



AGENDA

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

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

Tuesday, March 26, 2024
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. Introduction Of New And Promoted Employees For 2023
- 3.b. IT Department Strategic Plan Update

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 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.)

Approve The Minutes Of The February 27, 2024 City Council Special Meeting

5.b. Approve The Minutes Of The February 27, 2024 City Council Regular Meeting

5.c. Adopt A Resolution To Formalize The Digital Preservation Of City Minutes, Resolutions, And Ordinances As Official Policy And Designate Docuware As The Trusted Electronic Document Management System (EDMS)

5.d. Adopt A Resolution Approving An Amendment To Update The Class Specifications For The Classifications Of Maintenance I - Parks and Grounds, And Budget Manager/Purchasing Agent

5.e. Adopt A Resolution Authorizing The Acceptance Of FY 2022-2023 SB 1383 Grant Funds From CalRecycle, In The Amount Of \$180,941, And Amending The FY 2023-2024 City Manager's Office, Solid Waste And Recycling Program Budget

5.f. Adopt A Resolution Approving The Consulting Services Agreement With California Wood Recycling, Inc. dba Agromin, For A Not-To-Exceed Amount Of \$240,000 Through December 31, 2026 For Compost Procurement Services And Compost Delivery To The City To Facilitate Compliance With SB 1383 Compost Procurement Regulations And Authorizing The City Manager To Approve Up To Three One-Year Extensions In An Additional Amount Not To Exceed \$270,000

6. PUBLIC HEARINGS - None

7. CITY MANAGER REPORTS

7.a. Introduction Of Ordinance Amending Union City Municipal Code Chapter 5.42 "Tobacco Retailers"

7.b. Policy Direction Regarding The Franchise Agreements For Landfill, Compost, And Recycle Collection Services

- 7.c. Presentation of the Fiscal Year 2021-2022 Year-End Financial Results and Adoption of A Resolution Authorizing The Use Of 50% Of The General Fund's Fiscal Year 2021-2022 Unanticipated Savings To Fund Unfunded Liabilities
- 7.d. Adopt A Resolution Approving An Exception To The 180-Day Waiting Period For Post-Retirement Employment And Approving An Employment Agreement With Retired Annuitant Laurie Radovich
- 8. **SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY - None**
- 9. **ITEMS REFERRED BY COUNCIL**
- 10. **GOOD OF THE ORDER**
- 11. **CLOSED SESSION**
 - 11.a. **Conference with Labor Negotiators (Pursuant to Government Code Section 54957.6) Agency Designated Representatives: Kristopher J. Kokotaylo, City Attorney; Mayor Dutra-Vernaci Unrepresented Employee: City Manager**
- 12. **ADJOURNMENT**

MEETING INFORMATION

Unless otherwise provided, the City Council's regular meetings are held in person 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 observe Council meetings via Zoom at: <https://unioncity-org.zoom.us/j/81719037355> Passcode: u8SH9cH^

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

Members of the public will not have the ability to provide comment via Zoom except under limited circumstances specified below. The ability to observe remotely as identified above is predicated on the technology being available and functioning without technical difficulties. Should the remote platform(s) not be available, or become non-functioning, or should the City Council otherwise encounter technical difficulties that makes the platform(s) unavailable, the City Council will proceed with the items of business in person unless otherwise prohibited by law.

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 impair.

ADDRESSING THE CITY COUNCIL

In Person Public Comment: Members of the public may address the Council on a matter on the agenda or during the Public Input portion of the meeting. Members who wish to speak 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 nor identification of name, city of residence or mailing address are required to provide public comment but are requested for record keeping purposes.

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 Zoom: As indicated above, the public cannot address the Council via Zoom unless the City is required to provide such opportunity pursuant to AB 2449. In the event that members of the public are allow to participate via Zoom pursuant to AB 2449, the Mayor will make an announcement at the beginning of the meeting. Raise your virtual hand to notify the host that you would like to speak during the item that you wish to speak on.

CITY COUNCIL NORMS AND GUIDELINES (Resolution No. 6129-23; Adopted May 23, 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 direction.
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 of 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.
11. We recognize the significant importance of attendance and participation at City Council meetings in proceeding with City business. All members of the City Council should endeavor to miss no more than two regular meetings per calendar year absent extraordinary circumstances. Members of the City Council should, absent unforeseen circumstances, provide a minimum of sixty days' notice to the City Council of planned absences during the Good of the Order or Items Referred by Council portion of the City Council agenda, as appropriate.

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 by 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

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: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JASON CASTLEBERRY, HUMAN RESOURCES DIRECTOR

SUBJECT: INTRODUCTION OF NEW AND PROMOTED EMPLOYEES FOR 2023

See attached staff report.

STRATEGIC PLAN ALIGNMENT

BACKGROUND

DISCUSSION

FISCAL IMPACT

RECOMMENDATION

Prepared by:

Jason Castleberry, Human Resources Director

Submitted by:

Jason Castleberry, Human Resources Director

ATTACHMENTS:

Description	Type
📎 Staff Report	Staff Report
📎 Presentation - New Hires and Promotions	Attachment



Agenda Item

DATE: March 26, 2024
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: JASON CASTLEBERRY, HUMAN RESOURCES DIRECTOR
SUBJECT: INTRODUCTION OF NEW AND PROMOTED EMPLOYEES

Staff presents the following 2023 new and promoted employees to the Mayor and City Council:

COMMUNITY & RECREATION SERVICES DEPARTMENT

New Hires:

- **Alivia Baker** was hired on April 17, 2023 as an Intervention Counselor.
- **Elaine Winnington** was hired on April 17, 2023 as a Homeless Program Outreach Worker.
- **Raja Boppey** was hired on October 9, 2023 as an Office Specialist II.

Promotions:

- **Christopher Valuckas** was promoted from Senior Recreation Supervisor to Community Recreation Services Manager on October 30, 2023.

FINANCE DEPARTMENT

New Hires:

- **Yang Chen** was hired on January 30, 2023 as a Finance Specialist III.
- **Marina Jimenez** was hired on October 16, 2023 as an Administrative Assistant II.

Promotions:

- **Kalpna Gurung** was promoted from Payroll Technician to Lead Payroll Technician on February 6, 2023.

HUMAN RESOURCES DEPARTMENT

New Hires:

- **Sean Bordbar** was hired on November 8, 2023 as a Human Resources Analyst I.

INFORMATION TECHNOLOGY DEPARTMENT

New Hires:

- **Dwayne Thaele** was hired on July 3, 2023 as the Cyber Security Manager.
- **Melissa Mastora** was hired on October 9, 2023 as an Administrative Assistant I.

POLICE DEPARTMENT

New Hires:

- **Zachary Hamilton** was hired on January 2, 2023 as a Police Cadet.
- **Victoria Estrada** was hired on February 27, 2023 as a Police Officer Trainee.
- **Marisol Soto** was hired on September 11, 2023 as a Police Officer Trainee.
- **Vijay Ajit Pal Kandola** was hired on September 11, 2023 as a Police Officer Trainee.
- **Eric Barajas** was hired on September 11, 2023 as a Police Officer Trainee.
- **Aiden Yarwood** was hired on September 11, 2023 as a Police Officer Trainee.
- **Maritza Viramontes** was hired on September 18, 2023 as a Police Office Assistant.
- **Jacqueline Aranda-Castillo** was hired on October 30, 2023 as a Police Office Assistant.

Promotions:

- **Maxwell Stubbs** was promoted from Police Officer Trainee to Police Officer Recruit II on January 30, 2023 and promoted from Police Officer Recruit II to Police Officer on June 16, 2023.
- **David Noorzad** was promoted from Police Officer Trainee to Police Officer Recruit II on January 30, 2023 and was promoted from Police Officer Recruit II to Police Officer on July 31, 2023.
- **Jeno Cornejo** was promoted from Police Officer Trainee to Police Officer Recruit II on January 30, 2023 and was promoted from Police Officer Recruit II to Police Officer on June 14, 2023.
- **Joseph Goodrich** was promoted from Police Officer Trainee to Police Officer Recruit II on January 30, 2023 and was promoted from Police Officer Recruit II to Police Officer on June 14, 2023.
- **Sergio Contreras** was promoted from Police Officer Trainee to Police Officer Recruit II on January 30, 2023 and was promoted from Police Officer Recruit II to Police Officer on July 14, 2023.
- **Jamal B. Hammad** was promoted from Police Officer Recruit II to Police Officer on February 13, 2023.
- **Angela Fonseca** was promoted from Police Officer to Police Sergeant on April 17, 2023.
- **Aaron Izquierdo** was promoted from Police Officer Trainee to Police Officer Recruit II on May 30, 2023 and was promoted from Police Officer Recruit II to Police Officer on October 9, 2023.
- **Jonathan Vasquez Barajas** was promoted from Police Officer Trainee to Police Officer Recruit II on May 30, 2023 and was promoted from Police Officer Recruit II to Police Officer on October 9, 2023.
- **Sunny Duong** was promoted from Police Officer Trainee to Police Officer Recruit II on May 30, 2023 and was promoted from Police Officer Recruit II to Police Officer on October 12, 2023.
- **Jorge Solorzano-Buenrostro** was promoted from Police Office Assistant to Police Department Office Coordinator on July 3, 2023.

- **Victoria Estrada** was promoted from Police Officer Trainee to Police Officer Recruit II on August 21, 2023.
- **Victor Derting** was promoted from Police Captain to Deputy Police Chief on December 25, 2023.
- **Andrew Holt** was promoted from Police Lieutenant to Police Captain on December 25, 2023.
- **Brian Baumgartner** was promoted from Police Lieutenant to Acting Police Captain on December 25, 2023.

PUBLIC WORKS DEPARTMENT

New Hires:

- **Gustavo Montoya** was hired on January 9, 2023 as a Maintenance Trainee – Streets.
- **Daniel Medrano** was hired on July 10, 2023 as a Maintenance Trainee – Streets.
- **Roberto Andres** was hired on October 16, 2023 as a Vehicle Heavy Equipment Mechanic.
- **Ronald Perry** was hired on October 23, 2023 as a Vehicle Heavy Equipment Mechanic.
- **Juan Dominguez** was hired on October 30, 2023 as a Fleet Supervisor.

Promotions:

- **Jorge Rodriguez** was promoted from Maintenance Trainee - Streets to Maintenance I - Streets on March 6, 2023.
- **Robert Calderon** was promoted from Fleet Supervisor to Public Works Superintendent on July 10, 2023.
- **Julio Duran** was promoted from Maintenance I – Parks & Grounds to Maintenance II – Parks & Grounds on August 14, 2023.
- **Gustavo Montoya** was promoted from Maintenance Trainee – Streets to Maintenance I – Streets on August 14, 2023.

EXECUTIVE LEADERSHIP TEAM

New Hires:

- **Jason Castleberry** was hired on July 17, 2023 as the Human Resource Director.

Prepared by:

Jason Castleberry, Human Resources Director

Submitted by:

Jason Castleberry, Human Resources Director

Approved by:

Joan Malloy, City Manager



2023 New Hires and Promotions

Presented By: Jason Castleberry, HR Director

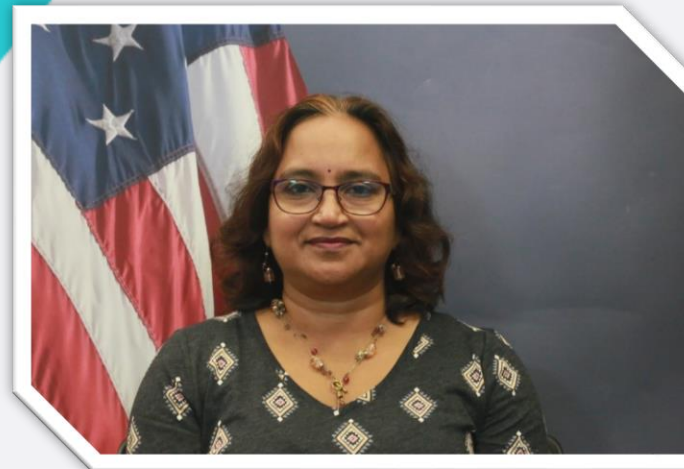
COMMUNITY & RECREATION SERVICES DEPARTMENT



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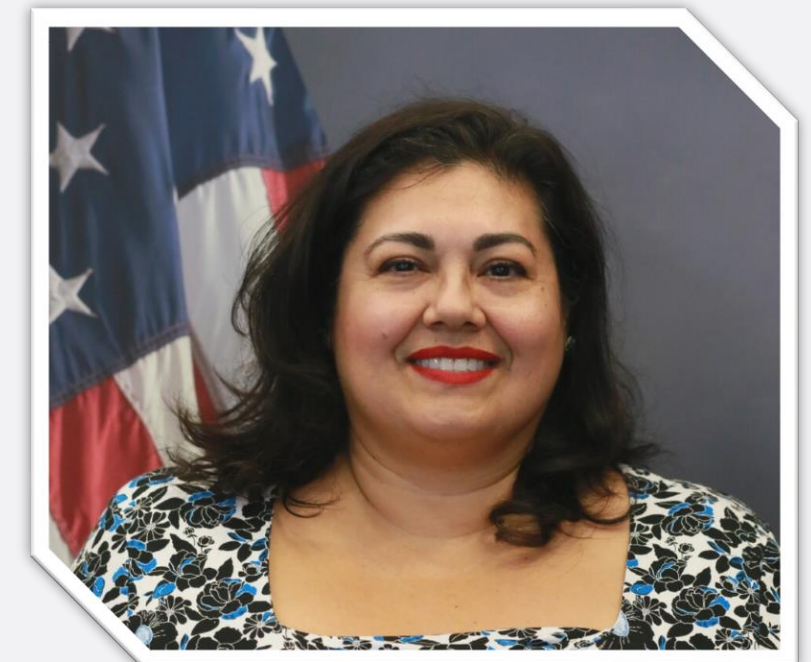
FINANCE DEPARTMENT

Kalpana Gurung was promoted from Payroll Technician to Lead Payroll Technician on February 6, 2023.

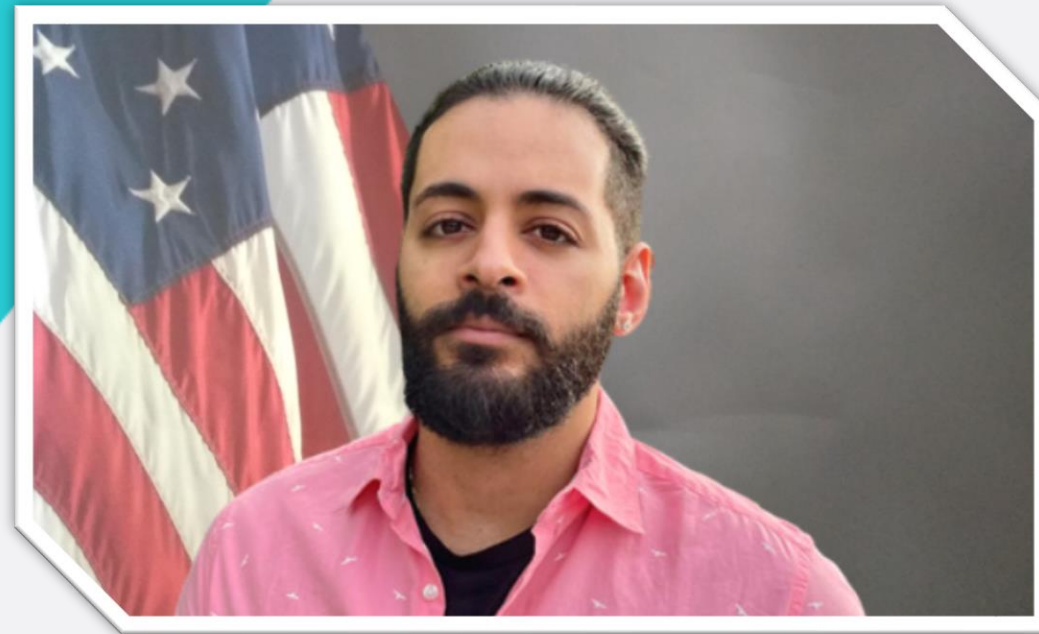


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HUMAN RESOURCES DEPARTMENT



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INFORMATION TECHNOLOGY DEPARTMENT

Dwayne Thaele was hired
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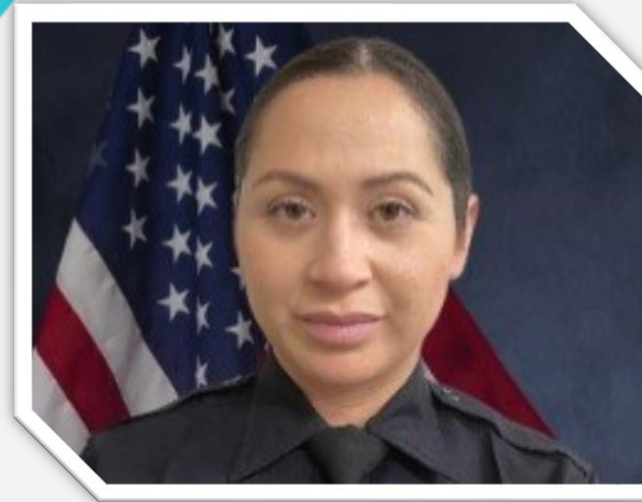
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POLICE DEPARTMENT



Zachary Hamilton was hired on January 2, 2023 as a Police Cadet.

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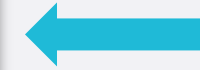
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POLICE DEPARTMENT



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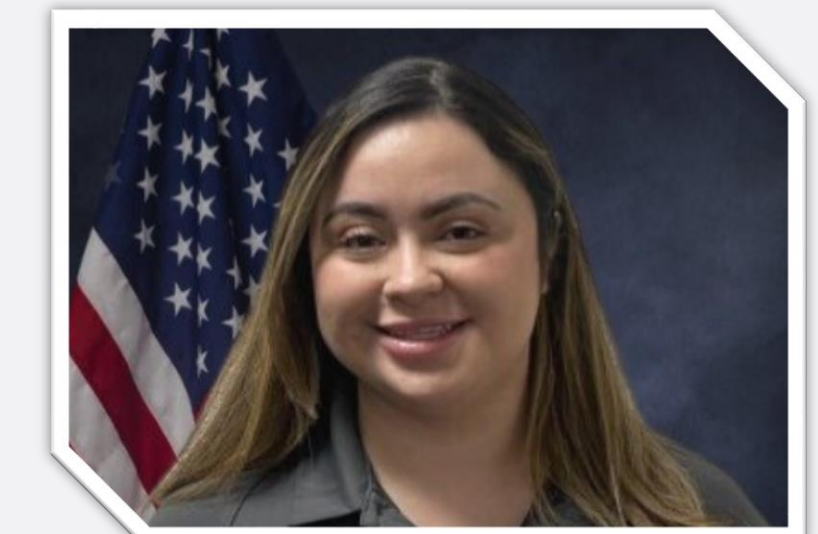
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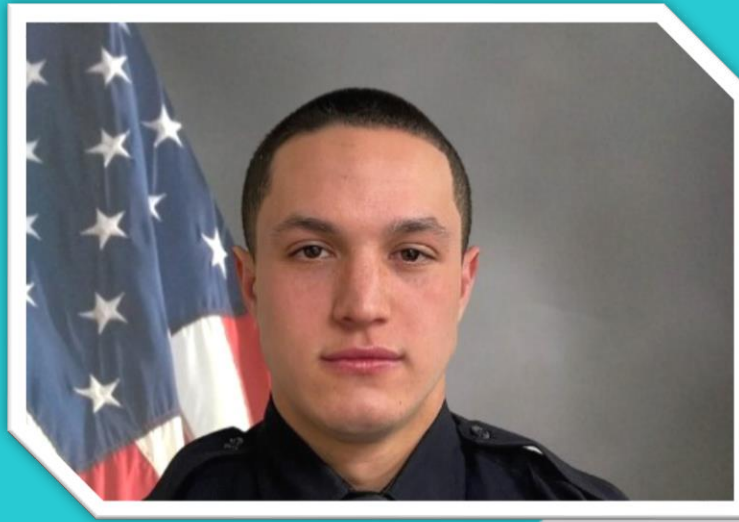
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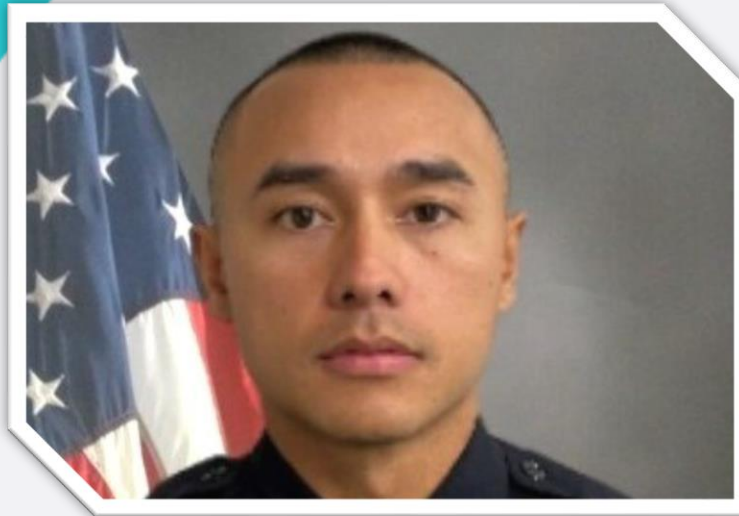
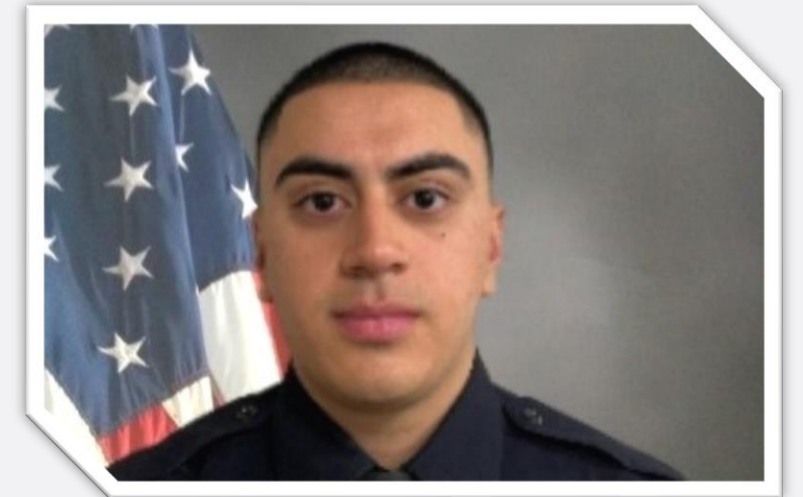


POLICE DEPARTMENT



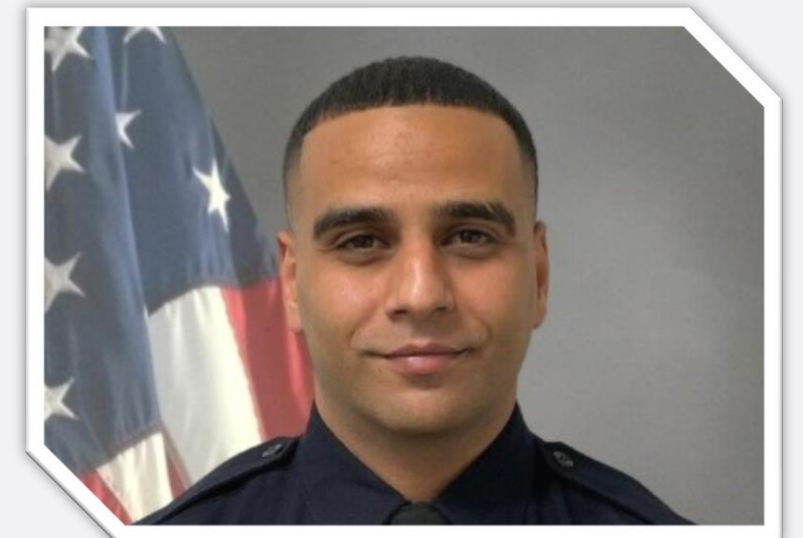
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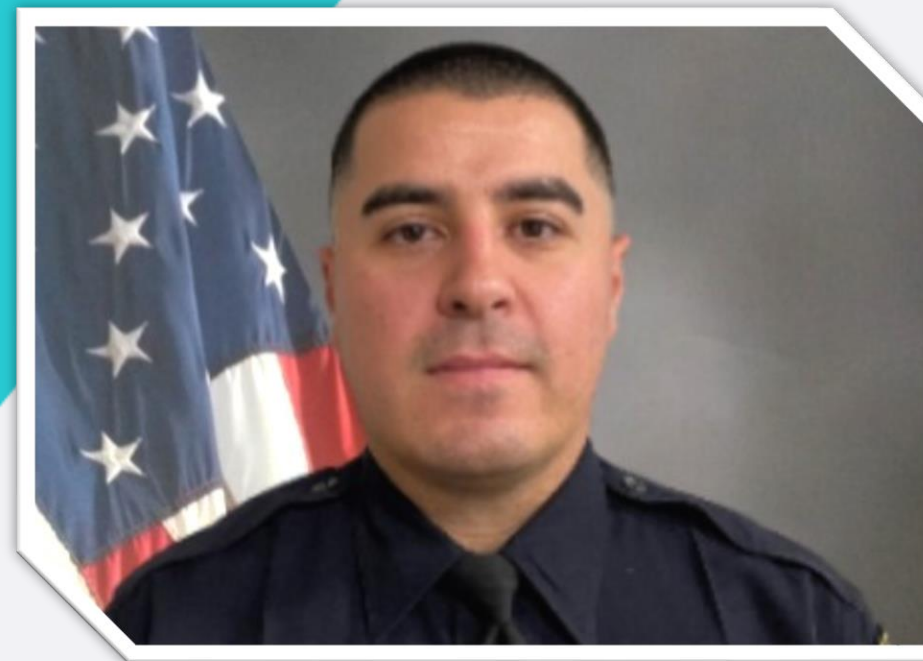
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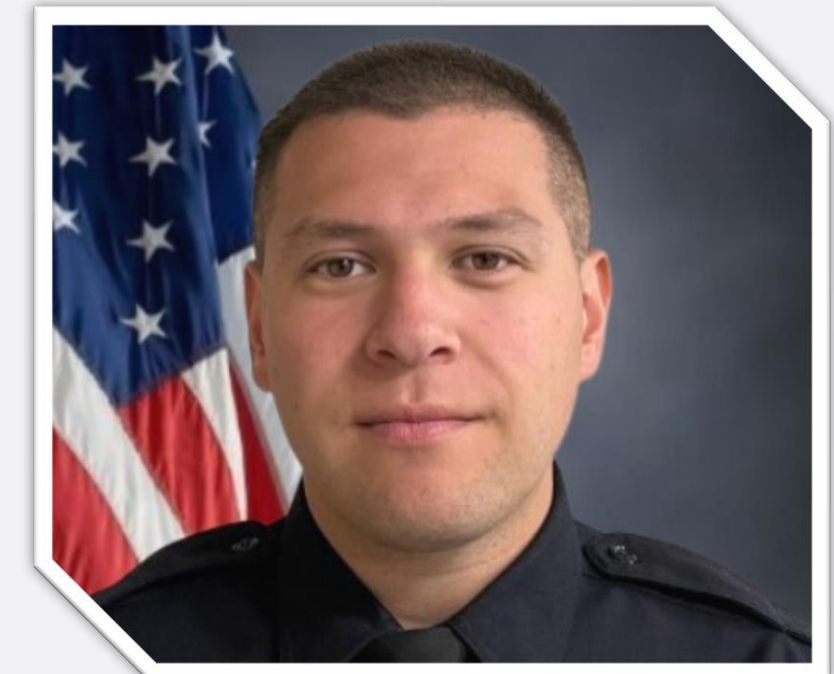
POLICE DEPARTMENT

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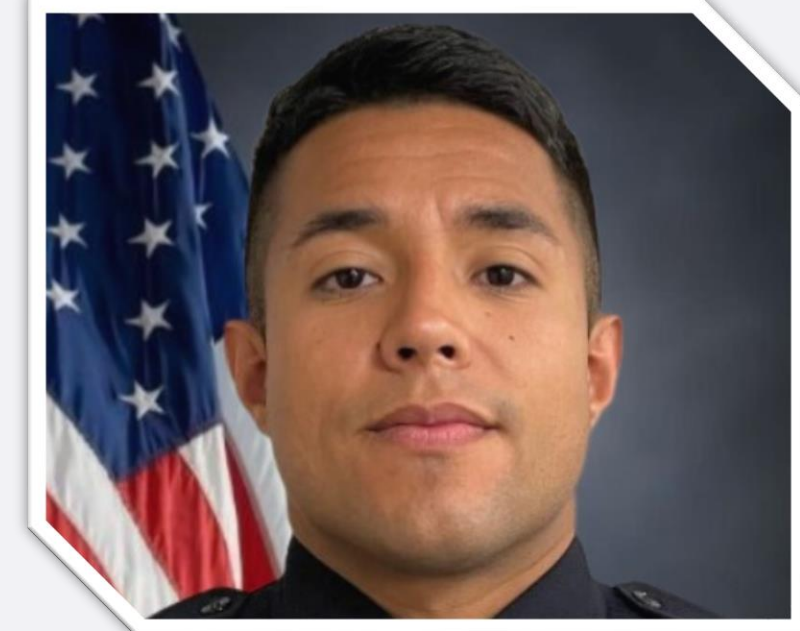


POLICE DEPARTMENT



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POLICE DEPARTMENT



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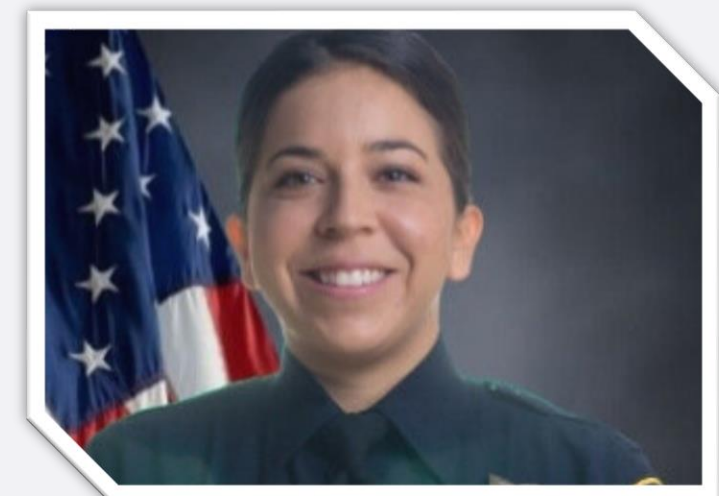
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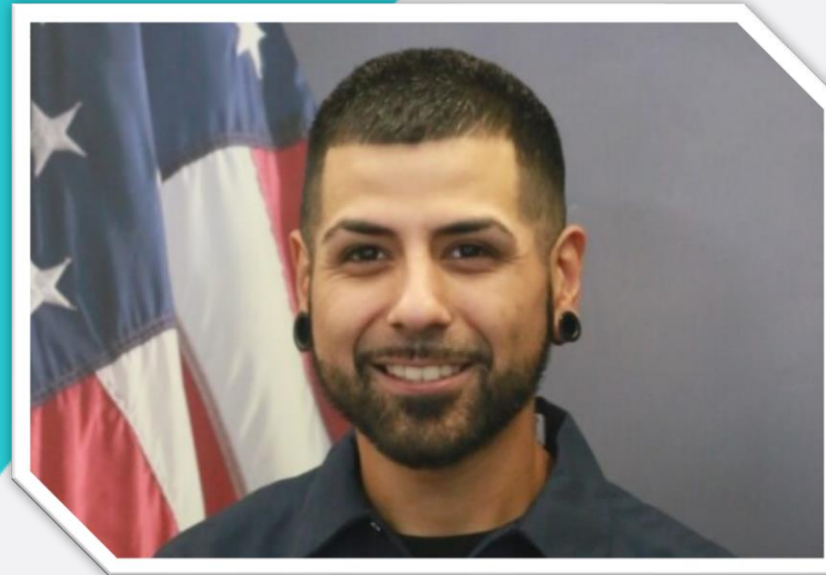


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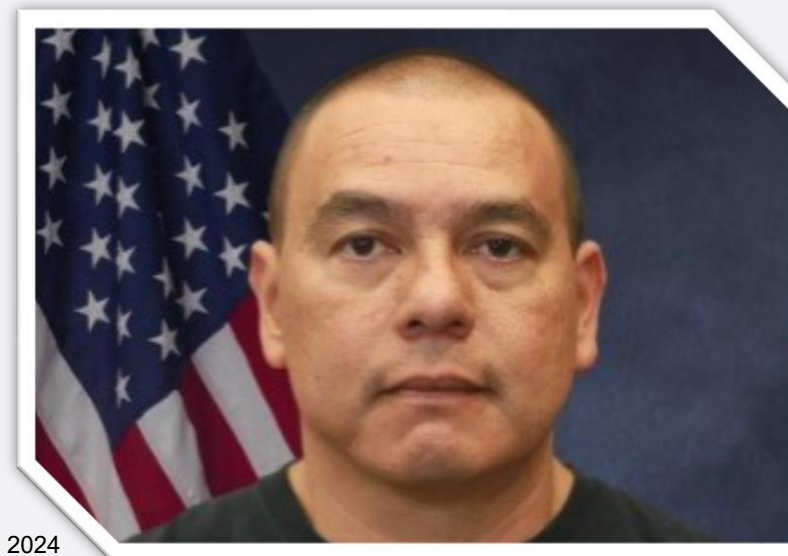
PUBLIC WORKS DEPARTMENT

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Ronald Perry was hired on October 23, 2023 as a Vehicle Heavy Equipment Mechanic.

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PUBLIC WORKS DEPARTMENT

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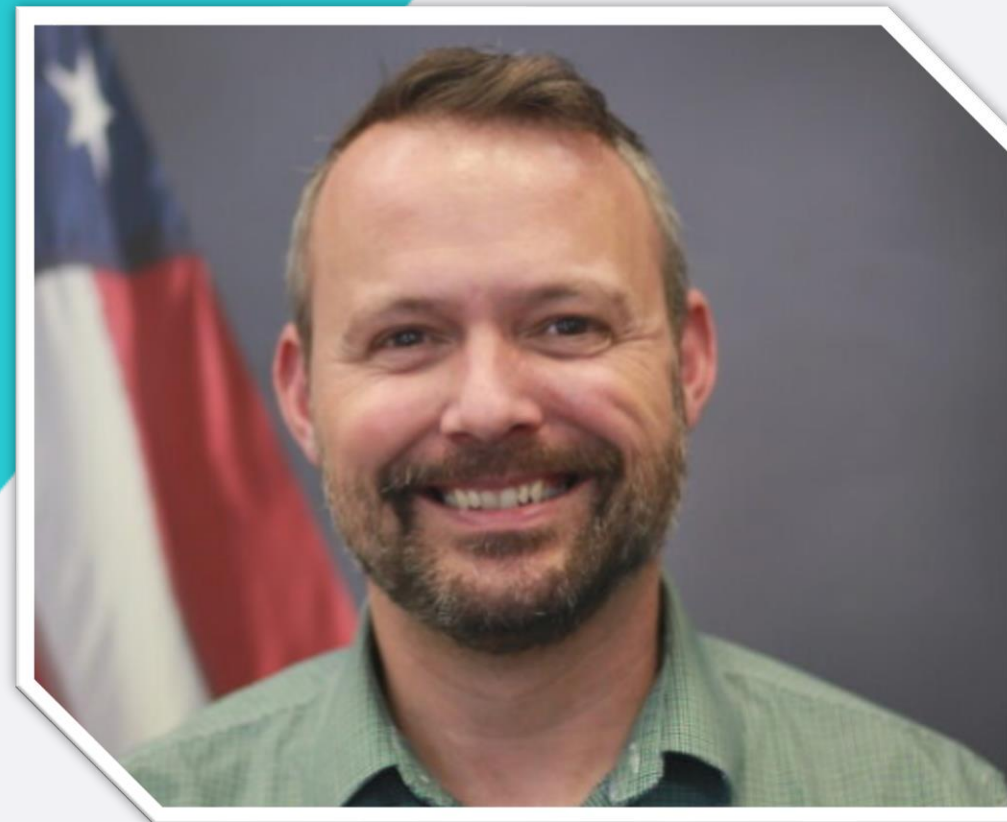
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EXECUTIVE LEADERSHIP TEAM



Jason Castleberry was hired on July 17, 2023 as the Human Resources Director.

SNAPSHOT OF CALENDAR YEAR 2024

Full Name	Position Title	Home Department
BORG, THOMAS	POLICE OFFICER	UPD
PHAM, THAI NAM	CITY CLERK	CMO
PULIDO LIZAOLA, ANTONIO	PUBLIC WORKS INSPECTOR	PWD-ENG
WEDDINGTON, KYLE	ECONOMIC DEVELOPMENT COORDINATOR	ECD

THANK YOU



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: MARIO VALLEJO, DIRECTOR OF INFORMATION TECHNOLOGY

SUBJECT: IT DEPARTMENT STRATEGIC PLAN UPDATE

See attached presentation.

STRATEGIC PLAN ALIGNMENT

BACKGROUND

DISCUSSION

FISCAL IMPACT

RECOMMENDATION

Prepared by:

Mario Vallejo, Director of Information Technology

Submitted by:

Mario Vallejo, Director of Information Technology

ATTACHMENTS:

Description	Type
 IT Strategic Plan Update	Resolution



Agenda Item 3.a.
March 26, 2024

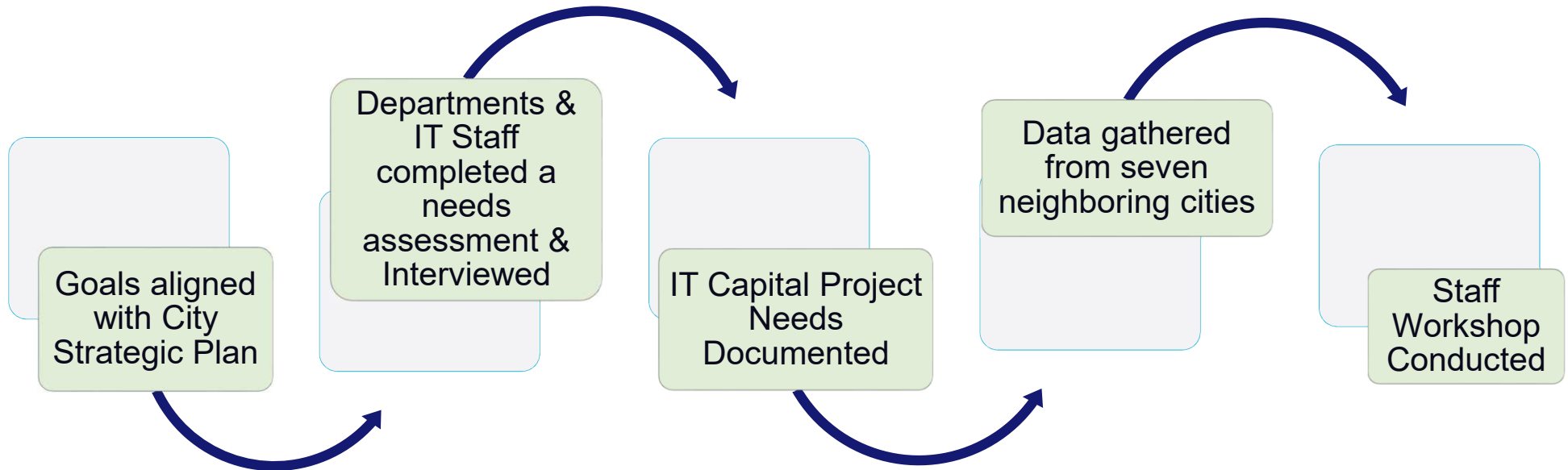
Information Technology Department 2022 - 2027 Strategic Roadmap Update





| Background

- Staff partnered with Management Partners in February 2022 to create the IT Five Year Strategic Roadmap



- IT Roadmap adopted by City Council on September 27, 2022

| Identified Goals



Goal A – Technology

These strategies ensure the City has sufficient software and hardware to deliver efficient services.



1.Goal B – Infrastructure

2.Support strategies provide the infrastructure to house, maintain, and connect the City's IT services.



1.Goal C – IT Governance, Training, Staffing

2.This is enabling the governance, policies, and training that will allow staff to fully use and support the new technology being rolled out.





| Goal A: Technology

FY2022/2023 & FY2023/2024 Completed Strategies

STRATEGY #	STRATEGY	STATUS
A2. Cyber Security	<ul style="list-style-type: none">Conduct a robust cybersecurity assessment and create a roadmap.	Completed
A3. City Website	<ul style="list-style-type: none">Improve the structure and navigation of the City's and Police website.	Completed
A8. GIS	<ul style="list-style-type: none">Evaluate and deploy a new geographic information system (GIS).	Completed
A11. City IT Software Policies	<ul style="list-style-type: none">Clarify the City's policies and procedures for requesting and receiving upgrades to software licenses, including chargebacks.	Completed
A12. City IT Infrastructure Funding	<ul style="list-style-type: none">Develop a comprehensive replacement plan for all citywide IT assets, including the aging data center servers, data storage and other IT items.	Completed
A13. Permit Technology Fee	<ul style="list-style-type: none">Regularly conduct cost allocation analyses to confirm the technology fee applied to all building, fire, encroachment, and grading permits is sufficient to meet technology needs	Completed



| Goal A: Technology

2024 Priority Strategies

STRATEGY #	STRATEGY	STATUS
A1. Police CAD/RMS	<ul style="list-style-type: none">Collaborate with Police and Fremont IT to deploy a new computer aided dispatch (CAD) and records management system (RMS) service.	Live April 2025
A5/A6. Business Continuity & Disaster Recovery Plan	<ul style="list-style-type: none">Develop, implement, and test a City Business Continuity and Disaster Recover Plans	In Progress
		HR/Payroll - Live 1/2025
A9. HR, Payroll, Finance, & Permitting	<ul style="list-style-type: none">Initiate the human resources, payroll, financial and permitting modules through Tyler Munis.	Finance – Live 9/2024 Permitting – Kickoff 10/2024



| Goal B: Infrastructure Support

2024 Priority Strategies

STRATEGY #	STRATEGY	STATUS
B2. City Cameras	<ul style="list-style-type: none">Establish video camera connectivity citywide with smart analytics and ensure the ability to store and view footage.	In Progress
B3. Connectivity to City sites	<ul style="list-style-type: none">Upgrade data connections between City facilities as necessary.	In Progress
B4. City Conduit and Fiber	<ul style="list-style-type: none">Team with Public Works to evaluate the cities available conduit and deploy citywide fiber to City intersections and facilities.	In Progress



| Goal A: IT Governance, Training, & Staffing

FY2022/2023 & FY2023/2024 Completed Strategies

STRATEGY #	STRATEGY	STATUS
C3. Cyber Training	<ul style="list-style-type: none">• Provide yearly cybersecurity and equipment safety training for all employees and clearly communicate security requirements to all staff using City technology	Completed
C7. IT Training	<ul style="list-style-type: none">• Establish professional development plans for each IT employee to support their growth and demonstrate commitment to employees' careers.	Completed



| Goal A: IT Governance, Training, & Staffing

2024 Priority Strategies

STRATEGY #	STRATEGY	STATUS
C6. Onboarding	<ul style="list-style-type: none">Streamline the onboarding process and expectations so staff have the equipment, access, and software they need when they begin work, whether newly hired, promoted, or given a new assignment.	In Progress
C7. IT Training	<ul style="list-style-type: none">Establish professional development plans for each IT employee to support their growth and demonstrate commitment to employees' careers.	In Progress

I New IT Focus Areas/Updates



- Cyber Insurance Security Requirements
- Artificial Intelligence (AI)
- City Broadband



**UNION
CITY**

THANK YOU



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Thai Nam Pham, City Clerk

SUBJECT: Approve The Minutes Of The City Council Meeting Held On February 27, 2024

N/A

STRATEGIC PLAN ALIGNMENT

N/A

BACKGROUND

N/A

DISCUSSION

N/A

FISCAL IMPACT

N/A

RECOMMENDATION

N/A

Prepared by:

Thai Nam Pham, City Clerk

Submitted by:

Thai Nam Pham, City Clerk

ATTACHMENTS:

Description	Type
 Draft Minutes	Attachment



MINUTES

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

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

Tuesday, February 27, 2024
7:00 PM

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

1. CALL TO ORDER

The meeting was called to order by Mayor Dutra-Vernaci at 7:09 PM.

1.a. Pledge of Allegiance

Mayor Dutra-Vernaci led the Pledge of Allegiance.

1.b. Roll Call

Attendance	Attendee Name
Present	Councilmember Patiño Councilmember Sakakihara Councilmember Singh Vice Mayor Wang Mayor Dutra-Vernaci
Absent	None

2. UNFINISHED BUSINESS

There were none.

3. PROCLAMATIONS AND PRESENTATIONS

There were none.

4. ORAL COMMUNICATIONS

Mayor Dutra-Vernaci opened Oral Communications.

Indy Singh thanked the Council for their work, stressed self-care, and suggested using vacant land for community food growth to improve food justice and land use.

Susie Garcia questioned possible Brown Act violations by Councilmembers seen together at events, seeking clarification on the Act's rules.

There being no further speakers, Mayor Dutra-Vernaci closed Oral Communications.

5. CONSENT CALENDAR

Mayor Dutra-Vernaci asked staff to provide a brief report on Item 5.g. City Attorney Kokotaylo and City Manager Malloy provided a brief report at her request.

Motion: Approve the Consent Calendar.

RESULT: Pass

MOVER: Mayor Dutra-Vernaci

SECONDER: Councilmember Patiño

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

NOES: None

ABSENT: None

5.b. Approve The Minutes Of The City Council Meeting Held On December 12, 2023

A motion was made to approve the minutes.

5.c. Adopt Two Resolutions Of The City Council Of The City Of Union City Updating Adopted Resolutions No. 6138-23 And 6250-24 Regarding The City's Homekey Application And Implementation Of The "Project Reclamation – Alameda County Scattered Sites Project" Per Direction From The State Department Of Housing And Community Development

A motion was made to adopt the resolutions.

Enactment Nos. Resolution Nos. 6258-24 and 6259-24

5.d. Adopt A Resolution Accepting The Completion Of The 2023-2024 Citywide Street Pavement Rehabilitation Project, City Project No. 23-01

A motion was made to adopt the resolution.

Enactment No. Resolution No. 6260-24

- 5.e. **Adopt A Resolution Authorizing The Award Of A Construction Contract To Bay Cities Paving & Grading, Inc., In The Amount Of \$17,049,000, And Approving A Total Construction Budget In The Amount Of \$21,222,750; Approving Two Budget Transfers, One In The Amount Of \$25,742 From The Measure B Bike & Ped Fund (Fund 2543) And Another In The Amount Of \$1,373,974 From The Measure BB Road Fund (Fund 2545), For A Total Of \$1,399,716 In Budget Transfers To The Union City Boulevard Bike Lanes Project, City Project No. 17-29; And Rejecting The Bid Protest From The Ghilotti Construction Company, Inc.**

A motion was made to adopt the resolution.

Enactment No. Resolution No. 6261-24

- 5.f. **Adopt A Resolution Approving A Reimbursement Payment In The Amount Of \$291,676.73 To The Alameda County Water District Pursuant To The Cooperative Agreement For Cost Sharing For Pavement Work For The Alvarado-Niles Pipeline Seismic Improvement Project (ACWD Job 21192), And Approving An Appropriation, In The Amount Of \$291,676.73 From The Allied Waste Vehicle Fee Fund Balance For Fiscal Year 2023-2024 To The Smith Street Restoration Project, City Project No. 24-05**

A motion was made to adopt the resolution.

Enactment No. Resolution No. 6262-24

- 5.g. **Adopt A Resolution Authorizing A Legal Services Agreement With Redwood Public Law, LLP For Kristopher Kokotaylo To Continue Serving As City Attorney**

A motion was made to adopt the resolution.

Enactment No. Resolution No. 6263-24

- 5.h. **Adopt A Resolution Approving And Authorizing The City Manager To Execute A Side Letter Agreement Between The City Of Union City And The Management Employee Group (MEG) To Allow For A Pilot Program On Alternative Work Schedules (AWS)**

A motion was made to adopt the resolution.

Enactment No. Resolution No. 6264-24

6. PUBLIC HEARINGS

6.a. Public Hearing And Adopt A Resolution Approving Administrative Site Development Review (ASD-23-023) And Use Permit (UP-23-008) For A New Enclosed Wireless Facility On Top Of The Avalon Union City Apartments, Located At 24 Union Square (APN 87-19-1-25), And To Increase The Height Of The Building From 79 To 86 Feet

Associate Planner Natalie Dean provided staff presentation and responded to Councilmember questions.

Mayor Dutra-Vernaci opened the Public Hearing at 7:27 PM. There being no speakers, Mayor Dutra-Vernaci closed the Public Hearing at 7:27 PM.

Motion: Adopt a resolution approving Administrative Site Development Review (ASD-23-023) and Use Permit (UP-23-008) for a new enclosed wireless facility on top of the Avalon Union City Apartments, located at 24 Union Square (APN 87-19-1-25), and to increase the height of the building from 79 to 86 feet.

RESULT: Pass

MOVER: Councilmember Singh

SECONDER: Councilmember Sakakihara

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

NOES: None

ABSENT: None

Enactment No. Resolution No. 6265-24

7. CITY MANAGER REPORTS

7.a. Receive Report On Potential Public Safety Parcel Tax And Utility Users' Tax Revenue Measures For The November 2024 Election And Provide Policy Direction

City Manager Malloy and Bryan Godbe of Godbe Research presented the item and responded to Councilmember questions.

Mayor Dutra-Vernaci opened the Public Comment. There being no speakers, Mayor Dutra-Vernaci closed Public Comment.

The Council received the report and directed staff to conduct additional surveys to test voter support for a modified public safety parcel tax and a potential increase in utility users' taxes.

7.b. Waive Further Reading And Adopt An Ordinance Amending Union City Municipal Code Chapter 5.42 "Tobacco Retailers"

City Attorney Kokotaylo provided staff presentation and responded to Councilmember questions.

Mayor Dutra-Vernaci opened the Public Comment.

Camille Cummings urged equitable policy enforcement by suggesting administrative fines over criminal penalties and holding retail licensees accountable rather than penalizing cashiers or those possessing, using, or purchasing tobacco products.

Isha Singh advocated for the policies, emphasizing their potential to make tobacco products less accessible to teens and enhance community safety.

Soorya Ramaraju reiterated calls for action against youth-targeted flavored tobacco products.

Amaya Wooding highlighted the importance of minimum price policies for tobacco products, noting disparities in pricing between cigars and cigarettes and the impact on consumer behavior.

Deborah Chhun supported the ban on all vapes, citing public health concerns.

Dave Patel expressed concerns about the impact of the proposed policies on local businesses, emphasizing the need for balanced approaches that protect youth without harming local enterprises.

Lakhsbir Singh opposed new licensing and vape ban regulations, arguing they negatively impact small businesses and are ineffective due to nearby cities without such bans.

Jagrup Singh criticized annual changes and increasing fines in tobacco laws, emphasizing his business's compliance and advocating for uniform state regulations.

Kevin Sardhu objected to licensing fees and proposed bans, highlighting the black-market issue and the unfair impact on law-abiding businesses.

Amit Barn questioned the rationale behind new fees and the vape ban, pointing out policy inconsistencies and the potential adverse effects on businesses.

Vivian Chang supported the proposed ordinance updates, emphasizing the need for regular compliance checks to enforce the ordinance effectively.

Luis Santos Hernandez advocated for spatial restrictions on tobacco retailers near schools and youth-focused spaces to limit youth access to tobacco products.

Arjun Sigampalli and Lucine Mokahel voiced support for the ordinance, stressing the importance of protecting youth from the harmful effects of tobacco.

There being no further speakers, Mayor Dutra-Vernaci closed Public Comment.

Motion: Waive Further Reading and Adopt an ordinance amending Union City Municipal Code Chapter 5.42 “Tobacco Retailers”.

RESULT: Fail

MOVER: Mayor Dutra-Vernaci

SECONDER: Councilmember Sakakihara

AYES: Councilmember Sakakihara and Mayor Dutra-Vernaci

NOES: Councilmember Patiño and Vice Mayor Wang

ABSENT: None

ABSTAIN: Councilmember Singh

Motion: Direct staff to come back with a proposed ordinance for consideration with everything as is, with the exception of a prohibition on the sale of all vape products and replace it with single-use vape products.

RESULT: Pass

MOVER: Councilmember Patiño

SECONDER: Vice Mayor Wang

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

NOES: None

ABSENT: None

ABSTAIN: None

8. SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY

There were none.

9. AUTHORITIES AND AGENCIES

There were none.

10. CITY COMMISSION / COMMITTEE REPORTS

There were none.

11. ITEMS REFERRED BY COUNCIL

Vice Mayor Wang reported on the Youth Commission.

Councilmember Singh had no report.

Councilmember Sakakihara reported on the Housing Commission and Parks and Recreation Meeting.

Councilmember Patiño reported on Fire Advisory Commission, CalCities Board of Directors, CalCities East Bay Division Meeting, AVA Community Energy Marketing, Regulatory and Legislative Subcommittee Meeting, and AVA Community Energy Board of Directors Meeting.

Mayor Dutra-Vernaci reported on the Metropolitan Transportation Commission and Alameda County Transportation Commission.

12. GOOD OF THE ORDER

Councilmember Patiño reported on attending a Hispanic elected officials meeting, preparing for the Congressional City Conference, and participating in interviews about gun control and other topics with students from Logan High School. He also mentioned an upcoming trip to D.C. for the National League of Cities Conference.

Councilmember Sakakihara reported on attending the Police Deputy Chief's promotion ceremony and the Crab Feed with the POA and Lions Club. He also requested that the Council agendaize Bob Singer's presentation on a bike park at a future council meeting. The item received majority support. Lastly, he raised a resident's concern about a fee for home additions, suggesting a review of the ordinance based on its application and financial implications.

Mayor Dutra-Vernaci noted the cancellation of the March 12th City Council meeting due to Councilmember Sakakihara's reserve duty and Councilmember Patiño and Vice Mayor Wang's commitments in Washington, D.C., leading to a lack of quorum. She reminded the Council of the policy requiring 60 days' notice for absences to assist in agenda planning and announced her likely absence from the first meeting in June due to an out-of-state travel.

Councilmember Singh reported on Sister City benches and a signal situation at Alvarado-Niles and Hop Ranch Road.

Vice Mayor Wang reported on attending the Police Deputy Chief's promotion ceremony and the Crab Feed with the POA and Lion Club.

13. CLOSED SESSION

13.a. Conference with Labor Negotiators (Pursuant to Government Code Section 54957.6) Agency Designated Representatives: Kristopher J. Kokotaylo, City Attorney; Mayor Dutra-Vernaci Unrepresented Employee: City Manager

No reportable action.

14. ADJOURNMENT

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

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the City Council/Successor Agency to the Redevelopment Agency of the City of Union City.

/s/Thai Nam Pham, MMC, CPMC
City Clerk



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Thai Nam Pham, City Clerk

SUBJECT: **ADOPT A RESOLUTION TO FORMALIZE THE DIGITAL PRESERVATION OF CITY MINUTES, RESOLUTIONS, AND ORDINANCES AS OFFICIAL POLICY AND DESIGNATE DOCUWARE AS THE TRUSTED ELECTRONIC DOCUMENT MANAGEMENT SYSTEM (EDMS)**

Staff recommends that the City Council adopt a resolution to institutionalize the digital preservation of City minutes, resolutions, and ordinances as official policy, while designating DocuWare as the trusted Electronic Document Management System (EDMS). This initiative aims to modernize record-keeping practices, enhance operational efficiency, and ensure the integrity and accessibility of digital records, in compliance with California Government Code Sections 34090 and 12168.7.

STRATEGIC PLAN ALIGNMENT

This policy directly supports **Goal B. Governance and Organization Effectiveness** by embodying the City's commitment to local government best practices by formalizing digital record-keeping methods. By institutionalizing the digital preservation of city minutes, resolutions, and ordinances, the City enhances its administrative efficiency and responsiveness and supports its employees by integrating state-of-the-art technology that facilitates their work and helps retain valuable institutional knowledge. This initiative represents a significant step towards modernizing the City's operations, ensuring that it continues to deliver high-quality services to the community while fostering a culture of innovation and continuous improvement within its municipal workforce.

BACKGROUND

While the City of Union City has been progressively digitizing its records, the formal adoption of a policy mandating the digital preservation of city minutes, resolutions, and ordinances is poised to establish a standardized and legally compliant framework. This initiative is in direct response to the evolving nature of record management, embracing advancements in technology to ensure sustainable, accessible, and secure record-keeping practices. In alignment with California Government Code Section 12168.5(a), this policy

supports the acceptance and legal efficacy of electronic signatures, further modernizing our documentation processes.

DISCUSSION

The adoption of this resolution is a testament to the City's commitment to enhancing operational efficiency and public record accessibility through digital preservation while respecting the historical integrity of the City's documents. This policy underscores the prohibition against destroying original paper documents, reinforcing our archival practices. It mandates the preservation of digital versions of all newly issued resolutions, minutes, and ordinances in a manner that negates the need for printed copies, aligning with the standards set forth for electronic records management. This includes preserving documents in PDF/A format, a non-modifiable and industry-recognized standard for the long-term digital preservation of electronic documents. This approach ensures the integrity, accessibility, and security of digital records over time, facilitating compliance with state laws and best practices in electronic document management.

FISCAL IMPACT

Adopting this resolution has no additional fiscal impact, as City staff already utilize DocuWare for digital preservation. The commitment to maintaining original paper documents does not alter this financial outlook, as the practices for storing physical documents remain unchanged. This policy formalizes a forward-looking approach to document preservation, ensuring that the Council adopts modern, efficient practices for new documents while upholding the responsibility for historical preservation without incurring additional costs.

RECOMMENDATION

Staff recommends the City Council adopt the proposed resolution. This will formalize the practice of digital preservation as an official policy, ensuring the City of Union City remains at the forefront of efficient, transparent, and compliant record-keeping practices. The resolution supports the expansion of the scope of digital preservation to include all final, official documents that are electronically signed, ensuring a comprehensive approach to document management and preservation.

Prepared by:

Thai Nam Pham, City Clerk

Submitted by:

Thai Nam Pham, City Clerk

ATTACHMENTS:

Description	Type
 Draft Resolution	Resolution

RESOLUTION NO. XXXX-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY AUTHORIZING THE DIGITAL PRESERVATION OF CITY MINUTES, RESOLUTIONS, AND ORDINANCES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 34090 AND 12168.7 AND DESIGNATING DOCUWARE AS THE TRUSTED ELECTRONIC DOCUMENT MANAGEMENT SYSTEM (EDMS) FOR SUCH PRESERVATION

WHEREAS, the City of Union City is committed to the efficient, lawful, and transparent management of its public records; and

WHEREAS, the City's resolutions, minutes, and ordinances are generated in a digital format, with digital signatures from the Mayor and attestation by the City Clerk, ensuring a secure and efficient process that aligns with modern record-keeping standards; and

WHEREAS, California Government Code Section 34090 provides guidelines for the destruction and preservation of city records; and

WHEREAS, California Government Code Section 12168.7 establishes uniform statewide standards for the digital storage and recording of public records in a trusted system; and

WHEREAS, digital preservation promotes efficiency, reduces physical storage requirements, and ensures the integrity, authenticity, and accessibility of records over time; and

WHEREAS, DocuWare is a compliant Electronic Document Management System (EDMS) recognized as a trusted system as defined by Government Code Section 12168.7, ensuring the accurate and secure digital preservation of public records.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION CITY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. AUTHORIZATION FOR DIGITAL PRESERVATION

The City Council hereby authorizes the digital preservation of city minutes, resolutions, and ordinances as digital files, pursuant to California Government Code Sections 34090 and 12168.7.

SECTION 2. DESIGNATION OF DOCUWARE AS TRUSTED EDMS

DocuWare is hereby designated as the trusted Electronic Document Management System (EDMS) for digitally preserving city minutes, resolutions, and ordinances.

SECTION 3. ACCESSIBILITY AND DISCLOSURE

The digital preservation of city minutes, resolutions, and ordinances shall be done in a manner that ensures their accessibility to the public and complies with all applicable laws and regulations concerning public disclosure and records retention.

SECTION 4. PRESERVATION OF ORIGINAL DOCUMENTS

Notwithstanding the authorization for digital preservation and the ability under California Government Code Sections 34090 and 12168.7 to destroy certain physical documents after digitization, the City of Union City hereby commits to retaining original copies of all city minutes, resolutions, and ordinances in their physical form.

SECTION 5. EFFECTIVE DATE

This resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on this X day of Y 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

CAROL DUTRA-VERNACI
Mayor

ATTESTED:

APPROVED AS TO FORM:

THAI NAM N. PHAM
City Clerk

KRISTOPHER J. KOKOTAYLO
City Attorney



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JASON CASTLEBERRY, HUMAN RESOURCES DIRECTOR

SUBJECT: ADOPT A RESOLUTION APPROVING AN AMENDMENT TO UPDATE THE CLASS SPECIFICATIONS FOR THE CLASSIFICATIONS OF MAINTENANCE I - PARKS AND GROUNDS, AND BUDGET MANAGER/PURCHASING AGENT

Staff recommends that the City Council adopt a resolution to approve updates to the class specifications of the Maintenance I - Parks and Grounds position in the Public Works Department, and the Budget Manager/Purchasing Agent in the Finance Department, which also is proposed to be retitled to Accounting Manager.

STRATEGIC PLAN ALIGNMENT

This program supports Goal B. Governance and Organization Effectiveness of the strategic plan in aligning critical city services with current staffing levels.

BACKGROUND

Staff is recommending minor modifications to the classification specifications and job descriptions for the Maintenance I - Parks and Grounds position and the Budget Manager/Purchasing Agent position so that the appropriate qualifications and experience expectations align with each of the positions' functions in Public Works Department and the Finance Department, respectively.

DISCUSSION

The proposed classification specification updates include slight modifications to align functions, qualifications, experience, and skill sets expected for each of the roles. The goal is to provide clarity on essential functions, qualifications, and certifications during the next recruitment. The City has met and conferred with the Service Employees International Union (SEIU) for the Maintenance I – Parks and Grounds position and the

Management Employee Group (MEG) for the Accounting Manager (new title for Budget Manager/Purchasing Agent) position regarding the proposed revisions to each class specification. No change to the current salary range is recommended at this time. The Public Works and Finance Departments, respectively, worked with the Human Resources Department to ensure the class specifications and job title change are updated prior to future recruitments.

FISCAL IMPACT

There is no fiscal impact for the position specification changes being proposed.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution to approve an amendment to the City's Classification and Compensation Plan to update the class specification/job descriptions of Maintenance I - Parks and Grounds position and Budget Manager/Purchasing Agent position, including a retitling to Account Manager.

Prepared by:

Jason Castleberry, Human Resources Director

Submitted by:

Jason Castleberry, Human Resources Director

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Draft Resolution	Resolution
<input type="checkbox"/> Maintenance I - Parks and Grounds Class Specification (Redlined)	Attachment
<input type="checkbox"/> Maintenance I - Parks and Grounds Class Specification (Clean)	Attachment
<input type="checkbox"/> Budget Manager/Purchasing Agent Class Specification (Redlined)	Attachment
<input type="checkbox"/> Budget Manager/Purchasing Agent Class Specification (Clean)	Attachment

RESOLUTION NO. XXXX-24

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
UNION CITY AMENDING THE CLASSIFICATION AND
COMPENSATION PLAN TO UPDATE THE CLASS
SPECIFICATIONS FOR THE CLASSIFICATIONS OF
MAINTENANCE I – PARKS AND GROUNDS AND BUDGET
MANAGER/PURCHASING AGENT**

WHEREAS, the City has undertaken an inquiry and recommends that the City Council update the class specification for the positions of Maintenance I – Parks and Grounds position and Budget Manager/Purchasing Agent position; and

WHEREAS, the City Council has identified in the Strategic Plan Goal B, Governance and Organization Effectiveness to align critical city services with current staffing levels by ensuring the accuracy and clarity for the Maintenance I – Parks and Grounds and Budget Manager/Purchasing Agent class specifications; and

WHEREAS, the City Manager or their designee has met and conferred in good faith with the representatives of all bargaining units related to the above matters.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby approves the updated Maintenance I – Parks and Grounds position and Budget Manager/Purchasing Agent position class specifications, attached hereto and incorporated herein by reference, effective March 26, 2024.

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to take such further actions as may be necessary to implement the proposed revisions to the class specification for the classifications of Maintenance I – Parks and Grounds position and Budget Manager/Purchasing Agent position.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City
at a regular meeting held on this 26th day of March 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

CAROL DUTRA-VERNACI
Mayor

ATTESTED:

APPROVED AS TO FORM:

THAI NAM N. PHAM
City Clerk

KRISTOPHER J. KOKOTAYLO
City Attorney

**MAINTENANCE I -
PARKS & GROUNDS**
Bargaining Unit: SEIU Local 1021
FLSA Status: Non-Exempt

DEFINITION:

Under supervision of the Public Works Grounds Supervisor and under direction of the Maintenance II, Parks and Grounds lead person, incumbents in this classification work individually or as a member of a Parks and gGrounds crew in the upkeep of City parks, medians, and satellite facilities including buildings, equipment, and flora.; perform related work as required.

CLASS CHARACTERISTICS:

The Maintenance I ~~position~~ classification represents the journey-level within the Parks and Grounds Maintenance class series. ~~Individuals in this class demonstrate full competence to autonomously execute a range of street Parks & Grounds maintenance responsibilities~~ Individuals within this class exhibit comprehensive proficiency in independently carrying out a spectrum of Parks & Grounds maintenance responsibilities. This entails not only performing tasks such as inspecting, cleaning, repairing, and maintaining City parks, landscape areas, and trail systems, but also making informed decisions regarding safety and usability. The Maintenance I role stands apart from Maintenance II, the lead-level in the series, as Maintenance II holds responsibility for overseeing the tasks performed by a crew engaged in parks and grounds maintenance.

EXAMPLES OF DUTIES (illustrative only):

- Inspect, clean, repair, and maintain City parks, landscape areas and trail system to ensure facilities are safe and usable; inspect, clean, and stock park restrooms; remove refuse from City garbage cans.
- Plant, cultivate, and provide upkeep for City landscapes and parks; mow lawns, replant vegetation, and prune trees, shrubs, and ground covers.
- Prepare and apply pesticides, growth regulators, and fertilizers; identify and appropriately label the containers when using these materials; document materials used.
- Paint, sandblast, or otherwise remove graffiti from public properties; paint interiors/exterior.
- Attend technical and safety on-the-job training sessions; carry out what is learned in the classroom/tailgate training on the job; fill out accident reports if involved in an accident.
- Operate and maintain a variety of hand and power tools used in landscaping, including but not limited to carpentry, electrical, plumbing, concrete work, and welding activities.

- Operate and maintain various pieces of medium to heavy equipment ~~including~~ trucks, tractors, chippers, backhoes, ~~skiploaders~~ skip loaders, mowers, sandblasters, compost spreaders and trailers.
- Inspect irrigation systems; repair and renovate the systems by rebuilding and/or installing timers, clocks, wires, pipes, joints, valves, and heads.
- Control weeds throughout the City.
- Perform related work as required.

QUALIFICATIONS:

EDUCATION AND EXPERIENCE:

Any combination of education, training, and experience that would likely provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the knowledge, skills and abilities would be:

One (1) year of general landscaping, grounds, and/or parks maintenance work with supplemental coursework in horticulture.

LICENSE AND CERTIFICATIONS:

- Possession of a valid California Driver's license and have a satisfactory driving record.
- Possession of a Department of Pesticide Regulation's Applicator Certificate with Landscape Maintenance (Category B) for pesticide application

KNOWLEDGE AND ABILITIES:

Knowledge Of:

- Proper use of ~~C~~common hand tools, materials, and equipment used in the maintenance of City parks and grounds.
- ; ~~B~~business and shop math.
- Safe lifting techniques, safety standards, and procedures.
- ; ~~verbal and written communication methods;~~ Terminology, practices, and procedures used in facilities, parks and grounds maintenance.
- ; ~~b~~Basic carpentry, construction, electrical, plumbing, concrete ~~work,~~ and welding methods.
- dDisease and pest control of City vegetation.

Ability To:

- Read and follow technical manuals and departmental policies and procedure.
- Provide the upkeep for City facilities, equipment, and flora.

- ~~W~~ork independently or as a crew member.
- Comprehend and follow written and verbal instructions.
- Utilize effective verbal and written communication methods.
- ~~I~~nterpret and use rough working diagrams; read maps and blueprints.
- Maintain positive contact with employees and the public.
- Operate a variety of hand and power tools; ~~operate and~~ medium to heavy equipment.
- ~~W~~ork with pesticides, paints, thinners, and other substances.
- ~~Obtain and maintain appropriate California licensure for equipment operation as necessary; physically perform the duties of the job.~~

WORKING CONDITIONS, ADA AND OTHER REQUIREMENTS:

The City of Union City is an equal opportunity employer. The City of Union City will comply with its obligations under the law to provide equal employment opportunities to qualified individuals with disabilities.

Positions in this class must have the physical ability to bend, pull, push, lift and carry up to 50 pounds.

~~Sedentary Work: Exerting up to 10 or more pounds of force occasionally and/or a negligible amount of force frequently or constantly to lift, carry, push, pull or otherwise move objects. Sedentary work involves sitting most of the time. Jobs are sedentary if walking and standing are required only occasionally, and all other sedentary criteria are met.~~

~~Incumbents generally work in a typical office environment with adequate light and temperature.~~

Travel: Positions in this class may require local and statewide travel as necessary.

**MAINTENANCE I -
PARKS & GROUNDS**
Bargaining Unit: SEIU Local 1021
FLSA Status: Non-Exempt

DEFINITION:

Under supervision of the Public Works Grounds Supervisor and under direction of the Maintenance II, Parks and Grounds lead person, incumbents in this classification work individually or as a member of a Parks and Grounds crew in the upkeep of City parks, medians, and satellite facilities including buildings, equipment, and flora.

CLASS CHARACTERISTICS:

The Maintenance I classification represents the journey-level within the Parks and Grounds Maintenance class series. Individuals within this class exhibit comprehensive proficiency in independently carrying out a spectrum of Parks & Grounds maintenance responsibilities. This entails not only performing tasks such as inspecting, cleaning, repairing, and maintaining City parks, landscape areas, and trail systems, but also making informed decisions regarding safety and usability. The Maintenance I role stands apart from Maintenance II, the lead-level in the series, as Maintenance II holds responsibility for overseeing the tasks performed by a crew engaged in parks and grounds maintenance.

EXAMPLES OF DUTIES (*illustrative only*):

- Inspect, clean, repair, and maintain City parks, landscape areas and trail system to ensure facilities are safe and usable; inspect, clean, and stock park restrooms; remove refuse from City garbage cans.
- Plant, cultivate, and provide upkeep for City landscapes and parks; mow lawns, replant vegetation, prune trees, shrubs, and ground covers.
- Prepare and apply pesticides, growth regulators, and fertilizers; identify and appropriately label the containers when using these materials; document materials used.
- Paint, sandblast, or otherwise remove graffiti from public properties; paint interiors/exterior.
- Attend technical and safety on-the-job training sessions; fill out accident reports if involved in an accident.
- Operate and maintain a variety of hand and power tools used in landscaping including but not limited to carpentry, electrical, plumbing, concrete work, and welding activities.
- Operate and maintain various pieces of medium to heavy equipment including trucks, tractors, chippers, backhoes, skip loaders, mowers, sandblasters, compost spreaders and trailers.
- Inspect irrigation systems; repair and renovate the systems by rebuilding and/or installing timers, clocks, wires, pipes, joints, valves, and heads.

- Control weeds throughout the City.
- Perform related work as required.

QUALIFICATIONS:

EDUCATION AND EXPERIENCE:

Any combination of education, training, and experience that would likely provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the knowledge, skills and abilities would be:

One (1) year of general landscaping, grounds, and/or parks maintenance work with supplemental coursework in horticulture.

LICENSE AND CERTIFICATIONS:

- Possession of a valid California Driver's license and have a satisfactory driving record.
- Possession of a Department of Pesticide Regulation's Applicator Certificate with Landscape Maintenance (Category B) for pesticide application

KNOWLEDGE AND ABILITIES:

Knowledge Of:

- Proper use of common hand tools, materials, and equipment used in the maintenance of City parks and grounds.
- Business and shop math.
- Safe lifting techniques, safety standards, and procedures.
- Terminology, practices, and procedures used in facilities, parks and grounds maintenance.
- Basic carpentry, construction, electrical, plumbing, concrete work, and welding methods.
- Disease and pest control of City vegetation.

Ability To:

- Read and follow technical manuals and departmental policies and procedure.
- Provide the upkeep for City facilities, equipment, and flora.
- Work independently or as a crew member.
- Comprehend and follow written and verbal instructions.
- Utilize effective verbal and written communication methods.
- Interpret and use rough working diagrams; read maps and blueprints.
- Maintain positive contact with employees and the public.

- Operate a variety of hand and power tools and medium to heavy equipment.
- Work with pesticides, paints, thinners, and other substances.
-

WORKING CONDITIONS, ADA AND OTHER REQUIREMENTS:

The City of Union City is an equal opportunity employer. The City of Union City will comply with its obligations under the law to provide equal employment opportunities to qualified individuals with disabilities.

Positions in this class must have the physical ability to bend, pull, push, lift and carry up to 50 pounds.

Travel: Positions in this class may require local and statewide travel as necessary.

BUDGET ACCOUNTING MANAGER/PURCHASING AGENT

Bargaining Unit: Management Employees Group
FLSA Status: Exempt

DEFINITION:

Under general direction, plans, organizes, manages and directs and the Accounting Division of the Finance Department, including supervises development of the City's budgetary document and the budget development process and preparation of the budget book; ,including budget monitoring, analysis and reporting; short- and long-range fiscal forecasting; ensuring adherence to financial policies and procedures; and and capital planning and preparation of the budget book. The Accounting Manager ; performs budget monitoring, performance analysis, and interim financial reporting; manages and oversees the annual audit, preparation of the Annual Comprehensive Financial Report (ACFR), and all other required annual financial reports; provides support to department activities with specific responsibility for implementing purchasing activities in compliance with mandated requirements; overseeing daily accounting activities; responding to a wide range of inquiries regarding budget or accounting processes or bid status; and achieving department objectives and goals within budget; serves as a member of the Finance Department's management team; makes recommendations regarding departmental policies and procedures; trains, and evaluates assigned staff; and performs other work as required.

CLASS CHARACTERISITICS:

This is a single position classification at the managerial/supervisory level classification in the Finance Department responsible for managing the budget and purchasaccounting functions. The Accounting Manager has a broad range of independence within policy and procedural limitations and works under minimal supervision. The incumbent is accountable to the Finance Director for the quality and efficiency of services directed. The-Budget Accounting Manager -/ Purchasing Agent is expected to provide resources, system support, and oversight to all subordinate professional and paraprofessional staff. -This position is responsible for the successful planning and implementation of the citywide budget process and the day-to-day accounting operations.related fiscal programs, as well as researching contracts, suppliers, equipment and regulations, including evaluation of new products for the purpose of ensuring compliance with budgetary guidelines The BudgetAccounting Manager / Purchasing Agent has frequent interaction with staff and leaders of other departments, the City Manager, the Mayor, the City Council, and citizens. The incumbent works as an integral member of various City leadership teams in helping the City achieve its objectives, includingand may make public presentations to citizens and other interested parties.

Incumbents in this classification have a broad range of independence within policy and procedural limitations and work under minimal supervision. The incumbent is accountable to the Finance Director for the the quality and efficiency of services directed. While the general parameters of the job are defined, the employee is

~~expected to select and put into effect work procedures and practices which will lead to the effective and efficient accomplishment of Department/Division goals. Recommendations on the improvement of Department/Division activities are expected.~~

EXAMPLES OF DUTIES (illustrative only):

~~Administers bidding process and contracts for vendor performance/compliance within established limits (e.g. prepare specifications, evaluate bids, recommend vendors, conduct bid meetings, etc.) for the purpose of securing items and/or services within budget and in compliance with regulatory requirements.~~

- ~~• Plan, organize, direct and evaluate the activities of the Accounting Division including general accounting, accounts payable and payroll.~~
- ~~• Recommend the appointment of personnel; provide or coordinate staff training; conduct performance evaluations; work with employees on performance issues; and implement disciplinary procedures.~~
- ~~• Prepare, review and maintain journal entries and general ledger postings and supporting financial records and supervise the maintenance of the General Ledger.~~
- ~~• Conduct and coordinate the annual audit and serve as the liaison between the City and the external auditors, Assists auditors in providing requested information for the purpose of providing and necessary documentation for completion of the audit, and ensure timely completion of the audit, State Controller's Office reports and other compliance reports as required.~~
- ~~• Oversee reconciliations of the City's financial activities including bank accounts and investments, month-end and year-end close processes and prepare related reports.~~
- ~~• Prepare, analyze and monitor the City's budget and prepare quarterly budget status reports.~~

~~Compiles data from a wide variety of sources (e.g. vendors, staff, public agencies, etc.) for the purpose of analyzing issues, ensuring compliance with a wide variety of purchasing policies and procedures, and/or monitoring purchasing processes.~~

~~Evaluates order and bid documentation (e.g. requisitions, change orders, bids, etc.) for the purpose of ensuring proper use of City funds in the acquisition of supplies, equipment and/or services.~~

~~Evaluates vendors for the purpose of determining their capability for performing to established specifications. Issues purchase orders, etc. for the purpose of completing purchasing processes in accordance with established procedures.~~

~~Maintains purchasing information, files and records (e.g. Requests for Proposal, purchase orders, vender files, etc.) for the purpose of ensuring the availability of documentation and compliance with established policies and regulatory guidelines.~~

~~Negotiates with vendors for the purpose of resolving purchasing issues and/or ensuring purchases are within state and City requirements/regulations.~~

~~Oversees required processes (e.g. orders, work orders and requisitions for supplies, equipment, conference requests, bids for potential commodities, supplies equipment and services, etc.) for the purpose of acquiring necessary resources to support City operations.~~

~~Recommend the appointment of personnel; provide or coordinate staff training; conduct performance evaluations; work with employees on performance issues; implement disciplinary procedures.~~

~~Participates in unit meetings, in-service training, workshops, etc. for the purpose of conveying and/or gathering information required to perform job functions.~~

~~Initiates short- and long-range revenue policy analysis and develops revenue enhancement strategies.~~

~~Ensures compliance with federal, state and local laws, regulations and codes and provides interpretation of such for taxpayers and City personnel as required.~~

- Plans and implements citywide budget process and related fiscal programs.
- ~~Manages the timely and accurate presentation of budget documents and financial reports.~~
- ~~Coordinates budgeting activities with other departments, serving as the primary budget authority.~~
- Effectively communicates budget preparation calendar and information needs, capabilities, and limitations as well as budget policies, procedures and outcomes to departments, city officials, citizens, and other interested parties.
- ~~Reviews departmental budgetary proposals and makes recommendations on staffing and resource needs and other expenditure requirements to accomplish citywide goals.~~
- Projects citywide personnel costs on an annual basis and as needed.
- Performs Monitor the City's budget, perform budget analysis, prepare quarterly budget status reports, develops financial and capital plans, and prepares short- and long-range fiscal-financial forecasts.
- Research and implement new budget initiatives that increase the usefulness and clarity of budget presentations and maximize staff efficiency.
- Conducts a variety of special studies; ~~and~~ prepares and ~~may~~ present various analyses, statistical compilations, and reports to City staff, City Council, or the public.
- Assists in the management of the City's capital financing programs, including debt issuance.
- ~~Researches and implements new budget initiatives that increase the usefulness and clarity of budget presentations and maximizes staff efficiency.~~
- Facilitates development and implementation of improved processes and standard procedures.
- Participates in the development and implementation of Department goals, policies, and priorities.
-
- Assists in operational administration of risk management activities as assigned.

QUALIFICATIONS:

EDUCATION AND EXPERIENCE:

Any combination of education, training, and experience that would likely provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the knowledge, skills and abilities would be:

Graduation from an accredited college or university with major course work in accounting, financial management, economics, business administration or related field. Five (5) years of progressively responsible professional municipal or government financial management experience with substantial work in, budget preparation, administration, analysis, organization-wide coordination, and three (3) years of supervisory experience.

A Certified Public Accountant (CPA) License, Certified Public Finance Officer (CPFO) Certificate, or similar designation, or a graduate degree Master's in Public or Business Administration may be substituted for one (1) year of experience.

KNOWLEDGE AND ABILITIES:

Knowledge Oof:

- Knowledge of mManagement principles and practices.
- ; pPrinciples and practices of governmental accounting and financial management, including Generally Accepted Accounting Principles (GAAP).
- ; pPrinciples and practices of budget preparation, adoption, administration, evaluation, and coordination.
- ; aApplicable federal, state and local laws and regulations.
Specific knowledge-based competencies required to satisfactorily perform the functions of the job include: personnel processes; pertinent codes, policies, regulations and/or laws; federal and state purchasing regulations; and budget management and accounting.

Ability Tto:

- Ability to pPlan, organize, supervise and participate in the activities of the Budget and Purchasing functions.
- eEffectively plan and implement citywide budget process and related fiscal programs; develop financial plans and fiscal forecasts.
- ; aAnalyze financial and accounting reports and make appropriate recommendations on projected revenue or cash flow.
- ; dDevelop records, systems and procedures to ensure internal control over accounting operationsrevenue billing, cash handling and collection operations; develop and implement goals, objectives, policies, procedures, work standards, and internal controls and train staff in their use.
- Communicate effectively orally and in writing with diverse groups including staff, leaders of other department, citizens, and other stakeholders.; meet deadlines and schedules
- ; work as part of a team; bBe flexible to changing conditions.
- ; wWork with multiple projects while; dealing with frequent interruptions and changing priorities, while staying on schedule and meeting deadlines.
- ; mMaintain confidentiality.

- ~~Administer and perform assigned specialized finance activities;~~ iInterpret and apply state, federal and local laws and regulations related to governmental accounting, and financial management.
- ~~;~~ dDraw valid conclusions and project consequences of decisions and recommendations. ~~;~~ set priorities, meet deadlines and make sound decisions; e
- ~~stablish and maintain accurate records; communicate effectively orally and in writing;~~ pPrepare clear, concise and complete reports, ~~and~~ other written materials, and make ~~verbal and~~ multimedia presentations of complex, technical, and/or statistical information.
- eEstablish and maintain effective working relationships with employees, team members, service providers, and the general public.

~~LICENSE AND CERTIFICATIONS:~~

~~Possession of a valid California Driver's License and have a satisfactory driving record.~~

WORKING CONDITIONS, ADA AND OTHER REQUIREMENTS:

The City of Union City is an equal opportunity employer. The City of Union City will comply with its obligations under the law to provide equal employment opportunities to qualified individuals with disabilities.

Positions in this class typically require: sitting, stooping, ~~kneeling, crouching,~~ reaching, standing, walking, pushing, pulling, lifting, fingering, grasping, talking, hearing, seeing, and repetitive motions.

Travel: Positions in this class may require local and statewide travel as necessary.

ACCOUNTING MANAGER

Bargaining Unit: Management Employees Group
FLSA Status: Exempt

DEFINITION:

Under general direction, manages and directs the Accounting Division of the Finance Department, including the budget development process and preparation of the budget book; budget monitoring, analysis and reporting; short- and long-range fiscal forecasting; ensuring adherence to financial policies and procedures; and capital planning. The Accounting Manager trains and evaluates assigned staff.

CLASS CHARACTERISTICS:

This is a single position classification at the managerial level in the Finance Department responsible for managing the budget and accounting functions. The Accounting Manager has a broad range of independence within policy and procedural limitations and works under minimal supervision. The incumbent is accountable to the Finance Director for the quality and efficiency of services directed. The Accounting Manager is expected to provide resources, system support, and oversight to all subordinate professional and paraprofessional staff. This position is responsible for the successful planning and implementation of the citywide budget process and the day-to-day accounting operations.

EXAMPLES OF DUTIES (illustrative only):

- Plan, organize, direct and evaluate the activities of the Accounting Division including general accounting, accounts payable and payroll.
- Recommend the appointment of personnel; provide or coordinate staff training; conduct performance evaluations; work with employees on performance issues; and implement disciplinary procedures.
- Prepare, review and maintain journal entries and general ledger postings and supporting financial records and supervise the maintenance of the General Ledger.
- Conduct and coordinate the annual audit and serve as the liaison between the City and the external auditors, provide requested information and necessary documentation for completion of the audit, and ensure timely completion of the audit, State Controller's Office reports and other compliance reports as required.
- Oversee reconciliations of the City's financial activities including bank accounts and investments, month-end and year-end close processes and prepare related reports.
- Plan and implement citywide budget process and related fiscal programs.

- Effectively communicate budget preparation calendar and information needs, capabilities, and limitations as well as budget policies, procedures and outcomes to departments, city officials, citizens, and other interested parties.
- Project citywide personnel costs on an annual basis and as needed.
- Monitor the City's budget, perform budget analysis, prepare quarterly budget status reports, develop financial and capital plans, and prepare short- and long-range financial forecasts.
- Research and implement new budget initiatives that increase the usefulness and clarity of budget presentations and maximize staff efficiency.
- Conduct a variety of special studies; prepare and present various analyses, statistical compilations, and reports to City staff, City Council, or the public.
- Assist in the management of the City's capital financing programs, including debt issuance.
- Facilitate development and implementation of improved processes and standard procedures.
- Participate in the development and implementation of Department goals, policies, and priorities.
- Assist in operational administration of risk management activities as assigned.

QUALIFICATIONS:

EDUCATION AND EXPERIENCE:

Any combination of education, training, and experience that would likely provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the knowledge, skills and abilities would be:

Graduation from an accredited college or university with major course work in accounting, financial management, economics, business administration or related field. Five (5) years of progressively responsible professional municipal or government financial management experience with substantial work in budget preparation, administration, analysis, organization-wide coordination, and three (3) years of supervisory experience.

A Certified Public Accountant (CPA) License, Certified Public Finance Officer (CPFO) Certificate, or similar designation, or a Master's in Public or Business Administration may be substituted for one (1) year of experience.

KNOWLEDGE AND ABILITIES:

Knowledge of:

- Management principles and practices.
- Principles and practices of governmental accounting and financial management, including Generally Accepted Accounting Principles (GAAP).

- Principles and practices of budget preparation, adoption, administration, evaluation, and coordination.
- Applicable federal, state and local laws and regulations.

Ability to:

- Plan, organize, supervise and participate in the activities of the budget function.
- Effectively plan and implement citywide budget process and related fiscal programs; develop financial plans and forecasts.
- Analyze financial and accounting reports and make appropriate recommendations on projected revenue or cash flow.
- Develop records, systems and procedures to ensure internal control over accounting operations; develop and implement goals, objectives, policies, procedures, work standards, and internal controls and train staff in their use.
- Communicate effectively orally and in writing with diverse groups including staff, leaders of other department, citizens, and other stakeholders.
- Be flexible to changing conditions.
- Work with multiple projects while dealing with frequent interruptions and changing priorities, while staying on schedule and meeting deadlines.
- Maintain confidentiality.
- Interpret and apply state, federal and local laws and regulations related to governmental accounting and financial management.
- Draw valid conclusions and project consequences of decisions and recommendations.
- Prepare clear, concise and complete reports, other written materials, and make multimedia presentations of complex, technical, and/or statistical information.
- Establish and maintain effective working relationships with employees, team members, service providers, and the general public.

WORKING CONDITIONS, ADA AND OTHER REQUIREMENTS:

The City of Union City is an equal opportunity employer. The City of Union City will comply with its obligations under the law to provide equal employment opportunities to qualified individuals with disabilities.

Positions in this class typically require: sitting, stooping, reaching, standing, walking, pushing, pulling, lifting, fingering, grasping, talking, hearing, seeing, and repetitive motions.

Travel: Positions in this class may require local and statewide travel as necessary.



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN MALLOY, CITY MANAGER

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE ACCEPTANCE OF FY 2022-2023 SB 1383 GRANT FUNDS FROM CALRECYCLE, IN THE AMOUNT OF \$180,941, AND AMENDING THE FY 2023-2024 CITY MANAGER'S OFFICE, SOLID WASTE AND RECYCLING PROGRAM BUDGET

Staff recommends that the City Council adopt a resolution authorizing the acceptance of FY 2022-2023 SB 1383 grant funds from CalRecycle in the amount of \$180,941 and amending the FY 2023-2024 City Manager's Office, Solid Waste and Recycling Program budget. Moreover, the resolution also authorizes the City Manager or her designee to sign and submit various grant-related documents to CalRecycle.

City Council approved Resolution No. 6214-23 on October 24, 2023, which authorized staff to submit a grant application to CalRecycle for SB 1383 grant funds, and staff submitted the City's grant application on November 7, 2023. On February 26, 2024, the City received notice from CalRecycle that \$180,941 has been awarded. The grant funds will be used to supplement the City's efforts to comply with various aspects of the SB 1383 Regulations.

STRATEGIC PLAN ALIGNMENT

This report is in alignment with the following City Council priority:

Goal D: Environmental Sustainability and Infrastructure

Strategy 12: Coordinate with City departments, commercial and residential customers to implement the requirements of state organics and food recovery legislation.

BACKGROUND

The Short-lived Climate Pollutants Act of 2016 (SB 1383) establishes methane reduction targets as part of a larger Statewide strategy to combat climate change and reduce greenhouse gas (GHG) emissions. The goal of SB 1383 is to reduce Short-lived Climate Pollutants (SLCPs), primarily methane emissions created by

landfills, dairies, and livestock, as well as organic waste.

The law establishes a mandated target to achieve a Statewide 75 percent reduction in disposal of organic waste and a 20 percent increase in edible food recovery for human consumption by 2025. The law requires jurisdictions to implement relevant provisions of the SB 1383 Regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations.

The State's FY 2022-2023 Budget Act allocated \$180 million to assist local jurisdictions throughout the State with implementation of CalRecycle's SB 1383 regulations. A total amount of approximately \$110 million was allocated to the SB 1383 Local Assistance Grant Program. CalRecycle received 390 grant applications and awarded this \$110 million to the 387 local jurisdictions that met the grant criteria, which primarily was to have an adopted SB 1383 implementation ordinance as required by the law. The City adopted an ordinance on October 26, 2021 (via Ordinance No. 889-21 which added Union City Municipal Code Chapter 7.24 – Organics Reduction and Recycling).

DISCUSSION

A resolution accepting and appropriating the grant funds is required for the City to receive and spend the grant funds. In addition, CalRecycle requires that the resolution provide specificity regarding City staff signature authority to submit documents and implement the grant; therefore, the resolution also authorizes the City Manager or her designee to sign and submit various grant related documents to CalRecycle.

On October 24, 2023, the City Council approved Resolution No. 6214-23 which authorized staff to submit a grant application to CalRecycle for SB 1383 grant funds totaling \$128,780. Staff submitted the grant application on November 7, 2023, and CalRecycle provided notice to the City of its grant award on February 26, 2024. However, due to the number of applications and the amount of grant funds allocated in CalRecycle's budget, the City received an additional \$52,161 for a total grant award of \$180,941.

The grant funds will be used to supplement staff's efforts to comply with various aspects of the SB 1383 Regulations. These activities include: outreach, education, and technical assistance to businesses and multi-family properties to increase the number of customers subscribed to compost (organics) collection service; purchase of equipment to assist with spreading compost on City properties; and purchase of compost itself for deployment at City properties by the Public Works Department and for distribution to the public through the City's Community Compost Hub (which is currently in development). **Table 1** below provides a summary of the approved budget.

TABLE 1		
Union City Award of CalRecycle SB 1383 Grant Funds		
Budget Item	Description	Amount
Equipment	AG72- Turf Aerator	\$21,000
	FT-12E- Trailer	\$22,000
	JD 4066R- Compact Utility Tractor w/ Bucket	\$66,000
	Subtotal	\$109,000
Technical Assistance Interns	Fund limited duration part-time interns to assist staff with increasing participation in the compost collection services provided to multi-family and commercial properties by the City's franchised compost collection service provider, Republic Services.	\$50,000
Purchase of Compost	Procurement of compost product for distribution to the public through the City's Community Compost Hub (which is currently in development) and for deployment on City properties by the City's Public Works Department.	\$21,941
	Total	\$180,941

FISCAL IMPACT

Accepting and appropriating the CalRecycle grant totaling \$180,941 to fund programs to implement SB 1383 will not impact the General Fund. The grant funds will be accounted for in the SB 1383 CalRecycle Fund (Fund 2035).

RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the acceptance of FY 2022-2023 SB 1383 grant funds from CalRecycle, in the amount of \$180,941 and amending the FY 2023-2024 City Manager's Office, Solid Waste and Recycling Program budget. Moreover, the resolution also authorizes the City Manager or her designee to sign and submit various grant-related documents to CalRecycle.

Prepared by:

Cliff Feldman, Recycling and Solid Waste Program Manager

Submitted by:

Jennifer Phan, Deputy City Manager

ATTACHMENTS:

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

RESOLUTION NO. XXXX-24

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
AUTHORIZING THE ACCEPTANCE OF FY 2022-2023 SB 1383 GRANT
FUNDS FROM CALRECYCLE, IN THE TOTAL AMOUNT OF \$180,941,
AND AMENDING THE FY 2023-2024 CITY MANAGER'S OFFICE, SOLID
WASTE AND RECYCLING PROGRAM BUDGET**

WHEREAS, Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants; and

WHEREAS, CalRecycle solicited from local jurisdictions grant applications due on November 15, 2023 to award funds from its SB 1383 Local Assistance Grant Program (Greenhouse Gas Reduction Fund, Fiscal Year 2022-2023); and

WHEREAS, on October 24, 2023, the City Council approved Resolution No. 6214-23 authorizing the City to submit a grant by November 15, 2023 to CalRecycle in response to its SB 1383 Local Assistance Grant Program solicitation for grant funding; and

WHEREAS, on November 7, 2023, the City submitted a grant application to CalRecycle requesting an award of grant funds from the SB 1383 Local Assistance Grant Program; and

WHEREAS, on February 26, 2024, CalRecycle provided notice of its award to the City of a grant totaling \$180,941 to support the City's efforts to comply with the Short-Lived Climate Pollutants Act of 2016 (SB 1383) Regulations.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby authorizes acceptance of the CalRecycle FY 2022-2023 grant funds, in the amount of \$180,941.

BE IT FURTHER RESOLVED that the City Council of the City of Union City hereby amends the FY 2023-2024 SB 1383 CalRecycle Fund revenue budget by increasing the revenue projection in Account Number 2035-20024-44168 (SB 1383 CalRecycle Fund - CalRecycle SB 1383 Local Assistance Grant (2022-2023)) by \$180,941.

BE IT FURTHER RESOLVED that the City Council of the City of Union City hereby amends the FY 2023-2024 SB 1383 CalRecycle Fund expenditure budget by appropriating the \$180,941 grant to the following accounts in the SB 1383 CalRecycle Fund:

2035-1201-20024-51111 - \$50,000
2035-1201-20024-54111 - \$21,941
2035-1201-20024-57130 - \$109,000

BE IT FURTHER RESOLVED that the City Council of the City of Union City does hereby authorize the City Manager, or her designee, to execute any and all agreements necessary to accept the grant in a form approved by the City Attorney and to take other such action as is necessary to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on this 26th day of March 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

CAROL DUTRA-VERNACI
Mayor

ATTESTED:

APPROVED AS TO FORM:

THAI NAM N. PHAM
City Clerk

KRISTOPHER J. KOKOTAYLO
City Attorney



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN MALLOY, CITY MANAGER

SUBJECT: ADOPT A RESOLUTION APPROVING THE CONSULTING SERVICES AGREEMENT WITH CALIFORNIA WOOD RECYCLING, INC. DBA AGROMIN, FOR A NOT-TO-EXCEED AMOUNT OF \$240,000 THROUGH DECEMBER 31, 2026 FOR COMPOST PROCUREMENT SERVICES AND COMPOST DELIVERY TO THE CITY TO FACILITATE COMPLIANCE WITH SB 1383 COMPOST PROCUREMENT REGULATIONS AND AUTHORIZING THE CITY MANAGER TO APPROVE UP TO THREE ONE-YEAR EXTENSIONS IN AN ADDITIONAL AMOUNT NOT TO EXCEED \$270,000

Staff recommends that the City Council adopt a resolution (Attachment 1) approving the Consulting Services Agreement (CSA) with California Wood Recycling, Inc. dba Agromin, for compost procurement services and compost delivery to the City to facilitate compliance with SB 1383 compost procurement regulatory requirements. The Agreement is through December 31, 2026 for not-to-exceed amount of \$240,000 and includes up to three (3) one (1) year extensions in the additional total not-to-exceed amount of \$270,000.

STRATEGIC PLAN ALIGNMENT

This report is in alignment with the following City Council priority:

Goal D: Environmental Sustainability and Infrastructure

Strategy 12: Coordinate with City departments, commercial and residential customers to implement the requirements of state organics and food recovery legislation.

BACKGROUND

The Short-lived Climate Pollutants Act of 2016 (SB 1383) establishes methane reduction targets as part of a larger Statewide strategy to combat climate change and reduce greenhouse gas (GHG) emissions. The goal of SB 1383 is to reduce Short-lived Climate Pollutants (SLCPs), primarily methane emissions created by

landfills, dairies, and livestock, as well as organic waste.

The law establishes a mandated target to achieve a Statewide 75 percent reduction in disposal of organic waste and a 20 percent increase in edible food recovery for human consumption by 2025. The law requires jurisdictions to implement relevant provisions of the SB 1383 Regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations.

A component of the SB 1383 Regulations requires local jurisdictions to procure compost annually pursuant to the per capita based calculation in the Regulations. This regulatory obligation requires the City to procure approximately 2,200 tons of compost annually in calendar year 2024 and 3,400 tons in 2025 and subsequent years (based on a population of 68,000) to comply with the SB 1383 Regulations.

DISCUSSION

Staff is requesting authorization from Council to execute an agreement with Agromin to procure compost for the City to facilitate compliance with the SB 1383 compost procurement requirements. A majority of the compost procured for the City through this agreement will be used by various agriculture entities in the central valley of California, and the remainder will be delivered to the City's community compost hub for distribution to the public, and to the Public Works Department for deployment at City properties.

Staff will closely monitor the amount of compost needed by both the Public Works Department and the community compost hub, and the remainder of the City's regulatory compost procurement obligation will be distributed to agriculture outlets in the central valley.

The agreement with Agromin is through December 31, 2026 and the resolution authorizing the City Manager to execute this agreement allows for three (3) additional one (1) year term extensions at the City's discretion without incurring a price increase.

FISCAL IMPACT

The City Manager's Office Recycling Program has funds included in the FY 2023-2024 Budget under "Contractual Services" (Account No. 2030-1201-20021-54111) for the consultant's compost procurement services, and this contract will not impact the General Fund.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution approving the Agreement with California Wood Recycling, Inc. dba Agromin, for Compost Procurement Services, and authorizing the City Manager to execute the Agreement in a form approved by the City Attorney.

Prepared by:

Cliff Feldman, Recycling and Solid Waste Program Manager

Submitted by:

Jennifer Phan, Deputy City Manager

ATTACHMENTS:

Description	Type
▣ Draft Resolution	Resolution
▣ Exhibit A – Consulting Services Agreement with Agromin for Compost Procurement Services	Exhibit

RESOLUTION NO. XXXX-24

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
APPROVING THE CONSULTING SERVICES AGREEMENT WITH
CALIFORNIA WOOD RECYCLING, INC. DBA AGROMIN, FOR AN
AMOUNT NOT TO EXCEED \$240,000.00 THROUGH DECEMBER 31, 2026
FOR COMPOST PROCUREMENT SERVICES AND COMPOST
DELIVERY TO THE CITY TO FACILITATE COMPLIANCE WITH SB
1383 COMPOST PROCUREMENT REGULATIONS AND AUTHORIZING
THE CITY MANAGER TO APPROVE UP TO THREE ONE-YEAR
EXTENSIONS IN AN ADDITIONAL AMOUNT NOT TO EXCEED \$270,000**

WHEREAS, the Short-lived Climate Pollutants Act of 2016 (SB 1383) establishes methane reduction targets as part of a larger Statewide strategy to combat climate change and reduce greenhouse gas (GHG) emissions; and

WHEREAS, SB 1383 establishes a mandated target to achieve a Statewide 75 percent reduction in disposal of organic waste and a 20 percent increase in edible food recovery for human consumption by 2025; and

WHEREAS, the SB 1383 Regulations require local jurisdictions to implement policies to ensure the sustainability of the marketplace for the compost products manufactured due to an increase in collected organic materials Statewide; and

WHEREAS, the City of Union City's SB 1383 calculated compost procurement target amount pursuant to the Regulations is approximately 2,200 tons for calendar year 2024 and approximately 3,400 tons for calendar year 2025 and subsequent years, based on the City's current population estimated at 68,000; and

WHEREAS, the City of Union City is currently developing a community compost hub to distribute compost directly to the residents of Union City; and

WHEREAS, the City of Union City Public Works Department has previously acquired equipment and shall procure additional equipment via grants from CalRecycle to commence deploying compost on City properties; and

WHEREAS, the Consulting Services Agreement with Agromin for Compost Procurement Services will facilitate the City's compliance with the compost procurement requirements of SB 1383 by providing compost for the community compost hub for distribution to Union City residents, to the Public Works Department for deployment at City properties, and to agriculture entities for deployment on farmland; and

WHEREAS, the City Manager's Office will be utilizing funds included in the FY 2023-2024 Budget under the line item of Contractual Services (Account No. 2030-1201-20021-54111) for the Consultant's compost procurement services and compost delivery to the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby approves the Consulting Services Agreement with California Wood Recycling, Inc. dba Agromin, for Compost Procurement Services and Compost Delivery for a total not to exceed amount of \$240,000.00 through December 31, 2026.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Union City hereby authorizes the City Manager to extend the Consulting Services Agreement with California Wood Recycling, Inc. dba Agromin for up to a total of three (3) one (1) year terms at the sole discretion of the City in an additional total not to exceed the amount of \$270,000.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on the 26th day of March 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

CAROL DUTRA-VERNACI
Mayor

ATTESTED:

APPROVED AS TO FORM:

THAI NAM N. PHAM
City Clerk

KRISTOPHER J. KOKOTAYLO
City Attorney

EXHIBIT A

SB 1383 Procurement Scope of Services Agreement

THIS AGREEMENT is made and entered into on _____, by and between the City of Union City, a political subdivision of the State of California, hereinafter referred to as "City," and California Wood Recycling, Inc. DBA Agromin, a California corporation, hereinafter referred to as "Contractor."

1. Purpose of Agreement. Contractor shall provide City with the recycled organic waste products (hereinafter referred to as "Products") procurement services described in Attachment 1 – Services (hereinafter referred to as "Services"), for the purpose of facilitating City's compliance with Senate Bill 1383 regulations' recovered organic waste product procurement requirements, as described in the California Code of Regulations Title 14, Division 7, Chapter 12, Article 12 – Procurement of Recovered Organic Waste Products (14 CCR 18993.1 et seq.). Contractor shall perform these Services on City's behalf.

2. Services to Be Provided Exclusively to City. Contractor shall ensure and maintain records sufficient to demonstrate that any Product it procures on City's behalf under this Agreement is not applied towards the SB 1383 recovered organic waste product procurement target of any other City.

3. Requirements for Products. To ensure that Products procured under this Agreement meet the requirements specified in 14 CCR 18993.1, Products shall meet the criteria in Attachment 2 – Requirements for Products.

4. Recordkeeping and Reporting. Contractor shall maintain and submit records and supporting documents describing the Services as specified in Attachment 3 – Recordkeeping and Reporting Requirements. At the time Contractor submits those records to City, the records shall be accompanied by a certification attesting to the records' accuracy. Contractor may use the declaration form in Attachment 4 – Certification of Records.

5. Time of Performance and Termination.

The services of Contractor are to commence upon execution of this Contract by City. Agreement shall terminate no later than December 31, 2026, and will automatically renew up to three additional one-year extensions, unless written notification is provided sixty (60) days prior to the expiration of the current calendar year by either party requesting to terminate or update the agreement. This agreement can be extended for additional years by the mutual agreement of both parties. Either party may terminate or request to amend the agreement upon the expiration of any calendar year, for services related to the following calendar year, by providing notice to the other party in writing at least sixty (60) days in advance of such calendar year expiration.

Attachments

Attachment 1 – Services

Attachment 2 – Compost Requirements and Definitions

Attachment 3 – Recordkeeping and Reporting Requirements

Attachment 4 – Certification of Records

Attachment 1 – Services

- 1) Contractor will procure the following Products on behalf of the City:
 - a) Compost or composted mulch:
 - i) 2,195 tons during calendar year 2024.
 - (1) 230 tons estimated for delivery to the City (10 deliveries).
 - (2) 1,965 tons estimated for Direct Service Provider delivery.
 - ii) 3,378 tons during calendar year 2025 and beyond.
 - (1) 230 tons estimated for delivery to the City (10 deliveries).
 - (2) 3,148 tons estimated for Direct Service Provider delivery.
- 2) Contractor will provide the Products to various farms, ranches, or similar (hereinafter “Direct Service Provider”), for purposes of agricultural use, soil conditioning, and carbon sequestration at the farms, ranches, or similar, or to locations within Union City, for use by the City at its compost hub, parks and open spaces.
- 3) Contractor will procure the products from CalRecycle-approved composting facilities. Contractor shall provide to City record-keeping and reporting services as described in Attachment 3 – Record-keeping and Reporting Requirements.

Product Cost.

- 1) Compost or composted mulch from Agromin facility: \$15.00 per ton
- 2) Freight/handling cost for Scenario B below: \$8/ton
- 3) Estimated delivery of compost to Union City for Scenario C: \$36.70/ton

Procurement Scenario A

Contractor makes arrangements with a Direct Service Provider (DSP) who would like to use compost and/or composted mulch. The DSP uses the subsidized compost on behalf of the City and pays for the freight cost. City only pays for the compost and/or composted mulch per above price and applicable sales tax.

Procurement Scenario B

Contractor makes arrangements with a DSP that is willing to receive compost or composted mulch, and is located in the immediate proximity to Contractor’s composting facility. City pays for the compost and/or composted mulch per above prices plus applicable sales tax, and pays for the minimal cost to transport/handle the compost/composted mulch to the DSP site.

Procurement Scenario C

Contractor will deliver compost to locations within the City for use by the City. The cost of hauling will vary based on delivery location, time of year, and diesel prices. The total estimated delivery cost is provided above. The City pays for the compost, delivery, and applicable sales tax.

Procurement will be satisfied by a combination of Scenario A, Scenario B, and Scenario C.

Payment.

Payment for this agreement is not to exceed the following amounts unless agreed upon by the City:

- i) \$60,000 during calendar year 2024
 - (1) Estimated 230 tons x \$15.00 per ton x \$21.70 per ton hauling + 10.75% tax.
 - (2) Estimated 1,965 tons x \$15.00 per ton x \$8.00 per ton hauling + 10.75% tax.
- ii) \$90,000 during calendar year 2025 and beyond
 - (1) Estimated 230 tons x \$15.00 per ton x \$21.70 per ton hauling + 10.75% tax.
 - (2) Estimated 3,148 tons x \$15.00 per ton x \$8.00 per ton hauling + 10.75% tax.

Payment will be due and payable by City, net 30 days, when the following conditions have been met:

- 1) Agreement is fully executed.
- 2) Contractor has provided services per this agreement moving compost and/or composted mulch meeting SB 1383 procurement requirements to Direct Service Providers (DSP) and/or to City.
- 3) All required procurement documents have been submitted and accepted.
- 4) Invoice for payment has been submitted and accepted by City.

Attachment 2 - Compost Requirements and Definitions

As required in 14 CCR 18993.1(f)(1), compost procured to perform the Services shall meet the following criteria:

1) Materials:

a) Acceptable materials are:

- i) Compost, including fine, medium, and coarse compost.
- ii) The portion of topsoil, biotreatment soil mix, or other blend that is compost.
- iii) See attached specification for additional requirements.
- iv) Mulch

b) Unacceptable materials include:

- i) Compost that exceeds state maximum limitations for pathogens, metals, and physical contaminants in 14 CCR § 17868.2 – 17868.3.1.
- ii) Digestate
- iii) Biosolids/sewage sludge
- iv) Manure
- v) Biochar
- vi) Uncomposted compostable materials
- vii) Synthetic fertilizer, nitrolized sawdust, gypsum, urea
- viii) Topsoil, fill (except as described in (1)(a)(ii))

2) Sources:

a) Acceptable sources of compost are (per 14 CCR 18993.1(f)(1)):

- i) A compostable materials handling facility with a Full Solid Waste Facility Permit or Registration Permit, or is authorized under the Enforcement Agency Notification Tier under 14 CCR § 17854.1
- ii) A large-volume in-vessel digestion facility that composts on-site.

Definitions:

“Biochar” means the charcoal product of biomass conversion through pyrolysis (along with ash and syngas).

“Biosolids” means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Biosolids includes, but is not limited to, treated domestic septage and scum or solids removed in primary, secondary, or advanced wastewater treatment processes. Biosolids includes the residue solids resulting from the co-digestion of anaerobically digestible material with sewage sludge. Biosolids does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during the preliminary treatment of domestic sewage in a treatment works. 14 CCR 17852(a)(9)

“Compost” means the product resulting from the controlled biological decomposition of organic solid wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility. 14 CCR 17896.2(a)(4)

“Compostable material” means any organic material that when accumulated will become active compost. 14 CCR 17852(a)(11)

“Compostable Material Handling Facility permitted or authorized by [14 CCR § 17854.1](#)” means a facility described by the tiered regulatory system adopted by the California Integrated Waste Management Board in 1994.

“Digestate” means the solid and/or liquid residual material remaining after organic material has been processed in an in-vessel digester. 14 CCR 17896.2(a)(6)

“Large Volume In-vessel Digestion Facility” means a facility that receives an average greater than 100 tons of solid waste per operating day or greater than 700 tons (2,800 cubic yards) per week of solid waste for digestion in an in-vessel digester. 14 CCR 17896.2(a)(15)

“Manure” is an agricultural material and means accumulated herbivore or avian excrement. This definition shall include feces and urine, and any bedding material, spilled feed, or soil that is mixed with feces or urine. 14 CCR 17896.2(a)(18)

Attachment 3 – Recordkeeping and Reporting Requirements

Contractor shall keep and maintain a complete copy of all records regarding its provision of Services to City. Records shall be maintained on a calendar year basis, i.e. for each calendar year in which Contractor procures compost for City under this Agreement.

- 1) Reporting:
 - a) Contractor shall ensure all reporting documents are available to the City on the CaliforniaCompost.net jurisdictional portal, or provided directly per request by the City.
- 2) The following information shall be included in the reporting documents:
 - a) The total compost provided to Direct Service Providers during the reporting period and to date.
 - b) The following information on the compost provided to each Direct Service Provider:
 - i) Quantity of compost
 - ii) Compost producer information:
 - (1) Name of facility
 - (2) Physical location (address)
 - (3) Contact information
 - iii) Direct Service Provider information:
 - (1) Name of Direct Service Provider
 - (2) Description of where compost was used
 - (3) A general description of how the compost was used.
- 3) The following submittals shall be included with each report:
 - a) All invoices or similar evidencing Direct Service Provider's receipt of compost on City's behalf.
 - b) Test data sheets showing that each compost supplied to Direct Service Providers complies with the City specifications, including requirements described in Attachment 2 of this Agreement.
- 4) Contractor shall report above information on the CaliforniaCompost.net website jurisdiction portal.

Attachment 4 – Certification of Records

**Certification of Records with Respect to:
Contractor Agreement between Agromin and City of Union City
Effective: [Date]**

State of California
County of Ventura
City of Oxnard

I, the undersigned, do certify as follows:

I am an authorized representative of the Contractor named above. I am familiar with the Services that Contractor has provided to the City named above under the Contractor agreement referenced above and as described in the SB 1383 Contractor Procurement Scope of Services.

I hereby certify that all records and information that Contractor is submitting to City regarding Contractor's provision of Services in [insert applicable calendar year] pursuant to the above-referenced agreement are true, accurate, and complete.

I declare under penalty of perjury that the foregoing is true and correct.

Agromin

By: Kimberly M. Cook
Title: Central/NorCal Business Dev. Mgr. and SB1383 Procurement Lead

Date: _____



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: KRISTOPHER J. KOKOTAYLO, CITY ATTORNEY

SUBJECT: INTRODUCTION OF ORDINANCE AMENDING UNION CITY MUNICIPAL CODE CHAPTER 5.42 “TOBACCO RETAILERS”

The City Council previously provided direction to staff regarding a potential ordinance amending Chapter 5.42, “Tobacco Retailers”, of the Union City Municipal Code (“UCMC”) (the “Tobacco Retailers Ordinance”). The City Attorney’s Office has prepared draft text amendments to the Tobacco Retailers Ordinance based on direction provided by the City Council and presented those to the City Council at the January 9, January 23, February 13, and February 27 meetings.

The City Council previously introduced a proposed ordinance on February 13, 2024. However, the City Council elected to not proceed with adoption and provide further direction related to the prohibition on vape products. The City Attorney’s Office further prepared draft text amendments based on that direction. Staff and the City Attorney’s Office now recommends that the City Council hold a public hearing and introduce the proposed Tobacco Retailers Ordinance.

STRATEGIC PLAN ALIGNMENT

There are no Strategic Plan goals associated with this agenda item.

BACKGROUND

The City Council held a study session on July 25, 2023, regarding possible amendments to the Tobacco Retailers Ordinance. This followed voter approval of Proposition 31, upholding Senate Bill 793 which banned the sale of flavored tobacco products.

At that time, the City Council considered the following potential amendments to the Tobacco Retailers Ordinance and provided general direction as follows:

- 1) Completely prohibit the sale of vape products.

- 2) Prohibit the sale of flavored tobacco products, consistent with state law.
- 3) Prohibit the sale of tobacco products in pharmacies.
- 4) Amend the minimum single cigar price from \$5 to \$8 with the annual increase by the Consumer Price Index (CPI) or some other amount.
- 5) Amend the minimum pack size for cigars (unless sold at the single cigar price identified above) from 5 to 20.
- 6) Prohibit the issuance of tobacco retail licenses within 500 feet of each other.
- 7) Increase the amount for fines related to violations.

The City Council subsequently considered the potential amendments at its January 9, 2024 City Council meeting. At that time, the City Council provided the following direction:

- 1) Allow the transfer of a tobacco retailers license with the transfer of a business and revise the definition of “arm’s length transaction” to allow for family transfers and other transfers that are outside of the open market.
- 2) Provide an effective date that is 120 days from adoption.
- 3) Prohibit the redemption and use of coupons by tobacco retailers.
- 4) Revise the minimum pack size requirements for cigars to a minimum pack of 10 with a \$15 minimum.

Additionally, the City Council provided the following direction at the January 23, 2024 City Council meeting:

- 1) Prohibit discounts which allow the sale of any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item.
- 2) Prohibit discounts which allow retailers to provide free or discounted items to a consumer in consideration for the purchase of any tobacco product.
- 3) Provide an enforcement date of June 1, 2024.

Subsequently, the City Council introduced a proposed ordinance amending the Tobacco Retailers Ordinance on February 13, 2024. The City Council declined to adopt the proposed ordinance on February 27, 2024 and provided further direction to modify the proposed ordinance to provide a prohibition on “single use” vapes instead of all vape products.

The City Council also referred a number of additional items to the Legislation and Policy Committee for consideration.

DISCUSSION

The City Attorney’s Office has prepared draft text amendments to the Tobacco Retailers Ordinance incorporating the City Council’s feedback from the January 9, January 23, February 13, and February 27 City Council meetings. The text amendments include the prior revisions, except to the extent modified by Council direction on February 27. Specifically, the proposed ordinance amending the Tobacco Retailers Ordinance now prohibits the sale of single use electronic smoking devices, and not all electronic smoking devices generally.

The proposed ordinance includes the following definition of “single-use electronic smoking product” to be: “an electronic smoking device that is not refillable or rechargeable and is typically discarded once its contents have been used. It includes without limitation:

1. Any electronic device or delivery system that can be used to deliver an inhaled dose of nicotine, flavorings, chemicals, or other substances in aerosolized or vaporized form for human consumption, including but not limited to an electronic cigarette, cigar, pipe, vape pen, or hookah.
2. Any component, part, or accessory of such a device or delivery system that is used during its operation.

3. Any flavored or unflavored liquid or substance, whether sold separately or sold in combination with any such device or delivery system, that could be used to deliver tobacco products, nicotine, or other substances in aerosolized or vaporized form.
4. Any product for use in such an electronic device or delivery system whether it contains nicotine or tobacco or is derived from nicotine or tobacco.”

FISCAL IMPACT

There is no direct fiscal impact associated with adopting this ordinance.

RECOMMENDATION

Staff and the City Attorney’s Office recommend that the City Council waive full reading and introduce by title only the proposed ordinance amending Union City Municipal Code Chapter 5.42, “Tobacco Retailers”.

Prepared by:

Juliet Vaughn, Attorney

Submitted by:

Kristopher J. Kokotaylo, City Attorney

ATTACHMENTS:

Description	Type
☐ TRL Ordinance	Ordinance
☐ TRL Ordinance Exhibit A	Exhibit
☐ Item 7.a. Powerpoint	Attachment

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
UNION CITY AMENDING CHAPTER 5.42, "TOBACCO RETAILERS", OF THE
UNION CITY MUNICIPAL CODE**

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, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;¹ and

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills 98 million people and causes over 1.4 trillion dollars in economic damage each year;² and

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;³ and

WHEREAS, tobacco use is the number one cause of preventable death in California⁴ and continues to be an urgent public health issue; and

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity;⁵ and

¹ U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf

² World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2019: Offer Help to Quit Tobacco Use*. 2019. Available at: <https://apps.who.int/iris/handle/10665/326043>.

³ *Supra*, Note 1.

⁴ California Department of Public Health, California Tobacco Control Program. The #1 Preventable Cause of Death. <http://tobaccofreeca.com/other-tobacco-products/the-number-1-preventable-cause-of-death>. Accessed May 12, 2020.

⁵ California Tobacco Control Program. *California Tobacco Facts and Figures 2019*. Sacramento, CA: California Department of Public Health. 2019.

WHEREAS, despite the State's efforts to limit youth access to tobacco, youth are still able to access tobacco products in California;⁶ and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act, enacted in 2009, prohibited candy and fruit flavored cigarettes⁷ largely because these flavored products are marketed toward youth and young adults,⁸ and younger smokers and more likely than older smokers to have tried these products;⁹ and

WHEREAS, in a 2019 observation survey of 36 tobacco retailers within Union City conducted by the Alameda County Public Health Department, 86% of stores surveyed sold flavored tobacco products; and

⁶ California Tobacco Control Program. *California Tobacco Facts and Figures 2016*. Sacramento, CA: California Department of Public Health. 2016. California Tobacco Control Program. *California Tobacco Facts and Figures 2019*. Sacramento, CA: California Department of Public Health. 2019. California Student Tobacco Survey, 2017-18. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California, San Diego; April 2019; Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs — 2014*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014; Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance — United States, 2019. California: Tobacco Use. 2019. Available at: <https://nccd.cdc.gov/youthonline/app/Results.aspx?LID=CA>. Accessed August 31, 2023; Lin C, Baiocchi M, Halpern-Felsher B. Longitudinal trends in e-cigarette devices used by Californian youth, 2014–2018. *Addict Behav*. 2020;108:106459. doi: 10.1016/j.addbeh.2020.106459.

⁷ 21 U.S.C. § 387g(a)(1)(A).

⁸ U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf; Villanti AC, Collins LK, Niaura RS, Gagosian SY, Abrams DB. Menthol cigarettes and the public health standard: a systematic review. *BMC Public Health*. 2017;17(1):983. doi: 10.1186/s12889-017-4987-z; Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington, DC: The National Academies Press. 2015. Available at: <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

⁹ U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf.

WHEREAS, according to the California Department of Public Health, flavored tobacco products are used by the majority of youth and young adult tobacco users (86.4% and 57.7%) in California;¹⁰ and

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco¹¹ and that these products help establish tobacco habits that can lead to long-term addiction;¹² and

WHEREAS, research indicates that the FDA ban in 2009 on all flavored cigarette products (except menthol) led to a 6% decrease in youth tobacco use and a 17% decrease in the likelihood of a youth becoming a cigarette smoker;¹³ and

WHEREAS, studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use;¹⁴ and

WHEREAS, in 2020, California passed SB 793, which amended California Health and Safety Code Section 104559.5 to prohibit the sale of most types of flavored tobacco products, including flavored electronic cigarettes, non-premium flavored cigars, as well as flavored enhancers;¹⁵ and

WHEREAS, in 2022, California voters passed Proposition 31, which upheld SB 793;¹⁶ and

¹⁰ California Tobacco Control Program. *California Tobacco Facts and Figures 2019*. Sacramento, CA: California Department of Public Health. 2019.

¹¹ U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf.

¹² *Id.*

¹³ Courtemanche CJ, Palmer MK, Pesko MF. Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *Am J Prev Med*. 2017;52(5):e139-e146. doi: 10.1016/j.amepre.2016.11.019.

Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control*. 2017;26(1):78-84. doi: 10.1136/tobaccocontrol-2015-052418; Pearlman DN, Arnold JA, Guardino GA, Boles Welsh E. Advancing Tobacco Control Through Point of Sale Policies, Providence, Rhode Island. *Prev Chronic Dis*. 2019;16:E129. doi: 10.5888/pcd16.180614.

¹⁵ California Health and Safety Code (HSC) Section 104559.5.

¹⁶ Statement of the Vote Summary Pages. November 8, 2022, General Election. State of California. <https://elections.cdn.sos.ca.gov/sov/2022-general/sov/06-summary.pdf>.

WHEREAS, 75.64 percent of voters in Alameda County voted yes to uphold SB 793;¹⁷ and

WHEREAS, California Health and Safety Code Section 104559.5 still allows the sale of flavored loose-leaf pipe tobacco and premium cigars with a wholesale price of twelve dollars (\$12.00 or more), as well as flavored shisha/hookah tobacco if sold in licensed stores that only allow people twenty-one (21) years of age on the premises at any time;¹⁸ and

WHEREAS, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens;¹⁹ and

WHEREAS, unlike cigarette use that has steadily declined among youth, the U.S. has seen a surge in teen e-cigarette use, and youth e-cigarette use remains a serious public health concern;²⁰ and

WHEREAS, research has consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;²¹ and

WHEREAS, a systematic review by the U.S. Community Preventive Services Task Force found that a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;²² and

WHEREAS, youth are particularly responsive to changes in tobacco prices and evidence suggests that tobacco companies deliberately target youth with price reductions;²³ and

¹⁷ Official Election Site of Alameda County. General Election (Certified Final Results) – November 08, 2022. Last Updated: Thursday, December 08, 2022. <https://www.acgov.org/rovresults/248/>.

¹⁸ California Health and Safety Code (HSC) Section 104559.5.

¹⁹ Hoffmann D, Hoffmann I. Chapter 3: Chemistry and Toxicology. In: *Smoking and Tobacco Control Monograph No. 9: Cigars: Health Effects and Trends*. National Cancer Institute; 1998.

²⁰ Park-Lee E, Ren C, Cooper M, Cornelius M, Jamal A, Cullen KA. Tobacco Product Use Among Middle and High School Students — United States, 2022. *MMWR Morb Mortal Wkly Rep* 2022;71:1429–1435. National Youth Tobacco Survey (NYTS). https://www.cdc.gov/mmwr/volumes/71/wr/mm7145a1.htm?s_cid=mm7145a1_w.

²¹ Yao T, Ong MK, Max W, et al. Responsiveness to cigarette prices by different racial/ethnic groups of US adults. *Tob Control*. 2018;27(3):301-309. doi: 10.1136/tobaccocontrol-2016-053434.

²² Community Preventive Services Task Force. *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products*. 2012.

²³ U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human

WHEREAS, although federal and state law ban the sale of individual cigarettes, neither federal nor California state laws restrict the sale of individual little cigars and cigars;²⁴ and

WHEREAS, neither federal nor California law set a minimum price for tobacco products; and

WHEREAS, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;²⁵ and

WHEREAS, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke;²⁶ and

WHEREAS, the City Council of the City of Union City has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, the City Council of the City of Union City 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 of Union City in order to protect the health, safety, and welfare of its residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION CITY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

The above recitals (“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

Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf

²⁴ 21 C.F.R. § 1140.16(b); Cal. Penal Code § 308.3(a).

²⁵ Huang J, Chriqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. Do state minimum markup/price laws work? Evidence from retail scanner data and TUS-CPS. *Tob Control*. 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocon-trol-2016-053093.

²⁶ Hudmon KS, Fenlon CM, Corelli RL, Prokhorov AV, Schroeder SA. Tobacco sales in pharmacies: time to quit. *Tob Control*. 2006;15(1):35-38. doi: 10.1136/tc.2005.012278.

seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 3. Municipal Code Amendment Chapter 5.42.

Section 5.42 “Tobacco Retailers,” of the Union City Municipal Code is hereby amended to read as displayed in Exhibit A, incorporated and made a part of this Ordinance.

SECTION 4. 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 5. 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 thirty (30) days after its adoption and shall not be enforced until June 1, 2024.

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:

“Administrator” means the ~~Administrative Services~~Finance Director or designee.

“Arm’s length transaction” means a sale or transfer, in good faith and for valuable consideration ~~that reflects the fair market value in the open market~~ between two informed and willing parties, as determined by the parties, neither of which is under any compulsion to participate in the transaction. A sale or transfer ~~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 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. ~~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~~Finance 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 smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act. ~~“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.~~

“Flavored Tobacco Product” means any tobacco product that imparts:

1. a taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product,

including but not limited to tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or

2. a heating, cooling, or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.

-“License” means a tobacco retailer’s license as defined below.

-“Licensee” means a tobacco retailer with a tobacco retailer’s license.

“Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.

“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.

“Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

“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.

“Single-use electronic smoking product” means an electronic smoking device that is not refillable or rechargeable and is typically discarded once its contents have been used. It includes without limitation:

1. Any electronic device or delivery system that can be used to deliver an inhaled dose of nicotine, flavorings, chemicals, or other substances in aerosolized or vaporized form for human consumption, including but not limited to an electronic cigarette, cigar, pipe, vape pen, or hookah.
2. Any component, part, or accessory of such a device or delivery system that is used during its operation.
3. Any flavored or unflavored liquid or substance, whether sold separately or sold in combination with any such device or delivery system, that could be used to deliver tobacco products, nicotine, or other substances in aerosolized or vaporized form.
4. Any product for use in such an electronic device or delivery system whether it contains nicotine or tobacco or is derived from nicotine or tobacco.

~~“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.~~

1. any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
2. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
3. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

"Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

"Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.,
electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products or tobacco paraphernalia.

"Tobacco retailing" shall mean means engaging in the activities of a tobacco retailer. 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 this chapter that authorizes electronic cigarette or tobacco retailing at a certain location and by a certain tobacco retailer.

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~~ the sale of tobacco products.

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 ~~n 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. Persons employed by a tobacco retailer under this chapter that sell tobacco products must be at least the minimum legal sales age established by state law. ~~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.

3. No tobacco retailer may honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price.

4. No tobacco retailer may sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or other item.

5. No tobacco retailer may provide any free or discounted item to a consumer in exchange for the purchase of any tobacco product.

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;

b. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; or

c. Any package of cigars containing fewer than ~~ten~~five cigars.

d. Cigars at a price of less than fifteen dollars per package of ten cigars, including all applicable taxes and fees.

2. This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds either ~~eight~~five dollars, including all applicable taxes and fees. ~~This or the dollar amount may be increased annually by the Consumer Price Index, as determined by the City Council and 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.

L. Sale of Single-Use Electronic Smoking Products. No person may sell or possess with the intent to sell any single-use electronic smoking product within the city.

M. Flavored Tobacco Products. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.

1. Presumptive flavored tobacco product. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product is a flavored tobacco product. Any communication by or on behalf of the manufacturer or retailer of a tobacco product that such tobacco product imparts a taste or odor other than the taste or odor of tobacco, or that imparts a heating, cooling, or numbing sensation, constitutes presumptive evidence that the tobacco product is a flavored tobacco product. This includes but is not limited to public statements that a product is flavored, such as describing the product as "chill," "ice," "fresh," "arctic," "sweet," "spicy," or "frost."

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.

D. Proximity to other tobacco retailers. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within 500 feet of a tobacco retailer location already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of

the property line of the parcel on which an existing licensee's business is located. This restriction does not apply to an applicant who has been licensed to sell tobacco products as of March 1, 2024.

E. Pharmacies. No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.

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 subsection (A)(2);
 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~~ Department of Tax and Fee Administration;
 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 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 subsection 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 [Department of Tax and Fee Administration](#) ~~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 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.

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 ~~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.~~

5.42.110 ~~Violations~~ Suspension and revocation of license.

A. ~~Violations.~~ Suspension or revocation of tobacco retailer license for violation. In addition to any other penalty authorized by law, a Tobacco Retailer License shall be suspended or revoked if the Department finds or a court of competent jurisdiction determines, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any provision of this Chapter. ~~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. Upon a finding of a first violation of this Chapter at a location within any 5 year period, the License shall be suspended for 30 days. ~~First Violation. After a first violation of this chapter at a location within any sixty month period, the Administrator shall:~~

~~a. 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 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;~~

~~b. 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 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. Upon a finding of a second violation of this Chapter at a location within any 5 year period, the License shall be suspended for 90 days. ~~Second Violation. After a second violation of this chapter at a location within any sixty month period, the license shall be revoked and no new license shall be issued for the location or the tobacco retailer until thirty days have passed from the date of revocation.~~

3. Upon a finding of a third violation of this Chapter at a location within any 5 year period, the License shall be suspended for 1 year. ~~Third Violation. After a third violation of this chapter at a location within any sixty month period, the license shall be revoked and no new license shall be issued for the location or the tobacco retailer until ninety days have passed from the date of revocation.~~

4. Upon a finding of four or more violations of this Chapter at a location within any 5 year period, the License shall be revoked with no new license issued for a five year period. ~~Fourth Violation and Additional Violations. After four or more violations of this chapter at a location within any sixty month period, the license shall be revoked and no new license may issue for the location or tobacco retailer until five years have passed from the date of revocation.~~

B. ~~Revocation Procedures.~~ 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 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. 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 subsection C. Within five 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 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 subsection D. The date, time, and place of appeal hearings shall be provided in writing to the tobacco retailer with at least ten 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 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 a misdemeanor. The Department may impose administrative penalties as follows:

1. For a first violation of this Chapter within any 5 year period, two hundred fifty dollars (\$250);
2. For a second violation of this Chapter within any 5 year period, five hundred dollars (\$500); and
3. For a third or subsequent violation of this Chapter within any 5 year period, one thousand dollars (\$1,000). ~~n 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,~~ a 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.



ITEM 7.A ORDINANCE AMENDING CHAPTER 5.42 “TOBACCO RETAILERS”

City Council
March 26, 2024



| Background

- July 25, 2023: The City Council held a study session regarding possible amendments to the Tobacco Retailers License Ordinance.
- January 9 and January 23, 2024: The City Council held meetings on both dates to consider possible amendments and provided direction to return with a first reading of an ordinance and referred a number of items to the Legislation and Policy Committee for further consideration.



| Background

- On February 13, the City Council held a first reading and introduced a proposed ordinance amending the Tobacco Retailers License Ordinance.
- On February 27, the City Council elected to not adopt the proposed ordinance amending the Tobacco Retailers License Ordinance and provided further direction related to the prohibition on vape products to prohibit on the sale of “single use” products.



| Ordinance Provisions

Key aspects of the Tobacco Retailers License Ordinance include:

- Prohibition on the sale of single-use electronic smoking products.
- Prohibition on the sale of flavored tobacco products.
- Prohibition on the sale of tobacco products in pharmacies.
- Minimum single cigar price of \$8 (increase from \$5) with possible annual increases by the Consumer Price Index (CPI).
- Minimum pack size of 10 (increase from 5) for cigars with a minimum price of \$15.
- Increase the amount for fines related to violations.
- Prohibit the issuance of tobacco retail licenses within 500 feet of each other.
- Allow the transfer of a tobacco retailers license with the transfer of a business and revising the definition of “arm’s length transaction”. This will allow existing tobacco retailers within 500 feet of each other to continue being a tobacco retailer despite a change in business ownership.
- Prohibition on discounts.
- Enforcement date of June 1, 2024.



| Ordinance Provisions

Single-Use Electronic Smoking Product:

“an electronic smoking device that is not refillable or rechargeable and is typically discarded once its contents have been used. It includes without limitation:

1. Any electronic device or delivery system that can be used to deliver an inhaled dose of nicotine, flavorings, chemicals, or other substances in aerosolized or vaporized form for human consumption, including but not limited to an electronic cigarette, cigar, pipe, vape pen, or hookah.
2. Any component, part, or accessory of such a device or delivery system that is used during its operation.
3. Any flavored or unflavored liquid or substance, whether sold separately or sold in combination with any such device or delivery system, that could be used to deliver tobacco products, nicotine, or other substances in aerosolized or vaporized form.
4. Any product for use in such an electronic device or delivery system whether it contains nicotine or tobacco or is derived from nicotine or tobacco.”



Recommendation

Staff and the City Attorney's Office recommends that the City Council waive full reading and introduce by title only the proposed ordinance amending Union City Municipal Code Chapter 5.42, "Tobacco Retailers" or provide any further direction as necessary.



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN MALLOY, CITY MANAGER

SUBJECT: POLICY DIRECTION REGARDING THE FRANCHISE AGREEMENTS FOR LANDFILL, COMPOST, AND RECYCLE COLLECTION SERVICES

Staff recommends that the City Council provide staff policy direction regarding the current Franchise Agreements for Landfill, Compost, and Recycle collection services with Republic Services (Republic) and Tri-City Economic Development Corporation (Tri-CED) due to the timing of expiration of these agreements and the potential impact on FY 2024-2025 rate setting and other factors.

The options presented to the City Council that staff is seeking policy direction on include:

- extending the current agreements for an additional one (1) to four (4) years; or
- proceed with finalizing the negotiated ten (10) year extension to the agreements; or
- proceed with the process to issue a competitive procurement request for proposals.

STRATEGIC PLAN ALIGNMENT

This report is in alignment with the following City Council priority:

Goal D: Environmental Sustainability and Infrastructure

Strategy 12: Coordinate with City departments, commercial and residential customers to implement the requirements of state organics and food recovery legislation.

BACKGROUND

The City executed eight (8) and ten (10) year extensions to the Franchise Agreements for Landfill, Compost and Recycle collection services with Republic Services and Tri-City Economic Development Corporation (Tri-CED) in 2015 and 2017, respectively.

Republic Services is ranked number 314 in the Fortune 500 company ranking and is the second largest provider of solid waste related services in the United States. The local Republic Services operating division is headquartered in Fremont and the similar

collection services provided to Union City are also provided to the cities of Fremont and Newark from this location. The employees that perform Republic Services residential and commercial collection services and the processing of compost and recyclable materials at its Newby Island facilities in Milpitas are all unionized jobs under the Teamsters Union.

Tri-CED is a non-profit corporation that was established in 1980 in Union City and whose stated goals are to “employ low-income youth and adults in the recycling industry...” This appears to be primarily done through employment at its recyclable materials buyback center, which is not directly connected to the contract with Union City and is not included in the Franchise Agreement documents. The employees that perform Tri-CED’s residential recycling curbside collection services and the

Agreement documents. The employees that perform Tri-CED's residential recycling curbside collection services and the processing of recyclable materials at its Union City materials recovery facility are all unionized jobs under the Teamsters Union.

Both of the Franchise Agreements for Republic Services and Tri-CED provide a term that expires on June 30, 2025. However, the current Franchise Agreements include provisions that allow the City to extend these agreements for up to five (5) years and on June 13, 2023, City Council authorized the first one (1) year extension to the Agreement(s) that now expire on June 30, 2026. From October 2023 through March 2024, staff participated in discussions with both companies to determine the terms, conditions, and expense to extend the current agreements for a ten (10) year term commencing on July 1, 2025.

DISCUSSION

With the pending expiration of the current Franchise Agreements with Republic and Tri-CED on June 30, 2026, the City is at a critical decision point regarding the future of its landfill, compost, and recycle collection services.

In compliance with the Short-Lived Climate Pollutants Act of 2016 (SB 1383), on October 26, 2021, the City adopted Ordinance No. 889-21 adding Chapter 7.24 of the Union City Municipal Code, Organics Reduction and Recycling, incorporating the Alameda County Waste Management Authority Ordinance 2021-01: Organics Reduction and Recycling Ordinance (ORRO). However, the City is currently non-compliant with various aspects of SB 1383 which requires increased emphasis on compost (organic materials) recovery and recycling. The primary enforcement of SB 1383 by CalRecycle is anticipated to commence in 2024 depending on the status of the City's compliance. Thus, it would be in the City's best interest to ensure proper planning has been undertaken to deliver compliance in these deficient areas. The primary areas of non-compliance are related to:

- Ensuring all commercial and residential customers are provided compost collection service.
- Use of color-compliant containers citywide – i.e., recycling carts and bins must be blue, but are currently gray (residential carts) and white (commercial bins); landfill carts and bins must be black, but are currently blue (residential carts and commercial bins).
- Ensuring the compost and recyclable materials collected from residential and commercial customers is processed to maximize diversion from landfill via long-term contract(s).

These areas of deficiency persist primarily due to the associated capital expense of implementing new compost service to currently underserved customers, which requires purchase and deployment of an additional collection vehicle and collection containers, and purchase and deployment of new containers for all residential customers, and repainting commercial containers. The relatively short duration of the current Franchise Agreements (i.e., two (2) years left for these agreements) is potentially not conducive to cost-effectively amortize these additional capital expenses over a long-term such as ten (10) years, which is standard practice to mitigate the rate impact on ratepayers. While the City could impose a City directed change in service that would require investment in these new assets and the companies would in turn be guaranteed payment for the stranded assets at book value at the expiration of their contracts, it would be preferable for the companies to amicably agree to this as a good faith effort to facilitate the City's SB 1383 compliance, irrespective of the length of the current Franchise Agreements.

The City has three (3) primary options regarding the Franchise Agreements, as follows:



A brief explanation for each option is provided below:

Option 1: Extend the current Franchise Agreements for up to four (4) additional years.

The current Franchise Agreements include provisions that enable the City, at its sole discretion, to extend the term of these Agreements in one (1) year increments for a maximum period of five (5) years. Both the Republic Services and Tri-CED Franchise Agreements include these provisions. The City has already availed itself of this discretion and extended the original Agreements for one (1) additional year through June 30, 2026.

Option 2: Proceed with finalizing ten (10) year contract extensions.

The current Franchise Agreements include provisions that are conducive for the City and contractors to negotiate long-term extensions. This option would result in amending the current Agreements to include the new terms, conditions, and costs negotiated. In anticipation of the current decision point faced by the City, specifically the two (2) year mark prior to the expiration of the Franchise Agreements, staff facilitated contract extension discussions with both companies over the last several months. Commencing in October 2023 and concluding recently in March 2024, these negotiation discussions were conducted with the goal of determining both of the City's current contractors' terms, conditions, and expense to extend the current Franchise Agreements for an additional ten (10) year term.

Option 3: Proceed with a competitive procurement or issuance of a request for proposals (RFP).

A competitive procurement/RFP process should ideally be concluded with new long-term Franchise Agreement(s) in place within one (1) year of the expiration of the current Franchise Agreements (by July 1, 2025). This will enable the successful proposer to acquire the equipment, facilities, and staff necessary to timely deliver the required services commencing on July 1, 2026. The RFP process itself requires the following tasks and decision points which will take approximately nine (9) to twelve (12) months:

3 months:

- Community Engagement Process
- Preparation of RFP documents, cost proposal forms, and draft Franchise Agreement
- City Council approval for issuance of the RFP

2-3 months:

- Mandatory pre-proposal meeting with prospective contractors
- Contractor review of RFP, preparation, and submittal of proposal(s)

2-3 months:

- City review and evaluation of proposals
- Contractor(s) selection
- City Council approval of selected contractor(s)

2-3 months:

- Negotiations and development of final Franchise Agreement(s)
- City Council approval of Franchise Agreement(s)

Analysis

The policy decision sought by staff from the City Council concerning the Landfill, Compost, and Recycle Collection Services Franchise Agreements with Republic Services and Tri-CED may impact rate setting for FY 2024-2025 depending on direction from the City Council. The Republic Services and Tri-CED compensation and rate increase applications are due to be submitted to the City on April 1, and staff anticipates presenting the results of its review and analysis to the City Council at the April 23, 2024 City Council meeting.

The City Council action to be considered at its April 23, 2024 meeting is to facilitate the FY 2024-2025 rate setting process by authorizing staff to send a Proposition 218 Notice to all property owners informing them of the FY 2024-2025 rate increase that will become effective on July 1, 2024. The following provides the current FY 2024-2025 rate setting schedule to adopt rates effective July 1, 2024.

April 1, 2024 – Republic Services and Tri-CED Compensation increase/rate applications submitted to City for review and analysis.

April 23, 2024 – City Council consideration of new rates and authorization to issue Proposition 218 Notice to all

ratepayers.

June 11, 2024 – City Council convenes Public Hearing to tally rate increase protest votes and adopts or rejects new rates for FY 2024-2025.

July 1, 2024 – New rates effective for FY 2024-2025 if approved by City Council.

Table 1 below provides the implications for FY 2024-2025 rate setting regarding the three policy considerations:

Table 1

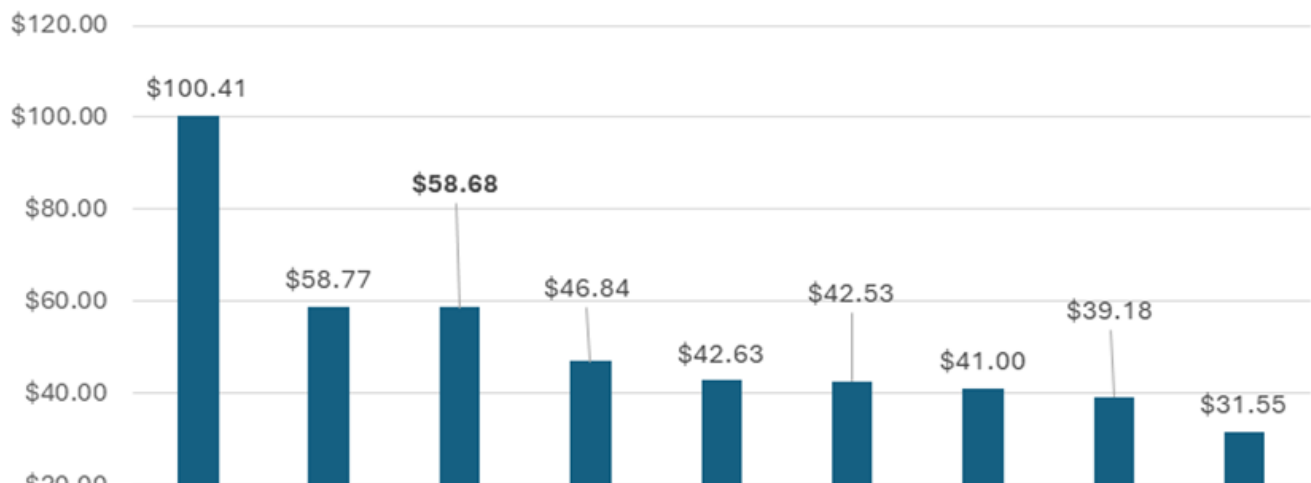
Option 1: Extend the current Franchise Agreements for up to four (4) additional years.	Option 2: Proceed with finalizing ten (10) year contract extensions.	Option 3: Proceed with a competitive procurement or issuance of a request for proposals (RFP).
<ul style="list-style-type: none"> • No impact on rate setting for FY 2024-2025 • Rate setting to proceed pursuant to current contractual provisions 	<ul style="list-style-type: none"> • Impact on rate setting for FY 2024-25 • Rates to include negotiated pricing. • Rate increases include: <ul style="list-style-type: none"> ○ changes in indices ○ additional capital investments ○ increases in compost processing <u>costs</u> ○ increases in recycling processing costs 	<ul style="list-style-type: none"> • No impact on rate setting for FY 2024-2025 • Rate setting to proceed pursuant to current contractual provisions
<ul style="list-style-type: none"> • Rates increased for FY 2024-2025 in alignment with one-year changes in indices 	<ul style="list-style-type: none"> • FY 2024-2025 rates projected to increase 11-13% 	<ul style="list-style-type: none"> • Rates increased for FY 2024-2025 in alignment with one-year changes in indices

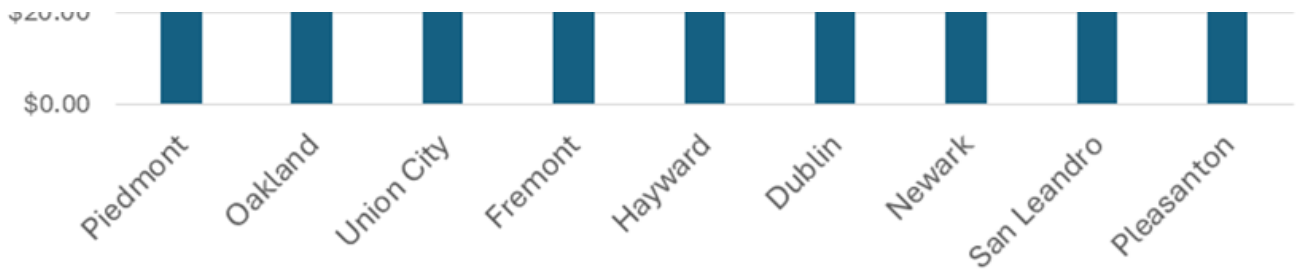
Current Rates and Services

The City’s current combined rate for the landfill, compost, and recycle collection services for single-family residential customers is the third highest in Alameda County. Table 2 below provides examples of landfill, compost, and recycle rates for several Alameda County cities. The rates noted in this table provide a general snapshot of the differences charged across the County but may not be directly comparable due to the complexities of the components of the rates and the services provided. For example, the City of Piedmont is the highest rate in Alameda County, but these residents receive backyard service of their carts, and thus residents are not required to bring their carts curbside for collection.

Table 2

Examples of Current Residential Landfill, Compost and Recycle Rates in Alameda County





A notable disparity in the above residential rates is the approximate 25% and 43% lower rates for Fremont and Newark customers, respectively, when compared to Union City. This is notable because these cities/customers, along with Union City, are also primarily served by Republic Services operating out of Fremont; however, in Union City the residential recycling materials are collected and processed by Tri-CED and not Republic Services.

It is important to note that these rates include the various fees charged by cities to provide these services to its ratepayers which may include: regulatory compliance stormwater mitigation fees, vehicle impact fees, staffing costs, regulatory compliance compost and recycling fee, and general fund revenues. When these City fees are stripped from the residential rates for Union City, Fremont, and Newark, leaving only the operational cost to provide the similar weekly three (3) cart collection services (landfill, compost and recycle collection), the result is that the operational cost component or compensation paid to the collection services company in Union City are 22% higher than Fremont and 15% higher than Newark.

Financial Results of 10-Year Contract Extension Negotiations with Republic Services and Tri-CED

The City and its franchised collection services partners, Republic Services and Tri-CED, commenced long-term contract extension discussions in October 2023 and have concluded these negotiations recently. The City received cost proposals from the companies that address several programs and services needs that are deficient in the current contracts. These needs include providing new residential carts to customers and repainting the commercial bins that are SB 1383 color compliant. For example, SB 1383 requires recycling containers to be blue, but Union City's landfill containers are currently blue.

In addition, both companies are requiring cost increases in current services provided such as compost processing costs (Republic Services) and recycling processing costs (Tri-CED). Below is a list of the programs and services that are included in the cost increases associated with the negotiated 10-year contract extensions:

- Blue Residential Recycling Carts (Tri-CED)
- Green Residential Compost Carts (Republic Services/Tri-CED)
- Black Residential Landfill Carts (Republic Services)
- Blue Commercial Bins (repainted) (Republic Services)
- Black Commercial Bins (repainted) (Republic Services)
- Additional public education and outreach staffing (Tri-CED)
- Increased Composting Cost (Republic Services)
- Increased Recycling Processing Cost (Tri-CED)
- Providing Compost Carts and Service to Underserved Residential Customers (Republic Services/Tri-CED)
- Providing Residential Customers Direct Billing Services (Republic Services)

The projected total cost increase for Union City ratepayers associated with the ten (10) year contract extensions with Republic Services and Tri-CED is an increase of approximately **11.0-13.0% in FY 2024-2025** and a similar **11.0-13.0% increase in FY 2025-2026**.

Competitive Procurement/RFP

The following provides several factors related to the policy consideration of proceeding with a competitive procurement/RFP:

- Scope and cost of services included in current Franchise Agreements
- Negotiated cost basis for long-term extensions of the current Franchise Agreements with both Republic Services and Tri-CED
- Current status of the City's SB 1383 compliance
- Need for expanded and/or new services to ensure compliance and the associated expenses
- Limited duration of the current Franchise Agreements and the preferred 2 years lead time need to proceed with a RFP
- Rates charged to other customers in Alameda County for similar services
- The City having not pursued a competitive procurement/RFP process in 20 years (since July 2004)

- The potential to bundle collection services to obtain economy of scale cost savings

Direction to proceed with a competitive procurement RFP is timely to ensure that new long-term Franchise Agreement(s) are in place one (1) year in advance of the expiration of the current Franchise Agreement(s). By proceeding with a RFP, it would be staff's goal to ensure that the future contracts provide the variety of needed services with pricing that offers value to ratepayers. The City Council would be involved in all decision points related to the development and issuance of an RFP, including approval of the RFP and draft Franchise Agreement, the timing of issuance of the RFP, the contractor selection, and approval of the best and final negotiated Franchise Agreement. In addition, staff would pursue a community engagement process to obtain feedback from ratepayers on their preferences, concerns and priorities regarding the scope of services and cost to provide these services. The results of these community engagement efforts would be shared with the City Council to assist with their consideration of approving the RFP and draft Franchise Agreement.

Summary of Policy Considerations Concerning Options 1, 2 & 3

Included as **Attachment 1** is a matrix providing several policy considerations for options 1, 2, and 3. This table is provided in matrix format to highlight the relative considerations for each alternative, such as the impact of a decision on rate setting for FY 2024-2025 which commences in April, job retention for collection services drivers, or meeting regulatory compliance needs timely.

FISCAL IMPACT

There is no fiscal impact with staff's recommendation to obtain policy direction from City Council.

RECOMMENDATION

Staff recommends that the City Council consider providing direction to staff to proceed with one of the three following outcomes:

1. Provide direction to staff to proceed with an extension to the Landfill, Compost, and Recycle Collection Services Franchise Agreements for a duration of one (1) to four (4) additional years.

This option would continue the current rate setting model whereby the company's compensation and rates are increased annually pursuant to index-only or cost-based (actual cost of company operations and revenue true-up) adjustments. This option caps annual rate increases at 6%, and would likely have the lowest impact on ratepayers but would not address the City's compliance with SB 1383.

2. Provide direction to staff to proceed with finalizing negotiations and preparing the required contract amendment documents for a ten (10) year extension to the Landfill, Compost, and Recycle Collection Services Franchise Agreements.

The negotiated ten-year extension would result in a rate increase of 22-26% over two years, it results in the increase in compensation/rates via index-only adjustments capped at 5% annually (although the company can impose up to two (2) cost-based true-ups over the term), it allows the City to begin addressing compliance with SB 1383, and it provides for direct residential billing services.

3. Provide direction to staff to proceed with a competitive procurement or issuance of a Request for Proposals (RFP) for future Landfill, Compost, and Recycle Collection Services commencing July 1, 2026.

An RFP process would align the City's costs with current market conditions via marketplace competition, allow the City to pursue a community engagement process to inform the future programs/services, provide diversion from landfill guarantees, seamlessly incorporate SB 1383 compliance and direct residential billing services, and possibly recognize cost savings from inherent marketplace competition and gaining economy of scale in key cost areas.


Prepared by:

Cliff Feldman, Recycling and Solid Waste Program Manager

Submitted by:

Jennifer Phan, Deputy City Manager

ATTACHMENTS:

Description	Type
 Attachment 1 – Policy Considerations for Options 1, 2, & 3	Attachment

Policy Considerations for Options 1, 2, & 3

	<div>1</div> <p>Extend Current 10-year Agreements for up to Four (4) More Years. Current 1-year Extension is Through June 30, 2026. (1-Year Through June 30, 2027) (4-Year Through June 30, 2030)</p>	<div>2</div> <p>Agree to Currently Negotiated Terms and Conditions for a 10-year Extension Effective July 1, 2025 Through June 30, 2035. (Includes Current 1-Year Extension.)</p>	<div>3</div> <p>Proceed With a Competitive Procurement/Request for Proposals (RFP) With New Contract(s) Effective July 1, 2026. (New Contract(s) Executed by June 30, 2025 - One (1) Year in Advance of Expiration of Current Contracts on June 30, 2026.)</p>
Cost Impact to Ratepayers	<ul style="list-style-type: none"> Lowest Cost for Short Term Maximum Rate Increases Capped at 6% Annually 	<ul style="list-style-type: none"> Known Cost for Short and Long Term <ul style="list-style-type: none"> 2024 – 11-13+% Rate Increase 2025 – 11-13+% Rate Increase 2-Year Rate Increase of 22-26+% 2026 through 2035 5% Cap With Accrual of Annual Rollover Above 5% Companies Can Initiate Up To Two (2) Cost-Based True-ups 	<ul style="list-style-type: none"> Cost To Be Determined Based on Competitive Market Conditions Short Term and Long Term Rate Increases May Be Similar to 10-Year Extension, Less Than or More Than City Can Require Industry Standard 5% Cap on Annual Long Term Rate Increases in RFP Documents
Rate Certainty	<ul style="list-style-type: none"> Defers Long Term Contractual Certainty and Rate Stability 	<ul style="list-style-type: none"> Provides 10-Year Contractual Certainty and Rate Stability 	<ul style="list-style-type: none"> Provides 10-Year Contractual Certainty and Rate Stability
Collection Services Providers	<ul style="list-style-type: none"> Continues Contracts With Long Term Service Providers for Short Term 	<ul style="list-style-type: none"> Continues Contracts With Long Term Service Providers for Long Term 	<ul style="list-style-type: none"> Long Term Service Providers Well Positioned to Continue Contracts for Long Term, but Not Guaranteed Contract Award
SB 1383 Compliance	<ul style="list-style-type: none"> Defers Key Areas of SB 1383 Compliance Residential Carts and Bins Remain Non SB 1383 Color Compliant 	<ul style="list-style-type: none"> Addresses Needed SB 1383 Compliance New Residential Carts and Repainted Bins SB 1383 Color Compliant 	<ul style="list-style-type: none"> Addresses Needed SB 1383 Compliance New Residential Carts and Repainted Bins SB 1383 Color Compliant
Diversion from Landfill Disposal	<ul style="list-style-type: none"> Defers Potential Increases in Diversion and Less Landfill Disposal Does Not Fund Tri-CED Equipment Upgrades Totaling \$5,800,000 	<ul style="list-style-type: none"> Defers Increases in Diversion Short Term and Potentially Results in Less Landfill Diversion Long Term Depending on Performance of Equipment Upgrades City Commences Contributing its Share of the \$5,800,000 Equipment Upgrades for Tri-CED 	<ul style="list-style-type: none"> Addresses Increases in Diversion and Less Landfill Disposal Provides Diversion from Landfill Performance Guarantees

Policy Considerations for Options 1, 2, & 3

	<div>1</div> <p>Up to 4-year Extension Through June 30, 2030</p>	<div>2</div> <p>10-year Extension Through June 30, 2035</p>	<div>3</div> <p>Competitive Procurement/Request for Proposals Effective July 1, 2026</p>
Diversion from Landfill Disposal	<ul style="list-style-type: none"> Defers Potential Increases in Diversion and Less Landfill Disposal Does Not Fund Tri-CED Equipment Upgrades Totaling \$5,800,000 	<ul style="list-style-type: none"> Defers Increases in Diversion Short Term and Potentially Results in Less Landfill Diversion Long Term Depending on Performance of Equipment Upgrades City Commences Contributing its Share of the \$5,800,000 Equipment Upgrades for Tri-CED 	<ul style="list-style-type: none"> Addresses Increases in Diversion and Less Landfill Disposal Provides Diversion from Landfill Performance Guarantees
Recycling Processing Rate	<ul style="list-style-type: none"> City Not Obligated to Pay for Recycling Processing, but Will Likely Continue to Equitably Pay for Processing Even Though Current Performance Results in Approximately 50% Recycling Rate 	<ul style="list-style-type: none"> City Will Be Obligated to Pay for Recycling Processing, and Improving the Current 50% Recycling Rate May Be Achieved Via Contributing to \$5,800,00 Equipment Upgrades for Tri-CED 	<ul style="list-style-type: none"> Responses to RFP Will Reflect Market Rate for Recycling Processing Results Will Be Required to Achieve 75-80% Recycling Rate in Line With Industry Standards
Contract Standards	<ul style="list-style-type: none"> Facilitates Legacy 20+ Year Contract Standards for an Additional 10 Years Some Standards Outdated (i.e., No Free or Discounted Service to Elderly or Low Income Residents) Contract Standards Deficient in Several Areas Concerning Recycling Compliance 	<ul style="list-style-type: none"> Facilitates Legacy 20+ Year Contract Standards for an Additional 10 Years Some Standards Outdated (i.e., No Free or Discounted Service to Elderly or Low Income Residents) Contract Standards Deficient in Several Areas Concerning Recycling Compliance 	<ul style="list-style-type: none"> Provides for Community Engagement in Defining Programs, Services and Priorities (e.g., Cost vs. Service Standards) for Next 10 Years Contract Standards Updated to Address Community Concerns (i.e., Free or Discounted Service to Elderly or Low Income Residents) Provides for Seamless Inclusion of SB 1383 Compliance Standards
Direct Billing to Residential Customers	<ul style="list-style-type: none"> Customers Continue To Be Billed Via Property Taxes Direct Billing Not Included 	<ul style="list-style-type: none"> Direct Billing Included Setup Cost Included in Rate Increase Bad Debt Risk Shared Equitably by Republic Services, Tri-CED, and City 	<ul style="list-style-type: none"> Direct Billing Included in Standard Services Bad Debt Risk Assumed by Selected Contractor(s)
City's Expense	<ul style="list-style-type: none"> No Impact on Short Term Staffing Expense 	<ul style="list-style-type: none"> Developing Contract Amendment Documents Results in Short Term Expense (\$100,000-150,000) 	<ul style="list-style-type: none"> Developing RFP Documents and Procurement Process Results in Short Term Expense (\$100,000-150,000)

Policy Considerations for Options 1, 2, & 3

	<div>1</div> Up to 4-year Extension Through June 30, 2030	<div>2</div> 10-year Extension Through June 30, 2035	<div>3</div> Competitive Procurement/Request for Proposals Effective July 1, 2026
Customer Service	<ul style="list-style-type: none"> Two Separate Points of Contact <ul style="list-style-type: none"> o Different Phone Numbers o Different Email Addresses o Different Websites Two Customer Databases Two Separate Records of Customer Interactions Customer Frustration Due to Delayed Service Delivery Reduced Customer Satisfaction Due to Delayed Resolution to Complaints 	<ul style="list-style-type: none"> Two Separate Points of Contact <ul style="list-style-type: none"> o Different Phone Numbers o Different Email Addresses o Different Websites Two Customer Databases Two Separate Records of Customer Interactions Customer Frustration Due to Delayed Service Delivery Reduced Customer Satisfaction Due to Delayed Resolution to Complaints 	<ul style="list-style-type: none"> Potential for One Point of Contact <ul style="list-style-type: none"> o One Phone Number o One Email Address o One Website Potential for One Customer Database Potential for One Record of Customer Interactions Potential for Minimal Customer Frustration Potential for Prompt Resolution and Customer Satisfaction
Driver Job Retention	<ul style="list-style-type: none"> No Impact on Current Collection Services Drivers 	<ul style="list-style-type: none"> No Impact on Current Collection Services Drivers 	<ul style="list-style-type: none"> No Impact on Current Collection Services Drivers Standard Practice for City to Require Driver Job Retention in RFP Documents
Cost Structure	<ul style="list-style-type: none"> Redundant Expenses With Two Service Providers Passed on to Ratepayers <ul style="list-style-type: none"> o Finance/Accounting o HR o Management o Supervision o Overhead o Customer Service o Facilities o Equipment 	<ul style="list-style-type: none"> Redundant Expenses With Two Service Providers Passed on to Ratepayers <ul style="list-style-type: none"> o Finance/Accounting o HR o Management o Supervision o Overhead o Customer Service o Facilities o Equipment 	<ul style="list-style-type: none"> Potential for Bundling of Services With One Service Provider to Deliver Economies of Scale and Cost Savings to Ratepayers RFP Structured to Solicit Proposals for: <ul style="list-style-type: none"> o Recycle, Compost, and Landfill Collection; Compost Processing; Recycling Processing o Landfill and Compost Collection; Compost Processing (same as current Republic Services contract) o Recycle Collection and Recycling Processing (same as current Tri-CED contract)



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JACKIE ACOSTA, FINANCE DIRECTOR

SUBJECT: PRESENTATION OF THE FISCAL YEAR 2021-2022 YEAR-END FINANCIAL RESULTS AND ADOPTION OF A RESOLUTION AUTHORIZING THE USE OF 50% OF THE GENERAL FUND'S FISCAL YEAR 2021-2022 UNANTICIPATED SAVINGS TO FUND UNFUNDED LIABILITIES

See attached staff report.

STRATEGIC PLAN ALIGNMENT

BACKGROUND

DISCUSSION

FISCAL IMPACT

RECOMMENDATION

Prepared by:

Jackie Acosta, Finance Director

Submitted by:

Jackie Acosta, Finance Director

ATTACHMENTS:

Description		Type
	Staff Report	Staff Report
	Draft Resolution	Resolution



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JACKIE ACOSTA, FINANCE DIRECTOR

SUBJECT: PRESENTATION OF THE FISCAL YEAR 2021-2022 YEAR-END FINANCIAL RESULTS AND ADOPTION OF A RESOLUTION AUTHORIZING THE USE OF 50% OF THE GENERAL FUND'S FISCAL YEAR 2021-2022 UNANTICIPATED SAVINGS TO FUND UNFUNDED LIABILITIES

EXECUTIVE SUMMARY

This staff report is to provide financial information to the City Council for the General Fund for Fiscal Year 2021-2022. At the next City Council meeting on April 9, 2024, staff will present the unaudited financial information for Fiscal Year 2022-2023, as well as a mid-year update for FY 2023-2024. Additionally, on April 9, 2024, staff will be requesting approval of mid-year budget adjustments, an amended Authorized Positions List, and an amended Classification and Compensation Plan.

STRATEGIC PLAN

This staff report aligns with Goal A: Financial Stability and Sustainability.

BACKGROUND

Due to the cyberattack and significant staff turnover in the Finance Department over the past three years, staff continue to be behind in year-end closings and audits. However, staff is close to being caught up and expect to have a timely close and audit for the current fiscal year which will end on June 30, 2024. The Audit Committee will be presented with the Fiscal Year 2021-2022 audited financial statements in early April and then the report will be presented to the full City Council. The year-end close for Fiscal Year 2022-2023 has begun and the audit will commence soon.

DISCUSSION

To start, staff will begin with the available General Fund balance as of June 30, 2021, which was \$16,371,772. The total General Fund balance as of June 30, 2021, is \$26,480,885 (as per the June 30, 2021, audited financial statements). The difference between the total General Fund balance and the available General Fund balance is \$10,109,113, as shown in Table 1 on the following page:

Table 1

Total General Fund Balance at 6-30-2021	\$26,480,885
Less: Nonspendable funds	256,206
Less: Restricted funds	26,509
Less: Assigned funds	7,179,103
Less: Assigned to paydown UALs	<u>2,647,295</u>
Total Unavailable Funds	<u>\$10,109,113</u>
Available General Fund Balance at 6-30-21	<u>\$16,371,772</u>

This \$10,109,113 is considered unavailable to spend because these funds are not in a spendable form, they are legally restricted, or they have been assigned by the City Council and/or City Manager for a specific use.

With respect to the City's reserve policy which states that the City's unassigned reserves should be maintained at a minimum of 20% of annual operating expenditures, as of June 30, 2021, the City was in compliance with its reserve policy, with unassigned reserves (available fund balance) of \$16,371,772 or 23.3% of the FY 2021-2022 adopted operating budget of \$70,195,736.

FY 2021-2022 GENERAL FUND

Moving on to FY 2021-2022, Table 2A presents the year-end audited results in the General Fund as well as summarized Budget to Actual information. However, the results for FY 2021-2022 require some explanation as the City acquired the Gateway Property from the State of California in July 2021, with a market value of \$86,184,000, and the way that transaction is required to be recorded in our books significantly affects our financial statements. The accounting for the Gateway Property requires us to record "Proceeds of Debt Issuance" (revenue), which in turn, increases our General Fund balance, although the \$86M is considered restricted fund balance (meaning it is not available to spend). Following Table 2A is Table 2B, which provides the year-end results with the Gateway Property transaction excluded. When that transaction is excluded, it shows that revenues exceeded expenditures by \$7,996,796.

Table 2A

GENERAL FUND	FY 2021-2022 ADOPTED BUDGET	FY 2021-2022 AMENDED BUDGET	FY 2021-2022 AUDITED YEAR-END ACTUALS	FY 2021-2022 AMENDED BUDGET VS ACTUAL VARIANCES
REVENUES:				
Operating Revenues	\$64,381,400	\$64,329,900	\$65,186,681	\$856,781
Transfers-In	8,317,913	8,317,913	7,299,913	(\$1,018,000)
Sale of City Property	0	0	1,638	1,638
Proceeds of Debt Issuance /Lease Financing	0	0	86,791,719	86,791,719
Total Revenues	\$72,699,313	\$72,647,813	\$159,279,951	\$86,632,138
EXPENDITURES:				
Operating Expenditures	\$70,195,736	\$71,156,309	\$63,688,155	\$7,468,154
Transfers Out	1,491,344	1,491,344	1,411,000	80,344
Total Expenditures	\$71,687,080	\$72,647,653	\$65,099,155	\$7,548,498
REVENUES IN EXCESS OF EXPENDITURES	\$1,012,233	\$160	\$94,180,796	\$94,180,636

Table 2B

GENERAL FUND	FY 2021-2022 ADOPTED BUDGET	FY 2021-2022 AMENDED BUDGET	FY 2021-2022 AUDITED YEAR-END ACTUALS	FY 2021-2022 AMENDED BUDGET VS ACTUALS VARIANCES
REVENUES:				
Operating Revenues	\$64,381,400	\$64,329,900	\$65,186,681	\$856,781
Transfers-In	8,317,913	8,317,913	7,299,913	(\$1,018,000)
Sale of City Property	0	0	1,638	1,638
Proceeds of Debt Issuance /Lease Financing	0	0	607,719	607,719
Total Revenues	\$72,699,313	\$72,647,813	\$73,095,951	\$448,138
EXPENDITURES:				
Operating Expenditures	\$70,195,736	\$71,156,309	\$63,688,155	\$7,468,154
Transfers Out	1,491,344	1,491,344	1,411,000	80,344
Total Expenditures	\$71,687,080	\$72,647,653	\$65,099,155	\$7,548,498
REVENUES IN EXCESS OF EXPENDITURES	\$1,012,233	\$160	\$7,996,796	\$7,996,636

When comparing budget to actuals, FY 2021-2022 revenues are approximately \$448,138 more than the amended revenue budget, which amounts to a very small 0.6% variance. FY 2021-2022 expenditures are approximately \$7.5 million less than the amended expenditure budget, which represents a 10.4% variance. Without the \$7,049,913 of Federal ARPA funds, and excluding the Gateway Property transaction, year-end revenues would only have been \$66,046,038. Therefore, had the City not received the ARPA funds, revenues would have only exceeded expenditures by \$946,883 for FY 2021-2022. **Further to that, had the City not had \$3.7M of salary savings, \$3.5M of professional and contractual services savings, and \$0.3M of other savings, for a combined total of \$7.5M in expenditure savings, the City would have ended FY 2021-2022 with a shortfall of \$6.6M.** The \$7,996,636 of revenues in excess of expenditures is not because our revenues performed significantly better than expected, it is because of two things: 1) the City received \$7M in Federal ARPA funds, and 2) the City spent significantly less than what had been budgeted.

The next two sections provide budget-to-actual information for FY 2021-2022 to show how our major revenue sources fared compared to the revenue estimates and to demonstrate where the majority of expenditures savings came from.

REVENUES:

Again, for FY 2021-2022, total revenues, excluding the Gateway Property, were \$448,138 more than the amended budget. Most of the City's major revenues performed slightly better than estimated, while a few came in under the original revenue estimates. The City's largest General Fund revenue source is Property Tax. For FY 2021-2022, property taxes were \$314,019, or 1%, less than the revenue projection. The City's second and third largest revenue sources are the Bradley-Burns 1% sales tax and the Measure AA 0.5% local sales tax, respectively. Both of those revenue sources performed much better than projected. The Bradley-Burns sales tax was \$860,154, or 7.7%, more than estimated and the Measure AA local sales tax was \$1,150,265, or 19.2%, more than estimated. One of the revenues that has still not returned to pre-pandemic levels is Transient Occupancy Tax. Additionally, in the first

full year of receiving Utility Users' Tax revenues, that revenue came in at \$214,749 less than the first-year estimate. The large negative variance in the All Other Revenues category is due to the requirement for the City to book the difference between the City's cost basis of investments and their market value at the end of each fiscal year. This is a required accounting entry, but it is just a "paper loss" because the City would not, and did not, sell any of its investments as of June 30, 2022. The City holds all its investments until maturity and so would not expect to take a loss on an investment transaction. A summary of the significant budget-to-actual revenue variances is shown in Table 3 below:

Table 3 (Excluding the Gateway Property transactions)

REVENUE SOURCE	FY 2021-2022 AMENDED BUDGET	FY 2021-2022 AUDITED YEAR-END ACTUALS	FY 2021-2022 AMENDED BUDGET VS ACTUAL VARIANCES
Property Taxes	\$26,433,100	\$26,119,081	(\$314,019)
Sales Tax (Bradley-Burns)	11,150,300	12,010,454	860,154
Sales Tax (Measure AA)	5,998,600	7,148,865	1,150,265
Transient Occupancy Tax	1,626,100	1,491,262	(134,838)
Franchise Taxes	5,701,200	5,979,267	278,067
Business License Tax	1,545,000	1,787,652	242,652
Real Property Transfer Tax	210,000	621,052	411,052
Cannabis Cultivation	223,500	460,302	236,802
Utility Users' Tax	5,500,000	5,285,251	(214,749)
Licenses & Permits	2,209,100	3,086,088	876,988
Intergovernmental Revenues	735,600	913,700	178,100
Charges for Services	1,943,200	2,386,717	443,517
ARPA	7,049,913	7,049,913	0
Transfers-In	1,268,000	250,000	(1,018,000)
All Other Revenues	1,054,200	(1,493,653)	(2,547,853)
Total Budget-to-Actual Variance	\$72,647,813	\$73,095,951	\$448,138

EXPENDITURES:

In FY 2021-2022, total expenditures were \$7,548,498 less than budgeted. These significant savings were realized because the City continued to proceed cautiously with regards to City finances due to the lingering impacts of the cyberattack and the ongoing pandemic. The challenges of finding qualified candidates and the lack of staffing continued to slow the City's recovery and the implementation of capital projects and programs in FY 2021-2022. Staff is hopeful that throughout 2024, the City will continue to fill vacancies and to restore services to a pre-pandemic level. However, as the Council is aware, the market for employees is very tight. A summary of the significant budget-to-actual expenditure variances that make up the \$7.5 million expenditure savings is shown in Table 4 on the following page:

Table 4

EXPENDITURE TYPE	FY 2021-2022 AMENDED BUDGET	FY 2021-2022 AUDITED YEAR-END ACTUALS	FY 2021-2022 AMENDED BUDGET VS ACTUAL VARIANCES
Full-Time Pay	\$22,109,524	\$19,417,552	\$2,691,972
CalPERS Retirement	11,612,647	11,307,336	305,311
Health Insurance	3,477,327	2,783,637	693,690
Professional/Consulting Services	2,002,681	1,358,786	643,895
Contractual Services	19,363,730	16,828,401	2,535,329
Legal Services	670,000	531,102	138,898
Election Services	215,000	33,900	181,100
Vehicle Maintenance	665,200	517,597	147,603
Utilities	905,000	724,776	180,224
Travel & Training	611,709	292,899	318,810
All Other Expenditure Accounts	11,014,835	11,303,169	(288,334)
Totals	\$72,647,653	\$65,099,155	\$7,548,498

As stated above, had the City not received Federal ARPA funds and not had significant expenditure savings, FY 2021-2022 would have ended with just under \$1M of revenues in excess of expenditures.

Table 5 provides a look at how the FY 2021-2022 year-end results affect the General Fund balance (both with and without the Gateway Property transaction). To provide more detail, the \$86,184,000 attributed to the Gateway site reflects the value of the Caltrans property that was transferred to City ownership in 2021. While the value of the land was booked to the General Fund, it is not a fungible (cash) asset, and the City is required to repay Caltrans once the land is sold. No cash was transacted in the City's agreement with Caltrans. Therefore, this is a restricted fund balance item (not available to spend) and should be considered as such when looking at the available fund balance.

Table 5

	W/Gateway	W/O Gateway
General Fund Balance at 6-30-2021	\$26,480,885	\$26,480,885
Plus: FY 2021-2022 Total Revenues	159,279,951	73,095,951
Less: FY 2021-2022 Total Expenditures	(65,099,155)	(65,099,155)
Net Change in Fund Balance	\$94,180,796	\$7,996,796
General Fund Balance at 6-30-2022	\$120,661,681	\$34,477,681

The difference between the total General Fund balance and the available General Fund balance is \$94,707,047 (with the Gateway Property transaction) and \$8,523,047 (without the Gateway Property transaction), as shown in Table 6 on the following page:

Table 6

	W/Gateway	W/O Gateway
Total General Fund Balance at 6-30-2022	\$120,661,681	\$34,477,681
Less: Nonspendable funds	240,902	240,902
Less: Restricted funds	86,210,509	26,509
Less: Assigned funds	5,134,899	5,134,899
Less: Assigned to paydown UALs	3,120,737	3,120,737
Total Unavailable Funds	<u>\$94,707,047</u>	<u>\$8,523,047</u>
Available General Fund Balance at 6-30-2022	<u>\$25,954,634</u>	<u>\$25,954,634</u>

With respect to the City's reserve policy which states that the City's unassigned reserves should be maintained at a minimum of 20% of annual operating expenditures, as of June 30, 2022, the City was in compliance with its reserve policy. The unassigned reserves (available fund balance) were \$25,954,634 as of June 30, 2022, which is 32.9% of the FY 2022-2023 budget of \$78,876,913, adopted on June 28, 2022.

Also, Principle 11 of the City's adopted Financial Principles states that 50% of unanticipated surpluses may be used to fund the City's pension and OPEB (Other Post-Employment Benefits) unfunded liabilities, and, in adherence with that principle, staff requests City Council's approval to take 50% of the remaining surplus, after deducting the APRA funding of \$7,049,913, to be set aside to pay down a portion of the City's unfunded liabilities. The calculation of that amount would be as follows:

FY 2021-2022 Year-End Surplus	\$7,996,796
Less: ARPA funding	\$7,049,913
Adjusted Year-End Surplus	\$946,883
X 50%	X 50%
Amount to set-aside to pay down UALs	\$473,442

While the City used the ARPA funding to help pay for our public safety costs in FY 2021-2022, we did finish the fiscal year with a net positive result of \$7,996,796 because of those ARPA funds. And, because the federal regulations regarding the use of ARPA funds specifically state that ARPA funds cannot be used to pay down unfunded liabilities, the City is taking the conservative approach of reducing our year-end surplus amount by the amount of ARPA funds received in FY 2021-2022.

UPDATE ON DEFERRED MAINTENANCE PROJECTS

In April 2022, the City Council approved the use of \$2.7M of the FY 2020-2021 year-end savings to fund one-time deferred maintenance projects. To date, \$562,482 has been spent on these deferred maintenance projects as shown on the following page:

Project Name	Amount	Project Status
Library Roof	\$125,257	Complete
Historical Museum	\$103,564	In-Progress
CH Emergency Generator Project	\$39,901	In-Progress
Lobby Atrium Garden	\$83,599	In-Progress
CH Workstation Modernization-Phase 1	\$35,351	Complete
FS 31 & 32 Exhaust Removal	\$150,110	In-Progress
Emergency PD Shower Repairs	\$24,701*	Complete
Total Expenditures	\$562,482	

*The remaining \$60,000 for this project was funded from another funding source.

\$2.1M in funding is still available to continue completing deferred maintenance projects and as part of the Mid-Year budget report on April 9, 2024, staff will be requesting additional appropriations for some of these projects that are currently underfunded and new appropriations for additional deferred maintenance projects that were not on the original list of projects.

SUMMARY

Finance staff continue to work through the challenges we have faced to bring the City current on its financial reporting and audits. This staff report has provided information on the General Fund for FY 2021-2022. Forthcoming at the next City Council meeting will be the unaudited financial information for FY 2022-2023 and a mid-year update for FY 2023-2024. Additionally on April 9, 2024, staff will be requesting approval of mid-year budget adjustments, an amended Authorized Positions List, and an amended Classification and Compensation Plan.

FISCAL IMPACT

This staff report provides the year-end financial results of the General Fund for FY 2021-2022 and recommends the use of 50% of the General Fund's unanticipated surplus of \$946,883, which amounts to \$473,442, for efforts to continue to pay down the City's unfunded pension and OPEB liabilities, in conformance with the City's approved financial policies.

RECOMMENDATION

Staff recommends that the City Council receive and file the staff report and adopt the attached resolution which authorizes staff to use \$473,442 to pay down a portion of the City's unfunded pension and/or OPEB liabilities.

Prepared by

Jackie Acosta, Finance Director

Submitted by

Jackie Acosta, Finance Director

Attachments

Description:

Resolution

Type:

RESOLUTION NO. XXXX-24

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY ADOPTING A RESOLUTION AUTHORIZING THE USE OF FIFTY PERCENT (50%) OF THE GENERAL FUND'S FISCAL YEAR 2021-2022 UNANTICIPATED SAVINGS TO FUND UNFUNDED LIABILITIES

WHEREAS, the City is exiting an extraordinary four years of impacts on City operations and its finances. In September 2019, the City suffered a ransomware cyberattack that crippled computer systems citywide. The City Council chose to not pay the ransom and instead committed to rebuilding the City's computer infrastructure. This incident was followed by the defeat at the polls in March 2020 of the Public Safety Parcel Tax renewal, which created a budget shortfall of \$4.2 million. Both trials, though, were quickly overshadowed by the event of our lifetime – a global pandemic that took lives and threatened the economy; and

WHEREAS, on an annual basis, staff provides the City Council with a summary of the City's preliminary year-end financial results. Since the cyberattack in September 2019, Finance has been significantly behind in closing the books each year because it took many months for staff to rebuild the City's financial records that were lost in the cyberattack. Staff has finished the process of closing the FY 2021-2022 books and is finalizing the financial statements with our external auditors; and

WHEREAS, the General Fund actual year-end results for FY 2021-2022 show that the City has realized adjusted revenues in excess of expenditures of \$946,883; and

WHEREAS, based on the FY 2021-2022 adjusted revenues in excess of expenditures of \$946,883, staff is requesting City Council's approval of staff's recommended use of these funds. Per the City's adopted financial principles, "Unanticipated annual surpluses in the General Fund may be used in the following fiscal year to fund unfunded liabilities associated with the City's retirement obligations through CalPERS and/or other post-employment benefits such as retiree medical obligations subject to the following: 1) General Fund reserves exceed the minimum reserve policy of 20% of annual operating expenditures, and 2) Limited to 50% of the unanticipated annual surplus." Following this financial principle, staff recommends that the City use 50% of the \$946,883, or \$473,442, to fund our unfunded liabilities.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City does hereby adopt a resolution authorizing the use of fifty percent (50%) of the FY 2021-2022 adjusted revenues in excess of expenditures of \$946,883 to fund unfunded liabilities associated with the City's retirement obligations through CalPERS and/or other post-employment benefits such as retiree medical obligations.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City
at a regular meeting held on March 26, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Carol Dutra-Vernaci
Mayor

ATTESTED:

APPROVED AS TO FORM:

Thai Nam Pham
City Clerk

Kristopher J. Kokotaylo
City Attorney



Agenda Item

DATE: 3/26/2024

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JASON CASTLEBERRY, HUMAN RESOURCES DIRECTOR

SUBJECT: ADOPT A RESOLUTION APPROVING AN EXCEPTION TO THE 180-DAY WAITING PERIOD FOR POST-RETIREMENT EMPLOYMENT AND APPROVING AN EMPLOYMENT AGREEMENT WITH RETIRED ANNUITANT LAURIE RADOVICH

Staff recommends that the City Council adopt the attached resolution and employment agreement which will allow the City to hire retired annuitant Laurie Radovich on a limited and temporary basis to perform services that require specialized skills while the City conducts a recruitment to fill the vacant Transit Coordinator position and to also assist with the transfer of information to the person selected to fill the vacant position.

STRATEGIC PLAN ALIGNMENT

This agenda item does not have alignment with the Strategic Plan.

BACKGROUND

On December 30, 2023, Laurie Radovich, Transit Coordinator, retired from the City of Union City's workforce, thus becoming a CalPERS retired annuitant. Ms. Radovich possesses specialized skills needed to perform certain work that the City must carry out as information is transferred to current and future employees. Ms. Radovich also possesses knowledge that will need to be documented and transferred to other staff related to the City's paratransit program and other programs.

Government Code Section 7522.56(f) requires a 180-day waiting period before a retired annuitant can be employed by a CalPERS agency unless the nature of the employment meets one of the exceptions and is approved via resolution by the governing body. In this case, the nature of Ms. Radovich's recommended appointment will be as an extra help retired annuitant. She will assist staff as needed to learn the complicated and detailed tasks associated with the City's paratransit program and other transit related programs. Ms. Radovich possesses the specialized skills needed to perform this work and this appointment qualifies for an exception under Government Code section 7522.56(f). As a CalPERS extra help retired annuitant, she will

qualify for this exemption based on her role performing work of limited duration (no more than 960 hours per fiscal year) including the elimination of backlogs, limited-term special project work, and/or work in excess of what regular permanent staff can do. In this instance, this limited term special project relates to the paratransit program for which Ms. Radovich is the only person qualified.

DISCUSSION

In order for the City Council to approve the proposed Employment Agreement with Ms. Radovich, the City Council must first adopt a Resolution making specific findings related to hiring a retired annuitant subject to CalPERS regulations contained in Government Code Section 21224. The terms of the Employment Agreement state that the term is of limited duration through no later than December 31, 2024, and that the hourly rate is \$53.22. Such terms are in conformance with CalPERS regulations.

FISCAL IMPACT

The costs related to the adoption of this Resolution and the approval of this Employment Agreement will be covered by salary savings generated by the vacant Transit Coordinator position.

RECOMMENDATION

Staff recommends that the City Council: 1) adopt a Resolution approving an exception to the 180-day waiting period for post-retirement employment, and 2) approve an Employment Agreement with retired annuitant Laurie Radovich to serve as an Extra Help Transit Coordinator.

Prepared by:

Jason Castleberry, Human Resources Director

Submitted by:

Jason Castleberry, Human Resources Director

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Draft Resolution	Resolution
<input type="checkbox"/> Employment Agreement	Attachment

RESOLUTION NO. XXXX-24

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
UNION CITY APPROVING AN EXCEPTION TO THE 180-
DAY WAITING PERIOD FOR POST RETIREMENT
EMPLOYMENT FOR LAURIE RADOVICH TO SERVE AS
EXTRA HELP PURSUANT TO GOVERNMENT CODE
SECTIONS 7522.56 & 21224**

WHEREAS, in compliance with Government Code Section 7522.56, the City Council of the City of Union City (“City Council”) must provide CalPERS this certification resolution when hiring a retiree before 180 days have passed since their retirement date; and

WHEREAS, Laurie Radovich retired from the City of Union City in the position of Transit Coordinator on December 30, 2023; and

WHEREAS, Government Code Section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 28, 2024 (December 30, 2023, plus 180 days), without this certification resolution; and

WHEREAS, Government Code Section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City Council, the City of Union City, and Laurie Radovich certify that Laurie Radovich has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City Council hereby appoints Laurie Radovich as an extra help retired annuitant to perform the duties of Transit Coordinator for the City of Union City under Government Code Section 21224, effective March 27, 2024; and

WHEREAS, the entire employment agreement, contract or appointment document between Laurie Radovich and the City of Union City has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule, divided by 173.333 to equal the hourly rate; and

WHEREAS, the minimum base salary for this position or its equivalent is \$7,685 per month, and the hourly equivalent is \$44.34, and the maximum base salary for this position or its equivalent is \$9,225 per month, and the hourly equivalent is \$53.22; and

WHEREAS, the hourly rate paid to Laurie Radovich will be \$53.22; and

WHEREAS, Laurie Radovich has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

NOW THEREFORE, BE IT RESOLVED THAT the City Council of the City of Union City hereby certifies the nature of the appointment of Laurie Radovich as described herein and detailed in the attached employment agreement document and that this appointment is necessary to fill the critically needed Transit Coordinator position for the City of Union City by March 27, 2024 to work on transfer of specialized knowledge and expertise to facilitate the transfer and documentation of knowledge related to the City's paratransit program and services in excess of what staff can perform. As a retired Transit Coordinator with 29 years of service, Laurie Radovich possesses the necessary knowledge and expertise regarding the City's existing processes and procedures that other staff do not possess. Laurie Radovich's appointment is also critical to provide necessary training regarding these procedures.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on this 26th day of March 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

CAROL DUTRA-VERNACI
Mayor

ATTESTED:

APPROVED AS TO FORM:

THAI NAM N. PHAM
City Clerk

KRISTOPHER J. KOKOTAYLO
City Attorney

EMPLOYMENT AGREEMENT BETWEEN THE CITY OF UNION CITY AND LAURIE RADOVICH

This Employment Agreement (this “**Agreement**”) is entered into this 27th day of March 2024, by and between the City of Union City (“**City**”) and Laurie Radovich (“**Laurie Radovich**” or “**Annuitant**”) collectively referred to as “**Parties.**”

RECITALS

WHEREAS, on December 30, 2023, Annuitant retired from the City; and

WHEREAS, Annuitant has previously served as a Transit Coordinator; and

WHEREAS, Annuitant, by virtue of having previously served as a Transit Coordinator employed by the City for 29 years has specialized knowledge and expertise to facilitate the transfer and documentation of knowledge related to the City’s paratransit program and services in excess of what staff can perform; and

WHEREAS, the City desires to employ the Annuitant as an extra help annuitant pursuant to Government Code Section 21224; and

WHEREAS, the California Public Employees Retirement System (“**CalPERS**”) regulations allow a benefit recipient to work up to 960 hours per fiscal year pursuant to Government Code Section 21224; and

WHEREAS, it is necessary for the City to retain the services of Annuitant, following retirement, as an extra help retired annuitant to work on transfer of specialized knowledge and expertise to facilitate the transfer and documentation of knowledge related to the City’s paratransit program and services in excess of what staff can perform; and

WHEREAS, Annuitant desires to accept a part-time and temporary employment contract under the terms and conditions set forth below; and

WHEREAS, the City desires by this Agreement to set forth the terms and conditions of Annuitant’s duties and services as an extra help retired annuitant for a limited term as set forth in this Agreement.

AGREEMENT

The Parties hereby agree as follows:

1. **SCOPE OF SERVICE.** Annuitant shall perform her duties to the best of her ability in accordance with the highest professional and ethical standards of the profession. Annuitant shall comply with the City’s rules and regulations and she shall obey the laws of the State of California and the United States of America as they apply to the performance of her duties.

2. **TERM.** The term of this Agreement shall begin on March 27, 2024 and end no later than December 31, 2024. Further, as agreed upon by Parties, Annuitant shall not work more than 40 hours per week, nor shall the City be financially responsible for paying Annuitant for work performed in excess of 40 hours per week.
3. **EFFECTIVE DATE.** This Agreement shall become effective after:
 - i. This Agreement is approved and executed by Annuitant; and
 - ii. This Agreement is approved and executed by the City Manager.
4. **RETIRED ANNUITANT STATUS.** It is intended that at all times Annuitant's post-retirement employment shall be in compliance with all laws governing employment of CalPERS retired annuitants, including without limitation Government Code Sections 7522.56 & 21224. Annuitant understands that she is solely responsible for monitoring her hours worked and ensuring that she does not work more than 960 hours in a fiscal year (including work performed prior to execution of this agreement and work performed for other employers participating in CalPERS).
5. **SERVICES TO BE PERFORMED BY ANNUITANT.** Annuitant shall perform the duties of Transit Coordinator or as directed by the City Manager and in accordance with all applicable requirements of federal, state and local laws.
6. **COMPENSATION.** City shall pay Annuitant for her services hereunder as an extra help annuitant and Annuitant shall accept, as full and complete compensation for said services, the sum of \$53.22 per hour. Annuitant shall receive no other payment, benefit, or remuneration other than her hourly wage for her services. There shall be no deductions from her wages for health insurance (including medical, dental, vision care, life, disability), or payment of overtime, or accrual of vacation leave, or any other similar benefits of whatever kind or nature.
7. **INDEMNIFICATION.** City agrees, in the event Annuitant is named as a defendant in a civil action arising from or as a result of her performance of duties as Transit Coordinator, to provide Annuitant such indemnification benefits as are required to be provided to an employee of the City under the laws of the State of California, including, but not limited to, the provisions of Government Code Sections 825 et seq. and 995 et seq. This provision shall not apply with respect to any intentional tort or crime committed by Annuitant, or any actions outside the performance of her job duties pursuant to this Agreement.
8. **RESERVED.**
9. **RESERVED.**
10. **UNEMPLOYMENT INSURANCE.** Annuitant Certifies that she has not received any unemployment insurance payments in the past 12 months.

11. ENTIRE AGREEMENT. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding unless in writing and signed by both Parties.
12. GOVERNING LAW. The validity of this Agreement and of any of its terms or provisions as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of California and leave for any action concerning the terms of this Agreement shall be in the Superior Court of the County of Alameda.
13. SEVERABILITY. Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and shall in no way be invalidated, impaired or affected thereby.
14. ASSIGNMENT. The Parties agree that the expertise and experience of Annuitant are material considerations for this Agreement. Annuitant shall not assign, transfer, or subcontract any interest in this Agreement, nor the performance of any of Annuitant's obligations hereunder.
15. TERMINATION. Annuitant understands that she is an at-will employee and that employment may be terminated by Annuitant or City at any time, for any reason, or for no reason at all. The City's right of termination shall be in addition to other remedies available under law to the City.
16. WAIVER. Waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Annuitant shall not be deemed a waiver of any term or condition of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

City of Union City

DATED: _____

By: _____
Joan Malloy
City Manager

Approved as to Form: _____
Kristopher J. Kokotaylo
City Attorney

Annuitant

DATED: _____

By: _____
Laurie Radovich