



AGENDA

CITY OF UNION CITY/ SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY MEETING

CAROL DUTRA-VERNACI, Mayor
GARY SINGH, Vice Mayor (District 1)
JAMIE PATIÑO Councilmember (District 2)
JEFF WANG, Councilmember (District 3)
SCOTT SAKAKIHARA, Councilmember (District 4)

Tuesday, July 25, 2023
7:00 PM

City Hall- Council Chamber
34009 Alvarado-Niles Road
Union City, CA 94587

- 1. CALL TO ORDER**
 - 1.a. Pledge of Allegiance
 - 1.b. Roll Call
- 2. UNFINISHED BUSINESS - None**
- 3. PROCLAMATIONS AND PRESENTATIONS**
 - 3.a. Union City Police Department Fourth of July After Action Report Presentation
- 4. ORAL COMMUNICATIONS**

An individual speaker shall have three minutes to address the Council on non-agenda items under the Oral Communications section of the agenda. The Chair may, in their discretion, lower the time limit to less than three minutes based on the number of speakers and/or business to be conducted by the City Council. Members of the public who wish to speak to the Council under the first Oral Communications section are requested to complete a

speaker card, giving their name and city of residence. If a speaker wants further notification from the City, the speaker may include a mailing address. Neither a speaker card or identification of name, city of residence or mailing address are not required to provide public comment but are requested for record keeping purposes.

5. CONSENT CALENDAR

All matters listed on the Consent Calendar are considered routine in nature and will be enacted by one motion. If discussion is required on a specific item, it will be removed from the Consent Calendar and considered separately.

5.a. Waived Further Reading of Proposed Ordinance

(This permits reading the title only in lieu of reciting the entire text of any proposed Ordinance.)

5.b. Approve The Minutes Of The Special City Council Meetings Held On June 20, 2023, July 11, 2023, July 18, 2023, and July 19, 2023

5.c. Adopt a Resolution Authorizing the Union Landing Property Owners' Association to Enter into an Agreement with Zooka Creative, in a Form Approved by the City Attorney, in an Amount Not to Exceed \$123,000 for Marketing Services for the Union Landing Shopping Center For FY 23/24

5.d. Adopt A Resolution Authorizing The City Manager To Execute A Consulting Services Agreement With Park Engineering, Inc., In The Amount Of \$2,000,000, For Construction Management Services For The Union City Boulevard Bike Lanes Project, City Project No. 17-29

5.e. Adopt A Resolution Approving Local Support For Union City Transit To Participate In The Clipper START Pilot Program Extension Through June 30, 2025, And Approving An Increase To The Clipper START Pilot Program Discount From Twenty Percent (20%) To Fifty Percent (50%), Effective January 1, 2024

5.f. Second Reading And Adoption Of An Ordinance For Zoning Text Amendment AT-23-003 To Amend Title 18, Zoning, Of The Union City Municipal Code To Update Chapter 18.08, Definitions, Chapter 18.36, Commercial Districts, Chapter 18.40, Industrial Districts, Chapter 18.76, Site Development Review, Add Chapter 18.43, Use Of Hazardous Materials, And Find That The Amendment Is Exempt From Environmental Review In Accordance With CEQA Guidelines Section 15061(b) (3)

5.g. Second Reading And Adoption Of Ordinance For 1) Zoning Text Amendment AT-23-002 To Amend Title 18, Zoning, Of The Union City Municipal Code To Update Chapter 18.41, Station East Employment (SEE) District To Rename This Chapter

“Employment Mixed-Use Districts” And Add A New Zoning District For Consistency With The Union City 2040 General Plan Designation of Mixed-Use Employment (EMU) Referred To As “Corridor Mixed-Use Employment (CMUE)” And 2) Zoning Map Amendment A-23-001 To Amend The Official Zoning Map Of The City Of Union City To Rezone The Properties Located Along The Union City Boulevard Corridor, With A Union City 2040 General Plan Designation Of Mixed-Use Employment (EMU), From Special Industrial (MS) To Corridor Mixed-Use Employment For Consistency With The General Plan, And Find That The Amendments Are Exempt From Environmental Review In Accordance With CEQA Guidelines Section 15061(B)(3)

- 5.h. Adopt A Resolution Approving The Side Letter Agreement Between The City Of Union City And The Professional Employees’ Group (PEG), Approving Amendments To The City’s Classification And Compensation Plan In Conformance With California Code Of Regulations, Title 2, Section 570.5, Effective August 7, 2023, And Amending The Fiscal Year 2023-2024 Budget
- 5.i. Adopt A Resolution Approving The Side Letter Agreement Between The City Of Union City And The Management Employees’ Group (MEG), Approving Amendments To The City’s Classification And Compensation Plan In Conformance With California Code Of Regulations, Title 2, Section 570.5, Effective August 7, 2023, And Amending The Fiscal Year 2023-2024 Budget
- 5.j. Adopt A Resolutions Appointing Individuals To Serve On The Arts & Culture Commission, Bicycle Pedestrian Advisory Committee (BPAC), Economic Development Advisory Team, Human Relations Commission, And Park & Recreation Commission.

6. PUBLIC HEARINGS - None

7. CITY MANAGER REPORTS

- 7.a. Study Session to Receive Direction from City Council on Possible Amendments to the Tobacco Retail License Ordinance and other Ordinances that Govern the Sale and Location of the Tobacco Retailers
- 7.b. Adopt A Resolution Approving Union City Transit Fall 2023 Service Changes Effective Saturday, September 9, 2023

8. SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY - None

9. AUTHORITIES AND AGENCIES - None

10. CITY COMMISSION / COMMITTEE REPORTS - None

11. **SCHEDULED ORAL COMMUNICATION - None**
12. **ITEMS REFERRED BY COUNCIL**
13. **GOOD OF THE ORDER**
 - 13.a. Articles Distributed At Meeting
14. **CLOSED SESSION - None**
15. **ADJOURNMENT**

PEOPLE OF UNION CITY

The City Council's regular meetings are held on the second and fourth Tuesday of each month at 7:00 p.m. inside the Council Chamber at City Hall, 34009 Alvarado-Niles Road, Union City CA 94587. The City continues to offer an opportunity to participate in Council meetings via Zoom at: <http://citycouncil-live.unioncity.org/> ; Passcode: u8SH9cH^

Meetings are broadcast live through UCTV Channel 15 and via live stream at:
<https://unioncity.org/199/City-Meetings-Video>

Any writings or documents provided to a majority of City Council members relating to each item of business referred to on this agenda are available for review on the City's website at www.unioncity.org or during regular business hours in the Office of the City Clerk located at 34009 Alvarado-Niles Road, Union City CA 94587.

In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Office of the City Clerk at (510) 675-5448. Notification 36 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting. The City also provides closed captioning of all its Regular City Council Meetings for the hearing impaired.

PUBLIC COMMENT

Written Comment: To provide written comment on an item on the agenda or to address the Council about an issue during Public Comment, you may send an email to cityclerk@unioncity.org. Please include the phrase "public comment" in the subject line and note the agenda item number that you want to address. Written comments will be e-mailed to the City Council and made publicly available.

Public Comment via Teleconference: Members of the public may address the Council on a matter on the agenda or during the Public Input portion of the meeting. Raise your virtual hand to notify the host that you would like to speak during that portion.

CITY COUNCIL NORMALS AND GUIDELINES (Resolution No. 6095-23; Adopted 03/14/2023)

The City Council of the City of Union City comply with the following norms:

1. We conduct ourselves in a professional manner, treat everyone with respect, and act with high integrity, always putting the interests of the City of Union City ahead of self-interests in accordance

with our code of ethics.

2. We respect the Council-Manager form of government, and do not interfere with the City Manager's role or any professional duties of City Staff.
3. We recognize that matters of confidential nature are to be kept private and undisclosed.
4. We respect each other's opinions and are supportive of each other's work advocating for the City, and we ensure that all voices are heard. We do not criticize others for having a different point of view, and we agree to disagree respectfully.
5. We understand that the City Council acts as a body, all members are equal, and policy direction is only given by a majority vote of the City Council. Once a decision is made, all members of the City Council must respect the City Council's decision.
6. We will be prepared for City Council meetings and ask our questions of the City Manager in advance so we can avoid surprising City staff at meetings.
7. We do not criticize City staff publicly or to others and will refrain from directing them. Instead, we will take our concerns and questions privately to the City Manager.
8. We will govern on an at-large basis, although elected by districts. We will maintain a citywide perspective and consider the needs and interests of the entire community.
9. We will continue to allocate resources based on long-term strategic priorities and efforts, with consideration a citywide service levels and financial capacity.
10. We understand customer service is the priority and each member of the City Council will help constituents regardless of the district in which they reside or from which a Councilmember themselves is elected.

May these Council Norms be administered and enforced in the following manner:

1. Councilmembers have the primary responsibility to assure that ethical standards are understood and met be the Council, and that the public can continue to have full confidence in the integrity of government.
2. The Mayor and the Council have the responsibility to intervene when action of its members are in violation of Council Norms.
3. The City Council can review and revise the Council Norms as needed.
4. During City Council discussions, deliberations, and proceedings, the Mayor is designated with the primary responsibility to ensure that Councilmembers adhere to the Council Norms.

CERTIFICATION OF MEETING NOTICE AND AGENDA POSTING

I, Anna M. Brown, City Clerk of the City of Union City, California, state under penalty of perjury that this

notice/agenda was posted at least 72 hours in advance of the meeting date, in accordance with the Ralph M. Brown Act, on the City's Website and on the bulletin board of City Hall.



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CHIEF JARED RINETTI

SUBJECT:

STRATEGIC PLAN ALIGNMENT

BACKGROUND

DISCUSSION

FISCAL IMPACT

RECOMMENDATION

Prepared by:

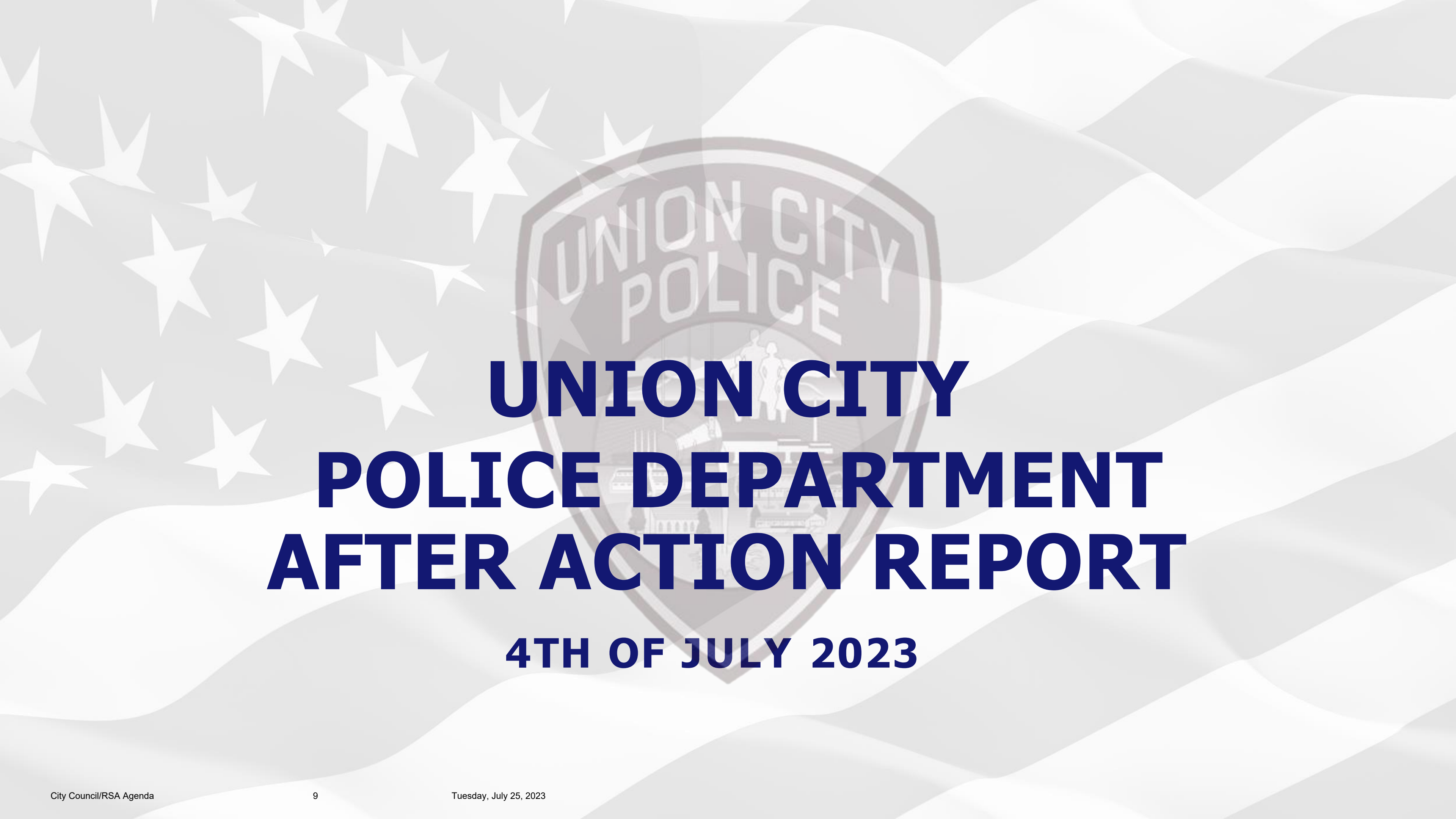
Lieutenant Brian Baumgartner

Submitted by:

Lieutenant Brian Baumgartner

ATTACHMENTS:

Description	Type
 4th of July After Action Report Power point	Attachment

The background of the slide features a stylized American flag with white stars on a light blue field and wavy stripes in shades of blue and white. Overlaid on the left side of the flag is a large, semi-transparent Union City Police Department badge. The badge is shield-shaped with a blue border and contains the text "UNION CITY" and "POLICE" in white, along with a central emblem depicting a cityscape and figures.

UNION CITY POLICE DEPARTMENT AFTER ACTION REPORT

4TH OF JULY 2023

OPERATION PLAN - FOURTH OF JULY 2023

Department Objectives



**Maintain High
Visibility**

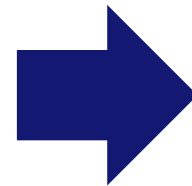
**Enforce
Fireworks
Statutes**

**Educate the
Community on Safe
and Sane Fireworks
to ensure Public
Safety**

This year, we used the same comprehensive Incident Command System (ICS) format that was first implemented in previous years. The plan required the cooperation of resources from the Union City Police Department, Fremont Police Department, Alameda County Fire and UC Public Works. Preparatory meetings began in late May of 2023.

CALLS FOR SERVICE/CITATIONS

Starting
June 16, 2023
Ending
July 5, 2023



2,657

Total Calls
for Service

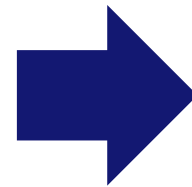
206

Fireworks-Related
Calls for Service

92

Citations Issued for
Fireworks-Related
Offenses

July 4, 2023
beginning at **0001**
hours and ending on
July 5th, 2023, at
0100 hours.



271

Total Calls
for Service

135

Fireworks-Related
Calls for Service

69

Citations Issued for
Fireworks-Related
Offenses

POLICE CHIEF	1
POLICE CAPTAIN	2
POLICE LIEUTENANT	1
POLICE SERGEANT	3
POLICE OFFICER	18
COMMUNITY SERVICE AIDE	2
PUBLIC SERVICES OFFICER	1



TOTAL STAFFING	28
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CALLS FOR SERVICE RESPONSE TIMES

2022

Average Police Response Time

37 minutes

Shortest Police Response Time

6 minutes

Longest Police Response Time

2 hours 44 minutes

2023

Average Police Response Time

12 minutes

Shortest Police Response Time

11 seconds

Longest Police Response Time

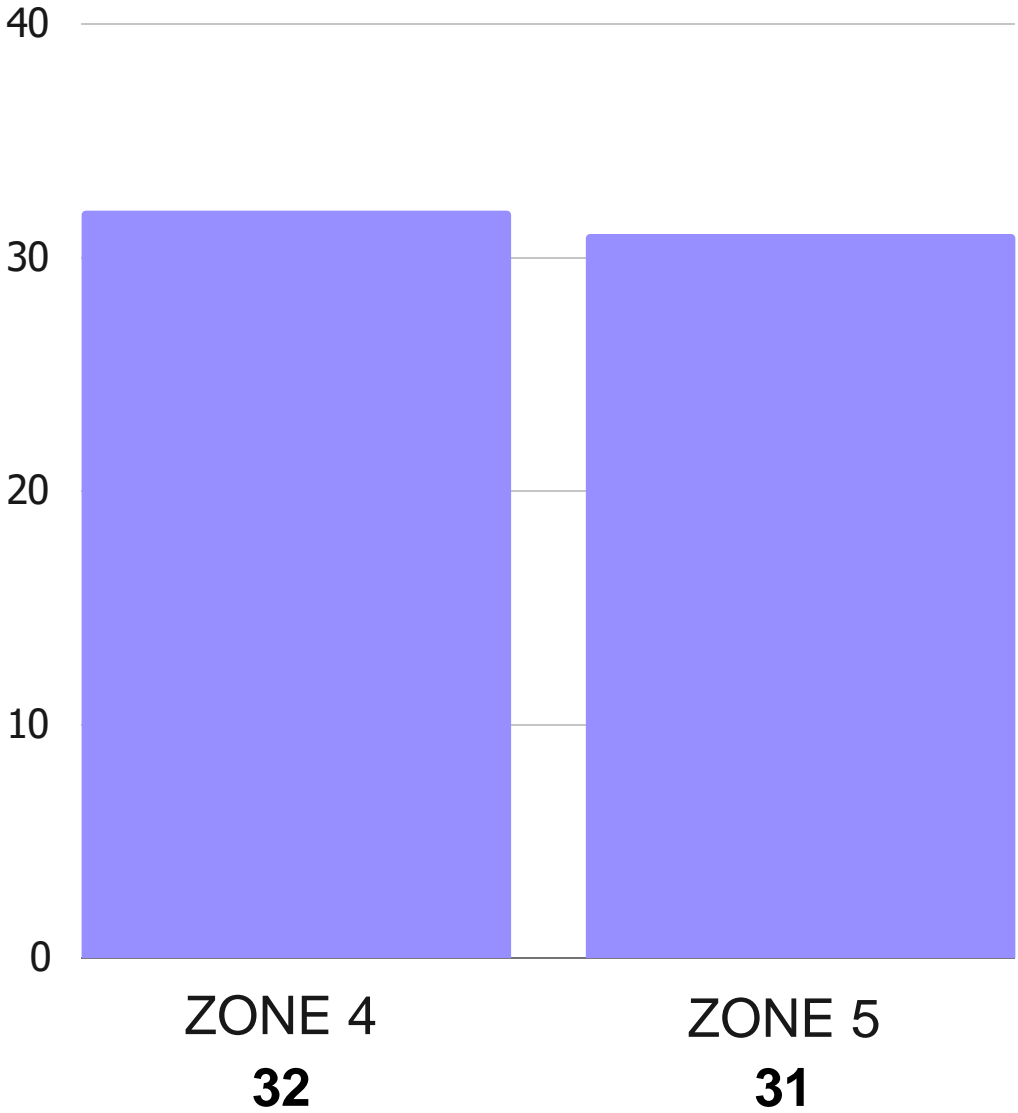
1 hour 55 minutes (during critical incident)

JULY 4TH – FIREWORKS-RELATED CITATIONS & CALLS FOR SERVICE

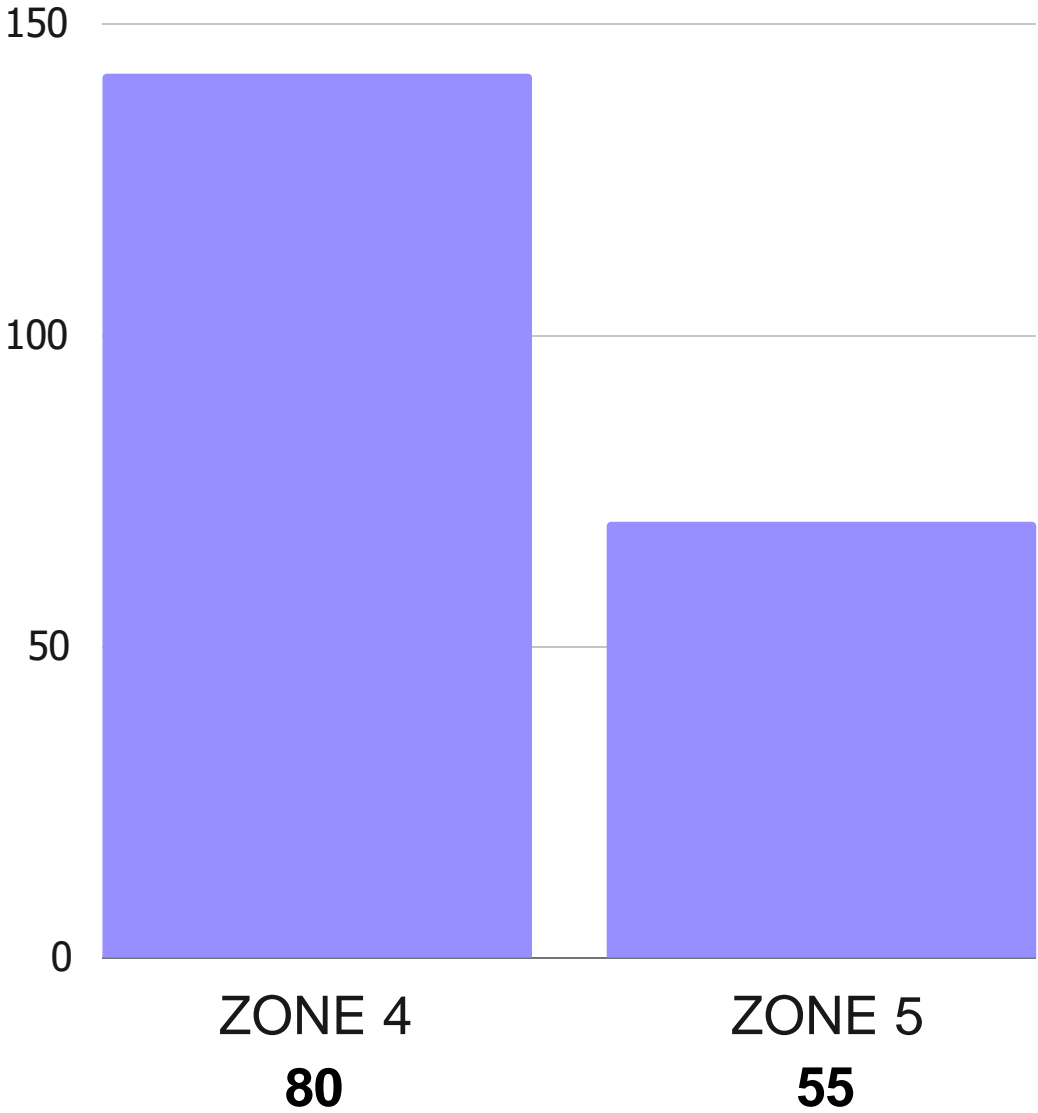
Based on Zone 4 & Zone 5



Citations

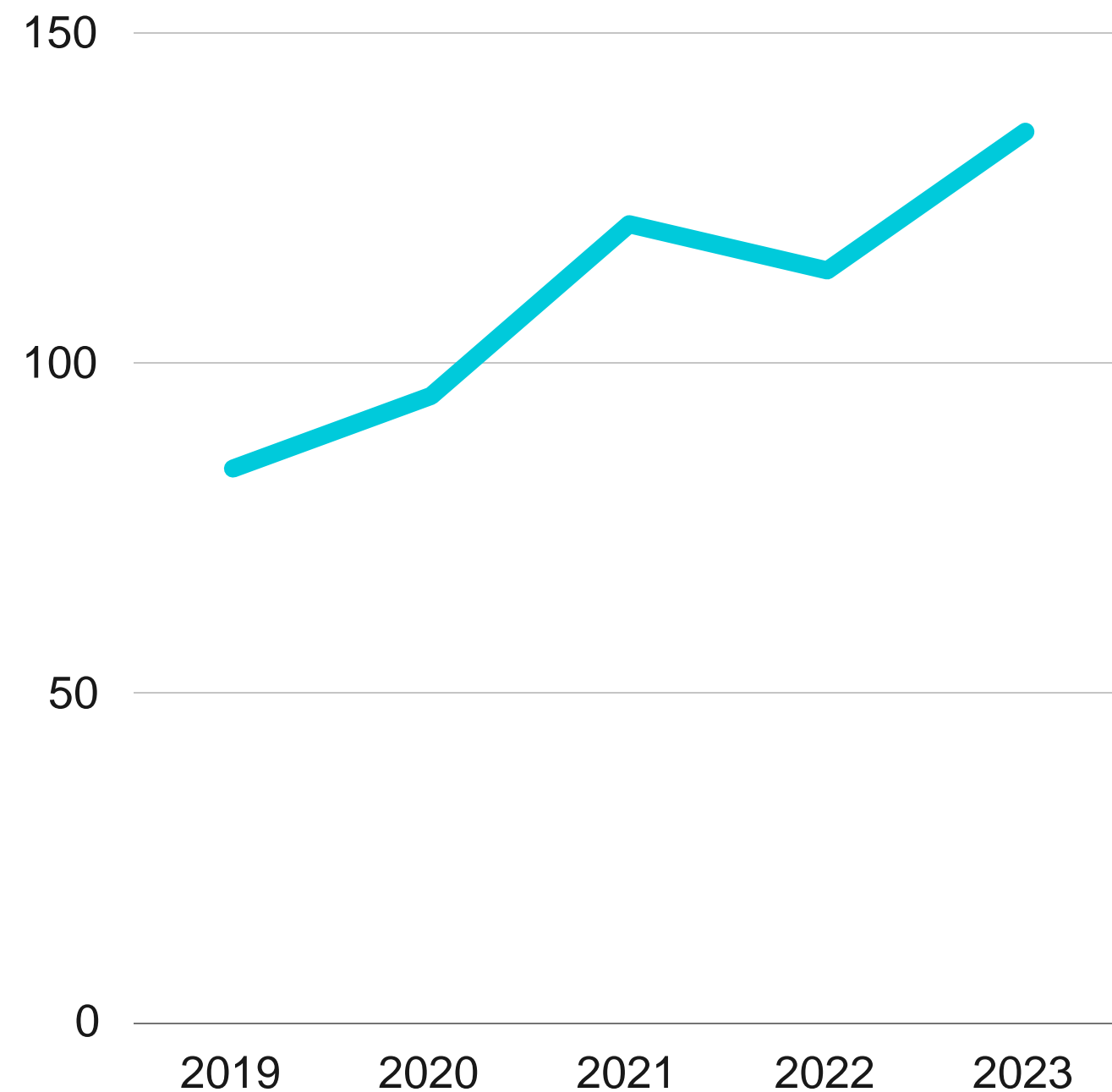


Calls for Service



JULY 4TH – FIREWORKS-RELATED INCIDENTS

5-Year Look-Back



135 Tuesday, July 4th, 2023

114 Monday, July 4th, 2022

121 Sunday, July 4th, 2021

95 Saturday, July 4th, 2020

84 Thursday, July 4th, 2019

COSTS RELATED TO FIREWORKS ENFORCEMENT

Fourth of July overtime costs of non-management staff from June 16, 2023, to July 5, 2023

	SWORN PERSONNEL	CIVILIAN PERSONNEL	TOTAL
PERSONNEL	31	4	35
COST	\$ 32,617.35	\$ 684.89	\$ 33,302.89

HISTORICAL COSTS FOR JULY 4TH OPERATIONAL PERIOD

	SWORN PERSONNEL	CIVILIAN PERSONNEL	TOTAL
2023	31	4	\$ 33,302.89
2022	29	5	\$ 18,458.56
2021	17	6	\$ 15,956.56
2020	19	4	\$ 11,966.58

FIRE DEPARTMENT FIREWORKS-RELATED CALLS FOR SERVICE

9

Fireworks-Related Calls for Service

3

Fireworks-Related Fires

1

Fireworks-Related Injury

FIREWORKS EDUCATION Through Social Media

Weekly posts began June 14th through July 4th

Total of 7 posts across all social media platforms

- 4 Informational Flyers
- 3 Proactive Enforcement Fireworks Posts



Union City Police Department

July 4 at 10:00 AM · 🌐

Happy 4th of July, everyone!

Please be safe tonight and take care of your families, pets, and most of all, yourselves.

Many pets become so frightened by the noise and commotion of fireworks that they run from familiar environments and people and sadly become lost. If your pet does become lost, contact your local animal control and surrounding shelters immediately.... [See more](#)

Union City Police Department

**SAFE AND
SANE
FIREWORKS
ONLY!**



CELEBRATE SAFELY.

[HTTPS://WWW.UNIONCITY.ORG/197/POLICE](https://www.unioncity.org/197/police)

PROACTIVE ENFORCEMENT



June 16, 2023 - July 4, 2023



Confiscated Fireworks

Seven (7) 55-gallon drums filled with hundreds of pounds of illegal and dangerous fireworks worth thousands of dollars were seized.

RECOMMENDATIONS FOR JULY 4, 2024



Continue fireworks education prior to July 4th.



Continue unmarked patrol vehicles in each zone for enforcement on the 4th.



Encourage and train Patrol to assist with administrative citations.



No stacking system for calls for service. Dispatch should MDT dispatch and/or radio dispatch.



Special enforcement units (10) assigned to patrol were sufficient and should not be decreased any further.



Due to minimal fireworks activity 3 weeks prior to the 4th, have special enforcement units start 2 weeks prior to the 4th.



Set expectations that special enforcements units stay busy with EPC's, security checks, and general proactivity if fireworks activity is not occurring.



Agenda Item

ATTACHMENTS:

Description	Type
 Draft Min 6/20/23 sp	Attachment
 Draft Min 6/20/23 cs	Attachment
 Draft Min 7/11/23 sp	Attachment
 Draft Min 7/18/23 sp	Attachment
 Draft Min 7/19/23 sp	Attachment



MINUTES

CITY OF UNION CITY CITY COUNCIL SPECIAL MEETING

Tuesday, June 20, 2023

3:00 PM

**City Hall – Council Chambers
34009 Alvarado-Niles Road
Union City, CA 94587**

1. CALL TO ORDER

Mayor Dutra-Vernaci called the meeting to order at 3:00 p.m.

Roll Call Present: Councilmembers Patiño, Sakakihara, Wang, Vice
 Mayor Singh, Mayor Dutra-Vernaci

Absent: None

2. ORAL COMMUNICATIONS

Public comment was given by Wendy Huang.

3. PUBLIC HEARING

- 3.a. Continued Public Hearing On The Proposed FY 2023-2024 And FY 2024-2025 Biennial Budget And Five-Year Capital Improvement Plan For FY 2023-2024 Through FY 2027-2028 And Adoption Of Three Resolutions: 1) Resolution Adopting The FY 2023-2024 And FY 2024-2025 Biennial Budget And Five-Year Capital Improvement Plan For FY 2023-2024 Through FY 2027-2028; 2) Resolution Approving The GANN Appropriations Limit For FY 2023-2024; And 3) Resolution Approving The Financial Principles

Finance Director Jackie Acosta presented the staff report. City Manager Joan Malloy and Finance Director Acosta responded to questions from Council. Councilmembers provided comment.

Mayor Dutra-Vernaci opened the public hearing and called for public comment.

Public comment was given by Wendy Huang and Liz Ames.

Mayor Dutra-Vernaci closed the public hearing.

It was moved by Vice Mayor Singh and seconded by Councilmember Wang to adopt:

Resolution No. 6146-23 Adopting The FY 2023-2024 And FY 2024-2025 Biennial Budget And Five-Year Capital Improvement Plan For FY 2023-2024 Through FY 2027-2028; **Resolution No. 6147-23** Approving The GANN Appropriations Limit For FY 2023-2024; and **Resolution No. 6148-23** Approving The Financial Principles. The motion was carried by the following roll call vote:

AYES:	Councilmembers Patiño, Sakakihara, Wang, Vice Mayor Singh, and Mayor Dutra-Vernaci
NOES:	None
ABSENT:	None
ABSTAIN:	None

4. CITY MANAGER REPORTS

- 4.a. Adopt Two Resolutions: 1) Approving The Annual Engineer's Report For The Landscape And Lighting Maintenance District (LLAD) No. 3; And, 2) Declaring The City Council's Intent To Levy And Collect Assessments, Setting July 11, 2023, As The Public Hearing Date

City Engineer Farooq Azim presented the staff report and responded to questions from Council. Councilmembers provided comment.

Public comment was given by Mandeep Gill.

It was moved by Councilmember Sakakihara and seconded by Councilmember Patiño to adopt:

Resolution No. 6149-23 Approving The Annual Engineer's Report For The Landscape And Lighting Maintenance District (LLAD) No. 3; And **Resolution No. 6150-23** Declaring The City Council's Intent To Levy And Collect Assessments, Setting July 11, 2023, As The Public Hearing Date. The motion was carried by the following roll call vote:

AYES:	Councilmembers Patiño, Sakakihara, Wang, Vice Mayor Singh, and Mayor Dutra-Vernaci
NOES:	None
ABSENT:	None
ABSTAIN:	None

- 4.b. Provide Direction Regarding Process For Consideration Of Potential Amendment To Zoning Code To Eliminate Prohibition On Sale Of Alcohol At Service Stations

City Manager Joan Malloy stated at the June 13, 2023 City Council Meeting, Councilmember Patiño requested Council to consider opening sales of alcohol, beer, and wine at service stations.

City Manager Joan Malloy and Police Chief Jared Rinetti responded to questions from Council. Councilmembers provided comment.

Public comment was given by Mandeep Gill and Wendy Huang.

Councilmember Patiño made a motion, seconded by Councilmember Wang, to direct the City Attorney to write an ordinance rescinding the prohibition on the sale of alcohol at service stations for consideration by the Planning Commission and City Council, bypassing the Legislation and Policy Committee.

AYES:	Councilmembers Patiño and Wang, and Vice Mayor Singh
NOES:	Councilmember Sakakihara and Mayor Dutra-Vernaci
ABSENT:	None
ABSTAIN:	None

City Attorney Kris Kokotaylo and City Manager Joan Malloy responded to questions from Council. Mayor Dutra-Vernaci provided comment.

5. ADJOURNMENT

Mayor Dutra-Vernaci adjourned the meeting at 4:01 p.m.

Respectfully submitted,

Johanna Ota
Administrative Specialist
City Clerk's Office



MINUTES

CITY OF UNION CITY CITY COUNCIL SPECIAL MEETING

Tuesday, June 20, 2023

4:00 PM

**City Hall – City Council Conference Room
34009 Alvarado-Niles Road
Union City, CA 94587**

1. CALL TO ORDER

Mayor Dutra-Vernaci called the meeting to order at 4:07 p.m.

Roll Call	Present:	Councilmembers Patiño, Sakakihara, Wang, Vice Mayor Singh, Mayor Dutra-Vernaci
	Absent:	None

2. ORAL COMMUNICATIONS - None

3. CLOSED SESSION

3.a. Public Employee Appointment

Gov. Code § 54957

Title: Human Resources Director

City Council voted unanimously to approve the City Manager appointment of Jason Castleberry to Human Resources Director.

AYES: Councilmembers Patiño, Sakakihara, Wang, Vice Mayor Singh, and Mayor Dutra-Vernaci

NOES: None

ABSENT: None

ABSTAIN: None

4. ADJOURNMENT

Mayor Dutra-Vernaci adjourned the meeting at 4:23 p.m.

Respectfully submitted,

Johanna Ota
Administrative Specialist
City Clerk's Office



MINUTES

CITY OF UNION CITY CITY COUNCIL SPECIAL MEETING

Tuesday, July 11, 2023

6:30 PM

**City Hall- Council Chamber
34009 Alvarado-Niles Road
Union City, CA 94587**

1. CALL TO ORDER

Mayor Dutra-Vernaci called the meeting to order at 6:30 p.m.

Roll Call Present: Councilmembers Patiño, Sakakihara, Wang, Vice Mayor Singh, Mayor Dutra-Vernaci

Absent: None

2. ORAL COMMUNICATIONS - None

3. CLOSED SESSION

3.a. CONFERENCE WITH LABOR NEGOTIATORS

Gov. Code Section 54957.6

Agency designated representative for Employee Organizations:
Lisa Achen, Interim Human Resources Director
Charles Flescher, IEDA Representative

For Unrepresented Employees:
Kristopher J. Kokotaylo, City Attorney

Employee organization:
Management Employees Group (MEG)
Professional Employees Group (PEG)

4. ADJOURNMENT

Mayor Dutra-Vernaci adjourned the meeting at 6:55 p.m. with no reportable action.

Respectfully submitted,

Anna M. Brown, CMC
City Clerk



MINUTES

CITY COUNCIL

SPECIAL MEETING

**Tuesday, July 18, 2023
5:30 PM**

**City Council Conference Room
34009 Alvarado-Niles Road Union City, CA 94587**

This Meeting Was Also Teleconferenced Pursuant To Government Code Section 54953(B), With Councilmember Jaime Patiño, From The Lobby Of The Marriott Tacoma Downtown Lobby 1538 Commerce St Tacoma, WA 98402. The Agenda Will Be Posted At The Remote Location And The Teleconference Location Shall Be Accessible To The Public For The Public Portion Of This Meeting Pursuant To Government Code Section 54953(B)(3).

1. CALL TO ORDER

Mayor Dutra-Vernaci called the meeting to order at 5:30 p.m.

1.a. Roll Call Present: Councilmembers Patiño, Wang, Vice
Mayor Singh, Mayor Dutra-Vernaci

Absent: Councilmember Sakakihara

2. ORAL COMMUNICATIONS - None

3. BOARD AND COMMISSION INTERVIEWS

**3.a. Conduct Interviews Of The Following Individuals To Serve
On Various Boards/Commissions/Committees:**

Lee Guio
Ali Jaweed
Santiago Gonzalez
Vipan Bajwa
Madhu Singh
Chuck Kennedy
Arun Coumar

Council conducted interviews of the applicants. Appointments will appear on agenda on the meetings of July 25, 2023 and August 8, 2023.

4. ADJOURNMENT

Mayor Dutra-Vernaci adjourned the meeting at 8:10 p.m.

Respectfully submitted,

Anna M. Brown, CMC
City Clerk



MINUTES

CITY COUNCIL

SPECIAL MEETING

**Tuesday, July 19, 2023
5:30 PM**

**City Council Conference Room
34009 Alvarado-Niles Road Union City, CA 94587**

This Meeting Was Also Teleconferenced Pursuant To Government Code Section 54953(B), With Councilmember Jaime Patiño, From The Lobby Of The Marriott Tacoma Downtown Lobby 1538 Commerce St Tacoma, WA 98402. The Agenda Will Be Posted At The Remote Location And The Teleconference Location Shall Be Accessible To The Public For The Public Portion Of This Meeting Pursuant To Government Code Section 54953(B)(3).

1. CALL TO ORDER

Mayor Dutra-Vernaci called the meeting to order at 5:30 p.m.

1.a. Roll Call Present: Councilmembers Patiño, Wang, Vice
 Mayor Singh, Mayor Dutra-Vernaci

Absent: Councilmember Sakakihara

2. ORAL COMMUNICATIONS - None

3. BOARD AND COMMISSION INTERVIEWS

3.a. Conduct Interviews Of The Following Individuals To Serve On Various Boards/Commissions/Committees:

Manjit Gill
Vanessa McDonnell
Bob Singer
Bridget Uzoew
Wendy Huang
Francisco Elizando
Thu Thai
Praina Gupta Garg

Council conducted interviews of the applicants. Appointments will appear on agenda on the meetings of July 25, 2023 and August 8, 2023.

4. ADJOURNMENT

Mayor Dutra-Vernaci adjourned the meeting at 9:02 p.m.

Respectfully submitted,

Johanna Ota
Administrative Specialist
City Clerk's Office



Agenda Item

DATE: 7/11/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CARMELA CAMPBELL, ECONOMIC AND COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE UNION LANDING PROPERTY OWNERS' ASSOCIATION TO ENTER INTO AN AGREEMENT WITH ZOOKA CREATIVE, IN A FORM APPROVED BY THE CITY ATTORNEY, IN AN AMOUNT NOT TO EXCEED \$123,000, FOR MARKETING SERVICES FOR THE UNION LANDING SHOPPING CENTER FOR FY 23/24

Staff is recommending the City Council adopt a resolution (Attachment 1) authorizing the Union Landing Property Owners' Association ("Owners' Association") to enter into an agreement with Zooka Creative ("Zooka"), in a form approved by the City Attorney, in an amount not to exceed \$123,000, for marketing services for the Union Landing Shopping Center for FY 23/24.

The Union Landing Property Business Improvement District (PBID) allows for marketing services to promote and maintain the visibility of the Union Landing shopping center as a retail destination. Zooka Creative will provide marketing services and support including web page maintenance, digital campaigns, and other optional tasks. For more information, see attached scope of work labeled Exhibit A.

STRATEGIC PLAN ALIGNMENT

This agenda item is in alignment with the following:

Goal C, Strategy 4: Enhance the City's partnership with Union Landing property owners and tenants to grow the vitality of the business district and revenue to the City.

BACKGROUND

The FY 23/24 PBID budget includes \$202,505.60 annually for marketing services. At their June 15, 2023

meeting, the Union Landing Property Owners' Association ("ULPOA") Board of Directors approved the following to support marketing services, which informed preparation of the FY 23/24 Annual Report, which includes the PBID budget.

- Increase incidental costs for Marketing Services by 4% to adjust for inflation as allowed by the PBID Management Plan.
- Not to increase the base Marketing Services Budget by 4%; the amount will remain at the same level as the previous year.
- Addition of a \$50,000 contingency to support efforts to improve and promote Union Landing.
- Launch a Request for Proposals for an updated banner program.
- Enter into a contract with Zooka Creative for \$123,000, with a 30-day termination clause, to allow the Owners' Association Marketing Committee to re-evaluate services which benefit the center most effectively as a whole. Until services are agreed upon, Zooka Creative will continue to provide web hosting services.
- Develop fiscal plan to renovate the pylons, that could include use of marketing funds and shared costs with license holders. A subcommittee will study options and bring recommendations to the Board of Directors.

On July 6, 2023, the ULPOA approved the Annual Report. On July 11, 2023, the City Council approved the Annual Report and ordered the collection and levy of PBID assessments.

DISCUSSION

Through the PBID Annual Report approval process, the ULPOA approved renewal of the Zooka agreement, up to \$123,000, to provide marketing services for the Union Landing Shopping Center. In the past, Zooka has focused on promoting both the center and individual businesses. However, the ULPOA's legal counsel has advised that marketing services should focus solely on promotion of the center and not individual businesses due to the agreement funded through the PBID. As a result, the ULPOA Marketing sub-committee will work with Zooka to determine which additional services benefit the center most effectively as a whole. Zooka has agreed to continue to provide web hosting services until a joint agreement is reached on any additional activities.

In summary, the base service will include a year of web hosting charged at a rate of \$9,000 commencing July 1, 2023. Optional services can include digital advertising (outreach, writing, design and development, newsletters, website, event coordination); paid media; and events. The ULPOA will manage the Zooka Creative agreement with assistance from staff from the Economic and Community Development Department.

FISCAL IMPACT

There is no fiscal impact to the General Fund by entering into an agreement with Zooka for marketing services for the term ending June 30, 2024. The City maintains all funds collected pursuant to the PBID assessment and ensures that such funds are accounted for separately from the City's General Fund. The FY 23/24 annual revenue to be collected for marketing services is approximately \$202,505.60, which is sufficient to cover the Zooka agreement. In addition, the ULPOA has approximately \$218,073 in surplus funds that have rolled over from previous years that can be used to supplement any marketing activities.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the Owners' Association to enter into an agreement with Zooka Creative, in a form approved by the City Attorney, in an amount not to exceed \$123,000, for marketing services for the Union Landing Shopping Center for FY 23/24.

Prepared by:

Gloria Ortega, Economic Development Manager

Submitted by:

Gloria Ortega, Economic Development Manager

ATTACHMENTS:

Description	Type
☐ Resolution Zooka Creative	Resolution
☐ Exhibit A - Zooka Agreement Scope of Work	Exhibit

CITY COUNCIL RESOLUTION NUMBER XXXX-23

RESOLUTION AUTHORIZING THE UNION LANDING PROPERTY OWNERS ASSOCIATION TO ENTER INTO AN AGREEMENT WITH ZOOKA CREATIVE FOR MARKETING SERVICES FOR THE UNION LANDING SHOPPING CENTER, IN A FORM APPROVED BY THE CITY ATTORNEY, IN AN AMOUNT NOT TO EXCEED \$123,000 FOR FY 23/24

WHEREAS, On July 11, 2023, the City Council adopted Resolution number [REDACTED]-23 to renew the Union Landing Property and Business Improvement District (“ULPBID”) and to levy and collect assessment for FY 2023-2024 in accordance with the provisions of the Property and Business Improvement District Law of 1994, California Streets and Highways Code section 36600 *et seq.*;

WHEREAS, the ULPBID Management District Plan identified the Union Landing Property Owners Association (“ULPOA”), as the owner’s association for the ULPBID and established the duties and responsibilities of the ULPOA with regard to management of the ULPBID;

WHEREAS, the mission of the ULPOA, is to create and promote a high quality entertainment and shopping environment in the Union Landing center, to protect the safety of its visitors and provide businesses within the shopping center with valuable marketing efforts;

WHEREAS, the ULPBID includes an annual assessment of approximately \$202,505.60 for contractual marketing services for the five-year PBID term from FY 20-21 through FY 24-25. In addition, the ULPOA has approximately \$218,073 dollars in surplus funds to support marketing efforts that were rolled over from previous years, and approved a \$50,000 one-time contingency fund; and

WHEREAS, the ULPOA Board of Directors approved a proposal, labeled Exhibit A, attached hereto and made a part hereof, in the amount of \$123,000 with Zooka Creative to continue to provide marketing services for the Union Landing Shopping Center including web site management, social media, marketing, and promotions services through June 30, 2024; and

WHEREAS, the agreement will include a 30-day termination clause, to allow the ULPOA Marketing Committee to re-evaluate services which benefit the center most effectively as a whole. Until services are agreed upon, Zooka Creative will continue to provide web hosting services until a joint agreement on services is established; and

WHEREAS, since the City receives the Union Landing Property and Business Improvement District (ULPBID) assessments and manages them for the ULPOA the City must approve the expenditure of these funds.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City authorizes the ULPOA to enter into an agreement with Zooka Creative for marketing services for the Union Landing Shopping Center, in a form approved by the City Attorney, in an amount not to exceed \$123,000.

EXHIBIT A

Zooka Agreement

SCOPE OF SERVICES AND COST

Proposed 2023-2024 Budget

Web Hosting, CRM, email	\$9,000
To commence July 1, 2023	

Optional Services

The following services will be further reviewed by the Board of Directors. Upon approval, the services can commence.

Digital Advertising	Up to \$95,000
All Outreach, Strategy, writing, design and development, Newsletters, social media, website and event coordination (\$9,500 per month) –	

Paid Media	Up to \$4,000
(\$500 per month) -	

Events	\$15,000
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Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MARILOU AYUPAN, PUBLIC WORKS DIRECTOR

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTING SERVICES AGREEMENT WITH PARK ENGINEERING, INC., IN THE AMOUNT OF \$2,000,000, FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE UNION CITY BOULEVARD BIKE LANES PROJECT, CITY PROJECT NO. 17-29

Staff recommends that the City Council adopt a resolution authorizing the City Manager to execute a Consulting Services Agreement with Park Engineering, Inc., in the amount of \$2,000,000, for construction management services for the Union City Boulevard Bikes Lanes Project, City Project No. 17-29.

STRATEGIC PLAN ALIGNMENT

This agenda item is in alignment with the following:

Goal D, Strategy 1: Environmental Sustainability and Infrastructure - Continue the build-out of the City's Bicycle and Pedestrian network, with an emphasis on closing gaps, addressing safety concerns, and increasing connectivity to the Station District.

Goal D, Strategy 2: Environmental Sustainability and Infrastructure – Implement the City's capital improvement plan.

BACKGROUND

The Alameda County Transportation Commission (Alameda CTC) administers funding programs and projects that benefit the Alameda County transportation system, consisting of 2000 Measure B, 2010 Vehicle Registration Fee (VRF), 2014 Measure BB, CMA-TIP, and Transportation Fund for Clean Air Programs, and such funding is collectively defined as and shall be referenced herein as the "Alameda CTC Administered Funds."

On April 27, 2017, the Alameda CTC Commission approved the award of an \$8,800,000 grant to the Union City Boulevard Bikes Lanes Project, City Project No. 17-29. On October 9, 2017, Union City received the executed Alameda CTC Project Funding Agreement No. A17-0125 in the amount of \$8,800,000 grant funded with 2014

Measure BB, CMA TIP, TFCA (Transportation Fund for Clean Air Programs) and a required local match of \$1,000,000 (Gas Tax) for the Final Design, Right of Way, and Construction Phases.

Since 2017, Union City has received other transportation funds for the Union City Boulevard Bike Lanes Projects as summarized below.

- Resolution No. 5613-20 was adopted to approve the List of Projects for FY 2020-2021, in the amount of approximately \$1.4 million funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation in various locations, including Union City Boulevard.
- Resolution No. 5768-21 was adopted to approve the List of Projects for FY 2021-2022, in the amount of approximately \$1.5 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation in various locations, including the Union City Boulevard Bike Lanes Project, City Project No. 17-29.
- Resolution No. 5951-22 was adopted to approve the List of Projects for FY 2022-2023, in the amount of approximately \$1.6 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation and improvements in various locations, including Union City Boulevard Bike Lanes Project, City Project No. 17-29
- Resolution No. 6123-23 was adopted to accept \$604,912 in Transportation Development Act (TDA), Article 3 Pedestrian/Bicycle Project Funding from the Metropolitan Transportation Commission, increasing revenue projections in the Capital Projects Fund by \$604,912, and appropriating \$604,912 to the Capital Projects Fund for the construction of the Union City Boulevard Bike Lanes Project, City Project No. 17-29.
- Resolution No. 6152-23 was adopted to accept \$1.8 million from the 2024 Comprehensive Investment Program (CIP) Grant Funds from the Alameda County Transportation Commission (Alameda CTC) for the Union Boulevard Bike Lanes (Phase III, Complete Streets) Project, City Project No. 17-29, increasing the revenue projections in the Capital Projects Fund (Fund 4100) by \$1.8 million, appropriating \$1.8 million to Project No. 17-29, earmarking \$450,000 of previously approved SB-1 funds (Fund 2515) to meet the Local Match requirement and authorizing the City Manager to sign the required grant funding agreements, in a form approved by the City Attorney.
- Resolution No. 6160-23 was adopted to approve a List of Projects for FY 2023-2024, in the amount of approximately \$1.7 million, funded with SB-1: The Road Repair and Accountability Act of 2017 (Fund 2515), which includes, among the various projects, the Union City Boulevard Bike Lanes Project, City Project No. 17-29.

This Union City Boulevard Bike Lanes Project will complete the gap along Union City Boulevard by providing continuous bike facilities from Alameda County Flood Control Channel (Fremont) to Smith Street for over two miles and will serve as the San Francisco Bay Trail in Union City. The improvements will also include the rehabilitation of the roadway within the project limits. The bike lane project has been enhanced and improved to incorporate input from BPAC member, Bike Advocates and other community members. These improvements now consist of the following:

- Implements “Complete Streets” Designs at Intersections incl. Traffic Signal Modifications:
- Upgrades Class II to Class II Buffer Bike Lanes:
- Provides a new Class I bikeway west of UCB from Lowry Road to Rocklin Drive to Delaine Eastin School and the east of UCB with a dedicated right-turn lane to improve student drop off and access to the school;
- Significantly Enhances Street Lighting (for all modes); and
- Improves roadway drainage to reduce flooding in the new bike lanes.

The construction cost of the project is estimated at \$16.8 million.

DISCUSSION

On March 24, 2023, the City of Union City released a Request for Proposal (RFP) for Construction Management Services for the Union City Boulevard Bike Lanes Project and the Cargill Brine Pipeline Project followed by the issuance of Addendum No. 1, dated April 11, 2023, and Addendum No. 2, dated May 10, 2023.

A Pre-Proposal Meeting for interested construction management firms was held on April 26, 2023 at the Mark Green Sports Center.

In early May 2023, the Design Consultant (Kimley-Horn Associates) submitted the Final Design Plans and Specifications for review by the City, the Cargill design teams, and interested construction management firms. The submittal also included an updated Construction Cost of \$16.8 million for the Union City Boulevard Bike Lanes Project, City Project No. 17-29.

On May 16, 2023, the City of Union City received four (4) proposals from Consor PMCM, Inc., Ghirardelli Associates, MNS Engineers, Inc., and Park Engineering. Interviews were held on June 15, 2023, and the interview panel, consisting of Public Works staff and a representative from Cargill, selected Park Engineering, Inc. because of their project understanding, local knowledge, similar project experience, having in-house/local inspectors, and favorable reference checks.

Park Engineering, Inc. will be the single point of contact for the Pre-Construction, Construction and Post-Construction phases (August 2023-December 2025) of this \$16.8 million project and the construction management services will include preforming a constructability and bid-ability review of the Plans, Specifications and Costs, assisting with contract bid process, project administration, managing the daily activities of the Prime Contractor, holding weekly meetings, reviewing and coordinating material submittals, RFIs and change orders with the design team, coordinating with utility companies, other agencies, businesses and residents, assisting with public meetings and outreach, reviewing progress reports & construction schedule, perform and monitor all field inspections, review test data, analyze records, assist with implementing stages construction set up for various phases, oversee post construction services including project close-out and preparation of As-Builts Plans.

The Consulting Services Agreement with Park Engineering for construction management for the Union City Boulevard Bike Lanes Project, City Project No. 17-29, is requested in the amount of \$2,000,000. If approved, staff will advertise the project in September 2023, with construction beginning in early 2024, and completion by end of 2025.

FISCAL IMPACT

The Consulting Services Agreement with Park Engineering, Inc. for Construction Management Services, in the amount of \$2,000,000, will be funded with \$1,136,000 from the Alameda CTC Project Funding Agreement No. A17-0125 in Capital Projects Fund (Account Number 4100-3199-91729-54110) for Union City Boulevard Bike Lanes Project, \$214,000 from the Measure B ACTC Bike and Ped Fund (Account Number 2543-3199-91729-54110) and \$650,000 from the S Road Maintenance and Rehabilitation Account (RMRA) Fund (Account Number 2515-3199-91729-54110), which is budgeted in the approved Five-Year Capital Improvement Plan (CIP) for Fiscal Year 2023-2024 to Fiscal Year 2027-2028 for the Union City Boulevard Bike Lane Project, City Project No. 17-29.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the City Manager to execute a Consulting Services Agreement with Park Engineering, Inc., in the amount of \$2,000,000, for construction management

services for the Union City Boulevard Bikes Lanes Project, City Project No. 17-29.

Prepared by:

Marilou Ayupan, Public Works Director

Submitted by:

Marilou Ayupan, Public Works Director

ATTACHMENTS:

Description	Type
☐ Attachment 1 - UCB Bike Lanes CM RFP and Addendum	Attachment
☐ Attachment 2 - Pre-Proposal Conference Presentation	Attachment
☐ Attachment 3 - CSA	Attachment
☐ Resolution	Resolution



REQUEST FOR PROPOSAL (RFP) FOR CONSTRUCTION MANAGEMENT SERVICES

CITY PROJECT NO. 17-29

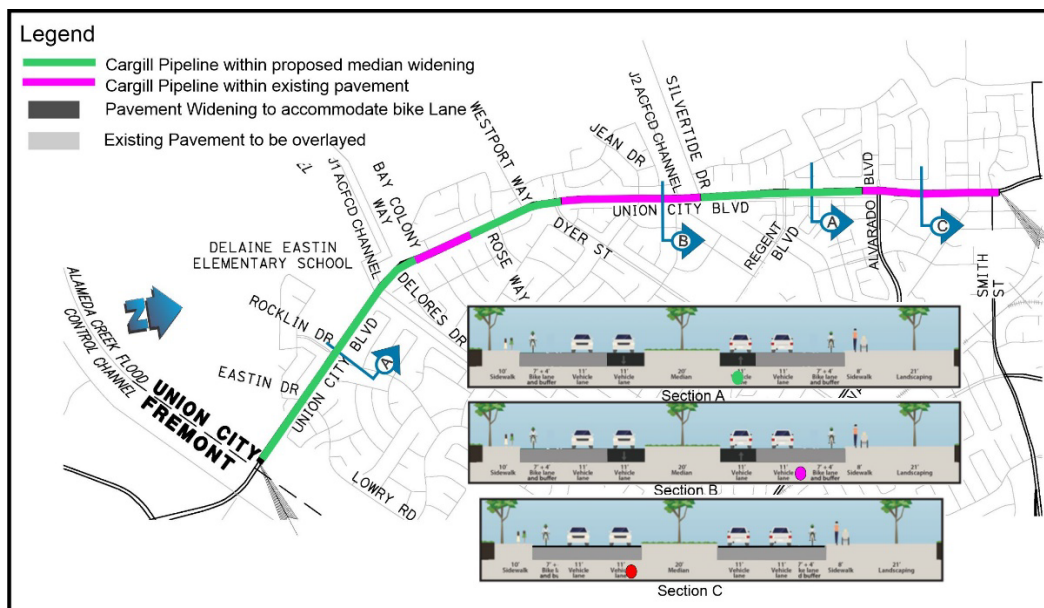
Union City Boulevard Bike Lane and Cargill's Brine Pipeline Project

Marilou R. Ayupan, P.E.
Public Works Director
City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587
MarilouA@UnionCity.org

RFP SCHEDULE	
Issue RFP	March 24, 2023
Deadline to Submit Questions	Tuesday, April 12, 2023
Deadline to Submit Proposal	Tuesday, April 19, 2023, by 1:30 p.m.
Interviews (If Necessary)	May 2, 2023

TABLE OF CONTENTS

INTRODUCTION:	1
A) About RFP	1
B) Project Background	1
C) Schedule	2
I. INSTRUCTIONS	2
II. PROPOSER'S MINIMUM QUALIFICATIONS	5
III. EVALUATION AND SELECTION	5
IV. PROPOSAL FORMAT AND CONTENT	6
V. ALAMEDA CTC REQUIREMENTS	8
VI. PREVAILING WAGE REQUIREMENTS	8
VII. INDEMNITY AND INSURANCE REQUIREMENTS	8
VIII. PROTESTS	9
IX. SCOPE OF WORK	10
X. ADMINISTRATIVE SUBMITTALS	10
XII. APPENDICES	10
a) Detailed Scope of Services	17
b) Consulting Service Agreement	22




INTRODUCTION:

A) About Request for Proposal (RFP)

Union City seeks proposals from qualified professional engineering firms to provide construction management services (including construction administration, construction inspection and material testing).

B) Project Information

Union City Boulevard Bike Lanes and Cargill Pipeline Project



Project Purpose

- Completes the bike lane gap between Smith Street and Alameda Creek Bridge (Fremont City Limits) with Buffered Bike Lanes
- Combines Bike Lane and Cargill Brine Pipeline as one single construction package to minimize public inconvenience, traffic delays and disruption to residents & local commuters
- Promotes a combined Clean Air (*Bike Lanes*) & Clean Water (*Pipeline*) Project
- Improves overall bike access to local trails and bikeway network to and from schools and parks including improvements from Delaine Elementary School on Rocklin Drive and improved access to regional trails.
- Improves pedestrian and bicycle crossings at signalized intersections
- Completes pavement rehabilitation along Union City Boulevard within the project limits
- Improves overall lighting along Union City Boulevard to enhance multimodal safety
- Improves drainage infrastructure along Union City Boulevard

Current Status

- Currently in the design phase

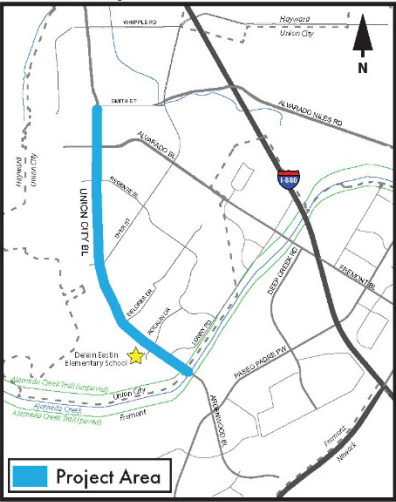
Partners and Stakeholders

- City of Union City
- Alameda County Transportation Commission
- Bicycle Pedestrian Advisory Commission (BPAC)

Construction Costs

UC Bike Lane Project	\$15,300,000
Cargill Pipeline Project	\$ 4,500,000
Total	\$19,800,000

Context Map

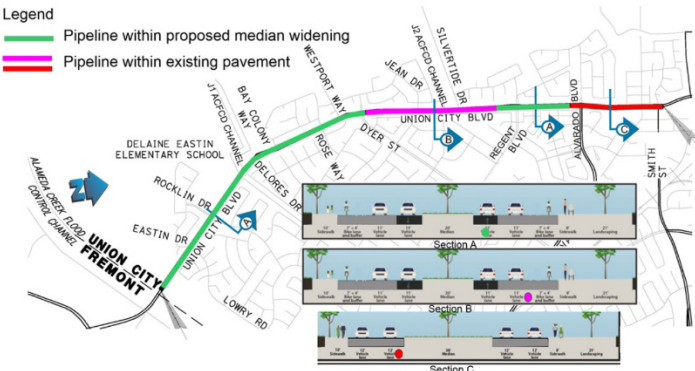


Timeline

Phase	Date
Complete Final Design	Late Spring 2023
Advertise and Award	Summer 2023
Construction	Fall 2023- Fall 2024

Legend

- Pipeline within proposed median widening
- Pipeline within existing pavement



C) Schedule

Tentative schedule is as follows:

SCHEDULE	
Notice to proceed	June 12, 2023
Review Plans For Construability	June 30, 2023
Start Construction	August 10, 2023
End Construction	October 30, 2024
Project Closeout	February 1, 2025

I. INSTRUCTIONS TO PROPOSERS

- A. PROCUREMENT SCHEDULE:** The City's procurement schedule dates are listed in the table below. All dates set forth in this RFP are subject to change at City's sole discretion and will be provided to persons submitting a proposal under this RFP ("Proposers") as an addendum. All time references in this RFP are in Pacific Time.

RFP SCHEDULE	
Issue RFP	March 24, 2023
Deadline to Submit Questions	Tuesday, April 12, 2023
Deadline to Submit Proposal	Tuesday, April 19, 2023, by 1:30 p.m.
Interviews (If Necessary)	May 2, 2023

*Note: City Hall Lobby at 34009 Alvarado-Niles Road, Union City, CA 94587 is open from 9:00 AM to 5:00 PM Monday through Thursday and 9 AM to 12 PM on the alternating Fridays that City Hall is open. Deliver all proposals to the Public Works Counter.

- B. DESIGNATED POINT OF CONTACT:** All communications with the City shall be in writing (US mail/email) to the Designated Point of Contact identified below. All emails must indicate in the subject line "RFP UCB Bike Lane and Cargill's Brine Pipeline Project, City Project No. 17-29". No telephone calls will be accepted. Proposers are prohibited from contacting anyone (including City Council members and other City staff) other than the Designated Point of Contact.

The Designated Point of Contact for this procurement shall be as follows:

Marilou Ayupan, Public Works Director
City of Union City
Public Works Department
34009 Alvarado Niles Road
Union City, CA 94587
Email: MarilouA@UnionCity.org

- C. EXAMINATION OF PROPOSAL DOCUMENTS:** By submitting a proposal, the Proposer represents that they have thoroughly examined and become familiar with the work required under this RFP, and that they are capable of performing quality work to achieve

the City's objectives. A draft PS&E is available to any firm interested in obtaining a copy. Please contact Erika Cramer at the City's Public Works Department (erikac@unioncity.org).

- D. ADDENDA/CLARIFICATIONS:** Questions or comments regarding this RFP must be submitted in writing and must be received by City no later than 5:00 p.m. on April 12, 2023. Email questions must be submitted to the Designated Point of Contact listed above and shall include line "RFP UCB Bike Lane and Cargill's Brine Pipeline Project, City Project No. 17-29" in the subject line.

Responses from the City will be communicated in writing to all recipients of this RFP and published on the City online procurement website.

NOTHING RELIEVES PROPOSERS FROM BEING BOUND BY ADDITIONAL TERMS AND CONDITIONS IN ADDENDA.

E. SUBMISSION OF PROPOSALS: All proposals shall be submitted to the Designated Point of Contact no later than 1:30 p.m. on Tuesday, April 19, 2023. If proposal is submitted in person, please deliver to the Public Works Counter in the City Hall lobby at 34009 Alvarado-Niles Road, Union City, CA 94587 (please note the City Hall lobby is open from 9:00 AM to 5:00 PM Monday through Thursday and 9 AM to 12 PM on the alternating Fridays that City Hall is open).

The Proposer shall submit five (5) printed copies and one (1) copy of the proposal in an electronic format in the form of a CD, DVD, or flash drive accompanied by a separate and sealed envelope, containing one printed copy of the Alameda CTC LBE/SLBE Forms.

The package must bear the Proposer's name and address, and be clearly labeled as follows: "RFP Union City Blvd. Bike Lane and Cargill's Brine Pipeline Project, City Project No. 17-29"

All responses, inquiries, and correspondence related to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the Proposer and submitted as part of the proposal will become the property of the City when received by the City and may be considered public information under applicable law. Any proprietary information in the proposal should be identified as such. The City does not typically disclose proprietary information to the public, unless required by law; however, the City cannot guarantee that such information will be held confidential.

- F. WITHDRAWAL OF PROPOSALS:** A Proposer may withdraw their proposal at any time before the expiration of the time for submission of proposals as provided in this RFP by delivering to the Designated Point of Contact a written request for withdrawal signed by, or on behalf of, the Proposer.

- G. RIGHTS OF CITY:** The City may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by the Proposer, and require

additional evidence or qualifications to perform the services described in this RFP.

The City reserves the right to:

- ☐ Reject any or all proposals.
- ☐ Issue subsequent Requests for Proposal.
- ☐ Postpone opening/review of proposals for its own convenience.
- ☐ Remedy technical errors in the Request for Proposal process.
- ☐ Approve or disapprove the use of specific subcontractors.
- ☐ Solicit best and final offers from all or some of the Proposers.
- ☐ Award a professional services agreement to one or more Proposers.
- ☐ Waive informalities and irregularities in proposals.
- ☐ Conduct interviews at its discretion.

H. AGREEMENT TYPE: It is anticipated that the City will award a consulting services agreement (“Agreement”). The City standard agreement is included in Appendix B. If awarded, the Agreement compensation will be cost-plus-fixed-fee not to exceed maximum dollar amount. This RFP does not commit the City to enter into such an agreement nor does it obligate the City to pay for costs incurred in the preparation or submission of proposals or in anticipation of entry into an Agreement.

I. COLLUSION: By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and not collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not, directly or indirectly, induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

J. AUDIT REPORT/REQUIREMENTS: Proposers must agree to abide by the requirements in Chapter III, paragraph 4 of FTA Circular 4220.1F. and Alameda CTC requirements. Every Proposer that has been the subject of any audit report by any government or public agency or qualified independent CPA must attach with its proposal the latest such audit report, including direct labor, materials, fringe benefits and general overhead.

Proposers must also agree to submit cost or pricing data in accordance with 48 CFR Part 15.408 Table 15-2 prior to award of the contract.

K. ECONOMIC INTEREST FORM 700: The Proposer’s key point of contact, as well as other positions within his or her firm determined by the City to be participating in the making of governmental decisions, will be required to file a Form 700, the financial disclosure form mandated by the Fair Political Practices Commissions (FPPC). The Form 700 will be required to be filed upon execution of the Agreement in which the City retains the services of the Proposer, annually thereafter, and upon separation of services pursuant to FPPC rules and regulations.

L. INCORPORATION OF EXHIBITS & ATTACHMENTS: All exhibits and attachments referenced in this RFP are incorporated herein by this reference.

II. PROPOSER'S MINIMUM QUALIFICATIONS

A. REQUIRED MINIMUM QUALIFICATIONS: The following qualifications are the minimum required qualifications that a Proposer must have in order for a proposal to be considered:

- ☐ The Prime Consultant Proposer shall be a firm with at least ten (10) years of roadway/municipal construction management experience providing professional services for construction administration, inspection and material testing for public agency clients and with the understanding of ACTC funding requirements and coordination with third party (Cargill Inc.) for the installation of their pipeline.

B. PREFERRED QUALIFICATIONS: The Proposer's Resident Engineer shall possess knowledge of municipal design guidelines, requirements, reporting requirements for ACTC, and construction administration of a similar project.

III. EVALUATION AND SELECTION

A. EVALUATION CRITERIA: The following criteria will be used to evaluate proposals:

Resident Engineer and Key Staff's Relevant Experience	35 Points
Technical Approach to the Project	30 Points
Resource Plan for the Project (hours by staff & task)	30 Points
Administrative Compliance (PW, Levine, Others)	<u>5 Points</u>
	100 Points

- 1. RESIDENT ENGINEER, DEPUTY RESIDENT ENGINEER AND KEY STAFF'S RELEVANT EXPERIENCE:** Evaluation of this criterion will be based on the resident engineer and key staff's relevant experience demonstrating the ability of the proposed team to successfully complete the project and references.
- 2. TECHNICAL APPROACH TO THE PROJECT:** Evaluation of this criterion will be based on the Proposer's technical approach to the project.
- 3. RESOURCE PLAN FOR THE PROJECT:** Evaluation of this criterion will be based on percentages and hours allocated to the major subtasks to reflect the Proposers' overall understanding of the project requirements. This information must be provided as part of the main proposal content showing only the estimated hours allocated to complete each subtask as specified in the Scope of Work and total hours by staff.

4. LOCAL FIRM PREFERENCE: A local firm is a firm that currently has its main office or a branch office with meaningful production capability located within the Bay Area counties (the nine counties in the Metropolitan Transportation Commission jurisdiction), or a firm that, upon award of the contract by the City, will establish such a local office.

B. EVALUATION PROCEDURE: The review board will evaluate proposals based on the pre-established criteria to determine the successful Proposer or establish a shortlist of firms to interview. The City reserves the right to conduct interviews at its discretion.

The names of the review board members are not revealed prior to the interviews. The individual or composite rating and evaluation forms prepared by individual review board members are not retained by the City and will not be revealed.

C. AWARD: When the review board has completed its work, negotiations will be conducted for the extent of services to be rendered.

IV. PROPOSAL FORMAT AND CONTENT

A. FORMAT: Proposals shall be typed and as concise as possible and shall not include any unnecessary promotional material. The nature and form of response are at the discretion of the Proposer, but shall include the information listed below.

B. CONTENT: Page limits for each section of the proposal are as follows:

Contents	Page Limit
Firm, team profile and qualifications (1/2 page per firm and one page resume, except for Project Manager -2 pages)	10 to 15
Work Plan/Project Understanding-Technical Approach	10
Resource Plan	4
Administrative Requirements	As specified

The Proposer shall include the information described below:

1. PROFILE OF FIRM: This section shall include a brief description of the firm's size as well as the local organizational structure. Include a discussion on the firm's financial stability, capacity, and resources. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from: (a) any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five (5) years; or, (b) any type of project where claims or settlements were paid by the Proposer or its insurers within the last five (5) years.

2. **QUALIFICATIONS OF THE FIRM/KEY Staff:** This section shall include a brief description of the firm. Provide at least three (3) examples of projects that are similar in nature to the Union City Boulevard Bike Lane and Cargill's Brine Pipeline Project performed by the proposed project manager and deputy project manager to show supporting evidence of relevant experience, including the name of the project, the name and contact information for the client on the project and the roles and responsibilities of the proposed project manager, deputy project manager and key staff on each of the example projects. Additionally, provide information for the proposed project manager, deputy project manager and key staff that shows experience working on complex multi-modal transportation projects with multiple agency and private stakeholders, experience and familiarity with the process to implement multi-modal transportation improvements from the earliest planning steps through construction. Include at least three (3) references.

3. **WORK PLAN/PROJECT UNDERSTANDING:** By presentation of a well-conceived work plan, this section of the proposal shall establish that the Proposer understands the City's objectives and work requirements and the Proposer's ability to satisfy those objectives and requirements. The work plan should describe the Proposer's approach to project management, including: developing a work plan, project communication, developing and maintaining a project schedule, and quality assurance and quality control.

4. **PROJECT STAFFING:** This section shall include the staffing level in the detailed scope of services in Appendix A. At minimum, staffing level shall be a list major tasks and staffing level by positions as shown below:

Staff	PM	DPM	PE1	PE2	Inspector 1	Inspector 2	Consultant1	Consultant1	Total
TASKS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS	HRS
Construction Administration:									
1 Project Review									
Pre-Construction Coordination &									
2 Administration									
3 Construction Coordination									
4 Contract Administration									
5 Cost and Schedule Control									
6 Project Closeout									
7 Inspection									
8 Material Testing									
Total Hours									

Proposer project team members shall be identified by name, location, and specific responsibilities on the project. An organizational chart for the project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review board. Once the proposal is submitted, there can be no change of key personnel without the prior approval of City.

5. ADMINISTRATIVE SUBMITTALS: The Proposer must complete forms as follows:

- Form 1: General Information
- Form 2: Levine Act Statement
- Form 3: Alameda CTC LBE/SBE Certification
- Form 4: Exceptions to City's Standard Agreement
- Form 5: Certificate of Proposer

V. ALAMEDA CTC REQUIREMENTS

This project is partially funded by Alameda CTC, but this contract does not have to comply with ACTC Local Business Contract Equity (LBCE). Good faith effort shall be made to meet these goals.

VI. PREVAILING WAGE REQUIREMENTS

Pursuant to appropriate Sections of the Labor Code of the State of California, the Director of the California Department of Industrial Relations has ascertained the general prevailing rate of wages (which rate includes employer payments for health and welfare, vacation, pension, and similar purposes) for those classifications applicable to the Services, for straight time, overtime, Saturday, Sunday, and holiday work. Said prevailing wage rates have been adopted by the City and are incorporated herein by reference. These wage rates are available through the California State Department of Industrial Relations, <http://www.dir.ca.gov>.

Work-persons employed in the work must be paid at rates at least equal to the prevailing wage rates as adopted. If selected Proposer uses a craft or classification not shown on the prevailing wage determinations, selected Proposer may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of award.

In the performance of the Services, the selected Proposer and all subcontractors shall be responsible for compliance with California Labor Code Sections 1776 (Payroll records, retention, inspection, non-compliance penalties, rules and regulations) and 1777.5 (Employment of registered apprentices, wages, standards, number, apprenticeable craft or trade, exemptions, contributions).

This Agreement is also subject to Federal requirements for payment of prevailing wages as determined by the Secretary of Labor. Where there are differences in the rates, the higher rate shall apply.

VII. INDEMNITY AND INSURANCE REQUIREMENTS

Selected Proposer shall maintain insurance limits no less than:

- A. GENERAL LIABILITY:** \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury, and property damage. If a Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- B. AUTOMOBILE LIABILITY:** \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:** Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- D. PROFESSIONAL LIABILITY:** \$2,000,000 each occurrence/aggregate minimum limit per claim.

VIII. PROTESTS

- A. SOLICITATION PHASE:** Prior to the closing date for submittal of proposal, Proposer may submit to the City protests regarding the procurement process, or alleged improprieties in specifications or alleged restrictive specifications. Any such protests shall be filed no later than ten (10) working days prior to the scheduled closing date. If necessary, the closing date of the solicitation may be extended pending a resolution of the protest.
- B. PRE-AWARD:** Protests dealing with alleged improprieties in the procurement or the procurement process that can only be apparent after the closing date for receipt of proposals shall be filed within five (5) working days after issuance of the Notice of Recommended Award. Protests shall contain a statement of the grounds for protests and supporting documentation. Protestor will be notified of the City's final decision prior to issuance of award.
- C. PROTEST PROCEDURES:** Protestors shall have an opportunity to appear and be heard before the agency prior to the opening of proposals in the case of protests based on the content of the request for proposals or prior to final award in the case of protests based on other grounds. Proposer's requests and protests shall be **in writing only** and be addressed to:

Marilou Ayupan, P.E.
Public Works Director
City of Union City
34009 Alvarado Niles Road
Union City, CA 94587

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

IX. SCOPE OF WORK

A detailed scope of services is included in Appendix A. Proposer shall review the detailed scope of services and if a proposer believes it is in the best interest of the project to modify or deviate from the scope of work in Appendix A, proposer shall include in Approach Section of the proposal the suggested/recommended deviations.

X. ADMINISTRATIVE SUBMITTALS

FORM 1. GENERAL INFORMATION

FORM 2. LEVINE ACT STATEMENT

FORM 3. ACTC LBE/SBE CERTIFICATION

FORM 4. EXCEPTIONS TO THE AGREEMENT

FORM 5. CERTIFICATE OF PROPOSER

XI. APPENDICES

A) Detailed Scope of Work

B) City Standard Agreement

FORM 1. GENERAL INFORMATION

Instructions: Please complete this form and include in your proposal. On a separate page, list all subcontractors; include company name, address, phone number and type of service.

Company Name _____
Street Address _____
City/State/Zip _____
Phone No. _____
FAX No. _____
Federal Taxpayer ID No. _____

POINT(S) OF CONTACT

Primary

Name/Title _____
Phone No. _____
Cell Phone No. _____
E-mail _____

Alternate

Name/Title _____
Phone No. _____
Cell Phone No. _____
E-mail _____

AUTHORIZED SIGNATORIES:

Primary

Name/Title _____
Signature _____

Alternate

Name/Title _____
Signature _____

FORM 2. LEVINE ACT STATEMENT

Prime Proposer and Subcontractors must submit a signed Levine Act Statement

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an elected local government agency from participating in the award of a contract if he or she receives any contributions totaling more than \$250 in the twelve (12) months preceding the pendency of the contract award, and for three (3) months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for elective office or on behalf of any committee in federal, state or local elections.

1. Have you or your company, or any agent on behalf of you or your company, made any contributions of more than \$250 to any City Council member in the twelve (12) months preceding the date of the issuance of this RFP?

No ___ Yes ___ Please identify the Board member or alternate: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any contributions of more than \$250 to any City Council member in the three months following the award of the contract?

No ___ Yes ___ Please identify the Board member or alternate: _____

Answering yes to either of the two questions above does not preclude City from awarding a contract to your firm. It does, however, preclude the identified Council member or alternate from participating in the contract award process for this contract.

Signature:

Firm Name:

Date:

FORM 3 ALAMEDA CTC FIRM CERTIFICATION

The Proposer hereby certifies that _____% of the dollar value of services to be rendered will be performed by the following firms (including Proposer, if applicable):

Name of Proposer or Subcontractor LBE, SLBE or NON	% of Dollar Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

By:

Signature of Authorized Representative of Proposer

Printed Name/Title

SUBMIT IN A SEALED ENVELOPE

FORM 4. EXCEPTIONS TO THE AGREEMENT

This form shall include any exceptions the Proposer takes to the “Agreement for Services,” which include the “Compensation, Invoicing and Payment” and “Indemnity and Insurance Requirements.” If Proposer takes no exceptions, check the field “Proposer takes no exceptions” below.

- Proposer takes exception to the following:

Section Reference		Disposition (For CITY Use Only)
*Insert proposed changes here		
Section Reference		Disposition (For CITY Use Only)
*Insert proposed changes here		

*Make copies of this page if necessary

- “Proposer takes no exceptions.”

Proposer:

Firm

Signature

Printed Name

Title

Date

FORM 5. CERTIFICATE OF PROPOSER

I hereby certify that I am the _____ and
duly authorized representative of the firm of _____ whose
address is _____ and that,
except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Proposer) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above Proposer) any fee, contribution, donation, consideration or any kind for, or in connection with procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Name of Company (Proposer)

Date

Signature of Contractor's Authorized Official

Printed Name and Title of Contractor's
Authorized Official

APPENDIX A

DETAILED SCOPE OF SERVICES

Provide complete Construction Administration, Inspection and Materials Testing services for the Project in accordance with ODOT's 2017 Construction Administration and Inspection Manual of Procedures (CAIMOP). CPM Scheduling services are not part of this scope.

The performance of engineering and supervisory duties required in the administration of a City of Union City construction contract, as defined in the Division 100 sections of the CAIMOP, construction contract specific requirements and City policies and procedures.

Section 101 of the Manual of Procedures defines the term Engineer, and Section 105.01 further defines the Authority/Responsibilities of the Engineer. A City employee will act as the Engineer of Record and remain in responsible charge of administration of the construction contract. The consultant employee will serve as Resident Engineer, who will provide day-to-day administration of the construction project. The table below delineates the authority of the Consultant Resident Engineer and defines the authority and decisions reserved for the City.

Section 105.01 Activity	Responsibility	Notes
The person designated as the Resident Engineer (RE) shall serve as the initial point-of-contact for all contractual issues and construction issues to the Contractor and coordination with third party (Cargill, Inc.) Engineer. The RE shall recommend the resolution of contractual issues to City staff. The RE shall coordinate the resolution of construction issues. with City staff and others involved with this project.	Consultant	
Conduct regular progress meetings (every 2 weeks) with stakeholders.	Consultant	Take meeting minutes and distribute to the group.
Provide EEO/Prevailing Wage contract compliance assistance in accordance with Section 107 of the CAIMOP.	Consultant	

Section 105.01 Activity	Responsibility	Notes
Provide required accounting documentation for ACTC	Consultant	
Record all pertinent information to force account and change orders.	Consultant	
Assignment of the inspection duties at the project level.	Consultant	
Instruction of the inspection force in the requirements of the project and the items being constructed including: <ul style="list-style-type: none"> • Addenda, proposal and supplemental specifications, and equipment (e.g., concrete testing kit). 	Consultant	
Review/respond to Requests for Information (RFIs).	Consultant	Input to be sought from City's Engineer and/or the Design Consultant as needed.
Review/approval of materials to be incorporated in the work. This may involve rejection of materials.	Consultant	City's Engineer must approve all non-spec material incorporated in the project.
Review/approval of shop drawings of materials to be incorporated in the work. This may involve rejection of drawings.	Consultant	The CM shall track the review process and "turn around" time of the submittals and coordinate the reviews with the Contractors. The CM shall provide a Disposition of Comments to the Contractors. The CM shall ensure review comments are all adequately addressed and implemented, as needed.

Section 105.01 Activity	Responsibility	Notes
<p>Timely payment for work performed by performing the following activities:</p> <ul style="list-style-type: none"> • Input daily diaries in eBuilder, review estimates, verify payrolls, and obtain approval of sampled materials. 	<p>Consultant and City</p>	<p>City's Engineer must approve all payments to the contractor.</p>
<p>Determining the need for change orders within the scope of the contract.</p>	<p>Consultant and City</p>	<p>City's Engineer must approve all change orders. Consultant shall advise the Engineer of potential claims and change orders. City's Engineer will provide direction concerning analysis and development of recommendations.</p>
<p>Monitoring of the project and discussing progress schedule with Contractor's Superintendent.</p>	<p>Consultant and City</p>	<p>City's Engineer must approve all changes in the progress schedule affecting critical milestones, completion dates, and critical path on the project.</p>
<p>Maintaining project records:</p> <ul style="list-style-type: none"> • Construction daily diary. • Work performed. • Contractor's equipment, materials, and significant events of the day. • Job correspondence. • Letters from contractors, utility companies, and other public agencies, as well as any correspondence from the City or other public agencies. • Minutes from project progress meetings, including who attended, items discussed, resolutions to problems and action items. • Other pertinent documents. • Shop drawings/working drawings. • As-built drawings. 	<p>Consultant</p>	
<p>Addressing and resolving job site problems in a timely manner.</p>	<p>Consultant and City</p>	<p>Advise City's Engineer of significant issues.</p>

Section 105.01 Activity	Responsibility	Notes
Providing the Contractor with specific information regarding the usage of contingency quantities or "as directed" items.	Consultant and City	Advise City's Engineer of significant issues with existing items of work or new items of work.
Reporting to City's Engineer any major change in conditions, traffic accidents, or status of project.	Consultant and City	Advise City's Engineer of significant issues concerning major change in conditions, traffic accidents, or status of project.
Determining final quantities, ensuring the Contractor completes the Punch List items, completing project files, and scheduling final inspection.	Consultant and City	City's Engineer must approve final quantities, punch list completion and attend the final inspection.

The performance of inspection and materials management duties as described in the CAIMOP. The Consultant will perform all off-site material testing. The Consultant shall furnish the following tools as needed:

- a) Nuclear Density Gauge and related tools.
- b) Concrete Control Kit to perform tests ASTM C-231, ASTM C-173, ASTM C-138 and ASTM C-143.
- c) The type and number of vehicles, either cars or trucks, for use on-site.

The report-in location for Consultant personnel shall be the project field office or a location at the project site designated by the City. No compensation will be provided by the City for commuting to and from the report-in location. Consultants that provide leased or company owned vehicles for use on site shall be compensated on a daily rate basis. If company owned vehicles are provided, the Consultant's indirect cost pool shall be credited for the daily rate reimbursement.

- d) Testing:
 - a. Concrete Field Testing & Test Specimen Field Fabrication - ACI Field Testing Technician Grade I
 - b. Soil & Aggregate Inspection & Compaction Testing - approved per ODOT S1121 for both equipment and personnel
 - c. Asphalt Laboratory Testing - ODOT QC Asphalt Technician - Level 2

Test laboratory shall be accredited by AASHTO (or another approved accreditation body) in the following quality management system specifications:

- a) AASHTO R18
- b) ASTM C1077 (Concrete)

- c) ASTM E-329 (Concrete)
- d) ASTM E-329 (Soil)
- e) ASTM D3740

APPENDIX B – CITY STANDARD AGREEMENT

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF UNION CITY AND [NAME OF CONSULTANT] FOR [SERVICES]

This Agreement for consulting services is made by and between the City of Union City, a municipal corporation, (“City”) and _____, a _____ (corporation / limited liability company / sole proprietor), with offices located at _____, (“Consultant”), (together referred to as the “Parties”) as of _____, 20__ (the “Effective Date”).

Section 1. Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on _____, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time is of the Essence. Time is of the essence. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

1.5 [OPTIONAL] Public Works Requirements. Because the services described in Exhibit A include “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C. Consultant shall waive, indemnify, hold harmless, and defend City concerning any liability arising out of Labor Code Section 1720 *et seq.*

[NOTE TO STAFF: IF THE SERVICES ARE NOT WITHIN THE STATUTORY DEFINITION OF A PUBLIC WORKS PROJECT, THEN SECTION 1.5 AND EXHIBIT C MAY BE DELETED. CHECK WITH THE CITY ATTORNEY IF THERE IS A QUESTION ABOUT WHETHER THE SERVICES CONSTITUTE A PUBLIC WORKS PROJECT.]

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed [Spell out amount] _____) notwithstanding any contrary indications that may be contained in Consultant's proposal for services to be performed and reimbursable costs

incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

[NOTE TO STAFF: THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT.]

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- Project name & number if applicable;
- Purchase Order number to expedite payment;
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the

work, the hours spent by each person, a brief description of the work, and each reimbursable expense;

- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Rate/Fees. Unless the services provided are for a lump sum or flat fee, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation cost proposal attached hereto as Exhibit B. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, the Agreement shall prevail.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit C, attached hereto and incorporated herein. Reimbursable expenses not listed in Exhibit C are not chargeable to City. Reimbursable expenses shall not include a mark-up and are billed as a direct costs. In no event shall expenses be advanced by the City to the Consultant. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice

of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

2.10. Business License. The Consultant is not authorized to perform services or incur costs whatsoever under the terms of this Agreement until Consultant applies for and has been issued a business license from the City pursuant to Title 5 of the Union City Municipal Code.

[NOTE TO STAFF: SECTION 3 MAY BE MODIFIED AS NECESSARY FOR THE TYPE OF WORK.]

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 Required Coverage. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>COVERAGE</u>	<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
A	Commercial General Liability Premises Liability; Products	\$1,000,000 per occurrence; Bodily Injury and Property

	and Completed Operations; Contractual Damage Liability; Personal Injury and Advertising Liability	\$2,000,00 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$2,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease. Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement
D	Professional & Omissions Includes contractual liability	Liability/Errors \$2,000,000 per occurrence \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$100,000 per claim

4.2 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement

b. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: City of Union City, its City Council, and all City officers, agents, employees, volunteers and representatives.

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

e. **Certificates of Insurance:** Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to City, evidencing that all required insurance coverage is in effect. The City reserves the rights to require the Consultant to provide complete, certified copies of all required insurance policies.

f. **Subcontractors:** Consultant shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

g. **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

i. The retroactive date of the policy must be shown and must be before the date of the Agreement.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant

must purchase an extended period coverage for a minimum of three (3) years after completion of work under this Agreement.

iv. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3 All Policies Requirements.

a. **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the City. Acceptance of Consultant's insurance by City shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.

b. **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

d. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

4.4 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of

employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant Not an Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by the City Manager, or his designee, identified as [REDACTED] ("Contract Administrator"). All correspondence, meeting documentation, invoices and project deliverables shall be directed to or through the Contract Administrator.

10.10 Notices. Any written notice to Consultant shall be sent to:

[INSERT CONSULTANT CONTACT INFORMATION HERE]

All other written notices to City shall be sent to:

Joan M. Malloy
City Manager
City of Union City

Kristopher J. Kokotaylo,
City Attorney
City of Union City

34009 Alvarado Niles Rd.
Union City, CA 94587

with a copy to

34009 Alvarado Niles Rd.
Union City, CA 94587

10.12 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.13 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, [[and]C[, and D]] **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A

Scope of Services

Exhibit B

Cost Proposal

Exhibit C

Reimbursable Expenses **[DELETE IF NOT APPLICABLE]**

Exhibit [C or D]
[APPLICABLE]

Public Works Requirements **[DELETE IF NOT APPLICABLE]**

10.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date.

CITY OF UNION CITY

[CONSULTANT]

JOAN MALLOY, CITY MANAGER

Title: _____

ATTEST:

ANNA M. BROWN, CITY CLERK

APPROVED AS TO FORM:

KRISTOPHER J. KOKOTAYLO
CITY ATTORNEY

3695229.2
Version 3.2.21

Addendum No. 1

Issued: April 11, 2023



Date: April 11, 2023

**ADDENDUM NO. 1
FOR
REQUEST FOR PROPOSAL (RFP)
FOR CONSTRUCTION MANAGEMENT SERVICES
CITY PROJECT NO. 17-29
UNION CITY BOULEVARD BIKE LANE AND CARGILL'S BRINE PIPELINE PROJECT**

1. RFP schedule on cover sheet and Page 2 of RFP is modified as shown:

RFP SCHEDULE	
Issue RFP	March 20, 2023
Reissue RFP	March 21, 2023
Pre-Proposal Conference	April 26, 2023 at 9:30 a.m.
Deadline to Submit Questions	May 4, 2023 by <u>5:00 p.m.</u>
<u>Issue Addenda/Clarifications</u>	<u>May 5, 2023 by 5:00 p.m.</u>
Deadline to Submit Proposal	May 16, 2023, by 1:30 p.m.
Interviews (If Necessary)	June 1, 2023 (Thursday)

2. Pre-Proposal Conference Meeting

All prospective proposers are strongly encouraged to attend the Pre-Proposal Conference Meeting scheduled as noted below.

Wednesday, April 26, 2023 at 9:30 a.m.
Mark Green Sports Center
31224 Union City Blvd.
Union City, CA 94587

Meeting will begin with a project presentation, contract requirements, and questions/answers period.

3. Final Design Status

We are expecting final Plans and Specifications to be completed the week of May 8, 2023.

Addendum No. 2

Issued: May 10, 2023

**ADDENDUM NO. 2
FOR
REQUEST FOR PROPOSAL (RFP)
FOR CONSTRUCTION MANAGEMENT SERVICES
CITY PROJECT NO. 17-29
UNION CITY BOULEVARD BIKE LANE AND CARGILL'S BRINE PIPELINE PROJECT**

1. Final Design Status

- a. The latest project plans were posted for download on 5/8/2023.
- b. The project specifications will be made available on May 11, 2023 (Thursday).
- c. Fiber optic and additional landscaping plans is anticipated to be issued as an addendum to construction bid package in June 2023.

2. Change to the Proposal Due Date

The proposal due date has been extended one week. Due date is **May 23, 2023 (Tuesday) at 1:30 PM**

3. Questions/Clarifications

- a. Current cost estimates
 - i. Bike Lane Project \$19.9 million with 10% contingency
 - ii. Cargill Pipeline Project \$ 7.0 million
- b. What is meant by "local organization structure"?

Include Bay Area organizations, particularly if a firm has an office in Alameda County.
- c. Appendix A – What is the "ODOT" acronym?

This was an oversight, change the acronym "ODOT" to "Caltrans".
- d. Does Section 105.01 activity intend to serve as the complete and detailed scope?

Make suggestions or recommendations for changes to scope.

- e. Resource clarification.

The intent of RFP is to seek proposers to submit their staffing plan for the project based on the scope of services included in the RFP or as recommended changes/additions by the proposers.

- f. Appendix A soil and aggregate inspection, compaction.

Change “ODOT” reference to “Caltrans”.

- g. Will there be an opportunity to ask questions regarding PS&E?

No, we are providing PS&E to guide the proposers in preparing CM approach, issues, and strategy.

- h. Section IV, Part B, subsection 2, Project Manager/Deputy PM.

Please use Resident Engineer and Deputy Resident Engineer.

- i. What is the City’s primary objectives and concerns for the construction management of this project?

The City’s objective is to minimize traffic impact to travelling motorists and to adjacent neighborhoods.

- j. Will the project follow Caltrans LAPM for advertise and award, construction administration and project completion?

To extent they are applicable.

- k. What is Phase 2B traffic signal improvements?

Please refer to updated PS&E for staging of signal improvements for various intersections.

- l. Stage 2 shows no construction.

Please refer to updated PS&E for staging and traffic handling requirements.

- m. How did the City arrive at end of construction dates? Will the contractor be allowed to overlap stages? Can 500 feet lane closure may be at multiple locations?

The City arrived at the number of working days based on a best engineering estimate for construction duration. Yes, contractor can request changes to staging, subject to City approval. Staging plans were developed by the City to minimize disruption to local traffic and to travelling motorists on Union City Blvd.

- n. Is traffic signal poles procurement timing considered in the schedule?

Yes, we anticipate doing the intersection improvements first (Cargill pipeline and reconstruction of median curb and paving, underground work for pole foundation and conduits, etc.), but not the installation of actual signal system until the poles are procured.

- o. Is UCB heavily travelled in both directions before 9 am and after 3 pm? Can the working hours be adjusted for the direction?

Based on available 24/7 traffic counts, UCB has peak volumes in both directions both before 9 am and after 3 pm. The scope for CM work will include performing two 24/7 traffic counts to update AM/PM peak volumes to see if changes to working hours can be made.

- p. Environmental permitting.

The City does not anticipate needing any environmental services during construction phase, other than compliance with NPDES permit requirements.

4. Additions to RFP

- a. Include public outreach – discuss and present proposers’ approach.
- b. Include two 24/7 traffic counts, analysis, recommendations to potentially change working hours.
- c. Construction staking is included as a bid item. You can make suggestions or other recommendations.
- a. CM firm should coordinate and lead utility meetings before the project construction commences so that the requirements of the utility companies are incorporated/considered.
- b. It is a Union Sanitary District requirement to swap non-standard manhole frames/covers with the new standard frames/covers when raising these to grade. USD will provide/swap the replacement MH frames/covers, contractor to coordinate. USD will need a count, ahead of time, to make sure they have the replacement frames.



Union City Blvd. Bike Lanes, City Project No. 18-04 and Brine Pipeline Project

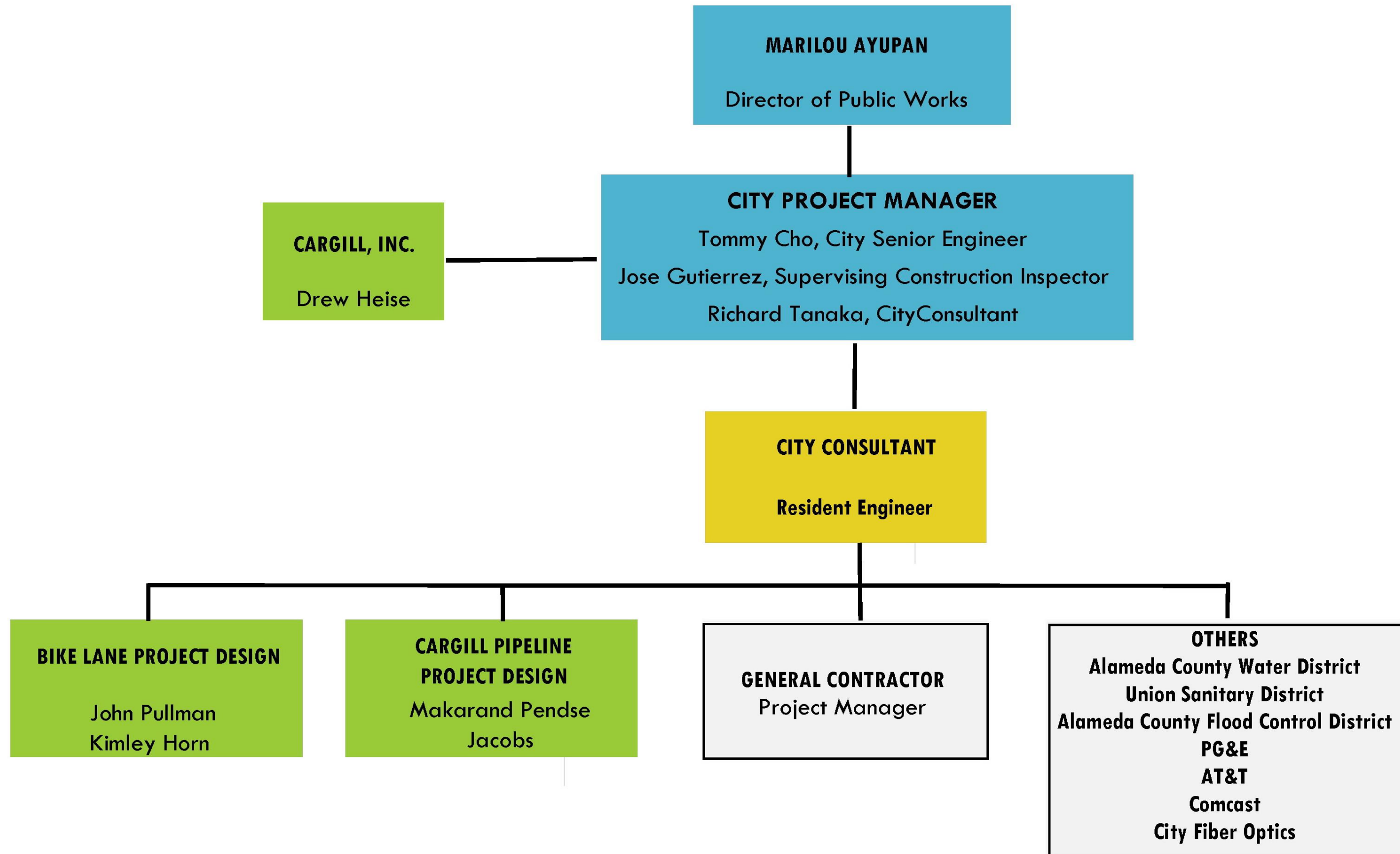
*Construction Management Pre-proposal Meeting
Wednesday, April 26, 2023*



UCB Bike Lanes and Brine Pipeline Project Pre-Proposal Meeting for Construction Management Services RFP

- 1) Introductions (Union City, Cargill, Consultants & Proposers)
- 2) RFP & Contractual Requirements
- 3) Proposal and Construction Schedule
- 4) Project Overview
 - Combined Project
 - Union City Blvd. Bike Lane Project
 - Cargill Pipeline Project
- 5) Construction Staging
- 6) CM Office and Questions

Project Organization



CM RFP and Contractual Requirements

- RFP Schedule

Issue RFP	March 20, 2023
Reissue RFP	March 21, 2023
Pre-Proposal Conference	April 26, 2023 at 9:30 a.m.
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Deadline to Submit Proposal	May 16, 2023, by 1:30 p.m.
Interviews (If Necessary)	June 1, 2023 (Thursday)

- Prevailing Wage Requirements
- City Standard Agreement for Services
- Scope and Project Staffing (Hours)

CM RFP and Contractual Requirements

PROJECT FUNDING

Alameda County Transportation Commission (AlaCTC) Funds

- 2014 Measure BB
- TFCA (Transportation Funds for Clean Air) Funds
- CMA TIP & Gas Tax (Local Match)

Local Funds

- City's Measure B/BB and VLF (AlaCTC DLD) Funds
- State Gas Tax and SB-1 Funds
- State/MTC TDA, Article 3 Funds
- Cargill Share (Common Bid Items)
- Others

CM RFP and Contractual Requirements

- Construction Schedule

TASKS	DATE
CM Firm On-Board	June 13, 2023 City Council
CM Review Final PS&E/Familiarize	June 15, 2023 to June 30, 2023
Bid Opening	July 15, 2023
<u>Construction NTP</u>	August 15, 2023
Construction Duration	August 15, 2023 to April 2025
Project Close-out	April 2025 to August 2025

PROJECT OVERVIEW

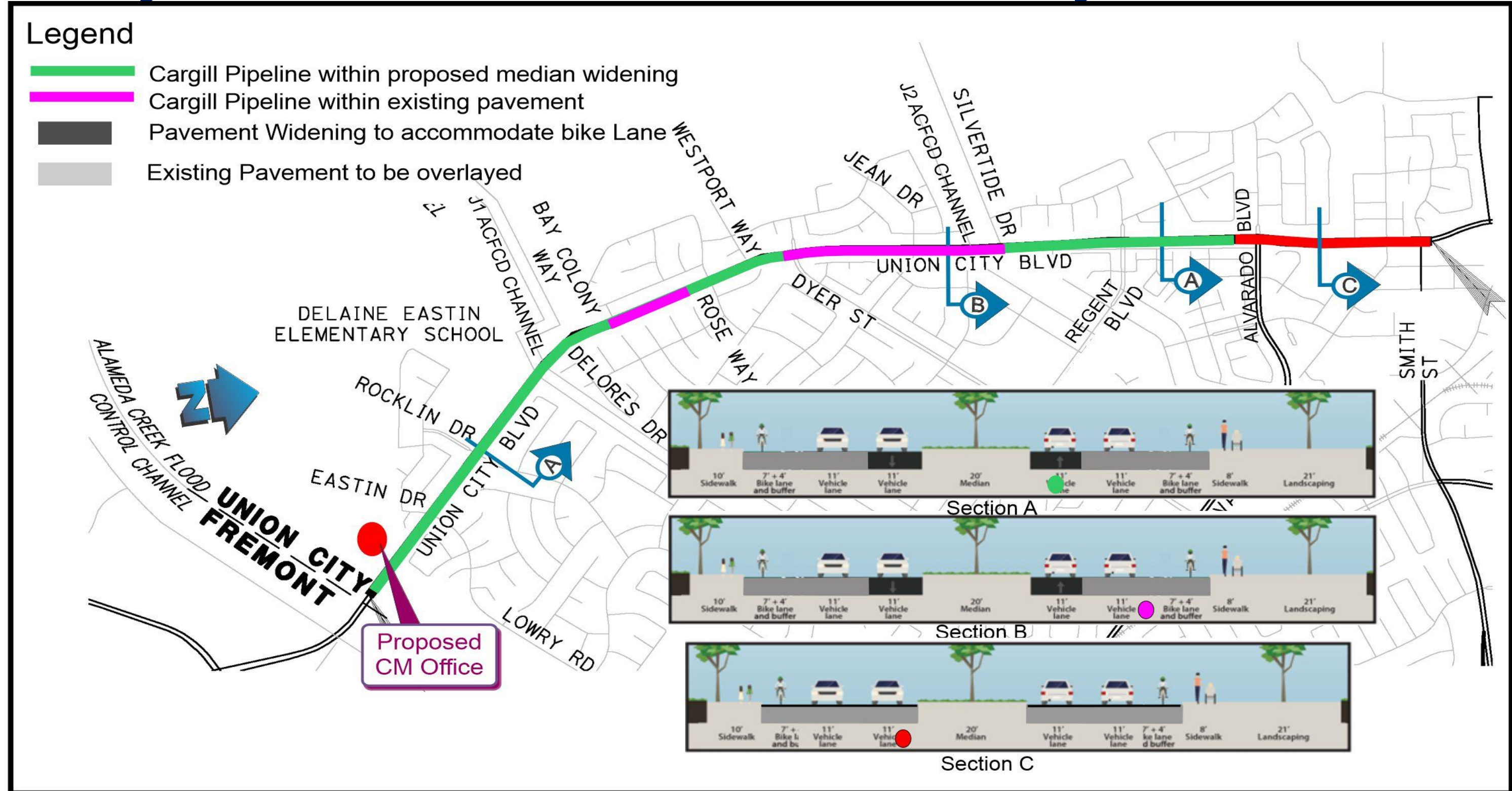
Union City Blvd (UCB) Bike Lanes Project

- Constructs about 2 miles of buffer Class II Bike Lanes by reconstructing median island (Fremont City Limits to Smith Street)
- Rehabilitates UCB pavement within project limits
- Constructs “Complete Streets” improvements at the intersections
- Enhances corridor lighting for all modes (pedestrians, bikes, transit & cars)
- Improves roadway drainage infrastructure at various locations
- Improves access to and from Delaine Eastin Elementary School at Rocklin Dr.
- Improves roadway signing and striping (incl. new “Bay Trail” signs)
- Other misc. items of work (landscaping, etc.)

Cargill Brine Pipeline Project

- Installs 18-inch underground HDPE brine pipeline within UCB
- Installs fiber optic conduit

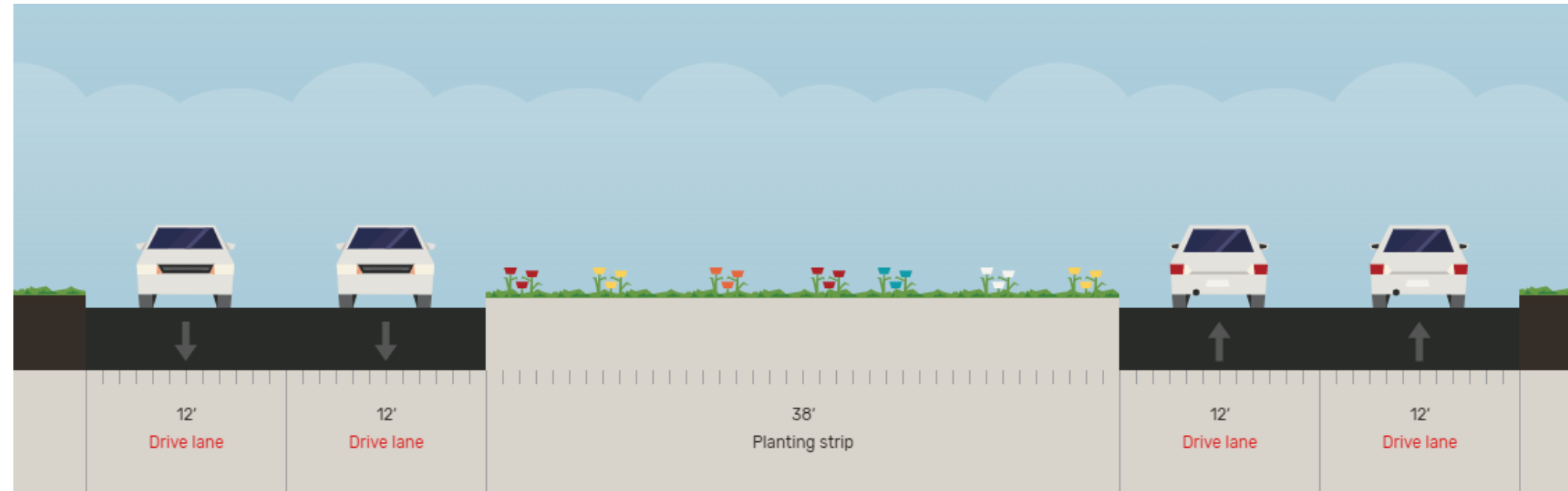
Project Overview – Combined Project



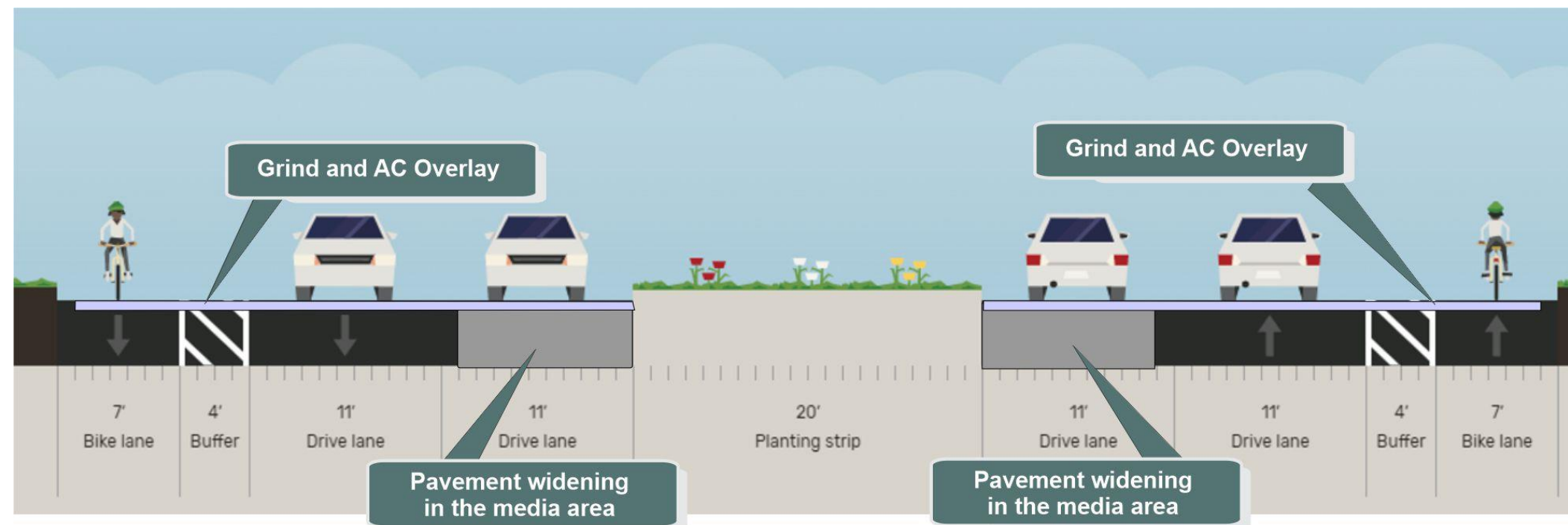
1)	Bike Lane Estimated Construction Cost	\$15.3 m
2)	Cargill Pipeline Estimated Construction Cost	\$ 4.5 m
	Total	\$19.8 m

Project Overview – Bike Lane Project

Widen in median area

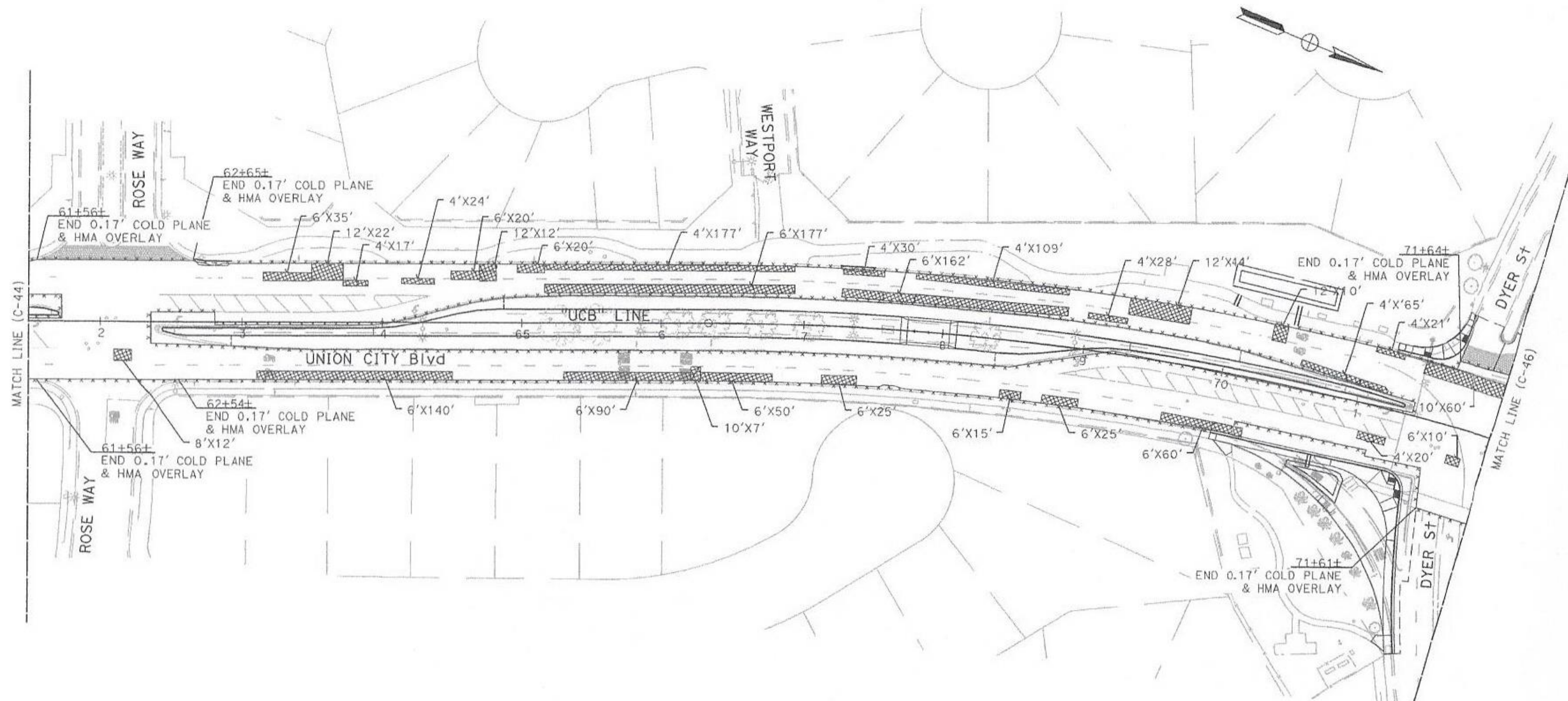


Existing Typical Section



Proposed Widening - Typical Section

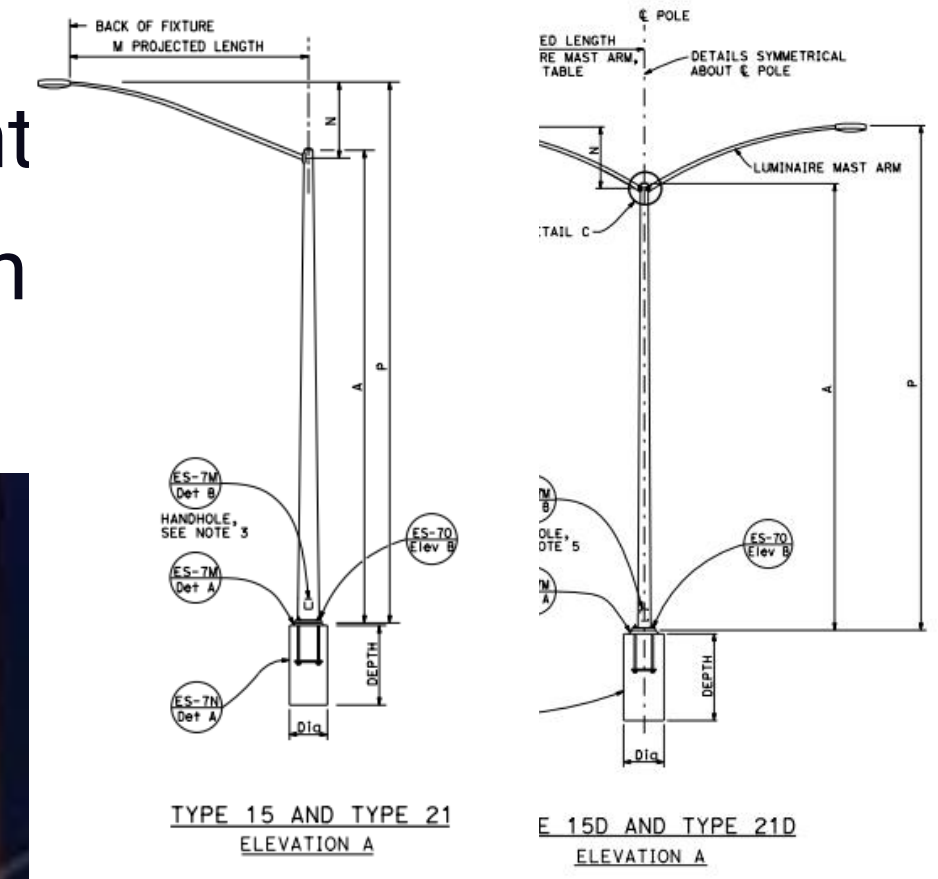
Project Overview – Bike Lane Project Typical Pavement Repairs



Project Overview – Bike Lane Project

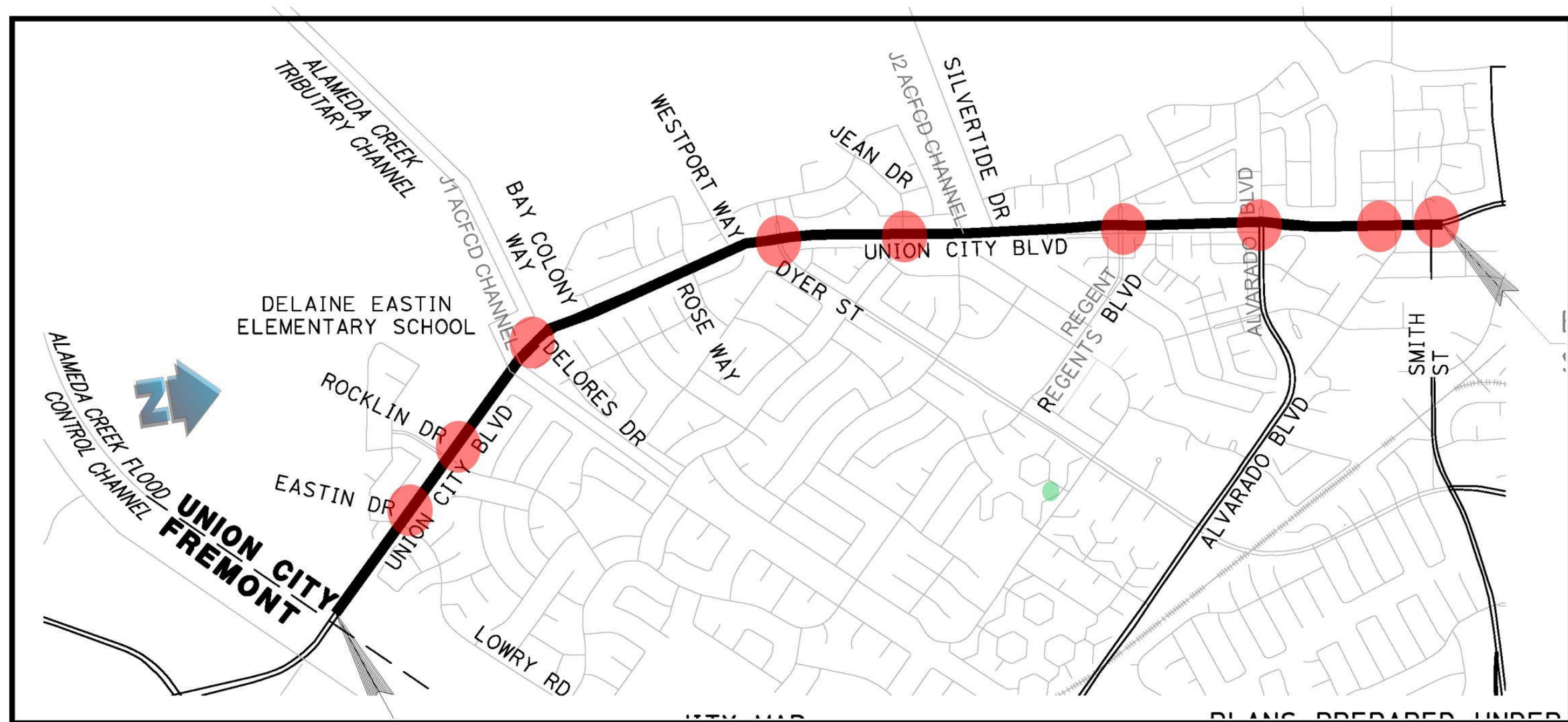
Multimodal Corridor Lighting

- Replacement of luminaires on existing streetlight
- Installation of new streetlight poles to provide uniform lighting and eliminate dark spots



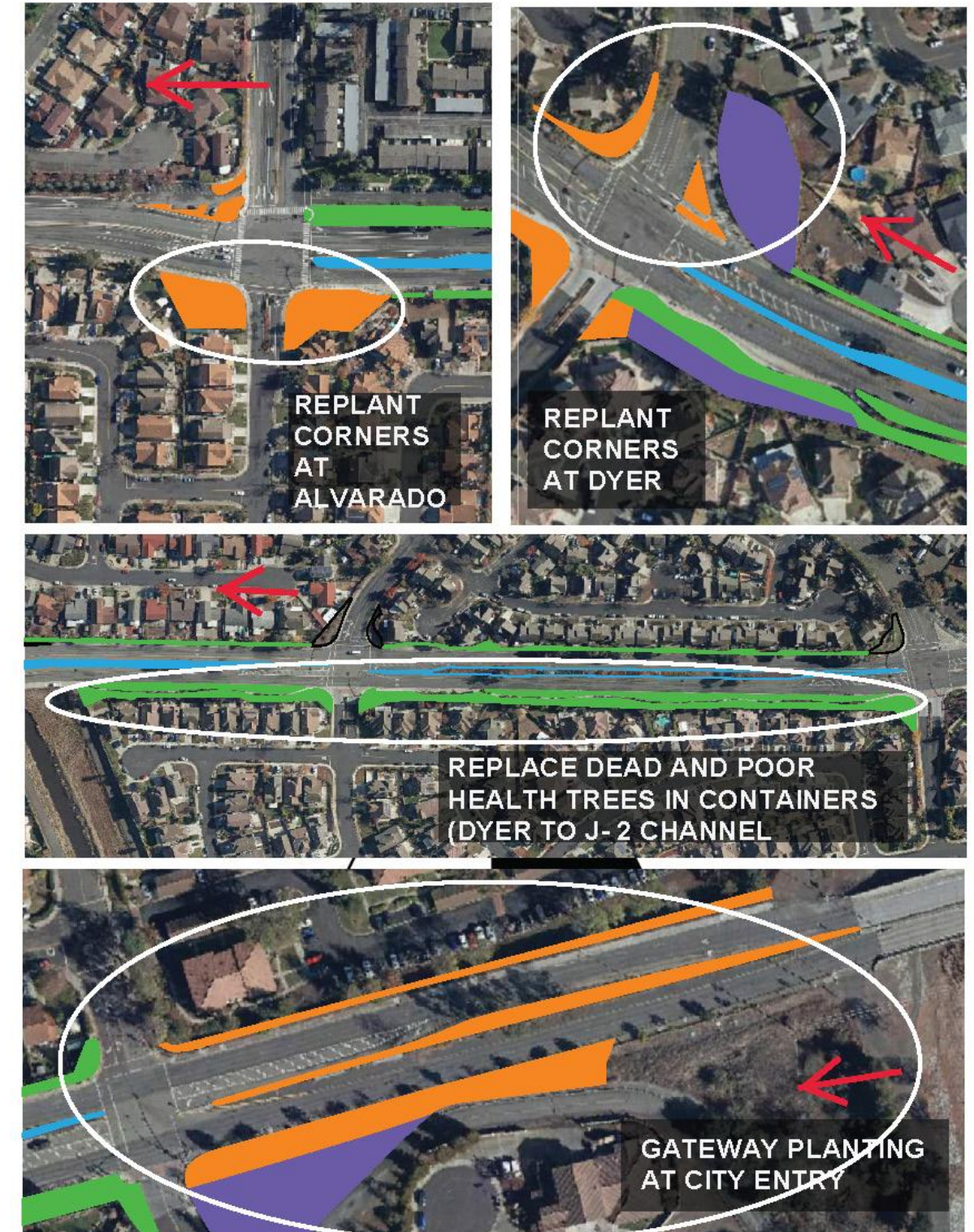
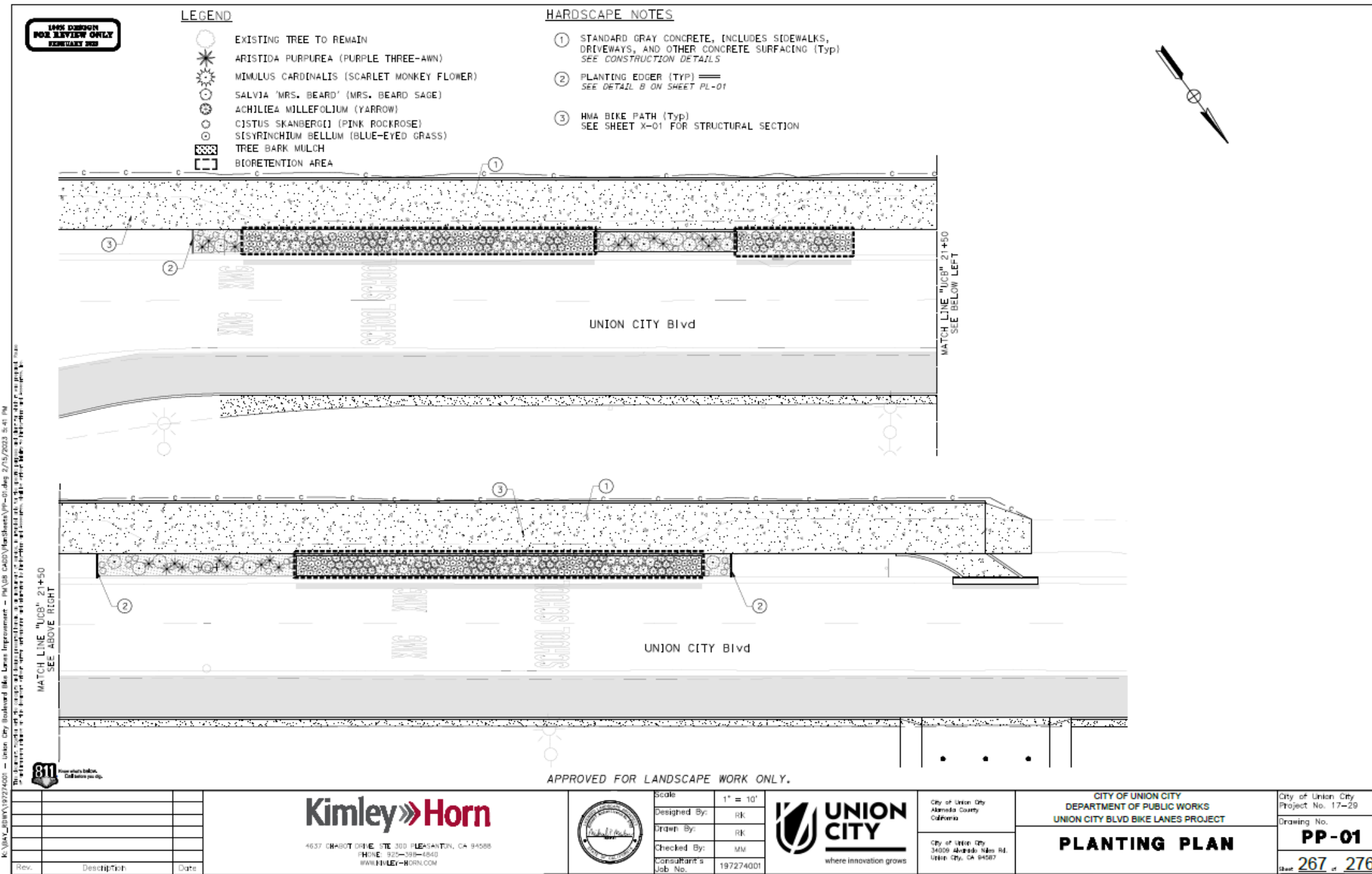
Project Overview – Bike Lane Project

“Complete Streets” intersection/Signal Mods



- Nine (9) “Complete Streets” Signal Modifications
- Dyer Street intersection reconstruction

Project Overview – Bike Lane Project Landscaping



Project Overview – Bike Lane Project

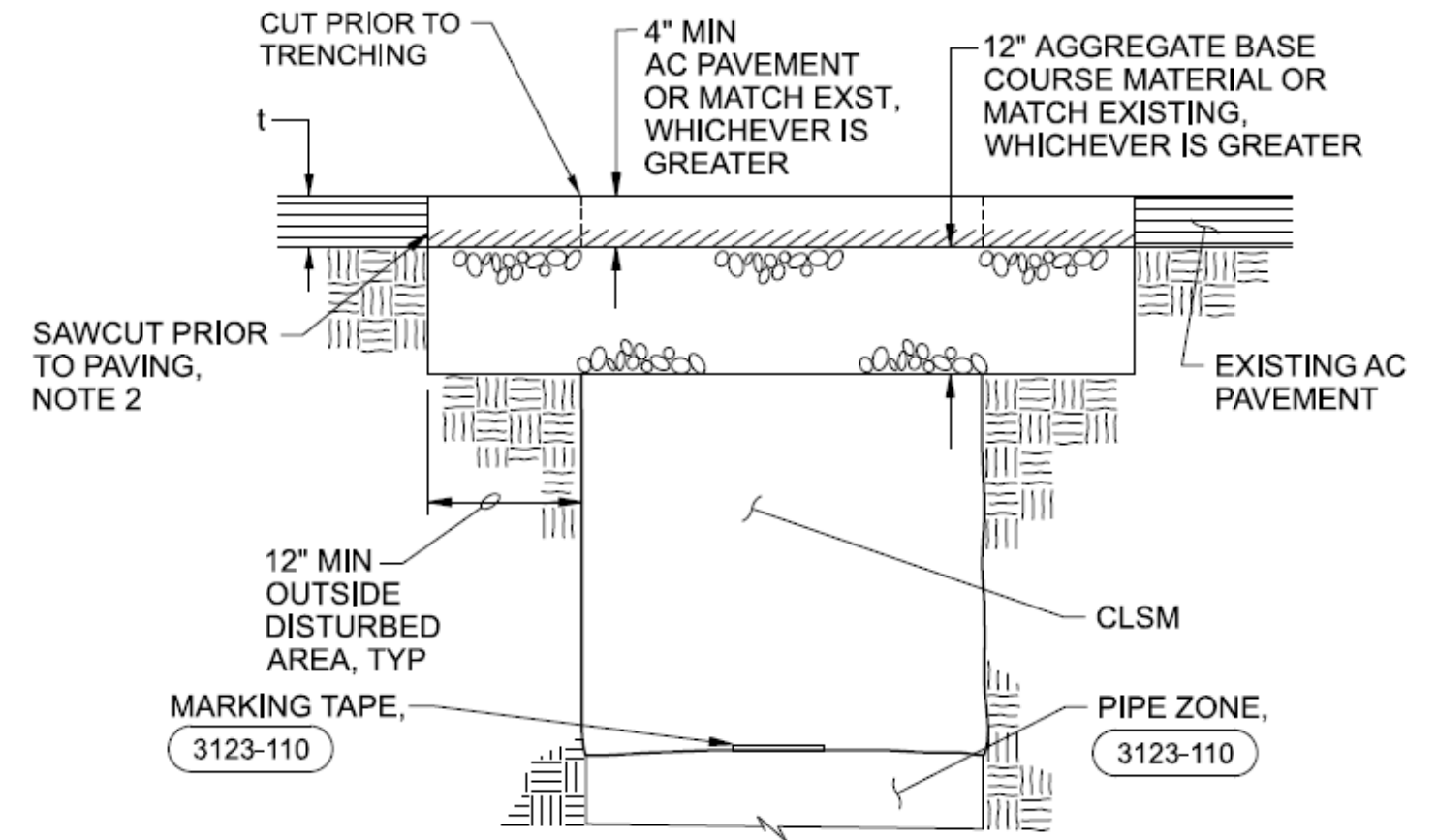
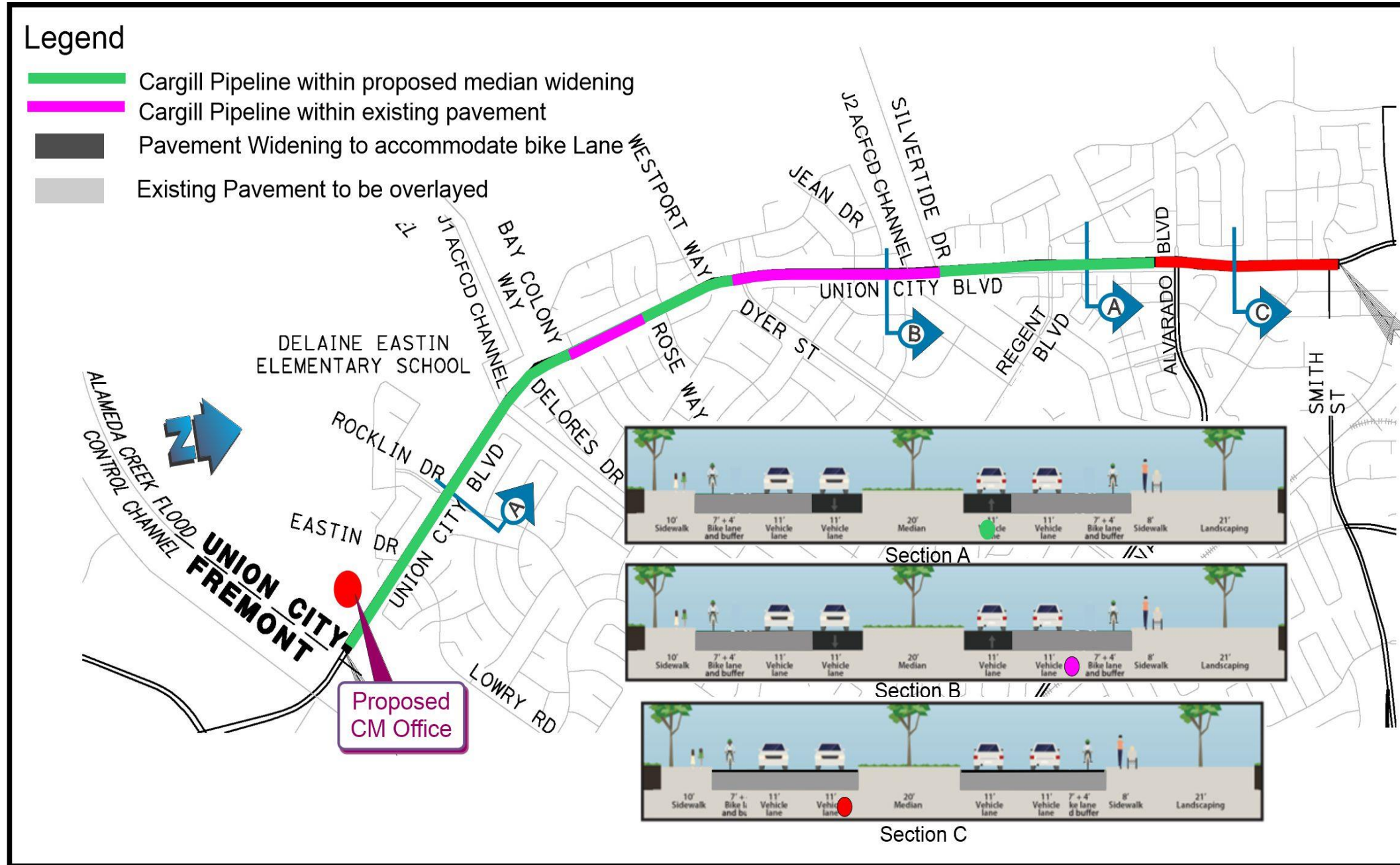
Potential Fiber Optic Implementation



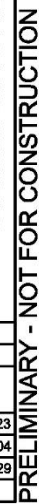
Signal Interconnect Layout

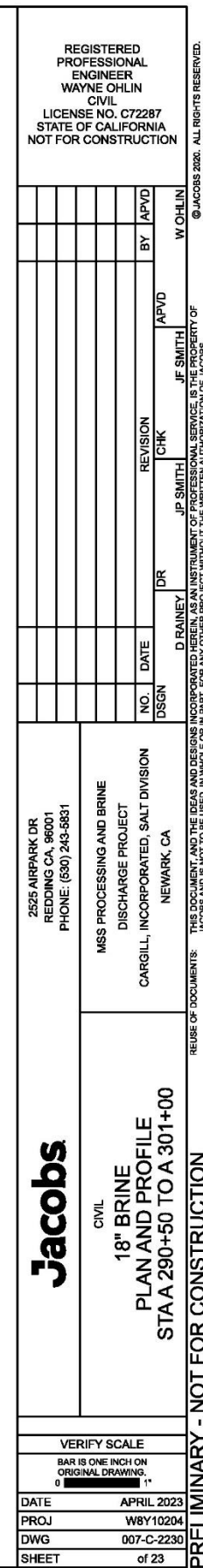
L-1
EXISTING CONDITIONS

Project Overview – Cargill Brine Pipeline Project



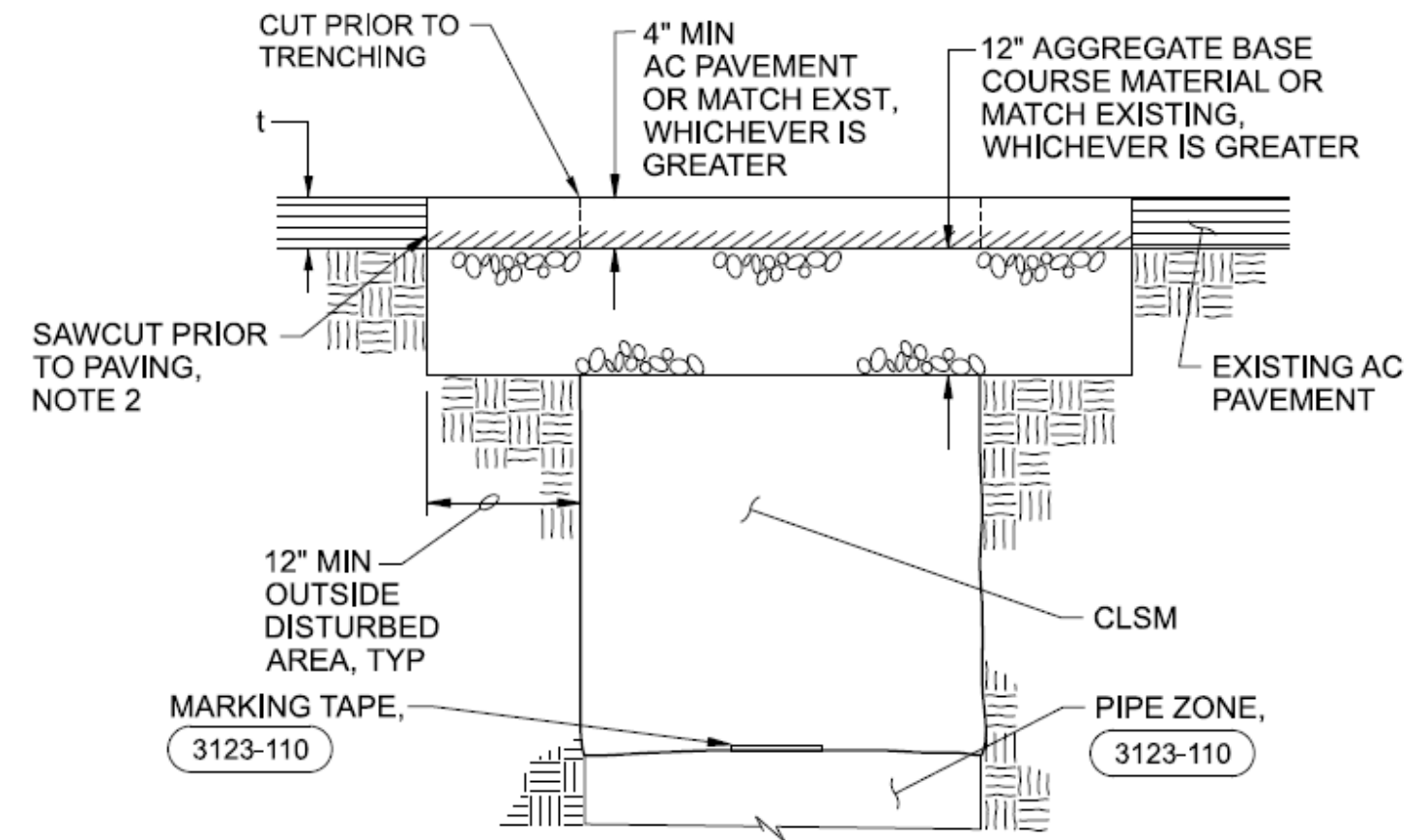
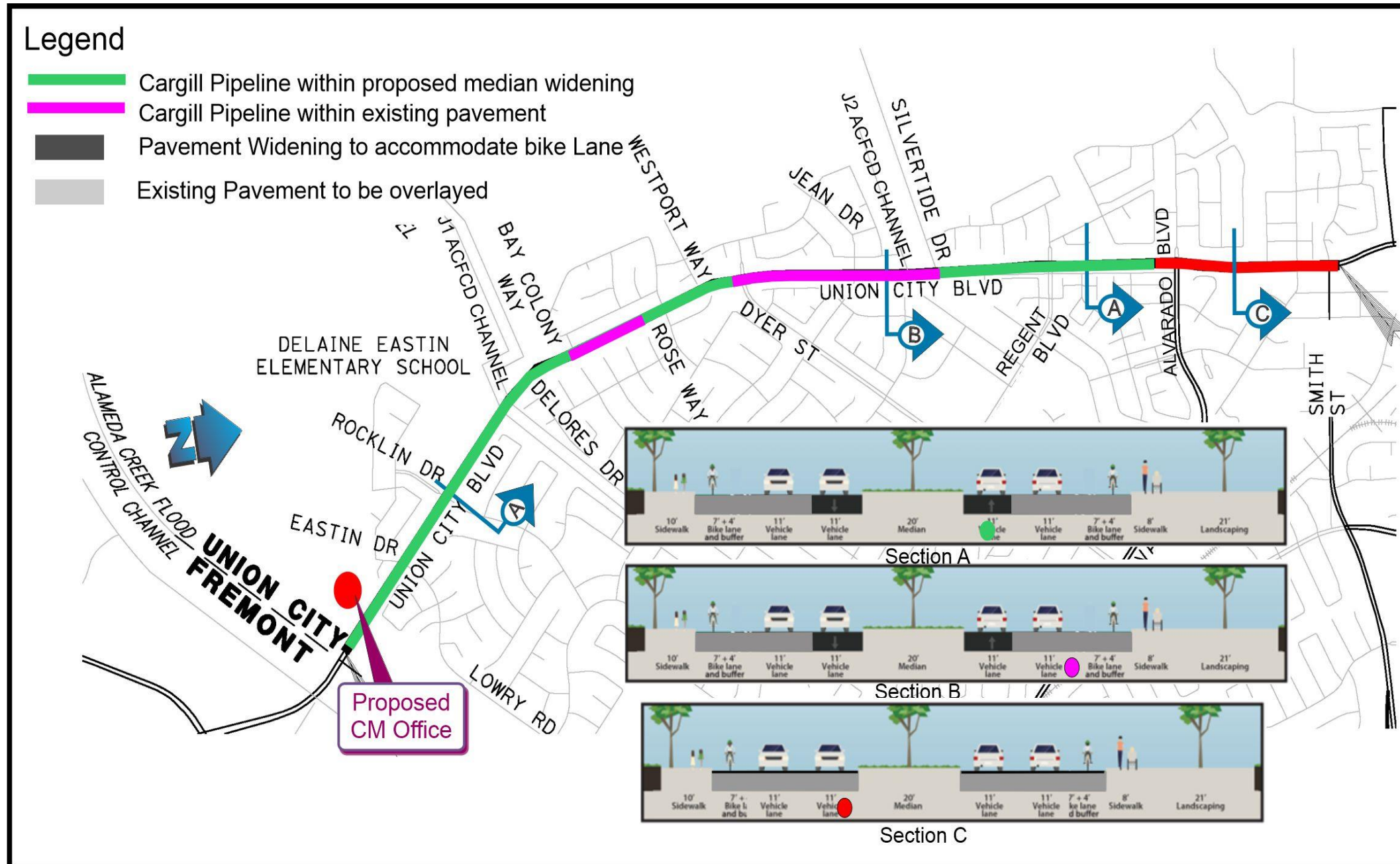
- 18" HDPE Pipeline
- 2,450 feet







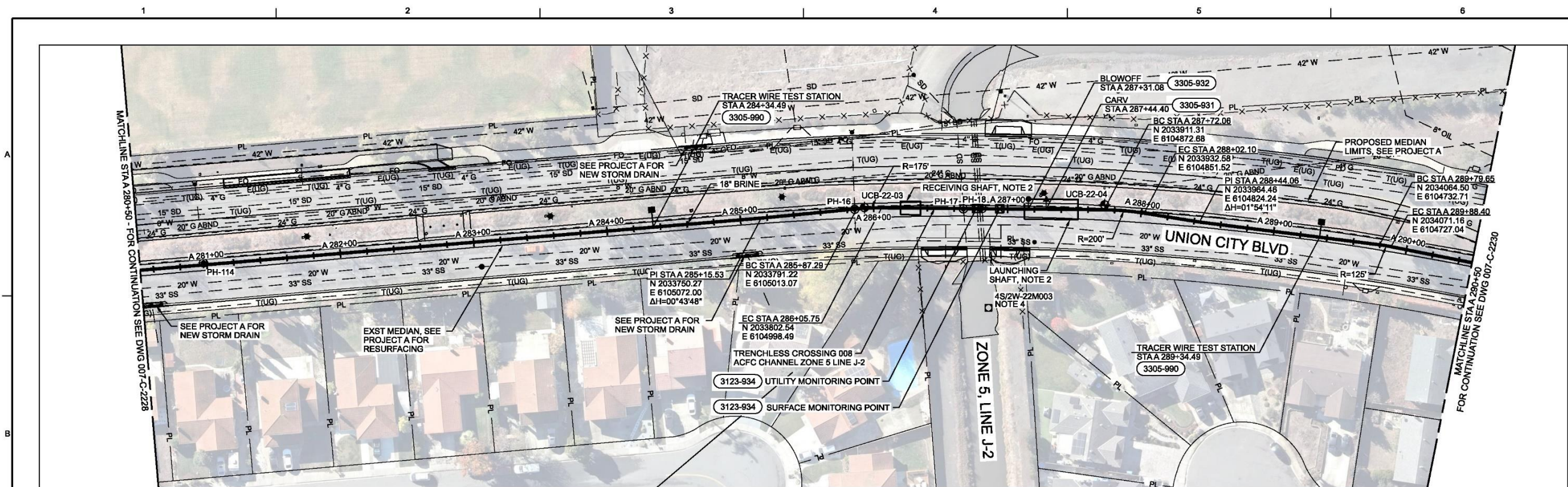
Project Overview – Cargill Brine Pipeline Project



- 18" HDPE Pipeline
- 2,450 feet



Cargill Pipeline Project

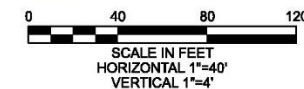


NOTES:

1. SEE PROJECT A FOR SURFACE RESTORATION REQUIREMENT.
2. SHAFT AND WORK AREA SIZES SHOWN ARE FOR REFERENCE ONLY. CONTRACTOR TO DETERMINE THE REQUIRED SHAFT SIZES SUITABLE FOR TUNNELING EQUIPMENT.
3. POT HOLE OF EXISTING UTILITY, SEE POT HOLE SCHEDULE.
4. ACWD WELL, LOCATION APPROXIMATE PROTECT IN PLACE.

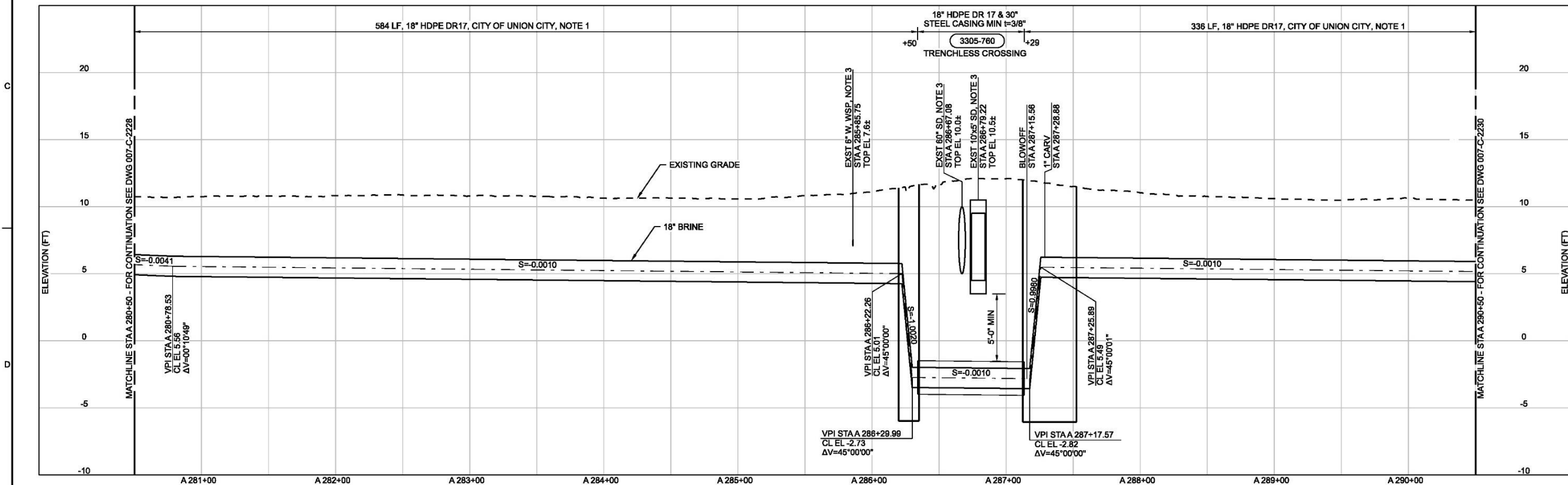


PLAN
1"=40'

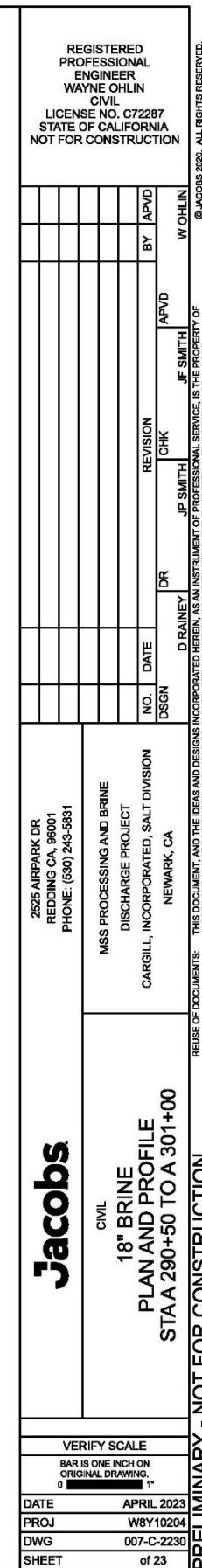


REVIEWED BY:

FOR ACFC & WCD

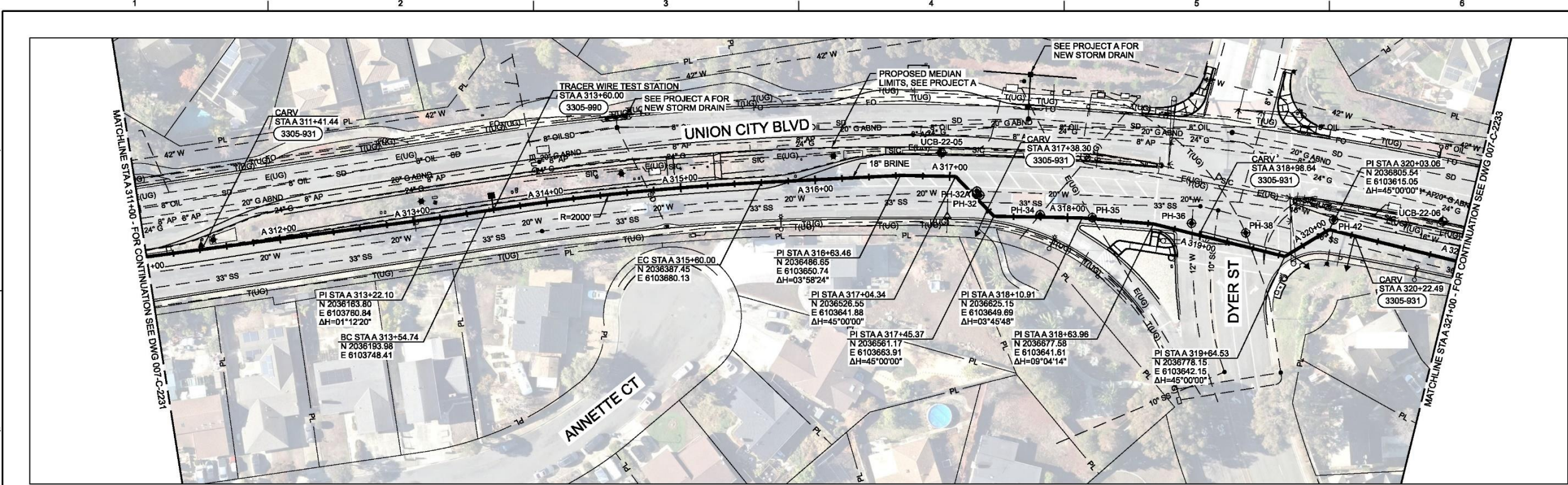


REGISTERED PROFESSIONAL ENGINEER WAYNE OHLIN CIVIL LICENSE NO. GT2287 STATE OF CALIFORNIA NOT FOR CONSTRUCTION					
NO.	DATE	DR	CHK	APVD	BY
2535 AIRPARK DR. REDDING, CA 96001 PHONE: (530) 243-3831		MSS PROCESSING AND BRINE DISCHARGE PROJECT CARGILL, INCORPORATED, SALT DIVISION NEWARK, CA		CIVIL 18" BRINE PLAN AND PROFILE STAA 280+50 TO A 290+50	
JACOBS		REUSE OF DOCUMENTS: THIS DOCUMENT AND THE IDEAS AND DESIGNS INCORPORATED HEREIN AS AN INSTRUMENT OF PROFESSIONAL SERVICE IS THE PROPERTY OF JACOBS AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF JACOBS.		PRELIMINARY - NOT FOR CONSTRUCTION	
VERIFY SCALE BAR IS ONE INCH ON ORIGINAL DRAWING 0 1"		DATE APRIL 2023		SHEET of 23	
PROJ W8Y10204		DWG 007-C-2229		PLOT TIME: 12:11:00 AM	

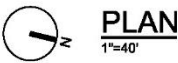




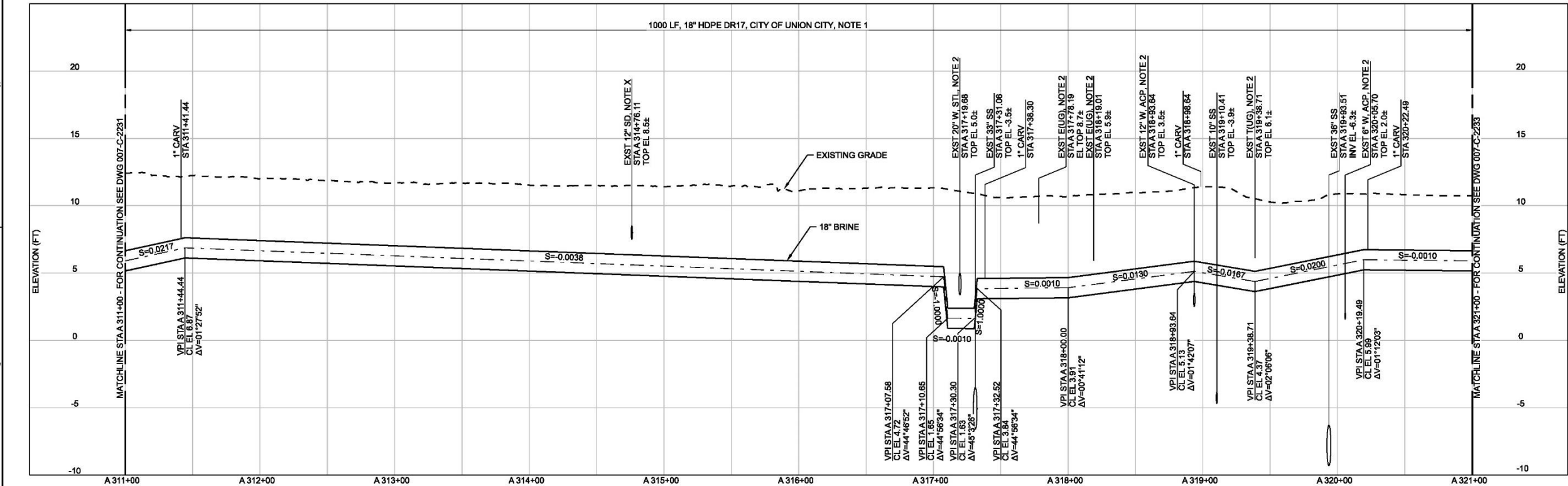
Cargill Brine Pipeline Project



- NOTES:
- SEE PROJECT A FOR SURFACE RESTORATION REQUIREMENT.
 - POTHOLE OF EXISTING UTILITY, SEE POTHOLE SCHEDULE.
 - UTILITY DEPTH UNKNOWN, SEE PIPELINE NOTES.



0 40 80 120
SCALE IN FEET
HORIZONTAL 1"=40'
VERTICAL 1"=4'



REGISTERED
PROFESSIONAL
ENGINEER
WAYNE OHLIN
CIVIL
LICENSE NO. C72287
STATE OF CALIFORNIA
NOT FOR CONSTRUCTION

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2525 AIRPARK DR
REDDING, CA 96001
PHONE: (530) 243-9831

MSS PROCESSING AND BRINE
DISCHARGE PROJECT
CARGILL, INCORPORATED, SALT DIVISION
NEWARK, CA

Jacobs
CIVIL
18" BRINE
PLAN AND PROFILE
STAA 311+00 TO A 321+00

VERIFY SCALE
BAR IS ONE INCH ON
ORIGINAL DRAWING
DATE: APRIL 2023
PROJ: WBY10204
DWG: 007-C-2232
SHEET: 23 OF 23

PRELIMINARY - NOT FOR CONSTRUCTION



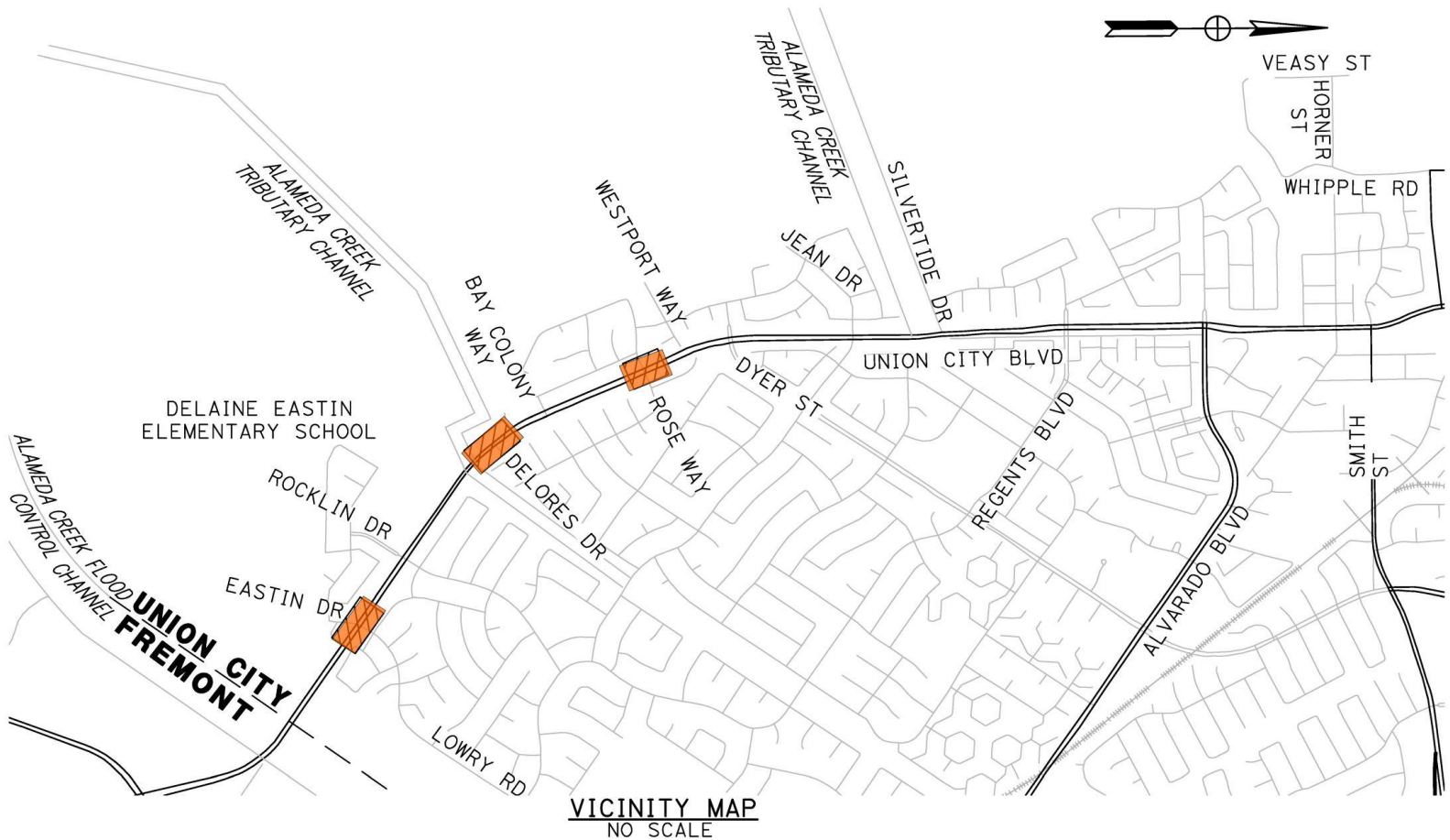
Construction Staging

STAGE 1: INTERSECTION WORK

PROJECT LIMITS: INTERSECTION WORK
ALONG UNION CITY BLVD, FROM EASTIN
DR TO ROSE WAY

LEGEND:
 CONSTRUCTION IN THIS STAGE

Intersections closed for 5 working days



PHASE	STAGE 1 DESCRIPTION OF WORK
1A	COMPLETE MEDIAN AND PIPELINE CONSTRUCTION AT INTERSECTIONS AND WITHIN LEFT TURN POCKETS PER SUBSEQUENT STEPS. DEMOLISH EXISTING HMA DIKE AND CURB AT INTERSECTION WORK LIMITS. PERFORM ROADWAY EXCAVATION. INSTALL CARGILL PIPELINE. INSTALL AGGREGATE BASE AND HMA. COMPLETE MEDIAN WIDENING IMPROVEMENTS INCLUDING NEW MEDIAN, CURB, PAVEMENT AND UTILITIES WITHIN INTERSECTION AREA. CONSTRUCT NEW MEDIAN PAVEMENT EXCEPT THE FINAL LIFT. COMPLETE TRAFFIC SIGNAL IMPROVEMENTS THAT REQUIRE AN INSIDE LANE CLOSURE. SEE TRAFFIC SIGNAL AND LIGHTING SHEETS FOR DETAILS.
1B	COMPLETE ALL TRAFFIC SIGNAL IMPROVEMENTS THAT REQUIRE AN OUTSIDE LANE CLOSURE. SEE TRAFFIC SIGNAL AND LIGHTING SHEETS FOR DETAILS. COMPLETE ALL CIVIL INTERSECTION IMPROVEMENTS AT EACH RESPECTIVE INTERSECTION. CONTRACTOR SHALL MAINTAIN PEDESTRIAN ACCESS AT ALL TIMES.
1C	RECONSTRUCT DRIVEWAY AND SIDEWALK WHILE MAINTAINING PEDESTRIAN ACCESS AT ALL TIMES. CONSTRUCT SHARED-USE PATH WHILE MAINTAINING PEDESTRIAN ACCESS AT ALL TIMES.
1D	INSTALL TEMPORARY STRIPING FOR TWO 11' TRAVEL LANES ALONG UNION CITY BLVD IN BOTH DIRECTIONS, FROM SOUTH OF EASTIN DR TO SOUTH OF ALVARADO BLVD, AS SHOWN ON SHEET TH-62. REMOVE EXISTING CONFLICTING STRIPING BY GRINDING PRIOR TO INSTALLATION. REMOVE TEMPORARY BARRIER AND INSTALL SURFACE MOUNTED CHANNELIZERS AT 25' O/C, THREE FEET FROM LEFT EDGELINE OF TEMPORARY LEFT TURN POCKETS. INSTALL SC11(CA) SIGN MOUNTED ON TYPE III BARRICADE BETWEEN SURFACE MOUNTED CHANNELIZERS AND NEW MEDIAN. USE TEMPORARY BARRIER REMOVED IN THIS STAGE DURING SUBSEQUENT STAGES. COORDINATE WITH SIGNAL VENDOR TO MATCH TEMPORARY TRAFFIC SIGNAL VIDEO DETECTION ZONES WITH TEMPORARY LANE LINES. COORDINATE WITH SIGNAL VENDOR TO PROGRAM VIDEO DETECTION ZONES FOR THE PERMANENT CONDITION FOR FUTURE USE.



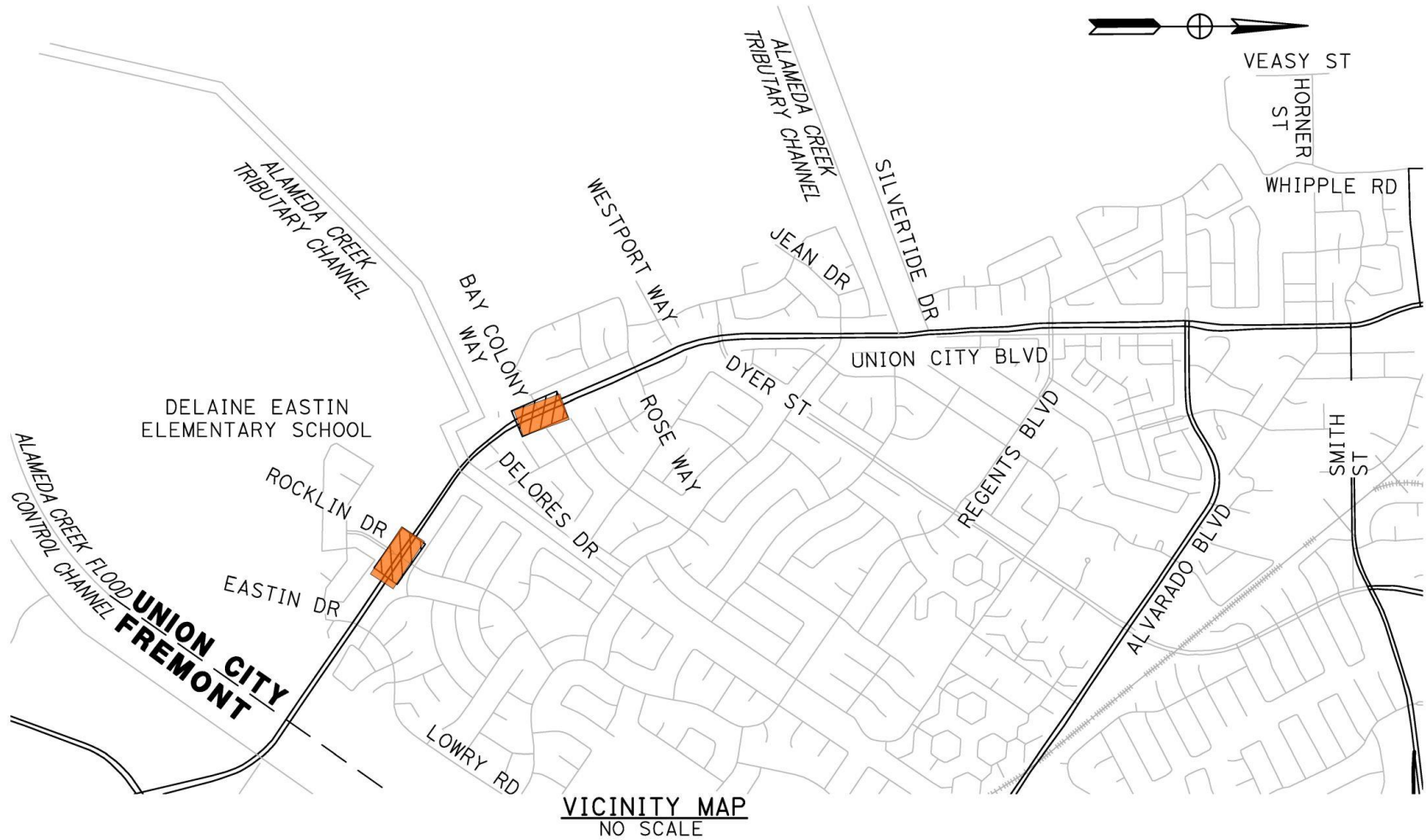
Construction Staging

STAGE 2: INTERSECTION WORK

**PROJECT LIMITS: INTERSECTION WORK
ALONG UNION CITY BLVD, FROM
ROCKLIN DR TO BAY COLONY WAY**

LEGEND:
 CONSTRUCTION IN THIS STAGE

Intersections closed for 5 workking days



PHASE	STAGE 2 DESCRIPTION OF WORK
2A	COMPLETE MEDIAN AND PIPELINE CONSTRUCTION AT ROSE WAY AND WITHIN LEFT TURN POCKETS PER SUBSEQUENT STEPS. DEMOLISH EXISTING HMA DIKE AND CURB AT INTERSECTION WORK LIMITS. PERFORM ROADWAY EXCAVATION. INSTALL CARGILL PIPELINE. INSTALL AGGREGATE BASE AND HMA. COMPLETE MEDIAN WIDENING IMPROVEMENTS INCLUDING NEW MEDIAN, CURB, PAVEMENT AND UTILITIES WITHIN INTERSECTION AREA. CONSTRUCT NEW MEDIAN PAVEMENT EXCEPT THE FINAL LIFT. COMPLETE TRAFFIC SIGNAL IMPROVEMENTS THAT REQUIRE AN INSIDE LANE CLOSURE. SEE TRAFFIC SIGNAL AND LIGHTING SHEETS FOR DETAILS.
2B	COMPLETE ALL TRAFFIC SIGNAL IMPROVEMENTS THAT REQUIRE AN OUTSIDE LANE CLOSURE. SEE TRAFFIC SIGNAL AND LIGHTING SHEETS FOR DETAILS. COMPLETE ALL CIVIL INTERSECTION IMPROVEMENTS AT ROSE WAY. CONTRACTOR SHALL MAINTAIN PEDESTRIAN ACCESS AT ALL TIMES.
2C	RECONSTRUCT DRIVEWAY AND SIDEWALK WHILE MAINTAINING PEDESTRIAN ACCESS AT ALL TIMES. CONSTRUCT SHARED-USE PATH WHILE MAINTAINING PEDESTRIAN ACCESS AT ALL TIMES.



Construction Staging

STAGE 3-6: NORTHBOUND MEDIAN WORK

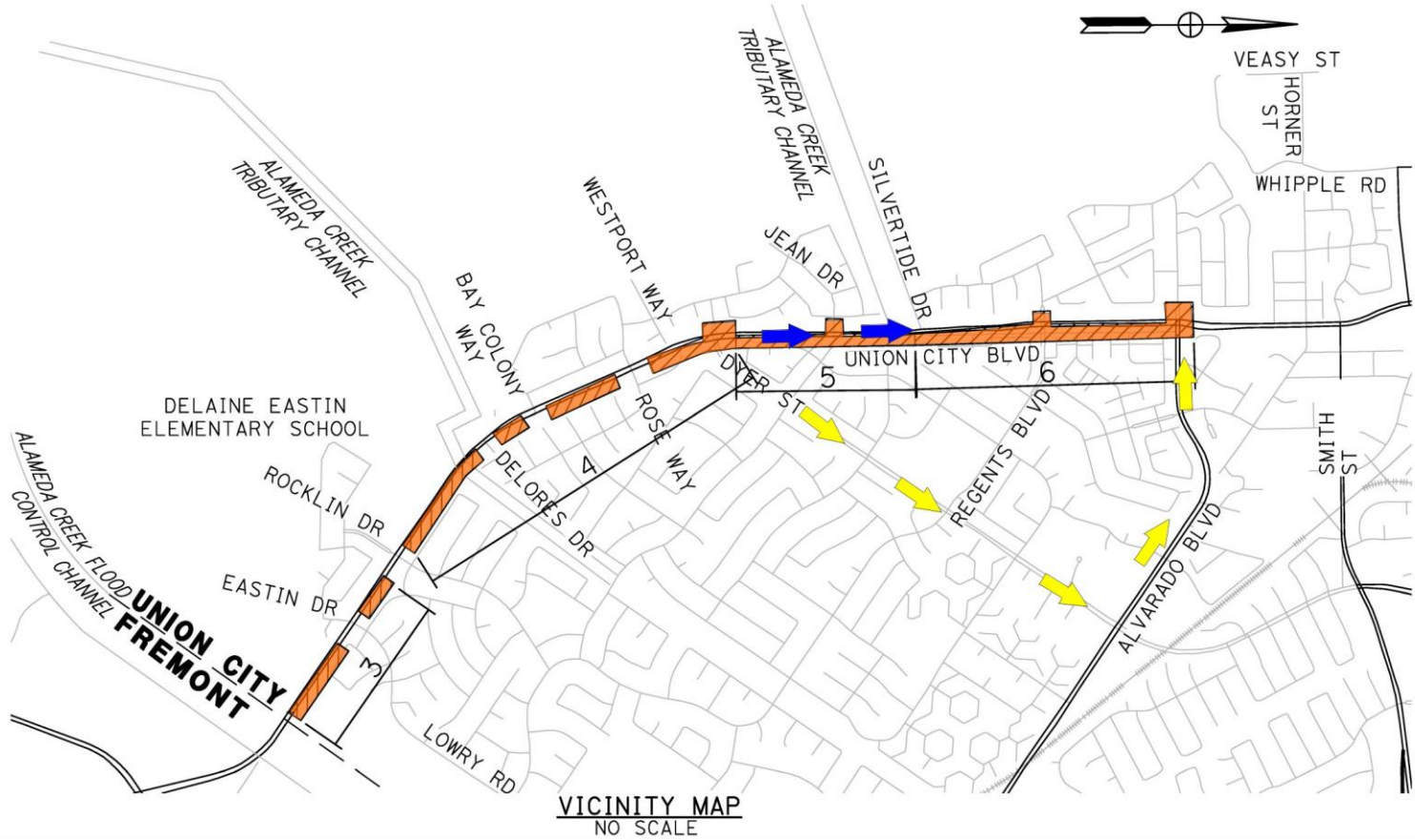
PROJECT LIMITS: NORTHBOUND MEDIAN & PIPELINE WORK, FROM SOUTHERN PROJECT LIMITS TO ALVARADO BLVD (EXCEPT LEFT TURN POCKETS AND INTERSECTIONS FROM EASTIN DR TO ROSE WAY (SEE STAGE 1&2))

LEGEND:

- CONSTRUCTION IN THIS STAGE
- DETOUR ROUTE

Traffic Control:

- 1) One Lane Closure 9 am to 3 pm Stage 5.
- 2) In Stage 5, one lane 24/7 and detour traffic onto Dyer Street (3 weeks)



PHASE	STAGE 3 DESCRIPTION OF WORK (FROM ALAMEDA CREEK TO SOUTH OF ROCKLIN DR (EXCEPT LEFT TURN POCKETS & INTERSECTIONS (SEE STAGE 1))
3A	REMOVE EXISTING HMA DIKE. (9AM-3PM DAILY)
3B	INSTALL TEMPORARY BARRIER ALONG LEFT EDGELINE OF INSIDE TEMPORARY 11' NORTHBOUND TRAVEL LANE. (9AM-3PM DAILY)
3C	PERFORM ROADWAY EXCAVATION. INSTALL CARGILL PIPELINE. INSTALL AGGREGATE BASE AND HMA. COMPLETE NORTHBOUND MEDIAN WIDENING IMPROVEMENTS, INCLUDING MEW MEDIAN, CURB, PAVEMENT AND UTILITIES, FROM ALAMEDA CREEK TO SOUTH OF ROCKLIN DR INTERSECTION. CONSTRUCT NEW MEDIAN PAVEMENT EXCEPT THE FINAL LIFT.
3D	REMOVE TEMPORARY BARRIER AND INSTALL SURFACE MOUNTED CHANNELIZERS AT 25' O/C, THREE FEET FROM LEFT EDGELINE OF TEMPORARY INSIDE LANE, UP TO EACH INTERSECTION. INSTALL SC11 (CA) SIGN MOUNTED ON TYPE I BARRICADE AT 200' O/C BETWEEN SURFACE MOUNTED CHANNELIZERS AND NEW MEDIAN. USE TEMPORARY BARRIER REMOVED IN THIS STAGE DURING SUBSEQUENT STAGES.
PHASE	STAGE 4 DESCRIPTION OF WORK (FROM NORTH OF ROCKLIN DR THROUGH DYER ST (EXCEPT LEFT TURN POCKETS & INTERSECTIONS SOUTH OF DYER ST (SEE STAGE 1 AND STAGE 2))
4A	COMPLETE MEDIAN AND PIPELINE CONSTRUCTION AT DYER ST AND WITHIN LEFT TURN POCKETS PER SUBSEQUENT STEPS. DEMOLISH EXISTING HMA DIKE AND CURB AT INTERSECTION WORK LIMITS. PERFORM ROADWAY EXCAVATION. INSTALL CARGILL PIPELINE. INSTALL AGGREGATE BASE AND HMA. COMPLETE MEDIAN WIDENING IMPROVEMENTS INCLUDING NEW MEDIAN, CURB, PAVEMENT AND UTILITIES WITHIN INTERSECTION AREA. CONSTRUCT NEW MEDIAN PAVEMENT EXCEPT THE FINAL LIFT. COMPLETE TRAFFIC SIGNAL IMPROVEMENTS THAT REQUIRE AN INSIDE LANE CLOSURE. SEE TRAFFIC SIGNAL AND LIGHTING SHEETS FOR DETAILS.
4B	COMPLETE ALL TRAFFIC SIGNAL IMPROVEMENTS THAT REQUIRE AN OUTSIDE LANE CLOSURE. SEE TRAFFIC SIGNAL AND LIGHTING SHEETS FOR DETAILS. COMPLETE ALL CIVIL INTERSECTION IMPROVEMENTS AT DYER ST. CONTRACTOR SHALL MAINTAIN PEDESTRIAN ACCESS AT ALL TIMES.
4C	RECONSTRUCT DRIVEWAY AND SIDEWALK WHILE MAINTAINING PEDESTRIAN ACCESS AT ALL TIMES.
4D	REMOVE EXISTING HMA DIKE. (9AM TO 3PM DAILY)
4E	PERFORM ROADWAY EXCAVATION. INSTALL CARGILL PIPELINE 100' NORTH OF DELORES DR TO 200' SOUTH OF ROSE WAY WITH ONE LANE CLOSURE FROM 9AM-3PM. INSTALL AGGREGATE BASE AND HMA. COMPLETE NORTHBOUND MEDIAN WIDENING IMPROVEMENTS INCLUDING NEW MEDIAN, CURB, PAVEMENT AND UTILITIES, FROM NORTH OF ROCKLIN DR TO SOUTH OF DYER ST INTERSECTION. CONSTRUCT NEW MEDIAN PAVEMENT EXCEPT THE FINAL LIFT.

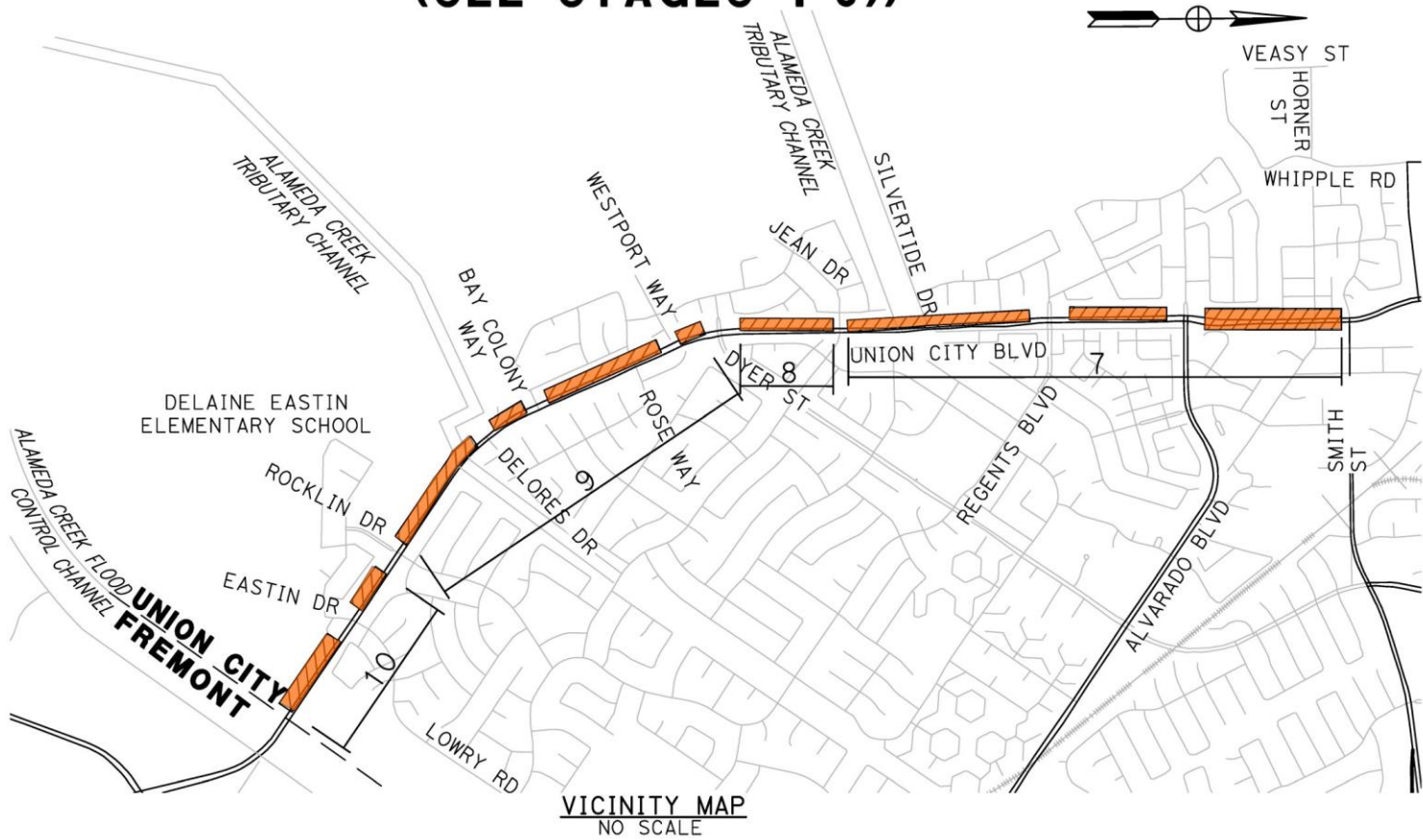


Construction Staging

STAGE 7-10: SOUTHBOUND MEDIAN WORK

PROJECT LIMITS: SOUTHBOUND MEDIAN & PIPELINE WORK, FROM SOUTHERN PROJECT LIMITS TO ALVARADO BLVD (EXCEPT LEFT TURN POCKETS, INTERSECTIONS & JEAN DR (SEE STAGES 1-6))

LEGEND:
[Orange hatched box] CONSTRUCTION IN THIS STAGE



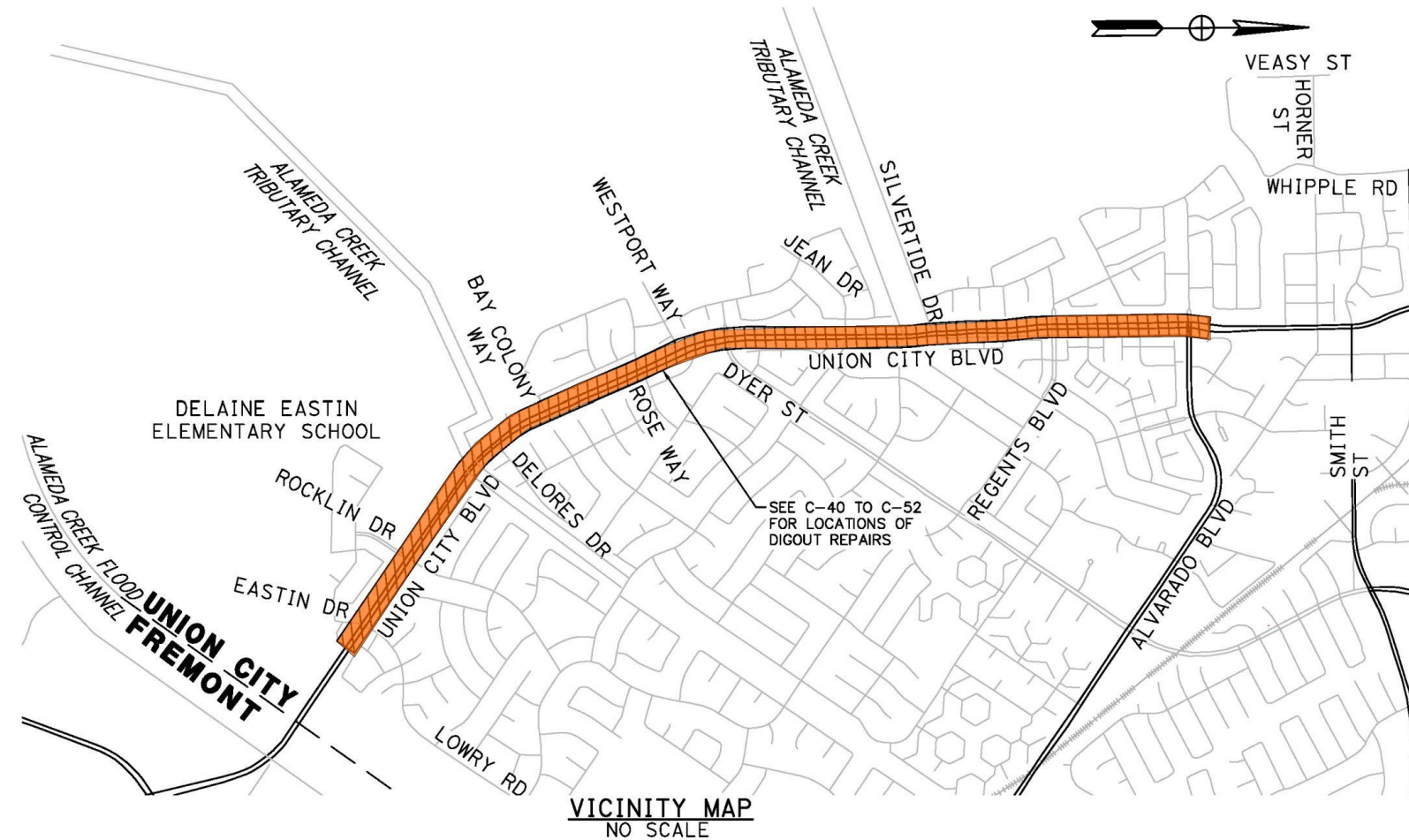
PHASE	STAGE 7 DESCRIPTION OF WORK (FROM SOUTH OF ALVARADO BLVD TO NORTH OF JEAN DR INTERSECTION IMPROVEMENTS (EXCEPT LEFT TURN POCKETS & INTERSECTIONS (SEE STAGE 2))
7A	INSTALL CARGILL PIPELINE FROM SMITH ST TO ALVARADO BLVD. (9AM–3PM)
7B	REMOVE EXISTING HMA DIKE.
7C	INSTALL TEMPORARY STRIPING FOR TWO 11' NORTHBOUND TRAVEL LANES WITH TEMPORARY BARRIER.
7D	PERFORM ROADWAY EXCAVATION. INSTALL AGGREGATE BASE AND HMA. COMPLETE SOUTHBOUND MEDIAN WIDENING IMPROVEMENTS, INCLUDING MEW MEDIAN, CURB, PAVEMENT AND UTILITIES, FROM SOUTH OF ALVARADO BLVD TO NORTH OF JEAN DR. CONSTRUCT NEW MEDIAN PAVEMENT EXCEPT THE FINAL LIFT.
7E	REMOVE TEMPORARY BARRIER AND INSTALL SURFACE MOUNTED CHANNELIZERS AT 25' O/C, THREE FEET FROM LEFT EDGELINE OF TEMPORARY INSIDE LANE FROM ALVARADO BLVD TO JEAN DR, EXCEPT FOR AT STORM DRAIN PIPELINE LOCATION FROM UCB STA 100+80 TO UCB STA 102+65. OPEN TWO 11' SOUTHBOUND LANES FROM ALVARADO BLVD TO JEAN DR, EXCEPT FOR AT STORM DRAIN PIPELINE LOCATION. FROM UCB STA 100+80 TO UCB STA 102+62, MAINTAIN ONE 10' SOUTHBOUND TRAVEL LANE ADJACENT TO NEWLY CONSTRUCTED MEDIAN WITH TEMPORARY BARRIER. INSTALL STORM DRAIN PIPELINE FROM UCB STA 100+80 TO UCB STA 102+62.
7F	REMOVE TEMPORARY BARRIER AND INSTALL SURFACE MOUNTED CHANNELIZERS AT 25' O/C, THREE FEET FROM LEFT EDGELINE OF TEMPORARY INSIDE LANE, FROM UCB STA 100+80 TO UCB STA 102+62. INSTALL SC11 (CA) SIGN MOUNTED ON TYPE I BARRICADE AT 200' O/C BETWEEN SURFACE MOUNTED CHANNELIZERS AND NEW MEDIAN. USE TEMPORARY BARRIER REMOVED IN THIS STAGE DURING SUBSEQUENT STAGES.



Construction Staging

STAGE 11: BASE REPAIR WORK

PROJECT LIMITS: BASE REPAIR ALONG
UNION CITY BLVD, FROM ALAMEDA
CREEK TO ALVARADO BLVD
INTERSECTION



LEGEND:

- CONSTRUCTION IN THIS STAGE
- DIRECTION OF TRAVEL
- SURFACE MOUNTED CHANNELIZER
- PORTABLE DELINEATOR
- TYPE I BARRICADE
- TYPE III BARRICADE
- CONSTRUCTION AREA SIGN (THIS STAGE)
- TRAFFIC CONE
- TEMPORARY IN-LINE CRASH CUSHION
- TEMPORARY BARRIER WITH YELLOW REFLECTIVE MARKER
- INSTALL TEMPORARY CALTRANS STRIPING DETAIL "XX" WITH PAINT

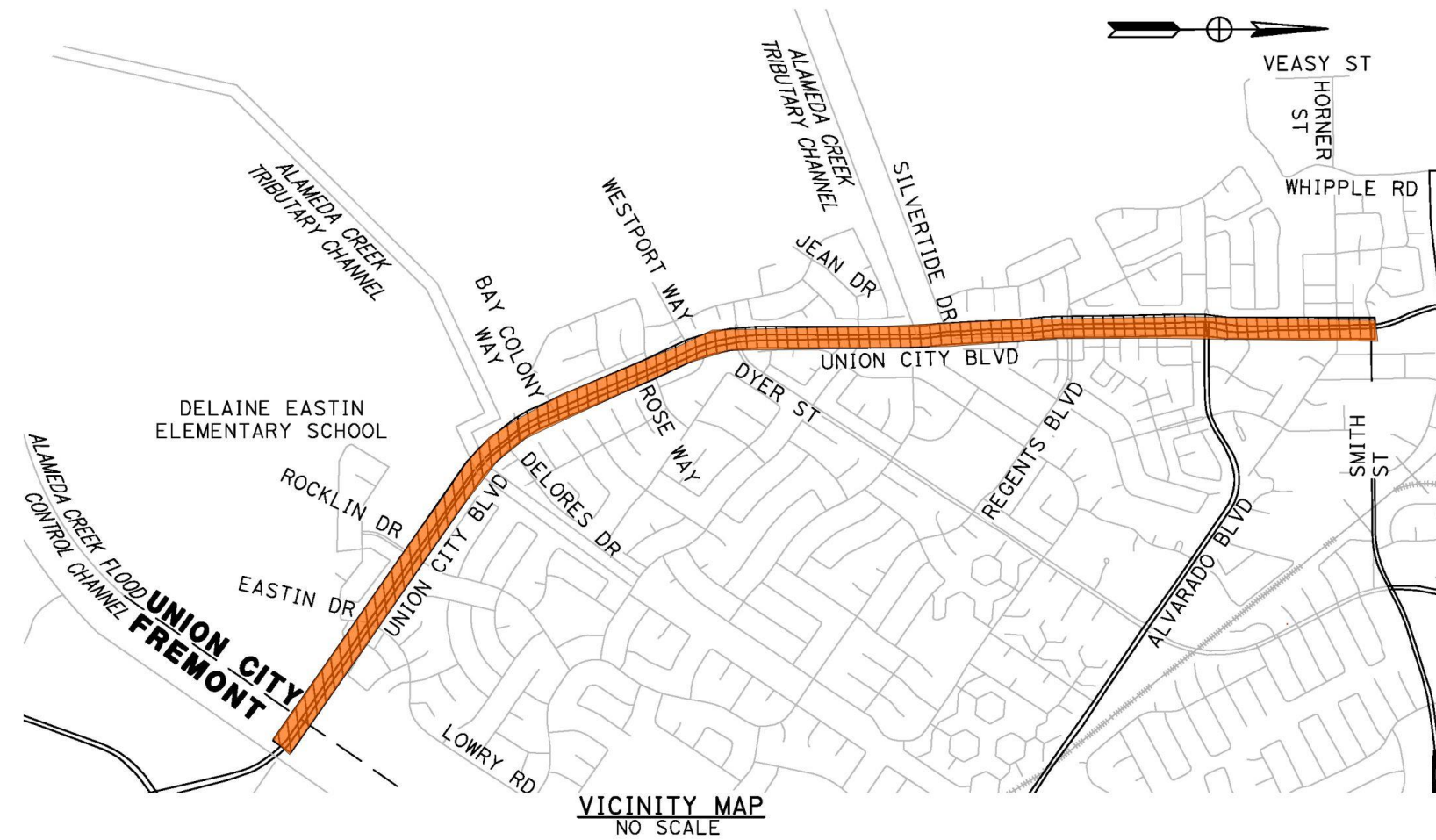
PHASE	STAGE 11 DESCRIPTION OF WORK
11A	COMPLETE ALL BASE REPAIR WORK IN NORTHBOUND PAVEMENT BETWEEN THE HOURS OF 9 AM AND 3 PM. CONTRACTOR MUST ONLY DIG OUT AND REPLACE QUANTITY OF PAVEMENT THAT CAN BE REMOVED AND REPLACED WITHIN A SINGLE WORK SHIFT. CONTRACTOR TO COMPLETE WORK IN SEGMENTS BETWEEN ADJACENT INTERSECTIONS, BEGINNING WITH THE SEGMENT FROM THE SOUTHERN PROJECT LIMITS TO ALVARADO BLVD, BEFORE PROCEEDING TO WORK IN THE NEXT SEGMENTS. CONTRACTOR TO COMPLETE BASE REPAIR IN INTERSECTIONS ONLY IMMEDIATELY PRECEDING OR FOLLOWING SEGMENT WORK.
11B	COMPLETE ALL BASE REPAIR WORK IN SOUTHBOUND PAVEMENT BETWEEN THE HOURS OF 9 AM AND 3 PM. CONTRACTOR MUST ONLY DIG OUT AND REPLACE QUANTITY OF PAVEMENT THAT CAN BE REMOVED AND REPLACED WITHIN A SINGLE WORK SHIFT. CONTRACTOR TO COMPLETE WORK IN SEGMENTS BETWEEN ADJACENT INTERSECTIONS, BEGINNING WITH THE SEGMENT FROM THE NORTHERN PROJECT LIMITS TO ALAMEDA CREEK, BEFORE PROCEEDING TO WORK IN THE NEXT SEGMENTS. CONTRACTOR TO COMPLETE BASE REPAIR IN INTERSECTIONS ONLY IMMEDIATELY PRECEDING OR FOLLOWING SEGMENT WORK.



Construction Staging

STAGE 12: GRIND & OVERLAY, SLURRY SEAL, & FINAL STRIPING

PROJECT LIMITS: FROM SOUTHERN CITY
LIMITS TO SMITH ST



- LEGEND:**
- CONSTRUCTION IN THIS STAGE
 - DIRECTION OF TRAVEL
 - SURFACE MOUNTED CHANNELIZER
 - PORTABLE DELINEATOR
 - TYPE I BARRICADE
 - TYPE III BARRICADE
 - CONSTRUCTION AREA SIGN (THIS STAGE)
 - TRAFFIC CONE
 - TEMPORARY IN-LINE CRASH CUSHION
 - TEMPORARY BARRIER WITH YELLOW REFLECTIVE MARKER
 - INSTALL TEMPORARY CALTRANS STRIPING DETAIL "XX" WITH PAINT

PHASE	STAGE 12 DESCRIPTION OF WORK
12A	REMOVE EXISTING UTILITY COVERS AND CAP WITH HMA. SEE UTILITY COVER DETAIL SHEET C-53.
12B	COMPLETE GRIND AND OVERLAY OPERATIONS IN THE NORTHBOUND DIRECTION FROM ALAMEDA CREEK TO ALVARADO BLVD FROM 9 AM TO 3 PM DAILY.
12C	COMPLETE GRIND AND OVERLAY OPERATIONS IN THE SOUTHBOUND DIRECTION FROM ALAMEDA CREEK TO ALVARADO BLVD FROM 9 AM TO 3 PM DAILY.
12D	REINSTALL UTILITY COVERS FROM 9 AM TO 3 PM DAILY. SEE UTILITY COVER DETAIL SHEET C-53.
12E	COMPLETE SLURRY SEAL IN THE NORTHBOUND DIRECTION FROM ALVARADO BLVD TO SMITH ST FROM 9 AM TO 3 PM DAILY.
12F	COMPLETE SLURRY SEAL IN THE SOUTHBOUND DIRECTION FROM ALVARADO BLVD TO SMITH ST FROM 9 AM TO 3 PM DAILY.
12G	INSTALL FINAL STRIPING FROM 9 AM TO 3 PM DAILY. PROGRAM TO VIDEO DETECTION ZONES FOR THE PERMANENT CONDITION.



Union City Blvd Bike Lanes and Brine Pipeline Project

POTENTIAL CM OFFICE LOCATION

Station # 30 Office Space and Conference Room on UCB/Eastin Court

POTENTIAL CONTRACTOR TRAILER/STAGING AREA LOCATION

East Bay Regional Park District lands nearby



Union City Blvd Bike Lanes and Brine Pipeline CM Proposal Schedule

Issue RFP	March 20, 2023
Reissue RFP	March 21, 2023
Pre-Proposal Conference	April 26, 2023 at 9:30 a.m.
Deadline to Submit Questions	May 4, 2023 by <u>5:00 p.m.</u>
<u>Issue Addendum/Clarifications & Draft PS&E</u>	<u>May 5, 2023 by 5:00 p.m.</u>
Deadline to Submit Proposal	May 16, 2023, by 1:30 p.m.
Interviews	June 1, 2023 (Thursday)

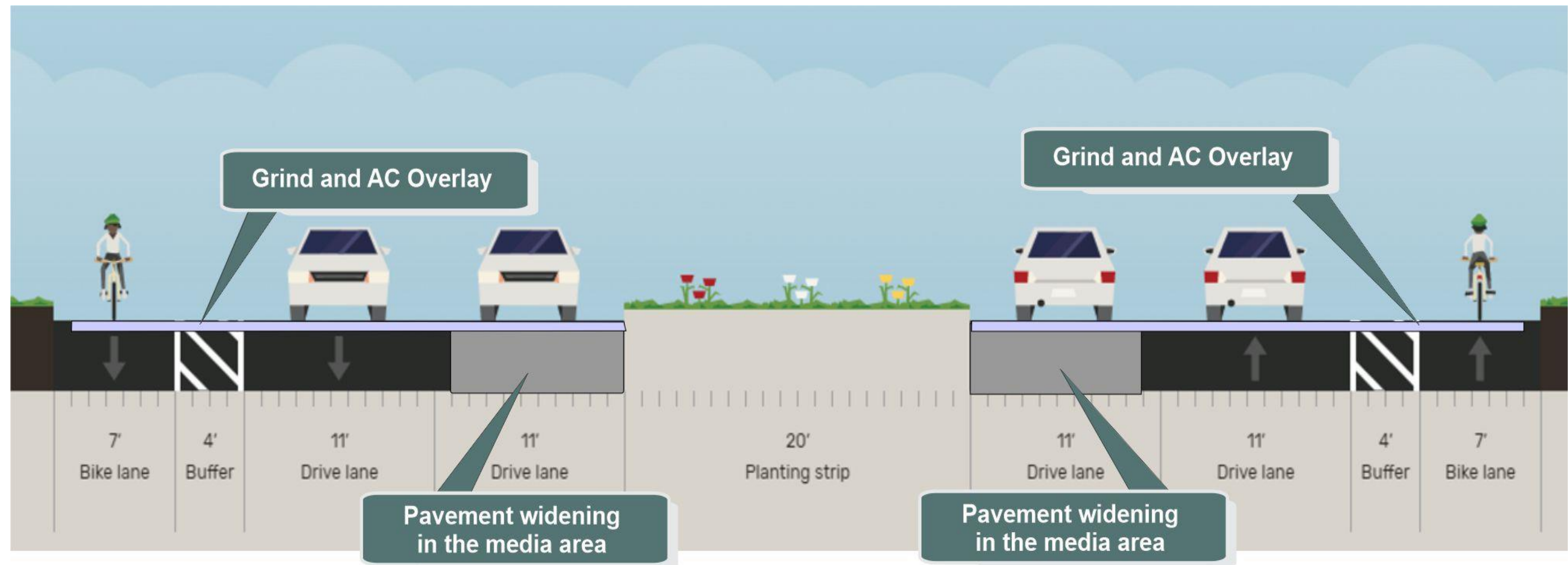


Union City Blvd Bike Lanes & Brine Pipeline - Construction Schedule

TASKS	DATE
CM Firm On-Board	June 13, 2023 City Council
CM Review Final PS&E/Familiarize	June 15, 2023 to June 30, 2023
Bid Opening	July 15, 2023
<u>Construction NTP</u>	August 15, 2023
Construction Duration	August 15, 2023 to April 2025
Project Close-out	April 2025 to August 2025

Union City Blvd Bike Lanes and Brine Pipeline Project

Questions?



**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF UNION CITY
AND
PARK ENGINEERING, INC.
FOR CONSTRUCTION MANAGEMENT SERVICES
FOR THE UNION CITY BOULEVARD BIKE LANE PROJECT
CITY PROJECT NO. 17-29**

This Agreement for consulting services is made by and between the City of Union City, a municipal corporation, (“City”) and Park Engineering, Inc., a California Corporation, with offices located at 3960 Adeline Street, #3, Emeryville, CA 94608, (“Consultant”), (together referred to as the “Parties”) as of July 25, 2023 (the “Effective Date”).

Section 1. Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on December 30, 2025, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time is of the Essence. Time is of the essence. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

1.5 Public Works Requirements. Because the services described in Exhibit A include “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C. Consultant shall waive, indemnify, hold harmless, and defend City concerning any liability arising out of Labor Code Section 1720 *et seq.*

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed Two Million Dollars (\$2,000,000.00) notwithstanding any contrary indications that may be contained in Consultant's proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- Project name & number;
- Purchase Order number to expedite payment;
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- A detailed invoice showing the total number of hours of work and associated costs, for each task, performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;

- Although this Agreement is not required to comply with Alameda CTC local business (“LB”) and small business (“SBE”) requirements, invoice shall include a breakdown of LB and SBE per Alameda CTC guidelines.
- The Consultant’s signature;

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Hourly Rate/Fees. Unless the services provided are for a lump sum or flat fee, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation cost proposal attached hereto as Exhibit B. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, the Agreement shall prevail.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit C, attached hereto and incorporated herein. Reimbursable expenses not listed in Exhibit C are not chargeable to City. Reimbursable expenses shall not include a mark-up and are billed as a direct costs. In no event shall expenses be advanced by the City to the Consultant. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

2.10. Business License. The Consultant is not authorized to perform services or incur costs whatsoever under the terms of this Agreement until Consultant applies for and has been issued a business license from the City pursuant to Title 5 of the Union City Municipal Code.

Section 3. FACILITIES AND EQUIPMENT. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical construction management office at the City's Fire Station 30 (conference room, office and restroom) and other physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while performing construction management services. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, telephone or other communication charges, vehicles, and reproduction facilities unless these costs are included in Exhibit B as reimbursable expenses.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 Required Coverage. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>COVERAGE</u>	<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
A	Commercial General Liability Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence; Bodily Injury and Property Damage \$2,000,00 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability

		occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$2,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
C	Workers’ Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease. Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$100,000 per claim

4.2 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination

and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement

b. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: City of Union City, its City Council, and all City officers, agents employees, volunteers and representatives.

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

e. **Certificates of Insurance:** Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to City, evidencing that all required insurance coverage is in effect. The City reserves the rights to require the Consultant to provide complete, certified copies of all required insurance policies.

f. **Subcontractors:** Consultant shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

g. **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

i. The retroactive date of the policy must be shown and must be before the date of the Agreement.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of three (3) years after completion of work under this Agreement.

iv. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3 All Policies Requirements.

a. **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the City. Acceptance of Consultant's insurance by City shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.

b. **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

d. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents and subcontractors.

4.4 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

With respect to its operations in the performance of Design Professional services when the Services to be provided under this Agreement are to be performed by a "design professional" as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, defend, and hold harmless City, its officers and employees, from and against liability for damages to the extent caused by Consultant's recklessness, negligent acts, errors or omissions, or willful misconduct in the performance of services

under this agreement, except such loss or damage caused by the negligence or willful misconduct of the City. Consultant's defense costs shall not exceed the Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the Consultant shall meet and confer with other parties regarding unpaid defense costs

A. Consultant shall, to the extent permitted by law, indemnify, hold harmless and assume the defense of, in any actions at law or in equity, the City, its employees, agents, volunteers, and elective and appointive boards, from all claims, losses, and damages (excluding claims arising from a professional error or omission), including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.

B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the City (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages to the extent caused by the professionally negligent acts, errors or omissions of Consultant. Consultant has no obligation to pay for any of City Indemnitees defense related cost prior to a final determination of liability by either a Court of law or third party neutral, or to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant, except as provided in Civil Code Section 2782.8(a) and (e).

C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the active negligence or willful misconduct of the City.

D. Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to

control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant Not an Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City, or Consultant, may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; Additional costs may be incurred after the date of written termination in order to package up and complete other pertinent project closeout procedures. City, however, may condition payment of such compensation upon Consultant delivering to City any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged

shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by the City Manager, or his designee, identified as Marilou Ayupan, Public Works Director ("Contract Administrator"). All correspondence, meeting documentation, invoices and project deliverables shall be directed to or through the Contract Administrator.

10.10 Notices. Any written notice to Consultant shall be sent to:

Jaemin Park, President
3960 Adeline Street, #3
Emeryville, CA 94608
Tel: (925) 257-258
jpark@park-eng.com

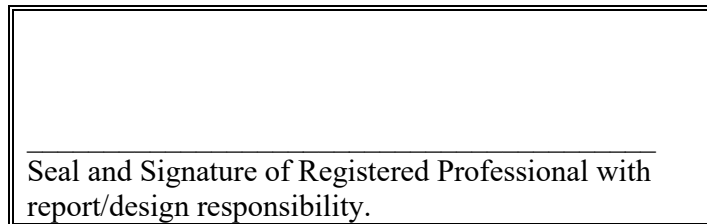
All other written notices to City shall be sent to:

Joan M. Malloy
City Manager
City of Union City
34009 Alvarado Niles Rd.
Union City, CA 94587

with a copy to

Kristopher J. Kokotaylo,
City Attorney
City of Union City
34009 Alvarado Niles Rd.
Union City, CA 94587

10.12 Professional Seal. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.13 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A
Exhibit B
Exhibit C

Scope of Services and Project Schedule
Cost Proposal, Hourly Charge Rate and Reimbursable Expenses
Public Works Requirements

10.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

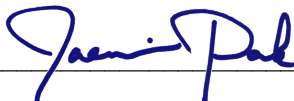
SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date.

CITY OF UNION CITY

PARK ENGINEERING, INC.

JOAN MALLOY, CITY MANAGER


Title: President/CEO

ATTEST:

ANNA M. BROWN, CITY CLERK

APPROVED AS TO FORM:

KRISTOPHER J. KOKOTAYLO
CITY ATTORNEY

5033628.1
Version 3.2.21

EXHIBIT A

SCOPE OF SERVICES

Park Engineering Team will support the City of Union City by providing construction management, inspection, and materials testing services. The detailed scope of services are as follows:

PRE-CONSTRUCTION SERVICES

1. Perform constructability and bid-ability reviews on contract plans and specifications.
2. Assist with management of the bid process for the City from starting advertisement through the construction bid phase.
3. Work with City staff and the design team on preparation of addendums and answering of bid questions received in a timely manner.
4. Coordinate and participate in pre-bid meeting, review bids, bid bonds, insurance information to assist the City in selecting a qualified bidder for construction.
5. Organize, notify and conduct the pre-construction conference.
6. Work with the design team to ensure all required construction permits are in place.
7. Prepare and work with City personnel regarding initial project notification to businesses and residents. Once construction has begun, provide accurate and timely schedule updates on the progress of the work and anticipated sidewalk and street closures.
8. Prepare and work with City personnel to set up cost segregation and accounting for reimbursement of funds from the various funding sources. Set up a tracking spreadsheet to segregate cost by funding source so that the City will know exactly what funds are being spent on the items of work. We will make sure that all of this information is provided so that when monthly reimbursement invoices are submitted to the funding agencies, there are no questions regarding where the funds are and how much of the work is being covered by each fund.
9. Perform pre-construction public outreach including setting up project website, project social media sites, supporting City's website for links to project information, outreach meetings and other public information as requested by City.
10. Perform preconstruction drone video including mapping in northbound and southbound directions as requested by City.
11. Perform up to four (4) 24 hour/7-day traffic counts and analysis to determine adequacy of current lane closure requirements. Provide information to update or modify traffic closure charts.

CONSTRUCTION SERVICES

Project Administration

1. Prepare documents for City approval to meet ACTC and State requirements following award of the construction contract.

2. Act as the single point of contact for all communications and coordination between the contractor, utility companies, regulatory agencies, local businesses and residents, designer, and the City.
3. Maintain close contact with City Project Manager, including sharing all correspondences, to ensure that the City is kept up to date on all project matters.
4. Prepare a monthly progress report to meet the City's needs in presenting the project's key issues and updates on cost and schedule status.
5. Manage submittals from the contractor, tracking date submitted, duration for review and making sure that submittals are reviewed and returned within the allotted time to prevent any delays.
6. Coordinate, manage and respond to Requests for Information (RFI's) submitted by the contractor, including tracking RFI's sent to the designers and/or other agencies for their timely response.
7. Coordinate and conduct meetings with the contractor, designer and oversight agencies for RFI's, when appropriate to resolve and clarify complex issues.
8. Coordinate, conduct and summarize weekly progress meetings with the contractor during construction. Meeting may include design team and other oversight agencies.
9. Manage any necessary utility coordination for conflicts or relocation work required.
10. Perform all field inspection activities to monitor compliance with the contract plans and specifications. Record all items of work, labor, equipment, materials incorporated, materials tested, and any other pertinent information in a daily diary for permanent record of events.
11. Monitor contractor's construction activities for conformance with the approved Water Pollution Control Plan and NPDES General Permit requirements.
12. Maintain and enforce safety awareness for the protection of workers and public.
13. Project daily reports, photographs and video documentation of project progress and major work components will be done on a daily basis and kept for permanent records to support disputes and verify quality for acceptance.
14. Schedule and perform necessary sampling and testing of materials for the project in accordance with the specifications.
15. Park Engineering will use a contract management system, which is based on the Caltrans Construction Manual and Caltrans Local Assistance Procedures Manual. Electronic forms and document control system will be implemented at project start up that can be tailored to fit the needs of the City and other partner, oversight and funding agencies.
16. Park Engineering will receive all contractor correspondence and prepare and transmit responses.
17. We will review and approve contractor submittals required by the construction contract plans and specifications including traffic control plans, Water Pollution Control Plans, and various mix designs.
18. Park Engineering will also review the contractor's weekly certified payroll for compliance with prevailing wage requirements and conduct labor interviews.
19. Evaluate contractor's change order requests and claims and make recommendations to the City based on the merit and circumstances.
20. Review cost estimates and documentation for any contract change order work.
21. Negotiate and prepare any contract change orders with justification memorandums for the City's approval.

22. Prepare quantity calculations, including any contract change orders, and progress pay estimates on a monthly basis.
23. Review contractor's monthly invoices to verify accuracy and "sign-off" on construction progress pay estimates for City payment approval.
24. Monitor and report on project budget and construction status and provide any necessary info needed for funding reimbursements.
25. Provide construction contract accounting, filing and administration in accordance with City, ACTC, State and Federal requirements.
26. Support all project work with documentation to meet the contract requirements for acceptance.
27. Review contractor's traffic control plans with City Project Manager and City Departments for acceptability prior to approval.
28. Review contractor's planned schedule for conformance with the specifications and for reasonableness of the sequence and duration of the activities.
29. Review work progress as compared to the planned schedule and notify contractor of schedule slippage.
30. Prepare and distribute accurate Weekly Statement of Working Day reports to track project time.
31. Identify actual and potential problems associated with the construction project and recommend sound engineering solutions to the City Project Manager.
32. Park Engineering will analyze, negotiate and resolve any potential claims.

Inspection and Materials Testing

1. Work will be tracked in relation to the items of work on the contract with an estimate of hours worked for each activity.
2. Perform all field inspection activities to monitor compliance with the contract plans and specifications. Record all items of work, labor, equipment, materials incorporated, materials tested, traffic control and any other pertinent information in a daily diary for permanent record of events.
3. Inspect the construction elements of the project as required by the construction contract plans and specifications.
4. Take photographs and videos of project progress and major work components on a weekly basis and file for permanent records to support disputes and verify quality for acceptance.
5. Necessary sampling and testing of materials will be performed by AME for the project in accordance with the specifications.
6. Arrange for specialty inspection, such as source inspection to ensure compliance with the contract.
7. Quality Assurance Program (QAP) indicating all the materials testing requirements for the project. All the record keeping and testing frequencies for the materials specified on the project will be listed in this manual and followed through the project. Other materials which do not require testing but can be accepted based on the Certificate of Compliance will be listed in this manual.
8. Analyze records of materials used in the project in accordance with ASTM and California Standard Test Methods.
9. Review test data and materials certifications submitted by the contractor and suppliers for compliance with the contract requirements.

10. Document & develop deficiency reports on unacceptable work to meet the City's reporting requirements and ensure that corrective work is completed and documented as such.
11. Maintain and enforce safety awareness for the protection of workers and public.
12. Monitor daily traffic control for both vehicles and pedestrians and modify as necessary to improve public convenience and/or safety.
13. Perform during construction drone video including mapping in northbound and southbound directions as requested by City.

Public and Community Outreach

1. Implement cost-effective outreach methods to disseminate project information and build consensus with key stakeholders.
2. Assist in organization and execution of any public outreach meetings and events.
3. Set up, monitor and update project website, hotline, and social media sites.
4. Work with the City to link City's website with project sites.
5. Provide accurate and timely project updates on a weekly basis of the work performed and upcoming work.
6. Answer questions from the public concerning the project work and schedule, by meeting them in person (if possible) or at least via e-mail or phone call.
7. Ensure all street closure notifications are posted timely and accurately. And the closures are approved by the appropriate agency prior to implementation. Accordingly, all the signs are posted accurately per approved plans for closures.
8. Coordinate and communicate with adjacent businesses and residents to minimize impacts and maintain a neighborly reputation for the project. Address public concerns on a daily, weekly, and monthly basis, as needed.
9. We will be available to answer questions on an ongoing basis and for any meetings. We will report the current status of the project's schedule to the City on a daily, weekly and monthly basis through meetings and progress report requests.

ACTC Funding Support

Construction Phase Programming and Reimbursement Assistance for Alameda CTC Funding Assist in organization and execution of any public outreach meetings and events.

1. Facilitation of approvals of documents needed for the obligation and administration of Alameda CTC funding including tracking of funding details, requirements, and milestones.

Documents include but are not limited to:

- Local Business Contract Equity Semi-Annual Reports.
- Semi-Annual Progress Reports.
- TFCA Annual Reports.
- Alameda CTC Project Funding Agreement Amendment Requests, as needed.

2. Reimbursement requests for construction invoices.
3. Closeout document preparation.

Documents include but are not limited to:

- TFCA Final Report.

- Alameda CTC Final Report.

Bicycle and Pedestrian Advisory Committee (BPAC) Meeting Updates

Provide necessary meeting updates and information on the project works as needed and requested by the City.

POST CONSTRUCTION SERVICES

1. Inspect work as it is completed. Develop punch list for any needed corrections as the work progresses.
2. Conduct, review, and follow up on inspection work to assure completion of the contract including any punch list items of work.
3. Perform final inspection of all work for acceptance.
4. Finalize all bid item and change order totals for the project's Final Progress Payment.
5. Provide recommendation and supporting information to resolve any outstanding potential claims.
6. Work with the contractor's staff to prepare and transition, official and accurate construction record drawings and Final Reports required.
7. Prepare all required documents for project close-out for the City. We will complete all documents including - Report of Completion, Final Inspection Report, Detailed Estimate and Summary, Change Order Summary, Final Utilization of LBE/VSLBE Contractors, Report of Expenditures, As-builts, and Final Invoice.
8. Perform post construction drone video including mapping in northbound and southbound directions as requested by City.
9. Submit all records and documents to the City upon final completion of the project.
10. Perform any additional services as requested by the City.

EXHIBIT B

COMPENSATION SCHEDULE

Name	PARK						VSCE			
	RE	Deputy RE	CI	CI (OT)	CI	CI (OT)				
	J Park	T Baxter	C Kinser	C Kinser	D White	D White	AW	OE/Admin 2	Admin 1	ODC
	Hourly Billing Rate ==>	249.10	\$230.49	\$181.77	\$272.66	\$172.70	\$259.05	197.50	130.00	103.00
TASK										
TASK 1 - PRE CONSTRUCTION PHASE										
Data gathering/constructibility review	100	20	16							
Setup project files/accounting system/janiitorial		20	8					8	8	
Pre-Bid and pre-construction meeting	16	8	8		4		160		160	
Pre constructuion photos and documentation		16	40							
Subtotal Hours Task 1	116	64	72		4		160	8	168	
Subtotal Cost Tasl 1	\$28,896	\$14,751	\$13,087		\$691		\$31,600	\$1,040	\$17,304	\$ -
TASK 2 - CONSTRUCTION PHASE										
Traffic Analysis										
Public Outreach							392		112	\$1,840
Meetings/correspondences - Contractors	200	80								
Meetings/correspondences - Designers/City/Cargill	100	40								
Project corespondence/coordinate w/PM	100	20								
Utility coordination	80	80								
Office Engineer/Document control	60	120						732		
Material testing	40	40								
Schedule/Monthly contractor's updates/invoices	120	120								
Monitor project safety	20	20								
Labor and SWPPP compliance	40	60								

Name	PARK						VSCE			
	RE	Deputy RE	CI	CI (OT)	CI	CI (OT)				
	J Park	T Baxter	C Kinser	C Kinser	D White	D White	AW	OE/Admin 2	Admin 1	ODC
	Hourly Billing Rate ==>	249.10	\$230.49	\$181.77	\$272.66	\$172.70	\$259.05	197.50	130.00	103.00
TASK										
Field inpection			2544	100	1500	40				
Inspector's office time- daily reports, Q verifications			240		150					
Submittals	200	160								
RFI & RFC	200	160								
Change orders	160	160								
Dispute mitigation/resolution	100	60								
Video and Documentation										
Subtotal Hours Task 2	1420	1120	2784	100	1650	40	392	732	112	
Subtotal Cost - Task 2	\$353,722	\$258,149	\$506,127	\$27,266	\$284,955	\$10,362	\$77,420	\$95,160	\$11,536	\$ 1,840
TASK 3 - POST CONSTRUCTION PHASE										
Final inspection	16		24							
Verifying as-builts	16	8	40		8					
final project filing and accounting close-out	24	24						16		
Final pay item & project close-out	16	16								
Subtotal Hours Task 3	72	48	64		8			16		
Subtotal Cost Task 3	\$17,935	\$11,064	\$11,633		\$1,382			\$2,080		\$ -
TOTAL HOURS	1608	1232	2920	100	1662	40	552	756	280	
TOTAL COMPENSATION	\$400,553	\$283,964	\$530,768	\$27,266	\$287,027	\$10,362	\$109,020	\$98,280	\$28,840	\$ 1,840

		APPLIED MATERIALS	WINTERS CONSULTING	GREY-BOWEN	TJKM	CHRADELLI	TOTAL
					Classification ==>		
	Name	T&M	T&M	T&M	T&M	T&M	
	Hourly Billing Rate ==>						
	TASK						
	TASK 1 - PRE CONSTRUCTION PHASE						
1.1	Data gathering/constructibility review						\$32,428
1.2	Setup project files/accounting system/janiitorial						\$7,928
1.3	Pre-Bid and pre-construction meeting						\$56,054
1.4	Pre constructuion photos and documentation						\$10,959
	Subtotal Hours Task 1						592
	Subtotal Cost Tasl 1						\$107,369
	TASK 2 - CONSTRUCTION PHASE						
2.1	Traffic Analysis				\$12,000		\$12,000
2.2	Public Outreach						\$90,796
2.3	Meetings/correspondences - Contractors						\$68,259
2.4	Meetings/correspondences - Designers/City/Cargill						\$34,130
2.5	Project corespondence/coordinate w/PM						\$29,520
2.6	Utilty coordination						\$38,367
2.7	Office Engineer/Document control						\$137,765
2.8	Material testing \$150,000						\$169,184
2.9	Schedule/Monthly contractor's updates/invoices		\$15,000	\$30,000			\$102,551
2.10	Monitor project safety						\$9,592
2.11	Labor and SWPPP compliance						\$23,793
2.12	Field inpsection						\$759,101
2.13	Inspector's office time- daily reports, Q verifications						\$69,530
2.14	Submittals						\$86,698
2.15	RFI & RFC						\$86,698
2.16	Change orders						\$76,734
2.17	Dispute mitigation/resolution						\$38,739

		APPLIED MATERIALS	WINTERS CONSULTING	GREY-BOWEN	TJKM	CHRADELLI	TOTAL
					Classification ==>		
	Name	T&M	T&M	T&M	T&M	T&M	
	Hourly Billing Rate ==>						
	TASK						
2.2	Video and Documentation					\$15,000.00	\$15,000
	Subtotal Hours Task 2						8350
	Subtotal Cost - Task 2	\$150,000	\$15,000	\$30,000	\$12,000	\$15,000	\$1,848,537
	TASK 3 - POST CONSTRUCTION PHASE						
3.1	Final inspection						\$ 8,348.08
3.2	Verifying as-builts						\$14,481.92
3.3	final project filing and accounting close-out						\$ 13,590.16
3.4	Final pay item & project close-out						\$ 7,673.44
	Subtotal Hours Task 3						208
	Subtotal Cost Task 3	\$ -	\$ -		\$ -	\$ -	\$ 44,094
	TOTAL HOURS						9150
	TOTAL COMPENSATION	\$150,000	\$15,000	\$ 30,000	\$ 12,000	\$ 15,000	\$2,000,000.00

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A

is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.
- The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.
- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any

person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

DIR REGISTRATION

Consultant shall be currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5, except in limited circumstances as set forth in Labor Code section 1771.1. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code Section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

RESOLUTION NO. XXXX-22

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTING
SERVICES AGREEMENT WITH PARK ENGINEERING, INC., IN THE
AMOUNT OF \$2,000,000, FOR CONSTRUCTION MANAGEMENT SERVICES
FOR THE UNION CITY BOULEVARD BIKE LANES PROJECT,
CITY PROJECT NO. 17-29**

WHEREAS, the Alameda County Transportation Commission (Alameda CTC) administers funding programs and projects that benefit the Alameda County transportation system, consisting of 2000 Measure B, 2010 Vehicle Registration Fee (VRF), 2014 Measure BB, CMA-TIP, and Transportation Fund for Clean Air Programs, and such funding is collectively defined as and shall be referenced herein as the “Alameda CTC Administered Funds;” and

WHEREAS, on April 27, 2017, the Alameda CTC Commission approved the award of an \$8,800,000 grant to the Union City Boulevard Bikes Lanes Project, City Project No. 17-29; and

WHEREAS, on October 9, 2017, Union City received the executed Alameda CTC Project Funding Agreement No. A17-0125 in the amount of \$8,800,000 grant funded with 2014 Measure BB, CMA TIP, TFCA (Transportation Fund for Clean Air Programs) and a required local match of \$1,000,000 (Gas Tax) for Final Design, Right of Way and Construction Phases for Union City Boulevard Bikes Lanes Project, City Project No. 17-29; and

WHEREAS, on June 23, 2020, the City Council adopted Resolution No. 5613-20, in the amount of approximately \$1.4 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), to amend the list of projects for FY 2020-2021, to include pavement rehabilitation and improvements in various locations including Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

WHEREAS, on June 8, 2021, the City Council adopted a Resolution No. 5768-21, adopting a List of Projects for FY 2021-2022, in the amount of approximately \$1.5 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation and improvements in various locations including Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

WHEREAS, on June 14, 2022, the City Council adopted Resolution No. 5951-22, adopting a List of Projects for FY 2022-2023, in the amount of approximately \$1.6 million, funded by SB 1: The Road Repair and Accountability Act of 2017 (Fund 2515), which included pavement rehabilitation and improvements in various locations to include the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

WHEREAS, on May 23, 2023, the City Council adopted Resolution No. 6123-23

accepting \$604,912 in Transportation Development Act (TDA), Article 3 Pedestrian/Bicycle Project Funding from the Metropolitan Transportation Commission, increasing revenue projections in the Capital Projects Fund by \$604,912, and appropriating \$604,912 to the Capital Projects Fund for the construction of the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

WHEREAS, on June 27, 2023, the City Council adopted Resolution No. 6152-23, accepting \$1.8 million from the 2024 Comprehensive Investment Program (CIP) Grant Funds from the Alameda County Transportation Commission (Alameda CTC) for the Union Boulevard Bike Lanes (Phase III, Complete Streets) Project, City Project No. 17-29, increasing the revenue projections in the Capital Projects Fund (Fund 4100) by \$1.8 million, appropriating \$1.8 million to Project No. 17-29, earmarking \$450,000 of previously approved SB-1 funds (Fund 2515) to meet the Local Match requirement and authorizing the City Manager to sign the required grant funding agreements, in a form approved by the City Attorney; and

WHEREAS, on July 11, 2023, the City Council adopted a Resolution No. 6160-23, adopting a List of Projects for FY 2023-2024, in the amount of approximately \$1.7 million, funded with SB-1: The Road Repair and Accountability Act of 2017 (Fund 2515), which includes, among the various projects, the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

WHEREAS, the project will complete over a two (2) mile gap with buffer Class II bikes lanes along Union City Boulevard (UCB) from Alameda County Flood Control Channel (Fremont) to Smith Street and will serve as the San Francisco Bay Trail in Union City. The improvements also include the rehabilitation of the pavement within the project limits. The project will include “Complete Street” improvements at all intersections including traffic signal modifications, a new multi-purpose trail along UCB adjacent to Delaine Eastin Elementary School, providing direct access for students who bike or walk to school and a right-turning lane into the school, streetlight modifications, roadway drainage improvement and landscape improvements at various locations; and

WHEREAS, on March 24, 2023, the City of Union City released a Request for Proposal (RFP) for Construction Management Services for the Union City Boulevard Bike Lanes Project and the Cargill Brine Pipeline Project followed by the issuance of Addendum No. 1, dated April 11, 2023, and Addendum No. 2, dated May 10, 2023, see Exhibit A; and

WHEREAS, a Pre-Proposal Meeting for interested construction management firms was held on April 26, 2023 at the Mark Green Sports Center, see Exhibit B; and

WHEREAS, in early May 2023, the Design Consultant (Kimley-Horn Associates) submitted the Final Design Plans and Specifications for review by the City, the Cargill design teams, and interested construction management firms. The submittal also included an updated Construction Cost of \$16.8 million for the Union City Boulevard Bike Lanes Project, City Project No. 17-29; and

WHEREAS, on May 16, 2023, the City of Union City received four (4) proposals from Consor PMCM, Inc., Ghirardelli Associates, MNS Engineers, Inc., and Park Engineering. Interviews were held on June 15, 2023, with the selection panel consisting of Public Works staff and a representative from Cargill and the panel selected Park Engineering, Inc. because of their project understanding, local knowledge, similar project experience, having in-house/local inspectors, and favorable reference checks; and

WHEREAS, Park Engineering, Inc. will be the single point of contact for the Pre-Construction, Construction and Post-Construction phases (August 2023-December 2025) of this \$16.8 million project and the construction management services will include preforming a constructability and bid-ability reviews of the Plans, Specifications and Costs, assisting with contract bid process, project administration, managing the daily activities of the Prime Contractor, holding weekly meetings, reviewing and coordinating material submittals, RFIs and change orders with the design team, coordinating with utility companies, other agencies, businesses and residents, assisting with public meetings and outreach, reviewing progress reports & construction schedule, perform and monitor all field inspections, review test data, analyze records, assist with implementing stages construction set up for various phases, oversee post construction services including project close-out and preparation of As-Builts Plans; and

WHEREAS, the Consulting Services Agreement with Park Engineering, Inc. for Construction Management Services, in the amount \$2,000,000, will be funded with \$1,136,000 from the Alameda CTC Project Funding Agreement No. A17-0125 in the Capital Projects Fund (Account Number 4100-3199-91729-54110) for Union City Boulevard Bike Lanes Project, \$214,000 from the Measure B ACTC Bike and Ped Fund (Account Number 2543-3199-91729-54110) and \$650,000 from the SB-1 Road Maintenance and Rehabilitation Account (RMRA) Fund (Account Number 2515-3199-91729-54110), which were budgeted in the approved Five-Year Capital Improvement Plan (CIP) for Fiscal Year 2023-2024 to Fiscal Year 2027-2028 for the Union City Boulevard Bike Lane Project, City Project No. 17-29.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby authorizes the City Manager to execute a Consulting Services Agreement with Park Engineering, Inc., of Emeryville, CA, in the amount of \$2,000,000, for construction management services for the Union City Boulevard Bikes Lanes Project, City Project No. 17-29.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on the 25th day of July 2023, by the following vote:



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MARILOU AYUPAN, PUBLIC WORKS DIRECTOR

SUBJECT: ADOPT A RESOLUTION APPROVING LOCAL SUPPORT FOR UNION CITY TRANSIT TO PARTICIPATE IN THE CLIPPER® START PILOT PROGRAM EXTENSION THROUGH JUNE 30, 2025, AND APPROVING AN INCREASE TO THE CLIPPER® START PILOT PROGRAM DISCOUNT FROM TWENTY PERCENT (20%) TO FIFTY PERCENT (50%), EFFECTIVE JANUARY 1, 2024

Staff recommends that the City Council adopt a resolution approving local support for Union City Transit to participate in the Clipper® START Pilot Program extension through June 30, 2025, and approving an increase to the Clipper® START Pilot Program discount from twenty percent (20%) to fifty percent (50%), effective January 1, 2024.

STRATEGIC PLAN ALIGNMENT

There is no direct alignment with the Strategic Plan goals.

BACKGROUND

In May 2018, the Metropolitan Transportation Commission (MTC) adopted Resolution No. 4320, establishing the framework for the Regional Means-Based Transit Fare Pilot Program. Branded as Clipper® START, the regional means-based transit discount program seeks to increase access to opportunity and improve transportation affordability for adult transit passengers who earn a lower income. Program information is available online at clipperstartcard.com. The Clipper® START program was launched between July 2020 and January 2021 on twenty-one (21) of the Bay Area's twenty-seven (27) transit operators. The program offers either a twenty percent (20%) or fifty percent (50%) discount on an adult one (1)-way fare for eligible program participants who earn under 200% of the federal poverty level. MTC reimburses participating transit operators half of the fare revenue loss.

On October 27, 2020, City Council approved Resolution No. 5679-20 which gave our local support for Union City Transit's participation in Clipper® START with a twenty percent (20%) fare discount through December 31, 2021. Due to the ongoing COVID-19 pandemic and overall low transit ridership, MTC approved an eighteen (18)-month pilot extension. On July 27, 2021, City Council approved Resolution No. 5806-21 which extended Union City's participation in the pilot program through June 30, 2023.

DISCUSSION

During the on-going pilot period, MTC has evaluated the program to assess the program design, development and impacts on improving mobility, affordability, and access to opportunities. This evaluation identified potential strategies to increase program reach, improve customer experience and reduce administrative costs. Key findings included denser enrollment rates in equity priority communities, more interest in varied Clipper® START products such as accumulator passes, and the need for a comprehensive marketing approach to reach underrepresented demographics.

As a next step, MTC recommends extending the pilot program for a twenty-four (24)-month period through June 30, 2025. This extension will allow MTC to conduct additional feasibility, benefits, and risk analysis of the potential strategies as transit ridership continues to recover from the COVID-19 pandemic. To date, Clipper® START ridership on Union City Transit has been relatively low at 1,084 total rides as of May 31, 2023. MTC would continue an extensive regional marketing effort to support and improve the reach of the Clipper® START program, including direct mail advertising and partnering with Community Based Organizations to conduct on-site events.

Currently, seven (7) of the participating twenty-one (21) transit agencies offer a fifty percent (50%) discount. Fourteen (14) transit agencies (including Union City Transit) offer a twenty percent (20%) discount. MTC has recommended that transit operators go to the fifty (50%) discount level (effective January 1, 2024) to encourage increased program participation and regional discount uniformity. Many transit agencies that currently offer a twenty percent (20%) discount are recommending to their respective governing boards that their discount increase to fifty percent (50%).

Under the current program, a Union City Transit adult one (1)-way fare of \$2.00 costs a Clipper® START participant \$1.60 with MTC reimbursing \$0.20 of the reduced fare and no further contribution from Union City Transit. Continuing with this model and an anticipated reimbursement of \$15,000, it would require 75,000 unique one (1)-way trips before the MTC contribution is exhausted. Under the proposed program change, a Union City Transit adult one (1)-way fare of \$2.00 would cost a Clipper® START participant \$1.00 with MTC reimbursing \$0.50 of the reduced fare and no further contribution from Union City Transit; continuing with this model and an anticipated reimbursement of \$15,000 would require 30,000 unique one (1)-way trips before the MTC contribution is exhausted. Based on the current ridership of 1,084 total rides after thirty (30) months of Union City Transit participating in the program, staff do not foresee an issue with an increase in the discount.

Union City Transit continues to offer a twenty percent (20%) discount through Clipper® START even after the June 30, 2023, pilot extension expiration in anticipation of continuing with the next version of the pilot program. Staff sees value in Union City Transit continuing to participate in the Clipper® START pilot program and to change the discount for eligible participants from twenty percent (20%) to fifty percent (50%) starting January 1, 2024.

FISCAL IMPACT

There will be no impact to Union City Transit funding unless the program exceeds 30,000 one (1)-way trips during the pilot extension period. MTC reimburses fifty percent (50%) of Union City Transit's revenue loss with regional Low Carbon Transit Operations Program (LCTOP) funds which are separate from the annual LCTOP program approved by City Council Resolution No. 6112-23 on April 25, 2023. To reduce financial risk and to simplify the processing of reimbursement for operators, MTC proposes an upfront payment for the twenty-four (24)-month extension. The funding distribution details will be finalized later in Summer 2023, but the current program reimbursement has been sufficient for Union City Transit fare revenues. Staff anticipates that the proposed reimbursement of \$15,000 will be more than enough to cover any expected revenue loss during the Clipper® START extension period. There will be no impact on the General Fund.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving local support for Union City Transit to participate in the Clipper® START Pilot Program extension through June 30, 2025; and approving an increase to the Clipper® START Pilot Program discount from twenty percent (20%) to fifty percent (50%), effective January 1, 2024.

Prepared by:

Wilson Lee, Project Specialist

Submitted by:

Steve Adams, Transit Manager

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Resolution	Resolution

RESOLUTION NO. XXXX-23

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY APPROVING LOCAL SUPPORT FOR UNION CITY TRANSIT TO PARTICIPATE IN THE CLIPPER® START PILOT PROGRAM EXTENSION THROUGH JUNE 30, 2025, AND APPROVING AN INCREASE TO THE CLIPPER® START PILOT PROGRAM DISCOUNT FROM TWENTY PERCENT (20%) TO FIFTY PERCENT (50%), EFFECTIVE JANUARY 1, 2024

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Section 66500 et seq.; and

WHEREAS, transit affordability has been highlighted as a regional issue in MTC's Coordinated Plan, Plan Bay Area and other plans; and

WHEREAS, MTC has established the regional framework for the Regional Means-Based Transit Fare, branded Clipper® START, Pilot Program to improve transit affordability and access to opportunity for eligible low-income residents; and

WHEREAS, MTC has adopted a regional framework for the program, with participating operators, funding guidelines, and program conditions, pursuant to MTC Resolution No. 4320, Revised, to guide implementation of the Clipper® START Pilot Program for an eighteen (18)-month period spanning Fiscal Year 2020-21 and Fiscal Year 2021-22; and

WHEREAS, on October 27, 2020, the Union City City Council approved Resolution No. 5679-20 which gave support for Union City Transit to participate in the Clipper® START Pilot Program; and

WHEREAS, on July 27, 2021, the Union City City Council approved Resolution No. 5806-21 to extend Union City's participation in the Clipper® START Pilot Program through June 30, 2023; and

WHEREAS, MTC has recommended extending the program for a twenty-four (24)-month period through June 30, 2025, during which period MTC will conduct additional feasibility, benefits and risk analysis of the program, as well as continued marketing of the program; and

WHEREAS, there will be no impact to Union City Transit funding unless the program exceeds 30,000 one (1)-way trips during the pilot extension period and there will be no impact to the General Fund.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby adopts a resolution approving local support for Union City Transit to participate in the Clipper® START Pilot Program through June 30, 2025; and

BE IT FURTHER RESOLVED that the City Council of the City of Union City hereby approves an increase to the Union City Transit Clipper® START Pilot Program discount from

twenty percent (20%) to fifty percent (50%) for an adult one (1)-way fare for eligible program participants beginning January 1, 2024.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on the 25th day of July 2023, by the following vote:



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CARMELA CAMPBELL, ECONOMIC, AND COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE FOR ZONING TEXT AMENDMENT AT-23-003 TO AMEND TITLE 18, ZONING, OF THE UNION CITY MUNICIPAL CODE TO UPDATE CHAPTER 18.08, DEFINITIONS, CHAPTER 18.36, COMMERCIAL DISTRICTS, CHAPTER 18.40, INDUSTRIAL DISTRICTS, CHAPTER 18.76, SITE DEVELOPMENT REVIEW, ADD CHAPTER 18.43, USE OF HAZARDOUS MATERIALS, AND FIND THAT THE AMENDMENT IS EXEMPT FROM ENVIRONMENTAL REVIEW IN ACCORDANCE WITH CEQA GUIDELINES SECTION 15061(B)(3)

Staff recommends that the City Council 1) waive the reading of the full text of the ordinance, 2) conduct the second reading of the title of the proposed ordinance, and 3) adopt the ordinance approving Zoning Text Amendment AT-23-003 and find that the amendment is exempt from environmental review in accordance with CEQA guidelines section 15061(b) (3).

The City Council held a public hearing and introduced the Ordinance at its July 11, 2023, meeting on a 5-0 Vote. The proposed zoning text amendments associated with AT-23-003 are included in Exhibit A (Clean) and B (red-lined) of Attachment 1.

STRATEGIC PLAN ALIGNMENT

The proposed amendments are in alignment with the following:

Goal C. Institute forward-thinking business, land use development, housing, social services, and public safety strategies that promote community growth and innovation.

Goal C. Strategy 1. Analyze the feasibility of transforming warehouses to attract high-value industrial and commercial uses for the benefit of the community.

Goal C. Strategy 15. Improve and streamline the development process. (Council Priority)

BACKGROUND

As part of the implementation of Strategic Plan Goal C.1, which states “Analyze the feasibility of transforming warehouses to attract high-value industrial and commercial uses for the benefit of the community,” staff developed design criteria and performance standards to ensure future industrial developments are well-designed and accommodate a variety of flex-industrial uses including office and research and development. As part of the effort to develop these standards, staff determined that there needed to be a more comprehensive update to address use classifications, outdated performance standards, and the need to reformat the chapter to ensure that use categories were consistent and standardized across all districts. As a result, amendments are proposed which modify and standardize uses, update development and performance standards, establish objective design standards, and reformat the chapter for ease of use.

The majority of the updates are focused on Chapter 18.40, Industrial Districts, which include the General Industrial (MG), Light Industrial (ML), and Special Industrial (MS) Zoning Districts. These districts make up the majority of the City’s industrial areas. Additional amendments are also proposed to other chapters in Title 18, Zoning, for consistency.

Staff is also proposing amendments to Chapter 18.76, Site Development Review, to make the Planning Commission the decision maker for Site Development Review applications. The proposed amendments also update applicability. These amendments are not directly related to the other proposed amendments but are included since they are critically important to streamlining the development review process, which is a City Council priority in the Strategic Plan.

For a detailed overview of the prior actions, see City Council Staff Report dated July 11, 2023, which can be accessed on-line at:

<https://unioncity.novusagenda.com/agendapublic/CoverSheet.aspx?ItemID=3961&MeetingID=1635>

DISCUSSION

A high-level summary of the text amendments is included below. To review the text amendment language, see attached Exhibit A (Clean) and Exhibit B (Redlines) of Attachment 1.

A. Chapter 18.08, Definitions

The amendments to Chapter 18.08 add definitions for new and existing uses, to better clarify what operations are covered by the use.

B. Chapter 18.36, Commercial Districts

The amendments to Chapter 18.36 update a reference to the Use of Hazardous Materials section which has been made its own chapter (Chapter 18.43) as part of these amendments.

C. Chapter 18.40, Industrial Districts

The amendments to Chapter 18.40 modify and standardize uses, update development and performance standards, establish objective design standards, and reformat the chapter for ease of use and consistency. Due to the substantial scope of the update, Chapter 18.40 will be repealed and replaced.

D. Chapter 18.43 Use of Hazardous Materials

The amendment would relocate the existing requirements listed in Chapter 18.40 Article IV, Use of Hazardous Materials, to a new chapter (Chapter 18.43 Use of Hazardous Materials). The requirements contained in that section apply to additional districts beyond those referenced in Chapter 18.40 (i.e., MG,

ML, MS) including the Station East Employment (SEE) Zoning District. For this reason, along with the reformatting of Chapter 18.40, these requirements were included in their own chapter. Additionally, the amendments incorporate a newly added Corridor Mixed-Use Employment (CMUE) Zoning District

E. Chapter 18.76 Site Development Review

Staff is proposing updates to Chapter 18.76, Site Development Review, to require the Site Development Review (SDR) process apply to all zoning districts. Previously, the Zoning Ordinance did not include the Civic Facilities (CF) Zoning District in the list of zoning districts where SDR applied. An exception has been added exempting City-owned projects on City-owned land. Additionally, Planning staff has provided direction to evaluate having the Planning Commission be the decision-making body for Site Development Review approvals instead of the City Council. The City Council would still retain the ability to call the project up on appeal for their review. Staff is developing a process to alert the City Council to Planning Commission actions so they are aware and can exercise this right. This change would further streamline project reviews, align our process with those in neighboring jurisdictions, and provide an appeal process for the public. It also reflects how Site Development Reviews were previously reviewed before an update in 2006.

FISCAL IMPACT

No fiscal impacts to the General Fund would result from adoption of the proposed zoning text amendments.

RECOMMENDATION

Staff recommends that the City Council 1) waive the reading of the full text of the ordinance, 2) conduct the second reading of the title of the proposed ordinance, and 3) adopt the ordinance approving Zoning Text Amendment AT-23-003 and find that the amendment is exempt from environmental review in accordance with CEQA guidelines section 15061(b) (3).

Prepared by:

Brandon H DeLucas, Associate Planner

Submitted by:

Brandon H DeLucas, Associate Planner

ATTACHMENTS:

Description	Type
❑ Attachment 1: Draft City Council Ordinance	Ordinance
❑ Attachment 1: Exhibit A (Clean)	Exhibit
❑ Attachment 1: Exhibit B (Redlines)	Exhibit

Attachment 1

ORDINANCE NO. XXXX-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY APPROVING ZONING TEXT AMENDMENT AT-23-003 TO AMEND TITLE 18, ZONING, OF THE UNION CITY MUNICIPAL CODE TO UPDATE CHAPTER 18.08, DEFINITIONS, CHAPTER 18.36, COMMERCIAL DISTRICTS, CHAPTER 18.40, INDUSTRIAL DISTRICTS, CHAPTER 18.76, SITE DEVELOPMENT REVIEW, AND ADD CHAPTER 18.43, USE OF HAZARDOUS MATERIALS

WHEREAS, as part of the implementation of Strategic Plan Goal C.1, which states “Analyze the feasibility of transforming warehouses to attract high-value industrial and commercial uses for the benefit of the community”, staff developed design criteria and performance standards to ensure future industrial developments are well-designed and accommodate a variety of flex-industrial uses including office and research and development; and

WHEREAS, during the effort to develop these standards, staff determined that there needed to be a more comprehensive update to address use classifications, outdated performance standards, and the need to reformat the chapter to ensure that use categories were consistent and standardized across all districts; and

WHEREAS, this comprehensive update has modified and standardized uses, updated development and performance standards, established objective design standards, and reformatted the chapter for ease of use and consistency with other chapters in Title 18; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, the City’s Zoning Code currently regulates all development within the City; and

WHEREAS, the City Council desires to amend Title 18 of the Union City Municipal Code, Chapter 18.08, Definitions, Chapter 18.36, Commercial Districts, Chapter 18.40, Industrial Districts, Chapter 18.76, Site Development Review, and add Chapter 18.43, Use of Hazardous Materials. These amendments modify and standardize uses, update development and performance standards, establish objective design standards, streamline approval processes, and reformat the chapters for ease of use and consistency with other chapters in Title 18; and

PLANNING COMMISSION REVIEW

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments associated with AT-23-003 on June 15, 2023, at which time all interested parties had the opportunity to be heard. The Planning Commission considered a staff report and Desk Item

dated June 15, 2023 and all written and oral testimony, and adopted Resolution No. 11-23 recommending approval of the amendments. The staff report, Desk Item and resolution are incorporated herein by reference; and

CITY COUNCIL REVIEW

WHEREAS, the City Council held a duly noticed public hearing on the proposed amendments on July 11, 2023, at which time all interested parties had the opportunity to be heard. The City Council considered a staff report dated July 11, 2023 and July 25, 2023 (including background reports) and incorporated herein by reference, the Planning Commission recommendation, and all written and oral testimony before taking action on the amendments; and

WHEREAS, the amendment to Title 18 of the Municipal Code as shown in Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, a red-lined version of the amendment is shown in Exhibit B, which is attached hereto and incorporated herein by reference.

THE CITY COUNCIL OF THE CITY OF UNION CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from environmental review in accordance with California Environmental Quality Act Guidelines section 15061(b)(3), the general exemption for projects with no potential for significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment will have a significant effect on the environment.

SECTION 3. Findings. The City Council makes the following findings in support of approving this Ordinance, based on the whole of the record before it.

1. The proposed Municipal Code Amendments are consistent with the General Plan,
2. The proposed Municipal Code Amendments are necessary and desirable to achieve the purposes of Title 18.

SECTION 4. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, amending Chapter 18.08, Definitions, Chapter 18.36, Commercial Districts, Chapter 18.40, Industrial Districts, Chapter 18.76, Site Development Review, and add Chapter 18.43, Use of Hazardous Materials, as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application

of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

EXHIBIT A

Chapter 18.08 DEFINITIONS

18.08.045 Automobile rental.

“Automobile rental” means a facility engaged in the rental and leasing of new and used automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles and supplies, including storage of said vehicles.

18.08.047 Automobile sales.

“Automobile sales” means a facility engaged in the retail sales and services of new automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles and supplies. Accessory sales of used automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles may be permitted.

18.08.073 Bank and financial institutions.

“Bank and financial institutions” means an establishment which provides services to meet the financial needs of its customers (i.e., checking account services, mortgage broker services, etc.). This use does not include check cashing businesses as defined in Section 18.08.168 or payday loan facility as defined in Section 18.08.486.

18.08.074 Bar.

“Bar” means a business where alcoholic beverages (including beer, wine, liquor, and mixed drinks) are sold for on-site consumption as a primary use, which is not part of a larger full service/sit down restaurant. Includes taverns, wine bars, pubs, lounges, and similar establishments where any food service is subordinate to the sale of alcoholic beverages.

18.08.075 Bed and breakfast establishment.

“Bed and breakfast establishment” means a building of residential character containing no more than five (5) sleeping units for rent by tourists on a temporary basis not to exceed a stay exceeding fourteen (14) calendar days in any month. A bed and breakfast establishment may also serve meals to guests as part of the guest fee and shall provide for a resident-manager.

18.08.076 Bicycle parking facility.

A “bicycle parking facility” is a device that is used to securely store bicycles. A bicycle parking facility can either be a bicycle locker or rack designed and installed in conformance with the design criteria listed in Section 18.28.080 or 18.28.090.

18.08.077 Bingo games.

“Bingo games” means the establishment of a game of chance open to the public in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random in accordance with Section 326.5 of the California State Penal Code and Chapter 5.32 of the Union City Municipal Code. For the purposes of the zoning ordinance, bingo games

shall include conduct of such games as either the primary use of land or as a use that is accessory to a primary use of land.

18.08.078 Biotechnology.

“Biotechnology” is the industrial use of living organisms (or parts of living organisms) in applications in medicine, agriculture, or other products. Biotechnology can include fermentation and plant and animal hybridization, which may include animal testing, protein separation technologies, and genomics and combinational chemistry.

18.08.156 Business services.

“Business services” means a facility that provides support services for businesses or the public for a fee. These services include copying, printing, mailing, design, data processing and sign shops, etc.

18.08.175 Conference center.

A “Conference center” means a facility for conventions, conferences, trade shows, festivals, and other events held within a facility designed and approved for this purpose.

18.08.176 Construction equipment sales and rental.

“Construction equipment sales and rental” means a facility which provides construction equipment and related commodities to the public for sale or rental, and accessory servicing of that equipment.

18.08.177 Contractor services.

“Contractor services” means a facility providing general contracting and/or building construction services, including general building, plumbing, electrical, air conditioning, carpentry, and other trade contractors.

18.08.178 Convenience market.

“Convenience market” means an activity that includes the retail sale of food, beverages, and personal convenience items, primarily for off-premises consumption and typically found in establishments with long or late hours of operation and in a building of less than three thousand (3,000) square feet. Convenience markets may sell beer and wine but shall be considered liquor stores if hard liquor is sold on site. Excluded from this definition are delicatessens, specialty food shops, and establishments which have a sizeable assortment of fresh fruits and vegetables and fresh cut meat.

18.08.190 Director.

“Director” means Economic and Community Development Director. The Director is the executive head of the Economic and Community Development Department appointed by the City Manager to administer the zoning title. The Director also functions as the “Zoning Administrator.”

18.08.246 Engineering and design services.

“Engineering and design services” means an establishment primarily engaged in engineering and drafting services including architectural services. Usually includes office and drafting equipment, including blueprint machines.

18.08.266 Food Truck.

A ‘Food Truck’ means any motorized vehicle or trailer used as a mobile vending vehicle that sells food or beverages in the operation of a business.

18.08.267 Gas station marketeer.

A “gas station marketeer” is:

A. An enclosed area located on a gasoline service station site, where merchandise that is not considered accessory to the normal operation and maintenance of automobiles is sold. This merchandise includes convenience food items such as sodas, nonalcoholic beverages, chips, cookies, ice cream, and other snack items and also nonfood items.

B. Additionally, the use of refrigerated display cases to which the general public has access constitutes a marketeer. However, a service station may have up to four (4) coin-operated vending machines and may sell cigarettes over the counter only without being considered a marketeer.

18.08.291 Incubator Space

“Incubator Space” means a facility managed by a third-party that helps startup companies and individual entrepreneurs develop their businesses by providing services such as mentorship and advice, office or lab space, access to investors or capital, equipment, networking and learning opportunities.

18.08.396 Maker space.

“Maker space” means a facility where shared manufacturing tools, such as 3-D printers, laser cutters, and traditional arts and crafts supplies, are used for the fabrication, of physical products and not for mass production.

18.08.401 Manufacturing and assembly.

“Manufacturing and assembly” means a use that is principally devoted to manufacturing processes and may include accessory research and development, administrative, and warehousing activities.

18.08402. Manufacturing process.

“Manufacturing process” means the fabrication, processing, assembly, or blending of organic or inorganic materials and/or substances into new products.

18.08.403 Media production studio.

“Media production studio” means a facility for the production of motion pictures, television, video, sound, graphics and other communications. Accessory uses include incidental rehearsal and broadcasting uses; however, use does not include transmission towers. This may also include incidental office use, retail sales, and indoor storage of equipment related to the recording uses.

18.08.486 Payday loan facility.

“Payday loan facility” means a facility primarily engaged in the business of advancing funds to customers in situations where the customer uses their entitlement to a future paycheck from some other source as

collateral for the loan, and for which the customer pays a fee (percentage or otherwise) for the advancement.

18.08.487 Personal services.

“Personal services” means a use providing services of a personal convenience including beauty salons, barber shops, dressmaking/tailoring, hair removal, nail salons, photographic and portrait studios, shoe repair shops, travel agency, and similar uses. Excluded from this definition are massage, check cashing, and any other personal service type use specifically listed within district regulations.

CHAPTER 18.36 COMMERCIAL DISTRICTS

18.36.050 Required conditions.

H. Other provisions of this chapter notwithstanding, all storage, handling or other use of hazardous materials shall be subject to the provisions of Chapter 18.43 of this title.

Chapter 18.40 is repealed and replaced in its entirety.

CHAPTER 18.40 INDUSTRIAL DISTRICTS

18.40.010 Purpose

The Industrial Districts are as follows:

General Industrial (MG): The purpose of the MG District is to provide space for a broad range of light to heavy industrial uses, including manufacturing, transportation, warehousing, and distribution uses. It is applied where unsightliness, noise, odor, traffic, and the hazards associated with certain industrial uses will not impact residential, commercial, schools, other less intense use areas.

Light Industrial (ML): The purpose of the ML District is to provide space for light manufacturing, assembly, and distribution of manufactured products, R&D facilities, industrial supply, incidental warehousing, offices, parking, and supportive sales, which evidence no or very low nuisance characteristics. The ML District promotes high quality industrial and office park developments. The district applies to areas where nuisance characteristics of noise, odor, traffic generation, unsightliness, or hazardous materials manufacturing or storage are undesirable. Performance standards are applied to ensure minimum potential for adverse effects, that any unavoidable adverse effects are contained on-site, and that the general objective of a high standard of property and use maintenance is met.

Special Industrial (MS): The purpose of the MS District is to provide space for lightest industrial operations, including limited manufacturing, assembly, distribution of manufactured products, R&D facilities, incidental industrial supply, incidental warehousing, offices, and supportive sales, as well as limited commercial uses along major arterials. The MS District promotes high quality industrial and office park developments. The district applies to areas where nuisance characteristics of noise, odor, traffic generation, unsightliness or hazardous materials storage or handling are avoided, and almost all uses will be conducted entirely within enclosed buildings.

18.40.020 Land use regulations—Industrial Districts

Table 18.40.020 Land use regulations—Industrial Districts sets the land use regulations for the Industrial Districts by letter designation as follows unless a use or activity is prohibited or subject to a higher level of permit pursuant to other parts of this Section, other requirements of the Union City Municipal Code, or other applicable regulations:

"P" designates permitted uses.

"AUP" designates uses that are permitted subject to approval of an Administrative Use Permit (Chapter 18.54).

"UP" designates uses that are permitted subject to approval of a Conditional Use Permit (Chapter 18.56).

"-" designates uses that are not allowed.

Any other use determined by the decision maker to be essentially the same or very similar to the uses in in Table 18.40.020 may be permitted. In making this determination, the findings required under Section 18.52.060 shall be addressed. Land uses defined in the Union City Municipal Code and not listed in the table or not found to be substantially similar to the uses below are prohibited. Unless otherwise explicitly stated, all uses shall be conducted within a permanent building.

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
ASSEMBLY, EDUCATION AND RECREATION				
Conference center	-	-	UP	
Fitness and recreational facilities	-	-	UP	
Hotel	-	UP	UP	Including accessory commercial and business services uses
Professional trade schools and colleges	-	-	UP	Limited to programs serving persons 18 years or older
AUTOMOBILE				
Automobile rentals	-	P	P	
Automobile repair and service	-	UP	-	Including auto body and paint shops
Automobile sales of new vehicles	-	-	UP	Accessory used vehicles sales and service uses permitted

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Service stations	-	UP	-	Subject to the following conditions: 1. All operations except the sale of fuel and oil shall be conducted in a building enclosed on at least three (3) sides 2. Pump Island shall be located not closer than twenty (20) feet to any property line 3. No sale of alcoholic beverages or food products 4. No service station marketeer
COMMERCIAL SERVICES				
Banks and financial institutions	-	-	UP	
Business services	-	P	UP	
Child day care center	-	-	UP	When conducted as an integral part of a main building or on a proximate site/campus and where the parent(s) or guardian(s) of children using such facility remain on site, or on a proximate site
Food service	-	-	UP	Excluding Drive-through uses
Live music (non-amplified)	-	-	AUP	At food service uses and subject to the provisions of Section 18.36.195(A)
Outdoor dining areas	-	-	AUP	At food service uses and subject to the provisions listed in Section 18.36.190
Food truck	P	P	-	On private property, with property owner permission and up to 2 hours
INDUSTRIAL – MANUFACTURING AND ASSEMBLY				
Building materials and products				
Manufacturing and assembly of prefabricated structures	P	P	-	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Manufacturing and assembly of porcelain and ceramic products including bathroom and kitchen fixtures and equipment	P	P	-	Kilns shall be fired only by gas or electricity
Manufacturing and assembly of building paper and building board	P	-	-	
Manufacturing and assembly of building materials not elsewhere listed in this table.	UP	UP	-	
<i>Chemicals and allied products manufacturing</i>				
Manufacturing of candle and paraffin products	P	UP	UP	Excluding the rendering of products
Manufacturing and assembly of pharmaceuticals and products from the life sciences and biotechnology industries	P	P	P	
Manufacturing of soap, detergents, and cleaning preparations	P	UP	-	Excluding the refining or rendering of fats and oils
Manufacturing of perfumes, cosmetics, and other toiletries preparations	P	UP	-	Excluding the refining or rendering of fats and oils
Manufacturing and assembly of plastic and rubber products,	P	UP	UP	Excluding tire manufacturing
<i>Electronic, mechanical, and scientific equipment</i>				
Manufacturing, assembly, and repair of electrical and neon signs including billboards and commercial advertising structures	P	P	-	
Manufacturing and assembly of scientific instruments and devices, computer hardware and software, semiconductors, and computer chips	P	P	P	
Manufacturing and assembly of medical equipment	P	P	P	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Manufacturing and assembly of, optical goods, watches and clocks, musical instruments and camera and photographic equipment	P	P	P	
Manufacturing and assembly of machinery, appliances and fixtures	P	UP	-	
<i>Fabricated metal products</i>				
Finishing and plating of metal products	-	UP	-	
Machine shops	P	P	UP	Excluding the use of drop hammers or punch presses with a rated capacity of over twenty (20) tons
Manufacturing and assembly of fabricated metal products not elsewhere listed in this table	P	P	-	
Manufacturing and assembly of Transportation Equipment	SEE BELOW			
Assembly of bicycles	P	P	P	
Assembly of mass transit equipment	P	UP	-	
Manufacturing and assembly of motor vehicles, trailers, motorcycles, and associated parts and equipment not elsewhere listed in this table	P	UP	-	
Manufacturing and assembly of mass transit equipment	P	-	-	
Manufacturing and assembly of products from previous prepared materials such as precious or semi-precious metal	P	UP	UP	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Manufacturing and assembly of structural steel iron and pipe including bars, girders, and rails	P	-	-	
<i>Food and kindred products</i>				
Breweries, distilleries, and wineries	P	P	AUP	
On-site tasting rooms for Breweries, distilleries, and wineries	-	AUP	AUP	Including accessory food service. Outdoor dining areas subject to the provisions listed in Section 18.36.190
Indoor farming and cultivation	P	P	-	Excluding the cultivation of cannabis or other controlled substances
Manufacturing and bottling of Beverages	P	P		Including soft drinks and water
Manufacturing and packing of bread, bakery, confectionery and related products	P	P	-	
Manufacturing and packing of food products	P	P	P	Excluding production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats, oils
Manufacturing and packing of food products	P	P	-	Including processes such as baking, cooking, roasting, pasteurization and extraction
Processing and packing of Dairy products	P	-	-	
Processing and packing of Meat products	UP	-	-	Excluding slaughtering
Sugar refining	P	-	-	
<i>Furniture and fixtures</i>				
Manufacturing and assembly of Cabinets	P	P	P	
Manufacturing and assembly of Household and office furniture, and fixtures	P	P	-	
<i>Leather and allied products</i>				

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Manufacturing and assembly of leather products and associated dyeing	P	UP	-	Excluding tanning and curing
<i>Lumber and wood products</i>				
Lumber yards	UP*	UP	-	*Outdoor operations only permitted in the MG Zoning District
Manufacturing and assembly of wooden and cork products, not elsewhere listed in this table	P	P	-	
Sawmills	UP	-	-	
<i>Paper, printing, publishing, and allied industries</i>				
Manufacturing and assembly of paper and pulp goods not listed elsewhere in this table	P	UP	-	
Publishing, printing, and binding of newspapers, periodicals, books, cards, forms, blank books and circulars	P	P	UP	
<i>Stone, clay, and glass products</i>				
Gravel, rock and cement yards	UP	-	-	Including batch plans, and outdoor operations
Fabrication of concrete products	P	UP	-	Excluding batch plants
Manufacturing and assembly of artisan products	P	P	P	Including glass, tile and clay
Manufacturing and assembly of glass and pottery products	P	P	-	Kilns shall be fired only by gas or electricity
Manufacturing and assembly, including cutting, polishing, and setting of jewelry products and products from precious or semi-precious stone	P	P	P	
<i>Textile mill products</i>				

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Manufacturing and assembly of textile products including apparel, not elsewhere listed in this table	P*	P*	P	*Accessory dyeing and finishing only Permitted in the MG and ML Zoning Districts
INDUSTRIAL - WAREHOUSE, WHOLESALE AND DISTRIBUTION				
Cold Storage uses that do not exceed 100,000 square feet	UP	UP	-	
Warehouse, wholesale and distribution uses within buildings which were built, or approved by the Economic and Community Development Department, prior to August 22, 1996	-	P	-	
Warehouse, wholesale and distribution uses up to twenty-five (25,000) within buildings built since August 22, 1996	-	P	-	
Warehouse, wholesale and distribution uses over 25,000 square feet within buildings built since August 22, 1996; provided, that they either: (1) generate sales tax revenues as a point of sale, and/or (2) Supports an existing Union City manufacturing or assembly use with a valid business license	-	AUP	-	
Warehouse, wholesale, and distribution uses that do not exceed then thousand (10,000) square feet	-	-	P	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Warehouse, wholesale, and distribution uses that do not exceed twenty-five thousand (25,000) square feet; provided, that they either serve as a point of sale for taxable goods and/or supports an existing Union City manufacturing or assembly use with a valid businesses license	-	-	P	
INDUSTRIAL SERVICES				
Construction equipment sales and rentals	-	P	P	
Construction equipment sales and rentals with accessory service and/or outdoor storage	-	AUP	-	
Contractor services	P	P	P	
Contractor services with accessory outdoor storage of equipment or supplies	UP	UP	-	
Incubator spaces		AUP	AUP	
Maker space	P	P	P	
Media production studios	P	P	P	
Painting, enameling, lacquering, welding, and sandblasting shops	UP	UP	-	
Printing, lithographing, and engraving	P	P	P	
OFFICE/LABORATORY/RESEARCH AND DEVELOPMENT				
Administrative, executive, financial and professional offices	P	P	UP	Excluding medical offices
Engineering and design services and related facilities	P	P	P	
Medical offices	-	-	UP	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Research and development services and related facilities	P	P	P	Including life sciences, medical and pharmaceutical research, electronics, and computer science
Veterinarian offices and small animal hospitals	-	P	UP	Including short-term overnight boarding of animals for medical purposes.
RETAIL				
Commercial cannabis use	-	P	P	Subject to the zoning requirements of Chapter 18.117 and the licensure and regulatory requirements of Chapter 5.44
Retail catalog and mail order houses with warehouse and distribution center that serve as a point of sales	P	P	P	
Retail sales of office or business products, specialty electronics, household furnishings, appliances, etc	-	-	P	
Retail sale of goods which are manufactured, processed or assembled (improved or developed to a higher use by machine or by hand) on the premises	P	P	P	
Retail stores incidental to and on the same site with a permitted or conditionally permitted use	-	P	P	
UTILITIES AND WASTE FACILITIES				
Cogeneration plants	UP	-	-	
Public utilities, power stations, electric substations, service groups, and storage tanks	P	P	P	Provided they are fenced and landscaped

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
Recycling facilities with accessory outdoor drop-off/sorting and storage of equipment	UP	UP	-	Excluding any operations which entail the recycling of hazardous materials
MISCELLANEOUS USES				
Civic facilities	P	P	P	
Industrial planned unit development	UP	UP	UP	Consistent with the requirements of Chapter 18.44

18.40.030 Accessory uses

- A. Accessory structures and uses customarily incidental to any of the permitted uses listed in Table 18.40.020 when located on the same lot are permitted.
- B. Accessory structures and uses customarily incidental to any of the conditional uses listed in Table 18.40.020 when located on the same lot are permitted only upon the granting of a conditional use permit pursuant to the provisions of Chapter 18.56.
- C. No accessory building or structure shall be constructed on any lot prior to the time of construction of the principal building to which it is accessory.
- D. Accessory structures and uses shall be located within the area of the lot allowed for principal structures and uses and shall conform to the required front, side and rear yard setbacks.

18.40.040 Performance standards

- A. New or substantially modified industrial buildings shall be designed to limit warehouse, wholesale and distribution activities to a maximum of seventy-five percent (75%) of the gross floor area of the building with the remaining floor area used for assembly, manufacturing, research and development, sales, showrooms or office uses. This requirement can be waived by the decision maker if it can be found that the new or modified building will further the goals and policies of the Economic Development Element of the City's General Plan.
- B. No use shall be permitted which creates odors, noise, vibration, heat, glare, or electrical disturbance detectable by the human senses without the aid of instruments, beyond the boundaries of the site. However, such uses may be approved by the decision maker, if they specifically find that the use will not result in substandard conditions or otherwise have a detrimental effect on the surrounding properties.
- C. Site shall be maintained in good order at all times and consistent with project conditions of approval (if applicable). This shall include, but not be limited to, maintenance and repair of all on-site structures including building façade materials or paint, fencing/walls, signage, paved areas

including sidewalks and driveways, and landscaping, as may be necessary to preserve a high-quality aesthetic for the area.

- D. All uses shall comply with the regulations pertaining to hazardous materials contained in Chapter 18.43.
- E. Additions and modifications to industrial developments shall be designed to integrate with the existing development and shall be consistent with the standards included in Section 18.40.090.
- F. All development shall comply with Chapter 7.04 related to management of solid waste, organic waste, and recyclable materials and shall be enclosed within the building or within an enclosure meeting the requirements of Section 7.04.55.

18.40.050 Development standards.

- A. Table 18.40.050, Development standards—Industrial Districts, prescribes the development standards for Industrial Districts.

Table 18.40.050 Development standards—Industrial Districts			
Standard	Industrial District		
	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)
Site area, minimum	One acre	20,000 Square feet	20,000 Square feet
Lot coverage, maximum	75%	60%	60%
FAR, maximum	.75	1.0	1.0
Front Yard setback, minimum	25 feet	25 feet	25 feet
	50 feet when the front street frontage abuts on any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).		
Interior side yard setback, minimum	10 feet	10 feet	10 feet
	50 feet when the front street frontage abuts on any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).		
Street side yard setback, minimum	10 feet	10 feet	Arterial. A minimum yard of twenty-five (25) feet shall be required from the ultimate right-of-way line,
			Other streets. A minimum yard of ten (10) feet shall be required from the ultimate right-of-way line,
	50 feet when the front street frontage abuts on any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).		
Rear yard setback, minimum	10 feet	10 feet	10 feet
	50 feet when the front street frontage abuts on any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).		

Table 18.40.050 Development standards—Industrial Districts			
Standard	Industrial District		
	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)
Maximum height	100 feet	50 feet. This height limit may be increased to a maximum of seventy-five (75) feet where the decision maker finds that the increase is necessary to provide a more beneficial site layout or will result in public benefits/amenities that could not be achieved under current zoning standards.	40 feet. This height limit may be increased to a maximum of fifty-five (55) feet where the decision maker finds that the increase is necessary to provide a more beneficial site layout or will result in public benefits/amenities that could not be achieved under current zoning standards.
Landscaping minimum	10%	10%	15%

18.40.060 Supplemental standards

A. Permitted obstructions in required yards:

1. Roof overhangs as provided in Section 18.24.050.
2. Pedestrian paths.
3. Street access driveways and associated curbing.
4. Parking and loading facilities in side and rear yards not adjoining a street.
5. Signage in conformance with Chapter 18.30.
6. Railroad spur tracks, drill tracks, switches, bumpers, except that such uses shall not be permitted in required yards that adjoin any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).
7. Walls and fences subject to the provision under Section 18.40.060(C).
8. Landscaping and landscape features as provided for in Section 18.40.060(E).
9. Public art.

B. Signage. Signage shall be consistent with Chapter 18.30 and any approved sign plan or planned sign program. Signage shall be designed as an integral element of a building's architecture and shall be compatible, including color and scale, with the building. A sign plan or planned sign program, consistent with Section 18.30.100, shall be required for any development.

C. Wall and fences

1. In areas outside of the required yards, the maximum height shall be eight (8) feet above the surface of the ground.

2. In the required rear and side yard, the maximum height shall be eight (8) feet above the surface of the ground.
 3. In the required front yard,
 - a. the maximum height shall be three (3) feet above the surface of the ground, except that tubular steel fences with a maximum height of eight (8) feet may be allowed but shall be setback at least 20 feet from the property line.
 4. In the required street side yard,
 - a. the maximum height shall be three (3) feet above the surface of the ground, except that tubular steel fences with a maximum height of eight (8) feet may be allowed but shall be setback at least 20 feet from the property line.
 5. Where a site adjoins a district other than an Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE), a solid wall, at least six (6) feet in height but not greater than eight (8) feet, shall be provided along the property line adjoining the nonindustrial district. Climbing vines, or similar landscaping, shall be provided along the exterior of the wall. When the wall is located within a required front yard, then said wall shall not exceed three (3) feet in height.
 6. When explicitly permitted per Table 18.40.020, Any use not conducted entirely within an enclosed structure, shall be screened by a solid wall, not less than six (6) feet or greater than ten (10) feet in height. No materials or equipment shall be stored to a height greater than that the wall.
 7. The design of fences and walls shall aesthetically complement the development, be constructed of high-quality materials, be compatible with neighboring yards, fences and structures, and be subject to review and approval by the city prior to installation. Acceptable materials along street frontages are deemed to be masonry, concrete, and tubular steel. New walls shall include a landscape strip in front to accommodate climbing vines or other suitable plant material to reduce the susceptibility for graffiti. Wire mesh fencing is permitted along non-street facing property lines. The use of barbed wire, razor wire and cyclone (i.e., chain-link) fencing is prohibited.
- D. Employee amenity areas. All new development and additions that expand existing floor area by 25 percent or more, resulting in at least 10,000 square feet of floor area, shall provide an employee area of at least 300 square feet in size. The employee use area shall be identified and improved as passive or active recreational space, or indoor or outdoor amenities for the use and enjoyment of employees.
- E. Sidewalks and street frontage improvements. Sidewalks, curbs, and gutters along a site's frontage(s) shall be maintained to the satisfaction of the City Engineer. All new buildings, additions to buildings which increase existing square footage by fifty percent (50%) or more, or projects that include substantial site modifications, shall provide sidewalks, curbs, and gutters if none already exist. Improvements shall be installed consistent with City standards and specifications.
- F. Landscaping

1. New landscaping and modifications to existing landscaping shall comply with the provisions listed in Chapter 18.112 and the Landscape Standards Policy Statement.
 2. Projects that include development of a vacant site or substantial modification of a developed site, shall provide landscaped areas that meet the minimums as provided for in Table 18.40.050 for the project site area. Projects that cannot provide the minimum amount of required landscaping shall pay a landscape in-lieu fee in the amount set forth in the City's Master Fee Schedule subject to approval through the Site development review process.
 3. All other areas not utilized for structures or paving shall be landscaped unless otherwise authorized by the decision maker because of site constraints, existing or adjacent site conditions, or phased development.
- G. Equipment screening. Mechanical/utility equipment shall be sited and screened in accordance with the following:
1. In instances where mechanical equipment cannot be located within the building or undergrounded due to building code or utility provider requirements, it shall be adequately screened from off-site view and located at the rear of the site in an enclosure with walls matching the material and color of the building. The enclosure shall include gates or heavy gauge corrugated steel and shall be surrounded by trees, shrubs or climbing vines;
 2. In instances where mechanical equipment is located on the building roof, roof top screening shall be provided, which is integrated into the building architecture; and
 3. Alternate design, screening, or siting may be considered to meet utility provider requirements.
- H. Bicycle and pedestrian facilities. Projects that include development of a vacant site or substantial modification of a developed site shall accommodate bicycle and pedestrian facilities / access including:
1. Provisions for safe, well-lit and visually attractive pedestrian access from public streets to the parking areas and building entries;
 2. Pedestrian pathways between buildings and parcels;
 3. Publicly accessible pedestrian amenities which may include plazas, pocket parks, seating areas, fountains, public art, and/or eating areas;
 4. Orientation of outdoor public spaces towards activated ground-floor building frontages.

18.40.070 Off-street parking and loading

- A. Off-street parking. For each building constructed or use established, off-street parking shall be provided according to the following standards:

Table 18.40.070 Off-street parking	
Use	Minimum off-street parking requirements
Office	1.0 space / 300 square feet
Research and development, laboratory	1.0 space / 500 square feet
Manufacturing	1.0 Space / 1000 square feet, and 1.0 Truck/Trailer space / 10,000 square feet
Warehouse, distribution and storage	1.0 Space / 1000 Square feet, and 1.0 Space/ 300 Square feet of at least 25% of the gross floor area of the building and 1.0 Truck/Trailer space / 10,000 square feet
Other uses	See Section 18.36.150

1. Flex industrial buildings built without an end user selected and/or on speculation shall provide a minimum of one (1) parking space for each three hundred (300) square feet of the gross floor area for twenty-five percent (25%) of the building in addition to providing parking for the remaining seventy-five percent (75%) of the gross floor area consistent with the standards listed above.
2. All parking areas shall be designed and maintained in accordance with the provisions of Chapter 18.28.
3. In addition to the minimums above, one (1) parking space for each vehicle used in the conduct of the enterprise shall be provided.
4. Off-street parking requirements for other uses shall be provided on the same basis as required for the most similar use or as determined by the decision maker.
5. Truck trailer parking spaces shall have a minimum dimension of twelve (12) feet by fifty-five (55) feet when parked perpendicular and twelve (12) feet by sixty-five (65) feet when parked parallel.
 - a. The number of truck trailer parking spaces required by section 18.40.070 may be decreased by the decision maker for a specific use if it is found that such use will not create as great a need for truck trailer parking and that the use is reasonably likely to continue for at least ten (10) years.
 - b. The number of truck trailer parking spaces required by section 18.40.070 may be increased by the decision maker if it is found that a use will create an additional need for truck trailer parking.
6. When determined necessary by the decision maker to reasonably serve the anticipated use, visitor parking, in addition to the above requirements, shall be provided.
7. Parking structures.

- a. Parking structure facades shall be designed as compatible visual extensions of the primary buildings.
 - b. Auto entries shall be located in a manner that minimizes pedestrian/auto conflicts.
 - c. Decorative screening or other decorative element constructed of durable, high-quality materials shall be provided on parking structure facade.
- B. Off-street loading: For each building constructed or use established, off-street loading shall be provided according to the following:
1. Loading docks and berths shall be provided adequate to serve the use. Such facilities shall be located to the side and rear of buildings and shall be adequately screened and landscaped so as to not be visible from the public rights-of-way. Truck loading areas and activities shall not conflict with on-site circulation and parking. All truck loading doors and docks shall be screened from view by an architecturally acceptable decorative wall or other acceptable alternative which does not encroach into required landscaped areas.
 2. Loading berths. Loading berths shall be a minimum of ten (10) feet wide by twenty-five (25) feet long.

18.40.080 Bicycle parking

- A. Bicycle parking facilities shall be provided, at a minimum, in an amount equal to:

Table 18.40.080 Bicycle Parking		
Use	Short-term bicycle parking requirements	Long-term bicycle parking requirements
Retail	1.0 space / 3,000 square feet	1.0 space / 10,000 square feet
Office, research and development, lab	1.0 space/20,000 square feet Minimum of 2 spaces	1.0 space/ 7,000 square feet Minimum of 2 spaces
Manufacturing, warehouse, distribution and Storage	1.0 space/20,000 square feet Minimum of 2 spaces	1.0 space/ 7,000 square feet Minimum of 2 spaces

- B. Required facilities shall be designed and installed in conformance with the design criteria outlined in Section 18.28.080.
- C. Bicycle parking may be substituted for automobile parking subject to the provisions outlined in Section 18.28.100 and approval by the decision maker.
- D. The number of required bicycle parking facilities may be increased by the decision maker for a specific use if it is found that such a use shall create a greater demand for these facilities.

18.40.090 Design criteria

- A. Architectural standards. Buildings shall be designed with a contemporary or “Modern” vocabulary, using varied geometric volumes and a variety of high-quality materials (e.g. metal and glass). The following shall apply to any new buildings, additions to buildings which increase existing square footage by fifty percent (50%) or more, or modifications to existing buildings which modify the exterior of the building:
 1. To minimize overall massing building elevation shall incorporate the following:
 - a. Variations in wall plane, wall height, trim or reveals, entry and window openings, and/or varying colors and materials; and
 - b. Detailing including elements such as recesses, columns, living walls, score lines, reveals, trellises, lighting, or other features to create shadow patterns and depth on building elevations; and
 - c. Other elements as required by the decision maker
 2. Blank walls should not occupy over thirty percent (30%) of the principal frontage, and a section of blank wall should not exceed twenty (20) linear feet without being interrupted by a variation in wall plane, wall height, trim or reveals, entry and window openings.
 3. Design entries so that they are clearly defined and distinguishable from the street. Incorporate architectural features such as awnings, canopies, trellises, and/or other treatments such as vertical architectural features or unique building colors or materials to clearly identify primary building entries.
 4. A minimum of fifty percent (50%) of the building wall area located within twenty (20) feet of the midpoint of a primary building entrance shall be comprised of transparent windows or openings. Glass is considered transparent where it has a transparency higher than eighty percent (80%) and external reflectance of less than fifteen percent (15%).
- B. Exterior materials. Exterior building materials shall be chosen based on character, durability, ease of maintenance and context, and may include:
 1. Steel—Porcelain enamel panels, steel windows, steel exterior doors, steel rails and fences, painted, stainless or pre-weathered steel are acceptable
 2. Aluminum—Windows, panels (luco-bond and aluminum plate), storefront, curtain wall, doors; aluminum should be natural finish anodized, powder-coated or kynar (no bronze anodized)
 3. Other Metal
 4. Glass—Clear, low-e, nonreflective, solar-bronze or solar gray glass, shadow boxes and spandrel glass is permitted
 5. Brick, natural clay colors;
 6. Stone

7. Pre-cast concrete, glass-fiber reinforced concrete
8. High-quality, cast-in-place concrete
9. Ceramic tile
10. Cement plaster
11. Wood.

Chapter 18.43: Use of Hazardous Materials

18.43.010 Purpose.

Other provisions of this chapter and Title 15 notwithstanding, all use of hazardous materials shall be as regulated herein. Hazardous materials are substances which are capable of posing risk to health, safety property or the environment. The hazard potential of a substance is based on its chemical properties, on the quantity of the material at a site, how it is stored and how it is used. The intent of this chapter is to reduce or eliminate hazards to the general public, including sensitive receptors, resulting from the potentially inappropriate location of facilities that use or store hazardous materials.

18.43.020 Standards.

The permitted on-site quantities and uses of hazardous materials shall be as listed in Table 18.43.050.

18.43.030 Hazardous materials classifications.

Hazard categories or classifications are defined in current Fire Code and Appendices for the City of Union City. Additional definitions are based on the definitions in Article I of Chapter 8.35 of the U.S. Department of Transportation (DOT) Code of Federal Regulations (CFR), Title 49, Parts 100 to 177, and in the Hazardous Materials Table, 49 CFR, Part 172.101, and as the foregoing may be amended. Hazardous materials classifications are listed below:

- A. Group A representing those materials that pose a higher risk;
- B. Group B representing those materials that pose a more moderate risk; and
- C. Group C representing those materials that pose the least risk to health, safety, or property.

For purposes of this chapter, the table and table notes in Section 18.43.050 identify the categories of hazardous materials for each group.

18.43.040 Definition of hazardous materials facilities.

- A. Bulk Plant (BP). Hazardous materials at the bulk plant level are manufactured, processed, or packaged but are not used on-site. Materials may be stored in large containers, railcars, tankers, drums, or cylinders. Bulk plant quantities are larger than the amount transported in or out in any single shipment.
- B. Bulk Distribution Plant (BD). Hazardous materials at the bulk distribution plant level are collected, repackaged, and/or blended prior to being transported to other facilities. Materials are transported to the site in unpackaged form and are transferred to storage containers by hose,

pipeline or conveyor belt from railcars, tankers, large containers or drums. Materials are stored until transported out as finished or semi-finished products.

- C. Large User Site (LU). Hazardous materials at a large user site are used as part of on-site operations. Materials are stored and used in various sized containers. Container size will vary depending on the nature of the on-site operations. Hazardous materials are used in processes to obtain finished goods which are not hazardous materials which then may be used on-site or shipped out. On-site storage of hazardous materials exceeds the following quantities: two hundred thousand (200,000) pounds for solids, twenty thousand (20,000) gallons for liquids, and eighty thousand (80,000) cubic feet at STP for compressed gases.
- D. Large Storage Plant (LS). Hazardous materials at the large storage plant level are stored until they are distributed to other facilities. On-site storage of hazardous materials exceeds the following quantities: two hundred thousand (200,000) pounds for solids, twenty thousand (20,000) gallons for liquids, and eighty thousand (80,000) cubic feet at STP for compressed gases. Materials are warehoused in closed containers. No transfer of materials from one container to another takes place on-site. Containers may be handled individually, palletized, or unitized for purposes of transportation. Packaging types may include cylinders, drums, boxes or portable tanks.
- E. Medium User Site (MU). Hazardous materials at the medium user site are used as part of on-site operations. Materials are stored and used in various sized containers. Container size will vary depending on the nature of the on-site operations. Hazardous materials are used in processes to obtain finished goods which are not hazardous materials which then may be used on-site or shipped out. On-site storage of hazardous materials is between twenty-five thousand (25,000) to two hundred thousand (200,000) pounds for solids, two thousand seven hundred fifty (2,750) to twenty thousand (20,000) gallons for liquids, and ten thousand (10,000) to eighty thousand (80,000) cubic feet at STP for compressed gases.
- F. Medium Storage Plant (MS). Hazardous materials at the medium storage plant are stored until they are distributed to other facilities. On-site storage of hazardous materials is between twenty-five thousand (25,000) to two hundred thousand (200,000) pounds for solids, two thousand seven hundred fifty (2,750) to twenty thousand (20,000) gallons for liquids, and ten thousand (10,000) to eighty thousand (80,000) cubic feet at STP for compressed gases. Materials are warehoused in closed containers. No transfer of materials from one container to another takes place on site. Containers may be handled individually, palletized, or unitized for purposes of transportation. Packaging types may include cylinders, drums, boxes, or bottles.
- G. Small User Site (SU). Hazardous materials at a small user site are used as part of on-site operations. Materials are stored and used in various sized containers. Container size will vary depending on the nature of the on-site operations. Hazardous materials are used in processes to obtain finished goods which are not hazardous materials which then may be used on-site or shipped out. On-site storage of hazardous materials does not exceed twenty-five thousand (25,000) pounds for solids, two thousand seven hundred fifty (2,750) gallons for liquids, and ten thousand (10,000) cubic feet at STP for compressed gases.
- H. Small Storage Plant (SS). Hazardous materials at the small storage plant site are stored until they are distributed to other facilities. On-site storage of hazardous materials does not exceed twenty-

five thousand (25,000) pounds for solids, two thousand seven hundred fifty (2,750) gallons for liquids, and ten thousand (10,000) cubic feet at STP for compressed gases. Materials are warehoused in closed containers. No transfer of materials from one container to another shall take place on-site. Containers may be handled individually, palletized, or unitized for purposes of transportation. Packaging types may include cylinders, drums, boxes, or bottles.

18.43.045 Quantity range definitions.

Range Number	Range Amounts
1.	Up to and including 500 pounds for solids, 55 gallons for liquids and 200 cubic feet at NTP for compressed gases.
2.	Between 500 and 5,000 pounds for solids, 55 and 550 gallons for liquids and 200 to 2,000 cubic feet at NTP for compressed gases.
3.	Between 5,000 and 25,000 pounds for solids, 550 and 2,750 gallons for liquids and 2,000 to 10,000 cubic feet at NTP for compressed gases.
4.	Between 25,000 and 50,000 pounds for solids, 2,750 and 5,500 gallons for liquids and 10,000 to 20,000 cubic feet at NTP for compressed gases.
5.	More than 50,000 pounds for solids, 5,500 gallons for liquids and 20,000 cubic feet at NTP for compressed gases.

18.43.050 Use table for on-site storage of hazardous materials.

Where indicated with the letters "AUP," the use requires an administrative use permit. The administrative use permit procedure is described in Chapter 18.54. Where indicated with the letters "UP," the use requires a use permit. The use permit procedure is described in Chapter 18.56. Where indicated with a "P," the use is permitted. Where indicated with a dash (-), the use is not allowed.

Table 18.43.050 Use table for on-site storage of hazardous materials					
Type of Facility	Zoning District				
	MG	ML	MS	SEE	CMUE
<i>Group A chemicals and materials*: Class 3 and 4 oxidizers, compressed gases (corrosive, highly toxic, toxic, pyrophoric, unstable), cryogenics (highly toxic, toxic, corrosive, pyrophoric, unstable), explosives and blasting agents, germ cell mutagenicity materials, highly toxic materials, materials that in contact with water emit flammable gas, organic peroxides (unclassified, Class I and Class II), pyrophoric materials, radioactive materials (gamma emitters), self-heating materials, self-reactive materials, unstables/reactives (Class 3 and Class 4), water reactive materials (Class 3)</i>					
Bulk Plant	-	-	-	-	-

Table 18.43.050 Use table for on-site storage of hazardous materials					
Type of Facility	Zoning District				
	MG	ML	MS	SEE	CMUE
Bulk Distribution	-	-	-	-	-
Large User Site	UP	UP	UP	UP	UP
Large Storage Plant	UP	UP	UP	UP	UP
Medium User Site	UP	UP	UP	UP	UP
Medium Storage Plant	UP	UP	UP	UP	UP
Small User Site	AUP	AUP	AUP	AUP	AUP
Small Storage Plant	AUP	AUP	AUP	AUP	AUP
<i>Group B chemicals and materials*: Carcenogenic materials, combustible dust, compressed gases (flammable and oxidizing), corrosive liquids and solids, cryogenes (flammable and oxidizing), flammable liquids, flammable solids, organic peroxide materials (Class III, Class IV, Class V), oxidizing materials (Class 1 and Class 2), radioactive materials (alpha and beta emitters), reproductive toxicity materials, target organ toxins, toxic materials, unstable/reactive materials (Class 1 and Class 2), water reactive materials (Class 1 and Class 2)</i>					
Bulk Plant	-	-	-	-	-
Bulk Distribution	-	-	-	-	-
Large User Site	UP	UP	UP	UP	UP
Large Storage Plant	UP	UP	UP	UP	UP
Medium User Site	P	P	AUP	AUP	AUP
Medium Storage Plant	P	P	AUP	AUP	AUP
Small User Site	P	P	P	P	P
Small Storage Plant	P	P	P	P	P
<i>Group C chemicals and materials*: combustible liquids and solids, compressed gases (inerts), cryogenes (inerts), irritant materials, materials identified as hazard not otherwise classified, and sensitizer materials.</i>					
Bulk Plant	-	-	-	-	-
Bulk Distribution	UP	-	-	-	-

Table 18.43.050 Use table for on-site storage of hazardous materials					
Type of Facility	Zoning District				
	MG	ML	MS	SEE	CMUE
Large User Site	UP	UP	UP	UP	UP
Large Storage Plant	UP	UP	UP	UP	UP
Medium User Site	P	P	P	P	P
Medium Storage Plant	P	P	P	P	P
Small User Site	P	P	P	P	P
Small Storage Plant	P	P	P	P	P

* All chemical and material types listed above are included for reference purposes only. Final determination of hazard classification will be made by the Environmental Programs Division.

A. Table notes.

1. Hazardous materials belonging to more than one (1) group or hazardous classification are subject to the regulations of the more stringent group or category.
2. Above-ground storage tanks for the storage of hazardous materials utilized in the day-to-day operations of a permitted or conditional use within an Industrial or Mixed-Use Employment District shall require Administrative Site Development Review if visible from the public way. All above-ground storage tanks shall be adequately screened from off site.
3. When a use permit or administrative use permit is required, in addition to the findings required under Chapter 18.56 or 18.54, respectively, the decision maker shall consider the recommendation of the Fire Department and the Environmental Programs Division based upon an evaluation of current codes, ordinances and referenced standards in conjunction with the following information: an inventory of all hazardous materials to be used or stored on site, a materials safety sheet (MSS) for each of the hazardous materials to be used on site, a list of equipment which utilizes or contains hazardous materials, information on the building construction type and information on the proposed method of handling and disposal of hazardous materials, as well as any mitigation features designed to reduce the level of risk posed by the hazardous materials.
4. The following exemptions from the requirements of this chapter shall apply:
 - a. Storage, use or handling of the following gases in any quantities, whether in a gaseous, liquefied or cryogenic physical state: air (non-enriched), argon, helium, krypton, neon, nitrogen, and xenon. This exemption does not apply to bulk plants or bulk distribution plants.
 - b. Storage, use or handling of hazardous materials in quantities less than fifty-five (55) gallons, five hundred (500) pounds, and two hundred (200) cubic feet, for liquids, solids

and gases respectively. This exemption does not apply to acutely hazardous materials and extremely hazardous substances, as defined in the Code of Federal Regulations and the California Health and Safety Code, which may require a CUPA permit from the Environmental Programs Division or preparation of a Risk Management Plan.

c. Radioactive materials that are licensed, sealed sources, used for instruments, calibration devices and similar equipment, and materials exempted from regulation by the United States Nuclear Regulatory Commission.

d. On-site retail sales of common household hazardous materials in containers sized and packaged for use by the general public.

5. Ammonia refrigeration systems are subject to the provisions of this chapter.

B. Table qualifiers. In addition to the regulations set forth in this chapter, all storage and use of hazardous materials must be in conformance with the provisions of Federal, State, and local laws and regulations, Uniform Codes and referenced standards, as may be amended.

Chapter 18.76 Site Development Review

18.76.010 Purpose.

Site development review is intended to promote orderly, attractive and harmonious development and the stability of land values and investments and the general welfare, by preventing the establishment of uses or the erection or maintenance of structures having unsightly, undesirable or obnoxious qualities which are not properly related to their sites, surroundings and traffic circulation in the vicinity, or which would not meet the specific intent clauses or performance standard requirement of the zoning title.

18.76.020 Applicability.

- A. The site development review procedure shall apply to all proposed projects in all districts established under Title 18: Zoning.
- B. The site development review procedure shall apply to all projects enumerated in subsection A of this section unless determined by the Director to qualify for administrative site development review as provided in Chapter 18.72.
- C. The site development review procedure shall not apply to City projects on City-owned properties.

18.76.030 Application, fees and exhibits.

- A. An application for a site development review shall be made to the Planning Commission on a form prescribed by the Director which shall include the following data:
 - 1. Name and address of the applicant;
 - 2. Statement that the applicant is the owner of the property or is the authorized agent of the owner;
 - 3. Address or description of the property;

4. Statement indicating the precise manner of compliance with each of the applicable provisions of this title together with any other data pertinent to the findings prerequisite to the granting of a site development review prescribed in this chapter;
 - B. The application shall be accompanied by the items identified in the Formal Application Checklist as prescribed by the Director.
 - C. The application shall be accompanied by a fee in an amount established by resolution of the City Council.
 - D. All applications for site development review shall be filed through the Director for review and approval or disapproval by the Planning Commission prior to the issuance of any building permits.

18.76.040 Investigation.

The Director, upon receipt of an application for site development review, shall make such investigations as are necessary to determine whether or not the proposed use or structure conforms or may be conditioned to conform fully to the regulations for the district as herein set forth.

Such investigations shall include reports, upon referral, to other departments of the City, and any other public agency or district concerned.

If, in the opinion of the Director, the proposed use may cause the emission of dangerous or objectionable noise, odors, lights, dust, smoke or vibrations, the Director, with the consent of the applicant, may refer the application for investigation and report to one or more expert consultant(s) who shall report in writing to the Director and a copy of such report shall be furnished to the applicant. The applicant shall be required to pay the fee for services of the consultant(s).

At the conclusion of such investigation, the Director shall prepare a report thereon which shall be submitted to the Planning Commission.

18.76.045 Findings for approval.

- A. All of the following findings are required for approval of a site development review:
 1. Approval of this application is consistent with the General Plan and any applicable specific plans;
 2. Approval of this application is consistent with the purposes of this title and the requirements of the district in which the site is located;
 3. Approval of this application is consistent with the purpose of site development review as outlined in Section 18.76.010.
- B. A site development review may be revocable and may be granted subject to such conditions as are necessary to support the above findings.
- C. The above findings are also required for any approval on appeal, or approval of a modification to a site development review.

18.76.050 Planning Commission public hearing—Notice.

The Planning Commission shall hold a public hearing for any application for a site development review permit. Notice of the public hearing shall be given pursuant to Section 18.52.082.

18.76.080 Planning Commission decision and appeals.

- A. The Planning Commission may grant an application for a site development review as applied for or in modified form, if on the basis of the application and the evidence submitted, the Commission finds that the application complies with the findings set forth in Section 18.76.045. The Planning Commission may adopt additional conditions of approval as the facts warrant.
- B. The Planning Commission may deny an application for site development review.
- C. Decisions of the Planning Commission and appeals of such decisions shall be made in accordance with the provisions of Section 18.52.088.

18.76.095 Site development review modifications.

Applications to modify any site development review approval or any condition of approval shall be subject to the same procedures and regulations as those applicable to the original application.

In the event a site development review application is approved on property previously affected by a site development review approval, the previous approval and its conditions shall be null and void.

18.76.100 Site development review approval expiration.

A site development review approval shall be valid for one (1) year following the date on which the application became effective. The approval shall become null and void unless prior to the expiration of the year a building permit is issued by the Building Department and construction is commenced and diligently pursued toward completion on the site which was the subject of the site development review application or a certificate of occupancy is issued by the Building Department for the site or structure which was the subject of the site development review application. The phrase “construction is commenced” shall be defined for the purposes of this provision to mean the progress of actual building activity on the site in accordance with a valid building permit to a point such that the first inspection under the Uniform Building Code has been completed, including but not necessarily limited to the inspection of installed footings, reinforced steel, utility, plumbing, and electrical conduits and/or services and all other work or activity customarily and typically inspected prior to the first pouring of foundation concrete. Completion of only site preparation activities such as site clearance, grading or excavation without commencement of actual building activity shall not constitute commencement of construction.

In the case where site development review approval was granted either concurrently with, or subsequently consistent with, an approved residential tentative map, the site development review approval shall be valid through the duration of the tentative map, as specified by Section 66452.6 of the California State Subdivision Map Act.

18.76.105 Site development review extension.

- A. A site development review approval may be extended for an additional period of time not to exceed one (1) year no more than two (2) times. Each such request for extension must be submitted in writing

to the Zoning Administrator prior to the expiration date of the site development review approval. The request for extension shall be accompanied by a fee in an amount established by resolution of the City Council. The Zoning Administrator may grant or deny an application for extension of a site development review approval. The Zoning Administrator may grant an extension if he or she finds that there has been no substantial change in the facts or circumstances present when the original application was approved.

- B. Upon expiration of the site development review extension, the project shall be deemed to be expired and shall become null and void. Upon expiration, approval of a new site development review application shall be required prior to commencing with the project.

18.76.110 New application.

Following the denial of a site development review application, no application for the same or substantially the same project on the same or substantially the same site shall be filed within one (1) year from the date of denial of the application.

EXHIBIT B

Chapter 18.08 DEFINITIONS

18.08.045 Automobile rental.

“Automobile rental” means a facility engaged in the rental and leasing of new and used automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles and supplies, including storage of said vehicles.

18.08.047 Automobile sales.

“Automobile sales” means a facility engaged in the retail sales and services of new automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles and supplies. Accessory sales of used automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles may be permitted.

~~18.08.060 Automobile wrecking yard.~~

See “salvage yard” definition.

18.08.073 Bank and financial institutions.

“Bank and financial institutions” means an establishment which provides services to meet the financial needs of its customers (i.e., checking account services, mortgage broker services, etc.). This use does not include check cashing businesses as defined in Section 18.08.168 or payday loan facility as defined in Section 18.08.486.

~~18.08.073-074~~ Bar.

“Bar” means a business where alcoholic beverages (including beer, wine, liquor, and mixed drinks) are sold for on-site consumption as a primary use, which is not part of a larger full service/sit down restaurant. Includes taverns, wine bars, pubs, lounges, and similar establishments where any food service is subordinate to the sale of alcoholic beverages.

~~18.08.074-075~~ Bed and breakfast establishment.

“Bed and breakfast establishment” means a building of residential character containing no more than five (5) sleeping units for rent by tourists on a temporary basis not to exceed a stay exceeding fourteen (14) calendar days in any month. A bed and breakfast establishment may also serve meals to guests as part of the guest fee and shall provide for a resident-manager.

~~18.08.075-076~~ Bicycle parking facility.

A “bicycle parking facility” is a device that is used to securely store bicycles. A bicycle parking facility can either be a bicycle locker or rack designed and installed in conformance with the design criteria listed in Section 18.28.080 or 18.28.090.

~~18.08.076-077~~ Bingo games.

“Bingo games” means the establishment of a game of chance open to the public in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random in accordance with Section 326.5 of the California State Penal Code and Chapter 5.32 of the Union City Municipal Code. For the purposes of the zoning ordinance, bingo games shall include conduct of such games as either the primary use of land or as a use that is accessory to a primary use of land.

18.08.~~077-078~~ Biotechnology.

“Biotechnology” is the industrial use of living organisms (or parts of living organisms) in applications in medicine, agriculture, or other products. Biotechnology can include fermentation and plant and animal hybridization, which may include animal testing, protein separation technologies, and genomics and combinational chemistry.

18.08.156 Business services.

“Business services” means a facility that provides support services for businesses or the public for a fee. These services include copying, printing, mailing, design, data processing and sign shops, etc.

18.08.175 Conference center.

A “Conference center” means a facility for conventions, conferences, trade shows, festivals, and other events held within a facility designed and approved for this purpose.

18.08.176 Construction equipment sales and rental.

“Construction equipment sales and rental” means a facility which provides construction equipment and related commodities to the public for sale or rental, and accessory servicing of that equipment.

18.08.177 Contractor services.

“Contractor services” means a facility providing general contracting and/or building construction services, including general building, plumbing, electrical, air conditioning, carpentry, and other trade contractors.

18.08.~~175-178~~ Convenience market.

“Convenience market” means an activity that includes the retail sale of food, beverages, and personal convenience items, primarily for off-premises consumption and typically found in establishments with long or late hours of operation and in a building of less than three thousand (3,000) square feet. Convenience markets may sell beer and wine but shall be considered liquor stores if hard liquor is sold on site. Excluded from this definition are delicatessens, specialty food shops, and establishments which have a sizeable assortment of fresh fruits and vegetables and fresh cut meat.

18.08.190 Director.

“Director” means Economic and Community Development Director. The Director is the executive head of the ~~Office of~~ Economic and Community Development Department appointed by the City Manager to administer the zoning title. The Director also functions as the “Zoning Administrator.”

18.08.246 Engineering and design services.

“Engineering and design services” means an establishment primarily engaged in engineering and drafting services including architectural services. Usually includes office and drafting equipment, including blueprint machines.

18.08.266 Food Truck.

A “Food Truck” means any motorized vehicle or trailer used as a mobile vending vehicle that sells food or beverages in the operation of a business.

18.08.266-267 Gas station marketeer.

A “gas station marketeer” is:

A. An enclosed area located on a gasoline service station site, where merchandise that is not considered accessory to the normal operation and maintenance of automobiles is sold. This merchandise includes convenience food items such as sodas, nonalcoholic beverages, chips, cookies, ice cream, and other snack items and also nonfood items.

B. Additionally, the use of refrigerated display cases to which the general public has access constitutes a marketeer. However, a service station may have up to four (4) coin-operated vending machines and may sell cigarettes over the counter only without being considered a marketeer.

18.08.291 Incubator Space

“Incubator Space” means a facility managed by a third-party that helps startup companies and individual entrepreneurs develop their businesses by providing services such as mentorship and advice, office or lab space, access to investors or capital, equipment, networking and learning opportunities.

18.08.396 Maker space.

“Maker space” means a facility where shared manufacturing tools, such as 3-D printers, laser cutters, and traditional arts and crafts supplies, are used for the fabrication, of physical products and not for mass production.

18.08.401 Manufacturing and assembly.

“Manufacturing and assembly” means a use that is principally devoted to manufacturing processes and may include accessory research and development, administrative, and warehousing activities.

18.08402. Manufacturing process.

“Manufacturing process” means the fabrication, processing, assembly, or blending of organic or inorganic materials and/or substances into new products.

18.08.403 Media production studio.

“Media production studio” means a facility for the production of motion pictures, television, video, sound, graphics and other communications. Accessory uses include incidental rehearsal and broadcasting uses; however, use does not include transmission towers. This may also include incidental office use, retail sales, and indoor storage of equipment related to the recording uses.

18.08.486 Payday loan facility.

“Payday loan facility” means a facility primarily engaged in the business of advancing funds to customers in situations where the customer uses their entitlement to a future paycheck from some other source as collateral for the loan, and for which the customer pays a fee (percentage or otherwise) for the advancement.

18.08.487 Personal services.

“Personal services” means a use providing services of a personal convenience including beauty salons, barber shops, dressmaking/tailoring, hair removal, nail salons, photographic and portrait studios, shoe repair shops, travel agency, and similar uses. Excluded from this definition are massage, check cashing, and any other personal service type use specifically listed within district regulations.

18.08.520 Salvage yard.

A “salvage yard” includes automobile wrecking yards and includes any area of more than two hundred (200) square feet for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

CHAPTER 18.36 COMMERCIAL DISTRICTS

18.36.050 Required conditions.

H. Other provisions of this chapter notwithstanding, all storage, handling or other use of hazardous materials shall be subject to the provisions of ~~Sections 18.40.410 through 18.40.450~~Chapter 18.43 of this title.

Chapter 18.40 is repealed and replaced in its entirety.

CHAPTER 18.40 INDUSTRIAL DISTRICTS

18.40.010 Purpose

The Industrial Districts are as follows:

General Industrial (MG): The purpose of the MG District is to provide space for a broad range of light to heavy industrial uses, including manufacturing, transportation, warehousing, and distribution uses. It is applied where unsightliness, noise, odor, traffic, and the hazards associated with certain industrial uses will not impact residential, commercial, schools, other less intense use areas.

Light Industrial (ML): The purpose of the ML District is to provide space for light manufacturing, assembly, and distribution of manufactured products, R&D facilities, industrial supply, incidental warehousing, offices, parking, and supportive sales, which evidence no or very low nuisance characteristics. The ML District promotes high quality industrial and office park developments. The district applies to areas where nuisance characteristics of noise, odor, traffic generation, unsightliness, or hazardous materials manufacturing or storage are undesirable. Performance standards are applied to ensure minimum potential for adverse effects, that any unavoidable adverse effects are contained on-site, and that the general objective of a high standard of property and use maintenance is met.

Special Industrial (MS): The purpose of the MS District is to provide space for lightest industrial operations, including limited manufacturing, assembly, distribution of manufactured products, R&D facilities, incidental industrial supply, incidental warehousing, offices, and supportive sales, as well as limited commercial uses along major arterials. The MS District promotes high quality industrial and office park developments. The district applies to areas where nuisance characteristics of noise, odor, traffic generation, unsightliness or hazardous materials storage or handling are avoided, and almost all uses will be conducted entirely within enclosed buildings.

18.40.020 Land use regulations—Industrial Districts

Table 18.40.020 Land use regulations—Industrial Districts sets the land use regulations for the Industrial Districts by letter designation as follows unless a use or activity is prohibited or subject to a higher level of permit pursuant to other parts of this Section, other requirements of the Union City Municipal Code, or other applicable regulations:

"P" designates permitted uses.

"AUP" designates uses that are permitted subject to approval of an Administrative Use Permit (Chapter 18.54).

"UP" designates uses that are permitted subject to approval of a Conditional Use Permit (Chapter 18.56).

"-" designates uses that are not allowed.

Any other use determined by the decision maker to be essentially the same or very similar to the uses in in Table 18.40.020 may be permitted. In making this determination, the findings required under Section 18.52.060 shall be addressed. Land uses defined in the Union City Municipal Code and not listed in the table or not found to be substantially similar to the uses below are prohibited. Unless otherwise explicitly stated, all uses shall be conducted within a permanent building.

<u>Table 18.40.020 Land use regulations—Industrial Districts</u>				
<u>Use</u>	<u>General Industrial (MG)</u>	<u>Light Industrial (ML)</u>	<u>Special Industrial (MS)</u>	<u>Specific use regulations/ notes</u>
<u>ASSEMBLY, EDUCATION AND RECREATION</u>				
<u>Conference center</u>	=	=	<u>UP</u>	
<u>Fitness and recreational facilities</u>	=	=	<u>UP</u>	
<u>Hotel</u>	=	<u>UP</u>	<u>UP</u>	<u>Including accessory commercial and business services uses</u>
<u>Professional trade schools and colleges</u>	=	=	<u>UP</u>	<u>Limited to programs serving persons 18 years or older</u>
<u>AUTOMOBILE</u>				
<u>Automobile rentals</u>	=	<u>P</u>	<u>P</u>	
<u>Automobile repair and service</u>	=	<u>UP</u>	=	<u>Including auto body and paint shops</u>

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Automobile sales of new vehicles</u>	=	=	UP	<u>Accessory used vehicles sales and service uses permitted</u>
<u>Service stations</u>	=	UP	=	<u>Subject to the following conditions:</u> <u>1. All operations except the sale of fuel and oil shall be conducted in a building enclosed on at least three (3) sides</u> <u>2. Pump Island shall be located not closer than twenty (20) feet to any property line</u> <u>3. No sale of alcoholic beverages or food products</u> <u>4. No service station marketer</u>
COMMERCIAL SERVICES				
<u>Banks and financial institutions</u>	=	=	UP	
<u>Business services</u>	=	P	UP	
<u>Child day care center</u>	=	=	UP	<u>When conducted as an integral part of a main building or on a proximate site/campus and where the parent(s) or guardian(s) of children using such facility remain on site, or on a proximate site</u>
<u>Food service</u>	=	=	UP	<u>Excluding Drive-through uses</u>
<u>Live music (non-amplified)</u>	=	=	AUP	<u>At food service uses and subject to the provisions of Section 18.36.195(A)</u>
<u>Outdoor dining areas</u>	=	=	AUP	<u>At food service uses and subject to the provisions listed in Section 18.36.190</u>
<u>Food truck</u>	P	P	=	<u>On private property, with property owner permission and up to 2 hours</u>
INDUSTRIAL – MANUFACTURING AND ASSEMBLY				
<u>Building materials and products</u>				
<u>Manufacturing and assembly of prefabricated structures</u>	P	P	=	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Manufacturing and assembly of porcelain and ceramic products including bathroom and kitchen fixtures and equipment</u>	<u>P</u>	<u>P</u>	<u>=</u>	<u>Kilns shall be fired only by gas or electricity</u>
<u>Manufacturing and assembly of building paper and building board</u>	<u>P</u>	<u>=</u>	<u>=</u>	
<u>Manufacturing and assembly of building materials not elsewhere listed in this table.</u>	<u>UP</u>	<u>UP</u>	<u>=</u>	
<u>Chemicals and allied products manufacturing</u>				
<u>Manufacturing of candle and paraffin products</u>	<u>P</u>	<u>UP</u>	<u>UP</u>	<u>Excluding the rendering of products</u>
<u>Manufacturing and assembly of pharmaceuticals and products from the life sciences and biotechnology industries</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Manufacturing of soap, detergents, and cleaning preparations</u>	<u>P</u>	<u>UP</u>	<u>=</u>	<u>Excluding the refining or rendering of fats and oils</u>
<u>Manufacturing of perfumes, cosmetics, and other toiletries preparations</u>	<u>P</u>	<u>UP</u>	<u>=</u>	<u>Excluding the refining or rendering of fats and oils</u>
<u>Manufacturing and assembly of plastic and rubber products,</u>	<u>P</u>	<u>UP</u>	<u>UP</u>	<u>Excluding tire manufacturing</u>
<u>Electronic, mechanical, and scientific equipment</u>				
<u>Manufacturing, assembly, and repair of electrical and neon signs including billboards and commercial advertising structures</u>	<u>P</u>	<u>P</u>	<u>=</u>	
<u>Manufacturing and assembly of scientific instruments and devices, computer hardware and software, semiconductors, and computer chips</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Manufacturing and assembly of medical equipment</u>	<u>P</u>	<u>P</u>	<u>P</u>	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Manufacturing and assembly of, optical goods, watches and clocks, musical instruments and camera and photographic equipment</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Manufacturing and assembly of machinery, appliances and fixtures</u>	<u>P</u>	<u>UP</u>	<u>=</u>	
<i>Fabricated metal products</i>				
<u>Finishing and plating of metal products</u>	<u>=</u>	<u>UP</u>	<u>=</u>	
<u>Machine shops</u>	<u>P</u>	<u>P</u>	<u>UP</u>	<u>Excluding the use of drop hammers or punch presses with a rated capacity of over twenty (20) tons</u>
<u>Manufacturing and assembly of fabricated metal products not elsewhere listed in this table</u>	<u>P</u>	<u>P</u>	<u>=</u>	
<u>Manufacturing and assembly of Transportation Equipment</u>	<u>SEE BELOW</u>			
<u>Assembly of bicycles</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Assembly of mass transit equipment</u>	<u>P</u>	<u>UP</u>	<u>=</u>	
<u>Manufacturing and assembly of motor vehicles, trailers, motorcycles, and associated parts and equipment not elsewhere listed in this table</u>	<u>P</u>	<u>UP</u>	<u>=</u>	
<u>Manufacturing and assembly of mass transit equipment</u>	<u>P</u>	<u>=</u>	<u>=</u>	
<u>Manufacturing and assembly of products from previous prepared materials such as precious or semi-precious metal</u>	<u>P</u>	<u>UP</u>	<u>UP</u>	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Manufacturing and assembly of structural steel iron and pipe including bars, girders, and rails</u>	<u>P</u>	<u>=</u>	<u>=</u>	
<u>Food and kindred products</u>				
<u>Breweries, distilleries, and wineries</u>	<u>P</u>	<u>P</u>	<u>AUP</u>	
<u>On-site tasting rooms for Breweries, distilleries, and wineries</u>	<u>=</u>	<u>AUP</u>	<u>AUP</u>	<u>Including accessory food service. Outdoor dining areas subject to the provisions listed in Section 18.36.190</u>
<u>Indoor farming and cultivation</u>	<u>P</u>	<u>P</u>	<u>=</u>	<u>Excluding the cultivation of cannabis or other controlled substances</u>
<u>Manufacturing and bottling of Beverages</u>	<u>P</u>	<u>P</u>		<u>Including soft drinks and water</u>
<u>Manufacturing and packing of bread, bakery, confectionery and related products</u>	<u>P</u>	<u>P</u>	<u>=</u>	
<u>Manufacturing and packing of food products</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>Excluding production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats, oils</u>
<u>Manufacturing and packing of food products</u>	<u>P</u>	<u>P</u>	<u>=</u>	<u>Including processes such as baking, cooking, roasting, pasteurization and extraction</u>
<u>Processing and packing of Dairy products</u>	<u>P</u>	<u>=</u>	<u>=</u>	
<u>Processing and packing of Meat products</u>	<u>UP</u>	<u>=</u>	<u>=</u>	<u>Excluding slaughtering</u>
<u>Sugar refining</u>	<u>P</u>	<u>=</u>	<u>=</u>	
<u>Furniture and fixtures</u>				
<u>Manufacturing and assembly of Cabinets</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Manufacturing and assembly of Household and office furniture, and fixtures</u>	<u>P</u>	<u>P</u>	<u>=</u>	
<u>Leather and allied products</u>				

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Manufacturing and assembly of leather products and associated dyeing</u>	<u>P</u>	<u>UP</u>	<u>=</u>	<u>Excluding tanning and curing</u>
<u>Lumber and wood products</u>				
<u>Lumber yards</u>	<u>UP*</u>	<u>UP</u>	<u>=</u>	<u>*Outdoor operations only permitted in the MG Zoning District</u>
<u>Manufacturing and assembly of wooden and cork products, not elsewhere listed in this table</u>	<u>P</u>	<u>P</u>	<u>=</u>	
<u>Sawmills</u>	<u>UP</u>	<u>=</u>	<u>=</u>	
<u>Paper, printing, publishing, and allied industries</u>				
<u>Manufacturing and assembly of paper and pulp goods not listed elsewhere in this table</u>	<u>P</u>	<u>UP</u>	<u>=</u>	
<u>Publishing, printing, and binding of newspapers, periodicals, books, cards, forms, blank books and circulars</u>	<u>P</u>	<u>P</u>	<u>UP</u>	
<u>Stone, clay, and glass products</u>				
<u>Gravel, rock and cement yards</u>	<u>UP</u>	<u>=</u>	<u>=</u>	<u>Including batch plans, and outdoor operations</u>
<u>Fabrication of concrete products</u>	<u>P</u>	<u>UP</u>	<u>=</u>	<u>Excluding batch plants</u>
<u>Manufacturing and assembly of artisan products</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>Including glass, tile and clay</u>
<u>Manufacturing and assembly of glass and pottery products</u>	<u>P</u>	<u>P</u>	<u>=</u>	<u>Kilns shall be fired only by gas or electricity</u>
<u>Manufacturing and assembly, including cutting, polishing, and setting of jewelry products and products from precious or semi-precious stone</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Textile mill products</u>				

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Manufacturing and assembly of textile products including apparel, not elsewhere listed in this table</u>	<u>P*</u>	<u>P*</u>	<u>P</u>	<u>*Accessory dyeing and finishing only Permitted in the MG and ML Zoning Districts</u>
<i>INDUSTRIAL - WAREHOUSE, WHOLESALE AND DISTRIBUTION</i>				
<u>Cold Storage uses that do not exceed 100,000 square feet</u>	<u>UP</u>	<u>UP</u>	<u>=</u>	
<u>Warehouse, wholesale and distribution uses within buildings which were built, or approved by the Economic and Community Development Department, prior to August 22, 1996</u>	<u>=</u>	<u>P</u>	<u>=</u>	
<u>Warehouse, wholesale and distribution uses up to twenty-five (25,000) within buildings built since August 22, 1996</u>	<u>=</u>	<u>P</u>	<u>=</u>	
<u>Warehouse, wholesale and distribution uses over 25,000 square feet within buildings built since August 22, 1996; provided, that they either: (1) generate sales tax revenues as a point of sale, and/or (2) Supports an existing Union City manufacturing or assembly use with a valid business license</u>	<u>=</u>	<u>AUP</u>	<u>=</u>	
<u>Warehouse, wholesale, and distribution uses that do not exceed then thousand (10,000) square feet</u>	<u>=</u>	<u>=</u>	<u>P</u>	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Warehouse, wholesale, and distribution uses that do not exceed twenty-five thousand (25,000) square feet; provided, that they either serve as a point of sale for taxable goods and/or supports an existing Union City manufacturing or assembly use with a valid businesses license</u>	=	=	P	
INDUSTRIAL SERVICES				
<u>Construction equipment sales and rentals</u>	=	P	P	
<u>Construction equipment sales and rentals with accessory service and/or outdoor storage</u>	=	AUP	=	
<u>Contractor services</u>	P	P	P	
<u>Contractor services with accessory outdoor storage of equipment or supplies</u>	UP	UP	=	
<u>Incubator spaces</u>		AUP	AUP	
<u>Maker space</u>	P	P	P	
<u>Media production studios</u>	P	P	P	
<u>Painting, enameling, lacquering, welding, and sandblasting shops</u>	UP	UP	=	
<u>Printing, lithographing, and engraving</u>	P	P	P	
OFFICE/LABORATORY/RESEARCH AND DEVELOPMENT				
<u>Administrative, executive, financial and professional offices</u>	P	P	UP	<u>Excluding medical offices</u>
<u>Engineering and design services and related facilities</u>	P	P	P	
<u>Medical offices</u>	=	=	UP	

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Research and development services and related facilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>Including life sciences, medical and pharmaceutical research, electronics, and computer science</u>
<u>Veterinarian offices and small animal hospitals</u>	<u>=</u>	<u>P</u>	<u>UP</u>	<u>Including short-term overnight boarding of animals for medical purposes.</u>
RETAIL				
<u>Commercial cannabis use</u>	<u>=</u>	<u>P</u>	<u>P</u>	<u>Subject to the zoning requirements of Chapter 18.117 and the licensure and regulatory requirements of Chapter 5.44</u>
<u>Retail catalog and mail order houses with warehouse and distribution center that serve as a point of sales</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Retail sales of office or business products, specialty electronics, household furnishings, appliances, etc</u>	<u>=</u>	<u>=</u>	<u>P</u>	
<u>Retail sale of goods which are manufactured, processed or assembled (improved or developed to a higher use by machine or by hand) on the premises</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Retail stores incidental to and on the same site with a permitted or conditionally permitted use</u>	<u>=</u>	<u>P</u>	<u>P</u>	
UTILITIES AND WASTE FACILITIES				
<u>Cogeneration plants</u>	<u>UP</u>	<u>=</u>	<u>=</u>	
<u>Public utilities, power stations, electric substations, service groups, and storage tanks</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>Provided they are fenced and landscaped</u>

Table 18.40.020 Land use regulations—Industrial Districts				
Use	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)	Specific use regulations/ notes
<u>Recycling facilities with accessory outdoor drop-off/sorting and storage of equipment</u>	<u>UP</u>	<u>UP</u>	<u>-</u>	<u>Excluding any operations which entail the recycling of hazardous materials</u>
MISCELLANEOUS USES				
<u>Civic facilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Industrial planned unit development</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>Consistent with the requirements of Chapter 18.44</u>

18.40.030 Accessory uses

- A. Accessory structures and uses customarily incidental to any of the permitted uses listed in Table 18.40.020 when located on the same lot are permitted.
- B. Accessory structures and uses customarily incidental to any of the conditional uses listed in Table 18.40.020 when located on the same lot are permitted only upon the granting of a conditional use permit pursuant to the provisions of Chapter 18.56.
- C. No accessory building or structure shall be constructed on any lot prior to the time of construction of the principal building to which it is accessory.
- D. Accessory structures and uses shall be located within the area of the lot allowed for principal structures and uses and shall conform to the required front, side and rear yard setbacks.

18.40.040 Performance standards

- A. New or substantially modified industrial buildings shall be designed to limit warehouse, wholesale and distribution activities to a maximum of seventy-five percent (75%) of the gross floor area of the building with the remaining floor area used for assembly, manufacturing, research and development, sales, showrooms or office uses. This requirement can be waived by the decision maker if it can be found that the new or modified building will further the goals and policies of the Economic Development Element of the City's General Plan.
- B. No use shall be permitted which creates odors, noise, vibration, heat, glare, or electrical disturbance detectable by the human senses without the aid of instruments, beyond the boundaries of the site. However, such uses may be approved by the decision maker, if they specifically find that the use will not result in substandard conditions or otherwise have a detrimental effect on the surrounding properties.
- C. Site shall be maintained in good order at all times and consistent with project conditions of approval (if applicable). This shall include, but not be limited to, maintenance and repair of all on-site structures including building façade materials or paint, fencing/walls, signage, paved areas

including sidewalks and driveways, and landscaping, as may be necessary to preserve a high-quality aesthetic for the area.

D. All uses shall comply with the regulations pertaining to hazardous materials contained in Chapter 18.43.

E. Additions and modifications to industrial developments shall be designed to integrate with the existing development and shall be consistent with the standards included in Section 18.40.090.

F. All development shall comply with Chapter 7.04 related to management of solid waste, organic waste, and recyclable materials and shall be enclosed within the building or within an enclosure meeting the requirements of Section 7.04.55.

18.40.050 Development standards.

A. Table 18.40.050, Development standards—Industrial Districts, prescribes the development standards for Industrial Districts.

Table 18.40.050 Development standards—Industrial Districts			
Standard	Industrial District		
	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)
Site area, minimum	One acre	20,000 Square feet	20,000 Square feet
Lot coverage, maximum	75%	60%	60%
FAR, maximum	.75	1.0	1.0
Front Yard setback, minimum	25 feet	25 feet	25 feet
	50 feet when the front street frontage abuts on any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).		
Interior side yard setback, minimum	10 feet	10 feet	10 feet
	50 feet when the front street frontage abuts on any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).		
Street side yard setback, minimum	10 feet	10 feet	Arterial. A minimum yard of twenty-five (25) feet shall be required from the ultimate right-of-way line,
			Other streets. A minimum yard of ten (10) feet shall be required from the ultimate right-of-way line,
	50 feet when the front street frontage abuts on any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).		
Rear yard setback, minimum	10 feet	10 feet	10 feet
	50 feet when the front street frontage abuts on any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).		

Table 18.40.050 Development standards—Industrial Districts			
Standard	Industrial District		
	General Industrial (MG)	Light Industrial (ML)	Special Industrial (MS)
Maximum height	<u>100 feet</u>	<u>50 feet. This height limit may be increased to a maximum of seventy-five (75) feet where the decision maker finds that the increase is necessary to provide a more beneficial site layout or will result in public benefits/amenities that could not be achieved under current zoning standards.</u>	<u>40 feet. This height limit may be increased to a maximum of fifty-five (55) feet where the decision maker finds that the increase is necessary to provide a more beneficial site layout or will result in public benefits/amenities that could not be achieved under current zoning standards.</u>
Landscaping minimum	<u>10%</u>	<u>10%</u>	<u>15%</u>

18.40.060 Supplemental standards

A. Permitted obstructions in required yards:

1. Roof overhangs as provided in Section 18.24.050.
2. Pedestrian paths.
3. Street access driveways and associated curbing.
4. Parking and loading facilities in side and rear yards not adjoining a street.
5. Signage in conformance with Chapter 18.30.
6. Railroad spur tracks, drill tracks, switches, bumpers, except that such uses shall not be permitted in required yards that adjoin any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).
7. Walls and fences subject to the provision under Section 18.40.060(C).
8. Landscaping and landscape features as provided for in Section 18.40.060(E).
9. Public art.

B. Signage. Signage shall be consistent with Chapter 18.30 and any approved sign plan or planned sign program. Signage shall be designed as an integral element of a building's architecture and shall be compatible, including color and scale, with the building. A sign plan or planned sign program, consistent with Section 18.30.100, shall be required for any development.

C. Wall and fences

1. In areas outside of the required yards, the maximum height shall be eight (8) feet above the surface of the ground.

2. In the required rear and side yard, the maximum height shall be eight (8) feet above the surface of the ground.
 3. In the required front yard,
 - a. the maximum height shall be three (3) feet above the surface of the ground, except that tubular steel fences with a maximum height of eight (8) feet may be allowed but shall be setback at least 20 feet from the property line.
 4. In the required street side yard,
 - a. the maximum height shall be three (3) feet above the surface of the ground, except that tubular steel fences with a maximum height of eight (8) feet may be allowed but shall be setback at least 20 feet from the property line.
 5. Where a site adjoins a district other than an Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE), a solid wall, at least six (6) feet in height but not greater than eight (8) feet, shall be provided along the property line adjoining the nonindustrial district. Climbing vines, or similar landscaping, shall be provided along the exterior of the wall. When the wall is located within a required front yard, then said wall shall not exceed three (3) feet in height.
 6. When explicitly permitted per Table 18.40.020, Any use not conducted entirely within an enclosed structure, shall be screened by a solid wall, not less than six (6) feet or greater than ten (10) feet in height. No materials or equipment shall be stored to a height greater than that the wall.
 7. The design of fences and walls shall aesthetically complement the development, be constructed of high-quality materials, be compatible with neighboring yards, fences and structures, and be subject to review and approval by the city prior to installation. Acceptable materials along street frontages are deemed to be masonry, concrete, and tubular steel. New walls shall include a landscape strip in front to accommodate climbing vines or other suitable plant material to reduce the susceptibility for graffiti. Wire mesh fencing is permitted along non-street facing property lines. The use of barbed wire, razor wire and cyclone (i.e., chain-link) fencing is prohibited.
- D. Employee amenity areas. All new development and additions that expand existing floor area by 25 percent or more, resulting in at least 10,000 square feet of floor area, shall provide an employee area of at least 300 square feet in size. The employee use area shall be identified and improved as passive or active recreational space, or indoor or outdoor amenities for the use and enjoyment of employees.
- E. Sidewalks and street frontage improvements. Sidewalks, curbs, and gutters along a site's frontage(s) shall be maintained to the satisfaction of the City Engineer. All new buildings, additions to buildings which increase existing square footage by fifty percent (50%) or more, or projects that include substantial site modifications, shall provide sidewalks, curbs, and gutters if none already exist. Improvements shall be installed consistent with City standards and specifications.
- F. Landscaping

1. New landscaping and modifications to existing landscaping shall comply with the provisions listed in Chapter 18.112 and the Landscape Standards Policy Statement.
2. Projects that include development of a vacant site or substantial modification of a developed site, shall provide landscaped areas that meet the minimums as provided for in Table 18.40.050 for the project site area. Projects that cannot provide the minimum amount of required landscaping shall pay a landscape in-lieu fee in the amount set forth in the City's Master Fee Schedule subject to approval through the Site development review process.
3. All other areas not utilized for structures or paving shall be landscaped unless otherwise authorized by the decision maker because of site constraints, existing or adjacent site conditions, or phased development.

G. Equipment screening. Mechanical/utility equipment shall be sited and screened in accordance with the following:

1. In instances where mechanical equipment cannot be located within the building or undergrounded due to building code or utility provider requirements, it shall be adequately screened from off-site view and located at the rear of the site in an enclosure with walls matching the material and color of the building. The enclosure shall include gates or heavy gauge corrugated steel and shall be surrounded by trees, shrubs or climbing vines;
2. In instances where mechanical equipment is located on the building roof, roof top screening shall be provided, which is integrated into the building architecture; and
3. Alternate design, screening, or siting may be considered to meet utility provider requirements

H. Bicycle and pedestrian facilities. Projects that include development of a vacant site or substantial modification of a developed site shall accommodate bicycle and pedestrian facilities / access including:

1. Provisions for safe, well-lit and visually attractive pedestrian access from public streets to the parking areas and building entries;
2. Pedestrian pathways between buildings and parcels;
3. Publicly accessible pedestrian amenities which may include plazas, pocket parks, seating areas, fountains, public art, and/or eating areas;
4. Orientation of outdoor public spaces towards activated ground-floor building frontages.

18.40.070 Off-street parking and loading

A. Off-street parking. For each building constructed or use established, off-street parking shall be provided according to the following standards:

Table 18.40.070 Off-street parking	
<u>Use</u>	<u>Minimum off-street parking requirements</u>

<u>Office</u>	<u>1.0 space / 300 square feet</u>
<u>Research and development, laboratory</u>	<u>1.0 space / 500 square feet</u>
<u>Manufacturing</u>	<u>1.0 Space / 1000 square feet, and</u> <u>1.0 Truck/Trailer space / 10,000 square feet</u>
<u>Warehouse, distribution and storage</u>	<u>1.0 Space / 1000 Square feet, and</u> <u>1.0 Space/ 300 Square feet of at least 25% of the gross floor area of the building and</u> <u>1.0 Truck/Trailer space / 10,000 square feet</u>
<u>Other uses</u>	<u>See Section 18.36.150</u>

1. Flex industrial buildings built without an end user selected and/or on speculation shall provide a minimum of one (1) parking space for each three hundred (300) square feet of the gross floor area for twenty-five percent (25%) of the building in addition to providing parking for the remaining seventy-five percent (75%) of the gross floor area consistent with the standards listed above.
2. All parking areas shall be designed and maintained in accordance with the provisions of Chapter 18.28.
3. In addition to the minimums above, one (1) parking space for each vehicle used in the conduct of the enterprise shall be provided.
4. Off-street parking requirements for other uses shall be provided on the same basis as required for the most similar use or as determined by the decision maker.
5. Truck trailer parking spaces shall have a minimum dimension of twelve (12) feet by fifty-five (55) feet when parked perpendicular and twelve (12) feet by sixty-five (65) feet when parked parallel.
 - a. The number of truck trailer parking spaces required by section 18.40.070 may be decreased by the decision maker for a specific use if it is found that such use will not create as great a need for truck trailer parking and that the use is reasonably likely to continue for at least ten (10) years.
 - b. The number of truck trailer parking spaces required by section 18.40.070 may be increased by the decision maker if it is found that a use will create an additional need for truck trailer parking.
6. When determined necessary by the decision maker to reasonably serve the anticipated use, visitor parking, in addition to the above requirements, shall be provided.
7. Parking structures.

- a. Parking structure facades shall be designed as compatible visual extensions of the primary buildings.
 - b. Auto entries shall be located in a manner that minimizes pedestrian/auto conflicts.
 - c. Decorative screening or other decorative element constructed of durable, high-quality materials shall be provided on parking structure facade.
- B. Off-street loading: For each building constructed or use established, off-street loading shall be provided according to the following:
1. Loading docks and berths shall be provided adequate to serve the use. Such facilities shall be located to the side and rear of buildings and shall be adequately screened and landscaped so as to not be visible from the public rights-of-way. Truck loading areas and activities shall not conflict with on-site circulation and parking. All truck loading doors and docks shall be screened from view by an architecturally acceptable decorative wall or other acceptable alternative which does not encroach into required landscaped areas.
 2. Loading berths. Loading berths shall be a minimum of ten (10) feet wide by twenty-five (25) feet long.

18.40.080 Bicycle parking

- A. Bicycle parking facilities shall be provided, at a minimum, in an amount equal to:

<u>Table 18.40.080 Bicycle Parking</u>		
<u>Use</u>	<u>Short-term bicycle parking requirements</u>	<u>Long-term bicycle parking requirements</u>
<u>Retail</u>	<u>1.0 space / 3,000 square feet</u>	<u>1.0 space / 10,000 square feet</u>
<u>Office, research and development, lab</u>	<u>1.0 space/20,000 square feet</u> <u>Minimum of 2 spaces</u>	<u>1.0 space/ 7,000 square feet</u> <u>Minimum of 2 spaces</u>
<u>Manufacturing, warehouse, distribution and Storage</u>	<u>1.0 space/20,000 square feet</u> <u>Minimum of 2 spaces</u>	<u>1.0 space/ 7,000 square feet</u> <u>Minimum of 2 spaces</u>

- B. Required facilities shall be designed and installed in conformance with the design criteria outlined in Section 18.28.080.
- C. Bicycle parking may be substituted for automobile parking subject to the provisions outlined in Section 18.28.100 and approval by the decision maker.
- D. The number of required bicycle parking facilities may be increased by the decision maker for a specific use if it is found that such a use shall create a greater demand for these facilities.

18.40.090 Design criteria

A. Architectural standards. Buildings shall be designed with a contemporary or “Modern” vocabulary, using varied geometric volumes and a variety of high-quality materials (e.g. metal and glass). The following shall apply to any new buildings, additions to buildings which increase existing square footage by fifty percent (50%) or more, or modifications to existing buildings which modify the exterior of the building:

1. To minimize overall massing building elevation shall incorporate the following:
 - a. Variations in wall plane, wall height, trim or reveals, entry and window openings, and/or varying colors and materials; and
 - b. Detailing including elements such as recesses, columns, living walls, score lines, reveals, trellises, lighting, or other features to create shadow patterns and depth on building elevations; and
 - c. Other elements as required by the decision maker
2. Blank walls should not occupy over thirty percent (30%) of the principal frontage, and a section of blank wall should not exceed twenty (20) linear feet without being interrupted by a variation in wall plane, wall height, trim or reveals, entry and window openings.
3. Design entries so that they are clearly defined and distinguishable from the street. Incorporate architectural features such as awnings, canopies, trellises, and/or other treatments such as vertical architectural features or unique building colors or materials to clearly identify primary building entries.
4. A minimum of fifty percent (50%) of the building wall area located within twenty (20) feet of the midpoint of a primary building entrance shall be comprised of transparent windows or openings. Glass is considered transparent where it has a transparency higher than eighty percent (80%) and external reflectance of less than fifteen percent (15%).

B. Exterior materials. Exterior building materials shall be chosen based on character, durability, ease of maintenance and context, and may include:

1. Steel—Porcelain enamel panels, steel windows, steel exterior doors, steel rails and fences, painted, stainless or pre-weathered steel are acceptable
2. Aluminum—Windows, panels (luco-bond and aluminum plate), storefront, curtain wall, doors; aluminum should be natural finish anodized, powder-coated or kynar (no bronze anodized)
3. Other Metal
4. Glass—Clear, low-e, nonreflective, solar-bronze or solar gray glass, shadow boxes and spandrel glass is permitted
5. Brick, natural clay colors;
6. Stone
7. Pre-cast concrete, glass-fiber reinforced concrete

8. High-quality, cast-in-place concrete
9. Ceramic tile
10. Cement plaster
11. Wood.

Chapter 18.43: Use of Hazardous Materials

18.43.010 Purpose.

Other provisions of this chapter and Title 15 notwithstanding, all use of hazardous materials shall be as regulated herein. Hazardous materials are substances which are capable of posing risk to health, safety property or the environment. The hazard potential of a substance is based on its chemical properties, on the quantity of the material at a site, how it is stored and how it is used. The intent of this chapter is to reduce or eliminate hazards to the general public, including sensitive receptors, resulting from the potentially inappropriate location of facilities that use or store hazardous materials.

18.43.020 Standards.

The permitted on-site quantities and uses of hazardous materials shall be as listed in Table 18.43.050.

18.43.030 Hazardous materials classifications.

Hazard categories or classifications are defined in current Fire Code and Appendices for the City of Union City. Additional definitions are based on the definitions in Article I of Chapter 8.35 of the U.S. Department of Transportation (DOT) Code of Federal Regulations (CFR), Title 49, Parts 100 to 177, and in the Hazardous Materials Table, 49 CFR, Part 172.101, and as the foregoing may be amended. Hazardous materials classifications are listed below:

- A. Group A representing those materials that pose a higher risk;
- B. Group B representing those materials that pose a more moderate risk; and
- C. Group C representing those materials that pose the least risk to health, safety, or property.

For purposes of this chapter, the table and table notes in Section 18.43.050 identify the categories of hazardous materials for each group.

18.43.040 Definition of hazardous materials facilities.

- A. Bulk Plant (BP). Hazardous materials at the bulk plant level are manufactured, processed, or packaged but are not used on-site. Materials may be stored in large containers, railcars, tankers, drums, or cylinders. Bulk plant quantities are larger than the amount transported in or out in any single shipment.
- B. Bulk Distribution Plant (BD). Hazardous materials at the bulk distribution plant level are collected, repackaged, and/or blended prior to being transported to other facilities. Materials are transported to the site in unpackaged form and are transferred to storage containers by hose, pipeline or conveyor belt from railcars, tankers, large containers or drums. Materials are stored until transported out as finished or semi-finished products.

- C. Large User Site (LU). Hazardous materials at a large user site are used as part of on-site operations. Materials are stored and used in various sized containers. Container size will vary depending on the nature of the on-site operations. Hazardous materials are used in processes to obtain finished goods which are not hazardous materials which then may be used on-site or shipped out. On-site storage of hazardous materials exceeds the following quantities: two hundred thousand (200,000) pounds for solids, twenty thousand (20,000) gallons for liquids, and eighty thousand (80,000) cubic feet at STP for compressed gases.
- D. Large Storage Plant (LS). Hazardous materials at the large storage plant level are stored until they are distributed to other facilities. On-site storage of hazardous materials exceeds the following quantities: two hundred thousand (200,000) pounds for solids, twenty thousand (20,000) gallons for liquids, and eighty thousand (80,000) cubic feet at STP for compressed gases. Materials are warehoused in closed containers. No transfer of materials from one container to another takes place on-site. Containers may be handled individually, palletized, or unitized for purposes of transportation. Packaging types may include cylinders, drums, boxes or portable tanks.
- E. Medium User Site (MU). Hazardous materials at the medium user site are used as part of on-site operations. Materials are stored and used in various sized containers. Container size will vary depending on the nature of the on-site operations. Hazardous materials are used in processes to obtain finished goods which are not hazardous materials which then may be used on-site or shipped out. On-site storage of hazardous materials is between twenty-five thousand (25,000) to two hundred thousand (200,000) pounds for solids, two thousand seven hundred fifty (2,750) to twenty thousand (20,000) gallons for liquids, and ten thousand (10,000) to eighty thousand (80,000) cubic feet at STP for compressed gases.
- F. Medium Storage Plant (MS). Hazardous materials at the medium storage plant are stored until they are distributed to other facilities. On-site storage of hazardous materials is between twenty-five thousand (25,000) to two hundred thousand (200,000) pounds for solids, two thousand seven hundred fifty (2,750) to twenty thousand (20,000) gallons for liquids, and ten thousand (10,000) to eighty thousand (80,000) cubic feet at STP for compressed gases. Materials are warehoused in closed containers. No transfer of materials from one container to another takes place on site. Containers may be handled individually, palletized, or unitized for purposes of transportation. Packaging types may include cylinders, drums, boxes, or bottles.
- G. Small User Site (SU). Hazardous materials at a small user site are used as part of on-site operations. Materials are stored and used in various sized containers. Container size will vary depending on the nature of the on-site operations. Hazardous materials are used in processes to obtain finished goods which are not hazardous materials which then may be used on-site or shipped out. On-site storage of hazardous materials does not exceed twenty-five thousand (25,000) pounds for solids, two thousand seven hundred fifty (2,750) gallons for liquids, and ten thousand (10,000) cubic feet at STP for compressed gases.
- H. Small Storage Plant (SS). Hazardous materials at the small storage plant site are stored until they are distributed to other facilities. On-site storage of hazardous materials does not exceed twenty-five thousand (25,000) pounds for solids, two thousand seven hundred fifty (2,750) gallons for liquids, and ten thousand (10,000) cubic feet at STP for compressed gases. Materials are warehoused in closed containers. No transfer of materials from one container to another shall

take place on-site. Containers may be handled individually, palletized, or unitized for purposes of transportation. Packaging types may include cylinders, drums, boxes, or bottles.

18.43.045 Quantity range definitions.

<u>Range Number</u>	<u>Range Amounts</u>
<u>1.</u>	<u>Up to and including 500 pounds for solids, 55 gallons for liquids and 200 cubic feet at NTP for compressed gases.</u>
<u>2.</u>	<u>Between 500 and 5,000 pounds for solids, 55 and 550 gallons for liquids and 200 to 2,000 cubic feet at NTP for compressed gases.</u>
<u>3.</u>	<u>Between 5,000 and 25,000 pounds for solids, 550 and 2,750 gallons for liquids and 2,000 to 10,000 cubic feet at NTP for compressed gases.</u>
<u>4.</u>	<u>Between 25,000 and 50,000 pounds for solids, 2,750 and 5,500 gallons for liquids and 10,000 to 20,000 cubic feet at NTP for compressed gases.</u>
<u>5.</u>	<u>More than 50,000 pounds for solids, 5,500 gallons for liquids and 20,000 cubic feet at NTP for compressed gases.</u>

18.43.050 Use table for on-site storage of hazardous materials.

Where indicated with the letters “AUP,” the use requires an administrative use permit. The administrative use permit procedure is described in Chapter 18.54. Where indicated with the letters “UP,” the use requires a use permit. The use permit procedure is described in Chapter 18.56. Where indicated with a “P,” the use is permitted. Where indicated with a dash (–), the use is not allowed.

<u>Table 18.43.050 Use table for on-site storage of hazardous materials</u>					
<u>Type of Facility</u>	<u>Zoning District</u>				
	<u>MG</u>	<u>ML</u>	<u>MS</u>	<u>SEE</u>	<u>CMUE</u>
<u>Group A chemicals and materials*: Class 3 and 4 oxidizers, compressed gases (corrosive, highly toxic, toxic, pyrophoric, unstable), cryogens (highly toxic, toxic, corrosive, pyrophoric, unstable), explosives and blasting agents, germ cell mutagenicity materials, highly toxic materials, materials that in contact with water emit flammable gas, organic peroxides (unclassified, Class I and Class II), pyrophoric materials, radioactive materials (gamma emitters), self-heating materials, self-reactive materials, unstables/reactives (Class 3 and Class 4), water reactive materials (Class 3)</u>					
<u>Bulk Plant</u>	<u>–</u>	<u>–</u>	<u>–</u>	<u>–</u>	<u>–</u>
<u>Bulk Distribution</u>	<u>–</u>	<u>–</u>	<u>–</u>	<u>–</u>	<u>–</u>
<u>Large User Site</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>

Table 18.43.050 Use table for on-site storage of hazardous materials					
Type of Facility	Zoning District				
	MG	ML	MS	SEE	CMUE
<u>Large Storage Plant</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>
<u>Medium User Site</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>
<u>Medium Storage Plant</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>
<u>Small User Site</u>	<u>AUP</u>	<u>AUP</u>	<u>AUP</u>	<u>AUP</u>	<u>AUP</u>
<u>Small Storage Plant</u>	<u>AUP</u>	<u>AUP</u>	<u>AUP</u>	<u>AUP</u>	<u>AUP</u>
<u>Group B chemicals and materials*: Carcenogenic materials, combustible dust, compressed gases (flammable and oxidizing), corrosive liquids and solids, cryogens (flammable and oxidizing), flammable liquids, flammable solids, organic peroxide materials (Class III, Class IV, Class V), oxidizing materials (Class 1 and Class 2), radioactive materials (alpha and beta emitters), reproductive toxicity materials, target organ toxins, toxic materials, unstable/reactive materials (Class 1 and Class 2), water reactive materials (Class 1 and Class 2)</u>					
<u>Bulk Plant</u>	=	=	=	=	=
<u>Bulk Distribution</u>	=	=	=	=	=
<u>Large User Site</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>
<u>Large Storage Plant</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>
<u>Medium User Site</u>	<u>P</u>	<u>P</u>	<u>AUP</u>	<u>AUP</u>	<u>AUP</u>
<u>Medium Storage Plant</u>	<u>P</u>	<u>P</u>	<u>AUP</u>	<u>AUP</u>	<u>AUP</u>
<u>Small User Site</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Small Storage Plant</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Group C chemicals and materials*: combustible liquids and solids, compressed gases (inerts), cryogens (inerts), irritant materials, materials identified as hazard not otherwise classified, and sensitizer materials.</u>					
<u>Bulk Plant</u>	=	=	=	=	=
<u>Bulk Distribution</u>	<u>UP</u>	=	=	=	=
<u>Large User Site</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>
<u>Large Storage Plant</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>	<u>UP</u>

Table 18.43.050 Use table for on-site storage of hazardous materials					
Type of Facility	Zoning District				
	MG	ML	MS	SEE	CMUE
<u>Medium User Site</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Medium Storage Plant</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Small User Site</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Small Storage Plant</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

* All chemical and material types listed above are included for reference purposes only. Final determination of hazard classification will be made by the Environmental Programs Division.

A. Table notes.

1. Hazardous materials belonging to more than one (1) group or hazardous classification are subject to the regulations of the more stringent group or category.
2. Above-ground storage tanks for the storage of hazardous materials utilized in the day-to-day operations of a permitted or conditional use within an Industrial or Mixed-Use Employment District shall require Administrative Site Development Review if visible from the public way. All above-ground storage tanks shall be adequately screened from off site.
3. When a use permit or administrative use permit is required, in addition to the findings required under Chapter 18.56 or 18.54, respectively, the decision maker shall consider the recommendation of the Fire Department and the Environmental Programs Division based upon an evaluation of current codes, ordinances and referenced standards in conjunction with the following information: an inventory of all hazardous materials to be used or stored on site, a materials safety sheet (MSS) for each of the hazardous materials to be used on site, a list of equipment which utilizes or contains hazardous materials, information on the building construction type and information on the proposed method of handling and disposal of hazardous materials, as well as any mitigation features designed to reduce the level of risk posed by the hazardous materials.
4. The following exemptions from the requirements of this chapter shall apply:
 - a. Storage, use or handling of the following gases in any quantities, whether in a gaseous, liquefied or cryogenic physical state: air (non-enriched), argon, helium, krypton, neon, nitrogen, and xenon. This exemption does not apply to bulk plants or bulk distribution plants.
 - b. Storage, use or handling of hazardous materials in quantities less than fifty-five (55) gallons, five hundred (500) pounds, and two hundred (200) cubic feet, for liquids, solids and gases respectively. This exemption does not apply to acutely hazardous materials and extremely hazardous substances, as defined in the Code of Federal Regulations and the California Health and Safety Code, which may require a CUPA permit from the Environmental Programs Division or preparation of a Risk Management Plan.

c. Radioactive materials that are licensed, sealed sources, used for instruments, calibration devices and similar equipment, and materials exempted from regulation by the United States Nuclear Regulatory Commission.

d. On-site retail sales of common household hazardous materials in containers sized and packaged for use by the general public.

5. Ammonia refrigeration systems are subject to the provisions of this chapter.

B. Table qualifiers. In addition to the regulations set forth in this chapter, all storage and use of hazardous materials must be in conformance with the provisions of Federal, State, and local laws and regulations, Uniform Codes and referenced standards, as may be amended.

Chapter 18.76 Site Development Review

18.76.010 Purpose.

Site development review is intended to promote orderly, attractive and harmonious development and the stability of land values and investments and the general welfare, by preventing the establishment of uses or the erection or maintenance of structures having unsightly, undesirable or obnoxious qualities which are not properly related to their sites, surroundings and traffic circulation in the vicinity, or which would not meet the specific intent clauses or performance standard requirement of the zoning title.

18.76.020 Applicability.

A. The site development review procedure shall apply to all proposed ~~uses~~ projects in ~~the following districts~~all districts established under Title 18: Zoning.

~~Residential districts;~~

~~Hillside combining (H) district;~~

~~Commercial (CPA, CN, CS, CC, CVR) districts;~~

~~Station East Employment (SEE) district;~~

~~Corridor Mixed Use (CMU) district;~~

~~Marketplace Mixed Use (MMU) district;~~

~~Station East Mixed Use Residential (SEMU-R) district;~~

~~Village Mixed Use (VMU) district;~~

~~Station Mixed Use Commercial (CSMU) district;~~

~~Union Landing Commercial (CUL) district;~~

~~Private Institutional (PI) district;~~

~~Industrial (MS, ML, MG) districts;~~

~~Agricultural (A) district;~~

~~Civic Center design control (CCDCD) district;~~

~~Landmark and Historic Preservation (LHP) Overlay Zone.~~

~~Q.B.~~ The site development review procedure shall apply to all projects enumerated in subsection A of this section unless determined by the Director to qualify for administrative site development review as provided in Chapter 18.72.

~~R.C. The site development review procedure shall not apply to City projects on City-owned properties.~~

18.76.030 Application, fees and exhibits.

A. An application for a site development review shall be made to the City Council Planning Commission on a form prescribed by the Director which shall include the following data:

1. Name and address of the applicant;
2. Statement that the applicant is the owner of the property or is the authorized agent of the owner;
3. Address or description of the property;
4. Statement indicating the precise manner of compliance with each of the applicable provisions of this title together with any other data pertinent to the findings prerequisite to the granting of a site development review prescribed in this chapter;

B. The application shall be accompanied by the items identified in the Formal Application Checklist as prescribed by the Director. ~~The application shall be accompanied by the following items:~~

~~1. A mailing list on mailing labels of adjacent property owners and/or occupants for the purpose of providing notice of the pending application.~~

~~2. A site plan prepared by a licensed civil engineer, land surveyor, architect, landscape architect or building designer; provided, however, that the boundary and topographic survey on the site plan shall be prepared by a licensed civil engineer or land surveyor whose seal shall appear on the site plan. The site plan shall show existing and proposed locations of streets, utilities, and drainage facilities, property lines, structures, driveways, pedestrian walks, off street parking and off street loading facilities and landscaped areas. The site plan shall be drawn to scale and shall indicate clearly and with full dimension the following information:~~

~~a. The registration number and signature of person or persons preparing the plan;~~

~~b. Parcel dimension in distance and bearings;~~

~~c. All existing and proposed building and structures—location, size, height and proposed uses, including front, side and rear elevations of proposed buildings showing architectural detail and exterior materials;~~

~~d. Existing and proposed elevation and contours of lots and buildings;~~

~~e. Yards and open spaces between buildings;~~

- ~~f. — Walls and fences — location, height, and materials;~~
- ~~g. — Off-Street Parking. Location, number of spaces, dimension or parking area, and internal circulation pattern, yard lighting and landscaping;~~
- ~~h. — Access. Pedestrian, vehicular, service, points of ingress and egress, internal circulation, design and improvements;~~
- ~~i. — Street dedication and improvements, existing and proposed, if any;~~
- ~~j. — Proposed storm drainage plan with substantiating calculations;~~
- ~~k. — All existing trees which are twelve (12) inches or greater in circumference measured at thirty-six (36) inches above grade: type, size, location, dripline, condition and indication if tree is being saved or removed;~~
- ~~l. — Complete landscape plan pursuant to the landscape standards policy statement;~~
- ~~m. — Site plans for other than residential uses shall contain the following additional information:~~
 - ~~i. — Signs. Locations, size, height, types of materials and lighting;~~
 - ~~ii. — Loading. Location, dimensions, number of spaces and internal circulation;~~
 - ~~iii. — Lighting. Location and general nature.~~
- ~~3. — Such other data, such as cross-sections, soils reports, arborist report, and a statement of use as may be required under the circumstances of each application to permit the City Council to make the required findings.~~

- C. The application shall be accompanied by a fee in an amount established by resolution of the City Council.
- D. All applications for site development review shall be filed through the Director for review and approval or disapproval by the ~~City Council~~Planning Commission prior to the issuance of any building permits.

18.76.040 Investigation.

The Director, upon receipt of an application for site development review, shall make such investigations as are necessary to determine whether or not the proposed use or structure conforms or may be conditioned to conform fully to the regulations for the district as herein set forth.

Such investigations shall include reports, upon referral, to other departments of the City, and any other public agency or district concerned.

If, in the opinion of the Director, the proposed use may cause the emission of dangerous or objectionable noise, odors, lights, dust, smoke or vibrations, the Director, with the consent of the applicant, may refer the application for investigation and report to one or more expert consultant(s) who shall report in writing to the Director and a copy of such report shall be furnished to the applicant. The applicant shall be required to pay the fee for services of the consultant(s).

At the conclusion of such investigation, the Director shall prepare a report thereon which shall be submitted to the Planning Commission ~~and City Council~~.

18.76.045 Findings for approval.

- A. All of the following findings are required for approval of a site development review:
 - 1. Approval of this application is consistent with the General Plan and any applicable specific plans;
 - 2. Approval of this application is consistent with the purposes of this title and the requirements of the district in which the site is located;
 - 3. Approval of this application is consistent with the purpose of site development review as outlined in Section 18.76.010.
- B. A site development review may be revocable and may be granted subject to such conditions as are necessary to support the above findings.
- C. The above findings are also required for any approval on appeal, or approval of a modification to a site development review.

18.76.050 Planning Commission public hearing—Notice.

The Planning Commission shall hold a public hearing for any application for a site development review permit. Notice of the public hearing shall be given pursuant to Section 18.52.082.

18.76.080 Planning Commission ~~recommendation~~ decision and appeals.

- A. The Planning Commission may grant an application for a site development review as applied for or in modified form, if on the basis of the application and the evidence submitted, the Commission finds that the application complies with the findings set forth in Section 18.76.045. The Planning Commission may adopt additional conditions of approval as the facts warrant.
- B. The Planning Commission may deny an application for site development review. The Planning Commission shall transmit a written recommendation to the City Council that the application be approved, conditionally approved or denied, based on compliance with the findings set forth in Section 18.76.045.
- C. Decisions of the Planning Commission and appeals of such decisions shall be made in accordance with the provisions of Section 18.52.088.

~~18.76.085 City Council public hearing—Notice~~

~~The City Council shall hold a public hearing on the application. Notice of the public hearing shall be given pursuant to Section 18.52.082.~~

~~18.76.090 City Council decision.~~

~~A.—The City Council may grant an application for a site development review as applied for or in modified form, if on the basis of the application and the evidence submitted, the Council finds that the application~~

~~complies with the findings set forth in Section 18.76.045. The City Council may adopt additional conditions of approval as the facts warrant.~~

~~B. — The City Council may deny an application for site development review.~~

18.76.095 Site development review modifications.

Applications to modify any site development review approval or any condition of approval shall be subject to the same procedures and regulations as those applicable to the original application.

In the event a site development review application is approved on property previously affected by a site development review approval, the previous approval and its conditions shall be null and void.

18.76.100 Site development review approval expiration.

A site development review approval shall be valid for one (1) year following the date on which the application became effective. The approval shall become null and void unless prior to the expiration of the year a building permit is issued by the Building Department and construction is commenced and diligently pursued toward completion on the site which was the subject of the site development review application or a certificate of occupancy is issued by the Building Department for the site or structure which was the subject of the site development review application. The phrase “construction is commenced” shall be defined for the purposes of this provision to mean the progress of actual building activity on the site in accordance with a valid building permit to a point such that the first inspection under the Uniform Building Code has been completed, including but not necessarily limited to the inspection of installed footings, reinforced steel, utility, plumbing, and electrical conduits and/or services and all other work or activity customarily and typically inspected prior to the first pouring of foundation concrete. Completion of only site preparation activities such as site clearance, grading or excavation without commencement of actual building activity shall not constitute commencement of construction.

In the case where site development review approval was granted either concurrently with, or subsequently consistent with, an approved residential tentative map, the site development review approval shall be valid through the duration of the tentative map, as specified by Section 66452.6 of the California State Subdivision Map Act.

18.76.105 Site development review extension.

- A. A site development review approval may be extended for an additional period of time not to exceed one (1) year no more than two (2) times. Each such request for extension must be submitted in writing to the Zoning Administrator prior to the expiration date of the site development review approval. The request for extension shall be accompanied by a fee in an amount established by resolution of the City Council. The Zoning Administrator may grant or deny an application for extension of a site development review approval. The Zoning Administrator may grant an extension if he or she finds that there has been no substantial change in the facts or circumstances present when the original application was approved.
- B. Upon expiration of the site development review extension, the project shall be deemed to be expired and shall become null and void. Upon expiration, approval of a new site development review application shall be required prior to commencing with the project.

18.76.110 New application.

Following the denial of a site development review application, no application for the same or substantially the same project on the same or substantially the same site shall be filed within one (1) year from the date of denial of the application.



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CARMELA CAMPBELL, ECONOMIC, AND COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE FOR 1) ZONING TEXT AMENDMENT AT-23-002 TO AMEND TITLE 18, ZONING, OF THE UNION CITY MUNICIPAL CODE TO UPDATE CHAPTER 18.41, STATION EAST EMPLOYMENT (SEE) DISTRICT TO RENAME THIS CHAPTER “EMPLOYMENT MIXED-USE DISTRICTS” AND ADD A NEW ZONING DISTRICT FOR CONSISTENCY WITH THE UNION CITY 2040 GENERAL PLAN DESIGNATION OF MIXED-USE EMPLOYMENT (EMU) REFERRED TO AS “CORRIDOR MIXED-USE EMPLOYMENT (CMUE)” AND 2) ZONING MAP AMENDMENT A-23-001 TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF UNION CITY TO REZONE THE PROPERTIES LOCATED ALONG THE UNION CITY BOULEVARD CORRIDOR, WITH A UNION CITY 2040 GENERAL PLAN DESIGNATION OF MIXED-USE EMPLOYMENT (EMU), FROM SPECIAL INDUSTRIAL (MS) TO CORRIDOR MIXED-USE EMPLOYMENT (CMUE) FOR CONSISTENCY WITH THE GENERAL PLAN, AND FIND THAT THE AMENDMENTS ARE EXEMPT FROM ENVIRONMENTAL REVIEW IN ACCORDANCE WITH CEQA GUIDELINES SECTION 15061(B)(3)

Staff recommends that the City Council 1) waive the reading of the full text of the ordinance, 2) conduct the second reading of the title of the proposed ordinance, and 3) adopt the ordinance approving Zoning Text Amendment AT-23-002 and Zoning Map Amendment A-23-001 and find that the amendments are exempt from environmental review in accordance with CEQA guidelines section 15061(b) (3).

The City Council held a public hearing and introduced the Ordinance at its July 11, 2023, meeting on a 4-0 Vote. The proposed zoning text amendments associated with AT-23-002 are included in Exhibit A (Clean) and B (red-lined) of Attachment 1. The proposed zoning map amendments associated with A-23-001 are included in Exhibit C (Existing) and D (Proposed) of Attachment 1.

STRATEGIC PLAN ALIGNMENT

The proposed amendments are in alignment with the following:

Goal C. Institute forward-thinking business, land use development, housing, social services, and public safety strategies that promote community growth and innovation.

Goal C. Strategy 1. Analyze the feasibility of transforming warehouses to attract high-value industrial and commercial uses for the benefit of the community.

Goal C. Strategy 15. Improve and streamline the development process. (Council Priority)

BACKGROUND

The Union City 2040 General Plan designates some properties along the Union City Boulevard corridor as Mixed-Use Employment. To implement the vision of the General Plan, staff has drafted regulations for a new Corridor Mixed Use Employment (CMUE) Zoning designation (AT-23-002) included in Exhibit A and B of Attachment 1.

A Zoning Map Amendment (A-23-001) is also proposed to rezone properties identified in the Union City 2040 General Plan as Mixed-Use Employment to apply the new CMUE zoning designation. See Exhibit C (Existing Zoning Map) and Exhibit D (Proposed Zoning Map), which details the existing and proposed rezoning for the sites.

For a more detailed overview of the prior actions, see City Council Staff Report dated July 11, 2023, which can be accessed on-line at: [https://unioncity.novusagenda.com/agendapublic/CoverSheet.aspx?](https://unioncity.novusagenda.com/agendapublic/CoverSheet.aspx?ItemID=3962&MeetingID=1635)

ItemID=3962&MeetingID=1635

DISCUSSION

The amendments to Chapter 18.41, retitles the chapter to Mixed-Use Employment Districts as the new CMUE District and Station East Employment (SEE) District are combined in one chapter which is focused on higher density employment areas with mixed use zoning. This approach is consistent with the format for the City's industrial areas, which combines similar zoning districts into one chapter for simplicity and ease of review.

The standards included in the proposed amendments are based on the Station East Employment District (SEE) District which is a Mixed-Use Employment Zoning District within the Station District Specific Plan area and shares similarities with the CMUE District. Both zoning districts provide for mixed use employment centers, which are designed to accommodate a higher density employment district than the City's more traditional industrial areas. The amendments also reflect the design criteria and performance standards, which are part of the proposed amendments to Chapter 18.40, Industrial Districts.

FISCAL IMPACT

No fiscal impacts to the general fund would result from adoption of the proposed zoning text amendments.

RECOMMENDATION

Staff recommends that the City Council 1) waive the reading of the full text of the ordinance, 2) conduct the second reading of the title of the proposed ordinance, and 3) adopt the ordinance approving Zoning Text Amendment AT-23-002 and Zoning Map Amendment A-23-001 and find that the amendments are exempt from environmental review in accordance with CEQA guidelines section 15061(b) (3).

Prepared by:

Brandon H DeLucas, Associate Planner

Submitted by:

Brandon H DeLucas, Associate Planner

ATTACHMENTS:

Description	Type
☐ Attachment 1: Draft City Council Ordinance	Ordinance
☐ Attachment 1: Exhibit A (Clean)	Exhibit
☐ Attachment 1: Exhibit B (Redlines)	Exhibit
☐ Attachment 1: Exhibit C (Existing Zoning Map)	Exhibit
☐ Attachment 1: Exhibit D (Proposed Zoning Map)	Exhibit

Attachment 1

ORDINANCE NO. XXXX-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY APPROVING 1) ZONING TEXT AMENDMENT, AT-23-002 AMENDING TITLE 18, ZONING, OF THE UNION CITY MUNICIPAL CODE TO UPDATE CHAPTER 18.41, STATION EAST EMPLOYMENT (SEE) DISTRICT TO ADD A NEW ZONING DISTRICT REFERRED TO AS “CORRIDOR MIXED USE EMPLOYMENT (CMUE)” AND RENAME THIS CHAPTER “EMPLOYMENT MIXED USE DISTRICTS” AND 2) ZONING MAP AMENDMENT A-23-001 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF UNION CITY TO REZONE PROPERTIES LOCATED ALONG THE UNION CITY BLVD. CORRIDOR, WITH A UNION CITY 2040 GENERAL PLAN DESIGNATION OF MIXED-USE EMPLOYMENT (EMU), FROM SPECIAL INDUSTRIAL (MS) TO CORRIDOR MIXED USE EMPLOYMENT (CMUE) FOR CONSISTENCY WITH THE GENERAL PLAN

WHEREAS, the Union City 2040 General Plan designates some properties along the Union City Blvd. corridor as Mixed-Use Employment; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, the City’s Zoning Code currently regulates all development within the City; and

WHEREAS, the City Council desires to amend Title 18 of the Union City Municipal Code, Chapter 18.41, Station East Employment (SEE) District, to add a new zoning district for consistency with the Union City 2040 General Plan designation of Mixed-Use Employment (EMU) referred to as “Corridor Mixed Use Employment (CMUE) District” and rename this chapter “Employment Mixed Use Districts.” Additionally, the amendment would update the SEE District to modify and standardize uses, update development, performance and objective design standards for consistency with the CMUE District and reformat the chapter for ease of use and consistency with other chapters in Title 18.

WHEREAS, the City of Union City is also proposing to amend the official Zoning Map, to rezone properties located along the Union City Blvd. Corridor, with a Union City 2040 General Plan designation of Mixed-Use Employment (EMU), from Special Industrial (MS) to Corridor Mixed Use Employment (CMUE) for consistency with the General Plan; and

PLANNING COMMISSION REVIEW

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments associated with AT-23-002 and A-23-001 on June 15, 2023, at which time all interested parties had the opportunity to be heard. The Planning Commission considered a staff

report and Desk Item dated June 15, 2023 and all written and oral testimony, and adopted Resolution No. 12-23 recommending approval of the amendments. The staff report, Desk Item and resolution are incorporated herein by reference; and

CITY COUNCIL REVIEW

WHEREAS, the City Council held a duly noticed public hearing on the proposed amendments on July 11, 2023, at which time all interested parties had the opportunity to be heard. The City Council considered a staff report dated July 11, 2023 and July 25, 2023 (including background reports) and incorporated herein by reference, the Planning Commission recommendation, and all written and oral testimony before taking action on the amendments; and

WHEREAS, the amendment to Title 18 of the Municipal Code as shown in Exhibit A (Clean) and Exhibit B (Redlined), are attached hereto and incorporated herein by reference; and

WHEREAS, the amendment to the official zoning map as shown in Exhibit C (Existing) and Exhibit D (Proposed), are attached hereto and incorporated herein by reference.

THE CITY COUNCIL OF THE CITY OF UNION CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from environmental review in accordance with California Environmental Quality Act Guidelines section 15061(b)(3), the general exemption for projects with no potential for significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment will have a significant effect on the environment.

SECTION 3. Findings. The City Council makes the following findings in support of approving this Ordinance, based on the whole of the record before it.

1. The proposed Municipal Code Amendments are consistent with the General Plan,
2. The proposed Municipal Code Amendments are necessary and desirable to achieve the purposes of Title 18.

SECTION 4. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, amending Chapter 18.41, Employment Mixed-Use Districts, as shown in attached Exhibit A, and amending the official zoning map, as shown in attached Exhibit D, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall

continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

EXHIBIT A

Chapter 18.41 MIXED-USE EMPLOYMENT DISTRICTS

18.41.010 Purpose.

The Mixed-Use Employment Districts are as follows:

Station East Employment (SEE): The purpose of the SEE District is to accommodate a higher density employment district, which allows for a range of uses including office, lab, research and development, and light manufacturing and accompanying commercial services and uses to create an urban campus in a walkable and transit-oriented setting. Other uses, including hotels, conference centers, and public or quasi-public uses of an educational or recreational nature, can be established if it will support the City's economic development goals for the area.

Corridor Mixed-Use Employment (CMUE): The purpose of the CMUE District is to accommodate a mix of employment uses, including but not limited to light industrial, research and development, office, and flex space, as well as supportive commercial uses that are vertically or horizontally integrated. The Mixed-use Employment designation is intended to foster innovation and emerging technologies; promote the creation of an employment district with travel patterns that are oriented toward pedestrian, transit, and bicycle use; and provide amenities to employees as well as surrounding neighborhoods. This zoning district implements the Mixed-Use Employment (EMU) General Plan Land Use Designation.

18.41.020 Land use regulations – Mixed Use Employment Districts.

Table 18.41.020 Land use regulations—Mixed-Use Employment Districts sets the land use regulations for the Mixed-Use Employment Districts by letter designation as follows unless a use or activity is prohibited or subject to a higher level of permit pursuant to other parts of this Section, other requirements of the Union City Municipal Code, or other applicable regulations:

"P" designates permitted uses.

"AUP" designates uses that are permitted subject to approval of an Administrative Use Permit (Chapter 18.54).

"UP" designates uses that are permitted subject to approval of a Conditional Use Permit (Chapter 18.56).

"-" designates uses that are not allowed.

Any other use determined by the decision maker to be essentially the same or very similar to the uses in in Table 18.41.020 may be permitted. In making this determination, the findings required under Section 18.52.060 shall be addressed. Land uses defined in the Union City Municipal Code and not listed in the table or not found to be substantially similar to the uses below are prohibited. All uses shall be conducted within a permanent building.

Table 18.41.020 Land use regulations – Mixed-Use Employment Districts			
Use	Corridor Mixed-Use Employment (CMUE)	Station East Employment (SEE)	Specific use regulations/ notes
ASSEMBLY, EDUCATION, AND RECREATION			
Conference center	UP	UP	
Hotel	UP	UP	
Professional trade schools and colleges	UP	UP	Limited to programs serving persons 18 years or older
Public or quasi-public uses of an educational or recreational nature	-	UP	
COMMERCIAL USES – Permitted only as a ground floor use as part of an office, industrial, hotel or conference center development			
Banks and financial institutions	P	P	
Business services	P	P	
Civic facilities	P	P	
Fitness and recreational facilities	P	P	With an occupant load of less than fifty (50) under the Uniform Building Code
Food service	P	P	Excluding drive-through uses
Outdoor dining areas	AUP	AUP	Subject to the standards of Section 18.36.190
Live music (amplified)	UP	UP	Subject to the standards of Section 18.36.195(B)
Live music (non-amplified)	AUP	AUP	Subject to the standards of Section 18.36.195(A)
Food stores	P	P	Up to twenty-five thousand (25,000) square feet, excluding convenience markets
General merchandise/retail stores,	P	P	Excluding adult business stores, clearance center/dollar stores, pawn shops, second hand/thrift stores, and retail tobacco stores
Office uses including medical offices	P	P	
Personal services	-	P	
INDUSTRIAL USES – MANUFACTURING AND ASSEMBLY			

Table 18.41.020 Land use regulations – Mixed-Use Employment Districts			
Use	Corridor Mixed-Use Employment (CMUE)	Station East Employment (SEE)	Specific use regulations/ notes
Breweries, distilleries and wineries	UP	UP	Accessory on-site tasting rooms permitted. Including food service. Outdoor dining areas subject to the provisions listed in Section 18.36.190
Live music (amplified)	UP	UP	Subject to the standards of Section 18.36.195(B)
Live music (non-amplified)	AUP	AUP	Subject to the standards of Section 18.36.195(A)
Manufacture of pharmaceuticals and products from the life sciences and biotechnology industries	P	P	
Manufacture and assembly of electric and electronic supplies, instruments and devices, computer hardware and software, semiconductors, and computer chips	P	P	
Manufacture of fabricated metal products	AUP	AUP	
Manufacture of food products	P	-	Excluding production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats, oils, or canning
Manufacturing and assembly of medical equipment	P	P	
Manufacturing and assembly of, optical goods, watches and clocks, musical instruments and camera and photographic equipment	P	P	
Manufacturing and assembly of products from previous prepared materials such as precious or semi-precious metal	P	P	

Table 18.41.020 Land use regulations – Mixed-Use Employment Districts			
Use	Corridor Mixed-Use Employment (CMUE)	Station East Employment (SEE)	Specific use regulations/ notes
Manufacturing and assembly, including cutting, polishing, and setting of jewelry products and products from precious or semi-precious stone	P	P	
Manufacturing and assembly of leather products and associated dyeing	P	P	Excluding tanning and curing
Manufacturing and assembly of textile products including apparel	P	P	Excluding dyeing
Manufacturing and assembly of plastic and rubber products,	P	P	Excluding tire manufacturing
INDUSTRIAL SERVICES			
Contractor services	UP	UP	
Incubator spaces	AUP	AUP	
Maker space	P	P	
Media production studios	UP	UP	
OFFICE/LABORATORY/RESEARCH AND DEVELOPMENT			
Administrative, executive, financial and professional offices	AUP	P	Excluding medical offices
Engineering and design services and related facilities	P	P	
Research and development services and related facilities	P	P	Including life sciences, medical and pharmaceutical research, electronics, and computer science
RETAIL			
Commercial cannabis use	P	-	Subject to the zoning requirements of Chapter 18.117 and the licensure and regulatory requirements of Chapter 5.44

Table 18.41.020 Land use regulations – Mixed-Use Employment Districts			
Use	Corridor Mixed-Use Employment (CMUE)	Station East Employment (SEE)	Specific use regulations/ notes
Retail sale of goods which are manufactured, processed or assembled (improved or developed to a higher use by machine or by hand) on the premises	P	P	
MISCELLANEOUS USES			
Civic facilities	P	P	

18.41.030 Prohibited uses.

Distribution, wholesale, warehouse, outdoor storage, and/or repackaging uses are prohibited.

18.41.040 Accessory uses.

- A. Accessory structures and uses customarily incidental to any of the above permitted uses when located on the same lot are permitted.
- B. Accessory structures and uses customarily incidental to any of the above conditional uses when located on the same lot are permitted only upon the granting or modification of a conditional use permit pursuant to the provisions of Chapter 18.56.
- C. No accessory building or structure shall be constructed on any lot prior to the time of construction of the principal building to which it is accessory.

18.41.050 Performance standards.

- A. In the SEE District, retail, service, public, or office uses shall be provided along the ground floor of buildings in the areas detailed in the Station District Specific Plan Figure 4-6.
- B. All business, services, and processes shall be conducted entirely within a completely enclosed structure, except for off-street parking and loading areas and solid waste/recycling enclosures. Outdoor storage is prohibited. Incidental equipment that is necessary to conduct the operation of the business and that is required to be installed outdoors may be allowed subject to approval by the Economic and Community Development Director or decision maker.
- C. All development shall comply with Chapter 7.04 related to management of solid waste, organic waste, and recyclable materials. Solid waste, organic waste and recycling enclosures shall comply with Section 7.04.055 .
- D. Site shall be maintained in good order at all times and consistent with project conditions of approval (if applicable). This shall include, but is not limited to, maintenance and repair of all on-site structures including building façade materials or paint, fencing/walls, signage, paved areas

including sidewalks and driveways, and landscaping, as may be necessary to preserve a high-quality aesthetic for the area.

- E. All uses shall comply with the regulations pertaining to hazardous materials contained in Chapter 18.43.
- F. Only one (1) driveway per parcel shall be permitted for each street frontage except that additional driveways may be permitted if determined by the Public Works Department that additional driveways are necessary to facilitate on-site traffic circulation.
- G. Additions and modifications to industrial developments shall be designed to integrate with the existing development and shall be consistent with the standards included in Section 18.41.100
- H. Permitted or conditional uses shall not:
 - 1. Emit obnoxious, toxic or corrosive fumes or gases;
 - 2. Emit odors, heat or glare perceptible beyond property lines;
 - 3. Emit smoke nor discharge into the air dust or other particular matter created by any industrial operations or emanating from any products stored prior or subsequent to processing;
 - 4. Produce noise perceptible beyond property lines, except as may be allowed by the Union City Community Noise Ordinance (Chapter 9.40 of the Union City Municipal Code);
 - 5. Produce physical vibration perceptible beyond property lines;
 - 6. Produce electromagnetic radiation or radioactive emission injurious to human beings, animals or vegetation, except under controlled operations being conducted observing standard methods or operations established by the California Department of Health Services, CAL-OSHA or the Nuclear Regulatory Commission. The most restrictive requirements shall apply. Electromagnetic radiation or radioactive emissions shall not be of an intensity that interferes with the use of any other property;
 - 7. Engage in the production or storage of any material designed for use as an explosive, nor in the use of such material in production; and
 - 8. Utilize diesel fuel powered equipment unless for standby emergency use only.

18.41.060 Development standards.

Table 18.41.060 Development standards		
Standard	Corridor Mixed-Use Employment (CMUE)	Station East Employment (SEE)
Site area, minimum	One (1) Acre	One (1) Acre
Floor area ratio, FAR	.40 minimum	.75 minimum
	2.0 maximum	3.0 maximum
Street frontage, minimum*	150 feet	150 feet

Lot depth, minimum*	200 feet	200 feet
Front yard setback, minimum	10 feet	10 feet
Interior side yard setback, minimum	5 feet	4 feet
	50 feet when adjoining a residential district or use	20 feet when adjoining a residential district or use
Street side yard setback, minimum	10 feet	10 feet
Rear yard setback, minimum	10 feet	10 feet
	50 feet when adjoining a residential district or use	20 feet when adjoining a residential district or use
Maximum height	60 feet. Rooftop employee amenities may be permitted, including, but not limited to, break rooms and kitchens, recreational facilities, gardens and seating areas provided they do not exceed twenty (20) feet in height. Buildings along major arterials must be a minimum of two (2) stories.	100 feet. Rooftop amenities may be permitted, including, but not limited to, community rooms and kitchens, recreational facilities, and greenhouses provided they do not exceed twenty (20) feet in height. All buildings must be a minimum of two (2) stories.

** Exceptions may be granted by the decision maker through the Site development review process if it results in a more usable lot configuration or to accommodate lots created for public or common use.*

18.41.070 Supplemental standards

A. Permitted obstructions in required yards:

1. Roof overhangs as provided in Section 18.24.050.
2. Pedestrian paths.
3. Street access driveways and associated curbing.
4. Parking and loading facilities in side and rear yards not adjoining a street.
5. Signage in conformance with Chapter 18.30.
6. Railroad spur tracks, drill tracks, switches, bumpers, except that such uses shall not be permitted in required yards that adjoin any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).
7. Walls and fences subject to the provision under Section 18.41.070(C).
8. Landscaping and landscape features as provided for in Section 18.41.070(F).
9. Public art.

B. Signs, marquees, awnings.

1. Signage shall be consistent with Chapter 18.30 and any approved sign plan or planned sign program. Signage shall be designed as an integral element of a building's architecture and shall be compatible, including color and scale, with the building. A sign plan or planned sign program, consistent with Section 18.30.100, shall be required for any development.
2. In the SEE District, Blade signs may project over the sidewalk to indicate and demarcate commercial uses and increase pedestrian interest, subject to approval of an encroachment permit by the Public Works Department.

C. Walls and fences

1. In areas outside of the required yards, the maximum height shall be eight (8) feet above the surface of the ground.
 2. In the required rear and side yard, the maximum height shall be eight (8) feet above the surface of the ground.
 3. In the required front yard,
 - a. the maximum height shall be three (3) feet above the surface of the ground.
 4. In the required street side yard,
 - a. the maximum height shall be three (3) feet above the surface of the ground.
 5. Where a site adjoins a district other than an Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE), a solid wall, at least six (6) feet in height but not greater than eight (8) feet, shall be provided along the property line adjoining the nonindustrial district. Climbing vines, or similar landscaping, shall be provided along the exterior of the wall. When the wall is located within a required front yard, then said wall shall not exceed three (3) feet in height.
 6. The design of fences and walls shall aesthetically complement the development, be constructed of high-quality materials, be compatible with neighboring yards, fences and structures, and be subject to review and approval by the City prior to installation. Acceptable materials along street frontages are deemed to be masonry, concrete, and tubular steel. New walls shall include a landscape strip in front to accommodate climbing vines or other suitable plant material to reduce the susceptibility for graffiti. Wire mesh fencing is permitted along non-street facing property lines. The use of barbed wire, razor wire and cyclone (i.e., chain-link) fencing is prohibited.
- D. Employee amenity areas. All new development and additions that expand existing floor area by 25 percent or more, resulting in at least 10,000 square feet of floor area, shall provide an employee area of at least 300 square feet in size. The employee use area shall be identified and improved as passive or active recreational space, or indoor or outdoor amenities for the use and enjoyment of employees.
- E. Sidewalks and street frontage improvements. Sidewalks, curbs, and gutters along a site's frontage(s) shall be maintained to the satisfaction of the City Engineer. All new buildings, additions

to buildings which increase existing square footage by fifty percent (50%) or more, or projects that include substantial site modifications, shall provide sidewalks, curbs, and gutters if none already exist. Improvements shall be installed consistent with City standards and specifications.

F. Landscaping.

1. New landscaping and modifications to existing landscaping shall comply with the provisions listed in Chapter 18.112 and the Landscape Standards Policy Statement. Approved landscaping shall be maintained for the life of the project including replacement of dead, dying or deficient landscaping.
2. Projects that include development of a vacant site or substantial modification of a developed site, shall provide landscaped areas that measure a minimum fifteen percent (15%) of the project site area. Projects that cannot provide the minimum amount of required landscaping shall pay a landscape in-lieu fee in the amount set forth in the City's Master Fee Schedule subject to approval through the site development review process.
3. Parking lot coverage. To provide adequate visual screening of any surface parking areas from public rights-of-way, there shall be a landscaped strip ten (10) feet in width which shall be contiguous and parallel to such rights-of-way and shall be planted with trees, shrubs, and ground cover sufficient to obtain the required screening.

G. Equipment screening. Mechanical/utility equipment shall be sited and screened in accordance with the following:

1. In instances where mechanical equipment cannot be located within the building or undergrounded due to building code or utility provider requirements, it shall be adequately screened from off-site view and located at the rear of the site in an enclosure with walls matching the material and color of the building. The enclosure shall include gates or heavy gauge corrugated steel and shall be surrounded by trees, shrubs or climbing vines;
2. In instances where mechanical equipment is located on the building roof, roof top screening shall be provided, which is integrated into the building architecture; and
3. Alternate design, screening, or siting may be considered to meet utility provider requirements.

H. Bicycle and pedestrian facilities. Projects that include development of a vacant site or substantial modification of a developed site shall accommodate bicycle and pedestrian facilities / access including:

1. Provisions for safe, well-lit and visually attractive pedestrian access from public streets to the parking areas and building entries;
2. Pedestrian pathways between buildings and parcels;
3. Publicly accessible pedestrian amenities which may include plazas, pocket parks, seating areas, fountains, public art, and/or eating areas;

4. Orientation of outdoor public spaces towards activated ground-floor building frontages;
5. Inclusion of bicycle paths and bicycle parking facilities consistent with the Bicycle and Pedestrian Master Plan and designed and installed in conformance with the design criteria outlined in Section 18.28.080.

18.41.080 Off-street parking and loading

A. In the SEE District, off-street parking shall be provided consistent with the following standards.

Table 18.41.080(A) SEE District off-street parking requirements		
Use	Minimum off-street parking requirements	Maximum off-street parking allowed
Retail	1.0 space/300 square feet	1.0 space/200 square feet
Office	1.0 space/300 square feet	1.0 space/250 square feet
Research and development laboratory	1.0 space/500 square feet	1.0 space/300 square feet
Manufacturing	1.0 space/500 square feet	1.0 space/300 square feet
Other uses	See Section 18.36.150	See Section 18.36.150

1. Automobile parking areas shall not occupy more than thirty percent (30%) of the primary street frontage.

B. In the CMUE District, off-street parking shall be provided consistent with the following standards.

Table 18.41.080(B) CMUE District off-street parking requirements	
Use	Minimum off-street parking requirements
Office	1.0 space / 300 square feet
Research and development laboratory	1.0 space / 500 square feet
Manufacturing	1.0 Space / 1000 square feet
Other uses	See Section 18.36.150

C. Off-street parking shall be provided consistent with the following standards:

1. All parking areas shall be designed and maintained in accordance with the provisions of Chapter 18.28.
2. Off-street parking requirements for other uses shall be provided on the same basis as required for the most similar use or as determined by the decision maker.
3. Joint use of parking spaces may be allowed subject to the limitations and conditions included in Section 18.36.160.

4. Flex industrial buildings built without an end user selected and/or on speculation shall provide a minimum of one (1) parking space for each three hundred (300) square feet of the gross floor area for twenty-five percent (25%) of the building in addition to providing parking for the remaining seventy-five percent (75%) of the gross floor area consistent with the standards listed above.
5. In addition to the minimums above, one (1) parking space for each vehicle used in the conduct of the enterprise shall be provided.
6. Truck trailer parking spaces shall have a minimum dimension of twelve (12) feet by fifty-five (55) feet when parked perpendicular and twelve (12) feet by sixty-five (65) feet when parked parallel.
 - a. The number of truck trailer parking spaces required by Section 18.40.070 may be decreased by the decision maker for a specific use if it is found that such use will not create as great a need for truck trailer parking and that the use is reasonably likely to continue for at least ten (10) years.
 - b. The number of truck trailer parking spaces required by Section 18.40.070 may be increased by the decision maker if it is found that a use will create an additional need for truck trailer parking.
7. Parking structures.
 - a. Parking structure facades shall be designed as compatible visual extensions of the primary buildings.
 - b. Auto entries shall be located in a manner that minimizes pedestrian/auto conflicts.
 - c. Decorative screening or other decorative element constructed of durable, high-quality materials shall be provided on parking structure facade.
- D. Off street loading: For each building constructed or use established, off-street loading shall be provided according to the following:
 1. Loading docks and berths shall be provided adequate to serve the use. Such facilities shall be located to the side and rear of buildings and shall be adequately screened and landscaped so as to not be visible from the public rights-of-way and are subject to review and approval through the site development review process. Truck loading areas and activities shall not conflict with on-site circulation and parking. All truck loading doors and docks shall be screened from view by an architecturally acceptable decorative wall or other acceptable alternative which does not encroach into required landscaped areas.
 2. Loading berths. Loading berths shall be a minimum of ten (10) feet wide by twenty-five (25) feet long.
 3. In the SEE District, adequate loading zones shall be provided along the street frontage(s).

18.41.090 Bicycle parking

A. In the SEE District, bicycle parking shall be provided consistent with the following standards.

Table 18.41.090(B) SEE District bicycle parking requirements		
Use	Short-term bicycle parking	Long-term bicycle parking
Retail	1.0 space/3,000 square feet	1.0 space/10,000 square feet
Office, research and development laboratory, and other nonresidential uses	1.0 space/8,000 square feet, minimum of 2 spaces	1.0 space/4,000 square feet

B. In the CMUE District, Bicycle parking shall be provided consistent with the following standards.

Table 18.41.090(B) CMUE District Bicycle Parking Requirements		
Use	Short-Term Bicycle	Long-Term Bicycle
Retail	1.0 space / 3,000 square feet	1.0 space / 10,000 square feet
Office, research and development laboratory, and manufacturing	1.0 space / 20,000 square feet	1.0 space / 7,000 square feet

C. Bicycle parking shall be provided consistent with the following standards;

1. Required facilities shall be designed and installed in conformance with the design criteria outlined in Section 18.28.080.
2. Bicycle parking may be substituted for automobile parking subject to the provisions outlined in Section 18.28.100 and approval by the decision maker.
3. The number of required bicycle parking facilities may be increased by the decision maker for a specific use if it is found that such a use shall create a greater demand for these facilities.

18.41.100 Design criteria

A. Architectural standards. Buildings shall be designed with a contemporary or “modern” vocabulary, using varied geometric volumes and a variety of high-quality materials (e.g. metal and glass). The following shall apply to any new buildings, additions to buildings which increase existing square footage by fifty percent (50%) or more, or modifications to existing buildings which modify the exterior of the building:

1. In the SEE District, building elevations shall include variations in wall plane, wall height, and roofs located at different levels in order to minimize the overall appearance of the elevation. Building wall shall not continue for more than twenty-five (25) feet without a change in building wall plane direction of at least two (2) feet.

2. In the SEE District, all elevations shall provide articulation and detailing include elements such as recesses, columns, score lines, reveals, trellises, windows, lighting, or other features to create shadow patterns and depth on building elevations.
 3. In the CMUE District, to minimize overall massing building elevation shall incorporate the following:
 - a. Variations in wall plane, wall height, trim or reveals, entry and window openings, and/or varying colors and materials;
 - b. Detailing including elements such as recesses, columns, living walls, score lines, reveals, trellises, lighting, or other features to create shadow patterns and depth on building elevations; and
 - c. Other elements as required by the Director.
 4. Blank walls should not occupy over thirty percent (30%) of the principal frontage, and a section of blank wall should not exceed twenty (20) linear feet without being interrupted by a variation in wall plane, wall height, trim or reveals, entry and window openings.
 5. Design entries so that they are clearly defined and distinguishable from the street. Incorporate architectural features such as awnings, canopies, trellises, and/or other treatments such as vertical architectural features or unique building colors or materials to clearly identify primary building entries.
 6. A minimum of fifty percent (50%) of the building wall area located within twenty (20) feet of the midpoint of a primary building entrance shall be comprised of transparent windows or openings. Glass is considered transparent where it has a transparency higher than eighty percent (80%) and external reflectance of less than fifteen percent (15%). Façades facing streets or pedestrian focused areas such as promenades and plazas shall be lined with windows.
- B. Exterior materials. Exterior building materials shall be chosen based on character, durability, ease of maintenance and context, and may include:
1. Steel—Porcelain enamel panels, steel windows, steel exterior doors, steel rails and fences, painted, stainless or pre-weathered steel are acceptable;
 2. Aluminum—Windows, panels (luco-bond and aluminum plate), storefront, curtain wall, doors; aluminum should be natural finish anodized, powder-coated or kynar (no bronze anodized);
 3. Other metal;
 4. Glass—Clear, low-e, nonreflective, solar-bronze or solar gray glass, shadow boxes and spandrel glass is permitted;
 5. Brick, natural clay colors;
 6. Stone;

7. Pre-cast concrete, glass-fiber reinforced concrete;
 8. High-quality, cast-in-place concrete;
 9. Ceramic tile;
 10. Cement plaster;
 11. Wood.
- C. Ground floor commercial uses. The design of ground floor commercial uses shall comply with the following:
1. Minimum depth of commercial space is thirty-five (35) feet and minimum height is eighteen (18) feet floor to floor.
 2. A minimum of twenty-five percent (25%) of the ground floor commercial area shall be designed to accommodate a food service use.
 3. Between two and one-half (2½) feet and seven (7) feet above grade, ground floor transparency (i.e., amount of glazing) shall be fifty percent (50%) for all other commercial uses.
 4. Ground floor façades shall be designed to give identity to each retail and service establishment, through recesses, enhanced materials, signage and architectural features that are integral components of the building.
 5. The maximum distance of blank wall (a façade without doors, windows, landscaping treatments, or other pedestrian interest) on the ground level of any building facing a street, open space, or paseo shall not exceed twenty (20) feet in length.
 6. The design of ground floor commercial uses shall promote indoor/outdoor connections by providing some or all of the following:
 - a. Sliding or removable windows/doors;
 - b. Low planters with wide seat walls;
 - c. Recessed entrances and porticos that increase the indoor/outdoor quality or allow for increased outdoor seating or display;
 - d. Awnings and canopies that may encroach into the public right-of-way subject to approval of an encroachment permit by the Public Works Department; and
 - e. Visually transparent storefronts with clear glass windows and doors that are not blocked by storage, racks or shelving placed against glass.

EXHIBIT B (REDLINES)

Chapter 18.41 ~~STATION EAST EMPLOYMENT (SEE) MIXED-USE EMPLOYMENT~~ DISTRICTS

18.41.010 Purpose.

The Mixed-Use Employment Districts are as follows:

Station East Employment (SEE): The purpose of the ~~Station East Employment (SEE) district-District~~ is to accommodate a higher density employment district, which allows for a range of uses including office, lab, research and development, and light manufacturing and accompanying commercial services and uses to create an urban campus in a walkable and transit-oriented setting. Other uses, including hotels, conference centers, and public or quasi-public uses of an educational or recreational nature, can be established if it will support the City's economic development goals for the area.

Corridor Mixed-Use Employment (CMUE): The purpose of the CMUE District is to accommodate a mix of employment uses, including but not limited to light industrial, research and development, office, and flex space, as well as supportive commercial uses that are vertically or horizontally integrated. The Mixed-use Employment designation is intended to foster innovation and emerging technologies; promote the creation of an employment district with travel patterns that are oriented toward pedestrian, transit, and bicycle use; and provide amenities to employees as well as surrounding neighborhoods. This zoning district implements the Mixed-Use Employment (EMU) General Plan Land Use Designation.

18.41.020 ~~Land use regulations – Mixed Use Employment Districts~~Permitted uses.

Table 18.41.020 Land use regulations—Mixed-Use Employment Districts sets the land use regulations for the Mixed-Use Employment Districts by letter designation as follows unless a use or activity is prohibited or subject to a higher level of permit pursuant to other parts of this Section, other requirements of the Union City Municipal Code, or other applicable regulations:

"P" designates permitted uses.

"AUP" designates uses that are permitted subject to approval of an Administrative Use Permit (Chapter 18.54).

"UP" designates uses that are permitted subject to approval of a Conditional Use Permit (Chapter 18.56).

"-" designates uses that are not allowed.

Any other use determined by the decision maker to be essentially the same or very similar to the uses in Table 18.41.020 may be permitted. In making this determination, the findings required under Section 18.52.060 shall be addressed. Land uses defined in the Union City Municipal Code and not listed in the table or not found to be substantially similar to the uses below are prohibited. All uses shall be conducted within a permanent building.

Table 18.41.020 Land use regulations – Mixed-Use Employment Districts			
Use	Corridor Mixed-Use Employment (CMUE)	Station East Employment (SEE)	Specific use regulations/ notes
<u>ASSEMBLY, EDUCATION, AND RECREATION</u>			
<u>Conference center</u>	<u>UP</u>	<u>UP</u>	
<u>Hotel</u>	<u>UP</u>	<u>UP</u>	
<u>Professional trade schools and colleges</u>	<u>UP</u>	<u>UP</u>	<u>Limited to programs serving persons 18 years or older</u>
<u>Public or quasi-public uses of an educational or recreational nature</u>	<u>-</u>	<u>UP</u>	
<u>COMMERCIAL USES – Permitted only as a ground floor use as part of an office, industrial, hotel or conference center development</u>			
<u>Banks and financial institutions</u>	<u>P</u>	<u>P</u>	
<u>Business services</u>	<u>P</u>	<u>P</u>	
<u>Civic facilities</u>	<u>P</u>	<u>P</u>	
<u>Fitness and recreational facilities</u>	<u>P</u>	<u>P</u>	<u>With an occupant load of less than fifty (50) under the Uniform Building Code</u>
<u>Food service</u>	<u>P</u>	<u>P</u>	<u>Excluding drive-through uses</u>
<u>Outdoor dining areas</u>	<u>AUP</u>	<u>AUP</u>	<u>Subject to the standards of Section 18.36.190</u>
<u>Live music (amplified)</u>	<u>UP</u>	<u>UP</u>	<u>Subject to the standards of Section 18.36.195(B)</u>
<u>Live music (non-amplified)</u>	<u>AUP</u>	<u>AUP</u>	<u>Subject to the standards of Section 18.36.195(A)</u>
<u>Food stores</u>	<u>P</u>	<u>P</u>	<u>Up to twenty-five thousand (25,000) square feet, excluding convenience markets</u>
<u>General merchandise/retail stores,</u>	<u>P</u>	<u>P</u>	<u>Excluding adult business stores, clearance center/dollar stores, pawn shops, second hand/thrift stores, and retail tobacco stores</u>
<u>Office uses including medical offices</u>	<u>P</u>	<u>P</u>	
<u>Personal services</u>	<u>-</u>	<u>P</u>	
<u>INDUSTRIAL USES – MANUFACTURING AND ASSEMBLY</u>			

<u>Table 18.41.020 Land use regulations – Mixed-Use Employment Districts</u>			
<u>Use</u>	<u>Corridor Mixed-Use Employment (CMUE)</u>	<u>Station East Employment (SEE)</u>	<u>Specific use regulations/ notes</u>
<u>Breweries, distilleries and wineries</u>	<u>UP</u>	<u>UP</u>	<u>Accessory on-site tasting rooms permitted. Including food service. Outdoor dining areas subject to the provisions listed in Section 18.36.190</u>
<u>Live music (amplified)</u>	<u>UP</u>	<u>UP</u>	<u>Subject to the standards of Section 18.36.195(B)</u>
<u>Live music (non-amplified)</u>	<u>AUP</u>	<u>AUP</u>	<u>Subject to the standards of Section 18.36.195(A)</u>
<u>Manufacture of pharmaceuticals and products from the life sciences and biotechnology industries</u>	<u>P</u>	<u>P</u>	
<u>Manufacture and assembly of electric and electronic supplies, instruments and devices, computer hardware and software, semiconductors, and computer chips</u>	<u>P</u>	<u>P</u>	
<u>Manufacture of fabricated metal products</u>	<u>AUP</u>	<u>AUP</u>	
<u>Manufacture of food products</u>	<u>P</u>	<u>-</u>	<u>Excluding production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats, oils, or canning</u>
<u>Manufacturing and assembly of medical equipment</u>	<u>P</u>	<u>P</u>	
<u>Manufacturing and assembly of, optical goods, watches and clocks, musical instruments and camera and photographic equipment</u>	<u>P</u>	<u>P</u>	
<u>Manufacturing and assembly of products from previous prepared materials such as precious or semi-precious metal</u>	<u>P</u>	<u>P</u>	

Table 18.41.020 Land use regulations – Mixed-Use Employment Districts			
Use	Corridor Mixed-Use Employment (CMUE)	Station East Employment (SEE)	Specific use regulations/ notes
<u>Manufacturing and assembly, including cutting, polishing, and setting of jewelry products and products from precious or semi-precious stone</u>	<u>P</u>	<u>P</u>	
<u>Manufacturing and assembly of leather products and associated dyeing</u>	<u>P</u>	<u>P</u>	<u>Excluding tanning and curing</u>
<u>Manufacturing and assembly of textile products including apparel</u>	<u>P</u>	<u>P</u>	<u>Excluding dyeing</u>
<u>Manufacturing and assembly of plastic and rubber products,</u>	<u>P</u>	<u>P</u>	<u>Excluding tire manufacturing</u>
<u>INDUSTRIAL SERVICES</u>			
<u>Contractor services</u>	<u>UP</u>	<u>UP</u>	
<u>Incubator spaces</u>	<u>AUP</u>	<u>AUP</u>	
<u>Maker space</u>	<u>P</u>	<u>P</u>	
<u>Media production studios</u>	<u>UP</u>	<u>UP</u>	
<u>OFFICE/LABORATORY/RESEARCH AND DEVELOPMENT</u>			
<u>Administrative, executive, financial and professional offices</u>	<u>AUP</u>	<u>P</u>	<u>Excluding medical offices</u>
<u>Engineering and design services and related facilities</u>	<u>P</u>	<u>P</u>	
<u>Research and development services and related facilities</u>	<u>P</u>	<u>P</u>	<u>Including life sciences, medical and pharmaceutical research, electronics, and computer science</u>
<u>RETAIL</u>			
<u>Commercial cannabis use</u>	<u>P</u>	<u>=</u>	<u>Subject to the zoning requirements of Chapter 18.117 and the licensure and regulatory requirements of Chapter 5.44</u>

<u>Table 18.41.020 Land use regulations – Mixed-Use Employment Districts</u>			
<u>Use</u>	<u>Corridor Mixed-Use Employment (CMUE)</u>	<u>Station East Employment (SEE)</u>	<u>Specific use regulations/ notes</u>
<u>Retail sale of goods which are manufactured, processed or assembled (improved or developed to a higher use by machine or by hand) on the premises</u>	<u>P</u>	<u>P</u>	
<u>MISCELLANEOUS USES</u>			
<u>Civic facilities</u>	<u>P</u>	<u>P</u>	

The following uses shall be permitted:

A. ~~— Civic facilities.~~

B. ~~— Ground floor commercial uses as part of an office mixed use development, hotel or conference center including:~~

- ~~1. — Banks/savings and loans, excluding check cashing businesses;~~
- ~~2. — Business services;~~
- ~~3. — Civic facilities;~~
- ~~4. — Fitness studios with an occupant load of less than fifty (50) under the Uniform Building Code;~~
- ~~5. — Food service, such as full service/sit down restaurants, quick service restaurants, and retail and carry out food stores;~~
- ~~6. — Food stores, up to twenty five thousand (25,000) square feet, excluding convenience markets;~~
- ~~7. — General merchandise/retail stores, excluding adult business stores, clearance center/dollar stores, pawn shops, second hand/thrift stores, and retail tobacco stores;~~
- ~~8. — Live music (non-amplified) at full service/sit down restaurants subject to the standards of Section 18.36.195(A);~~
- ~~9. — Office uses;~~
- ~~10. — Outdoor dining areas subject to the provisions listed in Section 18.39.055; and~~
- ~~11. — Personal services, such as laundry, dry cleaning, beauty parlor, barbershop, nail salon, shoe repair, travel agency, tailor, photography studio, and similar uses excluding massage.~~

C. ~~— Manufacture and assembly of electric and electronic supplies, instruments and devices, computer hardware and software, semiconductors, and computer chips, provided no noxious or offensive fumes or odors are produced.~~

~~D. — Manufacture of pharmaceuticals and products from the life sciences and biotechnology industries, provided no noxious or offensive fumes or odors are produced.~~

~~E. — Manufacture of scientific, medical, dental and drafting instruments, orthopedic and medical applications, optical goods, watches and clocks, precision instruments, musical instruments and camera and photographic equipment except film.~~

~~F. — Manufacturing, assembly, including packaging and storage, of products from previous prepared materials, such as cloth, plastic, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, nor any manufacturing uses involving primary production of wood, metal or chemical products from raw materials.~~

~~G. — Office uses excluding health services.~~

~~H. — Research and development laboratories and related facilities, including for life sciences, medical and pharmaceutical research, electronics, and computer science.~~

~~I. — Retail sales of goods manufactured, processed or assembled on the premises.~~

~~J. — Any other use determined by the Director to be essentially the same or very similar to the above permitted uses. In making this determination the findings required under Section 18.52.060 shall be addressed.~~

~~18.41.030~~ Conditional uses.

The following conditional uses shall be permitted in the SEE zoning district upon the granting of a use permit by the Planning Commission (refer to Chapter 18.56 for a detailed description of the use permit process):

~~A. — Hotels and conference centers.~~

~~B. — Manufacture of fabricated metal products.~~

~~C. — Microbreweries, wineries, or distilleries with accessory food service and outdoor dining.~~

~~D. — Public or quasi-public uses of an educational or recreational nature.~~

~~E. — Specialty trade contractors when located in a completely enclosed building.~~

~~F. — All other uses determined by the Planning Commission to be essentially the same or very similar to the above conditionally permitted uses. In making this determination, the findings required under Section 18.52.060 shall be addressed.~~

~~18.41.040-030~~ Prohibited uses.

Distribution, ~~import/export~~, wholesale, warehouse, outdoor storage, and/or repackaging uses are prohibited ~~within the SEE District.~~

~~18.41.050-040~~ Accessory uses.

- A. Accessory structures and uses customarily incidental to any of the above permitted uses when located on the same lot are permitted.

- B. Accessory structures and uses customarily incidental to any of the above conditional uses when located on the same lot are permitted only upon the granting or modification of a conditional use permit pursuant to the provisions of Chapter 18.56.
- C. No accessory building or structure shall be constructed on any lot prior to the time of construction of the principal building to which it is accessory.

18.41.060-050 Performance standards.

- A. In the SEE District, rRetail, service, public, or office uses shall be provided along the ground floor of buildings in the areas detailed in the Station District Specific Plan Figure 4-6.
- B. All business, services, and processes shall be conducted entirely within a completely enclosed structure, except for off-street parking and loading areas and solid waste/recycling enclosures. Outdoor storage is prohibited. Incidental equipment that is necessary to conduct the operation of the business and that is required to be installed outdoors may be allowed subject to approval by the Economic and Community Development Director or decision maker.
- C. All development shall comply with Chapter 7.04 related to management of solid waste, organic waste, and recyclable materials. Solid waste, organic waste and recycling enclosures shall comply with Section 7.04.055 ~~and shall be enclosed within the building or screened by a solid wall so as to not be visible from public streets.~~
- D. Site shall be maintained in good order at all times and consistent with project conditions of approval (if applicable). This shall include, but is not limited to, maintenance and repair of all on-site structures including building façade materials or paint, fencing/walls, signage, paved areas including sidewalks and driveways, and landscaping, as may be necessary to preserve a high-quality aesthetic for the area.
- E. All uses shall comply with the regulations pertaining to hazardous materials contained in Chapter 18.40, Article IV18.43.
- F. Only one (1) driveway per parcel shall be permitted for each street frontage except that additional driveways may be permitted if determined by the Public Works Department that additional driveways are necessary to facilitate on-site traffic circulation.

G. Additions and modifications to industrial developments shall be designed to integrate with the existing development and shall be consistent with the standards included in Section 18.41.100

G-H. Permitted or conditional uses shall not:

1. Emit obnoxious, toxic or corrosive fumes or gases;
2. Emit odors, heat or glare perceptible beyond property lines;
3. Emit smoke nor discharge into the air dust or other particular matter created by any industrial operations or emanating from any products stored prior or subsequent to processing;
4. Produce ~~no~~ noise perceptible beyond property lines, except as may be allowed by the Union City Community Noise Ordinance (Chapter 9.40 of the Union City Municipal Code);

5. Produce ~~no~~ physical vibration perceptible beyond property lines;
6. Produce ~~no~~ electromagnetic radiation or radioactive emission injurious to human beings, animals or vegetation, except under controlled operations being conducted observing standard methods or operations established by the California Department of Health Services, CAL-OSHA or the Nuclear Regulatory Commission. The most restrictive requirements shall apply. Electromagnetic radiation or radioactive emissions shall not be of an intensity that interferes with the use of any other property;
7. ~~Do not engage~~ Engage in the production or storage of any material designed for use as an explosive, nor in the use of such material in production; and
8. Utilize diesel fuel powered equipment unless for standby emergency use only.

18.41.060 Development standards.

<u>Table 18.41.060 Development standards</u>		
<u>Standard</u>	<u>Corridor Mixed-Use Employment (CMUE)</u>	<u>Station East Employment (SEE)</u>
<u>Site area, minimum</u>	<u>One (1) Acre</u>	<u>One (1) Acre</u>
<u>Floor area ratio, FAR</u>	<u>.40 minimum</u>	<u>.75 minimum</u>
	<u>2.0 maximum</u>	<u>3.0 maximum</u>
<u>Street frontage, minimum*</u>	<u>150 feet</u>	<u>150 feet</u>
<u>Lot depth, minimum*</u>	<u>200 feet</u>	<u>200 feet</u>
<u>Front yard setback, minimum</u>	<u>10 feet</u>	<u>10 feet</u>
<u>Interior side yard setback, minimum</u>	<u>5 feet</u>	<u>4 feet</u>
	<u>50 feet when adjoining a residential district or use</u>	<u>20 feet when adjoining a residential district or use</u>
<u>Street side yard setback, minimum</u>	<u>10 feet</u>	<u>10 feet</u>
<u>Rear yard setback, minimum</u>	<u>10 feet</u>	<u>10 feet</u>
	<u>50 feet when adjoining a residential district or use</u>	<u>20 feet when adjoining a residential district or use</u>
<u>Maximum height</u>	<u>60 feet. Rooftop employee amenities may be permitted, including, but not limited to, break rooms and kitchens, recreational facilities, gardens and seating areas provided they do not exceed twenty (20) feet in height. Buildings along major arterials must be a minimum of two (2) stories.</u>	<u>100 feet. Rooftop amenities may be permitted, including, but not limited to, community rooms and kitchens, recreational facilities, and greenhouses provided they do not exceed twenty (20) feet in height. All buildings must be a minimum of two (2) stories.</u>

* Exceptions may be granted by the decision maker through the Site development review process if it results in a more usable lot configuration or to accommodate lots created for public or common use.

18.41.070 Supplemental standards

A. Permitted obstructions in required yards:

1. Roof overhangs as provided in Section 18.24.050.
2. Pedestrian paths.
3. Street access driveways and associated curbing.
4. Parking and loading facilities in side and rear yards not adjoining a street.
5. Signage in conformance with Chapter 18.30.
6. Railroad spur tracks, drill tracks, switches, bumpers, except that such uses shall not be permitted in required yards that adjoin any district other than another Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE).
7. Walls and fences subject to the provision under Section 18.41.070(C).
8. Landscaping and landscape features as provided for in Section 18.41.070(F).
9. Public art.

B. Signs, marquees, awnings.

1. Signage shall be consistent with Chapter 18.30 and any approved sign plan or planned sign program. Signage shall be designed as an integral element of a building's architecture and shall be compatible, including color and scale, with the building. A sign plan or planned sign program, consistent with Section 18.30.100, shall be required for any development.
2. In the SEE District, Blade signs may project over the sidewalk to indicate and demarcate commercial uses and increase pedestrian interest, subject to approval of an encroachment permit by the Public Works Department.

C. Walls and fences

1. In areas outside of the required yards, the maximum height shall be eight (8) feet above the surface of the ground.
2. In the required rear and side yard, the maximum height shall be eight (8) feet above the surface of the ground.
3. In the required front yard,
 - a. the maximum height shall be three (3) feet above the surface of the ground.
4. In the required street side yard,
 - a. the maximum height shall be three (3) feet above the surface of the ground.

5. Where a site adjoins a district other than an Industrial or Mixed-Use Employment District (i.e., MG, ML, MS, CMUE, SEE), a solid wall, at least six (6) feet in height but not greater than eight (8) feet, shall be provided along the property line adjoining the nonindustrial district. Climbing vines, or similar landscaping, shall be provided along the exterior of the wall. When the wall is located within a required front yard, then said wall shall not exceed three (3) feet in height.
 6. The design of fences and walls shall aesthetically complement the development, be constructed of high-quality materials, be compatible with neighboring yards, fences and structures, and be subject to review and approval by the City prior to installation. Acceptable materials along street frontages are deemed to be masonry, concrete, and tubular steel. New walls shall include a landscape strip in front to accommodate climbing vines or other suitable plant material to reduce the susceptibility for graffiti. Wire mesh fencing is permitted along non-street facing property lines. The use of barbed wire, razor wire and cyclone (i.e., chain-link) fencing is prohibited.
- D. Employee amenity areas. All new development and additions that expand existing floor area by 25 percent or more, resulting in at least 10,000 square feet of floor area, shall provide an employee area of at least 300 square feet in size. The employee use area shall be identified and improved as passive or active recreational space, or indoor or outdoor amenities for the use and enjoyment of employees.
- E. Sidewalks and street frontage improvements. Sidewalks, curbs, and gutters along a site's frontage(s) shall be maintained to the satisfaction of the City Engineer. All new buildings, additions to buildings which increase existing square footage by fifty percent (50%) or more, or projects that include substantial site modifications, shall provide sidewalks, curbs, and gutters if none already exist. Improvements shall be installed consistent with City standards and specifications.
- F. Landscaping.
1. New landscaping and modifications to existing landscaping shall comply with the provisions listed in Chapter 18.112 and the Landscape Standards Policy Statement. Approved landscaping shall be maintained for the life of the project including replacement of dead, dying or deficient landscaping.
 2. Projects that include development of a vacant site or substantial modification of a developed site, shall provide landscaped areas that measure a minimum fifteen percent (15%) of the project site area. Projects that cannot provide the minimum amount of required landscaping shall pay a landscape in-lieu fee in the amount set forth in the City's Master Fee Schedule subject to approval through the site development review process.
 3. Parking lot coverage. To provide adequate visual screening of any surface parking areas from public rights-of-way, there shall be a landscaped strip ten (10) feet in width which shall be contiguous and parallel to such rights-of-way and shall be planted with trees, shrubs, and ground cover sufficient to obtain the required screening.
- G. Equipment screening. Mechanical/utility equipment shall be sited and screened in accordance with the following:

1. In instances where mechanical equipment cannot be located within the building or undergrounded due to building code or utility provider requirements, it shall be adequately screened from off-site view and located at the rear of the site in an enclosure with walls matching the material and color of the building. The enclosure shall include gates or heavy gauge corrugated steel and shall be surrounded by trees, shrubs or climbing vines;
2. In instances where mechanical equipment is located on the building roof, roof top screening shall be provided, which is integrated into the building architecture; and
3. Alternate design, screening, or siting may be considered to meet utility provider requirements.

H. Bicycle and pedestrian facilities. Projects that include development of a vacant site or substantial modification of a developed site shall accommodate bicycle and pedestrian facilities / access including:

1. Provisions for safe, well-lit and visually attractive pedestrian access from public streets to the parking areas and building entries;
2. Pedestrian pathways between buildings and parcels;
3. Publicly accessible pedestrian amenities which may include plazas, pocket parks, seating areas, fountains, public art, and/or eating areas;
4. Orientation of outdoor public spaces towards activated ground-floor building frontages;
5. Inclusion of bicycle paths and bicycle parking facilities consistent with the Bicycle and Pedestrian Master Plan and designed and installed in conformance with the design criteria outlined in Section 18.28.080.

18.41.080 Off-street parking and loading

A. In the SEE District, off-street parking shall be provided consistent with the following standards.

Table 18.41.080(A) SEE District off-street parking requirements		
<u>Use</u>	<u>Minimum off-street parking requirements</u>	<u>Maximum off-street parking allowed</u>
<u>Retail</u>	<u>1.0 space/300 square feet</u>	<u>1.0 space/200 square feet</u>
<u>Office</u>	<u>1.0 space/300 square feet</u>	<u>1.0 space/250 square feet</u>
<u>Research and development laboratory</u>	<u>1.0 space/500 square feet</u>	<u>1.0 space/300 square feet</u>
<u>Manufacturing</u>	<u>1.0 space/500 square feet</u>	<u>1.0 space/300 square feet</u>
<u>Other uses</u>	<u>See Section 18.36.150</u>	<u>See Section 18.36.150</u>

1. Automobile parking areas shall not occupy more than thirty percent (30%) of the primary street frontage.

B. In the CMUE District, off-street parking shall be provided consistent with the following standards.

<u>Table 18.41.080(B) CMUE District off-street parking requirements</u>	
<u>Use</u>	<u>Minimum off-street parking requirements</u>
<u>Office</u>	<u>1.0 space / 300 square feet</u>
<u>Research and development laboratory</u>	<u>1.0 space / 500 square feet</u>
<u>Manufacturing</u>	<u>1.0 Space / 1000 square feet</u>
<u>Other uses</u>	<u>See Section 18.36.150</u>

C. Off-street parking shall be provided consistent with the following standards:

1. All parking areas shall be designed and maintained in accordance with the provisions of Chapter 18.28.
2. Off-street parking requirements for other uses shall be provided on the same basis as required for the most similar use or as determined by the decision maker.
3. Joint use of parking spaces may be allowed subject to the limitations and conditions included in Section 18.36.160.
4. Flex industrial buildings built without an end user selected and/or on speculation shall provide a minimum of one (1) parking space for each three hundred (300) square feet of the gross floor area for twenty-five percent (25%) of the building in addition to providing parking for the remaining seventy-five percent (75%) of the gross floor area consistent with the standards listed above.
5. In addition to the minimums above, one (1) parking space for each vehicle used in the conduct of the enterprise shall be provided.
6. Truck trailer parking spaces shall have a minimum dimension of twelve (12) feet by fifty-five (55) feet when parked perpendicular and twelve (12) feet by sixty-five (65) feet when parked parallel.
 - a. The number of truck trailer parking spaces required by Section 18.40.070 may be decreased by the decision maker for a specific use if it is found that such use will not create as great a need for truck trailer parking and that the use is reasonably likely to continue for at least ten (10) years.
 - b. The number of truck trailer parking spaces required by Section 18.40.070 may be increased by the decision maker if it is found that a use will create an additional need for truck trailer parking.
7. Parking structures.

- a. Parking structure facades shall be designed as compatible visual extensions of the primary buildings.
 - b. Auto entries shall be located in a manner that minimizes pedestrian/auto conflicts.
 - c. Decorative screening or other decorative element constructed of durable, high-quality materials shall be provided on parking structure facade.
- D. Off street loading: For each building constructed or use established, off-street loading shall be provided according to the following:
1. Loading docks and berths shall be provided adequate to serve the use. Such facilities shall be located to the side and rear of buildings and shall be adequately screened and landscaped so as to not be visible from the public rights-of-way and are subject to review and approval through the site development review process. Truck loading areas and activities shall not conflict with on-site circulation and parking. All truck loading doors and docks shall be screened from view by an architecturally acceptable decorative wall or other acceptable alternative which does not encroach into required landscaped areas.
 2. Loading berths. Loading berths shall be a minimum of ten (10) feet wide by twenty-five (25) feet long.
 3. In the SEE District, adequate loading zones shall be provided along the street frontage(s).

18.41.090 Bicycle parking

- A. In the SEE District, bicycle parking shall be provided consistent with the following standards.

<u>Table 18.41.090(B) SEE District bicycle parking requirements</u>		
<u>Use</u>	<u>Short-term bicycle parking</u>	<u>Long-term bicycle parking</u>
<u>Retail</u>	<u>1.0 space/3,000 square feet</u>	<u>1.0 space/10,000 square feet</u>
<u>Office, research and development laboratory, and other nonresidential uses</u>	<u>1.0 space/8,000 square feet, minimum of 2 spaces</u>	<u>1.0 space/4,000 square feet</u>

- B. In the CMUE District, Bicycle parking shall be provided consistent with the following standards.

<u>Table 18.41.090(B) CMUE District Bicycle Parking Requirements</u>		
<u>Use</u>	<u>Short-Term Bicycle</u>	<u>Long-Term Bicycle</u>
<u>Retail</u>	<u>1.0 space / 3,000 square feet</u>	<u>1.0 space / 10,000 square feet</u>
<u>Office, research and development laboratory, and manufacturing</u>	<u>1.0 space / 20,000 square feet</u>	<u>1.0 space / 7,000 square feet</u>

- C. Bicycle parking shall be provided consistent with the following standards;

1. Required facilities shall be designed and installed in conformance with the design criteria outlined in Section 18.28.080.
2. Bicycle parking may be substituted for automobile parking subject to the provisions outlined in Section 18.28.100 and approval by the decision maker.
3. The number of required bicycle parking facilities may be increased by the decision maker for a specific use if it is found that such a use shall create a greater demand for these facilities.

18.41.100 Design criteria

A. Architectural standards. Buildings shall be designed with a contemporary or “modern” vocabulary, using varied geometric volumes and a variety of high-quality materials (e.g. metal and glass). The following shall apply to any new buildings, additions to buildings which increase existing square footage by fifty percent (50%) or more, or modifications to existing buildings which modify the exterior of the building:

1. In the SEE District, building elevations shall include variations in wall plane, wall height, and roofs located at different levels in order to minimize the overall appearance of the elevation. Building wall shall not continue for more than twenty-five (25) feet without a change in building wall plane direction of at least two (2) feet.
2. In the SEE District, all elevations shall provide articulation and detailing include elements such as recesses, columns, score lines, reveals, trellises, windows, lighting, or other features to create shadow patterns and depth on building elevations.
3. In the CMUE District, to minimize overall massing building elevation shall incorporate the following:
 - a. Variations in wall plane, wall height, trim or reveals, entry and window openings, and/or varying colors and materials;
 - b. Detailing including elements such as recesses, columns, living walls, score lines, reveals, trellises, lighting, or other features to create shadow patterns and depth on building elevations; and
 - c. Other elements as required by the Director.
4. Blank walls should not occupy over thirty percent (30%) of the principal frontage, and a section of blank wall should not exceed twenty (20) linear feet without being interrupted by a variation in wall plane, wall height, trim or reveals, entry and window openings.
5. Design entries so that they are clearly defined and distinguishable from the street. Incorporate architectural features such as awnings, canopies, trellises, and/or other treatments such as vertical architectural features or unique building colors or materials to clearly identify primary building entries.
6. A minimum of fifty percent (50%) of the building wall area located within twenty (20) feet of the midpoint of a primary building entrance shall be comprised of transparent windows

or openings. Glass is considered transparent where it has a transparency higher than eighty percent (80%) and external reflectance of less than fifteen percent (15%). Façades facing streets or pedestrian focused areas such as promenades and plazas shall be lined with windows.

B. Exterior materials. Exterior building materials shall be chosen based on character, durability, ease of maintenance and context, and may include:

1. Steel—Porcelain enamel panels, steel windows, steel exterior doors, steel rails and fences, painted, stainless or pre-weathered steel are acceptable;
2. Aluminum—Windows, panels (luco-bond and aluminum plate), storefront, curtain wall, doors; aluminum should be natural finish anodized, powder-coated or kynar (no bronze anodized);
3. Other metal;
4. Glass—Clear, low-e, nonreflective, solar-bronze or solar gray glass, shadow boxes and spandrel glass is permitted;
5. Brick, natural clay colors;
6. Stone;
7. Pre-cast concrete, glass-fiber reinforced concrete;
8. High-quality, cast-in-place concrete;
9. Ceramic tile;
10. Cement plaster;
11. Wood.

C. Ground floor commercial uses. The design of ground floor commercial uses shall comply with the following:

1. Minimum depth of commercial space is thirty-five (35) feet and minimum height is eighteen (18) feet floor to floor.
2. A minimum of twenty-five percent (25%) of the ground floor commercial area shall be designed to accommodate a food service use.
3. Between two and one-half (2½) feet and seven (7) feet above grade, ground floor transparency (i.e., amount of glazing) shall be fifty percent (50%) for all other commercial uses.
4. Ground floor façades shall be designed to give identity to each retail and service establishment, through recesses, enhanced materials, signage and architectural features that are integral components of the building.

5. The maximum distance of blank wall (a façade without doors, windows, landscaping treatments, or other pedestrian interest) on the ground level of any building facing a street, open space, or paseo shall not exceed twenty (20) feet in length.
6. The design of ground floor commercial uses shall promote indoor/outdoor connections by providing some or all of the following:
 - a. Sliding or removable windows/doors;
 - b. Low planters with wide seat walls;
 - c. Recessed entrances and porticos that increase the indoor/outdoor quality or allow for increased outdoor seating or display;
 - d. Awnings and canopies that may encroach into the public right-of-way subject to approval of an encroachment permit by the Public Works Department; and
 - e. Visually transparent storefronts with clear glass windows and doors that are not blocked by storage, racks or shelving placed against glass.

~~18.41.070 Walls, fences, and hedges.~~

~~The location of all fences shall be subject to the minimum front yard and street side yard standards contained herein. Side and rear yards may have fences along the property line.~~

~~18.41.080 Minimum site area.~~

~~A minimum site area of not less than one (1) acre shall be required.~~

~~18.41.090 Floor area ratio.~~

~~The minimum floor area ratio (FAR) shall be 0.75 and the maximum shall be 3.0.~~

~~18.41.100 Frontage, width and depth of site.~~

~~Newly created lots shall have a minimum street frontage width of one hundred fifty feet (150) feet and a minimum lot depth of two hundred (200) feet. Exceptions may be granted by the decision maker through the site development review process if it results in a more usable lot configuration or to accommodate lots created for public or common use.~~

~~18.41.110 Lot Coverage.~~

~~The amount of the site area covered by structures shall not be restricted provided the development meets all applicable standards.~~

~~18.41.120 Required setbacks.~~

~~A. — Front yard setback shall be a minimum of ten (10) feet.~~

~~B. — Interior side yard setback shall be a minimum of five (5) feet. Street side yard setback shall be a minimum of ten (10) feet.~~

~~C. — Rear yard setback shall be a minimum of ten (10) feet.~~

~~18.41.130 Height of structures.~~

~~The maximum height of buildings shall be one hundred (100) feet. Rooftop amenities may be permitted, including, but not limited to, community rooms and kitchens, recreational facilities, and greenhouses provided they do not exceed twenty (20) feet in height. All buildings must be a minimum of two (2) stories.~~

~~18.41.140 Design criteria.~~

~~A. — Architectural Standards. Buildings shall be designed with a contemporary or “modern” vocabulary, using varied geometric volumes and a variety of high-quality materials (e.g. metal and glass). The following shall apply to any new buildings, additions to buildings which increase existing square footage by fifty percent (50%) or more, or modifications to existing buildings which modify the exterior of the building:~~

~~1. — Building elevations shall include variations in wall plane, wall height, and roofs located at different levels in order to minimize the overall appearance of the elevation. Building wall shall not continue for more than twenty five (25) feet without a change in building wall plane direction of at least two (2) feet.~~

~~2. — All elevations shall provide articulation and detailing include elements such as recesses, columns, score lines, reveals, trellises, windows, lighting, or other features to create shadow patterns and depth on building elevations.~~

~~3. — Minimize blank wall planes on all elevations through the use of wall plane variation, trim or reveals, entry and window openings, and/or varying colors and materials. Blank walls should not occupy over thirty percent (30%) of the principal frontage, and a section of blank wall should not exceed twenty (20) linear feet without being interrupted by a window or entry.~~

~~4. — Design entries so that they are clearly defined and distinguishable from the street. Incorporate architectural features such as awnings, canopies, trellises, and/or other treatments such as vertical architectural features or unique building colors or materials to clearly identify primary building entries.~~

~~5. — A minimum of fifty percent (50%) of the building wall area located within twenty (20) feet of the midpoint of a primary building entrance shall be comprised of transparent windows or openings. Glass is considered transparent where it has a transparency higher than eighty percent (80%) and external reflectance of less than fifteen percent (15%). Façades facing streets or pedestrian focused areas such as promenades and plazas shall be lined with windows.~~

~~B. — Exterior Materials. Exterior building materials shall be chosen based on character, durability, ease of maintenance and context, and may include:~~

~~1. — Steel — Porcelain enamel panels, steel windows, steel exterior doors, steel rails and fences, painted, stainless or pre-weathered steel are acceptable;~~

~~2. — Aluminum — Windows, panels (luco-bond and aluminum plate), storefront, curtain wall, doors; aluminum should be natural finish anodized, powder-coated or kynar (no bronze anodized);~~

- ~~3. — Other metal;~~
- ~~4. — Glass — Clear, low-e, nonreflective, solar-bronze or solar gray glass, shadow boxes and spandrel glass is permitted;~~
- ~~5. — Brick, natural clay colors;~~
- ~~6. — Stone;~~
- ~~7. — Pre-cast concrete, glass fiber reinforced concrete;~~
- ~~8. — High-quality, cast-in-place concrete;~~
- ~~9. — Ceramic tile;~~
- ~~10. — Cement plaster;~~
- ~~11. — Wood.~~

~~C. — Equipment Screening. Mechanical/utility equipment shall be sited and screened in accordance with the following:~~

- ~~1. — In instances where mechanical equipment cannot be located within the building due to building code or utility provider requirements, it shall be adequately screened from off-site view and located at the rear of the site in an enclosure with walls matching the material and color of the building. The enclosure shall include gates or heavy gauge corrugated steel and shall be surrounded by trees, shrubs and climbing vines;~~
- ~~2. — In instances where utility equipment cannot be located within the building or underground due to building code or utility provider requirements, it shall be screened by locating at the rear of the site in an enclosure with walls matching the material and color of the building. The enclosure shall include gates or heavy gauge corrugated steel and shall be surrounded by trees, shrubs and climbing vines. Alternate locations may be considered to meet utility provider requirements; and~~
- ~~3. — In instances where mechanical equipment is located on the building roof, roof top screening shall be provided, which is integrated into the building architecture.~~

~~D. — Bicycle and Pedestrian Facilities. Projects that include development of a vacant site or substantial modification of a developed site shall accommodate bicycle and pedestrian facilities/access including:~~

- ~~1. — Provisions for safe, well-lit and visually attractive pedestrian access from public streets to the parking areas and building entries;~~
- ~~2. — Pedestrian pathways between buildings and parcels;~~
- ~~3. — Public pedestrian and bicycle connections to the Station District's existing and proposed bicycle and pedestrian network;~~
- ~~4. — Publicly accessible pedestrian amenities which may include plazas, pocket parks, seating areas, fountains, public art, and/or eating areas;~~

~~5. — Orientation of outdoor public spaces towards activated ground-floor building frontages; and~~

~~6. — Inclusion of bicycle paths and bicycle parking facilities consistent with the Bicycle and Pedestrian Master Plan and designed and installed in conformance with the design criteria outlined in Section 18.28.080.~~

~~E. — Ground Floor Commercial Uses. The design of ground floor commercial uses shall comply with the following:~~

~~1. — Minimum depth of commercial space is thirty-five (35) feet and minimum height is twenty (20) feet floor to floor; and~~

~~2. — A minimum of twenty-five percent (25%) of the ground floor commercial area shall be designed to accommodate a restaurant use; and~~

~~3. — Between two and one-half (2½) feet and seven (7) feet above grade, ground floor transparency (i.e., amount of glazing) shall be forty percent (40%) for grocery stores and fifty percent (50%) for all other commercial uses; and~~

~~4. — Ground floor façades shall be designed to give identity to each retail and service establishment, through recesses, enhanced materials, signage and architectural features that are integral components of the building; and~~

~~5. — The maximum distance of blank wall (a façade without doors, windows, landscaping treatments, or other pedestrian interest) on the ground level of any building facing a street, open space, or paseo shall not exceed twenty (20) feet in length; and~~

~~6. — The design of ground floor commercial uses shall promote indoor/outdoor connections by providing some or all of the following:~~

~~a. — Sliding or removable windows/doors;~~

~~b. — Low planters with wide seat walls;~~

~~c. — Recessed entrances and porticos that increase the indoor/outdoor quality or allow for increased outdoor seating or display;~~

~~d. — Awnings and canopies that may encroach into the public right-of-way subject to approval of an encroachment permit by the Public Works Department; and~~

~~e. — Visually transparent storefronts with clear glass windows and doors that are not blocked by storage, racks or shelving placed against glass.~~

~~18.41.150 Landscaping.~~

~~A. — New landscaping and modifications to existing landscaping shall comply with the provisions listed in Chapter 18.112 and the Landscape Standards Policy Statement. Approved landscaping shall be maintained for the life of the project including replacement of dead, dying or deficient landscaping.~~

~~B. — Projects that include development of a vacant site or substantial modification of a developed site, shall provide landscaped areas that measure a minimum fifteen percent (15%) of the project site area. Projects that cannot provide the minimum amount of required landscaping may pay a landscape in-lieu fee in the amount set forth in the City's Master Fee Schedule subject to approval through the site development review process.~~

~~C. — Parking Lot Coverage. To provide adequate visual screening of any surface parking areas from public rights-of-way, there shall be a landscaped strip ten (10) feet in width which shall be contiguous and parallel to such rights-of-way and shall be planted with trees, shrubs, and ground cover sufficient to obtain the required screening.~~

~~18.41.160 Signs, marquees, awnings.~~

~~Signage shall be consistent with Chapter 18.30 and any approved sign plan or planned sign program. Signage shall be designed as an integral element of a building's architecture and shall be compatible, including color and scale, with the building. A sign plan or planned sign program, consistent with Section 18.30.100, shall be required for any development. Blade signs may project over the sidewalk to indicate and demarcate commercial uses and increase pedestrian interest, subject to approval of an encroachment permit by the Public Works Department.~~

~~18.41.170 Off street parking.~~

~~A. — Off street automobile parking shall be provided consistent with the following standards:~~

Vehicular Parking Requirements	Minimum Off-Street Parking Requirements	Maximum Off-Street Parking Allowed
Retail	1.0 space/300 square feet	1.0 space/200 square feet
Office	1.0 space/300 square feet	1.0 space/250 square feet
Research and Development laboratory, manufacturing use	1.0 space/500 square feet	1.0 space/300 square feet
Other Uses	See Section 18.36.050	See Section 18.36.050

~~-~~

~~B. — Automobile parking areas shall not occupy more than thirty percent (30%) of the primary street frontage.~~

~~C. — Joint use of parking spaces may be allowed subject to the limitations and conditions included in Section 18.36.160.~~

~~D. — Parking Structures.~~

~~1. — Parking structure façades shall be designed as compatible visual extensions of the primary buildings.~~

~~2. — Auto entries shall be located in a manner that minimizes pedestrian/auto conflicts.~~

3. ~~Decorative screening or other decorative element constructed of durable, high-quality materials shall be provided on parking structure façade.~~

~~18.41.180 Bicycle parking.~~

A. ~~Bicycle parking facilities shall be provided, at a minimum, in an amount equal to:~~

Bicycle Parking Requirements	Short-Term Bicycle Parking Requirements	Long-Term Bicycle Parking Requirements
Retail	1.0 space/3,000 square feet	1.0 space/10,000 square feet
Office, R&D, and Other Nonresidential uses	1.0 space/8,000 square feet Minimum of 2 spaces	1.0 space/4,000 square feet

B. ~~Required facilities shall be designed and installed in conformance with the design criteria outlined in Section 18.28.080.~~

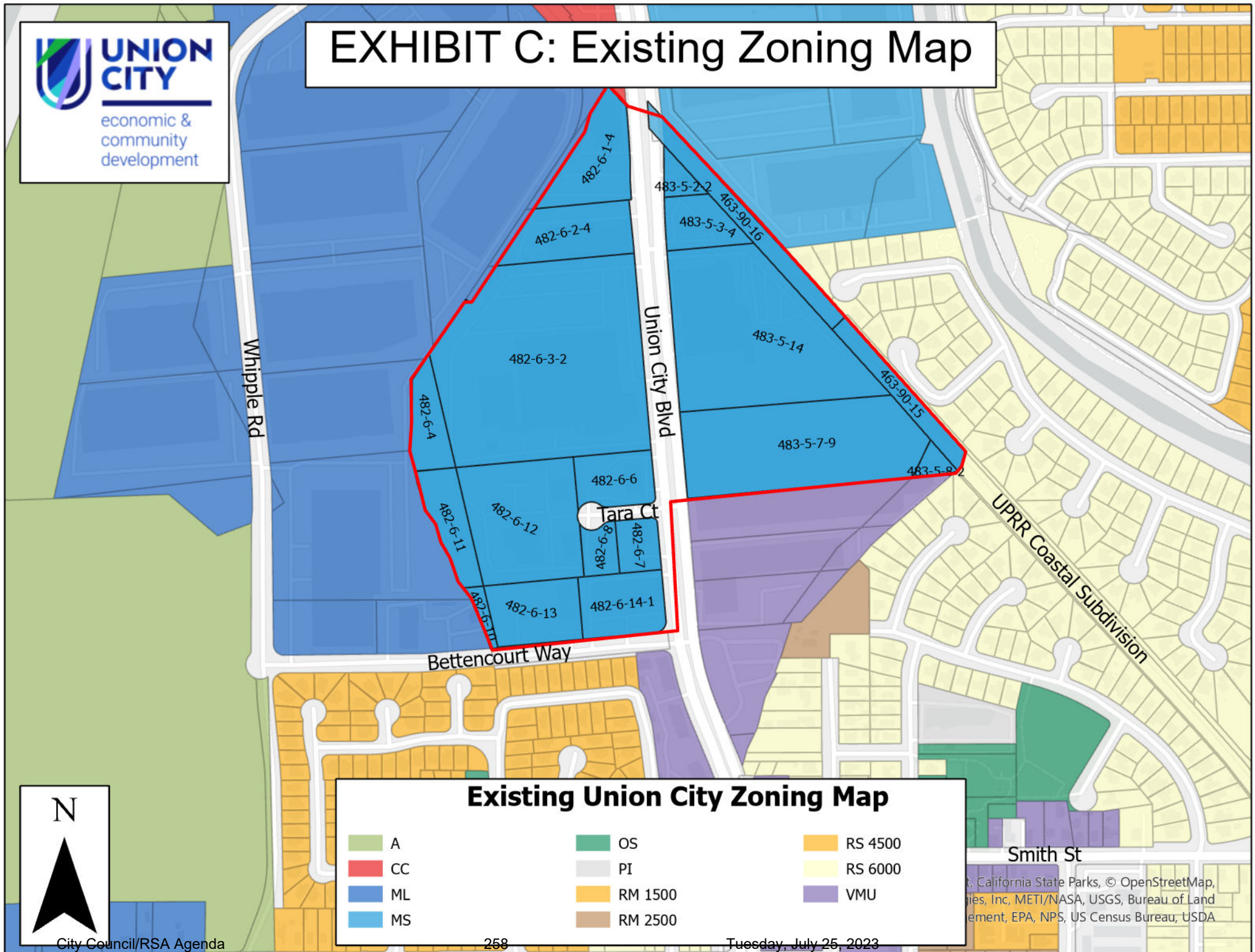
C. ~~Bicycle parking may be substituted for automobile parking subject to the provisions outlined in Section 18.28.100 and approval by the decision makers.~~

~~18.41.190 Loading.~~

A. ~~Adequate loading docks and/or berths shall be provided on site to serve the use. Such facilities shall be located on the rear or side of the building, be screened from the public right-of-way, and are subject to review and approval through the site development review process.~~

B. ~~Adequate loading zones shall be provided along the street frontage(s).~~

EXHIBIT C: Existing Zoning Map



Existing Union City Zoning Map

A	OS	RS 4500
CC	PI	RS 6000
ML	RM 1500	VMU
MS	RM 2500	



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JASON CASTLEBERRY, HUMAN RESOURCES DIRECTOR

SUBJECT: ADOPT A RESOLUTION APPROVING THE SIDE LETTER AGREEMENT BETWEEN THE CITY OF UNION CITY AND THE PROFESSIONAL EMPLOYEES' GROUP (PEG), APPROVING AMENDMENTS TO THE CITY'S CLASSIFICATION AND COMPENSATION PLAN IN CONFORMANCE WITH CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5, EFFECTIVE AUGUST 7, 2023, AND AMENDING THE FY 2023-2024 BUDGET

Staff recommends that the City Council adopt a resolution approving the Side Letter Agreement between the City of Union City (the "City") and the Professional Employees' Group ("PEG"), approving amendments to the City's Classification and Compensation Plan, effective August 7, 2023, and appropriating \$119,000.00 to the appropriate salary accounts.

STRATEGIC PLAN ALIGNMENT

This action supports Strategy 8 of Goal B, Governance and Organization Effectiveness, by ensuring salaries are competitive in order to attract qualified candidates and to retain talented staff.

BACKGROUND

The City and PEG (the "Parties") are parties to a Memorandum of Understanding covering the period of January 1, 2022, through December 31, 2024 (the "MOU"). The Parties entered into a side letter agreement entitled "City of Union City and Union City Professional Employees Group Side Letter of Agreement Salary Survey" (the "Prior Side Letter") which provided that the City would engage a consultant to conduct a compensation survey and provided for related actions. The City contracted with Ralph Anderson and Associates to conduct a survey which began in October 2022. Subsequent to obtaining the comprehensive data, City staff and PEG have been negotiating in good faith pursuant to terms of the Prior Side Letter. Both parties had a chance to meet and confer regarding the results of the salary survey and the proposed market equity adjustments and reached a tentative agreement as reflected in the attached Side Letter Agreement.

DISCUSSION

As noted above, the City’s consultant conducted a salary survey. The results found that some market equity adjustments were in order. The proposed market equity adjustments affect 19 of the 31 PEG classifications within the City’s Classification and Compensation Plan providing adjustments that range from .3% to 10% as shown in the attached Side Letter Agreement.

The Existing MOU expires on December 31, 2024. The PEG membership ratified the Side Letter Agreement on July 2023. The market equity adjustments will become effective on August 7, 2023, the first full pay period after approval by the City Council.

FISCAL IMPACT

The estimated annual cost associated with the market equity adjustments provided for in the Side Letter Agreement is approximately \$119,000.00, and funding for these adjustments was not included in the adopted FY 2023-2024 budget.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the Side Letter Agreement between the City of Union City and the Professional Employees’ Group (PEG), approving amendments to the City’s Classification and Compensation Plan, effective August 7, 2023, and appropriating \$119,000.00 to the appropriate salary accounts. The proposed resolution authorizes the City Manager to execute the Side Letter Agreement on behalf of the City.

Prepared by:

Jason Castleberry, Human Resources Director

Submitted by:

Jason Castleberry, Human Resources Director

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Resolution - Professional Employees Group (PEG)	Resolution
<input type="checkbox"/> PEG Side Letter Agreement	Exhibit
<input type="checkbox"/> Exhibit A to the Side Letter Agreement	Exhibit
<input type="checkbox"/> Exhibit to Resolution - Class and Comp Plan	Exhibit

RESOLUTION NO. XXXX-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY APPROVING THE SIDE LETTER AGREEMENT BETWEEN THE CITY OF UNION CITY AND THE PROFESSIONAL EMPLOYEES' GROUP (PEG), APPROVING AMENDMENTS TO THE CITY'S CLASSIFICATION AND COMPENSATION PLAN IN CONFORMANCE WITH CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5, EFFECTIVE AUGUST 7, 2023, AND AMENDING THE FY 2023-2024 BUDGET

WHEREAS, the current Memorandum of Understanding between the City of Union City (the "City") and the Professional Employees' Group ("PEG"), effective January 1, 2022, through December 31, 2024, is currently in effect (the "MOU"); and

WHEREAS, pursuant to a side letter agreement entitled "City of Union City and Union City Professional Employees Group Side Letter of Agreement Salary Survey", the City's consultant completed a salary survey and the City Manager, or her designee, has met and conferred regarding the proposed market equity adjustments; and

WHEREAS, the parties wish to enter into this Side Letter Agreement clarifying and memorializing the Parties' agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby approves the Side Letter Agreement to the MOU, attached hereto and incorporated herein by reference, and authorizes the City Manager to execute the Side Letter Agreement and to take such further actions as may be necessary to implement the Side Letter Agreement to the MOU, including any necessary non-substantive modifications.

BE IT FURTHER RESOLVED that the City Council of the City of Union City hereby approves amendments to the City's Classification and Compensation Plan, effective August 7, 2023, to include the market equity adjustments reflected in Exhibit A to the Side Letter Agreement.

BE IT FURTHER RESOLVED that the City Council of the City of Union City hereby approves the appropriation of \$119,000.00 to the appropriate salary accounts.

The Professional Employees' Group

WHEREAS, the City will provide market equity adjustments as a result of a salary survey conducted; and

WHEREAS, the Parties wish to enter into this Side Letter Agreement clarifying and memorializing the Parties' agreement.

FOR THE CITY:

Joan Malloy
City Manager

Date

Brandon H. DeLucas Date

Jason Castleberry
Human Resources Director

Date

Trish Heuer Date

Valerie Avendano Date

	<p style="text-align: center;">City of Union City and Professional Employees Group (PEG) MOU Negotiations 2023</p> <p style="text-align: center;">LBFO to PEG July 19, 2023</p>
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This proposal represents the full authority provided by the City Council and is intended to represent the City of Union City's last, best, and final offer to the Professional Employees Group (PEG).

Modify Section 2.0 COMPENSATION to include Salary Equity Adjustments identified as part of the Salary Survey conducted and which are indicated below:

Section 2.01 COMPENSATION

- Salary Equity Adjustments shall be implemented in the following manner, effective the first full pay period after City Council approval:

Job Code	Class Title	% Increase
30060	Accountant	5.30%
30250	Assistant Planner	0.40%
30230	Associate Planner	0.40%
30053	Building Code Compliance Coordinator	0.00%
30090	Case Manager	10.00%
30600	Economic Development Coordinator	0.00%
30275	Emergency Services Coordinator	0.00%
30150	Engineer I (Civil)	7.90%
30130	Engineer II (Civil)	7.90%
30120	Engineer III (Civil)	7.90%
30030	Environmental Analyst I	7.70%
30031	Environmental Analyst II	7.70%
30040	Environmental Programs Inspector	0.00%
30095	Homeless Program Coordinator	0.00%
30080	Intervention Counselor	0.30%
30185	Lead Construction Inspector	0.00%
30066	Lead Payroll Technician	0.00%
30065	Payroll Technician	0.00%
30100	Recreation Supervisor	6.40%
30020	Senior Accountant	10.00%
30210	Senior Planner	3.00%
30400	Senior Recreation Supervisor	6.40%
30260	Senior Systems Analyst	0.00%

30055	Sr. Building/Code Compliance Inspector	0.00%
30310	Sustainability Analyst I	7.70%
30320	Sustainability Analyst II	7.70%
30265	Systems Analyst	0.00%
30503	Transit Planner - Assistant	0.40%
30501	Transit Planner - Associate	0.40%
30502	Transit Planner - Senior	3.00%
30270	Web and Database Administrator	0.00%

FOR THE CITY:

Joan Malloy Date

Lisa Achen Date

FOR PEG:

Brandon H. DeLucas Date

Trish Heuer Date

Valerie Avendano Date

City of Union City
Classification and Compensation Plan
FY 2023-2024
Effective: August 7, 2023

Amendment #1: June 20, 2023 - Reso. No. 6146-23
Amendment #2: July 11, 2023 - Reso. No. 6158-23
Amendment #3: July 25, 2023 - Reso. No. XXXX-23

City of Union City - Classification and Compensation Plan

<u>Bargaining Unit</u>	<u>Job Code</u>	<u>Classification Title</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>FULL-TIME (monthly rates shown)</u>							
City Council	10010	Mayor	2,437				
City Council	10020	Council Member	1,625				
City Manager	20010	City Manager	26,492				
<u>UNREPRESENTED</u>			<u>Min.</u>	← Range →			<u>Max.</u>
Dept. Heads	20015	Assistant City Manager/Chief Financial Officer	17,514				21,049
Dept. Heads	20020	Deputy City Manager	16,874				20,240
Dept. Heads	20470	Community & Recreation Services Director	16,455				19,729
Dept. Heads	20515	Economic & Community Development Director	16,455				19,729
Dept. Heads	20275	Finance Director	16,455				19,729
Dept. Heads	20280	Human Resources Director	16,455				19,729
Dept. Heads	20290	Information Technology Director	16,455				19,729
Dept. Heads	40010	Police Chief	21,496	22,356	23,250	24,180	25,147
Dept. Heads	20710	Public Works Director	16,765				20,108
Unrep Mgmt	21050	Assistant to the City Manager	14,210				17,064
Unrep Mgmt	21185	Chief Human Resources Officer	14,922				17,918
Unrep Mgmt	21315	Chief Technology Officer	14,922				17,918
Unrep Mgmt	20030	City Clerk	11,797	12,336	12,905	13,501	14,127
Unrep Mgmt	20145	Human Resources Analyst I	7,987	8,337	8,706	9,093	9,500
Unrep Mgmt	20155	Human Resources Analyst II	9,766	10,208	10,671	11,154	11,664
Unrep Mgmt	20180	Human Resources Manager	12,471	13,046	13,645	14,278	14,940
Unrep Mgmt	20930	Supervising Construction Inspector	10,128	10,587	11,070	11,577	12,109
Unrep Non-Mgmt	21010	Administrative Specialist - Confidential	6,823	7,166	7,524	7,901	8,297
Unrep Non-Mgmt	30800	Human Resources Technician	7,195	7,556	7,925	8,330	8,742
<u>MANAGEMENT EMPLOYEES' GROUP (MEG)</u>							
Management	20360	Budget Manager/Purchasing Agent	11,878	12,425	12,996	13,598	14,228
Management	20590	Chief Building Official/Senior Plans Examiner	13,666	14,294	14,958	15,650	16,381
Management	20810	City Engineer	14,189	14,852	15,546	16,273	17,038
Management	20505	Clinical Supervisor	8,450	8,824	9,216	9,628	10,061
Management	20650	Communications & Marketing Manager	11,375	11,937	12,499	13,053	13,616
Management	20508	Community Services Manager	10,128	10,588	11,070	11,577	12,110
Management	20800	Cyber Security Manager	12,315	12,870	13,451	14,049	14,690
Management	20630	Economic Development Manager	11,375	11,937	12,499	13,053	13,616
Management	20600	Environmental Program Manager	12,285	12,852	13,446	14,070	14,725
Management	20911	Fleet Supervisor	10,658	11,145	11,652	12,188	12,748
Management	20540	Housing & Community Development Manager	12,183	12,745	13,333	13,951	14,600
Management	20500	Intervention Counselor I	7,202	7,516	7,841	8,186	8,546
Management	20310	Information Technology Manager	14,210	14,870	15,565	16,296	17,064
Management	20450	Community & Recreation Services Manager	11,980	12,530	13,110	13,717	14,355
Management	20080	Management Analyst I	7,987	8,337	8,706	9,093	9,500
Management	20090	Management Analyst II	9,766	10,208	10,671	11,154	11,664
Management	20100	Management Analyst III	11,878	12,425	12,996	13,598	14,228
Management	20560	Planning Manager	13,015	13,614	14,245	14,905	15,600
Management	20860	Principal Civil Engineer	12,726	13,314	13,932	14,582	15,260
Management	20730	Public Works Superintendent	12,388	12,957	13,559	14,187	14,850
Management	20920	Public Works Grounds Supervisor	10,658	11,145	11,652	12,188	12,748
Management	20910	Public Works Streets Supervisor	10,658	11,145	11,652	12,188	12,748
Management	20700	Recycling & Solid Waste Program Manager	11,066	11,573	12,106	12,664	13,250
Management	20620	Redevelopment Manager	12,285	12,852	13,446	14,070	14,725
Management	20370	Revenue Collections Manager	11,878	12,425	12,996	13,598	14,228
Management	20350	Supervising Accountant	11,087	11,593	12,124	12,682	13,267
Management	20912	Transit Manager	11,980	12,530	13,110	13,717	14,355

City of Union City - Classification and Compensation Plan

<u>Bargaining Unit</u>	<u>Job Code</u>	<u>Classification Title</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
<u>POLICE MANAGEMENT ASSOCIATION (PMA)</u>									
Police Mgmt.	40020	Police Captain	17,690	18,524	19,398	20,316	21,281		
Police Mgmt.	40040	Police Lieutenant	14,997	15,731	16,503	17,320	18,178		
Police Mgmt.	40015	Deputy Police Chief	18,556	19,426	20,341	21,297	22,307		
Police Mgmt.	40045	Police Commander	15,742	16,508	17,315	18,168	19,064		
<u>POLICE OFFICERS' ASSOCIATION (POA)</u>									
UCPOA	40220	Community Relations Officer	7,050	7,403	7,772	8,162	8,571		
UCPOA	40095	Community Resources Coordinator	6,117	6,424	6,745	7,081	7,435		
UCPOA	40090	Community Service Aide	6,035	6,304	6,587	6,885	7,199		
UCPOA	40240	Confidential Operations Assistant	7,022	7,374	7,743	8,129	8,537		
UCPOA	40080	Crime Analyst	8,571	9,000	9,449	9,923	10,418		
UCPOA	40070	Dispatch Clerk	6,673	6,857	7,165	7,492	7,833		
UCPOA	40170	Dispatch Clerk Trainee	5,778						
UCPOA	40241	Executive Assistant to the Police Chief	7,022	7,374	7,743	8,129	8,537		
UCPOA	40063	Personnel and Training Supervisor	7,050	7,403	7,772	8,162	8,571		
UCPOA	40130	Police Corporal	11,867						
UCPOA	40230	Police Department Office Coordinator	6,074	6,380	6,698	7,033	7,386		
UCPOA	40140	Police Office Assistant	5,537	5,814	6,105	6,410	6,731		
UCPOA	40050	Police Officer	8,620	9,018	9,426	9,827	10,321	10,838	11,379
UCPOA	40150	Police Officer Recruit I	6,907						
UCPOA	40160	Police Officer Recruit II	8,187						
UCPOA	40060	Police Records Supervisor	7,050	7,403	7,772	8,162	8,571		
UCPOA	40030	Police Sergeant	11,650	12,173	12,714	13,349	14,017		
UCPOA	40120	Prisoner Transportation Officer	6,035	6,304	6,587	6,885	7,199		
UCPOA	40100	Property & Evidence Specialist	6,035	6,304	6,587	6,885	7,199		
UCPOA	40065	Property & Evidence Supervisor	7,050	7,403	7,772	8,162	8,571		
UCPOA	40110	Public Services Officer I	6,117	6,424	6,745	7,081	7,435		
UCPOA	40180	Public Services Officer II	6,440	6,763	7,101	7,454	7,828		
<u>POA REPRESENTED PART-TIME (hourly rates shown)</u>									
UCPOA PT	40070	Dispatcher Clerk (PT)	38.50	39.56	41.34	43.22	45.19		
UCPOA PT	40120	Prisoner Transportation Officer (PT)	34.82	36.37	38.00	39.72	41.53		
UCPOA PT	40181	Public Services Officer I (PT)	35.29	37.06	38.91	40.85	42.89		
UCPOA PT	40182	Public Services Officer II (PT)	37.15	39.02	40.97	43.00	45.16		
<u>PD UNREPRESENTED PART-TIME (hourly rates shown)</u>			<u>Min.</u>	← <u>Range</u> →	<u>Max.</u>				
Unrep. Police PT	60120	Police Cadet	16.39	17.20	18.06				
Unrep. Police PT	60150	Police Officer Trainee	44.00						
<u>PROFESSIONAL EMPLOYEES' GROUP (PEG)</u>									
Professionals	30060	Accountant	8,005	8,404	8,816	9,266	9,726		
Professionals	30250	Assistant Planner	7,119	7,474	7,845	8,239	8,650		
Professionals	30230	Associate Planner	8,283	8,695	9,128	9,586	10,063		
Professionals	30053	Building Code Compliance Coordinator	10,703	11,261	11,822	12,380	12,939		
Professionals	30090	Case Manager	6,337	6,653	6,985	7,335	7,702		
Professionals	30600	Economic Development Coordinator	9,603	10,088	10,539	11,024	11,510		
Professionals	30275	Emergency Services Coordinator	8,810	9,250	9,705	10,192	10,702		
Professionals	30150	Engineer I (Civil)	7,853	8,241	8,655	9,090	9,543		
Professionals	30130	Engineer II (Civil)	8,722	9,158	9,604	10,093	10,594		
Professionals	30120	Engineer III (Civil)	9,971	10,469	10,986	11,536	12,113		
Professionals	30030	Environmental Analyst I	7,060	7,414	7,783	8,175	8,584		
Professionals	30031	Environmental Analyst II	7,969	8,389	8,831	9,295	9,785		
Professionals	30040	Environmental Programs Inspector	9,533	10,035	10,562	11,116	11,703		
Professionals	30095	Homeless Program Coordinator/Case Manager	6,179	6,510	6,840	7,172	7,540		
Professionals	30080	Intervention Counselor	6,570	6,899	7,245	7,608	7,988		
Professionals	30185	Lead Construction Inspector	9,605	10,069	10,498	10,997	11,498		
Professionals	30066	Lead Payroll Technician	7,891	8,248	8,677	9,105	9,605		
Professionals	30065	Payroll Technician	7,503	7,877	8,263	8,684	9,114		

City of Union City - Classification and Compensation Plan

<u>Bargaining Unit</u>	<u>Job Code</u>	<u>Classification Title</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>PROFESSIONAL EMPLOYEES' GROUP (PEG) (CONT.)</u>							
Professionals	30100	Recreation Supervisor	7,906	8,302	8,716	9,151	9,608
Professionals	30020	Senior Accountant	9,255	9,727	10,213	10,718	11,247
Professionals	30055	Senior Building/Code Compliance Inspector	9,533	10,035	10,562	11,116	11,703
Professionals	30210	Senior Planner	9,574	10,076	10,609	11,165	11,753
Professionals	30400	Senior Recreation Supervisor	9,284	9,736	10,211	10,710	11,232
Professionals	30260	Senior Systems Analyst	10,703	11,261	11,822	12,380	12,939
Professionals	30310	Sustainability Analyst I	6,958	7,305	7,670	8,054	8,456
Professionals	30320	Sustainability Analyst II	8,214	8,624	9,056	9,509	9,984
Professionals	30265	Systems Analyst	10,264	10,778	11,317	11,882	12,476
Professionals	30501	Transit Planner - Assistant	6,836	7,177	7,533	7,911	8,307
Professionals	30502	Transit Planner - Associate	8,186	8,593	9,021	9,474	9,943
Professionals	30503	Transit Planner - Senior	9,574	10,076	10,609	11,165	11,753
Professionals	30270	Web and Database Administrator	9,793	10,282	10,797	11,337	11,904
<u>SERVICE EMPLOYEES' INTERNATIONAL UNION (SEIU)</u>							
SEIU 1021	50520	Administrative Assistant I	5,664	5,924	6,196	6,486	6,783
SEIU 1021	50525	Administrative Assistant II	6,196	6,486	6,783	7,099	7,428
SEIU 1021	50530	Administrative Assistant III	6,783	7,099	7,428	7,776	8,142
SEIU 1021	50290	Building/Code Compliance Inspector	8,172	8,551	8,943	9,353	9,780
SEIU 1021	50201	Building/Code Compliance Inspector - Trainee	7,173	7,508	7,852	8,212	8,589
SEIU 1021	50255	Building Permit Technician	6,485	6,811	7,139	7,469	7,795
SEIU 1021	50251	Building Permit Technician II	7,051	7,393	7,754	8,132	8,529
SEIU 1021	50566	Communications Coordinator	5,817	6,085	6,364	6,662	6,967
SEIU 1021	50256	Community Development Technician	6,356	6,676	6,997	7,320	7,639
SEIU 1021	50351	Facility Maintenance Worker	6,295	6,578	6,875	7,191	7,515
SEIU 1021	50080	Finance Specialist I	5,181	5,412	5,673	5,940	6,216
SEIU 1021	50090	Finance Specialist II	5,673	5,940	6,216	6,516	6,823
SEIU 1021	50100	Finance Specialist III	6,216	6,516	6,823	7,148	7,491
SEIU 1021	50332	Lead Facilities Maintenance Worker	7,377	7,713	8,068	8,426	8,818
SEIU 1021	50323	Lead Vehicle Heavy Equipment Mechanic	7,747	8,099	8,471	8,848	9,259
SEIU 1021	50361	Leisure Services Maintenance Worker	5,338	5,605	5,886	6,180	6,489
SEIU 1021	50360	Maintenance I - Parks & Grounds	5,757	6,029	6,310	6,605	6,919
SEIU 1021	50330	Maintenance I - Streets	6,045	6,330	6,626	6,936	7,265
SEIU 1021	50342	Maintenance II - Parks & Grounds	6,373	6,673	6,984	7,314	7,659
SEIU 1021	50320	Maintenance II - Streets	6,693	7,008	7,333	7,678	8,042
SEIU 1021	50325	Maintenance Trainee - Parks & Grounds	4,933	5,162	5,404	5,654	5,918
SEIU 1021	50350	Maintenance Trainee - Streets	4,933	5,162	5,404	5,654	5,918
SEIU 1021	50200	Neighborhood Preservation Specialist	7,527	7,876	8,237	8,615	9,008
SEIU 1021	50500	Office Specialist I	4,465	4,670	4,876	5,094	5,325
SEIU 1021	50505	Office Specialist II	4,864	5,082	5,313	5,555	5,805
SEIU 1021	50510	Office Specialist III	5,308	5,551	5,801	6,068	6,346
SEIU 1021	50560	Preschool Site Supervisor II	4,457	4,680	4,915	5,161	5,418
SEIU 1021	50291	Public Works Inspector	7,908	8,352	8,756	9,179	9,622
SEIU 1021	50370	Public Works Maintenance II	6,373	6,673	6,984	7,314	7,659
SEIU 1021	50110	Recreation Administrative Technician	6,966	7,314	7,679	8,064	8,467
SEIU 1021	50160	Recreation Program Coordinator	6,340	6,650	6,977	7,323	7,681
SEIU 1021	50600	Recycling Programs Coordinator	6,542	6,860	7,198	7,556	7,925
SEIU 1021	50380	Special Projects Coordinator	5,930	6,210	6,499	6,804	7,127
SEIU 1021	50538	Street Outreach Worker	4,552	4,780	5,019	5,271	5,534
SEIU 1021	50341	Street Sweeper Operator	6,448	6,739	7,043	7,367	7,699
SEIU 1021	50400	Technical Support Specialist I	6,063	6,368	6,674	6,979	7,246
SEIU 1021	50405	Technical Support Specialist II	6,711	7,055	7,398	7,741	8,047
SEIU 1021	50517	Transit Coordinator	7,461	7,810	8,209	8,554	8,956
SEIU 1021	50321	Vehicle Heavy Equipment Mechanic	6,917	7,230	7,561	7,903	8,269
SEIU 1021	50326	Vehicle Equipment Technician	5,475	5,747	6,035	6,337	6,653
SEIU 1021	50536	Youth Employment Coordinator	6,079	6,383	6,703	7,037	7,389
SEIU 1021	50537	Youth Services Specialist	6,200	6,511	6,837	7,178	7,537

City of Union City - Classification and Compensation Plan

<u>Bargaining Unit</u>	<u>Job Code</u>	<u>Classification Title</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>SEIU REPRESENTED PART-TIME (hourly rates shown)</u>							
SEIU 1021 PT	50373	Facilities Maintenance Attendant (PT)	27.29	28.65	30.09	31.60	33.19
SEIU 1021 PT	50533	CRS Program Manager (PT)	21.57	22.63	23.77	24.94	26.17
SEIU 1021 PT	50500	Office Specialist I (PT)	25.76	26.94	28.13	29.39	30.72
SEIU 1021 PT	50505	Office Specialist II (PT)	28.06	29.32	30.65	32.05	33.49
SEIU 1021 PT	50510	Office Specialist III (PT)	30.62	32.02	33.47	35.01	36.61
SEIU 1021 PT	50561	Preschool Site Supervisor I (PT)	20.85	21.88	22.98	24.12	25.32
SEIU 1021 PT	50532	Program Coordinator (PT)	36.58	38.36	40.25	42.25	44.31
SEIU 1021 PT	50531	Senior Recreation Leader	17.71	18.62	19.54	20.52	21.57
SEIU 1021 PT	50539	Homeless Program Outreach Worker (PT)	26.26	27.58	28.96	30.41	31.92
SEIU 1021 PT	50538	Street Outreach Worker (PT)	26.26	27.58	28.96	30.41	31.92
<u>UNREPRESENTED PART-TIME (hourly rates shown)</u>							
Unrep. Gen. PT	60069	CRS Program Manager (PT)	19.93	20.92	21.97	23.07	24.22
Unrep. Gen. PT	60100	Preschool Aide (PT)	15.50	16.27			
Unrep. Gen. PT	60090	Preschool Teacher (PT)	17.71	18.60	19.53	20.51	21.53
Unrep. Gen. PT	60072	Program Coordinator (PT)	23.25	24.41	25.63	26.91	28.26
Unrep. Gen. PT	60232	Recreation Aide (PT)	15.50	16.27			
Unrep. Gen. PT	60233	Recreation Leader (PT)	16.61	17.44	18.31	19.22	20.19
Unrep. Gen. PT	60300	Seasonal Maintenance Worker (PT)	22.14				
Unrep. Gen. PT	60234	Senior Recreation Leader (PT)	17.71	18.60	19.53	20.51	21.53
Unrep. Gen. PT	60600	Intern (PT)	15.50				56.46
Unrep. Gen. PT	60570	Project Specialist (PT)	15.50				116.00
Unrep. Gen. PT	60400	Retired Annuitant (PT)	15.50				133.00



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JASON CASTLEBERRY, HUMAN RESOURCES DIRECTOR

SUBJECT: ADOPT A RESOLUTION APPROVING THE SIDE LETTER AGREEMENT BETWEEN THE CITY OF UNION CITY AND THE MANAGEMENT EMPLOYEES' GROUP (MEG), APPROVING AMENDMENTS TO THE CITY'S CLASSIFICATION AND COMPENSATION PLAN IN CONFORMANCE WITH CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5, EFFECTIVE AUGUST 7, 2023, AND AMENDING THE FISCAL YEAR 2023-2024 BUDGET

Staff recommends that the City Council adopt a resolution approving the Side Letter Agreement between the City of Union City (the "City") and Management Employees' Group ("MEG"), approving amendments to the City's Classification and Compensation Plan, effective August 7, 2023, and appropriating \$39,000.00 to the appropriate salary accounts.

STRATEGIC PLAN ALIGNMENT

This action supports Strategy 8 of Goal B, Governance and Organization Effectiveness, by ensuring salaries are competitive in order to attract qualified candidates and to retain talented staff.

BACKGROUND

The City and MEG (the "Parties") are parties to a Memorandum of Understanding covering the period of January 1, 2022, through December 31, 2024 (the "MOU"). The Parties entered into a side letter agreement entitled "City of Union City and Union City Management Employees' Group Side Letter of Agreement Salary Survey" (the "Prior Side Letter"), which provided that the City would engage a consultant to conduct a compensation survey and provided for related actions. The City contracted with Ralph Anderson and Associates to conduct a survey which began in October 2022. Subsequent to obtaining the comprehensive data, City staff and MEG have been negotiating in good faith pursuant to the terms of the Prior Side Letter. Both parties had a chance to meet and confer regarding the results of the salary survey and the proposed market equity adjustments and reached a tentative agreement as reflected in the attached Side Letter Agreement.

DISCUSSION

As noted above, the City's consultant conducted a salary survey. The results found that some market equity adjustments were in order. The proposed market equity adjustments affect 4 of the 13 MEG classifications within the City's Classification and Compensation Plan providing adjustments that range from 4.4% – 8.2% as shown in the attached Side Letter Agreement.

The Existing MOU expires on December 31, 2024. The MEG membership ratified the Side Letter Agreement on July 20, 2023. The market equity adjustments will become effective on August 7, 2023, the first full pay period after approval by the City Council.

FISCAL IMPACT

The estimated annual cost associated with the market equity adjustments provided for in the Side Letter Agreement is approximately \$39,000.00 and funding for these adjustments was not included in the adopted FY 2023-2024 budget.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving the Side Letter Agreement between the City of Union City and the Management Employees' Group (MEG), approving amendments to the City's Classification and Compensation Plan, effective August 7, 2023, and appropriating \$39,000.00. The proposed resolution authorizes the City Manager to execute the Side Letter Agreement on behalf of the City.

Prepared by:

Jason Castleberry, Human Resources Director

Submitted by:

Jason Castleberry, Human Resources Director

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Resolution - Management Employees Group (MEG)	Resolution
<input type="checkbox"/> MEG Side Letter Market Equity Adjustments	Exhibit
<input type="checkbox"/> Exhibit A to the Side Letter Agreement	Exhibit
<input type="checkbox"/> Exhibit to the Resolution - Classification and Compensation Plan	Exhibit

RESOLUTION NO. XXXX-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY APPROVING THE SIDE LETTER AGREEMENT BETWEEN THE CITY OF UNION CITY AND THE MANAGEMENT EMPLOYEES' GROUP (MEG), APPROVING AMENDMENTS TO THE CITY'S CLASSIFICATION AND COMPENSATION PLAN IN CONFORMANCE WITH CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5, EFFECTIVE AUGUST 7, 2023, AND AMENDING THE FY 2023-2024 BUDGET

WHEREAS, the current Memorandum of Understanding between the City of Union City (the "City") and Management Employees' Group (MEG) effective January 1, 2022, through December 31, 2024, is currently in effect (the "MOU"); and

WHEREAS, pursuant to a side letter agreement entitled "City of Union City and Union City Management Employees' Group Side Letter of Agreement Salary Survey", the City's consultant completed a salary survey and the City Manager, or her designee, has met and conferred regarding the proposed market equity adjustments; and

WHEREAS, the parties wish to enter into a Side Letter Agreement clarifying and memorializing the Parties' agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby approves the Side Letter Agreement to the MOU, attached hereto and incorporated herein by reference, and authorizes the City Manager to execute the Side Letter Agreement and to take such further actions as may be necessary to implement the Side Letter Agreement to the MOU, including any necessary non-substantive modifications.

BE IT FURTHER RESOLVED, that the City Council of the City of Union City hereby approves amendments to the City's Classification and Compensation Plan, effective August 7, 2023, to include the market equity adjustments reflected in Exhibit A to the Side Letter Agreement.

BE IT FURTHER RESOLVED that the City Council of the City of Union City hereby approves the appropriation of \$39,000.00 to the appropriate salary accounts.

Management Employees' Group

WHEREAS, the Parties entered into a side letter agreement entitled “City of Union City and Union City Management Employees’ Group Side Letter Agreement Salary Survey” (the “prior Side Letter”); and

WHEREAS, the City will provide market equity adjustments as a result of a salary survey conducted; and

WHEREAS, the Parties wish to enter into this Side Letter Agreement clarifying and memorializing the Parties' agreement and satisfying the Parties' obligations under the prior Side Letter Agreement.

FOR THE CITY:

Francisco Gomez Date

Gloria Ortega	Date
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Tuesday, July 25, 2023

Lisa Bachmann	Date
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Paul Roman	Date
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Modify Section 2.C.1 SALARY – EQUITY ADJUSTMENTS to include Salary Equity Adjustments identified as part of the Salary Survey conducted and which are indicated below:

Section 2.C.1 SALARY – EQUITY ADJUSTMENTS

- Salary Equity Adjustments shall be implemented in the following manner, effective August 7, 2023:

Job Code	Class Title	% Increase
20080	Management Analyst I	0.00%
20090	Management Analyst II	0.00%
20100	Management Analyst III	0.00%
20310	IT Manager	0.00%
20350	Supervising Accountant	0.00%
20360	Budget Manager/Purchasing Agent	0.00%
20370	Revenue Collections Manager	0.00%
20450	CRS Manager	0.00%
20500	Intervention Counselor I	0.00%
20505	Clinical Supervisor	8.00%
20508	Community Services Manager	8.00%
20540	HCD Manager	0.00%
20560	Planning Manager	0.00%
20590	Chief Building Official/Sr. Plans Examiner	0.00%
20600	Environmental Program Manager	0.00%
20630	Economic Development Manager	4.40%
20650	Communications & Marketing Manager	0.00%
20700	Recycling & Solid Waste Prog Manager	0.00%
20730	Public Works Superintendent	0.00%
20800	Cyber Security Manager	0.00%
20810	City Engineer	8.20%
20860	Principal Civil Engineer	0.00%
20910	PW Streets Supervisor	0.00%
20911	Fleet Supervisor	0.00%
20912	Transit Manager	0.00%
20920	PW Grounds Supervisor	0.00%

The City commits to conducting a Salary Survey prior to the expiration of the January 1, 2022 through December 31, 2024 MOU and prior to the start of the negotiation process. The results of the completed total compensation and benefits survey will be for the sole purpose of meeting and conferring over potential equity adjustments during negotiations for a successor agreement between the parties.

City of Union City
Classification and Compensation Plan
FY 2023-2024
Effective: August 7, 2023

Amendment #1: June 20, 2023 - Reso. No. 6146-23
Amendment #2: July 11, 2023 - Reso. No. 6158-23
Amendment #3: July 25, 2023 - Reso. No. XXXX-23
Amendment #4: July 25, 2023 - Reso. No. XXXX-23

City of Union City - Classification and Compensation Plan

<u>Bargaining Unit</u>	<u>Job Code</u>	<u>Classification Title</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>FULL-TIME (monthly rates shown)</u>							
City Council	10010	Mayor	2,437				
City Council	10020	Council Member	1,625				
City Manager	20010	City Manager	26,492				
<u>UNREPRESENTED</u>			<u>Min.</u>	← Range →			<u>Max.</u>
Dept. Heads	20015	Assistant City Manager/Chief Financial Officer	17,514				21,049
Dept. Heads	20020	Deputy City Manager	16,874				20,240
Dept. Heads	20470	Community & Recreation Services Director	16,455				19,729
Dept. Heads	20515	Economic & Community Development Director	16,455				19,729
Dept. Heads	20275	Finance Director	16,455				19,729
Dept. Heads	20280	Human Resources Director	16,455				19,729
Dept. Heads	20290	Information Technology Director	16,455				19,729
Dept. Heads	40010	Police Chief	21,496	22,356	23,250	24,180	25,147
Dept. Heads	20710	Public Works Director	16,765				20,108
Unrep Mgmt	21050	Assistant to the City Manager	14,210				17,064
Unrep Mgmt	21185	Chief Human Resources Officer	14,922				17,918
Unrep Mgmt	21315	Chief Technology Officer	14,922				17,918
Unrep Mgmt	20030	City Clerk	11,797	12,336	12,905	13,501	14,127
Unrep Mgmt	20145	Human Resources Analyst I	7,987	8,337	8,706	9,093	9,500
Unrep Mgmt	20155	Human Resources Analyst II	9,766	10,208	10,671	11,154	11,664
Unrep Mgmt	20180	Human Resources Manager	12,471	13,046	13,645	14,278	14,940
Unrep Mgmt	20930	Supervising Construction Inspector	10,128	10,587	11,070	11,577	12,109
Unrep Non-Mgmt	21010	Administrative Specialist - Confidential	6,823	7,166	7,524	7,901	8,297
Unrep Non-Mgmt	30800	Human Resources Technician	7,195	7,556	7,925	8,330	8,742
<u>MANAGEMENT EMPLOYEES' GROUP (MEG)</u>							
Management	20360	Budget Manager/Purchasing Agent	11,878	12,425	12,996	13,598	14,228
Management	20590	Chief Building Official/Senior Plans Examiner	13,666	14,294	14,958	15,650	16,381
Management	20810	City Engineer	15,353	16,069	16,821	17,607	18,435
Management	20505	Clinical Supervisor	9,126	9,530	9,954	10,399	10,866
Management	20650	Communications & Marketing Manager	11,375	11,937	12,499	13,053	13,616
Management	20450	Community & Recreation Services Manager	11,980	12,530	13,110	13,717	14,355
Management	20508	Community Services Manager	10,938	11,435	11,956	12,503	13,078
Management	20800	Cyber Security Manager	12,315	12,870	13,451	14,049	14,690
Management	20630	Economic Development Manager	11,876	12,462	13,049	13,628	14,215
Management	20600	Environmental Program Manager	12,285	12,852	13,446	14,070	14,725
Management	20911	Fleet Supervisor	10,658	11,145	11,652	12,188	12,748
Management	20540	Housing & Community Development Manager	12,183	12,745	13,333	13,951	14,600
Management	20310	Information Technology Manager	14,210	14,870	15,565	16,296	17,064
Management	20500	Intervention Counselor I	7,202	7,516	7,841	8,186	8,546
Management	20080	Management Analyst I	7,987	8,337	8,706	9,093	9,500
Management	20090	Management Analyst II	9,766	10,208	10,671	11,154	11,664
Management	20100	Management Analyst III	11,878	12,425	12,996	13,598	14,228
Management	20560	Planning Manager	13,015	13,614	14,245	14,905	15,600
Management	20860	Principal Civil Engineer	12,726	13,314	13,932	14,582	15,260
Management	20920	Public Works Grounds Supervisor	10,658	11,145	11,652	12,188	12,748
Management	20910	Public Works Streets Supervisor	10,658	11,145	11,652	12,188	12,748
Management	20730	Public Works Superintendent	12,388	12,957	13,559	14,187	14,850
Management	20700	Recycling & Solid Waste Program Manager	11,066	11,573	12,106	12,664	13,250
Management	20620	Redevelopment Manager	12,285	12,852	13,446	14,070	14,725
Management	20370	Revenue Collections Manager	11,878	12,425	12,996	13,598	14,228
Management	20350	Supervising Accountant	11,087	11,593	12,124	12,682	13,267
Management	20912	Transit Manager	11,980	12,530	13,110	13,717	14,355

City of Union City - Classification and Compensation Plan

<u>Bargaining Unit</u>	<u>Job Code</u>	<u>Classification Title</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
<u>POLICE MANAGEMENT ASSOCIATION (PMA)</u>									
Police Mgmt.	40020	Police Captain	17,690	18,524	19,398	20,316	21,281		
Police Mgmt.	40040	Police Lieutenant	14,997	15,731	16,503	17,320	18,178		
Police Mgmt.	40015	Deputy Police Chief	18,556	19,426	20,341	21,297	22,307		
Police Mgmt.	40045	Police Commander	15,742	16,508	17,315	18,168	19,064		
<u>POLICE OFFICERS' ASSOCIATION (POA)</u>									
UCPOA	40220	Community Relations Officer	7,050	7,403	7,772	8,162	8,571		
UCPOA	40095	Community Resources Coordinator	6,117	6,424	6,745	7,081	7,435		
UCPOA	40090	Community Service Aide	6,035	6,304	6,587	6,885	7,199		
UCPOA	40240	Confidential Operations Assistant	7,022	7,374	7,743	8,129	8,537		
UCPOA	40080	Crime Analyst	8,571	9,000	9,449	9,923	10,418		
UCPOA	40070	Dispatch Clerk	6,673	6,857	7,165	7,492	7,833		
UCPOA	40170	Dispatch Clerk Trainee	5,778						
UCPOA	40241	Executive Assistant to the Police Chief	7,022	7,374	7,743	8,129	8,537		
UCPOA	40063	Personnel and Training Supervisor	7,050	7,403	7,772	8,162	8,571		
UCPOA	40130	Police Corporal	11,867						
UCPOA	40230	Police Department Office Coordinator	6,074	6,380	6,698	7,033	7,386		
UCPOA	40140	Police Office Assistant	5,537	5,814	6,105	6,410	6,731		
UCPOA	40050	Police Officer	8,620	9,018	9,426	9,827	10,321	10,838	11,379
UCPOA	40150	Police Officer Recruit I	6,907						
UCPOA	40160	Police Officer Recruit II	8,187						
UCPOA	40060	Police Records Supervisor	7,050	7,403	7,772	8,162	8,571		
UCPOA	40030	Police Sergeant	11,650	12,173	12,714	13,349	14,017		
UCPOA	40120	Prisoner Transportation Officer	6,035	6,304	6,587	6,885	7,199		
UCPOA	40100	Property & Evidence Specialist	6,035	6,304	6,587	6,885	7,199		
UCPOA	40065	Property & Evidence Supervisor	7,050	7,403	7,772	8,162	8,571		
UCPOA	40110	Public Services Officer I	6,117	6,424	6,745	7,081	7,435		
UCPOA	40180	Public Services Officer II	6,440	6,763	7,101	7,454	7,828		
<u>POA REPRESENTED PART-TIME (hourly rates shown)</u>									
UCPOA PT	40070	Dispatcher Clerk (PT)	38.50	39.56	41.34	43.22	45.19		
UCPOA PT	40120	Prisoner Transportation Officer (PT)	34.82	36.37	38.00	39.72	41.53		
UCPOA PT	40181	Public Services Officer I (PT)	35.29	37.06	38.91	40.85	42.89		
UCPOA PT	40182	Public Services Officer II (PT)	37.15	39.02	40.97	43.00	45.16		
<u>PD UNREPRESENTED PART-TIME (hourly rates shown)</u>			<u>Min.</u>	← <u>Range</u> →	<u>Max.</u>				
Unrep. Police PT	60120	Police Cadet	16.39	17.20	18.06				
Unrep. Police PT	60150	Police Officer Trainee	44.00						
<u>PROFESSIONAL EMPLOYEES' GROUP (PEG)</u>									
Professionals	30060	Accountant	8,005	8,404	8,816	9,266	9,726		
Professionals	30250	Assistant Planner	7,119	7,474	7,845	8,239	8,650		
Professionals	30230	Associate Planner	8,283	8,695	9,128	9,586	10,063		
Professionals	30053	Building Code Compliance Coordinator	10,703	11,261	11,822	12,380	12,939		
Professionals	30090	Case Manager	6,337	6,653	6,985	7,335	7,702		
Professionals	30600	Economic Development Coordinator	9,603	10,088	10,539	11,024	11,510		
Professionals	30275	Emergency Services Coordinator	8,810	9,250	9,705	10,192	10,702		
Professionals	30150	Engineer I (Civil)	7,853	8,241	8,655	9,090	9,543		
Professionals	30130	Engineer II (Civil)	8,722	9,158	9,604	10,093	10,594		
Professionals	30120	Engineer III (Civil)	9,971	10,469	10,986	11,536	12,113		
Professionals	30030	Environmental Analyst I	7,060	7,414	7,783	8,175	8,584		
Professionals	30031	Environmental Analyst II	7,969	8,389	8,831	9,295	9,785		
Professionals	30040	Environmental Programs Inspector	9,533	10,035	10,562	11,116	11,703		
Professionals	30095	Homeless Program Coordinator/Case Manager	6,179	6,510	6,840	7,172	7,540		
Professionals	30080	Intervention Counselor	6,570	6,899	7,245	7,608	7,988		
Professionals	30185	Lead Construction Inspector	9,605	10,069	10,498	10,997	11,498		
Professionals	30066	Lead Payroll Technician	7,891	8,248	8,677	9,105	9,605		
Professionals	30065	Payroll Technician	7,503	7,877	8,263	8,684	9,114		

City of Union City - Classification and Compensation Plan

<u>Bargaining Unit</u>	<u>Job Code</u>	<u>Classification Title</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>PROFESSIONAL EMPLOYEES' GROUP (PEG) (CONT.)</u>							
Professionals	30100	Recreation Supervisor	7,906	8,302	8,716	9,151	9,608
Professionals	30020	Senior Accountant	9,255	9,727	10,213	10,718	11,247
Professionals	30055	Senior Building/Code Compliance Inspector	9,533	10,035	10,562	11,116	11,703
Professionals	30210	Senior Planner	9,574	10,076	10,609	11,165	11,753
Professionals	30400	Senior Recreation Supervisor	9,284	9,736	10,211	10,710	11,232
Professionals	30260	Senior Systems Analyst	10,703	11,261	11,822	12,380	12,939
Professionals	30310	Sustainability Analyst I	6,958	7,305	7,670	8,054	8,456
Professionals	30320	Sustainability Analyst II	8,214	8,624	9,056	9,509	9,984
Professionals	30265	Systems Analyst	10,264	10,778	11,317	11,882	12,476
Professionals	30501	Transit Planner - Assistant	6,836	7,177	7,533	7,911	8,307
Professionals	30502	Transit Planner - Associate	8,186	8,593	9,021	9,474	9,943
Professionals	30503	Transit Planner - Senior	9,574	10,076	10,609	11,165	11,753
Professionals	30270	Web and Database Administrator	9,793	10,282	10,797	11,337	11,904
<u>SERVICE EMPLOYEES' INTERNATIONAL UNION (SEIU)</u>							
SEIU 1021	50520	Administrative Assistant I	5,664	5,924	6,196	6,486	6,783
SEIU 1021	50525	Administrative Assistant II	6,196	6,486	6,783	7,099	7,428
SEIU 1021	50530	Administrative Assistant III	6,783	7,099	7,428	7,776	8,142
SEIU 1021	50290	Building/Code Compliance Inspector	8,172	8,551	8,943	9,353	9,780
SEIU 1021	50201	Building/Code Compliance Inspector - Trainee	7,173	7,508	7,852	8,212	8,589
SEIU 1021	50255	Building Permit Technician	6,485	6,811	7,139	7,469	7,795
SEIU 1021	50251	Building Permit Technician II	7,051	7,393	7,754	8,132	8,529
SEIU 1021	50566	Communications Coordinator	5,817	6,085	6,364	6,662	6,967
SEIU 1021	50256	Community Development Technician	6,356	6,676	6,997	7,320	7,639
SEIU 1021	50351	Facility Maintenance Worker	6,295	6,578	6,875	7,191	7,515
SEIU 1021	50080	Finance Specialist I	5,181	5,412	5,673	5,940	6,216
SEIU 1021	50090	Finance Specialist II	5,673	5,940	6,216	6,516	6,823
SEIU 1021	50100	Finance Specialist III	6,216	6,516	6,823	7,148	7,491
SEIU 1021	50332	Lead Facilities Maintenance Worker	7,377	7,713	8,068	8,426	8,818
SEIU 1021	50323	Lead Vehicle Heavy Equipment Mechanic	7,747	8,099	8,471	8,848	9,259
SEIU 1021	50361	Leisure Services Maintenance Worker	5,338	5,605	5,886	6,180	6,489
SEIU 1021	50360	Maintenance I - Parks & Grounds	5,757	6,029	6,310	6,605	6,919
SEIU 1021	50330	Maintenance I - Streets	6,045	6,330	6,626	6,936	7,265
SEIU 1021	50342	Maintenance II - Parks & Grounds	6,373	6,673	6,984	7,314	7,659
SEIU 1021	50320	Maintenance II - Streets	6,693	7,008	7,333	7,678	8,042
SEIU 1021	50325	Maintenance Trainee - Parks & Grounds	4,933	5,162	5,404	5,654	5,918
SEIU 1021	50350	Maintenance Trainee - Streets	4,933	5,162	5,404	5,654	5,918
SEIU 1021	50200	Neighborhood Preservation Specialist	7,527	7,876	8,237	8,615	9,008
SEIU 1021	50500	Office Specialist I	4,465	4,670	4,876	5,094	5,325
SEIU 1021	50505	Office Specialist II	4,864	5,082	5,313	5,555	5,805
SEIU 1021	50510	Office Specialist III	5,308	5,551	5,801	6,068	6,346
SEIU 1021	50560	Preschool Site Supervisor II	4,457	4,680	4,915	5,161	5,418
SEIU 1021	50291	Public Works Inspector	7,908	8,352	8,756	9,179	9,622
SEIU 1021	50370	Public Works Maintenance II	6,373	6,673	6,984	7,314	7,659
SEIU 1021	50110	Recreation Administrative Technician	6,966	7,314	7,679	8,064	8,467
SEIU 1021	50160	Recreation Program Coordinator	6,340	6,650	6,977	7,323	7,681
SEIU 1021	50600	Recycling Programs Coordinator	6,542	6,860	7,198	7,556	7,925
SEIU 1021	50380	Special Projects Coordinator	5,930	6,210	6,499	6,804	7,127
SEIU 1021	50538	Street Outreach Worker	4,552	4,780	5,019	5,271	5,534
SEIU 1021	50341	Street Sweeper Operator	6,448	6,739	7,043	7,367	7,699
SEIU 1021	50400	Technical Support Specialist I	6,063	6,368	6,674	6,979	7,246
SEIU 1021	50405	Technical Support Specialist II	6,711	7,055	7,398	7,741	8,047
SEIU 1021	50517	Transit Coordinator	7,461	7,810	8,209	8,554	8,956
SEIU 1021	50321	Vehicle Heavy Equipment Mechanic	6,917	7,230	7,561	7,903	8,269
SEIU 1021	50326	Vehicle Equipment Technician	5,475	5,747	6,035	6,337	6,653
SEIU 1021	50536	Youth Employment Coordinator	6,079	6,383	6,703	7,037	7,389
SEIU 1021	50537	Youth Services Specialist	6,200	6,511	6,837	7,178	7,537

City of Union City - Classification and Compensation Plan

<u>Bargaining Unit</u>	<u>Job Code</u>	<u>Classification Title</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
<u>SEIU REPRESENTED PART-TIME (hourly rates shown)</u>							
SEIU 1021 PT	50373	Facilities Maintenance Attendant (PT)	27.29	28.65	30.09	31.60	33.19
SEIU 1021 PT	50533	CRS Program Manager (PT)	21.57	22.63	23.77	24.94	26.17
SEIU 1021 PT	50500	Office Specialist I (PT)	25.76	26.94	28.13	29.39	30.72
SEIU 1021 PT	50505	Office Specialist II (PT)	28.06	29.32	30.65	32.05	33.49
SEIU 1021 PT	50510	Office Specialist III (PT)	30.62	32.02	33.47	35.01	36.61
SEIU 1021 PT	50561	Preschool Site Supervisor I (PT)	20.85	21.88	22.98	24.12	25.32
SEIU 1021 PT	50532	Program Coordinator (PT)	36.58	38.36	40.25	42.25	44.31
SEIU 1021 PT	50531	Senior Recreation Leader	17.71	18.62	19.54	20.52	21.57
SEIU 1021 PT	50539	Homeless Program Outreach Worker (PT)	26.26	27.58	28.96	30.41	31.92
SEIU 1021 PT	50538	Street Outreach Worker (PT)	26.26	27.58	28.96	30.41	31.92
<u>UNREPRESENTED PART-TIME (hourly rates shown)</u>							
Unrep. Gen. PT	60069	CRS Program Manager (PT)	19.93	20.92	21.97	23.07	24.22
Unrep. Gen. PT	60100	Preschool Aide (PT)	15.50	16.27			
Unrep. Gen. PT	60090	Preschool Teacher (PT)	17.71	18.60	19.53	20.51	21.53
Unrep. Gen. PT	60072	Program Coordinator (PT)	23.25	24.41	25.63	26.91	28.26
Unrep. Gen. PT	60232	Recreation Aide (PT)	15.50	16.27			
Unrep. Gen. PT	60233	Recreation Leader (PT)	16.61	17.44	18.31	19.22	20.19
Unrep. Gen. PT	60300	Seasonal Maintenance Worker (PT)	22.14				
Unrep. Gen. PT	60234	Senior Recreation Leader (PT)	17.71	18.60	19.53	20.51	21.53
Unrep. Gen. PT	60600	Intern (PT)	15.50				56.46
Unrep. Gen. PT	60570	Project Specialist (PT)	15.50				116.00
Unrep. Gen. PT	60400	Retired Annuitant (PT)	15.50				133.00



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ANNA M. BROWN, CITY CLERK

SUBJECT: ADOPT A RESOLUTION APPOINTING INDIVIDUALS TO SERVE ON THE ARTS & CULTURE COMMISSION, BICYCLE PEDESTRIAN ADVISORY COMMITTEE, ECONOMIC DEVELOPMENT ADVISORY TEAM, HUMAN RELATIONS COMMISSION, AND PARK & RECREATION COMMISSION

Staff has prepared Resolutions appointing individuals to serve on Arts & Culture Commission, Bicycle Pedestrian Advisory Committee, Economic Development Advisory Team, Human Relations Commission, and Park & Recreation Commission.

STRATEGIC PLAN ALIGNMENT

Goal E. Communication and Outreach: Build strong connections with community partners, residents and employees.

BACKGROUND

A recruitment process was initiated for the scheduled term expirations, existing vacancies and unscheduled vacancies on the noted boards, commissions and committees.

Interested parties were asked to submit applications to the City Clerk. Councilmembers conducted interviews on July 18 and 19, 2023.

DISCUSSION

Board and commission members are appointed by the Mayor with approval of the City Council. At the request of Mayor Dutra-Vernaci, a resolution has been prepared reappointing/appointing the following individuals:

Arts & Culture Commission

- Appoint Anish Mohanty to a four (4) year term expiring July 25, 2027
- Appoint Manjit Gill as Alternate to a four (4) year term expiring July 25, 2027

Bicycle Pedestrian Advisory Committee

- Reappoint Jo Ann Lew to a four (4) year term expiring June 13, 2027
- Reappoint Steve Nichols to a four (4) year term expiring June 13, 2027
- Reappoint Glenn Kirby to a four (4) year term expiring June 13, 2027
- Reappoint Timothy Swenson to a four (4) year term expiring June 13, 2027
- Appoint Vanessa McDonnell to four (4) year term expiring July 25, 2027

Economic Development Advisory Team

- Appoint Lee Guio (business representative) to a four (4) year term expiring July 25, 2027
- Appoint Arun Coumar (resident) to a four (4) year term expiring July 25, 2027
- Appoint Robert Singer (resident) to a four (4) year term expiring July 25, 2027

Human Relations Commission

- Reappoint Jonathan Pettey to a four (4) year term expiring June 25, 2027
- Appoint Ali Jaweed to a four (4) year term expiring July 25, 2027
- Reappoint Bridget Uzoew as Alternate to a four (4) year term expiring June 25, 2027

Parks & Recreation Commission

- Appoint Madhu Singh to a four (4) year term expiring July 25, 2027
- Appoint Santiago Gonzalez as Alternate to a four (4) year term expiring July 25, 2027
- Appoint Francisco Elizando as Alternate to a four (4) year term expiring July 25, 2027

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDATION

Staff recommends City Council consider adopting the resolution appointing individuals to serve on the Arts & Culture Commission, Bicycle Pedestrian Advisory Committee, Economic Development Advisory Team, Human Relations Commission, and Park & Recreation Commission.

Prepared by:

Anna M. Brown, City Clerk

Submitted by:

Anna M. Brown, City Clerk

ATTACHMENTS:

Description	Type
□ Resolution	Resolution

RESOLUTION NO. XXXX-23

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
APPOINTING/REAPPOINTING INDIVIDUALS TO SERVE ON THE ARTS & CULTURE
COMMISSION, BICYCLE PEDESTRIAN ADVISORY COMMITTEE, ECONOMIC
DEVELOPMENT ADVISORY TEAM, HUMAN RELATIONS COMMISSION, AND
PARKS & RECREATION COMMISSION**

WHEREAS, there are a number of vacancies on the City's Boards, Commissions, Committees due to membership reconstitution, term expirations and unscheduled vacancies; and

WHEREAS, a recruitment process was initiated and the City Council conducted interviews on July 18 and 19, 2023;

WHEREAS, Board and commission members are appointed by the Mayor with approval of the City Council.

NOW THEREFORE BE IT RESOLVED, that the following individuals are hereby appointed/reappointed to serve on the various boards, commissions, committees:

Arts & Culture Commission

Appoint Anish Mohanty to a four (4) year term expiring July 25, 2027

Appoint Manjit Gill as Alternate to a four (4) year term expiring July 25, 2027

Bicycle Pedestrian Advisory Committee

Reappoint Jo Ann Lew to a four (4) year term expiring June 13, 2027

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Parks & Recreation Commission

Appoint Madhu Singh to a four (4) year term expiring July 25, 2027

Appoint Santiago Gonzalez as Alternate to a four (4) year term expiring July 25, 2027

Appoint Francisco Elizando as Alternate to a four (4) year term expiring July 25, 2027

PASSED, APPROVED AND ADOPTED by the City Council of the City of Union City at a special meeting held on the 25th day of July 2025, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

CAROL DUTRA-VERNACI
Mayor

ATTEST:

APPROVED AS TO FORM:

ANNA M. BROWN
City Clerk

KRISTOPHER J. KOKOTAYLO
City Attorney



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN MALLOY, CITY MANAGER

SUBJECT: STUDY SESSION TO RECEIVE DIRECTION FROM CITY COUNCIL ON POSSIBLE AMENDMENTS TO THE TOBACCO RETAIL LICENSE ORDINANCE AND OTHER ORDINANCES THAT GOVERN THE SALE AND LOCATION OF THE TOBACCO RETAILERS.

Staff recommends that the City Council hold a study session and provide direction on possible amendments to the Tobacco Retail License Ordinance and other ordinances that govern the sale and location of the tobacco retailers. Tobacco uses and licenses are regulated through Chapter 5.42 and Title 18 Zoning, of the Union City Municipal Code.

STRATEGIC PLAN ALIGNMENT

There is no Strategic Plan alignment associated with this agenda item.

BACKGROUND

On January 11, 2022 (**Attachment 1**) a staff report was brought to City Council requesting policy direction regarding an update to the Tobacco Retail License Ordinance. This report was in response to the Youth Commission's September 14, 2021, presentation, and recommendation to further restrict the sale tobacco retail sales. The Youth Commission worked in collaboration with Breathe California, UCAN-ACT Initiative, which provided the support for the Youth Commission to form a working group called, Tackle Tobacco Workgroup. The group researched and developed the following four recommendations for the Youth Commission to bring forward to the City Council:

1. Ban the sale of all flavored tobacco products, including menthol cigarettes.
2. Ban the sale of electronic smoking devices/vapes and related paraphernalia.
3. Ban the sale of tobacco products in pharmacies.
4. Strengthen the minimum price and/or pack size requirement for tobacco products.

Currently, Union City has a Tobacco Retail License Ordinance that can be found here: Chapter 5.42 Tobacco Retailers. The enabling ordinance was adopted in 2010, Ordinance 741-10 (**Attachment 2**) and amended in 2013, Ordinance 791-13 (**Attachment 3**).

Among other things, the Tobacco Retail License Ordinance establishes a minimum package size for cigars of at least five (except cigars costing at least \$5.00 can be sold individually) and prohibits the non-sale distribution of tobacco products and distribution of tobacco product coupons. Tobacco products include electronic cigarettes and vaping devices. The City's Zoning Ordinance, Chapter 18.36.0404, also provides that tobacco retailers must be at least 1,000 feet from parks, playgrounds, public libraries, recreation centers, religious institutions, and school or youth-oriented establishments.

Union City has 38 active tobacco retail license holders within the city limits. They are comprised of eight convenience stores, one department store chain, 10 liquor stores, one pharmacy, nine service stations, eight grocery stores and one tobacco specialty store. Attached is a list of all of the tobacco licensees within the City and their locations (**Attachment 4**). Some national retailers with pharmacies in Union City already prohibit the sale of tobacco products, including Union City Walmart and Union City Safeway. Both Walmart and Safeway recently stopped tobacco sales, though each still carry a Tobacco Retail License. Other retailers continue to sell tobacco products including Lucky's and Rite Aid.

At the January 11, 2022, City Council meeting, the Council concluded that possible amendments to the ordinance should be considered after the November 8, 2022, election. A proposition that upheld Senate Bill 793, which banned the sale of flavored tobacco, including menthol cigarettes, was anticipated to be on the ballot. The resulting Proposition 31 to ban the sale of flavored tobacco products was supported by California voters. The law went into effect on January 1, 2023 (**Attachment 5**) and accomplished one of the Youth Commission's recommendations.

Support to further regulate tobacco sales within the community continues to grow, including the Union City Youth Commission, Alameda County Public Health Department's Tobacco Control Program, and New Haven Unified School District that passed Resolution No. 030-2122 in 2022, calling on the City Council to strengthen the current tobacco ordinance to keep youth from accessing tobacco products.

DISCUSSION

With the passage of the Proposition 31 that banned the sale of flavored tobacco products statewide, there are four remaining recommendations from the Youth Commission, including:

1. ~~Ban the sale of all flavored tobacco products, including menthol cigarettes~~ COMPLETED.
2. Ban the sale of electronic smoking devices/vapes and related paraphernalia.
3. Ban the sale of tobacco products in pharmacies, no grandfathering.
4. Increase the minimum price for tobacco products.
5. Increase the minimum size requirement for tobacco products.

To assist the City Council in the evaluation of remaining Youth Commission recommendations, (**Attachment 6**), a table is attached that summarizes the status of Alameda County and Alameda County cities' tobacco regulations. This table was provided by the Alameda County Public Health Department Tobacco Control Program.

- **Ban on the sale of electronic smoking devices:** Alameda County and the cities of Dublin, Hayward, Livermore, and Pleasanton.

Note, the ban on electronic smoking devices would not apply to cannabis dispensaries.

- **Ban on the sale of tobacco products at pharmacies:** Alameda County and the cities of Albany, Berkeley, Hayward, and Oakland.
- **Increase the minimum pack size of more than five products:** Alameda County and the cities of Albany, Berkeley, Oakland, and Pleasanton have minimum pack sizes of 20.

Cities that have a minimum pack size of five products or more include Alameda, Fremont, San Leandro, and Union City.

Cities with no minimum pack size include Emeryville, Dublin, Newark, and Piedmont.

The recommendation from the Youth Commission is to increase the minimum pack size of little cigars to 20 per pack.

- **Minimum price for products:** Alameda County and cities of Alameda, Albany, Berkeley, Fremont, Hayward, Oakland, Pleasanton, San Leandro, and Union City have a minimum price threshold for some tobacco products.

Several cities have variable minimum prices, depending on the product. The minimum costs range is between \$5.00 and \$8.00. Union City's minimum cost is limited to \$5.00 for single cigars.

Cities without minimum prices for tobacco products are Dublin, Emeryville, Livermore, Newark, and Piedmont.

The recommendation from the Youth Commission is to increase the price to a minimum of \$8.00 per pack.

Beyond the recommendations made by the Youth Commission, the Alameda County Public Health Department Tobacco Control Program is also suggesting that the City Council consider additional regulations on the sale of tobacco, including:

- Prohibit Tobacco Retail Licenses within 500 feet of another existing tobacco retailers.

This would impact several existing retail locations where there may be existing tobacco retail licenses in one shopping center, including grocery stores, gas stations, and liquor stores. The Four Corners area is an example of a location where there may be several tobacco retailers within a 500-foot proximity of each other. As a business is sold or closed, the Tobacco Retail License would be lost if the business was within 500 feet of another licensed establishments.

- Limit the total number of tobacco retail licenses to 1 per 2,500 residents.

This regulation would require a method to reduce the number of retail licenses in Union City from the existing 38 to 28. To accomplish this, when a business is sold or closed, the Tobacco Retail License would not transfer. For example, if a services station or liquor store was sold, the license would be discontinued in order to reduce the total number of licenses.

- Increase the citation fines for violations.

The violations and revocation of a license is outlined in Chapter 5.42.110 of the Tobacco Retail Ordinance. The current violation structure is as follows:

1. First violation is a written warning and 30 days to correct the violation.
2. Second violation is a 30-day license suspension.
3. Third violation is a 90-day license suspension.
4. Fourth violation is a license revocation and no new license issued for five years.
5. Violators are subject to a \$250-\$1,000 fine.

Alameda County Public Health Department Tobacco Control Program suggests that citation, fines and penalties for the sale of tobacco products be increased. The recommended violation structure is as follows:

1. First violation is a 30-day suspension, plus \$250 fine.
2. Second violation is a 90-day license, plus a \$500 fine.
3. Third violation is a one-year license suspension plus \$1,000 fine.
4. Fourth violation is a license renovation and no new license issued for five years.
5. All fines would be levied on the owner/licensee and require one compliance check per year with a recheck within three months.

Conclusion

Union City provides several protections through the current Tobacco Retail License Ordinance and Zoning Ordinance:

1. Minimum price of \$5.00 per single cigar (no minimum price on cigarettes)
2. Minimum pack size of 5 for cigars
3. Prohibition of non-sale distribution of coupons
4. Ban the sale of tobacco within 1000 feet of “sensitive use” areas

The Youth Commission is recommending the following additional action:

1. Ban the sale of all electronic smoking devices/vapes and related paraphernalia
2. Ban the sale of all tobacco products in pharmacies, no grandfathering
3. Increase the minimum price for all tobacco products from \$5.00 to \$8.00 per pack
4. Increase the minimum size pack requirement for all tobacco products from five to 20

If the Council is interested in further regulating the sale of tobacco products, Alameda County Public Health Department Tobacco Control Program has suggested additional steps including prohibiting the tobacco sales within 500 feet of existing tobacco retailers, limiting the number of licenses based on population, and increasing the citation fines and penalties.

FISCAL IMPACT

There is no fiscal impact to the General Fund. If the Council directs staff to proceed with an ordinance update, there will be a modest cost associated with preparing the ordinance.

RECOMMENDATION

Staff recommends that the City Council hold a study session and receive input from the public and provide direction to staff regarding any amendments to the Tobacco Retail License Ordinance and other ordinances that govern the sale and location of the tobacco retailers.

Prepared by:

SERENITY MLAY, MANAGEMENT ANALYST I

Submitted by:

JOAN MALLOY, CITY MANAGER

ATTACHMENTS:

Description	Type
❏ Attachment 1 - Staff Report of January 11, 2022	Attachment
❏ Attachment 2 - Union City Ordinance, 741-10	Attachment
❏ Attachment 3 - Union City Ordinance, 741-13	Attachment
❏ Attachment 4 - List of Current Tobacco Licensees in Union City	Attachment
❏ Attachment 5 - SB 793	Attachment
❏ Attachment 6 - Summary of Alameda County TRL Regulations in Alameda County	Attachment
❏ Public Comment	Attachment
❏ Power Point	Attachment



Agenda Item

DATE: 1/11/2022

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN MALLOY, CITY MANAGER

SUBJECT: INFORMATIONAL REPORT AND RECEIVE COUNCIL DIRECTION REGARDING TOBACCO RETAIL LICENSE UPDATE

This is an informational report and no formal action is required by the City Council; however, staff is requesting direction on next steps regarding updates to the Tobacco Retail License Ordinance. Staff recommends proceeding with an update to the Ordinance after the November 2022 elections results are available.

Other alternative options for the Council to consider include:

- 1) Do not proceed with an update to the Tobacco Retail License Ordinance; or
- 2) Proceed now with an update to the Tobacco Retail License Ordinance.

STRATEGIC PLAN ALIGNMENT

There is no strategic plan alignment associated with this agenda item.

BACKGROUND

The City of Union City has an established Tobacco Retail License Ordinance, which has been in place since 2010 (**Attachment A** – Ordinance 741-10) and was updated in 2013 (**Attachment B** – Ordinance 791-13). There are currently 39 active tobacco retail license holders within Union City. The Tobacco Retail License Ordinance also establishes a minimum package size for cigars of at least five (except cigars costing at least \$5 can be sold individually), prohibits and restricts the non-sale distribution of tobacco products and distribution of tobacco product coupons. The City's Zoning Ordinance also provides that tobacco retailers must be at least 1,000 feet from parks, playgrounds, public libraries, recreation centers, religious institutions, and school or youth-oriented establishments.

The City's Youth Commission was presented information by Breathe California's UCAN-ACT Initiative in March 2020 and the Youth Commission formed the Tackle Tobacco Workgroup (TTW) in December 2020. The TTW researched and developed 4 recommendations and presented these recommendations at the September 14, 2021 regular City Council meeting. Members of the TTW/Youth Commission presented a report recommending four action items:

- 1) banning flavored tobacco products
- 2) ending the sale of electronic smoking devices
- 3) ending the sale of tobacco products in pharmacies
- 4) increasing the minimum price/and or pack size requirement for tobacco products

Upon receipt of the report from the Youth Commission, the City Council directed staff to research tobacco retail license regulations throughout Alameda County. City staff have been researching tobacco retail license regulations and trends at the federal, State and local level. City staff have been in contact with Breathe California, the Alameda County Department of Public Health and the American Heart Association. These organizations fully support a ban on all flavored tobacco products (including menthol) be included in an update to the City's tobacco retail license ordinance.

Tobacco use and COVID-19 linkages are currently being researched. The Alameda County Tobacco Control Program has highlighted data that supports succession of tobacco decrease the effects of severe disease progression and risk of mortality (**Attachment C**). Those who smoke are more likely to test positive for COVID-19. With reduced lung capacity and compromised respiratory systems, people who smoke have an increased risk of serious illness including COVID-19.

DISCUSSION

There is clear evidence that tobacco products are addictive and pose serious health concerns for consumers of such products. Given the public health crisis surrounding flavored tobacco products, Governor Gavin Newsom signed SB 793 into law in August 2020. SB 793 prohibits the sale of flavored tobacco products, including menthol cigarettes, statewide effective January 1, 2021. However, a referendum that qualified for the November 2022 general election suspended the implementation of the statewide flavored tobacco law until it is approved or rejected by voters statewide.

On April 28, 2021, Governor Newsom issued a statement urging the Federal government to ban menthol cigarettes. One day later, on April 29, 2021 the US Drug and Food Administration (FDA) issued a statement that it is working toward issuing proposed product standards within the next year to ban the sale of menthol tobacco products. If implemented, the FDA's enforcement of any ban on menthol cigarettes and all flavored cigars will address manufacturers, distributors, wholesalers, importers, and retailers (by taking these products out of the market).

Local jurisdictions have the power to enact stronger laws than the state and the suspension of SB-793 does not prohibit local jurisdictions from moving forward with implementing laws ending the sale of flavored tobacco.

Alameda County Public Health provided research on all 14 incorporated jurisdictions and unincorporated areas within Alameda County. The majority (80%) of all jurisdictions within Alameda County have established tobacco retail license ordinances including Union City (except for Newark, Piedmont and Emeryville). In addition, to having established tobacco retail license ordinances, over 73% of local jurisdictions in Alameda County have a complete sales ban on flavored tobacco, with the vast majority categorizing "menthol" as a flavor (**Attachment D**).

A. Ban on Flavored Tobacco Sales (including menthol)

"Flavored Tobacco Product" means any tobacco product that imparts a characterizing flavor.

B. Prohibited Electronic Smoking Device Sales (cannabis electronic smoking devices are permitted)

"Electronic Smoking Devices" include electronic cigarette, electronic cigar, electronic pipe and electronic hookah.

C. Density (limits an overconcentration of tobacco retailers) and Youth-Sensitive Areas (prohibits tobacco sales within 1,000 feet of youth populated areas; prohibits tobacco sales within 500 feet of existing tobacco retailers; limits total number of tobacco retail licenses to 1 per 2,500 residents)

D. Little Cigar Pack Size (20 per pack)

"Little Cigar" means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. Little cigar includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo. Larger pack size numbers are associated with higher costs to tobacco consumers, which in turn reduces the purchase of little cigars.

E. Minimum Price (\$8 cigarette's, little cigars, premium cigars)

"Cigar" means any roll of tobacco other than a cigarette wrapped in paper entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

F. Discounts and Coupons – Prohibited

"Coupon" means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

G. Tobacco-Free Pharmacies (a tobacco-free pharmacy sales policy decreases the availability of tobacco products by reducing the number of tobacco retailers)

Union City does not have a ban on flavored tobacco sales; however, the City does provide protections through its current Tobacco Retail License Ordinance and Zoning Ordinance. Key highlights include:

- A. Density and Youth-Sensitive Areas (bans sale of tobacco within 1,000 feet of parks, playgrounds, libraries, recreation centers, religious institutions and youth-oriented establishments)
- B. Little Cigar Pack Size (minimum pack size of 5)
- C. Minimum Price (a single premium cigar shall cost at least \$5)
- D. Limits Discounts and Coupons (which increases the cost of low-cost tobacco products)

All local jurisdictions within Alameda County are not in total alignment regarding tobacco retail licenses. However, advocating on policy measures that ban flavored tobacco sales is of the upmost priority to Alameda County Public Health and the American Heart Association. Due to tobacco companies' marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ communities are significantly more likely to use menthol cigarettes and other flavored tobacco products. These groups disproportionately bear the burden of tobacco-related harm. A comprehensive prohibition on the sale of all flavored tobacco products, including menthol cigarettes, provides a significant public health and health equity benefit.

Potential updates to the Tobacco Retail License Ordinance that the Council may wish to consider include:

- A. Ban on Flavored Tobacco Sales (including menthol)
- B. Prohibit Electronic Smoking Device Sales (cannabis electronic smoking devices are permitted)
- C. Density and Youth-Sensitive Areas (in addition to prohibiting tobacco sales within 1,000 feet of youth populated areas; prohibit tobacco sales within 500 feet of existing tobacco retailers; limit the total number of tobacco retail licenses to 1 per 2,500 residents)
- D. Increase the Little Cigar Pack Size (from 5 to 20)
- E. Increase Minimum Price (from \$5 to \$8 cigarettes, little cigars, premium cigars) The City could establish additional minimum price for tobacco products. For example, unincorporated Alameda County establishes a minimum price of \$8 per package of twenty (20) cigarettes, \$8 per package of little cigars, and \$8 per cigar.
- F. Implement Tobacco-Free Pharmacies - Tobacco sales in pharmacies send mixed messages to customers about tobacco's health risks. An amended ordinance can make pharmacies ineligible to receive or renew a tobacco retailer license.

FISCAL IMPACT

This is an informational report, with no associated fiscal impact to the General Fund. If the Council directs staff to proceed with an ordinance update, there will be legal costs in preparing the ordinance.

RECOMMENDATION

This is an informational report, and no formal action is required by the City Council; however, staff is requesting direction on next steps regarding updates to the Tobacco Retail License Ordinance.

Staff recommends proceeding with an update to the Ordinance after the November 2022 elections results are available. Some of the concerns raised by the Youth Commission and the TTW may be addressed through statewide legislation.

Other alternative options for the Council to consider include:

- 1) Do not proceed with an update to the Tobacco Retail License Ordinance; or
- 2) Proceed now with an update to the Tobacco Retail License Ordinance.

Prepared by:

Sharon Petrehn, Management Analyst II

Submitted by:

Sharon Petrehn, Management Analyst II

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Attachment A - UC Ord. 741-10	Ordinance
<input type="checkbox"/> Attachment B - UC Ord. 791-13	Ordinance
<input type="checkbox"/> Attachment C - COVID-19 and Smoking Handout	Attachment
<input type="checkbox"/> Attachment D - Flavored Tobacco Map	Attachment
<input type="checkbox"/> Attachment E - Alameda County Ordinance 2020-4	Ordinance
<input type="checkbox"/> Desk Item - Breathe CA Letter	Attachment
<input type="checkbox"/> Power Point	Attachment

ORDINANCE NO. 741-10

AN ORDINANCE OF THE CITY OF UNION CITY AMENDING THE UNION CITY MUNICIPAL CODE TO ADD CHAPTER 5.42 “TOBACCO RETAILERS” REQUIRING THE LICENSURE OF TOBACCO RETAILERS

The City Council of the City of Union City does ordain as follows:

SECTION 1. The City Council of the City of Union City hereby finds and declares as follows:

WHEREAS, based in part on the information contained in this section, the City Council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 438,000 people die in the United States from tobacco-related diseases every year, making it the nation’s leading cause of preventable death;¹ and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year, killing 50% more people in 2015 than HIV/AIDS, and will be responsible for 10% of all deaths worldwide;² and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950); and
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308); and
- State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952); and

¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Morbidity and Mortality Weekly Report: Annual Smoking - Attributable Mortality, Years of Potential Life Lost, and Productivity Losses - United States 1997-2001*. 2005, 54(25): p. 625-628. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5425a1.htm.

² World Health Organization. *World Health Statistics 2007, Part 1: Ten Statistical Highlights in Global Public Health*. 2007, p. 12. Available at: www.who.int/whosis/whostat2007_10highlights.pdf.

- State law prohibits the sale of tobacco products and paraphernalia through self-services displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code § 22960, 22962); and
- State law prohibits the sale of “bidis” (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments (Cal. Pen. Code § 308.1); and
- State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code § 308.3); and

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

WHEREAS, California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of the City to regulate business activity in order to discourage violations of law; and

WHEREAS, Title 18 of the Union City Zoning Code prohibits the sale or distribution of tobacco products within 1,000 feet of “sensitive uses” such as parks, playground, public library, recreation center, religious institution, school or youth-oriented establishment; and

WHEREAS, despite the state’s efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

- Each day, nearly 4,000 children under 18 years of age smoke their first cigarette, and almost 1,500 children under 18 years of age begin smoking daily;³ and
- More than 75% of all current smokers in 2001 began smoking before the age of 18;⁴ and
- Among middle school students who were current cigarette users in 2004, 70.6% were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4% were not refused purchase because of their age;⁵ and
- In 2002, youth smoked approximately 540 million packs of cigarettes, generating nearly \$1.2 billion in tobacco industry revenue⁶; and

³ Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. *Results from the 2004 National Survey on Drug Use and Health: National Findings*. 2005. Available at: <http://oas.samhsa.gov/NSDUH/2k4nsduh/2k4Results/2k4Results.pdf>.

⁴ Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. *2003 National Survey on Drug Use and Health: Results*. 2003. Available at: www.oas.samhsa.gov/nhsda/2k3nsduh/2k3Results.htm#ch5.

⁵ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Morbidity and Mortality Weekly Report: Tobacco Use, Access & Exposure to Tobacco Among Middle & High School Students, U.S., 2004*. 2005, 54: p. 297-301. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5412a1.htm.

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes, as evidenced by the following:

- A review of thirteen California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in twelve of the thirteen communities, with an average decrease of 68% in the youth sales rate;⁷ and
- A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85% in 1994 to 43% in 1998;⁸ and
- A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8% to 4.9% in the number of youth able to purchase tobacco;⁹ and

WHEREAS, the implementation of tobacco retailer licensing requirements is supported by most Californians, as evidenced by the following:

- Statewide, over 80% of California adults think tobacco retailers should be licensed;¹⁰ and
- Similarly, in rural areas in California, 78% of adults think tobacco retailers should be licensed, and 91% agree that a store owner who repeatedly sells cigarettes to minors should no longer have the right to sell cigarettes;¹¹ and
- 65% of California's key opinion leaders surveyed support implementation of tobacco-licensing requirements;¹² and
- Over 90% of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco;¹³ and

⁶ Heaton C, Farrelly MC, Weitzenkamp D, et al. "Youth Smoking Prevention and Tobacco Industry Revenue." *Tobacco Control*, 15: 103-106, 2006. Available at: <http://tobaccocontrol.bmj.com/cgi/content/full/15/2/103>.

⁷ American Lung Association of California, Center for Tobacco Policy and Organizing. *Tobacco Retail Licensing is Effective*. 2007. Available at: www.center4tobaccopolicy.org/_files/_files/5377_Tobacco%20Retailer%20Licensing%20is%20Effective%20October%202007.pdf.

⁸ Ma GX, Shive S and Tracy M. "The Effects of Licensing and Inspection Enforcement to Reduce Tobacco Sales to Minors in Greater Philadelphia, 1994-1998." *Addictive Behaviors*, 26(5): 677-87, 2001. Abstract available at: www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=11676378&dopt=Abstract.

⁹ Forster JL et al. "The Effects of Community Policies to Reduce Youth Access to Tobacco." *American Journal of Public Health*, 88(8): 1193-1197, 1998. Available at: www.ajph.org/cgi/reprint/88/8/1193.

¹⁰ California Department of Health Services, Tobacco Control Section. *California Tobacco Control Update*. 2004. Available at: <http://dhs.ca.gov/tobacco/documents/pubs/2004TCSupdate.pdf>.

¹¹ American Lung Association of California, Center for Tobacco Policy and Organizing. *Survey of California Rural and Small Town Voters About Local Tobacco Retail Licensing Ordinances*. 2008. Available at: www.center4tobaccopolicy.org/_files/_files/Rural_Poll_Summary_of_Findings_Final_5-21-08.pdf.

¹² California Department of Health Services, Tobacco Control Section. *Final Report, Independent Evaluation of the California Tobacco Control Prevention & Education Program: Waves 1, 2, and 3 (1996-2000)*. 2003. Available at: www.dhs.ca.gov/tobacco/documents/pubs/WavesComplete.pdf.

¹³ *Id.*

WHEREAS, ninety-six cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from smoking;¹⁴ and

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- Nearly 11% of all tobacco retailers unlawfully sold to minors in 2007;¹⁵ and
- Non-traditional tobacco retailers such as deli, meat, and donut shops sold to minors in 2007 at a much higher rate than the statewide average, as high as 16%;¹⁶ and
- Teens surveyed in 2002 say they bought their cigarettes at: gas stations (58%), liquor stores (45%), and supermarkets and small grocery stores (29% combined);¹⁷ and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

WHEREAS, while state law prohibits possession of certain forms of “drug paraphernalia,” and prohibits all sales of “drug paraphernalia,” many retailers continue to sell items that are commonly known to be “drug paraphernalia,” and claim that such items are intended to be used for tobacco; and

WHEREAS, tobacco companies distribute free samples for the purpose of luring young adult tobacco users, as evidenced by the following:

- 18-24 year olds have been specifically targeted by tobacco industry marketing as the youngest group of legal smokers;¹⁸ and
- after the 1998 Master Settlement Agreement with the states, tobacco companies increased marketing aimed at college students by sponsoring events at college bars and providing free samples to college students;¹⁹ and
- the distribution of free samples at promotional events in bars and fraternities has become an integral part of a marketing strategy designed to initiate young adult tobacco users;²⁰ and

¹⁴ American Nonsmokers' Rights Foundation. *California Municipalities With Ordinances Restricting Youth Access To Tobacco*. 2010. Available at: <http://www.phlpnet.org/tobacco-control/products/ANRF-list>

¹⁵ California Department of Health Services, Tobacco Control Section. *Youth Purchase Survey, 2007: Percent of Retailers Selling Tobacco to Youth by Store Type*. 2007 (graph on file with TALC).

¹⁶ *Id.*

¹⁷ California Department of Health Services, Tobacco Control Section. *Final Report, Tobacco Control Successes in California: A Focus on Young People, Results from the California Tobacco Surveys, 1990-2002*. 2003, p. 11-12. Available at: www.dhs.ca.gov/tobacco/documents/eval/2003CTSReport.pdf.

¹⁸ Campaign for Tobacco-Free Kids. *Tobacco Company Marketing to College Students Since the Multistate Settlement Agreement was Signed*. March 21, 2001. Available at: www.tobaccofreekids.org/research/factsheets/pdf/0135.pdf.

¹⁹ *Id.*

²⁰ Sepe E et al. “Smooth Moves: Bar and Nightclub Tobacco Promotions that Target Young Adults.” *American*

- tobacco promotional events encourage tobacco use among college students by linking the enjoyable aspects of a bar environment with a tobacco brand;²¹ and
- tobacco company documents demonstrate that bar promotions are highly effective at increasing sales due in part to resulting brand switching, smoking uptake, or relapse by former smokers;²² and
- past research has shown that sampling in bar environments has the ability to significantly increase awareness, trial, and purchase of tobacco products by young adults;²³ and
- the vast majority of free samples distributed by tobacco companies are used, whether by the recipient or by a friend or family member of the recipient;²⁴ and
- young adults are significantly more likely to be willing to use tobacco promotional items than adults over 25 years old;²⁵ and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (the “FDA law”) completely bans free distribution of all tobacco products except smokeless tobacco, which can still be distributed in “qualified adult-only facilities”; and

WHEREAS, the FDA law does not prohibit the free distribution of coupons or nominally priced tobacco products; and

WHEREAS, California state law prohibits the sale or distribution of free or nominal-cost cigarettes or smokeless tobacco products (or coupons, coupon offers, or rebate offers for such products) on public grounds or on private grounds that are open to the public;²⁶ and

WHEREAS, this state law does *not* apply to:

- locations where minors are prohibited by law (such as bars); and

Journal of Public Health, 92: 414, 2002.

²¹ Katz SK and Lavack AM. “Tobacco Related Bar Promotions: Insights from Tobacco Industry Documents.” *Tobacco Control*, 11: 92-93, 2002.

²² *Id.* at 99.

²³ Reynolds RJ. *Evaluation of RJR Sampling Experience*. RJR Document, May 3, 1979 (Bates No. 503537286-7287). Available at: <http://legacy.library.ucsf.edu/cgi/getdoc?tid=nlz85d00&fmt=pdf&ref=results>.

²⁴ Reynolds RJ. *Marketing Research Report: Camel Light Sample Penetration Mass Versus Retail Sampling*. RJR Document, Aug. 25, 1978 (Bates No. 505630295-0302). Available at: <http://legacy.library.ucsf.edu/cgi/getdoc?tid=ifdl5d00&fmt=pdf&ref=results>.

²⁵ California Department of Health Services, Tobacco Control Section. *Final Report - The California Tobacco Control Program: A Decade of Progress, Results from the California Tobacco Survey 1990-1999*. 2001, p. 8-9. Available at: http://ssdc.ucsd.edu/ssdc/pdf/1999_Final_Report.pdf.

²⁶ Cal. Health & Safety Code § 118950.

- public grounds leased for a private function where minors are denied access to the private function by a peace officer or licensed security guard; and
- private property open to the general public where minors are denied access to a separate sampling area and the sampling area is enclosed so minors cannot see inside; and
- product samples, coupons, or rebate offers in connection with the sale of another item, including tobacco products, lighters, magazines, or newspapers; and

WHEREAS, this state law specifically allows adoption of a local ordinance that is “more restrictive” than the state law and provides that a stricter local ordinance shall govern in the case of any inconsistency between the local ordinance and state law;²⁷ and

WHEREAS, the FDA law also expressly grants state and local governments the right to enact measures that are more restrictive than those in the federal law; and²⁸

WHEREAS, although state and federal laws prohibits most free sampling, tobacco companies may still distribute free smokeless tobacco products in qualifying adult-only facilities, as well as nominally priced tobacco products and coupons in other locations where minors are prohibited by law; and

WHEREAS, Union City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults.

NOW, THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

SECTION 2. Chapter 5.42 “Tobacco Retailers” is hereby added to the Municipal Code with the text in Exhibit A, attached hereto and made a part hereof by this reference, a copy of which is on file in the office of the City Clerk.

SECTION 3. The proposed Municipal Code Text Amendment has been deemed exempt from CEQA, subject to Sections 15061(b)(3). No further environmental review is required.

SECTION 4. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adop-

²⁷ *Id.*

²⁸ 21 U.S.C. § 387p(a)(1) (2009).

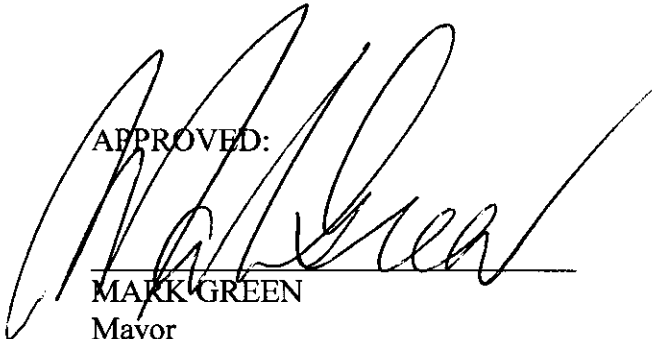
tion.

SECTION 5. 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 Union City 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.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Union City at a regular meeting held on November 23, 2010, by the following vote:

AYES: Councilmembers Dutra-Vernaci, Fernandez, and Navarro, Vice Mayor Valle, Mayor Green
 NOES: None
 ABSENT: None
 ABSTAIN: None

APPROVED:



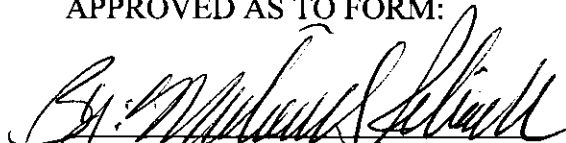
MARK GREEN
Mayor

ATTEST:



RENEE ELLIOTT
City Clerk

APPROVED AS TO FORM:



BENJAMIN T. REYES II
City Attorney

Dated: 12-8-10

EXHIBIT A

5.42.010. 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) “Administrator” means the Administrative Services Director or his or her designee.
- (b) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm’s Length Transaction.
- (c) “Coupon” means anything that can be exchanged for or used to acquire a Tobacco Product, such as a printed piece of paper, voucher, ticket, rebate, rebate offer, check, credit, token, code, password, or anything labeled “coupon” or “coupon offer.”
- (d) “Department” means the Administrative Services Department.
- (e) “Drug Paraphernalia” shall have the definition set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.
- (f) “License” means a Tobacco Retailer’s License as defined below.
- (g) “Licensee” means a Tobacco Retailer with a Tobacco Retailer’s License.
- (h) “Nominal Cost” means the cost of any item that is transferred from one person to another for less than the total of: (1) twenty-five percent (25%) of the full retail value of the item exclusive of taxes and fees; plus (2) all taxes and fees previously paid and all taxes and fees still due on the item at the time of transfer.
- (i) “Nonsale Distribution” means to give, within the jurisdictional limits of the City, a Tobacco Product or Coupon at no cost or at Nominal Cost to a Person who is not a Tobacco Seller.
- (j) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (k) “Proprietor” means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.
- (l) “Public Place” means any place within the City, public or private, that is open to the general public regardless of any fee or age requirement, including, for example, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, and buses.
- (m) “Retailer” means Tobacco Retailer as defined below.
- (n) “Self-Service Display” means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the

assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

(o) "Tobacco" means leaves of the tobacco plant dried and prepared for smoking or ingestion.

(p) "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, cigarette rolling machines, and any other item designed for the Smoking, preparation, storing, or consumption of Tobacco Products.

(q) "Tobacco Product" means Tobacco and any substance containing Tobacco, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; 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.

(r) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(s) "Tobacco Retailer's License" means the license issued pursuant to Section 5.42.050 that authorizes Tobacco Retailing at a certain location and by a certain Tobacco Retailer.

5.42.020. REQUIREMENTS AND PROHIBITIONS.

(a) **TOBACCO RETAILER LICENSE REQUIRED.** It shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retailer's License pursuant to this chapter for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's License is a nuisance as a matter of law.

(b) **LAWFUL BUSINESS OPERATION.** In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a License issued, it shall be a violation of this chapter for a Licensee, or any of the Licensee's agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

(c) **DISPLAY OF LICENSE.** Each Tobacco Retailer License shall be prominently displayed in a publicly visible location at the licensed location.

(d) **POSITIVE IDENTIFICATION REQUIRED.** No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another Person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

(e) **MINIMUM AGE FOR PERSONS SELLING TOBACCO.** No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

(f) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco Retailing by means of a Self-Service Display is prohibited.

(g) **FALSE AND MISLEADING ADVERTISING PROHIBITED.** A Tobacco Retailer or Proprietor without a valid Tobacco Retailer License, including, for example, a person whose License has been revoked:

(1) Shall keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute Tobacco Retailing without a License; and

(2) Shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

(h) **SIGNAGE VIOLATIONS.** It shall be a violation of this chapter for any Licensee to violate any local, state, or federal law regulating exterior, storefront, window, or door signage.

(i) **DRUG PARAPHERNALIA.** It shall be a violation of this chapter for any Licensee or any of the Licensee's agents or employees, to violate any local, state, or federal law regulating controlled substances or Drug Paraphernalia.

(j) **NONSALE DISTRIBUTION OF TOBACCO PRODUCTS PROHIBITED.**

(1) No Tobacco Retailer nor any agent or employee of a Tobacco Retailer shall engage in the Nonsale Distribution of any Tobacco Product or Coupon in any Public Place.

(2) No Person, motivated by an economic or a business purpose, shall knowingly permit the Nonsale Distribution of any Tobacco Product or Coupon: (1) anywhere in any Public Place under the legal or de facto control of the Person; or (2) through any agent or employee of the Person. This provision shall not apply to Coupons incidentally distributed in connection with a printed or electronic publication, such as, for example, magazines, newspapers, and websites, so long as that Person's distribution of a publication containing Coupons is not primarily motivated by an economic or a business purpose to distribute Coupons.

5.42.030. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

(a) No License shall be issued to authorize Tobacco Retailing at other than a fixed location.

(b) No License shall be issued to authorize Tobacco Retailing at a location where Tobacco Products are prohibited from being distributed pursuant to Title 18.

(c) No License shall be issued to a location or a Tobacco Retailer where prohibited pursuant to Section 5.42.110.

5.42.040. APPLICATION PROCEDURE.

(a) Application for a Tobacco Retailer's License shall be submitted in the name of each Proprietor proposing to conduct Tobacco Retailing and shall be signed by each Proprietor or an authorized agent thereof.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's License. No Proprietor may rely on the issuance of a License as a determination by the City that the Proprietor has complied with all laws applicable to Tobacco Retailing. A License issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section 5.42.110(d) of this chapter. Nothing in this chapter shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's License any status or right to act as a Tobacco Retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

- (1) The name, address, and telephone number of each Proprietor of the business seeking a License.
 - (2) The business name, address, and telephone number of the single fixed location for which a License is sought.
 - (3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this chapter. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
 - (4) Proof that the location for which a Tobacco Retailer's License is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
 - (5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years.
 - (6) A statement signed by each Proprietor that no Drug Paraphernalia is or will be sold at the location for which the License is sought.
 - (7) Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- (b) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's License within ten (10) business days of a change.
- (c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law, subject to the laws' exemptions.

5.42.050. ISSUANCE OF LICENSE. Upon the receipt of a complete application for a Tobacco Retailer's License and the license fee required by this chapter, the Administrator shall issue a License unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

(b) The application seeks authorization for Tobacco Retailing at a location for which this chapter prohibits issuance of Tobacco Retailer Licenses. However, this subparagraph shall not constitute a basis for denial of a License if the applicant provides the City with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an Arm's Length Transaction.

(c) The application seeks authorization for Tobacco Retailing for a Proprietor or location for which this chapter prohibits a License to be issued, including the provisions of Section 5.42.110.

(d) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this chapter (e.g., mobile vending), that is unlawful pursuant to this Code or that is unlawful pursuant to any other law.

(e) The location for which a Tobacco Retailer's License is sought lacks a valid state tobacco retailer's license by the California Board of Equalization.

5.42.060. LICENSE RENEWAL AND EXPIRATION.

(a) **TERM AND RENEWAL OF LICENSE.** A Tobacco Retailer's License is invalid if the appropriate fee has not been timely paid in full or if the term of the License has expired. The term of a Tobacco Retailer License is one year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's License and submit the License fee no later than thirty (30) days prior to expiration of the term.

(b) **EXPIRATION OF LICENSE.** A Tobacco Retailer's License that is not timely renewed shall expire at the end of its term. To renew a License not timely renewed pursuant to subparagraph (a), the Proprietor must:

(1) Submit the License fee and application renewal form; and

(2) Submit a signed affidavit affirming that the Proprietor:

(i) has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the License expiration date and before the License is renewed; or

(ii) has waited the appropriate ineligibility period established for Tobacco Retailing without a License, as set forth in Section 5.42.110(a) of this chapter, before seeking renewal of the License.

5.42.070. LICENSES NONTRANSFERABLE.

(a) A Tobacco Retailer's License may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's License is required whenever a Tobacco Retailing location has a change in Proprietor(s).

(b) Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and License ineligibility periods shall continue to apply to a location unless:

(1) the location has been fully transferred to a new Proprietor or fully transferred to entirely new Proprietors; and

(2) the new Proprietor(s) provide the City with clear and convincing evidence that the new Proprietor(s) have acquired or is acquiring the location in an Arm's Length Transaction.

5.42.080. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's License any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the permit. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a Tobacco Retailer License does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

5.42.090. FEE FOR LICENSE.

The fee to issue or to renew a Tobacco Retailer's License shall be established from time to time by resolution of the City Council and shall be included within the City's Master Fee Schedule. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a License, administering this chapter, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

5.42.100. COMPLIANCE MONITORING.

(a) Compliance with this chapter shall be monitored by the Police Department. The City may designate any number of additional Persons to monitor compliance with this chapter.

(b) Compliance checks shall be conducted so as to allow the Police Department to determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with laws regulating youth access to Tobacco Products. When the Police Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to Tobacco Retailing.

(c) The City shall not enforce any law establishing a minimum age for Tobacco Product purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when:

(1) the Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City;

(2) the Youth Decoy is acting as an agent of a Person designated by the City to monitor compliance with this chapter; or

(3) the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services.

5.42.110. VIOLATIONS AND REVOCATION OF LICENSE.

(a) **VIOLATIONS.** If the Administrator has reasonable cause to believe a violation of this chapter exists, or if any court of competent jurisdiction determines the same, the Administrator may issue a notice of violation and begin the revocation process as follows:

(1) First Violation. After a first violation of this chapter at a location within any sixty-month (60) period, the Administrator shall:

(i) Issue a written warning to the Licensee, which includes: the facts supporting the finding of a violation, the penalties for further violations of this chapter, and provides thirty (30) days within which the Licensee may cure the violation and advise employees of applicable regulations or contact the Administrator to challenge the finding of a violation.

(ii) If the Licensee contacts the Administrator to challenge the finding of a violation, the Administrator shall provide written notice of a hearing, not less than five (5) business days after the notice, at which the Tobacco Retailer may show cause, at a time and place specified in the notice, why a violation does not exist. Should the Tobacco Retailer fail to present evidence at such hearing establishing, in the reasonable determination of the Administrator, that a violation does not exist, the Administrator shall provide written notice to the Tobacco Retailer that the notice of violation is upheld.

(2) Second Violation. After a second violation of this chapter at a location within any sixty-month (60) period, the License shall be revoked and no new License shall be issued for the location or the Tobacco Retailer until 30 days have passed from the date of revocation.

(3) Third Violation. After a third violation of this chapter at a location within any sixty-month (60) period, the License shall be revoked and no new License shall be issued for the location or the Tobacco Retailer until 90 days have passed from the date of revocation.

(4) Fourth Violation and Additional Violations. After four or more violations of this chapter at a location within any sixty-month (60) period, the License shall be revoked and no new License may issue for the location or Tobacco Retailer until 5 years have passed from the date of revocation.

(b) **REVOCATION PROCEDURES.** If a License is subject to revocation, the Administrator shall provide written notice of revocation along with the reasons for revocation, facts suggesting violation, the penalties for violation, and ability to appeal pursuant to Section 5.42.110(c). Within five (5) days of the mailing of notice of revocation, the Tobacco Retailer shall cease the operation of the business for which the License was issued.

(c) **APPEAL OF REVOCATION.** A decision of the Administrator to revoke a License is appealable to the City Manager and must be filed with the City Clerk within ten (10) days of mailing of the Administrator's notice of revocation. If such an appeal is made, it shall stay enforcement of the appealed action. An appeal to the City Manager is not available for a revocation made pursuant to Section 5.42.110(d). The date, time, and place of appeal hearings shall be provided in writing to the Tobacco Retailer with at least ten (10) days notice and copies of hearing rules. If the Tobacco Retailer fails to present evidence establishing that Tobacco Retailer is entitled to retain the License, the City Manager shall uphold the revocation and give written notice to the Tobacco Retailer. Within five (5) days of the mailing of the notice of upheld revocation, the Tobacco Retailer shall cease operation of the business for which the License was issued.

(d) **REVOCATION OF LICENSE WRONGLY ISSUED.** A Tobacco Retailer's License shall be revoked if the Administrator finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a License under Section 5.42.050 existed at the time application was made or at any time before the License issued. The decision by the Administrator shall be the final decision of the City. Such a revocation shall be without prejudice to the filing of a new License application.

5.42.120. ENFORCEMENT.

(a) **Criminal Prosecution.** Each incident of violation of this chapter is an infraction subject to a one hundred dollar (\$100) fine or otherwise punishable pursuant to Section 1.16.030 of this code. Other violations of this chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the Police Chief or his or her designee. In addition, any peace officer or code enforcement official also may enforce this chapter.

(b) **Civil Enforcement by the City.**

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

(2) **Injunctions, Nuisance Abatement, and Code Enforcement.** 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, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. Where the City pursues a civil action to remedy a violation of this chapter, the prevailing party shall be entitled to recovery of attorneys fees if the City elects, at the beginning of that action, to seek recovery of its own attorneys fees pursuant to Government Code section 38773.5 as currently drafted or as amended.

(c) **General Provisions.**

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

(2) **Violations.** Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter. A violation exists for each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of this chapter. A violation also exists for each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for sale in violation of this chapter.

(3) **Nuisances.** Violations of this chapter are hereby declared to be public nuisances.

(4) **No Testimony for Persons under 18.** Whenever evidence of a violation of this chapter is obtained in any part through the participation of a Person under the age of eighteen (18) years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

WHATS HAPPENINGS TRI CITY VOICE

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UNION CITY, CA - 94587-4497

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California)
County of ALAMEDA) ss

Notice Type: ORD - ORDINANCE PUBLICATION


Ad Description: Ord 741-10

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the WHATS HAPPENINGS TRI CITY VOICE - UNION CITY, a newspaper published in the English language in the cities of UNION CITY and FREMONT, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of ALAMEDA, State of California, under date of 05/02/2008, Case No. FG08374520. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

11/30/2010

Executed on: 11/30/2010
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

CNS#: 1996160

ORDINANCE NO. 741-10

AN ORDINANCE OF THE CITY OF UNION CITY AMENDING THE UNION CITY MUNICIPAL CODE TO ADD CHAPTER 5.42 "TOBACCO RETAILERS" REQUIRING THE LICENSURE OF TOBACCO RETAILERS

The City Council of the City of Union City does ordain as follows:

SECTION 1. The City Council of the City of Union City hereby finds and declares as follows:

WHEREAS, based in part on the information contained in this section, the City Council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 438,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;[1] and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year, killing 50% more people in 2015 than HIV/AIDS, and will be responsible for 10% of all deaths worldwide;[2] and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950); and
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308); and
- State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952); and
- State law prohibits the sale of tobacco products and paraphernalia through self-services displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code § 22960, 22962); and



- State law prohibits the sale of "bids" (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments (Cal. Pen. Code § 308.1); and
- State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code § 308.3); and

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

WHEREAS, California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of the City to regulate business activity in order to discourage violations of law; and

WHEREAS, Title 18 of the Union City Zoning Code prohibits the sale or distribution of tobacco products within 1,000 feet of "sensitive uses" such as parks, playground, public library, recreation center, religious institution, school or youth-oriented establishment; and

WHEREAS, despite the state's efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

- Each day, nearly 4,000 children under 18 years of age smoke their first cigarette, and almost 1,500 children under 18 years of age begin smoking daily;[3] and
- More than 75% of all current smokers in 2001 began smoking before the age of 18;[4] and
- Among middle school students who were current cigarette users in 2004, 70.6% were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4% were not refused purchase because of their age;[5] and
- In 2002, youth smoked approximately 540 million packs of cigarettes, generating nearly \$1.2 billion in tobacco industry revenue[6]; and

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes, as evidenced by the following:

- A review of thirteen California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in twelve of the thirteen communities, with an average decrease of 68% in the youth sales rate;[7] and
- A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85% in 1994 to 43% in 1998;[8] and
- A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8% to 4.9% in the number of youth able to purchase tobacco;[9] and

WHEREAS, the implementation of tobacco retailer licensing requirements is supported by most Californians, as evidenced by the following:

- Statewide, over 80% of California adults think tobacco retailers should be licensed;[10] and
- Similarly, in rural areas in California, 78% of adults think tobacco retailers should be licensed, and 91% agree that a store owner who repeatedly sells cigarettes to minors should no longer have the right to sell cigarettes;[11] and
- 65% of California's key opinion leaders surveyed support implementation of tobacco licensing requirements;[12] and
- Over 90% of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco;[13] and

WHEREAS, ninety-six cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from smoking;[14] and

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- Nearly 11% of all tobacco retailers unlawfully sold to minors in 2007;[15] and
- Non-traditional tobacco retailers such as deli, meat, and donut shops sold to minors in 2007 at a much higher rate than the statewide average, as high as 16%;[16] and
- Teens surveyed in 2002 say they bought their cigarettes at: gas stations (58%), liquor stores (45%), and supermarkets and small grocery stores (29% combined);[17] and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

WHEREAS, while state law prohibits possession of certain forms of "drug paraphernalia," and prohibits all sales of "drug paraphernalia," many retailers continue to sell items that are commonly

known to be "drug paraphernalia," and claim that such items are intended to be used for tobacco; and

Whereas, tobacco companies distribute free samples for the purpose of luring young adult tobacco users, as evidenced by the following:

- 18-24 year olds have been specifically targeted by tobacco industry marketing as the youngest group of legal smokers; [18] and
- after the 1998 Master Settlement Agreement with the states, tobacco companies increased marketing aimed at college students by sponsoring events at college bars and providing free samples to college students; [19] and

• the distribution of free samples at promotional events in bars and fraternities has become an integral part of a marketing strategy designed to initiate young adult tobacco users;[20] and

• tobacco promotional events encourage tobacco use among college students by linking the enjoyable aspects of a bar environment with a tobacco brand;[21] and

• tobacco company documents demonstrate that bar promotions are highly effective at increasing sales due in part to resulting brand switching, smoking uptake, or relapse by former smokers;[22] and

• past research has shown that sampling in bar environments has the ability to significantly increase awareness, trial, and purchase of tobacco products by young adults;[23] and

• the vast majority of free samples distributed by tobacco companies are used, whether by the recipient or by a friend or family member of the recipient;[24] and

• young adults are significantly more likely to be willing to use tobacco promotional items than adults over 25 years old;[25] and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (the "FDA law") completely bans free distribution of all tobacco products except smokeless tobacco, which can still be distributed in "qualified adult-only facilities"; and

WHEREAS, the FDA law does not prohibit the free distribution of coupons or nominally priced tobacco products; and

WHEREAS, California state law prohibits the sale or distribution of free or nominal-cost cigarettes or

smokeless tobacco products (or coupons, coupon offers, or rebate offers for such products) on public grounds or on private grounds that are open to the public;[26] and

WHEREAS, this state law does not apply to:

- locations where minors are prohibited by law (such as bars); and
- public grounds leased for a private function where minors are denied access to the private function by a peace officer or licensed security guard; and
- private property open to the general public where minors are denied access to a separate sampling area and the sampling area is enclosed so minors cannot see inside; and
- product samples, coupons, or rebate offers in connection with the sale of another item, including tobacco products, lighters, magazines, or newspapers; and

WHEREAS, this state law specifically allows adoption of a local ordinance that is "more restrictive" than the state law and provides that a stricter local ordinance shall govern in the case of any inconsistency between the local ordinance and state law;[27] and

WHEREAS, the FDA law also expressly grants state and local governments the right to enact measures that are more restrictive than those in the federal law; and[28]

WHEREAS, although state and federal laws prohibits most free sampling, tobacco companies may still distribute free smokeless tobacco products in qualifying adult-only facilities, as well as nominally priced tobacco products and coupons in other locations where minors are prohibited by law; and

WHEREAS, Union City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults.

NOW, THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

SECTION 2. Chapter 5.42 "Tobacco Retailers" is hereby added to the Municipal Code with the text in Exhibit A, attached hereto and made a part

hereof by this reference, a copy of which is on file in the office of the City Clerk.

SECTION 3. The proposed Municipal Code Text Amendment has been deemed exempt from CEQA, subject to Sections 15061(b)(3). No further environmental review is required.

SECTION 4. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

SECTION 5. 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 Union City 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.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Union City at a regular meeting held on November 23, 2010, by the following vote:

AYES: Councilmembers Dutra-Vernaci, Fernandez, and Navarro, Vice Mayor Valle, Mayor Green
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:
/s/ Mark Green
MARK GREEN, Mayor

ATTEST:
/s/ Renee Elliott
RENEE ELLIOTT, City Clerk

APPROVED AS TO FORM:
/s/ Benjamin T. Reyes II
BENJAMIN T. REYES II, City Attorney

[1] US Department of Health and Human Services, Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report: Annual Smoking - Attributable Mortality, Years of Potential Life Lost, and Productivity Losses - United States 1997-2001. 2005, 54(25): p. 625-628. Available at:

www.cdc.gov/mmwr/preview/mmwrhtml/mm5425a1.htm.

[2] World Health Organization. World Health Statistics 2007, Part 1: Ten Statistical Highlights in Global Public Health. 2007, p. 12. Available at: www.who.int/whosis/whostat/2007_10highlight.s.pdf.

[3] Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. Results from the 2004 National Survey on Drug Use and Health: National Findings. 2005. Available at: <http://oas.samhsa.gov/NSDUH/2k4nsduh/2k4Results/2k4Results.pdf>.

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11/30/10

CNS-1996160#

ORDINANCE NO. 791-13

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY AMENDING CHAPTER 5.42, ADDING CHAPTER 5.43, ADDING SECTION 18.04.210, AND AMENDING CHAPTER 18.08 OF THE MUNICIPAL CODE TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES, E-CIGARETTE BARS/LOUNGES, VAPOR BARS/LOUNGES, AND HOOKAH BARS/LOUNGES; TO REGULATE THE SALE OF CIGARS, CIGARILLOS, AND ELECTRONIC CIGARETTES; AND TO REPEAL RELATED TEMPORARY MORATORIUM ORDINANCES (AT-13-002)

GENERAL RECITALS

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, California courts have affirmed the power of a city to regulate business activity in order to discourage violations of law in such cases as Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, Bravo Vending v. City of Rancho Mirage (1993) 16 Cal.App.4th 383, and Prime Gas v. City of Sacramento (2010) 184 Cal.App.4th 697; and

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, the City Council intends to prohibit the establishment and operation of medical marijuana dispensaries, e-cigarette bars/lounges, vapor bars/lounges, and hookah bars/lounges, and to regulate the sale of cigars, cigarillos, and electronic cigarettes in Union City for the protection of public health, safety, and welfare of City residents, especially minors; and

RECITALS REGARDING MEDICAL MARIJUANA DISPENSARIES

WHEREAS, on November 5, 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act of 1996" ("the CUA" or "Act"), codified as California Health and Safety Code section 11362.5 *et seq.*. The intent of Proposition 215 was to enable seriously ill Californians access to medical marijuana under limited, specified circumstances; and

WHEREAS, the Compassionate Use Act is limited in scope, in that it only provides a defense from State criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, in 2003, the California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program" to Division 10 of the

California Health and Safety Code section 11362.7 *et seq.* ("Medical Marijuana Program Act" or "MMPA"), which authorizes cities to adopt and enforce rules and regulations consistent with the MMPA (Health & Safety Code section 11362.83.); and

WHEREAS, on August 25, 2008, then California Attorney General Edmund G. Brown, issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients; and

WHEREAS, pursuant to Government Code section 65858, the City has adopted urgency ordinances imposing temporary moratoria on the establishment and operation of medical marijuana dispensaries pending direction from the courts on the limits of permissible regulation of such uses; and

WHEREAS, on May 6, 2013, the California Supreme Court issued the long-awaited decision in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729 upholding the City of Riverside ban on medical marijuana dispensaries. The Court held that Riverside's ban on medical marijuana dispensaries was not preempted by California law, as set forth in the CUA or the MMPA, and that cities may prohibit such uses as a matter of their inherent police power; and

WHEREAS, the recent California Supreme Court decision finally provides the City guidance regarding its options related to medical marijuana dispensaries; and

WHEREAS, staff anticipates that the new court decision will result in more aggressive behavior and probing of legal issues by the medical marijuana dispensaries towards jurisdictions that have not yet established regulations or bans on such facilities. This ordinance will make clear that medical marijuana dispensaries are prohibited in the City; and

WHEREAS, in adopting this ordinance, the City Council takes legislative notice of the following cases that it finds to be relevant to its actions:

1. City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729 [California Supreme Court upholds the ban by the City of Riverside on medical marijuana dispensaries]; and
2. Claremont v. Kruse (2009) 177 Cal.App.4th 1153 [California Court of Appeal holding that neither the Act nor the Program expressly or impliedly preempt local exercise of land use and zoning police powers]; and
3. People v. Urziceanu (2005) 132 Cal.App.4th 747 [California Court of Appeal noting that courts consistently have rejected attempts to broaden the scope of the Act and the Program and recognizing that the Act did not create a constitutional right to obtain marijuana]; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. § 801, et seq., provides that the manufacture, cultivation, distribution, and dispensing of marijuana is illegal for any purpose, and further provides for criminal penalties for marijuana use; and

WHEREAS, the United States Supreme Court held in Gonzales v. Raich, 545 U.S. 1 (2005), that the provisions of the federal Controlled Substances Act apply to the personal medical use of marijuana in California, and held in Raich v. Gonzalez, 500 F.3d 850 (2007), that the Controlled Substances Act applied to individual's personal medical use of marijuana, and upheld the provisions of the Controlled Substance Act criminalizing the manufacture, distribution, or possession of marijuana to growers and users of marijuana for medical purposes; and

WHEREAS, California Health and Safety Code section 11362.765 prohibits the cultivation or distribution of medical marijuana for profit, but neither the Compassionate Use Act nor Medical Marijuana Program imposes operational regulations on medical marijuana dispensaries, collectives or cooperatives. Thus, local governments, such as the City, are left to regulate medical marijuana dispensaries; and

WHEREAS, the Compassionate Use Act provides that persons who are in need of medical marijuana for specified purposes may obtain and use it under limited, specified circumstances. The Act has led to the establishment of medical marijuana dispensaries in various communities throughout California; and

WHEREAS, the California Police Chief's Association issued a "White Paper" dated April 22, 2009, which identifies that throughout California, many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies, and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries; and

RECITALS REGARDING ELECTRONIC CIGARETTES, E-CIGARETTE BARS/LOUNGES, VAPOR BARS/LOUNGES, AND HOOKAH BARS/LOUNGES

WHEREAS, it is unlawful to sell or furnish an electronic cigarette to minors,¹ however, minors are still able to obtain access to electronic cigarette products. A national survey revealed that between 2011 and 2012, middle school students who reported ever using e-cigarettes increased from 1.4% to 2.7% and current use of e-cigarettes increased from 0.6% to 1.1%.² The same survey found that high school students who reported ever using e-cigarettes increased from 4.7% to 10.0% while current use increased from 1.5% to 2.8%;³ and

¹ Cal. Health & Safety Code § 119405 (West 2013).

² Centers for Disease Control and Prevention. Electronic Cigarette Use Among Middle and High School Students—United States, 2011-2012. *Morbidity and Mortality Weekly Report*. September 6, 2013 (survey results are available at http://www.cdc.gov/tobacco/data_statistics/surveys/nyts.)

³ *Id.*

WHEREAS, the safety and efficacy of electronic cigarettes is still unknown and electronic cigarettes deliver an unknown mix of potentially carcinogenic and toxic compounds as evidenced by the following: a) nicotine content labeling was not accurate with some manufacturers;⁴ b) nicotine related impurities contents in cartridges and refills vary by electronic cigarette manufacturer;⁵ and c) the concentrations of some metal and silicate particles in electronic cigarette aerosol were higher than or equal to the levels contained in conventional cigarette smoke;⁶ and

WHEREAS, the City Council finds that the surveys and reports referenced herein are relevant to the problems addressed by the City in enacting this ordinance to preserve and safeguard public health, safety and welfare by protecting against the potentially negative secondary effects and adverse impacts of electronic cigarettes; and

WHEREAS, it is unknown if e-cigarettes may lead minors to try other tobacco products; and

WHEREAS, requiring retailers of electronic cigarettes to obtain a Tobacco Retailer License from the City will not unduly burden legitimate business activities of retailers who sell or distribute electronic cigarettes or other tobacco products to adults; it will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local electronic cigarette-related laws; and

WHEREAS, the City has received inquiries from a business that seeks to open a “vapor bar” or “e-cigarette” lounge, designed to provide an “adults-only” leisure space within which to use e-cigarettes. The Municipal Code is silent with regard to the regulation and location of e-cigarette bars/lounges, vapor bars/lounges and hookah bars/lounges, except that in general, uses not specified as permitted are not allowed; and

WHEREAS, the establishment and operation of e-cigarette bars/lounges, vapor bars/lounges, and hookah bars/lounges may adversely affect Union City’s economic vitality, and may promote illegal consumption and purchase of drugs by children and minors by increasing their exposure to tobacco or electronic cigarette paraphernalia that may be used for other drugs; and

⁴ Trehy ML, Ye W, et al. “Analysis of Electronic Cigarette Cartridges, Refill Solutions, and Smoke for Nicotine and Nicotine Related Impurities.” *Journal of Liquid Chromatography & Related Technologies*, 34:1442–1458, 2011.

⁵ *Id.*

⁶ Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013) Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. *PLoS ONE* 8(3): e57987. doi:10.1371/journal.pone.0057987

RECITALS REGARDING SINGLE CIGARS AND CIGARILLOS

WHEREAS, at the City Council meeting on May 28, 2013, the Union City Youth Commission delivered a presentation, entitled “Teen Tobacco Initiative” and provided the Council with an educational briefing on flavored cigars and cigarillos, and explained how these products are packaged and marketed to appeal to children. The Youth Commission’s report also included a briefing on electronic or “e-cigarette” nicotine ionization devices; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the following:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California; that keeping children from beginning to use tobacco products in any form shall be among the highest priorities in disease prevention for the State of California;⁷
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors;⁸ requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age;⁹ requires that retailers of tobacco products post conspicuous notices stating that selling tobacco products to anyone under 18 years of age is illegal;¹⁰ prohibits the sale of tobacco products and paraphernalia through self-service displays with limited exceptions;¹¹ prohibits the sale of “bidis” (filterless cigarettes wrapped in temburni or tendu leaf) except in adult-only establishments;¹² prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco;¹³ and

WHEREAS, the City Council of the City of Union City previously found that minors have ready access to tobacco products as a result of noncompliance with existing laws and prohibited the sale, donation, or distribution of tobacco products within 1000 feet of “sensitive uses” in the City in order to minimize the use of tobacco products by minors (Union City Municipal Code, title 18, Chapters 36.040, 38.035, 39.070, 40.145, 40.245, 40.345, 40.555); and

WHEREAS, despite local, state, and federal efforts to limit youth access to tobacco, minors are still able to access tobacco products, as evidenced by the following: a) in 2009,

⁷ Cal. Health & Safety Code § 118950.

⁸ Cal. Pen. Code § 308.

⁹ Cal. Bus. & Prof. Code § 22956.

¹⁰ Cal. Bus. & Prof. Code § 22952

¹¹ Cal. Bus. & Prof. Code §§ 22960, 22962

¹² Cal. Pen. Code § 308.1

¹³ Cal. Pen. Code § 308.3.

10.9% of all students in grades 9-12, including 6.7% of female students and 15% of male students were current cigar users;¹⁴ in 2009, 3.9% of all students in grades 6-8, including 3.2% of female students and 4.6% of male students were current cigar users;¹⁵ 17% of 12th graders reported smoking hookah within the past year;¹⁶ and

WHEREAS, the City Council finds that the reports referenced herein are relevant to the problems addressed by the City in enacting this ordinance to preserve and safeguard public health, safety and welfare by protecting against the negative secondary effects and adverse impacts of tobacco use among youth; and

WHEREAS, the failure of tobacco retailers to comply with tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City; and

WHEREAS, while state law prohibits possession of certain forms of “drug paraphernalia,” and all sales of “drug paraphernalia,” many retailers continue to sell items that are commonly known to be “drug paraphernalia,” and claim that such items are intended to be used for tobacco; and

WHEREAS, cigarettes are subject to minimum pack sizes and certain taxes that do not apply to cigars under federal or California law, and higher prices caused by minimum pack sizes for cigarettes and higher tax rates have acted as a significant deterrent against purchases of tobacco products by minors and young adults; and

WHEREAS, the price of a pack of cigarettes can be more than ten times the price of a single cigar, and lower priced cigars are attractive to youth looking for a less expensive tobacco alternative to cigarettes; and

WHEREAS, Union City has a substantial interest in promoting compliance with state laws prohibiting the sale or furnishing of tobacco products and electronic cigarette products to minors; in promoting compliance with federal, state and local laws intended to discourage the purchase of tobacco or electronic cigarette products by minors; and finally, in protecting children from being lured into illegal activity through adult misconduct; and

PLANNING COMMISSION REVIEW

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments on November 7, 2013, at which time all interested parties had the

¹⁴ National Center for Chronic Disease Prevention and Health Promotion (US) Office on Smoking and Health. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta (GA): Centers for Disease Control and Prevention (US); 2012. 3, The Epidemiology of Tobacco Use Among Young People in the United States and Worldwide. Available from: <http://www.ncbi.nlm.nih.gov/books/NBK99243/>

¹⁵ *Id.*

¹⁶ Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. (2011). Monitoring the Future national results on adolescent drug use: Overview of key findings, 2010. Ann Arbor: Institute for Social Research, The University of Michigan.

opportunity to be heard. The Planning Commission considered a staff report dated November 7, 2013, (including background reports) and all written and oral testimony, and adopted Resolution No. 17-13 recommending approval of the amendments as modified to clarify applicability to cigar products. The staff report and resolution are incorporated herein by reference; and

CITY COUNCIL REVIEW

WHEREAS, the City Council adopted a temporary 45-day moratorium on the establishment and operation of medical marijuana dispensaries through Ordinance 766-12, which moratorium was extended through Ordinance 767-12, and again through Ordinance 773-13. No further extensions may be granted and the moratorium will expire on January 24, 2014, unless repealed before then; and

WHEREAS, the City Council adopted a temporary 45-day moratorium on the establishment and operation of e-cigarette lounges, vapor bars and hookah bars through Ordinance 777-13, which moratorium was extended through Ordinance 778-13. The moratorium as extended will expire on August 27, 2015, unless repealed before then; and

WHEREAS, the City Council held a duly noticed public hearing on the proposed amendments on November 26, 2013, at which time all interested parties had the opportunity to be heard. The City Council considered a staff report dated November 26, 2013, (including background reports) and incorporated herein by reference, the Planning Commission recommendation, and all written and oral testimony before taking action on the amendments; and

WHEREAS, the amendments to the Municipal Code propose to amend Chapter 5.42, add a new Chapter 5.43, add a new Section 18.04.210, and amend Chapter 18.08 as shown in Exhibit A and in red-lined version in Exhibit B for reference, which exhibits are attached and incorporated herein by reference.

THE CITY COUNCIL OF THE CITY OF UNION CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 3. Findings. The City Council makes the following findings in support of approving this ordinance, based on the whole of the record before it.

1. The City has a substantial interest in protecting residents against the negative secondary effects and adverse impacts of locating medical marijuana dispensaries in the City; promoting compliance with state laws prohibiting the sale or furnishing of tobacco products and electronic cigarette products to minors; promoting compliance with federal, state and local laws intended to discourage the purchase of tobacco or electronic cigarette products by minors; and, protecting children from being lured into illegal activity through adult misconduct.

2. The amendments are consistent with the General Plan and are necessary and desirable to achieve the purposes of Title 18, Zoning.

SECTION 4. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, amending chapter 5.42, adding chapter 5.43, adding section 18.04.210, and amending chapter 18.08, as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours. For reference purposes, a red-lined copy of the amendments is shown in attached Exhibit B, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION 5. Moratoria repealed. The temporary moratorium on the establishment and operation of medical marijuana dispensaries, as extended through Ordinance 773-13, and the temporary moratorium on the establishment and operation of e-cigarette lounges, vapor bars and hookah bars, as extended through Ordinance 778-13, are repealed as of the effective date of this ordinance.

SECTION 6. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 7. Publication and effective date. Within fifteen (15) days from and after adoption, this ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This ordinance shall take effect and be enforced thirty (30) days after its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on December 10, 2013, by the following vote:

AYES: Councilmembers Duncan, Gacoscas, and Navarro, Vice Mayor Ellis,
Mayor Dutra-Vernaci
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:


CAROL DUTRA-VERNACI
Mayor

ATTEST:

APPROVED AS TO FORM:


RENEE ELLIOTT
City Clerk


BENJAMIN T. REYES II
City Attorney

Dated: 12-17-13

EXHIBIT A

Amendments and additions to Municipal Code.

Section 1. Section 5.42.010, Definitions is amended as follows.

Section 5.42.010 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:

“Administrator” means the Administrative Services Director or designee.

“Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm’s length transaction.

“Coupon” means anything that can be exchanged for or used to acquire an electronic cigarette, electronic cigarette paraphernalia, electronic cigarette or tobacco product, such as a printed piece of paper, voucher, ticket, rebate, rebate offer, check, credit, token, code, password, or anything labeled “coupon” or “coupon offer.”

“Department” means the Administrative Services Department.

“Drug paraphernalia” shall have the definition set forth in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.

“Electronic cigarette” means “a device that can provide an inhalable dose of nicotine by delivering a vaporized solution” as defined in California Health and Safety Code Section 119405(b), as that section may be amended from time to time, or any device designed to vaporize a liquid solution that releases flavored vapor.

“Electronic cigarette paraphernalia” means any device designed to provide an inhalable dose of nicotine or a flavored liquid solution through vaporization, nicotine-based or flavored solution-based cartridges for use with electronic cigarettes, and any other item designed for the vaporization, preparation, storing, or consumption of electronic cigarette products.

“Electronic cigarette product” means any substance containing nicotine or a flavored liquid solution for vaporization, including 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.

“License” means a tobacco retailer’s license as defined below.

“Licensee” means a tobacco retailer with a tobacco retailer’s license.

“Nominal cost” means the cost of any item that is transferred from one person to another for less than the total of: (1) twenty-five percent of the full retail value of the item exclusive of taxes and fees; plus (2) all taxes and fees previously paid and all taxes and fees still due on the item at the time of transfer.

“Nonsale distribution” means to give, within the jurisdictional limits of the City, a tobacco product or coupon at no cost or at nominal cost to a person who is not a tobacco seller.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

“Public place” means any place within the City, public or private, that is open to the general public regardless of any fee or age requirement, including, for example, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, and buses.

“Retailer” means tobacco retailer as defined herein.

“Self-service display” means the open display or storage of electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

“Tobacco” means leaves of the tobacco plant dried and prepared for smoking or ingestion.

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

“Tobacco product” means tobacco and any substance containing tobacco, including, but not limited to, cigarettes, cigars, cigarillos, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; 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.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

“Tobacco retailer’s license” means the license issued pursuant to Section 5.42.050 that authorizes electronic-cigarette or tobacco retailing at a certain location and by a certain tobacco retailer.

Section 2. Section 5.42.020 is amended as follows.

Section 5.42.020 Requirements and prohibitions.

- A. Tobacco Retailer License Required. It is unlawful for any person to act as a tobacco retailer in the City without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.
- B. Lawful Business Operation. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, State, or Federal law applicable to electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products, tobacco paraphernalia, or tobacco retailing.
- C. Display of License. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- D. Positive Identification Required. No person engaged in tobacco retailing shall sell or transfer an electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia.
- E. Minimum Age for Persons Selling Tobacco. No person who is younger than the minimum age established by State law for the purchase or possession of electronic cigarette products or tobacco products shall engage in tobacco retailing.
- F. Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited.
- G. False and Misleading Advertising Prohibited. A tobacco retailer or proprietor without a valid tobacco retailer license, including, for example, a person whose license has been revoked:
1. Shall keep all electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products and tobacco paraphernalia out of public view. The public display of electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license; and
 2. Shall not display any advertisement relating to electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.
- H. Signage Violations. It is a violation of this chapter for any licensee to violate any local, State, or Federal law regulating exterior, storefront, window, or door signage.

I. Drug Paraphernalia. It is a violation of this chapter for any licensee or any of the licensee's agents or employees, to violate any local, State, or Federal law regulating controlled substances or drug paraphernalia.

J. Nonsale Distribution of Tobacco Products Prohibited.

1. No tobacco retailer nor any agent or employee of a tobacco retailer shall engage in the nonsale distribution of any electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product, tobacco product or coupon in any public place.

2. No person, motivated by an economic or a business purpose, shall knowingly permit the nonsale distribution of any electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product, tobacco product or coupon: (a) anywhere in any public place under the legal or de facto control of the person; or (b) through any agent or employee of the person. This provision shall not apply to coupons incidentally distributed in connection with a printed or electronic publication, such as, for example, magazines, newspapers, and websites, so long as that person's distribution of a publication containing coupons is not primarily motivated by an economic or a business purpose to distribute coupons.

K. Minimum Pack Size for Cigars.

1. Notwithstanding any other provision of this chapter, no tobacco retailer shall sell, offer for sale, or exchange for any form of consideration:

- a. Any single cigar, whether or not packaged for individual sale; or
- b. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer.
- c. Any package of cigars containing fewer than five cigars.

2. This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds either \$5.00 or the dollar amount adopted by resolution of the City Council and adjusted from time to time, whichever is higher. The public shall be given notice of any such resolution in the manner notice is given of ordinances of the City.

3. This subsection shall apply to cigars, cigarillos and any other cigar product regardless of the terminology used for the product.

Section 3. Section 5.42.030 is amended as follows.

Section 5.42.030 Limits on eligibility for a tobacco retailer license.

A. No license shall be issued to authorize tobacco retailing at other than a fixed location.

B. No license shall be issued to authorize tobacco retailing at a location where electronic cigarettes, electronic cigarette paraphernalia, electronic cigarette products or tobacco products are prohibited from being distributed pursuant to Title 18.

C. No license shall be issued to a location or a tobacco retailer where prohibited pursuant to Section 5.42.110.

Section 4. Section 5.42.060 is amended as follows.

5.42.060 License renewal and expiration.

A. Term and Renewal of License. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is one year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

B. Expiration of License. A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subsection A, the proprietor must:

1. Submit the license fee and application renewal form; and
2. Submit a signed affidavit affirming that the proprietor:
 - a. Has not sold and will not sell any electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed; or
 - b. Has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section 5.42.110(A) of this chapter, before seeking renewal of the license.

Section 5. Section 5.42.100 is amended as follows.

5.42.100 Compliance monitoring.

A. Compliance with this chapter shall be monitored by the Police Department. The City may designate any number of additional persons to monitor compliance with this chapter.

B. Compliance checks shall be conducted so as to allow the Police Department to determine, at a minimum, if the tobacco retailer is conducting business in a manner that complies with laws regulating youth access to electronic cigarettes, electronic cigarette paraphernalia, electronic cigarette products or tobacco products. When the Police Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco retailing.

C. The City shall not enforce any law establishing a minimum age for electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product or tobacco product purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

1. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City;

2. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with this chapter; or

3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services.

Section 6. Section 5.42.120 is amended as follows.

5.42.120 Enforcement.

A. Criminal Prosecution. Each incident of violation of this chapter is an infraction subject to a one hundred dollar fine or otherwise punishable pursuant to Section 1.16.030 of this Code. Other violations of this chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the Police Chief or designee. In addition, any peace officer or code enforcement official also may enforce this chapter.

B. Civil Enforcement by the City.

1. Fines. Violations of this chapter are subject to a civil action brought by the City of Union City, punishable by a civil fine not less than two hundred fifty dollars and not exceeding one thousand dollars per violation.

2. Injunctions, Nuisance Abatement, and Code Enforcement. 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, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. Where the City pursues a civil action to remedy a violation of this chapter, the prevailing party shall be entitled to recovery of attorneys fees if the City elects, at the beginning of that action, to seek recovery of its own attorneys' fees pursuant to Government Code Section 38773.5 as currently drafted or as amended.

C. General Provisions.

1. Cumulative Remedies. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

2. Violations. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter. A violation exists for each day on which an electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia is offered for sale in violation of this chapter. A violation also exists for each individual retail electronic cigarette, electronic cigarette product or tobacco product and each individual retail item of electronic cigarette paraphernalia tobacco paraphernalia that is distributed, sold, or offered for sale in violation of this chapter.

3. Nuisances. Violations of this chapter are hereby declared to be public nuisances.

4. No Testimony for Persons Under Eighteen. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

Section 7. Chapter 5.43 is added, as follows.

CHAPTER 5.43 MEDICAL MARIJUANA DISPENSARIES

5.43.010 Findings and purpose.

A. In enacting this chapter, it is the intent of the City Council to protect the safety and welfare of the general public. The federal Controlled Substances Act, 21 U.S.C. Section 841, prohibits the possession, sale and distribution of marijuana, and the City Council finds that sanctioning the opening or establishment of medical marijuana collectives, cooperatives and dispensaries would be inconsistent with federal law.

B. Furthermore, the City Council finds that medical marijuana dispensaries are public nuisances in that many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out-of-area criminals in search of prey, are commonly encountered near or outside marijuana collectives, cooperatives and dispensaries.

C. Therefore, in order to protect the integrity of the city, the City Council finds that it is in the best interest of the residents of the city to prohibit medical marijuana collectives, cooperatives and dispensaries.

D. The purpose of this chapter is to prohibit medical marijuana collectives, cooperatives and dispensaries from being opened or established in the city of Union City. Nothing in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

5.43.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it is apparent that they have a different meaning:

A. "City" means the city of Union City.

B. “Medical marijuana” means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code Section 11362.5) and the Medical Marijuana Program Act (California Health and Safety Code Section 11362.7 et seq.).

C. “Medical marijuana dispensary” or “dispensary” means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver, in strict accordance with California Health and Safety Code Section 11362.5 et seq.; or (2) any facility, building, structure or location where two qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or cooperatively distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to California Health and Safety Code Section 11362.5 et seq. and such group is organized as a medical marijuana cooperative or collective as set forth in the Attorney General’s guidelines. The terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall be as defined in California Health and Safety Code Section 11362.5 et seq.

For purposes of this chapter, a “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and complies strictly with applicable law, including but not limited to California Health and Safety Code Section 11362.5 et seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code;
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code;
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code;
5. A residential hospice or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code.

D. “Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability corporation, collective, cooperative, or combination thereof in whatever form or character.

5.43.030 Medical marijuana dispensaries prohibited.

Medical marijuana dispensaries are prohibited in the city. It shall be unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the operation of a medical marijuana dispensary.

5.43.040 Permits.

No permits or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use

approval, shall be approved or issued for the establishment or operation of a Medical Marijuana Dispensary in the City of Union City.

5.43.050 Penalty.

A. Violation of this chapter is a public nuisance.

B. Nothing in this chapter in any way limits any other remedy that may be available to the city, or any penalty that may be imposed by the city, for violations of this chapter. Such additional remedies include, but are not limited to, injunctive relief, administrative citations, or a cause of action under the California Narcotics Nuisance Abatement Act (Health and Safety Code Section 11570).

Section 8. Section 18.04.210 is added, as follows.

18.04.210 Permitted, conditional and prohibited uses.

A. Permitted uses. Permitted uses are as listed for each zoning district.

B. Conditional uses. Conditional uses as listed for each zoning district shall be permitted upon granting of a use permit.

C. Prohibited uses. The following uses are prohibited in all zoning districts.

1. Uses not listed. A use that is not listed as a permitted or conditionally permitted use is not a permitted use, unless a similar-use determination is made by the Director, Zoning Administrator or Planning Commission as provided in the particular zoning district.

2. Prohibited uses. The following uses are prohibited in all zoning districts.

a. Medical marijuana dispensary, as defined in Section 18.08.402

b. Vapor bar/lounge, as defined in Section 18.08.612.

c. E-cigarette bar/lounge, as defined in Section 18.08.242.

d. Hookah bar/lounge, as defined in Section 18.08.282.

3. Permits. No permits or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued for the establishment or operation of a prohibited use in the City of Union City.

Section 9. Chapter 18.08, Definitions is amended to add, amend definitions, as follows.

18.08.242 E-cigarette bar/lounge. “E-cigarette bar” or “e-cigarette lounge” means any facility, building, structure or location, whether fixed or mobile, where customers utilize a heating

element that vaporizes a liquid solution that releases nicotine or flavored vapor within the establishment.

18.08.243 Electronic cigarette product. “Electronic cigarette product” means any substance containing nicotine or a flavored liquid solution for vaporization, including 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.

18.08.282 Hookah bar/lounge. “Hookah bar” or “hookah lounge” means any facility, building, structure or location, whether fixed or mobile, where customers share tobacco from a communal hookah placed throughout the establishment.

18.08.402 Medical Marijuana Dispensary. “Medical marijuana dispensary” or “dispensary” means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver, in strict accordance with California Health and Safety Code Section 11362.5 et seq.; or (2) any facility, building, structure or location where two qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or cooperatively distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to California Health and Safety Code Section 11362.5 et seq. and such group is organized as a medical marijuana cooperative or collective as set forth in the Attorney General’s guidelines. The terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall be as defined in California Health and Safety Code Section 11362.5 et seq.

For purposes of this chapter, a “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and complies strictly with applicable law, including but not limited to California Health and Safety Code Section 11362.5 et seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code;
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code;
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code;
5. A residential hospice or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code.

18.08.575 Tobacco product. “Tobacco product” means any product(s) that is used to consume tobacco or any product that contains any tobacco leaf, including, but not limited to: cigarettes, cigars, cigarillos, blunts, snuff, creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka, kretek, shisha, roll-your-own cigarettes, cigarette or cigar rolling papers, electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, or pipes.

18.08.576 Tobacco store, retail. A “retail tobacco store” means a retail store that devotes more than fifteen percent (15%) of its total floor area to the sale of electronic cigarette, electronic cigarette products/paraphernalia, tobacco or smoking products and accessories/paraphernalia, but does not provide a lounge for the consumption of tobacco or electronic cigarettes. A retail tobacco store may also be referred to as a smoke shop.

18.08.612 Vapor bar/lounge. “Vapor bar” or “vapor lounge” means any facility, building, structure or location, whether fixed or mobile, where customers utilize a heating element that vaporizes a liquid solution that releases nicotine or flavored vapor within the establishment.

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EXHIBIT B

Amendments and additions to Municipal Code shown in redline format for reference.

Section 1. Section 5.42.010, Definitions is amended as follows.

Section 5.42.010 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:

“Administrator” means the Administrative Services Director or designee.

“Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm’s length transaction.

“Coupon” means anything that can be exchanged for or used to acquire an electronic cigarette, electronic cigarette paraphernalia, electronic cigarette or tobacco product, such as a printed piece of paper, voucher, ticket, rebate, rebate offer, check, credit, token, code, password, or anything labeled “coupon” or “coupon offer.”

“Department” means the Administrative Services Department.

“Drug paraphernalia” shall have the definition set forth in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.

“Electronic cigarette” means “a device that can provide an inhalable dose of nicotine by delivering a vaporized solution” as defined in California Health and Safety Code Section 119405(b), as that section may be amended from time to time, or any device designed to vaporize a liquid solution that releases flavored vapor.

“Electronic cigarette paraphernalia” means any device designed to provide an inhalable dose of nicotine or a flavored liquid solution through vaporization, nicotine-based or flavored solution-based cartridges for use with electronic cigarettes, and any other item designed for the vaporization, preparation, storing, or consumption of electronic cigarette products.

“Electronic cigarette product” means any substance containing nicotine or a flavored liquid solution for vaporization, including 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.

“License” means a tobacco retailer’s license as defined below.

“Licensee” means a tobacco retailer with a tobacco retailer’s license.

“Nominal cost” means the cost of any item that is transferred from one person to another for less than the total of: (1) twenty-five percent of the full retail value of the item exclusive of taxes and fees; plus (2) all taxes and fees previously paid and all taxes and fees still due on the item at the time of transfer.

“Nonsale distribution” means to give, within the jurisdictional limits of the City, a tobacco product or coupon at no cost or at nominal cost to a person who is not a tobacco seller.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

“Public place” means any place within the City, public or private, that is open to the general public regardless of any fee or age requirement, including, for example, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, and buses.

“Retailer” means tobacco retailer as defined herein.

“Self-service display” means the open display or storage of electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

“Tobacco” means leaves of the tobacco plant dried and prepared for smoking or ingestion.

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

“Tobacco product” means tobacco and any substance containing tobacco, including, but not limited to, cigarettes, cigars, cigarillos, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; 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.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

“Tobacco retailer’s license” means the license issued pursuant to Section 5.42.050 that authorizes electronic-cigarette or tobacco retailing at a certain location and by a certain tobacco retailer.

Section 2. Section 5.42.020 is amended as follows.

Section 5.42.020 Requirements and prohibitions.

- A. Tobacco Retailer License Required. It is unlawful for any person to act as a tobacco retailer in the City without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.
- B. Lawful Business Operation. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, State, or Federal law applicable to electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products, tobacco paraphernalia, or tobacco retailing.
- C. Display of License. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- D. Positive Identification Required. No person engaged in tobacco retailing shall sell or transfer an electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia.
- E. Minimum Age for Persons Selling Tobacco. No person who is younger than the minimum age established by State law for the purchase or possession of electronic cigarette products or tobacco products shall engage in tobacco retailing.
- F. Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited.
- G. False and Misleading Advertising Prohibited. A tobacco retailer or proprietor without a valid tobacco retailer license, including, for example, a person whose license has been revoked:
1. Shall keep all electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products and tobacco paraphernalia out of public view. The public display of electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license; and
 2. Shall not display any advertisement relating to electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.
- H. Signage Violations. It is a violation of this chapter for any licensee to violate any local, State, or Federal law regulating exterior, storefront, window, or door signage.

I. Drug Paraphernalia. It is a violation of this chapter for any licensee or any of the licensee's agents or employees, to violate any local, State, or Federal law regulating controlled substances or drug paraphernalia.

J. Nonsale Distribution of Tobacco Products Prohibited.

1. No tobacco retailer nor any agent or employee of a tobacco retailer shall engage in the nonsale distribution of any electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product, tobacco product or coupon in any public place.

2. No person, motivated by an economic or a business purpose, shall knowingly permit the nonsale distribution of any electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product, tobacco product or coupon: (a) anywhere in any public place under the legal or de facto control of the person; or (b) through any agent or employee of the person. This provision shall not apply to coupons incidentally distributed in connection with a printed or electronic publication, such as, for example, magazines, newspapers, and websites, so long as that person's distribution of a publication containing coupons is not primarily motivated by an economic or a business purpose to distribute coupons.

K. Minimum Pack Size for Cigars.

1. Notwithstanding any other provision of this chapter, no tobacco retailer shall sell, offer for sale, or exchange for any form of consideration:

a. Any single cigar, whether or not packaged for individual sale; or

b. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer.

c. Any package of cigars containing fewer than five cigars.

2. This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds either \$5.00 or the dollar amount adopted by resolution of the City Council and adjusted from time to time, whichever is higher. The public shall be given notice of any such resolution in the manner notice is given of ordinances of the City.

3. This subsection shall apply to cigars, cigarillos and any other cigar product regardless of the terminology used for the product.

Section 3. Section 5.42.030 is amended as follows.

Section 5.42.030 Limits on eligibility for a tobacco retailer license.

A. No license shall be issued to authorize tobacco retailing at other than a fixed location.

B. No license shall be issued to authorize tobacco retailing at a location where electronic cigarettes, electronic cigarette paraphernalia, electronic cigarette products or tobacco products are prohibited from being distributed pursuant to Title 18.

C. No license shall be issued to a location or a tobacco retailer where prohibited pursuant to Section 5.42.110.

Section 4. Section 5.42.060 is amended as follows.

5.42.060 License renewal and expiration.

A. Term and Renewal of License. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is one year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

B. Expiration of License. A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subsection A, the proprietor must:

1. Submit the license fee and application renewal form; and

2. Submit a signed affidavit affirming that the proprietor:

a. Has not sold and will not sell any electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed; or

b. Has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section 5.42.110(A) of this chapter, before seeking renewal of the license.

Section 5. Section 5.42.100 is amended as follows.

5.42.100 Compliance monitoring.

A. Compliance with this chapter shall be monitored by the Police Department. The City may designate any number of additional persons to monitor compliance with this chapter.

B. Compliance checks shall be conducted so as to allow the Police Department to determine, at a minimum, if the tobacco retailer is conducting business in a manner that complies with laws regulating youth access to electronic cigarettes, electronic cigarette paraphernalia, electronic cigarette products or tobacco products. When the Police Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco retailing.

C. The City shall not enforce any law establishing a minimum age for electronic cigarette, electronic cigarette paraphernalia, electronic cigarette product or tobacco product purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

1. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City;

2. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with this chapter; or

3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services.

Section 6. Section 5.42.120 is amended as follows.

5.42.120 Enforcement.

A. Criminal Prosecution. Each incident of violation of this chapter is an infraction subject to a one hundred dollar fine or otherwise punishable pursuant to Section 1.16.030 of this Code. Other violations of this chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the Police Chief or designee. In addition, any peace officer or code enforcement official also may enforce this chapter.

B. Civil Enforcement by the City.

1. Fines. Violations of this chapter are subject to a civil action brought by the City of Union City, punishable by a civil fine not less than two hundred fifty dollars and not exceeding one thousand dollars per violation.

2. Injunctions, Nuisance Abatement, and Code Enforcement. 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, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. Where the City pursues a civil action to remedy a violation of this chapter, the prevailing party shall be entitled to recovery of attorneys fees if the City elects, at the beginning of that action, to seek recovery of its own attorneys' fees pursuant to Government Code Section 38773.5 as currently drafted or as amended.

C. General Provisions.

1. Cumulative Remedies. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

2. Violations. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter. A violation exists for each day on which an electronic cigarette, electronic cigarette product, electronic cigarette paraphernalia, tobacco product or tobacco paraphernalia is offered for sale in violation of this chapter. A violation also exists for each individual retail electronic cigarette, electronic cigarette product or tobacco product and each individual retail item of electronic cigarette

paraphernalia tobacco paraphernalia that is distributed, sold, or offered for sale in violation of this chapter.

3. Nuisances. Violations of this chapter are hereby declared to be public nuisances.

4. No Testimony for Persons Under Eighteen. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

Section 7. Chapter 5.43 is added, as follows.

CHAPTER 5.43 MEDICAL MARIJUANA DISPENSARIES

5.43.010 Findings and purpose.

A. In enacting this chapter, it is the intent of the City Council to protect the safety and welfare of the general public. The federal Controlled Substances Act, 21 U.S.C. Section 841, prohibits the possession, sale and distribution of marijuana, and the City Council finds that sanctioning the opening or establishment of medical marijuana collectives, cooperatives and dispensaries would be inconsistent with federal law.

B. Furthermore, the City Council finds that medical marijuana dispensaries are public nuisances in that many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders. Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out-of-area criminals in search of prey, are commonly encountered near or outside marijuana collectives, cooperatives and dispensaries.

C. Therefore, in order to protect the integrity of the city, the City Council finds that it is in the best interest of the residents of the city to prohibit medical marijuana collectives, cooperatives and dispensaries.

D. The purpose of this chapter is to prohibit medical marijuana collectives, cooperatives and dispensaries from being opened or established in the city of Union City. Nothing in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

5.43.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as hereafter set out, unless it is apparent that they have a different meaning:

A. "City" means the city of Union City.

B. “Medical marijuana” means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code Section 11362.5) and the Medical Marijuana Program Act (California Health and Safety Code Section 11362.7 et seq.).

C. “Medical marijuana dispensary” or “dispensary” means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver, in strict accordance with California Health and Safety Code Section 11362.5 et seq.; or (2) any facility, building, structure or location where two qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or cooperatively distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to California Health and Safety Code Section 11362.5 et seq. and such group is organized as a medical marijuana cooperative or collective as set forth in the Attorney General’s guidelines. The terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall be as defined in California Health and Safety Code Section 11362.5 et seq.

For purposes of this chapter, a “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and complies strictly with applicable law, including but not limited to California Health and Safety Code Section 11362.5 et seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code;
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code;
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code;
5. A residential hospice or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code.

D. “Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability corporation, collective, cooperative, or combination thereof in whatever form or character.

5.43.030 Medical marijuana dispensaries prohibited.

Medical marijuana dispensaries are prohibited in the city. It shall be unlawful for any person to engage in, conduct, carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the operation of a medical marijuana dispensary.

5.43.040 Permits.

No permits or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use

approval, shall be approved or issued for the establishment or operation of a Medical Marijuana Dispensary in the City of Union City.

5.43.050 Penalty.

A. Violation of this chapter is a public nuisance.

B. Nothing in this chapter in any way limits any other remedy that may be available to the city, or any penalty that may be imposed by the city, for violations of this chapter. Such additional remedies include, but are not limited to, injunctive relief, administrative citations, or a cause of action under the California Narcotics Nuisance Abatement Act (Health and Safety Code Section 11570).

Section 8. Section 18.04.210 is added, as follows.

18.04.210 Permitted, conditional and prohibited uses.

A. Permitted uses. Permitted uses are as listed for each zoning district.

B. Conditional uses. Conditional uses as listed for each zoning district shall be permitted upon granting of a use permit.

C. Prohibited uses. The following uses are prohibited in all zoning districts.

1. Uses not listed. A use that is not listed as a permitted or conditionally permitted use is not a permitted use, unless a similar-use determination is made by the Director, Zoning Administrator or Planning Commission as provided in the particular zoning district.

2. Prohibited uses. The following uses are prohibited in all zoning districts.

a. Medical marijuana dispensary, as defined in Section 18.08.402

b. Vapor bar/lounge, as defined in Section 18.08.612.

c. E-cigarette bar/lounge, as defined in Section 18.08.242.

d. Hookah bar/lounge, as defined in Section 18.08.282.

3. Permits. No permits or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued for the establishment or operation of a prohibited use in the City of Union City.

Section 9. Chapter 18.08, Definitions is amended to add, amend definitions, as follows.

18.08.242 E-cigarette bar/lounge. “E-cigarette bar” or “e-cigarette lounge” means any facility, building, structure or location, whether fixed or mobile, where customers utilize a heating

element that vaporizes a liquid solution that releases nicotine or flavored vapor within the establishment.

18.08.243 Electronic cigarette product. “Electronic cigarette product” means any substance containing nicotine or a flavored liquid solution for vaporization, including 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.

18.08.282 Hookah bar/lounge. “Hookah bar” or “hookah lounge” means any facility, building, structure or location, whether fixed or mobile, where customers share tobacco from a communal hookah placed throughout the establishment.

18.08.402 Medical Marijuana Dispensary. “Medical marijuana dispensary” or “dispensary” means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver, in strict accordance with California Health and Safety Code Section 11362.5 et seq.; or (2) any facility, building, structure or location where two qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or cooperatively distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to California Health and Safety Code Section 11362.5 et seq. and such group is organized as a medical marijuana cooperative or collective as set forth in the Attorney General’s guidelines. The terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall be as defined in California Health and Safety Code Section 11362.5 et seq.

For purposes of this chapter, a “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and complies strictly with applicable law, including but not limited to California Health and Safety Code Section 11362.5 et seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code;
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code;
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code;
5. A residential hospice or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code.

18.08.575 Tobacco product. “Tobacco product” means any product(s) that is used to consume tobacco or any product that contains any tobacco leaf, including, but not limited to: cigarettes, cigars, cigarillos, blunts, snuff, creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka, kretek, shisha, roll-your-own cigarettes, cigarette or cigar rolling papers, electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, or pipes.

18.08.576 Tobacco store, retail. A “retail tobacco store” means a retail store that devotes more than fifteen percent (15%) of its total floor area to the sale of electronic cigarette, electronic cigarette products/paraphernalia, tobacco or smoking products and accessories/paraphernalia, but does not provide a lounge for the consumption of tobacco or electronic cigarettes. A retail tobacco store may also be referred to as a smoke shop.

18.08.612 Vapor bar/lounge. “Vapor bar” or “vapor lounge” means any facility, building, structure or location, whether fixed or mobile, where customers utilize a heating element that vaporizes a liquid solution that releases nicotine or flavored vapor within the establishment.

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WHATS HAPPENINGS TRI CITY VOICE

This space for filing stamp only

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Regina McEvoy
UNION CITY/CITY CLERK
34009 ALVARADO-NILES ROAD
UNION CITY, CA - 94587-4497

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California)
County of ALAMEDA) ss

Notice Type: ORD - ORDINANCE PUBLICATION

Ad Description:

Ord No. 791-13

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the WHATS HAPPENINGS TRI CITY VOICE - UNION CITY, a newspaper published in the English language in the cities of UNION CITY and FREMONT, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of ALAMEDA, State of California, under date of 05/02/2008, Case No. FG08374520. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

12/17/2013

Executed on: 12/31/2013
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

CNS #: 2567795

ORDINANCE NO. 791-13

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY AMENDING CHAPTER 5.42, ADDING CHAPTER 5.43, ADDING SECTION 18.04.210, AND AMENDING CHAPTER 18.08 OF THE MUNICIPAL CODE TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES, E-CIGARETTE BARS/LOUNGES, VAPOR BARS/LOUNGES, AND HOOKAH BARS/LOUNGES; TO REGULATE THE SALE OF CIGARS, CIGARILLOS, AND ELECTRONIC CIGARETTES; AND TO REPEAL RELATED TEMPORARY MORATORIUM ORDINANCES (AT-13-002)

The above entitled ordinance was adopted by the City Council on December 10, 2013. This abbreviated notice is published in lieu of the full text of the ordinance. A copy of the full text of the ordinance, as it was read and adopted on December 10, 2013, is available on the City's website at: <http://ff2.unioncity.org/webblink8/0/fol/112/Row1.aspx>. A copy of the full text of the ordinance is also available at the Office of the City Clerk, 34009 Alvarado-Niles Road, Union City, California, during normal business hours. The City Clerk can be reached by phone at 510-675-5348 if you desire a copy of the full text of the ordinance sent to you via email or by first class mail.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on December 10, 2013, by the following vote:

AYES: Councilmembers Duncan, Gacoscas, and Navarro, Vice Mayor Ellis, Mayor Dutra-Vernaci
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:
/s/ Carol Dutra-Vernaci
CAROL DUTRA-VERNACI, Mayor

ATTEST:
/s/ Renee Elliott
RENEE ELLIOTT, City Clerk

APPROVED AS TO FORM:
/s/ Benjamin T. Reyes II
BENJAMIN T. REYES II, City Attorney
12/17/13

CNS-2567795#



	Type	DBA	Expiration Date	Business Address
1	Convenience Store	MISSION VIEW FOOD & LIQUORS	12/31/2023	33503 MISSION BLVD
2	Convenience Store	7 ELEVEN 16824D	9/30/2023	2609 DECOTO RD
3	Convenience Store	7 ELEVEN 38702H	5/31/2023	1998 WHIPPLE RD
4	Convenience Store	7-ELEVEN INC. 21427C	11/30/2023	915 WHIPPLE RD
5	Convenience Store	7-ELEVEN STORE #16104C	12/31/2023	32215 ALVARADO-NILES RD
6	Convenience Store	QUIK STOP MARKET #551029	6/30/2024	1824 WHIPPLE RD
7	Convenience Store	UC FOOD & LIQUORS	12/31/2023	31090 UNION CITY BLVD
9	Convenience Store	MISSION FOOD & LIQUOR	12/31/2023	101 DECOTO RD
8	Department Store Chain	WALMART STORES #2031	12/31/2023	30600 DYER ST
10	Liquor	BOB'S DISCOUNT LIQUOR #19	5/31/2024	34596 ALVARADO NILES RD
11	Liquor	BOBS DISCOUNT LIQUORS #15	9/30/2023	31846 ALVARADO BLVD
12	Liquor	BOBS DISCOUNT LIQUORS #7	7/31/2023	32154 ALVARADO BLVD
13	Liquor	BOB'S DISCOUNT LIQUORS #8	6/30/2024	101 APPIAN WAY
14	Liquor	BOB'S QUICK SHOP BEER & WINE	9/30/2023	31887 ALVARADO BLVD
15	Liquor	KINGS LIQUORS	12/31/2023	30063 B SW INDUSTRIAL PKY
16	Liquor	LIQUOR BARREL	12/31/2023	2641 DECOTO RD
17	Liquor	NILES LIQUOR	2/29/2024	34359 ALVARADO-NILES RD
18	Liquor	OO LIQUORS	12/31/2023	1800 WHIPPLE RD
19	Liquor	PERRY'S LIQUORS	6/30/2024	31885 ALVARADO BLVD
20	Pharmacy	RITE AID #5943	12/31/2023	1650 DECOTO RD
21	Service Station	ALVARADO 76	12/31/2023	31901 ALVARADO BLVD
22	Service Station	ALVARADO NILES SHELL	12/31/2022	32187 ALVARADO-NILES RD
23	Service Station	CHEVRON STATIONS INC #2210	12/31/2023	1990 DECOTO RD
24	Service Station	CIVIC CENTER SHELL	12/31/2023	2001 DECOTO RD
25	Service Station	DEOL & LALLY ENTERPRISES INC.	12/31/2023	31301 ALVARADO NILES RD
26	Service Station	H&S ENERGY PRODUCTS,LLC #3057	2/29/2024	31300 ALVARADO NILES RD
27	Service Station	HARJAS PETROLEUM INC.	3/31/2024	31889 ALVARADO BLVD
28	Service Station	UC SHELL	11/30/2023	33365 MISSION BLVD
29	Service Station	UNION CITY VALERO	9/30/2023	31890 ALVARADO BLVD
30	Speciality Retail Grocery	SHALIMAR INDIAN GROCERY, LLC	12/31/2023	32118 ALVARADO BLVD
31	Speciality Retail Grocery	ISLAND PACIFIC SUPERMARKET	4/30/2024	4122 DYER ST
32	Speciality Retail Grocery	MARINA FOOD #6	12/31/2023	1791 DECOTO RD
33	Speciality Retail Grocery	NEW INDIA MARKET	12/31/2023	31885 ALVARADO BLVD #B
34	Speciality Supermarket Chain	WELCOME MARKET INC (Ranch 99)	9/30/2023	2931 FABER ST
35	Specialty	CHEAPER CIGARETTES	9/30/2023	31834 ALVARADO BLVD UNIT #A
36	Supermarket Chain	FOOD MAXX #463	12/31/2023	30073 INDUSTRIAL PKWY
37	Supermarket Chain	SAFEWAY INC #1197	12/31/2023	1790 DECOTO RD
38	Supermarket Chain	SAVE MART SUPERMARKETS #782 (Lucky's)	12/31/2023	32300 DYER ST

Senate Bill No. 793

CHAPTER 34

An act to add Article 5 (commencing with Section 104559.5) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to tobacco products.

[Approved by Governor August 28, 2020. Filed with Secretary of State August 28, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 793, Hill. Flavored tobacco products.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits a person from selling or otherwise furnishing tobacco products, as defined, to a person under 21 years of age. Existing law also prohibits the use of tobacco products in county offices of education, on charter school or school district property, or near a playground or youth sports event, as specified.

This bill would prohibit a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer, as those terms are defined, except as specified. The bill would make a violation of this prohibition an infraction punishable by a fine of \$250 for each violation. The bill would state the intent of the Legislature that these provisions do not preempt or prohibit the adoption and implementation of local ordinances that impose greater restrictions on the access to tobacco products than the restrictions imposed by the bill, as specified. The bill would state that its provisions are severable. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 104559.5) is added to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, to read:

Article 5. Tobacco Sale Prohibition

104559.5. (a) For purposes of this section, the following definitions apply:

(1) “Characterizing flavor” means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

(2) “Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(3) “Flavored shisha tobacco product” means any shisha tobacco product that contains a constituent that imparts a characterizing flavor.

(4) “Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor.

(5) “Hookah” means a type of waterpipe, used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

(6) “Hookah tobacco retailer” means a tobacco retailer that is engaged in the retail sale of shisha tobacco products, hookah, and hookah smoking accessories.

(7) “Labeling” means written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

(8) “Loose leaf tobacco” consists of cut or shredded pipe tobacco, usually sold in pouches, excluding any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes, including roll-your-own cigarettes.

(9) “Packaging” means a pack, box, carton, or container of any kind, or, if no other container, any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.

(10) “Premium cigar” means any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

(11) “Retail location” means both of the following:

- (A) A building from which tobacco products are sold at retail.
- (B) A vending machine.

(12) “Sale” or “sold” means a sale as that term is defined in Section 30006 of the Revenue and Taxation Code.

(13) “Shisha tobacco product” means a tobacco product smoked or intended to be smoked in a hookah. “Shisha tobacco product” includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. “Shisha tobacco product” does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

(14) “Tobacco product” means a tobacco product as defined in paragraph (8) of subdivision (a) of Section 104495, as that provision may be amended from time to time.

(15) “Tobacco product flavor enhancer” means a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.

(16) “Tobacco retailer” means a person who engages in this state in the sale of tobacco products directly to the public from a retail location. “Tobacco retailer” includes a person who operates vending machines from which tobacco products are sold in this state.

(b) (1) A tobacco retailer, or any of the tobacco retailer’s agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.

(2) There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer’s agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(c) Subdivision (b) does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:

(1) The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code.

(2) The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time.

(3) The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.

(4) If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.

(d) Subdivision (b) does not apply to sales of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises.

(e) Subdivision (b) does not apply to loose leaf tobacco or premium cigars.

(f) A tobacco retailer, or agent or employee of a tobacco retailer, who violates this section is guilty of an infraction and shall be punished by a fine of two hundred fifty dollars (\$250) for each violation of this section.

(g) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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Jurisdiction Adoption Year	Tobacco Retail License Ordinance	Flavored Tobacco Sales Restrictions	Electronic Smoking Device Sales Regulations	Density & Youth-Sensitive Areas	Little Cigar / Cigar Minimum Package Size	Minimum Price Set for Tobacco Product Sales	Redemption of Tobacco Discounts & Coupons Prohibited	Tobacco-Free Pharmacies	TRL Enforcement Agency	Annual TRL Fee	Approximate # Retailers	TRL Ordinance Links
Alameda (City) 2018	Yes	Yes, Complete sales ban, no exemptions	No	No TRLs may be issued within 300 feet of a youth populated area (private or public kindergarten, elementary, middle or high school) No TRL's may be issued within 500 feet of another tobacco retailer. Total number of TRLs limited to one for each 2,500 city inhabitants	5	\$7 cigarettes \$5 little cigars \$5 per premium cigar	Yes	Yes	Police Department	Unknown	45	https://www.alamedaca.gov/files/assets/public/departments/alameda/city-manager/ordinance-3230.pdf
Albany 2019	Yes	Yes, Complete sales ban, no exemptions	No	No	20	\$8 cigarettes \$8 little cigars	Yes	No	Police Department	\$250	11	https://www.albanyca.org/home/showpublisheddocument/41070/636915496893500000
Berkeley Updated 2019	Yes	Yes, Complete sales ban, no exemptions	No	No new TRL may be issued within 600 feet of a school	20	\$8 cigarettes \$8 little cigars \$7 per premium cigar	Yes	Yes	Police Department + Environmental Health	\$427	73	https://www.codepublishing.com/CA/Berkeley/html/Berkeley09/Berkeley0980/Berkeley0980.html
Dublin Updated 2020	Yes	Yes, Complete sales ban, no exemptions	Yes	To be considered	To be considered	To be considered	To be considered	To be considered	Police Department	\$298	27	https://www.codepublishing.com/CA/Dublin/html/Dublin04/Dublin0440.html
Emeryville	No	No	No	No	No	No	No	No	N/A	N/A	11	N/A
Fremont 2019	Yes	Yes, Complete sales ban, no exemptions	No	No	5	\$8 cigarettes \$8 little cigars \$5 per premium cigar	No	No	Police Department	Unknown	112	https://www.codepublishing.com/CA/Fremont/#!/Fremont08/Fremont0875.html#8.75.290
Hayward Updated 2020	Yes	Yes, Complete sales ban, no exemptions	Yes	No new tobacco retailers within 1,000 feet of youth sensitive areas (public or private K-12 schools, libraries, parks and playgrounds, daycare centers)	5 with exception for a single large cigar for \$8	\$8 cigarettes \$8 little cigars \$8 single large cigars	Yes	Yes	Development Services Department – Code Enforcement Division	\$400	111	https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAM_UCO_CH10PLZOSU_ART1ZOOOR_S10-1.2780TORESAES
Livermore 2019	Yes	Yes, Complete sales ban, no exemptions	Yes	No TRL may be issued or existing license renewed within 1,000 feet of a youth-populated area (schools, libraries, playgrounds, youth centers, recreation facilities, or licensed commercial child-care or preschool facilities)	No	No	No	No	Police Department	\$1,005	64	https://www.codepublishing.com/CA/Livermore/Municipal/Livermore05/Livermore0550.html
Newark	No	No	No	No	No	No	No	No	N/A	N/A	39	N/A
Oakland Updated 2020	Yes	Yes, Complete sales ban, no exemptions	No	Conditional Use Permit (not in TRL): No tobacco retailing within 1,000 feet of a residential zone, school, public library, park or playground, recreation center or licensed daycare facility.	20	\$8 cigarettes little cigars large cigars	Yes	Yes	Police Department/ ABAT Unit	\$1,500	363	https://oakland.legistar.com/View.ashx?M=F&ID=8287081&GUID=2FD70A99-A98A-4823-B60A-6B4039EFBCA3
Piedmont 9/19/22	No	Yes	No	No	No	No	No	No	Police Department	N/A	1	https://piedmont.ca.gov/common/pages/DisplayFile.aspx?itemId=18933088
Pleasanton 8/18/20	Yes	Yes, Complete sales ban, no exemptions	Yes	Prohibits new tobacco retailers from locating within 1,000 feet of youth-populated areas	20	\$8 cigarettes, little cigars and large cigars (at 5 cigars per pack). Individual large cigars priced at \$7 or more plus sales tax	Yes	No	Police Department	\$550 (initial) / \$450 renewals	44	https://www.cityofpleasantonca.gov/search/default.asp?q=tobacco
San Leandro Updated 2022	Yes	Yes	No	No	5	\$7 little cigars \$5 premium cigar	No	No	Police Department	\$500	75	https://qcode.us/codes/sanleandro/view.php?topic=4-4_36&frames=off
Unincorporated Alameda County 1/14/20	Yes	Yes, Complete sales ban, no exemptions	Yes	Prohibits tobacco sales (new retailers) within 1,000 ft of youth populated areas (schools, libraries, parks, playgrounds, youth centers, recreation facilities, and licensed child-care facilities or preschools); Prohibits tobacco sales (new retailers) within 500 feet of existing tobacco retailers; Limits the total number of tobacco retail licenses to 1 per 2,500 residents	20	\$8 cigarettes little cigars premium cigars	Yes	Yes	Planning - Community Development Agency District Attorney's Office	\$940	105	http://www.acgov.org/cda/trl.htm
Union City 2010	Yes	No	No	Conditional Use Permit (not TRL) bans sale of tobacco within 1,000 feet of park, playground, public library, recreation center, religious institution, school or youth-oriented establishments (service stations exempt) and sale of tobacco by a <u>retail tobacco store</u> within 1,000 feet of another such use. Other Tobacco Zoning Definitions: - Tobacco Products - Gas Station Marketeer	5	\$5 premium cigar	Yes (nonsale distribution)	No	Police Department	\$863	38	http://qcode.us/codes/unioncity/?view=desktop&topic=5-5_42-5_42_010

Electronic Smoking Ban

SBC LIQUORS

Thu 7/20/2023 9:37 PM

To: City Clerk <Cityclerk@unioncity.org>

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Hello,

We have been informed that the city of Union City are trying to ban the sell of electronic smoking devices.

We strongly feel this is unfair to small businesses and would force business such as ours to close down. As a small business, we are working day to day to ensure that we are able to profit in our businesses. The state has already banned flavored tobacco products, which already affected our industry. We have 3 stores in Union City, including one next to a school, and we have never received a tobacco ticket for selling underage. Our employees are dependent on our businesses to ensure they have a solid income to feed their families as well. If Union City would put a ban on E Cigarette products, consumers would just shop in Fremont to get their products. We already have saw a decrease in sales this year due to the flavor ban, and if Union City were to ban more products and create these restrictions, then it would decrease our sales more. Since flavors have already been banned, why is the city trying to increase more restrictions? Wages, Rent and other expenses are increasing to run a business, but the city is creating so many restrictions to actually allow businesses to cover these expenses. The ban of e cigarettes would have a huge impact on small businesses as well as the employees working in these businesses. A lot of these employees working in these stores are lower income employees working minimum wage jobs. So if sales do start to decrease with this proposed ban, then people would eventually start to be laid off and the business would be shut down. Please be mindful of these employees and their families as well. Thank you for reading this email. If you have any questions, please feel free to call me at (510)-789-8311 and we can discuss more.

Sent from my iPhone

Public Comment for agenda item #7.a.**Gurpreet Bhella**

Mon 7/24/2023 2:37 PM

To:City Clerk <Cityclerk@unioncity.org>

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Dear City Council Members,

I hope this letter finds you in good health and high spirits. My name is Gurpreet Bhella, and I am a 11th-grade student at James Logan. I am writing to you today with a heavy heart and a plea for your understanding and support.

Over the past few years, I have witnessed the growing issue of tobacco usage among students in my school and around our community. The easy availability of tobacco products has made it dangerously simple for my peers to access and fall prey to this harmful habit. As a result, many of my friends and classmates are getting addicted, and it breaks my heart to see their lives negatively impacted by tobacco use.

Tobacco addiction is a serious problem that affects not just the individual users but also their families and friends. The toll it takes on their health, both physical and mental, is immense. I have seen bright and promising futures being dimmed by this addiction, and it's a constant source of concern and sadness for all of us.

Stricter tobacco control measures can make a significant difference in curbing the use of these harmful products among young people like myself. We need your help to enforce regulations that limit the sale and marketing of tobacco products near schools and youth-populated areas. By doing so, you would be safeguarding the well-being and future of countless students like me.

I sincerely believe that the health and happiness of our youth should be our top priority. Your actions now will not only protect us from the dangers of tobacco but will also inspire future generations to lead healthier lives.

Please consider the impact that your decisions can have on the lives of students and the community as a whole. Together, we can create a safer and healthier environment for all residents of our city.

Thank you for taking the time to read my letter and for considering my heartfelt request. Your support in enforcing stricter tobacco control measures would mean the world to me and my fellow students.

With utmost sincerity,

Gurpreet Bhella

James Logan High School

Union City, California

Item 7.a

Study Session to Receive Direction from City Council on Possible Amendments to the Tobacco Retail License Ordinance and other Ordinances that Govern the Sale and Location of the Tobacco Retailers



July 25, 2023, City Council Regular Meeting

BACKGROUND



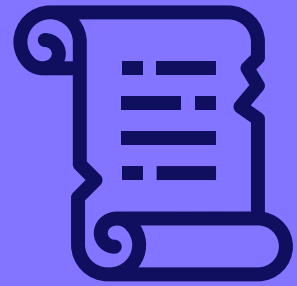
Youth Commission Recommendations

1. Ban the sale of all flavored tobacco products, including menthol cigarettes.
2. Ban the sale of electronic smoking devices/vapes and related paraphernalia.
3. Ban the sale of tobacco products in pharmacies.
4. Strengthen the minimum price and/or pack size requirement for tobacco products.

BACKGROUND



Informational Report of January 11, 2022



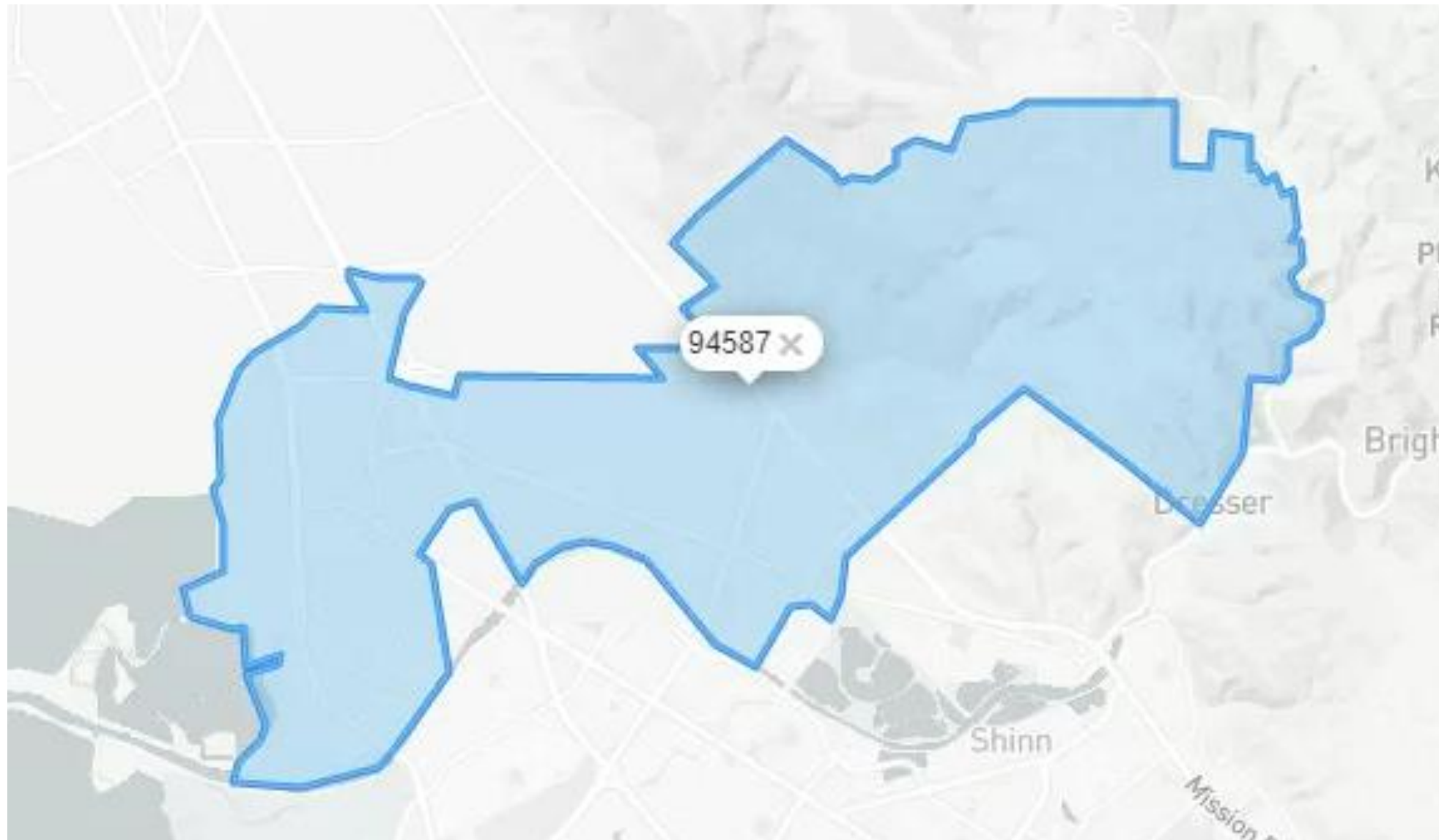
Proposition 31, November 8, 2022



Study Session, July 25, 2023

CURRENT TOBACCO RETAIL ORDINANCE IN UNION CITY		
Minimum Price	\$ 5.00 per single cigar (No minimum price on cigarettes)	Chapter 5.42
Discount / Coupons	Prohibits non-sale distribution of coupons	Chapter 5.42
Density / Youth Sensitive Areas	Conditional Use Permit: Prohibit the sale of tobacco within 1,000 feet to “sensitive use”	Chapter 18.36.040
Proximity to Other Retail Tobacco Stores	Prohibits the sale of tobacco within 1,000 feet of other retailers.	Chapter 18.36.030
Violation Structure	1st: Written warning & 30 days to correct violation. 2nd: 30-day license suspension 3rd: 90-day license suspension 4th: License revocation; no new license issued for 5 years. Violations subject to \$250-\$1K fine	Chapter 5.42

Tobacco Retailers



QuikStop



Lucky

38 Tobacco Retailers in Union City



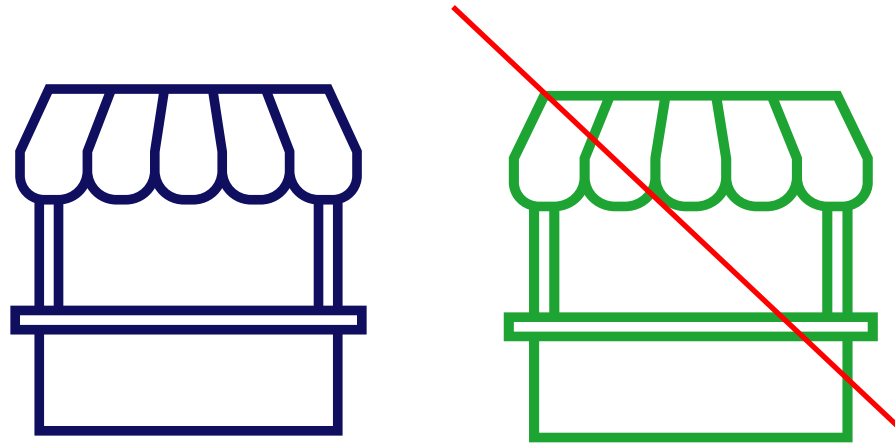
Youth Commission Recommendations

1. Ban electronic smoking devices/vapes and paraphernalia.
2. Ban tobacco products in pharmacies.
3. Minimum price for tobacco products to \$8.00
4. Minimum size requirement for tobacco products to 20 per pack

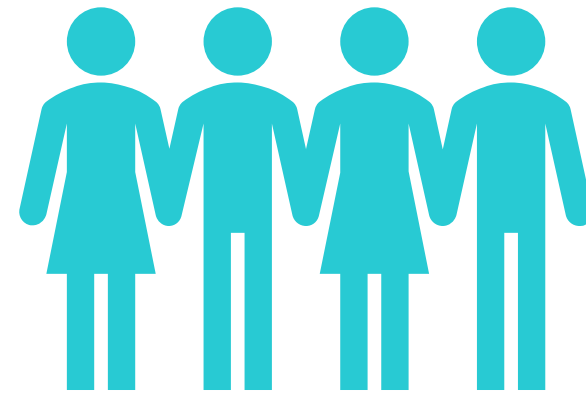
Neighboring Cities in Alameda County

- Dublin, Hayward, Livermore, and Pleasanton
- Alameda, Berkeley, Hayward, and Oakland.
- Albany, Berkeley, Fremont, Hayward, Oakland
- Albany, Berkeley, Oakland, and Pleasanton

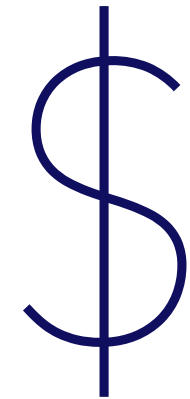
Additional Recommendations



Prohibit retail license
within 500 feet of
existing tobacco
retailers



Limit the number of
tobacco licenses
to 1 per 2,500
residents



Increase the citation
fines for violations

RECOMMENDATION

Staff recommends that the City Council hold a study session and provide direction on possible amendments to the Tobacco Retail License Ordinance and other ordinances that govern the sale and location of the tobacco retailers. Tobacco retail licenses are regulated through Chapter 5.42 and Title 18 Zoning, of the Union City Municipal Code.



Agenda Item

DATE: 7/25/2023

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MARILOU AYUPAN, PUBLIC WORKS DIRECTOR

SUBJECT: ADOPT A RESOLUTION APPROVING UNION CITY TRANSIT FALL 2023 SERVICE CHANGES EFFECTIVE SATURDAY, SEPTEMBER 9, 2023

Staff recommends that the City Council adopt a resolution approving Union City Transit Fall 2023 services changes effective Saturday, September 9, 2023.

STRATEGIC PLAN ALIGNMENT

Does not align with strategic plan goals.

BACKGROUND

Prior to the Novel Coronavirus (COVID-19) Pandemic, Union City Transit had not changed its routes and schedules since 2015. During 2020, Union City Transit went through multiple iterations of its service to adapt to decreased ridership, social distancing, and social unrest with curfews. After a public hearing held on March 9, 2021, the City Council approved Resolution No. 5722-21 to make permanent service changes, specifically to route alignments, that Union City Transit still follows today.

On May 24, 2021, Union City Transit began the twenty-two (22) month Union City Flea microtransit pilot project that was initially approved by City Council Resolution No. 5535-19 on October 22, 2019. The pilot project concluded on March 31, 2023. City Council approved extending the program through September 1, 2023 by adopting Resolution No. 6111-23 on April 25, 2023, to coincide with the upcoming Bay Area Rapid Transit District (BART) fall service changes originally scheduled to take place in August 2023.

BART made the official announcement on April 27, 2023, that their proposed service changes for Fall 2023 would take effect on Monday, September 11, 2023. The service changes would be in response to a looming fiscal cliff that requires reducing service to preserve existing operating funds with significant impacts to the segment of the system between Bay Fair and Milpitas. Trains will now be scheduled to arrive on an average of ten (10) minutes instead of an average of seven and a half (7.5) minutes. This adjustment impacts Union City

Transit schedules in effect since September 8, 2022.

Additionally, due to the COVID-19 Pandemic, the City Council approved multiple extensions of the operations and maintenance contract with MV Transportation, Inc. (MV Transit) between May 2020 and December 2022. A new competitively bid contract was awarded to MV Transit on March 14, 2023, through City Council Resolution No. 6096-23. The new contract includes a provision for microtransit and an anticipated number of service hours pending an expansion of the service.

On April 25, 2023, the City Council approved Resolution No. 6112-23 authorizing Union City Transit to apply for Low-Carbon Transit Operation Program (LCTOP) funds to partially fund an expanded service area for the Union City Flea microtransit service as described in the awarded contract with MV Transit. This application has been submitted to the California Department of Transportation (Caltrans) for review and Caltrans staff has worked with Union City Transit staff to ensure it gets approved.

DISCUSSION

The Metropolitan Transportation Commission's (MTC) Blue Ribbon Transit Recovery Task Force (BTRTF or BRTF) that convened remotely during the COVID-19 Pandemic to address transit issues has evolved into the Transit Transformative Action Plan (TTAP) in order to implement the most viable recommendations that came from the BRTF. The TTAP includes schedule coordination, fare coordination, wayfinding coordination, technology coordination, procurement coordination, and fiscal responsibility amongst all the transit operators in the nine (9) county San Francisco Bay Area under the purview of MTC. Some of the described collaboration will come through a newly developed MTC committee responsible for Regional Network Management (RNM). Part of the idea is to make local or sub-regional operators connect with regional operators. In Union City, Union City Transit would (and has been) coordinate its schedule to connect with BART trains arriving or departing at the station.

Union City Transit staff has evaluated the new BART schedule for Fall 2023 and come up with a slightly modified schedule that maintains connections with the maximum number of trains possible. The new schedule preserves weekday morning and evening twenty (20)-minute peak service on Routes 1, 2, and 5. The new schedule preserves the same number of trips on Routes 3 and 4. A continuation of supplemental service on Routes 1 and 5 on weekdays during the school year are also part of the new schedule. The new weekday schedule will start at 4:41 AM, instead of 4:29 AM, and end at 10:42 PM, instead of 10:45 PM, with the same amount of scheduled service. The new weekend schedules will start at 6:51 AM, instead of 6:39 AM, and end at 7:42 PM, instead of 7:46 PM, with the same amount of scheduled service.

Union City Paratransit's Americans with Disabilities Act (ADA) service hours will adjust to complement those of the fixed-route service as required by law. There will be no change to Paratransit Plus service on weekdays while the service hours on weekends will adjust to the weekend fixed-route service.

Union City Flea will be impacted the most with the upcoming service changes. The previous configuration of the Union City Flea was a pilot project with restrictions and limitations on when and where the service could operate. Beginning on Monday, September 11, 2023, Union City Transit staff intends to expand the weekday hours of service from a morning service window of 4:40 AM to 8:40 AM and an afternoon service window of 2:40 PM to 6:40 PM to an all-day service window of 4:41 AM (coinciding with start of fixed-route service) to 8:40 PM. The service area will also expand to encompass the Civic Center, Decoto, Seven Hills, Tamarack, and Tamarack Hills. Only one (1) vehicle will be in service in the beginning with wait times expected to be between ten (10) to (20) minutes for a curb-to-curb service. The expansion of the service area and hours will reflect the same number of service hours that were available during the pilot project only spread out to allow greater access. For now, the fare will remain the same as that on the fixed-route service and Clipper is accepted (and recommended) along with the Clipper discounts. If the service becomes popular, Union City Transit has

two (2) additional vehicles to accommodate peak period trends.

Union City Transit is also currently working with the New Haven Unified School District (NHUSD) to create a seasonal supplemental service to operate during the school year. The service will be open to everyone, but will be a pilot program to see if the configuration is correct for moving students across town. This new supplemental service is not included in this requested action by the City Council because NHUSD is still garnering feedback from families regarding the proposed service and Union City Transit staff expect to present an Agreement for approval at the August 8, 2023 City Council meeting.

FISCAL IMPACT

The service changes put forth were included in the pricing from MV Transit and MV Transit's pricing was used in the development of Union City Transit's approved biennial budget, so there is no anticipated cost increase to Union City Transit. Union City Transit staff continues to explore additional funding sources like LCTOP to fund service enhancements, but this is in an effort to preserve funding reserves since the San Francisco Bay Area Transit operators are all potentially facing financial issues after FY 2027-2028. There will be no impact on the City's General Fund.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution approving Union City Transit Fall 2023 services changes effective Saturday, September 9, 2023.

Prepared by:

Steve Adams, Transit Manager

Submitted by:

Marilou Ayupan, Public Works Director

ATTACHMENTS:

Description	Type
❑ Resolution	Resolution
❑ Power Point	Attachment

RESOLUTION NO. XXXX-23

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
APPROVING UNION CITY TRANSIT'S FALL 2023 SERVICE CHANGES,
EFFECTIVE SATURDAY, SEPTEMBER 9, 2023**

WHEREAS, in the wake of the Novel Coronavirus (COVID-19) Pandemic, the Metropolitan Transportation Commission (MTC) has taken the lead on a Transit Transformative Action Plan (TTAP) to increase collaboration and connectivity amongst the San Francisco Bay Area operators through Regional Network Management (RNM); and

WHEREAS, connectivity amongst operators is recommended to happen through local or sub-regional operator connections with regional operators and in Union City, Union City Transit coordinates its schedule to connect with Bay Area Rapid Transit District (BART) trains arriving or departing at the station; and

WHEREAS, BART will implement a new schedule starting on Monday, September 11, 2023, that will reduce frequency on the routes passing through the Union City station; and

WHEREAS, Union City Transit will take this opportunity to re-align its service schedule to connect with the new BART schedules as well as expand on its previous Union City Flea microtransit pilot service; and

WHEREAS, the new weekday schedule will start at 4:41 AM, instead of 4:29 AM, and end at 10:42 PM, instead of 10:45 PM, with the same amount of scheduled service along with the new weekend schedules which will start at 6:51 AM, instead of 6:39 AM, and end at 7:42 PM, instead of 7:46 PM, with the same amount of scheduled service; and

WHEREAS, the service changes put forth were included in the pricing of the MV Transportation, Inc. (MV Transit) operations and maintenance contract recently awarded and MV Transit's pricing was used in the development of Union City Transit's approved biennial budget, so there is no anticipated cost increase to Union City Transit.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby adopts a resolution approving Union City Transit's Fall 2023 services changes, effective Saturday, September 9, 2023.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on the 25th day of July 2023, by the following vote:



Item 7b. Presentation: Union City Transit Fall 2023 Service Changes

July 25, 2023

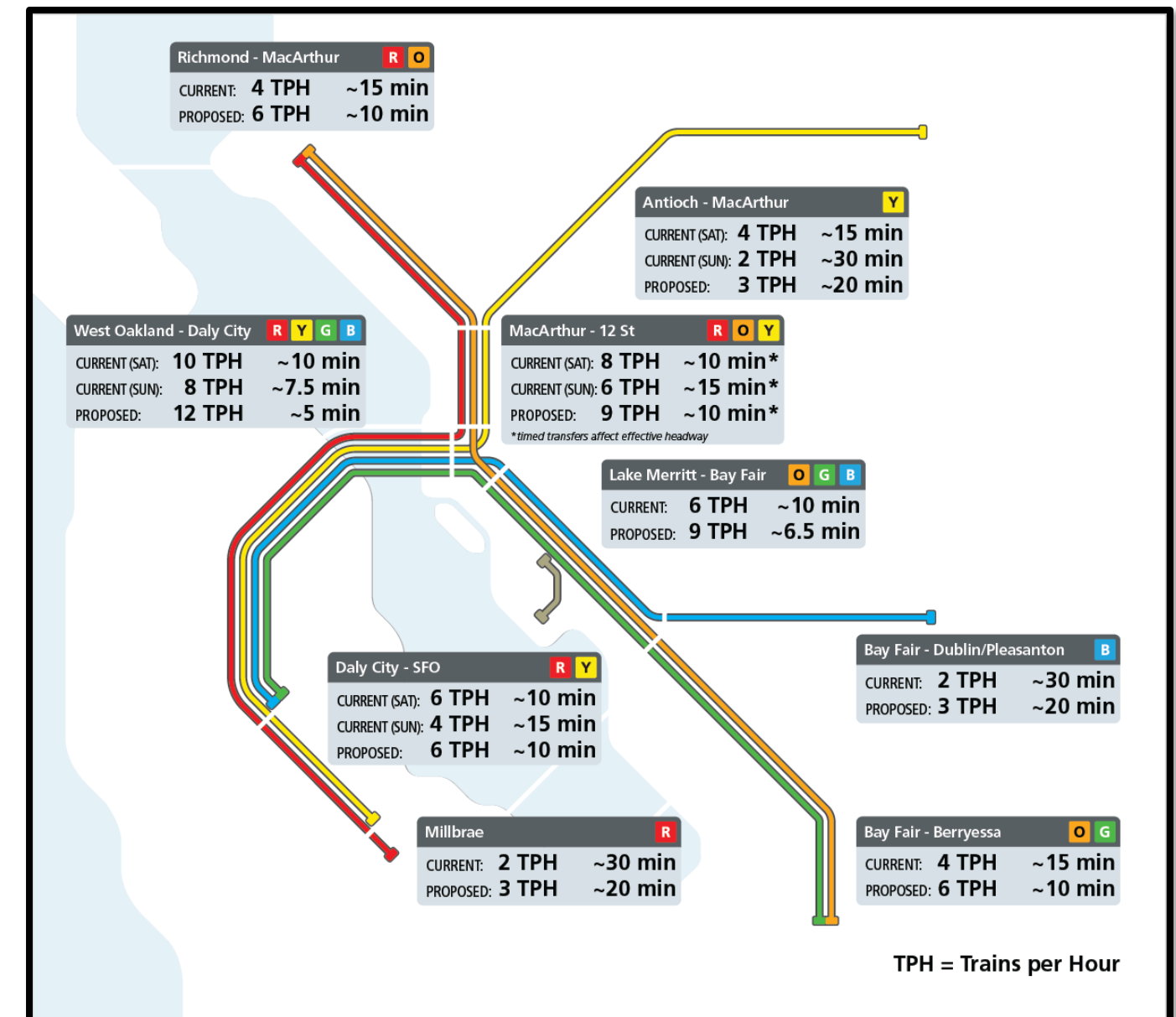
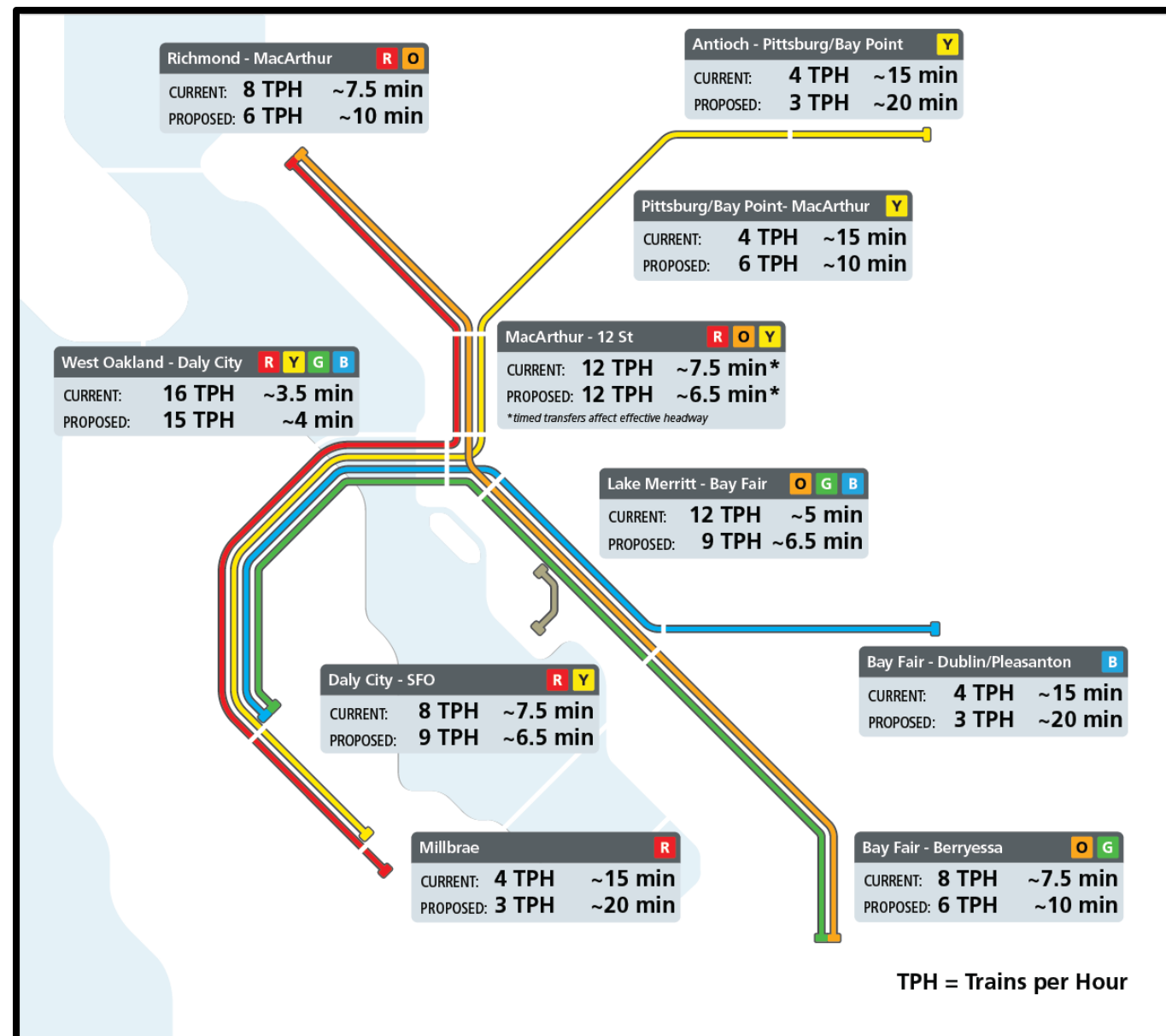
I The Basics

- When?
 - Saturday, September 9, 2023
- Why?
 - BART's new schedule starts Monday, September 11, 2023
 - Union City Transit changing schedule to connect with trains



BART Changes

- Reduced Service Frequency Schedule
- Orange and Green Line trains arrive at Union City BART at the same time everyday after 8:00 a.m.





I Union City Transit Changes

- Weekdays
 - Service hours are 4:41 a.m. to 10:42 p.m.
 - Routes 1, 2, and 5 continue to operate every 20 minutes from 5:00 a.m. to 8:30 a.m. and 3:30 p.m. to 7:00 p.m.
- Weekends
 - Service hours are 6:51 a.m. to 7:42 p.m.
 - Route 2 continues to operate every 30 minutes all day

I Union City Transit Changes (Continued)

- Routes 3 & 4
 - Same schedule from 7:37 a.m. to 7:25 p.m. everyday
 - Both routes scheduled to depart and arrive at BART at the same time
- Weekday Supplemental Service During School Year
 - Starts Wednesday, August 9, 2023
 - New seasonal supplemental service funded by NHUSD (Not starting Wednesday, August 9, 2023)

I Union City Flea

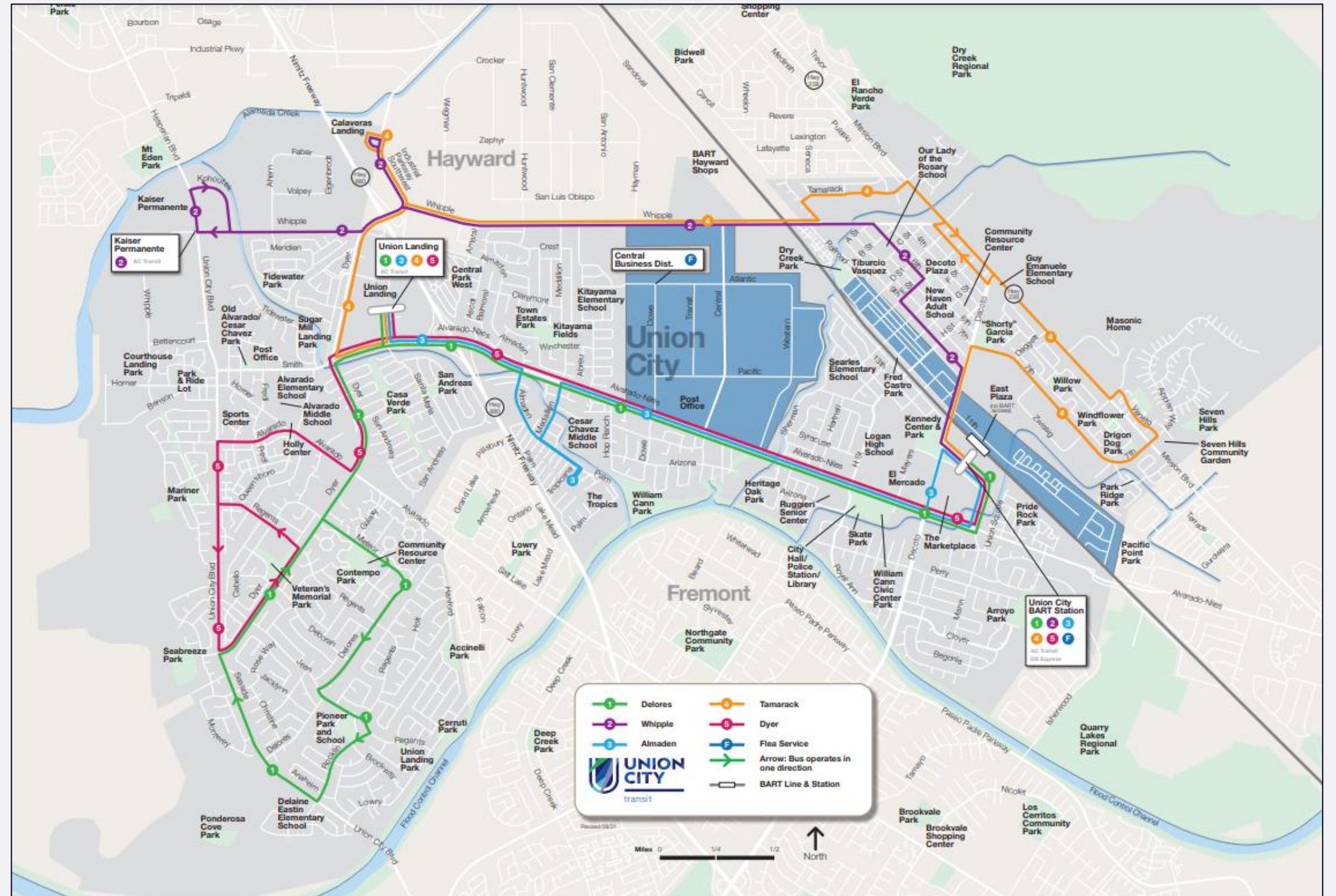
- Weekdays Only
 - Service hours are 4:41 a.m. to 8:40 p.m.
 - Large zone expansion
 - Tamarack
 - Tamarack Hills
 - Decoto
 - Seven Hills
- Trips available to and from anywhere in the zone
- New program to request trips as part of new contract with MV Transit
- Partially funded through Low Carbon Transit Operations Program (LCTOP)





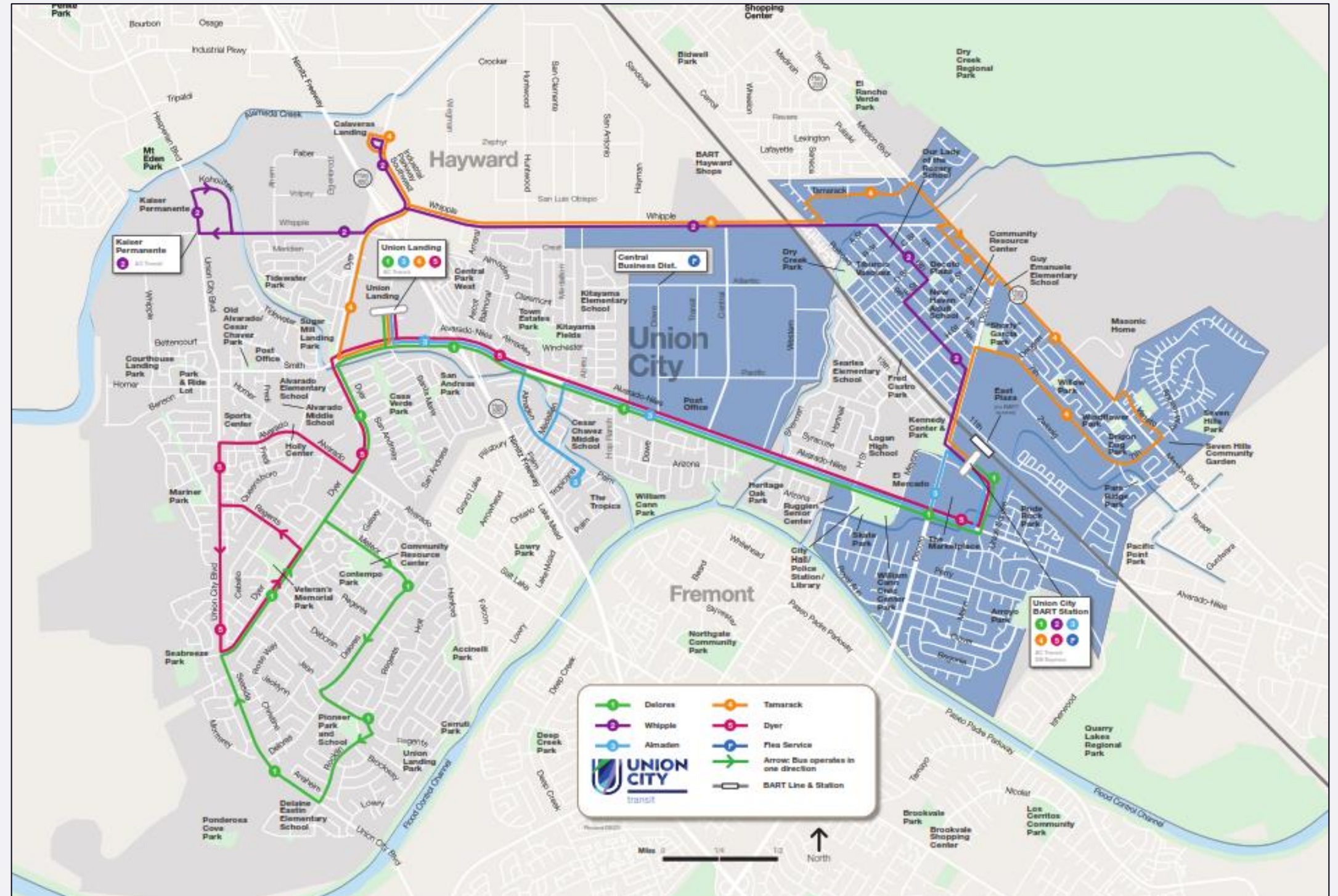
| 2022 Service Map

Union City Transit & Flea Service Area



| 2023 Service Map

Union City Transit & Flea Service Area

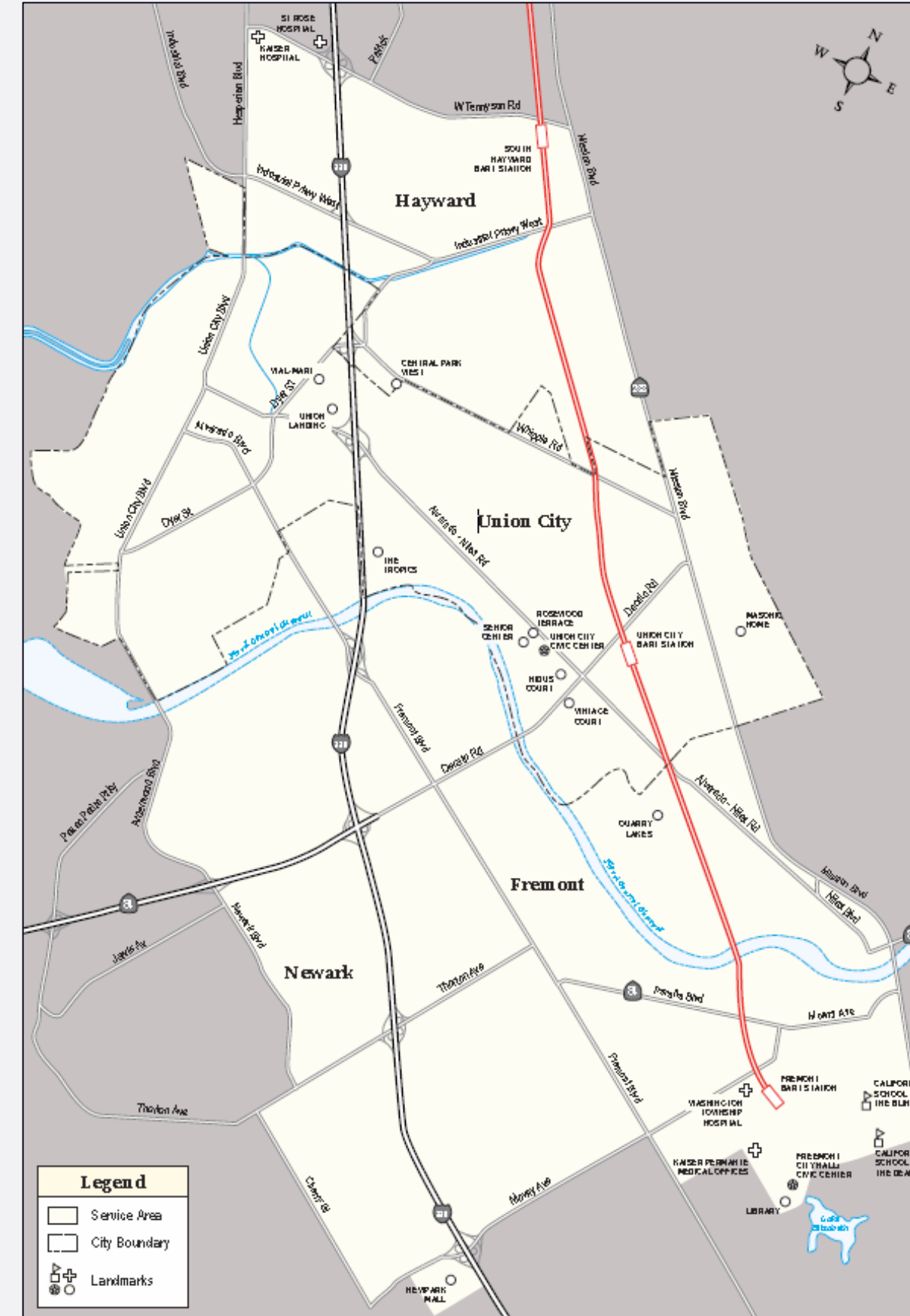


I Union City Paratransit Changes

- Weekdays
 - Service hours are 4:41 a.m. to 10:42 p.m.
- Weekends
 - Service hours are 6:51 a.m. to 7:42 p.m.
- New reservation program coming soon with some self-service features as part of new contract with MV Transit; Phone numbers remain the same



Union City Paratransit & Paratransit Plus Service Area





I Questions

Steve Adams, Transit Manager
Union City Transit
sadams@unioncity.org



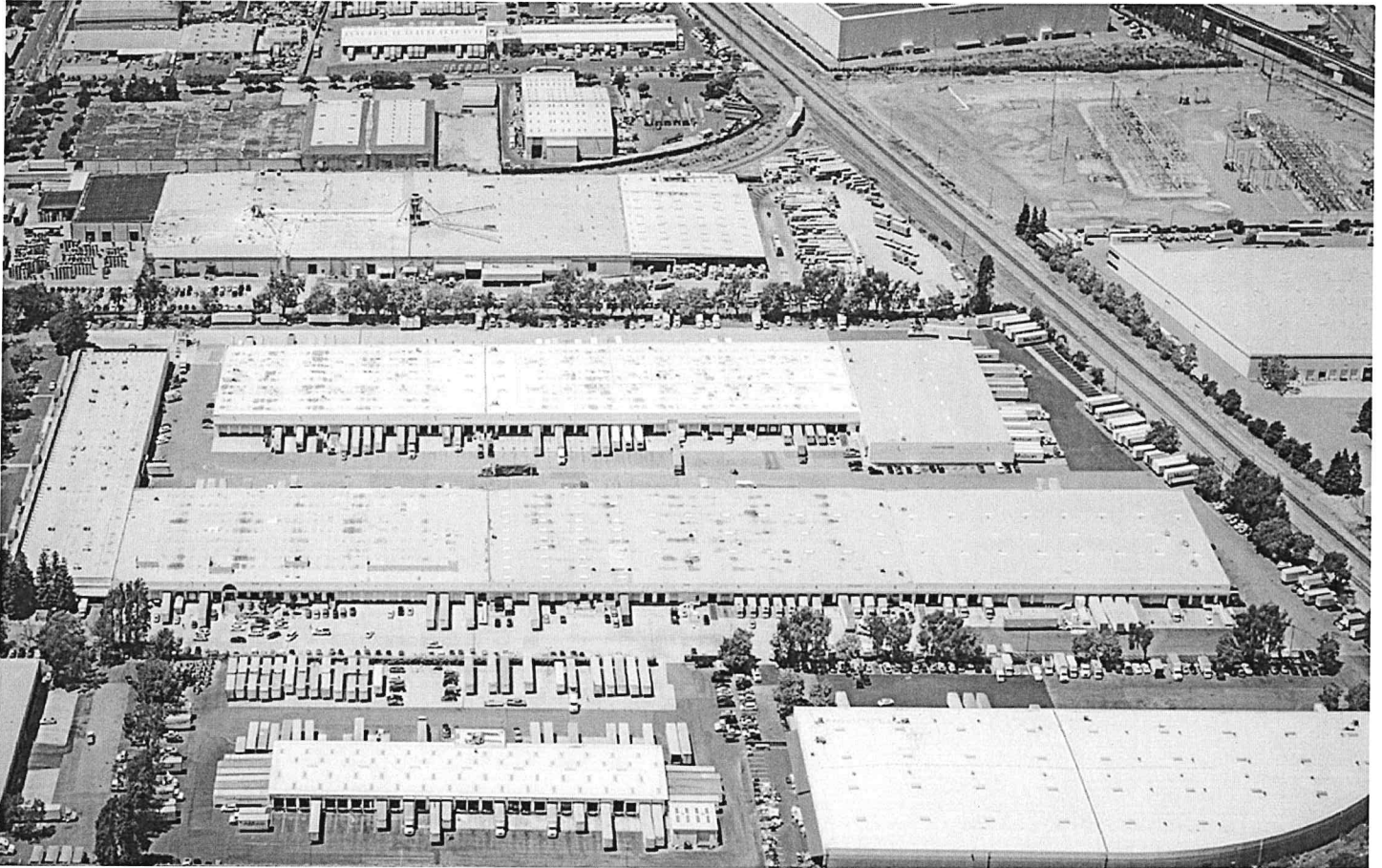
Agenda Item

ATTACHMENTS:

Description	Type
 Articles From Gloria Ortega, Economic Development Manager	Attachment

Regional Investments Awarded to Protect and Invest in East Bay's Industrial Areas

by East Bay EDA | Jul 24, 2023 | News



Prologis facilities in San Leandro's Priority Production Area (PPA). Source: Prologis.

Oakland, CA – On June 28, 2023, the Metropolitan Transportation Commission awarded pilot grants to the East Bay Economic Development Alliance (East Bay EDA) and Contra Costa County to advance their Priority Production Areas (PPA), which are regional growth areas that have been prioritized for economic development investments and a key part of MTC Plan Bay Area's broader effort to achieve a better jobs-housing balance across the Bay Area. The East Bay's industrial employment lands are one of the region's greatest strategic advantages within the greater Bay Area, offering incomparable quantity and diversity of industrial land uses and buildings compared to the rest of the region.

Led by East Bay EDA and the cities of Fremont, Oakland, San Leandro and Union City, the multi-jurisdictional project titled "Leading the Next Generation of Industrial Buildings and Districts" will implement modern, resilient building and site design standards in seven PPAs as well as provide technical assistance to cities seeking financing mechanisms to fund critical infrastructure needs in their industrial districts.

The fast-growing I-880 corridor cities of Fremont, Oakland, San Leandro, and Union City continue to drive demand for industrial repositioning and in recent years, have attracted a growing number of advanced industries seeking modern, flexible spaces to accommodate a variety of functions, including R&D, manufacturing, logistics, and more. At the same time, these PPAs are located in low-lying areas and along the Hayward Fault, making these areas vulnerable to sea-level rise and seismic activity. The project will bolster economic diversity and the continual growth of innovation industries by also working to ensure these building and infrastructure investments will be resilient and responsive to climate change.

“As demand heats up for East Bay industrial space, we see this moment as an opportunity to prepare and design for the next generation of flexible and resilient industrial buildings and districts,” said Carol Dutra-Vernaci, MTC Commissioner and Mayor of the City of Union City. “This pilot project will assist cities in evaluating and reviewing current and future development proposals, provide developers clear direction of our goals, and serve as a model for other industrial cities.”

In Contra Costa County, the “Northern Waterfront Priority Production Areas Technical Assistance Project” will identify and implement common tools for infrastructure improvements across multiple Priority Production Areas (PPAs) of the County and the Cities of Concord, Pittsburg, Antioch, and Oakley. The Multi-Jurisdiction Technical Assistance Project for the seven PPAs covered will increase opportunity in Contra Costa County by expanding employment in communities with a jobs-housing imbalance. The Northern Waterfront of Contra Costa County is home to a robust labor force and this project will expand and upgrade the infrastructure capacity to attract the industries that support economic revitalization and address the jobs-housing imbalance.

Supervisor Federal Glover, MTC Commissioner and Chair of the Northern Waterfront Ad Hoc Committee said, *“We are looking forward to working with MTC-ABAG and the cities of Concord, Pittsburg, Antioch, and Oakley on developing a common set of tools and a direct path to infrastructure improvements that are so vital to advancing our economic development goals. Sixty percent of the industrial land in Contra Costa County is on the Northern Waterfront, and yet it is an older built environment with aging infrastructure. This project will leverage the multi-jurisdictional nature of the Northern Waterfront Economic Development Initiative to produce benefits at a regional/multi-jurisdictional scale.”*

For more information about MTC-ABAG’s Priority Production Area Program, please visit the MTC website.

FOR THE EXCLUSIVE USE OF GLORIAO@UNIONCITY.ORG

From the San Francisco Business Times:

<https://www.bizjournals.com/sanfrancisco/news/2023/06/30/southern-alameda-county-leads-growth.html>

SUBSCRIBER CONTENT:

Technology

Sponsored Content by East Bay Economic Development Alliance

Southern Alameda County leads growth of advanced industries



The City of Fremont has developed considerable expertise about the needs and requirements of these industries, positioning them to establish favorable industrial policies and processes.

By East Bay Economic Development Alliance

Jun 30, 2023

Silicon Valley is rightfully known as the national and global hub of the technology sector, although there is a lot more than just software that has helped to build and cement the region's reputation as an epicenter of innovation. Nowhere is this more evident than in the southern Alameda County cities of Fremont, Newark and Union City, which are home to some of the fastest growing and most innovative companies in sectors such as biomedical, cleantech, creative design and advanced manufacturing. These companies are driving the creation of new products and services that are already showing their potential to transform entire industries.

Over the past several months, the East Bay Economic Development Alliance (East Bay EDA) has been leading a study of industrial lands and the companies that occupy them. A few notable findings of this work so far has been the impressive 71.1 million square feet of industrial inventory and more than 60,000 industrial jobs in southern Alameda County, a grouping that includes the advanced manufacturing, life sciences and goods movement sectors. In just these three cities, these industries grew by more than 26,000 jobs, or 77%, in the 10-year period between 2011 and 2021.* Beyond the torrential growth of Tesla, whose Fremont factory is now the largest single site of automobile production in North America, there are many companies in related sectors, such as batteries and other clean technologies, that have helped to fuel these gains. Above and beyond the obvious benefits from the mere growth of these industries is the tremendous promise that they offer to help our world advance toward a less carbon-dependent future.



Rendering of development for life science, R&D and manufacturing in Union City, California

While the presence of world class talent, proximity to Silicon Valley, and strong industrial reputation has obviously had a lot to do with the growth of the East Bay subregion, other less obvious factors have also played a role, particularly the flexibility and proactivity of these cities to embrace and support their development. The City of Fremont has developed considerable expertise about the needs and requirements of these industries, positioning them to establish favorable industrial policies and processes - particularly permit streamlining and flexible building types - that have helped facilitate their rapid growth and development. As a result, there are now almost 50 battery or clean energy companies in Fremont, including Amprius, EnerVenue and Enovix, among others. As this cluster continues to grow, it has similarly expanded into Newark, home to FreeWire's global headquarters, maker of ultrafast EV charging solutions, as well as luxury electric car maker Lucid Motors. And nearby Union City has also seen growth in the life sciences and manufacturing sectors, with companies such as Emerald Packaging, Finelite and Mizuho OSI located within its borders.



FreeWire's global headquarters in Newark

Despite growing concerns about the state of the Bay Area economy during continued macroeconomic uncertainty, the evolution, innovation and investment in advanced industries that drove recent growth in southern Alameda County shows little sign of abating. Developers continue to be bullish in the industrial market, acquiring underutilized commercial sites for redevelopment into mixed-use life sciences and advanced manufacturing campuses, such as this property in Union City. Diverse companies and industries in this area are at the center of developing new solutions and technologies in areas such as energy generation and health care, addressing fundamental societal issues and challenges. The need to develop new products and services that can make people healthier and push our society toward a clean energy future is greater than ever, and it is the depth and strength of this innovation ecosystem in Fremont, Newark and Union City that will continue to lead the way forward.

East Bay EDA is a cross-sector, public-private partnership that promotes strategic economic development throughout Alameda and Contra Costa counties, serving as the regional voice and networking resource for strengthening the economy, building the workforce and enhancing the quality of life in the East Bay. For more information about our work, visit us at eastbayeda.org.