

RESPONSE TO COUNCIL QUESTIONS RE: 6/6/17 CITY COUNCIL AGENDA

Agenda Item #: 1.C.

Title: Approve the List(s) of Claims and Bills Approved for Payment by the City Manager

Council Question: On the payment for \$2,303,013.70 to Old Republic Title Co, please describe the nature of the payment(s) and a brief overview of who the customers are and the program under which these loans are disbursed. Further, please describe the internal financial control processes in place to ensure the payment was duly authorized and properly accounted for.

Staff Response: This wire transfer into escrow was a disbursement of Housing Mitigation loan funds to MP Edwina Benner, LP, the borrower, for eligible development costs of the Edwina Benner Plaza affordable apartments (being developed by MidPen Housing) at 460 Persian Drive. The \$2.3 million payment was the difference between the previously provided bridge loan (\$5 million) and the \$7.4 million loan recently authorized by the City Council. The bridge loan (\$5.1million) – including principal and interest – was paid off using the \$7.4 million permanent loan, and the remaining \$2.3 million is the net proceeds of the new City loan. The funds for this loan come from the City's Housing Mitigation Fund, which is generated from housing mitigation impact fees paid primarily by market-rate developers of office and industrial developments. Council approved the loan for this project on several occasions, most recently in February when the permanent loan amount was increased to \$7.4 million. The most direct customers of this funding are the future tenants of this 66-unit development.

Internal controls for this transfer include close coordination between City staff of several departments, MidPen Housing staff, and the other lenders on the project, including the County and the senior lender, for several months leading up to closing on all the construction loans as well as the conversion of the City's bridge loan to a permanent loan. Housing staff participated in weekly "closing calls" with all of the project's lenders, the developer, and related staff for several months to plan and coordinate this construction closing to ensure that the state's tax credit deadlines would be met and the conditions of all the lenders were met. City staff ensures that all of the City loan conditions have been met before the loan is closed and funds are disbursed. City staff prepares and signs detailed escrow instructions, the City Attorney and City Manager sign final loan documents, and staff completes the documentation required by Finance for the wire transfer to occur, all in close coordination with the City Attorney. Further, this funding was approved by Council as part of the Projects Budget in a capital project set up for the Benner Plaza Project.

Agenda Item #: 3

Title: Annual Review of Proposed Fees and Charges for Fiscal Year 2017/18

Council Question: For RTC 17-0530, Annual Review of Proposed Fees and Charges for Fiscal Year 2017/18, what is the Financial Impact? That section of the report duplicates the Public Notice section.

Staff Response: Due to a clerical error, the Public Contact section was inadvertently duplicated into the Fiscal Impact section. As outlined in the attached Addendum to RTC 17-0530, and posted on the City's website, the Fiscal Impact reads as follows: The impact of proposed adjustments to these fees and their anticipated impact on revenues have been incorporated in the FY 2017/18 Recommended Budget and Resource Allocation Plan.

Council Question: Page 2 - public charging station fee = \$1.50 per hour. How about charging per electric energy consumed? There are a variety of charging speeds (kW/hr) and charging by time seems unfair to someone stuck using a slower speed charger. Also, the human tendency is to get the most for your money so people might spend more time getting every minute they paid for rather than quitting when they get enough to get home, thereby freeing up stations for others.

Staff Response: The fee covers Level 2 (220-240 Volt) charging stations that charge at generally the same speed. Setting the fee at an hourly rate (\$1.50 per hour) is consistent with most other South Bay cities. Our charging stations have been operational for less than six months and we plan to review the fee over time to ensure the fee is set at cost recovery and encourage optimal use of the stations by customers. Additionally, we will also review the structure of the fee when the City installs additional stations in the future.

Council Question: Page 9 - Rezoning: Combining District Heritage Housing (HH)/ Single-Story (S) (per lot) \$155. Why per lot? Does the city have to do anything special for each lot? If it is processed as one entity might it be fairer to just charge one fee for the entire application?

Staff Response: A per lot fee has been used for these projects as the amount of staff work increases as the size of the rezoning area increases. As opposed to a development application where there is one applicant, the Heritage Housing and Single-story combining districts have multiple property owners and more staff time is needed to respond to questions. The minimum size S zoning is 20 properties. A 20-property rezone fee would be \$3,100 approximately the same as the flat rate combining district fee of \$3,030 associated with one development application.

Council Question: Page 10 - Park Dedication In-Lieu Fee - Average Fair Market Value (FMV) per square foot. Is the FMV based on the average for the entire city or the property in question?

Staff Response: The average land value is based on all comparable land sales within the City. To assist in the calculation, staff has commissioned an appraisal report for land sales in Sunnyvale.

Council Question: Page 14 – Photovoltaic (PV) Systems Single Family or Duplex \$253. Don't we want to encourage solar energy? How about zero? How many applications do we get?

Staff Response: The \$253 fee is the same as last year's fee. PV systems require a building permit plan check (which requires staff review of plans, typically at the counter with same-day permit issuance) and an inspection for proper installation. Building Division activities are fee for service and revenues are part of the Development Services Enterprise Fund. If the Council desires to provide the permit at no cost, it would require a

Council action to subsidize the fee with General Fund dollars. In 2016 there were 295 PV permits issued; in 2015 there were 266 permits issued; year-to-date, for 2017 we have received 72 permit applications.

Council Question: Page 16 and page 23 - COPIES OF PRINTED MATERIAL Compact disk. Are there any charges for email or USB or are they free?

Staff Response: A fee for the provision of a USB flash drive is listed on page two for citywide use at \$10. Specifically, for the pages in question: Page 16, Community Development noted that the General Plan related documents are online for free as are the zoning maps. For page 23, Public Safety generally does not provide responses to civil subpoenas by email or USB.

Council Question: Page 29 - Battery system fire inspection fee \$934 & \$456. Is this for home batteries meant to store excess solar electricity for evening use like the Tesla PowerWall? If so this seems designed to kill that market as it would cost more in a very few years than the batteries cost. Batteries are flammable, but that includes the battery in the laptop I am using. Also, most people have containers of gallons of highly flammable liquid sitting in their garage (their cars). In 2015 there were 472 auto fires per day costing \$1.2B in damages and taking 445 lives.

<http://www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/vehicle-fires/highway-vehicle-fires> 3,280 deaths due to fire last year of which roughly 2,558 were in the home. Most common cause was smoking followed by cooking. Contrast to 149 unit apt building inspection fee = \$753 (page 38). Is the cost of inspecting a battery more than that of inspecting a 149-unit apt. building?

Staff Response: The battery systems being regulated by the permit in question are systems providing emergency or standby power to building systems and regulated under Section 608 of the Fire Code. It is not intended to cover systems in single-family homes.

Council Question: Page 43 - cryogenic gases? What gases are referred to? CO2? Liquid Nitrogen? Neither of them are flammable.

Staff Response: Liquid nitrogen is the most commonly used. Cryogenic fluids are not flammable but they are hazardous due to the extreme low temperature for storage as well as the gases' ability to expand if released and displace oxygen potentially causing asphyxiation.

Agenda Item #: 7

Title: Adopt Resolutions Authorizing the Operation of Property Assessed Clean Energy (PACE) Financing Programs Within the City of Sunnyvale, Authorize the City Manager to Execute Agreements and Other Documents Necessary to Implement the Same, and Find that the Actions are Exempt from Environmental Review under CEQA Guidelines Section 15378(b)(4)

Council Question: How many JPAs is Sunnyvale a member of?

Staff Response: Sunnyvale is a member of numerous JPAs including but not limited to the following: ABAG, NOVA, CJPRMA (the City's excess risk pool), CSAC EIA (for worker's comp coverage), the Silicon Valley Interoperability Authority, the Santa Clara County Congestion Management Program, and the recently formed Silicon Valley Clean

Energy Authority. In the limited time to respond to Council questions, staff was not able to complete a full assessment and will respond to this question in full through a City Manager's Biweekly Report.

Council Question: When did Sunnyvale become a member of the California Statewide Communities Development Authority and why?

Staff Response: The original agreement was signed in 2005. When the City Council took actions to join the CalioforniaFIRST program on January 5, 2010, the City was already a member of the California Statewide Communities Development Authority (CSCDA). From the CSCDA website: CSCDA was created in 1988, under California's Joint Exercise of Powers Act, to provide California's local governments with an effective tool for the timely financing of community-based public benefit projects. Although cities, counties and special districts are able to issue their own debt obligations or serve as a conduit issuer of private activity bonds that promote economic development and provide critical community services, many local agencies find stand-alone financings too costly or lack the necessary resources or experience to facilitate the bond issuance and perform post-issuance activities for the term of the bonds. In response, CSCDA was created by and for local governments in California, and is sponsored by the California State Association of Counties and the League of California Cities.

Council Question: Can Staff speculate as to the reason that an existing JPA would want to become involved in the provision of PACE services? Is there a financial benefit to the JPA in providing PACE services? For example, the Western Riverside Council of Governments (WRCOG) was formed in 1991 as a regional JPA to conduct local studies and projects and continued as such for 21 years until 2012 when they started PACE services throughout the State. What would have motivated the WRCOG to make this change?

Staff Response: PACE programs can be administered through JPAs or by municipalities. Per the WRCOG website, "the purpose of the Western Riverside Council of Governments (WRCOG) is to unify Western Riverside County so that it can speak with a collective voice on important issues that affect its members... WRCOG focuses on a number of regional matters important to our future...WRCOG is cost-effective by reducing duplication of effort and sharing information, enabling strong advocacy and strengthening Western Riverside's standing in the region and the State. Today, WRCOG's program areas are varied and include transportation, environment, energy, economy, and health."

Council Question: What is the worst thing that could happen to Sunnyvale as a member, if one of the PACE JPAs encountered difficulties (e.g. declares bankruptcy, bond market seizes-up, etc.)? What protections or liability limitations are in place and how enforceable are they?

Staff Response: The JPA structure protects the City from debts and other financial obligations of the JPA, but this would not require the JPA to indemnify the City if the City is sued as a result of the actions of the JPA or its contractors. The terms of the JPA, agreements do not absolutely protect the City for acts of the JPAs. The California Home Finance Authority JPA agreement requires the Board to approve a request for indemnification. Since the Joint Powers Agencies are already in existence, the terms of the agreements were not negotiable. The City's decision to join the JPA is a discretionary

act that may be protected by discretionary immunity under Gov. Code section 820.2. However, this would not necessarily protect the City from claims that the City acted negligently, for example, by failing to supervise the actions of the PACE providers. However, the City would argue that it has no duty to directly supervise the PACE programs since that is the responsibility of the JPAs, which are separate and independent public entities under California law. We have not become aware of any litigation against cities as a result of PACE programs. Cities that have authorized PACE programs have done so because they perceive the benefits to the community outweigh the risks.

Council Question: Which JPA did the City become a member of in 2010 to enable CaliforniaFIRST as a PACE program provider in Sunnyvale?

Staff Response: The City Council adopted a resolution and approved actions necessary for Sunnyvale to participate in establishing the CaliforniaFIRST PACE Program, sponsored by the California Statewide Communities Development Authority. The City was already a member of CSCDA.

Council Question: Page 6 of the Staff report states that CaliforniaFIRST since 2014 has provided 8 loans for \$204 thousand. How many applications has CaliforniaFIRST received in that time that were declined / not funded? In other words, did CaliforniaFIRST receive only 8 applications since 2014 or some larger number?

Staff Response: We placed a call with CaliforniaFIRST to seek this information requested. If received by tomorrow's Council meeting, we will share the information through a verbal update.

CORRECTION TO 17-0530:
Annual Review of Proposed Fees and Charges for Fiscal Year 2017/18
June 6, 2017
Item 3

Due to a clerical error, the text of the Fiscal Impact section was not included in 17-0530, *Annual Review of Proposed Fees and Charges for Fiscal Year 2017/18*:

FISCAL IMPACT

The impact of proposed adjustments to these fees and their anticipated impact on revenues have been incorporated in the FY 2017/18 Recommended Budget and Resource Allocation Plan. Attachment 1 to [17-0530](#) presents the Recommended FY 2017/18 Fee Schedule reflecting proposed fees and charges.