room</td>
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<td>X</td>
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<td>Medical and dental office, laboratories, and clinics open to the general public</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
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<tr>
<td>Medical and dental laboratory not open to the public</td>
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<td>Medical marijuana dispensary</td>
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<tr>
<td>Modeling agency, talent agencies and entertainment booking services (office only)</td>
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<td>P</td>
<td>P</td>
<td>P</td>
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<tr>
<td>Motion picture theatre (indoor)</td>
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<td>Music lessons conducted indoors</td>
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<td>Music store including the sale of musical instruments, sheet music, and recorded music</td>
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<td>P</td>
<td>P</td>
<td>P</td>
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<tr>
<td>Office, administrative, business and professional</td>
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<td>Office machine sales</td>
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<td>P</td>
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<td>Optical goods including eye glasses, contact lenses, and eye exams</td>
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<td>Outdoor dining, accessory to authorized restaurant or cocktail lounge</td>
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<td>Z</td>
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<td>Outdoor sales events at existing business developments</td>
<td>T</td>
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<td>Activity</td>
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<td>Parcel delivery and postal services (office only, does not include U.S. Postal Service offices)</td>
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<td>X</td>
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<td>Pawn shop or pawn broker</td>
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<td>X</td>
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<td>Personal storage facility</td>
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<td>Pest control services</td>
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<td>Pet supply stores including pet sales and pet adoption services with accessory indoor veterinary and grooming services</td>
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<td>X</td>
<td>P</td>
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<td>Pharmacy</td>
<td>P</td>
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<td>Photocopying and other retail office services for the general public</td>
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<td>Photographic studio including ancillary photo finishing services</td>
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<td>P</td>
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<td>Plant nursery</td>
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<td>X</td>
<td>P</td>
<td>P</td>
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<td>Pool hall or billiards parlor</td>
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<td>3</td>
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<td>Prefabricated storage containers used for short term storage</td>
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<td>T</td>
<td>T</td>
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<tr>
<td>Private security company with watch dogs</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>3</td>
</tr>
<tr>
<td>Public assembly, sports related including stadiums, arenas, racetracks, etc.</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
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<tr>
<td>Public assembly, non-sports related, including amphitheaters, drive-in theaters, concert halls, playhouses, banquet halls, etc.</td>
<td>X</td>
<td>X</td>
<td>C</td>
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<tr>
<td>Recreational facility—commercial indoors, including skating rinks, radio controlled cars, lazer tag, etc.</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
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<tr>
<td>Recreational facility—commercial outdoors, including golf courses, driving ranges, radio controlled cars, skateboard parks, paintball facilities, etc.</td>
<td>X</td>
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<td>Resource recovery center</td>
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<td>Restaurant, take-out only</td>
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<tr>
<td>Seasonal outdoor businesses such as Christmas tree lots</td>
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<td>T</td>
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<td>Secondhand merchandise</td>
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<td>P</td>
<td>X</td>
<td>1, 3</td>
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<td>Shoe sales and shoe repair</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
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<tr>
<td>Sporting goods, bicycles, and toy stores</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
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<tr>
<td>Supermarket</td>
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<td>P</td>
<td>P</td>
<td>P</td>
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<td>Surplus store</td>
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<td>Land Use</td>
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<tr>
<td>Swap meet and flea market</td>
<td>X</td>
<td>X</td>
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<td>C</td>
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<td>1, 3</td>
</tr>
<tr>
<td>Tailoring, alteration, and sewing services</td>
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<td>X</td>
<td></td>
</tr>
<tr>
<td>Tattoo and body piercing studio</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Thrift shop</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Ticket sales office</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Tobacco and smoke shop</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>1, 20</td>
</tr>
<tr>
<td>Tool and equipment repair and sharpening</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>services excluding heavy equipment repair</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trailer and camper sales, non-motorized</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Travel agency</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Vehicle storage lot (new vehicles)</td>
<td>X</td>
<td>X</td>
<td>T</td>
<td>T</td>
<td>T</td>
<td></td>
</tr>
<tr>
<td>Veterinary and small animal hospital, indoors only</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>1</td>
</tr>
<tr>
<td>Video sales and rentals including video game sales and rentals</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Vocational and trade school (conducted indoors)</td>
<td>X</td>
<td>C</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>9</td>
</tr>
<tr>
<td>Vocational and trade school (conducted outdoors)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>9</td>
</tr>
<tr>
<td>Volume discount store (including 99¢ and closeout stores)</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Watch, clock, and jewelry sales and repair</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Other similar uses</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>21</td>
</tr>
</tbody>
</table>

**Light Industrial Uses**

<table>
<thead>
<tr>
<th>Land Use</th>
<th>O-P</th>
<th>C-N</th>
<th>C-G</th>
<th>C-R</th>
<th>C-M</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract construction services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Direct selling organizations (baked goods, ice cream trucks, bottled water vendors, catering wagons, etc.)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Food and beverage processing</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Heavy equipment service and repair</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Laundry services, industrial, including linen, diaper, and uniform cleaning, alteration and repair services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Light manufacturing</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Printing and publishing services, non-retail and excluding contact with the general public</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Recycling center for metal, cardboard, glass, e-waste, etc.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Scientific and commercial testing laboratories including product research and development</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Service and repair of consumer electronics</td>
<td>O-P</td>
<td>C-N</td>
<td>C-G</td>
<td>C-R</td>
<td>C-M</td>
<td>Notes</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-------</td>
</tr>
<tr>
<td>Service and repair of light machinery including vending machines, office machines, large household appliances, etc.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Service and repair of precision instruments including cameras, optical devices, medical devices and electronic testing equipment</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Warehousing and distribution</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Wholesale trade excluding explosives</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Other similar uses</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>21</td>
</tr>
</tbody>
</table>

**Transportation, Communication and Utilities**

| Airports and flying fields                | C   | C   | C   | C   | C   |       |
| Ambulance service                        | C   | C   | C   | C   | P   | 3     |
| Bus passenger terminals, public or private charter | X   | X   | P   | P   | P   |       |
| Bus parking and maintenance facility     | X   | X   | X   | X   | P   |       |
| Heliport                                 | C   | C   | C   | C   | C   |       |
| Light rail terminal                      | X   | X   | X   | X   | P   |       |
| Limousine service                        | X   | X   | X   | X   | P   | 3     |
| Media production including broadcasting studios, and audio and video recording studios | X   | P   | P   | P   | P   |       |
| Parking lots and garages, short term requiring payment of a fee | C   | P   | P   | P   | P   |       |
| Parking lots and garages, short term free parking | P   | P   | P   | P   | P   |       |
| Radio, and/or television broadcasting facilities with transmitters | C   | C   | C   | C   | C   | 22    |
| Railroad facilities, including switching stations, maintenance yards, rail freight and passenger terminals | X   | X   | X   | X   | P   |       |
| Solid waste disposal facility            | C   | C   | C   | C   | C   | 1     |
| Taxicab terminal                         | X   | X   | P   | P   | P   |       |
| Towing services with vehicle storage     | X   | X   | X   | X   | C   | 1, 3  |
| Towing services without vehicle storage  | X   | X   | C   | C   | 1, 3 |
| Trucking terminal for motor freight including parcel delivery service terminals | X   | X   | X   | X   | P   |       |
| Utilities, excluding sewage treatment    | C   | C   | C   | C   | C   |       |
| Vehicle storage facility, long term, including lots and structures | X   | X   | X   | X   | C   | 1     |
### Wireless Communication Facilities

<table>
<thead>
<tr>
<th>Description</th>
<th>O-P</th>
<th>C-N</th>
<th>C-G</th>
<th>C-R</th>
<th>C-M</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freestanding</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>23</td>
</tr>
<tr>
<td>Architecturally integrated or other stealth design</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>23</td>
</tr>
</tbody>
</table>

### Institutional and Charitable Uses

<table>
<thead>
<tr>
<th>Description</th>
<th>O-P</th>
<th>C-N</th>
<th>C-G</th>
<th>C-R</th>
<th>C-M</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botanical garden, and arboretum</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Detention facility excluding prisons and juvenile halls</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Educational institution</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Governmental administrative offices</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Governmental operation center and service facilities</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Hospital</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Library, public</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
</tr>
<tr>
<td>Military base</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Museum</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>MC</td>
<td>X</td>
</tr>
<tr>
<td>Non-profit welfare and charitable organizations and services</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Parks, playgrounds, and amateur sports fields, public or private</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Public safety facility</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Religious facilities</td>
<td>C</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>9</td>
</tr>
<tr>
<td>Temporary feeding area</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>Transition service center</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>C</td>
<td>P</td>
<td>1, 24</td>
</tr>
<tr>
<td>United States Postal Service facilities</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>25</td>
</tr>
<tr>
<td>WIC center</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>1</td>
</tr>
<tr>
<td>Zoo</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Other similar uses</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>21</td>
</tr>
</tbody>
</table>

### Residential Uses

<table>
<thead>
<tr>
<th>Description</th>
<th>O-P</th>
<th>C-N</th>
<th>C-G</th>
<th>C-R</th>
<th>C-M</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caretaker’s unit</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>26</td>
</tr>
<tr>
<td>Residential care facility</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td>1</td>
</tr>
</tbody>
</table>

---

1. Prohibited in SP 182
2. Subject to the provisions of Chapter 17.45 (adult entertainment establishments)
3. Requires a Special Operations License as described in ECMC Chapter 5.16. For towing services, only police towing services require a Special Operations License
4. Offsite outdoor automobile sales are subject to the provisions of Section 17.225.190
Subject to the provisions of Chapter 17.215 (automotive fueling stations).

Subject to the provisions of Chapter 5.40 of the El Cajon Municipal Code.

Subject to the provisions of Section 17.190.270 (billboard signs).

Subject to the provisions of Chapter 17.210 (alcohol sales).

Subject to parking requirements listed in Section 17.185.190.

“Check cashing only” services are prohibited in SP 182.

Subject to the provisions of Section 17.130.250 (kiosks).

Subject to the provisions of Section 17.225.070 (massage parlors).

Subject to the provisions of Chapter 17.230 (motion picture theaters).

Subject to the provisions of Section 17.225.090 (outdoor dining areas).

Subject to the provisions of Chapter 17.235. (personal storage facilities).

The retail display area shall not exceed 15% of the gross floor area in the O-P zone.

Subject to the provisions of Section 17.225.100 (resource recovery centers).

Restaurants limited to 2,000 square feet gross floor area in the C-M zone.

Subject to the provisions of Section 17.225.130 (take-out only restaurants).

Subject to the provisions of Chapter 17.240 (tobacco and smoke shops).

As determined by the director of community development.

Excludes wireless communications facilities as defined in Chapter 17.110.

Subject to the provisions of Chapter 17.245 (wireless communications facilities).

Subject to the provisions of Section 17.225.170 (transition service centers).

Excludes public contact in the C-M zone (mail processing only).

Only one caretaker’s unit permitted per lot in association with an authorized primary use occupying the same property. Must be attached to the primary structure on the lot, if such a structure exists.

May only be operated as an ancillary use to 1) a bona fide non-profit club, society, professional organization, union hall, fraternal organization, and similar (non-profit) use, with a valid conditional use permit for the primary use, and 2) a restaurant, except that card rooms are prohibited at restaurants in SP 182. Subject to additional card room regulations listed in Chapter 5.28 (Card rooms) of Title 5 and Chapter 17.225 (Miscellaneous Special Uses and Regulations) of this Title.

Non-profit status must be in place prior to application submittal, as applicable.

(Ord. 4979 §§ 6, 7, 2012; Ord. 4968 § 39, 2011)
What is the Purpose of Public Convenience or Necessity review?

Public Convenience or Necessity review provides the City with the means to review proposals for new or property transferred alcohol licenses within the City of El Cajon for retail stores greater than 15,000 square feet or for which a conditional use permit is required.

The purpose of this process is to provide appropriate feedback to the State of California in connection with any request for issuance of licenses for the off-sale of alcoholic beverages by the California Department of Alcoholic Beverage Control (ABC) in those areas that are deemed to be over-concentrated with off-sale outlets or those areas that are considered to have high crime or very high, as specified in business and Professions Code Section 23958.

The Director of the Community Development Department or the Planning Commission (when a conditional use permit is required), shall determine public convenience or necessity for alcoholic beverage license applications. The following criteria and procedure shall be used in making such determinations:

Procedure:

1. The applicant shall file with the Planning Division the Alcohol Beverage Control “Form Per Section 23958.4”, commonly known as a “PCN” form, and remit the Director’s Determination Fee. This fee is not required if the PCN request is filed concurrently with a conditional use permit.

2. A copy of the PCN form shall be sent to the Police Department (Sgt. Mike Moulton) for comment. The Policy response shall be a recommendation to approve, conditionally approve, or deny the application, and any recommended conditions. A recommendation for denial shall state reasons for recommendation.
3. The Community Development Director or the Planning Commission shall make a decision as to whether a determination of public convenience or necessity can be made based on the criteria set forth in Municipal Code Section 17.210.090 and the recommendation of the Police Department.

4. The decision shall be transmitted in writing to the Department of Alcoholic Beverage Control and the applicant.

5. The Planning Division secretary shall place a copy of signed PCN form and transmitted correspondence in associated conditional use permit file or in the appropriate PCN file.

6. The decision of the Community Development Director may, within ten days of the date of that written decision, be appealed in writing by the applicant to the Planning Commission. An applicant shall pay the appropriate appeal fee.

7. When the appeal is received by the Planning Division, the Secretary of the Planning Commission shall schedule the matter for next available Planning Commission meeting. The Director shall provide the Planning Commission with a written brief on the matter and the written appeal.

8. The Planning Commission shall consider the matter and render a decision regarding the determination of public convenience or necessity. Any decision of the Planning Commission shall be in the form of a resolution and is final, unless appealed to the City Council.

9. The decision of the Planning Commission shall be transmitted to the applicant, and if different from the decision of the Director, shall also be transmitted to ABC.
Public Convenience and Necessity

The Alcoholic Beverage Control Act (the “Act”) requires that the Department of Alcohol Beverage Control must deny an application for a new off-sale or on-sale license if issuance of the license would create a law enforcement problem, or if issuance would result in or add to an “undue concentration” of licenses, except under certain circumstances. Those circumstances include a showing of “public convenience and necessity” to justify the issuance of the license.

In the case of on-sale licenses for restaurants, hotels, motels, and breweries the applicant has the burden to prove that the “public convenience and necessity” exists to allow the issuance of the new license; in the case of off-sale licenses that determination must be made by the City Council, provided that the City Council notifies the Department of its determination within 90 days of notification of the completion of the application.

Nowhere in the Act is the term, “public convenience and necessity,” defined, leaving the Department (in the case of applications where the applicant must make the showing) and the City Council (in the case of off-sale license applications) to define that term. In reaching a definition, which would be considered a quasi-legislative action, the City Council must not act so unreasonably so as to be an abuse of discretion as a matter of law. One way to come up with the definition would be to use definitions of “public,” “convenience,” and “necessity,” from a recognized dictionary.
Planning Division
Alcohol Strategy Study

Off-Sale Outlet Concentration by Census Tract

- Under concentration limit
- At license concentration limit
- Above concentration limit
- Outlets < 15,000 SF
- Outlets > 15,000 SF
Planning Division
Alcohol Strategy Study

Alcohol related arrest
At or above off-sale license concentration limits and high and very high crime reporting districts

Impacted Areas

Outlets < 15,000 SF
Outlets > 15,000 SF

* 323/668 acres (47%) of commercially zoned properties fall under this "Impacted" category.
Below off-sale license concentration limits and low or average crime reporting districts

Commercial land within the "capacity area"

Alcohol Related Arrest

Outlets < 15,000 SF

Outlets > 15,000 SF

SP No. 182

* 18/688 acres (2.6%) of commercially zoned properties are within the "capacity area"
Planning Division
Alcohol Strategy Study

Alcohol Related Arrests
Below off-sale license concentration limits and high and very high crime reporting districts not within SP No. 182

Tipping Point Areas - Crime

Below off-sale license concentration limits and high and very high crime reporting districts not within SP No. 182

Commercial land within the tipping point areas

Alcohol Related Arrest

Outlets < 15,000 SF

Outlets > 15,000 SF

SP No. 182

* 5.668 acres (0.8%) of commercially zoned properties are within these tipping point areas
At or above off-sale license concentration limits and low or average crime reporting districts

Commercial land within tipping point areas - licenses

Alcohol Related Arrest

Outlets < 15,000 SF

Outlets > 15,000 SF

SP No. 182

* 256/688 acres (37%) of commercially zoned properties are within these tipping point areas.
Commercial Zones

- C-G, C-R, C-N Zones
- SP No. 182

* Commercial zones cover 688 acres of the City's 9281 acres (7.4%)
Planning Division
Alcohol Strategy Study

Road Segment Study
Non-DUI Alcohol Related Arrests per Quarter Mile

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Segment Detail</th>
<th>Arrests per Quarter Mile</th>
</tr>
</thead>
<tbody>
<tr>
<td>El Cajon Blvd</td>
<td>Between I-8 off-ramp and W Main St</td>
<td>3.88</td>
</tr>
<tr>
<td>W Main St</td>
<td>Between Travelodge and Magnolia Ave</td>
<td>7.33</td>
</tr>
<tr>
<td>E Main St</td>
<td>Between N 2nd St and City Boundary</td>
<td>7.88</td>
</tr>
<tr>
<td>Fletcher Pkwy</td>
<td>Between SR-67 and the Western City Boundary</td>
<td>9.91</td>
</tr>
<tr>
<td>N 2nd St</td>
<td>Between Interstate-8 and the Northern City Boundary</td>
<td>10.56</td>
</tr>
<tr>
<td>Broadway</td>
<td>Between the Eastern City Boundary and SR-67</td>
<td>10.71</td>
</tr>
<tr>
<td>Jamacha Rd</td>
<td>Between E Main St and the Southern City Boundary</td>
<td>11.68</td>
</tr>
<tr>
<td>E Main St</td>
<td>Between Magnolia Ave and N 2nd St</td>
<td>35.48</td>
</tr>
<tr>
<td>N 2nd St</td>
<td>Between E Main St and Interstate-8</td>
<td>82.21</td>
</tr>
</tbody>
</table>
beer and wine) licenses in the City exceeds one for each 2,500 inhabitants. Therefore, ABC will not issue new Type 20 licenses in the City of El Cajon and will not allow the transfer of an existing license into the City, without a finding by the City of public convenience or necessity.

Oversaturation of alcoholic beverage retailers strains City resources aggravating existing crime problems and negatively impacts public safety. Based on the Police Department's investigation in this particular application, it is not in the public convenience or necessity to authorize a new off-sale license on the subject property and it is recommended this application be denied.

Should the City Council choose to grant the CUP over this objection, the Police Department would recommend the following conditions:

The CUP applicant be required to purchase two Type 20 licenses within over-concentrated census tracts within the City. Furthermore, one of the licenses shall be cancelled with ABC. This action would result in the net reduction of one Type 20 license within El Cajon and no net new licenses within the subject census tract.

In addition, the Police Department recommends the following conditions:

1. Sales of alcoholic beverages shall only be permitted between the hours of 10:00 AM and 11:00 PM.

2. The petitioner shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.

3. No wine shall be sold with an alcoholic content of greater then 15% by volume except for “Dinner Wines” which have been aged two years or more.

4. Beer, wine coolers and other malt beverages cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi unit quantities.

5. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

6. A maximum of 10 percent of the retail display area may be devoted to the sale and display of alcoholic beverages limited to off-sale beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers.
2011 Moratorium Counties/Cities

2011 Moratorium Figures – Section 23817.5 B & P Code

On January 1, 1998, Section 23817.5 was amended to permanently establish a moratorium on the issuance of off-sale and wine licenses (Type 20) in cities and counties where the ratio of Type 20 licenses exceeds one for each 2,500 inhabitants.

In the city and county of San Francisco, the ratio has been established as one for each 1,250 inhabitants. The San Francisco computation combines off-sale beer and wine license with off-sale general licenses for the purpose of establishing the ratio.

Enclosed are the following lists and a map showing the new Type 20 license limitation data:

- List of Counties with their moratorium status.
- List of Cities in Counties with partial moratorium status.
- Summary of Changes to Moratorium Counties/Cities.

Please note the changes in moratorium counties compared to the 2005 list. There have been changes in some of the cities within the current 11 non-moratorium counties.

The new moratorium lists are effective as of May 9, 2011 and will be in effect until recalculated in approximately five years, in accordance with Section 23817.9.

The enclosed lists and map may be distributed to all interested parties.

If you have any questions or need additional information, please contact Debbie Holden:

Email: Debra.Holden@abc.ca.gov
Phone: (916) 419-2535
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# MORATORIUM CITIES - SECTION 23817.5 B. P. CODE

Effective May 9, 2011

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MORATORIUM CITIES - SECTION 23817.5 B. P. CODE

Effective May 9, 2011

LOS ANGELES COUNTY (Continued)

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Revised 05/9/11
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Reducing Community Alcohol Problems Associated with Alcohol Sales: The Case of Deemed Approved Ordinances in California

James F. Mosher
Carol Cannon
Ryan Treffers
September 2009

Alcohol Policy Consultations
6062 Graham Hill Road, Suite B
Felton, CA, 95018
www.alcoholpolicyconsultations.com

Report prepared for
Ventura County Behavioral Health Department
Alcohol & Drug Programs
Prevention Services
Acknowledgements

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Berkeley, CA

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Novato, CA

Michael Sparks
Petaluma, CA

Cliff Waer
Senior Alcohol Compliance Officer
Oxnard Police Department
Oxnard, CA

Friedner D. Wittman, Ph.D, M.Arch
Institute for the Study of Social Change
University of California at Berkeley
Berkeley, CA

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Reducing Community Alcohol Problems Associated with Alcohol Sales: The Case of Deemed Approved Ordinances in California

I. INTRODUCTION

Alcohol retail sales establishments may pose serious health and safety risks for neighborhoods and communities. Research has shown that the number, density, location, and operational practices of alcohol outlets affect the level of community violence, drinking-driving incidents, injuries, underage drinking, public nuisance activities, among other social problems. Having large numbers of bars and liquor stores concentrated in a small geographic area is likely to create serious neighborhood disruption, particularly if the outlets promote heavy drinking and are located near sensitive uses such as schools, parks, and private residences.

The link between alcohol retail sales establishments and community health and safety problems has prompted governments to regulate their number, location, and practices. Most States establish minimum guidelines through a licensing system and permit local governments to impose additional restrictions in order to tailor the alcohol availability structure to meet local circumstances, needs, and problems. Typically, local controls are exercised through land use and zoning and/or planning and public safety ordinances. Some States delegate licensing authority to local jurisdictions. However, some States exercise exclusive or near exclusive regulatory authority over alcohol retail sales, prohibiting (or “preempting”) local authority regarding this particular type of land use. California is one such State.

The California Constitution declares that “the State of California … shall have the exclusive right and power to license and regulate the … sale … of alcoholic beverages within the State” to the exclusion of cities and counties. The State legislature has carved an exception to this general rule, by prohibiting alcohol retail licensing from being issued if the issuance would violate a valid local zoning ordinance. The relevant provision states:

“No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city. Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation [under specified conditions].”

California courts have upheld this delegation of authority and have interpreted it broadly in recognition of the important traditional role local governments play in regulating land use and protecting public safety. There is a fundamental conceptual difference between land use regulation and alcohol regulation:

“The essence of zoning lies in metropolitan and regional planning; it is the use and treatment of public and private land and its appurtenances in the interest of the community as a whole. The factors and reasons that determine the imposition of metropolitan zoning are entirely different from those which control the regulation of the [production, distribution, sale and] consumption of liquor.”

This conceptual distinction may be difficult to apply in practice since many regulations have aspects of both alcohol and land use regulation.

Beginning in the early 1980s, many California cities became concerned about the public health and safety issues associated with the overconcentration of alcohol outlets, particularly in urban settings. California law provides only minimal controls on the number of alcohol licenses that can be issued at the county level and no restrictions at the municipal level. Local jurisdictions responded by exercising their land use powers through the enactment of Conditional Use Permit (CUP) ordinances specific to alcohol outlets. Today most local jurisdictions have some form of CUP ordinance. CUP ordinances, however, are an imperfect tool. Retail alcohol establishments in existence before their enactment in a particular city or county are exempt (or “grandfathered” or treated as “non-conforming uses”) and must be allowed to continue operation without restrictions on the alcohol sales practices. The large majority of a city’s alcohol outlets fit this category, and the existence of a CUP ordinance encourages existing businesses to maintain their grandfathered status, which can be transferred to new owners.
The inability to regulate grandfathered retail establishments prompted the City of Oakland to enact the first “deemed approved” ordinance (DAO) in 1993. The ordinance exercises authority over these establishments by issuing “deemed approved” permits and establishing “public nuisance standards” that pre-existing retailers must abide by in order to maintain their permit. The standards are monitored by the city through an enforcement and education program which is paid for by a fee on the deemed approved outlets. The standards do not directly regulate the sale of alcohol, but rather address land use and public safety issues associated with alcohol sales, such as loitering, increased police calls, noise, graffiti, and drug sales.

Oakland alcohol retailers challenged the ordinance in court on two grounds: (1) The ordinance constituted regulation of the sale of alcohol and was therefore preempted by the State Constitution; and (2) The fee was in fact a tax, also prohibited under State law. The California Court of Appeal rejected these claims, and the California Supreme Court allowed it to stand without further review. The court concluded that the ordinance did not directly regulate the sale of alcohol so did not violate the State Constitution and that the city was exercising its authority through land use measures. It also held that the fee was permissible because it was assessed based on the city’s costs associated with retail establishments and all revenues from the fee are used to administer and enforce the ordinance and promote retailer education. Taxes and fees are distinguished based on these two factors.

The Oakland DAO became a model for many other cities and counties, with 19 additional cities enacting some form of a DAO ordinance in the last 15 years. In 2008, the Ventura County Behavioral Health Department commissioned a study to develop a “best practices” guide for drafting CUP and deemed approved ordinances. The recommendations were developed based on key informant interviews and a review of relevant research. Yet, despite this increased interest and attention to this form of local control, there has been surprisingly little analysis across jurisdictions or at the statewide level regarding the structure of existing ordinances, enforcement strategies, and impact on community alcohol problems.

This study represents a first step in filling this gap in the research literature. It is a descriptive, comparative analysis of the legal provisions found in 12 DAOs from across California, comparing them to the provisions recommended in the best practices guide developed in 2008. The analysis is limited because the legal provisions themselves will have little or no impact unless they are effectively administered and enforced, topics beyond the scope of this analysis. Enforcement practices are dependent on numerous factors, including the structure and breadth of the ordinance. Our analysis therefore focuses particularly on those provisions that may enhance or hinder effective enforcement practices.

II. METHODS

We conducted a content analysis to identify key provisions, based on the research literature on the impact of alcohol retail establishments on community problems, with particular attention to provisions that would affect enforcement practices. We developed variable definitions based on this review of key provisions.

We searched the secondary literature to identify DAOs in California and located 19 such laws. We reviewed these laws and selected 12 for further analysis based on the following criteria. To be included, ordinances needed to: (1) Target alcohol outlets that were in existence prior to the passage of a CUP ordinance and therefore exempt from the CUP provisions (referred to here as “pre-existing” or “grandfathered” retail establishments); and (2) Authorize (at least implicitly) revocation of a pre-existing retail establishment’s deemed approved status or permit for violations of the deemed approved standards. Typically, a revocation results in the outlet needing to apply for a CUP in order to continue operations. Our selection was further limited based on the breadth to which the ordinances addressed the key variables. Our focus is on the provisions that affect the grandfathered alcohol outlets. We ignored provisions in the ordinances that affected new outlets subject to CUP provisions.

The six categories of variables are defined as follows:
Types of Alcohol Outlets
A DAO must define which types of retail alcohol establishments the ordinance applies to.

Off-sale retail licenses: Deemed approved requirements apply to establishments selling alcohol for off-sale consumption. No jurisdiction distinguishes between licenses that are restricted to beer and wine.

On-sale retail licenses: Bar/Nightclub: Deemed approved requirements apply to establishments selling alcohol for on-sale consumption, including bars, nightclubs, and restaurants. Ordinances that exempt some types of restaurants are highlighted in footnotes to Table 1.

Performance Standards
These are the standards to which all deemed approved establishments will be held.

Nuisance listing: Extensive/Minimal: Deemed approved performance standards require that licensed establishments take action to prevent various nuisance activities associated with their businesses. Specific nuisance activities may include: disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or police detentions and arrests. The ordinances in our analysis were rated either comprehensive (listing all or most of those above) or minimal (providing only a general description of nuisance activities). As noted in the finding section, no ordinance fell between these two extremes.

Close proximity: Ordinance specifies that the extent of the nuisances to be prevented includes those occurring near to or in close proximity of (as well as within) the establishment.

Federal/state/local laws: Performance standards specify that the establishment comply with all federal, state, and local laws.

Compatibility: Performance standards specify that the establishment’s upkeep and operating characteristics remain compatible with and will not adversely affect the livability or development of abutting properties and surrounding neighborhoods.

Enforcement and Administration
DAOs may provide standards and guidelines for their enforcement and administration.

Community engagement: Ordinance mandates a role for community and industry groups in enforcing or administering the ordinance or provides a formal mechanism for providing input into the process.

Dedicated enforcement officer: Ordinance mandates a dedicated officer for the enforcement of deemed approved standards. Ordinance may specify that funding for this position come from annual fees paid by deemed approved establishments.13

Dedicated hearing officer: Ordinance mandates a dedicated hearing officer for the adjudication of complaints made against deemed approved establishments. Ordinance may specify that funding for this position come from annual fees paid by deemed approved establishments.

Appeal: Specifies the municipal body to which an establishment might appeal judgments and penalties:

- Planning/zoning: Appeals go to the planning or zoning commission.
- City Council: Appeals go to the city council or board of supervisors.
- Other: See Notes section for details.
Type of Ordinance
Describes where the DAO is found in the municipal or county code.

Land Use: Found in sections pertaining to land use (Zoning, Planning).

Nuisance/Police Powers: Found in sections pertaining to nuisance activities or other responsibilities assigned to local law enforcement agencies (Nuisance, Public Safety, Public Peace, Morals).

Penalties
Describes the types of penalties imposed on violators of deemed approved standards.

Remedy opportunity: Licensee is informed of violations and given the opportunity to remedy before other sanctions are imposed.

Civil: Civil penalties (such as citations and fines) may be imposed for violations.

Criminal: Criminal penalties may be imposed for violations.

Costs: Violators required to pay the city for the costs of enforcement and administration, such as the cost of repeated police or other municipal responses to complaints or re-inspection of establishment following a notification to remedy.

Revocation, when permitted: Describes the requirements for revoking an establishment’s deemed approved status and/or ordering that the licensee cease and desist conducting business.14

Fee Schedule15
Describes the criteria for fees paid to the city or county by deemed approved licensees. Some cities use a combination of criteria (such as risk, hours, and volume) to calculate fees. Note fees may be imposed on a one-time basis.

Risk: Fees calculated by degree of risk associated with establishment. Risk may be dependent on the type of business (e.g., bars versus restaurants), past history of complaints, or calls for police service associated with the establishment.

Hours: Fees calculated by how late the establishment is open.

Volume: Fees calculated by volume of alcohol sales.

Re-inspection: Fee charged for re-inspection of an establishment after order to remedy.

Minimum: Minimum fee paid to municipality by deemed approved establishments.

Maximum: Maximum fee paid to municipality by deemed approved establishments.

DEEDED APPROVE D ORDINANCES: CALIFORNIA CITIES AND COUNTIES
(See Table 1 on page 8.)

III. FINDINGS
Types of Alcohol Outlets

Recommended practice: Include all alcohol outlets in the jurisdiction.16

The recommended practice is based on the potential risks posed by commercial alcohol service generally. Outlet types deemed to be low risk can be charged lower fees while still being subject to the ordinance’s provisions.
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With a few exceptions noted below, the localities generally apply their deemed approved ordinances to all alcoholic beverage retailers. Ordinances apply city- or county-wide and are not restricted to certain geographical zones.

San Francisco differs the most significantly from the other localities in that its ordinance applies only to off-sale retailers. With the exception of San Leandro (where the ordinance is unclear), San Francisco is the only locality that does not have a deemed approved ordinance that covers bars and nightclubs. Two cities exempt at least some restaurants. Oakland exempts “full-service” restaurants, which are defined as having facilities to prepare and serve meals on the premises. To qualify for the exemption, the establishment must have at least 60 percent of its revenue derive from food sales. Santa Rosa only includes “restaurants with bars” and exempts restaurants “which serve alcoholic beverages as part of a meal.”

Performance Standards

**Recommended practice: Include a comprehensive list of nuisance activities; include nuisance activities within and in the vicinity of the retail establishment; include provision related to compatibility with surrounding neighborhoods.**

The recommended practice reflects the importance of being both specific and inclusive when drafting ordinances. Including the list of nuisance activities in the DAO itself is recommended to clarify that local planning/zoning officials have primary enforcement and administration responsibility (who need not defer to city attorney or county counsel offices).

The jurisdictions largely hold outlets to similar performance standards. However, there are some notable exceptions. All jurisdictions except Ventura include an extensive list of specific nuisance activities that are prohibited. The Ventura ordinance provides a general prohibition of nuisance activities. San Francisco limits its ordinance’s application to activities within the establishment’s property line. Other ordinances include nuisance activities in “close proximity of” or “near” the retail establishment. Richmond is the only locality that does not require that deemed approved outlets meet all Federal/State/local laws.

Five jurisdictions (Oxnard, Richmond, San Francisco, Santa Cruz, and Ventura) do not include a requirement for outlets to be compatible with other land uses in their neighborhoods. Such a provision gives additional authority to consider the adverse impacts of the retail establishment on the community more generally. San Francisco is the only jurisdiction that does not impose either a proximity or compatibility standard.

**Enforcement and Administration**

**Recommended practice: Specify a team that has specific responsibility to monitor, administer, and enforce the deemed approved ordinance.**

Decisions regarding who will enforce and administer the ordinance, the methods to be used, the role of community actors, and the priority to be placed are delegated to city/county departments and staff. City Councils and Board of Supervisors can enhance the likelihood of effective enforcement and administration by providing clear standards and guidelines to staff. Establishing mechanisms for engaging community and business groups is an important aspect of effective administration.

Some ordinances identify specific agencies or individuals with primary responsibility for monitoring and enforcing their deemed approved ordinances. The ordinances in Alameda County and Vallejo specify dedicated enforcement and hearing officers; Santa Rosa and Oakland specify dedicated hearing officers only. Vallejo has the most detailed designated enforcement/implementation provisions. Its ordinance creates a three-member complaint response team, including representatives from development services department, police department, and a citizens’ community coalition. It also establishes an alcohol outlet advisory board that must include at least two business owners. The board meets with the dedicated enforcement officer regularly to review complaints and to make recommendations on how to reduce/eliminate problems.
Note that many other cities/counties may meet the best practice standard through administrative decisions and without specific provisions in the ordinance (a topic beyond the scope of this analysis).

All jurisdictions provide specific procedures for the retailer to appeal decisions to impose sanctions. The size of the community may affect the decision regarding what body will hear the appeal, with larger jurisdictions having more pre-existing options. In general, having an initial review occur within the administrative structure of the city or county government (e.g., a planning board) will reduce costs to the city and reduce the likelihood of political pressure being placed on the appeals process.

**Type of Ordinance**

**Recommended practice: Not specified.**

Deemed approved ordinances can be either land-use or public safety-based enactments. The jurisdictions are about split between these two options. The decision regarding the location of the DAO in the city or county’s municipal code will rest on local policy and political considerations and the structure and practice of the jurisdiction’s administrative and law enforcement functions. Choosing between these options should reflect an assessment of which agencies and staff will best insure effective administration and enforcement.

**Penalties**

**Recommended practice: Licensee is given notice of violation by enforcement team and provided opportunity to abate prior to hearing. Civil penalties should be given priority over criminal penalties. Penalties should become increasingly severe for either (1) failure to abate despite warnings; or (2) multiple violations, with revocation authorized. Associated costs should be included in civil penalty.**

The recommended practice reflects the importance of imposing penalties that are sufficiently severe to serve as a deterrent. Civil penalties are more effective than criminal penalties because they can be imposed more swiftly and are more likely to be enforced, two critical components of deterrence.

All ordinances provide some penalty for violations except Santa Cruz, which does not specify penalties in the DAO provisions. Half of the localities provide violators the opportunity to remedy a nuisance prior to imposing other sanctions (which can also be permitted administratively, without a specific provision in the DAO). All jurisdictions include civil penalties and five ordinances impose both types of sanctions. Civil penalties take the form of monetary fines and adjudicated by administrative personnel; criminal penalties include misdemeanor convictions that may also carry jail sentences and are adjudicated through the criminal justice system.

Eight localities permit recovery of costs associated with prosecution, appeals, compliance, and abatement of nuisances. Such fees both penalize a violator and provide reimbursement for the city or county’s enforcement and administrative costs.

Seven jurisdictions allow for revocation of an outlet’s deemed approved permit after the first hearing where a violation is established. Three do not permit revocation until after a second hearing at which a finding is made that the offending outlet failed to meet requirements or conditions established following a finding of a first violation. Two ordinances – in Ventura and Petaluma – do not specify when revocation can occur. Oxnard’s ordinance contains two provisions. The first requires the city manager to seek a court order before revocation of permit can occur, and the second states that “any other action available to the city” can be taken, which could include revocation of the deemed approved permit and a requirement that the licensee seek a special use permit (which in turn could be denied). It is therefore coded to permit revocation after the first hearing where a violation is established.

**Fee Schedule**

**Recommended practice: Fee should be imposed to defray cost of monitoring and enforcement based on risk factors (amount of fee not specified).**
Reducing Community Alcohol Problems Associated with Alcohol Sales:
The Case of Deemed Approved Ordinances in California

Fees represent a critical aspect of DAO ordinances because they provide the resources for effective administration and enforcement and for promoting retailer education. Basing the fee structure on risk factors and past history insure an equitable distribution of costs – licensees that create increased risks of health and safety problems pay more reflecting the higher costs of monitoring their businesses.

The jurisdictions are split into three groups with regards to charging fees for monitoring, education and enforcement. Rohnert Park, Santa Cruz, Santa Rosa, and Ventura base their fees on a set of risk factors (type of outlet, police calls for service, hours, and volume of sales), with higher risk establishments paying higher fees. Santa Rosa’s fee is based solely on the volume of sales. Alameda County, Oakland, Oxnard, and San Francisco charge a flat rate fee to all deemed approved outlets. Vallejo charges a one-time flat fee that is imposed at the time an outlet receives its deemed approved permit. Petaluma, Richmond and San Leandro do not charge any fees. The fee amount varies widely between the localities, from zero to $5,000 annually. The use of a fee schedule or a flat rate does not predict the amount of the fee. Alameda County, Oakland, San Leandro, and Santa Rosa impose re-inspection fees. These are in addition to the cost recovery provisions reported in the Penalties section.

IV. DEEMED APPROVED ORDINANCES IN VENTURA COUNTY

Two jurisdictions in Ventura County – the cities of Oxnard and Ventura – have DAOs, which share some similarities. Both cities require that all types of alcohol outlets (off-sale, bars/nightclubs, and restaurants) follow deemed approved performance guidelines. They also both include the performance standards provisions that deemed approved establishments are responsible for nuisance activities in close proximity to each establishment, and that establishments follow Federal/State/local laws. Although neither city’s ordinance has mandated a dedicated enforcement or hearing officer for deemed approved violations, both in fact have created such a position in the police department through administrative action. Both cities impose fees. Ventura has established a fee schedule that can vary between $250 and $1,400 depending on the type of business, hours of sale, and volume of alcohol sales. Oxnard has a fixed fee of $427.

While sharing these similarities, the cities differ in their definition of nuisance activities. The Oxnard ordinance specifies 21 separate activities as nuisances that deemed approved establishments are responsible for preventing, compared to the Ventura ordinance, which refers only to “nuisance conditions” and litter and graffiti. The appeals and revocations processes for Oxnard deemed approved establishments are specified in the ordinance, while the Ventura code does not specify how these processes are to be carried out. Oxnard includes civil penalties and cost recovery among the potential penalties accrued by establishments in violation, while the Ventura ordinance refers to civil and criminal penalties.

V. DISCUSSION

In general, our findings suggest that all twelve ordinances maintain the same core structure and strategies employed by the original Oakland ordinance upheld by the California Court of Appeal. This is not surprising, since any major deviations that imposed significant additional burdens on licensees would likely lead to costly and possibly unsuccessful litigation. All the ordinances provide the basic tools for monitoring grandfathered alcohol establishments and reducing their adverse impact on community health and safety. In most cases, the ordinances provide sufficient enabling authority to support a comprehensive monitoring and enforcement program. San Francisco provides a notable exception to this general observation, since its ordinance exempts on-sale establishments. Jurisdictions that exempt restaurants may also encounter unintended barriers, since the definitions for restaurants may create ambiguity. Unless carefully monitored, exempted restaurants may transform into bars or nightclubs during late night hours. Such transformations (sometimes called “morphing”) have been observed in California communities with large populations of college-age youth.17 This highlights the importance of having clearly articulated definitions of terms used in the ordinances.

Although the core structures are similar, there remains a good degree of variation that may affect a jurisdiction’s
commitment to monitoring and enforcement. In other words, specific provisions may support or discourage effective implementation. Examples of supportive provisions include:

- Vallejo’s establishment of a complaint response team and advisory board;
- Remedy opportunity provisions, that provide city officials with the authority to seek resolution of the problem without the need for formal hearings;
- Provisions that make retailers responsible for nuisance activities beyond the strict confines of their establishment and include consideration of the compatibility of the business to other land uses in the neighborhood;
- A clearly articulated hearing and appeals process to be followed in instances of serious non-compliance, reinforcing the city’s intent to enforce the ordinance.

Examples of provisions that may discourage effective implementation include:

- San Leandro’s and Richmond’s lack of penalties for violators beyond paying costs;
- Ventura’s lack of a clear definition of what constitutes a public nuisance in the context of alcohol sales.

Ventura County Behavioral Health Department’s best practices analysis is focused at precisely this level – establishing standards for drafting DAOs that will facilitate their effectiveness in reducing community health and safety problems. All of the ordinances met some of the recommended standards, but all have some omissions or weaknesses. The weaknesses are not necessarily fatal and can be addressed through effective administration. For example, a dedicated law enforcement officer position and complaint response team can be established whether or not they are mandated by the ordinance. However, these practices are more likely to occur and less likely to be abandoned or undermined over time if they are formalized in the ordinance.

These observations point to a limitation of our study. Our analysis focuses on the provisions found in specific DAOs. It omits both administrative practice and companion municipal code provisions not included in the DAO. Our findings and conclusions regarding the relative strength of a particular DAO should be interpreted with this limitation in mind. A city with a relatively weak DAO may have companion provisions addressing some of the identified weaknesses and may have a strong program on the ground. Conversely, a city with a relatively strong ordinance may have weak implementation.

Fees

The findings regarding fee schedules deserve special note. California cities and counties face limited and shrinking budgets, creating enormous pressure on local law enforcement officials to maintain staff and meet conflicting demands for service. DAO enforcement may be in jeopardy despite its positive impact on community safety and the likelihood that it reduces costs through preventing crime and violence. The problem may be exacerbated by the fact that many jurisdictions have relied on GAP (Grant Assistance Program) funds from the California Alcoholic Beverage Control Department to fund local enforcement of ABC laws. When the GAP funds end (usually after one year), the enforcement program is often terminated or continued without sufficient resources to maintain it. Fees provide a foundation for insuring that the costs of the deemed approved program are covered, providing ongoing support for local law enforcement programs, and underwriting the costs of retailer education through Responsible Beverage Service programs.

Increased attention is needed to the fee structure. Enforcement and administration of a DAO should be considered a cost associated with alcohol retail sales. Expecting retailers to incorporate the fee into the retail price of alcohol products is an appropriate exercise of local authority. These costs are enormous, particularly if public health costs are included. However, the costs are not equally spread across all alcohol outlets – some create added risks and costs based on the type and size of the outlet and the manner in which they are operated.

These considerations suggest two improvements to current practice. First, cities and counties should monitor on an ongoing basis their costs associated with retail alcohol sales and the costs of administering and enforcing a
A comprehensive deemed approved program. The identified and documented costs should be substantially covered through the fee program.

Second, fees should reflect the relative burden placed on the local jurisdiction by each retail establishment. Jurisdictions should track on a routine basis the past performance of retail establishments (e.g., calls for service, past violations, frequency of patron intoxication, and lack of compliance with Responsible Business Practices) and adjust fees to reflect the extent to which city/county resources have been expended. The Alcohol/Drug Sensitive Information Planning System (ASIPS) provides one means to collect such monitoring data. Retail establishment type is a second important factor to be considered in a fee structure, since, in general, some types (e.g., bars, nightclubs) create more risks and costs than others (e.g., restaurants without separate bars). The size of the alcohol outlet in terms of total alcohol sales represents a third factor, with larger outlets paying higher fees. This reflects the fact that the sheer volume of alcohol sales creates public health and safety costs across the jurisdiction.

A carefully structured fee schedule that is tied to the costs associated with the program will also insure that it can withstand a court challenge that the fee is in fact a tax. As discussed in the introduction, linking the fee to the costs being addressed and documenting those costs are critical steps in defending the fee’s legality.

In this light, the fees being imposed among these twelve jurisdictions appear generally low and probably insufficient to fund an effective monitoring and enforcement effort. Consideration should be given to raising the fees to insure effective implementation and establishing an equitable fee structure based on the factors listed above. Increased monitoring of past performance should be integrated into the administration of the ordinance both to improve enforcement and to provide data for establishing fees.

NOTES TO TABLE 1

1. Dedicated enforcement officer is also dedicated hearing officer.
2. Oakland exempts “full service restaurants” that have facilities to prepare and serve meals on the premises. To qualify for the exemption, the establishment must have at least 60 percent of its revenue derive from food sales.
3. City Council only hears appeals of decisions to revoke deemed approved status.
4. City manager sends notice of abatement to property owner. Property owner may appeal notice to a hearing officer. Appeal of hearing officer’s decision is filed in court.
5. Appeals filed through city clerk, and are heard by “hearing officer.”
6. Public safety director is charged with enforcement and conducts the hearing. Appeal of a decision to revoke goes to the city manager. The decision of the city manager is final.
7. Appeals are to Board of Appeals except for revocation, which is appealed to Board of Supervisors.
8. “Full-service restaurant,” fast food establishments, dance halls and “retail establishments” are included. Bars and nightclubs not specifically included.
9. City attorney charged with enforcing all orders from Zoning Board or City Council.
10. Santa Rosa includes “restaurants with bars” in its ordinance. Restaurants “which serve alcohol with meals” are exempt.
11. Designates a three-member complaint response team, including representatives from development services department, police department, and VAPC (community coalition). Designates an alcohol outlet advisory board consisting of business owners to meet with police department to review complaints and to make recommendations on how to reduce/eliminate problems.
12. City Council only hears appeals of revocations.
13. ABC laws are specified; federal and local laws are not specified.
14. Appeal process not specified; default is City Council.
15. There is $500 fee for appealing an abatement notice.
16. Penalties not specified.
17. Retailers with less than $1,000 alcohol annual alcohol sales are exempt from fee.
18. There is a $200 additional permit fee for entertainment venues.
REFERENCES


7. Id. at Appendix B: Case Studies, pp. 119-140.


11. We did not attempt to locate all ordinances due to limited resources. Because there is no single repository for city and county ordinances and on-line search capabilities are limited, such a search would require contacting every jurisdiction.

12. Provisions related to Responsible Beverage Service training programs were excluded, since many cities enact RBS requirements in separate ordinances that would not have been captured in our ordinance search. We also excluded an examination of the links between DAO and CUP ordinances for the same reason. The “findings” sections of DAOs constitute an important variable as well because of their potential role in litigation. Our preliminary analysis suggested that the ordinances all had adequate findings sections and we therefore excluded them from our analysis on this basis.

13. Note that the ordinance can specify that a specific hearing officer will hear all DAO-related cases, but the hearing officer so identified must still be “independent”, (i.e., be impartial). Haas v. San Bernardino, 27 Cal.4th 1017, Cal. Rptr.2d 341 (2004).

14. Revocation of a deemed approved ordinance may not necessarily result in closure. The business may apply for a Conditional Use Permit under the city’s CUP ordinance that is applied to new businesses. The requirements for obtaining a CUP are typically more stringent than the performance standards applied to deemed approved outlets.

15. Fee schedules are usually not found in the deemed approved ordinances. We retrieved this information from other sources, including administrative fee schedules available from city governmental offices. All fee rates were confirmed by city officials with responsibility for administering the fees.


Liquor Stores, Bars and Nightclubs: Conditional Use Permits and Best Practices for Regulating Alcohol Sales

Thursday, September 22, 2011 General Session; 1:00 – 2:45 p.m.

Steven T. Mattas, Meyers Nave
LIQUOR STORES, BARS & NIGHTCLUBS: 
Conditional Use Permits and Best Practices for Regulating Alcohol Sales

League of California Cities Annual Conference
September 22, 2011

Prepared By:

Attorneys Steve Mattas and Jason Rosenberg
I. Introduction

Alcohol sales at liquor stores, bars and nightclubs create social and economic challenges for California’s communities. Neighborhoods where bars, restaurants, liquor stores and retail outlets that sell alcohol are close together or concentrated suffer more frequent incidences of violence, social dislocation, medical emergencies and property crimes. However, direct regulation of alcohol outlets by local governments is limited by California’s existing regulatory framework.

Upon the ratification of the Twenty-First Amendment, states became empowered to regulate alcohol sales, consumption, production and transportation. California gave exclusive jurisdiction to the state over manufacture, sale, purchase, possession and transportation of alcoholic beverages. In California, this regulatory authority is vested in the Department of Alcoholic Beverage Control (“Department”), which has the dual responsibility for both the issuance of liquor licenses and the regulation of existing licensees. The Department issues two broad categories of alcohol licenses. On-sale licenses are issued for businesses that sell alcohol for consumption on the premises, such as bars and restaurants. Off-sale licenses are issued for businesses that sell alcohol for consumption off the site, such as grocery stores, liquor stores, and corner markets. Additionally, one-day licenses are issued for the sale of alcohol at special events.

Because local authority to regulate alcohol sales and related activity is largely preempted by the Department, the challenge that cities face is how to properly regulate the ancillary aspects of alcohol sales without regulating in areas of exclusive state authority. Cities’ land use and police powers function as the effective tools in exercising local control over alcohol sales and its secondary effects.


2 Special Thanks to Stacy L. Saetta of Monterey County Counsel’s Office for her advice and recommendations concerning best practices for comprehensive ordinance adoption.
II. State Regulation of Alcohol Sales

Limited Local Authority and State Preemption

In 1955, the California Constitution was amended to establish a uniform framework for licensing alcoholic beverage sales throughout the state. The Constitution provides that “[t]he State of California. . . shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State.”\(^3\) The sale of alcohol is also regulated by the Alcoholic Beverage Control Act (Bus. & Prof. Code §§ 23000-25762). Accordingly, the Department was established to oversee the licensing process and it was given both the power to issue and revoke liquor licenses.\(^4\) The Department has specific criteria upon which it is permitted to issue and revoke licenses, and cities’ ability to participate in the Department’s license regulation is limited. Nevertheless, cities may participate in the Department’s licensing in a limited fashion, but also impose regulations pursuant to valid police power and/or land use authority. Local government regulation beyond those areas that have been specifically authorized by state law is preempted.

State License Issuance

Article XX, §22, of the California Constitution grants the Department the exclusive power to license the sale of alcoholic beverages in California. Section 22 grants the Department the power, \textit{in its discretion}, to deny, suspend or revoke any specific alcoholic beverage license if it shall determine \textit{for good cause} that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violated any law prohibiting conduct

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\(^3\) Cal. Const., art XX §22.

involving moral turpitude. It shall be unlawful for any person other than a licensee of said department to manufacture, import or sell alcoholic beverages in this State. [Emphasis added.]

The Legislature gave the Department the responsibility to “ensure a strict, honest, impartial, and uniform administration and enforcement of the liquor laws throughout the State.” In delegating regulatory authority to the Department, the Legislature also provided guidance for overseeing the licensing process. When issuing licenses, the Department may only grant a license if it determines that the license will not be contrary to the “public welfare or morals.” Additionally, the Department is authorized to refuse issuing any retail license for premises located within the immediate vicinity of churches and hospitals. The Department is also specifically authorized to refuse to issue a license for any premises located within 600 feet of “schools and public playgrounds or nonprofit youth facilities, including, but not limited to, facilities serving Girl Scouts, Boy Scouts, or Campfire Girls.” However, this legislative authorization gives the Department the authority, but not the mandate to issue licenses. Therefore, the determination of whether an applicant is within the “immediate vicinity” of a church or hospital lies within the discretion of the Department.

No “Undue Concentration”

State law, however, directs the Department to deny a license if, “issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4. “Undue concentration” is a key standard in evaluating state and local responsibilities in controlling the adverse consequences of alcohol sales. An “undue concentration” exists when an “applicant’s premises are located in a crime reporting district that has a 20 percent or greater number of Reported Crimes…than the average number of reported crimes as determined from all the crime Reporting

5 Bus. & Prof. Code § 23049.
6 Bus & Prof. Code § 23789.
7 Id.
8 Bus. & Prof. Code §23958.
Districts within the jurisdiction,” or when the census tract in which the applicant’s store is located “exceeds the ratio of on sale retail licenses to population in the county in which the applicant premises are located.”9 A city may determine that there is an "undue concentration" of off-sale beer and wine licenses in a given location and that the public convenience and necessity would not be served by approval of the proposed license.

Licensee Cannot Conflict with Local Zoning Ordinance

In addition, under Bus & Prof. Code §23790, The Department may not issue a liquor sales license for premises located in an area where the terms of the license conflict with a valid zoning ordinance, unless the following are met: (1) the premises were licensed before adoption of the zoning ordinance, (2) the license will be of the same type and classification as the prior license, and (3) the licensed premises have operated continuously without substantial change in mode or character of operation. Accordingly, a city ordinance denying a use permit for a cocktail bar in a shopping center was upheld because it was supported by findings that the bar would disrupt the peace, health, and general welfare of the people in the area, and more specifically because of the proximity of the bar to surrounding residences.10 Similarly, a court upheld an ordinance that grandfathered an existing restaurant with only a beer and wine license in a residential zone while barring an expansion of the license to include the sale of distilled liquors.11 Also, Bus & Prof Code §23800 authorizes the Department to impose conditions prepared by the Department or requested by a city or county on liquor licensees in certain situations, including the transfer of a license. In fact, license applicants are required to provide a zoning affidavit affirming that issuance of the license will not be contrary to applicable zoning standards. Assuming the license is consistent with local zoning, in order to carry out its mandate to protect the public welfare and morals, the Department is required to conduct a “thorough

9 Bus. & Prof. Code §23958.4(a).

10 Floresta, Inc. v City Council of the City of San Leandro (1961) 190 Cal.App.2d 599.

investment” to determine that the license will comply with all statutory criteria for the issuance of a liquor license.\(^\text{12}\)

**Department Discretion**

However, despite this seemingly clear mandate, the Department tends not to err on the side of the community and issues licenses amidst opposition from local government and community leaders. In such instances the Department’s broad discretion can undermine a local jurisdiction’s ability to manage alcohol related social and police problems. In practice, it is also difficult to overturn a decision of the Department. While the Department may delegate the power to hear from all parties and decide a licensing question to an Administrative Law Judge, the Department must render the final decision: whether it is to adopt the recommendation of the Administrative Law Judge, or to render a decision notwithstanding the Administrative Law Judge’s recommendation.\(^\text{13}\)

If a party seeks to challenge a decision by the Department regarding its decision on a liquor license, the petitioner must bring its challenge before the Alcoholic Beverage Control Appeals Board ("Appeals Board") to determine whether there is substantial evidence to reasonably support the findings of the Department. However, the Appeals Board “will indulge all legitimate inferences in support of the Department’s determination.”\(^\text{14}\) If, after reviewing the Department's decision, the Appeals Board determines there is substantial evidence in the record to support the Department’s decision, the Appeals Board will uphold the Department's decision. The courts will also review the Department's decisions under the same standard of review.\(^\text{15}\) However, such review is wholly discretionary with the court and the courts are under no obligation to accept such cases. There is, therefore, no guarantee that the Department’s decisions

\(^{12}\) Bus. & Prof. Code §23958.

\(^{13}\) Bus. & Prof. Code §24210.


\(^{15}\) Bus. & Prof. Code § 23090.2.
will be subject to judicial review. As a result, this deferential standard of review protects the Department’s interpretations and decisions with regard to fulfilling its statutory mandate.

A local agency may also file accusations against license holders with the Department. The Department then has discretion to decide whether to proceed with a formal accusation against a license holder.\(^\text{16}\) The grounds for suspension or revocation are that the continuance of the license would be contrary to public welfare or morals; the licensee failed to take reasonable steps to correct objectionable conditions on the licensee’s premises or immediately surrounding area including public sidewalks and streets within 20 feet of premises; or the failure to abate nuisances, such as disturbance of the peace, public drunkenness, drinking in public and harassment to passersby, after notification by the city attorney.\(^\text{17}\) Reasonable steps are defined as timely calls to law enforcement asking for assistance in abating nuisance conditions, asking persons engaging in nuisance activities to cease such activities and the removal of items that facilitate nuisances, such as furniture.\(^\text{18}\) Courts have ruled that the existence of a public nuisance, regardless of fault by the license holder, may support the revocation of a license.\(^\text{19}\)

Business and Professions Code section 24203 also provides that “accusations may be filed with the Department by the legislative body. . . of any city. . . requesting the suspension or revocation of a retail license. Upon the filing of the accusation, the Department shall provide for a public hearing. . . and determine whether or not the license should be revoked or suspended.” Furthermore, if the local legislative body certifies that “the public safety, health, or welfare requires immediate hearing of the accusation; the public hearing shall be held within 60 days after the filing of the accusations with the Department.”\(^\text{20}\) Using this provision allows the city to directly file an accusation against a license holder and entitles the city to a hearing in front of the

\(^{16}\) Bus. & Prof. Code §24201.

\(^{17}\) Bus. & Prof. Code §24200.

\(^{18}\) Id.


\(^{20}\) Bus. & Prof. Code §24203.
Department to determine whether or not to revoke or suspend a liquor license. The Department does not have discretion to deny a hearing if it is requested by the City Council.\textsuperscript{21}

This course of action, however, like the original license issuance decision also places a great deal of discretion in the hands of the Department. Moreover, as with other Department decisions, the Department's decision is difficult to overturn through a legal challenge. In order to successfully proceed with an accusation against a license holder, a city will have to accumulate substantial evidence that a license holder is creating a public nuisance or creating a law enforcement problem as a result of its sale of liquor.

**Miscellaneous Local Regulation**

Lastly, cities retain limited authority to regulate the consumption of alcoholic beverages.\textsuperscript{22} Regulation of mere possession of alcohol, however, is unconstitutional absent specific legislative authorization.\textsuperscript{23} Penal Code Section §647(e), however, authorizes city regulation of possession of open container on certain licensed premises, and Bus & P C §25620 authorizing city regulation of open container in city-owned public place. Cities also have limited authority to regulate the concurrent sale of gasoline and beer or wine at a given location as defined by statute.\textsuperscript{24}

**III. Nuisance Regulation**

A city can exert a certain degree of control over alcohol outlets through its inherent authority to regulate nuisances. A city can adopt an ordinance directed at the abatement of potential nuisance activity around businesses that sell alcoholic beverages, even though such adopted regulations may in fact prohibit the sale of alcohol at particular locations.\textsuperscript{25} The right to

\textsuperscript{21} Id.


\textsuperscript{24} Bus. & Prof. Code §23790.5.

control and abate nuisance and criminal activities by ordinance applies to all alcoholic beverage establishments, including those in operation before an ordinance's effective date.

**Traditional Nuisance Abatement**

Cities may also regulate alcohol outlets on an individual basis through the traditional nuisance abatement authority by declaring a building or place where liquor is unlawfully sold a public nuisance.26 The Unlawful Liquor Sale Abatement Law (Pen Code §§ 11200 – 11207) provides cities with the ability to declare and abate a nuisance when an establishment is selling liquor unlawfully.27 Recently, the Second Appellate District upheld a permanent injunction against a café that was found to be unlawfully selling alcohol to its patrons.28 The City of Los Angeles sought and obtained an injunction against a café that was selling alcohol to visibly intoxicated patrons based on a finding of nuisance under the Unlawful Liquor Sale Abatement Law.29 In upholding the injunction, the Court of Appeal stated that Penal Code section 11200 has a broad reach which encompasses unlicensed liquor sales and unlawful sales, even if lawful sales also occur on the premises.30 Thus, if a city finds that off-sale alcohol sales establishments are violating laws, and they have a negative effect on the health, safety, and general welfare of those living and working in the area, one available course of action is to declare the activity a public nuisance. The city attorney may then maintain an action to abate and prevent the nuisance.31 However, this approach is time intensive and must regulate problem alcohol outlets on a case by case basis.

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26 Pen C §11200.
27 Pen C § 11200-11207.
29 *Id.*
30 *Id.* at 1141-1144.
31 Pen C §§11200-11201.
The City of Oakland “Deemed Approved” Model

The City of Oakland (“Oakland”) tested the limits of the state preemption issue by instituting a “deemed approved” program for existing licensees. Oakland’s program was created as a means of imposing operating standards on legal nonconforming retail alcohol outlets established prior to adoption of the Oakland’s conditional use permit requirements. As part of its program, Oakland adopted a comprehensive code enforcement scheme that the California Court of Appeals has upheld as a permissible use of a city's police power and authority to regulate nuisances and criminal activities in the areas surrounding alcoholic beverage retail sellers.\(^{32}\) Oakland’s ordinance was challenged as to whether it could apply its deemed approved program to licensees that had sold liquor prior to the adoption of the ordinance. Specifically, at issue was whether the deemed approved ordinance violated Business and Professions Code section 23790, which prohibits new zoning regulations barring the sale of liquor at a site from being applied to “grandfathered” establishments. The court ruled that the regulations were not intended to control the sale of alcoholic beverages, but instead were intended to eliminate nuisance and criminal activities.\(^{33}\) Although the ordinance did not prohibit licensees from selling alcoholic beverages, it did prevent licensees from creating nuisances and facilitating criminal activity at their stores and in the surrounding areas.

The Oakland Ordinance establishes that the sale of alcoholic beverages in Oakland is deemed to be an approved commercial activity, so long as the seller complies with the “Deemed Approved Performance Standards.” The performance standards require that the sale of liquor at a site does not:

1. result in adverse effects to the health, peace, and safety of persons residing or working in the surrounding areas;

2. jeopardize or endanger the public health or safety of persons working in or residing in the


\(^{33}\) Id. at 765.
surrounding area;

3. result in repeated nuisance activities within the premises or close proximity of the premises, including but not limited to illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, the sale of stolen goods, public urination, thefts, assaults, littering, loitering, police detentions, arrests;

4. violate any city, state, or federal regulation, ordinance, or statute; or

5. have upkeep or operating characteristics that are incompatible with the surrounding area or adversely affect the liability of appropriate development of abutting properties.\textsuperscript{34}

If the sale of liquor causes a violation of one of the established performance standards, then an administrative hearing is held to review the complaint. Complaints can come from the police department or the general public. The administrative hearing officer then holds a hearing to determine whether the standards have been violated, and at that point, may impose conditions on the merchant in order to enforce the Deemed Approved standards. If the merchant violates those conditions, the Deemed Approved status may be revoked. Once appeals of the administrative hearing officer's decision to the city council are exhausted, the City may seek to have the activity abated as a nuisance. The city may also refer the matter to the Department for revocation of the liquor license. Lastly, to pay for the enforcement of the ordinance, Oakland imposes a $600 fee on liquor licensees.

Violations of the ordinance do not result in the forfeiture of the merchant’s liquor license, because only the Department has the constitutional authority to revoke a liquor license. A violation, however, does prevent the merchant from selling liquor at the location where the violation occurred. Furthermore, violations can be forwarded to the Department for possible revocation.

\textsuperscript{34} City of Oakland Deemed Approved Alcoholic Beverage Sale Regulations, Title 17 Planning, §§17.156 et seq.
IV. Regulation through Local Zoning Ordinance

The Department of Alcoholic Beverage Control may not issue an alcoholic beverage retail license for any business located in a zone where the exercise of the rights conferred by that license would be contrary to a valid local zoning ordinance.35 When enacting a zoning ordinance, a key distinction involves the status of the specific licensed premise as a “new” or “pre-existing” outlet at the time a city enacts a new ordinance or regulation. A retailer whose business is already in place receives far greater protection under state law than outlets that are proposed following enactment of a valid zoning ordinance.36 Thus, a city that wants to restrict alcohol outlets from locating near schools cannot impose the new restriction on an existing outlet, but can prohibit a new outlet from locating in the restricted zone or selling a restricted product.

Los Angeles’ Ordinance

In an attempt to define the limitations local government may impose on alcohol-serving establishments, courts have consistently held that local ordinances that do not directly affect the sale of alcohol are not preempted by the powers granted to the Department. In 1994, in Korean American Legal Advocacy Foundation v. City of Los Angeles,37 the California Court of Appeal examined the extent to which the state had preempted the field of alcohol regulation. The case was set against the backdrop of the 1992 Los Angeles riots and the effort to rebuild stores destroyed during that period of civil unrest. Since 1985, the City of Los Angeles had required business engaged in the sale of off-site alcoholic beverages to obtain conditional use permits. In 1987, the city adopted a specific plan, which required conditional use approvals for establishments dispensing alcohol in South Central Los Angeles, and provided that approval was contingent on specified findings. Businesses in operation before the effective dates of either ordinance enjoyed “deemed approved” conditional use status. In the aftermath of the riots, the city adopted ordinances to facilitate rebuilding, with expedited procedures to process building

36 Bus. & Prof. Code § 23790
permits in conformity with existing code provisions. However, all conditional uses, including conditional uses selling alcoholic beverages for off-site consumption, had to submit plans for approval before rebuilding. Such approval could be made contingent on conditions (such as graffiti removal, adequate lighting, trash removal, security guards and limited hours of operation) imposed on the same basis as for new conditional uses. In addition to the plan approval process, the city instituted “revocation hearings” to revoke or condition an owner’s deemed approved status or use permit in the event the business threatened to become, or had become, a nuisance or law enforcement problem. The plaintiffs, many of whom had stores destroyed during the riots, brought suit, challenging the validity of the ordinance imposing the plan approval process and establishing revocation hearings. They alleged that Los Angeles’ plan approval and revocation processes were completely preempted by the state constitution, which specified that the state had exclusive authority to regulate the sale of alcoholic beverages and exercised this exclusive jurisdiction through the Alcoholic Beverage Control Act.38

In addressing the preemption challenge, the court examined the purpose of the ordinance and noted that the conditions imposed by the city did not have the effect, either direct or indirect, of regulating the “manufacture, sale, purchase, possession or transportation” of alcoholic beverages.39 Rather, the conditions imposed under the plan approval process were aimed at controlling or eradicating the negative secondary impacts often associated with establishments that sell alcoholic beverages.40 Accordingly, the ordinance was deemed permissible as it was aimed at land use and zoning - to abate or eradicate nuisance activities in a particular geographic area by imposing conditions aimed at mitigating those effects - rather than the regulation of alcohol. The validity of the ordinance was underscored by the fact it focused on the negative conduct occurring in the immediate vicinity of businesses selling alcohol for off-site consumption; “[t]hat the conditions imposed under the ordinance may have some indirect impact on the sale of alcoholic beverages does not transmute the purpose and scope of the ordinance into

38 *Id.* at 385.

39 *Id.* at 385-87.

40 *Id.* at 387.
Thus, provided that an ordinance imposes land use and zoning regulations, and applies them properly, the zoning regulation should be valid.

V. **Recommended Practices**

Any local zoning ordinance aimed at regulating retail alcohol outlets should comprehensively seek to regulate, by including both conditional use permit (“CUP”) and Deemed Approved provisions. By including both of these provisions, the city will properly distinguish between pre-existing and new alcohol outlets. Both of these provisions are also flexible enough to vary according to each city’s needs. The recommended approach for regulating pre-existing alcohol outlets, both for on-sale and off-sale outlets is the Oakland Deemed Approved model, as described above. This provides a city with as much regulatory control over existing outlets as is permissible under the state statutory framework. Further, this approach has been upheld by courts as valid.

**Findings and Statement of Purpose**

The ordinance should contain specific findings that will give the proper justification for any conditions and/or operating standards that are imposed. As is the case with other conditions imposed on a property, the conditions imposed must be related to the goals of the ordinance. The findings establish the need for the ordinance, listing the specific problems that are to be alleviated. These should be adapted to local circumstances, including any local data regarding alcohol problems and their link to retail alcohol sales. The purposes section can augment the findings from the introductory section, such as focusing on the rationale for requiring CUPs for new alcohol outlets. Carefully drafted findings and purpose sections are important to establish the city’s rationale and authority to take action.

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\(^{41}\) *Id.*
Regulation of Retail Outlet Locations

The Department may not issue alcohol licenses for premises located in the immediate vicinity of churches and hospitals. In addition to the state law restrictions concerning location of outlets near those sensitive uses, a local ordinance can further restrict outlet locations through a valid zoning ordinance. Zoning ordinance restrictions regarding the location of outlets could restrict the outlets to certain zones, by defining the alcohol sales use and then restrict alcohol outlets from a zone within the city’s zoning ordinance, such as residential zones. Conversely, the ordinance could restrict alcohol outlets only to certain commercial zones. In addition, the adopted ordinance may want to require spacing requirements by imposing specific distances from sensitive uses, such as playgrounds, schools, hospitals, high crime districts, etc. Lastly, the ordinance could require distance requirements between outlets. For example, no more than four alcohol retail outlets can be allowed within a 1,000 foot radius of each other. The location requirements may also choose to focus on particular types of alcohol outlets. For example, restaurants or grocery stores with relatively limited alcohol sales may be treated differently from bars, nightclubs, or liquor stores.

Conditional Use Permit Provisions

An ordinance containing CUP provisions is an effective tool for local regulation of retail alcohol outlets. When regulating new outlets, establishing specific CUP provisions is the most effective method to impose local conditions and sanction those that do not comply with the enacted conditions. Additionally, the CUP allows cities to take much swifter action than if a city was forced to rely on the Department to take action. Lastly, the CUP provides individuals and groups within the community a voice in the decision-making process with respect to how proposed retail alcohol outlets would impact the community.

Any adopted CUP ordinance must be cognizant of the areas upon which state law has exclusive jurisdiction which is, “the manufacture, sale, purchase, possession and transportation of alcoholic beverages.” However, when acting within those restrictions, a city can properly adopt and enforce operating restrictions that will meet the particular needs of its communities.

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42 Bus. & Prof Code § 23789.
43 Cal Const. Art. XX, § 22.
Operational standards and conditions of approval can work in conjunction to comprehensively regulate new outlets. Operational standards are mandatory requirements that apply to all outlets, are typically general in nature, and can often be similar to the Deemed Approved operating standards. For example, operating standards can have restrictions against public nuisance activities and activities that violate state or local laws.

Although related to operating standards, conditions of approval are more specific and should be tailored to local issues. The conditions can be either standard or discretionary. If standard, they apply to all new outlets automatically; if discretionary, the permitting agency considers their applicability on a case-by-case basis and tailored to the specific application and the surrounding neighborhood. Erring on the side of over inclusion is recommended; if it is uncertain whether a given condition is relevant, it can be treated as discretionary and used only if warranted for particular retail outlets. Some conditions to consider are as follows:

- Soundwalls
- Prohibited Products
- Graffiti Removal
- Chilled Alcoholic Beverages
- Exterior Lighting
- Hours of Operation
- Trash Receptacles
- Paper or Plastic Cups
- Pay Telephones
- Size of alcohol signage
- Complaint Response – Community Relations Program
- Loitering
- Prohibited Activities (e.g. pool tables)
- Security Cameras
- Prohibited Vegetation
- Limitations on signs and advertising on windows of doors in off-sale outlet

Provisions Specific to On-Sale Outlets

Although the regulatory framework for on-sale and off-sale alcohol outlets are the same, on-sale outlets can present different issues than off-sale outlets. Because of this variation, cities may want to consider specific regulation for on-sale outlets. For example, nightclubs present operational issues that regulations tailored to liquor stores may not adequately cover. Operating hours restrictions would presumably be different for nightclubs. Additionally, requiring security and noise restrictions for nightclubs is also recommended.
Some cities have a cluster of on-sale outlets within one area that becomes a focal point for entertainment and tourism. Whether a city desires this “entertainment zone” or not, when such zones emerge, including additional provisions for those zones may help to minimize some of the impacts from several inebriated customers streaming out of closing bars all at once. Additionally, some potential conditions for Entertainment Zones could be restricting the number of alcohol licenses within a defined zone and prohibition of transferring a permit from one zone to another zone.

Other on-sale outlets that may present unique issues are restaurants. Cities may want to consider whether or not to include “full service restaurants” as an outlet subject to the CUP ordinance. Some cities, for example, exclude restaurants from their ordinances, provided that they meet strict criteria in terms of food sales, hours of operation, kitchen facilities, among other factors, to ensure that a restaurant does not transform into a more problematic mode of business. Regardless of a city’s desire to subject a full service restaurant to CUP ordinance regulations, the ordinance’s definitions should clearly define what constitutes a full service restaurant. Adopting restaurant specific operational requirements can prevent businesses from opening under the guise of a full service restaurant, but not actually operating as such, and in effect operate as a bar with little regulatory oversight. Some options for regulating restaurants include: treating restaurants similarly to other types of outlets; exempting them from the ordinance entirely; or developing separate standards applicable to restaurants.

Additional Ordinance Considerations

Some jurisdictions also charge an annual business license renewal fee to any bar, nightclub, restaurant, or grocery store permitted by the state to sell alcohol. The money generated pays for police officer(s) assigned to moderate the excesses associated with the sale of alcohol. If the exaction is imposed as a "fee," rather than a tax or an assessment, no election is required. Businesses that will likely generate more police response would pay more than those that do not. For example, large nightclubs with dance permits that stay open until 2:30 a.m. pay around $1,700 per year, and small corner markets that sell beer and wine would pay close to $300 per year.
VI. Conclusion

While the State has express authority over the licensing and regulation of alcohol sales, local governments retain the right, under the police power, to regulate the impact of alcohol availability on the public health, safety and welfare of the community. When the existence of licensed alcoholic beverage establishments creates negative secondary impacts, local governments must continue to address these impacts while not treading in the exclusive area of the State’s authority.

Although there are limited opportunities for cities to play a role in the state regulatory process, cities can nonetheless use their land use and police powers to exert control over retail alcohol outlets. When regulating pursuant to land use and/or police power authority, cities are able to employ a strategic approach to managing alcohol sales and affiliated issues. Any adopted ordinance should distinguish between pre-existing outlets and new outlets, with the deemed approved program and conditional use permit requirements.
I am happy to present the following written report:

INTRODUCTION:

History:

September 2009, 2nd Street businesses contacted El Cajon Police Department for assistance in public drunkenness and aggressive panhandling around their establishments. Officer Dan Hansen contacted IPS (Institute for Public Strategies) to conduct a survey on 2nd Street to compile data to identify areas of major concerns for corrective measures. Councilmember Jillian Hanson-Cox was contacted by businessman Garry Davis, representing 2nd Street Alliance for a Better Community, in February 2010 to participate in the roundtable discussions for possible solutions.

Complaint:

2nd Street businesses attended Council Meeting in January 2011 to express their concerns for an agenda item regarding an establishment on 2nd Street requesting a CUP that would exceed the City of El Cajon’s limit of establishments, in the specified (sector) area, in selling alcoholic beverages. The business group (2nd Street ABC) believed that “over allowance” issuances of these CUP’s in sector areas were contributing to public drunkenness within the city limits that was impacting businesses and shoppers.

Action:

Councilmember Gary Kendrick brought forward a recommendation for Council on January 25, 2011 to consider an ordinance banning the sale of single serving alcoholic beverages and fortified beer, wine, and alcoholic energy drinks, from off-sale premises.

Councilmember Jillian Hanson-Cox mentioned that she was currently working with businesses regarding this situation and asked for the City Council to delay their vote on this recommended ordinance for six months. City Council granted Councilmember Hanson-Cox the time to develop solutions with a task force.
A task force was established “El Cajon Alliance for a Better Community” that included the following members:

Jillian Hanson-Cox, Council Member - City of El Cajon
Captain Jim Redman, El Cajon Police Department
Ramzi Murad, Neighborhood Market Association
Samantha Dabish, Neighborhood Market Association
Don Tendvahl, East County Transitional Living Center
Sean Oliver, East County Transitional Living Center
Joseph Eberstein, Institute of Public Strategies
Dana Stevens, Communities Against Substance Abuse
Garry Davis, 2nd Street Alliance for a Better Community
Arkan Somo, Arkan Somo and Associates

WORK ESTABLISHED

The task force met numerous times preparing a plan, timeline, and short-term goals to meet council’s directive.

Extensive time and efforts on all task force members were focused in the following areas:

1) Continuous data gathering by IPS
   a) Shopper perception
   b) Employee perception
   c) Neighborhood perception

2) Identify issues of concern that resulted in complaints from residents, shoppers, and local business owners about nuisance and criminal activities around off-sale premises:
   
   Some of these activities include:
   - Public drunkenness
   - Disturbance of the Peace
   - Littering
   - Panhandling and aggressive panhandling
   - And other behaviors that negatively impact local businesses and surrounding neighborhoods
   - Loitering
   - Theft
   - Drug dealing
   - Harassment of passerby
   - Assaults
   - Urinating in Public

3) Develop a presentation and tools (items and services provided by participating task force members) for off-sale alcohol businesses to use to assist them to be good neighbors, and increase their business.

4) Develop a partnership program that includes a “Voluntary Good Business Neighbor Pledge”. This pledge also includes other miscellaneous items such as noise, public space and trash, etc.

5) Communicate with all off-sale alcohol businesses within the city limit by mail and personal contact (twice) to express the importance for their participation in becoming partners in assisting with resolving issues that were identified by task force.
Two presentations were given (May 17th and June 13th) at the Ronald Reagan Community Center that comprised of a power point presentation, and speaking points by all task force members to attendees.

**Results**

- Ninety-two (92) off-sales alcohol retailers within the City of El Cajon limits were contacted (list taken from Alcohol Beverage Control on-line).

  They comprised of:
  - 74 small businesses
  - 18 large business chains (ie: CVC, Walmart, Target, large grocery store chains, etc.)

- Businesses represented at presentations (total of both):
  - 56 out of 74 small businesses (= 76%)
  - 0 out of 18 large chain businesses

- Forty-one (41) out of fifty-six (56) small businesses (= 73%) turned in a "Voluntary Good Business Neighbor Pledge" to-date. We are aware that there are more being mailed in direct to the El Cajon Police Dept.

- Many of the same businesses have also turned in a signed:
  a) Illegal Lodging Enforcement Letter
  b) Request for Permission to Remove Graffiti on Private Property

**CONCLUSION**

Since the partnership inception on May 17, 2011, the data gathered by IPS shows that residents, shoppers, and businesses perception of troublesome nuisances (mainly drunkenness and aggressive panhandling) have decreased from 6.7% in September 2009 to 12% on June 22, 2011 along 2nd Street alone.- proving our plan/program is working.

Jennifer Hill with ABC (Alcoholic Beverage Control) praised the task force for developing a successful partnership program that was perceived very positive, and much appreciated, among the off-sale alcohol businesses during the first presentation.

Therefore, based on the hard work and successes that the task force has incurred to-date with our "partnership program", we do not believe that it is necessary for the City Council to enact an ordinance.

The task force will continue to monitor the results of this partnership program within the "entire" city limits. We also plan to expand this program to on-sale alcohol businesses, and develop a similar program for non-alcohol businesses as well in regards to noise, litter, and graffiti.

Enclosed: Off-Sale Retailer Presentation (Packet)
Voluntary Good Business Neighbor Pledge
Illegal Lodging Enforcement Letter
Request for Permission to Remove Graffiti on Private Property
TO: Mayor and City Council
FROM: Mayor Pro Tern Bill Wells
SUBJECT: Council Activities Report

RECOMMENDATION:

That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

- February 16, 2013 – Annual Chamber of Commerce Awards Dinner
- February 20, 2013 – Key Largo Apartments Grand Opening Celebration
- February 21, 2013 - Metro JPA Meeting
- February 21, 2013 - Nicolosi's Grand Opening
- February 23, 2013 - El Cajon Community Garden Grand Breaking
- February 25, 2013 – Meeting with City Manager
- February 26, 2013 – Agenda Meeting at 9:00 a.m.
- February 26, 2013 – El Cajon Citizen of the Year Luncheon
- February 26, 2013 – City Council Advisory Meeting – Mid-Year Budget
- February 26, 2013 - City Council Meetings at 3:00 and 7:00 p.m.

I will be happy to answer any questions you may have.

SUBMITTED BY,

Bill Wells
Mayor Pro Tern
TO: Mayor Lewis, Councilmembers Ambrose Kendrick and McClellan

FROM: Mayor Pro Tem Wells

SUBJECT: Ceasing Operation of Red Light Cameras Within the City of El Cajon

RECOMMENDATION: That the City Council direct the City Manager, pursuant to the existing contract with our contractor Redflex, to immediately cease operation of all red light cameras within the City of El Cajon and to terminate the contract.

BACKGROUND: At the direction of the City Council, this item was continued from our meeting of February 12, 2013, in order to permit the full Council to discuss the issue. After further consideration since our last meeting, I believe there is significant support within the community to end the red light program altogether. Therefore, I am recommending to the City Council that we direct staff, pursuant to the existing contract with our contractor Redflex, to immediately cease operation of all red light cameras within the City of El Cajon. The contract stipulates that Redflex must shut down all cameras upon receipt of written notice by the City and that the cameras must be physically removed within an additional 60 days after the 30-day notice is complete.

FISCAL IMPACT: Negligible. The City's net revenue via this program has varied significantly over recent years. Since Fiscal Year 2007-08, the City has actually lost $7,300 net.

PREPARED BY:

Bill Wells
MAYOR PRO TEM
ACTIVITIES REPORTS OF COUNCILMEMBERS

7. MAYOR PRO TEM BILL WELLS
League of California Cities, San Diego Division; METRO Commission/Wastewater JPA; East County Economic Development Council - Alternate; SANDAG (San Diego Association of Governments) – Alternate; Heartland Fire Training JPA – Alternate

7.1 Council Activities Report

REPORT AS STATED.

7.2 RED LIGHT CAMERA PROGRAM

RECOMMENDATION: That the City Council direct the City Manager to bring back information at the earliest possible time on the City's red light camera program, including information on possibly ending the program. In addition, it is recommended that the City Council set a Council Advisory Meeting for 2:00 p.m. on March 12, 2013, and another information session that same evening at 7:00 p.m. to gain input from the public.

DISCUSSION

Councilmember Wells speaks about the controversy involving the red light camera program. He comments that many people feel the program helps save lives and prevent accidents. However, some people have been complaining about the issue of civil liberties, and the cost and effectiveness of the program. He advises that over the past three years, $2,000,000.00 in fines have been paid for red light camera violations in El Cajon, and that very little of that amount goes to the City. The City runs either a small deficit or just breaks even. The fines, he feels, are enormous, at approximately $500.00 per violation. He requests that Staff research this topic, and possibly host two town hall meetings to gain input from the public, and to bring back findings to Council.

Mayor Lewis states he is in favor of the red light camera program. He feels this is a safety issue, rather than a revenue issue, and that the program prevent accidents and saves lives.

Councilmember Kendrick speaks about two accidents, and reads statistics from the Insurance Institute for Highway Safety pertaining to the reduction in fatalities and number of accidents at intersections with red light cameras. He feels it is the duty of cities to protect its citizens, and that the program helps change driving habits. He would like to know if there has been a decrease in the number of accidents at red light camera intersections within the City.
ITEM 7.2 (Continued)

City Manager Williford responds that a study done three years prior and three years after the installation of the red light cameras, which was a little over a decade ago, revealed a decrease in the number of accidents at seven intersections. If added together, the decrease in accidents averaged 31%. Should Council desire, Staff could evaluate recent statistics and report the findings.

Councilmember Ambrose suggests gathering the following information, before town hall meetings are scheduled:
- Cost of the program;
- Cost effectiveness to the City;
- Consistency of signal light timing at both camera and non-camera intersections;
- Perspective from the Police Department;
- Studies performed in last 10 years;
- Type of legal issues raised by the public;
- The reasons for discontinuing the program in other cities.

Mayor Lewis suggests continuing the item until a full council is present. Mayor Pro Tem Wells concurs with the suggestion.

MOTION BY LEWIS, SECOND BY KENDRICK, to CONTINUE Item 7.2 to the next meeting for two weeks or until a full Council is present.

MOTION CARRIES BY UNANIMOUS VOTE OF THOSE PRESENT. (MCCELLELLAN – Absent)

8.
COUNCILMEMBER TONY AMBROSE
Chamber of Commerce – Government Affairs; MTS (Metropolitan Transit System Board) – Alternate; East County Economic Development Council.

8.1 Council Activities Report
REPORT AS STATED.

9.
COUNCILMEMBER GARY KENDRICK
Heartland Communications JPA; Heartland Fire Training JPA.

9.1 Council Activities Report
REPORT AS STATED.
TO: Mayor Lewis, Councilmembes Ambrose, Kendrick and McClellan
FROM: Mayor Pro Tem Wells
SUBJECT: Red light Camera Program

RECOMMENDATION: That the City Council direct the City Manager to bring back information at the earliest possible time on the City's red light camera program, including information on possibly ending the program. In addition, I recommend that the City Council set a Council Advisory Meeting for 2:00 p.m. on March 12, 2013 and another information session that same evening at 7:00 p.m. to gain input from the public.

BACKGROUND: Many cities in California, including very recently the City of San Diego, have been reconsidering their use of red light cameras at intersections. These concerns have involved issues of civil liberties, privacy, inappropriate fees and the overall effectiveness of the programs. I recommend that we direct staff to bring back a report that outlines information on our current program and the steps we may wish to take if the City Council decides to end the program.

In concert with this direction, I recommend that the City Council host on two community meetings on this subject, in order to solicit public input. For maximum effectiveness for both the public and the Council, I would suggest an afternoon session (i.e. – a Council Advisory Meeting) prior to our regular meeting of March 12, 2013 and a second session that same evening for those citizens who could not attend the afternoon session. In lieu of this, I would be happy to host such meetings myself and report back to the City Council the results of the public input. Because I believe this is an issue of significant importance, I would request that staff bring this item back to the City Council at the earliest possible time.

FISCAL IMPACT: Unknown at this time.

PREPARED BY:

Bill Wells
MAYOR PRO TEM
TO: Mayor Lewis, Councilmembers Ambrose Kendrick and McClellan

FROM: Mayor Pro Tern Wells

SUBJECT: Opposition to Senate Bill 7

RECOMMENDATION: That the City Council direct the City Manager to send a letter to our elected state representatives stating our opposition to Senate Bill 7.

BACKGROUND: Proposed Senate Bill 7 would prohibit a charter city from receiving or using State funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage provisions on any public works contract. Losing all possible state funding assistance for future capital projects in El Cajon would potentially be devastating. This bill would remove our current ability to not pay prevailing wages, if the City so chooses, pursuant to our recently approved City Charter, without resulting in these state penalties. This bill is not in the best interest of either the City of El Cajon or the taxpayers.

FISCAL IMPACT: If Senate Bill 7 were to become law, it would cost the City of El Cajon significant funds either via not being able to take advantage of non-prevailing wage contracts or foregoing state funding opportunities for future projects.

PREPARED BY:

Bill Wells
MAYOR PRO TEM
TO: Mayor and City Council
FROM: Councilmember Ambrose
SUBJECT: Council Activities Report

RECOMMENDATION:

That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

February 13, 2013 - Alliance for a Better Community meeting
February 16, 2013 - Chamber of Commerce Awards Banquet
February 22, 2013 - Meeting with City Manager
February 23, 2013 - Rock Church Appreciation Event
February 26, 2013 - Council Advisory Meeting – Mid-Year Budget
February 26, 2013 - Council Meetings at 3:00 and 7:00 p.m.

I will be happy to answer any questions you may have.

SUBMITTED BY,

Tony Ambrose
Councilmember
TO: Mayor and City Council
FROM: Councilmember Kendrick
SUBJECT: Council Activities Report

RECOMMENDATION:

That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

- February 16, 2013 - Meeting w/ Neighborhood Market Assn/Ramzi Murad
- February 22, 2013 - Meeting with City Manager
- February 26, 2013 - City Council Advisory Meeting – Mid-Year Budget
- February 26, 2013 - City Council Meetings 3:00 and 7:00 p.m.

I will be happy to answer any questions you may have.

SUBMITTED BY,

Gary Kendrick
Councilmember
TO: Mayor and City Council  
FROM: Councilmember McClellan  
SUBJECT: Council Activities Report

RECOMMENDATION:

That the City Council accept and file the following report of Council/Mayor activities attended during the current agenda period.

BACKGROUND:

Government Code Section 53232.3(d) requires members of a legislative body to provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

REPORT:

Since the last City Council meeting, I have attended the following events on behalf of the City of El Cajon:

- February 21, 2013 - MTS Meeting
- February 26, 2013 - City Council Advisory Meeting – Mid-Year Budget
- February 26, 2013 - City Council Meetings at 3:00 and 7:00 p.m.

I will be happy to answer any questions you may have.

SUBMITTED BY,

Bob McClellan  
Councilmember
The Legislative Report tracks bills for the 2013-2014 Session of the California Legislature that the El Cajon City Council/Housing Authority/Successor Agency to the Redevelopment Agency has voted to monitor, support or oppose. Page - 1 – Updated February 19 at 10:30 a.m. for the February 26, 2013 City Council Meeting
STATE WATER BOARD APPROVES PHASE II SMALL MS4 GENERAL PERMIT

Yesterday the State Water Board discussed and approved the Phase II Small MS4 general permit. The approval was made after staff incorporated changes based on written comments from interested parties received in December. In addition, the board made several changes to the wording based on public comment during the meeting.

Cities can find the draft permit and change sheet on the program website at http://waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml. The changes made during the meeting will be reflected in the final order that will soon be posted to the website.

For questions, please contact Ali Dunn at (916) 341-6899 or adunn@waterboards.ca.gov.
CALIFORNIA SUPREME COURT HEARS ORAL ARGUMENT IN MEDICAL MARIJUANA DISPENSARY CASE

The California Supreme Court heard oral arguments on Tuesday in City of Riverside v. Inland Empire Patient's Health and Wellness Center — the case challenging Riverside's ordinance banning medical marijuana dispensaries.

Riverside's ordinance prohibits medical marijuana dispensaries in any zone in the city and provides that a violation can be abated as a public nuisance. After the ordinance was adopted, the defendants opened a dispensary and the city obtained an injunction to close it. The Court of Appeal upheld the injunction and the defendant appealed the decision to the Supreme Court. The defendant contended that Riverside's ordinance is invalid since state medical marijuana laws preempt or prevent cities from prohibiting dispensaries. Riverside argued that the California Constitution provides cities with broad authority to control and regulate land uses within their borders and that state medical marijuana laws do not limit that power. Several Supreme Court justices appeared to express skepticism about the defendant's arguments in the case.

Following the argument, Gregory P. Priamos, city attorney, Riverside said the city "is cautiously optimistic that the Supreme Court will uphold the decision of our Court of Appeal. The Supreme Court's decision will be very significant with respect to a city's exercise of its constitutional police power as well as the exercise of its traditional land use powers."

The Supreme Court has granted review in five other cases involving ordinances that either ban or regulate medical marijuana dispensaries, but only the Riverside case has been argued. The Court's decision will be issued within 90 days and is expected to provide valuable guidance to local public agencies on the authority to ban or regulate dispensaries.

The League thanks Thomas B. Brown and Stephen A. McEwen of Burke Williams & Sorensen for preparing the amicus brief on the League's behalf in this case.
UPCOMING HEARINGS OF INTEREST

The following hearings are of interest to cities. The League will be monitoring these hearings and will report on any actions of significance. For more, see Page 2.

CITY MANAGERS DEPARTMENT AWARD WINNERS

Each year, the League of California Cities' City Managers' Department presents three prestigious awards honoring distinguished members of the department: the Wes McClure Award of Distinction, the John H. Nail Memorial Award and the Award for the Advance of Diverse Communities. This year the department is proud to announce the following winners. For more, see Page 2.

CALL FOR ENTRIES FOR 2013 HELEN PUTNAM AWARDS

Each year the League of California Cities honors outstanding work in member cities across the state through the League Partner-sponsored Helen Putnam Awards for Excellence. If your city has done remarkable, innovative work in any of the 12 categories listed below now is the time to get your deserved recognition. It is an opportunity to thank your employees and collaborators, gain the appreciation of your residents and feel proud of outstanding contributions made to better your city. For more, see Page 2.
Many legislative hearings are available for video or audio monitoring online at http://www.calchannel.com/?page_id=4. A full listing (http://www.leginfo.ca.gov/dayfile.html) of all Senate and Assembly hearings is also available online. Hearing times are subject to change.

**Monday, Feb. 11**

Assembly Transportation Committee, State Capitol, Room 4202 at 1:30 p.m.:
- Development of California’s Freight Plan.

Senate Public Employment and Retirement, State Capitol, Room 2040 at 2 p.m.:
- SB 13 (Negrete McLeod) Public Employees’ Retirement Benefits.
- SB 54 (Hancock) Retirement: County Employees. (*’37 Act)

Assembly Subcommittee #6 on Budget Process, Oversight and Program Evaluations, State Capitol, Room 126 at 2:30 p.m.:
- Redevelopment: Implementation Follow Up to AB 26 x1 (Blumenfield) and AB 1484 (Committee on Budget).

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**John H. Nail Memorial Award:** Jim Schutz, assistant city manager, San Rafael

The John H. Nail Memorial Award was created by the League’s City Managers’ Department during the 1978 Annual Spring Conference, in honor and memory of a highly regarded city manager and individual. The award is presented to an outstanding municipal assistant who has contributed significantly to his or her city government and to the advancement of the community as a whole.

**Award for the Advance of Diverse Communities:** Bryan Montgomery, city manager, Oakley

The Award for Advancement of Diverse Communities honors a city manager or assistant who has been most successful in promoting the advancement of diversity within the community and the workplace through the development and implementation of effective programs, policies and/or practices encouraging diversity.

**Wes McClure Award of Distinction:** Connie Jackson, city manager, San Bruno

The Wes McClure Award of Distinction recognizes the values and principles deemed essential to city managers' professional conduct. This award recognizes a city manager’s outstanding career service, leadership, ethics, expertise and innovation in the field of city management as observed by their colleagues. The award is given to recognize those who make a difference to the profession.

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**Helen Putnam** Continued from Page 1...

This award program recognizes the successes of California cities as demonstrated by beneficial innovations, resourceful efficiencies, improved public service, and overall enhanced public trust and support. It also provides a great opportunity to have a community celebration of the good work you are doing.

Does your city have an outstanding program that delivers efficiency, quality service and innovation? Enter your program at www.helenputnam.org to compete for the recognition it deserves.

Award categories include:
- CCS Partnership Intergovernmental Collaboration Award
- Community Services and Economic Development
- Economic Development through the Arts – NEW Category
- Enhancing Public Trust, Ethics, and Community Involvement
- Health and Wellness Programs
- Housing Programs and Innovations
- Internal Administration
- League Partners Award for Excellence in City-Business Relations
- Planning and Environmental Quality
- Public Safety
- Public Works, Infrastructure, Transportation
- Ruth Vreeland Award for Engaging Youth in City Government

Additionally, your city can receive the President's Advocacy Award. This prestigious award honors a distinguished program or individual that best advocates for the League’s annual strategic priorities. One outstanding winner may be chosen from the 12 categories.

Your city must be a member of the League of California Cities to apply. To qualify, simply demonstrate that your city offered a program or service that has proven measurable and successful within a minimum of one year of actual implementation. Particular attention and credit is given to applications specifically advancing the League’s strategic priorities at www.cacities.org/priorities, which are determined each year by the board of directors.

Online entry deadline is April 11. Submit your application at www.helenputnam.org.

ILG to Host Public Engagement Webinar on March 13

The Institute for Local Government (ILG) announced it will host the first webinar for its 12-week Sustainable Communities Learning Network’s Brownbag Webinar series on March 13. The March 13 webinar will examine effective methods of public engagement and dealing with deeply held public concerns and organized opposition.

Webinar Details

March 13, 10 – 11:15 a.m.
Register online at https://www1.gotomeeting.com/register/347528313

Speakers:
- Brian Moura, assistant city manager, San Carlos
- Susan Stuart Clark, director, Common Knowledge

For more information on ILG’s Sustainable Communities Learning Network Brownbag Series please visit ILG’s website at http://www.ca-ilg.org/post/sustainable-communities-learning-network-launches-brownbag-webinar-series.

Future webinar topics will be announced at a later date.

New U.S. Communities Contract Offers Clean, Green Products

AmSan-CleanSource has been awarded the new U.S. Communities cleaning supplies contract through a competitive solicitation process conducted by lead public agency Fresno Unified School District. AmSan-CleanSource is a leading supplier of janitorial, cleaning and facility maintenance supply products.

U.S. Communities Government Purchasing Alliance is a government purchasing cooperative that reduces the cost of goods and services by aggregating the purchasing power of public agencies nationwide. It provides world-class procurement resources and solutions to local and state government agencies, school districts (K-12), higher education and nonprofits. Participants have access to a broad line of competitively solicited contracts with best-in-class national suppliers.
AmSan-CleanSource has multiple distribution centers across North America. It is committed to delivering janitorial solutions, products and industry experts, focused on the needs of local government to create a long-term, cost-saving cleaning program that maintains a healthy environment while improving operational costs, productivity and human resource savings.

The new U.S. Communities program offers local governments a full line of certified and environmentally preferable chemical products, tools and equipment — certified products by independent third parties such as Green Seal, Environmental Choice, Design for the Environment and EcoLogo. "Green" solutions can be found for products such as floor care, general purpose cleaners, industrial cleaners, restroom towels and tissue, cleaning equipment and many other categories.

AmSan-CleanSource will work with local governments to develop green solutions designed to reduce the environmental impact of cleaning processes while promoting a safer and healthier indoor environment.

U.S. Communities is the only government cooperative purchasing organization to be founded by the National League of Cities, the National Association of Counties, the Association of School Business Officials International, the National Institute of Governmental Purchasing and the U.S. Conference of Mayors.

For more information about U.S. Communities and the various products and services offered to local governments, please visit www.uscommunities.org or contact Dan Harrison at (916) 658-8267 or dharrison@cacities.org.

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The Hit List from WesternCity.com

Western City magazine has compiled its most popular stories into a "Hit List" showing the top five articles on WesternCity.com during the past month. This list reflects the topics of greatest interest to California city officials during the month of January.

The results are in, and these articles are "Hits!"


2. "How the Second Amendment Right To Bear Arms Affects the Local Police Power to Regulate Firearms" (http://www.westerncity.com/Western-City/November-2010/How-the-Second-Amendment-Right-To-Bear-Arms-Affects-the-Local-Police-Power-to-Regulate-Firearms/) – November 2010


Job opportunity pages are not counted in the Hit List, but Western City’s job board consistently ranks as our most popular resource each month.

Did your clicks make the list? Check back next month for the latest "Hit List."
UPDATES

DUARTE, OXNARD AND PASADENA EXPERIENCE SOME SUCCESSES IN REDEVELOPMENT DISSOLUTION LITIGATION

Initially, successes in cases filed by local agencies challenging AB 126 and AB 1484 were few and far between, but recently positive results have started to emerge. More than 55 lawsuits have been filed challenging the Department of Finance’s (DOF) decisions. Of those 55 lawsuits, more than 30 are currently active. For more, see Page 2.

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ASSEMBLY BUDGET SUBCOMMITTEE MEMBERS RAISE REDEVELOPMENT DISSOLUTION CONCERNS
Level of Legislative Follow Up Remains to be Seen

Yesterday, the Assembly Budget Subcommittee #6 on Budget Process, Oversight and Program Evaluation held an informational hearing on redevelopment dissolution issues per AB 126 and AB 1484. Representatives from the Department of Finance (DOF) and State Controller’s Office gave presentations. Video of the entire hearing is available on Cal Channel’s website at http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=910. For more, see Page 3.

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PENSION CLEAN UP BILL PASSED OUT OF SENATE PUBLIC EMPLOYMENT AND RETIREMENT COMMITTEE

Yesterday, as expected, SB 13 (Beall) was easily passed out of the Senate Public Employment and Retirement Committee. SB 13 addresses a number of technical clean up provisions needed to implement pension reforms in last year’s AB 340 (Furutani; 2012). For more, see Page 5.
The League has compiled a summary of those lawsuits at www.cacities.org/rdacases, a listing which is periodically updated. The cities of Duarte, Oxnard and Pasadena recently used litigation to achieve successful outcomes.

City of Duarte

Duarte had committed $1.2 million in 20 percent housing set-aside funds for a 43-unit affordable senior housing project. The project also was the subject of a grant application for $7.7 million in federal Housing and Urban Development (HUD) funds. Duarte had an option agreement with an affordable housing developer that was conditioned upon the award of the HUD grant. Duarte listed the $1.2 million on its ROPS III as an enforceable obligation, which DOF rejected alleging that the developer had not timely exercised the right to extend the option agreement after receiving notice of the HUD grant award. DOF had not previously raised the issue of the option agreement extension in previous discussions with Duarte.

Duarte moved quickly to seek a temporary restraining order in Sacramento County Superior Court as any significant delay would place the HUD grant in jeopardy. After reviewing the city's pleadings, the Attorney General agreed to have DOF drop its objection to the $1.2 million item.

The League congratulates Bill Ihrke and Dan Slater with Rutan & Tucker on the successful outcome of this case.

CRFL Family Apartments, LP (City of Oxnard)

This case involves an affordable housing project that is a component of a larger residential development project in Oxnard. To assist the development of the affordable housing, the city's former redevelopment agency agreed to provide the developer with a loan not to exceed $15 million. The loan agreement was subsequently assigned to the current developer, CRFL. Oxnard listed this loan as an enforceable obligation on its ROPS, which DOF subsequently denied.

As the court noted, all the parties agreed that this loan agreement was an enforceable obligation. The question was whether it continued to be an enforceable obligation after the agreement was assigned to CRFL. DOF asserted that the agreement was no longer a valid enforceable obligation because the assignment was not valid. The Sacramento Superior Court disagreed and held that the assignment was valid under the terms of the contract. Further, the court stated that to deprive the parties of the right to assign the agreement "would inevitably raise serious impairment of contract issues since it would deprive a private party of an important right negotiated as part of the agreement." The court further noted that this would also defeat the Legislature's intent to honor existing enforceable obligations. The court ended by ordering DOF to recognize the agreement as an enforceable obligation without limitation.

The League congratulates Hans Van Ligten and Bill Ihrke with Rutan & Tucker for their work on this case.

City of Pasadena

This case arises out of a 1986 reimbursement agreement between Pasadena and its redevelopment agency. The agreement was intended to reimburse the city for various costs it incurred in connection with various public improvements. Pasadena listed the agreement, which provides for payments to be made through 2014, as an enforceable obligation on its ROPS III. DOF asserted that this reimbursement agreement was not an enforceable obligation.

Pasadena asserted that the agreement had been validated by state statute in 1987 and by a court judgment in 1999. Further, Pasadena asserted that DOF did not object to the agreement's inclusion on previous ROPS. DOF, on the other hand, asserted that these types of redevelopment agency-city reimbursement agreements were invalidated by ABx1 26, and that the 1987 statute validating the agreement was effectively withdrawn by virtue of ABx1 26. Further, DOF questioned whether the 1999 court judgment served to actually validate the agreement.
The court characterized the issue as whether the 1986 agreement was an enforceable obligation for the benefit of the city that should be placed on the ROPS. The court concluded that the agreement easily fell within the broad definition of "enforceable obligation" in the statute under several subsections. The court further rejected DOF's argument that the reimbursement agreement fell within an exception to the "enforceable obligation" definition, giving that exception a narrow construction.

In granting the preliminary injunction, the court noted that the city was likely to suffer irreparable harm if the funds at stake were to be released to the taxing entities. The court noted that there was no mechanism by which the funds could be recouped. Therefore, the purposes for which the funds were to be used by the city would either be unfunded or the city would be forced to redirect city funds intended for other purposes. Lastly, the court observed that since the funds were primarily to be used for the payment of pension bonds issued by the city, releasing the funds to the taxing entities would effectively trigger a material default on the bonds that would likely result in harm to the city's credit rating.

The League congratulates Murray Kane, Guillermo Frias, and Edward Kang of Kane Berkman & Ballmer for their success in this case.

As demonstrated by Duarte, Oxnard and Pasadena litigation can offer a path to a successful resolution of issues with DOF decisions. The League will continue to monitor and report on redevelopment dissolution litigation of interest.

'Hearing' Continued from Page 1...

Committee members in attendance included:
- Assembly Member Bob Blumenfield (D-Woodland Hills), chair
- Assembly Member Richard Bloom (D-Santa Monica)
- Assembly Member Susan Bonilla (D-Concord)
- Assembly Member Rocky Chávez (R-Oceanside)
- Assembly Member Tom Daly (D-Anaheim)
- Assembly Member Jeff Gorell (R-Camarillo)
- Assembly Member Diane Harkey (R-Dana Point)
- Assembly Member Reginald Jones-Sawyer, Sr. (D-Los Angeles)
- Assembly Member Holly Mitchell (D-Los Angeles)

Assembly Members Toni Atkins (D-San Diego), who heads an internal redevelopment working group formed of members of the Assembly Democrat Caucus, and Nora Campos (D-San Jose) also participated in the hearing.

Subcommittee Chair Assembly Member Bob Blumenfield (D-Woodland Hills), author of ABx1 26, in his opening remarks stated that the hearing's purpose was to discuss oversight issues related to redevelopment dissolution. He thanked Assembly Member Toni Atkins for her work as chair of the redevelopment working group before allowing presentations from Justyn Howard, assistant program budget manager, DOF, and Walter Barnes, chief of special projects, State Controller's Office.

Presentations

Howard's presentation (http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/RDA%20-%20Legislative%20Presentation%20%282%29.pdf) covered redevelopment dissolution implementation including the progress of DOF's review of enforceable obligations and bond obligations, the true-up process, housing successor issues, recognized obligation payment schedule (ROPs) reviews, the process for final and conclusive determinations for enforceable obligations, due diligence review and current litigation.

Committee Concerns

Following the presentations, committee members asked questions highlighting a number of issues.

Assembly Member Blumenfield asked for clarification on the 3 percent administrative cost cap. Howard noted that there was no flexibility in the statute but that administrative costs could be isolated to make accounting under the 3 percent cap more effective.

Assembly Member Gorell asked for clarification on findings of completion and DOF’s role following such a finding. Howard responded that the best way for successor entities to have more budgetary stability is to seek a final and conclusive determination from DOF.

Assembly Member Atkins asked how disagreements between DOF and the Controller’s office were being reconciled. Barnes said that to the extent the Controller’s office is aware of conflicting rulings from its office it would work with DOF to resolve them. Later in the hearing, Assembly Member Atkins addressed home ownership program issues including loans to homeowners. It was noted that legislation would not be required to address these problems.

Assembly Member Mitchell asked about inflexibility in deadlines, specifically noting that successor agencies are required to provide information to DOF prior to the date county auditors are required to provide that information to the successor agency. Howard noted that DOF is working to coordinate these deadlines to the best of their ability but noted that the dates are set in statute and may require a legislative fix if they could not be worked out in the next round of reviews.

Assembly Member Harkey asked about DOF approvals for the transfer to cities of property used for governmental purposes, such as public parking lots and facilities such as senior centers. Howard noted that to the extent that DOF could determine that the property was being used for a truly governmental purpose it would be approved. Following up later in the hearing, Assembly Member Harkey expressed concern about the meet and confer process and commented that the large number of pending lawsuits seems to favor local jurisdictions. Howard disagreed about the lawsuits and noted that the meet and confer process is not a negotiation. Howard indicated that the meet and confer process was merely a second chance for jurisdictions to provide further information which could be used to reverse DOF’s decisions. Howard reported that there are “50 plus” pending lawsuits, 15 of which were initiated by DOF to help the affected agency get a stipulated judgment.

Assembly Member Jones-Sawyer, Sr. asked about long range management plans for real estate to ensure the maximum value of properties, and asked whether DOF planned to bring on people with expertise in real estate development. Howard noted that DOF is working on internal guidelines for long range management plans for these types of properties and creating a master database of properties throughout the state, although it is not available yet. Howard also noted that after the creation of this database, some flexibility would be given to successor agencies and oversight boards to determine the best way to handle the asset.

Assembly Member Bonilla noted the lack of communication throughout this process and asked if DOF was considering training opportunities for successor agencies, possible simplifications or standardizations for ROPS including reducing the number of submittals to one per year, or offering public forums to solicit suggestions. Howard noted some of the steps DOF has already taken to improve communications including a “meet and discuss” process, assigning specific staff as points of contact for counties, and future training for oversight boards. Howard also noted that legislation would be required to reduce the number of ROPS submitted. Following up on this question, Assembly Member Blumenfield asked DOF to provide suggestions for legislation that would improve the process.

Assembly Member Bloom asked for clarification on bond proceeds, specifically why unencumbered bond proceeds are not enforceable obligations especially in the case of bond covenants which prevented the commitment of proceeds prior to June 2011. DOF’s position is that statute requires defeasement and the issuance of bonds without a contract does not
constitute an enforceable obligation. Later in the hearing, Assembly Member Bloom noted that he was aware of 227 units of affordable housing which have been stalled by DOF during this process and that seemed to conflict with the Legislature’s intent to protect and prioritize affordable housing projects. In response, Howard noted that some projects were not included on the ROPs and they need to be listed to receive funding.

Assembly Member Chávez asked how jurisdictions with insufficient funds to pay enforceable obligations would be handled by DOF. Further, Assembly Member Chávez asked DOF to provide a data matrix showing DOF’s actions related to these jurisdictions. Howard agreed to work with Assembly Member Chávez.

Assembly Member Daly asked about the DOF and the Controller’s office staff dedicated to redevelopment dissolution. DOF has 55 full time staff while the Controller’s office has 26.

Public Comment

League Legislative Director Dan Carrigg urged the committee to translate the real and valid concerns they had raised into actionable legislation that would help struggling cities. He noted that if legislators were unhappy with implementation issues they had the power to change the process.

Culver City Mayor Andy Weissman gave public testimony about his city’s experiences during the process of redevelopment dissolution and provided the committee with several recommendations to improve the process. City of Hayward Assistant City Manager Kelly McAdoo Morariu also testified on behalf of five cities in Alameda County further urging the committee to review the dissolution process and improve the process for all cities. A representative from Yuba City also asked the committee to carefully review specific issues related to bond obligations.

Housing advocates urged the committee to protect existing investments for affordable housing.

Interestingly, several school representatives expressed the seemingly unrealistic request that pass-through payments be continued even after the complete wind down of redevelopment agencies, because schools count on pass-through money for their budgets. Presumably the school advocates are arguing that schools should be receiving this money on top of the percentage of property tax allocated to schools.

Next Steps

In closing, the subcommittee agreed to continue its work, alongside the working group chaired by Assembly Member Atkins, to identify and resolve outstanding issues. City officials with legislators on the committee are encouraged to watch the hearing and thank their legislator for raising issues. While the participation and interest of legislators in the hearing was clearly sincere, and they should be commended for it, the true test is whether legislators opt to use their significant power to deliver a clear message to Gov. Jerry Brown that cleaning up the dissolution process is a high priority for them that is not to be dismissed or ignored.

'SB 13' Continued from Page 1...

In addition to SB 13, three other pension clean up bills, SB 215 (Beall), SB 216 (Beall), and SB 217 (Beall) have been introduced. These bills will conform individual retirement laws to the changes made in AB 340.

For more background on this issue, please see the Feb. 4 CA Cities Advocate story "Pension Reform Implementation and Cleanup Legislation" at http://www.cacities.org/Top/News/News-Articles/2013/February/Pension-Reform-Implementation-and-Cleanup-Legisl.

The League will continue to monitor the progress of clean up legislation and regulatory efforts to ensure that the integrity of AB 340 remains intact.

For questions about these bills please contact Natasha Karl at nkarl@cacities.org.
UPDATES

PRESIDENT OBAMA DELIVERS THE STATE OF THE UNION ADDRESS

On Tuesday night, President Barack Obama delivered his fifth State of the Union speech. In the hour-long speech, many issues important to cities and city officials were mentioned. In a show of solidarity with cities, the President invited National League of Cities' (NLC) President Marie Lopez, mayor of Avondale, Arizona, to sit in the gallery with the First Lady for the speech.

The President covered a variety of issues, renewing his call for action to address immigration reform and gun violence, specifically focusing on background checks for all gun sales. In addition, he asked for more support for responsible homeowners who are current on payments, but cannot refinance due to property values. Below are a few areas that cities may be particularly interested.

For more, see Page 2.

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**Sequestration:** Very early in his speech, the President called on Congress to adopt a balanced approach to deficit reduction rather than letting the sequester go into effect. He reminded them that the sequester was only meant to be a threat, and that it will hurt military readiness, devastate energy, medical research and education programs, slow recovery and cost the country jobs. The League has also been advocating for a balanced approach (www.cacities.org/sequestration); unfortunately it seems that the sequester is now a very real possibility.

**“Fix-It-First” and “Partnership to Rebuild America” Infrastructure Programs:** President Obama also called for two new programs to address the nation’s failing infrastructure. He pointed out that more than 200,000 miles of U.S. roads need repair right now and that thousands of bridges are structurally deficient. The Fix-It-First program will focus on repairing what we have, while the Partnership to Rebuild America program will attract private investment for public infrastructure.

**Tax Reform and MuniBonds:** The President renewed his call for closing loopholes and overall tax reform. Unfortunately for cities, comprehensive tax reform will likely include a cap or elimination of the tax exempt status for municipal bonds. On a call Wednesday morning with NLC and the White House, David Agnew, director of Intergovernmental Affairs for the White House, was specifically asked about this, as the President has been supportive of a cap in the past. He assured cities that their concerns were being heard and weighed, but could not provide any assurance that the President was removing his support. It is important that cities continue to advocate for the tax exemption for municipal bonds. The League has sample letters (http://www.cacities.org/federal) available.

**Climate Change:** The President pointed to the many natural disasters the country has recently faced and concluded that the nation must do more to combat climate change. He focused on three areas of action: reducing carbon pollution, preparing communities for climate change, and accelerating the country’s transition to more sustainable sources of energy. He also proposed a new Energy Security Trust to shift cars and trucks off oil for good. He indicated that without congressional action, the President would act through executive order.

Additional information on the Presidents’ proposals is expected to be released in the upcoming weeks, likely with the release of his budget. The text and enhanced video of the State of the Union is available at www.whitehouse.gov/state-of-the-union-2013. In addition, cities may like to follow David Agnew on Twitter (@DavidAgnew44) as he will be distributing information of interest to cities.
PROPOSITION 1A LOAN REPAYMENT THIS JUNE

The $1.9 billion Proposition 1A Suspension Loan of 2009 is due to be repaid this year. Prop.1A (2004) requires that the amounts be repaid within three years (specified in subsequent legislation as by June 13, 2013) with interest (stipulated by the Director of Finance at 2 percent). Many agencies participated in a securitization program which the legislation authorized. For more, see Page 2.

CALIFORNIA AIR RESOURCES BOARD TO HOLD PUBLIC WORKSHOPS ON CAP-AND-TRADE PROCEEDS

The California Air Resources Board (CARB) is hosting three public workshops (http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/auctionproceeds.htm) throughout the state to solicit input on the development of an investment plan for Cap-and-Trade auction proceeds. For more, see Page 2.

GREEN CALIFORNIA LEADERSHIP AWARDS

Nominations Due March 8

Cities with sustainability accomplishments should consider applying for the Green California Leadership Awards. For more, see Page 2.
The California Local Government Finance Almanac has added a section its website (http://californiacityfinance.com/#PROPTAXLOAN) with more information including a schedule showing the transferred amounts, a link to the California Communities JPA website site with information on the securitization program, and a link to the uniform guidelines for implementation prepared by the County Auditors Association.

The provisions permitting any such a suspension of Prop. 1A in the future were deleted by the passage of Prop. 22 (2010).

Workshop Details

Tuesday, Feb. 19
5–8 p.m.
Mariposa Mall Building, Room 1036
2550 Mariposa Mall
Fresno

Monday, Feb.25
3–6 p.m.
California Environmental Protection Agency Building
1001 I Street
Byron Sher Auditorium, 2nd Floor
Sacramento
This meeting will also be webcast.
www.calepa.ca.gov/broadcast/

Wednesday, Feb. 27
4–7 p.m.
Ronald Reagan Building - Auditorium
300 South Spring Street
Los Angeles

In cooperation with the Advisory Board for the Green California Summit, the Green California Leadership Awards (http://www.green-technology.org/gcs/leadership-awards.html) were established as a forum to recognize outstanding environmental achievements in government. This is an opportunity to highlight and celebrate successful state and local government projects implemented in California during 2012. All nominated projects must be publicly financed and executed, and must have provided a measurable benefit to the natural or human environment.

Green California Leadership Awards applications are due March 8. The Awards program is part of the Green California Summit (http://www.green-technology.org/gcs/), to be held April 18–19 in Sacramento. The 2013 Green Summit’s new registration structure offers free admission to the Thursday keynote address, Thursday and Friday concurrent workshops, and the Summit Expo.
TO: Mayor Lewis, Mayor Pro Tem Wells, 
Councilmembers Ambrose, Kendrick, McClellan

FROM: Manjeet Ranu, Planning Manager


RECOMMENDATION: That the City Council:

• Open the public hearing and receive testimony;
• Close the public hearing;

THEN
• Move to ADOPT the next RESOLUTIONS in order APPROVING applicable CEQA Exemptions, Conditional Use Permit No. 2179 and Tentative Parcel Map No. 648, subject to conditions; and,
• Move to ADOPT the next RESOLUTION in order APPROVING Owner Participation and Development Agreement between Sunroad E C LAND, INC., and the City of El Cajon.

BACKGROUND:

On February 11, 2013, the Planning Commission held a public hearing to consider a request to redevelop an existing automobile dealership site at the southwest corner of El Cajon Boulevard and Marshall Avenue and subsequently adopted Resolution Nos. 10720, 10721 and 10725 recommending City Council approval of the applicable CEQA Exemptions, Conditional Use Permit No. 2179 and Tentative Parcel Map No. 648, subject to conditions. BMW South County proposes to demolish all existing on-site improvements, grade the site to minimize slope, then construct a new 31,200-square foot two-story building, a 730-square foot car wash, paving for auto display, employee and customer parking, retaining walls, landscaping and two 65-foot high pylon signs. One pylon sign is intended to be viewed from Interstate 8. The project includes the consolidation of multiple parcels, the relocation of an existing public sewer easement, and the vacation and abandonment of other easements no longer pertinent. A more detailed project description can be read in the companion Planning Commission staff
report dated February 11, 2013. City Council approval of the conditional use permit and tentative parcel map is required because the subject site is located within the boundaries of Specific Plan (SP) No. 462, which contains language that any CUP for automobile sales and/or service requires City Council approval.

Owner Participation and Development Agreement

On December 11, 2012, the City Council authorized the City Manager to enter into an exclusive negotiation agreement with Sunroad E C Land, Inc., for the development of a new BMW dealership at 720 El Cajon Boulevard. That negotiation agreement has resulted in a proposed agreement between the two parties for the Council's review and approval. Since the proposed agreement is primarily a fiscal economic development tool, it is only being considered by the Council. The Planning Commission only reviewed and recommended approval on the land use entitlements for the subject site.

The proposed Owner Participation and Development Agreement is not a "development agreement," whereby the developer will be obtaining vested rights to zoning or building codes. Instead, it is an arrangement, by which BMW South County will contractually agree to construct and operate a dealership at 720 El Cajon Boulevard, in consideration for which the City will be paying a calculable amount of money, over a period of years, which will provide capital so that BMW South County can recoup their investment. Such agreements are not uncommon and are widely used as an economic development incentive. Economic development incentives are tools used by state and local governments to retain or attract jobs and/or a tax base. This agreement ensures that BMW South County retains its sales operation through a specified time period, thus providing a continuous flow of sales tax to the City.

In consideration for BMW South County's performance under the agreement, the City will agree to make payments to BMW South County, measured by a portion of the net sales tax generated by BMW South County on the site as indicated in the City Reimbursement Schedule included in the agreement as Attachment 5, and will reimburse BMW South County for certain public and private improvements listed in Section 3.4 of the agreement. The City and BMW South County have agreed that the amount to be paid by the City to BMW South County during the operating period is a fair exchange for the consideration to be furnished by BMW South County to the City in the operating period. The City also agrees to consider various improvements and study potential new land use regulations in the El Cajon Boulevard corridor. The dealership will be renamed to reflect its El Cajon location.

In order for the City Council to approve the proposed land use entitlements and agreement, the Council must be able to make the following findings:

Conditional Use Permit No. 2179

A. The proposed dealership and freeway-oriented sign are consistent with applicable goals, policies, and programs of the General Plan;

B. The proposed dealership and freeway-oriented sign are consistent with all applicable use and development standards;
C. The proposed dealership and freeway-oriented sign will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use;

D. The proposed dealership and freeway-oriented sign will not be detrimental to the public health, safety, and general welfare, including but not limited to matters of noise, smoke, dust, fumes, vibration, odors, and hazards or excessive concentrations of traffic; and

E. The proposed dealership and freeway-oriented sign are in the best interest of public convenience and necessity.

Tentative Parcel Map No. 648

Section 16.12.090 of the ECMC states that the City shall deny approval of a tentative parcel map if the city’s legislative body (the City Council) makes any of the following findings:

A. The proposed map is not consistent with the General Plan.

B. The design or improvement of the proposed map is not consistent with the General Plan.

C. The site is not physically suitable for the type of development.

D. The site is not physically suitable for the proposed density of development.

E. The proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

F. The design or type of improvements is likely to cause serious public health problems.

G. The type of improvements will conflict with easements of record or easements established by court judgment, acquired by the public at large, for access through or use of property within the proposed map.

H. That all requirements of the CEQA have not been met.

I. That all requirements of the ordinances and policies of the city have not been met.

J. That the proposed map fails to meet or perform the requirements or conditions of this title or the Subdivision Map Act unless they find that such failure is a result of a technical and inadvertent error which does not materially affect the validity of the map.

Owner Participation and Development Agreement

A. The proposed agreement is a benefit to the City and its citizens.

B. The proposed agreement constitutes valid public purposes under Article XVI, Section 6 of the California Constitution.

C. The proposed agreement is in the best interest of public convenience and necessity.
Staff believes the Council can make the required findings to approve the requested conditional use permit, tentative parcel map and agreement as indicated below.

**Conditional Use Permit No. 2179**

In recommending approval of CUP No. 2179, the Planning Commission determined that the redevelopment of an existing automobile dealership and freeway-oriented sign is consistent with applicable goals, policies, and programs of the General Plan, because the dealership will facilitate the implementation of Special Development Area No. 10 of the General Plan, which recommends that this segment of El Cajon Boulevard develop into a strong sales and service area for automobile related activities. Furthermore, the project will continue to expand upon existing vehicle sales and service uses in the area and will allow a new dealership to be re-established on a site that has been historically developed for automobile dealership activities. Additionally, the freeway-oriented sign is an accessory feature for the regional automobile dealership which requires a broader means of identification.

The Commission also found that the proposed site plan is consistent with all applicable use and development standards, if the site plan is amended to show a bicycle facility able to accommodate bicycle parking at a ratio of 10% of the required parking; and if all applicable requirements from other City Departments and Divisions, and the Helix Water District are noted on the amended site plan.

The Commission additionally found that the proposed use and freeway-oriented sign will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use, if all dealership activities are conducted within the thresholds of the Performance Standards listed in Zoning Code Section 17.115.130; sufficient customer and employee parking is provided on-site; if on-site lighting does not create a nuisance on adjacent properties; if the applicant submits a sign analysis acceptable to the Planning Manager for up to 15 additional feet, if appropriate; and if the applicant obtains an outdoor advertising display permit from Caltrans prior to the issuance of building permits for the sign and it is erected according to the standards in the El Cajon Zoning Code, the California Building Code, and the Outdoor Advertising Act.

The Commission continued with its findings and determined that the proposed use, freeway-oriented sign and project design will not be detrimental to the public health, safety, and general welfare or excessive concentrations of traffic, if the applicant submits a sign analysis acceptable to the Planning Manager for up to 15 additional feet, if appropriate; and if it is operated in conformance with the performance standards for noise, air quality, water quality, and vibrations that are contained in the Zoning Code; and within the standards of the County of San Diego Department of Environmental Health Hazardous Materials Division. The existing public transportation systems are adequately designed to handle the projected transportation demands for this use.

Finally, the Commission determined that the proposed use is in the best interest of public convenience and necessity because it will redevelop an existing underutilized automobile site in accordance with the current regulatory framework and create a modern facility that is convenient for existing and future BMW customers.
In concert with the above findings for CUP No. 2179, the Planning Commission found that the design of the parcel map and proposed improvements are consistent with the General Plan and Specific Plan No. 462, because it prevents proposed buildings crossing existing property lines; removes vacated streets, right-of-ways and easements no longer pertinent; realigns an existing public sewer easement for improved building position; and, creates a buildable project site enabled to effectively satisfy the Zoning Code development standards.

The Commission found that the design of the map and proposed improvements are not likely to cause substantial environmental damage or cause serious public health problems because the proposed project site has historically been used as an automobile dealership; there is no habitat value and it is located in an urbanized area where zoning and General Plan designations recognize and support commercial development.

The Commission also found that the proposed parcel map and type of improvements will not conflict with easements of record or easements established by court judgment, acquired by the public at large, for access through or use of property within the proposed map, and there are no existing easements that will be affected by the proposed construction because the map will consolidate multiple parcels, realign an existing City sewer easement, and vacate or abandon other existing easements that are no longer pertinent.

Finally, the Commission determined that the proposed parcel map is exempt from the requirements of the California Environmental Quality Act under Section 15305 Class 5 (a) (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, because it will not result in any changes in land use or density and the average slope is less than 20%. Furthermore, all requirements of the Subdivision Map Act, El Cajon Municipal Code Title 16 and City policies will be satisfied before final map acceptance and recordation.

Owner Participation and Development Agreement

By its approval of this agreement, the City Council would be finding that it is of benefit to the City and its citizens for BMW South County continuing sales operations in the City, and its generation of continuous sales tax revenues. Additionally, by approving the agreement, the City Council also finds that the proposed transaction constitutes valid public purposes under Article XVI, Section 6 of the California Constitution, as necessary for the economic enhancement of the City and to preserve a revenue source for the City's general fund that supports services for the health, safety and welfare of the residents of the City. Furthermore, the City Council finds that it is necessary to protect the general fund revenue base and retain a top income-generating business by providing the opportunity for increased sales, fees, taxes, and revenues. Finally, the City Council would also be finding that the use and operation of the site as described in the attached agreement will assist in the generation of additional sales and use tax revenues to City; and therefore, the City desires to obtain such an agreement and the use restriction on the site in the best interest of public convenience and necessity.

CEQA: The proposed project is exempt from environmental review in accordance with Section 15302 (Replacement or Reconstruction), Class 2, Section 15305 (Minor Alterations in Land Use Limitations), Class 5 (a), and Section 15311 (Accessory Structures) Class 11 of
CEQA Guidelines. Class 2 allows for the replacement of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The proposed project to demolish the existing automobile dealership, including all structures totaling 36,981 square feet in building area, and replacing it with a new automobile dealership including a 31,200-square foot two-story building, 730-square foot car wash, vehicle display areas and parking is substantially the same purpose and capacity as the structures replaced. Class 5 allows the consolidation of parcels and the removal, relocation and adjustment of existing easements, because it will not result in any changes in land use or density and the average slope is less than 20%. Class 11 provides an exemption for the construction of minor structures that are accessory to commercial facilities, which is applicable to the freeway-oriented sign at a maximum height of 80-feet if it can be determined by an analysis acceptable to the Planning Manager that a height greater than 65 feet is appropriate. Finally, the project is required to satisfy all applicable storm water regulations because it meets the threshold established by the El Cajon Municipal Code Chapter 16.60 to be a priority project and is therefore subject to the Standard Urban Runoff Mitigation Plan requirements. None of the conditions in Section 15300.2, which provide exceptions for categorical exemptions, exist.

The proposed agreement is subject to CEQA because it requires a discretionary action by the City Council and includes certain public improvements not directly associated with CUP No. 2179 and TPM No. 648. The public improvements that will result from the agreement include, the relocation of the existing sewer system across the site, the repaving of Marshall Avenue from El Cajon Boulevard to West Main Street, the restriping of Marshall Avenue to accommodate an extended right turn lane, frontage improvements within the public right of way, maintenance of existing street trees and other landscaping located in the median and along El Cajon Boulevard from Wilson Avenue to Marshall; and if supported by a focused intersection capacity analysis, the City will increase the length of the left turn lane from El Cajon Boulevard onto Marshall Avenue, and the City will consider rescinding the existing two-hour parking zone on El Cajon Boulevard along the frontage of the site. These improvements fall under CEQA Categorical Exemption 15301 (Existing Facilities), because Class 1 allows for the maintenance and minor alteration of such facilities.

PUBLIC NOTICE: Notice of this public hearing was mailed on January 31, 2013, to all property owners within 300 feet of the subject site and to anyone who requested such notice in writing, in compliance with Government Code Sections 65090, 65091, and 65092, as applicable. Additionally, as a public service, the notice was posted in the kiosk at City Hall and on the City’s website under “Public Hearings/Public Notices.” The notice was also mailed to the two public libraries in the City of El Cajon, located at 201 East Douglas Avenue and 576 Garfield Avenue.

FISCAL IMPACT:

The agreement commits the City to sharing a net increase in sales tax revenue with Sunroad Land E C. It also commits the City to reimbursement of certain public improvements costs.
Attachments:

1. Proposed Resolutions
2. Companion Planning Commission staff report dated 02-11-13, w/attachments
4. Proposed Agreement
5. Public hearing notice
6. Plans (in Council Binders)
RESOLUTION NO. ___-13

A RESOLUTION APPROVING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) CATEGORICAL EXEMPTIONS 15302 (REPLACEMENT OR RECONSTRUCTION), 15305 (MINOR ALTERATIONS IN LAND USE LIMITATIONS), AND 15311 (ACCESSORY STRUCTURES) FOR THE BMW EL CAJON PROJECT.

WHEREAS, the El Cajon Planning Commission held a duly advertised public hearing on February 11, 2013, to consider Conditional Use Permit No. 2179 for the development of a new automobile dealership, including a freeway-oriented; and Tentative Parcel Map No. 648 for the consolidation of multiple parcels, the relocation of an existing public sewer easement, and the vacation and abandonment of other easements no longer pertinent on the properties located at the southwest corner of El Cajon Boulevard and Marshall Avenue, and addressed 720 El Cajon Boulevard; and

WHEREAS, in accordance with CEQA Guidelines Section 15061(b)(2), and prior to making a recommendation to the City Council, the Planning Commission reviewed and considered the information contained in the project staff report; and

WHEREAS, the El Cajon Planning Commission adopted Resolution No. 10720, recommending to the El Cajon City Council the approval of California Environmental Quality Act (CEQA) Categorical Exemption 15302 (Replacement or Reconstruction), 15305 (Minor Alterations in Land Use Limitations), and 15311 (Accessory Structures) for the BMW El Cajon Project; and

WHEREAS, the proposed project is exempt from CEQA under Sections 15302 (Replacement or Reconstruction), 15305 (Minor Alterations in Land Use Limitations), and 15311 (Accessory Structures) of CEQA Guidelines, which allow for the replacement of existing structures and facilities where the new structure(s) will be located on the same site as the structure(s) replaced and will have the substantially the same purpose and capacity as the structure replaced. The proposed project to demolish the existing automobile dealership including all structures totaling 36,981 square feet in building area and replacing it with a new automobile dealership including a 31,200-square foot two-story building, 730-square foot car wash, vehicle display areas and parking is substantially the same purpose and capacity as the structures replaced; and, Class 5 allows the consolidation of parcels and the removal, relocation and adjustment of existing easements, because it will not result in any changes in land use or density and the average slope is less than 20%; and, Class 11 provides an exemption for the construction of minor structures that are accessory to commercial facilities, which is applicable to the freeway-oriented sign up to 80-feet high if it can be determined by an analysis acceptable to the Planning Manager that a height greater than 65 feet is appropriate; and, the project is required to satisfy all applicable storm water regulations because it meets the threshold established by the El Cajon Municipal Code Chapter 16.60 to be a priority project and is therefore subject to the Standard Urban Runoff Mitigation Plan requirements; and, none of the conditions in Section 15300.2, which provide exceptions for categorical exemptions exist; and
WHEREAS, after considering evidence and facts, the City Council did consider the proposed Categorical Exemptions, Sections 15302, 15305, and 15311 as presented at its meeting.

NOW, THEREFORE, BE IT RESOLVED by the El Cajon City Council as follows:

Section 1. That the foregoing recitals are true and correct, and are findings of fact of the El Cajon City Council in regard to the proposed Categorical Exemptions Section 15302, Section 15305 and Section 15311 for the BMW El Cajon Project.

Section 2. That based upon said findings of fact, the El Cajon City Council hereby APPROVES the proposed Categorical Exemptions Section 15302, Section 15305 and Section 15311 for the proposed project to redevelop the project site for an automobile dealership and freeway oriented sign under Conditional Use Permit No. 2179; and the consolidation of the multiple parcels, the realignment of an existing public sewer easement, and the vacation or abandonment of other existing easements that are no longer pertinent according to the Subdivision Map Act by Tentative Parcel Map No. 648.
RESOLUTION NO. —13

A RESOLUTION APPROVING CONDITIONAL USE PERMIT NO. 2179 AUTHORIZING THE REDEVELOPMENT AND OPERATION OF AN EXISTING AUTOMOBILE DEALERSHIP, INCLUDING THE SALE OF NEW AND USED VEHICLES, SERVICING AND PARTS SALES AND A FREEWAY-ORIENTED SIGN IN THE C-G (GENERAL COMMERCIAL) ZONE; APNS: 487-490-07 & -19; GENERAL PLAN DESIGNATION: SPECIAL DEVELOPMENT AREA NO. 10 (SDA 10)/ GENERAL COMMERCIAL (CG)

WHEREAS, the Planning Commission held a public hearing on this item on February 11, 2013 to consider Proposed Planning Commission Resolution No. 10721 recommending City Council approval of Conditional Use Permit No. 2179, subject to conditions, and has submitted its recommendation to the City Council prior to the City Council taking action on this application; and

WHEREAS, the City Council reviewed and considered Planning Commission Resolution No. 10720 recommending City Council approval of California Environmental Quality Act (CEQA) Categorical Exemption 15302 (Replacement or Reconstruction), 15305 (Minor Alterations in Land Use Limitations), and 15311 (Accessory Structures) for the BMW El Cajon Project, prepared for this entitlement in accordance with CEQA Guidelines Section 15061(b)(2), and then adopted Resolution No. - 13 adopting the same; and

WHEREAS, the El Cajon City Council held a duly advertised public hearing on February 26, 2013, to consider Conditional Use Permit (CUP) No. 2179 as submitted by South County BMW, requesting to redevelop an automobile dealership on an existing commercially developed site located at the southwest corner El Cajon Boulevard and Marshall Avenue in the C-G zone.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

A. The City Council finds that:

1. The recitals above are true and correct and have been incorporated herein by reference; and

2. The proposed use and freeway-oriented sign is consistent with applicable goals, policies, and programs of the General Plan; and the proposed dealership will facilitate the implementation of Special Development Area No. 10 of the General Plan, which recommends that the segment of Johnson Avenue south of Interstate 8 to El Cajon Blvd. and including El Cajon Blvd. from West Main Street to West Chase Avenue develop into a strong sales and service area for automobile related activities; and the proposal will continue to expand upon existing vehicle sales and service uses in the area and will allow a new dealership to be redeveloped on a site that has been
developed for automobile dealership activities. Furthermore, the freeway-oriented sign is an accessory feature for the existing regional automobile dealership which requires a broader means of identification; and

3. The proposed site plan is consistent with all applicable use and development standards, if the site plan is amended to show a bicycle facility able to accommodate bicycle parking at a ratio of 10% of the required parking. Furthermore, all applicable requirements from other City Departments and Divisions, and the Helix Water District are noted on the amended site plan; and

4. The proposed use and freeway-oriented sign will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use, if all dealership activities are conducted within the thresholds of the Performance Standards listed in Zoning Code Section 17.115.130; sufficient customer and employee parking is provided on-site; if on-site lighting does not create a nuisance on adjacent properties; and if the applicant submits an analysis acceptable to the Planning Manager for up to 15 additional feet, if appropriate; and if the applicant obtains an outdoor advertising display permit from Caltrans prior to the issuance of building permits for the sign and it is erected according to the standards in the El Cajon Zoning Code, the California Building Code, and the Outdoor Advertising Act; and

5. The proposed use, freeway-oriented sign and project design will not be detrimental to the public health, safety, and general welfare, including but not limited to matters of noise, smoke, dust, fumes, vibration, odors, and hazards or excessive concentrations of traffic, if the applicant submits an analysis acceptable to the Planning Manager for up to 15 additional feet, if appropriate; and if it is operated in conformance with the performance standards for noise, air quality, water quality, and vibrations that are contained in the Zoning Code and within the standards of the County of San Diego Department of Environmental Health Hazardous Materials Division. Odors are not anticipated because the facility will not include vehicle painting. The existing public transportation systems are adequately designed to handle the projected transportation demands for this use; and

6. The proposed use is in the best interest of public convenience and necessity because it will redevelop an existing underutilized automobile site in accordance with the current regulatory framework and create a modern facility that is convenient for existing and future BMW customers.

B. The City Council hereby APPROVES Conditional Use Permit No. 2179, for an automobile dealership in the C-G zone on the above described properties, subject to the following conditions:

1. Prior to the issuance of building permits, or as otherwise determined by the Planning Manager, the applicant shall submit and obtain approval of a
revised, one-page, 24" by 36" mylar site plan that reflects the following specific notes and changes:

a. Indicate a bike rack able to accommodate bicycle parking at a ratio of 10% of the required parking.

b. Remove the "See Civil or Landscape" note block.

c. Note that all uses will operate according to the performance standards in ECMC Section 17.115.130.

d. Under the heading "Planning Division Notes" add the ongoing conditions of approval listed in condition 5.

e. Include the following note: "This project shall comply with the Standard Conditions of Development from Planning Commission Resolution No. 10649, as applicable, which are incorporated herein by reference."

f. The revised site plan shall reflect the applicable comments and include all of the required notes from the Public Works Dept. attached to this resolution as "Exhibit B" and dated 01-16-13.

g. The revised site plan shall reflect the applicable comments listed in the Building comments from the Building and Fire Safety Division attached to this resolution as "Exhibit C" and dated 01-14-12.

h. The revised site plan shall reflect the applicable comments and include all of the required notes listed in the Fire comments from the Building and Fire Safety Division attached to this resolution as "Exhibit D" and dated 01-14-13.

i. The revised site plan shall reflect the applicable comments from the Helix Water District attached to this resolution as "Exhibit E" and dated 01-15-13.

2. Prior to the issuance of building permits, or as otherwise determined by the Planning Manager, the applicant shall complete the following:

a. The revised CUP site plan required in condition 1 shall be approved by the Planning Division.

b. The applicant shall comply with all the conditions listed in the "Standard Conditions of Development" adopted by the Planning Commission by Planning Commission Resolution No. 10649 and labeled "Exhibit A" as applicable.

c. Submit the required copies of the recorded final parcel map. The map shall be in conformance with the approved CUP No. 2179 Site Plan.

d. Submit a lighting plan in accordance with El Cajon Municipal Code Section 17.130.150. The plan shall include the location of all external lighting elements and their respective design. Planning Division approval of the plan is required before building permit issuance.

e. The approved building material types and colors of all exterior elevations shall be shown on the construction drawings submitted for building permits and shall be in substantial conformance with the materials approved by the City Council.

f. Submit a comparison or line of sight analysis, or other analysis acceptable to the Planning Manager that determines that the proposed 65-foot high sign is not sufficient, and a greater height up to
80 feet is appropriate for identification.

g. Obtain and submit to the Planning Division an outdoor advertising display permit from Caltrans prior to the issuance of building permits for the sign.

h. Comply with the Public Works Department comments attached to this resolution as “Exhibit B” and dated 01-16-13, to the satisfaction of the Deputy Director of Public Works and the Planning Manager.

i. Comply with the building comments from the Building and Fire Safety Division attached to this resolution as “Exhibit C” and dated 01-14-13.

j. Comply with the fire comments from the Building and Fire Safety Division attached to this resolution as “Exhibit D” and dated 01-14-13.

k. Comply with the comments from the Helix Water District attached to this resolution as “Exhibit E” and dated 01-15-13.

l. Obtain approval of a Landscape Documentation Package (LDP) in conformance with the requirements of Chapter 17.195 of the Zoning Code, and consistent with the guidelines provided in the City of El Cajon Landscape Design Manual. The LDP shall further indicate landscaping in all areas excluding the dwelling units and the private rear yards for the dwelling units.

3. Prior to the issuance of building permits or as otherwise determined by the Planning Manager, Tentative Parcel Map No. 648 shall be finaled and recorded.

4. Prior to the granting of occupancy or as otherwise determined by the Planning Manager, all on-site improvements shall be completed or guaranteed in accordance with the approved CUP No. 2179 site plan. In addition, the following items shall be completed and/or inspected:

a. Complete the installation of the approved landscaping and irrigation system and obtain approval of a Certificate of Completion.

b. Satisfy all requirements of the Public Works Department, Building Division, Fire Safety Division, & Helix Water District as indicated in the attached comments dated and labeled 01-16-13 (Exhibit B), 01-14-12 (Exhibit C), 01-14-13 (Exhibit D), & 01-15-13 (Exhibit E), respectively.

5. The following are ongoing conditions of approval for this conditional use permit and shall be noted on the CUP site plan.

a. Any change in use or expansion of may require prior city approval, including an amendment to this conditional use permit.

b. The minimum number of striped parking spaces shall be maintained as indicated on the approved CUP No. 2179 site plan.

c. A bicycle rack shall be maintained, per the approved location shown on the final site plan.

d. The uses shall be operated in a manner that complies at all times with the performance standards listed in Section 17.115.130 of the Zoning Code.

e. All landscaped areas shall be sufficiently watered and periodically fertilized to establish and maintain healthy growth, and shall be
maintained in a neat, litter and weed free condition. All plants shall be pruned and trimmed as necessary, and upon notification by the Planning Division, all plant materials that have died or have failed to show healthy growth shall be replaced by plants of the same or similar species. Replacement by more drought resistant plants may also be approved. Landscape maintenance shall include regular inspection, adjustment, and repair of the irrigation system, including making seasonal changes to the irrigation controller.

6. The existence of this conditional use permit shall be recorded with the County Recorder.

7. The Planning Commission may at any time during the life of this use permit, after holding a properly noticed public hearing, at which time the applicant may appear and object under applicable law to any potential revocation or modification of the conditions of approval, and after considering testimony as to the operation of the approved uses, revoke the permit, or modify the permit with any additional conditions as it deems necessary, to ensure that the approved uses continue to be compatible with surrounding properties and continue to be operated in a manner that is in the best interest of public convenience and necessity and will not be contrary to the public health, safety or welfare.

8. The proposed use shall be operated in substantial conformance as presented in the Planning Commission staff report titled Conditional Use Permit No. 2179, dated February 11, 2013, except as modified by this resolution. Operation of the uses in violation of the conditions of approval is grounds for revocation.

9. If this permit is not legally exercised within two years of project approval, and a written request for an extension of time has not been received by the Planning Commission Secretary within the same time period, and subsequently approved by the Planning Commission, this conditional use permit shall be considered null and void per El Cajon Zoning Code Section 17.35.010.
A RESOLUTION APPROVING TENTATIVE PARCEL MAP NO. 648 FOR THE CONSOLIDATION OF MULTIPLE PARCELS, THE RELOCATION OF AN EXISTING PUBLIC SEWER EASEMENT, AND THE VACATION AND ABANDONMENT OF OTHER EASEMENTS NO LONGER PERTINENT ON PROPERTIES LOCATED AT THE SOUTHWEST CORNER OF EL CAJON BOULEVARD AND MARSHALL AVENUE, APNS: 487-490-07 & 487-490-19; GENERAL PLAN DESIGNATION: SPECIAL DEVELOPMENT AREA NO. 10 (SDA NO. 10)/ GENERAL COMMERCIAL (GC)

WHEREAS, the Planning Commission held a public hearing on this item on February 11, 2013 to consider Proposed Planning Commission Resolution No. 10725 recommending City Council approval of Tentative Parcel Map No. 648, subject to conditions, and has submitted its recommendation to the City Council prior to the City Council taking action on this application; and

WHEREAS, the City Council reviewed and considered Planning Commission Resolution No. 10720 recommending City Council approval of California Environmental Quality Act (CEQA) Categorical Exemption 15302 (Replacement or Reconstruction), 15305 (Minor Alterations in Land Use Limitations), and 15311 (Accessory Structures) for the BMW El Cajon Project, prepared for this entitlement in accordance with CEQA Guidelines Section 15061(b)(2), and then adopted Resolution No. - 13 adopting the same; and

WHEREAS, the El Cajon City Council held a duly advertised public hearing on February 26, 2013, to consider Tentative Parcel Map No. 648 as submitted by South County BMW, requesting to requesting the consolidation of multiple parcels, the relocation of an existing public sewer easement, and the vacation and abandonment of other easements no longer pertinent on the existing commercially developed site located at the southwest corner El Cajon Boulevard and Marshall Avenue in the C-G zone.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:

A. The City Council finds that:

1. The recitals above are true and correct and have been incorporated herein by reference; and

2. The design of the parcel map and proposed improvements are consistent with the General Plan and Specific Plan No. 462, because it prevents proposed buildings crossing existing property lines; removes vacated streets, right-of-ways and easements no longer pertinent; realigns an existing public sewer easement for improved building position; and, creates a buildable project site enabled to effectively satisfy the Zoning Code development standards; and
3. The design of the map and proposed improvements are not likely to cause substantial environmental damage or cause serious public health problems because the proposed project site has historically been used as an automobile dealership; there is no habitat value and it is located in an urbanized area where zoning and General Plan designations recognize and support commercial development; and

4. The proposed parcel map and type of improvements will not conflict with easements of record or easements established by court judgment, acquired by the public at large, for access through or use of property within the proposed map, and there are no existing easements that will be affected by the proposed construction because the map will consolidate multiple parcels, realign an existing City sewer easement, and vacate or abandon other existing easements that are no longer pertinent; and

5. The proposed parcel map is exempt from the requirements of the California Environmental Quality Act under Section 15305 Class 5 (a) (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, because it will not result in any changes in land use or density and the average slope is less than 20%. Furthermore, all requirements of the Subdivision Map Act, El Cajon Municipal Code Title 16 and City policies will be satisfied before final map acceptance and recordation.

NOW, THEREFORE, BE IT RESOLVED that based upon said findings of fact stated above, the El Cajon City Council hereby APPROVES Tentative Parcel Map No. 648 for the consolidation of multiple parcels, the relocation of an existing public sewer easement, and the vacation and abandonment of other easements no longer pertinent, on the above described property subject to the following conditions:

1. The applicant shall comply with all requirements of the Public Works Department indicated in the attached comments to Planning Commission Resolution No. 10721 labeled as “Exhibit B” and dated 01-16-13.

2. Prior to the issuance of building permits or as otherwise determined by the Planning Manager, the final map for TPM No. 648 shall be recorded and the appropriate number of copies returned to the City.

3. The final map shall be in substantial conformance with the approved site plan for CUP No. 2179 and TPM No. 648.

4. The final map shall be accepted by the City Council and prepared for recordation in accordance with El Cajon Municipal Code Chapter 16.32.

5. The recordation of the final map shall be in accordance with the time limits permitted in Government Code §66452.6 et. seq.
RESOLUTION NO. __-13

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CAJON
APPROVING AND AUTHORIZING THE EXECUTION OF AN OPERATION AND
DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF EL CAJON AND SUNROAD EC LAND, INC., AND
MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

WHEREAS, on December 11, 2012, the El Cajon City Council approved and
authorized the City Manager to enter into an Exclusive Negotiation Agreement on behalf
of the City of El Cajon (the “City”) with Sunroad EC Land, Inc. (the “Developer”), for the
Development of a New BMW Dealership located at 720 El Cajon Boulevard, El Cajon
(the “Subject Property”); and

WHEREAS, the Developer and City now wish to enter into an Operation and
Development Agreement (the “Agreement”) whereby the Developer will covenant to
develop a new BMW dealership consistent with BMW USA’s new image requirements,
which include modern European style frontage, showroom service areas, and customer
waiting areas (the “Dealership”) that will serve BMW customers, and the Developer has
expressed an interest in developing the Dealership on property located at 720 El Cajon
Boulevard in the City (the “Site”); and

WHEREAS, the City Council has determined that the imposition of these and
other operating covenants and restrictive covenants with respect to the Project
constitutes a valid public purpose, and therefore the City desires to obtain such
operating covenants and restrictive covenants with respect to the Project in
consideration of the transfer of sums in accordance with the terms of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF EL CAJON AS FOLLOWS:

1. The City Council hereby finds that the foregoing Recitals are true and
   correct.

2. Based upon the record as a whole, the City Council hereby finds and
determines that the proposed Agreement is subject to CEQA because it requires a
discretionary action by the City Council and includes certain public improvements not
directly associated with CUP No. 2179 and TPM No. 648. The public improvements that
will result from the Agreement include, the relocation of the existing sewer system
across the site, the repaving of Marshall Avenue from El Cajon Boulevard to West Main
Street, the restriping of Marshall Avenue to accommodate an extended right turn lane,
frontage improvements within the public right of way, maintenance of existing street
trees and other landscaping located in the median and along El Cajon Boulevard from
Wilson Avenue to Marshall; and if supported by a focused intersection capacity
analysis, the City will increase the length of the left turn lane from El Cajon Boulevard

(Continued on Page 2)
onto Marshall Avenue, and the City will consider rescinding the existing two-hour parking zone on El Cajon Boulevard along the frontage of the site. The City Council further finds and determines that these improvements fall under CEQA Categorical Exemption 15301 (Existing Facilities), because Class 1 allows for the maintenance and minor alteration of such facilities.

3. The City Council hereby approves that certain Owner Participation and Development Agreement in substantially the same form as presented to the City Council at this meeting, with such changes as may be approved by the City Manager or designee.

4. The City Manager, Deputy City Manager, or their designees, are hereby authorized to sign the Agreement. The City Clerk, or Deputy City Clerk, is hereby authorized to attest to the signature of the City Manager, Deputy City Manager, or designee. The execution of the Agreement by the City Manager, Deputy City Manager, or designee shall be deemed approval of any changes in the Agreement at the time of execution.

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

PASSED AND ADOPTED by the City Council of the City of El Cajon, California, at a Regular Joint City Council/Housing Authority/Successor Agency to the El Cajon Redevelopment Agency Meeting held this 26th day of February, 2013, by the following vote to wit:

AYES:
NOES:
ABSENT:
DISQUALIFY:

Mayor of the City of El Cajon

ATTEST:

City Clerk

I hereby certify that the above and foregoing is a full and true copy of Resolution No. ____-13 of the Resolutions of the City of El Cajon, California, as adopted by the City Council at the Regular Joint Meeting of the City Council/Housing Authority/Successor Agency to the Redevelopment Agency on the 26th day of February, 2013.

Kathie J. Rutledge, CMC, City Clerk

2/26/13 (Item____)
AGENDA ITEM NO. 2

SUBJECT: BMW EL CAJON - CONDITIONAL USE PERMIT NO. 2179 AND TENTATIVE PARCEL MAP NO. 648

(This item is tentatively scheduled for the City Council meeting on February 26, 2013 at 7:00 p.m.)

This is a public hearing on a request for a new automobile dealership, freeway-oriented sign, and the consolidation of multiple parcels and the vacation or abandonment of existing easements. The subject property is addressed as 720 El Cajon Boulevard. This project is exempt from the California Environmental Quality Act (CEQA).

APNs: 487-490-07 and 487-490-19
General Plan: Special Development Area No. 10 (SDA 10)/ General Commercial (CG)
Zoning: C-G (General Commercial)
Applicant: BMW South County (Tom Story) / 858.362.8500
Project Planner: Tony Shute / 619.441.1705
Email: tonys@cityofelcajon.us and include “CUP 2169/ TPM 648” in Subject Line.

********** ********** ********** **********

RECOMMENDED ACTIONS: Move to adopt proposed Resolution Nos. 10720, 10721 and 10725 recommending City Council approval of applicable CEQA Exemptions, Conditional Use Permit No. 2179 and Tentative Parcel Map No. 648, subject to conditions.

********** ********** ********** **********

BACKGROUND

The subject site was developed prior to 1975 and has historically been operated as an automobile dealership. Previous dealerships on the subject site have operated as legal nonconforming. In 1985, a conditional use permit (CUP) was issued for an automobile dealership operation to allow an expansion and subsequently eliminate the legal nonconforming status.

PROJECT DESCRIPTION

Existing Conditions: The subject site is located on the southwest corner of El Cajon Boulevard and Marshall Avenue and is 3.89 acres in area. The site is completely improved and slopes slightly from the rear toward the public streets. The site is developed with
vehicle display areas and multiple buildings including sales offices and service buildings for the existing used car dealership. There are SDG&E and City of El Cajon easements encompassing the site as indicated on the TPM No. 648 site plan.

The surrounding land uses are located in the C-G zone and include used automobile sales and repair to the south, and related service uses across El Cajon Boulevard to the east and to the north. To the west is the MTS Trolley right-of-way that separates the subject site from the industrial uses located in the M zone.

Project Proposal:

The applicant proposes to demolish all the existing on-site improvements, grade the site to minimize the slope across the site, then construct a new 31,200-square foot two-story building, a 730-square foot car wash, paving for auto display, employee and customer parking, retaining walls, landscaping and two 65-foot high pylon signs. One pylon sign is intended to be viewed from Interstate 8, thus making it a freeway-oriented sign and subject to discretionary review and approval. The proposed dealership will conduct new and used vehicle sales, automobile service and parts sales. The project includes the consolidation of multiple parcels, the relocation of an existing El Cajon sewer easement, and the vacation and abandonment of other easements no longer pertinent.

Entitlements and Use

The proposed project is subject to the El Cajon Municipal Code (ECMC) Title 17 through Conditional Use Permit No. 2179 for the automobile dealership and the 65-foot high freeway oriented sign. The consolidation of parcels and the relocation, vacation or abandonment of easements is subject to the Subdivision Map Act under Tentative Parcel Map No. 648.

Architectural Design

Chapter 17.180 of the Zoning Code requires design creativity and visual interest through variations in exterior forms, materials, and colors. The design and visual interest of the project is primarily accomplished by a significant amount of storefront glazing (windows) across the El Cajon Boulevard elevation. The glazing wraps around to each side for a linear distance of 55 feet on the Marshall Avenue elevation and 85 feet on the west elevation. Aluminum window framing and various exterior wall materials such as split-face concrete, stucco and EIFS will provide changes to the horizontal and vertical dimensions (EIFS is a modern, lightweight synthetic wall cladding that includes foam plastic insulation and thin synthetic coatings similar to stucco). The proposed parapet will screen all rooftop equipment from the surrounding public views. The color palette of white, gray and aluminum finishes complement the modern appearance of the building. The proposed colored elevations have been included in the Planning Commissioner’s binders and building material color board will be displayed at the Planning Commission hearing.
Site Circulation/ Parking

The project site is located at the southwest corner of El Cajon Boulevard and Marshall Avenue. The adjacent public transportation system serves the project site and the surrounding properties in the area and includes El Cajon Boulevard, Marshall and Washington Avenues and the El Cajon Transit Center (ECTC). El Cajon Boulevard is classified as a primary arterial and is currently a four-lane divided roadway with sidewalks on each side. On-street parking is permitted along both sides of the street and there are no bike lanes provided. Marshall Avenue is a secondary roadway and is designed with two to four lanes, sidewalks and Class II bike lanes, except from W. Main Street to El Cajon Boulevard there are two lanes of travel, Class II bikes lanes and curbside parking on the eastside.

Washington Avenue is designed as a primary roadway and is currently improved with four lanes, sidewalks, and Class II bike lanes. On-street parking is not permitted. The ECTC is located on the west side of Marshall Avenue between Palm Avenue and West Main Street, approximately ¼-mile from the project site. The ECTC is served by 11 local and regional bus routes and it has a taxi terminal.

El Cajon Boulevard is designed to accommodate 35,500 daily vehicles at level of service (LOS) D. Most of El Cajon Boulevard operates at LOS A, except between Chase and Marshall/ Washington Avenues, which operates at LOS D while handling on average 31,500 vehicles per day. Marshall Avenue is designed to provide for 19,000 vehicles per day at LOS C, but operates at LOS C from Palm Avenue to El Cajon Boulevard and Washington Avenue can accommodate 34,200 vehicles and operates at LOS B.

The project site is located within the boundaries of Specific Plan (SP) No. 462 and is therefore subject to the vehicle parking standards detailed in this ordinance. The proposed dealership provides the required number of parking spaces in accordance with SP No. 462 as shown in the table below. Based on the proposed site plan, the buildings' floor area and the vehicle display areas show 121 parking spaces will be provided for customers and employees. Additionally, the project must also provide a secure and accessible mechanism to park bicycles in accordance with Zoning Code Section 17.185.150. Although bicycle parking is depicted on the applicant's proposed site plan, it must accommodate at least 12 bicycles.

Lighting

The project site plan includes freestanding light poles and building façade mounted lights. Section 17.130.150 of the Zoning Code requires that adequate lighting be provided to ensure pedestrian and vehicular safety, but not create a nuisance on adjacent properties. Lights must be of an appropriate size and intensity and must be directed downward and hooded to prevent casting glare upon adjacent properties. Additionally, lighting element details will need to be provided for all proposed exterior lights that are in concert with the
The overall theme of the project. The proposed resolution recommends that a lighting plan be submitted to the Planning Division that clearly indicates the location of all on-site lighting and includes details that indicate how the lights are shielded, so as not to create a nuisance on any adjacent properties.

**Freeway-Oriented Sign**

The applicant's proposal includes a 65-foot high freestanding freeway-oriented sign that has 144 square feet of sign area shown on the proposed sign plan at the southwest corner of the site. The sign is proposed with the overall project's color theme of white, gray and aluminum. This location is approximately 450 feet to the nearest traveling lane. The proposed sign is within the allowable height and sign area on a site that is greater than two acres according to ECMC Section 17.190.190. Normally, a 65-foot high freeway-oriented pylon sign would be authorized at the administrative level, but since the sign is part of the proposed project to redevelop the entire site, it has been included in the scope of the conditional use permit request. For comparison purposes, the Toyota of El Cajon freeway-oriented sign is 80-feet high, with 1,040-square feet of sign area and is located 130-feet to the nearest freeway traveling lane.

A sign height greater than 65-feet high may be approved if it can be shown that it is necessary to gain adequate identification. This can be achieved by a line of sight or comparison analysis that includes the elevation of the site and the elevation of the adjacent freeway. If the project applicant determines that the proposed 65-foot high sign is not sufficient, and a greater height is appropriate for identification, a condition of approval is proposed to allow the applicant to submit an analysis acceptable to the Planning Manager for staff review and approval up to 80 feet. Under no circumstances will a greater height beyond 15 additional feet be approved without a formal amendment of this conditional use permit.

**Consolidation of Parcels**

The proposed redevelopment of the site includes the consolidation of multiple parcels, the realignment of an existing City sewer easement, and the vacation or abandonment of other existing easements that are no longer pertinent. The existing parcels, right-of-ways, electric and public utility easements have created a fragmented project site. The merging of the existing parcels into one comprehensive legal property, and the removal, relocation and adjustment of existing easements benefits the project in the following ways:

1. Prevents the proposed buildings crossing existing property lines
2. Removes vacated streets, right-of-ways and easements no longer pertinent
3. Realigns existing City sewer easement for improved building position
4. Creates an efficient buildable project site
GENERAL PLAN/ CODE COMPLIANCE

General Plan: The project site is designated as Special Development Area No. 10 (SDA No. 10) and GC (General Commercial) on the General Plan Land Use Map. As described in the Land Use Element of the General Plan, SDA No.10 is an older commercial area along El Cajon Blvd. and a mixed industrial/commercial area along Johnson Avenue that has developed with a base of automobile sales and service activities. General Plan Policy 9-2.4 states, “The City will make every effort to concentrate automotive dealerships in the new El Cajon Boulevard-Johnson Avenue Special Development Area.” The use of the subject site as a dealership with vehicle servicing and parts sales is consistent with SDA No.10 and policies within the General Plan because it will allow a modern vehicle sales and service facility to be established in an area that is intended to develop into a strong sales and service area for such uses.

Zoning Code: Automobile sales, service, parts sales and a freeway-oriented sign may be approved in the C-G zone subject to satisfying development standards in the Zoning Code. Furthermore, a CUP is required in order to ensure compliance with applicable development standards, use restrictions, and compatibility with surrounding properties and land uses.

<table>
<thead>
<tr>
<th>Development Standard</th>
<th>C-G Zone</th>
<th>Proposed Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Lot Area</td>
<td>None</td>
<td>3.87 acres (net)</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td>None</td>
<td>429 feet on El Cajon Blvd. &amp; 339 feet on Marshall Ave.</td>
</tr>
<tr>
<td>Minimum Front Yard*</td>
<td>10 feet</td>
<td>10 feet</td>
</tr>
<tr>
<td>Minimum Interior Side Yard</td>
<td>0 feet to commercial &amp; manufacturing zones</td>
<td>160 &amp; 190 feet</td>
</tr>
<tr>
<td>Minimum Street Side Yard*</td>
<td>10 feet</td>
<td>10 feet</td>
</tr>
<tr>
<td>Minimum Rear Yard</td>
<td>0 feet to commercial &amp; manufacturing zones</td>
<td>48 feet</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td>35 feet</td>
<td>30 feet</td>
</tr>
<tr>
<td>Maximum Lot Coverage</td>
<td>None</td>
<td>20 percent</td>
</tr>
<tr>
<td>Parking (Auto &amp; Bicycle)</td>
<td>Auto: 1:250 for first 10,000 sq. ft. of building area, plus 1:300 for balance, plus 1:500 for indoor vehicle display, plus 1:1000 of outdoor vehicle display = 121</td>
<td>121 spaces provided</td>
</tr>
<tr>
<td></td>
<td>Bicycle: 10% of required auto spaces = 12</td>
<td>Bike rack for 12 bicycles</td>
</tr>
</tbody>
</table>
Minimum Site Landscaping | Exterior yards & 10 sq. ft. per parking space | Exceeds minimum
--- | --- | ---
Walls | 6-foot high on property line abutting residential zones | No freestanding walls proposed
Freestanding freeway-oriented sign | 65-feet high & within 2 sq. ft. per lineal foot of street frontage – administrative approval
Greater height than 65-feet – Planning Commission | 65-feet high
144 sq. ft. sign area

*Minimum front and street side yards must be landscaped for the full depth of the required yard. (El Cajon Municipal Code (ECMC) Section 17.195.100 A)

**Performance Standards:** Section 17.115.130 of the Zoning Code contains minimum performance standards for air, water, noise and vibrations. The proposed dealership and associated activities will be required to be conducted in accordance with these standards. It is not anticipated that any of the service activities proposed at the site will exceed the thresholds stipulated in the performance standards, as they will be performed within the existing service bays and are typical service activities that are found at automobile dealerships.

**Department of Transportation/ Outdoor Advertising Act:** The proposed freeway-oriented sign must conform to Department of Transportation (Caltrans) regulations for outdoor advertising structures that are designed to be viewed from the freeway. The applicant will need to obtain an outdoor advertising display permit from Caltrans prior to the issuance of building permits for the sign. The outdoor advertising display permit will require compliance with the Outdoor Advertising Act. The proposed resolution will also include these requirements as ongoing conditions of approval.

**Subdivision Ordinance/ Subdivision Map Act:** TPM No. 648 proposes to consolidate the existing parcels on the project site, adjust the location of the existing City of El Cajon sewer easement, vacate and abandon non-essential easements. The authority and procedures for the processing of a tentative parcel map are found in the California Subdivision Map Act, and the City of El Cajon Subdivision Ordinance (Title 16 of the El Cajon Municipal Code.)

The Planning Commission’s role in analyzing and making a decision regarding the proposed parcel map is described in Section 16.24.113 of the El Cajon Municipal Code (ECMC). Section 16.24.113 requires the Planning Commission to make a report to the City Council regarding the design of the proposed parcel map and the nature and extent of the proposed improvements. In this context, “improvements” means public or private, street and/or drainage improvements. The Public Works Department has provided comments regarding the proposed parcel map, grading, and drainage improvements and those comments have been included as an attachment to this staff report.
Required Findings: In order for the Commission to recommend City Council approval of the proposed project, the Commission must be able to make the following findings:

**Conditional Use Permit No. 2179**

A. The proposed dealership and freeway-oriented sign is consistent with applicable goals, policies, and programs of the General Plan;

B. The proposed dealership and freeway-oriented sign is consistent with all applicable use and development standards;

C. The proposed dealership and freeway-oriented sign will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use;

D. The proposed dealership and freeway-oriented sign will not be detrimental to the public health, safety, and general welfare, including but not limited to matters of noise, smoke, dust, fumes, vibration, odors, and hazards or excessive concentrations of traffic; and

E. The proposed dealership and freeway-oriented sign is in the best interest of public convenience and necessity.

**Tentative Parcel Map No. 648**

Section 16.12.090 of the ECMC states that the City shall deny approval of a tentative parcel map if the city's legislative body (the City Council) makes any of the following findings:

A. The proposed map is not consistent with the General Plan.

B. The design or improvement of the proposed map is not consistent with the General Plan.

C. The site is not physically suitable for the type of development.

D. The site is not physically suitable for the proposed density of development.

E. The proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

F. The design or type of improvements is likely to cause serious public health problems.
Planning Commission Staff Report
Conditional Use Permit No. 2179 & Tentative Parcel Map No. 648 – BMW El Cajon
February 11, 2013 Agenda

G. The type of improvements will conflict with easements of record or easements established by court judgment, acquired by the public at large, for access through or use of property within the proposed map.

H. That all requirements of the CEQA have not been met.

I. That all requirements of the ordinances and policies of the city have not been met.

J. That the proposed map fails to meet or perform the requirements or conditions of this title or the Subdivision Map Act unless they find that such failure is a result of a technical and inadvertent error which does not materially affect the validity of the map.

CEQA: The proposed project is exempt from environmental review in accordance with Section 15302 (Replacement or Reconstruction), Class 2, Section 15305 (Minor Alterations in Land Use Limitations), Class 5 (a), and Section 15311 (Accessory Structures) Class 11 of CEQA Guidelines. Class 2 allows for the replacement of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have the substantially the same purpose and capacity as the structure replaced. The proposed project to demolish the existing automobile dealership including all structures totaling 36,981 square feet in building area and replacing it with a new automobile dealership including a 31,200-square foot two-story building, 730-square foot car wash, vehicle display areas and parking is substantially the same purpose and capacity as the structure replaced. Class 5 allows the consolidation of parcels and the removal, relocation and adjustment of existing easements, because it will not result in any changes in land use or density and the average slope is less than 20%. Class 11 provides an exemption for the construction of minor structures that are accessory to commercial facilities, which is applicable to the freeway-oriented sign at a maximum height of 80-feet if it can be determined by an analysis acceptable to the Planning Manager that a height greater than 65 feet is appropriate. Finally, the project is required to satisfy all applicable storm water regulations because it meets the threshold established by the El Cajon Municipal Code Chapter 16.60 to be a priority project and is therefore subject to the Standard Urban Runoff Mitigation Plan requirements. None of the conditions in Section 15300.2, which provide exceptions for categorical exemptions, exist.

Noticing Requirements: Notice of this public hearing was mailed on January 31, 2013 to all property owners within 300 feet of the project site and to anyone who requested such notice in writing, in compliance with Government Code Sections 65090, 65091, and 65092, as applicable. Additionally, as a public service, the notice was posted in the kiosk at City Hall and on the City's website under “Public Hearings/Public Notices.” The notice was also mailed to the two public libraries in the City of El Cajon, located at 201 East Douglas Avenue and 576 Garfield Avenue.
ANALYSIS

Required Findings: In order for the Commission to recommend City Council approval of the proposed project, the Commission must be able to make the following findings:

Conditional Use Permit No. 2179

A. The proposed use and freeway-oriented sign is consistent with applicable goals, policies, and programs of the General Plan. The proposed dealership will facilitate the implementation of Special Development Area No. 10 of the General Plan, which recommends that the segment of Johnson Avenue south of Interstate 8 to El Cajon Blvd. and including El Cajon Blvd. from West Main Street to West Chase Avenue develop into a strong sales and service area for automobile related activities. The proposal will continue to expand upon existing vehicle sales and service uses in the area and will allow a new dealership to be re-established on a site that has been developed for automobile dealership activities. Furthermore, the freeway-oriented sign is an accessory feature for the regional automobile dealership which requires a broader means of identification.

B. The proposed site plan is consistent with all applicable use and development standards, if the site plan is amended to show a bicycle facility able to accommodate bicycle parking at a ratio of 10% of the required parking. Furthermore, all applicable requirements from other City Departments and Divisions, and the Helix Water District are noted on the amended site plan.

C. The proposed use and freeway-oriented sign will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use, if all dealership activities are conducted within the thresholds of the Performance Standards listed in Zoning Code Section 17.115.130; sufficient customer and employee parking is provided on-site; if on-site lighting does not create a nuisance on adjacent properties; and if the applicant submits a sign analysis acceptable to the Planning Manager for up to 15 additional feet, if appropriate; and if the applicant obtains an outdoor advertising display permit from Caltrans prior to the issuance of building permits for the sign and it is erected according to the standards in the El Cajon Zoning Code, the California Building Code, and the Outdoor Advertising Act.

D. The proposed use, freeway-oriented sign and project design will not be detrimental to the public health, safety, and general welfare, including but not limited to matters of noise, smoke, dust, fumes, vibration, odors, and hazards or excessive concentrations of traffic, if the applicant submits a sign analysis acceptable to the Planning Manager for up to 15 additional feet, if appropriate; and if it is operated in conformance with the performance standards for noise, air quality, water quality, and vibrations that are contained in the Zoning Code; and within the standards of the County of San Diego Department of Environmental Health Hazardous Materials...
Division. Odors are not anticipated because the facility will not include vehicle painting. The existing public transportation systems are adequately designed to handle the projected transportation demands for this use.

E. The proposed use is in the best interest of public convenience and necessity because it will redevelop an existing underutilized automobile site in accordance with the current regulatory framework and create a modern facility that is convenient for existing and future BMW customers.

**Tentative Parcel Map No. 648**

A. The design of the parcel map and proposed improvements is consistent with the General Plan and Specific Plan No. 462, because it prevents proposed buildings crossing existing property lines; removes vacated streets, right-of-ways and easements no longer pertinent; realigns an existing public sewer easement for improved building position; and, creates a buildable project site enabled to effectively satisfy the Zoning Code development standards.

B. The design of the map and proposed improvements are not likely to cause substantial environmental damage or cause serious public health problems because the proposed project site has historically been used as an automobile dealership; there is no habitat value and it is located in an urbanized area where zoning and General Plan designations recognize and support commercial development.

C. The proposed parcel map and type of improvements will not conflict with easements of record or easements established by court judgment, acquired by the public at large, for access through or use of property within the proposed map, and there are no existing easements that will be affected by the proposed construction because the map will consolidate multiple parcels, realign an existing City sewer easement, and vacate or abandon other existing easements that are no longer pertinent.

D. The proposed parcel map is exempt from the requirements of the California Environmental Quality Act under Section 15305 Class 5 (a) ([Minor Alterations in Land Use Limitations](#)) of the CEQA Guidelines, because it will not result in any changes in land use or density and the average slope is less than 20%. Furthermore, all requirements of the Subdivision Map Act, ECMC Title 16 and City policies will be satisfied before final map acceptance and recordation.
ATTACHMENTS:
1. Proposed Resolution No. 10720
2. Proposed Resolution No. 10721
   Exhibit A - P.C. Res. 10721: Standard Conditions of Development
   Exhibit B - P.C. Res. 10721: Public Works Dept. comments dated 01-16-13
   Exhibit C - P.C Res. 10721: Building & Fire Safety Division, Building comments dated 01-14-13
   Exhibit D - P.C. Res. 10721: Building & Fire Safety Division, Fire comments dated 01-14-13
   Exhibit E - P.C. Res. 10721: Helix Water District comments dated 01-15-13
3. Proposed Resolution No. 10725
4. Zoning Code Excerpts: Sections 17.115.130
5. Aerial Photograph of Subject Site
6. Public Hearing Notice
7. Application
8. Disclosure statement
9. Project Description
10. Reduced site plan (not to scale)
11. Full-sized plans & reduced elevations (Commissioner's Binders)
A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) CATEGORICAL EXEMPTIONS 15302 (REPLACEMENT OR RECONSTRUCTION), 15305 (MINOR ALTERATIONS IN LAND USE LIMITATIONS), AND 15311 (ACCESSORY STRUCTURES) FOR THE BMW EL CAJON PROJECT.

WHEREAS, the El Cajon Planning Commission held a duly advertised public hearing on February 11, 2013, to consider Conditional Use Permit No. 2179 for the development of a new automobile dealership, including a freeway-oriented; and Tentative Parcel Map No. 648 for the consolidation of multiple parcels, the relocation of an existing public sewer easement, and the vacation and abandonment of other easements no longer pertinent on the properties located at the southwest corner of El Cajon Boulevard and Marshall Avenue, and addressed 720 El Cajon Boulevard; and

WHEREAS, in accordance with CEQA Guidelines Section 15061(b)(2), and prior to making a recommendation to the City Council, the Planning Commission reviewed and considered the information contained in the project staff report; and

WHEREAS, the proposed project is exempt from CEQA under Sections 15302 (Replacement or Reconstruction), 15305 (Minor Alterations in Land Use Limitations), and 15311 (Accessory Structures) of CEQA Guidelines, which allow for the replacement of existing structures and facilities where the new structure(s) will be located on the same site as the structure(s) replaced and will have the substantially the same purpose and capacity as the structure replaced. The proposed project to demolish the existing automobile dealership including all structures totaling 36,981 square feet in building area and replacing it with a new automobile dealership including a 31,200-square foot two-story building, 730-square foot car wash, vehicle display areas and parking is substantially the same purpose and capacity as the structures replaced; and, Class 5 allows the consolidation of parcels and the removal, relocation and adjustment of existing easements, because it will not result in any changes in land use or density and the average slope is less than 20%; and, Class 11 provides an exemption for the construction of minor structures that are accessory to commercial facilities, which is applicable to the freeway-oriented sign up to 80-feet high if it can be determined by an analysis acceptable to the Planning Manager that a height greater than 65 feet is appropriate; and, the project is required to satisfy all applicable storm water regulations because it meets the threshold established by the El Cajon Municipal Code Chapter 16.60 to be a priority project and is therefore subject to the Standard Urban Runoff Mitigation Plan requirements; and, none of the conditions in Section 15300.2, which provide exceptions for categorical exemptions exist; and

WHEREAS, after considering evidence and facts, the Planning Commission did consider the proposed Categorical Exemptions, Sections 15302, 15305, and 15311 as presented at its meeting.
NOW, THEREFORE, BE IT RESOLVED by the El Cajon Planning Commission as follows:

Section 1. That the foregoing recitals are true and correct, and are findings of fact of the El Cajon Planning Commission in regard to the proposed Categorical Exemptions Section 15302, Section 15305 and Section 15311 for the BMW El Cajon Project.

Section 2. That based upon said findings of fact, the El Cajon Planning Commission hereby RECOMMENDS City Council APPROVAL of the proposed Categorical Exemptions Section 15302, Section 15305 and Section 15311 for the proposed project to redevelop the project site for an automobile dealership and freeway oriented sign under Conditional Use Permit No. 2179; and the consolidation of the multiple parcels, the realignment of an existing public sewer easement, and the vacation or abandonment of other existing easements that are no longer pertinent according to the Subdivision Map Act by Tentative Parcel Map No. 648.

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Planning Commission Resolution No. 10720

PASSED AND ADOPTED by the El Cajon Planning Commission at a regular meeting held February 11, 2013, by the following vote:

AYES:
NOES:
ABSENT:

ATTEST:

[Signature]
Darrin J. MROZ, Chairperson

[Signature]
Manjeet RANU, AICP, Secretary
PROPOSED PLANNING COMMISSION RESOLUTION NO. 10721

A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL OF CONDITIONAL USE PERMIT NO. 2179 FOR THE REDEVELOPMENT OF AN EXISTING AUTOMOBILE DEALERSHIP, INCLUDING THE SALE OF NEW AND USED VEHICLES, SERVICING AND PARTS SALES AND A FREEWAY-ORIENTED SIGN IN THE C-G (GENERAL COMMERCIAL) ZONE; APNS: 487-490-07 & -19; GENERAL PLAN DESIGNATION: SPECIAL DEVELOPMENT AREA NO. 10 (SDA 10)/ GENERAL COMMERCIAL (CG).

WHEREAS, the El Cajon Planning Commission duly advertised and held a public hearing on February 11, 2013, to consider Conditional Use Permit No. 2179, as submitted by BMW South County, for the redevelopment of an existing automobile dealership, and a freeway-oriented sign on an existing commercially developed site located at the southwest corner of El Cajon Boulevard and Marshall Avenue, and addressed as 720 El Cajon Boulevard; and

WHEREAS, the El Cajon Planning Commission adopted Resolution No. 10720, recommending to the El Cajon City Council the approval of the proposed CEQA Categorical Exemptions Section 15302, Section 15305, and Section 15311; and

WHEREAS, the following findings of fact are hereby made in regard to said conditional use permit:

A. The proposed use and freeway-oriented sign is consistent with applicable goals, policies, and programs of the General Plan; and the proposed dealership will facilitate the implementation of Special Development Area No. 10 of the General Plan, which recommends that the segment of Johnson Avenue south of Interstate 8 to El Cajon Blvd. and including El Cajon Blvd. from West Main Street to West Chase Avenue develop into a strong sales and service area for automobile related activities; and the proposal will continue to expand upon existing vehicle sales and service uses in the area and will allow a new dealership to be redeveloped on a site that has been developed for automobile dealership activities. Furthermore, the freeway-oriented sign is an accessory feature for the existing regional automobile dealership which requires a broader means of identification.

B. The proposed site plan is consistent with all applicable use and development standards, if the site plan is amended to show a bicycle facility able to accommodate bicycle parking at a ratio of 10% of the required parking. Furthermore, all applicable requirements from other City Departments and Divisions, and the Helix Water District are noted on the amended site plan.

C. The proposed use and freeway-oriented sign will be operated in a manner that is compatible with existing and planned land uses in the vicinity of the proposed use, if all dealership activities are conducted within the thresholds of the Performance
Standards listed in Zoning Code Section 17.115.130; sufficient customer and employee parking is provided on-site; if on-site lighting does not create a nuisance on adjacent properties; and if the applicant submits an analysis acceptable to the Planning Manager for up to 15 additional feet, if appropriate; and if the applicant obtains an outdoor advertising display permit from Caltrans prior to the issuance of building permits for the sign and it is erected according to the standards in the El Cajon Zoning Code, the California Building Code, and the Outdoor Advertising Act.

D. The proposed use, freeway-oriented sign and project design will not be detrimental to the public health, safety, and general welfare, including but not limited to matters of noise, smoke, dust, fumes, vibration, odors, and hazards or excessive concentrations of traffic, if the applicant submits an analysis acceptable to the Planning Manager for up to 15 additional feet, if appropriate; and if it is operated in conformance with the performance standards for noise, air quality, water quality, and vibrations that are contained in the Zoning Code and within the standards of the County of San Diego Department of Environmental Health Hazardous Materials Division. Odors are not anticipated because the facility will not include vehicle painting. The existing public transportation systems are adequately designed to handle the projected transportation demands for this use.

E. The proposed use is in the best interest of public convenience and necessity because it will redevelop an existing underutilized automobile site in accordance with the current regulatory framework and create a modern facility that is convenient for existing and future BMW customers.

NOW, THEREFORE, BE IT RESOLVED that based upon said findings of fact stated above, the El Cajon Planning Commission hereby RECOMMENDS City Council approval of Conditional Use Permit No. 2179 for the development of a new automobile dealership and a 65-foot high freeway oriented sign at 720 El Cajon Boulevard in the C-G (General Commercial) zone, on the above described property, subject to the following conditions:

1. Prior to the issuance of building permits, or as otherwise determined by the Planning Manager, the applicant shall submit and obtain approval of a revised, one-page, 24" by 36" mylar site plan that reflects the following specific notes and changes:
   a. Indicate a bike rack able to accommodate bicycle parking at a ratio of 10% of the required parking.
   b. Remove the "See Civil or Landscape" note block.
   c. Note that all uses will operate according to the performance standards in ECMC Section 17.115.130.
   d. Under the heading "Planning Division Notes" add the ongoing conditions of approval listed in condition 5.
   e. Include the following note: “This project shall comply with the Standard Conditions of Development from Planning Commission Resolution No. 10649, as applicable, which are incorporated herein by reference.”
   f. The revised site plan shall reflect the applicable comments and include all of the required notes from the Public Works Dept. attached to this resolution as
“Exhibit B” and dated 01-16-13.

The revised site plan shall reflect the applicable comments listed in the Building comments from the Building and Fire Safety Division attached to this resolution as “Exhibit C” and dated 01-14-12.

The revised site plan shall reflect the applicable comments and include all of the required notes listed in the Fire comments from the Building and Fire Safety Division attached to this resolution as “Exhibit D” and dated 01-14-13.

The revised site plan shall reflect the applicable comments from the Helix Water District attached to this resolution as “Exhibit E” and dated 01-15-13.

Prior to the issuance of building permits, or as otherwise determined by the Planning Manager, the applicant shall complete the following:

a. The revised CUP site plan required in condition 1 shall be approved by the Planning Division.

b. The applicant shall comply with all the conditions listed in the “Standard Conditions of Development” adopted by the Planning Commission by Planning Commission Resolution No. 10649 and labeled “Exhibit A” as applicable.

c. Submit the required copies of the recorded final parcel map. The map shall be in conformance with the approved CUP No. 2179 Site Plan.

d. Submit a lighting plan in accordance with El Cajon Municipal Code Section 17.130.150. The plan shall include the location of all external lighting elements and their respective design. Planning Division approval of the plan is required before building permit issuance.

e. The approved building material types and colors of all exterior elevations shall be shown on the construction drawings submitted for building permits and shall be in substantial conformance with the materials approved by the City Council.

f. Submit a comparison or line of sight analysis, or other analysis acceptable to the Planning Manager that determines that the proposed 65-foot high sign is not sufficient, and a greater height is appropriate for identification.

g. Obtain and submit to the Planning Division an outdoor advertising display permit from Caltrans prior to the issuance of building permits for the sign.

h. Comply with the Public Works Department comments attached to this resolution as “Exhibit B” and dated 01-16-13, to the satisfaction of the Deputy Director of Public Works and the Planning Manager.

i. Comply with the building comments from the Building and Fire Safety Division attached to this resolution as “Exhibit C” and dated 01-14-13.

j. Comply with the fire comments from the Building and Fire Safety Division attached to this resolution as “Exhibit D” and dated 01-14-13.

k. Comply with the comments from the Helix Water District attached to this resolution as “Exhibit E” and dated 01-15-13.

l. Obtain approval of a Landscape Documentation Package (LDP) in conformance with the requirements of Chapter 17.195 of the Zoning Code, and consistent with the guidelines provided in the City of El Cajon Landscape

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Design Manual. The LDP shall further indicate landscaping in all areas excluding the dwelling units and the private rear yards for the dwelling units.

3. Prior to the issuance of building permits or as otherwise determined by the Planning Manager, Tentative Parcel Map No. 648 shall be finaled and recorded.

4. Prior to the granting of occupancy or as otherwise determined by the Planning Manager, all on-site improvements shall be completed or guaranteed in accordance with the approved CUP No. 2179 site plan. In addition, the following items shall be completed and/or inspected:
   a. Complete the installation of the approved landscaping and irrigation system and obtain approval of a Certificate of Completion.
   b. Satisfy all requirements of the Public Works Department, Building Division, Fire Safety Division, & Helix Water District as indicated in the attached comments dated and labeled 01-16-13 (Exhibit B), 01-14-12 (Exhibit C), 01-14-13 (Exhibit D), & 01-15-13 (Exhibit E), respectively.

5. The following are ongoing conditions of approval for this conditional use permit and shall be noted on the CUP site plan.
   a. Any change in use or expansion of may require prior city approval, including an amendment to this conditional use permit.
   b. The minimum number of striped parking spaces shall be maintained as indicated on the approved CUP No. 2179 site plan.
   c. A bicycle rack shall be maintained, per the approved location shown on the final site plan.
   d. The uses shall be operated in a manner that complies at all times with the performance standards listed in Section 17.115.130 of the Zoning Code.
   e. All landscaped areas shall be sufficiently watered and periodically fertilized to establish and maintain healthy growth, and shall be maintained in a neat, litter and weed free condition. All plants shall be pruned and trimmed as necessary, and upon notification by the Planning Division, all plant materials that have died or have failed to show healthy growth shall be replaced by plants of the same or similar species. Replacement by more drought resistant plants may also be approved. Landscape maintenance shall include regular inspection, adjustment, and repair of the irrigation system, including making seasonal changes to the irrigation controller.

6. The existence of this conditional use permit shall be recorded with the County Recorder.

7. The Planning Commission may at any time during the life of this use permit, after holding a properly noticed public hearing, at which time the applicant may appear and object under applicable law to any potential revocation or modification of the conditions of approval, and after considering testimony as to the operation of the approved uses, revoke the permit, or modify the permit with any additional conditions as it deems necessary, to ensure that the approved uses continue to be
compatible with surrounding properties and continue to be operated in a manner that is in the best interest of public convenience and necessity and will not be contrary to the public health, safety or welfare.

8. The proposed use shall be operated in substantial conformance as presented in the Planning Commission staff report titled Conditional Use Permit No. 2179, dated February 11, 2013, except as modified by this resolution. Operation of the uses in violation of the conditions of approval is grounds for revocation.

9. If this permit is not legally exercised within two years of project approval, and a written request for an extension of time has not been received by the Planning Commission Secretary within the same time period, and subsequently approved by the Planning Commission, this conditional use permit shall be considered null and void per El Cajon Zoning Code Section 17.35.010.
Planning Commission Resolution No. 10721

PASSED AND ADOPTED by the El Cajon Planning Commission at a regular meeting held February 11, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:

______________________________
Darrin MROZ, Chairman

ATTEST:

______________________________
Manjeet RANU, AICP
Planning Commission Secretary
STANDARD CONDITIONS OF DEVELOPMENT
(Planning Commission Resolution No. 10649)

All projects approved by the Planning Commission shall comply with the following standard conditions, unless specifically exempted by the Commission or Council.

A. GENERAL

1. The applicant shall comply with the school impact fee requirements of the Grossmont Union High School Districts, Cajon Valley, and La Mesa-Spring Valley School Districts when applicable.

2. For projects that require a grading permit and excavate more than three feet into native soils, and prior to the issuance of a Building Permit, the applicant shall submit a letter to the Director of Community Development agreeing to suspend construction in the vicinity of a cultural resource encountered during development of the site, and leave the resource in place until a qualified archaeologist can examine them and determine appropriate mitigation measures. All fees and expenses for the retaining of a qualified archaeologist shall be paid by the applicant and shall not be at City expense. The applicant shall agree to comply with mitigation measures recommended by the archaeologist and approved by the Director of Community Development.

B. PROJECT SITE

1. The applicant shall comply with all regulations and code requirements of the Building and Fire Safety Division, Public Works Department, the Police Department and any other agencies requiring review of the project. If required, these agencies shall be supplied copies of the final building and site plans.

2. All landscape areas that adjoin parking spaces, driveways, vehicular circulation areas, or the public right-of-way shall be protected from encroachment by vehicles in a manner that also complies with state storm water regulations, which require storm water to be discharged to landscaped areas in order to reduce or eliminate the discharge of pollutants. The method of protection shall be determined by the Director of public works or the director's designee. The approved method may include six-inch high curb segments, wheel stops, decorative rock bands, or other methods determined to be acceptable by the Director of public works.

3. Environmental and engineering studies, as directed by the Director of Community Development, must be complete and on file prior to commencement to plan checking. Developer shall install off-street improvements determined necessary by the City Engineer to provide safe traffic conditions.

4. Developer shall underground existing and required on and off-site utilities as specified in Chapter 15 of the Municipal Code, or as deemed necessary by the City Engineer.
5. All development projects shall comply with Title 12 (Streets and Sidewalks), and Title 13 (Water, Sewers, Grading, Erosion and Stormwater) of the El Cajon Municipal Code as determined by the City Engineer.

6. All retaining walls visible from public right-of-ways shall include decorative elements, subject to approval by the Planning Division.

7. The design of any masonry soundwall shall be approved by the Planning Division. Such walls shall match or be architecturally compatible with existing soundwalls of neighboring projects along that street. All masonry walls shall have a trim cap.

C. ARCHITECTURE

1. All exterior materials and colors used in this project shall be in conformance with the materials and color samples approved as a part of this application.

2. All mechanical, and/or roof mounted equipment shall be architecturally screened from public view.

3. All trash/recycling enclosures shall be constructed of masonry material with view-obscuring doors. The enclosure shall include materials and colors consistent with the primary building and meet appropriate Stormwater Division requirements. Required roofs shall match elements of the primary building and shall include a fascia trim.

4. All vents, gutters, downspouts, flashing, electrical conduits, etc., shall be painted or finished to match the color of the adjacent surface, unless otherwise directed by the Planning Commission.

5. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a manner that is architecturally compatible with the exterior of the building.

6. Finish quality of approved exterior design elements shall be subject to approval of the Planning Division prior to issuance of Certificate of Occupancy.

7. Any decorative elements around the base of a building (stone veneer or tile, etc.) shall be finished with a decorative cap or trim piece.

D. LANDSCAPING

1. Specific landscaping for screening shall have an appearance of mature growth subject to a field check and approval by the Planning Division prior to the issuance of a Certificate of Occupancy.

2. All existing trees to remain shall be shown on the grading plan.
3. The area under the drip line of all existing trees that are to remain shall be protected during construction by a fence or other acceptable means. Grading shall be restricted under the trees to prevent soil compaction and to prevent root damage.

4. All sloped banks greater than three (3) feet in vertical height and 2:1 or greater slope shall be landscaped and irrigated for erosion control and to soften their appearance as follows: deep-rooting grasses, ground cover and shrubs. Shrubbery shall be a minimum one-gallon size and shall have a minimum separation of one (1) times the mature width and on slopes of 10 feet or more in vertical height shall include, a minimum of one (1) tree for every 600 square feet of the total slope area. Trees shall be a minimum five-gallon size and shall be spaced a minimum of 30 feet apart. Trees and shrubs shall be planted in staggered clusters to soften and vary the slope plane. Slope planting required by this condition shall include a permanent irrigation system to be installed by the developer prior to occupancy.

5. All landscaping shall be maintained in good growing condition. Such maintenance shall include, where appropriate, pruning, mowing, weeding, cleaning of debris and trash, fertilizing and regular watering. Whenever necessary, dead or dying plants shall be replaced with other plant materials to ensure continued compliance with applicable landscaping requirements. Required irrigation systems shall be fully maintained in sound operating condition with heads periodically cleaned and replaced when missing to ensure continued regular watering of landscape areas, and health and vitality of landscape materials.

E. MISCELLANEOUS

1. Final occupancy shall not be granted until all construction and landscaping is complete in accordance with all approved plans. Under certain circumstances, a temporary occupancy may be granted prior to final inspection.

2. It is the responsibility of the applicant or developer to check with each agency for requirements that may pertain to their project.

3. All signs shall be submitted to the Planning Division for review and approval per Section 17.190.060 of the El Cajon Municipal Code. Signs within the Downtown Specific Plan area shall receive design review approval from the El Cajon Community Development Corporation.

4. The site shall be maintained in a neat and clean manner free of trash and debris.

5. Certain outdoor equipment, such as satellite dishes and back-flow prevention devices shall be visually screened or painted to match surroundings upon installation subject to the approval of the Planning Division. Screening devices shall be shown on construction and/or landscape plans.
6. All exterior light fixtures shall be shown on a lighting plan and made part of construction drawings subject to staff review and approval. All lights attached to buildings shall provide a soft “wash” of light against the wall. All building, parking, and yard lights shall conform to the City General Development Standards 17.130.150 and Performance Standards 17.115.130 (G) and shall complement the site and building architecture.

7. The removal of trees shall not take place during the bird-nesting (breeding) season (February 1 through August 15), unless written authorization from a qualified biologist to proceed with tree removal is submitted to the Planning Division. If clearing is proposed to take place during the breeding season, a survey shall be conducted by the qualified biologist to determine if nests are present, or nest building or other breeding/nesting behavior is occurring. If nesting is not occurring (which includes nest building or other breeding/nesting behavior) within this area, clearing shall be allowed to proceed. If nesting is occurring (or breeding/nesting behavior is occurring), tree removal shall be postponed until a qualified biologist determines that all nesting (or breeding/nesting behavior) has ceased or until after August 15.

8. The placement of bollards within parking areas and driveways shall only be permitted when no other alternative design (curbs or landscaping) is feasible and accepted by the Building Official.
DATE: JANUARY 16, 2013

TO: PLANNING COMMISSION
FROM: DEPARTMENT OF PUBLIC WORKS
SUBJECT: TENTATIVE PARCEL MAP 648 CONDITIONAL USE PERMIT 2179 ENGINEERING JOB NO. 3457 ADDRESS 720 EL CAJON BOULEVARD

A Parcel Map must be prepared by a registered civil engineer or a licensed land surveyor in accordance with Title 16 of the Municipal Code and the Subdivision Map Act. In order to complete the process of subdividing the property, the owner is responsible for having a Parcel Map recorded with the County Recorder within two years after approval of the Tentative Parcel Map by the City Engineer or within the time limits of an extension granted in accordance with Title 16 of the Municipal Code.

The following conditions must be completed prior to recording of the Parcel Map:

1. Dedicate or provide a public sewer easement along El Cajon Boulevard, parallel with the existing sewer main, as necessary to provide a public sewer easement parallel to the property line with a width 7-feet wide.

2. The existing utility and other easements shall not conflict with the proposed project. Relinquish any existing easements and grant new easements on the Map, as necessary to resolve any conflicts.

3. Remove the existing retaining wall from the public right-of-way on South Marshall Avenue.

4. The existing sidewalks along the property frontage of El Cajon Boulevard and South Marshall Avenue shall be replaced with full-width sidewalks, per San Diego Area Regional Standard Drawings (SDRSD) G-7, G-9, G-10 and G-11. Repair all damaged concrete curb and gutter per SDRSD G-2.

5. Reconstruct the existing curb ramp at the southwest corner of El Cajon Boulevard and South Marshall Avenue per San Diego Area Regional Standard Drawings (SDRSD) G-27 with a 4’ x 3’ truncated dome per SDRSD G-30.

6. The proposed southwesterly driveway on El Cajon Boulevard shall be per San Diego Area Regional Standard Drawings (SDRSD) G-14 A and comply with current ADA standards. Include 2-foot transitions on both sides of the driveway for 8” to 6” curb transitions. Edge of driveway shall be a minimum of 3-feet from the property line and all obstructions. The driveway shall be a minimum 24’/30’ curb cut. Repair all damaged concrete curb and gutter per SDRSD G-2.

7. The proposed northeasterly driveway on El Cajon Boulevard and the proposed driveway on South Marshall Avenue shall be per San Diego Area Regional Standard Drawings (SDRSD) G-17 with curb...
ramps per SDRSD G-31 and comply with current ADA standards. Include 2-foot transitions on both sides of the El Cajon Boulevard driveway for 8” to 6” curb transitions. Edge of driveways shall be a minimum of 3-feet from the property lines and all obstructions. The driveways shall be a minimum 24’ width. Repair all damaged concrete curb and gutter per SDRSD G-2.

8. The existing driveway on South Marshall Avenue shall be closed and replaced with full height curb and gutter and sidewalk per San Diego Area Regional Standard Drawings (SDRSD) G-2, G-7, G-9, G-10 and G-11.

9. The proposed driveway on South Marshall Avenue shall be per San Diego Area Regional Standard Drawings G-14 A and comply with current ADA standards. Edge of driveway shall be a minimum of 3-feet from the property line and all obstructions. The driveway shall be a minimum 24’/30’ curb cut. Repair all damaged concrete curb and gutter SDRSD G-2.

Prior to issuance of any Building Permit or Encroachment Permit, the applicant or contractor shall prepare a detailed scaled drawing with dimensions of the proposed driveways and sidewalk installations showing the location of the public street right-of-way, property lines, face of curb, all physical obstructions, including but not limited to, utility poles, telephone and cable TV equipment, fencing, etc. along with any required offsets in accordance with San Diego Area Regional Standard Drawings (SDRSD) G-15 and G-16.

10. Install separate gravity sewer services, water services (including meters) and other utilities to each building unit in accordance with the Municipal Code. Wet-tap fees are required. The proposed sewer and water laterals serving the parcel shall be private and shall be approved by the Building Division. A cleanout is required for all sewer laterals. Maintenance of the private sewer and water laterals shall be the responsibility of the property owner. Connections to the City sewer system and payment of connection fees are required with Building Permits.

11. The proposed public sewer main relocation shall be shown on a detailed scaled drawing that shows the plan and profile of the sewer main, manhole locations, and laterals, and shall be prepared by a Civil Engineer registered in the State of California. The sewer main shall be designed and built in accordance with the City of El Cajon Improvement Standards for Public Sewer Mains and submitted to the City for review. Maintenance of the public sewer main shall be the responsibility of the City. Maintenance of the sewer laterals shall be the responsibility of the property owner. Connections to the City sewer system and payment of connection fees are required with Building Permits. **Public Sewer Main Improvement Plans shall be included with the Grading and Drainage Plans.**

12. The proposed storm water conveyance system to serve the parcel shall be private. A detailed scaled drawing showing the plan and profile of the storm water conveyances, inlets and manhole locations, and any other storm water related infrastructure shall be prepared by a Civil Engineer registered in the State of California. The storm water conveyance system main shall be designed and built in accordance with the City of El Cajon Improvement Standards for Drainage and submitted to the City for review. Maintenance of the private storm water conveyance shall be the responsibility of the property owner. **Private storm water conveyance system plans shall be included with the Grading and Drainage Plans.**

13. Install new traffic signal loop detectors along South Marshall Avenue. Abandon the existing loop detectors that are damaged.

14. Re-configure the existing traffic striping to allow left-turns into the proposed driveway on South Marshall
15. Stub any new underground utility services out at the property line.

16. Comply with the following Storm Water requirements:

   a. In accordance with the City of El Cajon Municipal Code Section 16.60, this project falls into a priority project category and is subject to the Standard Urban Storm Water Mitigation Plan (SUSMP) requirements. To fulfill SUSMP requirements, a Storm Water Mitigation Plan (SWMitP) needs to be prepared by a Registered Civil Engineer in the State of California. Amongst other things, the SWMitP shall include the following:

      1) Incorporation of New Development Best Management Practices (BMPs).

      2) Runoff calculations for water quantity in compliance with the approved Hydromodification Management Plan (HMP) requirements. Calculate pre- and post-construction peak flow runoff rates (calculated to the nearest 0.1 CFS using % imperviousness). The post-construction flows must not exceed the pre-construction flows. An electronic copy of the County of San Diego HMP can be found online at:


      3) Runoff calculations for water quality. A specific volume or flow of storm water runoff must be captured and treated with an approved (series of) storm water treatment control device(s); the BMP design size is calculated using either: a) the 85th percentile hourly precipitation (County Hydrology Manual isopluvial map) for volume based BMPs, or b) using a rain fall intensity of 0.2 inches per hour (Storm Water Attachment No. 4) for flow based BMPs.

      4) Incorporation of Low Impact Development (LID) BMPs for compliance with the California Regional Water Quality Control Board (San Diego Region) Order No. R9-2007-0001. (See Section D.1.d(4) of Order No. R9-2007-0001, located at:


      LID BMPs must be included as a separate section of the SWMitP. The LID section must include a comprehensive review and consideration of LID BMPs and a determination of feasibility and practicality for all mandatory LID BMPs. The LID section must include implementation of Source Control BMPs, Treatment Control BMPs and other LID BMPs where practical and feasible. An electronic copy of the County of San Diego Low Impact Development Handbook can be found online at:


      5) A Maintenance Plan per Storm Water Attachment No. 3 to ensure perpetual maintenance of BMPs (Available to the public through Public Works on the fourth floor of City Hall).

      6) Landscaping Plans that comply with SUSMP requirements (submitted to the Planning
7) Details of any proposed and existing trash enclosures. Any and all enclosures must be designed to be secured, constructed with a grade-break across the entire enclosure entrance, and covered with an impervious, fire-resistant roof in accordance with the requirements of Public Works Storm Water Attachment No. 2.

b. Prepare and submit a Storm Water Maintenance and Operations Plan to ensure compliance with City of El Cajon’s storm water regulations.

c. Submit a signed and executed Storm Water Facilities Maintenance Agreement with Easement and Covenants. An electronic copy of the Storm Water Facilities Maintenance Agreement with Easement and Covenants can be obtained at the City of El Cajon Public Works Department.

d. Submit copies of the Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) from the California Regional Water Quality Control Board.

17. Submit a current Preliminary Title Report and a Subdivision Guarantee, no older than 60 days, at the time the map is ready to record.

18. Submit a County Tax Certificate valid at the time of map recordation.

19. Set survey monuments and guarantee setting of any deferred monuments.


21. Submit a preliminary soils report prepared by a Civil or Geotechnical Engineer registered in the State of California, along with adequate test borings.

22. Submit a Drainage Study and a Grading and Drainage Plan along with an Erosion Control Plan prepared by a Civil Engineer, registered in the State of California. No grading or soil disturbance, including clearing of vegetative matter, shall be done until all necessary environmental clearances are secured and the Grading and Drainage Plan and Erosion Control Plan have been reviewed by the City.

These Plans shall be based on the preliminary soils report and in conformance with the City of El Cajon Jurisdictional Urban Runoff Management Program (JURMP) and Standard Urban Storm Water Mitigation Plan Ordinance (SUSMP) which require additional erosion control measures and future ongoing maintenance even after completion of the project to prevent, treat, or limit the amount of storm water runoff and pollution from the property.

The Erosion Control Plan shall show measures to ensure that pollutants and runoff from the development are reduced to the maximum extent practicable and will not cause or contribute to an exceedance of receiving water quality objectives throughout project construction.

The Drainage Study shall include all related tributary areas and adequately address the impacts to the surrounding properties and to the City drainage system. The developer shall provide any needed public and private drainage facilities, including off site drainage facilities (as determined by the study). If public drainage facilities are required, the required improvements need to be included in improvement plans, prepared by a Civil Engineer, registered in the State of California, and submitted to the City for approval.
Note: If the Drainage Study indicates the existing downstream drainage system is inadequate for the proposed density of the subdivision, a reduction in density and/or hard surface coverage of the subdivision may be required.

23. Underground all new and existing utility distribution facilities adjacent to and within the subdivision boundaries, including services to all new and existing buildings, in accordance with City Municipal Code Sections 16.16.040D and 16.52.010. Evidence of arrangements to underground utilities must be provided.

24. Submit signature omission letters from all public easement holders who do not have a signature block on the map.

25. Submit a letter stating if the required public improvements listed in 4 through 13 above will be completed prior to recording the Map or deferred by an Improvement Agreement.

26. An Encroachment Permit is required prior to any work within the public right-of-way.

Municipal Code Section 16.16.060 provides that in lieu of constructing the required improvements prior to recording of the final map, the subdivider may enter into an agreement which guarantees construction within one year. Such agreement shall be accompanied by improvement security in accordance with Municipal Code Section 16.16.080 and a certificate of insurance provided by the subdivider in accordance with City Council Policy D-3.

The school districts in the City have developer fee assessment policies. These fees are collected at the time of issuance of building permits.

Existing streets shall be kept free of dirt and debris and maintained in good condition. Dust shall be controlled so that it does not become a nuisance. The developer shall be responsible for the repair of any streets or private property damaged as a result of the construction of the subdivision.

Landscaping at the entrance of the driveways shall be kept low to provide adequate sight distance.

NOTE:
The following must be submitted to the Private Development Section of the Public Works Department when the final map is submitted for checking (An incomplete submittal will not be accepted). Please make an appointment with the Private Development Section personnel and the Storm Water Section personnel to review requirements and obtain appropriate checklists prior to the first submittal. Appropriate checklists will be sent to the Engineer of Work. The checklists shall be completed by the Engineer of Work and will be required with the first submittal:

- Three (3) sets of maps and completed map checklist.
- Map closure calculations/data.
- Copies of record maps referenced (full size sheets only).
- Cost estimate of improvements within public right-of-way.
- Cost estimate of public sewer main relocation.
- Cost estimate of on-site improvements, including storm water conveyances and infrastructure, excluding buildings, walls, pavement and utilities.
- Four (4) sets of Grading and Drainage Plans with Public Sewer Main Relocations, Storm Water Conveyance Improvements and Erosion Control Plans for the on-site improvements, with signatures.
and sealed, and completed Grading and Drainage Plan checklist.

- Soils report.
- Drainage study.
- Map checking fee.
- Grading and Drainage Plan check fee.
- Erosion Control Plan check fee.
- Drainage Study fee.
- Standard Urban Storm Water Mitigation Plan Ordinance (SUSMP) review fee.
- Letter stating if the required Public Improvements will be constructed prior to recording the Map or deferred by a Subdivision Agreement or Improvement Agreement.
- Two copies of the Storm Water Mitigation Plan (SWMitP).
- Copy of Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP).
- When applicable: A copy of the Operating Agreement (for an LLC); Partnership Agreement (for a Partnership); or a Resolution (for a Corporation).

Submitted by,

Dennis Davies
Deputy Director of Public Works
DD: JRP

cc:
BMW South County
4445 Eastgate Mall Suite 400
San Diego, CA 92121
Attn: Tom Story

Stevens Cresto Engineering, Inc.
9665 Chesapeake Dr., Suite 320
San Diego, CA 92123-1352

Attachments (Engineer of Work and Applicant):
1. Parcel Map Checklist
2. Public Sewer Main Improvements Plan Checklist and Standard Notes
3. Grading and Drainage Plan Checklist and Standard Notes
4. City Unit Cost Sheet
5. City Fee Schedule
6. Subdivision Control Sheet
7. Double Cleanout Detail

Storm Water Attachments (Engineer of Work and Applicant)
1. Storm Water Mitigation Plan (SWMitP) Template
2. Erosion Control Standard Notes for Erosion Control Plans
3. Storm Water Attachment No. 2 - Trash Enclosure
4. Storm Water Management/BMP Facilities Agreement Example
Monday, January 14, 2013

To: Planning Division
From: Building and Fire Safety Div., Dan Pavao
Subject: Building Comments for CUP 2179

720 El Cajon Blvd.

Building Comments for this planning application are as follows:

1. Comply with Currently adopted edition of the CBC, CMC, CPC, and CEC.
2. A Building permit is required for this project.
3. Project must comply with Title 24 disabled access regulations.
4. Title 24 energy efficiency compliance and documentation is required.
5. Soils report will be required for this project.
6. A licensed design professional is required for this project.
7. An automatic sprinkler system is required by CBC or local ordinance.
8. Undergrounding of all on-site utilities is required.

Dan Pavao
Monday, January 14, 2013

To: Planning Division
From: Building and Fire Safety Div., Dan Pavao
Subject: Fire Comments for CUP 2179
720 El Cajon Blvd.

Fire Comments for this planning application are as follows:

1. This project must comply with currently adopted edition of the CFC.
2. All weather fire access road shall be available on the job site before start of const.
3. An approved automatic fire sprinkler system is required for this project.
4. Commercial address numbers shall be visible from the street, contrasting in color from wall surface, and minimum 8 inches in size (individual suite numbers may be 3").
5. Dedicate and maintain fire apparatus access lanes by red curb or signage. Fire access lane to be min. 26 feet wide and 13'-6" in height.
6. Provide fire hydrant with 50 feet of FDC connection.

Dan Pavao
January 15, 2013

Tony Shute
Project Manager
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

Subject: Conditional Use Permit No. 2179/TPM 648
APN: 487-490-19
720 El Cajon Blvd. - South County BMW

Dear Mr. Shute:

Thank you for the opportunity to comment on the subject project. Helix Water District serves the subject property with 1-1.5" water service with 1-3/4" water meter and 3-1" water services with 3-3/4" water meters. The nearest fire protection is provided by a fire hydrant at the North East corner of the property with 1-4 and 2-2.5 inch outlets. Water pressure in the area is approximately 45 psi.

We request a review of any street improvement plans and/or grading plans and signature of Helix Water District if such plans are required by the City of El Cajon.

A backflow device will be required for the existing water services and shall be installed per current Water Agencies’ Standards. The new backflow devices shall be tested by a certified backflow tester with a copy of the passing test results forwarded to Helix Water District attention Darrin Teisher by e-mail: crossconnection@helixwater.org

If landscaping of the parcels exceeds 5,000 sq ft., a dedicated irrigation meter will be required and the property entered into our water conservation program. Please contact them by e-mail: conserve@helixwater.org

The El Cajon Fire Dept. may require additional or upgraded fire protection facilities for this project. All costs for new fire protection facilities shall be paid by the Owner/Developer. Easements will be required if new or existing facilities cannot be installed within existing public right of way.

If you have any questions, please call me at (619) 667-6239.

Sincerely,

Carlos Perdomo
Senior Engineering Technician

cc: Tim Ross
Aneld Anub
Darren Teisher
tony@cityofelcajon.us
PROPOSED PLANNING COMMISSION RESOLUTION NO. 10725

A RESOLUTION RECOMMENDING CITY COUNCIL APPROVAL OF TENTATIVE PARCEL MAP NO. 648 FOR THE CONSOLIDATION OF MULTIPLE PARCELS, THE RELOCATION OF AN EXISTING PUBLIC SEWER EASEMENT, AND THE VACATION AND ABANDONMENT OF OTHER EASEMENTS NO LONGER PERTINENT ON PROPERTIES LOCATED AT THE SOUTHWEST CORNER OF EL CAJON BOULEVARD AND MARSHALL AVENUE, APNS: 487-490-07 & 487-490-19; GENERAL PLAN DESIGNATION: SPECIAL DEVELOPMENT AREA NO. 10 (SDA NO. 10)/ GENERAL COMMERCIAL (GC)

WHEREAS, the El Cajon Planning Commission duly advertised and held a public hearing on February 11, 2013, to consider Tentative Parcel Map (TPM) No. 648, as submitted by BMW South County, requesting the consolidation of multiple parcels, the relocation of an existing public sewer easement, and the vacation and abandonment of other easements no longer pertinent on the existing commercially developed site located at the southwest corner of El Cajon Boulevard and Marshall Avenue, and addressed 720 El Cajon Boulevard; and

WHEREAS, the El Cajon Planning Commission adopted Resolution No. 10720, recommending to the El Cajon City Council the approval of the proposed CEQA Categorical Exemptions Section 15302, Section 15305, and Section 15311; and

WHEREAS, the El Cajon Planning Commission adopted Resolution No. 10721, recommending to the El Cajon City Council the approval of proposed Conditional Use Permit No. 2179 for the redevelopment of an existing automobile dealership and a freeway-oriented sign on an existing commercially developed site; and

WHEREAS, the following findings of fact are hereby made in regard to said tentative subdivision map:

A. The design of the parcel map and proposed improvements is consistent with the General Plan and Specific Plan No. 462, because it prevents proposed buildings crossing existing property lines; removes vacated streets, right-of-ways and easements no longer pertinent; realigns an existing public sewer easement for improved building position; and, creates a buildable project site enabled to effectively satisfy the Zoning Code development standards.

B. The design of the map and proposed improvements are not likely to cause substantial environmental damage or cause serious public health problems because the proposed project site has historically been used as an automobile dealership; there is no habitat value and it is located in an urbanized area where zoning and General Plan designations recognize and support commercial development.
C. The proposed parcel map and type of improvements will not conflict with easements of record or easements established by court judgment, acquired by the public at large, for access through or use of property within the proposed map, and there are no existing easements that will be affected by the proposed construction because the map will consolidate multiple parcels, realign an existing City sewer easement, and vacate or abandon other existing easements that are no longer pertinent.

D. The proposed parcel map is exempt from the requirements of the California Environmental Quality Act under Section 15305 Class 5 (a) (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, because it will not result in any changes in land use or density and the average slope is less than 20%. Furthermore, all requirements of the Subdivision Map Act, ECMC Title 16 and City policies will be satisfied before final map acceptance and recordation.

NOW, THEREFORE, BE IT RESOLUTIONED that based upon said findings of fact stated above, the El Cajon Planning Commission hereby RECOMMENDS that the City Council approve Tentative Parcel Map No. 648 for the consolidation of multiple parcels, the relocation of an existing public sewer easement, and the vacation and abandonment of other easements no longer pertinent, on the above described property subject to the following conditions:

1. The applicant shall comply with all requirements of the Public Works Department indicated in the attached comments to Planning Commission Resolution No. 10721 labeled as “Exhibit B” and dated 01-16-13.

2. Prior to the issuance of building permits or as otherwise determined by the Planning Manager, the final map for TPM No. 648 shall be recorded and the appropriate number of copies returned to the City.

3. The final map shall be in substantial conformance with the approved site plan for CUP No. 2179 and TPM No. 648.

4. The final map shall be accepted by the City Council and prepared for recordation in accordance with El Cajon Municipal Code Chapter 16.32.

5. The recordation of the final map shall be in accordance with the time limits permitted in Government Code §66452.6 et. seq.

{The remainder of this page is intentionally blank}
Planning Commission Resolution No. 10725

PASSED AND ADOPTED by the El Cajon Planning Commission at a regular meeting held February 11, 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

__________________________
Darrin MROZ, Chairman

ATTEST:

__________________________
Manjeet RANU, AICP
Planning Commission Secretary
17.115.130 **Performance standards.**

All uses and operations within the city shall be subject to the following minimum performance standards:

**A. Air quality.**

1. **Smoke.** In accordance with Section 24242 of the State Health and Safety Code, a person shall not discharge smoke into the atmosphere for a period or periods aggregating more than three (3) minutes in any one (1) hour, which is:

   a. As dark or darker in shade as that designated as No. 1 on the Ringelmann Chart, as published by the U.S. Bureau of Mines; or

   b. Of such opacity as to obscure an observer’s view to a degree equal to or greater than does smoke described above.

2. **Air pollution.** Fly ash, dust, fumes, vapors, gases, and other forms of air pollution, in accordance with Section 24243 of the State Health and Safety Code. A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which will cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to animals, vegetation, business or property. In no event shall any emission from any chimney or other source, or any solid or liquid particles in concentration exceed 0.4 grains per cubic foot of the conveying gas at any point.

3. **Odors.** No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable at the property line of the use from which such odor emits, or at the point of greatest concentration if further than the lot line. Any process that may involve the creation or emission of any odors shall be provided with an adequate secondary safeguard system of control, so that control will be maintained if the primary safeguard system should fail. In no event shall odors, gases or other odorous matter be emitted in such quantities as to be readily detectable when diluted in a ratio of one (1) volume of odorous air to four (4) volumes of clean air.

**B. Water quality.**

1. **Wastes into surface runoff.** Any discharge of liquid industrial wastes of any sort to surface streams, flood control channels, storm drains and subsurface pits shall be prohibited in conformance with applicable storm water regulations.

2. **Wastes into sanitary sewer.** Any wastes discharged into the city sanitary sewer, which may require pretreatment, depending upon the type, concentration and volume of material being handled, shall conform to the requirements of Title 13 of the code of the city.

3. **Wastes disposed by hauling.** Any industry hauling liquid wastes off-site for disposal shall obtain and conform to waste discharge requirements of the California Regional Water Quality Control Board, San Diego Region, which will necessitate hauling such wastes to a Class 1 site for disposal.

**C. Noise.**

1. The sound level of any individual operation, land use, or activity other than rail, aircraft, street, or highway transportation, shall not exceed the sound levels indicated in the following table. For the purpose of determining compliance with these noise limitations, the sound levels shall be measured at the property lines of the property upon which the operation, land use, or activity is conducted.
### Table: Noise Level Standards

<table>
<thead>
<tr>
<th>Zones</th>
<th>Time of Day</th>
<th>One-Hour Average Sound Level Decibels</th>
</tr>
</thead>
<tbody>
<tr>
<td>All residentially zoned properties</td>
<td>7 a.m.—7 p.m.</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>7 p.m.—10 p.m.</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>10 p.m.—7 a.m.</td>
<td>50</td>
</tr>
<tr>
<td>All M-U and commercially zoned properties</td>
<td>7 a.m.—7 p.m.</td>
<td>65</td>
</tr>
<tr>
<td>except the C-M zoned properties</td>
<td>7 p.m.—10 p.m.</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>10 p.m.—7 a.m.</td>
<td>55</td>
</tr>
<tr>
<td>All C-M and industrially zoned properties</td>
<td>Anytime</td>
<td>Conditionally* 80</td>
</tr>
</tbody>
</table>

* Where outdoor noise levels are higher, additional noise attenuation measures, i.e., earphones for workers, increased insulation, double-pane glass, etc., may make noise levels acceptable.

2. For the purposes of this section, interior lease lines within a property or building shall comply with the same standards as lot lines. For noise inside a building, the sound level meter shall be placed at least three (3) feet distant from any wall, ceiling or partition, and the average measurement of at least three (3) different positions throughout the room shall be determined. The sound level limit at a location on a boundary between two (2) adjoining zoning districts shall be that of the more restrictive zone. When any sound level measurement is required it will be made pursuant to the provisions of this chapter and shall be measured with a sound level meter.

3. Equipment noise. It is unlawful for any person within any residential zone, or within a radius of 500 hundred feet from any residential zone, to operate equipment or perform any outside construction, maintenance or repair work on buildings, structures, landscapes or related facilities, or to operate any pile driver, power shovel, pneumatic hammer, power hoist, leaf blower, mower, or any other mechanical device, between the hours of 7 p.m. of one (1) day and 7 a.m. of the next day in such a manner that a reasonable person of normal sensitivities residing in the area is caused discomfort or annoyance. This subsection shall also apply to any property in the Mixed-Use zone having one or more residential units. This restriction does not apply to emergency work made necessary to restore property to a safe condition, restore utility service, or to protect persons or property from an imminent exposure to danger.

4. Vehicle repairs.
   a. It is unlawful for any person within any residential zone of the city to repair, rebuild, or test any automobile between the hours of 7 p.m. of one (1) day and 7 a.m. of the next day. This subsection shall also apply to any property in the Mixed-Use zone having one or more residential units.
   b. It is unlawful for any person within any residential zone of the city to repair, rebuild or test any automobile which is not registered with the Department of Motor Vehicles to a person residing at the address or to an immediate family member of a person residing at the address where such repairing, rebuilding or testing is being performed unless proof of exemption from such registration is provided which clearly demonstrates ownership by a resident at the subject address or an immediate family member of a resident at the subject address. This subsection shall also apply to any property in the Mixed-Use zone that includes one or more residential units.
   c. Under no circumstances is the operation of an automotive repair facility as a business
permitted in any residential zone, or on a property in the Mixed-Use zone that includes one or more residential units on the property.

5. Refuse vehicles and parking lot sweepers. No person shall operate or permit to be operated a refuse compacting, processing or collection vehicle or parking lot sweeper between the hours of 7 p.m. of one (1) day and 7 a.m. of the next day in any residential zone.

6. Notwithstanding any other provision of this chapter, and in addition thereto, it is unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood, or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the area. The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include, but not be limited to, the following:

   a. The level of the noise;
   b. The intensity of the noise;
   c. Whether the nature of the noise is usual or unusual;
   d. Whether the origin of the noise is natural or unnatural;
   e. The level and intensity of the background noise, if any;
   f. The proximity of the noise to residential sleeping facilities;
   g. The nature and zoning of the area within which the noise emanates;
   h. The density of the inhabitation of the area within which the noise emanates;
   i. The time of the day or night the noise occurs;
   j. The duration of the noise;
   k. Whether the noise is recurrent, intermittent, or constant; and
   l. Whether the noise is produced by a commercial or noncommercial activity.

7. Specific exemptions. Special events of short duration, such as carnivals, fireworks displays, outdoor concerts, parades and sports activities which are regulated by separate city approval such as a conditional use permit, are specifically exempted from the provisions of this chapter. Noise regulations for such events, however, may be applied as a condition of such separate approval.

8. Enforcement and penalties.

   a. It is a violation for any property owner(s) and/or person(s) in control of property to permit or cause a noise disturbance to be produced upon property owned by them or under their control.
   b. It is a violation for any person or persons to create or allow the making of noise disturbance as provided by this chapter at any location in the city.
   c. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor or infraction, and shall be subject to the provisions of the general penalty clause as set forth in Section 1.24.010 of this code.
   d. The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter which causes or creates sound levels or vibration exceeding the allowable limits as specified in this chapter, is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. Additionally, no provision of this chapter shall be construed to impair any common law or statutory cause or action, or legal remedy of any person for injury or damage arising from any violation of this chapter or from any other law.

D. Vibrations. Every use shall be so operated that the ground vibration generated by such use is not harmful or injurious to the use or development of surrounding properties. No vibration shall be permitted
which is perceptible without instruments at any use along the property line on which such use is located. For the purpose of this determination, the boundary of any lease agreement or operating unit or properties operating as a unit shall be considered the same as the property line.

E. Radioactivity. No activities shall be permitted which emit dangerous radioactivity at any point.

F. Electrical disturbance. No activity shall be permitted which causes electrical disturbances affecting the operation of any equipment located beyond the property line of such activity.

G. Other performance quality. Other uses not specifically noted above are required to conform to performance standards as set forth by the following provisions:

1. No use shall be undertaken or maintained unless it conforms to the regulations set forth in this section. No land or building shall be used or occupied in any manner so as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosion or other hazard, noise or vibration, smoke, dust, odor, airborne sand, materials in suspension such as paint droplets or any other form of air pollution, heat, cold, dampness, electrical or other disturbance, glare, liquid or solid refuse or wastes, or other substance, condition or element in such a manner or in such an amount as to affect adversely the surrounding area or adjacent premises.

(Ord. 4968 § 18, 2011)
NOTICE IS HEREBY GIVEN that the El Cajon Planning Commission will hold a public hearing at **7:00 p.m., Monday, February 11, 2013**, in the City Council Chambers, 200 Civic Center Way, El Cajon, CA.

and the El Cajon City Council will hold a public hearing at **7:00 p.m., Tuesday, February 26, 2013**, in the City Council Chambers, 200 Civic Center Way, El Cajon, CA to consider:

**BMW EL CAJON - CONDITIONAL USE PERMIT NO. 2179 AND TENTATIVE PARCEL MAP NO. 648**, as submitted by BMW South County, requesting a new automobile dealership, a freeway oriented sign, the consolidation of multiple parcels and the vacation or abandonment of existing easements. The subject property is addressed as 720 El Cajon Boulevard. This project is exempt from the California Environmental Quality Act (CEQA).

The public is invited to attend and participate in this public hearing. If you challenge the matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Commission at, or prior to, the public hearing. The City of El Cajon encourages the participation of disabled individuals in the services, activities, and programs provided by the City. Individuals with disabilities who require reasonable accommodation in order to participate in the public hearing should contact the Planning Division at 619.441.1742. More information about planning and zoning in El Cajon is available at www.ci.el-cajon.ca.us/dept/comm/planning.html.

If you have any questions, or wish any additional information, please contact **TONY SHUTE** at 619.441.1705 or via email at tonys@cityofelcajon.us and reference “CUP 2179/TPM 648” in the subject line.
Type of Discretionary Permit(s) Requested

- [ ] AZP
- [x] CUP
- [ ] LLA
- [ ] PRD
- [ ] PUD
- [ ] Specific Plan
- [ ] TPM
- [x] TSM
- [ ] VAR
- [ ] ZR
- [ ] Other:

CUP 2179  TPM 648

Applicant Information (the individual or entity proposing to carry out the project; not for consultants)

<table>
<thead>
<tr>
<th>Company Name:</th>
<th>BMW South County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Name:</td>
<td>Tom Story</td>
</tr>
<tr>
<td>Address:</td>
<td>4445 Eastgate Mall Ste 400, San Diego, CA 92121</td>
</tr>
<tr>
<td>Phone:</td>
<td>(858) 362-8500</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:Tstory@sunroadenterprises.com">Tstory@sunroadenterprises.com</a></td>
</tr>
</tbody>
</table>

Interest in Property:  
- [ ] Own  
- [ ] Lease  
- [x] Option

Project Representative Information (if different than applicant; consultant information here)

<table>
<thead>
<tr>
<th>Company Name:</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Name:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td></td>
</tr>
</tbody>
</table>

Property Owner Information (if different than applicant)

<table>
<thead>
<tr>
<th>Company Name:</th>
<th>Kam West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Name:</td>
<td>Kam Firozie</td>
</tr>
<tr>
<td>Address:</td>
<td>2800 National City Blvd., National City, CA 91950</td>
</tr>
<tr>
<td>Phone:</td>
<td>(619) 990-5777</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:zoomzoomowner@gmail.com">zoomzoomowner@gmail.com</a></td>
</tr>
</tbody>
</table>
Project Location

Address: 720 El Cajon Blvd., El Cajon, CA
Nearest Intersection: El Cajon Blvd and Marshall Ave.

Project Description (or attach separate narrative)

See Attached.

Hazardous Waste and Substances Statement

Section 65962.5(f) of the State of California Government Code requires that before the City of El Cajon accepts as complete an application for any discretionary project, the applicant submit a signed statement indicating whether or not the project site is identified on the State of California Hazardous Waste and Substances Sites List. This list identifies known sites that have been subject to releases of hazardous chemicals, and is available at http://www.caepa.ca.gov/sitecleanup/corteselist/. Check the appropriate box and if applicable, provide the necessary information:

The development project and any alternatives proposed in this application:
- [ ] is/are NOT contained on the lists compiled pursuant to Government Code Section 65962.5.
- [x] is/are contained on the lists compiled pursuant to Government Code Section 65962.5.
If yes, provide Regulatory Identification Number: __________________ Date of List: __________

Authorization

Applicant Signature:

Property Owner Signature:

Date: 12-12-12

1. Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application. I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the City to enter the subject property for inspection purposes.

2. Property Owner's Signature: If not the same as the applicant, property owner must also sign. A signed, expressed letter of consent to this application may be provided separately instead of signing this application form. By signing, property owner acknowledges and consents to all authorizations, requirements, conditions and notices described in this application. Notice of Restriction: property owner further acknowledges and consents to a Notice of Restriction being recorded on the title to their property related to approval of the requested permit. A Notice of Restriction runs with the land and binds any successors in interest.
Disclosure Statement

This statement is intended to identify and avoid potential conflicts of interest that may exist between the project proponents and the decision makers; including City staff, Planning Commissioners, and City Council members.

The following information must be disclosed:

1. List the names and addresses of all persons having a financial interest in the application.

Aaron Feldman
4445 Eastgate Mall ste 400, San Diego, CA 92121

Dan Feldman

Uri Feldman
4445 Eastgate Mall ste 400, San Diego, CA 92121

List the names and address of all persons having any ownership interest in the property involved.

Kam Firozie
2800 National City Blvd., National City, CA 91950

2. If any person identified pursuant to (1) above is a corporation or partnership, list the names and addresses of all individuals owning more than 10% of the shares in the corporation or owning any partnership interest in the partnership.

N/A

3. If any person identified pursuant to (1) above is a trust, list the name and address of any person serving as trustee or beneficiary or trustor of the trust.

Aaron Feldman
4445 Eastgate Mall ste 400, San Diego, CA 92121
4. Have you or your agents transacted more than $500.00 worth of business with any member of City staff, Boards, Commissions, Committees and Council within the past 12 months or $1,000.00 with the spouse of any such person? Yes [ ] No [✓]

If yes, please indicate person(s), dates, and amounts of such transactions or gifts.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

“Person” is defined as “Any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.” Gov’t Code §82047.

Tom Story
Print or type name of applicant

Signature of applicant/ date 12/12/12
NOTE: Attach appropriate names on additional pages as necessary.
**BMW El Cajon - Project Description**

The project applicant, Sunroad E C Land, Inc., proposes to construct a new BMW automobile dealership on a 3.9 ac. site located at 720 El Cajon Blvd. in the City of El Cajon. The site is located at the intersection of El Cajon Blvd., Marshall Ave. and Washington Ave. and is currently developed and used for auto dealership use. Fronting on El Cajon Blvd. and Marshall Ave., the site is bordered on the west by the ROW for the SDA&E railroad (MTS). Surrounding land uses include commercial uses to the north, east and south.

The proposed project requires a Conditional Use Permit (CUP) and Tentative Parcel Map (TPM - for the purpose of consolidating multiple lots and to accomplish the initial process of vacation or abandonment of existing easements to the City of El Cajon) to construct and operate a full service, new and used car dealership within a single, two story building of approximately 31,200 sf, a 730 sf car wash, and paved auto display areas for approximately 250 vehicles, and all grading, drainage, utility and access improvements.

**Access.** Access to the project would remain via the existing private drive on El Cajon Blvd. and relocation of an existing driveway on Marshall Ave. to the northwest.

**Building Elevations/Landscaping.** The proposed buildings would be painted, concrete tilt-up construction and/or CMU or wood frame construction with portions finished with a special BMW approved EIFS surface. The building color will be predominantly white with gray accents per BMW standards. Landscaping will be used to provide visual variation in the parking lot, screen utility structures, provide shade and help create a unifying theme within the project site. The plant palette would include drought tolerant plants and street trees required by the City of El Cajon.

**Lighting Plan.** Outdoor lighting and lighting levels for this site would be provided in accordance with the City standards. Lighting standards will be a maximum of 35' above finished grade.

**Grading Plan.** Existing on-site elevations range from 504 feet AMSL at the southwestern corner of the site to 470 feet AMSL at the northeastern corner. Most of the 3.9 site will be graded to minimize the slope (fall) across the site and accommodate a single larger building in place of the smaller multiple buildings currently on the site. The resulting grading quantities are approximately 25,500 CY of Cut and 1,500 CY of Fill, yielding 24,000 CY of exported material. New masonry retaining walls are planned along the rear of the site paralleling the railroad ROW (exposed heights ranging from 7-11') and Marshall Ave. frontage (exposed heights ranging from 3-4') to retain the soil excavations needed to support final site elevation. The existing gunite covered slope along the railroad ROW will be repaired. No offsite grading is proposed.

**Utilities.** Existing utility connections will be adjusted to serve the new dealership. The existing 8" public sewer main within the site will be up-sized to 10" per City requirements and relocated from the vacated Marshall Ave alignment to occur within project driveways to avoid the proposed building.

**Stormwater.** The project will comply with Low Impact Development (LID) requirements through the use of Modular Wetland Units and to a lesser extent, bio-swales for post-construction stormwater treatment of runoff from the 85th percentile storm. Facilities will incorporate provisions to bypass larger storms events as is typical and in compliance with LID regulations. Based on the current regulations, the site is exempt from Hydromodification Management Planning (HMP) due to the existing developed and completely impervious site conditions. Based on this exemption, there are no HMP facilities currently planned for the site.
**Existing vs Proposed building coverage and floor area.**

**Existing Building coverage = 30,646 sf**

<table>
<thead>
<tr>
<th>Building</th>
<th>Coverage</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building 1</td>
<td>8,690</td>
<td>4,000 (Basement Parts area)</td>
</tr>
<tr>
<td>Building 2</td>
<td>4,870</td>
<td>0</td>
</tr>
<tr>
<td>Building 3</td>
<td>4,062</td>
<td>1500 (Second floor of service building)</td>
</tr>
<tr>
<td>Building 4</td>
<td>4,542</td>
<td>0</td>
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<tr>
<td>Building 5</td>
<td>4,476</td>
<td>835 (Second floor of sales building)</td>
</tr>
<tr>
<td>Building 6</td>
<td>3,262</td>
<td>0</td>
</tr>
<tr>
<td>Building 7</td>
<td>744</td>
<td>0</td>
</tr>
</tbody>
</table>

**Total: 30,646 + 6,335**

**Existing floor area = 36,981 sf (.22 FAR)**

**Proposed Building Coverage = 28,466 sf**

**Proposed floor area = 31,930 sf (.19 FAR)**
DRAFT EXCERPTS FROM THE MINUTES OF THE
EL CAJON PLANNING COMMISSION MEETING
FEBRUARY 11, 2013

AGENDA ITEM NO. 2 – BMW EL CAJON - CONDITIONAL USE PERMIT NO. 2179 AND TENTATIVE PARCEL MAP NO. 648
This was a public hearing on a request for a new automobile dealership, freeway-oriented sign, and consolidation of lots into one parcel and the adjustment or vacation of certain easements. The subject property is addressed as 720 El Cajon Boulevard. This project is exempt from the California Environmental Quality Act (CEQA).

APN: 487-490-07 and 487-490-19
General Plan: El Cajon Blvd/Johnson Av-GC (SDA 10) / General Commercial (CG)
Zoning: General Commercial (C-G)
Applicant: BMW South County (Tom Story) / 858.362.8500
Project Planner: Tony Shute / 619.441.1705
Email: tonys@cityofelcajon.us and include “CUP 2179/TPM 648” in Subject Line.

In a PowerPoint presentation, SHUTE summarized the staff report.

MROZ opened the public hearing and invited any speakers to the podium.

Tom STORY, applicant, approached the podium and expressed excitement about the project and added that they would be implementing BMW's new design standards.

MROZ asked the applicant if studies had been completed on the size design for the sign.

STORY replied that after evaluating the costs, they may only proceed with one sign. He appreciated the flexibility allotted them by staff in order to accommodate the freeway-oriented sign subject to further staff review.

SOTTILE thanked the applicant for wanting to do business in El Cajon and increasing employment opportunities. He added that in reviewing the plans, the design of the building was very attractive.

Motion was made by BALES, seconded by CIRCO, to close the public hearing; carried 5-0.
Motion was made by MROZ, seconded by SOTTILE, to adopt the proposed Resolution Nos. 10720, 10721 and 10725, as presented recommending City Council approval of CEQA Categorical Exemptions 15302 (Replacement or Reconstruction), 15305 (Minor Alterations in Land Use Limitations), and 15311 (Accessory Structures), Conditional Use Permit No. 2179 and Tentative Parcel Map No. 648, respectively, subject to conditions; carried 5-0.

This item is tentatively scheduled for the City Council meeting on February 26, 2013, at 7 p.m.
NOTICE OF PROPOSED CONDITIONAL USE PERMIT AND TENTATIVE PARCEL MAP FOR BMW EL CAJON

NOTICE IS HEREBY GIVEN that the El Cajon Planning Commission will hold a public hearing at 7:00 p.m., Monday, February 11, 2013, in the City Council Chambers, 200 Civic Center Way, El Cajon, CA,

and the El Cajon City Council will hold a public hearing at 7:00 p.m., Tuesday, February 26, 2013, in the City Council Chambers, 200 Civic Center Way, El Cajon, CA to consider:

BMW EL CAJON - CONDITIONAL USE PERMIT NO. 2179 AND TENTATIVE PARCEL MAP NO. 648, as submitted by BMW South County, requesting a new automobile dealership, a freeway oriented sign, the consolidation of multiple parcels and the vacation or abandonment of existing easements. The subject property is addressed as 720 El Cajon Boulevard. This project is exempt from the California Environmental Quality Act (CEQA).

The public is invited to attend and participate in this public hearing. If you challenge the matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Commission at, or prior to, the public hearing. The City of El Cajon encourages the participation of disabled individuals in the services, activities, and programs provided by the City. Individuals with disabilities who require reasonable accommodation in order to participate in the public hearing should contact the Planning Division at 619.441.1742.

If you have any questions, or wish any additional information, please contact TONY SHUTE at 619.441.1705 or via email at tonys@cityofelcajon.us and reference "CUP 2179/TPM 648" in the subject line.
OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT

by and between

CITY OF EL CAJON
a charter city and municipal corporation

and

SUNROAD EC LAND, INC.,
a California Corporation

Attachment 4
OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT

This OWNER PARTICIPATION AND DEVELOPMENT AGREEMENT (this “Agreement”) dated as of _____________, 2013 (the “Effective Date”), is made by and between the CITY OF EL CAJON, a charter city and municipal corporation (the “City”), and SUNROAD EC LAND, INC., a California Corporation (the “Developer”).

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City is interested in the development of a new BMW dealership consistent with BMW USA’s new image requirements, which include modern European style frontage, showroom service areas, and customer waiting areas (the “Dealership”) that will serve BMW customers, and the Developer has expressed an interest in developing the Dealership on property located at 720 El Cajon Boulevard in the City (the “Site”).

B. The successful operation of the Dealership is an important component in the City’s efforts to revitalize El Cajon Boulevard and maintain a vibrant and expanding group of new auto dealerships in the City to promote economic development and employment opportunities for its citizens.

C. Recent changes in redevelopment law and the allocation of property tax revenues between municipalities and the State of California require the public and private sectors to consider new and innovative structures to promote redevelopment in order to realize significant public benefits in the form of increased revenues and employment opportunities.

D. The Developer has recently acquired the Site and improvements thereon. The Site is more particularly described on Attachment 1, which is attached hereto and incorporated herein by this reference.

E. Subject to and as provided by this Agreement, the parties contemplate that (i) the Developer will reconfigure, renovate and rehabilitate the Site so that it conforms to the current manufacturer’s requirements for a BMW motorcar dealerships (the “Project”), as further defined herein, and (ii) the City will provide financial assistance towards the costs incurred by the Developer to construct the Project.

F. The City has determined that the imposition of certain operating covenants and restrictive covenants with respect to the Project constitutes a valid public purpose, and therefore the City desires to obtain such operating covenants and restrictive covenants with respect to the Project in consideration of the transfer of sums in accordance with the terms hereof.

G. In consideration for the Developer’s agreement to be bound by such operating covenants and restrictive covenants, the City has agreed to make certain payments to the Developer. The City and the Developer agree the amount of each payment required to be made by the City hereunder is a fair exchange for the consideration actually furnished pursuant to this Agreement by the Developer during each fiscal year of the City in which payment is made, that
each payment to be made by the City hereunder has been calculated so that it will not exceed the resources available to make such payment, and further that in no event shall the City be immediately indebted to the Developer for the aggregate payments herein provided.

H. The purpose and intention of the City in making the transfers to the Developer is solely to induce the Developer to construct the public improvements described in this Agreement and to develop and operate, or cause to be developed and operated, the Project on the Site so as to further the enhancement, the well-being of the citizens at large, the enhanced local employment, and expand the City's tax revenue base.

I. This Project is categorically exempt from environmental review pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (California Public Resources Code § 21000 et seq.) (“CEQA”).

J. This Agreement and the Developer’s development of the Project is a new and innovative structure of public and private participation in an effort to promote and assist economic development in the City, which will realize significant public benefits in the form of increased revenues to the City and increased employment opportunities of quality trades, and are in the vital and best interest of the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, the City and the Developer agree as follows:

1. RECITALS INCORPORATED

The recitals are hereby incorporated by reference into this Agreement and are a material part of this Agreement.

2. DEVELOPMENT OF THE SITE

2.1 Description of Project. The Project shall consist of the Developer’s rehabilitation of the Site as further described in the Scope of Development attached hereto and incorporated herein as Attachment 2 (the “Scope of Development”). The Developer shall construct the Project in compliance with (i) the terms and conditions of this Agreement, (ii) the “Project Entitlements” (as that term is defined in Section 2.2 below), (iii) current factory standards for BMW USA (“BMW”) motorcar dealerships (“BMW Standards”), (iv) all plans and permits approved by City with respect to the Project, and (v) the Schedule of Performance attached hereto and incorporated herein as Attachment 3. The Developer shall thereafter operate the Project as provided in Section 4 below. The Developer shall ensure that all designs prepared for the Project shall be (1) prepared by an architect and development team that is recognized by BMW as having the expertise and ability to prepare and implement plans that meet BMW Standards, and (2) approved by BMW as being compliant with BMW Standards.

2.2 Project Entitlements. As a condition precedent to the Developer’s right to construct the Project under this Agreement, the Developer shall obtain from the City all permits, approvals, and entitlements necessary for the Project as required in this Agreement, by applicable State law, by City code, and all other applicable laws, including but not limited to any
approvals or certifications as required by CEQA, the approval of which is subject to the City's legislative discretion (all of the foregoing, the "Project Entitlements"). City staff shall use reasonable efforts to assist the Developer in coordinating the expeditious processing and consideration of the Project Entitlements. However, the execution of this Agreement does not constitute the granting of or a commitment to obtain the Project Entitlements required by the City, nor does such execution obligate the City to incur any expense in assisting the Developer in the acquisition of the Project Entitlements. In the event of a conflict between BMW Standards and the Project Entitlements, the Project Entitlements shall control.

2.3 Entitlement Process. The Developer acknowledges that the requirements set forth in this Article 2, including, without limitation the Developer's construction and completion of the Project, are material considerations for the participation by the City in this Agreement, and that but for such requirements, the City would not have entered into this Agreement. The Developer acknowledges and agrees that in reviewing and approving documents under this Section 2.3, the City is not acting on behalf of the Developer. Further, the Developer understands that the City shall conduct its typical governmental functions and exercise of its police powers in its capacity as the jurisdiction responsible for land use and building permit approvals.

2.3.1 Submittal of Developer's Applications. The Developer shall submit relevant development applications and supporting documentation, and all other applications necessary to obtain the Project Entitlements (collectively, the "Developer's Applications"). These submittals shall be provided in the time period designated in the Schedule of Performance.

2.3.2 Defects in Plans. The City shall not be responsible to the Developer or to third parties in any way for any defects in the Developer’s Applications nor for any structural or other defects in any work done according to the Developer’s Applications, nor shall the City be responsible for any delays caused by the review and approval processes established by this Article 2 or the reviews conducted by the City in the Schedule of Performance.

2.4 Schedule of Performance. The Developer has submitted or shall submit all of the Developer’s Applications, and if approved by the City shall commence and complete construction of the Project, and shall satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance. The City’s City Manager is permitted to modify or extend the Schedule of Performance without further authorization by the City of El Cajon City Council (the “City Council”) provided that each of the following conditions are satisfied: (i) the modification does not prohibit the Developer from obtaining a certificate of occupancy for the Project no later than eighteen (18) months from the Effective Date; (ii) the City Manager and the Developer agree to the modification or extension in a writing executed by both the Developer and the City Manager; (iii) the Developer is not otherwise in default under this Agreement; and (iv) such modification or extension does not increase the City’s obligations or costs under this Agreement.
2.5 Costs of Construction. Except as provided in Section 3 below, all of the costs of planning, designing, developing and constructing the Project, site preparation and grading shall be borne solely by the Developer.

2.6 Rights of Access. For purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to the Site at normal construction hours during the period of construction and upon reasonable prior notice to the Developer, including but not limited to, the inspection of the work being performed in the construction of the Project. The City shall indemnify, defend and hold the Developer harmless from any loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property (collectively, “Claims”) arising from or related to the City's inspection of the Project as permitted by this Section 2.6. Notwithstanding the prior sentence, the City shall not be liable for such Claims to the extent and in the proportion that the same is ultimately determined to be attributable to the negligence or misconduct of the Developer or its agents, representatives, employees, directors, officers or consultants. This section does not apply to, limit or otherwise restrict or impose conditions on any inspection or entry right the City has pursuant to State law or the City of El Cajon Municipal Code.

2.7 Miscellaneous Rules and Regulations Applicable to Development of the Project.

2.7.1 Compliance with Laws. The Developer shall carry out the design and construction of the Project in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards (except as otherwise provided herein), building, plumbing, mechanical and electrical codes, and all other provisions of the City of El Cajon Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

2.7.2 Nondiscrimination in Employment. The Developer certifies and agrees that all persons employed or applying for employment by it (including all contractors and subcontractors used by the Developer) in constructing the Project on the Site (collectively, the “Construction Personnel”) are and will be treated equally without regard to, or because of, race, color, religion, ancestry, national origin, sex, sexual orientation, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, et seq., the California Equal Pay Law, Cal Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other antidiscrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Subject to any
privacy rights of the affected individuals, upon the reasonable request by the City, the Developer shall allow representatives of the City access to Construction Personnel records during regular business hours to verify compliance with these provisions in connection with the Project and construction thereof. Any contract or agreement entered by the Developer with Construction Personnel shall specifically incorporate this section and shall include a provision providing the City access to the Construction Personnel's records referenced in the prior sentence.

2.7.3 Levies and Attachments on Site and Building. As a condition precedent to the City's obligation to issue a Release of Construction Covenants pursuant to Section 2.8 of this Agreement, the Developer shall remove or have removed any levy or attachment made on the Site and Building or any part thereof, or assures the satisfaction thereof within a reasonable time. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amount of any levy or attachment or to limit the remedies available to the Developer with respect thereto.

2.7.4 Insurance. The Developer shall maintain insurance as provided by Section 6 of this Agreement.

2.8 Release of Construction Covenants.

2.8.1 Promptly after completion of construction of the Project in conformity with this Agreement, the City shall promptly deliver to the Developer a Release of Construction Covenants, executed and acknowledged by the City substantially in the form provided on Attachment 4, attached hereto and incorporated herein by this reference. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction of the Project, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to development of the Site or construction of the Project; however, any such party shall be subject to those continuing covenants described in Section 4 of this Agreement.

2.8.2 If City refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the City shall, within thirty (30) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City's opinion of the actions the Developer must take or cause to be taken to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.
3. CITY REIMBURSEMENT FOR IMPROVEMENTS

3.1 Eligible Rehabilitation Improvements. In consideration for the Developer's investment in the City through the construction of the Project on the Site, the City shall, subject to the satisfaction of the conditions precedent identified in Section 3.2, return to the Developer a percentage of the Net Sales Taxes From the Site consistent with the formula and term described in the City Reimbursement Schedule set forth in Attachment 5 hereto (the "City Reimbursement").

3.2 Conditions Precedent to City Reimbursement Obligation. Prior to, and as a condition precedent to, the City's obligation to fund or disburse any portion of the City Reimbursement, the following conditions precedent (each a "Disbursement Milestone"), which are for the sole and exclusive benefit of the City, and shall be completed to the satisfaction of, or valued by, the City.

3.2.1 The Developer shall have executed, with signatures notarized, the "Operating Covenant" (as that term is defined in Section 4 below), and the Operating Covenant shall have been recorded against the Site, subject only to (a) easements, restrictions, financing, and reservations of record in existence prior to the Effective Date; and (b) that certain Ground Lease executed February 19, 2013, between Sunroad E-C Land, Inc., as Landlord, and BCY Auto, Inc., as Tenant by Instrument recorded Document No. , Official Records, San Diego County Recorder's Office. The City acknowledges that the Developer is pursuing financing to fund construction of the Project and agrees, if requested by the mortgagor, to subordinate the Operating Covenant to any documents recorded in favor of the mortgagor in connection with such financing.

3.2.2 All Project Entitlements shall have been approved by all applicable government or regulatory entities and shall be final. Any applicable statute of limitations to challenge such Project Entitlements shall have passed without the commencement of a challenge (including a referendum), shall have been waived by the City or, if a timely challenge has been made, such challenge shall be resolved in a manner that is acceptable to the City.

3.2.3 The Developer shall have provided evidence of financing to the City and the City shall have approved the same.

3.2.4 The Developer shall have provided evidence to the City that the Developer has procured insurance as required by Section 6.1 hereof.

3.2.5 The Developer shall have provided evidence to the City's City Manager that the Developer has obtained approval from BMW for the Project, including the Developer's site plan and all construction plans and drawings.

3.2.6 The Developer shall not be in breach of its obligations under this Agreement and the Operating Covenant.
3.2.7 The Developer shall obtain building permits for the Project work to be performed.

3.3 Disbursement of City Reimbursement. The City shall disburse the City Reimbursement to the Developer in accordance with the provisions of this Agreement. Each disbursement of a portion of the City Reimbursement shall be conditioned upon the Developer’s compliance with this Agreement, and shall include a calculation of the Net Sales Taxes From the Site as defined in City Reimbursement Schedule set forth in Attachment 5, hereto.

3.4 City Development Responsibilities. In order to assist the Developer in the successful construction of the Dealership, and in addition to the consideration otherwise contained herein, the City hereby agrees as follows:

3.4.1 The City will reimburse Developer for all soft and hard costs of relocating the existing sewer system, including required traffic controls, concrete encasement as necessary to facilitate final grades as well as any costs attributable to upsizing the sewer piping for the Dealership, within thirty (30) days after the City has completed a final inspection of the sewer improvements and the Developer has submitted documentation to the City of the costs of such sewer improvements.

3.4.2 The City will be responsible for re-paving (i.e., overlaying) Marshall Avenue, from El Cajon Boulevard to West Main Street (“Marshall Avenue Repaving”) not later than the end of fiscal year 2015-16, but using its best efforts to complete such work before the end of fiscal year 2013-14.

3.4.3 The City commits to assigning a mid-management level employee to expedite the processing of all Project Entitlements, including the review of all required plans, studies or reports for the Dealership.

3.4.4 The City will reimburse Developer for all soft and hard costs of all off-site public improvements, including but not limited to restriping Marshall Avenue to accommodate an extended right turn lane, frontage improvements within the public right of way including relocation of fire hydrants (as necessary), fire service lateral connection to the water main, curb and gutter repair or replacement, sidewalk repair or replacement, and off-site landscaping required as a result of the Project Entitlements for the Dealership (“City Funded Improvements”). The Developer shall provide the City with documentation of the soft and hard costs of the City Funded Improvements within thirty (30) days after City inspection of the City Funded Improvements.

3.4.5 During the term of this Agreement the City will trim and maintain, as necessary, existing street trees and other landscaping located in the median and along El Cajon Boulevard from Wilson Avenue to Marshall Avenue to maximize the visibility of the Dealership for arriving customers.

3.4.6 If supported by a focused intersection capacity analysis, the City will increase the length of the left turn lane from El Cajon Boulevard onto Marshall Avenue (“Left Turn Lane Improvements”).
3.4.7 If requested by the Developer, the City will consider rescinding the existing two-hour parking zone on El Cajon Boulevard along the frontage of the Site.

3.4.8 The City shall deem the Developer's Project pending and subject to all sign regulations existing as of December 11, 2012, and timely process all necessary sign permit applications in order for the Developer to install the maximum number and types of on-site commercial signs including, without limitation, a freeway visible pylon sign; a second pylon sign on the property viewable from Marshall Avenue and El Cajon Boulevard; full BMW dealership required signage (e.g., colors, sizes and locations on improvements) on the Site; and monument directional signs for parts, service, used cars, certified used cars, new cars, and express service.

3.4.9 The City's financial obligations in subsections 3.4.2, 3.4.4 and 3.4.6 of this Section 3.4 are subject to the availability of former El Cajon Redevelopment Agency funds and the approval of the California Department of Finance. The City shall seek approval so that the improvements may be funded in fiscal year 2013-14, and construction completed before the end of fiscal year 2014-15. In the event that the City is unable to obtain such approval or identify other City funding sources within twelve (12) months after the Effective Date, the City covenants that it shall use any legally available funds to fully finance the Marshall Avenue Improvements, City Improvements, and/or Left Turn Lane Improvements.

3.5 City-Initiated Land Use Regulations. The City agrees to use its best efforts to initiate and process, for City Council consideration, the adoption of an updated land use plan (e.g., a specific plan, or a general plan amendment, including implementing ordinances to amend its zoning code, as necessary) applicable to the Site and adjacent areas. The initiation of these efforts shall begin not later than December 31, 2013, and would include reasonable land use regulations to encourage compatible uses and development for properties, and to prohibit uses incompatible to the Dealership on neighboring properties. The parties agree that the following types of uses are incompatible with a BMW dealership: check cashing; liquor stores; tattoo parlors; tobacco retailers and smokerooms; medical marijuana dispensaries; adult entertainment; card rooms; homeless shelters; food banks; food stamp distribution or collection premises (excluding therefrom regional or larger supermarkets that redeem food stamps); gun shops and other shops selling ammunition or other weapons, whether firearms or otherwise; massage parlors; and bars, nightclubs, or other similar uses the predominant feature of which is the on-site sale of alcoholic beverages.

3.6 Additional City Commitments. The City further agrees to the following commitments:

3.6.1 The City shall designate El Cajon Boulevard, from the Interstate 8 off ramp in the south to its intersection with Main Street in the north a problem oriented policing ("POP") project. City law enforcement will use its best efforts to address lawlessness as a POP project.

3.6.2 The City will assist the Developer, to the extent possible, in seeking the cooperation of the Metropolitan Transit System ("MTS") to eliminate storm water runoff.
originating within the MTS right-of-way and other areas under MTS control up-slope from the Site.

4. OPERATION OF THE PROJECT AND COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO THE SITE AFTER COMPLETION OF CONSTRUCTION OF THE PROJECT

Concurrently with the Developer's execution of this Agreement, the Developer shall execute and acknowledge an Operating Covenant substantially in the form attached hereto and incorporated herein as Attachment 6 (the "Operating Covenant"). The Operating Covenant shall be recorded within five (5) days after the Effective Date. The Developer's execution of the Operating Covenant shall be a material component of this Agreement and a condition precedent to all of the City's obligations in this Agreement. The Operating Covenant shall obligate the Developer to construct the Project and shall obligate the Developer to operate the Project for a minimum period of fifteen (15) years, commencing on the date the City issues a Release of Construction Covenants for the Project.

5. DEFAULTS AND REMEDIES

5.1 Default. Subject to the extensions of time set forth in Section 9.2 of this Agreement, (1) failure by any party to perform any action or adhere to any covenant or representation or warranty required by this Agreement, including in any of the attachments hereto, within the time periods provided herein following notice and an opportunity to cure as described in this Section 5.1, or (2) the filing of a petition in bankruptcy by or against the Developer or appointment of the receiver or trustee of any property constitutes a "Default" under this Agreement. The breach or falsity of any representation or warranty by a party as set forth in this Agreement also constitutes a "Default" under this Agreement following notice and an opportunity to cure as described hereinafter. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default as to non-monetary Defaults if such party, within thirty (30) days from receipt of such notice, promptly and with due diligence, commences to cure, correct or remedy such failure or delay and thereafter completes such cure, correction or remedy with due diligence. In no event shall a party be allowed more than 180 days to cure a default. As to monetary Defaults, a cure period of ten (10) days upon written notice shall apply.

Notwithstanding anything to the contrary in this Agreement, no notice of Default shall be necessary, nor shall the Developer have a right to cure a Default resulting from a Transfer, as that term is defined below, that has not been approved by the City.

5.2 Institution of Legal Actions; Remedies. In addition to any other rights or remedies, and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, or to obtain any other remedy consistent with the purpose of this Agreement. The City shall also have the right to pursue damages (but only actual damages) for the Developer's Defaults, but in no event shall the Developer be entitled to
damages of any kind from City, except as a result of the City's Default of its obligation to make the City Reimbursement in which case the Developer shall be entitled to specific performance of this Agreement or, if such remedy is not available, then damages not in excess of the maximum amount of the City Reimbursement, but such damages shall not include lost profits or other consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, or in the Federal District Court in the Central District of California. Developer hereby waives any right to remove any such action from San Diego County as is otherwise allowed by California Code of Civil Procedure section 394.

5.3 Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Manager of the City or the City Clerk of the City if there is no City Manager in addition to such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of the Developer, whether made within or outside the State of California, or in such other manner as may be provided by law.

5.4 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party.

5.5 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.6 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

5.7 Applicable Law. The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

6. INSURANCE REQUIREMENTS; REPAIR AND RESTORATION OF PROJECT

6.1 Insurance Requirements. The Developer shall maintain, at all times during the term of this Agreement, insurance in such amounts and providing such coverage commonly required for an automobile dealership in the State of California, including, but not limited to, commercial general liability, workers' compensation, automobile, and fire and casualty (including "all risk") insurance, all to protect the Dealership from interruption from operations.
6.2 Remedies for Defaults Re: Insurance. In addition to any other remedies the City may have if the Developer commits a Default hereunder by failing to provide or maintain any insurance policies or policy endorsements to the extent, and within the time herein required, the City may at its sole option obtain such insurance and deduct the amount of the premium for such insurance from any sums due to the Developer by the City from the City Reimbursement. Exercise of such remedy, however, is an alternative to other remedies the City may have and is not the exclusive remedy for the Developer’s failure to maintain insurance or secure appropriate endorsements.

6.3 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. If the Project shall be totally or partially destroyed or rendered uninhabitable by fire or other casualty required to be insured against by the Developer, the Developer shall promptly proceed to obtain all available insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as they existed prior to the casualty, and the Developer shall complete or cause to be completed the same as soon as possible thereafter so that the Project can be operated in accordance with this Agreement. The City shall cooperate with the Developer, at no expense to the City, in obtaining any governmental permits required for the repair, replacement, or restoration.

7. TRANSFER RESTRICTIONS

7.1 Prohibition. The qualifications and identity of the Developer are of particular concern to the City. It is because of these qualifications and identity that the City has entered into this Agreement with the Developer. Accordingly, commencing upon the Effective Date and continuing throughout the term of the Operating Covenant: (i) no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement; (ii) the Developer shall not make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing, or lease of the whole or any part of the Site or the Project thereon; and (iii) no changes shall occur with respect to the ownership and/or control of the Developer, including, without limitation, stock transfers, sales of issuances, or transfers, sales or issuances of membership or ownership interests, or statutory conversions (with each of the actions in clauses in clauses (i), (ii), and (iii) above, referred to herein as a “Transfer”), without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Any purported Transfer, voluntarily or by operation of law, except with the prior written consent of the City, shall be null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

7.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, the City’s approval of a Transfer shall not be required in connection with any of the following:

(a) Any Transfer by the Developer to a “Related Person or Entity” (as defined below).
(b) A Transfer consisting of the conveyance or dedication of any portion of the Site to the City or other appropriate governmental City, including public utilities, where the granting of such easements permits or facilitates the development of the Site and the Project.

(c) Any Transfer for: (i) financing purposes to the holder of a mortgage; (ii) any refinancing or permanent financing of the mortgage; or (iii) any Transfer to any person or entity pursuant to foreclosure or deed in lieu of foreclosure of any such mortgage referred to in clauses (i) or (ii).

In the event of a Transfer by the Developer not requiring the City's prior approval, the Developer nevertheless agrees that at least thirty (30) days prior to such Transfer, the Developer shall give written notice to the City of such Transfer. In the case of a Transfer pursuant to subparagraph (a) above, the Developer agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed, or upon the effective date of transfer will assume, in writing through an assignment and assumption agreement, in form reasonably acceptable to the City, all of the obligations of the Developer under this Agreement which remain unperformed as of such Transfer or which arise from and after the date of Transfer.

As used in this Agreement, a “Related Person or Entity” shall mean an entity in which the Developer, or an entity in which Sunroad E-C Land, Inc. or a majority of Sunroad E-C Land, Inc.’s shareholders, own a greater than fifty percent (50%) ownership and management interest, has a greater than fifty percent (50%) ownership and management interest; provided, however, that such Related Person or Entity shall demonstrate that such person or entity has been approved in writing by BMW to operate the Project thereon.

7.3 City Consideration of Proposed Transfer; Release of Transferor Upon Permitted or Approved Transfer. If the Developer desires to cause a Transfer of any of its interests in this Agreement or the Site, and such Transfer requires the City's approval under Section 7.1, the Developer shall request in writing to the City that it consent to such Transfer, which consent shall not be unreasonably delayed or withheld. A Transfer shall be conditioned upon: (i) the proposed assignee expressly assuming, in writing, the unexecuted obligations hereunder of the transferor/assignor, as applicable, as to times following the effective date of the assignment; and (ii) the proposed assignee demonstrating to the reasonable satisfaction of the City that such person or entity has adequate financial capacity to complete the development and/or operation of the Project on the Site and that such person or entity has been approved in writing by BMW to operate the Project thereon.

Notwithstanding any other provision set forth in this Agreement to the contrary, upon the effective date of a permitted or approved Transfer, and provided that the transferor/assignor shall have delivered to the City an executed assignment and assumption agreement in form reasonably acceptable to City legal counsel, the transferor/assignor shall be released from all further liabilities and obligations hereunder and the Operating Covenant that have been so transferred and assigned.
7.4 **Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall run with the Site and be binding upon the Developer and the City and their permitted successors and assigns. Whenever the term “Developer” or “City” is used in this Agreement, such term shall include any other permitted successors and assigns.

8. **INDEMNIFICATION OF CITY**

The Developer shall indemnify, defend, and hold harmless the City and City Personnel from and against any and all claims, liabilities, damages, and losses, including without limitation, reasonable attorneys’ fees and litigation expenses, including court costs and expert witness fees (collectively “Claims”), due to the death or personal injury of any person, or physical damage to any person’s real or personal property, caused by the construction of improvements by, or construction-related activities of, the Developer on the Site and the Building, or for any construction defects in any improvements constructed by the Developer on the Site and the Building, or the approval or operation of the Project on the Site and the Building; provided, however, that the foregoing indemnification shall not apply to the extent such Claims are caused by the negligence or willful misconduct of the City or City, subject to any immunities which may apply to the City or City with respect to such Claims. The foregoing indemnification provision shall survive the termination of this Agreement.

9. **GENERAL PROVISIONS**

9.1 **Notices.** All notices under this Agreement shall be effective: (i) upon personal delivery; (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery; (iii) via facsimile, so long as the sender receives confirmation of successful transmission from the sending machine; or (iv) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid, and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

**To City:**
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Phone No.: 619-441-1716
Attention: City Manager

**With a copy to:**
El Cajon City Attorney
200 Civic Center Way
El Cajon, CA 92020
Phone No.: 619-441-1798
Attention: Morgan Foley, Esq.
To Developer: Sunroad E-C Land, Inc.
4445 Eastgate Mall
Suite 400
San Diego, CA 92121

Phone No.: 858-362-8500
Attention: Dan Feldman

With a copy to:
Haynie Law Group
17140 Bernardo Center Drive
Suite 354
San Diego CA 92128
Phone No.: 858-485-7700
Attention: Allen D. Haynie, Esq.

9.2 Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; inability to obtain reasonably acceptable financing; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City or City or any other public or governmental City or entity. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Subject to the second sentence of Section 2.4, times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and Developer.

9.3 Non-Liability of Officials and Employees of the City to the Developer. No member, official, director, officer, agent, or employee of City shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any Default or breach by the City or for any amount which may become due to the Developer or the Developer's successors, or on any obligations under the terms of this Agreement.

9.4 Relationship Between City and Developer. It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other.

9.5 City Approvals and Actions. The City shall maintain the authority to implement this Agreement on behalf of the City through the City Manager (or his or her duly authorized
The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development permitted on the Site and in the Building, or add to the costs incurred or to be incurred by the City. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

9.6 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

9.7 Integration. This Agreement, including the Attachments hereto, contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

9.8 Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled to its reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

9.9 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

9.10 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

9.11 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

9.12 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law and consistent with the mutual intent of the parties as expressed herein.
9.13 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be the applicable time of day in the Pacific Time Zone.

9.14 Legal Advice. Each party represents and warrants to the other the following: it has carefully read this Agreement, and in signing this Agreement, it does so with full knowledge of any right which it may have; it has received independent legal advice from its legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, it has freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or its agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

9.15 Time of Essence. Time is expressly made of the essence with respect to the performance by the City and the Developer of each and every obligation and condition of this Agreement.

9.16 Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

9.17 Third Party Beneficiaries. With the exception of the provisions in Section, 8, which benefits, and is enforceable by, the City and the indemnitees described therein, there are no intended third party beneficiaries to this Agreement.

9.18 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party; (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

[Signatures on Following Page]
IN WITNESS WHEREOF, the Developer and the City each hereby represents that it has read this Agreement, understands it, and hereby executes this Agreement to be effective as of the day and year first written above.

“Developer”
SUNROAD E-C LAND, INC. a California corporation

By: ____________________________
Its: ____________________________

Date: ________________________, 2013

“City”
CITY OF EL CAJON, a charter city and municipal corporation

By: ____________________________

Douglas Williford, City Manager

Date: ________________________, 2013

ATTEST:

Kathie Rutledge, CMC, City Clerk

APPROVED AS TO FORM:

Morgan L. Foley
City Attorney
ATTACHMENT “I”

LEGAL DESCRIPTION OF SITE

PARCELS 1 & 2 OF PARCEL MAP NO. 15077 IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY DECEMBER 21, 1987;

TOGETHER WITH PORTIONS OF LOTS 15 TO 19 OF BLOCK 19, AND BLOCKS 11 AND 12 OF JOHNSON’S RESUBDIVISION OF A PORTION OF EL CAJON HEIGHTS IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 874 FILED IN THE COUNTY RECORDER OF SAN DIEGO COUNTY FEBRUARY 20, 1894;

TOGETHER WITH PORTIONS OF EL CAJON HEIGHTS IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO LICENSED SURVEY MAP NO. 50, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY FEBRUARY 20, 1894.

TOGETHER WITH PORTIONS OF MARSHALL AVENUE AND WASHINGTON AVENUE, VACATED TO PUBLIC USE.

ASSESSOR’S PARCEL NUMBER: 487-490-19
SCOPE OF DEVELOPMENT

Scope of Work for the Project includes:

Site: Construction of a new BMW dealership, consisting of an approximately 31,000 square foot building consistent with BMW USA’s new image requirements, including new modern European style frontage and façade, showroom, service areas, and customer waiting areas.

Developer will invest approximately $12,000,000 in the development of the dealership before the end of fiscal year 2014-15.

Developer shall change the name of the Dealership from BMW South County to “BMW El Cajon,” “El Cajon BMW,” or such similar name, which shall identify the dealership as being located in El Cajon.
<table>
<thead>
<tr>
<th>Item of Performance</th>
<th>Time for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Developer’s execution and acknowledgement of the Operating Covenant; execution and recording of the Leasehold Deed of Trust.</td>
<td>Concurrently with Developer’s execution of Agreement.</td>
</tr>
<tr>
<td>2. City recordation of the Operating Covenant.</td>
<td>Within five (5) days after Effective Date.</td>
</tr>
<tr>
<td>3. Developer’s preparation and submission of Developer Applications, including a complete application for a Site Development Permit (SDPA) or amended CUP, as applicable, which shall include:</td>
<td>Prior to Effective Date.</td>
</tr>
<tr>
<td>• Detailed Site Plans</td>
<td></td>
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<tr>
<td>• Revised Site Plans</td>
<td></td>
</tr>
<tr>
<td>• Lighting Plans (photometric)</td>
<td></td>
</tr>
<tr>
<td>• “Conceptual” Landscaping Plans</td>
<td></td>
</tr>
<tr>
<td>• Preliminary Grading Plans</td>
<td></td>
</tr>
<tr>
<td>• “Conceptual” Floor Plans</td>
<td></td>
</tr>
<tr>
<td>• “Conceptual” Elevations</td>
<td></td>
</tr>
<tr>
<td>4. Review of Developer Applications by applicable City departments and provision of any comments to Developer.</td>
<td>Prior to Effective Date.</td>
</tr>
<tr>
<td>5. Developer to revise and resubmit (as necessary to address City comments) Developer Applications.</td>
<td>Prior to Effective Date</td>
</tr>
<tr>
<td>6. Re-review of Developer Applications by applicable City departments and preparation of conditions of approval.</td>
<td>Prior to Effective Date</td>
</tr>
<tr>
<td>7. Planning Commission and City Council hearing and consideration of Developer Applications, if applicable.</td>
<td>Prior to Effective Date</td>
</tr>
<tr>
<td>8. Developer’s submission of application for building permits.</td>
<td>Within sixty (60) days of receipt of City Council approval.</td>
</tr>
<tr>
<td>9. Plan check review by applicable City departments and preparation of any corrections to Developer.</td>
<td>City will use reasonable efforts to cause such review, and to obtain and provide to Developer any corrections, within three (3) weeks of Developer’s submittal of items listed in No. 8 above.</td>
</tr>
<tr>
<td>10. Developer to correct and resubmit (as necessary to address City comments) plans.</td>
<td>Within thirty (30) days of receipt of comments received in No. 9 above.</td>
</tr>
<tr>
<td>Item of Performance</td>
<td>Time for Completion</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>11. Plan check re-review by applicable City departments; Developer obtains issuance of building permits (if Developer is entitled to issuance).</td>
<td>City will use reasonable efforts to cause such re-review and the issuance of building permits (if Developer is entitled to issuance) within three (3) weeks of Developer’s submittal of items listed in No. 10 above.</td>
</tr>
<tr>
<td>12. Developer begins demolition portion of Project.</td>
<td>Within three (3) weeks of approval of building permits.</td>
</tr>
<tr>
<td>13. Developer constructs Project.</td>
<td>Within twelve (12) months of issuance of building permits, unless extended by the City Manager.</td>
</tr>
<tr>
<td>14. Developer obtains certificate of occupancy for Project.</td>
<td>Upon completion of final inspection of the Project.</td>
</tr>
<tr>
<td>15. City issues certificate of occupancy for Project.</td>
<td>Within two (2) days after City’s final inspection of Project.</td>
</tr>
</tbody>
</table>

This Schedule of Performance represents the parties’ target dates. However, subject to Section 2.4 of the Agreement, this Schedule of Performance may be adjusted by the City Manager so long as the Developer moves the Project forward and obtains a certificate of occupancy for the Project by no later than eighteen (18) months from the Effective Date. This Schedule of Performance does not include the time of performance for all obligations arising under the Agreement; rather this schedule focuses only on the development schedule of the Project. The parties are referred to the Agreement for the total description of the parties’ obligations and times for performance of matters not identified in this Schedule. The Developer understands that obligations contained in the Agreement may be conditions precedent to the City’s obligations under this schedule.

Nothing herein shall be construed to limit the City’s legislative authority, which the City may exercise in the City’s sole and absolute discretion. In all cases where a City action is required, the City shall use reasonable efforts to cause the City to take such action in the time prescribed herein.
ATTACHMENT "4"

RELEASE OF CONSTRUCTION COVENANTS

[See Following Document]
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Sunroad E-C Land, Inc.

Mailing address:
4445 Eastgate Mall
Suite 400
San Diego, CA 92121
Attention: Dan Feldman

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the “Release”) is made by the CITY OF EL CAJON, a charter city and municipal corporation (the “City”), in favor of Sunroad E-C Land, Inc., a California corporation (the “Developer”), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain Owner Participation and Development Agreement (the “Agreement”) dated March 9, 2011 concerning the redevelopment of certain real property situated in the City of El Cajon, California, as more fully described in Exhibit “A” attached hereto and made a part hereof (the “Site”).

B. As referenced in Section 2.8 of the Agreement, the City is authorized and required to furnish the Developer or its successors with a Release of Construction Covenants upon completion of construction of the “Project” (as defined in the Agreement), which Release is required to be in such form as to permit it to be recorded in the Recorder’s office of San Diego County. This Release is conclusive determination of satisfactory completion of the construction and development of the Project.

C. The City has conclusively determined that construction and development of the Project has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. The Project to be constructed by the Developer has been satisfactorily completed in accordance with the provisions of said Agreement.

2. This Release of Construction Covenants shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Project or any part thereof.
3. This Release of Construction Covenants is the release of construction covenants referred to in, and satisfies the requirements of, Section 2.8 of the Agreement for construction of the Project.

4. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of any other documents executed pursuant to the Agreement, all of which shall remain enforceable according to their terms of the documents incorporated therein.

BY WITNESS WHEREOF, the City and the Developer have signed this Release of Construction Covenants as of the respective dates set forth below.

“Developer”

SUNROAD E-C LAND, INC., a California corporation

Date: ______________________, 2013

By: ______________________

Its: ______________________

“City”

CITY OF EL CAJON, a charter city and municipal corporation

Date: ______________________, 2013

By: ______________________

Douglas Williford, City Manager

ATTEST:

Kathie Rutledge, CMC, City Clerk

APPROVED AS TO FORM:

______________________________
Morgan L. Foley
City Attorney
ACKNOWLEDGMENT

State of California,

County of San Diego

On __________________ before me, __________________________, (insert name and title of the officer) personally appeared __________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__________________________________________
Signature of Notary

ACKNOWLEDGMENT

State of California,

County of San Diego

On __________________ before me, __________________________, (insert name and title of the officer) personally appeared __________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__________________________________________
Signature of Notary
EXHIBIT “A”

LEGAL DESCRIPTION OF SITE

All that property located in the City of El Cajon, County of San Diego, State of California, described as follows:

PARCELS 1 & 2 OF PARCEL MAP NO. 15077 IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY DECEMBER 21, 1987;

TOGETHER WITH PORTIONS OF LOTS 15 TO 19 OF BLOCK 19, AND BLOCKS 11 AND 12 OF JOHNSON’S RESUBDIVISION OF A PORTION OF EL CAJON HEIGHTS IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 874 FILED IN THE COUNTY RECORDER OF SAN DIEGO COUNTY FEBRUARY 20, 1894;

TOGETHER WITH PORTIONS OF EL CAJON HEIGHTS IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO LICENSED SURVEY MAP NO. 50, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY FEBRUARY 20, 1894.

TOGETHER WITH PORTIONS OF MARSHALL AVENUE AND WASHINGTON AVENUE, VACATED TO PUBLIC USE.

ASSESSOR’S PARCEL NUMBERS: 487-490-19
ATTACHMENT "5"

CITY REIMBURSEMENT SCHEDULE

1. Reimbursement Payments. Starting in the first Operating Year, as defined below, following recordation of the Release of Construction Covenants as the term is defined in the Agreement, and each Operating Year thereafter for the Term of this Note, the City shall reimburse the Developer in each quarter of the Operating Year in an amount equal to:

- Seventy-five percent (75%) of the "Net Sales Taxes From the Site" generated on the Site during Operating Years 1 through 5, inclusive;
- Sixty percent (60%) of the "Net Sales Taxes From the Site" generated on the Site during Operating Years 6 through 10, inclusive; and
- Fifty percent (50%) of the "Net Sales Taxes From the Site" generated on the Site during Operating Years 11 through 15, inclusive.

As used herein, the term "Net Sales Taxes from the Site" shall mean the "Sales Taxes From the Site" in excess of $93,000 in each quarter of the year, as defined below. Operating Year shall mean the first twelve full months following the recordation of the Release of Construction Covenants and each subsequent twelve full months the Operating Covenant is in place, and "quarter of the year" shall mean such calendar quarters as calculated by the State Board of Equalization.

a. As used herein, the term "Sales Taxes From the Site" means the amount equal to the sales and use taxes that are generated from sales occurring on the Site on which sales or use taxes are imposed pursuant to applicable California law in each Operating Year, which are actually received by the City from the State Board of Equalization. In connection therewith:

(i) The Developer shall timely report, and shall cause its tenants (if any) to report all sales and use taxes from the Site to the State Board of Equalization in accordance with the laws, rules, and regulations applicable to such reporting.

(ii) Sales Taxes from the Site shall be deemed to have been paid by the State Board of Equalization to the City if and to the extent the State Board of Equalization elects to offset the payment of any such Sales Taxes From the Site against any other obligation of the City.

(iii) The Developer acknowledges that the State Board of Equalization makes payments to the City based on both actual and anticipated sales and use tax revenues and that the State Board of Equalization makes periodic reconciliations. The determination of Sales Taxes from the Site for any annual, quarterly, or other period shall be subject to the timing and reconciliation process related to the processing by the State Board of Equalization of payments of such Sales Taxes From the Site to the City. Any adjustments resulting from any interim or estimated determination of Sales Taxes From the Site for any
annual, quarterly, or other period shall be reconciled by the parties as soon as practicable without inclusion of, or any obligation to pay, interest.

(iv) Sales Taxes From the Site shall be determined based on actual amounts received by the City based only on the City's share of the State sales and use tax applicable to the Site (which, as of the Effective Date, is 1.0% of the taxable amount) within each Operating Year. Sales Taxes From the Site shall not include amounts paid to the City by the State Board of Equalization derived from any sales tax overrides or special tax amounts received by the City, nor shall include any administrative fees or charges imposed by the State Board of Equalization that reduce the actual amounts of sales and use taxes received by the City.

(v) The Developer shall, and shall cause its tenants (if any) to, keep full and accurate books of account, records, and other pertinent data showing all gross income earned upon the Site that is reportable for California sales and use tax purposes, including all documents required to be maintained by the State of California for sales and use tax purposes.

(vi) The Developer shall furnish, and shall cause its tenants (if any) to furnish, to City true and correct photocopies of its quarterly California sales and use tax returns at the time each is filed with the State of California, together with a copy of all checks or wire transfers or other forms of transfer of funds sent for such payment of sales and use taxes.

2. Reimbursement Prepayment. The City shall have the right to prepay all or any portion of its obligations for reimbursement at any time without penalty.

3. Expiration of Reimbursement Obligation. If, after fifteen (15) years after the recordation of the Release of Construction Covenants, the cumulative applicable Net Sales Taxes From the Site has not fully reimbursed the Developer for its Eligible Project Costs, the term of the Agreement notwithstanding, City's obligation to pay reimbursements to the Developer shall terminate and be of no further force or effect.
ATTACHMENT "6"

OPERATING COVENANT

[See Following Document]
OPERATING COVENANT

THIS OPERATING COVENANT ("Operating Covenant") is made this _____ day of __________, 2013 (the "Effective Date"), by and between the CITY OF EL CAJON, a charter city and municipal corporation (the "City"), and SUNROAD F C LAND, INC., a California corporation, (the "Developer"), with reference to the following:

A. The City and the Developer have executed an Owner Participation and Development Agreement ("Agreement"), dated as of __________, 2013, which provides, inter alia, for the redevelopment of that certain real property located in the City of El Cajon, County of San Diego, State of California, more fully described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Land"), and Developer’s construction and operation thereon of a BMW motorcar dealership (the "Project"). The Agreement is available for public inspection and copying at the office of the City Clerk, El Cajon City Hall, 200 Civic Center Way, El Cajon, CA 92020.

B. The Developer owns the Land, which interest shall hereafter be referred to as the "Property".

C. Pursuant to the Agreement, the Developer has agreed to construct the Project on the Property, and the City has agreed to provide the Developer with certain financial incentives to reimburse the Developer for costs associated therewith.

D. The Agreement also provides for the recordation of this Operating Covenant against the Property to memorialize certain covenants, conditions, and restrictions regarding the use, maintenance, and operation of the Property by the Developer and the Developer’s successors and assigns.

E. The City has fee interests in parks, City Hall, and in various streets, sidewalks, and other property within the City (collectively, the "Benefited Public Property"), and is responsible for planning of land uses within the City in such a manner as to provide for the health, safety, and welfare of the residents of the City. The Benefited Public Property is legally described in Exhibit "B" attached hereto and incorporated herein by this reference.

NOW, THEREFORE, Developer hereby covenants, agrees, and declares by and for itself and its successors and assigns that the Property shall be held, sold, conveyed, hypothecated,
encumbered, used, occupied, and improved subject to the following covenants, conditions, and restrictions (sometimes collectively referred to hereinafter as the "Covenants"). These Covenants shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof and shall inure to the benefit of the City and its successors and assigns regardless of whether the City holds any interest in any real property benefited thereby.

1. **Covenant Regarding Specific Uses.**

   (a) **Construction of Project.** The Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer's interest in the Property or any part thereof, that within the times set forth in the Schedule of Performance attached to the Agreement as Attachment 3 (the "Schedule of Performance"), Developer shall commence, diligently proceed with, and satisfactorily complete construction of the Project so as to entitle Developer to the City’s issuance of a Release of Construction Covenants for the Project as provided for in Section 2.8 of the Agreement. The foregoing covenant shall be deemed satisfied and shall terminate upon the City’s issuance of a Release of Construction Covenants.

   (b) **Operation of Project.** For a term (the "Term") commencing upon the recordation of the Release of Construction Covenants and continuing until the fifteenth (15th) anniversary of the date of recording of the Release of Construction Covenants for the Project (the "Operating Covenant Termination Date"), the Developer hereby covenants and agrees to devote the Property for the exclusive purpose and use of development and operation of the Project and will comply with the other obligations contained herein. Notwithstanding anything herein to the contrary, the nondiscrimination covenants contained in subdivision (a) of Section 4 hereof shall run with the Property in perpetuity and shall not terminate on the Operating Covenant Termination Date. Except as provided below, or with the prior written consent of the City for each instance, which consent may be granted or withheld in the City’s sole and absolute discretion, the failure of the Developer (or its tenant) to operate any portion of the Project on the Property as required herein for thirty (30) or more consecutive days shall, at the City’s option, constitute a default hereunder; provided, however, that the Developer shall for purposes of this Section 1 be deemed to be operating such portion of the Project during any period that the Developer is prevented from operating such portion due to: (i) required or necessary rehabilitation of such portion of the Project (provided that the period during which such portion of the Project is not operated as a result of the rehabilitation shall in no event exceed thirty (30) days), unless the rehabilitation cannot reasonably be completed within such thirty (30) day period, in which case the period may extend as necessary for completion, provided such rehabilitation was commenced within the thirty (30) day period and is diligently pursued to completion, but in no event shall rehabilitation efforts exceed 180 days; or (ii) war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City or other public or governmental entity. Notwithstanding anything to the contrary herein, (a) an extension of time for any cause listed in romanette (ii) above shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Developer is sent to the
other party within ten (10) days of the commencement of the cause, and (b) the Developer is not entitled pursuant to this Section 1 to an extension of time to perform because of past, present, or future difficulty in obtaining financing necessary to operate the Project because of economic or market conditions.

2. **Performance of Maintenance.**

   (a) The Developer shall maintain the Project, the Property and all "improvements" (as defined hereinafter) thereon in accordance with the Maintenance Standards, as hereinafter defined. As used herein, the term "Improvements" shall mean and include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property.

   (b) To accomplish said maintenance, the Developer shall either use staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Operating Covenant.

   (c) The following standards ("Maintenance Standards") shall be complied with by the Developer and the Developer's maintenance staff, contractors or subcontractors:

   1. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

   2. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

   3. All maintenance work shall conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of maintenance.

   4. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

   5. The Project and Property shall be maintained in conformance and in compliance with the approved Property construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the City, and
reasonable commercial development maintenance standards for similar projects, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline and the repair and maintenance of all sidewalks, driveways, parking areas and all hard scape surfaces to keep these areas free from cracked and damaged surfaces.

3. **Failure to Maintain Property.**

In the event the Developer does not maintain the Property in the manner set forth herein and in accordance with the Maintenance Standards, the City shall have the right to maintain such private and/or public improvements, or to contract for the correction of such deficiencies, after written notice to the Developer. However, prior to taking any such action, the City agrees to notify the Developer in writing if the condition of the Project or Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Upon notification of any maintenance deficiency, the Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City, then the Developer shall have forty-eight (48) hours to rectify the problem.

In the event the Developer fails to correct, remedy, or cure (or for deficiencies which cannot reasonably be corrected, remedied, or cured within thirty (30) days has failed to commence correcting, remedying or curing such maintenance deficiency and diligently pursue such correction, remedy, or cure to completion) after notification and after the period of correction has lapsed, then the City shall have the right to maintain such improvements. The Developer agrees to pay the City such charges and costs. Until so paid, the City shall have a lien on the Property for the amount of such charges or costs, which lien shall be perfected by the recording of a “Notice of Claim of Lien” against the Property. Upon recording of a Notice of a Claim of Lien against the Property, such lien shall constitute a lien on the leasehold interest in the Property prior and superior to all other monetary liens except: (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with this Operating Covenant shall date from the date of the recordation of the Notice of Claim of Lien. The Developer shall be liable for any and all attorneys’ fees, and other legal costs or fees incurred in collecting said maintenance costs.

4. **Compliance with Law.** The Developer shall comply with all local, state and federal laws relating to the uses of or condition of the Property and the Project. The operation of the Project shall be in compliance with the requirements of any entitlements issued by the City for the Project, including, as applicable, a conditional use permit, site development permit, and specific plan amendment.

(a) **Nondiscrimination Covenants.** The Developer covenants, by and for itself and any successors in interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the
Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Property. The foregoing covenants shall run with the land.

The Developer shall refrain from restricting the rental, sale or lease of the Property any portion thereof on the basis of race, color, religion, sex, sexual preference, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: “The grantee herein covenants, by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein leased.”

(3) In contracts: “There shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

(b) No Violation of Statutes Relating to Direct Assistance by City. The Developer represents and warrants that it is using the City financial assistance for the sole and exclusive purpose of causing the construction of the Project on the Property and for no other purpose. The Developer further agrees to indemnify, defend, and hold harmless the City from
and against any claims, proceedings, losses, costs, or expenses incurred as a result of any such violation arising out of actions by the Developer.

5. **Sales and Use Tax Covenant.** From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, the Developer shall designate the Property as the point of sale for sales tax purposes for all goods and services sold or leased on the Property, whose sales and leases originate from the Property.

6. **Covenant to Pay Taxes and Assessments.** From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, the Developer shall pay or cause to be paid, prior to delinquency, all ad valorem real estate taxes (including possessory interest taxes), special taxes, and assessments levied against the Property and any improvements thereon, subject to the Developer's right to contest any such tax or assessment in good faith. During such period, the Developer shall remove or have removed any levy or attachment made on the Property or any part thereof or assures the satisfaction thereof within a reasonable time and prior to a sale of the Property.

7. **Defaults.**

   (a) Failure or delay by either party to perform any term or provision of this Operating Covenant constitutes a default under this Operating Covenant. A party claiming a default shall give written notice of default to the other party, specifying the default complained of and the actions required to correct such default.

   (b) Unless otherwise provided by the Agreement, the claimant shall not institute proceedings against the other party if the other party, within thirty (30) days from receipt of such notice, immediately and with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy as soon as reasonably practicable after receipt of such notice, but in no event shall the cure, correction or remedy occur more than 180 days after notice.

8. **Legal Actions.**

   (a) In addition to any other rights or remedies, and subject to the notice and cure provisions in Section 7 above, any party may institute legal action to seek specific performance of the terms of this Operating Covenant, or to cure, correct or remedy any default, or to obtain any other legal or equitable remedy consistent with the purpose of this Operating Covenant. The City shall also have the right to pursue damages for the Developer's defaults, but in no event shall the Developer be entitled to damages of any kind from City, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California or in the Federal District Court in the Central District of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.
(b) The internal laws of the State of California shall govern the interpretation and enforcement of this Operating Covenant, without regard to conflict of laws.

(c) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Manager of the City in addition to such other manner as may be provided by law.

(d) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of the Developer, whether made within or outside the State of California, or in such other manner as may be provided by law.

(e) Except as otherwise expressly stated in this Operating Covenant, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

(f) Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9. **Effect of Violation of the Terms and Provisions of this Operating Covenant.**

The covenants established in this Operating Covenant shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, and its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. The City is deemed the beneficiary of the terms and provisions of this Operating Covenant and of the covenants running with the Property, for and in their own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Operating Covenant and the covenants running with the land have been provided. This Operating Covenant and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Property. The City shall have the right, if the Operating Covenant or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which they or any other beneficiaries of this Operating Covenant and covenants may be entitled. Pursuant to applicable law, including, but not limited to, Section 1462, 1465 and 1468 of the Civil Code of the State of California, all provisions of this Covenant Agreement shall run with the Property and be binding upon and inure to the benefit of the Benefited Public Property and the Property and each and every portion thereof or interest therein, and all parties having or acquiring any right, title, or interest in the Property or any portion thereof, and their successors and assigns.
10. **Miscellaneous Provisions.**

(a) If any provision of this Operating Covenant or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Operating Covenant, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Operating Covenant; and each provision of this Operating Covenant shall be valid and enforceable to the fullest extent permitted by law.

(b) This Operating Covenant shall be construed in accordance with the internal laws of the State of California without regard to conflict of law principles.

c) This Operating Covenant shall be binding upon and inure to the benefit of the successors and assigns of the Developer but any Transfer shall be subject to the requirements and provisions of Section 7 of the Agreement.

(d) The City of El Cajon is a third party beneficiary of the terms of this Operating Covenant, and shall have the right, but not the obligation, to enforce the terms hereof.

11. **Notices.** All notices under this Operating Covenant shall be effective: (i) upon personal delivery; (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery; (iii) via facsimile, so long as the sender receives confirmation of successful transmission from the sending machine; or (iv) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City:

City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1716  
Attention: City Manager

With a copy to:

El Cajon City Attorney  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1798  
Attention: Morgan Foley, Esq.
IN WITNESS WHEREOF, the parties hereto has executed this instrument the day and year first hereinabove written.

"Developer"

SUNROAD E-C LAND, INC., a California corporation

Date: ________________, 2013

By: ____________________________________________

Its: ___________________________________________

"City"

EL CAJON REDEVELOPMENT CITY, a charter city and municipal corporation

Date: ________________, 2013

By: ____________________________________________

Douglas Williford, City Manager

ATTEST:

______________________________________________

Kathie Rutledge, CMC, City Clerk
APPROVED AS TO FORM:

Morgan L. Foley
City Attorney
ACKNOWLEDGMENT

State of California,

County of San Diego

On __________________________ before me, __________________________________________________, (insert name and title of the officer) personally appeared ____________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

________________________________________
Signature of Notary

ACKNOWLEDGMENT

State of California,

County of San Diego

On __________________________ before me, __________________________________________________, (insert name and title of the officer) personally appeared ____________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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________________________________________
Signature of Notary
EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

All that property located in the City of El Cajon, County of San Diego, State of California, described as follows:

PARCELS 1 & 2 OF PARCEL MAP NO. 15077 IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY DECEMBER 21, 1987;

TOGETHER WITH PORTIONS OF LOTS 15 TO 19 OF BLOCK 19, AND BLOCKS 11 AND 12 OF JOHNSON'S RESUBDIVISION OF A PORTION OF EL CAJON HEIGHTS IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 874 FILED IN THE COUNTY RECORDER OF SAN DIEGO COUNTY FEBRUARY 20, 1894;

TOGETHER WITH PORTIONS OF EL CAJON HEIGHTS IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO LICENSED SURVEY MAP NO. 50, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY FEBRUARY 20, 1894.

TOGETHER WITH PORTIONS OF MARSHALL AVENUE AND WASHINGTON AVENUE, VACATED TO PUBLIC USE.

ASSESSOR'S PARCEL NUMBER 487-490-19
EXHIBIT "B"

DESCRIPTION OF BENEFITED PUBLIC PROPERTIES IN EL CAJON

City Hall, 200 Civic Center Way  
APN: 488-111-30

El Cajon Public Safety Building, 100 Civic Center Way  
APN: 488-072-42

Fire Station No. 6, 100 East Lexington Ave.  
APN: 488-192-09

Heartland Fire Training Facility, 1301 North Marshall Ave.  
APN: 482-131-16

Fletcher Hills Center and Pool, 2345 Center Place  
APN: 481-430-47 & 481-430-44

Hillside Center and Park, 840 Buena Terrace  
APN: 481-521-01 & 481-520-12

Judson Park, NW corner of Magnolia and Park Avenues  
APN: 487-172-67

Kennedy Center and Park, 1675 East Madison Avenue  
APN: 511-210-13

Renette Center and Park, 935 South Emerald Avenue  
APN: 492-320-01 & 492-320-02

Wells Center and Park, 1153 East Madison Avenue  
APN: 489-140-63
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<tr>
<td>ATTACHMENT &quot;6&quot;</td>
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TO: Mayor Lewis, Mayor Pro Tem Wells, Councilmembers Ambrose, Kendrick, McClellan

FROM: Douglas Williford, City Manager

SUBJECT: AMENDMENT TO FY 2012-13 ONE YEAR ACTION PLAN; AND FY 2013-14 CDBG AND HOME ALLOCATIONS

RECOMMENDATION: That the City Council

♦ Open the public hearing and accept public testimony;
♦ Close the public hearing;
♦ Adopt the next resolution in order to amend the FY 2012-13 One-Year Action Plan and:
  ♦ Allocate and commit previously reserved HOME/CHDO funds to San Diego Habitat for Humanity in the amount of $168,198 for development of the Foundation Lane Phase II project (H0818); and
  ♦ Re-allocate $10,000 from the Housing Programs Pool of Funds (275900-H0720) to the Foundation Lane project (H0818) for legal and other professional services that may be needed for this project; and
  ♦ Allocate CDBG and HOME program income received during the year to the Housing Rehabilitation Program (C0704), the Housing Programs Pool of Funds (H0720), and the CDBG and HOME Administration activities to the maximums allowed (20% for CDBG Administration and 10% of eligible program income for HOME Administration).
♦ Authorize the City Manager to execute a HOME Funding Agreement and any amendments necessary with San Diego Habitat for Humanity governing the use of the HOME funds for the Foundation Lane Phase II project, with terms and conditions recommended by staff and approved by the City Manager; and
♦ Appropriate FY 2012-13 CDBG program income as follows: 80% to the Housing Rehabilitation Program (C0704), and 20% to CDBG Administration (CADMIN) for preparation of the consolidated plan, fair housing testing, and City personnel expenses (salaries and benefits) of providing services to the CDBG program; and
♦ Appropriate FY 2012-13 HOME program income as follows: 90% to the Housing Program Pool of Funds (H0720), and 10% to HOME Administration (HADMIN) for preparation of the consolidated plan, fair housing testing, and City personnel expenses (salaries and benefits) of providing services to the HOME program; and
♦ Allocate funds to projects and programs that will be funded from the FY 2013-14 Community Development Block Grant (CDBG) and HOME grant programs.
Staff will prepare a preliminary funding schedule reflecting the City Council's decisions relative to the FY 2013-14 Annual Action Plan and present it for final adoption at the second public hearing scheduled for April 23, 2013.

BACKGROUND:

The U.S. Department of Housing and Urban Development (HUD) provides funding to eligible jurisdictions through the CDBG and HOME grant programs annually through the Annual Action Plan process. This report requests actions relative to activities and allocations over two grant program years: Amendment to the current FY 2012-13 Action Plan, and adoption of tentative allocations for the FY 2013-14 grant year.

AMENDMENT TO FY 2012-13 ACTION PLAN:

Allocation of reserved HOME/CHDO Funds: The City has previously been allocated HOME funds and the HOME regulations require that not less than 15% of each year's HOME allocation be set aside for use by a certified Community Housing Development Organization (CHDO) to develop affordable housing for low-income households. The current balance of reserved HOME/CHDO funds is as follows:

<table>
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<th>Fiscal Year</th>
<th>CHDO Allocation</th>
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</thead>
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<tr>
<td>FY 2012-13</td>
<td>FY 2012-13 CHDO Reserve</td>
<td>$57,097</td>
</tr>
<tr>
<td>TOTAL:</td>
<td></td>
<td>$168,198</td>
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San Diego Habitat for Humanity (SDHFH) is a certified CHDO, is eligible to expend these funds, and recently submitted a request for these funds in a proposal to develop the second phase of Foundation Lane. Foundation Lane Phase 2 will include construction of six to seven new single-family homes (adjacent to the original Foundation Lane project which consisted of four new single-family homes) which will then be sold to low-income households using City First-Time Homebuyer Program guidelines tailored for this project. Habitat pledges to hold the 1st mortgage for each buyer at zero percent for 30 years, making the homes affordable. The HOME funds will be provided to Habitat via a deferred, no-interest loan to assist with pre-development costs to be repaid upon completion and sale of the units.

The Foundation Lane Phase 2 project, including all anticipated funding sources, project schedule and key project steps, will be further refined over the next few months, and it is anticipated that additional or amended agreement(s) with SDHFH will be required. The HOME/CHDO funds will be layered with significant donations of labor, services, sponsorships and other contributions. Staff is requesting an additional reallocation/budget amendment of $10,000 from the Housing Programs Pool of Funds (275900-H0720) to the Foundation Lane project (275900-H0818) for legal and other professional services that may be needed for this project.

Program Income Allocations: Program income funds from the repayment of outstanding loans and other activities in both the HOME and CDBG programs are received throughout the year. With this action, repayments would be automatically allocated back to the housing program from which the funds came (C0704 for CDBG and H0720 for HOME) for continuation of program services and activities in those programs. In addition, as allowed by the regulations, 10% of eligible HOME program income may be used for HOME Administration and 20% of CDBG program income may be used for CDBG Administration. The funds must be used for Administration activities in the same year as the program income is received.
FY 2013-14 CDBG AND HOME ALLOCATIONS:

The U.S. Department of Housing and Urban Development (HUD) currently provides funding to eligible jurisdictions through the CDBG and HOME grant programs. HUD has not yet released allocation amounts for FY 2013-14; however HUD has suggested funding may be reduced by approximately 8% over the previous year. Further, given on-going, apparently limitless reductions in federal funding, it is highly possible that CDBG and HOME program funds will be dramatically impacted or even eliminated altogether. If such severe changes do take place that cause substantial deviations in or elimination of grant funding to take place in these programs, staff will return to Council with recommendations.

With the anticipated 8% reductions, the CDBG allocation is expected to be approximately $919,889 and the HOME allocation is expected to total $350,196. Council action is requested to identify the projects that will automatically receive increases or decreases once actual funding amounts are known, in order to preclude the need for additional public hearings to allocate minor amounts.

ONE-YEAR ACTION PLAN:

As a recipient of CDBG and HOME funds for FY 2013-14, the City must prepare and submit a One-Year Action Plan to HUD. These funding allocations form the core of the One-Year Action Plan. Following the allocation decisions from this public hearing, the One-Year Action Plan will be prepared and made available for public review for a 30-day period. A second public hearing will follow (tentatively April 23, 2013) at which time the final Action Plan will be presented to the City Council for approval. The Action Plan will then be submitted to HUD for approval and if the Plan is approved, funds will become available after July 1, 2013.

EVALUATION OF PAST YEAR’S PERFORMANCE

A comprehensive review of the FY 2011-12 CDBG and HOME programs is included in the City’s Consolidated Annual Performance and Evaluation Report (CAPER) which is available for public review at the Housing Division public counter on the third floor of City Hall and on the Housing Division’s web page, located at http://www.cityofelcajon.us/dept/redev/housing/index.aspx. Programs and projects are currently underway for FY 2012-13, the fourth year of the Consolidated Plan period.

CDBG PROPOSALS

Following the release of a Notice of Funding Availability (NOFA) in November of 2012, the City received numerous requests for FY 2013-14 CDBG funding. As in past years, the requests for funding exceed the amount available for allocation. The complete Application Binder is available in the City Clerk’s Office for City Council and public review. A CDBG Fact Sheet is included as Attachment “2” for reference.

As noted above, the CDBG allocation is expected to total approximately $919,889 in FY 2013-14. A maximum of 15 percent of that amount ($137,983) may be used for Public Service activities, and a maximum of 20 percent ($183,978) may be expended for Administrative activities. The remainder may be allocated for Capital/Other projects. Staff recommendations for the categories of funding are summarized below and in Attachment “3” of this report.

ADMINISTRATION (MAXIMUM 20% OF CDBG GRANT)

Federal regulations restrict funds reserved for Planning and Administration in the CDBG program to 20% of the total grant amount (estimated $183,978).
- **CDBG Administration** - $168,978: To minimize or avoid impact to the General Fund, the maximum amount of funds available in this category will be required in order to adequately administer both the CDBG and HOME programs for FY 2013-14. Staff recommends allocating $168,978 to the City’s Housing Division for continued administration of both the CDBG and HOME Programs, including internal and external costs.

- **Fair Housing Services** - $30,110: The provision of fair housing services is mandatory for federal programs, including the CDBG and HOME programs. One application for funding was received that included the provision of fair housing services. CSA San Diego County has requested $30,110 to provide fair housing and landlord/tenant services for City of El Cajon residents. Staff recommends funding of $15,000 from CDBG funds (along with an additional $5,000 in HOME Admin funds) for a total contract of $20,000 for the provision of essential fair housing services.

- **Regional Task Force for the Homeless** - $10,000: Funding has been requested for the provision of data collection and training services to support local non-profits who provide direct services for the homeless. This activity is only eligible as a Planning or Administration activity as the project does not directly serve beneficiaries. Further, this activity is not recommended for funding as a separate project.

**CAPITAL/OTHER PROJECTS (PUBLIC FACILITIES AND IMPROVEMENTS)**

The City received several proposals for Capital/Other funds, including two requests from the Public Works Department for eligible Public Facility improvement projects, and one request from the Housing Division for continuation of rehabilitation program activities to meet Consolidated Plan goals. In addition, required repayment of the Section 108 loan must be made from this category of funding.

Previous Council direction has been to maximize and prioritize the use of CDBG funds for City-owned Public Facility improvements serving the entire community in order to bring aging facilities up to current standards (resulting in decreased maintenance costs), and to bring all public facilities into compliance with ADA requirements. Council has also directed staff to prioritize funding to continue ongoing projects before funding new projects. The following is a brief discussion of each project submittal for Capital/Other funds:

- **Section 108 Loan Repayment** - $77,004: The City is obligated to reserve funds in this category for annual repayment to the remaining Section 108 loan for the Ladder Truck Acquisition in FY 2013-14 in accordance with a set amortization schedule. Staff recommends funding this activity as required.

- **Housing Rehabilitation Program/ Mobile Home Rehabilitation Program** - $175,000: The Housing Rehabilitation Program is a continuing program that assists low-income owners to make major repairs, including ADA modifications, in order to assist them in preserving their homes. The project allocation supports the direct costs of internal project management of both the CDBG and HOME rehabilitation programs, as well as direct loans to homeowners for the CDBG Mobile Home Rehab Program. Staff recommends designating this activity to receive excess funds (if any) when the actual final allocation from HUD is determined.

- **ADA Curb Ramps Installation** - $200,000: This funding has been requested to continue progress toward installation of new ADA compliant curb ramps, as well as the retrofit of existing curb ramps throughout the City during the fiscal year. Staff recommends funding this activity in the amount of $190,924.
Council Chambers ADA Improvements - $240,000: ADA accessibility is required by federal law. This project was originally designed as a part of the City Hall ADA Improvements project (bid awarded in December of 2012). However, the Council Chambers portion of the bid award was deleted due to insufficient funding. An award of $240,000 will allow completion of the ADA Improvements already fully designed for the Council Chambers. Staff recommends funding this activity in the amount of $240,000.

East County Transitional Living Center - $60,000: Funding has been requested for repaving of the parking lot at the emergency/transitional shelter facility. Staff recommends funding this activity in the amount of $30,000. Davis-Bacon requirements will apply.

GRID Alternatives - $10,000: Funding has been requested for a program that pays for project management costs and volunteer training relative to the installation of solar equipment for low-income homeowners. Not recommended for funding.

Boys & Girls Club - $60,455: Funding has been requested for renovations to the restrooms and gym. Staff recommends funding this activity in the amount of $30,000. Davis-Bacon requirements will apply.

Crisis House - $15,948: Funding has been requested for replacement of exposed air conditioning ductwork in conjunction with roof repairs being conducted on this City-owned facility. The City currently provides in-kind support to Crisis House in several ways, including rental of the City-owned building at $1/year (valued at $70,000 per year) and assignment of cell tower revenue of approximately $17,000/year directly to Crisis House for operational support, all of which helps Crisis House realize significant budgetary savings. Not recommended for funding.

Home of Guiding Hands - $35,246: Funding has been requested for facility improvements in four group homes in El Cajon serving developmentally disabled adults. Staff recommends funding this activity in the amount of $30,000.

PUBLIC SERVICES (MAXIMUM 15% OF GRANT)
The City received a number of applications for Public Service programs, including one request from the Police Department. Per CDBG regulations, a maximum of 15% of the total annual allocation (estimated $137,983) may be allocated for Public Service activities this year. Following is a very brief discussion of each project submittal for Public Services funds, and staff's recommendations for funding:

Community Policing (Crime Free Multi Housing) - $59,982: Funds have been requested for the continued provision of the Crime Free Multi Housing Program which serves residents city-wide. Staff recommends funding this activity in the amount of $59,982.

Angel’s Depot (Emergency Food for Seniors) - $21,948: Funds have been requested to serve approximately 85 extremely low-income El Cajon seniors with a once-a-month emergency food distribution. Staff recommends funding this activity in the amount of $8,001.

East County Transitional Living Center (Emergency Shelter Program) - $50,000: Funds have been requested to provide emergency shelter for the homeless. Program will serve 150 persons. Staff recommends funding this activity in the amount of $50,000.

Meals on Wheels (Meal Delivery in El Cajon) - $10,000: Funds have been requested for the provision of meals to low-income, homebound seniors within the City. Program will serve 100 seniors. Staff recommends funding this activity in the amount of $10,000.

Crisis House (Motel Voucher Program) - $86,617: Funds have been requested to provide case management and motel vouchers for the homeless. Program will serve 114 persons. The City
currently provides in-kind support to Crisis House in several ways, including rental of the City-owned building at $1/year (valued at $70,000 per year) and assignment of cell tower revenue of approximately $17,000/year directly to Crisis House for operational support, all of which helps Crisis House realize significant budgetary savings. Not recommended for funding.

- **Interfaith Shelter Network (Rotational Shelter Program)** - $10,000: Funds have been requested to provide emergency shelter for the homeless during the cold winter months. Program will serve 15 homeless persons from El Cajon. Not recommended for funding.

- **International Rescue Committee (Fresh Fund Coupon Program)** - $45,171: Funds have been requested to provide increased access to fresh fruits and vegetables for low-income individuals and families at a local farmer’s market to be established in El Cajon. Program will serve 277 persons. Not recommended for funding.

- **St. Madeleine Sophie’s Center (Work Activity Program for Disabled Adults)** - $10,000: Funds have been requested to provide intensive employment services to adults with disabilities. Program will serve 50 persons. Staff recommends funding this activity in the amount of $10,000.

**HOME PROPOSALS**

Unlike the CDBG program, the HOME program mandates a 10% set-aside for Administration, a 15% CHDO set-aside, and the balance is for entitlement projects such as down payment assistance and housing rehabilitation. Staff recommendations for funding of each category are summarized below and included in Attachment “4”. The total HOME allocation is expected to be $350,196.

**Administration (Maximum 10% of grant)**

The amount available for Administration of the City’s HOME program is expected to be $35,020 for FY 2013-14.

- **HOME Administration** - Staff recommends allocating the $30,020 in this category to the Housing Division for administration of the HOME Program, including internal and external costs.

- **CSA San Diego County (Fair Housing Services)** - CSA San Diego County is requesting $30,110 to provide fair housing and landlord/tenant services for City of El Cajon residents. Staff recommends funding of $5,000 from HOME funds, along with an allocation of $15,000 from CDBG funds (see the discussion of CDBG funds above), for a total contract for $20,000 with CSA for the provision of mandatory fair housing services in El Cajon.

**CHDO Set-Aside funding (Minimum 15% of HOME grant)**

The HOME program requires that 15% of the grant be set aside for the production of affordable housing opportunities by Certified Housing Development Organizations (CHDO’s). For FY 2013-14, $52,529 is currently estimated to be the total amount that must be set-aside for future allocation to one or more CHDO’s. Staff will return with recommendations for a specific CHDO and project at a later time once a CHDO and a project have been identified. At this stage in order to comply with HOME regulations, funds must simply be reserved.

**Entitlement Projects (Balance of grant)**

The anticipated amount available for continuing housing programs is $262,647. Staff recommends the balance be allocated to the Housing Programs Pool of Funds (H0720) for continuing authorized housing activities including the HOME-funded Rehabilitation Programs and the First-Time Homebuyer Program. Funds may be moved from the Housing Programs Pool of Funds to these HOME Entitlement
programs on an as-needed basis based on market conditions and demand. These programs assist the City with meeting the goals and objectives as adopted in the Five-Year Consolidated Plan and Housing Element for the City of El Cajon.

FISCAL IMPACT:

All CDBG and HOME grant allocations will be used to fund project and program costs pursuant to Federal law.

PREPARED BY:  
Jamie Kasvikis  
Sr. Management Analyst

APPROVED BY:  
Douglas Williford  
CITY MANAGER

Attachments:
1. Resolution for Amendment to FY 2012-13 One Year Action Plan
2. CDBG Fact Sheet (summary of priorities, eligibility criteria, and Citizen Participation schedule);
3. FY 2013-14 CDBG Grant Allocation spreadsheet;
4. FY 2013-14 HOME Grant Allocation spreadsheet.
RESOLUTION NO. ____-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CAJON
AMENDING THE FY 2012-13 ONE-YEAR ACTION PLAN.

WHEREAS, on April 12, 2011, in resolution no. 42-11, the City Council approved project activities and allocations of CDBG and HOME funds for FY 2011-12, including an allocation of HOME funds reserved for future allocation to a certified Community Housing Development Organization (CHDO) in the amount of $111,101 (15% of the total HOME allocation as required by the HOME program regulations); and

WHEREAS, on April 24, 2012, in resolution No. 44-12, the City Council City Council approved project activities and allocations of CDBG and HOME funds for FY 2012-13, including an allocation of HOME funds reserved for future allocation to a certified CHDO in the amount of $57,097 (15% of the total HOME allocation as required by the HOME program regulations); and

WHEREAS, San Diego Habitat for Humanity (SDHFH) is a certified CHDO and has identified a need for the reserved CHDO funding for a project to develop affordable housing for low-income households (Foundation Lane Phase 2); and

WHEREAS, the City has found the proposed Foundation Lane Phase 2 project to be consistent with the Housing Element and Five-Year Consolidated Plan for FY 2009-2014 and the One-Year Action Plan for FY 2012-13, as amended; and

WHEREAS, program income generated from the use of HOME and CDBG funds is received throughout the year and is re-allocated back to the housing program from which the funds came (C0704 – Housing Rehab Program for CDBG, and H0720 - Housing Program Pool of Funds for HOME) for continuation of program services and activities in those programs. Further, the HOME and CDBG regulations permit a percentage of eligible program income to be designated for grant administration activities in both those programs (10% of program income in the HOME program and 20% for CDBG). The City has found that allocating these funds for the housing programs and for program administration to the maximum percentages allowed is in the City’s best interest for the proper and adequate administration of those two grants; and

WHEREAS, the City Council of El Cajon has held a public hearing as required by its Citizen Participation Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL CAJON AS FOLLOWS:
1. The City Council finds the recitals above to be true and incorporated herein by reference.

2. The City Council of the City of El Cajon does hereby reallocate HOME funds as follows:

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<tr>
<td>Housing Program Pool of Funds</td>
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<td>City of El Cajon – Legal, Other Professional Services</td>
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</tbody>
</table>

3. The City Manager or designee is hereby authorized to execute a HOME Funding Agreement and any amendments and documents necessary with San Diego Habitat for Humanity, with terms and conditions recommended by staff, consistent with City and Federal policies and regulations and approved by the City Manager.

4. The HOME and CDBG Administration budgets are authorized to receive the maximum percentages of program income received during the year as allowed by the regulations (10% of eligible Program Income for HOME Administration and 20% for CDBG Administration). Further, the Housing Program Pool of Funds (H0720 for HOME) and the Housing Rehabilitation Program (C0704 for CDBG) are authorized to receive all other program income received during the year that is generated from these programs for continuation of program services and activities.

5. The City Manager or designee is hereby authorized to submit this Amendment to the 2012-13 One-Year Action Plan to the U.S. Housing and Urban Development Department (HUD), to make any necessary or needed corrections or adjustments required by HUD, and to execute all affiliated documents.
I. Introduction

This FACT SHEET has been prepared to assist citizens to understand the COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) program in El Cajon. Also, this FACT SHEET provides information as to how non-profit organizations may apply for CDBG funds from the City of El Cajon and how those funds must be used to benefit the community.

II. Overview of Program

A. Per Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended, the City of El Cajon is entitled to receive federal CDBG funds on an annual basis. The purpose of the federal grant program is to assist cities, such as El Cajon, with the development of decent housing, a suitable living environment, and economic opportunities for the benefit of low and moderate-income residents.

B. All CDBG-funded projects and programs must meet one or more of the following NATIONAL OBJECTIVES:

1) Benefit a majority of low/moderate income residents; or
2) Meet a community need having a particular urgency because existing conditions pose a serious and immediate threat to the health and/or welfare of the community and no other financial resources are available to meet the need. (A condition will be considered urgent or of recent origin if it developed or became critical within the 18-month period preceding the application); or
3) Aid in the prevention or elimination of conditions of slum and blight.

NOTE: The majority of CDBG-funded projects in the City of El Cajon will address the national objective to benefit a majority of low/moderate income residents.

C. Additionally, projects must meet at least one or more of the local priorities developed by the City of El Cajon in its FY 2009-2014 Five-Year Consolidated Plan:

Priority 1: Conserve and Improve Existing Affordable Housing
Priority 2: Provide Homeownership Assistance to Low and Moderate Income Households
Priority 3: Provide Rental Assistance to Low and Moderate Income Households
Priority 4: Preserve Assisted Housing at Risk of Converting to Market Rate
Priority 5: Assist in the Development of Affordable Housing
Priority 6: Promote Equal Housing Opportunity
Priority 7: Support a Continuum of Care System for the Homeless
Priority 8: Provide for New Community Facilities and Improve the Quality of Existing Community Facilities to Serve Those of Low and Moderate Income and/or with Special Needs
Priority 9: Provide Needed Community and Supportive Services to Those of Lower Income and/or with Special Needs
Priority 10: Provide for Needed Infrastructure Improvements in Low and Moderate Income Areas
Priority 11: Provide for Necessary Planning Activities to Develop and Implement Both Housing and Community Development Plans to Address Anticipated Needs.

The Priorities are more fully described in the FY 2009-2014 Five-Year Consolidated Plan which is available for review at the Housing Division public counter, located at 200 Civic Center Way, Third Floor, El Cajon, CA 92020. The FY 2009-2014 Five-Year Consolidated Plan is also available for review on the City’s website at http://www.cityofelcajon.us/dept/redev/housing/funding.aspx.
D. In addition, proposed projects/programs will be assessed according to the following objectives and outcomes:

**PERFORMANCE MEASUREMENT STANDARDS**

<table>
<thead>
<tr>
<th>Outcomes © Objectives ©</th>
<th>Availability / Accessibility</th>
<th>Affordability</th>
<th>Sustainability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suitable Living Environment</td>
<td>Enhance suitable living environment through improved/ new accessibility</td>
<td>Enhance suitable living environment through improved/ new affordability</td>
<td>Enhance suitable living environment through improved/ new sustainability</td>
</tr>
<tr>
<td>Decent Housing</td>
<td>Create decent housing with improved/ new availability</td>
<td>Create decent housing with improved/ new affordability</td>
<td>Create decent housing with improved/ new sustainability</td>
</tr>
<tr>
<td>Economic Opportunity</td>
<td>Provide economic opportunity through improved/ new accessibility</td>
<td>Provide economic opportunity through improved/ new affordability</td>
<td>Provide economic opportunity through improved/ new sustainability</td>
</tr>
</tbody>
</table>

NOTE: City staff will assign the most suitable Outcome/Objective classification.

**III. Eligible Activity Categories**

The following provides a list of activity categories that may be eligible for funding under the CDBG program (24 CFR 570.201). Please note that each category is subject to very specific guidelines.

- Acquisition of real property
- Disposition of real property
- Public facilities and improvements
- Clearance activities
- Public services
- Interim assistance
- Payment of non-federal share of matching requirements for other federal grants
- Urban renewal completion
- Relocation assistance
- Loss of rental income (due to relocation)
- Code enforcement
- Housing services
- Privately owned utilities
- Construction of housing
- Homeownership assistance
- Facilitation of economic development
- Technical assistance
- Assistance to institutions of higher education
- Rehabilitation and preservation activities
- Planning activities
- Program administration

**IV. Ineligible Activities (24 CFR 570.207)**

The following provides a brief summary of specific activities which would not be eligible for CDBG funding:

- Buildings, or portions thereof, used for the general conduct of government.
- General government expenses.
- Political activities.
- Purchase of construction equipment.
- Purchase of equipment, fixtures, motor vehicles, furnishings or other personal property that is not an integral structural fixture (specific exceptions exist—contact program coordinator with questions).
- Operating and maintenance expenses of public facilities with the exception of public service activities, interim assistance and office space for CDBG program staff.
- Income payments for housing or any other purpose.

**V. Citizen Participation Plan**

To encourage public participation in the development of the CDBG program, the City has adopted a Citizen Participation Plan which outlines the procedures to be followed by public officials and private citizens to establish a statement of projects for a given program year. The complete Citizen Participation Plan is available for review at the public counter of the Housing Division, Third Floor, 200 Civic Center Way, El Cajon, CA 92020. A summary of the application process for CDBG funds is provided below for organizations and/or private citizens who wish to participate in the City's program.

The application process for CDBG funding begins each year in the fall. A "Notice of Funding Availability" is published in the local newspaper of general circulation for review by the public and a courtesy copy is mailed to all persons and organizations that requested to be placed on the City's mailing list. The Notice
will provide information regarding the amount of funds expected to be available, the procedures to follow for submitting proposals to the City with a schedule of applicable activities, and any additional information determined to be necessary by the program coordinator.

In the “Notice of Funding Availability”, the City will request applications for proposed projects from the community for eligible projects to be funded through the CDBG program. Applicants will be given at least thirty (30) days to submit a proposal or submit program comments/suggestions to the Housing Division, 200 Civic Center Way in El Cajon. Staff will review project submittals and determine whether or not a proposed project meets the stated criteria and is eligible for CDBG funding, and will then forward all eligible projects to the City Council for further consideration at two (2) public hearings.

The City Council will select the projects to be funded through the CDBG program and those projects will be included in the One Year Action Plan that is submitted to the U.S. Department of Housing and Urban Development for additional review and final approval. Once the Action Plan is approved, and all other stated conditions are met, project activities may begin and CDBG funding will be available for disbursement to the agencies who were selected to participate in the program.

For additional information on the Community Development Block Grant program and/or an application for funding, contact the City of El Cajon Housing Division at (619) 441-1785.

TENTATIVE FY 2013-14 ANNUAL ACTION PLAN TIMELINE*

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 8, 2012</td>
<td><em>Notice of Funding Availability</em> published in the newspaper and mailed to interested parties’ list.</td>
</tr>
<tr>
<td>November 8, 2012</td>
<td>Applications for CDBG Funding available.</td>
</tr>
<tr>
<td>November 13-December 11, 2012</td>
<td>Technical Assistance is available upon request. Call the program coordinator at (619) 441-1786 for assistance via telephone or to set an appointment.</td>
</tr>
<tr>
<td>December 13, 2012</td>
<td>Deadline for proposals/applications for CDBG funds to be submitted to Housing Division, 200 Civic Center Way, Third Floor, El Cajon, CA 92020 by 5:30 p.m.</td>
</tr>
<tr>
<td>January 11, 2013</td>
<td>Notify applicants regarding eligibility.</td>
</tr>
<tr>
<td>February 7, 2013</td>
<td><em>Notice of First Public Hearing</em> to be published in newspaper.</td>
</tr>
<tr>
<td>February 26, 2013</td>
<td>First Public Hearing at 7:00 p.m. to allocate FY 2013-14 CDBG funds and to solicit public input.</td>
</tr>
<tr>
<td>March 21, 2013</td>
<td><em>Notice of 30-day Public Review Period and Second Public Hearing</em> to be published in newspaper. Notice includes full listing of approved projects, amounts and regulatory citations, and seeks public input. Draft of Action Plan is available at the Housing Division Counter.</td>
</tr>
<tr>
<td>April 23, 2013</td>
<td>Second Public Hearing at 3:00 p.m. to solicit public input and final adoption of FY 2013-14 One-Year Action Plan.</td>
</tr>
<tr>
<td>April 24, 2013</td>
<td>Begin contract negotiations with selected CDBG subrecipients and initiate environmental reviews. Agreements targeted for execution on or before June 30, 2013.</td>
</tr>
<tr>
<td>May 14, 2013</td>
<td>One-Year Action Plan submitted to HUD for approval.</td>
</tr>
<tr>
<td>July 1, 2013</td>
<td>Begin Fiscal Year 2013-14.</td>
</tr>
</tbody>
</table>

*All dates listed herein are approximate and are subject to change. Persons relying on this Schedule must contact the program coordinator at (619) 441-1786 or ikesvika@cityofelcajon.us to confirm the actual date of each event as the timeframe nears.
SUMMARY OF CDBG APPLICATIONS FOR 2013-14 PROGRAM YEAR

Grant No. B-13-MC-06-0541

ATTACHMENT "3"

ESTIMATED CDBG FUNDS AVAILABLE:

| Est FY 2013-14 CDBG Grant Allocation: | $919,889 |
| Less Required Section 108 Loan Pymt: | $(77,004) |
| Less 20% max for Admin: | $(183,978) |
| Less 15% max for Public Services: | $(137,983) |
| Est CDBG available for Capital: | $520,924 |

<table>
<thead>
<tr>
<th>City Project No.</th>
<th>Agency</th>
<th>Project/Program</th>
<th>Grant</th>
<th>Type</th>
<th>Amount funded previous year</th>
<th>FY 2013-14 GRANT REQUEST</th>
<th>RECOMMENDED 2013-14 ALLOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADMINISTRATION - 20% CAP - $183,978 (est. max available)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CADMIN</td>
<td>City - Housing Division</td>
<td>CDBG Administration (1) and (2)</td>
<td>CDBG</td>
<td>Admin</td>
<td>$189,976</td>
<td>$183,978</td>
<td>$168,978</td>
</tr>
<tr>
<td>C0715</td>
<td>Center for Social Advocacy</td>
<td>Fair Housing Services</td>
<td>CDBG and HOME</td>
<td>Admin or PS</td>
<td>$10,000</td>
<td>$30,110</td>
<td>$15,000</td>
</tr>
<tr>
<td>Regional Task Force on the Homeless (RTFH)</td>
<td>Operational Support for HMIS / Training &amp; Technical Asst for Non-Profits</td>
<td>CDBG</td>
<td>Admin</td>
<td>-</td>
<td>$10,000</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>sub-total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$224,088</td>
<td>$183,978</td>
<td>-</td>
</tr>
</tbody>
</table>

PUBLIC FACILITIES/CAPITAL/OTHER - NO CAP - $597,928 (est) [520,924 remains after Sec 108 loan payment]

<table>
<thead>
<tr>
<th>City Project No.</th>
<th>Agency</th>
<th>Project/Program</th>
<th>Grant</th>
<th>Type</th>
<th>Amount funded previous year</th>
<th>FY 2013-14 GRANT REQUEST</th>
<th>RECOMMENDED 2013-14 ALLOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>C0702</td>
<td>City - Housing Division</td>
<td>REQUIRED Section 108 Loan - Ladder Truck</td>
<td>CDBG</td>
<td>Other</td>
<td>$79,865</td>
<td>$77,004</td>
<td>$77,004</td>
</tr>
<tr>
<td>C0704</td>
<td>City - Housing Division</td>
<td>City Housing Rehabilitation Program (3)</td>
<td>CDBG</td>
<td>Other</td>
<td>$100,700</td>
<td>$175,000</td>
<td>-</td>
</tr>
<tr>
<td>C0903</td>
<td>City - Public Works</td>
<td>City - ADA Curb Ramps Installation</td>
<td>CDBG</td>
<td>Capital</td>
<td>$75,000</td>
<td>$200,000</td>
<td>$190,924</td>
</tr>
<tr>
<td>C0902</td>
<td>City - Public Works</td>
<td>Council Chambers - ADA Improvements</td>
<td>CDBG</td>
<td>Capital</td>
<td>$887,205</td>
<td>$240,000</td>
<td>$240,000</td>
</tr>
<tr>
<td>East County Transitional Living Ctr</td>
<td>Parking Lot Repavement</td>
<td>CDBG</td>
<td>Capital</td>
<td>$30,000</td>
<td>$60,000</td>
<td>$30,000</td>
<td></td>
</tr>
<tr>
<td>GRID Alternatives</td>
<td>Solar Affordable Housing Program (Rehab)</td>
<td>CDBG</td>
<td>Capital</td>
<td>-</td>
<td>$10,000</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Boys &amp; Girls Clubs of East County</td>
<td>Restroom and Gym Renovations</td>
<td>CDBG</td>
<td>Capital</td>
<td>-</td>
<td>$60,455</td>
<td>$30,000</td>
<td></td>
</tr>
<tr>
<td>Crisis House</td>
<td>Roof Repairs - 1034 N. Magnolia</td>
<td>CDBG</td>
<td>Capital</td>
<td>-</td>
<td>$15,948</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>C0732</td>
<td>Home of Guiding Hands</td>
<td>Facility Improvements at Four Group Homes serving Disabled Adults II</td>
<td>CDBG</td>
<td>Capital</td>
<td>$30,800</td>
<td>$35,246</td>
<td>$30,000</td>
</tr>
<tr>
<td>sub-total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$873,653</td>
<td>$597,928</td>
<td>$77,004</td>
</tr>
</tbody>
</table>

(3) City Housing Rehabilitation Program is authorized to be allocated excess CDBG funds (increase in budget) when the actual final allocation from HUD is determined.
HOME ACTION PLAN ALLOCATIONS FOR 2013-14 PROGRAM YEAR

(Estimated with 8% reduction)

Grant No.: M-12-MC-06-0508

<table>
<thead>
<tr>
<th>City Project No.</th>
<th>Agency</th>
<th>Project/Program</th>
<th>Grant Type</th>
<th>Amount funded previous year</th>
<th>FY 2013-14 Grant Request</th>
<th>Recommended 2013-14 Allocation</th>
<th>Tentative Council 2013-14 Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>HADMIN</td>
<td>City - Housing Division</td>
<td>HOME Administration (1) and (2)</td>
<td>HOME Admin</td>
<td>$38,008</td>
<td>$36,020</td>
<td>$30,020</td>
<td>-</td>
</tr>
<tr>
<td>H0715</td>
<td>CSA San Diego County</td>
<td>Fair Housing Services</td>
<td>HOME Admin</td>
<td>$-</td>
<td>$30,110</td>
<td>$5,000</td>
<td>-</td>
</tr>
</tbody>
</table>

(1) HOME Administration is authorized to be allocated excess HOME funds (increase in budget) when the actual final allocation from HUD is determined, to the maximum allowed (10%).

(2) HOME Administration is authorized to automatically receive 10% of eligible Program income received (increase in budget) during the year.

<table>
<thead>
<tr>
<th>City Project No.</th>
<th>Agency</th>
<th>Project/Program</th>
<th>Grant Type</th>
<th>Amount funded previous year</th>
<th>FY 2013-14 Grant Request</th>
<th>Recommended 2013-14 Allocation</th>
<th>Tentative Council 2013-14 Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>H0918</td>
<td>TBD</td>
<td>CHDO Set Aside Funds (3)</td>
<td>HOME CHDO Set Aside</td>
<td>$57,097</td>
<td>$52,529</td>
<td>$52,529</td>
<td>-</td>
</tr>
</tbody>
</table>

(3) CHDO Reserve is authorized to be increased or decreased automatically to 15% of the total HOME allocation when the actual final allocation of HOME funds from HUD is determined.

<table>
<thead>
<tr>
<th>City Project No.</th>
<th>Agency</th>
<th>Project/Program</th>
<th>Grant Type</th>
<th>Amount funded previous year</th>
<th>FY 2013-14 Grant Request</th>
<th>Recommended 2013-14 Allocation</th>
<th>Tentative Council 2013-14 Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>H0719</td>
<td>City - Housing Division</td>
<td>First-Time Homebuyer</td>
<td>HOME Entitlement</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>-</td>
</tr>
<tr>
<td>H0722</td>
<td>City - Housing Division</td>
<td>Single-Family Rehabilitation Program</td>
<td>HOME Entitlement</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>-</td>
</tr>
<tr>
<td>H0721</td>
<td>City - Housing Division</td>
<td>Mobilehome Rehabilitation/Replacement Program</td>
<td>HOME Entitlement</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>-</td>
</tr>
<tr>
<td>H0720</td>
<td>City - Housing Division</td>
<td>Housing Programs Pool of Funds (4) and (5)</td>
<td>HOME Entitlement</td>
<td>$285,543</td>
<td>$262,647</td>
<td>$262,647</td>
<td>-</td>
</tr>
</tbody>
</table>

(4) Program income received during the year will be allocated automatically upon receipt (increase in budget) to the Housing Programs Pool of Funds (H0720) for additional housing and loan activities as allowed by the regulations.

(5) The City Manager is authorized to move funds from the Housing Programs Pool of Funds (H0720) to/between these HOME Entitlement programs (H0719, H0722, H0721) on an as-needed basis (based on market conditions and demand).

FY 2013-14 Grand Totals: $380,306 $350,196 $-