



**"The City With a Heart"**

Jim Ruane, Mayor  
Marty Medina, Vice Mayor  
Ken Ibarra, Councilmember  
Rico E. Medina, Councilmember  
Irene O'Connell, Councilmember

## **AGENDA**

### **SAN BRUNO CITY COUNCIL – SPECIAL MEETING – CLOSED SESSION**

**November 9, 2016**

**6:00 p.m.**

**Meeting Location: San Bruno Senior Center, 1555 Crystal Springs Road, San Bruno, CA**

City Council meetings are conducted in accordance with Roberts Rules of Order Newly Revised and City Council Rules of Procedure. You may address any agenda item by standing at the microphone until recognized by the Council. All regular Council meetings are recorded and televised on CATV Channel 1 and replayed the following Thursday, at 2:00 pm. You may listen to recordings in the City Clerk's Office, purchase CD's, access our web site at [www.sanbruno.ca.gov](http://www.sanbruno.ca.gov) or check out copies at the Library. We welcome your participation. In compliance with the Americans with Disabilities Act, individuals requiring reasonable accommodations or appropriate alternative formats for notices, agendas and records for this meeting should notify us 48 hours prior to meeting. Please call the City Clerk's Office 650-616-7058.

**1. CALL TO ORDER:**

**2. ROLL CALL:**

**3. PUBLIC COMMENT ON ITEMS NOT ON AGENDA:** Individuals allowed three minutes, groups in attendance, five minutes. If you are unable to remain at the meeting, ask the City Clerk to request that the Council consider your comments earlier. It is the Council's policy to refer matters raised in this forum to staff for investigation and/or action where appropriate. The Brown Act prohibits the Council from discussing or acting upon any matter not agendized pursuant to State Law.

**4. CLOSED SESSION:**

- a. Closed Session, Conference With Legal Counsel, Existing Litigation Pursuant to Government Code section 54956.9(d)(1): *Rebucas v. City of San Bruno*.
- b. Conference with Labor Negotiators Pursuant to Gov't Code Section 54957.6: Agency Designated Representatives: City Manager, Assistant City Manager, Employee Organizations: San Bruno Professional Fire Fighters Association, Public Safety Mid-Management Bargaining Unit, Miscellaneous Bargaining Unit and Mid Management Bargaining Unit.

**5. ADJOURNMENT:**

The next City Council Meeting will be held on November 9, 2016 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno.



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### **SAN BRUNO CITY COUNCIL – SPECIAL MEETING**

**November 9, 2016**

**7:00 p.m.**

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**1. CALL TO ORDER:**

**2. ROLL CALL/PLEDGE OF ALLEGIANCE:**

**3. ANNOUNCEMENTS:**

There will be no City Council Meeting on Tuesday, December 27, 2016.

**4. PRESENTATIONS:**

- a. Present a Proclamation Recognizing Artichoke Joe’s on their 100<sup>th</sup> Year Anniversary.
- b. Receive Presentation on Recology Solid Waste Services by the General Manager of Recology San Bruno.

**5. REVIEW OF AGENDA:**

**6. APPROVAL OF MINUTES** of Special Closed Session Council Meeting of October 25, 2016 and Regular Council Meeting of October 25, 2016 and Special Council Meeting of November 1, 2016.

**7. CONSENT CALENDAR:** All items are considered routine or implement an earlier Council action and may be enacted by one motion; there will be no separate discussion, unless requested.

- a. **Approve:** Accounts Payable of October 24 and 31, 2016.
- b. **Approve:** Payroll of October 21, 2016.
- c. **Adopt:** Reconciliation of General Ledger to Bank Reports and the Investment Reports Dated September 30, 2016.
- d. **Adopt:** Resolution Authorizing the City Manager to Execute a Comprehensive Agreement with the Peninsula Corridor Joint Powers Board for the Caltrain Electrification Project.

**8. PUBLIC HEARING:**

- a. Hold Public Hearing, Waive First Reading, and Introduce Ordinance Regulating Exposure to Secondhand Smoke.

- b. Hold Public Hearing, Waive First Reading and Introduce Ordinance Amending and Replacing Chapter 12.230 Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects.

**9. PUBLIC COMMENT ON ITEMS NOT ON AGENDA:** Individuals allowed three minutes, groups in attendance, five minutes. If you are unable to remain at the meeting, ask the City Clerk to request that the Council consider your comments earlier. It is the Council's policy to refer matters raised in this forum to staff for investigation and/or action where appropriate. The Brown Act prohibits the Council from discussing or acting upon any matter not agendized pursuant to State Law.

**10. CONDUCT OF BUSINESS:**

- a. Adopt a Resolution Authorizing the City Manager to Submit a One Bay Area Grant (OBAG2) Bicycle/Pedestrian Improvement Program Application to City/County Association of Governments for San Mateo County for the Huntington Transit Corridor Bicycle/ Pedestrian and Related Improvements Project.
- b. Adopt Resolution Authorizing the City Manager to Submit an Application to the City/County Association of Governments for San Mateo County for Street Rehabilitation on Pine, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Streets for the One Bay Area Local Streets and Roads Grant Program.
- c. Adopt Resolution Authorizing the City Manager to Reject All Bids and Execute a Four Year Contract Pursuant to Public Contracts Code Section 20167 with West Valley Constructor for Water Main Repairs in an Amount Not to Exceed First Year Budget of \$200,000.
- d. Receive the First Quarter Financial Report as of September 30, 2016, and Adopt Resolution Amending the Fiscal Year 2016-17 Operating and Capital Improvement Program Budgets to Re-Appropriate Fiscal Year 2015-16 Carryover Encumbrances.
- e. Receive Report and Provide Direction Regarding the Implementation of Body-Worn Camera Program Consistent with the San Mateo County Civil Grand Jury Report "Body Cameras-The Reel Truth" Recommendations.
- f. Adopt Resolution Establishing an Environmentally Preferable Procurement (EPP) Policy.

**11. REPORT OF COMMISSIONS, BOARDS & COMMITTEES:**

**12. COMMENTS FROM COUNCIL MEMBERS:**

Receive Report from Councilmember O'Connell on her Attendance at the League of California Cities Annual Conference, October 5-7, 2016.

**13. CLOSED SESSION:**

**14. STUDY SESSION:**

**15. ADJOURNMENT:**

The next Regular City Council Meeting will be held on November 22, 2016 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno.



**“The City With a Heart”**

Jim Ruane, Mayor  
Marty Medina, Vice Mayor  
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Rico E. Medina, Councilmember  
Irene O’Connell, Councilmember

**MINUTES**  
**SAN BRUNO CITY COUNCIL – SPECIAL MEETING**

**October 25, 2016**

**6:00 p.m.**

**Meeting Location: San Bruno Senior Center, 1555 Crystal Springs Road, San Bruno, CA**

City Council meetings are conducted in accordance with Roberts Rules of Order Newly Revised and City Council Rules of Procedure. You may address any agenda item by standing at the microphone until recognized by the Council. All regular Council meetings are recorded and televised on CATV Channel 1 and replayed the following Thursday, at 2:00 pm. You may listen to recordings in the City Clerk’s Office, purchase CD’s, access our web site at [www.sanbruno.ca.gov](http://www.sanbruno.ca.gov) or check out copies at the Library. We welcome your participation. In compliance with the Americans with Disabilities Act, individuals requiring reasonable accommodations or appropriate alternative formats for notices, agendas and records for this meeting should notify us 48 hours prior to meeting. Please call the City Clerk’s Office 650-616-7058.

**1. CALL TO ORDER: THIS IS TO CERTIFY THAT** the San Bruno City Council met on October 25, 2016 at San Bruno’s Senior Center, 1555 Crystal Springs Road, San Bruno, CA. The Council meeting was called to order at 5:00 p.m.

**2. ROLL CALL:** Presiding was Mayor Ruane, Vice Mayor Marty Medina, Councilmembers Ibarra, Rico Medina and O’Connell. Recording by City Clerk Bonner.

**3. PUBLIC COMMENT:** None.

**4. CLOSED SESSION:**

**Mayor Ruane** said they would be going into Closed Session, Conference With Legal Counsel, Anticipated Litigation, Significant Exposure to Litigation pursuant to Government Code section 54956.9(d)(2): One Case with no reportable action.

**5. ADJOURNMENT:**

**Mayor Ruane** closed the meeting at 6:45 p.m. The next regular City Council Meeting will be held on October 25, 2016 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno.

Respectfully submitted for approval  
at the Special City Council Meeting of  
November 9, 2016

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Carol Bonner, City Clerk

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Jim Ruane, Mayor



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## **MINUTES SAN BRUNO CITY COUNCIL**

**October 25, 2016**

**7:00 p.m.**

### **Music Performance by the Parkside School String Ensemble Preceding the Regular City Council Meeting at 6:30 p.m.**

**1. CALL TO ORDER: THIS IS TO CERTIFY THAT** the San Bruno City Council met on October 25, 2016 at San Bruno’s Senior Center, 1555 Crystal Springs Road, San Bruno, CA. The Council meeting was called to order at 7:00 p.m. **Mayor Ruane** thanked the garden club for the flower arrangement.

**2. ROLL CALL/PLEDGE OF ALLEGIANCE:**

Presiding was Mayor Ruane, Vice Mayor Marty Medina, Councilmembers Ibarra, Rico Medina and O’Connell. **Park and Recreation Commissioner Nigel** led the pledge of allegiance. Recording by City Clerk Bonner.

**3. ANNOUNCEMENTS:**

**Mayor Ruane** announced:

a. The Regular City Council Meeting of Tuesday, November 8 has been cancelled. There will be a Special Council Meeting on Wednesday, November 9 at 7:00 p.m. at the San Bruno Senior Center.

b. The City of San Bruno will join parents, schools, and communities across the country in support of Red Ribbon Week, a national celebration of anti-drug education and drug abuse awareness. Red ribbons will be worn October 23 to 31.

c. There will be a Community Forum at the Senior Center on Wednesday, October 26 at 6:30 p.m. An additional forum will be held on November 30 at 6:30 p.m. The public can give their input on what they would like to see done with the money received from the Crestmoor/Glenview fire.

**4. PRESENTATIONS:**

a. **Mayor Ruane** said they will receive a Presentation from Cheryl Olson, Superintendent, San Bruno Park School District who gave an update on what is occurring in the San Bruno Park School District. **Mayor Ruane** Presented a Proclamation Recognizing the District’s Initiation of the “Big Lift” Program to Cheryl Olson who thanked the City.

b. **Mayor Ruane** said they will Receive a Performance from the Parkside Intermediate School Orchestra String Ensemble. **Mayor Ruane** Presented a Proclamation Recognizing the Parkside Music Program which was received by Elyse Mahfouz and Ciana Whitfield, Parkside Intermediate Music Teachers who thanked the community.

c. **Cable Director Firpo** announced the first fiber optic cable has been connected at Shelter Creek. He said they are on their way to completing that project throughout Shelter Creek.

**Councilmember Ibarra** asked what people can expect with fiber to the home. **Firpo** said fiber optic has powering from only two sources, power to the customer's home and at the source of the originating point, which is in our head end facility. So it eliminates all power where we deliver

**5. REVIEW OF AGENDA:** **Mayor Ruane** moved Item 11. to follow the Public Hearing. He adjusted under Conduct of Business, Item d. to follow Item b. On the Consent Calendar, Item 7c. was pulled and Item 12 is postponed.

**6. APPROVAL OF MINUTES** of Regular Council Meeting of October 11, 2016, approved as submitted.

**7. CONSENT CALENDAR:**

a. **Approve:** Accounts Payable of October 10 and 17, 2016.

b. **Approve:** Payroll of October 7, 2016.

c. **Adopt:** Resolution Authorizing the City Manager to Execute a Comprehensive Agreement with the Peninsula Corridor Joint Powers Board for the Caltrain Electrification Project (Pulled.)

d. **Adopt:** Resolution Accepting the 2015 Street Rehabilitation Project as Complete, Authorizing the Filing of a Notice of Completion with the San Mateo County Recorder's Office, and Authorizing Release of the Construction Contract Retention in the Amount of \$120,900.

**M/S Ibarra/O'Connell** to approve the Consent Calendar and passed with all ayes.

**8. PUBLIC HEARING:**

Hold Public Hearing, Waive First Reading, and Introduce an Ordinance Adding Chapter 10.15 to the Municipal Code to Include Water Supply Cross-Connection and Backflow Prevention Standards.

**Deputy Public Services Director Burch** gave an overview of the staff report and asked for questions.

**Mayor Ruane** opened the Public Hearing. No one wished to speak.

**M/S Ibarra/Rico Medina** to close the public hearing.

**M/S Ibarra/O'Connell** to waive the first reading.

**Councilmember Ibarra** introduced the resolution for adoption and passed with a unanimous vote.

**11. Culture and Arts Commission Chair Gamble** introduced the members of the Commission. She gave a description of what the Commission's purpose is. She shared the accomplishments of the last year and their plans for the upcoming year.

**Mayor Ruane** thanked the Commission for all they do.

**9. PUBLIC COMMENT ON ITEMS NOT ON AGENDA:**

**Kevin Martinez, Martin Place** talked about the change of parking on the sidewalks. He said if they don't park off the street, there is not enough room for emergency vehicles. He asked for an exemption on Martin Place. He talked about handicapped ramps on the sidewalks.

**Dave Nigel** said he attended a meeting regarding the former Crestmoor High School Property where Peninsula High School is and said Vice Mayor Marty Medina did a wonderful job addressing the San Mateo High School District regarding the sports fields. He thanked the Council and staff for being honored nationally in St. Louis at the National Awards of the National Parks and Recreation Association with the Robert M. Artz Award for public advocacy.

**Lucy Mejia, Don Pico's** talked Taco trucks and asked the City of San Bruno consider enacting an ordinance such as Millbrae prohibiting solicitation on highways within the City limits including El Camino Real. She said taco trucks are great when there are no other options for fast economical food choices. In San Bruno, there are many options for Mexican or Latin food. She said there are taco trucks up and down El Camino from South San Francisco's border to Millbrae's border. She added she didn't know if the trucks pay taxes in San Bruno. She suggested San Bruno adopt an ordinance prohibiting solicitation on El Camino Real within the City limits.

**Mayor Ruane** asked if we have jurisdiction over El Camino Real. **City Attorney Zafferano** said under the States, Streets and Highways Code the City could adopt an ordinance similar to what Millbrae did to prohibit those trucks from dispensing goods and services on El Camino Real. The City has its own ordinance which regulates taco trucks, which was arrived at following a lengthy process of mediation and discussions with the owners of those trucks as well as other interest groups in the community.

#### **10. CONDUCT OF BUSINESS:**

a. Appoint Citizens to Fill Vacancies in the Citizen Advisory Boards, Commissions and Committees.

**Mayor Ruane** said they have two vacancies and asked for nominations.

##### **Community Preparedness Committee**

**M/S Rico Medina** nominated Malcolm Robinson and passed with a unanimous vote.

Mayor Ruane said this opens up a seat on the **Bicycle and Pedestrian Committee** and maybe that could be done at the next meeting.

##### **Traffic Safety & Parking**

**M/S Marty Medina/O'Connell** nominated Marco Durazo.

**M/S Rico Medina/Ken Ibarra** nominated Melody Blanchard and passed with three ayes, Councilmembers Rico Medina, Ken Ibarra and Jim Ruane.

b. Adopt Resolution Accepting the Florida Avenue Park Draft Master Plan and Approving the Park Design Concept.

**Vice Mayor Medina** was recused from this item because his home is within 500 feet of the Florida Avenue Park.

**Community Services Director Burns** gave an overview of the staff report and asked for questions.

**Park and Recreation Commissioner Alexander Melendrez** gave a summary of what the Commission envisioned.

**Councilmember Rico Medina** talked about the timeline, length from start to finish. **Burns** said they anticipate the design could be done as early as February, March at the latest. She said she hoped the award of the project would occur after the end of the rainy season. It will take the construction firm 30 days or so to do contract documents and another 30 days to mobilize. Florida is expected to take about six months. Dedication should take place at the end of 2017.

**Councilmember Ibarra** said he knows the site and has a very difficult time understanding what the park will look like. He asked if there will be good site lines through this park. He said while a staff member will be there two to three hours each day, it seems like a lot of time to be at one

location. **Burns** said as they get further into the design, it will give them a better idea of where there might be concern for lines of sight blockage. She said the maintenance crew go out to the parks every day and inspect the play equipment, check for hazards, tend to the plant material. On one day it may take a couple of hours to maintain the park, whereas the next day it may only take an hour which is why they say two hours.

**Councilmember O'Connell** asked why it takes six months to build a park. **Burns** said after they get through design she will be able to answer the question more specifically. **Councilmember** talked about rounding off the corners and making the street a little wider. She asked if a rendition of that could be brought back so Council and the public could see that. **Burns** said it is their intention before they get into design drawings on the park to attempt to answer this question sooner or later. She said they want to be sure the footprint they have for the park is accurate.

**City Attorney Zafferano** explained Vice Mayor Medina was recused from making a decision on this subject; however, as a member of the public he is allowed to talk for three minutes.

**Marty Medina, Garden Ave.** shared his excitement to have a new park. He talked about the curbs to increase the circulation in the neighborhood. He suggested adding an ADA compliant play structure. He talked about the trees affecting the lighting. He said a mural wall with rotation of art.

**Councilmember Medina** said the sidewalks were a subject at the second meeting with the neighborhood and they were going to be looked at. He said the vegetation was also addressed.

**Councilmember O'Connell** introduced the resolution for adoption and passed with four ayes. Vice Mayor Marty Medina recused.

d. Adopt Resolution Authorizing the City Manager to Execute a Contract with ACC Environmental Consultants for the 324 Florida Avenue Site Remediation Project in the Amount of \$24,591 and Appropriating \$25,000 from the General Fund Capital Reserve Fund. (Moved to follow Item b.)

**City Manager Jackson** said Vice Mayor Medina was recused from this item.

**Public Services Director Tan** gave an overview of the staff report and asked for questions.

**Councilmember O'Connell** introduced the resolution for adoption and passed with four ayes. Vice Mayor Marty Medina recused.

c. Adopt Resolution Authorizing the City Manager to Execute a Contract with MIG, Inc. for Landscape Architectural Design Services for the Earl-Glenview and Florida Avenue Parks in an Amount Not to Exceed \$227,750.

**Community Services Director Burns** gave an overview of the staff report and asked for questions.

**Councilmember Ibarra** he said he didn't want both parks to look the same. He asked if there was any research on the style they have. **Burns** said from the designs she has seen they are very responsive to the input from the neighborhood. She said from the responses she has received they will be very different.

**Vice Mayor Marty Medina** asked if they will start at the same time? **Burns** said yes. **Vice Mayor Marty Medina** said he was concerned about safety at Glenview. He said he was aware of the speeding that occurs there. He suggested limiting the design to just the east side. **Burns** said they could revisit a conversation with the neighborhood.

**Councilmember O’Connell** said she was astonished that eliminating the west park just popped up. **City Manager Jackson** said this was shown on the report as an alternative because there was discussion at the community meetings regarding safety in the pedestrian crossing.

**Councilmember Ibarra** said we need to have both parks. He said maybe the east side becomes the reflection area.

**Mayor Ruane** asked what the neighbors want. **Burns** said she reflected what the neighborhood had expressed with regard to their design vision having both parcels available. They did not put the reflection area on the west side of the park. They put it on the east side so they could look down the canyon.

**Mayor Ruane** said it is their neighborhood and we should go with what they want.

**Councilmember O’Connell** agreed with the Mayor and said the pedestrians need to be taken care of regardless if there are no parks there. She said traffic calming measures need to be looked at.

**Councilmember O’Connell** introduced the resolution implementing the original master plan park design and passed with a unanimous vote.

e. Adopt Resolution Authorizing the Closure of Park Avenue between Chestnut Avenue and Oak Avenue on October 31, 2016 between the Hours of 5:00 PM and 10:00 PM.

**Public Services Director Tan** gave an overview of the staff report and asked for questions.

**Councilmember Ibarra** asked what an encroachment permit entails. **Tan** said the action to apply for the City’s encroachment permit has some conditions attached to it. In this case, it would be notifying the residents, putting their own barricades and the cones. Normally with construction activities they would require more, insurance from the contractors or vendors but in this case it will not be required. **City Manager Jackson** said if there was an adjustment to the cost, in this case there would be a follow-up to make sure barricades and the notification was properly made. She said it has been in the Council’s past interest in road closure situations to notify people prior to the Council’s consideration. That did not occur in this case due to the timing of the request.

**Councilmember Rico Medina** introduced the resolution for adoption and asked that the encroachment permit in this case be waived and passed with a unanimous vote.

f. Receive Report and Provide Direction Regarding the Budget and Funding for the 2017 Community Day in the Park Event on June 4, 2017.

**City Manager Jackson** gave an overview of the staff report which included 2015 and 2016 Community Days in the Park. She said staff is recommending the 2017 event require pre-registration of the cars in order to allow for a more coordinated event and no more than 90 cars in the Lions’ car show. She said they also are recommending local bands be part of the entertainment; thereby reducing the entertainment bands from two to one allowing the opportunity to showcase some of our local talent. Staff is also proposing two additional rides be added for a total of eight rides. Additional food vendors are being looked at. She asked for questions.

**Councilmember Ibarra** said he didn’t have any problems with the budget. He said he wanted the community to be engaged. Maybe the schools need to sell the ride tickets. We need to make it easier. He said it needs to be community vendors.

**Councilmember Rico Medina** asked if it would the park would be the same time of closure? **Burns** said they are talking about the same closure as 2016. He echoed Councilmember Ibarra's suggestion to get the schools and community involved.

**Vice Mayor Marty Medina** said the schools should be involved. He would volunteer to be in a dunk tank. He suggested advertising through You Tube and Nextdoor.com.

**Mayor Ruane** asked if they need authorization for funds not to exceed a certain amount. direction from the Council

g. Adopt Interim Urgency Ordinance Regulating Cultivation and Prohibiting the Manufacture, Processing, Laboratory Testing, Labeling, Storing, Wholesale, and Retail Distribution of Non-medical Marijuana Pursuant to Government Code Section 65858(a).

**City Attorney Zafferano** gave an overview of the staff report and asked for questions.

**Councilmember Ibarra** introduced the resolution for adoption and passed with a unanimous vote.

#### **11. REPORT OF COMMISSIONS, BOARDS & COMMITTEES:**

Receive Annual Report from the Culture and Arts Commission (moved to follow Item 8.)

#### **12. COMMENTS FROM COUNCIL MEMBERS:**

Receive Report from Councilmember O'Connell on her Attendance at the League of California Cities Annual Conference, October 5-7, 2016. (Moved to meeting of November 9.)

#### **13. CLOSED SESSION:**

**Mayor Ruane** said they would be going into closed session with no reportable action.

a. Conference with Labor Negotiators Pursuant to Gov't Code Section 54957.6: Agency Designated Representatives: City Manager, Assistant City Manager, City Negotiator, Employee Organizations: San Bruno Professional Fire Fighters Association, Public Safety Mid-Management Bargaining Unit, Miscellaneous Group and Mid Management Bargaining Unit.

b. Conference with Legal Counsel, Pending Litigation Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Workers' Compensation Appeals Board Case: ADJ10412283.

#### **14. STUDY SESSION:**

#### **15. ADJOURNMENT:**

Mayor Ruane closed the meeting 9:09. The City Council Meeting will be held on November 9, 2016 at 7:00 p.m. at the Senior Center (which is a special meeting because November 8 is Election Day), 1555 Crystal Springs Road, San Bruno.

Respectfully submitted for approval  
at the Special City Council Meeting of  
November 9, 2016

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Carol Bonner, City Clerk

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Jim Ruane, Mayor



**"The City With a Heart"**

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**MINUTES**  
**SAN BRUNO CITY COUNCIL – SPECIAL MEETING**  
**November 1, 2016**  
**5:00 p.m.**

**Meeting Location: Bay Area Entrepreneur Ctr., 458 San Mateo Avenue, San Bruno**

- 1. CALL TO ORDER: THIS IS TO CERTIFY THAT** the San Bruno City Council met on October 25, 2016 at San Bruno's Senior Center, 1555 Crystal Springs Road, San Bruno, CA. The Council meeting was called to order at 5:00 p.m.
- 2. ROLL CALL:** Presiding was Mayor Ruane, Vice Mayor Marty Medina, Councilmembers Ibarra, Rico Medina and O'Connell. Recording by City Clerk Bonner.
- 3. PUBLIC COMMENT:** None.
- 4. CONDUCT OF BUSINESS:**

Mayor Ruane said they would Conduct a Study Session discussion to review key issues related to the Zoning Ordinance update. The meeting will include a walking tour of downtown San Mateo Avenue. Topics are:

- Changes in land use tables, by zoning district
- Signage, including murals
- Downtown parking and zoning regulations
- Consideration of use of Public Benefit Districts

Council, City Manager, Police Chief Community Development staff members and members of the public walked San Mateo Avenue and observed a lot of things that could improve the area. There was no reportable action.

**5. ADJOURNMENT:**

Mayor Ruane ended the meeting at 6:45 p.m. The next regular City Council Meeting will be held on November 9, 2016 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno

Respectfully submitted for approval  
at the Special City Council Meeting of  
November 9, 2016

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Carol Bonner, City Clerk

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Jim Ruane, Mayor

10/24/16

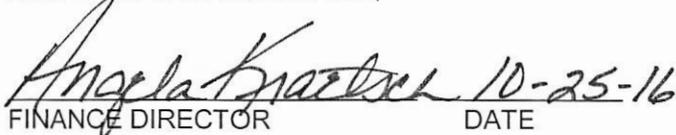
CITY OF SAN BRUNO  
WARRANT REGISTER  
TOTAL FUND RECAP

FUND	FUND NAME	AMOUNT
001	GENERAL FUND	\$183,276.35
002	GENERAL FUND RESERVE	\$100,000.00
132	AGENCY ON AGING	\$2,196.96
133	RESTRICTED DONATIONS	\$1,950.00
190	DISASTER RECOVERY FUND	\$18.00
203	STREET IMPROVE. PROJECTS	\$12,864.82
611	WATER FUND	\$47,415.43
621	STORMWATER FUND	\$2,822.17
631	WASTEWATER FUND	\$16,575.88
641	CABLE TV FUND	\$23,129.03
701	CENTRAL GARAGE	\$9,268.91
702	FACILITY MAINT. FUND	\$633.45
703	GENERAL EQUIPMENT REVOLVING	\$576.27
707	TECHNOLOGY DEVELOPMENT	\$882.32
880	PROJECT DEVELOP. TRUST	\$7,703.81
TOTAL FOR APPROVAL		\$409,313.40

HONORABLE MAYOR AND CITY COUNCIL:

THIS IS TO CERTIFY THAT THE CLAIMS LISTED ON PAGES NUMBERED FROM 1 THROUGH 3 INCLUSIVE, AND/OR CLAIMS NUMBERED FROM 164767 THROUGH 164915 INCLUSIVE, TOTALING IN THE AMOUNT OF \$409,313.40 HAVE BEEN CHECKED IN DETAIL AND APPROVED BY THE PROPER OFFICIALS, AND IN MY OPINION REPRESENT FAIR AND JUST CHARGES AGAINST THE CITY IN ACCORDANCE WITH THEIR RESPECTIVE AMOUNTS AS INDICATED THEREON.

RESPECTFULLY SUBMITTED,

  
FINANCE DIRECTOR                      DATE

Document group: komalley Bank: apbank 05507660

Vendor Code & Name	Check #	Check Date	Amount
0000858 ADECCO EMPLOYMENT SERVICES	164767	10/24/2016	4,160.70
0103202 ADVANCED MOBILE COMMUNICATIONS	164768	10/24/2016	325.86
0001170 AIRGAS USA, LLC	164769	10/24/2016	451.65
0000163 AIRPORT AUTO PARTS INC.	164770	10/24/2016	87.03
0017459 ALL CITY MANAGEMENT SVC.INC.	164771	10/24/2016	5,803.55
0000372 ALLIED SECURITY ALARMS	164772	10/24/2016	477.00
0018976 ALPHA ANALYTICAL LAB. INC.	164773	10/24/2016	3,909.00
0104542 ALTA LANGUAGE SERVICES, INC.	164774	10/24/2016	120.00
0103662 ALTERNATV INTERNATIONAL CORP.	164775	10/24/2016	177.92
0103234 ALWAYS UNDER PRESSURE	164776	10/24/2016	249.02
0102355 AMAZON	164777	10/24/2016	676.32
0000082 AMERICAN MESSAGING	164778	10/24/2016	68.57
0001202 ARAMARK UNIFORM SERVICES	164779	10/24/2016	1,096.80
0106225 ARIES INDUSTRIES, INC.	164780	10/24/2016	274.43
0001965 ARISTA BUSINESS	164781	10/24/2016	265.21
0106569 ARTHUR F. HURRELL	164835	10/24/2016	50.00
0016123 AT&T	164782	10/24/2016	137.46
0017191 AT&T	164783	10/24/2016	196.93
0018363 AT&T LONG DISTANCE	164784	10/24/2016	16.02
0018465 AT&T MOBILITY	164785	10/24/2016	46.65
0000345 BAKER & TAYLOR BOOKS	164786	10/24/2016	7,750.06
0001849 BAY AREA WATER SUPPLY & CONSERVATION AGEN	164899	10/24/2016	396.00
0105737 BAY CITIES PYROTECTOR, INC.	164789	10/24/2016	1,650.00
0105553 BELLECCI & ASSOCIATES, INC.	164790	10/24/2016	14,612.00
0094055 BRIAN WEATHERS	164914	10/24/2016	354.22
0000378 BROADMOOR LANDSCAPE SUPPLY	164792	10/24/2016	2,735.90
0102737 BURKE, WILLIAMS & SORENSEN,LLP	164793	10/24/2016	2,909.40
0094705 CACEO	164794	10/24/2016	50.00
0105324 CAINE COMPUTER CONSULTING, LLC	164795	10/24/2016	3,120.00
0018355 CALIFORNIA BUILDING OFFICIALS	164796	10/24/2016	3,495.00
0018317 CANNON DESIGN GROUP	164797	10/24/2016	3,242.45
0101061 CATHY REINHARDT	164884	10/24/2016	150.00
0018977 CBS TELEVISION STATIONS	164798	10/24/2016	11,106.86
0017843 CENTRAL COUNTY FIRE DEPT.	164799	10/24/2016	7,600.00
0017843 CENTRAL COUNTY FIRE DEPT.	164800	10/24/2016	114.03
0106570 CHARLES AND ROSEMARY CHETCUTI	164801	10/24/2016	50.00
0016842 CHICAGO TITLE COMPANY	164802	10/24/2016	100,000.00
0016324 CINTAS CORPORATION	164803	10/24/2016	416.89
0102572 CINTAS FIRE PROTECTION	164804	10/24/2016	1,977.02
0098588 CITY OF BURLINGAME	164805	10/24/2016	3,283.20
0001889 CITY OF REDWOOD CITY	164806	10/24/2016	350.00
0013595 CITY OF SAN BRUNO	164807	10/24/2016	1,311.37
0000508 CLEARLITE TROPHIES	164808	10/24/2016	609.54
0015857 COUNTY OF SAN MATEO	164812	10/24/2016	1,503.33
0018331 CSG CONSULTANTS INC.	164813	10/24/2016	26,586.50
0106080 DATALINK CORPORATION	164814	10/24/2016	4,599.84
0106572 DATASAFE, INC.	164815	10/24/2016	42.00
0106561 DEACON CORP.	164816	10/24/2016	2,000.00
0018759 DENNIS MOLLOY	164865	10/24/2016	525.00
0106571 DIANE LLAMAS	164854	10/24/2016	50.00
0102673 EBI AGGREGATES	164817	10/24/2016	543.64
0106285 EISEN LETUNIC	164818	10/24/2016	12,833.34
0106116 EVERBANK COMMERCIAL FINANCE, INC.	164810	10/24/2016	794.71

Document group: komalley Bank: apbank 05507660

Vendor Code & Name	Check #	Check Date	Amount
0000944 FEDEX	164820	10/24/2016	100.69
0105857 FIRE INFORMATION SUPPORT SVCS. INC.	164837	10/24/2016	250.00
0018117 FLYERS ENERGY, LLC	164821	10/24/2016	9,568.77
0102869 FRANCHISE TAX BOARD	164822	10/24/2016	921.68
0018272 GALE/CENGAGE LEARNING	164823	10/24/2016	67.62
0105960 GARRATT CALLAHAN	164824	10/24/2016	1,421.90
0100549 GAVIN LICHT	164851	10/24/2016	1,700.00
0016363 GCS ENVIRONMENTAL & EQUIPMENT SVC.	164819	10/24/2016	2,987.37
0104135 GLOBAL TRACKING COMMUNICATIONS, INC.	164908	10/24/2016	24.99
0016154 GOETZ BROTHERS SPORTING GOODS	164826	10/24/2016	1,682.96
0016969 GOLDEN IDEAS	164827	10/24/2016	2,398.89
0000162 GRAINGER	164828	10/24/2016	2,450.21
0095966 GREATAMERICA FINANCIAL SVCS.	164829	10/24/2016	577.50
0096316 GREEN CARPET LANDSCAPING & MAINTENANCE	164849	10/24/2016	1,100.00
0096837 GYM DOCTORS	164830	10/24/2016	100.00
0000385 HACH COMPANY	164831	10/24/2016	986.59
0105378 HOME MAID RAVIOLI COMPANY INC.	164832	10/24/2016	282.00
0103336 HUB INTERNATIONAL SERVICE INC.	164833	10/24/2016	359.36
0106054 HULA HALA 'O MAKALAPUA	164834	10/24/2016	72.00
0000497 HYDRA-SHIELD MANUFACTURING INC	164836	10/24/2016	2,530.00
0018838 INFOSEND, INC.	164838	10/24/2016	5,956.26
0018125 INTERNATIONAL CODE COUNCIL-ICC	164839	10/24/2016	93.72
0015531 INTERSTATE BATTERY SYS. OF SF	164840	10/24/2016	167.87
0017946 JON PRIOLO	164841	10/24/2016	200.00
0105682 JOSH BARROWS	164787	10/24/2016	30.35
0018498 KONICA MINOLTA	164844	10/24/2016	450.57
0018498 KONICA MINOLTA	164845	10/24/2016	125.70
0000317 L.N. CURTIS & SONS	164846	10/24/2016	5,294.34
0018561 LANCE BAYER	164848	10/24/2016	675.00
0106342 LESLIE SALAZAR	164887	10/24/2016	320.00
0104424 LIDIA'S ITALIAN DELICACIES	164852	10/24/2016	1,600.00
0093274 LINDSTROM CO	164853	10/24/2016	2,500.00
0018177 LOWE'S	164856	10/24/2016	964.58
0018177 LOWE'S	164857	10/24/2016	829.76
0101010 LUIS ULLOA	164909	10/24/2016	1,000.00
0017026 LYNX TECHNOLOGIES, INC.	164858	10/24/2016	325.00
0106568 MAGDA LAMPROS	164847	10/24/2016	50.00
0106302 MATTHEW JONES	164842	10/24/2016	5,917.40
0018311 MEDCO SUPPLY COMPANY	164859	10/24/2016	190.21
0102770 METLIFE	164860	10/24/2016	350.46
0106061 MICHAEL COOK	164811	10/24/2016	216.54
0092285 MICROMARKETING LLC	164861	10/24/2016	45.97
0016863 MIDWEST TAPE, LLC	164862	10/24/2016	82.77
0001709 MILLBRAE LOCK	164863	10/24/2016	192.00
0096800 MOBILE CALIBRATION SVCS. LLC	164864	10/24/2016	256.00
0000333 MOSS RUBBER & EQUIP. CORP.	164866	10/24/2016	1,771.41
0106575 NANCY KANIUTH	164843	10/24/2016	1,000.00
0000357 NATIONAL CABLE TV CO-OP, INC.	164867	10/24/2016	603.66
0090507 NCBPA	164868	10/24/2016	70.00
0018157 OCLC INC	164869	10/24/2016	362.90
0092263 OFFICE DEPOT INC	164870	10/24/2016	1,283.69
0018284 OFFICEMAX INC.	164871	10/24/2016	280.85
0000210 OLE'S CARBURETOR & ELECTRIC INC	164872	10/24/2016	21.69
0103933 OWEN EQUIPMENT SALES	164873	10/24/2016	1,268.19

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Vendor Code & Name	Check #	Check Date	Amount	
0000012	PACIFIC GAS & ELECTRIC	164874	10/24/2016	13,465.69
0106566	PAUL AND MAUREEN BONITZ	164791	10/24/2016	50.00
0106156	PENGUIN RANDOM HOUSE LLC	164875	10/24/2016	36.79
0001154	PENINSULA LIBRARY SYSTEM	164876	10/24/2016	8,677.00
0015163	PENINSULA SPORTS OFFICIALS ASSOC.INC.	164894	10/24/2016	660.00
0018861	PITNEY BOWES	164877	10/24/2016	6,000.00
0018756	POLLARDWATER	164878	10/24/2016	300.68
0017235	PPC BROADBAND, INC.	164879	10/24/2016	1,234.68
0102915	PRECISE PRINTING & MAILING	164880	10/24/2016	674.47
0000285	PREFERRED ALLIANCE, INC.	164881	10/24/2016	439.28
0000071	R & B COMPANY	164882	10/24/2016	5,345.20
0091044	R.A. METAL PRODUCTS, INC	164883	10/24/2016	3,897.21
0104548	RENNE SLOAN HOLTZMAN SAKAI LLP	164885	10/24/2016	454.00
0106567	ROBERT GLASS	164825	10/24/2016	50.00
0000022	ROBERT LOUIE	164855	10/24/2016	136.35
0018096	SAFARILAND, LLC	164886	10/24/2016	410.05
0092067	SCOTT WALDVOGEL	164888	10/24/2016	200.00
0106068	SCOTT'S PPE RECON, INC.	164889	10/24/2016	88.00
0018461	SERRAMONTE FORD, INC.	164890	10/24/2016	2,091.44
0102917	SFPUC FINANCIAL SERVICES	164891	10/24/2016	2,070.00
0018962	SHOE DEPOT INC.	164892	10/24/2016	488.44
0018214	SIGILLO SUPPLY INC.	164893	10/24/2016	628.36
0097079	SPRINT	164895	10/24/2016	37.99
0106565	STAYBRIDGE SUITES SAN DIEGO-SORRENTO MESA	164897	10/24/2016	704.40
0017036	STEVEN'S BAY AREA DIESEL SER., INC.	164788	10/24/2016	291.90
0000801	STEWART AUTOMOTIVE GROUP	164896	10/24/2016	398.85
0105796	SUNRISE FOOD DISTRIBUTOR INC.	164898	10/24/2016	248.40
0101086	T-MOBILE	164907	10/24/2016	96.48
0015691	TEAMSTERS LOCAL 856	164900	10/24/2016	14,346.00
0106290	TECHSHOP MID-PENINSULA	164901	10/24/2016	1,950.00
0106472	TEN-FOUR COMMUNICATIONS	164902	10/24/2016	7,442.90
0098021	THE SAN MATEO MEDICAL CENTER	164903	10/24/2016	700.00
0000036	THOMSON WEST	164904	10/24/2016	378.28
0017527	TIFCO INDUSTRIES INC.	164905	10/24/2016	425.94
0106230	TJM PROMOTIONS INC.	164906	10/24/2016	1,236.00
0018618	UNITED SITE SERVICES INC.	164910	10/24/2016	194.20
0105133	UTILITY TELECOM, INC.	164911	10/24/2016	189.87
0102988	VANTAGEPOINT TRANSFER AGENTS	164912	10/24/2016	11,776.97
0095749	VERIZON WIRELESS	164913	10/24/2016	893.96
0105955	WEST COAST CODE CONSULTANTS, INC.	164809	10/24/2016	10,996.06
0104660	WEST YOST ASSOCIATES, INC.	164915	10/24/2016	9,175.72
0106574	YOLANDA LEUNG	164850	10/24/2016	1,000.00

GrandTotal: 409,313.40

Total count: 149

10/31/16

CITY OF SAN BRUNO  
WARRANT REGISTER  
TOTAL FUND RECAP

FUND	FUND NAME	AMOUNT
001	GENERAL FUND	\$53,066.75
133	RESTRICTED DONATIONS	\$121.54
201	PARKS AND FACILITIES CAPITAL	\$11,855.00
611	WATER FUND	\$13,221.69
621	STORMWATER FUND	\$66.20
631	WASTEWATER FUND	\$4,704.85
641	CABLE TV FUND	\$70,218.92
701	CENTRAL GARAGE	\$1,105.27
702	FACILITY MAINT. FUND	\$7,560.32
707	TECHNOLOGY DEVELOPMENT	\$99.94
TOTAL FOR APPROVAL		\$162,020.48

HONORABLE MAYOR AND CITY COUNCIL:

THIS IS TO CERTIFY THAT THE CLAIMS LISTED ON PAGES NUMBERED FROM 1 THROUGH 3 INCLUSIVE, AND/OR CLAIMS NUMBERED FROM 164916 THROUGH 165022 INCLUSIVE, TOTALING IN THE AMOUNT OF \$162,020.48 HAVE BEEN CHECKED IN DETAIL AND APPROVED BY THE PROPER OFFICIALS, AND IN MY OPINION REPRESENT FAIR AND JUST CHARGES AGAINST THE CITY IN ACCORDANCE WITH THEIR RESPECTIVE AMOUNTS AS INDICATED THEREON.

RESPECTFULLY SUBMITTED,

  
FINANCE DIRECTOR

11-1-16  
DATE

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Vendor Code & Name	Check #	Check Date	Amount
0104680 ACCESS 24 COMMUNICATIONS INC.	164918	10/31/2016	421.20
0000858 ADECCO EMPLOYMENT SERVICES	164919	10/31/2016	3,294.80
0106586 AFOLAKEMI BAMIGOLA	164932	10/31/2016	5.00
0001170 AIRGAS USA, LLC	164920	10/31/2016	293.39
0000163 AIRPORT AUTO PARTS INC.	164921	10/31/2016	64.19
0017459 ALL CITY MANAGEMENT SVC.INC.	164923	10/31/2016	3,010.40
0000372 ALLIED SECURITY ALARMS	164924	10/31/2016	150.00
0106370 ANGEL CARPIO	164936	10/31/2016	1,300.00
0000843 ARRIS SOLUTIONS, INC.	164927	10/31/2016	1,038.97
0018858 ARTHUR QUIROZ	164996	10/31/2016	212.53
0016123 AT&T	164929	10/31/2016	391.78
0017191 AT&T	164930	10/31/2016	399.43
0098792 ATSUSHI/YUKI AKITO	164922	10/31/2016	6.24
0000345 BAKER & TAYLOR BOOKS	164931	10/31/2016	2,804.59
0098245 BEATRICE QUIROS	164995	10/31/2016	57.99
0017361 BOETHING TREELAND FARMS, INC.	164934	10/31/2016	53.41
0098595 BRANDON FREY	164952	10/31/2016	50.00
0102359 BRENT SCHIMEK	165004	10/31/2016	80.00
0018323 BSK ASSOCIATES	164935	10/31/2016	2,350.00
0001888 CALIFORNIA CABLE & TELECOMMUNICATIONS ASSI	165017	10/31/2016	913.66
0017679 CDW GOVERNMENT, INC	164938	10/31/2016	2,263.25
0098205 CHRISTINA LEE	164963	10/31/2016	5.38
0016324 CINTAS CORPORATION	164940	10/31/2016	144.20
0102572 CINTAS FIRE PROTECTION	164941	10/31/2016	277.32
0000508 CLEARLITE TROPHIES	164942	10/31/2016	20.38
0104552 COLIN PAGE	164985	10/31/2016	80.00
0105187 CONCERN	164943	10/31/2016	687.96
0097788 CONSTANCE PECORARO	164987	10/31/2016	141.13
0098204 DANA LEE	164964	10/31/2016	58.38
0099061 DAVID SIEMER	165011	10/31/2016	59.00
0106211 ED BARBERINI	164933	10/31/2016	222.00
0018697 EVIDENT	164945	10/31/2016	102.87
0000046 EWING IRRIGATION PRODUCTS INC	164946	10/31/2016	1,017.71
0106349 F.A. POLI TRUCKING	164947	10/31/2016	400.00
0106348 FAST AGGREGATES PRODUCTS CO.	164948	10/31/2016	257.26
0017335 FIBER INSTRUMENT SALES INC	164950	10/31/2016	314.21
0017720 FOX TELEVISION STATIONS, INC.	164951	10/31/2016	36,309.52
0100506 FRANCISCO ABASTILLAS	164917	10/31/2016	75.00
0018272 GALE/CENGAGE LEARNING	164953	10/31/2016	33.34
0100503 GERALD CHEVALIER	164939	10/31/2016	75.00
0106162 GRANITE BROADCASTING COMPANY	164954	10/31/2016	4,242.00
0095966 GREATAMERICA FINANCIAL SVCS.	164955	10/31/2016	289.32
0100479 GUILLERMO ARGUELLO	164926	10/31/2016	75.00
0100537 HELEN ARENS	164925	10/31/2016	75.00
0099054 INTERSTATE TRS FUND	164957	10/31/2016	673.85
0096674 JEONG KIM	164961	10/31/2016	5.38
0100493 JOYCE SEKULICH	165005	10/31/2016	75.00
0100101 KAMEL OMRI	164980	10/31/2016	10.54
0096379 KAREN OJAKIAN	164979	10/31/2016	552.50
0101866 KIDZ LOVE SOCCER	164960	10/31/2016	2,027.02
0014262 LC ACTION POLICE SUPPLY	164962	10/31/2016	106.82
0098711 LIA NASSI	164973	10/31/2016	5.66
0016034 LINDA RUSSELL	165001	10/31/2016	613.60

Document group: komalley Bank: apbank 05507660

Vendor Code & Name	Check #	Check Date	Amount
0094560 MARIO CARRASCO	164937	10/31/2016	15.10
0095355 MARK LOVE	164966	10/31/2016	359.56
0096714 MAXCOM	164968	10/31/2016	80.52
0018311 MEDCO SUPPLY COMPANY	164969	10/31/2016	86.01
0092285 MICROMARKETING LLC	164970	10/31/2016	19.98
0016863 MIDWEST TAPE, LLC	164971	10/31/2016	125.36
0106447 MOORE,IACOFANO, GOLTSMAN, INC.	164972	10/31/2016	11,855.00
0000357 NATIONAL CABLE TV CO-OP, INC.	164974	10/31/2016	1,560.37
0105855 NBATV, LLC	164975	10/31/2016	7,945.02
0103301 NHL NETWORK US, LP	164976	10/31/2016	734.40
0092263 OFFICE DEPOT INC	164977	10/31/2016	2,045.55
0018284 OFFICEMAX INC.	164978	10/31/2016	33.35
0097567 ONE HOUR DRY CLEANING	164981	10/31/2016	288.05
0001292 ORCHARD BUSINESS/SYNCB	164982	10/31/2016	850.75
0000012 PACIFIC GAS & ELECTRIC	164983	10/31/2016	22,769.65
0000101 PACIFIC NURSERIES	164984	10/31/2016	68.13
0106530 PBTV LLC	164986	10/31/2016	61.14
0106156 PENGUIN RANDOM HOUSE LLC	164988	10/31/2016	122.63
0001154 PENINSULA LIBRARY SYSTEM	164989	10/31/2016	397.25
0106269 PENINSULA PET RESORT INC.	164990	10/31/2016	176.40
0100564 PETER SUN	165015	10/31/2016	75.00
0095538 POP MEDIA NETWORKS, LLC	164991	10/31/2016	801.05
0104456 PORTOLA HOTEL	164992	10/31/2016	434.79
0102915 PRECISE PRINTING & MAILING	164993	10/31/2016	92.65
0098436 PROFESSIONAL LAND SERVICES	164994	10/31/2016	3,675.00
0018312 R. GUERRA & ASSOCIATES	164997	10/31/2016	250.00
0106578 RICHARD MASTERSON	164967	10/31/2016	50.00
0016729 RICOH AMERICAS CORPORATION	164999	10/31/2016	328.19
0106086 ROB HENSEL, JR.	164956	10/31/2016	190.00
0100555 RONG LEUNG	164965	10/31/2016	250.00
0017145 SAN MATEO LAWN MOWER SHOP	165003	10/31/2016	149.18
0103732 SFO MEDICAL CLINIC	165007	10/31/2016	838.00
0103732 SFO MEDICAL CLINIC	165008	10/31/2016	601.00
0018778 SHANNON ROHATCH	165000	10/31/2016	117.70
0098030 SHRED-IT USA	165009	10/31/2016	57.45
0098030 SHRED-IT USA	165010	10/31/2016	47.87
0101000 SKY CLIMBER TOWER SOLUTIONS	165012	10/31/2016	240.00
0017508 SOUTH CITY LUMBER AND SUPPLY	165013	10/31/2016	113.09
0105992 SPOK, INC.	165014	10/31/2016	70.36
0014075 STATE BOARD OF EQUALIZATION	164916	10/25/2016	18,676.00
0102991 STEVE SALAZAR	165002	10/31/2016	120.00
0017802 SUPPLYWORKS	165016	10/31/2016	2,718.19
0002025 TELECOMMUNICATIONS ENGINEERING ASSOCIATE	164944	10/31/2016	2,342.00
0103559 THE MLB NETWORK, LLC	165018	10/31/2016	1,852.88
0102744 UNIVERSAL BUILDING SERVICES	165019	10/31/2016	415.00
0102865 UNIVERSAL SERVICE ADMINISTRATIVE CO.	165006	10/31/2016	5,099.05
0095749 VERIZON WIRELESS	165020	10/31/2016	2,237.38
0100463 VICTOR KHOURY	164959	10/31/2016	150.00
0100849 VITALIY KAZARYAN	164958	10/31/2016	10.15
0106287 WATERWORKS - SOUTH BAY	165021	10/31/2016	475.00
0100184 WILLIAM J. FEISTER, PH.D.	164949	10/31/2016	350.00
0095359 YAZMIN REYES	164998	10/31/2016	400.00
0106585 YULIYA ASTAPOVICH	164928	10/31/2016	6.10
0106535 ZIEF FAMILY FOUNDATION	165022	10/31/2016	1,000.00

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GrandTotal: 162,020.48

Total count: 107



**City Council Agenda Item  
Staff Report**

CITY OF SAN BRUNO

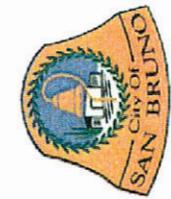
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DATE: November 8, 2016  
TO: Honorable Mayor and Members of the City Council  
FROM: Angela Kraetsch, Finance Director  
SUBJECT: Payroll Approval

City Council approval of the City payroll distributed October 21, 2016 is recommended. The Labor Summary report reflecting the total payroll amount of \$1,475,618.24 for bi-weekly pay period ending October 16, 2016 is attached.

LABOR SUMMARY FOR PAY PERIOD ENDING : OCTOBER 16, 2016

pyLaborDist	10/21/16
Fund: 001 - GENERAL FUND	1,103,863.14
Fund: 121 - FEDERAL/STATE GRANTS	491.96
Fund: 122 - SOLID WASTE/RECYCL.	2,341.29
Fund: 190 - EMERGENCY DISASTER FUND	14,388.46
Fund: 203 - STREET IMPROVE. PROJECTS	5,251.43
Fund: 611 - WATER FUND	92,791.55
Fund: 621 - STORMWATER FUND	12,791.83
Fund: 631 - WASTEWATER FUND	83,699.62
Fund: 641 - CABLE TV FUND	96,637.32
Fund: 701 - CENTRAL GARAGE	12,110.23
Fund: 702 - FACILITY MAINT.FUND	29,972.86
Fund: 707 - TECHNOLOGY DEVELOPMENT	16,137.44
Fund: 711 - SELF INSURANCE	5,141.11
<b>Total</b>	<hr/> 1,475,618.24



City of San Bruno  
567 El Camino Real  
San Bruno, CA 94066

**CITY OF SAN BRUNO**  
**Portfolio Summary**  
**September 30, 2016**

Investments	CUSIP	Book Value / Purchase Price	Market Value	Interest Rate	Maturity Date	% of Portfolio
<b>Investment Pools</b>						
Local Agency Investment Fund		14,380,787.23		0.61%		25%
Glenview Fire Local Agency Investment Fund		3,059,683.19		0.61%		5%
San Mateo County Pool		20,586,290.26		0.92%		36%
<b>Total Investment Pools</b>		<b>38,026,760.68</b>				<b>66%</b>
<b>Union Bank Investments</b>						
Federal Home Loan Mortgage Corp	3134G6ZX4	1,000,000.00	999,910.00	0.85%	August 25, 2017	2%
Federal Home Loan Bank Notes	3130A5HT9	1,000,000.00	1,000,590.00	0.75%	August 28, 2017	2%
Federal Home Loan Mortgage Corp	3134G5AU9	2,000,000.00	2,008,460.00	1.19%	December 26, 2017	3%
Federal Home Loan Mortgage Corp	3134G7FK2	1,000,000.00	1,003,470.00	1.10%	March 23, 2018	2%
Federal Home Loan Banks	3130A7H73	1,000,000.00	1,000,600.00	1.10%	March 29, 2018	2%
Federal Farm Credit Banks	3133EFD95	2,000,000.00	1,999,140.00	1.15%	November 23, 2018	3%
Federal Farm Credit Bank	3133EFBQ9	1,000,000.00	1,000,010.00	1.37%	March 1, 2019	2%
Federal Farm Credit Bank	3133EF4C8	2,000,000.00	1,999,860.00	1.19%	April 25, 2019	3%
Federal Farm Credit Bank	3133EGSD8	2,000,000.00	1,995,260.00	1.13%	August 23, 2019	3%
Cal State Federal Taxable	13063CKL3	2,015,100.00	2,037,940.00	2.22%	May 1, 2019	4%
U.S. Government Money Market	26200630S	4,348,892.31	4,348,892.31	0.01%		8%
<b>Total Union Bank Investments</b>		<b>19,363,992.31</b>	<b>19,394,132.31</b>			<b>34%</b>
<b>TOTAL INVESTMENTS</b>		<b>\$ 57,390,752.99</b>				<b>100%</b>

All securities held by the City of San Bruno as of August 31, 2016 were in compliance with the City's Investment Policy Statement. There is adequate cash flow and maturity of investments to meet the City's needs for the next six months.

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City of San Bruno

Through period: 3

Through September 2016

	Cash	Investments	Fund Total
001 GENERAL FUND	(1,189,711.54)	53,818.36	(1,135,893.18)
002 GENERAL FUND RESERVE	10,017,324.25	0.00	10,017,324.25
003 ONE-TIME REVENUE	23,811.30	0.00	23,811.30
004 NEW CAP IMPROV/ONE-TIME INITIATIVE RSRV	7,885,905.05	0.00	7,885,905.05
101 GAS TAX	87,279.40	0.00	87,279.40
102 MEASURE A TRANSPORTATION TAX	435,833.60	0.00	435,833.60
103 STREET SPECIAL REVENUE	314,024.09	0.00	314,024.09
104 TRAFFIC CONGESTION RELIEF	0.00	0.00	0.00
111 POLICE ASSET FORFEITURE	268,297.56	0.00	268,297.56
112 SAFETY AUGMENT. -PROP.172	0.00	0.00	0.00
113 POLICE SPECIAL REVENUE	80,103.48	0.00	80,103.48
114 TRAFFIC SAFETY GRANT	0.00	0.00	0.00
121 FEDERAL/STATE GRANTS	31,570.94	0.00	31,570.94
122 SOLID WASTE/RECYCL.	274,084.73	0.00	274,084.73
123 LIBRARY SPECIAL REVENUE	155,280.93	0.00	155,280.93
131 IN-LIEU FEES	3,533,441.27	0.00	3,533,441.27
132 AGENCY ON AGING	44,415.97	0.00	44,415.97
133 RESTRICTED DONATIONS	1,298,340.88	0.00	1,298,340.88
134 ED JOHNSON BEQUEST FUND	0.00	0.00	0.00
135 GLENVIEW FIRE DONATIONS	0.00	0.00	0.00
136 EMERGENCY DISASTER RESERVE	3,059,683.19	0.00	3,059,683.19
140 DEVELOPER IN-LIEU UNDERGROUNDING	0.00	0.00	0.00
151 SUCCESSOR AGENCY TO THE SB RDA - OPS	0.00	0.00	0.00
152 CITY OF SB AS SUCCESSOR HOUSING AGENC`	411,129.00	0.00	411,129.00
153 RDA OBLIGATION RETIREMENT FUND	527,000.62	650,154.11	1,177,154.73
190 DISASTER RECOVERY FUND	1,700,206.78	0.00	1,700,206.78
201 PARKS AND FACILITIES CAPITAL	2,234,089.36	0.00	2,234,089.36
203 STREET IMPROVE. PROJECTS	2,557,399.86	0.00	2,557,399.86
207 TECHNOLOGY CAPITAL	229,067.69	0.00	229,067.69
251 SUCCESSOR AGENCY TO THE SB RDA - CAPIT/	0.00	0.00	0.00
302 LEASE DEBT SERVICE	294,756.00	16.20	294,772.20
351 SUCCESSOR AGENCY TO THE SB RDA -2000 C/	0.00	0.00	0.00
611 WATER FUND	10,079,084.85	0.00	10,079,084.85
621 STORMWATER FUND	1,673,848.44	0.00	1,673,848.44
631 WASTEWATER FUND	12,402,746.21	9.24	12,402,755.45
641 CABLE TV FUND	(8,068,376.76)	0.00	(8,068,376.76)
701 CENTRAL GARAGE	566,609.70	0.00	566,609.70
702 FACILITY MAINT.FUND	591,005.85	0.00	591,005.85
703 GENERAL EQUIPMENT REVOLVING	5,532,717.60	0.00	5,532,717.60
707 TECHNOLOGY DEVELOPMENT	309,917.25	0.00	309,917.25
711 SELF INSURANCE	1,727,551.90	91,118.50	1,818,670.40
870 SAN BRUNO COMMUNITY FOUNDATION	0.00	0.00	0.00
880 PROJECT DEVELOP. TRUST	98,223.70	0.00	98,223.70
891 S.B. GARBAGE CO. TRUST	331,568.56	0.00	331,568.56
<b>Grand Total:</b>	<b>59,518,231.71 *</b>	<b>795,116.41</b>	<b>60,313,348.12</b>

\* Reconciliation of Pooled Cash &amp; Investments to Portfolio Book Value

Investment Portfolio Value	\$57,390,752.99
Cash on hand - Checking Account	3,009,524.28
Payroll and Accounts Payable Outstanding Checks	(1,101,049.02)
Deposits in Transit	219,003.46
General Ledger Cash Balance as of September 30, 2016	\$59,518,231.71

Totals are through period: 3



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

**DATE:** November 9, 2016

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jimmy Tan, Public Services Director/City Engineer

**SUBJECT:** Adopt Resolution Authorizing the City Manager to Execute a Comprehensive Agreement with the Peninsula Corridor Joint Powers Board for the Caltrain Electrification Project

### **BACKGROUND:**

In January 2015, the Caltrain Board of Directors approved and certified the Peninsula Corridor Electrification Project (PCEP) Final Environmental Impact Report (FEIR) for the proposed electrification of the Caltrain corridor between San Jose and San Francisco, a major milestone in the railroad's efforts to improve its commuter rail service.

Caltrain staff provided a presentation of the planned project at the October 11, 2016 City Council meeting to describe the project and address questions and comments.

The Caltrain Modernization Program envisions a series of capital improvement projects to upgrade the performance, operating efficiency, capacity, safety and reliability of Caltrain's commuter rail service. These projects include:

1. Implementation of an advanced signal system, which is currently being installed and tested;
2. Electrification of the existing Caltrain corridor between San Francisco and San Jose; and
3. Replacement of Caltrain's diesel trains with high performance electric trains.

The advanced signal system is currently being installed and tested. Once completed, it will increase the operating performance of the current signal system, improve the efficiency of at-grade crossing warning functions, and automatically stop a train when there is a violation of safe operating parameters. This project included the implementation of safety improvements mandated by the Federal Rail Administration and is scheduled to be operational by the end of this year.

The electrification project will electrify the Caltrain corridor from San Jose to San Francisco. The project consists of Overhead Contact System (OCS) to distribute electrical power and the Traction Power Facility (TPF) to deliver power to the OCS. The OCS system consists of installing OCS poles and wire stringing on both sides of the tracks. The OCS poles, which will be approximately 30 to 40 feet high, will typically be spaced between 180-200 feet apart, including at several locations on the elevated section of the grade separation. The TPF

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consists of an above ground facility to convert electrical power for electrical train usage. There are no proposed locations for the TPF in San Bruno. The project will be implemented through a design-build contract and is currently in the 35% design stage.

Caltrain anticipates the service to increase after the electrification project by increasing the number of trains from five to six per hour per direction. The increase in train speed will reduce the travel time. Caltrain currently uses a mixed fleet where 75% of trains are electric. Once the project is completed in 2020, Caltrain will be converting all the remaining diesel trains to electric which will reduce greenhouse gas emissions, engine noise and increase cleaner air.

#### **DISCUSSION:**

The work to be performed in San Bruno will be limited to installing overhead electrical system and as needed tree trimmings and removal. Electrical poles will be installed along Caltrain corridor from north City limit near Noor Avenue in South San Francisco to south City Limit near San Felipe Avenue in Millbrae.

The comprehensive agreement will memorialize the respective responsibilities of each party, mainly City staff review and input on construction plans, interagency cooperation, City consultation to facilitate the construction of the project, and PCJPB's role in coordinating the project design and construction that may potentially impact City utilities and right-of-way. The comprehensive agreement also establishes that Caltrain will pay for City staff time for review of plans and for performing construction inspection associated with City facilities impacted by the project. Caltrain will deposit \$25,000 with the City, which will be utilized for staff and consultant services required to review and process the project, and to issue encroachment permits and perform construction inspections as needed. The City will refund any unused portion of the funds at the end of the project. Conversely, if additional funds are needed to complete the work, Caltrain will deposit additional funds with the City as required. Staff has reviewed the proposed cost estimate and found it to be reasonable.

Furthermore, the comprehensive agreement provides that PCJPB will:

- Coordinate with the City to obtain input into the OCS pole design relative to aesthetics,
- Minimize spillover lighting during nighttime construction adjacent to residential areas, and
- Take great care in avoiding and minimizing tree impacts in consultation with a certified arborist, including developing a tree replacement plan for unavoidable situations.

As with all construction, there will be impacts to the adjacent community including work performed outside of peak commute hours and night-time construction. These impacts include construction traffic and noise and access to and from staging areas. Caltrain will establish monitoring programs during construction to ensure adherence to established protocols such as use of designated haul routes, implement appropriate traffic control measures due to impacts, and send project notification to the adjacent community and

interested residents. Additionally, Caltrain will designate a single point of contact liaison to handle project related complaints.

**FISCAL IMPACT:**

The costs associated with staff time and consultant resources in reviewing engineering design and construction plans, permit issuance and construction inspection is estimated at \$25,000, which will be paid for by Caltrain.

**ALTERNATIVES:**

1. Do not enter into a comprehensive agreement with Peninsula Corridor Joint Powers Board for the Caltrain Electrification Project.
2. Provide direction regarding necessary changes to the agreement as drafted.

**RECOMMENDATION:**

Adopt resolution authorizing the City Manager to execute a comprehensive agreement with the Peninsula Corridor Joint Powers Board for the Caltrain Electrification Project

**ATTACHMENTS:**

1. Resolution
2. Comprehensive Agreement with PCJPB

**DATE PREPARED:**

October 14, 2016

**DISTRIBUTION:**

None.

**REVIEWED BY:**

\_\_\_\_\_ CM  
\_\_\_\_\_ ACM  
\_\_\_\_\_ CA

RESOLUTION NO. 2016- \_\_\_\_

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COMPREHENSIVE AGREEMENT WITH THE PENINSULA CORRIDOR JOINT POWERS BOARD FOR THE CALTRAIN ELECTRIFICATION PROJECT**

**WHEREAS**, in January 2015, the Caltrain Board of Directors approved and certified the Peninsula Corridor Electrification Project (PCEP) Final Environmental Impact Report (FEIR) for the proposed electrification of the Caltrain corridor between San Jose and San Francisco; and

**WHEREAS**, the Caltrain Modernization Program includes projects to implement an advance signal system, electrification of existing Caltrain corridor and replacement of Caltrain's diesel trains; and

**WHEREAS**, Caltrain staff provided a presentation of the planned project at the October 11, 2016 San Bruno City Council meeting to describe the project and address questions and comments; and

**WHEREAS**, the work to be performed in San Bruno will be limited to installing Overhead Contact System (OCS) to deliver and distribute electrical power for train usage and as needed tree trimmings and removal; and

**WHEREAS**, the electrical poles will be installed along Caltrain corridor from north City Limit near Noor Avenue in South San Francisco to south City Limit near San Felipe Avenue in Millbrae; and

**WHEREAS**, the comprehensive agreement will memorialize the respective responsibilities of each party, mainly City staff review and input on construction plans, interagency cooperation, City consultation to facilitate the construction of the project, and Peninsula Corridor Joint Powers Board's role in coordinating the project design and construction that may potentially impact City utilities and right-of-way; and

**WHEREAS**, the comprehensive agreement also establishes that Caltrain will pay for City staff time for review of plans and for performing construction inspection associated with City facilities impacted by the project; and

**WHEREAS**, Caltrain will deposit \$25,000 with the City, which will be utilized for staff and consultant services required to review and process the project, and to issue encroachment permits and perform construction inspections as needed.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council authorizes the City Manager to execute a comprehensive agreement with the Peninsula Corridor Joint Powers Board for the Caltrain Electrification Project.

Dated: November 9, 2016

ATTEST:

\_\_\_\_\_  
Carol Bonner, City Clerk

-o0o-

I, Carol Bonner, City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this 9th day of November 2016 by the following vote:

AYES: Councilmembers: \_\_\_\_\_

NOES: Councilmembers \_\_\_\_\_

ABSENT: Councilmembers: \_\_\_\_\_

**COMPREHENSIVE AGREEMENT**  
**BETWEEN**  
**THE PENINSULA CORRIDOR JOINT POWERS BOARD**  
**AND CITY OF SAN BRUNO**  
**RELATING TO THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

This Comprehensive Agreement (“**Agreement**”) between the City of San Bruno, a municipal corporation city of the State of California (“**City**”) and the Peninsula Corridor Joint Powers Board, a joint exercise of powers agency (“**JPB**”) (collectively, the “**Parties**”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the “**Effective Date**”), each of which is referred to herein individually as “**Party**” and jointly as “**Parties.**”

### RECITALS

- A. City is a duly established municipal corporation organized and existing under the laws of the State of California.
- B. JPB is a joint exercise of powers agency organized and existing under the laws of the State of California.
- C. JPB is the owner of the Peninsula Corridor Railroad right-of-way, including certain real property and fixtures located in the City of San Bruno between milepost (MP) 10.4 and 12.5, (the “**Right-of-Way**”), and includes one vehicular at-grade crossing.
- D. The Peninsula Corridor Electrification Project (“**Project**”) consists of converting Caltrain from diesel-hauled to electrically-powered trains for service between the 4<sup>th</sup> and King Street Station in San Francisco and the Tamien Station in San Jose.
- E. In 2009, the JPB completed a Final Environmental Assessment/Environmental Impact Report (EA/EIR) for the Project. Based upon that document, the Federal Transit Administration issued a Finding of No Significant Impact (FONSI) in 2009, which completed the federal environmental review for the Project in accordance with the National Environmental Policy Act (NEPA).
- F. On January 31, 2013, the JPB issued a Notice of Preparation of an Environmental Impact Report and, in February, 2014, issued a Draft Environmental Impact Report for a 60-day comment period ending on April 29, 2014. A Final Environmental Impact Report was issued in December 2014.
- G. On January 8, 2015, pursuant to Resolution No. 2015-03, the JPB certified conformance with the California Environmental Quality Act (CEQA) to the extent that it is applicable to the Project, and certified the Final Environmental Impact Report (FEIR) for the Project.
- H. On January 8, 2015, pursuant to Resolution No. 2015-04, the JPB adopted CEQA findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting plan.
- I. On February 5, 2015, pursuant to Resolution No. 2015-08 the JPB authorized the issuance of the PCEP Project Design Build Request for Proposals to engage a Design-Build Contractor to construct the Project.

- J. The City desires to cooperate with the JPB to facilitate the design and construction of the Project. The JPB and the City desire to memorialize the interagency cooperation and consultation between the Parties in this Agreement.
- K. The Parties acknowledge that the Project is funded in part with funds made available by the Federal Transit Administration. Accordingly, this Agreement and the obligations imposed on the Parties hereby shall be interpreted in a manner consistent with both Federal and State laws and regulations.
- L. The locations of certain elements of the Project may require the use of certain City streets for hauling operations and staging of construction during construction of the Project.
- M. The JPB and the City acknowledge that it will be necessary to develop procedures to ensure careful and continued cooperation between the Parties, including the following:
  - (1) procedures to promote cooperation during the design and construction process;
  - (2) procedures to avoid all unnecessary delays to either the contracting, design or construction process; and
  - (3) procedures for inspecting the construction, relocation, and replacement, as necessary, of City Improvements.
- N. The Parties recognize and agree that this Agreement may not reasonably anticipate all aspects of the Project and changes thereto which may occur due to unforeseen circumstances. Accordingly, the Parties acknowledge their respective obligations to act reasonably and in good faith and to modify the terms hereof when necessary to accomplish their mutual goals.

**SECTION 1: AFFIRMATION OF RECITALS AND OPERATIVE DATE**

The JPB and the City affirm that the above recitals are true and correct.

**SECTION 2: DEFINITIONS**

The following definitions relate to such terms found in the entire Agreement, including, without limitation, all Exhibits hereto.

- A. **“City”** means City of San Bruno, its officers, employees, agents, consultants and contractors.
- B. **“City Improvements”** means City streets (including curbs, gutters and sidewalks), traffic control devices, storm drains, sanitary sewers, water lines, hydrants, electroliers, landscaping, irrigation systems, and all other public facilities and appurtenances.
- C. **“Contract Documents”** means the executed Design-Build Contract, Contract Change Orders and additional documents incorporated by express reference into the Contract.
- D. **“JPB”** means the Peninsula Corridor Joint Powers Board, its employees, agents, consultants, and contractors.

- E. **"Project Improvements"** means all structures, features and fixtures constructed or installed for the Project, including all necessary changes to signal, fiber optic facilities and appurtenances, relocation of all utilities and pipelines of any kind within the Right-of-Way, grading, drainage, access roadways to the Right-of-Way, preliminary and construction engineering, and any and/or all other work of every kind and character necessary to build the Project.
- F. **"Project"** means the Peninsula Corridor Electrification Project described in the FEIR, consisting of converting Caltrain from diesel-hauled to electrically-powered trains for service between the 4<sup>th</sup> and King Street Station in San Francisco and the Tamien Station in San Jose.

### **SECTION 3: PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to memorialize the Parties' consultation and cooperation, designate their respective rights and obligations, and ensure cooperation between the JPB and the City in connection with the design and construction of the Project.

### **SECTION 4: PROJECT FEATURES**

The Project features set forth below are not intended to constitute a comprehensive list of Project features, but are described in this Agreement to provide a general description of the elements of the Project. A comprehensive list of Project features associated with the Project is set forth in the FEIR.

- A. The Project will install facility improvements, including overhead catenary wires, support poles, traction power facilities, and other appurtenances necessary to convert service from the existing diesel-locomotive driven trains to Electric Multiple Units (EMUs). EMUs are self-propelled electric trains that do not have a separate locomotive. EMUs can accelerate and decelerate at faster rates than diesel-powered trains, even with longer trains. With EMUs, Caltrain can run longer trains without degrading speeds, thus increasing peak-period capacity. This will support operations of up to 6 Caltrain trains per peak hour per direction (an increase from 5 trains per peak hour per direction at present). Electrification of the rail line is scheduled to be operational by 2020/2021. The Project includes operating 114 trains per day between San Jose and San Francisco and six trains per day between Gilroy and San Jose.
- B. The Project will include the installation of 130 to 140 single-track miles of Overhead Contact System (OCS) for the distribution of electrical power to the new electric rolling stock. The OCS would be powered from a 25 kilovolt (kV), 60 Hertz (Hz), single-phase, alternating current (AC) traction power system consisting of the following Traction Power Facilities (TPF): two Traction Power Substations, one Switching Station and seven Paralleling Stations. The OCS poles are typically about 180 to 200 feet apart. On curved sections, the span lengths between supports must be reduced. The OCS poles are placed approximately 9 – 11 feet from the centerline of the tracks. Associated with the

OCS, an electric safety zone to adjacent vegetation is needed. This electric safety zone distance is approximately 10 feet from the face of the OCS pole.

- C. Specific to the City, and based on preliminary design, the Project elements anticipated within the City include:
- (1) OCS poles. Installation of foundations, poles and appurtenances.
  - (2) Stringing wire for OCS. Which will require temporary street closures when work occurs at an existing at-grade crossing. Specificity about the closures will be included in the Traffic Control Plan.
  - (3) Staging areas. The PCEP FEIR identified potential staging areas for the DB Contractor's use. The locations of the staging areas are near the intersection of (1) Herman Street and Scott Street and (2) near the intersection of Sylvan Avenue and Huntington Avenue. This location is shown in Exhibit A. Additional staging areas will comply with applicable mitigation measures and will be coordinated with the City.

#### **SECTION 5: GENERAL COMMITMENTS**

- A. The JPB will avoid affecting any City Improvements to the extent feasible. In the event a City Improvement requires modification and/or relocation, JPB shall be responsible for the design and construction of the City Improvement. A comprehensive list of affected City Improvements will be prepared by the JPB, and will be provided to the City for review. The City agrees to cooperate with the JPB to identify all City Improvements affected by the Project. Any replacement City Improvements will be of a similar kind and capacity to the existing facilities per existing City Codes and Standards. If City desires to increase or upgrade a City Improvement beyond its existing codes and standards, it shall be responsible for any additional costs for that change. The Parties will agree to a protocol for the review of plans and the inspection of affected City Improvements.
- B. In order to minimize disruption to the Caltrain passenger service during project construction as well as maximize protection of people and property, most of the Project work will be performed outside of the weekday peak commute hours.
- C. The JPB will provide the City with plan(s) addressing haul routes along city streets and roadways, and any staging areas or property owned or controlled by the City for City review and approval. JPB will also collaborate with the City to document existing conditions by video and photographic record of the proposed and accepted haul routes for comparison at the end of the project. JPB will provide the City a copy of both before and after video and photographic documentation to the City. The JPB shall be responsible for damages to City roadways but only to the extent and in the event that use of the roadways for this Project creates damages that exceed ordinary wear and tear of the roadways.
- D. The JPB and the City will cooperate to reduce impacts of the Project on local police, fire, and emergency services.

- E. During construction of the Project, the JPB shall provide the City with a list of JPB personnel to be contacted in the event of an emergency on the Project construction site within the City.
- F. During construction of the Project, the JPB will take responsibility for maintaining the security of the JPB construction areas within the City in consultation with the City's Police Department, as necessary.
- G. For the duration of Project construction, the JPB shall assign a lead representative to handle Project-related complaints from City residents, City officials, and/or staff. The JPB shall provide written notice to the City and shall publicize the telephone number, and E-mail address of the lead representative. The JPB shall make an initial response to all complaints within a reasonable period of time not to exceed 72 hours. For urgent matters, the JPB will make initial contact immediately. Follow-up of complaints will be completed within a reasonable time following initial contact with the complainant. The JPB shall take all reasonable actions to ensure that its lead representative is authorized to and does, in fact, ensure that corrective actions are implemented within a reasonable period of time following the determination that corrective actions are appropriate.
- H. Construction Noticing. The JPB will provide weekly construction updates via social media, the Caltrain website and by email. The JPB will provide a 60-day advance notice for construction within the City. The JPB will provide an initial notice of road and driveway closures 7 days in advance of the closure and the visual notifications for closures will be posted 72 hours in advance.
- I. Tree Trimming and Tree Removal. JPB will comply with any City tree replacement requirements for tree trimming or removal involving property outside of JPB property.
- J. Encroachment Permits and Haul Route Permit. JPB will obtain any City permit legally required for construction of the Project. The City shall not unreasonably withhold approval of the issuance of any such permit.

## **SECTION 6: MITIGATION MEASURES**

The JPB will require the Design/Build Contractor to perform the work to implement the mitigation measures outlined in the Mitigation, Monitoring and Reporting Plan adopted by the JPB on January 8, 2015, to include the following:

- A. Mitigation Measure Aesthetics-2b: Aesthetic treatments for OCS poles, TPFs in sensitive visual locations and Overbridge Protection Barriers.
  - (1) The JPB shall coordinate with the City to obtain their input into OCS pole design relative to station aesthetics.

- B. Mitigation Measure Aesthetics-4a: Minimize spillover light during nighttime construction adjacent to residential neighborhoods. The JPB will direct any artificial lighting onto the worksite and away from adjacent residential areas at all times.
- C. Mitigation Measure Biology-5: A Tree Avoidance, Minimization, and Replacement Plan will be developed in consultation with a certified arborist and in consultation with cities, counties, and affected property owners along the Project. A complete field survey of the entire Project area will be completed to support the plan development by preparing a tree inventory for all affected areas.

## **SECTION 7: CITY IMPROVEMENTS**

- A. Construction Standards: The JPB is designing and constructing the Project. The design and construction of the Project shall conform with JPB's adopted standards, specifically JPB Standards Dated September 30<sup>th</sup>, 2011 and the Design/Build Contract Documents. Any work required to repair or replace City Improvements damaged or affected by the Project shall conform with the City's adopted codes. If no City code exist for such work, it shall be designed to applicable Caltrans standards, or if no Caltrans standards apply, it shall be designed to such standards as JPB shall reasonably determine to apply and approved for application by the City. The JPB shall have the right to make changes to the design of work related to the City Improvements during construction, subject to the terms of this agreement.
- B. Design Review: The JPB will do a page-turn design review, or detailed walkthrough of the Project elements within the City limits at the 65% and Issued For Construction design levels prior to official submittal of Issued for Construction plans for final approval and permitting. All comments received will be addressed prior to official submittal of Issued for Construction plans. Design review for Project elements within the JPB Right-of-Way is for informational purposes only and is not for City approval. The City shall review and approve the design of any required work that alters or replaces City Improvements within 21 days of receipt of the official submittal of Issued For Construction plans.
- C. Permits: Following approval of official submittal of Issued For Construction plans, the City will issue all necessary permits for work to be performed in the City in accordance with the City's Municipal Code. The JPB will reimburse the City for its staff time and/or consultant costs spent on review of design documents, permits or inspections of City Improvements. The JPB shall pay all applicable City permit or other fees with regard to the Project. The JPB shall make an initial deposit of \$ 25,000.00 to the City for design review and inspection costs. The JPB will pay the City's standard permit and processing fees, as applicable to the Project. The method of payment is described below in Section 8. The City will cooperate with the JPB in identifying all City permits necessary for work to be performed under this Agreement. With the approved official submittal of Issued For Construction plans, the City shall issue the permits no later than twenty one (21) calendar days following the City's receipt of such permit submission.

- D. Coordination: During construction of the Project, the City shall provide the JPB with a list of City personnel to be contacted in the event of an emergency on the Project construction site within the City.
- E. Obligations: The Parties shall agree in writing with regard to any new or replacement City Improvements that will be the obligation of JPB to construct. Unless specifically authorized in writing, JPB shall not be required to replace any City Improvement with facilities of greater capacity, durability or efficiency than the one replaced, unless such replacement is required by the Project. Upon acceptance of any Project work related to City Improvements, City will have the responsibility for any maintenance, repairs, alterations or future upgrades or replacements.

#### **SECTION 8: METHOD OF PAYMENT TO THE CITY**

- A. The JPB shall make an initial deposit of \$25,000.00 to the City for costs incurred by the City for design review and inspection costs for the Project as described in Section 7 above. The JPB will pay the City's standard permit and processing fees, as applicable to the Project. The City shall notify the JPB when 75% of the initial deposit has been spent, at which time the JPB and the City shall review the spent and remaining budget to determine any additional needs beyond the initial deposit. Any change to the deposit amount shall be agreed upon by the JPB and the City.

#### **SECTION 9: TRAFFIC MAINTENANCE AND DETOURS**

The JPB will assume full responsibility for maintaining in service, or causing to be maintained in service, all traffic detours during JPB construction of the Project in a manner reasonably satisfactory to the City, subject to and consistent with all applicable California Department of Transportation requirements. All traffic control, lane closure, and detour plans shall be submitted to the City for approval prior to commencement of any phase of construction requiring either traffic control or detour(s), which approval shall not be unreasonably withheld. The traffic control, lane closure, and detour plans shall specify the length of time that portions of City streets will likely be closed.

- A. Although certain City streets will, of necessity, be partially closed for some period during construction of the Project, the JPB will, to the greatest extent practicable, maintain in service, or cause to be maintained in service, all City streets and related City Improvements within the limits of the Project area in a manner reasonably satisfactory to the City. At a minimum, two-way service will be maintained on all City streets affected by the Project, unless otherwise agreed to by the JPB and the City.
- B. In its Contract Documents, the JPB will require its contractor(s) to submit traffic plans showing haul routes, temporary closures, and the method of traffic maintenance and staging to the City for approval, which approval shall not be unreasonably withheld. The City shall approve or disapprove the plans no later than twenty-one(21) calendar days following the City's receipt of such plans.

- C. In its Contract Documents, the JPB will, prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, require that its contractor(s) provide at least fourteen (14) calendar days' notice of such closure to the City, and follow the City's Council protocol for street closures. Deviation from this fourteen (14) calendar day requirement may be permitted in bona fide emergency situations as determined by the JPB and the City.
- D. At least seventy two (72) hours prior to the temporary closure to traffic of all or part of any street, sidewalk, or other public access, the JPB will post notice of such closure. Such notice of any road closure shall include, at minimum, use of an electronic sign. The JPB will also provide closure-information fliers to residents, schools, and businesses within a five hundred (500) foot radius of any such closure.

#### **SECTION 10: EROSION CONTROL PLAN**

The JPB shall provide an erosion control plan to retain sediments on site in accordance with the JPB's Storm Water Pollution Prevention Program and Contract Documents. All stockpiled earthwork shall be protected from wind and water erosion. Dust control shall be undertaken in accordance with the JPB Contract Documents and shall provide for dust, erosion and pollution control seven days a week, 24 hours a day for the duration of construction activities

#### **SECTION 11: DESIGNATED AGENT OF THE PARTIES**

The City contact person for all matters related to this Agreement will be the City Manager or his or her designee. The JPB's contact person for all matters related to this Agreement will be the Lin Guan (650-508-7976; guanz@samtrans.com) or his designee.

#### **SECTION 12: INDEMNIFICATION**

##### **A. City's Indemnity.**

- (1) City shall fully release, indemnify, hold harmless and defend the JPB, as well as the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, Transit America Services, Inc. or any successor Operator of the Service, the Union Pacific Railroad Company, and/or their respective officers, directors, employees, contractors and agents (collectively, "JPB Indemnitees") from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, the passengers, employees and contractors of City and JPB), and damage to or loss of property arising out of or resulting from any act or omission by City, its agents, employees, contractors or subcontractors in the performance of its obligations under this Agreement.
- (2) City's obligation to defend shall include the payment of all reasonable attorney's fees and all other costs and expenses of suit, and if any judgment is rendered against any JPB Indemnitee, City shall, at its expense, satisfy and discharge the

same, so long as said claim has been timely tendered to the City without prejudice to City's rights and/or abilities to undertake a defense of said claim.

**B. JPB's Indemnity.**

- (1) JPB shall fully release, indemnify, hold harmless and defend the City and its respective officers, directors, employees, contractors and agents (collectively, "City Indemnitees") from and against all liability, claims, suits, sanctions, costs or expenses for injuries to or death of any person (including, but not limited to, passengers, employees and contractors of City and JPB) and damage to or loss of property arising out of or resulting from any act or omission by the JPB, its agents, employees, contractors or subcontractors in performance of its obligations under this Agreement.
- (2) JPB's obligation to defend shall include the payment of all reasonable attorney's fees and all other costs and expenses of suit, and if any judgment is rendered against City Indemnitee's or any one of them, JPB shall, at its expense, satisfy and discharge the same, so long as said claim has been timely tendered to the JPB without prejudice to JPB's rights and/or abilities to undertake a defense of said claim.

**C. Severability.** It is the intention of the Parties that should any term of this indemnity provision be found to be void or unenforceable; the remainder of the provision shall remain in full force and effect.

**D. Survival.** This indemnification shall survive termination or expiration of this Agreement.

**SECTION 13: INSURANCE**

The JPB shall include in its Contract Documents a requirement that the City be named an additional insured on all policies of insurance required of its contractors.

**SECTION 14: RESOLUTION OF DISPUTES**

**A.** Prior to commencement of any formal litigation arising out of this Agreement, the Parties shall submit the matters in controversy to a neutral mediator jointly selected by the Parties. The costs of said mediator shall be borne evenly by the Parties involved in said dispute. To the extent the disputes remain outstanding following completion of mediation, any claim, controversy, action or proceeding arising out of or relating to this Agreement or to any document, instrument or exhibit executed pursuant to this Agreement shall be tried by a judge pro tem. Said judge is to be selected by counsel for the Parties from a list of retired judges furnished by the presiding judge of the County of San Mateo. If counsel are unable to select a judge pro tem said judge will be selected by the presiding judge from the list provided.

- B. Each Party shall pay its pro rata share of the fee for the judge pro tem. Each Party shall bear its own fees and expenses in such proceedings and the prevailing Party shall not be entitled to reimbursement from the losing Party for any such fees or expenses.
- C. The judge pro tem shall have the authority to try and decide any or all of the issues in the claim, controversy, action or proceeding, whether of fact or of law, and to report a statement of decision thereon. In any proceedings before the judge pro tem, the issues are to be determined under the statutory and decisional law of the State of California. All local and California Rules of Court shall be applicable to any proceeding before the judge pro tem. All proceedings shall be conducted on consecutive dates without postponement or adjournments.

**SECTION 15: NOTICES**

All notices required hereunder may be given by personal delivery, US Mail, or courier service (e.g. federal express) transmission. Notices shall be effective upon receipt at the following addresses.

PCJPB: Peninsula Corridor Joint Powers Board  
1250 San Carlos Avenue  
San Carlos, CA 94070  
Attn: Executive Director

City: San Bruno  
567 El Camino Real, San Bruno, CA 94066  
Attn: City Manager, with a copy to the City Engineer

**SECTION 16: PARTIES NOT CO-VENTURERS**

Nothing in this Agreement is intended to nor does it establish the Parties as partners, co-ventures or principal and agent with one another.

**SECTION 17: FURTHER ASSURANCES, TIME PERIODS AND RECORDS**

- A. Each Party shall execute and deliver to the other all such additional instruments or documents as may be necessary to carry out this Agreement or to assure and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each Party's governing body.
- B. Should unforeseen circumstances occur, the JPB and the City shall negotiate in good faith to reach agreement on any amendment(s) that may be necessary to fully effectuate the Parties' respective intentions in entering into this Agreement.
- C. Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of the JPB or as part of any

audit of the JPB by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

**SECTION 18: NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS**

No director, member, official, employee or agent of the City or the JPB shall be personally liable to any Party to this Agreement or any successor in interest in the event of any default or breach of this Agreement or for any amount which may become due on any obligation under the terms of this Agreement.

**SECTION 19: HEADING AND TITLES**

Any titles of the Sections of this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any part of its provisions.

**SECTION 20: APPLICABLE LAW**

This Agreement shall be interpreted under and pursuant to the laws of the State of California. The Parties agree that the jurisdiction and venue of any dispute between the Parties to this Agreement shall be the Superior Court of San Mateo County.

**SECTION 21: SEVERABILITY**

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

**SECTION 22: BINDING UPON SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the transferees, successors and assigns of each of the Parties to it, except that there shall be no transfer of any interest by any of the Parties to this Agreement except pursuant to the terms of the Agreement.

**SECTION 23: REMEDIES NOT EXCLUSIVE**

No right or remedy conferred upon or reserved to the JPB or the City under this Agreement is intended to be exclusive of any other right or remedy, except as expressly stated in this Agreement, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited in this Agreement.

**SECTION 24: FORCE MAJEURE**

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine restrictions, casualties, acts of God, acts of the public enemy, epidemic, government restrictions on priorities, freight embargoes, shortage of labor or materials, unusually inclement weather, lack of transportation, court order, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the commencement of the cause and such extension is not rejected in writing by the other Party within thirty (30) days of receipt of the notice. Time of performance under this Agreement may also be extended by mutual written agreement, signed by both Parties.

#### **SECTION 25: INTEGRATION**

This Agreement represents the full, complete and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings or agreements, whether written or oral, between the Parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by an authorized officer or representative of each of the Parties hereto.

#### **SECTION 26: COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute a single Agreement.

#### **SECTION 27: AMENDMENTS**

This Agreement may be amended only in a writing that is executed by the Parties hereto.

#### **SECTION 28: THIRD PARTY RIGHTS**

Nothing herein shall be considered as creating any rights and/or obligations by any of the Parties to this Agreement to any third parties. Specifically, none of the duties to inspect or maintain shall in any way be construed as creating or expanding any additional obligations to any third Party beyond those required and established under the applicable statutes, regulations, ordinances or law.

#### **SECTION 29: SUCCESSORS**

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the Parties hereto.

**SECTION 30: BONDING**

JPB will require the design/build contractor for this Project to provide performance and payment bonds in the full amount of the contract and will require a two-year warranty period. The bond shall be maintained in full force and effect during the entire period that work is performed by the contractor until such work is accepted by JPB. With respect to work related to City Improvements, the JPB shall not accept the work related to such facilities for purposes of this section until it has reviewed the matter with the City.

This Agreement is made and entered into as of the date set forth above.

PENINSULA CORRIDOR JOINT POWERS BOARD      CITY OF SAN BRUNO

By: \_\_\_\_\_

Jim Hartnett  
General Manager

\_\_\_\_\_  
Connie Jackson  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

JPB Attorney

San Bruno City Attorney

By: \_\_\_\_\_

By: \_\_\_\_\_



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

**DATE:** November 9, 2016

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Marc Zafferano, City Attorney

**SUBJECT:** Hold Public Hearing, Waive First Reading, and Introduce Ordinance Regulating Exposure to Secondhand Smoke

### **BACKGROUND:**

Earlier this year, residents requested that the City consider prohibiting smoking in multi-unit housing. After discussion, the City Council appointed a subcommittee consisting of Vice-Mayor Medina and Councilmember Ibarra to meet with staff, residents, and property owner representatives to obtain input and report back with recommendations.

The subcommittee first met with representatives and several residents of Shelter Creek who had attended and spoken at the City Council meeting to obtain input about exposure to secondhand smoke in their units as well as cigarette butts around common areas that have designated cigarette trash receptacles. In late June, the subcommittee convened a second meeting with a broad group of representatives from many of the largest multi-unit housing complexes in the City, including Peninsula Place, Crystal Springs Terrace, Acappella, Archstone, Village Senior Apartments, Paragon Apartments, and Shelter Creek. Representatives of San Mateo County as well as approximately six members of the public were present and participated in an informal discussion. Those who attended the meeting were generally (though not unanimously) in favor of restricting smoking in multi-unit residences and creating designated outdoor smoking areas for the residents to use. The County representatives offered their ongoing assistance in fielding calls and responding to complaints of drifting secondhand smoke.

The subcommittee then met with staff to review the input received at these meetings, and the subcommittee recommended bringing the matter back to the full City Council for discussion and direction. The subcommittee considered the following topics:

1. An indoor ban on smoking that would:
  - a. Apply to all multi-unit complexes, defined as two or more units that share a common floor, wall, or ceiling;
  - b. Cover attached patios and balconies;
  - c. Include vaping and use of marijuana;
  - d. Include indoor workplaces if not otherwise covered by state law;
  - e. Include 90% of hotel/motel rooms;
  - f. Provide a grace period for multi-unit residences of no more than 14 months before enforcement;

8a

2. An outdoor ban that would:
  - a. Apply to common areas of multi-unit residences, except for designated outdoor smoking areas;
  - b. Apply to public places such as parks, service lines, outdoor eating areas, and sidewalks (unless actively moving to another destination);
  - c. Include outdoor workplaces such as construction sites.

The subcommittee was generally in favor of the above-listed provisions of an indoor ban and subsection (a) of the outdoor ban, but suggested additional discussion among the full council about subsections (b) and (c) of the outdoor ban.

On August 23, 2016, the City Council received a staff report that outlined the features of a draft ordinance. After hearing from the subcommittee and the public, and discussing the issues, the City Council provided direction to return with an ordinance for introduction that incorporated the recommendations of the subcommittee.

## **DISCUSSION:**

### Private Regulation

It should be noted that all private property owners, including those who own individual units in multi-unit complexes, are free to prohibit smoking in their units, such as Pacific Bay Vistas has done. For condominium and townhouses, the homeowner's association could prohibit smoking in all units and enforce the restriction against both individual property owners and their tenants, but most associations require a vote of the members to amend the CC&Rs. In 2012, the state adopted SB 332, which restated existing law that landlords are free to prohibit smoking in their apartment complexes without risk of liability to tenants. Attachment 1, prepared by San Mateo County, illustrates the benefits of smoke-free housing for landlords.

### Summary of State Law

Since 1995, state law has prohibited smoking in all enclosed "places of employment," which could include indoor common areas of multi-unit residences if the complex has an on-site employee. However, there are numerous exceptions for certain businesses, such as sole proprietorships and certain other small businesses with fewer than five full-time employees, up to 65% of hotel/motel guest rooms, 25-50% of hotel/motel lobbies (excluding the bar area), and employee break rooms if certain criteria are met.

Health and Safety Code section 118910, also adopted in 1995, specifically authorizes local agencies to adopt more stringent regulations than adopted by the state, or to ban smoking outright in any location. While tobacco products are legal to purchase and consume for those 18 or older, there is no constitutional or other legally-recognized right to smoke, whether in a public place or in a privately owned location, including one's own residence. Federal and state disability laws do not confer a legal right to smoke on those who may be addicted, because nicotine dependency or addiction is not a "disability" as defined under those laws. Conversely, individuals with recognized respiratory disabilities may be legally protected from exposure to secondhand smoke in the workplace.

In 2004, a state law was enacted that prohibited smoking in the following places: inside state, county, and city buildings; tot lots and playgrounds; schools; day care facilities; in vehicles when

children are present; and on public transit. Smoking was also prohibited within 20' of main entrances, exits, and operable windows of public buildings.

### Summary of Local Regulations

Local regulation of smoking in San Mateo County can be traced back to the early to mid-1990's, when most cities adopted ordinances prohibiting smoking in indoor (and in some cases outdoor) common areas of multi-unit housing, and established smoking restrictions in some indoor areas of commercial establishments. However, San Bruno did not choose to regulate smoking at that time, and the City does not currently regulate smoking in any locations (indoor or outdoor) beyond the restrictions in state law, with one exception for tobacco retailer shops (San Bruno Municipal Code section 6.54, adopted in 2010).

In 2006, responding in part to the accumulating scientific evidence that exposure to secondhand smoke was a health hazard, especially to children and those with respiratory and heart problems, the City of Dublin adopted an ordinance declaring secondhand smoke to be a "nuisance." While the ordinance did not ban smoking in any particular location, its purpose was to provide a private right of legal action for individuals exposed them to secondhand smoke. The ordinance explicitly disavowed any City enforcement or involvement in such litigation.

Also in 2006, the City of Calabasas adopted an ordinance prohibiting smoking in most indoor and outdoor public places, including on sidewalks and around commercial establishments, providing for City educational efforts and complaint-driven enforcement. The ordinance did not ban smoking in any housing units.

In October 2006, the City of Belmont began consideration of a comprehensive smoking ordinance that would prohibit smoking virtually everywhere in the City, except in single-family homes. After a series of eight public meetings at which hundreds of people expressed their support for and opposition to the ordinance, in late 2007 the City Council adopted the first ordinance in the nation to ban smoking in individual units of multi-unit residences, including on balconies and patios of such units. The ban went into effect 14 months after the ordinance was adopted to provide time for existing one-year leases to expire, thus giving landlords an opportunity to provide new non-smoking leases to their existing and future tenants. The ordinance was widely recognized as the most restrictive local smoking law ever adopted. Prior to and after adoption of the ordinance, the City conducted extensive and ongoing public outreach and education with all interested community groups, including trade associations that represent realtors, property owners, apartment managers, and homeowner's associations. All inquiries about smoking, including all complaints, were directed to code enforcement staff, who tracked each contact, including the action taken and resolution. Staff met individually with the involved parties, often multiple times, and in many cases to identify and establish suitable outdoor smoking areas in multi-unit residential complexes. As a result of these efforts, the City has not issued a single citation for smoking in violation of the ordinance, all complaints have been resolved, and the city did not become involved in any litigation.

Soon after Belmont adopted its ordinance, other cities followed to varying degrees. Most cities initially stopped short of a complete ban in multi-unit residences, and grandfathered either all existing units, or the smoking residents of those units, or provided a grace period of many years, while applying the ban only to newly-constructed units. More recently, some cities, notably Burlingame, Daly City, Foster City, San Mateo, and San Mateo County have all adopted ordinances that prohibit smoking in some or all existing units of multi-unit residences. Foster City's ordinance is different than the others in that if the City declines to take enforcement action

within 45 days of the complaint, the affected party may enforce their rights in a civil suit. Attachment 2 provides a recent summary of the various smoking ordinances in San Mateo County.

### Proposed Draft Ordinance

Staff has prepared a draft ordinance for the City Council's discussion and direction that includes all of the provisions discussed by the subcommittee (Attachment 3). The key provisions, which reflect similar ordinances adopted in other jurisdictions, are as follows:

1. Smoking would be broadly defined to include any lighted tobacco product, weed or plant, including hookah and marijuana, whether delivered by cigarette, pipe, cigar, or any electronic device;
2. Smoking would be prohibited:
  - a. In multi-unit residences (including attached patios and balconies), defined as including more than one dwelling unit;
  - b. In multi-unit residence common areas, such as halls, stairwells, paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas;
  - c. In 90% of all hotel and motel guest rooms;
  - d. In most places of employment, including indoor and outdoor areas, such as construction sites, taxis, employee lounges and break rooms, conference and banquet rooms, bingo and gaming facilities, health facilities, warehouses, retail and wholesale tobacco shops, and child care facilities;
  - e. In most public places, such as plazas, parking lots, malls, stadiums, parks, playgrounds, farmer's markets, and fairs;
  - f. In service areas, such as ATMs, bank teller windows, ticket lines, bus stops, and cab stands.
3. Smoking would be allowed:
  - a. In single family homes, rooms for rent in single family homes, and detached in-law units;
  - b. In designated outdoor smoking areas that are at least 20' from operable doors or windows;
  - c. On streets, sidewalks, and other outdoor areas that are at least 20' from operable doors and windows or locations where smoking is prohibited, or if the person is actively moving to another destination.
4. There would be a 14-month grace period before the ban goes into effect in multi-unit residences to allow renters on a one-year lease sufficient time to adjust their living

circumstances if necessary. All other provisions of the ordinance would become effective 30 days after adoption, unless the City Council specifies a different date.

Outreach and Education:

To ensure that residents, property owners, and businesses are aware of the new ordinance, and to assist them in achieving voluntary compliance, the City Council could consider a variety of measures:

1. Prepare a tri-fold flyer explaining the ordinance that would be available at City facilities and for distribution to multi-unit residential complexes, businesses, and community organizations;
2. Encourage homeowner's associations to meet with staff well before the 14-month grace period expires to establish designated outdoor smoking areas;
3. Develop an announcement for display on the City's cable TV channel;
4. Post information about the ordinance and available resources on the City's website.

Enforcement:

Staff recommends that the City enforce this ordinance on a complaint-driven basis. Because smoking is often a transitory activity, City staff cannot be expected to arrive at the scene of each alleged violation to observe the conduct as it occurs or issue a citation, especially after business hours. The most effective way to enforce the ordinance is by working with individuals, property owners, and businesses to adjust their behavior over time. While initially time-consuming, this approach reduces the long-term impact of ongoing enforcement efforts.

The County of San Mateo has offered to be an initial point of contact for individuals who wish to report a violation or who have a question or concern about how to comply with the ordinance. If the County cannot successfully address the issue, City code enforcement staff would respond, with the assistance of the City Attorney's office. The goal would be to talk and/or meet with the affected resident to determine the best way to address the issue, before issuing a formal citation.

**FISCAL IMPACT:**

None at this time. However, enforcement of this ordinance will be time-consuming and could divert limited staff resources from other pressing code enforcement issues. It is recommended that the City Council discuss their expectations regarding enforcement and determine if additional and/or focused staff resources will be necessary once the designated grace period expires.

**ALTERNATIVES:**

1. Direct staff to discontinue its efforts regarding this issue.
2. Request additional information before introducing the ordinance.
3. Propose modifications to the ordinance and request that staff return with an amended ordinance for introduction.

**RECOMMENDATION:**

Hold Public Hearing, Waive First Reading, and Introduce Ordinance Regulating Exposure to Secondhand Smoke

**ATTACHMENTS:**

1. San Mateo County handout re: benefits of non-smoking housing policies
2. Summary of smoking policies in San Mateo County
3. Draft ordinance

**DATE PREPARED:**

November 4, 2016

**REVIEWED BY:**

\_\_\_\_\_ CM



# Benefits of Non-smoking Housing Policies

## Don't Let Your Investment Go Up in Smoke!

### Save Money

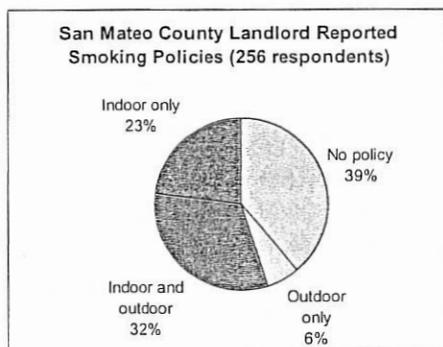
- ◆ Making your rental units non-smoking may allow you to save 10% or more on your insurance premiums.<sup>i</sup> Free online advertising is available for smoke-free apartments, saving you even more.<sup>ii</sup>
- ◆ Reports indicate that apartment turnover costs can be 2 to 7 times greater when smoking is allowed, compared to the cost of maintaining and turning over a non-smoking free unit.<sup>iii</sup>

### High Market Demand

Less than 11 % of San Mateo residents smoke, indicating that the market share is favorable toward smoke- free rentals.<sup>iv</sup>

### Properties Already Converting

- ◆ A recent survey of 256 San Mateo County property owners indicated broad adoption of some kind of smoke-free policy at their rental properties.



- ◆ Those owners who have adopted policies rated reducing fire hazards and improving tenant health as the top two benefits for adopting smoke-free policies.

### Decrease Liability

Most tenants find secondhand smoke entering their residence from a neighboring apartment to be an annoyance and a discomfort, but for some it can cause a serious illness. Health conditions and disabilities may worsen with exposure to econdhand smoke. Residents may seek legal action under the Federal Fair Housing Act, requiring reasonable accommodations in their building.<sup>viii</sup> Landlords who ignore the issue of smoking face a growing likelihood of lawsuits.

Average Apartment Turnover Costs			
	Non Smoker	Light Smoker	Heavy Smoker
Cleaning	\$240	\$500	\$720
Paint	\$170	\$225	\$480
Flooring	\$50	\$350	\$1,425
Appliances	\$60	\$75	\$490
Bathroom	\$40	\$60	\$400
<b>TOTAL</b>	<b>\$560</b>	<b>\$1,810</b>	<b>\$3,515</b>

\*Data reflects surveys from housing authorities and subsidized housing facilities in New England. Collected and reported by Smoke-Free Housing New England, 2009.

In collaboration with the California Apartment Association, a 2011 study showed that the most recently vacated smoking unit **cost the owner an average of \$4935 to turn over.**<sup>vi</sup>

### It is legal

There is no constitutional right to smoke, therefore it is legal to restrict smoking anywhere on your property as no Federal, State or local law prohibits property owners from implementing a smoke-free policy.<sup>v</sup>

### New CA Law Defines Rights

Although it has always been legal for landlords to prohibit smoking in their apartment complexes, SB 332 specifically states that authority in state law, which takes effect January 1, 2012.<sup>vii</sup>

### Reduce the Risk of Fires

Smoking significantly increases fire hazard. In fact, reports indicate in 2007 there were 18,900 residential fires in the U.S that were related to smoking materials, costing owners \$327 million in property loss.<sup>ix</sup>



**Remember, smoke-free policies are about the smoke, not the smoker. Smoke-free policies do not preclude someone who smokes from living in the building; rather, they simply require that all tenants abide by the policy while on the property.**

### Reduce Litter

Cigarette butts are the #1 form of litter in the U.S. Each year about 135 million pounds of butts are littered on the ground.<sup>x</sup> Adopting smoke-free policies can reduce the amount of cigarette butts littered and the costs of cleaning. Additionally, it can help improve the appearance of the property.



### Decrease Tenant Conflict

Secondhand smoke may seep from one unit to another unit through cracks, shared ventilation system and can also enter into the living space of another, bothering and physically affecting non-smoking tenants.<sup>xi</sup> Managers and owners are often drawn into the conflict between tenants and are asked to resolve it. Clear expectations can be stated in the lease to avoid these conflicts.

### Get the Facts



- ◆ Secondhand smoke is not just a nuisance; according to the Environmental Protection Agency and the U.S. Surgeon General, it is a substance known to cause cancer in humans for which there is no safe level of exposure.<sup>xii</sup>
- ◆ Reports indicate that children who are exposed to secondhand smoke are at an increased risk for sudden infant death syndrome, more severe asthma, and slowed lung growth.
- ◆ Let's help protect those children and elderly persons who can not protect themselves. Contact the Tobacco Prevention Program for information or support (650) 573-3777.

## California Apartment Association, Tri-County Division

“Over the last decade, there has been a dramatic change in Californian’s expectations regarding exposure to environmental tobacco smoke. Recent surveys indicate that over 80 percent of renters in California prefer housing with smoke free areas. In response to member inquiries and to enable the industry to address the resident demand voluntarily, CAA has made available an Addendum for Tobacco Smoke Free Areas. This form allows certain common areas, certain units, or the entire property to be designated as smoke free.”

(Letter from Joshua Howard, Executive Director of California Apartment Association, Tri-County Division to Menlo Park Mayor, 3/10/10)

<sup>1</sup> Capital Insurance Group <http://www.ciginsurance.com/insurance/liability/smoke-free-credit>

<sup>2</sup> California Smoke-free Apartments [www.smokefreeapartments.org](http://www.smokefreeapartments.org)

<sup>3</sup> Smoke-free Housing New England <http://smoke-freehousingnewengland.health.officelive.com/resources.aspx>

<sup>4</sup> 2008 Community Assessment, Health and Quality of Life in San Mateo County

<sup>5</sup> Smoke-free Environments Law Project <http://www.tesg.org/sfelp/home.htm>

<sup>6</sup> Estimates of Smoking-Related Property Costs in California Multiunit Housing <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300170>

<sup>7</sup> SB 332 Authorizing Landlords to Prohibit Smoking in Rental Units <http://www.center4tobaccopoliev.org/BillSearch.aspx?menu=id/5015>

<sup>8</sup> Smoke-free Environments Law Project <http://www.tesg.org/sfelp/home.htm>

<sup>9</sup> Hall (2006). *The Smoking Material Fire Problem*. Quincy, MA: National Fire Protection Association.

<sup>10</sup> State's Smoking Rate Falls to Record Low <http://californiawatch.org/dailyreport/states-smoking-rate-falls-record-low-7621>

<sup>11</sup> Utah Smoke-free Apartment and Condominium Guide <http://health.utah.gov/tobacco/apcondoguide.html>

<sup>12</sup> US Surgeon General <http://www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet1.html>

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# San Mateo County Jurisdiction Tobacco/Smoking Policies --- Last Updated: October 7, 2015

Click the underlined jurisdiction name with a "\*" symbol to access the jurisdiction's Smoking or Tobacco Retail Permit Policy.

<p><b>PARKS</b></p> <ul style="list-style-type: none"> <li>• <u>Atherton (rooms in parks)*</u></li> <li>• <u>Belmont*</u></li> <li>• <u>Burlingame</u></li> <li>• <u>Daly City*</u></li> <li>• <u>Menlo Park*</u></li> <li>• <u>South San Francisco*</u></li> <li>• <u>Unincorporated Areas*</u></li> </ul>	<p><b>BEACHES</b></p> <ul style="list-style-type: none"> <li>• <u>Daly City</u></li> <li>• <u>Pacifica*</u></li> <li>• <u>Unincorporated Areas</u></li> </ul> <p><b>OUTDOOR EATING AREA</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Daly City</u></li> <li>• <u>Foster City (50%)*</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>San Mateo*</u></li> <li>• <u>South SF (on City-owned property if designated by City Manager)</u></li> </ul>	<p><b>SPORTS FIELDS, ACTIVITIES, &amp; OTHER CITY EVENTS</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Burlingame</u></li> <li>• <u>Daly City</u></li> <li>• <u>Foster City (enclosed sports arenas &amp; convention halls)</u></li> <li>• <u>Hillsborough (enclosed meeting/public assembly place)*</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>Millbrae (enclosed)*</u></li> <li>• <u>Redwood City (enclosed)*</u></li> <li>• <u>San Carlos (enclosed)</u></li> <li>• <u>San Mateo (enclosed)</u></li> <li>• <u>South San Francisco</u></li> </ul>	<p><b>HOTELS/MOTELS</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont (not restricted in up to 10% of hotel/motel guest rooms)</u></li> <li>• <u>Burlingame (mtg/banquet rooms during food/beverage functions or exhibit purposes)</u></li> <li>• <u>Daly City (not restricted in up to 10% of hotel/motel guest rooms)</u></li> <li>• <u>East Palo Alto (not more than 50% of lobby/registration area)</u></li> <li>• <u>Foster City (at least 50% of rooms)</u></li> <li>• <u>Menlo Park (common areas of single room occupancy hotels)</u></li> <li>• <u>Millbrae (enclosed &amp; at least 51% lodging rooms)</u></li> <li>• <u>Redwood City (enclosed public places &amp; mtg rooms that reported no rooms rented to guests)</u></li> <li>• <u>San Carlos (enclosed public places)</u></li> <li>• <u>San Mateo (public places &amp; at least 50% lodging rooms)</u></li> <li>• <u>South SF (smoking permitted in up to 65%)</u></li> </ul>
<p><b>MULTI-UNIT RESIDENCE COMMON AREAS</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Burlingame*</u></li> <li>• <u>Daly City</u></li> <li>• <u>East Palo Alto (elevators)*</u></li> <li>• <u>Foster City</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>San Carlos*</u></li> <li>• <u>San Mateo</u></li> <li>• <u>South SF (enclosed)</u></li> <li>• <u>Unincorporated Areas</u></li> </ul>	<p><b>TOBACCO RETAIL PERMIT</b></p> <ul style="list-style-type: none"> <li>• <u>Brisbane*</u></li> <li>• <u>Cohine*</u></li> <li>• <u>Daly City*</u></li> <li>• <u>East Palo Alto*</u></li> <li>• <u>Menlo Park*</u></li> <li>• <u>Millbrae*</u></li> <li>• <u>Pacifica*</u></li> <li>• <u>Parola Valley*</u></li> <li>• <u>Redwood City*</u></li> <li>• <u>San Bruno*</u></li> <li>• <u>San Carlos*</u></li> <li>• <u>San Mateo*</u></li> <li>• <u>South San Francisco*</u></li> <li>• <u>Unincorporated Areas*</u></li> </ul>	<p><b>TICKET AREA, INDOOR OR SHELTERED BOARDING, WAITING AREAS OF PUBLIC TRANSIT DEPOTS</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Burlingame (enclosed)</u></li> <li>• <u>Daly City</u></li> <li>• <u>Foster City (enclosed)</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>Millbrae (enclosed)</u></li> <li>• <u>Redwood City (enclosed 50% waiting areas, smoking area &amp; separate waiting areas of equal size for smokers &amp; nonsmokers)</u></li> <li>• <u>San Carlos</u></li> <li>• <u>San Mateo (enclosed)</u></li> <li>• <u>Woodside (enclosed)</u></li> </ul>	<p><b>SERVICE LINES</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont</u></li> <li>• <u>Burlingame (indoor service lines)</u></li> <li>• <u>Daly City</u></li> <li>• <u>East Palo Alto (enclosed business establishments)</u></li> <li>• <u>Foster City (indoor service lines)</u></li> <li>• <u>Hillsborough</u></li> <li>• <u>Menlo Park</u></li> <li>• <u>Millbrae (enclosed)</u></li> <li>• <u>Redwood City (enclosed)</u></li> <li>• <u>San Carlos (enclosed)</u></li> <li>• <u>San Mateo</u></li> <li>• <u>Woodside (enclosed)</u></li> </ul>
<p><b>INDIVIDUAL UNITS IN MULTI-UNIT HOUSING</b></p> <ul style="list-style-type: none"> <li>• <u>Belmont (share floor or ceiling)</u></li> <li>• <u>Burlingame</u></li> <li>• <u>Daly City (condos exempt)</u></li> <li>• <u>Foster City</u></li> <li>• <u>San Mateo</u></li> <li>• <u>Unincorporated Areas</u></li> </ul>	<p><b>SIDEWALKS</b></p> <ul style="list-style-type: none"> <li>• <u>Daly City (in or adjacent to common interest developments, apartments, shopping centers, &amp; commercial properties w/ retail establishments, except while actively passing to another destination)</u></li> <li>• <u>Foster City (except those adjacent to single-family homes)</u></li> </ul>	<p><b>CHEMICAL STORAGE AREAS</b></p> <ul style="list-style-type: none"> <li>• <u>Atherton</u></li> </ul>	<p><b>TOBACCO RETAILER SHOPS</b></p> <ul style="list-style-type: none"> <li>• <u>San Bruno</u></li> </ul>
<p><b>E-CIGARETTES, VAPES, ETC.</b></p> <ul style="list-style-type: none"> <li>• <u>Daly City</u></li> <li>• <u>Foster City</u></li> <li>• <u>South San Francisco (City properties, parks &amp; recreation areas, &amp; Downtown Core)</u></li> <li>• <u>San Mateo</u></li> <li>• <u>Unincorporated Areas</u></li> </ul>	<p><b>TOBACCO SAMPLING/COUPONS</b></p> <ul style="list-style-type: none"> <li>• <u>Daly City</u></li> <li>• <u>Unincorporated Areas</u></li> </ul>	<p><b>TOBACCO-FREE PHARMACIES</b></p> <ul style="list-style-type: none"> <li>• <u>Daly City</u></li> </ul>	<p><b>LAGOONS AND WATERWAYS</b></p> <ul style="list-style-type: none"> <li>• <u>San Mateo</u></li> </ul>

ORDINANCE NUMBER \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN BRUNO REGULATING SECONDHAND SMOKE AND ADDING CHAPTER 6.56 OF THE SAN BRUNO MUNICIPAL CODE**

The City Council of the City of San Bruno does hereby ordain as follows:

**SECTION I. FINDINGS.** The City Council of the City of San Bruno hereby finds and declares as follows:<sup>1</sup>

WHEREAS, the City Council finds that this ordinance is exempt from the requirements of CEQA as it is not a “project” because it has no potential to result in a direct or reasonably foreseeable indirect change to the environment (14 Cal. Code Regs. Section 15378(a); and the ordinance is exempt from CEQA because it is an action taken for the protection of the environment (Cal. Code Regs. Section 15308), and;

WHEREAS, tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:

- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation’s leading cause of preventable death;<sup>2</sup> and
- secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease;<sup>3</sup> and
- secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke;<sup>4</sup> and
- secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis;<sup>5</sup> exacerbates childhood asthma; and increases the risk of

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<sup>1</sup> Each of the authorities identified in this draft ordinance is available on-line or may be obtained from the Technical Assistance Legal Center.

<sup>2</sup> U.S. Dep’t of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* MORBIDITY AND MORTALITY WEEKLY REPORT, 51(14), at 300-303 (2002), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5114.pdf> (last accessed March 23, 2005).

<sup>3</sup> Nat’l Cancer Inst., *NCI Health Information Tip Sheet for Writers: Secondhand smoke*, available at <http://www.cancer.gov/newscenter/tip-sheet-secondhand-smoke> (last accessed February 28, 2005).

<sup>4</sup> Cal. Env’tl. Prot. Agency, Office of Env’tl Health Hazard Assessment, *Health Effects of Exposure to Environmental Tobacco Smoke, Final Report ES-5* (1997), available at <http://www.oehha.org/pdf/chapter4.pdf> (last accessed December 21, 2006).

<sup>5</sup> U.S. Dep’t of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation’s Leading Cause of Death 2002*, at 2 (2004), available at [http://www.cdc.gov/nccdphp/aag/aag\\_osh.htm](http://www.cdc.gov/nccdphp/aag/aag_osh.htm) (last accessed October 18, 2006).

acute, chronic, middle-ear infections in children;<sup>6</sup> and

- the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States;<sup>7</sup> and
- the total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone;<sup>8</sup> and

WHEREAS, secondhand smoke is consistently identified as an extremely dangerous substance, as evidenced by the following:

- the United States Environmental Protection Agency has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;<sup>9</sup> and
- the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke;<sup>10</sup> and
- the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;<sup>11</sup> and
- the California Environmental Protection Agency has included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>12</sup> and

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<sup>6</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at [http://www.cdc.gov/tobacco/research\\_data/environmental/factsheet\\_ets.htm](http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm) (last accessed October 18, 2006).

<sup>7</sup> American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006, available at [http://www.actuary.org/pdf/health/smoking\\_oct06.pdf](http://www.actuary.org/pdf/health/smoking_oct06.pdf) (last accessed October 11, 2006).

<sup>8</sup> Wendy Max, Dorothy P. Rice, Xiulan Zhang, Hai-Yen Sung, Leonard Miller, Cal. Dept. of Health Servs., *The Cost of Smoking in California, 1999*, at 76 (2002), available at <http://www.dhs.ca.gov/tobacco/documents/pubs/CostOfSmoking1999.pdf> (last accessed October 18, 2006).

<sup>9</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Exposure to Environmental Tobacco Smoke and Cotinine Levels — Fact Sheet* (2004), available at [http://www.cdc.gov/tobacco/research\\_data/environmental/factsheet\\_ets.htm](http://www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm) (last accessed October 18, 2006).

<sup>10</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 11 (2006), available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf> (last accessed Sept. 19, 2006).

<sup>11</sup> Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), available at <http://www.arb.ca.gov/regact/ets2006/res0601.pdf> (last accessed Oct. 6, 2006).

<sup>12</sup> Cal. Env'tl. Prot. Agency, Office of Env'tl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*, at 8 and 17 (Aug. 11, 2006), available at [http://www.oehha.ca.gov/prop65/prop65\\_list/files/P65single081106.pdf](http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf) (last accessed Oct. 6, 2006).

- only 5 minutes of exposure to secondhand smoke causes the main artery carrying blood from the heart to the body, the aorta, to stiffen as much as if the person had actually smoked a cigarette, thereby causing the heart to work harder to pump blood;<sup>13</sup> and
- 30 minutes of exposure to secondhand smoke reduces the arterial function of a nonsmoker's circulatory system to that of an active smoker's, increasing the nonsmoker's risk of heart disease;<sup>14</sup> and
- Exposure to outdoor secondhand smoke may present a hazard under certain conditions of wind and smoker proximity.<sup>15</sup>

WHEREAS, state law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke;<sup>16</sup> and

WHEREAS, conventional air cleaning systems can remove large particles, but not the smaller particles or the gases found in secondhand smoke; and<sup>17</sup>

WHEREAS, state law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions;<sup>18</sup> and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- in 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarette butts;<sup>19</sup> and

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<sup>13</sup> C. Stefanadis et al., *Unfavorable Effects of Passive Smoking on Aortic Function in Men*, ANNALS OF INTERNAL MEDICINE 128(6), 426-34 (Mar. 15, 1998).

<sup>14</sup> Terry F. Pechacek & Stephen Babb, *How Acute and Reversible are the Cardiovascular Risks of Secondhand Smoke?*, BRITISH MEDICAL JOURNAL (April 24, 2004), available at <http://www.bmj.com/cgi/content/full/328/7446/980#REF21>. Ryo Otsuka, MD et al., *Acute Effects of Passive Smoking on the Coronary Circulation in Healthy Young Adults*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 284 (4), 436-441 (July 25, 2001), available at [http://jama.ama-assn.org/cgi/content/abstract/286/4/436?ijkey=bb98316bf9d977d6204b0330f4ecc2f8cae6ac6e&keytype2=tf\\_ipsecsha](http://jama.ama-assn.org/cgi/content/abstract/286/4/436?ijkey=bb98316bf9d977d6204b0330f4ecc2f8cae6ac6e&keytype2=tf_ipsecsha)

<sup>15</sup> Neil E. Klepeis, Wayne R. Ott, and Paul Switzer, *Real-Time Measurement of Outdoor Tobacco Smoke Particles*, AIR & WASTE MANAGEMENT ASSOCIATION, VOLUME 57 (May 1, 2007)

<sup>16</sup> Cal. Lab. Code § 6404.5 (West 2003).

<sup>17</sup> U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006. Available at [http://www.cdc.gov/tobacco/sgr/sgr\\_2006/index.htm](http://www.cdc.gov/tobacco/sgr/sgr_2006/index.htm)

<sup>18</sup> Cal. Health & Safety Code § 104495 (West 2003) and Cal. Gov't Code § 7596 (West 2004).

<sup>19</sup> Am. Ass'n of Poison Control Ctr. *Annual Report of the Toxic Exposure Surveillance System* at 645 (2004), available at <http://www.aapcc.org/Annual%20Reports/04report/AJEM%20->

- children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;<sup>20</sup> and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- it is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year;<sup>21</sup> and
- cigarette butts are often cast onto sidewalk and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean;<sup>22</sup> and
- cigarette butts, made of plastic cellulose acetate, take approximately 15 years to decompose;<sup>23</sup> and

WHEREAS, creating smokefree areas helps protect the 86% of Californians who are non-smokers;<sup>24</sup> and

WHEREAS, a majority of Californians favor limitations on smoking in multi-unit residences, as evidenced by the following:

- 67% of apartment renters, apartment owners, and managers favor limiting smoking in outdoor common areas of apartment buildings;<sup>25</sup> and
- 69% of apartment renters approve of apartment complexes offering non-smoking sections;<sup>26</sup> and
- 57% of apartment owners and managers favor a law mandating non-smoking units in

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[%20AAPCC%20Annual%20Report%202004.pdf](#) (last accessed October 23, 2006).

<sup>20</sup> U.S. Dep't of Health and Human Servs., Center for Disease Control and Prevention, *Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996*, MORBIDITY AND MORTALITY WEEKLY REPORT at 125-128 (1997), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm> (last accessed October 18, 2006).

<sup>21</sup> Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

<sup>22</sup> Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

<sup>23</sup> Surfrider Foundation, San Diego Chapter, *Hold on to Your Butt!: Our Beaches and Streets are Not Your Ashtray*, at <http://www.surfridersd.org/hotyb.php> (last accessed October 18, 2006).

<sup>24</sup> Tobacco Control Section, Cal. Dep't of Health Servs., *Adult Smoking Prevalence*, at 1, available at <http://www.dhs.ca.gov/tobacco/documents/pubs/AdultSmoking06.pdf> (last accessed October 18, 2006).

<sup>25</sup> Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Tobacco Renter Study* (2004), available at [http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data\\_001.doc](http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data_001.doc) (last accessed March 4, 2005).

<sup>26</sup> Tobacco Control Section, Cal. Dep't of Health Servs., *2004 Field Research Poll Results* at 16 (2004), available at <http://www.dhs.ca.gov/tobacco/documents/2004TCSupdate.pdf> (last accessed March 4, 2005).

- every building;<sup>27</sup> and
- 46% of apartment renters have experienced secondhand smoke drifting into their units;<sup>28</sup> and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by state law;<sup>29</sup> and

WHEREAS, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the preeminent U.S. standard-setting body on ventilations issues, has concluded that ventilation systems cannot remove secondhand smoke from indoor environments;<sup>30</sup>

WHEREAS, lighted tobacco products caused an estimated 14,450 residential fires in the United States in 2002 resulting in 520 deaths, 1,330 injuries, and \$371 million in residential property damage;<sup>31</sup> and

WHEREAS, electronic smoking devices and other nicotine delivery devices have a high appeal to youth due to their high-tech design and availability in child-friendly flavors such as cotton candy, bubble gum, chocolate chip cookie dough and cookies and cream milkshake, resulting in a more than doubling in the percentage of high school students who had tried e-cigarettes from 2011 to 2012; and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance;<sup>32</sup> and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;<sup>33</sup> and

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<sup>27</sup> Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Survey of California Apartment Owners and Managers* (2005), available at <http://www.californialung.org/thecenter/documents/CenterSmokefreeApartmentsOwnersSurveyJune2005.doc> (last accessed December 21, 2006).

<sup>28</sup> Ctr. For Tobacco Policy and Org., Am. Lung Ass'n of Cal., *Statewide Tobacco Renter Study* (2004), available at [http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data\\_001.doc](http://www.californialung.org/thecenter/community/documents/SFH-Survey-Data_001.doc) (last accessed March 4, 2005).

<sup>29</sup> Cal. Legislative Counsel Op., 21547, *Secondhand Smoke in Multi-Unit Housing (Apartments & Condos) Smoking Bans: Residential Rental Property*, (September 23, 1999).

<sup>30</sup> American Society of Heating, Refrigerating and Air-Conditioning Engineers. *Environmental Tobacco Smoke: Position Document*. Atlanta, Georgia: American Society of Heating, Refrigerating and Air-Conditioning Engineers, 2005.

<sup>31</sup> U.S. FIRE ADMINISTRATION/NATIONAL FIRE DATA CENTER, U.S. DEPT. OF HOMELAND SECURITY, *RESIDENTIAL SMOKING FIRES AND CASUALTIES, TOPICAL FIRE RESEARCH SERIES, VOLUME 5 – ISSUE 5*, at 1 (June 2005), available at <http://www.usfa.dhs.gov/downloads/pdf/tfrs/v5i5.pdf> (last accessed Jan. 30, 2007).

<sup>32</sup> Cal. Civil Code § 3479 (Deerings 2005).

<sup>33</sup> *In Re Jones*, 56 Cal.App.2d 658, 663 (1943). See also, Cal. Const., art. XI, § 7 and Cal. Gov. Code § 38771 (Deerings 2005).

WHEREAS, there is no Constitutional right to smoke;<sup>34</sup> and

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-smoking individuals, especially children; by protecting the public from nonconsensual exposure to secondhand smoke where they live, work, and play; by lessening smoking-related litter; by reducing the potential for children to wrongly associate smoking with a healthy lifestyle; and by affirming and promoting the family atmosphere of the City's public places.

**SECTION II.** Chapter 6.54 (Smoking Regulations) of the City of San Bruno Municipal Code is hereby repealed.

**SECTION III.** Chapter 6.56 of the City of San Bruno's Municipal Code is hereby added to read as follows:

**Sec. 1. DEFINITIONS.** The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an Employee, as defined in this section.

(b) A "Common Interest Development" means a development as defined in California Civil Code Section 1351(c), which includes condominium projects (including projects commonly known as townhomes or townhouses), community apartment projects, a planned development, or a stock cooperative.

(c) "Employee" means any person who is employed; retained as an independent contractor by any Employer, as defined in this section; or any person who volunteers his or her services for an Employer, association, nonprofit, or volunteer entity.

(d) "Employer" means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the service of one or more persons, or supervises volunteers.

(e) "Landlord" means any Person who owns real property leased as residential property, any Person who lets residential property, or any Person who manages such property, except that "Landlord" does not include sublessors.

(f) "Multi-Unit Residence" means a building or portion thereof that contains more than one dwelling Unit including but not limited to apartments, Common Interest Development, senior citizen housing, nursing homes, and single room occupancy hotels.

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<sup>34</sup> Technical Assistance Legal Ctr., Pub. Health Inst., *There Is No Constitutional Right to Smoke* (2004), available at [http://talcalaw.org/pdf\\_files/0051.pdf](http://talcalaw.org/pdf_files/0051.pdf) (last accessed April 8, 2005).

(g) “Multi-Unit Residence Common Area” means any indoor or outdoor area of a Multi-Unit Residence accessible to and usable by residents of different Units, including but not limited to halls and stairwells, paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas.

(h) “Nonprofit Entity” means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

(i) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity except the City of San Bruno.

(j) “Place of Employment” means any area under the legal or de facto control of an Employer, Business or Nonprofit Entity that an Employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, but not limited to: construction sites, taxis, employee lounges and breakrooms, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, retail and wholesale tobacco shops, and private residences that are used as child care or health care facilities subject to licensing requirements.

(k) “Public Place” means any place, public or private, open to members of the general public regardless of any fee or age requirement, including, for example, plazas, parking lots, malls, stadiums, parks, playgrounds, farmers markets, fairs, and taxis.

(l) “Service Area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and cab stands.

(m) “Significant Tobacco Retailer” means any tobacco retailer required to obtain a permit pursuant to Chapter 6.52 of the San Bruno Municipal Code and that derives seventy-five percent (75%) or more of gross sales receipts from the sale or exchange of Tobacco Products and Tobacco paraphernalia.

(n) “Smoking” or to “Smoke” means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, marijuana, electronic devices that vaporize a solution containing nicotine commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookas), or lighted cigarette of any kind), or the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, marijuana, electronic devices that vaporize a solution containing

nicotine commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, and e-hookas), or lighted cigarette of any kind).

(o) “Tobacco Product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any electronic cigarette or other electronic device used to generate smoke; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(p) “Unit” means: (1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces such as balconies, decks, and patios; and (2) senior citizen housing and single room occupancy hotels, as defined in California Health and Safety Code section 50519(b)(1), even where lacking private cooking facilities or private plumbing facilities. “Unit” does not include lodging in a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2).

## **Sec. 2. SECONDHAND SMOKE GENERALLY**

For all purposes within the City of San Bruno, nonconsensual exposure to secondhand smoke is a nuisance, and the uninvited presence of secondhand smoke on property is a nuisance and a trespass.

## **Sec. 3. SMOKING PROHIBITIONS**

(a) Smoking shall be prohibited in the following indoor and outdoor places within the City of San Bruno:

(1) Public Places;

(2) Places of Employment; and

(3) Multi-Unit Residence Common Areas; except that a Landlord or Common Interest Development may designate a portion of the outdoor area a Smoking area. A designated Smoking area:

(i) must be located at least 20 feet from any operable window or door used by the public of an indoor area of a Multi-Unit Residence where Smoking is prohibited;

(ii) must not include, and must be at least 20 feet from, outdoor areas primarily used by children including, but not limited to, areas

improved or designated for play or swimming;

(iii) must be no more than twenty-five percent (25%) of the total outdoor area of the premises for which it is designated;

(iv) must have a clearly marked perimeter;

(v) must be identified by conspicuous signs and include receptacles designed for and primarily used for disposal of Tobacco waste and shall be maintained free of Tobacco related litter including but not limited to cigarette butts; and

(vi) must not overlap with any area in which Smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law.

(4) Individual Units of Multi-Unit Residences, if such Units share at least one common floor, wall, or ceiling with another such Unit.

(5) Service Areas;

(b) Unless otherwise prohibited by law, Smoking is not restricted by this chapter in the following places:

(1) By performers during theatrical productions, if smoking is an integral part of the story in the theatrical production;

(2) Detached single-family homes and the lots they are sited on, except those used as a child care or health care facility subject to licensing requirements;

(3) Up to ten percent (10%) of hotel and motel guest rooms, if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that ninety percent (90%) or more of its guest rooms are nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent "no smoking" signage shall be posted in nonsmoking rooms;

(4) Significant tobacco retailers, if at all times minors are prohibited from entering the store;

(5) Individual Units of Multi-Unit Residences which do not share any common floors, walls, or ceilings with any other such Unit;

(6) Any City-designated outdoor Smoking areas;

(7) Automobiles (unless prohibited by state law);

(8) On streets and sidewalks, unless being used as outdoor workplaces or at City-sponsored events such as parades and fairs, and subject to the limitations in Section 6.

(c) Nothing in this chapter shall be construed to prohibit Smoking in any area in which such Smoking is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional local regulation.

#### **Sec. 4. PHASE-IN PERIOD FOR NON-SMOKING UNITS IN MULTI-UNIT RESIDENCES**

A Unit shall not be subject to the Smoking restrictions in Section 3(a)(4) until fourteen (14) months after the effective date of this chapter, or until the legal occupants on the effective date of this chapter vacate the Unit, whichever occurs first.

#### **Sec. 5. REQUIRED LEASE TERMS**

(a) For legal occupants on the effective date of this chapter, lease or rental agreement renewals for the occupancy of a Unit in a Multi-Unit Residence in which smoking is prohibited shall include:

(1) a clause stating that Smoking is prohibited in the Unit if the Unit has been designated as a non-smoking Unit ;

(2) a clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating Smoking while on the premises; (ii) Smoke in violation of a non-smoking lease term, such as smoking in a non-smoking Unit; or (iii) Smoke in any Multi-Unit Residence Common Area in which Smoking is prohibited by the Landlord; and

(3) a clause stating that all lawful occupants of the Multi-Unit Residence are express third-party beneficiaries of the above required clauses.

(4) a clause stating that terms 1 – 3 become effective fourteen (14) months after the effective date of this chapter, unless the Landlord specifies an earlier effective date;

(b) For new tenants not in occupancy on the effective date of this chapter, every lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence in which smoking is prohibited shall include:

(1) a clause stating that Smoking is prohibited in the Unit if the Unit has been designated as a non-smoking Unit;

(2) a clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating Smoking while on the premises; (ii) Smoke in violation of a non-smoking lease term, such as smoking in a non-smoking Unit; or (iii) Smoke in any Multi-Unit Residence Common Area in which Smoking is prohibited by the

Landlord; and

(3) a clause stating that all lawful occupants of the Multi-Unit Residence are express third-party beneficiaries of the above required clauses.

(c) The lease or agreement terms required by subsection (a) or (b) are hereby incorporated by force of law into any lease or other agreement for the occupancy of a Unit in a Multi-Unit Residence made on or after the effective date of the ordinance which adopted this section and which does not fully comply with subsection (a) or (b).

(d) A tenant who breaches the Smoking regulations of a lease or knowingly allows another person to do so shall be liable to: (i) the Landlord; and (ii) to any lawful occupant of the Multi-Unit Residence who is exposed to secondhand smoke as a result of that breach. A Landlord shall not be liable to any person for a tenant's breach of Smoking regulations if the Landlord has fully complied with subsection (a).

(e) Failure to enforce any Smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this ordinance and shall not prevent future enforcement of any such Smoking regulation on another occasion.

#### **Sec. 6. REASONABLE SMOKING DISTANCE REQUIRED—20 FEET**

(a) Smoking in outdoor areas shall be prohibited within 20 feet of an entrance or exit used by the public, or operable window of an indoor area in which smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any indoor area in which smoking is prohibited.

(b) Smoking in outdoor areas shall be prohibited within 20 feet from any outdoor area in which smoking is prohibited by this chapter except while actively passing on the way to another destination.

#### **Sec. 7. PROHIBITIONS AND DUTIES GENERALLY**

(a) No Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development shall knowingly permit the Smoking of Tobacco Products in an area which is under the legal or de facto control of the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development and in which Smoking is prohibited by law and the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development is not otherwise compelled to act under state or federal law.

(b) No Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area which is under the legal or de facto control of the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development and in which Smoking is prohibited, including, without

limitation, inside the perimeter of any Reasonable Distance required by this chapter.

(c) Notwithstanding any other provision of this chapter, any owner, Employer, Business, Nonprofit Entity, Landlord, Common Interest Development or other Person who controls any property, establishment, Place of Employment, Public Place, or Multi-Unit Residence regulated by this chapter may declare any part of such area in which Smoking would otherwise be permitted to be a nonsmoking area.

(d) “No Smoking” signs, with letters of no less than one inch in height or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) shall be clearly, sufficiently, and conspicuously posted in every indoor and outdoor place in which Smoking is prohibited by this chapter, by the Person, Employer, Business, Nonprofit Entity, Landlord, or Common Interest Development that has legal or de facto control of such place. For purposes of this chapter, the City Manager or designee shall be responsible for the posting of signs in regulated facilities owned or leased in part by the City of San Bruno. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

#### **Sec. 8. PENALTIES AND ENFORCEMENT**

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Each violation of this chapter by a Person because of the Person’s Smoking is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this chapter constitute misdemeanors punishable as provided in the San Bruno Municipal Code or may, in the discretion of the City Attorney, be prosecuted as infractions if the interests of justice so require. Any peace officer or code enforcement official may enforce this chapter.

(c) Violations of this chapter are subject to a civil action brought by the City, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

(d) No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks to attain compliance with this chapter. Moreover, no Person shall intentionally or recklessly expose another Person to secondhand smoke in response to that Person’s effort to achieve compliance with this chapter. Violation of this subsection shall constitute a misdemeanor.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(f) Any violation of this chapter is hereby declared to be a nuisance.

(g) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

**SECTION IV. STATUTORY CONSTRUCTION & SEVERABILITY.** It is the intent of the City Council of the City of San Bruno to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of San Bruno hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**SECTION V.** Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

**SECTION VI.** The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Introduced this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\* \* \* \* \*

PASSED AND ADOPTED as an Ordinance of the City of San Bruno at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
Mayor of the City of San Bruno

ATTEST:

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Clerk of the City of San Bruno



**City Council Agenda Item  
Staff Report**

CITY OF SAN BRUNO

**DATE:** November 9, 2016

**TO:** Honorable Mayor and Members of the City Council

**FROM:** David Woltering, Community Development Director

**SUBJECT:** Hold Public Hearing, Waive First Reading and Adopt Ordinance Amending and Replacing Chapter 12.230 Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects

**BACKGROUND**

This City Council public hearing continues the public hearing held on September 13, 2016 to consider adoption of an ordinance amending Section 12.230 of the Municipal Code to establish residential impact fees and commercial linkage fees, and an accompanying resolution stating the amount of the fee and methods of calculation. The proposed City Council action is to consider adoption of the revised affordable housing ordinance (Attachment 1) and a revised resolution setting the amount of the fees (Attachment 2). The proposed ordinance would replace the existing Below Market Rate (BMR) Housing ordinance with more effective tools to help mitigate the impacts of nonresidential development and new market-rate housing on the need for affordable housing. A summary of the proposed ordinance and resolution amendments is provided in Attachment 3.

At the September 13, 2016 City Council public hearing staff outlined the background, purpose and content of the proposed affordable housing ordinance and impact fee resolution and summarized public comments. Several comments were received after the release of the staff report for this meeting. The City Council expressed its support for adopting affordable housing impact fees, however, following discussion of the public comments, the City Council directed staff to conduct further research and return with recommendations for review and discussion at a future meeting and continued the public hearing. The comments focused on the four issues below.

1. Include more specific language exempting the San Mateo Community College District from the affordable housing requirements for residential projects on property owned by the district.
2. Allow flexibility in phasing requirements of affordable housing units with City Council approval.
3. Allow employees of public schools to rent affordable units.

4. Create an incentive for projects that pay area standard wages.

The complete analysis of the proposed affordable housing ordinance and impact fee resolution is contained in the September 13, 2016 City Council staff report and meeting minutes (Attachment 4).

## DISCUSSION

After careful review of the public comments received prior to the September 13, 2016 City Council meeting, staff has prepared recommendations for the City Council to consider. The discussion below provides staff's analysis of each comment and recommendations for potential adjustments to the ordinance and resolution presented on September 13, 2016. It should also be noted that the attached ordinance includes other minor clarifying edits. A detailed list of the proposed amendments to the ordinance and resolution is included in Attachment 3.

1. The Community College District requested that the City add specific language exempting the District from the requirements of the ordinance. The District cited a determination of the County Counsel's office that the District is an agency of the state and should be exempt under the current language of Section 230.050.D of the proposed ordinance, which exempts residential or nonresidential development projects located on property owned by an agency of the State or federal government and used exclusively for governmental or educational purposes.

While staff recommends amending the ordinance to specifically exempt nonresidential projects used exclusively for governmental or educational purposes, staff also recommends that residential projects should include an acceptable percentage of housing affordable to low and moderate income households in accordance with the City's affordable housing objectives. Although housing built by a community college or school district may be intended to provide affordable housing to staff and faculty, without deed restrictions specifying the qualifying tenant income levels and term of affordability, there is no guarantee that this housing will remain affordable. Therefore, staff does not recommend that residential development should be exempt from the ordinance, given that it already provides a mechanism to determine the affordable housing obligation on a case by case basis through an Affordable Housing Plan. Therefore, staff proposes the following change to Section 230.050.D of the proposed ordinance:

"The requirements of this Chapter do not apply to:

~~Residential or nonresidential~~ Development projects which fall within one or more of the following categories:

1. ~~Residential or nonresidential~~ Nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.
2. Summerhill Homes cited Section 12.230.080.B of the draft ordinance states, "affordable units shall be made available for occupancy concurrently with the market-rate units." This language does not allow flexibility in special circumstances, such as the proposed Skyline College residential project, which would include both

rental housing for staff and faculty and a separate single family subdivision.

3. Staff acknowledges the complexity of particular projects may require flexibility with respect to phasing of the construction of market-rate and affordable units. Accordingly, staff supports allowing flexibility in phasing, provided that the completion of the rental project occurs within a reasonable timeframe as determined in the negotiation of an Affordable Housing Plan, and with the final approval of the City Council. Staff proposes to add the following language to Section 12.230.080.B:
  - “, unless an alternative phasing plan is approved by the City Council.”
4. Section 12.230.080.C3, Conflict of interest, states that the project owner and its officers and employees (and their spouses and dependents) are ineligible to purchase or rent certain affordable housing units. This provision would not allow the Skyline College residential project to rent to faculty and staff, which is the specific intent of the project.

The Community College District is responding to the affordable housing crisis which has resulted in significant challenges in retaining and attracting qualified faculty and staff. Additionally, many of these households earn low and moderate incomes. This is an example of when it may be important to provide flexibility within the ordinance for the City Council to allow an employee to purchase or rent housing within an affordable development project. Therefore, staff proposes to add the following language to Section 12.230.080.C3:

- “However, employees of the project applicant and project owner may purchase or rent affordable housing units if the units were designed and intended to be occupied by employees of the applicant or owner, with approval of the City Council. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.”
5. Consider allowing a 25% reduction to the impact fee for projects that pay its workers Area Standard Wages, which are typically defined as union scale wages.

Staff does not recommend providing a fee reduction for projects that use area standard wages because the fees have been set at a level to ensure the financial feasibility of development projects, based on the analysis of the Nexus Study. The Nexus Study impact fee analysis methodology utilized conservative assumptions, which results in a lower estimate of the nexus supported fees. The Nexus Study has already taken prevailing wages into account in determining the fee amounts. The study subtracted out the higher cost of paying prevailing wages for development costs, resulting in a lower housing affordability gap, which is the basis for calculating the fees. In addition, the study used older market data from 2014 and 2015 reducing the impact fee calculation. A 25% reduction would also represent a very small portion of the additional cost for a project to pay standard wages and is unlikely to be an incentive for union labor or prevailing wages.

If the City Council wishes to consider providing an incentive, staff recommends reducing the percentage of affordable units required rather than reducing the amount of the impact fees. This would incentivize construction affordable units within a development project and to disperse the units throughout the community, which is the City's primary objective.

Of the six jurisdictions in San Mateo County that have adopted affordable housing impact fees in the past two years, four provide a 25 percent reduction in impact fees for projects paying area standard wages: Redwood City, San Mateo County, the City of San Mateo, and San Carlos.

Summary of the Affordable Housing Ordinance and Impact Resolution

The proposed ordinance would impose affordable housing impact fees and rules for construction of affordable units, alternatives to comply with the ordinance, and the use of the fees. The ordinance would apply to residential ownership or rental developments of five (5) units or more, and all nonresidential developments throughout the City, except public uses such as hospitals and community facilities and quasi-public uses such as child care centers, community facilities, churches and schools.

Residential rental and commercial projects would be required to pay impact fees, with the possibility of an alternative compliance method, such as the provision of affordable units on- or off-site, with the approval of the City Council. Residential for-sale projects would be required to include affordable units within the project, with the possibility of an alternative compliance method, such as the payment of residential impact fees, with the approval of the City Council.

Table 1 shows the recommended fee levels for residential impact fees and commercial linkage fees for each development type, based on the findings of the Nexus Study.

**Table 1. Recommended Impact Fees**

Unit Type	Recommended Fees	Minimum Project Size
Single Family	\$25	Residential projects with 5 or more net new units
Condominium	\$20	
Apartment	\$20	
Office	\$5	All new commercial development
Retail	\$5	
Hotel	\$5	

Table 2 shows the recommended percentages of affordable units, which would be required for ownership housing and allowed as an alternative for rental housing development.

**Table 2: Required Affordable Units per Residential Project**

	Single Family	Condominium	Apartment
Very Low Income	-	-	6%
Low Income	6%	6%	9%
Moderate Income	9%	9%	-
TOTAL	15%	15%	15%

\*Definitions of project types and affordability categories are contained in the Nexus Study.

Table 3 shows the recommended number of affordable units, which would be required per 100,000 square feet of nonresidential development.

**Table 3: Required Number of Affordable Units per 100,000 sf in a Nonresidential Project**

	Hotel	Retail, etc.	Office, R&D, Medical
Very Low Income	1	1	1
Low Income	1	1	1
Moderate Income	1	1	1
<b>TOTAL</b>	<b>3</b>	<b>3</b>	<b>3</b>

\*Definitions of project types and affordability categories are contained in the Nexus Study.

The adoption of an affordable housing ordinance and impact fees is not a project under the California Environmental Quality Act (CEQA) as it creates a governmental funding mechanism that does not involve any commitment to a specific project, which may result in a potentially significant effect on the environment (CEQA Guidelines Section 15378(b) (4)). Furthermore, even if these approvals were a project, they would be exempt from CEQA because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, given that the ordinance and resolution contain no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

### **FISCAL IMPACT**

Expected revenues were described in the September 13, 2016 staff report. The exact amount of the fiscal impact is unknown due to the fact that it is dependent on the amount and type of development projects that are brought forward. The City could receive several million dollars in affordable housing impact fees per year in the current economic cycle; however, these amounts will vary widely over time based on the level of development activity. The impact fee resolution requires a \$1,500 deposit to pay for staff time in collecting and administering the fee.

### **ALTERNATIVES**

1. Do not adopt the ordinance and resolution and provide direction to staff
2. Direct staff to revise the Affordable Housing Ordinance and/or the Impact Fee Resolution and schedule for additional review and discussion at a future meeting

### **RECOMMENDATION**

Hold Public Hearing, Waive First Reading and Adopt Ordinance Amending and Replacing Chapter 12.230, Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects

### **DISTRIBUTION**

None

**ATTACHMENTS**

1. Draft Affordable Housing Ordinance
2. Resolution Establishing Affordable Housing Impact Fee Amounts
3. Summary of proposed ordinance and resolution amendments
4. September 13, 2016 City Council Staff Report, Attachments and Minutes

RELATED DOCUMENTS AVAILABLE ON THE CITY WEBSITE AT  
[WWW.SANBRUNO.CA.GOV](http://WWW.SANBRUNO.CA.GOV) AND PROVIDED UNDER SEPARATE COVER

1. Residential Impact Fee Nexus Study for San Bruno – October 2015
2. Commercial Linkage Fee Nexus Study for San Bruno – October 2015

**DATE PREPARED**

November 4, 2016

**REVIEWED BY**

\_\_\_\_\_ CM

ATTACHMENT 1

DRAFT - ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN BRUNO AMENDING AND REPLACING  
CHAPTER 12.230, THEREBY UPDATING AND ESTABLISHING AN AFFORDABLE  
HOUSING PROGRAM AND AFFORDABLE HOUSING IMPACT FEES, IN TITLE 12 (LAND  
USE) OF THE SAN BRUNO MUNICIPAL CODE**

**Section 1.** Chapter 12.230 of Title 12 of the City of San Bruno Municipal Code is hereby repealed in its entirety.

**Section 2.** City Council makes the following findings:

**A.** The provision of safe and stable housing for households at all income levels is essential for the public welfare of the city. Housing in San Bruno has become steadily more expensive and housing costs have gone up faster than incomes. Federal and state government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households. As a result, there is a severe shortage of adequate, affordable housing for extremely low, very low, lower, and moderate income households, as evidenced by the following findings in the City's 2015-2023 Housing Element:

1. Almost half of San Bruno's households are lower income (see Housing Element Figure 2.3-2).

2. Households of any size earning less than the median income cannot afford the average home purchase price or the average rents in San Bruno.

3. More than 90 percent of San Bruno renter households and two thirds of owner households earning under \$35,000 annually are overpaying for housing. Over half the households earning between \$35,000 and \$75,000 per year are overpaying as well. Without choices and availability of affordable housing in San Bruno, lower income people may choose to live elsewhere and commute to work. Or, lower income households may live in overcrowded homes, and have limited money to dedicate towards other necessities such as food, transportation and medical care.

**B.** As provided in the Housing Element of the General Plan, the City aims to meet the housing needs of the citizens of San Bruno, including the creation and retention of housing for lower income households and households with special needs, given the limitations imposed by current political, economic, and social conditions, and availability of State and federal funding.

1. Housing Element Goal 5 is to ensure the continued availability of affordable housing for very-low, low, and moderate income households, seniors, persons with disabilities, single-parent households, large families, and other special needs groups.

2. Housing Element Goal 2 is to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

3. Housing Element Goal 3 is to expand the variety of construction and financing techniques available to achieve new affordable housing and maintain it over time. Housing Element Program 3-J calls for the City to adopt an Affordable Housing Impact Fee, including an implementation action to participate in a countywide nexus study to estimate the increase in demand for affordable housing associated with new residential and nonresidential development and to determine permissible and reasonable impact fees for both residential and nonresidential development based on local conditions that will not discourage development.

## ATTACHMENT 1

C. The City adopted the Below Market Rate (BMR) Housing Ordinance establishing inclusionary housing requirements for new construction for for-sale and rental development projects in 2008. The 2009 Palmer vs the City of Los Angeles court decision invalidated inclusionary requirements for rental developments, but not for for-sale developments.

D. Because the City's first preference is for the actual construction of new affordable units to ensure that affordable housing is actually provided within residential projects, the City intends to retain the BMR requirements for "for-sale" units.

E. New residents of market rate housing purchase goods and utilize services in the community, increasing local employment and attracting employees, of whom a quantifiable number will have very low, low, or moderate incomes and cannot afford market-rate housing.

F. New housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land.

G. Because nonresidential development also attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential developments similarly increase the demand for and exacerbate the shortage of housing available for people at these income levels while also reducing the supply of land potentially available for housing development.

H. Based on the findings above and the findings from the Residential Impact Fee and Commercial Linkage Fee Nexus Studies prepared for San Bruno, dated October 2015, the City desires to further the public health, safety and welfare by requiring residential and nonresidential development projects in the City to help mitigate their impact on the need for affordable housing in the City.

**Section 3.** A replacement Chapter 12.230 (Affordable Housing Program) is hereby added to Title 12 (Land Use) of the San Bruno Municipal Code to achieve the purpose in Section 12.230.010 of this Chapter, based on the Findings in Section 2 of this Chapter, to read as follows:

### CHAPTER 12.230 AFFORDABLE HOUSING PROGRAM

Sections:

- 12.230.010 Purpose
- 12.230.020 Definitions
- 12.230.030 Affordable Housing Requirements
- 12.230.040 Affordable Housing Impact Fees
- 12.230.050 Exemptions
- 12.230.060 Alternatives
- 12.230.070 Compliance Procedures
- 12.230.080 Affordable Housing Unit Standards
- 12.230.090 Owner-Occupied Units
- 12.230.100 Rental Units
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### 12.230.010 Purpose

The purpose of this Chapter is to:

A. Encourage the development and availability of housing affordable to a broad range of Households with varying income levels within the City as mandated by State Law, California Government Code Sections 65580 et seq.

B. Promote Housing Element Goal 2 to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

C. Implement the Housing Element by creating a mechanism to provide benefits to the community from new development in the form of affordable housing, thereby, helping to meet the housing needs of all socioeconomic segments of the community as provided in the Housing Element.

D. Promote Housing Element Goal 5 to ensure the continued availability of affordable housing for very low, low, and moderate income households, seniors, and persons with disabilities, single-parent households, large families, and other special needs groups.

E. Implement Housing Element Program 3-J to adopt permissible and reasonable impact fees for both residential and nonresidential development based on impact fee nexus studies.

F. Implement Housing Element Program 5-A to support the Affordable Housing Ordinance (BMR Program, adopted in 2008) and to modify the BMR program as appropriate to maximize efforts to achieve affordable housing objectives in San Bruno.

G. Enhance the public welfare by imposing affordable housing impact fees for residential and nonresidential development projects whereby developers of residential and nonresidential development projects will help mitigate the impacts of their projects on the need for affordable housing by contributing to the supply of housing for households with very low, low, and moderate incomes.

### 12.230.020 Definitions

As used in this Chapter, the following terms shall have the following meanings:

A. "Affordable housing agreement" means a written agreement between the City and the developer as provided in Section 12.230.070 of this Chapter.

B. "Affordable housing fund" means a fund for the deposit of fees established under this Chapter as provided in Section 12.230.120 of this Chapter.

C. "Affordable housing impact fee" means the fee paid by developers of residential or nonresidential development projects to help mitigate the impacts that such developments have on the demand for affordable housing in the City and to support affordable housing development and operation.

D. "Affordable housing plan" means a plan required for any residential or nonresidential development project which includes the provision of affordable housing units that demonstrates how the project complies with Section 12.230.070 of this Chapter.

E. "Affordable housing unit" means a dwelling unit that shall be offered at an affordable rent or affordable ownership cost to very low, low and moderate income households.

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F. "Affordable ownership cost" means the sales price of a for-sale affordable unit resulting in projected average monthly housing payments, during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners' association dues, if any, and a reasonable allowance for utilities, property maintenance, and repairs, not exceeding the sales prices specified by Section 50052.5 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924.

G. "Affordable rent" means the total monthly housing expenses for a rental affordable unit not exceeding the rents specified by Section 50053 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924. As used in this Chapter, "affordable rent" shall include the total of monthly payments by the tenant for all of the following: (1) use and occupancy of the affordable unit and land and all facilities associated with the affordable unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas; (2) any additional separately charged fees or service charges assessed by the owner, other than security deposits; (3) an allowance for utilities paid by the tenant as established by the San Mateo County Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or affordable unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

H. "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits

I. "City" means the City of San Bruno.

J. "City Council" means the City Council of the City of San Bruno.

K. "City Manager" means the City Manager of the City or his or her designee.

L. "Commercial linkage fee" means a fee or charge imposed on commercial developers to pay for the development's impact on the need for affordable housing. The fee is based on projected household incomes of new employees that will work in newly created space.

M. "Decision-making body" means the City staff person or body authorized to approve or deny an application for a planning or building permit for a residential or nonresidential development project.

N. "Developer" means the person(s) or legal entity(ies), who also may be the property owner seeking real property development permits or approvals from the City or developing a particular project in the City.

O. "For-sale unit" means a residential dwelling unit that may be sold individually in conformance with the Subdivision Map Act. For-sale units also include units that are converted from rental units to for-sale units.

P. "Household" means one person living alone or two or more persons sharing residency in one dwelling unit.

Q. "Inclusionary unit" has the same meaning as affordable housing unit.

R. "Low income households" means households with incomes no greater than the maximum income for low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

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S. "Market-rate unit" means a new dwelling unit in a residential development project that is not an affordable unit.

T. "Median income" means the median income applicable to San Mateo County, as published annually by the City for each household size, based on median income data for San Mateo County published by the United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD).

U. "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

V. "Nonresidential development project" means an application for a planning permit or building permit that includes the new construction of gross square feet of nonresidential space or the conversion of a residential use to a nonresidential use.

W. "Planning permit" means any discretionary approval of a residential or nonresidential development project, including, but not limited to, a general or specific plan adoption or amendment, rezoning, tentative map, conditional use permit, variances, or design review.

X. "Rental unit" means a dwelling unit that is intended to be offered for rent or lease and that cannot be sold individually in conformance with the Subdivision Map Act.

Y. "Residential impact fee" means a fee or charge imposed on residential development to pay for a development's impact on the need for affordable housing. The fee is based on the projected incomes of new employees associated with the new market rate developments.

Z. "Residential development project" means an application for a planning permit or building permit at one location to create one or more additional dwelling units, convert nonresidential uses to dwelling units, subdivide a parcel to create one or more separately transferable parcels intended for residential development, or implement a condominium conversion, including development constructed at one time and in phases. "One location" includes all adjacent parcels of land under common ownership or control, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the developer.

AA. "Very low income households" means households with incomes no greater than the maximum income for very low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

### **12.230.030 Affordable Housing Requirements**

A. For-sale residential development projects. All new for-sale residential development projects of five (5) or more units shall either include at least fifteen percent (15%) of the total units as affordable housing units restricted for occupancy by low and moderate income households, unless an alternative is proposed by the developer and approved by the City Council, as provided in Section 12.230.060.B.

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1. For purposes of this Chapter, the number of units in a residential development whose development includes the demolition or removal of existing residential units and the construction of new residential units shall be the difference between the new units constructed and the existing units demolished or removed.

2. Total units shall not include any units granted pursuant to density bonuses provided under state density bonus law.

3. For "for-sale" residential development projects, forty percent (40%) of the affordable housing units (or six percent (6%) of the total development) shall be restricted to occupancy by Low Income Households, and sixty percent (60%) of the affordable housing units (or nine percent (9%) of the total development) shall be restricted to occupancy by Moderate Income Households.

4. In determining the number of affordable housing units required, any decimal fraction of less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.

5. In determining the number of affordable housing units required for decimal fractions of less than 0.5, the developer shall be required to either construct one additional affordable unit or to pay the partial unit payment set forth in Subsection 12.230.040.C below.

**B.** Rental residential development projects. A residential impact fee is hereby imposed on all developers of rental residential development projects as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Council. No application for a rezoning, tentative map, conditional use permit, design review, or building permit shall be approved, nor shall any such rental project be constructed or condominium conversion approved without compliance with this Chapter.

**C.** Nonresidential development projects. A Commercial Linkage Fee is hereby imposed on all developers of nonresidential development projects, as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Manager.

**D.** Mixed-use development projects. Mixed use developments must comply with the requirements for nonresidential developments in the nonresidential portion of the development and must comply with the requirements for residential developments for the residential portion of the development.

### **12.230.040 Affordable Housing Impact Fees**

**A.** Affordable Housing Impact Fees are hereby established for all residential and nonresidential development projects, including residential impact fees for residential development projects and Commercial Linkage Fees for nonresidential development projects. The amount of the affordable housing impact fees shall be established and adjusted from time to time by resolution of the City Council. The impact fees shall not exceed the cost of mitigating the impact of residential or nonresidential development projects on the need for affordable housing in the City.

1. Residential Impact Fees for Rental Residential Projects. As provided in Section 12.230.030.B, all rental residential projects of five (5) or more units shall pay a Residential Impact Fee, unless an alternative is proposed by the developer and approved by the City Council as described in Section 12.230.060.

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2. Commercial Linkage Fees. As provided in Section 12.230.030, all nonresidential development projects shall pay a Commercial Linkage Fee, unless an alternative is proposed by the developer and approved by the City Council as described in Section 12.230.060.

3. Residential Impact Fees for "For Sale Residential Projects." As provided in Section 12.230.060.B, and with the approval of the City Council, for-sale residential projects may pay a Residential Impact Fee rather than provide onsite units.

**B.** Payment of the impact fees shall be due at the issuance of the building permit for the development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.

**C.** For for-sale development projects that trigger an affordable unit requirement with a decimal fraction of less than 0.5, the developer shall either build one additional affordable unit or pay an impact fee equal to the decimal fraction multiplied by the residential impact fee for the for-sale residential project.

### **12.230.050 Exemptions**

The requirements of this Chapter do not apply to:

**A.** Residential development projects of four (4) or fewer new housing units, the creation of four or fewer parcels, provided that no more than four dwelling units are allowed; or accessory dwellings created under Section 12.92.031 of the San Bruno Municipal Code.

**B.** Replacement construction that results in a net increase of four (4) or fewer new housing units.

**C.** Residential developments that already have more deed-restricted units that are affordable to very low, low and moderate income households than this Chapter requires, for the period required under this Chapter.

**D.** Residential or nonresidential development projects which fall within one or more of the following categories:

1. Nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.

2. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the square footage and use of the building remains the same, and construction of the replacement building begins within one year of the damage's occurrence.

3. Residential or nonresidential development projects to the extent they have received a vested right to proceed without payment of Affordable Housing Impact Fees pursuant to state law, including those that are the subject of development agreements currently in effect with the City, if such development agreements were approved prior to the effective date of this Chapter and where such agreements expressly preclude the city from requiring payment of the Affordable Housing Impact Fee.

4. Residential or nonresidential development projects for which applications have been deemed complete prior to the effective date of this chapter.

5. Other uses that may be specified by resolution of the City Council.

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### 12.230.060 Alternatives

**A.** Notwithstanding any contrary provisions of this Chapter, the City may determine that alternatives to the requirements in Section 12.230.030 of this Chapter as proposed by the developer in the affordable housing plan required by Section 12.230.070 of this Chapter, provided that the City Council makes the findings in Section 12.230.070.D E, or F as appropriate.

**B.** For-sale residential projects. As an alternative to construction of affordable housing units on-site or payment of an Residential Impact Fee, if approved by the City Council, developers of for-sale residential development projects may propose to mitigate affordable housing impacts of such housing through alternative means, including but not limited to:

1. Payment of Residential Impact Fees in accordance with Section 12.230.040.
2. Provision of affordable units off site.
3. Dedication of land to the City suitable for construction of affordable units.
4. Purchase of existing units for conversion to affordable units.
5. Acquisition and rehabilitation of affordable units.
6. Increase in the total number of affordable housing bedrooms.
7. Provision of greater level of affordability.
8. Construction of second dwelling units.
9. Providing rental affordable units rather than for-sale affordable units.

**C.** Rental residential development projects. As an alternative to payment of housing impact fees, developers of rental residential development projects may propose to help mitigate the affordable housing impacts of such developments through an alternative mitigation program, including but not limited to:

1. Construction of affordable housing units on site or through an alternative mitigation program, such as the provision of off-site affordable units, donation of land for the construction of affordable units, or purchase of existing units for conversion to affordable units.

2. For rental residential developments proposing this alternative, six percent (6%) of the total development shall be restricted to occupancy by very low income households, and nine percent (9%) of the total development shall be restricted to occupancy by low and moderate income households.

3. If a developer proposes to provide affordable rental units, then, to ensure compliance with the Costa-Hawkins Rental Housing Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve such a proposal if, as required by Civil Code Sections 1954.52(b) and 1954.53(a)(2), the developer agrees in a contract with the City to limit rents in accordance with Section 12.260.070 of this Chapter in consideration for a direct financial contribution from the City or a form of assistance specified in the State's Density Bonus Law (Chapter 4.3, commencing with Section 65915, of Division 1 of Title 7 of the Government Code). The developer may request that the City waive the Residential Impact Fee as a direct financial contribution to the rental residential development project.

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**D.** Nonresidential development projects. As an alternative to payment of the Commercial Linkage Fees, developers of nonresidential development projects may propose to mitigate the affordable housing impacts of such development through the construction of affordable housing units on site or through an alternative mitigation program, as provided in subsections B or D of this section.

1. The City Council may adopt by resolution the percentage of affordable units needed to help mitigate the impact of nonresidential development projects on the need for affordable housing.

**E.** Any affordable rental or for-sale units proposed as an alternative shall be subject to the requirements described in Section 12.230.080 of this Chapter.

### **12.230.070 Compliance Procedures**

**A.** General. Approval of an Affordable Housing Plan and execution, recordation and implementation of an Affordable Housing Agreement shall be conditions of any approval of a residential or nonresidential development project, which includes the provision of affordable housing units as provided in Section 12.230.030 or 12.230.060. No Affordable Housing Plan is required if the developer proposes only to pay the Residential Impact Fee or commercial linkage fee.

**B.** Affordable Housing Plan. No application for approval of a residential or nonresidential development project which includes the provision of affordable housing units may be deemed complete until an Affordable Housing Plan containing all the elements identified below is submitted to the Community Development Department. The Affordable Housing Plan shall include:

1. The number, location, number of bedrooms and size of the proposed market rate and affordable housing units and the basis for calculating the number of affordable housing units;

2. The City may approve an increase in the number of units per acre in a residential development if the increase is consistent with state density bonus law per Section 65915 of the State Government Code. If the applicant is proposing to apply for a density bonus, the Affordable Housing Plan must include an analysis of the density bonus request;

3. A site plan depicting the proposed location of the initial affordable housing units;

4. A floor plan depicting the proposed location of the initial affordable housing units within a residential development;

5. The income levels to which each affordable housing unit will be made affordable;

6. The mechanisms that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and City's option to purchase and other documents;

7. For a phased residential development proposing any change to the phasing requirements specified in Section 12.230.080.B, a phasing plan that provides for the timely development of affordable housing units in each proposed phase of development;

8. The conceptual plan for initial sales or rental by Developer of the affordable housing units; and

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9. Any proposed Alternative as provided in Section 12.230.060 along with information necessary to support the findings required in Section 12.230.070.E. for approval of such alternatives.

10. The City Manager may request additional information as reasonably needed to assist with evaluation of the Affordable Housing Plan under the standards of this Chapter.

**C.** The Affordable Housing Plan shall be processed concurrently with all other permits required for the residential or nonresidential development project. Before approving the Affordable Housing Plan, the City Council shall find that the Affordable Housing Plan conforms to this Chapter. A condition shall be attached to the first approval of any residential or nonresidential development project to require recordation of an affordable housing agreement, as described in this subsection, prior to the approval of any final or building permit for the residential or nonresidential development project.

**D.** Findings – all alternatives. The City Council may or conditionally approve an alternative contained in an affordable housing plan if the City Council determines, based on substantial evidence, that the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting state housing requirements.

**E.** Findings – alternative proposing on-site affordable units. The City Council may approve or conditionally approve an affordable housing plan that proposes on-site construction of affordable units if the City Council determines, based on substantial evidence, that:

1. The proposed affordable units comply with the standards in Section 12.230.080, including without limitation compliance with Section 12.230.080.B requiring that the affordable units be made available for occupancy concurrently with the market-rate units; and

2. The affordable units will help mitigate the impact of the project on the need for affordable housing.

**F.** Findings – alternative proposing off-site affordable units. If a developer proposes off-site affordable housing units or any other alternative in the Affordable Housing Plan, the City Manager may approve, conditionally approve or reject any alternative proposed by a developer subject to final approval by the City Council in its discretion. Any approval or conditional approval shall be based on a finding that:

1. Financing or a viable financing plan, which may include public funding sources, is in place for the proposed affordable housing units;

2. The proposed location is suitable for the proposed affordable housing, is consistent with the Housing Element, General Plan, and Zoning Ordinance, and will not tend to cause residential segregation; and

3. The net cost of the alternative is at least equal to the net cost to provide affordable housing units;

4. The alternative does not detract from the City's program to meet its housing goals and obligations under California Housing Law (Government Code Section 65580 and following) and California Community Redevelopment Law (Health and Safety Code Section 33000 and following).

**G.** Affordable Housing Agreement. To ensure compliance with the approved Affordable Housing Plan, an affordable housing agreement acceptable to the City Manager or designee shall be recorded against the residential or nonresidential development project prior to approval of any final, or issuance of any building permit, whichever occurs first. The affordable

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housing agreement shall specify the number, type, location, size, phasing, and terms of affordability of all affordable units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved Affordable Housing Plan, and subject to final approval by the City Council.

H. The City Manager may adopt affordable housing guidelines consistent with this Chapter and the Housing Element for the purpose of carrying out the administration of this Chapter and may update those guidelines periodically as required.

### **12.230.080 Affordable Housing Unit Standards**

A. All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be comparable to the overall quality of construction to market-rate units in the same housing development as follows:

1. The exterior appearance of the affordable units shall be compatible with that of market-rate units.

2. Interior finishes and amenities may not differ from those provided in the base model market rate units.

3. The number of bedrooms in the affordable units shall be comparable to the average number of bedrooms in the market-rate units, and the affordable units shall be reasonably dispersed within the residential development, with unit locations comparable to those of the market-rate units, subject to review and approval by the Community Development Director.

4. The affordable units shall have the same amenities as the market rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development, provided at an affordable rent as defined in Section 12.230.010 or at affordable ownership cost as defined in Section 12.230.010.

B. Affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be made available for occupancy concurrently with the market-rate units. For the purposes of this subsection, "concurrently" means that the City may not issue building permits for more percent (50%) of the market-rate units until it has issued building permits for all of the affordable units, and the City may not approve any final inspections or certificates of occupancy for more than fifty percent (50%) of the market-rate units until it has issued final inspections or certificates of occupancy for all of the affordable units. However, the City Council may modify the timing requirements for construction and occupancy of market-rate units to accommodate phasing schedules, model variations, or other factors, if the City Council determines this will provide greater public benefit.

C. All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be subject to a resale restriction, deed of trust, and/ or regulatory agreement recorded against the property for execution by the City Manager, in a form approved by the City Attorney, to ensure the continued affordability of the affordable units.

1. Affordable housing units produced under this Chapter shall be legally restricted to occupancy by Households of the income levels for which the units were designated for a period of not less than fifty-five (55) years for rental units and forty-five (45) years for owner-occupied units.

2. To the extent permitted by state and federal law, preferences will be given to those Households where at least one member in the Household lives or works in San Bruno

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or works for a school district serving the residents living in the City, except for those deemed ineligible due to conflict of interest noted below.

3. Conflict of Interest. The following individuals are ineligible to purchase or rent certain affordable housing units: (i) Elected or appointed City officials (including their spouse and dependents) who participated in the approval process for a project that included the affordable housing units (ii) the project applicant and its officers and employees (and their spouse and dependents), and (iii) the project owner and its officers and employees (and their spouse and dependents). However, employees of the project applicant and project owner may purchase or rent affordable housing units if the units were designed and intended to be occupied by employees of the applicant or owner, with approval of the City Council. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.

4. Any household that occupies an affordable unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party for a limited period of time due to household hardship, as determined by the City.

5. No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the community development director or designee. The City Manager or designee may from time to time adopt guidelines for determining household income and affordable housing cost, determining buyer eligibility, monitoring, and relevant administrative provisions.

### **12.230.090 Affordable Owner-Occupied Units**

**A.** Sale to Eligible Households. Owner-occupied units will be offered to eligible households at a sales price set so that the eligible household will pay an affordable ownership cost. The developer shall certify each prospective purchaser's income to the City or City's designee and obtain approval of the household prior to close of escrow. The developer must obtain and review documents that demonstrate the prospective owner's total income and assets and submit such information on a form approved by the City.

**B.** Initial Sales Price. The initial sales price of the affordable housing unit shall be set by the City so that the eligible household will pay an affordable ownership cost. The City shall respond to a written request by developer and provide developer with a good-faith estimate of the initial sales price during pre-development.

**C.** Deed Restrictions. Deed restrictions provided by the City, recorded against title to the affordable housing unit, and secured by a deed of trust shall be required as condition of sale for all owner-occupied affordable housing units and will include, but are not limited to, the City's or its designee's option to purchase, resale restrictions, occupancy requirements, payment of penalty for any default, and procedures and policies regarding changes in title. Deed restrictions must be approved by the City Attorney prior to close of escrow.

**D.** Administration. The Developer or subsequent seller shall pay all administrative costs associated with the sale of the for sale affordable housing units, including for buyer review and qualification, and the review and processing of documents associated with the transaction.

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### 12.230.100 Affordable Rental Units

**A. Non-Discrimination.** When selecting tenants, the owners of Affordable housing units shall comply with all fair-housing laws, rules, regulations, and guidelines. The owner shall apply the same rental terms and conditions to tenants of affordable housing units as are applied to all other tenants, except as required to comply with this Chapter or with other applicable government programs.

**B. Annual Report.** The owner shall submit an annual report summarizing the occupancy of each affordable housing unit for the year and demonstrating the income-eligibility of the tenant. The City Manager may require additional information to confirm household income and rental price of the unit if he or she deems necessary. The City Council may establish and charge the owner or operator of the rental residential development an annual fee to cover the costs of this monitoring. The fee will be added to the Master Fee Schedule by City Council resolution.

**C. Periodic Audit.** The City shall have the right to periodically audit the information supplied to the City for the annual report if deemed necessary to ensure compliance with this Chapter. In addition, owners of affordable housing units shall cooperate with any audits conducted by the City, State agencies, Federal agencies, or their designees.

**D. Change in Income.** If, after moving into an affordable rental housing unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 120 percent of the income limit, but the tenant's rent shall be increased to 30 percent of monthly income upon expiration of the tenant's lease. Once the tenant's income exceeds 120 percent of the income limit, the tenant shall be given one year's notice to vacate the unit, or the next available market rate unit in the residential development shall be offered as an affordable housing unit. The owners of the residential development are responsible for notifying the City of such changes in income and documenting the process by which the existing tenant will be removed or the next available unit shall be offered as an affordable housing unit.

### 12.230.110 Administrative Relief

**A.** As part of an application for the first approval of a residential or nonresidential development project, a developer may request that the requirements of this Chapter be waived or modified by the City Council, based upon a showing that applying the requirements of this Chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result, or because there is no reasonable relationship between the impact of the development and the need for affordable housing. concurrently

1. Any request for a waiver or modification shall be submitted with the project application. The developer shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

2. Any request for a waiver or modification based on this Section shall be reviewed and considered at the same time as the project application. The City Council may from time to time establish by resolution a processing fee for review of any request for a waiver or modification.

**B.** The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and the evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this Section.

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### 12.230.120 Affordable Housing Fund

**A.** There is hereby established in the City of San Bruno a separate "Affordable Housing Fund," pursuant to Section 66006 of the California Government Code. All Affordable Housing Impact Fees or other funds collected under this Chapter shall be deposited into the City's Affordable Housing Fund.

**B.** The monies in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide housing affordable to extremely low income, very low income, lower income, and moderate income households in the City, consistent with the goals and policies contained in the City's Housing Element and the purposes for which the fees were collected, and for administration and compliance monitoring of the affordable housing program.

**C.** The City Council may, from time to time, adopt guidelines for expenditure of monies in the affordable housing fund.

### 12.230.130 Enforcement

**A.** Payment of the Affordable Housing Impact Fee is the obligation of the developer for a residential or nonresidential development project. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.

**B.** The City Attorney shall be authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.

**C.** Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any developer or owner from the requirements of this Chapter. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Chapter have been satisfied.

**D.** The remedies provided for in this Section shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

**Section 4.** Adoption of this ordinance is found to be categorically exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures CEQA Guidelines Section 15061(b)(3)).

**Section 5.** If any section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that

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any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 6.** The City Clerk shall publish this ordinance in accordance with applicable law.

**Section 7.** Effective date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in the San Mateo Daily Journal, a newspaper of general circulation published and printed in the County of San Mateo and circulated in the City of San Bruno.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

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I hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was introduced on \_\_\_\_\_, and adopted at a regular meeting of the San Bruno City Council on \_\_\_\_\_, by the following vote:

AYES: COUNCILMEMBERS: \_\_\_\_\_

NOES: COUNCILMEMBERS: \_\_\_\_\_

ABSENT: COUNCILMEMBERS: \_\_\_\_\_

City Clerk: \_\_\_\_\_

ATTACHMENT 2

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO  
ESTABLISHING AFFORDABLE HOUSING IMPACT FEES FOR RESIDENTIAL AND  
NONRESIDENTIAL DEVELOPMENT PROJECTS AND ESTABLISHING A  
STANDARDIZED LIST OF USES AND EXEMPTIONS WITH RESPECT TO THE  
PAYMENT OF NONRESIDENTIAL HOUSING IMPACT FEES**

**WHEREAS**, on April 14, 2015 the City Council of the City of San Bruno adopted its 2015-2023 Housing Element which contemplates, among other things, an ordinance to adopt affordable housing impact fees as a mechanism to increase the supply of affordable housing in the City, pursuant to Housing Element Programs 3-J and 5-J;

**WHEREAS**, to implement the affordable housing goals, policies and programs of the City's 2015-2023 Housing Element, the City Council has considered and introduced on this same date an affordable housing ordinance that, among other things, authorizes the imposition of affordable housing impact fees for certain residential and nonresidential development projects to mitigate the impact of such projects on the need for affordable housing in the City (the "Affordable Housing Ordinance");

**WHEREAS**, to ensure that future development projects mitigate their impact on the need for affordable housing in San Bruno, and to ensure that any adopted housing impact fees do not exceed the actual affordable housing impacts attributable to the development projects to which the fees relate, the City agreed to participate in the preparation of a nexus study through the countywide 21 Elements collaboration project;

**WHEREAS**, the City has received and considered reports from Strategic Economics and Vernazza Wolfe Associates, Inc. dated October 2015 entitled "Residential Impact Fee Nexus Study" and "Commercial Linkage Fee Nexus Study" (together, the "Nexus Study");

**WHEREAS**, the Nexus Study uses widely applied, appropriate methodology to determine the maximum amount needed to fully mitigate the need for affordable housing created by residential and nonresidential development;

**WHEREAS**, to ensure that development projects remain economically feasible, the recommended housing impact fees as shown in the attached Exhibits A and B do not exceed the justified fees needed to mitigate the actual affordable housing impacts attributable to the development projects to which the fees relate, as determined by the Nexus Study;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution affordable housing impact fees for residential and nonresidential development, and the City Council desires to do so;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution a standardized list of specific uses that shall be exempt from the payment of housing impact fees, and the City Council desires to do so;

## ATTACHMENT 2

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution the percentage of affordable units needed to fully mitigate the impact of residential or nonresidential development projects on the need for affordable housing, and the City Council desires to do so;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution a fee for processing applications for waivers from or modifications to the housing impact fees, and the City Council desires to do so;

**WHEREAS**, at least ten days prior to the date this resolution is being heard, data was made available to the public indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including general fund revenues, in accordance with Government Code Section 66019;

**WHEREAS**, at least fourteen days prior to the date this resolution is being heard, notice was provided to any persons or organizations who had requested notice, in accordance with Government Code Section 66019;

**WHEREAS**, notice of the hearing on the proposed fee was published twice in the manner set forth in Government Code Section 6062a as required by Government Code Sections 66004 and 66018; and

**WHEREAS**, the City Council has reviewed the information contained in this Resolution and the accompanying staff report and any attachments at a meeting held on November 9, 2016.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of San Bruno as follows:

1. The foregoing recitals are true and correct and incorporated into this Resolution by this reference.
2. The findings of the Nexus Study have been considered and are hereby incorporated into this Resolution by this reference.
3. The facts and substantial evidence in the record establish that there is a reasonable relationship between the need for affordable housing and the impacts of the development described in the Nexus Study for which the corresponding fee is charged, and that there is also a reasonable relationship between the use of the affordable housing impact fee and the type of development for which the fee is charged, as is described in more detail in the Nexus Study.
4. The Nexus Study sets forth cost estimates, in 2015 dollars, that are reasonable for constructing affordable housing, and the fees expected to be generated by new development will not exceed these costs.

## ATTACHMENT 2

5. The City Council hereby adopts those affordable housing impact fees for residential development projects shown on Exhibit "A", attached hereto and incorporated by reference herein.

6. The City Council hereby adopts those affordable housing impact fees for nonresidential development projects shown on Exhibit "B", attached hereto and incorporated by reference herein.

7. All housing impact fees collected shall be deposited into the City's Affordable Housing Fund to be used to increase and preserve the supply of housing affordable to households of extremely low, very low, low, and moderate incomes (including necessary administrative costs).

8. The City Council hereby adopts the "Land Use Exemptions" set forth in Exhibit "C", attached hereto and incorporated by reference herein.

9. The City Council may review affordable housing impact fees from time to time. For any annual period during which the City Council does not review the housing impact fee, fee amounts shall be adjusted once by the Community Development Director based on the percentage increase in the Engineering News-Record Construction Cost Index for San Francisco, California.

10. The City Council hereby determines that the following percentages of affordable units will mitigate the impacts of residential development on the need for affordable housing:

<b>Required Affordable Units per Residential Project*</b>			
	Single Family	Condominium	Apartment
<b>Very Low Income</b>	-	-	6%
<b>Low Income</b>	6%	6%	9%
<b>Moderate Income</b>	9%	9%	-
<b>TOTAL</b>	15%	15%	15%

\*Definitions of project types and affordability categories are contained in the Nexus Study.

11. The City Council further determines that the following number of affordable units will mitigate the impacts of nonresidential development on the need for affordable housing:

<b>Required Affordable Units per 100,000 sf in a Nonresidential Project*</b>			
	Hotel	Retail, etc.	Office, R&D, Medical
<b>Very Low Income</b>	1	1	1
<b>Low Income</b>	1	1	1
<b>Moderate Income</b>	1	1	1
<b>TOTAL</b>	3	3	3

**ATTACHMENT 2**

\*Definitions of project types and affordability categories are contained in the Nexus Study.

12. The City Council hereby adopts a fee for processing applications for waivers from or modifications as shown on Exhibit "D", attached hereto and incorporated by reference herein.

13. The City Council finds that all of the housing impact fees adopted pursuant to this Resolution do not exceed the actual affordable housing impacts of the development projects to which those housing impact fees relate, as further set forth in the Nexus Study.

14. Adoption of this Resolution is exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this resolution contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

15. This Resolution shall take effect on the effective date of the Affordable Housing Ordinance.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the City Council of the City of San Bruno, at a regular meeting of said City Council held on \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of San Bruno

ATTEST: \_\_\_\_\_  
City Clerk of the City of San Bruno

**ATTACHMENT 2**

**EXHIBIT "A"**

**Housing Impact Fees for Residential Development Projects**

\*Residential impact fees for residential projects shall be calculated using the net new square footage of Residential Floor Area for the dwelling unit to which the housing impact fee relates.

As used in the Nexus Study, "Residential Floor Area" for Single-Family Detached Homes, Townhomes, Duplexes, and Triplexes includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking.

As used in the Nexus Study, "Residential Floor Area" for Apartments and Condominiums includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking, elevators, stairwells or stairs between floors, hallways, and between-unit circulation.

Fees shall be paid that are in effect at the time of issuance of the building permit for the residential development, based on the effective rate at the time of building permit issuance.

<b>Type of Residential Unit</b>	<b>Fee per Square Foot of Net New Residential Floor Area</b>
Single-Family Detached Home	<b>\$25.00</b>
Apartments and Condominiums	<b>\$20.00</b>

**ATTACHMENT 2**

**EXHIBIT "B"**

**Commercial Linkage Fees for Nonresidential Development Projects**

\*All commercial linkage fees for nonresidential projects, including new construction and conversion of a residential use to a nonresidential use shall be calculated using the gross floor area of net new nonresidential space, excluding structured parking.

<b>Nonresidential Use</b>	<b>Fee per Square Foot of Net New Gross Floor Area</b>
Hotel	<b>\$5.00</b>
Retail, Restaurants and Services	<b>\$5.00</b>
Office, Medical Office and Research and Development Uses	<b>\$5.00</b>

## ATTACHMENT 2

### EXHIBIT "C"

#### LAND USE EXEMPTIONS

In accordance with Section 12.230.050 of the Affordable Housing Ordinance, the following specific nonresidential uses are exempt from the payment of the housing impact fee:

1. Public Uses and Quasi-Public Uses, as defined in Section 2-3, Land Use Framework, of the 2009 San Bruno General Plan, including, but not limited to, government offices, fire and police facilities, transit stations, airports, and cemeteries;
2. Open Space Uses, as defined by Section 12.96.170 of the San Bruno Zoning Code, including, but not limited to, public and private parks, schools and cemeteries;
3. Child Care Centers, including Family Child Care Homes;
4. Recreational facilities for public use and enjoyment within commercial or industrial developments;
5. Housing for the elderly, nursing homes, rest homes, and residential care facilities, as defined by Section 12.80 of the San Bruno Zoning Code; and
6. Public and private schools.

**ATTACHMENT 2**

**EXHIBIT "D"**

**FEE FOR WAIVERS AND MODIFICATIONS**

Waivers and Modifications of Requirements of Affordable Housing Ordinance:

Initial Deposit of \$1,000

To be charged on a cost recovery basis, where the staff charges their time and other costs against the initial deposit, recovering the actual cost of project review.

## Attachment 3

### Proposed Amendments Affordable Housing Ordinance and Affordable Housing Impact Fees Resolution

November 9, 2016

The table below shows all changes to the draft Affordable Housing Ordinance and Impact Fee Resolution since September 13, 2016 City Council meeting.

#### Affordable Housing Ordinance Amendments

	Section	
1	12.230.020.X	<del>“Public/Quasi-Public Use” means the San Bruno General Plan land use designation, which permits a variety of public and quasi-public uses, including: government offices, fire and police facilities, transit stations, and cemeteries.</del>
2	12.230.030.A	For-sale residential development projects. All new for-sale residential development projects of five (5) or more units shall either include at least fifteen percent (15%) of the total units as affordable housing units restricted for occupancy by low and moderate income households, <del>or, if approved by the City Manager and subject to final approval by the City Council,</del> unless an alternative is proposed by the developer and approved by the City Council, as provided in Section 12.230.060.B. <del>pay the impact fee required under Section 12.230.040 of this Chapter.</del>
3	12.230.030.A.5	In determining the number of affordable housing units required for decimal fractions of less than 0.5, the developer shall be required to <u>either construct one additional affordable unit or to pay the partial unit payment set forth in Subsection 12.230.040.C below</u>
4	12.230.030.B	<del>...and approved by the City Manager</del> City Council.
5	12.230.040.A.1	...all rental residential projects of five (5) or more units shall pay a Residential Impact Fee, unless an alternative is proposed by the developer and approved by <del>the City Manager and subject to final approval by the City Council</del> <u>as described in Section 12.230.060.</u>
6	12.230.040.A.2	...all nonresidential development projects shall pay a Commercial Linkage Fee, unless an alternative is proposed by the developer and approved by <del>the City Manager and subject to final approval by the City Council</del> <u>as described in Section 12.230.060.D.</u>
7	12.230.040.A.3	Residential Impact Fees for “For Sale Residential Projects.” As provided in <del>Section 12.230.030</del> <u>12.230.060.B</u> , and with the approval of <del>the City Manager,</del> Council, for-sale residential projects may pay a Residential Impact Fee rather than provide onsite units.
8	12.230.040.C	For for-sale development projects that trigger an affordable unit requirement with a <u>decimal fraction of less than 0.5, the developer shall either build one additional affordable unit or pay an impact fee equal to the decimal fraction multiplied by the residential impact fee for the for-sale residential project.</u>
9	12.230.050.D.1	<del>Residential or Nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes</del>
10	12.230.050.D.1	Residential or nonresidential development projects for which applications have been deemed complete prior to <del>September 1, 2016</del> <u>the effective date of this chapter.</u>
11	12.230.060.A	provided that the <del>City Council</del> <u>decision-making body</u> makes the findings in Section 12.230.070.D E, or F as appropriate.
12	12.230.060.B	if approved by the <del>City Council</del> Manager.
13	12.230.060.B.1	<u>Payment of Residential Impact Fees in accordance with Section 12.230.040.</u>

14	12.230.060.C	<del>The City Council may approve alternatives to the payment of Residential Impact Fees where the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting its state housing requirements.</del>
15	12.230.070.B.7	<del>For a phased residential development proposing any change to the phasing requirements specified in Section 12.230.080.B...</del>
16	12.230.070.D	<del>Findings — all alternatives. The City Council may or conditionally approve an alternative contained in an affordable housing plan if the City Council determines, based on substantial evidence, that the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting state housing requirements.</del>
17	12.230.070.E	<del>Findings – alternative proposing on-site affordable units...</del>
18	12.230.070.F	<del>Findings — alternative proposing off-site affordable units...</del>
19	12.230.070.G	<del>To ensure compliance with the approved Affordable Housing Plan, an affordable housing agreement acceptable to the Community Development DirectorCity Manager or designee shall be recorded... as determined by the City Manager or designee, and subject to final approval by the City Council</del>
20	12.230.080.B	<del>However, the decision-making bodyCity Council may modify the timing requirements for construction and occupancy of market-rate units to accommodate phasing schedules, model variations, or other factors, if the approval bodyCity Council determines this will provide greater public benefit.</del>
21	12.230.080.C.3	<del>... However, employees of the project applicant and project owner may purchase or rent affordable housing units if the units were designed and intended to be occupied by employees of the applicant or owner, with approval of the City Council. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.</del>
22	12.230.080.C.5	<del>The Community Development DirectorCity Manager or designee may from time to time adopt guidelines for determining household income and affordable housing cost, determining buyer eligibility, monitoring, and relevant administrative provisions.</del>
23	12.230.080.C.5	<del>Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.</del>
24	21.230.100.D	<del>Change in Income. If, after moving into an affordable rental housing unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 120 percent of the income limit, but the tenant's rent shall be increased to 30 percent of monthly income upon expiration of the tenant's lease...</del>

### **Affordable Housing Impact Fee Resolution Amendments**

Exhibit C	<del>Public Uses and Quasi-Public Uses, as defined in Section 12.230.020 of the Affordable Housing Ordinance Section 2-3, Land Use Framework, of the 2009 San Bruno General Plan, including, but not limited to, public schools, parks, playgrounds, hospitals, and administrative and services facilities government offices, fire and police facilities, transit stations, airports, and cemeteries.</del>
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**City Council Agenda Item  
Staff Report**

CITY OF SAN BRUNO

**DATE:** September 13, 2016

**TO:** Honorable Mayor and Members of the City Council

**FROM:** David Woltering, Community Development Director

**SUBJECT:** Waive First Reading and Adopt Ordinance Amending and Replacing Chapter 12.230 Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects

**BACKGROUND**

San Bruno's adopted 2015 Housing Element Program includes policies and programs intended to increase the City's housing supply and address affordable housing needs. Program 3-J calls for the adoption of affordable housing impact fees on new commercial and residential development to help pay for the creation of new homes for lower income residents. The City Council action to consider adoption of the proposed affordable housing ordinance (Attachment 1) would establish residential impact fees for residential projects and commercial linkage fees for nonresidential projects, and the accompanying resolution (Attachment 2) would set the initial fee amounts to be included in the City's Master Fee Schedule. The City does not currently have any impact fees for new development, although the City is undertaking a comprehensive Development Impact Study later this year.

San Bruno's existing Below Market Rate (BMR) Housing ordinance requires all new residential development projects of ten units or more to provide 15% of the total units to be available to very low, low and moderate income households. However, the California Court decision in Palmer vs. City of Los Angeles invalidated affordable housing requirements for rental housing, limiting the effectiveness of the BMR ordinance. The draft ordinance under consideration would establish impact fees for new market rate rental residential projects and all new commercial development in the City, consistent with the Mitigation Fee Act (Gov't Code § 66000 et seq.), which establishes the procedures for adoption, expenditure and reporting of impact fees. The draft ordinance would restore the City's ability to impose affordable housing requirements on new rental housing projects and continue to require new for-sale housing developments to construct affordable units.

San Bruno participated with 13 other jurisdictions in San Mateo County in the countywide Grand Nexus Study, which analyzed the potential for local jurisdictions to adopt affordable housing impact fees. On October 27, 2015, the City Council received a

presentation describing the nexus study process, the legal requirements for adoption of impact fees, and the individual nexus studies that were prepared for each jurisdiction, tailored to local conditions and needs. The City Council directed staff to return with a report on San Bruno's draft Nexus Study and possible adoption of affordable housing impact fees.

On April 19, 2016, the City Council held a study session to review San Bruno's Residential Impact Fee Nexus Study for residential development projects and Commercial Linkage Fee Nexus Study for nonresidential development projects (together, the "Nexus Study"). The study session addressed the worsening affordable housing crisis since the Great Recession in 2009, and the severe constraints on the City's ability to address the crisis. Issues included soaring land costs, the dissolution of redevelopment agencies eliminating a significant revenues for affordable housing, cutbacks in federal and state funding for affordable housing, and the Palmer court decision. In addition, projected population and job growth is expected to place further pressure on housing affordability, creating a need for 660,000 new housing units in the San Francisco Bay Area by 2040, according to ABAG's Plan Bay Area. The study session reviewed a range of programs to address affordable housing needs, including a rent advisory policy and legalization of second units. The City Council indicated a continuing concern to address the need for affordable housing within San Bruno and directed staff to prepare a draft affordable housing ordinance that would enable the City to collect fees and/or promote the construction of affordable units in new development projects.

On August 16, 2016, the Planning Commission held a public hearing to review the draft affordable housing ordinance and impact fees. The Planning Commission recommended that the fees be set at a level high enough to encourage the construction of affordable units rather than paying the fees, but not so high that the fees might discourage developer investment. The Planning Commission adopted a resolution (Attachment 3) finding that the ordinance and impact fees are consistent with San Bruno's 2015 Housing Element, and recommending that the City Council adopt the ordinance and impact fees for residential and nonresidential development projects.

A number of Peninsula cities have already implemented housing impact fees, as shown in Table 1. Fee levels vary depending on land values, sale prices, rents and lease rates. The table shows the Peninsula cities that have adopted affordable housing impact fees. Cities closer to the center of Silicon Valley where housing prices and rents and commercial lease rates are significantly higher resulting in higher profitability, can charge higher fees than those further from the core area.

**Table 1. Affordable Housing Impact Fee Comparisons**

City	Date Adopted	Single Family	Condominium	Apartment	Office	Hotel	Retail
Cupertino	2015	\$15-\$17	\$20	\$25	\$20	\$10	\$10
Daly City	2014	\$14-\$18	\$22	\$25	N/A	N/A	N/A
East Palo Alto	2011	\$14-\$23	\$23-\$44	\$23	N/A	N/A	N/A

Menlo Park	2000	N/A	N/A	N/A	\$16	\$8	\$8
Mountain View	2015	N/A	N/A	\$15	\$25	\$2.50	\$2.50
Palo Alto	2002	\$95	\$50	\$50	\$35	\$30	\$20
Redwood City	2015	\$25	\$20	\$20	\$20	\$5	\$5
San Carlos	2010	\$24-44	\$21-\$42	\$24-\$43	N/A	N/A	N/A
Sunnyvale	2015	N/A	N/A	\$17	\$15	\$7.50	\$7.50

**DISCUSSION**

Currently, the BMR ordinance is the City’s tool for requiring affordable housing as part of new residential development projects. The proposed affordable housing ordinance, included in draft form in Attachment 1, would replace the BMR ordinance. The primary difference between the existing BMR ordinance and the proposed ordinance is that the proposed ordinance will allow the City to reestablish affordable housing requirements for rental housing development projects, which was invalidated by the Palmer court decision, and impose new affordable housing fees for commercial projects. The ordinance retains the BMR ordinance requirements for ownership residential development projects. A separate resolution (Attachment 2) will establish the specific fee amounts, how to calculate the fee, and what uses are exempt. The significant provisions of the proposed affordable housing ordinance are outlined below:

**General Requirements**

The proposed ordinance would impose affordable housing impact fees and rules for construction of affordable units, alternatives to comply with the ordinance, and the use of the fees, consistent with Housing Element and the Mitigation Fee Act. The ordinance will apply to residential ownership or rental developments of five (5) units or more, and all nonresidential developments throughout the City.

**Recommended Affordable Housing Impact Fees**

Staff recommends appropriate fee levels for each development type, based on the findings of the Nexus Study, which calculated a maximum justifiable fee level that would mitigate the entire impact of new development on the need for affordable housing and tested three lower impact fee scenarios to ensure the financial feasibility of new development. The recommended fees for residential developments are roughly equivalent to the City’s existing BMR ordinance’s in-lieu fees and are in line with comparable jurisdictions. The fees are intended to be high enough to encourage the construction of affordable units while still maintaining project feasibility. The ordinance provides for the establishment and adjustment from time to time of the affordable housing impact fees by resolution of the City Council. Staff recommends that the City adjust fee amounts each year consistent with an inflation index, such as the Engineering News Record (ENR), which is typically used for impact fees.

***Residential Impact Fees.*** While the Nexus Study justifies charging a fee on any new square footage, staff recommends a more conservative approach with a minimum

project size of five (5) or more residential units. This is a typical threshold, e.g., five of the seven cities that charge residential impact fees (see Table 1) set a threshold of five or more units. This also avoids burdening homeowners of two to four unit projects with additional costs. Staff recommends setting reasonable fees shown in the Table 2 below.

**Table 2. Recommended Residential Impact Fees**

Unit Type	Maximum Justified Fees	Recommended Reasonable Fees	Minimum Project Size
Single Family	\$27	\$25	5 or more net new units for residential projects
Condominium	\$51	\$20	
Apartment	\$56	\$20	

Developers of for-sale projects would be required to construct the required affordable units within the residential development, unless an alternative, such as payment of the residential impact fee, is approved. Rental developments would be required to pay the impact fee, unless an alternative, such as construction of affordable units onsite, is approved.

**Commercial Linkage Fees.** The commercial linkage fee would apply to all new commercial projects. Public uses such as hospitals and community facilities and quasi-public uses such as child care centers, community facilities, churches and schools would be exempted.

**Table 3. Recommended Commercial Linkage Fees**

Unit Type	Maximum Justified Fees	Recommended Reasonable Fees	Minimum Project Size
Office	\$196	\$5	All new commercial development
Retail	\$235	\$5	
Hotel	\$132	\$5	

The recommended linkage fees are considerably lower than the maximum justified fees identified in the Nexus Study because financial feasibility analysis determined that higher fees would decrease the viability of projects and inhibit new commercial development. The maximum justified fee is the amount that would generate sufficient funding to build all the units needed to mitigate the entire impact of new development on the need for affordable housing. In addition to the maximum justified fee, the Nexus Study studied effects of three lower fee scenarios on the feasibility of commercial projects. The Nexus Study demonstrated that charging the maximum fee would severely decrease financial feasibility and be a deterrent to new development. The analysis determined that a fee level of \$5 per square foot is the most that can be charged before a project becomes infeasible. The wide gap between the maximum feasible fee and the recommended financially feasible fee was found for all the jurisdictions that participated in the Grand Nexus Study. The recommended linkage fees are expected to have minimal effect on the viability of small commercial improvements.

It is intended that these fees be one of multiple tools or measures to address affordable housing needs in the community. The recommended fees are a starting point, which staff recommends should be reevaluated periodically. The Planning Commission discussed whether a higher linkage fees might be possible given the improved commercial real estate market. Staff believes that additional financial analysis is needed to ensure that a higher fee would maintain the viability of commercial development and to take into consideration other development fees the City is considering. In addition, the Nexus Study did not address tenant improvements that intensify commercial land resulting in a higher density of workers and potential impacts on the need for affordable housing. Therefore, staff has not proposed any fees to address this issue at this time. These fee adjustments could be analyzed during the overall Development Impact Fee Study that will be conducted this year, if the City Council wishes to explore them further.

**Mixed Use Projects:** Mixed residential/commercial projects would be subject to both the residential and commercial requirements in proportion to the square footage of each use in the project.

### **Affordable Unit Income Targeting**

The income levels and terms of affordability for affordable units are consistent with the requirements of the City's current BMR ordinance. Residential projects that are approved for construction of affordable units must provide a minimum of 15 percent of the total units in the residential project as affordable to very low, low or moderate income households.

- **For-Sale Residential Projects.** Six percent of total units must be for low income households and nine percent must be for low or moderate income households.
- **Rental Residential Projects.** Six percent of total units must be for very low income households and nine percent must be for very low or low income households.

For-sale affordable units must remain affordable for 45 years, and rental affordable units must remain affordable for 55 years. The term of affordability restarts with each transfer of the property.

### **Alternatives to Fee Payment**

The ordinance provides for alternatives methods of compliance with the fee requirements for each type of project, if approved by the City Council.

- **Rental Residential Projects.** Alternatives to payment of the residential impact fee for rental projects could include construction of onsite or off-site affordable housing, dedication of land, or other alternatives outlined in the ordinance.
- **For-sale Residential Projects.** Alternatives to construction of onsite affordable units for ownership projects could include, construction of affordable units off-site or payment of the residential impact fee, or other alternatives outlined in the ordinance.
- **Nonresidential Projects.** Alternatives to payment of the commercial linkage fee for nonresidential projects include construction of onsite or off-site affordable

housing, dedication of land, or other alternatives outlined in the ordinance.

### **Compliance Procedures**

Any project that involves the construction of affordable housing units must submit an affordable housing plan and enter into an affordable housing agreement, which must be considered by the decision-making authority for the project.

- **Affordable Housing Plan.** Developers must submit an affordable housing plan as part of the planning application demonstrating how they will meet the requirements of affordable housing ordinance, including unit types, sizes, amenities, and construction comparable to the market rate units.
- **Affordable Housing Agreement.** Developers must enter into an affordable housing agreement with the City to ensure compliance with the Affordable Housing Plan as a condition of approval of entitlements. The agreement must be executed and recorded prior to the issuance of a building permit.

### **Affordable Housing Fund**

The fees would be deposited in a separate fund and may be spent only for the purpose of developing workforce housing affordable to very low, low, and moderate income households. The City Council may adopt guidelines which prioritize how the money may be spent on renovating existing units, land purchase, or construction funding for new units. The fee must also meet the Mitigation Fee Act reporting requirements, including annual updates on collection and expenditure of fees, and identification of projects for funding. Every five years, specific findings must be made regarding unspent fees with estimates for future funding commitments.

### **Decision-Making Procedures**

The City Manager or her/his designee may approve the payment of a residential impact fees or commercial linkage fees. All other methods of compliance with the affordable housing ordinance, such as construction of affordable housing units must be approved by the City Council.

If the City Council adopts the affordable housing ordinance and resolution, the affordable housing impact fees would become effective 60 days following adoption, pursuant to Gov. Code § 66017. Projects that are deemed complete after the effective date of the ordinance would be subject to the ordinance requirements, and projects deemed complete prior to the effective date would not be subject to the ordinance.

### **FISCAL IMPACT**

The exact amount of the fiscal impact is unknown due to the fact that it is dependent on the amount and type of development projects that are brought forward. The proposed fee amounts could result in an apartment project of 100 units paying approximately \$2.4 million in residential impact fees, and a commercial project of 100,000 sq. ft. paying approximately \$500,000 in commercial linkage fees. Assuming full buildout of the Transit Corridors Plan area (not including potential development in other areas, such as

Bay Hill Office Park), the City could receive up to total of \$40 million in affordable housing impact fees over time.

#### **ALTERNATIVES**

1. Do not adopt the ordinance and provide direction to staff
2. Direct staff to revise the Affordable Housing Ordinance and impact fees and schedule for additional review and discussion at a future meeting

#### **RECOMMENDATION**

Waive First Reading and Adopt Ordinance Amending and Replacing Chapter 12.230, Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects

#### **DISTRIBUTION**

None

#### **ATTACHMENTS**

1. Draft Affordable Housing Ordinance
2. Resolution Establishing Affordable Housing Impact Fee Amounts
3. Planning Commission Resolution Recommending Adoption
4. Planning Commission Minutes (8/16/16)

RELATED DOCUMENTS AVAILABLE ON THE WEBSITE AT  
[WWW.SANBRUNO.CA.GOV](http://WWW.SANBRUNO.CA.GOV) AND PROVIDED UNDER SEPARATE COVER

1. Residential Impact Fee Nexus Study for San Bruno – October 2015
2. Commercial Linkage Fee Nexus Study for San Bruno – October 2015

#### **DATE PREPARED**

August 30, 2016

#### **REVIEWED BY**

\_\_\_\_\_ CM

ATTACHMENT 1

DRAFT - ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN BRUNO AMENDING AND REPLACING  
CHAPTER 12.230, THEREBY UPDATING AND ESTABLISHING AN AFFORDABLE  
HOUSING PROGRAM AND AFFORDABLE HOUSING IMPACT FEES, IN TITLE 12 (LAND  
USE) OF THE SAN BRUNO MUNICIPAL CODE**

**Section 1.** Chapter 12.230 of Title 12 of the City of San Bruno Municipal Code is hereby repealed in its entirety.

**Section 2.** City Council makes the following findings:

**A.** The provision of safe and stable housing for households at all income levels is essential for the public welfare of the city. Housing in San Bruno has become steadily more expensive and housing costs have gone up faster than incomes. Federal and state government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households. As a result, there is a severe shortage of adequate, affordable housing for extremely low, very low, lower, and moderate income households, as evidenced by the following findings in the City's 2015-2023 Housing Element:

1. Almost half of San Bruno's households are lower income (see Housing Element Figure 2.3-2).

2. Households of any size earning less than the median income cannot afford the average home purchase price or the average rents in San Bruno.

3. More than 90 percent of San Bruno renter households and two thirds of owner households earning under \$35,000 annually are overpaying for housing. Over half the households earning between \$35,000 and \$75,000 per year are overpaying as well. Without choices and availability of affordable housing in San Bruno, lower income people may choose to live elsewhere and commute to work. Or, lower income households may live in overcrowded homes, and have limited money to dedicate towards other necessities such as food, transportation and medical care.

**B.** As provided in the Housing Element of the General Plan, the City aims to meet the housing needs of the citizens of San Bruno, including the creation and retention of housing for lower income households and households with special needs, given the limitations imposed by current political, economic, and social conditions, and availability of State and federal funding.

1. Housing Element Goal 5 is to ensure the continued availability of affordable housing for very-low, low, and moderate income households, seniors, persons with disabilities, single-parent households, large families, and other special needs groups.

2. Housing Element Goal 2 is to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

3. Housing Element Goal 3 is to expand the variety of construction and financing techniques available to achieve new affordable housing and maintain it over time. Housing Element Program 3-J calls for the City to adopt an Affordable Housing Impact Fee, including an implementation action to participate in a countywide nexus study to estimate the increase in demand for affordable housing associated with new residential and nonresidential development and to determine permissible and reasonable impact fees for both residential and nonresidential development based on local conditions that will not discourage development.

## ATTACHMENT 1

**C.** The City adopted the Below Market Rate (BMR) Housing Ordinance establishing inclusionary housing requirements for new construction for for-sale and rental development projects in 2008. The 2009 Palmer vs the City of Los Angeles court decision invalidated inclusionary requirements for rental developments, but not for for-sale developments.

**D.** Because the City's first preference is for the actual construction of new affordable units to ensure that affordable housing is actually provided within residential projects, the City intends to retain the BMR requirements for "for-sale" units.

**E.** New residents of market rate housing purchase goods and utilize services in the community, increasing local employment and attracting employees, of whom a quantifiable number will have very low, low, or moderate incomes and cannot afford market-rate housing.

**F.** New housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land.

**G.** Because nonresidential development also attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential developments similarly increase the demand for and exacerbate the shortage of housing available for people at these income levels while also reducing the supply of land potentially available for housing development.

**H.** Based on the findings above and the findings from the Residential Impact Fee and Commercial Linkage Fee Nexus Studies prepared for San Bruno, dated October 2015, the City desires to further the public health, safety and welfare by requiring residential and nonresidential development projects in the City to help mitigate their impact on the need for affordable housing in the City.

**Section 3.** A replacement Chapter 12.230 (Affordable Housing Program) is hereby added to Title 12 (Land Use) of the San Bruno Municipal Code to achieve the purpose in Section 12.230.010 of this Chapter, based on the Findings in Section 2 of this Chapter, to read as follows:

### CHAPTER 12.230 AFFORDABLE HOUSING PROGRAM

Sections:

- 12.230.010 Purpose
- 12.230.020 Definitions
- 12.230.030 Affordable Housing Requirements
- 12.230.040 Affordable Housing Impact Fees
- 12.230.050 Exemptions
- 12.230.060 Alternatives
- 12.230.070 Compliance Procedures
- 12.230.080 Affordable Housing Unit Standards
- 12.230.090 Owner-Occupied Units
- 12.230.100 Rental Units
- 12.230.110 Administrative Relief
- 12.230.120 Affordable Housing Fund
- 12.230.130 Enforcement

## ATTACHMENT 1

### 12.230.010 Purpose

The purpose of this Chapter is to:

A. Encourage the development and availability of housing affordable to a broad range of Households with varying income levels within the City as mandated by State Law, California Government Code Sections 65580 et seq.

B. Promote Housing Element Goal 2 to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

C. Implement the Housing Element by creating a mechanism to provide benefits to the community from new development in the form of affordable housing, thereby, helping to meet the housing needs of all socioeconomic segments of the community as provided in the Housing Element.

D. Promote Housing Element Goal 5 to ensure the continued availability of affordable housing for very low, low, and moderate income households, seniors, and persons with disabilities, single-parent households, large families, and other special needs groups.

E. Implement Housing Element Program 3-J to adopt permissible and reasonable impact fees for both residential and nonresidential development based on impact fee nexus studies.

F. Implement Housing Element Program 5-A to support the Affordable Housing Ordinance (BMR Program, adopted in 2008) and to modify the BMR program as appropriate to maximize efforts to achieve affordable housing objectives in San Bruno.

G. Enhance the public welfare by imposing affordable housing impact fees for residential and nonresidential development projects whereby developers of residential and nonresidential development projects will help mitigate the impacts of their projects on the need for affordable housing by contributing to the supply of housing for households with very low, low, and moderate incomes.

### 12.230.020 Definitions

As used in this Chapter, the following terms shall have the following meanings:

A. "Affordable housing agreement" means a written agreement between the City and the developer as provided in Section 12.230.070 of this Chapter.

B. "Affordable housing fund" means a fund for the deposit of fees established under this Chapter as provided in Section 12.230.120 of this Chapter.

C. "Affordable housing impact fee" means the fee paid by developers of residential or nonresidential development projects to help mitigate the impacts that such developments have on the demand for affordable housing in the City and to support affordable housing development and operation.

D. "Affordable housing plan" means a plan required for any residential or nonresidential development project which includes the provision of affordable housing units that demonstrates how the project complies with Section 12.230.070 of this Chapter.

E. "Affordable housing unit" means a dwelling unit that shall be offered at an affordable rent or affordable ownership cost to very low, low and moderate income households.

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F. "Affordable ownership cost" means the sales price of a for-sale affordable unit resulting in projected average monthly housing payments, during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners' association dues, if any, and a reasonable allowance for utilities, property maintenance, and repairs, not exceeding the sales prices specified by Section 50052.5 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924.

G. "Affordable rent" means the total monthly housing expenses for a rental affordable unit not exceeding the rents specified by Section 50053 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924. As used in this Chapter, "affordable rent" shall include the total of monthly payments by the tenant for all of the following: (1) use and occupancy of the affordable unit and land and all facilities associated with the affordable unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas; (2) any additional separately charged fees or service charges assessed by the owner, other than security deposits; (3) an allowance for utilities paid by the tenant as established by the San Mateo County Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or affordable unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

H. "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits

I. "City" means the City of San Bruno.

J. "City Council" means the City Council of the City of San Bruno.

K. "City Manager" means the City Manager of the City or his or her designee.

L. "Commercial linkage fee" means a fee or charge imposed on commercial developers to pay for the development's impact on the need for affordable housing. The fee is based on projected household incomes of new employees that will work in newly created space.

M. "Decision-making body" means the City staff person or body authorized to approve or deny an application for a planning or building permit for a residential or nonresidential development project.

N. "Developer" means the person(s) or legal entity(ies), who also may be the property owner seeking real property development permits or approvals from the City or developing a particular project in the City.

O. "For-sale unit" means a residential dwelling unit that may be sold individually in conformance with the Subdivision Map Act. For-sale units also include units that are converted from rental units to for-sale units.

P. "Household" means one person living alone or two or more persons sharing residency in one dwelling unit.

Q. "Inclusionary unit" has the same meaning as affordable housing unit.

R. "Low income households" means households with incomes no greater than the maximum income for low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

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S. "Market-rate unit" means a new dwelling unit in a residential development project that is not an affordable unit.

T. "Median income" means the median income applicable to San Mateo County, as published annually by the City for each household size, based on median income data for San Mateo County published by the United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD).

U. "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

V. "Nonresidential development project" means an application for a planning permit or building permit that includes the new construction of gross square feet of nonresidential space or the conversion of a residential use to a nonresidential use.

W. "Planning permit" means any discretionary approval of a residential or nonresidential development project, including, but not limited to, a general or specific plan adoption or amendment, rezoning, tentative map, conditional use permit, variances, or design review.

X. "Public/Quasi-Public Use" means the San Bruno General Plan land use designation, which permits a variety of public and quasi-public uses, including: government offices, fire and police facilities, transit stations, and cemeteries.

Y. "Rental unit" means a dwelling unit that is intended to be offered for rent or lease and that cannot be sold individually in conformance with the Subdivision Map Act.

Z. "Residential impact fee" means a fee or charge imposed on residential development to pay for a development's impact on the need for affordable housing. The fee is based on the projected incomes of new employees associated with the new market rate developments.

AA. "Residential development project" means an application for a planning permit or building permit at one location to create one or more additional dwelling units, convert nonresidential uses to dwelling units, subdivide a parcel to create one or more separately transferable parcels intended for residential development, or implement a condominium conversion, including development constructed at one time and in phases. "One location" includes all adjacent parcels of land under common ownership or control, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the developer.

BB. "Very low income households" means households with incomes no greater than the maximum income for very low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

### **12.230.030 Affordable Housing Requirements**

A. For-sale residential development projects. All new for-sale residential development projects of five (5) or more units shall either include at least fifteen percent (15%) of the total units as affordable housing units restricted for occupancy by low and moderate

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income households, or, if approved by the City Manager and subject to final approval by the City Council, pay the impact fee required under Section 12.230.040 of this Chapter.

1. For purposes of this Chapter, the number of units in a residential development whose development includes the demolition or removal of existing residential units and the construction of new residential units shall be the difference between the new units constructed and the existing units demolished or removed.

2. Total units shall not include any units granted pursuant to density bonuses provided under state density bonus law.

3. For "for-sale" residential development projects, forty percent (40%) of the affordable housing units (or six percent (6%) of the total development) shall be restricted to occupancy by Low Income Households, and sixty percent (60%) of the affordable housing units (or nine percent (9%) of the total development) shall be restricted to occupancy by Moderate Income Households.

4. In determining the number of affordable housing units required, any decimal fraction of less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.

5. In determining the number of affordable housing units required for decimal fractions of less than 0.5, the Developer shall be required to pay the partial unit payment set forth in Subsection 12.230.040.C below.

**B.** Rental residential development projects. A residential impact fee is hereby imposed on all developers of rental residential development projects as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Manager. No application for a rezoning, tentative map, conditional use permit, design review, or building permit shall be approved, nor shall any such rental project be constructed or condominium conversion approved without compliance with this Chapter.

**C.** Nonresidential development projects. A Commercial Linkage Fee is hereby imposed on all developers of nonresidential development projects, as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Manager.

**D.** Mixed-use development projects. Mixed use developments must comply with the requirements for nonresidential developments in the nonresidential portion of the development and must comply with the requirements for residential developments for the residential portion of the development.

### **12.230.040 Affordable Housing Impact Fees**

**A.** Affordable Housing Impact Fees are hereby established for all residential and nonresidential development projects, including residential impact fees for residential development projects and Commercial Linkage Fees for nonresidential development projects. The amount of the affordable housing impact fees shall be established and adjusted from time to time by resolution of the City Council. The impact fees shall not exceed the cost of mitigating the impact of residential or nonresidential development projects on the need for affordable housing in the City.

1. Residential Impact Fees for Rental Residential Projects. As provided in Section 12.230.030.B, all rental residential projects of five (5) or more units shall pay a Residential Impact Fee, unless an alternative is proposed by the developer and approved by the City Manager and subject to final approval by the City Council.

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2. Commercial Linkage Fees. As provided in Section 12.230.030, all nonresidential development projects shall pay a Commercial Linkage Fee, unless an alternative is proposed by the developer and approved by the City Manager.

3. Residential Impact Fees for "For Sale Residential Projects." As provided in Section 12.230.030, and with the approval of the City Manager, for-sale residential projects may pay a Residential Impact Fee rather than provide onsite units.

**B.** Payment of the impact fees shall be due at the issuance of the building permit for the development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.

### 12.230.050 Exemptions

The requirements of this Chapter do not apply to:

**A.** Residential development projects of four (4) or fewer new housing units, the creation of four or fewer parcels, provided that no more than four dwelling units are allowed; or accessory dwellings created under Section 12.92.031 of the San Bruno Municipal Code.

**B.** Replacement construction that results in a net increase of four (4) or fewer new housing units.

**C.** Residential developments that already have more deed-restricted units that are affordable to very low, low and moderate income households than this Chapter requires, for the period required under this Chapter.

**D.** Residential or nonresidential development projects which fall within one or more of the following categories:

1. Residential or nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.

2. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the square footage and use of the building remains the same, and construction of the replacement building begins within one year of the damage's occurrence.

3. Residential or nonresidential development projects to the extent they have received a vested right to proceed without payment of Affordable Housing Impact Fees pursuant to state law, including those that are the subject of development agreements currently in effect with the City, if such development agreements were approved prior to the effective date of this Chapter and where such agreements expressly preclude the city from requiring payment of the Affordable Housing Impact Fee.

4. Residential or nonresidential development projects for which applications have been deemed complete prior to September 1, 2016.

5. Other uses that may be specified by resolution of the City Council.

### 12.230.060 Alternatives

**A.** Notwithstanding any contrary provisions of this Chapter, the City may determine that alternatives to the requirements in Section 12.230.030 of this Chapter as proposed by the developer in the affordable housing plan required by Section 12.230.070 of this Chapter, provided that the decision making body makes the findings in Section 12.230.070.E.

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**B.** For-sale residential projects. As an alternative to construction of affordable housing units on-site or payment of an Residential Impact Fee, if approved by the City Manager, developers of for-sale residential development projects may propose to mitigate affordable housing impacts of such housing through alternative means, including but not limited to:

1. Provision of affordable units off site.
2. Dedication of land to the City suitable for construction of affordable units.
3. Purchase of existing units for conversion to affordable units.
4. Acquisition and rehabilitation of affordable units.
5. Increase in the total number of affordable housing bedrooms.
6. Provision of greater level of affordability.
7. Construction of second dwelling units.

**C.** The City Council may approve alternatives to the payment of Residential Impact Fees where the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting its state housing requirements.

**D.** Rental residential development projects. As an alternative to payment of housing impact fees, developers of rental residential development projects may propose to help mitigate the affordable housing impacts of such developments through an alternative mitigation program, including but not limited to:

1. Construction of affordable housing units on site or through an alternative mitigation program, such as the provision of off-site affordable units, donation of land for the construction of affordable units, or purchase of existing units for conversion to affordable units.

2. For rental residential developments proposing this alternative, six percent (6%) of the total development shall be restricted to occupancy by very low income households, and nine percent (9%) of the total development shall be restricted to occupancy by low and moderate income households.

3. If a developer proposes to provide affordable rental units, then, to ensure compliance with the Costa-Hawkins Rental Housing Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve such a proposal if, as required by Civil Code Sections 1954.52(b) and 1954.53(a)(2), the developer agrees in a contract with the City to limit rents in accordance with Section 12.260.070 of this Chapter in consideration for a direct financial contribution from the City or a form of assistance specified in the State's Density Bonus Law (Chapter 4.3, commencing with Section 65915, of Division 1 of Title 7 of the Government Code). The developer may request that the City waive the Residential Impact Fee as a direct financial contribution to the rental residential development project.

**E.** Nonresidential development projects. As an alternative to payment of the Commercial Linkage Fees, developers of nonresidential development projects may propose to mitigate the affordable housing impacts of such development through the construction of affordable housing units on site or through an alternative mitigation program, as provided in subsections B or D of this section.

1. The City Council may adopt by resolution the percentage of affordable units needed to help mitigate the impact of nonresidential development projects on the need for affordable housing.

**F.** Any affordable rental or for-sale units proposed as an alternative shall be subject to the requirements described in Section 12.230.080 of this Chapter.

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### 12.230.070 Compliance Procedures

**A.** General. Approval of an Affordable Housing Plan and execution, recordation and implementation of an Affordable Housing Agreement shall be conditions of any approval of a residential or nonresidential development project, which includes the provision of affordable housing units as provided in Section 12.230.030 or 12.230.060. No Affordable Housing Plan is required if the developer proposes only to pay the Residential Impact Fee or commercial linkage fee.

**B.** Affordable Housing Plan. No application for approval of a residential or nonresidential development project which includes the provision of affordable housing units may be deemed complete until an Affordable Housing Plan containing all the elements identified below is submitted to the Community Development Department. The Affordable Housing Plan shall include:

1. The number, location, number of bedrooms and size of the proposed market rate and affordable housing units and the basis for calculating the number of affordable housing units;

2. The City may approve an increase in the number of units per acre in a residential development if the increase is consistent with state density bonus law per Section 65915 of the State Government Code. If the applicant is proposing to apply for a density bonus, the Affordable Housing Plan must include an analysis of the density bonus request;

3. A site plan depicting the proposed location of the initial affordable housing units;

4. A floor plan depicting the proposed location of the initial affordable housing units within a residential development;

5. The income levels to which each affordable housing unit will be made affordable;

6. The mechanisms that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and City's option to purchase and other documents;

7. For a phased residential development, a phasing plan that provides for the timely development of affordable housing units in each proposed phase of development;

8. The conceptual plan for initial sales or rental by Developer of the affordable housing units; and

9. Any proposed Alternative as provided in Section 12.230.060 along with information necessary to support the findings required in Section 12.230.060.B. for approval of such alternatives.

10. The City Manager may request additional information as reasonably needed to assist with evaluation of the Affordable Housing Plan under the standards of this Chapter.

**C.** The Affordable Housing Plan shall be processed concurrently with all other permits required for the residential or nonresidential development project. Before approving the Affordable Housing Plan, the City Council shall find that the Affordable Housing Plan conforms to this Chapter. A condition shall be attached to the first approval of any residential or nonresidential development project to require recordation of an affordable housing agreement,

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as described in this subsection, prior to the approval of any final or building permit for the residential or nonresidential development project.

**D.** Findings - on-site affordable units. The City Council may approve or conditionally approve an affordable housing plan that proposes on-site construction of affordable units if the City Council determines, based on substantial evidence, that:

1. The proposed affordable units comply with the standards in Section 12.230.080, including without limitation compliance with Section 12.230.080.B requiring that the affordable units be made available for occupancy concurrently with the market-rate units; and

2. The affordable units will help mitigate the impact of the project on the need for affordable housing.

**E.** Findings - off-site affordable units. If a developer proposes off-site affordable housing units or any other alternative in the Affordable Housing Plan, the City Manager may approve, conditionally approve or reject any alternative proposed by a developer subject to final approval by the City Council in its discretion. Any approval or conditional approval shall be based on a finding that:

1. Financing or a viable financing plan, which may include public funding sources, is in place for the proposed affordable housing units;

2. The proposed location is suitable for the proposed affordable housing, is consistent with the Housing Element, General Plan, and Zoning Ordinance, and will not tend to cause residential segregation; and

3. The net cost of the alternative is at least equal to the net cost to provide affordable housing units;

4. The alternative does not detract from the City's program to meet its housing goals and obligations under California Housing Law (Government Code Section 65580 and following) and California Community Redevelopment Law (Health and Safety Code Section 33000 and following).

**F.** Affordable Housing Agreement. To ensure compliance with the approved Affordable Housing Plan, an affordable housing agreement acceptable to the Community Development Director or designee shall be recorded against the residential or nonresidential development project prior to approval of any final, or issuance of any building permit, whichever occurs first. The affordable housing agreement shall specify the number, type, location, size, phasing, and terms of affordability of all affordable units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved Affordable Housing Plan, as determined by the City Manager or designee, and subject to final approval by the City Council.

**G.** The City Manager may adopt affordable housing guidelines consistent with this Chapter and the Housing Element for the purpose of carrying out the administration of this Chapter and may update those guidelines periodically as required.

### **12.230.080 Affordable Housing Unit Standards**

**A.** All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be comparable to the overall quality of construction to market-rate units in the same housing development as follows:

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1. The exterior appearance of the affordable units shall be compatible with that of market-rate units.

2. Interior finishes and amenities may not differ from those provided in the base model market rate units.

3. The number of bedrooms in the affordable units shall be comparable to the average number of bedrooms in the market-rate units, and the affordable units shall be reasonably dispersed within the residential development, with unit locations comparable to those of the market-rate units, subject to review and approval by the Community Development Director.

4. The affordable units shall have the same amenities as the market rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development, provided at an affordable rent as defined in Section 12.230.010 or at affordable ownership cost as defined in Section 12.230.010.

**B.** Affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be made available for occupancy concurrently with the market-rate units. For the purposes of this subsection, "concurrently" means that the City may not issue building permits for more percent (50%) of the market-rate units until it has issued building permits for all of the affordable units, and the City may not approve any final inspections or certificates of occupancy for more than fifty percent (50%) of the market-rate units until it has issued final inspections or certificates of occupancy for all of the affordable units.

**C.** All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be subject to a resale restriction, deed of trust, and/ or regulatory agreement recorded against the property for execution by the City Manager, in a form approved by the City Attorney, to ensure the continued affordability of the affordable units.

1. Affordable housing units produced under this Chapter shall be legally restricted to occupancy by Households of the income levels for which the units were designated for a period of not less than fifty-five (55) years for rental units and forty-five (45) years for owner-occupied units.

2. To the extent permitted by state and federal law, preferences will be given to those Households where at least one member in the Household lives or works in San Bruno or works for a school district serving the residents living in the City, except for those deemed ineligible due to conflict of interest noted below.

3. Conflict of Interest. The following individuals are ineligible to purchase or rent certain affordable housing units: (i) Elected or appointed City officials (including their spouse and dependents) who participated in the approval process for a project that included the affordable housing units (ii) the project applicant and its officers and employees (and their spouse and dependents), and (iii) the project owner and its officers and employees (and their spouse and dependents).

4. Any household that occupies an affordable unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party for a limited period of time due to household hardship, as determined by the City.

5. No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the community development director or designee. The Community Development Director may from time to time adopt guidelines for determining household income and affordable housing cost, determining buyer eligibility, monitoring, and relevant administrative provisions.

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6. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.

### **12.230.090 Affordable Owner-Occupied Units**

**A.** Sale to Eligible Households. Owner-occupied units will be offered to eligible households at a sales price set so that the eligible household will pay an affordable ownership cost. The developer shall certify each prospective purchaser's Income to the City or City's designee and obtain approval of the household prior to close of escrow. The developer must obtain and review documents that demonstrate the prospective owner's total income and assets and submit such information on a form approved by the City.

**B.** Initial Sales Price. The initial sales price of the affordable housing unit shall be set by the City so that the eligible household will pay an affordable ownership Cost. The City shall respond to a written request by developer and provide developer with a good-faith estimate of the initial sales price during pre-development.

**C.** Deed Restrictions. Deed restrictions provided by the City, recorded against title to the affordable housing unit, and secured by a deed of trust shall be required as condition of sale for all owner-occupied affordable housing units and will include, but are not limited to, the City's or its designee's option to purchase, resale restrictions, occupancy requirements, payment of penalty for any default, and procedures and policies regarding changes in title. Deed restrictions must be approved by the City Attorney prior to close of escrow.

**D.** Administration. The Developer or subsequent seller shall pay all administrative costs associated with the sale of the for sale affordable housing units, including for buyer review and qualification, and the review and processing of documents associated with the transaction.

### **12.230.100 Affordable Rental Units**

**A.** Non-Discrimination. When selecting tenants, the owners of Affordable housing units shall comply with all fair-housing laws, rules, regulations, and guidelines. The owner shall apply the same rental terms and conditions to tenants of affordable housing units as are applied to all other tenants, except as required to comply with this Chapter or with other applicable government programs.

**B.** Annual Report. The owner shall submit an annual report summarizing the occupancy of each affordable housing unit for the year, demonstrating the income-eligibility of the tenant. The City Manager may require additional information to confirm household income and rental price of the unit if he or she deems necessary. The City Council may establish and charge the owner or operator of the rental residential development an annual fee to cover the costs of this monitoring. The fee will be added to the Master Fee Schedule by City Council resolution.

**C.** Periodic Audit. The City shall have the right to periodically audit the information supplied to the City for the annual report if deemed necessary to ensure compliance with this Chapter. In addition, owners of affordable housing units shall cooperate with any audits conducted by the City, State agencies, Federal agencies, or their designees.

**D.** Change in Income. If, after moving into an affordable housing unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 120 percent of the income limit. Once the tenant's income exceeds 120 percent of the income limit, the tenant shall be given one year's

## ATTACHMENT 1

notice to vacate the unit, or the next available market rate unit in the residential development shall be offered as an affordable housing unit. The owners of the residential development are responsible for notifying the City of such changes in income and documenting the process by which the existing tenant will be removed or the next available unit shall be offered as an affordable housing unit.

### **12.230.110 Administrative Relief**

**A.** As part of an application for the first approval of a residential or nonresidential development project, a developer may request that the requirements of this Chapter be waived or modified by the City Council, based upon a showing that applying the requirements of this Chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result, or because there is no reasonable relationship between the impact of the development and the need for affordable housing. concurrently

1. Any request for a waiver or modification shall be submitted with the project application. The developer shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

2. Any request for a waiver or modification based on this Section shall be reviewed and considered at the same time as the project application. The City Council may from time to time establish by resolution a processing fee for review of any request for a waiver or modification.

**B.** The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and the evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this Section.

### **12.230.120 Affordable Housing Fund**

**A.** There is hereby established in the City of San Bruno a separate "Affordable Housing Fund," pursuant to Section 66006 of the California Government Code. All Affordable Housing Impact Fees or other funds collected under this Chapter shall be deposited into the City's Affordable Housing Fund.

**B.** The monies in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide housing affordable to extremely low income, very low income, lower income, and moderate income households in the City, consistent with the goals and policies contained in the City's Housing Element and the purposes for which the fees were collected, and for administration and compliance monitoring of the affordable housing program.

**C.** The City Council may, from time to time, adopt guidelines for expenditure of monies in the affordable housing fund.

### **12.230.130 Enforcement**

**A.** Payment of the Affordable Housing Impact Fee is the obligation of the developer for a residential or nonresidential development project. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.

**ATTACHMENT 1**

**B.** The City Attorney shall be authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.

**C.** Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any developer or owner from the requirements of this Chapter. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Chapter have been satisfied.

**D.** The remedies provided for in this Section shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

**Section 4.** Adoption of this ordinance is found to be categorically exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures CEQA Guidelines Section 15061(b)(3)).

**Section 5.** If any section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 6.** The City Clerk shall publish this ordinance in accordance with applicable law.

**Section 7.** Effective date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in the San Mateo Daily Journal, a newspaper of general circulation published and printed in the County of San Mateo and circulated in the City of San Bruno.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

---o0o---

**ATTACHMENT 1**

I hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was introduced on \_\_\_\_\_, and adopted at a regular meeting of the San Bruno City Council on \_\_\_\_\_, by the following vote:

AYES: COUNCILMEMBERS: \_\_\_\_\_

NOES: COUNCILMEMBERS: \_\_\_\_\_

ABSENT: COUNCILMEMBERS: \_\_\_\_\_

City Clerk: \_\_\_\_\_

ATTACHMENT 2

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO  
ESTABLISHING AFFORDABLE HOUSING IMPACT FEES FOR RESIDENTIAL AND  
NONRESIDENTIAL DEVELOPMENT PROJECTS AND ESTABLISHING A  
STANDARDIZED LIST OF USES AND EXEMPTIONS WITH RESPECT TO THE  
PAYMENT OF NONRESIDENTIAL HOUSING IMPACT FEES**

**WHEREAS**, on April 14, 2015 the City Council of the City of San Bruno adopted its 2015-2023 Housing Element which contemplates, among other things, an ordinance to adopt affordable housing impact fees as a mechanism to increase the supply of affordable housing in the City, pursuant to Housing Element Programs 3-J and 5-J;

**WHEREAS**, to implement the affordable housing goals, policies and programs of the City's 2015-2023 Housing Element, the City Council has considered and introduced on this same date an affordable housing ordinance that, among other things, authorizes the imposition of affordable housing impact fees for certain residential and nonresidential development projects to mitigate the impact of such projects on the need for affordable housing in the City (the "Affordable Housing Ordinance");

**WHEREAS**, to ensure that future development projects mitigate their impact on the need for affordable housing in San Bruno, and to ensure that any adopted housing impact fees do not exceed the actual affordable housing impacts attributable to the development projects to which the fees relate, the City agreed to participate in the preparation of a nexus study through the countywide 21 Elements collaboration project;

**WHEREAS**, the City has received and considered reports from Strategic Economics and Vernazza Wolfe Associates, Inc. dated October 2015 entitled "Residential Impact Fee Nexus Study" and "Commercial Linkage Fee Nexus Study" (together, the "Nexus Study");

**WHEREAS**, the Nexus Study uses widely applied, appropriate methodology to determine the maximum amount needed to fully mitigate the need for affordable housing created by residential and nonresidential development;

**WHEREAS**, to ensure that development projects remain economically feasible, the recommended housing impact fees as shown in the attached Exhibits A and B do not exceed the justified fees needed to mitigate the actual affordable housing impacts attributable to the development projects to which the fees relate, as determined by the Nexus Study;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution affordable housing impact fees for residential and nonresidential development, and the City Council desires to do so;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution a standardized list of specific uses that shall be exempt from the payment of housing impact fees, and the City Council desires to do so;

## ATTACHMENT 2

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution the percentage of affordable units needed to fully mitigate the impact of residential or nonresidential development projects on the need for affordable housing, and the City Council desires to do so;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution a fee for processing applications for waivers from or modifications to the housing impact fees, and the City Council desires to do so;

**WHEREAS**, at least ten days prior to the date this resolution is being heard, data was made available to the public indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including general fund revenues, in accordance with Government Code Section 66019;

**WHEREAS**, at least fourteen days prior to the date this resolution is being heard, notice was provided to any persons or organizations who had requested notice, in accordance with Government Code Section 66019;

**WHEREAS**, notice of the hearing on the proposed fee was published twice in the manner set forth in Government Code Section 6062a as required by Government Code Sections 66004 and 66018; and

**WHEREAS**, the City Council has reviewed the information contained in this Resolution and the accompanying staff report and any attachments at a meeting held on September 13, 2016.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of San Bruno as follows:

1. The foregoing recitals are true and correct and incorporated into this Resolution by this reference.
2. The findings of the Nexus Study have been considered and are hereby incorporated into this Resolution by this reference.
3. The facts and substantial evidence in the record establish that there is a reasonable relationship between the need for affordable housing and the impacts of the development described in the Nexus Study for which the corresponding fee is charged, and that there is also a reasonable relationship between the use of the affordable housing impact fee and the type of development for which the fee is charged, as is described in more detail in the Nexus Study.
4. The Nexus Study sets forth cost estimates, in 2015 dollars, that are reasonable for constructing affordable housing, and the fees expected to be generated by new development will not exceed these costs.

**ATTACHMENT 2**

5. The City Council hereby adopts those affordable housing impact fees for residential development projects shown on Exhibit "A", attached hereto and incorporated by reference herein.

6. The City Council hereby adopts those affordable housing impact fees for nonresidential development projects shown on Exhibit "B", attached hereto and incorporated by reference herein.

7. All housing impact fees collected shall be deposited into the City's Affordable Housing Fund to be used to increase and preserve the supply of housing affordable to households of extremely low, very low, low, and moderate incomes (including necessary administrative costs).

8. The City Council hereby adopts the "Land Use Exemptions" set forth in Exhibit "C", attached hereto and incorporated by reference herein.

9. The City Council may review affordable housing impact fees from time to time. For any annual period during which the City Council does not review the housing impact fee, fee amounts shall be adjusted once by the Community Development Director based on the percentage increase in the Engineering News-Record Construction Cost Index for San Francisco, California.

10. The City Council hereby determines that the following percentages of affordable units will mitigate the impacts of residential development on the need for affordable housing:

<b>Required Affordable Units per Residential Project*</b>			
	Single Family	Condominium	Apartment
<b>Very Low Income</b>	-	-	6%
<b>Low Income</b>	6%	6%	9%
<b>Moderate Income</b>	9%	9%	-
<b>TOTAL</b>	15%	15%	15%

\*Definitions of project types and affordability categories are contained in the Nexus Study.

11. The City Council further determines that the following number of affordable units will mitigate the impacts of nonresidential development on the need for affordable housing:

<b>Required Affordable Units per 100,000 sf in a Nonresidential Project*</b>			
	Hotel	Retail, etc.	Office, R&D, Medical
<b>Very Low Income</b>	1	1	1
<b>Low Income</b>	1	1	1
<b>Moderate Income</b>	1	1	1
<b>TOTAL</b>	3	3	3

**ATTACHMENT 2**

\*Definitions of project types and affordability categories are contained in the Nexus Study.

12. The City Council hereby adopts a fee for processing applications for waivers from or modifications as shown on Exhibit "D", attached hereto and incorporated by reference herein.

13. The City Council finds that all of the housing impact fees adopted pursuant to this Resolution do not exceed the actual affordable housing impacts of the development projects to which those housing impact fees relate, as further set forth in the Nexus Study.

14. Adoption of this Resolution is exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this resolution contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

15. This Resolution shall take effect on MMM DD, 2016, but only if the Affordable Housing Ordinance is adopted and effective prior to that date.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the City Council of the City of San Bruno, at a regular meeting of said City Council held on \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of San Bruno

ATTEST: \_\_\_\_\_  
City Clerk of the City of San Bruno

ATTACHMENT 2

EXHIBIT "A"

**Housing Impact Fees for Residential Development Projects**

\*Residential impact fees for residential projects shall be calculated using the net new square footage of Residential Floor Area for the dwelling unit to which the housing impact fee relates.

As used in the Nexus Study, "Residential Floor Area" for Single-Family Detached Homes, Townhomes, Duplexes, and Triplexes includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking.

As used in the Nexus Study, "Residential Floor Area" for Apartments and Condominiums includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking, elevators, stairwells or stairs between floors, hallways, and between-unit circulation.

Fees shall be paid that are in effect at the time of issuance of the building permit for the residential development, based on the effective rate at the time of building permit issuance.

<b>Type of Residential Unit</b>	<b>Fee per Square Foot of Net New Residential Floor Area</b>
Single-Family Detached Home	<b>\$25.00</b>
Apartments and Condominiums	<b>\$20.00</b>

ATTACHMENT 2

EXHIBIT "B"

**Commercial Linkage Fees for Nonresidential Development Projects**

\*All commercial linkage fees for nonresidential projects, including new construction and conversion of a residential use to a nonresidential use shall be calculated using the gross floor area of net new nonresidential space, excluding structured parking.

<b>Nonresidential Use</b>	<b>Fee per Square Foot of Net New Gross Floor Area</b>
Hotel	<b>\$5.00</b>
Retail, Restaurants and Services	<b>\$5.00</b>
Office, Medical Office and Research and Development Uses	<b>\$5.00</b>

## ATTACHMENT 2

### EXHIBIT "C"

#### LAND USE EXEMPTIONS

In accordance with Section 12.230.050 of the Affordable Housing Ordinance, the following specific nonresidential uses are exempt from the payment of the housing impact fee:

1. Public Uses and Quasi-Public Uses, as defined in Section 12.230.020 of the Affordable Housing Ordinance, including, but not limited to, public schools, parks, playgrounds, hospitals, and administrative and service facilities;
2. Open Space Uses, as defined by Section 12.96.170 of the San Bruno Zoning Code, including, but not limited to, public and private parks, schools and cemeteries;
3. Child Care Centers, including Family Child Care Homes;
4. Recreational facilities for public use and enjoyment within commercial or industrial developments;
5. Housing for the elderly, nursing homes, rest homes, and residential care facilities, as defined by Section 12.80 of the San Bruno Zoning Code; and
6. Public and private schools.

**ATTACHMENT 2**

**EXHIBIT "D"**

**FEE FOR WAIVERS AND MODIFICATIONS**

Waivers and Modifications of Requirements of Affordable Housing Ordinance:

Initial Deposit of \$1,000

To be charged on a cost recovery basis, where the staff charges their time and other costs against the initial deposit, recovering the actual cost of project review.

ATTACHMENT 3

RESOLUTION NO. 2016-10

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN BRUNO  
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN AFFORDABLE HOUSING  
ORDINANCE AND HOUSING IMPACT FEES FOR RESIDENTIAL AND  
NONRESIDENTIAL DEVELOPMENT PROJECTS**

**WHEREAS**, on April 14, 2015 the Planning Commission of the City of San Bruno adopted its 2015-2023 Housing Element which contemplates, among other things, an ordinance to provide a mechanism to increase the supply of affordable housing in the City pursuant to Housing Element Programs 3-J and 5-J;

**WHEREAS**, high land costs, the dissolution of the redevelopment agencies, cutbacks in federal and state funding for affordable housing and court cases that restrict the ability of cities to require affordable housing in new development have resulted in fewer people being able to afford to either live or continue to live in San Bruno and severely constrained the City's ability to address the City's affordable housing needs through its existing Below Market Rate (BMR) Housing ordinance, adopted in 2008;

**WHEREAS**, to ensure that future development projects mitigate their impact on the need for affordable housing in San Bruno, and to ensure that any adopted housing impact fees do not exceed the actual affordable housing impacts attributable to the development projects to which the fees relate, the City participated in the preparation of a nexus study through the San Mateo County-wide 21 Elements collaboration project;

**WHEREAS**, the City has received and considered reports from Strategic Economics and Vernazza Wolfe Associates, Inc. dated October 2015 entitled "Residential Impact Fee Nexus Study" and "Commercial Linkage Fee Nexus Study" (together, the "Nexus Study");

**WHEREAS**, on April 19, 2016, the City Council held a Study Session to review the draft Nexus Study reports and directed City staff to prepare an affordable housing ordinance (the "Affordable Housing Ordinance") to replace the existing BMR ordinance and to propose reasonable impact fees for residential and nonresidential development;

**WHEREAS**, the Affordable Housing Ordinance would authorize the City Council to adopt by resolution housing impact fees for residential and nonresidential development projects to help mitigate the impact of such projects on the need for affordable housing in the City, a list of uses that shall be exempt from the payment of affordable housing impact fees, the percentage of affordable units needed to fully mitigate the impact of residential or nonresidential development projects on the need for affordable housing, and a fee for processing applications for waivers from or modifications to the housing impact fees;

**WHEREAS**, the adoption of the Affordable Housing Ordinance and impact fees is not a project under the California Environmental Quality Act (CEQA) because it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that impact fees contain no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)); and

**WHEREAS**, on August 16, 2016, the Planning Commission held a duly noticed public hearing to consider the draft Affordable Housing Ordinance and affordable housing impact fees, the accompanying staff report and attachments, to take public testimony, and to make a recommendation on this matter to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the City of San Bruno as follows:

1. The Planning Commission has reviewed and considered the findings of the Residential Impact Fee Nexus Study, Commercial Linkage Fee Nexus Study, the proposed Affordable Housing Ordinance, and the impact fees for residential and nonresidential projects.
2. The Planning Commission determined that the Affordable Housing Ordinance and impact fees are consistent with the City of San Bruno's 2015 Housing Element of the General Plan.
3. The Planning Commission recommends that the City Council adopt the Affordable Housing Ordinance subject to minor changes to effectuate the intent of the ordinance and the Housing Element, and appropriate affordable housing impact fees for residential and nonresidential development projects, shown in Exhibit 1.
4. The Planning Commission recommends that the City Council repeal the existing Below Market Rate Housing Ordinance upon adoption of this Affordable Housing Ordinance.
5. The Planning Commission directs the Secretary of the City of San Bruno Planning Commission to forward to the City Council a certified copy of this resolution together with an attested copy.

8/18/16

Dated:

Mary Lou Johnson  
Planning Commission Chair

**ATTEST:**

David Woltering  
Planning Commission Secretary

**APPROVED AS TO FORM:**

Maura Jaffer  
City Attorney

I, David Woltering, Planning Commission Secretary, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the Planning Commission of the City of San Bruno on this 16<sup>th</sup> day of August 2016, by the following vote:

AYES: Mary Lou Johnson, Perry Peterson, Joe Sammut, Sujendra Mishra

NOES: None

ABSENT: Rick Biasotti, Marie Kayal, Kevin Chase

## EXHIBIT 1

### Recommended Affordable Housing Impact Fees

The Planning Commission recommends the affordable housing impact fees shown in the table below as appropriate fee levels for consideration by the City Council.

Development Type	Recommended Fees (per square foot)	Minimum Project Size
Single Family	\$25	5 or more net new units for residential projects
Condominium	\$20	
Apartment	\$20	
Office	\$5	All new commercial development
Retail	\$5	
Hotel	\$5	

ATTACHMENT 4

*"The City With a Heart"*

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Rick Biasotti, *Chair*  
Marie Kayal, *Vice Chair*  
Kevin Chase  
Mary Lou Johnson  
Sujendra Mishra  
Perry Petersen  
Joe Sammut

**DRAFT MINUTES  
PLANNING COMMISSION MEETING**

**August 16, 2016**

**7:00 p.m.**

**Meeting location: Senior Center, 1555 Crystal Springs Road, San Bruno**

**CALL TO ORDER at 7:06 pm.**

**ROLL CALL**

	<u>Present</u>	<u>Absent</u>
Chair Biasotti		X
Vice Chair Kayal		X
Commissioner Chase	X arrived 7:15	
Commissioner Johnson	X	
Commissioner Mishra	X	
Commissioner Petersen	X	
Commissioner Sammut	X	

**STAFF PRESENT:**

Planning Division:

Community Development Director: David Woltering  
Senior Planner: Michael Smith  
Long Range Planning Manager: Mark Sullivan  
Contract Assistant Planner: Matt Jones

**ROLL CALL**

**PLEDGE OF ALLEGIANCE:** Miriam Schalit

- 1. APPROVAL OF MINUTES – None**
- 2. COMMUNICATION – Introduced new Associate Planner Megan Wooley-Ousdahl, AICP.**

3. PUBLIC COMMENT – None

4. ANNOUNCEMENT OF CONFLICT OF INTEREST – None

5. PUBLIC HEARINGS:

**D. Affordable Housing Ordinance and Impact Fees (City-wide)**

Receive report, provide feedback to staff and take public testimony on Residential Impact Fee and Commercial Linkage Fee Nexus Studies demonstrating the impact of new housing or jobs on the need for affordable housing in San Bruno and proposing permissible and reasonable fee levels, and make a recommendation to the City Council regarding adoption of an affordable housing ordinance to replace Chapter 12.230 of the San Bruno Municipal Code and impact fees.

*Long Range Planning Manager Sullivan:* Presented Staff Report.

Questions for Staff

*Commissioner Mishra:* Concerned that if the intent of ordinance is to build more affordable housing, the housing impact fee shouldn't be on the lower end of the range, it should be as high as the market will allow so that developers would build housing. Creating "zones" of low income housing should be avoided.

*Long Range Planning Manager Sullivan:* The Nexus study calculated the maximum justifiable fee. A project must be economically feasible for a developer to proceed. The fee should be enough to help meet the need but not too much to discourage development in the City.

*Community Development Direct Woltering.* The City can require construction of affordable units in for-sale housing developments. The intent is to include and scatter affordable units, not cluster in one project, in one area. The challenge is in rental housing developments, since the Palmer court decision invalidated the City's current affordable housing requirements for rental housing. The recommended fee is initially set a little lower. The intent is to reevaluate the fees during the development impact fee study later this year, which will study potential impact fees needed for other purposes, such as traffic.

*Commissioner Johnson:* Asked staff to address the pro and cons of having higher impact fees.

*Long Range Planning Manager Sullivan:* Projects become economically infeasible as the fee is too high and could potentially deter development.

*Commissioner Petersen:* Asked if the report considers what the effects of the recommended fees are on the City, by comparison to other nearby cities. He would support lower impact fees, because they would be passed on to the consumer, and consider increasing the fee in the future. He is concerned that having higher impact fees would drive away developers, at which point it would be difficult to get them back.

*Commissioner Johnson:* Supports Commissioner Petersen's comments, because when a fees is raised, someone absorbs it in the end – typically the consumer. Commissioner Johnson stated

that Commissioner Chase was not feeling well and left the meeting early. She read a note from Commissioner Chase stating that he is in support of recommending to the City Council adoption of the ordinance and recommended fees.

*Director Woltering:* The next steps would be for the City Council to receive the Commission's recommendation on adoption of this program and fees.

*Commissioner Petersen:* Developers are not opposed to impact fees, but also they research to see if the fees are reasonable.

*Long Range Planning Manager Sullivan:* The fees being proposed are roughly equivalent to the BMR fees already established. The commercial fee proposed at \$5 per square foot is at the low end of the range for the area.

Public Comment - None

### **Motion to adopt resolution 2016-10 to forward to the City Council**

**Commissioners Petersen/Mishra**

**Roll Call Vote: 5-0**

AYES:	Commissioners Sammut, Johnson, Mishra, and Petersen
NOES:	None
ABSTAIN:	None

\*

## **6. DISCUSSION**

### **A. CITY STAFF DISCUSSION:**

Director Woltering: Staff is requesting volunteers for the September ARC meeting – Commissioners Chase, Johnson, and Biasotti identified.

### **B. PLANNING COMMISSION DISCUSSION:**

*Commissioner Petersen:* Asked for a status of The Plaza at 406-418 San Mateo Avenue. Will there be a provision in the permit for setting benchmarks at neighboring properties to monitor the elevations.

Director Woltering: Staff is working with the applicant's representative for issuance of the Shoring and De-watering permit. Staff anticipates issuing that permit by the end of the month. Staff is working on a traffic control plan and pedestrian safety around that site. There will be benchmarks established on adjoining properties.

## **8. ADJOURNMENT**

Meeting was adjourned at 9:43 pm



**City Council Agenda Item  
Staff Report**

CITY OF SAN BRUNO

**DATE:** November 9, 2016

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

**FROM:** Jimmy Tan, Public Services Director/City Engineer  
David Woltering, Community Development Director

**SUBJECT:** Adopt a Resolution Authorizing the City Manager to Submit a One Bay Area Grant (OBAG2) Bicycle/Pedestrian Improvement Program Application to City/County Association of Governments for San Mateo County for the Huntington Transit Corridor Bicycle/Pedestrian and Related Improvements Project

**BACKGROUND:**

Improving and developing new and existing pedestrian and bicycle networks are major components of the City of San Bruno's Capital Improvement Program (CIP), General Plan, Transit Corridors Plan, and the San Bruno Walk 'n Bike Plan. With the support of the City's Bicycle and Pedestrian Advisory Committee (BPAC) and the recently-adopted Walk 'n Bike Plan, the City is working to establish a bicycle and pedestrian network that will promote safety, connectivity, efficiency and convenience for these active transportation modes, as well as reduce vehicle trips in the Transit Corridors area of the City.

The goal of the OBAG2 (One Bay Area Grants – 2<sup>nd</sup> round) funding is to support local projects that promote active transportation as well as other projects like streetscape improvements. OBAG2 was created for local projects that help to meet the vision and goals of Plan Bay Area 2040, a long range integrated transportation and land-use/housing strategy for the San Francisco Bay Area. The Metropolitan Transportation Commission (MTC) is helping fund OBAG2 by providing \$396 million over 5 years to Bay Area congestion management agencies through the competitive grant process. The City/County Association of Governments (C/CAG) is facilitating the grant review process for all San Mateo County agencies. At this time, C/CAG has approximately \$12 million for grants split evenly between two application types—the Bicycle Pedestrian Improvement Program (BPIP) and Transportation for Livable Communities (TLC). City staff and the City's Walk 'n Bike Plan consultant have recommended applying for the Huntington Transit Corridor Bicycle/Pedestrian and Related Improvements under BPIP to increase its competitiveness.

C/CAG shares the City's goal of establishing bicycling and walking as a sustainable means of transportation that will contribute to reducing daily commute congestion, establishing regional transit connections, reducing vehicle emissions, and meeting local mobility needs. Based on the direction from the City Council to seek funding opportunities to implement the City's vision expressed through the Walk n' Bike Plan, staff is prepared to submit a grant application for installation of a dedicated bicycle lane and pedestrian improvements along

Huntington Avenue between South San Francisco's Centennial Trail connection and the San Bruno Caltrain Station.

**DISCUSSION:**

Staff believes that this project is well-aligned with the City's existing plans, policy goals, and the City Council's priorities and objectives. Staff expects that this project will be competitive, particularly given the project's proximity to the City's transit stations as well as lower-income neighborhoods.

Both of the City's major regional transit stations—BART and Caltrain—are located on Huntington Avenue, approximately half a mile apart. City and County planning documents have identified a shortage of bicycle-friendly facilities on Huntington and San Antonio Avenues, especially between the BART and Caltrain stations. Huntington Avenue/San Antonio Avenue is generally identified as the preferred North/South connection for commuters coming into or traveling through San Bruno.

**Scope of Proposed Grant Application Project:**

This proposed grant application is to provide safe, convenient, and comfortable connections for pedestrians and bicyclists between South San Francisco's Centennial Way Trail, the San Bruno BART and Caltrain stations, and downtown. Separately, City staff members are identifying opportunities to add facilities—including bike racks, sharrows (an arrow and bicycle stenciled inside a lane), wayfinding signage and crosswalk enhancements—in the downtown area to enhance downtown's walkability and bikeability and serve as a complement to the improvements in this application. In the long term, the Huntington Transit Corridor Bicycle/Pedestrian and Related Improvements would connect with additional improvements to the Huntington/San Antonio segment south of Caltrain and provide a complete and direct North/South connection to the Millbrae Caltrain/BART hub.

The scope of the proposed grant application project—from San Bruno Avenue to the entrance of the Centennial Way Trail—would include the following:

- The rightmost lane along Huntington Avenue going northbound would be converted into a two-way cycle track with a physically separated concrete barrier, with the flexibility to add landscaping to the barrier as costs permit.
- A sharrow (an arrow and bicycle stenciled inside a lane) would be placed in the rightmost lane going southbound along with designated bike route signage.
- Huntington Avenue would receive a slurry sealed treatment along the entire project area.
- Pedestrian-scale lighting and other amenities like public art and landscaping would be added to create a path-link environment for walking.
- A consultant would be hired to conduct a traffic study, as is required when proposing a lane removal. An alternative design would be pursued should the traffic study greatly impact traffic flow.

Staff based the project scope on the recommendations directly from the Walk 'n Bike Plan. The two-way cycle track, with its higher degree of safety, was proposed in this area to substantially increase ridership to the transit stations and downtown. See Exhibit A for an

example of the conceptual design for the bike improvement portion of the project. The pedestrian improvements will serve two purposes—to continue the comfortable, safe pedestrian-focused environment from the Centennial Way Trail and to beautify the areas immediately adjacent to the transit stations. Both purposes would promote walkability between the station areas and into the downtown area.

The total project cost is approximately \$1,157,000. The application will be submitted by November 18, 2016, to meet C/CAG's deadline.

The City's interest in submitting this application has been shared with the San Mateo County Health Department, Caltrain, BART, Samtrans, the Chamber of Commerce, and the City's BPAC. Also, TransForm, Silicon Valley Bicycle Coalition, San Mateo County Health Department, and BPAC and related representatives have tentatively committed to provide letters of support for the application.

**FISCAL IMPACT:**

There is no immediate fiscal impact to submit the OBAG2 grant application; however, the Metropolitan Transportation Commission will require a local City match of a minimum of 11.47% of the total project cost. However, an 11.47% match is not possible for this application, as grant requests cannot exceed \$1 million. Accordingly, the minimum local match percentage is 13.57%, which is \$157,000. Additional application points are awarded as local matching funds increase. Accordingly, staff recommends that the City Council considers a higher match amount of 21% or \$243,000. See the below table for various local match possibilities, with staff's recommendation in bold and grey:

Local match	Match Amount (lowest to achieve category)	Points Awarded*	Grant Request	Total Project Cost
11.47%-20%	\$157,000	2	\$1 million	\$1.157 million
<b>21%-30%</b>	<b>\$243,000</b>	<b>5</b>	<b>\$914,000</b>	<b>\$1.157 million</b>
31%-40%	\$359,000	7	\$798,000	\$1.157 million
40+%	\$475,000	10	\$682,000	\$1.157 million

\*Points Awarded for the local match are based on a 2-10 scale. The total maximum possible score for the application is 96 points.

No allocation request is being made at this time. Should the City be awarded a grant, an allocation request will be brought to the City Council for approval along with the funding agreements. Historically, the City has allocated grant matching funds from either the Measure A Local Streets and Transportation fund or the Gas Tax fund. Public Services staff will work with Finance staff to recommend the best allocation source should the project be awarded.

**RECOMMENDATION:**

Adopt the resolution authorizing the City Manager to submit a One Bay Area Grant (OBAG2) Bicycle/Pedestrian Improvement Program application to City/County Association

of Governments for San Mateo County for the Huntington Transit Corridor  
Bicycle/Pedestrian and Related Improvements Project.

**ALTERNATIVES:**

1. Adopt application submission resolution, but with an adjusted local matching contribution.
2. Do not adopt the resolution to submit OBAG2 application; and, accordingly, do not submit the application.

**DISTRIBUTION:**

None

**ATTACHMENTS:**

1. Resolution
2. Figure 6 (from San Bruno Walk 'n Bike Plan): Conceptual Design for Huntington Avenue from the Centennial Way Trail to Downtown

**DATE PREPARED:**

November 4, 2016

**REVIEWED BY:**

\_\_\_\_\_ CM  
\_\_\_\_\_ ACM  
\_\_\_\_\_ Finance Director

**RESOLUTION NO. 2016- \_\_\_\_**

**AUTHORIZE THE CITY MANAGER TO SUBMIT A ONE BAY AREA GRANT BICYCLE/PEDESTRIAN IMPROVEMENT PROGRAM APPLICATION TO THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS FOR SAN MATEO COUNTY FOR HUNTINGTON TRANSIT CORRIDOR BICYCLE/PEDESTRIAN AND RELATED IMPROVEMENTS PROJECT**

**WHEREAS**, The City of San Bruno (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$914,000 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the Huntington Transit Corridor Bicycle/Pedestrian and Related Improvements (herein referred to as PROJECT) for the One Bay Area Grant Bicycle/Pedestrian Improvement Program (herein referred to as PROGRAM); and

**WHEREAS**, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

**WHEREAS**, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

**WHEREAS**, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

**WHEREAS**, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

**WHEREAS**, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

**WHEREAS**, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

**WHEREAS**, as part of the application for REGIONAL DISCRETIONARY FUNDING,

MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and

**WHEREAS**, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

**WHEREAS**, there is no legal impediment to APPLICANT making applications for the funds; and

**WHEREAS**, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

**WHEREAS**, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

**WHEREAS**, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby authorizes the City Manager to submit an application to the City/County Association of Governments for San Mateo County for Huntington Transit Corridor Bicycle/Pedestrian and Related Improvements for the One Bay Area Grant Bicycle/Pedestrian Improvement Program; and be it further

**RESOLVED** that APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the

FEDERAL TRANSPORTATION ACT or continued funding; and be it further

**RESOLVED** that APPLICANT will provide any required matching funds; and be it further

**RESOLVED** that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and be it further

**RESOLVED** that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and be it further

**RESOLVED** that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and be it further

**RESOLVED** that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and be it further

**RESOLVED** that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and be it further

**RESOLVED** that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and be it further

**RESOLVED** that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and be it further

**RESOLVED** that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and be it further

**RESOLVED** that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and be it further

**RESOLVED** that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and be it further

**RESOLVED** that there is no legal impediment to APPLICANT making applications for the funds; and be it further

**RESOLVED** that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

**RESOLVED** that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and be it further

**RESOLVED** that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

**RESOLVED** that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

Dated: November 9, 2016

ATTEST:

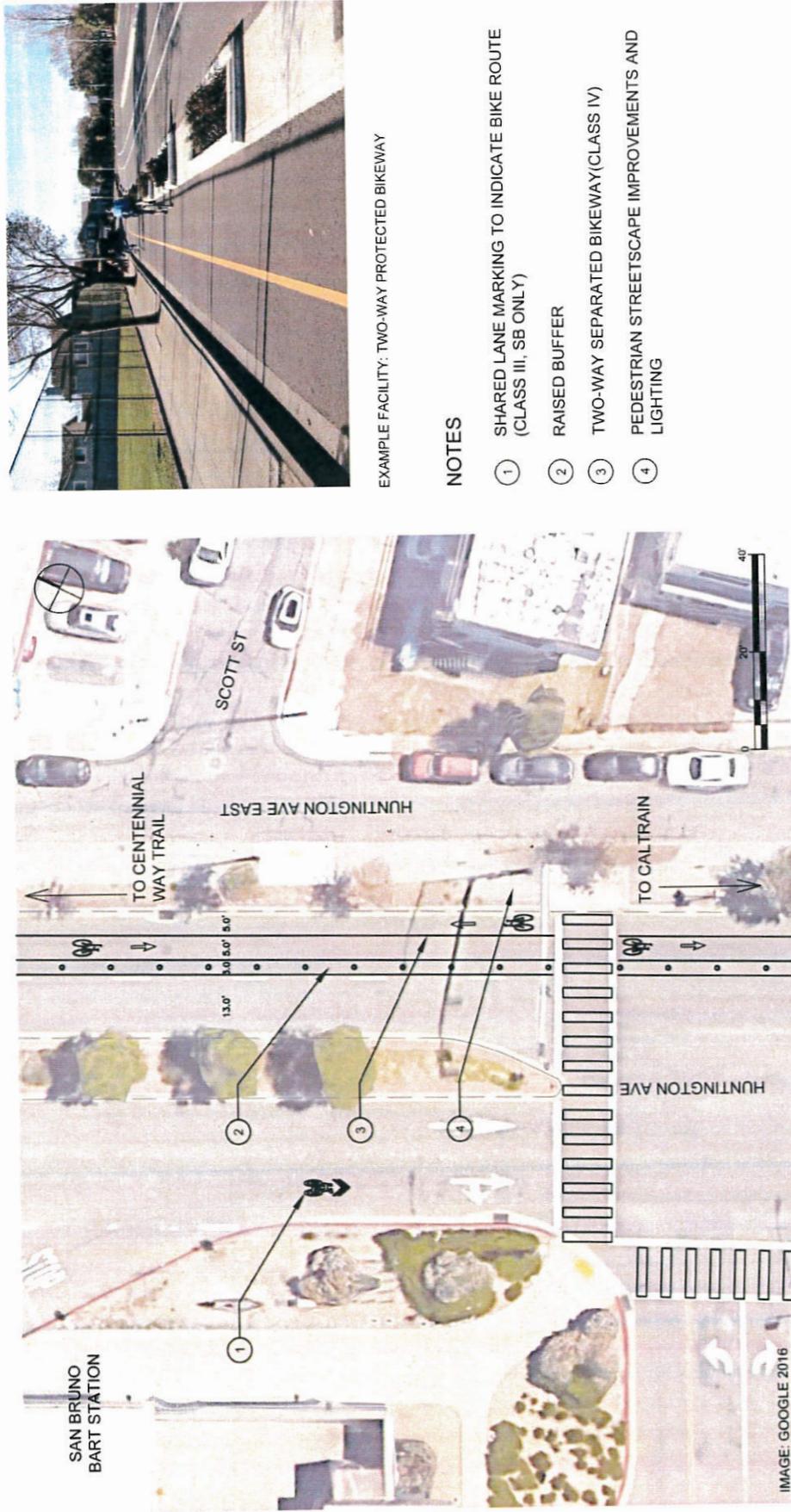
\_\_\_\_\_  
Carol Bonner, City Clerk

-o0o-

I, Carol Bonner, City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this 9th day of November 2016 by the following vote:

AYES: Councilmembers: \_\_\_\_\_  
NOES: Councilmembers \_\_\_\_\_  
ABSENT: Councilmembers: \_\_\_\_\_

**Figure 6 |** Conceptual design for Huntington Avenue from the Centennial Way Trail to Downtown



EXAMPLE FACILITY: TWO-WAY PROTECTED BIKEWAY

**NOTES**

- ① SHARED LANE MARKING TO INDICATE BIKE ROUTE (CLASS III, SB ONLY)
- ② RAISED BUFFER
- ③ TWO-WAY SEPARATED BIKEWAY (CLASS IV)
- ④ PEDESTRIAN STREETScape IMPROVEMENTS AND LIGHTING

Image credit: Parisi Transportation Consulting



City Council Agenda Item  
Staff Report

CITY OF SAN BRUNO

**DATE:** November 9, 2016

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jimmy Tan, Public Services Director/City Engineer

**SUBJECT:** Adopt Resolution Authorizing the City Manager to Submit an Application to the City/County Association of Governments for San Mateo County for Street Rehabilitation on Pine, 2nd, 4th, 5th, and 6th Streets for the One Bay Area Local Streets and Roads Grant Program

**BACKGROUND:**

The City's Capital Improvement Program (CIP) includes the Street Rehabilitation Project to repair and apply preventative maintenance treatment to local, collector, and arterial streets. The City utilizes the Metropolitan Transportation Commission's (MTC) Streetsaver Program, also known as the Pavement Management Program (PMP), to analyze pavement data in selecting street treatments in order to optimize use of funds for maintenance and rehabilitation work.

On May 12, 2016, the City/County Association of Governments (C/CAG) of San Mateo County approved the distribution of \$11 million in funding for the One Bay Area Grant Local Streets and Roads (OBAG-LSR) Program for each city in San Mateo County. The City received the sixth largest distribution in San Mateo County at \$643,000. The official Call for Projects was released on September 12, 2016 with a countywide workshop held on September 29, 2016. Applications are due to C/CAG by November 18, 2016.

The OBAG-LSR funds can be used towards pavement management projects as well as any ancillary work needed during paving such as improving or replacing curb ramps, storm drains, and sidewalks. Unlike OBAG's other grant programs, the LSR distribution formula is non-competitive. As long as the City submits a qualifying project by November 18, 2016, the funding is guaranteed to be distributed.

**DISCUSSION:**

The Pavement Condition Index (PCI) is a measurement of the pavement condition and ranges from 0 to 100. A newly constructed road would have a PCI of 100, while a failed road would have a PCI of 25 or less. After careful consideration of current paving needs and funding requirements outlined by C/CAG and MTC, staff recommends using the LSR funds for the rehabilitation of several streets in the community that are rated in the lowest PCI category of 25 or less. Staff is proposing that the following streets be submitted for the OBAG-LSR funding: Pine Street from 1<sup>st</sup> to 7<sup>th</sup> Street and 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Streets from San Bruno Avenue to the I-380 overpass. Currently, all of these proposed streets have a Pavement Condition Index (PCI) score of 25 or below, making them some of the lowest PCI scoring

streets in the City. These streets were recommended because many motorists use these streets as arterial roadways to connect to major streets such as Huntington Avenue, San Bruno Avenue, and El Camino Real. Streets in this low PCI state are costly to repair and difficult to include in the City's PMP. With limited street rehabilitation funds available and to maximize the amount of rehabilitated streets, the City typically prioritizes repairs for streets in the PCI range of 40 to 80 (Poor to Good).

The proposed streets also meet funding requirements set forth by the LSR guidelines, including the PCI threshold for paving projects and belong to a Priority Development Area (PDA) as defined by MTC. Along with repaving, rehabilitation will also include as needed work on sidewalks, storm drains, and curb ramps to bring them up to current standards. Should the project be approved by C/CAG and MTC, Pine Street will be the initial street to rehabilitate. Any remaining grant funds will be used on the other proposed streets. Staff expects a majority of the funds will be used to rehabilitate Pine Street and perform the required ancillary work to upgrade curb ramps and drains.

#### **FISCAL IMPACT:**

If the project is approved by C/CAG and MTC, the \$643,000 in LSR funding requires a local match of 11.47%, which totals \$73,753. Staff will return to the Council if the project is approved for grant acceptance and approval to utilize funding allocated for the annual street rehabilitation program to provide the appropriate local match.

#### **ALTERNATIVES**

1. Do not adopt the resolution to submit OBAG-LSR application, pull submitted application, and seek alternative funding sources for the proposed project.
2. Reduce the segment of Pine Street to be rehabbed and use remaining funds on another proposed street, or another new street within the PDA.
3. Direct staff to examine other streets to rehabilitate with the available funding.

#### **RECOMMENDATION**

Adopt resolution authorizing the City Manager to submit an application to the City/County Association of Governments for San Mateo County for street rehabilitation on Pine, 2nd, 4th, 5th, and 6th Streets for the One Bay Area Local Streets and Roads Grant Program.

#### **DISTRIBUTION:**

None

#### **ATTACHMENTS:**

1. Resolution

#### **DATE PREPARED:**

November 4, 2016

**REVIEWED BY:**

\_\_\_\_\_ CM  
\_\_\_\_\_ ACM  
\_\_\_\_\_ FIN

RESOLUTION NO. 2016- \_\_\_\_

**AUTHORIZE THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS FOR SAN MATEO COUNTY FOR STREET REHABILITATION ON PINE, 2ND, 4TH, 5TH, AND 6TH STREETS FOR THE ONE BAY AREA LOCAL STREETS AND ROADS GRANT PROGRAM**

**WHEREAS**, The City of San Bruno (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$643,000 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the Street Rehabilitation on ABC Street (herein referred to as PROJECT) for the One Bay Area Grant 2 Program (herein referred to as PROGRAM); and

**WHEREAS**, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

**WHEREAS**, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

**WHEREAS**, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

**WHEREAS**, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

**WHEREAS**, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

**WHEREAS**, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

**WHEREAS**, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and

**WHEREAS**, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

**WHEREAS**, there is no legal impediment to APPLICANT making applications for the funds; and

**WHEREAS**, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

**WHEREAS**, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

**WHEREAS**, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby authorizes the City Manager to submit an application to the City/County Association of Governments for San Mateo County for street rehabilitation on Pine, 2nd, 4th, 5th, and 6th Streets for the One Bay Area Local Streets and Roads Grant Program; and be it further

**RESOLVED** that APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and be it further

**RESOLVED** that APPLICANT will provide any required matching funds; and be it further

**RESOLVED** that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and be it further

**RESOLVED** that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and be it further

**RESOLVED** that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and be it further

**RESOLVED** that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and be it further

**RESOLVED** that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and be it further

**RESOLVED** that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and be it further

**RESOLVED** that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and be it further

**RESOLVED** that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and be it further

**RESOLVED** that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and be it further

**RESOLVED** that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and be it further

**RESOLVED** that there is no legal impediment to APPLICANT making applications for the funds; and be it further

**RESOLVED** that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

**RESOLVED** that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and be it further

**RESOLVED** that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

**RESOLVED** that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

Dated: November 9, 2016

ATTEST:

\_\_\_\_\_  
Carol Bonner, City Clerk

-o0o-

I, Carol Bonner, City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this 9th day of November 2016 by the following vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers	_____
ABSENT:	Councilmembers:	_____



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: November 9, 2016

TO: Honorable Mayor and City Council

FROM: Jimmy Tan, Public Services Director/City Engineer  
Jim Burch, Deputy Public Services Director

SUBJECT: Adopt Resolution Authorizing the City Manager to Reject All Bids and Execute a Four Year Contract Pursuant to Public Contracts Code Section 20167 with West Valley Construction for Water Main Repairs in an Amount Not to Exceed First Year Budget of \$200,000

### **BACKGROUND:**

As a water purveyor, the City of San Bruno is responsible for maintaining the water distribution system and rapidly responding to any incidents of service disruption due to equipment malfunction and water main leaks.

While the City Council has adopted a comprehensive Capital Improvement Program to identify, prioritize, repair, and replace existing water mains over time, the water distribution system is old and requires frequent repair. Whenever a water line break or damage occurs, City staff evaluates the situation and determines the most efficient and cost-effective means to complete the repair with as little disruption to the customers as possible. In some cases, the City's Water Division crew can complete the pipeline repair quickly and efficiently with materials and equipment on hand, and then retain a concrete contractor to complete any necessary asphalt or sidewalk, curb and gutter repairs. When the repair is large or complex, the City has required the services of an outside contractor with access to heavy equipment and specialized experience to complete the pipeline repair as well as the restoration of asphalt and concrete.

At its July 24, 2012 meeting, the City Council considered whether to award a four year water system spot repair contract to West Valley Construction, who had submitted the lowest responsive bid of approximately \$614,000 (the other bid was over \$677,000). In the report to the City Council, staff noted that even the low bid was substantially higher than expected, primarily because West Valley had to make very conservative assumptions about the nature of the work and its degree of difficulty. Therefore, staff recommended that Council reject all bids pursuant to its authority under Public Contracts Code section 20167, and authorize staff to negotiate an open market contract with West Valley on a labor and materials basis, which was anticipated to be less expensive. In fact, over the four year term of the contract, the City paid West Valley just under \$509,000, realizing a savings of over \$100,000 from the bid amount. Over the course of the contract, West Valley has continued to demonstrate its responsiveness to the City and its customers combined with timely and quality work.

**DISCUSSION:**

The four year contract with West Valley has now expired. In compliance with the State Contract Code and the City's local purchasing regulations, a Notice to Bidders for the water spot repair contract project was posted on the City's website and advertised in the *San Mateo Daily Journal* newspaper. One contractor attended the mandatory pre-bid meeting on August 16, 2016 and one bid was received and opened on August 30, 2016 as follows:

<u>No.</u>	<u>Contractor</u>	<u>Bid Amount</u> (based on 5 years)
1	West Valley Construction	\$ 677,135

Certain unit prices from the sole bidder were significantly higher than estimated. In discussing the issue with West Valley Construction, they explained that because of the general scenarios provided in the bid, rather than an actual list of specific main break location, their unit prices had to anticipate the most difficult and costly repair scenarios. Typically, a contractor will provide a project estimate for each location and the costs vary significantly based on the pipe size, pipe depth, and work site conditions. The bid proposal asked for unit prices for multiple work site scenarios, it could not anticipate every situation. If the unit prices are accepted as they were submitted, this will likely cost the City more over the life of the contract than if individual repairs were completed on a time and material basis with a pre-approved annual rate sheet. To provide the City with the most cost effective approach to complete water system repairs, staff is recommending that the City Council approve a resolution to reject the sole bid and authorize staff to negotiate an open market contract based on time and materials as reflected in pre-approved rate sheets, as it successfully did in 2012.

Public Contracts Code section 20167 states as follows:

"After rejecting bids, the legislative body may pass a resolution by a four-fifths vote of its members declaring that the project can be performed more economically by day labor, or the materials or supplies furnished at a lower price in the open market. Upon adoption of the resolution, it may have the project done in the manner stated without further complying with this chapter."

This section was specifically designed to address the situation in which even the presumptive low bid is significantly higher than the cost of the work available in the "day labor" or open materials market. Section 20167 recognizes that on some occasions, competitive bidding does not necessarily generate the lowest possible cost for a project, and that in these circumstances, the City should not spend more ratepayer dollars than are necessary to perform the work. The City has experience obtaining efficient, cost-effective, and quality water system repairs from West Valley, including during the last contract period from 2012 to 2016, and staff is confident that West Valley can perform the necessary work for a price at or below their bid. To ensure that the City would be paying a fair market price for the work, staff would closely monitor the invoices submitted by West Valley Construction during the progress of the contract and compare them with the invoices for previous work, as it did throughout the earlier contract. West Valley Construction continues to meet the contractor qualifications and requirements as specified in the contract documents, and City staff has had a positive experience with them on many previous City contracts.

After receiving only one bid, staff surveyed how other water providers in San Mateo County manage their main break repairs. Daly City and Redwood City only use City crews to make their spot repairs. These cities have staffing at a comparatively higher amount than San Bruno along with larger Corporation Yards to store the pipe inventory, along with the larger trucks and other equipment needed to complete all repairs in-house. North Coast County Water District and the California Water Service (Cal Water) use a combination of their own crews and West Valley Construction, similar to San Bruno. The cities of Menlo Park and Mountain View have limited emergency water repair contracts with West Valley Construction. These cities are not water providers and do not have the equipment or certifications to repair potable water systems.

Staff has evaluated whether to recommend that this contract be re-bid with different parameters, but as noted above, the City received only one bid. There are very few contractors in the Bay Area with the certified staff and equipment to complete water system repairs. The City requires that contractors be able to respond to a water main break within thirty (30) minutes of notification and mobilize onsite within ninety (90) minutes in order to minimize service interruption and property damage. Unless these response-time requirements are adjusted, the number of bidders for this work will be limited. Therefore, staff recommends that the City Council adopt the attached resolution to reject all bids and complete the required work using open market purchases of materials, as it has done since 2012. As identified above, the Public Contracts Code requires a four-fifths vote of the City Council to proceed as recommended by staff.

Staff therefore recommends executing a contract with West Valley for four years, with the yearly dollar limit set by the approved contractual services for main repairs in the Water Enterprise Operating Budget; for FY 2016-17 this amount is \$200,000.

#### **FISCAL IMPACT:**

If the number of 2016-17 main breaks and repair costs are similar to 2015-16, it is anticipated contract repairs will be approximately \$200,000. The contract amount of \$200,000 is within the \$257,000 2016-17 Operating Budget for water system contract repairs. The budget for each of the remaining four years of the proposed contract would be set yearly thereafter as part of the annual operating budget review and approval process. The prior three-year expenditure average for contract spot repairs was \$152,000. For 2015-16, the amount was \$202,000. The size, severity, and number of water pipe breaks can fluctuate from year to year. To be conservative, staff anticipates a minimum expenditure amount of \$200,000 for the remainder of the contract.

#### **ALTERNATIVES:**

1. Reject the bid and re-advertise the project. The time to re-advertise and present a new contract award to the City Council is estimated at four to eight weeks. City crews will complete repairs where feasible and continue assigning repairs to the current contractor until a new contract is executed.
2. Award a one-year contract to West Valley Construction through June 30, 2017 in an amount not to exceed \$200,000.

3. Evaluate the costs associated with acquiring the staff and equipment necessary to perform spot repairs in-house in future years.

**RECOMMENDATION:**

Adopt resolution authorizing the City Manager to reject all bids and execute a four year contract pursuant to Public Contracts Code Section 20167 with West Valley Construction for water main repairs in an amount not to exceed first year budget of \$200,000.

**ATTACHMENTS:**

1. Resolution

**REVIEWED BY:**

\_\_\_\_\_ CM  
\_\_\_\_\_ ACM  
\_\_\_\_\_ CA  
\_\_\_\_\_ FIN

RESOLUTION NO. 2016 - \_\_\_\_

**RESOLUTION AUTHORIZING THE CITY MANAGER TO REJECT ALL BIDS AND EXECUTE A FOUR YEAR CONTRACT PURSUANT TO PUBLIC CONTRACTS CODE SECTION 20167 WITH WEST VALLEY CONSTRUCTION FOR WATER MAIN REPAIRS IN AN AMOUNT NOT TO EXCEED FIRST YEAR BUDGET OF \$200,000**

**WHEREAS**, as a water purveyor, the City of San Bruno is responsible for maintaining the water distribution system and to rapidly respond to any incidents of service disruption due to equipment malfunction and water main leaks; and

**WHEREAS**, on July 24, 2012, the City awarded a four-year contract, which was later executed on October 22, 2012, to West Valley Construction, to perform various urgent maintenance and repair activities for both water and sewer facilities, with the provisions to extend the term of the contract by one year up to three times; and

**WHEREAS**, the contract with West Valley Construction, including the extensions has been exhausted; and

**WHEREAS**, the City has determined that it would be cost beneficial to secure a new long-term maintenance contract with a water system construction contractor to address urgent repairs to minimize service interruptions for the residents and businesses; and

**WHEREAS**, the City advertised this contract for bid in compliance with State Contract Code, local purchasing regulations and federal funding requirements and received one sealed bid with West Valley Construction as the sole bidder; and

**WHEREAS**, the received bid contained unit prices significantly higher than estimated, and it was apparent that very conservative assumptions were used by the contractor in preparing the bid prices; and

**WHEREAS**, Public Contracts Code section 20167 permits the City Council to pass a resolution by a four-fifths vote of its members to award a project on a time and materials basis after rejecting all bids; and

**WHEREAS**, based on West Valley Construction's positive past performance on City projects, it is confident that West Valley Construction can perform the work necessary at a price at or below their bid; and

**WHEREAS**, West Valley Construction met the contractor qualifications and requirements as specified in the contract documents; and

**WHEREAS**, Staff recommends entering into a four and one half-year contract with West Valley Construction with the yearly limit set by the approved contractual services for main repairs in the Water Enterprise – Water Division Budget.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of San Bruno to adopt resolution authorizing the City Manager to reject all bids and execute a four year contract pursuant to Public Contracts Code Section 20167 with West Valley

Construction for water main repairs in an amount not to exceed first year budget of \$200,000.

Dated: November 9, 2016

-o0o-

I, Carol Bonner, City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this 9th day of November 2016 by the following vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers	_____
ABSENT:	Councilmembers:	_____



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: November 9, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Angela Kraetsch, Finance Director

SUBJECT: Receive the First Quarter Financial Report as of September 30, 2016, and Adopt Resolution Amending the Fiscal Year 2016-17 Operating and Capital Improvement Program Budgets to Re-Appropriate Fiscal Year 2015-16 Carryover Encumbrances

### BACKGROUND

The City Council approved the 2016-17 Operating and Capital Improvement Program Budget on June 28, 2016. The City's budget is the annual plan and resource allocation that guides and ensures the implementation of City Council policies and priorities. The budget implements the vision and direction for the broad range of services that meet the needs of the community in accordance with City Council policy.

This financial review as of September 30, 2016 provides the first quarter budget update to the City Council for the current fiscal year. Analysis of the revenues collected and all expenditures through September 30, 2016 measures the level of adherence to the established resource allocation plan.

The purpose of the City's First Quarter budget review is to:

- Provide a reconciliation of the expected and actual General Fund balance for Fiscal Year 2016-17.
- Recommend the re-appropriation (carryovers) of prior year budgets for services/projects that were begun, but not completed as of June 30, 2016.
- Conduct a review of City funds to identify and recommend budgetary changes if needed.

### DISCUSSION

The attached 2016-17 Quarterly Financial Report as of September 30, 2016 provides the revenue and expenditure summary for the General Fund, Enterprise Funds, and Internal Service Funds. Overall, revenues and expenditures are on track at First Quarter. With 25% of the year complete, General Fund revenues are at 16% and expenditures are at 25%. Any significant variances are explained in the report.

10d

Additionally, staff continues to include a spreadsheet titled "Fund Balance/Net Position" which includes all City Funds. This spreadsheet shows the unaudited beginning balance as of July 1, 2016, the adopted budget, and any adjustments that have been approved during the fiscal year. The last column on the spreadsheet shows the estimated balance at year-end if all revenues are received and if all expenditures finish at 100% as budgeted.

### **FISCAL IMPACT**

The Quarterly Financial Report as of September 30, 2016 provides the City Council with a periodic update on the 2016-17 budget.

The resolution appropriating outstanding encumbrances at the end of fiscal year 2015-16 to the 2016-17 fiscal year will increase the adopted budgets in each fund as summarized in the attached report.

### **ALTERNATIVES:**

Do Not Adopt Resolution Amending the Fiscal Year 2016-17 Budget to Re-Appropriate Fiscal Year 2015-16 Carryover Encumbrances.

### **RECOMMENDATION**

Receive First Quarter Financial Update Report as of September 30, 2016, and Adopt Resolution Amending the Fiscal Year 2016-17 Operating and Capital Improvement Program Budgets to Re-Appropriate Fiscal Year 2015-16 Carryover Encumbrances.

### **ATTACHMENTS**

1. Resolution
2. Outstanding Purchase Orders By Fund at June 30, 2016
3. Quarterly Financial Report as of September 30, 2016

### **DATE PREPARED**

October 17, 2016

### **REVIEWED BY**

\_\_\_\_ CM

RESOLUTION NO. 2016-\_\_

**RESOLUTION AMENDING THE FISCAL YEAR 2016-17 OPERATING AND CAPITAL IMPROVEMENT PROGRAM BUDGET TO RE-APPROPRIATE FISCAL YEAR 2015-16 CARRYOVERS**

**WHEREAS**, at year-end there are ongoing Capital Improvement Program projects that cross fiscal years and require re-appropriation in the subsequent year; and

**WHEREAS**, at the end of each fiscal year, outstanding encumbrances (purchase orders) are reported as Reservations of Fund Balances which requires re-appropriation in the subsequent year; and

**WHEREAS**, at the end of fiscal year 2015-16, the Carryovers for purchase orders and Capital Improvement Program projects by fund were as follows:

General Fund:	\$ 227,835
Disaster Recovery Fund:	9,342,906
Parks and Facilities Capital Fund:	2,042,195
Streets Capital Fund:	6,069,588
Technology Capital Fund:	232,212
Water Fund:	7,899,443
Stormwater Fund:	712,986
Wastewater Fund:	13,076,275
Cable Fund:	1,071,224
General Equipment Revolving Fund:	<u>1,902,846</u>
<b>Total</b>	<b>\$42,577,510</b>

**WHEREAS**, the re-appropriation ensures that previously authorized funds are available in the current year budget to cover the cost of uncompleted projects and continuing obligations; and

**NOW THEREFORE**, the City Council of the City of San Bruno hereby resolves to amend the fiscal year 2016-17 Budget to Re-Appropriate fiscal year 2015-16 Carryovers.

—oOo—

I hereby certify that foregoing Resolution No. 2016 -\_\_ was introduced and adopted by the San Bruno City Council at a regular meeting on November 9, 2016 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
City Clerk

PO Number	[C]onstruction [S]ervice [G]oods	Vendor #	Vendor	PO Description	Account Number	Outstanding Amount at June 30, 2016
<b>207 Technology Capital</b> 1530-00033	S	0106167	CIVICA SOFTWARE, INC.	WEBSITE REDESIGN & HOSTING	207-3710-6401	21,040.50
						<b>21,040.50</b>
<b>611 Water Fund</b>						
3010-00346	S	0096458	RMC WATER AND ENVIRONMENT	RMC WATER PREPARATION OF GROUNDWATER PLA	611-6110-6401	117,856.00
3010-00310	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING SRVCS ANALYSIS REGIONAL GROU	611-6110-6401	12,073.60
6310-00111	S	0104781	BARTLE WELLS ASSOCIATES	BARTLE WELLS ASSOC-WATER AND WASTEWATER	611-6110-6401	27,430.00
3010-00302	S	0017083	VALI COOPER & ASSOCIATES INC	CONSTRUCTION INSPECTION SRVCS GLENVIEW T	611-6180-6401	1,519.37
3010-00239	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING DESIGN WATER TANK NO. 3	611-6180-6401	19,237.91
3010-00275	S	0105822	LEE & RO, INC.	ENGINEERING SERVICES WATER TANK #1 PROJ	611-6180-6401	2,288.24
3010-00299	S	0096458	RMC WATER AND ENVIRONMENT	CONSULTANT SRVCS SO. WESTSIDE GROUNDWATE	611-6180-6401	28,740.48
3010-00342	S	0018826	TJC & ASSOCIATES, INC.	ENGINEER PEER REVIEW SERVICES FOR CUNNIN	611-6180-6401	3,109.25
3010-00253	S	0017152	ERLER & KALINOWSKI, INC.	ENGINEERING SERVICES WELL 15 REPLACEMENT	611-6180-6401	310,726.32
3010-00304	S	0105553	BELLECCI & ASSOCIATES, INC.	ENGINEERING DESIGN SRVCS CRYSTAL SPRINGS	611-6180-6401	46,497.67
3010-00308	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING DESIGN SRVCS JENEVEIN WATER/	611-6180-6401	12,291.09
3010-00309	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING DESIGN SRVCS SAN MATEO AVE W	611-6180-6401	47,532.32
3010-00315	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING SVC TO DEVELOP COORDINATED I	611-6180-6401	12,510.51
3010-00332	S	0096893	WILSEY HAM	DESIGN SRVCS FOR AVE 1-1 & 1-2 WATER & SEWER MAIN REPLACE	611-6180-6401	166,067.90
3010-00303	S	0100826	THOMPSON BUILDERS CORPORATION	CONSTRUCTION SRVCS GLENVIEW TANK #3 REPL	611-6180-8020	30,604.00
3010-00339	S	0017928	THE EDCCO GROUP, INC.	EDCCO GROUP CONSULTANT SRVCS WATER/MWI FA	611-6180-8020	40,973.08
						<b>879,457.74</b>
<b>621 Stormwater Fund</b>						
3010-00318	S	0016311	V & A CONSULTING ENGINEERS INC	ENGINEERING DESIGN SVCS FOR MASSON AVE B	621-6280-6401	6,216.08
3010-00325	S	0105553	BELLECCI & ASSOCIATES, INC.	ENGINEERING DESIGN SVCS FOR CITY PARK WA	621-6280-6401	8,128.00
						<b>14,344.08</b>
<b>631 Wastewater Fund</b>						
6310-00111	S	0104781	BARTLE WELLS ASSOCIATES	BARTLE WELLS ASSOC-WATER AND WASTEWATER	631-6310-6401	27,430.00
3010-00255	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING SERVICES TRENTON DR SEWER PR	631-6380-6401	14,364.84
3010-00304	S	0105553	BELLECCI & ASSOCIATES, INC.	ENGINEERING DESIGN SRVCS CRYSTAL SPRINGS	631-6380-6401	46,497.67
3010-00305	S	0105735	HYDROSCIENCE ENGINEERS, INC.	ENGINEER DESIGN SRVCS SPYGLASS PUMP STA	631-6380-6401	30,554.80
3010-00308	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING DESIGN SRVCS JENEVEIN WATER/	631-6380-6401	12,291.11
3010-00309	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING DESIGN SRVCS SAN MATEO AVE W	631-6380-6401	47,532.33
3010-00315	S	0104660	WEST YOST ASSOCIATES, INC.	ENGINEERING SVC TO DEVELOP COORDINATED I	631-6380-6401	12,510.51
3010-00332	S	0096893	WILSEY HAM	DESIGN SRVCS FOR AVE 1-1 & 1-2 WATER & SEWER MAIN REPLACE	631-6380-6401	166,067.94
3010-00307	S	0104660	WEST YOST ASSOCIATES, INC.	CONSTRUCT MANAGEMENT/INSPECT SRVCS OLYMP	631-6380-6419	36,674.30
						<b>393,923.50</b>

PO Number	[C]onstruction [S]ervice [G]oods	Vendor #	Vendor	PO Description	Account Number	Outstanding Amount at June 30, 2016
<b>641 Cable Fund</b>						
6410-00325	G & S	0000843	ARRIS SOLUTIONS, INC.	VIDEO ON DEMAND SERVER (VOD) UPGRADE	641-6410-6650	39,814.62
6410-00330	G & S	0106437	CALIX, INC.	GPON EQUIPMENT FOR HEADEND/CUSTOMER PREM	641-6480-8014	238,322.11
6410-00342	G & S	0106437	CALIX, INC.	PROVISIONING SOFTWARE, INSTALL, MAINT.-S	641-6480-8014	13,400.00
6410-00331	G	0105931	INNOTRANS	RFOG EQUIPMENT FOR HEADEND - SHELTER CRE	641-6480-8014	58,206.85
6410-00332	G	0096714	MAXCOM	MICRO NODES FOR SHELTER CREEK FIBER TO THE HOME	641-6480-8014	141,501.77
6410-00336	S	0106468	COMMUNICATION NETWORK RESOURCE	LABOR, MATERIALS AND EQUIPMENTS FOR SHELTER CREEK	641-6480-8014	199,137.00
6410-00329	G	0000462	TVC COMMUNICATIONS L.L.C.	EQUIPMENT FOR FIBER TO HOME @ SHELTER CR	641-6480-8014	99,845.34
						<b>790,227.69</b>
<b>703 General Equipment Revolving Fund</b>						
2010-00046	S	0018658	TASER INTERNATIONAL INC.	TASER ASSURANCE PLAN CEW ANNUAL SERVICE	703-1560-6650	29,000.00
1510-00031	G	0106356	A-Z FIRE APPARATUS, INC	A2Z FIRE APPARATUS FOR E-ONE PUMPER WITH	703-1560-8013	618,208.00
1510-00032	G	0106356	A-Z FIRE APPARATUS, INC	A2Z FIRE APPARATUS E-ONE HP100 LADDER WI	703-1560-8013	1,255,638.00
						<b>1,902,846.00</b>
					<b>Grand Total</b>	<b>7,624,074.97</b>

PO Number	[C]onstruction [S]ervice [G]oods	Vendor #	Vendor	PO Description	Account Number	Outstanding Amount at June 30, 2016
<b>001 General Fund</b>						
1250-00006	S	0102353	ECONOMIC & PLANNING SYSTEMS, INC	DEVELOPMENT IMPACT FEE STUDY	001-1250-6401	100,000.00
2110-00027	G & S	0106472	TEN-FOUR COMMUNICATIONS	RADIO PURCHASE FOR NEW APPARATUS	001-2110-6650	7,461.06
3010-00345	S	0106173	MOFFATT & NICHOL	PREPARATION FOR APPEAL FEMA SF BAY COAST	001-3010-6401	54,141.00
3310-00018	S	0104141	DC&E	PROFESSIONAL SERVICES	001-3310-6401	11,145.85
3310-00022	S	0106302	MATTHEW JONES	CONSULTANT SERVICES FOR MUNICIPAL PLANNI	001-3310-6401	25,382.50
4110-00091	S	0102921	ST. FRANCIS ELECTRIC, LLC	CONTRACT ST. FRANCIS ELECTRIC, LLC FOR S	001-4110-6203	29,705.00
						<b>227,835.41</b>
<b>190 Emergency Disaster Fund</b>						
5110-00008	S	0106447	MOORE, IACOFANO, GOLTSMAN, INC.	CONTRACT MIG, INC FOR EARL/GLENVIEW PARK	190-9010-6401	5,633.50
3010-00174	S	0017624	BKF ENGINEERS	ENGINEERING FOR GLENVIEW RECONSTRUCTION	190-9010-6401	125,975.19
3010-00301	S	0103780	TREADWELL & ROLLO, INC.	GEOTECH ENGINEERING SRVCS FIRE STA 52 &	190-9010-6401	60,870.64
3010-00171	S	0104705	HB CONSULTING GROUP	GLENVIEW RECONSTRUCTION PROJECT MANAGEME	190-9010-6403	1,870,077.50
3010-00280	S	0103780	TREADWELL & ROLLO, INC.	GEOTECHNICAL ENGINEERING AND SOILS TESTI	190-9010-8020	10,879.22
3010-00294	S	0104960	POWER SYSTEMS DESIGN	DESIGN SERVICES FOR NEW STREETLIGHT SYST	190-9010-8020	9,700.00
3010-00311	S	0103342	JMB CONSTRUCTION, INC.	JMB CONSTRUCTION UPPER SEWER LAT CONSTRU	190-9010-8020	144,645.76
						<b>2,227,781.81</b>
<b>201 Parks and Facilities Capital</b>						
3010-00343	S	0106400	ZEIGER ENGINEERS, INC.	ENGINEERING SERVICES FOR CITY PARK RESTR	201-1801-6401	17,809.00
3010-00326	S	0018048	CALLANDER ASSOCIATES LANDSCAPE ARC	LANDSCAPE DESIGN SRVCS 324 FLORIDA PROJE	201-1801-6401	1,735.32
3010-00334	S	0105926	ACC ENVIRONMENTAL CONSULTANTS	CONTRACT SRVCS FOR SOIL STUDIES AT 324 F	201-1801-6401	2,015.00
3010-00298	S	0106010	MAINTENANCE DESIGN GROUP, LLC	DESIGN CONSULTANT SRVCS CORP YARD MASTER	201-1801-6401	15,660.00
3010-00340	S	0106209	CROSBY GROUP	DESIGN SERVICES FOR POLICE PLAZA SECURIT	201-1801-6401	2,350.00
5110-00004	S	0105981	FIELDTURF	LIONS FIELD REPAIR PROJECT	201-1801-8020	20,156.00
						<b>59,715.32</b>
<b>203 Streets Capital</b>						
3010-00327	S	0106285	EISEN LETUNIC	ENGINEERING DESIGN AND CONSULTING SVCS F	203-4810-6401	24,836.01
3010-00336	S	0017624	BKF ENGINEERS	ENGINEERING SRVCS FOR ECR/ANGUS AVE INTE	203-4810-6401	28,958.97
3010-00316	S	0104764	GOLDEN ASSOCIATES	GOLDEN ASSOC. LANDSCAPE DESIGN TRANSIT C	203-4810-6401	1,273.12
3010-00320	S	0106231	STANTEC CONSULTING SERVICES	ENGINEERING DESIGN SVCS - LOWER SAN BRUN	203-4810-6401	11,169.15
3010-00344	S	0102921	ST. FRANCIS ELECTRIC, LLC	REPLACEMENT OF THE UNDERGROUND ELECTRICA	203-4810-6411	46,233.54
3010-00330	S	0102909	SMITH-EMERY COMPANY	CONTRACT SMITH EMERY ENGINEERING TO PROV	203-4810-6419	7,923.25
3010-00133	S	0000430	DKS ASSOCIATES	TRAFFIC ENGINEERING DESIGN BELLE AIR SCH	203-4810-8020	8,464.77
3010-00324	S	0106240	GALLAGHER & BURK, INC.	CONSTRUCTION SVCS FOR FY2015-16 STREET R	203-4810-8020	200,237.70
3010-00333	S	0018898	TJKM TRANSPORTATION CONSULTANT	CONTRACT TRAFFIC ENGINEERING SRVCS WITH	203-4810-8020	5,520.00
3010-00284	S	0017083	VALI COOPER & ASSOCIATES INC	VALI COOPER PROJ MGMT SUPPORT	203-4810-8020	5,455.00
3010-00335	S	0018813	TANKO LIGHTING	CONTRACT TANKO LIGHTING, INC TO PERFORM	203-4810-8020	136,526.24
3010-00274	S	0092223	PENINSULA CORRIDOR JOINT POWERS BOA	JPB GRADE SEP ARCHWAY CONSTRUCTION	203-4810-8020	630,305.17
						<b>1,106,902.92</b>



# Quarterly Financial Report

First Quarter of Fiscal Year 2016-17

## OVERVIEW

This report summarizes the City's overall financial position for the fiscal year through September 30, 2016. Except as noted below, revenues and operating expenditures are generally on target based on the updated budget for the First Quarter.

**Adjusted Budgets:** The budget numbers reflected in this report include the adjustments for carryovers, budget adjustments requested in this report (if applicable), and City Council approved budget amendments.

**Mid-Year Review:** The City's overall revenue and expenditure picture will be discussed in greater detail during the Mid-Year Budget Review scheduled for Council consideration in February of 2017.

## GENERAL FUND

With 25% of the year complete, General Fund revenues are higher than at the same time as the prior year at 16% (the majority of this increase is due to receiving the full 1% of Sales Tax now that the Triple Flip has ended and a timing difference in Business License revenue when compared to the prior year. Both of these variances are explained in more detail on the following page) and expenditures are on track at 25%.

General Fund Balance	Budget	YTD Actual	%
Revenues	\$41,951,081	\$6,884,237	16%
Revenues – Carryovers & One-time	604,145		
Total Revenues	42,555,226		
Expenditures	42,555,226	10,490,004	25%

**Revenues:** The majority of General Fund revenue comes from taxes in six different categories. Property Tax, Sales Tax, Transient Occupancy Tax (TOT), Motor Vehicle License Fees (VLF), Regulatory (Cardroom) Fee, and Business Tax account for 68% of the General Fund revenue. Although there are fluctuations among revenue line items, the overall percentage is at 16%, which is \$1,076,035 higher than the prior year. Any significant variances are noted on the next page.

### 1<sup>st</sup> Quarter – Current Fiscal Year

Revenues	Current Budget	YTD Actual	%
Property Tax	\$ 8,978,000	\$ 69,880	1%
Sales Tax	7,448,000	833,304	11%
TOT	3,558,000	631,261	18%
Motor Vehicle License Fees	4,298,000	7,157	0%
Regulatory Fee	1,780,000	445,302	25%
Business Tax	2,480,000	1,690,724	68%
Franchise Fees	1,910,000	298,232	16%
Use of Money & Property	1,536,000	360,739	23%
Transfers in & Other Revenues	4,658,181	810,461	17%
Departmental Revenues	5,304,900	1,737,177	33%
<b>Total</b>	<b>\$ 41,951,081</b>	<b>\$ 6,884,237</b>	<b>16%</b>

### 1<sup>st</sup> Quarter - Prior Fiscal Year

Revenues	Current Budget	YTD Actual	%
Property Tax	\$ 7,966,000	\$ 123,832	2%
Sales Tax	8,113,031	350,265	4%
TOT	3,069,097	660,917	22%
Motor Vehicle License Fees	3,915,000	-	0%
Regulatory Fee	1,737,283	433,924	25%
Business Tax	2,973,000	1,292,101	43%
Franchise Fees	1,891,133	314,212	17%
Use of Money & Property	1,445,801	352,826	24%
Transfers in & Other Revenues	3,657,223	768,112	21%
Departmental Revenues	5,796,537	1,512,013	26%
<b>Total</b>	<b>\$ 40,564,105</b>	<b>\$ 5,808,202</b>	<b>14%</b>

By comparing the YTD prior year revenue to the current YTD revenue we can see an overall increase of \$1,076,035 as shown on the table below.

**Comparison of Actual YTD Revenue to Prior YTD Revenue**

Revenues	YTD Actual	YTD Prior Year	Increase/Decrease	%
Property Tax	\$ 69,880	\$ 123,832	\$ (53,952)	-44%
Sales Tax	833,304	350,265	483,039	138%
TOT	631,261	660,917	(29,656)	-4%
Motor Vehicle License Fees	7,157	-	7,157	0%
Regulatory Fee	445,302	433,924	11,378	3%
Business Tax	1,690,724	1,292,101	398,623	31%
Franchise Fees	298,232	314,212	(15,980)	-5%
Use of Money & Property	360,739	352,826	7,913	2%
Allocations & Other Revenues	810,461	768,112	42,349	6%
Departmental Revenues	1,737,177	1,512,013	225,164	15%
<b>Total</b>	<b>\$ 6,884,237</b>	<b>\$ 5,808,202</b>	<b>\$ 1,076,035</b>	<b>19%</b>

- Property tax** – The City receives the majority of its property tax revenue in December and April. The decrease of \$53,952 is due to a decrease in Supplemental Property Tax and Property Transfer Tax. These revenue sources reflect a decrease in the sale of properties in San Bruno when compared to the prior year as they are based on property being reassessed due to a change of ownership and transfer of title.
- Sales Tax** - Sales tax is showing an increase of \$483,039 when compared to the prior year. This increase is due to the end of the Triple Flip. On July 1, 2004 the Triple Flip was established to create a dedicated revenue stream for the State issued Economic Recovery Bonds. The Triple Flip decreased the local rate from 1 percent to .75 percent. The remaining .25 percent was replaced by property taxes and was received in December and April of each year. Beginning on January 1, 2016 the City began receiving the full 1 percent local rate. Sales tax is lower than 25% due to only receiving one month of revenue at First Quarter.
- Transient Occupancy Tax (TOT)** – This revenue source is showing a slight decrease of \$29,656 or 4%. A portion of this decrease is related to one of the City’s hotels being closed for renovations. TOT revenue reflected in this

report covers the months of July and August, September’s TOT is received in October.

- Business Tax** – Business taxes are billed and paid at the beginning of the fiscal year, which explains the high percentage received year-to-date. This revenue is showing an increase of \$398,623 when compared to the prior year. This is due to a timing difference in the prior year in which one of the City’s larger businesses paid their Business Tax in the 2<sup>nd</sup> Quarter.
- Franchise Fees** – This revenue source is showing a slight decrease of \$15,980 which is related to adjusting the calculation for the Franchise Fee from the Cable Enterprise.
- Departmental Revenues** – Departmental Revenues are up 15% or \$225,164 compared to the prior year. This is due to an increase in development revenues related to the Plaza project.

**Expenditures:** Operating costs are on target for the First Quarter as summarized by type below:

Expenditures by Type	Budget	YTD Actual	%
Salaries and Benefits	\$ 32,158,576	\$ 8,126,345	25%
Supplies and Materials	5,074,047	1,064,013	21%
Other Charges	3,624,486	846,239	23%
Capital Purchases	1,217,517	333,254	27%
Debt Service and Trans	480,600	120,153	25%
<b>Total</b>	<b>\$ 42,555,226</b>	<b>\$ 10,490,004</b>	<b>25%</b>

The key variance “by type” is in Capital Purchases (as shown above).

- Capital Purchases** are higher due to the annual payment for the Fire Truck being paid at the beginning of the year.

Departmental operating expenditures are also on target as summarized by the following:

Expenditures by Department	Budget	YTD Actual	%
City Council	\$ 199,338	\$ 47,419	24%
City Clerk	283,501	60,701	21%
City Treasurer	75,861	17,457	23%
City Attorney	461,597	85,105	18%
City Manager	969,049	179,879	19%
Human Resources	472,285	90,143	19%
Finance	2,128,684	416,610	20%
Police	16,026,663	4,100,315	26%
Fire	10,099,989	2,928,270	29%
Public Services	3,388,354	824,969	24%
Community Development	3,329,982	576,402	17%
Community Services	7,640,162	1,830,295	24%
Non-Departmental	(2,520,239)	(667,561)	26%
<b>Total</b>	<b>\$ 42,555,226</b>	<b>\$ 10,490,004</b>	<b>25%</b>

Overall departments are at 25% at September 30, 2016.

**2015-16 PRELIMINARY GENERAL FUND ANNUAL UPDATE**

This summarizes the General Fund’s overall financial position for fiscal year 2015-16. This is a preliminary update due to the fact that the auditors are still reviewing the City’s records. The final numbers will be presented to the City Council in the Comprehensive Annual Financial Report (CAFR) in December.

**OVERVIEW:**

General Fund Balance	Budget	Year-End Actuals	Difference
Beginning Fund Balance		\$ 1,688,263	
Revenues	40,564,105	41,122,227	558,122
Expenditures	41,390,767	40,539,429	851,338
Ending Fund Balance		\$ 2,271,061	

**EXPENDITURES:**

Expenditures by Type	Budget	YTD Actual	%
Salaries and Benefits	\$ 30,220,994	\$ 29,861,522	99%
Supplies and Materials	4,728,130	4,754,616	101%
Other Charges	4,773,844	4,235,134	89%
Capital Purchases	1,227,212	1,247,577	102%
Debt Service and Transfers	440,587	440,580	100%
<b>Total</b>	<b>\$ 41,390,767</b>	<b>\$ 40,539,429</b>	<b>98%</b>

With 100% of the year complete, expenditures are at 98% or approximately \$851,338 less than budgeted. The majority of this savings is due to salary savings and lower than budgeted County Service Charges. In addition, of

the \$851,338 saved, \$227,835 is being requested to carry over into FY 2016-17 for ongoing projects.

**REVENUES:**

Total year-end revenues are at 101% and came in \$558,122 higher than budgeted. The majority of this increase is due to increases in Property Tax, TOT, VLF, and Departmental revenues.

**2015-16 CARRYOVER RE-APPROPRIATION – ALL FUNDS**

The re-appropriation of prior year budget amounts known as “carryovers” are necessary when services or projects are started but not completed at the end of the fiscal year. This is especially true for Capital Improvement Program (CIP) work efforts that typically span several years.

The table below lists the amount of Carryovers by type being requested in this report:

Fund	Carryover Type	
	Purchase Order(s)	CIP
General Fund	\$ 227,835	\$ -
Disaster Recovery	2,227,782	7,115,124
Parks and Facilities Capital	59,715	1,982,480
Streets Capital	1,106,903	4,962,685
Technology Capital	21,041	211,171
Water	879,458	7,019,985
Stormwater	14,344	698,642
Wastewater	393,923	12,682,352
Cable	790,228	280,996
General Fund Equipment Reserve	1,902,846	-
<b>Subtotal</b>	<b>\$ 7,624,075</b>	<b>\$ 34,953,435</b>
<b>Total 15-16 Carryovers</b>	<b>\$ 42,577,510</b>	

**ENTERPRISE FUNDS**

**Water Fund:** The Water Fund reports an unrestricted net position of \$9,559,714 at the beginning of fiscal year 2016-17. Current expenditures at First Quarter equals \$2,019,434 or 10% of budget. This is below 25% because CIP

projects are in various stages of completion. Revenues are \$2,866,058 or 21% of budget. Staff is requesting that \$879,458 in outstanding purchase orders and \$7,019,985 in ongoing CIP projects be re-appropriated in fiscal year 2016-17. The estimated ending net position in this Fund is \$1,891,308.

**Wastewater Fund:** The Wastewater Fund ended the 2015-16 fiscal year with an unrestricted net position of \$12,717,851. At First Quarter total expenditures are \$1,898,760 and revenues equaled \$2,803,382. Re-appropriation of \$393,923 in open purchase orders and \$12,682,352 in CIP project carryovers are being requested in this report. The estimated ending net position for the Wastewater Fund is \$623,761. Staff will need to closely monitor any additional appropriation requests in this fund in order to avoid a negative fund balance.

**Stormwater Fund:** Stormwater fees are collected through the County property tax roll and received in December and April. Current expenditures at First Quarter are \$98,859 or 3% of budget. This is below 25% because CIP projects are in various stages of completion. Staff is requesting a total of \$712,986 be carried over into fiscal year 2016-17.

**Cable Fund:** The Cable Fund has a beginning unrestricted net position of (\$9,381,248). At First Quarter expenditures are \$2,992,453 or 25% of budget. Current revenues are \$2,464,287 or 22% of budget. Staff is requesting carryovers of \$790,228 for open purchase orders and \$280,996 in ongoing CIP projects. The projected ending net position for fiscal year 2016-17 is (\$9,286,727).

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### ***INTERNAL SERVICE FUNDS***

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Internal Service Funds are used to account for the financing of goods and services provided by one department to other departments on a cost reimbursement basis. Revenues are transferred from the budgeted departments to the Internal Service Funds on a monthly basis therefore, the revenues in all Internal Service Funds are at 25% of budget.

**Central Garage:** The Central Garage Fund ended the 2015-16 fiscal year with a fund balance of \$607,902. Current expenditures are \$119,448 or 19%. The estimated ending fund balance is \$205,216.

**Facility Maintenance Fund:** This Fund ended the 2015-16 fiscal year with a fund balance of \$611,745. Expenditures for the First Quarter equal \$242,468 or 21%. The estimated ending fund balance for this fund is \$193,845.

**Technology Development Fund:** This Fund reports a fund balance of \$218,554 at the end of fiscal year 2015-16. First Quarter expenditures are \$121,674 which is 18% of budget. The estimated ending fund balance in this Fund is \$232,474.

**Self-Insurance Fund:** This Fund ended the 2015-16 fiscal year with a fund balance of (\$795,619). Expenditures at first quarter equal \$1,188,275 or 59%. This is above 25% due to the up-front payment for Liability and Workers' Compensation premium costs. The estimated ending fund balance is (\$799,389). Staff will continue to monitor this fund and determine if additional funding is available to address the negative fund balance.

# Fund Balance / Net Position

All Funds Budget

2016-17 First Quarter Budget Update Report

	Unaudited Available Fund Balance / Net Position July 1, 2016		Adopted			Adopted		Estimated Available Fund Balance / Net Position June 30, 2017
	Budgeted Revenues	Adjustment to Revenues	FY 2015-16 Carryovers	Budgeted Appropriations	Adjustments to Appropriations	Budgeted Appropriations		
<b>General Fund</b>								
001 General Fund	\$ 1,727,835	\$ 17,181	\$ 227,835	\$ 42,316,081	\$ 11,310	\$	\$ 1,123,690	
002 General Fund Reserve (25% of Appropriations)	10,961,554	-	-	-	-	-	11,667,554	
003 General Fund - One-Time Revenue	278,654	-	-	700,000	-	-	278,654	
004 General Fund - Capital Improvement Reserve	8,999,660	-	-	3,505,000	519,000	-	4,975,660	
Total General Fund	\$ 21,967,704	\$ 17,181	\$ 227,835	\$ 46,521,081	\$ 530,310	\$	\$ 18,045,558	
<b>Special Revenue Funds:</b>								
101 Gas Tax	\$ 45,398	\$	\$	\$ 1,104,000	\$	\$	\$ 93,403	
102 Measure A Transportation Tax	1,361,832	-	-	472,500	1,156,652	-	663,681	
103 Street Special Revenue	314,024	-	-	-	-	-	315,024	
111 Police Asset Forfeiture	123,952	-	-	15,000	-	-	114,152	
113 Citizens Option for Public Safety (COPS)	41,990	-	-	100,000	-	-	41,990	
121 Federal/State Grants	-	-	-	87,482	-	-	-	
122 Solid Waste	268,963	-	-	75,998	-	-	276,884	
123 Library Special Revenue	165,031	-	-	39,000	-	-	126,831	
131 In-Lieu Fees	3,533,441	-	-	39,500	-	-	3,508,941	
132 Agency on Aging	32,560	-	-	214,465	-	-	32,560	
133 Restricted Donations	1,181,922	-	-	396,300	(50,000)	-	1,255,622	
136 Emergency Disaster Reserve	3,059,683	-	-	-	-	-	3,072,083	
152 Successor Housing Agency	501,129	-	-	-	-	-	651,129	
190 Emergency Disaster Recovery	882,181	-	7,115,124	5,652,672	-	-	0	
Total Special Revenue Funds	\$ 11,512,107	\$	\$ 7,115,124	\$ 8,196,917	\$ 1,106,652	\$	\$ 10,152,301	

# Fund Balance / Net Position

All Funds Budget

2016-17 First Quarter Budget Update Report

	Unaudited Available Fund Balance / Net Position July 1, 2016		Adopted			Adopted		Estimated Available Fund Balance / Net Position June 30, 2017
	Budgeted Revenues	Adjustment to Revenues	FY 2015-16 Carryovers	Budgeted Appropriations	Adjustments to Appropriations	Budgeted Appropriations		
<b>Capital Project Funds:</b>								
201 Parks and Facilities Capital	\$ 2,247,238	\$ 50,000	\$ 2,042,195	\$ 1,030,000	\$ -	\$ 1,030,000	\$ -	\$ 255,043
203 Street Improvement	1,596,093	3,880,272	5,421,904	2,750,000	-	2,750,000	-	54,461
207 Technology Capital	239,131	-	232,212	45,000	-	45,000	-	6,920
Total Capital Project Funds	\$ 4,082,463	\$ 3,930,272	\$ 7,696,311	\$ 3,825,000	\$ -	\$ 3,825,000	\$ -	\$ 316,424
<b>Debt Service Fund</b>								
302 Debt Service	\$ 16	\$ -	\$ -	\$ 1,217,517	\$ -	\$ 1,217,517	\$ -	\$ 16
Total Debt Service Fund	\$ 16	\$ -	\$ -	\$ 1,217,517	\$ -	\$ 1,217,517	\$ -	\$ 16
<b>Enterprise Funds:</b>								
611 Water	\$ 9,559,714	\$ -	\$ 7,899,443	\$ 13,508,873	\$ -	\$ 13,277,836	\$ -	\$ 1,891,308
621 Stormwater	1,761,665	469,000	712,986	1,679,000	1,756,998	1,756,998	469,000	970,681
631 Wastewater	12,717,851	-	13,076,276	16,285,136	14,842,578	14,842,578	460,373	623,761
641 Cable TV	(9,381,248)	1,071,224	1,071,224	11,088,419	1,071,224	10,959,868	34,030	(9,286,727)
Total Enterprise Funds	\$ 14,657,982	\$ 1,540,224	\$ 22,759,928	\$ 42,561,428	\$ 1,540,224	\$ 40,837,280	\$ 963,403	\$ (5,800,977)
<b>Internal Service Funds</b>								
701 Central Garage	\$ 607,902	\$ -	\$ -	\$ 210,500	\$ -	\$ 613,186	\$ -	\$ 205,216
702 Facility Maintenance	611,745	-	-	758,500	-	1,176,400	-	193,845
703 General Fund Equipment Replacement	6,884,677	-	1,902,846	480,600	-	1,896,876	19,000	3,546,555
707 Technology	218,554	-	-	690,815	-	676,895	-	232,474
711 Self Insurance	(795,619)	-	-	2,021,971	-	2,021,971	3,770	(799,389)
Total Internal Service Funds	\$ 7,527,258	\$ -	\$ 1,902,846	\$ 4,162,386	\$ -	\$ 6,385,328	\$ 22,770	\$ 3,378,700
<b>Grand Total All Funds</b>	\$ 59,747,530	\$ 5,487,677	\$ 39,702,044	\$ 110,165,117	\$ 106,983,123	\$ 2,623,135	\$ 26,092,022	



City Council Agenda Item  
Staff Report

CITY OF SAN BRUNO

**DATE:** November 9, 2016

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Ed Barberini, Chief of Police

**SUBJECT:** Receive Report and Provide Direction Regarding the Implementation of Body-Worn Camera Program Consistent with the San Mateo County Civil Grand Jury Report "Body Cameras-The Reel Truth" Recommendations

**BACKGROUND:**

In 2009 the San Bruno Police Department equipped all patrol vehicles with cameras. These cameras proved to be extremely valuable in providing evidence necessary to prosecute criminal acts and to investigate complaints submitted by individuals against the actions of police officers. Although valuable, these cameras proved difficult to maintain and eventually failed to operate on a reliable basis. These cameras failed at critical moments including at the scene of an officer involved shooting and a significant use of force related event. A subsequent inquiry determined that the existing equipment and software were outdated and no cost effective measure was available to rehabilitate the camera program. Due to their lack of effectiveness and reliability, these cameras were removed from patrol vehicles in January 2015.

A video recording system was installed into each of the Department's three interview rooms in April 2002. The video system is functional, but the audio is poor. The current system requires officers to "burn" the video to a disc prior to viewing it or logging it into evidence. The current interview room system has no visual aids to indicate when the video recorder is in the recording mode. The existing interview room video system is at the end of its useful life and will require a technical upgrade to be compatible with any body-worn video camera and any in-car video technology.

On May 24, 2016, the San Mateo County Civil Grand Jury released a report entitled "Body Cameras-The Reel Truth." The Grand Jury concluded that there are several reasons for law enforcement to employ body-worn cameras and recommended that each agency that has not implemented a body-worn camera program develop an implementation plan and advise the public of their plan by November 30, 2016. This body also recommended that all county law enforcement agencies implement a body-worn camera system as soon as practicable but, in any event, no later than October 31, 2017. On July 12, 2016, the San Bruno City Council approved a response to the Grand Jury articulating the City's willingness to comply with the recommendations by the provided deadlines.

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## DISCUSSION:

Prior to the issuance of the Grand Jury report, in March 2015, a committee was formed within the Police Department to evaluate in-car video, body-worn cameras, and interview room video systems. The committee was assigned the task of researching and recommending whether or not the San Bruno Police Department should purchase in-car video, body-worn camera, and interview room video systems. If the committee determined that one or more of these programs should be pursued, they were then to develop a plan for selection and implementation. The committee was comprised of command staff personnel, line staff personnel, and technical support.

The video committee determined that video evidence for law enforcement agencies has never been more significant than it is today. According to the United States Department of Justice, departments equipped with video cameras have experienced a significant reduction in citizen complaints. Video evidence not only asserts an agency's credibility and reduces liability, but it also increases productivity because officers spend less time in court due to the compelling evidence the programs provide. Video from the field has also been found to be a valuable training resource. The committee found that In-car video systems, body worn cameras, and interview room video systems are essential to today's policing. While each system has its own specific uses, all three can and should work hand-in-hand to provide a complete "picture" of an incident in addition to the Department's response.

All law enforcement agencies within San Mateo County have either implemented body-worn camera programs, or are taking steps to do so. This effort is not primarily a result of the aforementioned Grand Jury report, but also because it is viewed as a best practice and will soon become an industry standard.

Selecting camera systems is only one component in building a video program for the Department. Choosing an effective storage and management system is equally, if not more, important. It is critical that a selected vendor be capable of (a) managing video from all sources (in-car, body-worn, and interview room) using the same set of management rules, (b) applying the same storage architecture, and c) interlinking the video seamlessly for the end user. Dealing with different systems or vendors for each application would be a tremendous burden in terms of support, user training, and cost.

Replacing the antiquated interview room video system will allow the department to move towards an all-in-one video solution for in-car, body, and interview room system which is easily reviewed and managed. The new solution will be more easily accessible and will allow video evidence to be viewed and or forwarded to the District Attorney's office without the need to create a disc. This new system will provide for a centralized digital evidence repository where all of the captured data can be easily organized, securely stored, and retrieved.

Pursuant to section 34090.6(a) of the California Government Code, those police departments that have body worn, in-car video, and interview room video footage are required to maintain video footage for a one year retention period. It will be necessary to purchase and maintain additional storage equipment prior to

implementing new body-worn camera, in-car video and interview room video programs. The video storage server must be scalable to accommodate retention requirements in the upcoming years.

The Police Department does not have the necessary personnel to properly maintain a video server and manage the amount of additional video created by the implementation of body-worn camera, in-car video and interview room video camera programs. The existing Property Officer is classified as a Community Service Officer and is currently fully occupied with current property room duties, which do not include the management of a video server, body-worn camera footage, in-car video or Interview room video. The implementation of a video program will likely require the creation of a Digital Evidence Officer to manage the program as a whole, maintain the reliability and functionality of the program, ensure compliance with retention laws and the timely response to video related public records requests and requests from the District Attorney's Office. The video program is not expected to require the assistance or support of the City's Information Technology staff as the maintenance and management will be provided by the selected vendor should the Department pursue a request for proposal for these services.

The implementation of a body-worn camera, in-car video and interview room video program will result in additional requests from the public, District Attorney's Office, and defense counsel. The individual responsible for fulfilling these records requests and duplicating video footage will be required to view every video to ensure that video is not released in violation of confidentiality laws. All sworn patrol personnel and Community Service Officers in the field will be equipped with body-worn cameras and in-car video. This will result in the need for the Digital Evidence Officer to manage, review, redact, and duplicate a large amount of video footage from numerous sources. While other agencies plan to fill this position with a sworn peace officer, it would be much more cost effective for the San Bruno Police Department to classify this position as a Community Services Officer.

Pursuant to the recommendations made by the San Mateo County Civil Grand Jury, and the work completed by the aforementioned internal committee, the required next steps in securing a comprehensive video program include the following:

- Via a Request for Proposal (RFP) process, select a vendor to provide a complete video program and storage.
- Work with the Finance and Human Resources Departments to include a proposed a Digital Evidence Officer position and police video program in the Fiscal Year 2017-2018 Budget.
- Finalize relevant General Orders and Policies and Procedures and meet with the Police bargaining units and staff.
- Provide training to all personnel.

**FISCAL IMPACT:**

There is no immediate fiscal impact associated with the receipt of this report. Should the City Council approve of the creation of a Digital Evidence Officer at the classification of a Community Services Officer, a potential annual cost for this position is \$107,600. This amount reflects a full-time benefited position. A preliminary cost estimate, without the benefit of a submitted proposal, is approximately \$60,000 to \$70,000 annually to sustain a comprehensive video program. Equipment Reserve Funds are expected to be available to support the in-car and video room portions of the project. The body cameras, storage, and associated sustainability expenses would be new costs to be considered as part of the FY 2016-17 Operating Budget review and approval process. Specific details of associated costs will not be available until responses to the RFP are reviewed.

**RECOMMENDATION:**

Receive Report and Provide Direction Regarding the Implementation of Body-Worn Camera Program Consistent with the San Mateo County Civil Grand Jury Report "Body Cameras-The Reel Truth" Recommendations

**ALTERNATIVES:**

- 1) Direct staff to complete additional analysis and provide additional information.
- 2) Provide director to not proceed with a Body Camera Program.

**ATTACHMENTS:**

None.

**DATE PREPARED:** October 4, 2016

**REVIEWED BY:**

\_\_\_\_\_ CM

\_\_\_\_\_ ACM

\_\_\_\_\_ CA

\_\_\_\_\_ FD



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

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DATE: November 9, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Angela Kraetsch, Finance Director

SUBJECT: Adopt Resolution Establishing an Environmentally Preferable Procurement (EPP) Policy

### **BACKGROUND**

The Environmentally Preferable Purchasing Law, Public Contract Code section 12400-12404, was enacted in September 2002. This law regulates the purchase of environmentally friendly products for State agencies. The law states that Environmentally Preferable Purchasing means the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose. The comparison shall take into consideration, to the extent feasible, raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, product performance, durability, safety, the needs of the purchaser, and the cost.

While it is not required by law for Local agencies to adopt an Environmentally Preferable Purchasing (EPP) policy it is highly recommended. The City is currently interested in pursuing a Pavement Grant from CalRecycle. CalRecycle, which is a State agency and therefore required to follow the Environmentally Preferable Purchasing Law, requires that Cities have an adopted EPP policy in order to be eligible for grant opportunities.

### **DISCUSSION**

While the City does not have an adopted EPP policy, staff currently makes every effort to purchase goods and services that are environmentally friendly. City contracts include language requesting the use of recycled products where possible and economically feasible.

The EPP policy will provide guidelines and recommended criteria for environmentally preferable purchases consistent with the goals of protecting the environment and preserving limited natural resources. A EPP policy is consistent with the City Council's interest discussed as part of its consideration of the Climate Action Plan earlier this year. The EPP policy does not establish a price preference since it is anticipated that incorporating sustainable purchasing practices will be cost neutral or reduce overall

costs. For example purchasing LED lights may cost more up front but the City would realize energy cost savings overtime.

Adopting an EPP policy would allow the City to pursue future grant opportunities from CalRecycle as well as provide opportunities for environmental grants from other sources, including regional and federal entities.

### **FISCAL IMPACT**

There is no direct fiscal impact from the adoption of the EPP policy. However, it will enable the City to apply for various grant opportunities, as noted above.

### **ALTERNATIVES:**

1. Request additional information before adopting the EPP Policy.
2. Do not adopt the EPP Policy.

### **RECOMMENDATION**

Adopt Resolution establishing an Environmentally Preferable Procurement (EPP) policy.

### **ATTACHMENTS**

1. Resolution
2. Environmentally Preferable Purchasing Policy

### **DATE PREPARED**

October 17, 2016

### **REVIEWED BY**

\_\_\_\_ CM

**RESOLUTION NO. 2016-\_\_\_**

**RESOLUTION ADOPTING AN ENVIRONMENTALLY PREFERABLE  
PURCHASING POLICY**

**WHEREAS**, the City of San Bruno is charged with protecting the public health and welfare of its residents and workers, as well as the health of the environment; and

**WHEREAS**, the City of San Bruno desires to institute practices that increase the use of environmentally preferable products and services by implementing an Environmentally Preferable Purchasing Policy; and

**WHEREAS**, the benefits of implementing an Environmentally Preferable Purchasing Policy include financial and resource savings by reducing energy use, conserving water, reducing garbage and increasing recycling efforts; and

**WHEREAS**, the Environmentally Preferable Purchasing Policy provides guidelines and recommended criteria for environmentally preferable purchases consistent with the City Council's goal to protect the environment and preserve limited natural resources; and

**WHEREAS**, The Environmentally Preferable Purchasing Policy does not establish a price preference since it is anticipated that incorporating sustainable purchasing practices will be cost neutral or reduce overall costs; and

**WHEREAS**, adopting an Environmentally Preferable Purchasing Policy would allow the City to pursue future grant opportunities from CalRecycle as well as provide opportunities for environmental grants from other sources, including regional and federal entities; and

**WHEREAS**, Public Resources Code sections 40000 et seq authorize the California Department of Resources, Recycling, and Recovery (CalRecycle) to administer various grant programs in furtherance of the State of California's efforts to reduce, recycle, and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

**WHEREAS**, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

**WHEREAS**, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants, and

**WHEREAS**, CalRecycle requires that the City must adopt an Environmentally Preferable Purchasing Policy.

**NOW THEREFORE**, the City Council of the City of San Bruno hereby resolves to adopt an Environmentally Preferable Purchasing Policy.

—oOo—

I hereby certify that foregoing Resolution No. 2016 -\_\_ was introduced and adopted by the San Bruno City Council at a regular meeting on November 9, 2016 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
City Clerk

**CITY OF SAN BRUNO**  
**ENVIRONMENTALLY PREFERABLE PURCHASING**  
**POLICY**

**STATEMENT OF POLICY**

It is the policy to:

- Institute practices that reduce waste by increasing product efficiency and effectiveness;
- Purchase products where cost effective, that minimize environmental impacts such as toxics, pollution, and hazards to worker and community safety to the greatest extent practicable;
- Purchase cost effective products that reduce greenhouse gas emissions in their production, shipping, use and discard; and
- Purchase products that include recycled content, are durable and long-lasting, and conserve energy and water.

**PURPOSE**

This Policy is adopted in order to:

- Minimize environmental impacts such as pollution and use of water and energy;
- Conserve natural resources;
- Eliminate or reduce toxics that create hazards to workers and our community;
- Support strong recycling markets;
- Reduce materials that are landfilled;
- Increase the use and availability of environmentally preferable products that protect the environment;
- Identify environmentally preferable products and distribution systems;
- Reward manufacturers and vendors that reduce environmental impacts in their production and distribution systems or services; and
- Create a model for purchasing environmentally preferable products that encourages environmentally friendly practices during production, and that encourages other purchasers in our community to adopt similar goals.

**SPECIFICATIONS**

**Source Reduction**

- Institute practices that reduce waste and encourage reuse in order to result in the purchase of fewer products whenever practicable and cost-effective.
- Purchase remanufactured products such as laser toner cartridges, tires, furniture, equipment, and automotive parts whenever practicable.
- Consider short-term and long-term costs in comparing product alternatives, when feasible. This includes evaluation of total costs expected during the time a product is owned,

including, but not limited to, acquisition, extended warranties, operation, supplies, maintenance, maintenance and replacement parts, disposal costs, and expected lifetime compared to other alternatives.

- Purchase products that are durable, long lasting, reusable, or refillable whenever feasible.
- The City encourages vendors to eliminate packaging or use the minimum amount necessary for product protection.
- Indicate to vendors a preference for packaging that is reusable, recyclable or compostable, when suitable uses and programs exist.
- Vendors shall be encouraged to take back and reuse pallets and other shipping materials.
- Encourage suppliers of electronic equipment, including but not limited to computers, monitors, printers, and copiers, to take back equipment for reuse or environmentally safe recycling when the City discards or replaces such equipment, whenever possible.

### **Recycled Content Products**

- Purchase products, to the extent that it is cost effective for the City, with the highest post-consumer content available. The City will refer to the United States Environmental Protection Agency (U.S. EPA) Comprehensive Procurement Guidelines for product recycle content standards.
- Purchase copiers and printers compatible with the use of recycled content products.
- To the extent possible and cost effective, when specifying asphalt concrete, aggregate base or Portland cement concrete for road construction projects, the City shall use recycled, reusable or reground materials in accordance with adopted standards and specifications.
- When possible, the City shall specify and purchase recycled content transportation products, including signs, cones, parking stops, delineators, and barricades in accordance with the adopted standards and specifications.

### **Energy and Water Savings**

- Where applicable, energy-efficient equipment shall be purchased. This includes, but is not limited to, high efficiency space heating systems and high efficiency space cooling equipment.
- When practicable, replace inefficient interior lighting with energy-efficient equipment.
- Replace inefficient exterior lighting, street lighting and traffic signal lights with energy-efficient equipment, whenever practical.

- Purchase U. S. EPA Energy Star certified products when practicable. When Energy Star labels are not available, choose energy-efficient products that are in the upper 25% of energy efficiency as designated by the Federal Energy Management Program.
- The City shall purchase water-saving products whenever practicable. This includes, but is not limited to, high-performance fixtures like toilets, low-flow faucets and aerators, and upgraded irrigation systems.

### **Green Building - Construction and Renovations**

- Consider Green Building practices for design, construction, and operation, where appropriate, as described in the LEED™ Rating System for renovations undertaken by the City.

### **Landscaping**

- Landscape renovations, construction and maintenance by the City, including workers and contractors providing landscaping services for the City, shall employ eco-friendly landscaping or sustainable landscape management techniques for design, construction, and maintenance whenever possible, including, but not limited to, integrated pest management, grasscycling, drip irrigation, composting, and procurement and use of mulch and compost.
- Plants should be selected to minimize waste by choosing species for purchase that are appropriate to the microclimate, species that can grow to their natural size in the space allotted them, and perennials rather than annuals for color. Native and drought-tolerant plants that require no or minimal watering once established are preferred.
- Hardscapes and landscape structures constructed of recycled content materials are encouraged. The City shall limit the amount of impervious surfaces in the landscape, wherever practicable. Permeable substitutes, such as permeable asphalt or pavers, are encouraged for walkways, patios, and driveways.

### **Toxics and Pollution**

- To the extent possible and cost effective, surfactants and detergents shall be readily biodegradable.
- When maintaining buildings and landscapes, the City shall manage pest problems through prevention and physical, mechanical and biological controls.
- The City shall purchase products and equipment with no lead or mercury whenever possible. For products that contain lead or mercury, the City shall give preference to those products with lower quantities of these metals and to vendors with established lead and mercury recovery programs.
- When replacing vehicles, the City shall consider less-polluting alternatives to diesel such as compressed natural gas, bio-based fuels, hybrids, electric batteries, and fuel cells, as available.

## RESPONSIBILITIES

The health and safety of workers and citizens is of utmost importance to the City. Nevertheless, the City recognizes its duty to act in a fiscally responsible as well as in a timely manner.

Nothing contained in this policy shall be construed as requiring a department, purchaser, or contractor to procure products that do not perform adequately for their intended use, exclude adequate competition, risk the health or safety of workers and citizens, or are not available at a reasonable, competitive, and cost effective price in a reasonable period of time.

Nothing contained in this policy shall be construed as requiring the City, department, purchaser or contractor to take any action that conflicts with local, state, or federal requirements.

The City will utilize grant funds to support and implement the Environmentally Preferable Purchasing Policy to the extent allowable and eligible, where such funds are available and their use for this purpose is desirable.

## IMPLEMENTATION

The City Manager or his/her designee shall implement this policy in coordination with all other appropriate city personnel.

Every city department is responsible to ensure that their respective employees, contractors, and vendors are fully aware and supportive of the city initiative to purchase environmentally preferable goods and services. To this end, departments are responsible to exercise due diligence in their procurement decisions as well procurements made by their contractors and consultants, promoting the purchase and use environmentally preferable products whenever cost effective, and to the extent practicable for all work completed on behalf of the City.

Purchasers shall include businesses certified by the Bay Area Green Business Program in requests for products and services when practical.

Vendors, contractors and grantees shall be encouraged to comply with applicable sections of this policy for products and services provided to the City, where practicable.

## DEFINITIONS

**Bay Area Green Business Program** is a partnership of governments and businesses that certifies the environmental performance of government agencies and businesses.

**Biodegradable** means a substance or object is capable of being decomposed by bacteria or other living organisms.

**Buyer** means anyone authorized to purchase or contract for purchases on behalf of this the City or its subdivisions.

**Compostable** is when products are biodegrading into the soil or liquids biodegrade into water.

**Contractor** means any person, group of persons, business, consultant, designing architect, association, partnership, corporation, supplier, vendor, or other entity that has a contract with the City or serves in a subcontracting capacity with an entity having a contract with the City for the provision of goods or services

**Degradable** is when a compound undergoes significant changes in its structure under specific environmental conditions.

**Energy Star** means the U.S. EPA's energy efficiency product labeling program.

**Energy Efficient Product** means a product that is in the upper 25% of energy efficiency for all similar products, or that is at least 10% more efficient than the minimum level that meets Federal standards.

**Environmentally Preferable Products** are products that have a lesser or reduced impact on human health and the environment when compared with competing products that serve the same purpose. Such impacts include, but are not limited to, amount of raw material acquisition, production and manufacturing methods, packaging methods and materials, distribution, reuse, operation, and/or disposal of products.

**Feasible** means whenever possible and within reason without reducing safety, quality, or effectiveness.

**Federal Energy Management Program** is a program of the Department of Energy that issues a series of *Product Energy Efficiency Recommendations* that identify recommended efficiency levels for energy-using products.

**Green Building Practices** means a whole systems approach to the design, construction, and operation of buildings and structures that help mitigate the environmental, economic, and social impacts of construction, demolition, and renovation. Green Building Practices such as those described in the LEED Rating System, recognize the relationship between natural and built environments and seeks to minimize the use of energy, water, and other natural resources and provide a healthy productive environment.

**Integrated Pest Management (IPM)** is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and non-target organisms, and the environment.

**LEED™ Rating System** means the self-assessing system developed by the U.S. Green Building Council designed for rating new and existing commercial, institutional, and high-rise residential buildings.

**Post-consumer Material** means a finished material which would normally be disposed of as a solid waste, having reached its intended end-use and completed its life cycle as a consumer item, and does not include manufacturing or converting wastes.

**Practical or Practicable** mean whenever possible and compatible with local, state, and federal law, without reducing safety, quality, or effectiveness and where the product or service is available at a reasonable cost in a reasonable period of time.

**Pre-consumer Material** means material or by-products generated after manufacture of a product is completed but before the product reaches the end-use consumer. Pre-consumer material does not include mill and manufacturing trim, scrap, or broke which is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.

**Recovered Material** means fragments of products or finished products of a manufacturing process, which has converted a resource into a commodity of real economic value, and includes pre-consumer and post-consumer material but does not include excess resources of the manufacturing process.

**Recycled Content** means the percentage of recovered material, including pre-consumer and post-consumer materials, in a product.

**Recycled Product** means a product that meets the City's recycled content policy objectives for post-consumer and recovered material.

**Remanufactured Product** means any product diverted from the supply of discarded materials by refurbishing and marketing said product without substantial change to its original form.

**Reused Product** means any product designed to be used many times for the same or other purposes without additional processing except for specific requirements such as cleaning, painting or minor repairs.

**Source Reduction** refers to products that result in a net reduction in the generation of waste compared to their previous or alternate version and includes durable, reusable and remanufactured products; products with no, or reduced, toxic constituents; and products marketed with no, or reduced, packaging.

**U.S. EPA Guidelines** means the Comprehensive Procurement Guidelines established by the U.S. Environmental Protection Agency for federal agency purchases as of May 2002 and any subsequent versions adopted.

**Water-Saving Products** are those that are in the upper 25% of water conservation for all similar products, or at least 10% more water-conserving than the minimum level that meets the Federal standards.

#### **EXEMPTION**

Nothing in this policy shall be construed as requiring the purchase of products that do not perform adequately and/or are not available at a reasonable cost.

#### **EFFECTIVE DATE**

This policy shall take effect on November 10, 2016.