



# City of Sunnyvale

## Notice and Agenda City Council

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Tuesday, May 21, 2019

4:30 PM

Council Chambers and West Conference  
Room, City Hall, 456 W. Olive Ave.,  
Sunnyvale, CA 94086

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**Special Meeting: Closed Session - 4:30 PM | Special Meeting - 6 PM | Regular Meeting - 7 PM**

### **4:30 P.M. SPECIAL COUNCIL MEETING (Closed Session)**

#### **1 Call to Order in the West Conference Room**

#### **2 Roll Call**

#### **3 Public Comment**

*The public may provide comments regarding the Closed Session item(s) just prior to the Council beginning the Closed Session. Closed Sessions are not open to the public.*

#### **4 Convene to Closed Session**

[19-0279](#)

4:30 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code  
Section 54957:  
PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Attorney

[19-0390](#)

Closed Session held pursuant to California Government Code  
Section 54957:  
PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager

[19-0580](#)

CONFERENCE WITH LEGAL COUNSEL-PENDING  
LITIGATION  
Closed Session held pursuant to California Government Code  
Section 54956.9(d)(1):  
Name of Case: David Meinhardt v. City of Sunnyvale  
Personnel Board, et al. Case No. 19-CV-346911

**5 Adjourn Special Meeting****6 P.M. SPECIAL COUNCIL MEETING (Special Order of the Day)****1 Call to Order in the Council Chambers (Open to the Public)****2 Roll Call****3 Public Comment****4 Special Order of the Day**[19-0093](#)

6 P.M. SPECIAL COUNCIL MEETING

SPECIAL ORDER OF THE DAY - Department of Public Safety

Special Awards

Location: Council Chambers

**5 Adjourn Special Meeting****7 P.M. COUNCIL MEETING**

*Pursuant to Council Policy, City Council will not begin consideration of any agenda item after 11:30 p.m. without a vote. Any item on the agenda which must be continued due to the late hour shall be continued to a date certain. Information provided herein is subject to change from date of printing of the agenda to the date of the meeting.*

**CALL TO ORDER**

*Call to Order in the Council Chambers (Open to the Public)*

**SALUTE TO THE FLAG****ROLL CALL****CLOSED SESSION REPORT****SPECIAL ORDER OF THE DAY**[19-0531](#)

SPECIAL ORDER OF THE DAY - Asian Pacific American  
(APA) Heritage Month

[19-0294](#) SPECIAL ORDER OF THE DAY - National Public Works Week

[19-0314](#) SPECIAL ORDER OF THE DAY - Municipal Clerks Week

### **ORAL COMMUNICATIONS**

*This category provides an opportunity for members of the public to address the City Council on items not listed on the agenda and is limited to 15 minutes (may be extended or continued after the public hearings/general business section of the agenda at the discretion of the Mayor) with a maximum of up to three minutes per speaker. Please note the Brown Act (Open Meeting Law) does not allow the Council to take action on an item not listed on the agenda. If you wish to address the Council, please complete a speaker card and give it to the City Clerk. Individuals are limited to one appearance during this section.*

### **CONSENT CALENDAR**

*All matters listed on the consent calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion of these items. If a member of the public would like a consent calendar item pulled and discussed separately, please submit a speaker card to the City Clerk prior to the start of the meeting or before approval of the consent calendar.*

**1.A** [19-0513](#) Approve City Council Meeting Minutes of May 7, 2019.

**Recommendation:** Approve the City Council Meeting Minutes of May 7, 2019 as submitted.

**1.B** [19-0432](#) Approve City Council Meeting Minutes of May 14, 2019

**Recommendation:** Approve the City Council Meeting Minutes of May 14, 2019 as submitted.

**1.C** [19-0332](#) Approve the List(s) of Claims and Bills Approved for Payment by the City Manager

**Recommendation:** Approve the list(s) of claims and bills.

- 1.D [19-0301](#) Approve the FY 2019/20 Preliminary Engineer's Report for the Downtown Parking District Assessment, Adopt a Resolution of Intention to Levy and Collect an Assessment for the Downtown Parking Maintenance District for FY 2019/20, and Set the Date of June 25, 2019 for the Public Hearing on the Proposed Assessment

**Recommendation:** Approve the Fiscal Year (FY) 2019/20 preliminary Engineer's Report for the Downtown Parking District Assessment, adopt a Resolution of Intention to Levy and Collect an Assessment for the Downtown Parking Maintenance District for FY 2019/20, and set the date of June 25, 2019 for the public hearing on the levy of the proposed Assessment

- 1.E [19-0461](#) Adopt a Resolution to Authorize the Filing of Fiscal Year 2019/20 Transportation Development Act (TDA) Article 3 Application for the Design and Implementation of Pedestrian and Bicycle Safety Improvements at the Intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue

**Recommendation:** Adopt a resolution authorizing the filing of Fiscal Year 2019/20 Transportation Development Act Article 3 application requesting MTC for an allocation of \$172,712 for FY 2019/20 to be used for the design and implementation of pedestrian and bicycle safety improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue.

- 1.F [19-0489](#) Approval of Modifications to the Local and Regional Workforce Development Strategic Plans

**Recommendation:** Approve modifications to the NOVA Local Workforce Development Strategic Plan and the Bay-Peninsula Regional Workforce Development Strategic Plan.

- 1.G [19-0490](#) Approve Application for Subsequent Local Area Designation and Local Workforce Board Recertification for NOVA Workforce Development Area

**Recommendation:** Approve application for subsequent Local Area designation and Local Workforce Board recertification for NOVA Workforce Development Area.



- 1.H    [19-0439](#)            Receive and File the City of Sunnyvale Investment Report - 1st Quarter 2019

**Recommendation:** Receive and file the City of Sunnyvale - First Quarter 2019 Investment Report.

**PUBLIC HEARINGS/GENERAL BUSINESS**

*If you wish to speak to a public hearing/general business item, please fill out a speaker card and give it to the City Clerk. You will be recognized at the time the item is being considered by Council. Each speaker is limited to a maximum of three minutes. For land-use items, applicants are limited to a maximum of 10 minutes for opening comments and 5 minutes for closing comments.*

- 2        [19-0448](#)            Consider Below Market Rate Alternative Compliance Plans for Residential Development at 1142 Dahlia Court. Applicant: Trumark Homes; Planning Files 2018-7989 and 2018-7451.

**Recommendation:** Alternative 1: Approve the Applicant's BMR Alternative Compliance Plan for the project located at 1142 Dahlia Court, as shown in Attachment 2 to the report.

- 3      [19-0523](#)      Authorize the City Manager or His Designee to Execute a Small Cell License Agreement with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless and Delegate Authority for Term Extensions and Find the Project Categorically Exempt under CEQA

**Recommendation:** Alternative 1: Authorize the City Manager or his designee to execute the Small Cell License Agreement, in substantially the same form as in Attachment 1 to the report, with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless and authorize the City Manager or his designee to extend the term for two (2) additional five (5) year terms, and make a finding and make a finding that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15302 and 15303.

Using City street light poles offers several advantages over the current practice of using wooden power poles as a host for small cell installations. Street light poles are typical hollow allowing wiring to be concealed and a more consistent installation depending on pole type. In some cases, poles will be replaced which renews City assets at no cost to the City. City poles offer new options for areas with coverage gaps, taking pressure off the limited number of wooden poles, particularly where utilities have been undergrounded.

#### **COUNCILMEMBERS REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

#### **NON-AGENDA ITEMS & COMMENTS**

-Council

-City Manager

#### **INFORMATION ONLY REPORTS/ITEMS**

[19-0514](#)      Tentative Council Meeting Agenda Calendar

[19-0516](#)      Information/Action Items

[19-0517](#)

## Board/Commission Meeting Minutes

**ADJOURNMENT****NOTICE TO THE PUBLIC**

*The agenda reports to council (RTCs) may be viewed on the City's website at [sunnyvale.ca.gov](http://sunnyvale.ca.gov) after 7 p.m. on Thursdays or at the Sunnyvale Public Library, 665 W. Olive Ave. as of Fridays prior to Tuesday City Council meetings. Any agenda related writings or documents distributed to members of the City of Sunnyvale City Council regarding any open session item on this agenda will be made available for public inspection in the Office of the City Clerk located at 603 All America Way, Sunnyvale, California during normal business hours and in the Council Chamber on the evening of the Council Meeting, pursuant to Government Code §54957.5. Please contact the Office of the City Clerk at (408) 730-7483 for specific questions regarding the agenda.*

*PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the public hearing or presented in writing to the Office of the City Clerk at or before the public hearing. PLEASE TAKE FURTHER NOTICE that Code of Civil Procedure section 1094.6 imposes a 90-day deadline for the filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure 1094.5.*

*Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the Office of the City Clerk at (408) 730-7483. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.160 (b) (1))*

**Planning a presentation for a City Council meeting?**

*To help you prepare and deliver your public comments, please review the "Making Public Comments During City Council or Planning Commission Meetings" available at [Sunnyvale.ca.gov/PublicComments](http://Sunnyvale.ca.gov/PublicComments)*

**Planning to provide materials to Council?**

*If you wish to provide the City Council with copies of your presentation materials, please provide 12 copies of the materials to the City Clerk (located to the left of the Council dais). The City Clerk will distribute your items to the Council.*

**Upcoming Meetings**

*Visit <https://sunnyvaleca.legistar.com> for upcoming Council, board and commission meeting information.*



# City of Sunnyvale

## Agenda Item

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**19-0279**

**Agenda Date:** 5/21/2019

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4:30 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section 54957:  
PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Attorney



# City of Sunnyvale

## Agenda Item

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**19-0390**

**Agenda Date:** 5/21/2019

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Closed Session held pursuant to California Government Code Section 54957:  
PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager



# City of Sunnyvale

## Agenda Item

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**19-0580**

**Agenda Date:** 5/21/2019

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**CONFERENCE WITH LEGAL COUNSEL-PENDING LITIGATION**

Closed Session held pursuant to California Government Code Section 54956.9(d)(1):

Name of Case: *David Meinhardt v. City of Sunnyvale Personnel Board, et al.* Case No. 19-CV-346911



# City of Sunnyvale

## Agenda Item

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**19-0093**

**Agenda Date: 5/21/2019**

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6 P.M. SPECIAL COUNCIL MEETING

SPECIAL ORDER OF THE DAY - Department of Public Safety Special Awards

Location: Council Chambers





# City of Sunnyvale

## Agenda Item

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**19-0531**

**Agenda Date:** 5/21/2019

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SPECIAL ORDER OF THE DAY - Asian Pacific American (APA) Heritage Month



# City of Sunnyvale

## Agenda Item

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**19-0294**

**Agenda Date:** 5/21/2019

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SPECIAL ORDER OF THE DAY - National Public Works Week



# City of Sunnyvale

## Agenda Item

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**19-0314**

**Agenda Date:** 5/21/2019

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SPECIAL ORDER OF THE DAY - Municipal Clerks Week



# City of Sunnyvale

## Agenda Item

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**19-0513**

**Agenda Date:** 5/21/2019

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**SUBJECT**

Approve City Council Meeting Minutes of May 7, 2019.

**RECOMMENDATION**

Approve the City Council Meeting Minutes of May 7, 2019 as submitted.



# City of Sunnyvale

## Meeting Minutes - Draft City Council

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Tuesday, May 7, 2019

5:00 PM

Council Chambers and West Conference  
Room, City Hall, 456 W. Olive Ave.,  
Sunnyvale, CA 94086

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**Special Meeting: Closed Session - 5 PM | Special Meeting - 6 PM | Regular Meeting - 7 PM**

### **5 P.M. SPECIAL COUNCIL MEETING (Closed Session)**

Vice Mayor Melton announced the item for Closed Session and invited any members of the public to make public comments before the meeting.

#### **1 Call to Order in the West Conference Room**

Vice Mayor Melton called the meeting to order at 5:00 p.m.

#### **2 Roll Call**

**Present:** 7 - Mayor Larry Klein  
Vice Mayor Russ Melton  
Councilmember Gustav Larsson  
Councilmember Glenn Hendricks  
Councilmember Nancy Smith  
Councilmember Michael S. Goldman  
Councilmember Mason Fong

#### **3 Public Comment**

None.

#### **4 Convene to Closed Session**

[19-0272](#)

Closed Session held pursuant to California Government Code Section 54957.6:

#### **CONFERENCE WITH LABOR NEGOTIATORS**

Agency designated representatives: Tina Murphy, Director of Human Resources; Kent Steffens, City Manager

Employee organization: Sunnyvale Managers Association (SMA) and Sunnyvale Employees Association (SEA)

## **5 Adjourn Special Meeting**

Vice Mayor Melton adjourned the meeting at 5:51 p.m.

## **6 P.M. SPECIAL COUNCIL MEETING**

### **1 Call to Order in the Council Chambers**

Mayor Klein called the meeting to order.

### **2 Roll Call**

**Present:** 7 - Mayor Larry Klein  
Vice Mayor Russ Melton  
Councilmember Gustav Larsson  
Councilmember Glenn Hendricks  
Councilmember Nancy Smith  
Councilmember Michael S. Goldman  
Councilmember Mason Fong

### **3 Public Comment**

None.

### **4 Special Orders of the Day**

[19-0198](#) SPECIAL ORDER OF THE DAY - 2019 Earth Day Video and  
Poster Contest Winners  
Location: Council Chambers

Mayor Klein and Nupur Hiremath, Environmental Programs Manager, recognized the 2019 Earth Day Video and Poster Contest Winners.

[19-0199](#) SPECIAL ORDER OF THE DAY - Recognition of Green  
Businesses

Mayor Klein and Alyssa Rice-Wilson, Zero Waste Coordinator, presented awards in recognition of Green Businesses.

## **5 Adjourn Special Meeting**

Mayor Klein adjourned the meeting at 6:25 p.m.

## **7 P.M. COUNCIL MEETING**

**CALL TO ORDER**

Mayor Klein called the meeting to order at 7:01 p.m.

**SALUTE TO THE FLAG****ROLL CALL**

**Present:** 7 - Mayor Larry Klein  
Vice Mayor Russ Melton  
Councilmember Gustav Larsson  
Councilmember Glenn Hendricks  
Councilmember Nancy Smith  
Councilmember Michael S. Goldman  
Councilmember Mason Fong

**CLOSED SESSION REPORT**

Vice Mayor Melton reported the Council met in Closed Session held pursuant to California Government Code Section 54957.6: CONFERENCE WITH LABOR NEGOTIATORS Agency designated representatives: Tina Murphy, Director of Human Resources; Kent Steffens. City Manager Employee organization: Sunnyvale Managers Association (SMA) and Sunnyvale Employees Association (SEA); nothing to report.

**SPECIAL ORDER OF THE DAY**

[19-0525](#) SPECIAL ORDER OF THE DAY - Ceremonial Oath of Office for Board and Commission Members

Bonnie Filipovic, Administrative Aide administered the Oath of Office to Personnel Board Member Victor Marsh.

**At this time Council heard Special Orders of the Day for Teen Awareness Month and Older Americans Month concurrently.**

[19-0312](#) SPECIAL ORDER OF THE DAY - Teen Awareness Month

[19-0313](#) SPECIAL ORDER OF THE DAY - Older Americans Month

Mayor Klein presented proclamations to Senior Center volunteers and the Teen Advisory Group declaring the month of May 2019 as Older Americans Month and National Teen Self-Esteem Month in the City of Sunnyvale.

[19-0472](#) SPECIAL ORDER OF THE DAY - Affordable Housing Week

Mayor Klein presented a proclamation in recognition of Affordable Housing Week to Kathy Thibodeaux, founder of KM Thibodeaux Consulting LLC and Board Member of SV@Home.

**ORAL COMMUNICATIONS**

Serge Rudaz spoke regarding increasing gender and economic diversity on the City Council and potential transition to a "4+3" district-based electoral system.

Janette Brambila, Charlene Tan, and Yaneth Sarceno spoke regarding Sunnyvale Community Services' Community Leader/Promotoras de la Comunidad program that provides training and opportunities to low-income families.

Richard Mehlinger invited the City Council to the Silicon Valley PRIDE Picnic on June 8, 2019.

Kevin Jackson shared that Bike to Work Day is scheduled for May 9, 2019 and encouraged those with long commutes to pair bicycling with public transit.

Kristel Wickham spoke regarding Reach Codes, that prioritize electric usage over natural gas usage for buildings and vehicles.

Tara Martin-Milius encouraged the City Council to adopt Reach Codes with an emphasis on rewards rather than punishments to encourage compliance.

**CONSENT CALENDAR**

Zachary Kaufman requested Item 1.F be pulled.

MOTION: Vice Mayor Melton moved and Councilmember Larsson seconded the motion to approve the Consent Calendar Items 1.A through 1.E.

Motion carried with the following vote:



**Yes: 7 -** Mayor Klein  
Vice Mayor Melton  
Councilmember Larsson  
Councilmember Hendricks  
Councilmember Smith  
Councilmember Goldman  
Councilmember Fong

**No: 0**

- 1.A**     [19-0492](#)     Approve City Council Meeting Minutes of April 23, 2019
- 1.B**     [19-0330](#)     Approve the List(s) of Claims and Bills Approved for Payment by the City Manager
- 1.C**     [19-0196](#)     Authorize the Issuance of Purchase Orders to Canon Financial Services, Inc. and Canon Solutions of America, Inc. for the Lease and Maintenance of Multifunction Devices (MFDs) (F19-045)
- 1.D**     [19-0370](#)     Award of a Maintenance and Repair Contract to CEN-PAC Engineering, Inc. for the Removal and Installation of Light Emitting Diode Traffic Signal Modules (F19-119) and Finding of California Environmental Quality Act (CEQA) Categorical Exemption
- 1.E**     [19-0436](#)     Award of Contract to Advance Design Consultants, Inc. for Public Safety Facility Emergency Generator Replacement (F19-111)

- 1.F**      [19-0526](#)      Adopt Ordinance No. 3145-19 Amending the Precise Zoning Plan, Zoning Districts Map, to Rezone certain property located at 1 AMD Place (APN Numbers 205-22-024 and 205-22-025) and 975 Stewart Drive (APN 205-22-028) from MS Industrial-to-Residential R3 (MS/ITR-R3) and MS Industrial-to-Residential R4 (MS/ITR-R4) to Medium Density Residential/ Planned Development (R-3/PD), High Density Residential/Planned Development (R-4/PD), and Public Facilities (PF)

Public Hearing opened at 7:30 p.m.

Zachary Kaufman spoke regarding errata clarifications presented at the April 23, 2019 Council meeting.

Public Hearing closed at 7:33 p.m.

MOTION: Vice Mayor Melton moved and Councilmember Larsson seconded the motion to approve Item 1.F.

**Yes:** 7 - Mayor Klein  
Vice Mayor Melton  
Councilmember Larsson  
Councilmember Hendricks  
Councilmember Smith  
Councilmember Goldman  
Councilmember Fong

**No:** 0

**PUBLIC HEARINGS/GENERAL BUSINESS**

- 2**      [19-0220](#)      Public Hearing to Adopt a Resolution Confirming the Annual Report to Levy and Collect an Annual Assessment for the Downtown Sunnyvale Business Improvement District (BID) for Fiscal Year 2019/2020

Connie Verceles, Assistant to the City Manager provided the staff report.

Mike Johnson, Executive Director Sunnyvale Downtown Association shared a number of events sponsored by the Association.

Public Hearing opened at 7:39 p.m.

No speakers.

Public Hearing closed at 7:39 p.m.

MOTION: Vice Mayor Melton moved and Councilmember Hendricks seconded the motion to approve Alternative 1: Adopt the Resolution to Confirm the Annual Report and Levy and Collect an Annual Assessment for the Downtown Sunnyvale Business Improvement District for Fiscal Year 2019/20.

**Yes: 7 -**    Mayor Klein  
                 Vice Mayor Melton  
                 Councilmember Larsson  
                 Councilmember Hendricks  
                 Councilmember Smith  
                 Councilmember Goldman  
                 Councilmember Fong

**No: 0**

- 3**      [19-0454](#)      Approve Changes to Council Policy 1.1.10 to Update Use Regulations Regarding Storing Outdoor Dining Furniture on Sidewalks on the 100 Block of South Murphy Avenue (Study Issue OCM 17-01) and Finding of Exemption from the California Environmental Quality Act

Lupita Alamos, Senior Management Analyst provided the staff report and presentation.

Public Hearing opened at 7:55 p.m.

Mike Johnson, Executive Director Sunnyvale Downtown Association shared the Association's support of Option 2.

Public Hearing closed at 7:59 p.m.

MOTION: Councilmember Hendricks moved and Councilmember Smith seconded the motion to approve Alternatives 1 and 4: 1. Approve the proposed changes to Council Policy 1.1.10 Use of the Public Sidewalk on the 100 Block of South Murphy Avenue (Attachment 3) and as described in Option 2 in Attachment 1 of the report and direct staff to return in one year for reconsideration of the policy; and, 4. Make the finding that the action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(a).

**Yes: 7 -**    Mayor Klein  
                 Vice Mayor Melton  
                 Councilmember Larsson  
                 Councilmember Hendricks  
                 Councilmember Smith  
                 Councilmember Goldman  
                 Councilmember Fong

**No: 0**

**4**      [19-0510](#)      Approve Draft 2019 Housing and Urban Development (HUD)  
Action Plan

Jenny Carloni, Housing Officer provided the staff report.

Public Hearing opened at 8:13 p.m.

Jordan Dancer, Grants Manager, Next Door Solutions to Domestic Violence described the services offered by her organization and shared her appreciation of the City's funding for the organization.

Chris Anderson, Program Manager, Downtown Streets Team described the services offered by his organization and statistics of program outcomes. He shared his appreciation of the City's support of Downtown Streets Team.

Marie Bernard, Executive Director, Sunnyvale Community Services shared the appreciation of her organization for the City's funding for Sunnyvale Community Services and Downtown Streets Team.

Pilar Furlong, Chief Community Resources Officer, Bill Wilson Center described the services offered by the Bill Wilson Center and shared the organization's appreciation for the City's support.

Public Hearing closed at 8:25 p.m.

MOTION: Councilmember Fong moved and Councilmember Hendricks seconded the motion to approve Alternative 1: Approve the 2019 Action Plan as shown in Attachment 2 of the report.

**Yes: 7 -** Mayor Klein  
Vice Mayor Melton  
Councilmember Larsson  
Councilmember Hendricks  
Councilmember Smith  
Councilmember Goldman  
Councilmember Fong

**No: 0**

- 5      [19-0437](#)      Green Building Program Update: Adopt a Resolution to Update the Green Building Program for Residential Projects, Nonresidential Projects, and Public Facilities, and Find that the Action is Exempt from CEQA Pursuant to CEQA Guidelines Sections 15308, 15061(b)(3), and 15378(b).

Amber Blizinski, Principal Planner provided the staff report and presentation.

Public Hearing opened at 9:53 p.m.

Richard Mehlinger shared his appreciation of the staff work and proposed program; he stated that it may be more appropriate to continue some level of incentives for households that do not fully convert to electric only service until Reach Codes are implemented.

Scott Shell, Principal, EHDD Architects shared his support of the proposed program and promoted the concept of constructing natural gas-free buildings. He requested the City's support in advocating for Reach Codes with the California Public Utilities Commission.

Public Hearing closed at 9:57 p.m.

MOTION: Councilmember Hendricks moved and Councilmember Smith seconded the motion to approve Alternative 1: Adopt a Resolution (Attachment 2 to the report) to Update the Green Building Program for Residential Projects, Nonresidential Projects, and Public Facilities and Find that the Action is Exempt from the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Sections 15308, 15061(b)(3), and 15378(b).

FORMAL AMENDMENT: Vice Mayor Melton moved and Councilmember Goldman seconded the motion to remove the incentive of 120 points with the BuildIt Green Certification Program.

The formal amendment failed by the following vote:

**Yes:** 2 -    Vice Mayor Melton  
                 Councilmember Goldman

**No: 5 -** Mayor Klein  
Councilmember Larsson  
Councilmember Hendricks  
Councilmember Smith  
Councilmember Fong

The main motion carried by the following vote:

**Yes: 7 -** Mayor Klein  
Vice Mayor Melton  
Councilmember Larsson  
Councilmember Hendricks  
Councilmember Smith  
Councilmember Goldman  
Councilmember Fong

**No: 0**

- 6**      [19-0463](#)      Discussion and Possible Action to Modify or Confirm the Structure and Function of the Council Subcommittee to Discuss Items of Mutual Interest with Local School Districts (2x2 Subcommittee)

Kent Steffens, City Manager provided the staff report .

Public hearing opened at 11:17 p.m.

Zachary Kaufman voiced his support of continuing 2x2 subcommittees, stating the subcommittees promote public engagement and transparency.

Public hearing closed at 11:18 p.m.

MOTION: Councilmember Hendricks moved and Councilmember Larsson seconded the motion to approve dissolving the 2x2 subcommittees.

**Yes: 5 -** Mayor Klein  
Councilmember Larsson  
Councilmember Hendricks  
Councilmember Goldman  
Councilmember Fong

**No: 2 -** Vice Mayor Melton  
Councilmember Smith

MOTION: Vice Mayor Melton moved and Councilmember Hendricks seconded the motion to approve extending the meeting beyond 11:30pm.

**Yes: 7 -** Mayor Klein  
Vice Mayor Melton  
Councilmember Larsson  
Councilmember Hendricks  
Councilmember Smith  
Councilmember Goldman  
Councilmember Fong

**No: 0**

**COUNCILMEMBERS REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

Councilmember Larsson reported his attendance at the Calaveras Dam Replacement Project completion celebration. He noted the Calaveras Reservoir, along with two other local reservoirs provide a 3-month reserve of water for the area.

Councilmember Smith shared her attendance at the April 25 Caltrain Modernization (CalMod) Local Policy Makers Group meeting where the topics of the Caltrain Business Plan and grade separations were discussed. The following day she attended a Silicon Valley Clean Energy (SVCE) board meeting. SVCE and other Community Choice Aggregation (CCA) providers are working on joint purchase agreements to obtain lower rates.

**NON-AGENDA ITEMS & COMMENTS**

**-Council**

Councilmember Fong shared his appreciation for the Mayor's comments regarding the recent April 23 El Camino injury incident and the Department of Public Safety's handling of this, and numerous other incidents in the past few weeks.

Councilmember Smith announced that she is organizing the May League of California Cities Peninsula Division meeting. She encouraged her colleagues to attend. The topic is 5G wireless.



**-City Manager**

Kent Steffens, City Manager shared his appreciation for Bonnie Filipovic, Administrative Aide's service as the Clerk for this Council Meeting.

**INFORMATION ONLY REPORTS/ITEMS**

[19-0467](#) Tentative Council Meeting Agenda Calendar

[19-0468](#) Information/Action Items

**ADJOURNMENT**

Mayor Klein adjourned the meeting at 11:43 p.m.



# City of Sunnyvale

## Agenda Item

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**19-0432**

**Agenda Date:** 5/21/2019

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**SUBJECT**

Approve City Council Meeting Minutes of May 14, 2019

**RECOMMENDATION**

Approve the City Council Meeting Minutes of May 14, 2019 as submitted.



# City of Sunnyvale

## Meeting Minutes - Draft City Council

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Tuesday, May 14, 2019

6:00 PM

West Conference Room, City Hall, 456 W.  
Olive Ave., Sunnyvale, CA 94086

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### Special Meeting - Board/Commission Interviews

#### **6 P.M. SPECIAL COUNCIL MEETING (Study Session)**

##### **1 Call to Order in the West Conference Room (Open to the Public)**

Vice Mayor Melton called the meeting to order at 6:00 p.m.

##### **2 Roll Call**

**Present:** 6 - Mayor Larry Klein  
Vice Mayor Russ Melton  
Councilmember Glenn Hendricks  
Councilmember Nancy Smith  
Councilmember Michael S. Goldman  
Councilmember Mason Fong  
**Absent:** 1 - Councilmember Gustav Larsson

##### **3 Public Comment**

None.

##### **4 Study Session**

[19-0101](#) 6 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Board and Commission Interviews

The following individuals were interviewed for vacancies on boards and commissions:

David Simons - Planning Commission

Mark Isaak - Board of Library Trustees

Dawn Hopkins - Heritage Preservation Commission

Barbara Schmidt - Personnel Board

Wendi Zhang - Planning Commission

Daniel Hafeman - Bicycle and Pedestrian Advisory Commission

Carol Weiss - Planning Commission

Murali Srinivasan - Sustainability Commission

Melanie Holthaus - Heritage Preservation Commission (1st preference), Arts Commission (2nd preference), and Housing and Human Services Commission (3rd preference)

Emily White - Housing and Human Services Commission

## **5 Adjourn Special Meeting**

Vice Mayor Melton adjourned the meeting at 8:48 p.m.



# City of Sunnyvale

## Agenda Item

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19-0332

Agenda Date: 5/21/2019

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### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

Pursuant to Sunnyvale Charter Section 802(6), the City Manager has approved for payment claims and bills on the following list(s); and checks have been issued.

<u>List No.</u>	<u>Date</u>	<u>Total Disbursements</u>
970	04-21-19 through 04-27-19	\$6,797,401.76
971	04-28-19 through 05-04-19	\$2,189,130.65

Payments made by the City are controlled in a variety of ways. In general, payments are reviewed by the appropriate City staff for compliance with the goods or services provided. Any discrepancies are resolved and re-submitted for payment. Different levels of dollar amounts for payments require varying levels of approval within the organization. Ultimately, payments are reviewed and processed by the Finance Department. Budgetary control is set by Council through the budget adoption resolution.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

#### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

#### **RECOMMENDATION**

Approve the list(s) of claims and bills.

Prepared by: Timothy J. Kirby, Director of Finance  
Reviewed by: Jaqui Guzmán, Deputy City Manager  
Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. List(s) of Claims and Bills Approved for Payment

5/3/2019

City of Sunnyvale

**LIST # 970**

Page 1

**List of All Claims and Bills Approved for Payment**  
**For Payments Dated 4/21/2019 through 4/27/2019**

Sorted by Payment Number

Payment No.	Payment Date	Vendor Name	Invoice No.	Description	Invoice Amount	Discount Taken	Amount Paid	Payment Total
xxx313078	4/23/19	ACADEMY OF TRUCK DRIVING INC	1858	DED Services/Training - Training	504.10	0.00	504.10	<b>\$504.10</b>
xxx313079	4/23/19	AGILENT TECHNOLOGIES INC	116821291	General Supplies	252.07	0.00	252.07	<b>\$252.07</b>
xxx313080	4/23/19	AIRGAS USA LLC	9087082410	General Supplies	105.62	0.00	105.62	<b>\$265.85</b>
			9960381735	Equipment Rental/Lease	160.23	0.00	160.23	
xxx313081	4/23/19	AMFASOFT CORP	ABBAS-02	DED Services/Training - Training	432.50	0.00	432.50	<b>\$432.50</b>
xxx313082	4/23/19	BAY AREA NEWS GROUP DIGITAL FIRST MEDIA	0006300690	Advertising Services	232.00	0.00	232.00	<b>\$1,832.00</b>
			0006305418	Advertising Services	980.00	0.00	980.00	
			0006306279	Advertising Services	144.00	0.00	144.00	
			0006310461	Advertising Services	179.00	0.00	179.00	
			0006313919	Advertising Services	297.00	0.00	297.00	
xxx313083	4/23/19	BAY AREA TRENCHLESS	32919	Construction Services	5,900.00	0.00	5,900.00	<b>\$12,400.00</b>
			41019	Construction Services	5,900.00	0.00	5,900.00	
			4219	Construction Services	600.00	0.00	600.00	
xxx313084	4/23/19	BAY-VALLEY PEST CONTROL INC	0255385	Facilities Maintenance & Repair Labor	42.00	0.00	42.00	<b>\$680.00</b>
			0255837	Facilities Maintenance & Repair Labor	43.00	0.00	43.00	
			0255838	Facilities Maintenance & Repair Labor	43.00	0.00	43.00	
			0255839	Facilities Maintenance & Repair Labor	43.00	0.00	43.00	
			0255840	Facilities Maintenance & Repair Labor	63.00	0.00	63.00	
			0255841	Facilities Maintenance & Repair Labor	43.00	0.00	43.00	
			0255842	Facilities Maintenance & Repair Labor	43.00	0.00	43.00	
			0255850	Facilities Maintenance & Repair Labor	32.00	0.00	32.00	
			0255851	Facilities Maintenance & Repair Labor	56.00	0.00	56.00	
			0255853	Facilities Maintenance & Repair Labor	42.00	0.00	42.00	
			0255854	Facilities Maintenance & Repair Labor	42.00	0.00	42.00	
			0255855	Facilities Maintenance & Repair Labor	42.00	0.00	42.00	
			0255858	Facilities Maintenance & Repair Labor	42.00	0.00	42.00	
			0255882	Services Maintain Land Improv	62.00	0.00	62.00	
			255856	Facilities Maintenance & Repair Labor	42.00	0.00	42.00	
xxx313086	4/23/19	BIBLIOTHECA LLC	SI0050299-US	Library Periodicals/Databases	334.94	0.00	334.94	<b>\$334.94</b>

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xxx313087	4/23/19	BOETHING TREELAND FARMS INC	SI-1190929	Materials - Land Improve	801.25	0.00	801.25	<b>\$2,186.81</b>
			SI-1190963	Materials - Land Improve	1,385.56	0.00	1,385.56	
xxx313088	4/23/19	BOUND TREE MEDICAL LLC	83172937	Supplies, First Aid	146.65	0.00	146.65	<b>\$2,314.42</b>
			83172938	Supplies, First Aid	2,167.77	0.00	2,167.77	
xxx313089	4/23/19	C OVERAA & CO	PRMRYTRTMT	Construction Services	2,696,937.99	0.00	2,696,937.99	<b>\$2,696,937.99</b>
			2#20					
xxx313090	4/23/19	CALCON SYSTEMS INC	44096	Contracts/Service Agreements	1,853.66	0.00	1,853.66	<b>\$2,548.66</b>
			44104	Contracts/Service Agreements	695.00	0.00	695.00	
xxx313091	4/23/19	CALIFORNIA TRENCHLESS INC	SNTRYSEWR17#	Construction Project Contract Retainage	39,822.50	0.00	39,822.50	<b>\$39,822.50</b>
			R					
xxx313092	4/23/19	CALTEST ANALYTICAL LABORATORY	597334	Water Lab Services	173.49	0.00	173.49	<b>\$1,162.64</b>
			597433	Water Lab Services	57.83	0.00	57.83	
			597474	Water Lab Services	700.00	0.00	700.00	
			597510	Water Lab Services	57.83	0.00	57.83	
			597511	Water Lab Services	57.83	0.00	57.83	
			597512	Water Lab Services	115.66	0.00	115.66	
xxx313094	4/23/19	CIMEXTEK INC	7839	Professional Services	200.00	0.00	200.00	<b>\$200.00</b>
xxx313095	4/23/19	CORIX WATER PRODUCTS US INC	17913007584	Inventory Purchase	1,024.59	9.40	1,015.19	<b>\$3,608.08</b>
			17913007751	Inventory Purchase	2,593.56	23.79	2,569.77	
			17913008353	Inventory Purchase	19.27	0.18	19.09	
			17913009088	Inventory Purchase	328.74	3.02	325.72	
			17915000675	Inventory Purchase	-23.46	0.00	-23.46	
			17915000713	Inventory Purchase	-298.23	0.00	-298.23	
xxx313096	4/23/19	CORODATA SHREDDING INC	DN1223293	Recycling Services	1,375.00	0.00	1,375.00	<b>\$1,375.00</b>
xxx313097	4/23/19	D & M TRAFFIC SERVICES INC	64258	Inventory Purchase	1,140.69	0.00	1,140.69	<b>\$1,140.69</b>
xxx313098	4/23/19	DANIEL HOWARD	03/06-08/2019	Training and Conferences	693.30	0.00	693.30	<b>\$693.30</b>
xxx313099	4/23/19	DAVID SIMONS	030619-030819	Training and Conferences	669.08	0.00	669.08	<b>\$669.08</b>
xxx313100	4/23/19	DEBRA CHROMCZAK	658	Consultants	2,826.25	0.00	2,826.25	<b>\$2,826.25</b>
xxx313101	4/23/19	DEPARTMENT OF JUSTICE	364550	Contracts/Service Agreements	983.00	0.00	983.00	<b>\$983.00</b>
xxx313102	4/23/19	EOA INC	SU60-0219	Engineering Services	1,663.88	0.00	1,663.88	<b>\$1,663.88</b>
xxx313103	4/23/19	ETMS LLC	4419	Consultants	2,250.00	0.00	2,250.00	<b>\$2,250.00</b>
xxx313104	4/23/19	FERGUSON ENTERPRISES INC 3326						<b>\$2,718.28</b>



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			0134712	General Supplies	2,479.39	0.00	2,479.39	
			0134751	General Supplies	238.89	0.00	238.89	
xxx313105	4/23/19	FOSTER BROS SECURITY SYSTEMS INC	309042	Bldg Maint Matls & Supplies	519.67	0.00	519.67	<b>\$1,524.65</b>
			309198	Bldg Maint Matls & Supplies	1,004.98	0.00	1,004.98	
xxx313106	4/23/19	GARDENLAND POWER EQUIPMENT	662256	Misc Equip Maint & Repair - Labor	54.74	0.00	54.74	<b>\$84.39</b>
			662256	Misc Equip Maint & Repair - Materials	29.65	0.00	29.65	
xxx313107	4/23/19	GETINGE USA SALES LLC	6990955355	General Supplies	1,631.33	0.00	1,631.33	<b>\$1,631.33</b>
xxx313108	4/23/19	GOLDEN BAY CONSTRUCTION INC	PRKSLOTREHB #R	Construction Project Contract Retainage	18,073.52	0.00	18,073.52	<b>\$18,073.52</b>
xxx313109	4/23/19	GOLDER ASSOC INC	543296	Engineering Services	3,240.68	0.00	3,240.68	<b>\$3,240.68</b>
xxx313110	4/23/19	GOODYEAR COMMERCIAL TIRE & SERVICE CTR	189-1101079	Inventory Purchase	214.30	0.00	214.30	<b>\$214.30</b>
xxx313111	4/23/19	GREENSIDE SUPPLY & SERVICE	039043	Inventory Purchase	235.44	0.00	235.44	<b>\$176.58</b>
			039255	Inventory Purchase	-58.86	0.00	-58.86	
xxx313112	4/23/19	HINDERLITER DE LLAMAS & ASSOC	0030794-IN	Sales And Use Tax	43,487.37	0.00	43,487.37	<b>\$43,487.37</b>
xxx313113	4/23/19	HOSPITAL MAINTENANCE CONSULTANTS	122818-171-1	Misc Equip Maint & Repair - Labor	492.00	0.00	492.00	<b>\$539.60</b>
			122818-171-1	Misc Equip Maint & Repair - Materials	47.60	0.00	47.60	
xxx313114	4/23/19	HYDROSCIENCE ENGINEERS INC	262013058	Professional Services	3,000.00	0.00	3,000.00	<b>\$3,000.00</b>
xxx313115	4/23/19	INSIGHT PUBLIC SECTOR INC	1100657518	Software Licensing & Support	1,214.00	0.00	1,214.00	<b>\$1,214.00</b>
xxx313116	4/23/19	INTERIORS & TEXTILES CORP	744	Facilities Maintenance & Repair Labor	375.00	0.00	375.00	<b>\$375.00</b>
xxx313117	4/23/19	INTERNATIONAL TREE & LANDSCAPE SERVICE	1137	Services Maintain Land Improv	4,580.00	0.00	4,580.00	<b>\$4,580.00</b>
xxx313118	4/23/19	JAVELCO EQUIPMENT SERVICE INC	54737	Misc Equip Maint & Repair - Labor	24.80	0.00	24.80	<b>\$244.80</b>
			54737	Misc Equip Maint & Repair - Materials	220.00	0.00	220.00	
xxx313119	4/23/19	JAVIER COBOS	19-159	DED Services/Training - Books	27.64	0.00	27.64	<b>\$27.64</b>
xxx313120	4/23/19	JOHN HOWE	03/06-08/2019	Training and Conferences	693.01	0.00	693.01	<b>\$693.01</b>
xxx313121	4/23/19	KAISER FOUNDATION HEALTH PLAN INC	2073	City Wellness Program	375.00	0.00	375.00	<b>\$375.00</b>
xxx313122	4/23/19	KELLY MOORE PAINT CO INC	820-378535	Bldg Maint Matls & Supplies	41.17	0.00	41.17	<b>\$58.82</b>
			820-378536	Bldg Maint Matls & Supplies	17.65	0.00	17.65	
xxx313124	4/23/19	KIDZ LOVE SOCCER	KLS2019JF	Rec Instructors/Officials	4,464.88	0.00	4,464.88	<b>\$4,464.88</b>
xxx313125	4/23/19	L N CURTIS & SONS INC	CM14997	Miscellaneous Equipment	-257.24	0.00	-257.24	<b>\$4,245.55</b>
			INV253941	Miscellaneous Equipment	257.24	0.00	257.24	

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			INV272587	Inventory Purchase	626.75	0.00	626.75	
			INV272599	Clothing, Uniforms & Access	2,714.10	0.00	2,714.10	
			INV273405	Clothing, Uniforms & Access	904.70	0.00	904.70	
xxx313126	4/23/19	LC ACTION POLICE SUPPLY	394591	General Supplies	87.09	0.00	87.09	<b>\$1,916.61</b>
			394734	General Supplies	1,709.67	0.00	1,709.67	
			394784	General Supplies	119.85	0.00	119.85	
xxx313127	4/23/19	LOCAL GOVERNMENT PUBLICATIONS	19-446	Books & Publications	143.56	0.00	143.56	<b>\$143.56</b>
xxx313128	4/23/19	MM COMMUNICATIONS	INV-0414	Miscellaneous Services	170.00	0.00	170.00	<b>\$470.00</b>
			INV-0415	Miscellaneous Services	300.00	0.00	300.00	
xxx313129	4/23/19	MALLORY SAFETY & SUPPLY LLC	4630402	Inventory Purchase	210.58	0.00	210.58	<b>\$444.93</b>
			4630801	Inventory Purchase	234.35	0.00	234.35	
xxx313130	4/23/19	MCLAUGHLIN PAINTING	7123028	Miscellaneous Services	292.00	0.00	292.00	<b>\$292.00</b>
xxx313131	4/23/19	MICROBIZ SECURITY COMPANY	57854	Facilities Maintenance & Repair Labor	336.00	0.00	336.00	<b>\$336.00</b>
xxx313132	4/23/19	MIDWEST TAPE	97180463	Library Acquis, Audio/Visual	298.24	0.00	298.24	<b>\$328.31</b>
			97185518	Library Materials Preprocessing	47.85	0.00	47.85	
			97219204	Library Acquis, Audio/Visual	-16.33	0.00	-16.33	
			97232386	Library Materials Preprocessing	-1.45	0.00	-1.45	
xxx313133	4/23/19	MUNICIPAL MAINTENANCE EQUIPMENT INC	0134433-IN	Auto Maint & Repair - Labor	3,135.00	0.00	3,135.00	<b>\$5,275.37</b>
			0134433-IN	Auto Maint & Repair - Materials	1,016.62	0.00	1,016.62	
			0135584-IN	Automotive Maintenance & Repair Labor	2,268.26	0.00	2,268.26	
			0136805-CM	Automotive Maintenance & Repair Labor	-1,144.51	0.00	-1,144.51	
xxx313134	4/23/19	NAPA AUTO PARTS	5983-462863	Inventory Purchase	238.03	4.76	233.27	<b>\$233.27</b>
xxx313135	4/23/19	NEWCOMB MECHANICAL INC	11907	Bldg Maint Matls & Supplies	2,877.60	0.00	2,877.60	<b>\$2,877.60</b>
xxx313136	4/23/19	NUTRIEN AG SOLUTIONS, INC	38338289	Materials - Land Improve	583.53	0.00	583.53	<b>\$583.53</b>
xxx313137	4/23/19	ORLANDI TRAILER INC	178562	Parts, Vehicles & Motor Equip	25.61	0.00	25.61	<b>\$25.61</b>
xxx313138	4/23/19	OVERDRIVE INC	00910DA1907210	Library Periodicals/Databases	277.95	0.00	277.95	<b>\$277.95</b>
xxx313139	4/23/19	P&R PAPER SUPPLY CO INC	30250872-00	Inventory Purchase	1,464.96	0.00	1,464.96	<b>\$1,464.96</b>
xxx313140	4/23/19	PACIFIC WEST SECURITY INC	17965	Facilities Maintenance & Repair Labor	205.00	0.00	205.00	<b>\$205.00</b>
xxx313141	4/23/19	PEARSON BUICK GMC	335689	Parts, Vehicles & Motor Equip	24.75	0.00	24.75	<b>\$92.55</b>
			335906	Parts, Vehicles & Motor Equip	67.80	0.00	67.80	

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xxx313142	4/23/19	PETER WAKEFIELD	19-157	DED Services/Training - Books	140.47	0.00	140.47	<b>\$140.47</b>
xxx313143	4/23/19	PETERSON	PC240033770	Miscellaneous Equipment Parts & Supplies	568.02	0.00	568.02	<b>\$568.02</b>
xxx313144	4/23/19	PINE CONE LUMBER CO INC	552	Materials - Land Improve	8.30	0.00	8.30	<b>\$132.02</b>
			600	Materials - Land Improve	123.72	0.00	123.72	
xxx313145	4/23/19	POWER PLAN - OIB	11410466	Parts, Vehicles & Motor Equip	25.90	0.00	25.90	<b>\$25.90</b>
xxx313146	4/23/19	PRO-SWEEP INC	262709	Services Maintain Land Improv	832.00	0.00	832.00	<b>\$1,352.00</b>
			262710	Services Maintain Land Improv	520.00	0.00	520.00	
xxx313147	4/23/19	RASH CURTIS & ASSOC	662700000190	Financial Services	381.86	0.00	381.86	<b>\$2,174.86</b>
			662700000222	Financial Services	78.81	0.00	78.81	
			662700000246	Financial Services	478.32	0.00	478.32	
			662700000274	Financial Services	76.82	0.00	76.82	
			662700000292	Financial Services	0.60	0.00	0.60	
			662700000326	Financial Services	72.69	0.00	72.69	
			662700000335	Financial Services	687.76	0.00	687.76	
			662700000356	Financial Services	78.26	0.00	78.26	
			662700000361	Financial Services	218.13	0.00	218.13	
			663000000028	Financial Services	101.61	0.00	101.61	
xxx313148	4/23/19	READYREFRESH BY NESTLE	19D0023360647	General Supplies	1.08	0.00	1.08	<b>\$84.22</b>
			19D5740154009	General Supplies	27.50	0.00	27.50	
			19D5740156004	General Supplies	55.64	0.00	55.64	
xxx313149	4/23/19	REED & GRAHAM INC	942777	Materials - Land Improve	430.67	0.00	430.67	<b>\$11,658.32</b>
			942900	Materials - Land Improve	4,318.96	0.00	4,318.96	
			943013	Materials - Land Improve	1,546.78	0.00	1,546.78	
			943115	Materials - Land Improve	885.64	0.00	885.64	
			943310	Materials - Land Improve	1,591.31	0.00	1,591.31	
			943411	Materials - Land Improve	2,884.96	0.00	2,884.96	
xxx313150	4/23/19	ROHINI PATEL	19-160	DED Services/Training - Support Services	534.00	0.00	534.00	<b>\$534.00</b>
xxx313151	4/23/19	SC FUELS	1405476-IN	Inventory Purchase	113.09	0.00	113.09	<b>\$113.09</b>
xxx313152	4/23/19	SC FUELS	3895399	Inventory Purchase	24,345.16	0.00	24,345.16	<b>\$24,345.16</b>
xxx313153	4/23/19	SAFETY KLEEN SYSTEMS INC	79418468	HazMat Disposal - Hazardous Waste Disposal	250.00	0.00	250.00	<b>\$937.90</b>

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			79418469	HazMat Disposal - Hazardous Waste Disposal	842.52	0.00	842.52	
			79446275	HazMat Disposal - Hazardous Waste Disposal	65.00	0.00	65.00	
			79618925	HazMat Disposal - Hazardous Waste Disposal	30.00	0.00	30.00	
			79626091	Fuel, Oil & Lubricants	45.00	0.00	45.00	
			CO14221189	HazMat Disposal - Hazardous Waste Disposal	-214.62	0.00	-214.62	
			CO14221197	HazMat Disposal - Hazardous Waste Disposal	-80.00	0.00	-80.00	
xxx313154	4/23/19	SAFEWAY INC	431399-041119	General Supplies	43.68	0.00	43.68	<b>\$116.70</b>
			433459-041519	General Supplies	9.38	0.00	9.38	
			722058-040519	General Supplies	38.68	0.00	38.68	
			728984-041719	General Supplies	24.96	0.00	24.96	
xxx313155	4/23/19	SAN FRANCISCO BAY BIRD OBSERVATORY	1318	Water Lab Services	1,729.80	0.00	1,729.80	<b>\$1,729.80</b>
xxx313156	4/23/19	SAN JOSE CONSERVATION CORPS	7181	Recycling Services	5,416.66	0.00	5,416.66	<b>\$5,416.66</b>
xxx313157	4/23/19	SANACT INC	17236764	Construction Services	41,675.00	0.00	41,675.00	<b>\$83,350.00</b>
			17236765	Construction Services	41,675.00	0.00	41,675.00	
xxx313158	4/23/19	SANTA CLARA VALLEY WATER DISTRICT	GM101435	Taxes & Licenses - Misc	6,522.34	0.00	6,522.34	<b>\$6,522.34</b>
xxx313159	4/23/19	SHRED-IT USA	8126948584	Records Related Services	124.68	0.00	124.68	<b>\$924.68</b>
			8127035434	Recycling Services	800.00	0.00	800.00	
xxx313160	4/23/19	SIMPLE BOOTH	D3058	Software Licensing & Support	2,500.00	0.00	2,500.00	<b>\$2,500.00</b>
xxx313161	4/23/19	SMART & FINAL INC	044562-041719	General Supplies	61.00	0.00	61.00	<b>\$61.00</b>
xxx313162	4/23/19	STEVENS CREEK CHRYSLER JEEP DODGE	361474	Parts, Vehicles & Motor Equip	190.91	0.00	190.91	<b>\$190.91</b>
xxx313163	4/23/19	SUE HARRISON	03/06-08/2019	Training and Conferences	668.11	0.00	668.11	<b>\$668.11</b>
xxx313164	4/23/19	SUNNYVALE SISTER CITY ASSOCIATION	041619 CK REQ	Special Events	2,916.44	0.00	2,916.44	<b>\$2,916.44</b>
xxx313165	4/23/19	TEAMDYNAMIX SOLUTIONS LLC	4698	Professional Services	1,169.38	0.00	1,169.38	<b>\$1,169.38</b>
xxx313166	4/23/19	THOMAS PLUMBING INC	2449	Facilities Maint & Repair - Labor	292.50	0.00	292.50	<b>\$462.36</b>
			2449	Facilities Maint & Repair - Materials	169.86	0.00	169.86	
xxx313167	4/23/19	UNITED RENTALS	165469049-002	Equipment Rental/Lease	1,670.63	0.00	1,670.63	<b>\$3,341.26</b>
			165469049-003	Equipment Rental/Lease	1,670.63	0.00	1,670.63	

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xxx313168	4/23/19	UNIVAR USA INC	SJ934774	Chemicals	3,205.33	0.00	3,205.33	<b>\$12,427.25</b>
			SJ934929	Chemicals	4,548.11	0.00	4,548.11	
			SJ935745	Chemicals	4,673.81	0.00	4,673.81	
xxx313169	4/23/19	VWR INTERNATIONAL LLC	8085767298	General Supplies	205.16	0.00	205.16	<b>\$403.47</b>
			8085838441	General Supplies	139.41	0.00	139.41	
			8085841677	General Supplies	58.90	0.00	58.90	
xxx313170	4/23/19	VALLEY OIL CO	44219	Fuel, Oil & Lubricants	423.79	0.00	423.79	<b>\$35,152.52</b>
			44319	Fuel, Oil & Lubricants	311.74	0.00	311.74	
			968400	Inventory Purchase	16,945.21	0.00	16,945.21	
			968771	Inventory Purchase	17,471.78	0.00	17,471.78	
xxx313171	4/23/19	VERIZON WIRELESS	9827802112	Utilities - Mobile Phones - City Mobile Phones	50.34	0.00	50.34	<b>\$50.34</b>
xxx313172	4/23/19	W G FRITZ CONSTRUCTION INC	4049	Facilities Maint & Repair - Labor	1,888.21	0.00	1,888.21	<b>\$3,433.11</b>
			4049	Facilities Maint & Repair - Materials	1,544.90	0.00	1,544.90	
xxx313173	4/23/19	WOWZY CREATION CORP	92435	Customized Products	112.34	0.00	112.34	<b>\$361.26</b>
			92525	Customized Products	126.58	0.00	126.58	
			92560	Customized Products	122.34	0.00	122.34	
xxx313174	4/23/19	WENDY NASH	19-158	DED Services/Training - Books	139.00	0.00	139.00	<b>\$139.00</b>
xxx313175	4/23/19	WINSUPPLY OF SILICON VALLEY	002105 00	Miscellaneous Equipment Parts & Supplies	299.53	0.00	299.53	<b>\$299.53</b>
xxx313176	4/23/19	WITMER TYSON IMPORTS INC	T13069	Canine Program Expenditures	693.60	0.00	693.60	<b>\$693.60</b>
xxx313177	4/23/19	ZALCO LABORATORIES	1904036	Miscellaneous Services	390.00	0.00	390.00	<b>\$390.00</b>
xxx313178	4/23/19	PACIFIC GAS & ELECTRIC CO	05225890200319	Utilities - Gas	194.75	0.00	194.75	<b>\$10,256.38</b>
			05225892760319	Utilities - Electric	1,964.37	0.00	1,964.37	
			05225894560319	Utilities - Electric	1,075.29	0.00	1,075.29	
			06025923000319	Utilities - Electric	16.32	0.00	16.32	
			06037193330319	Utilities - Electric	0.07	0.00	0.07	
			06040860490319	Utilities - Electric	21.69	0.00	21.69	
			06072000410319	Utilities - Electric	16.39	0.00	16.39	
			06075132700319	Utilities - Electric	14.11	0.00	14.11	
			06075133000319	Utilities - Electric	11.28	0.00	11.28	
			06075135280319	Utilities - Electric	31.37	0.00	31.37	

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			06075135640319	Utilities - Electric	6.50	0.00	6.50	
			06075139670319	Utilities - Electric	0.65	0.00	0.65	
			06081240040319	Utilities - Electric	38.07	0.00	38.07	
			100023460419	Utilities - Electric	1,328.35	0.00	1,328.35	
			14823837850319	Utilities - Electric	37.49	0.00	37.49	
			18068041900319	Utilities - Electric	74.35	0.00	74.35	
			19867842520319	Utilities - Electric	34.31	0.00	34.31	
			38257235830319	Utilities - Electric	62.97	0.00	62.97	
			39509111000319	Utilities - Electric	38.08	0.00	38.08	
			43142590150319	Utilities - Gas	8.66	0.00	8.66	
			43142590250319	Utilities - Gas	2,115.39	0.00	2,115.39	
			43142590300319	Utilities - Gas	82.35	0.00	82.35	
			43142591280319	Utilities - Electric	438.44	0.00	438.44	
			43142597200319	Utilities - Electric	697.28	0.00	697.28	
			43142597640319	Utilities - Electric	1,136.41	0.00	1,136.41	
			43142599650319	Utilities - Electric	582.16	0.00	582.16	
			48131400740319	Utilities - Electric	9.65	0.00	9.65	
			63004478110319	Utilities - Electric	46.56	0.00	46.56	
			66172622090319	Utilities - Electric	20.76	0.00	20.76	
			97306197490319	Utilities - Electric	6.31	0.00	6.31	
			97322830180319	Utilities - Electric	87.58	0.00	87.58	
			97322834740319	Utilities - Electric	20.68	0.00	20.68	
			97386482120319	Utilities - Electric	37.74	0.00	37.74	
xxx313181	4/23/19	PALO ALTO FACILITY	B1900308	Deposits Payable - Warrants	15,000.00	0.00	15,000.00	<b>\$15,000.00</b>
xxx313182	4/23/19	SANTA CLARA COUNTY DISTRICT ATTORNEY	AF-1808-27056	Return of Seized, Forfeiture or Found Funds	16,942.53	0.00	16,942.53	<b>\$16,942.53</b>
xxx313183	4/23/19	THE ARCANUM GROUP	000949	General Supplies	88,897.06	0.00	88,897.06	<b>\$100,498.81</b>
			000950	General Supplies	11,601.75	0.00	11,601.75	
xxx313184	4/23/19	THE EVENT HEROES	40819	Special Events	900.00	0.00	900.00	<b>\$900.00</b>
xxx313185	4/23/19	JAN & HELEN NILSSON	117751-34810	Refund Utility Account Credit	6,314.08	0.00	6,314.08	<b>\$6,314.08</b>
xxx313186	4/23/19	PACIFIC RIDGE BUILDERS INC	BL074098 18-19	Business License Tax	134.32	0.00	134.32	<b>\$134.32</b>
xxx313187	4/23/19	PATIO DESIGNERS						<b>\$127.60</b>

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			BL075927 19-20	Business License Tax	127.60	0.00	127.60	
xxx313188	4/23/19	ROCCO'S BLUE MAX	IN000087392	Refund Over/Duplicate Payment	6.99	0.00	6.99	<b>\$6.99</b>
xxx313189	4/23/19	SERVICE UNLIMITED INC	BL072650 19-20	Business License Tax	30.40	0.00	30.40	<b>\$30.40</b>
xxx313190	4/23/19	SUGAR G ROBINSON	BL064398 19-20	Business License Tax	205.17	0.00	205.17	<b>\$205.17</b>
xxx313191	4/23/19	TODD W ROW CONSTRUCTION	BL073658 17-18	Business License Tax	70.82	0.00	70.82	<b>\$70.82</b>
xxx313192	4/23/19	TRI-BAY ELECTRIC INC	BL069928 19-20	Business License Tax	116.39	0.00	116.39	<b>\$116.39</b>
xxx313193	4/25/19	4LEAF INC	J3567T	Consultants	10,260.00	0.00	10,260.00	<b>\$10,260.00</b>
xxx313194	4/25/19	BABBITT BEARING CO	149843	Miscellaneous Equipment Parts & Supplies	2,346.23	0.00	2,346.23	<b>\$2,346.23</b>
xxx313195	4/25/19	BLAINE TECH SERVICES INC	1BLWJ-181207W	Construction Services	4,950.00	0.00	4,950.00	<b>\$4,950.00</b>
xxx313196	4/25/19	BOBCAT COMPANY	1144211	Miscellaneous Equipment Parts & Supplies	2,656.96	0.00	2,656.96	<b>\$2,656.96</b>
xxx313197	4/25/19	BUCKLES-SMITH ELECTRIC CO	3144942-00	Miscellaneous Equipment Parts & Supplies	2,794.11	0.00	2,794.11	<b>\$2,794.11</b>
xxx313198	4/25/19	BURTONS FIRE INC	S44022	Parts, Vehicles & Motor Equip	164.27	0.00	164.27	<b>\$1,232.87</b>
			S44097	Parts, Vehicles & Motor Equip	131.64	0.00	131.64	
			S44358	Parts, Vehicles & Motor Equip	221.18	0.00	221.18	
			S44415	Parts, Vehicles & Motor Equip	437.61	0.00	437.61	
			S44591	Parts, Vehicles & Motor Equip	278.17	0.00	278.17	
xxx313199	4/25/19	C OVERAA & CO	190179	Misc Equip Maint & Repair - Labor	29,286.00	0.00	29,286.00	<b>\$34,054.00</b>
			190179	Misc Equip Maint & Repair - Materials	4,768.00	0.00	4,768.00	
xxx313200	4/25/19	CALIFA GROUP	2080	Library Periodicals/Databases	35,073.56	0.00	35,073.56	<b>\$35,073.56</b>
xxx313201	4/25/19	CALTEST ANALYTICAL LABORATORY	597513	Water Lab Services	115.66	0.00	115.66	<b>\$115.66</b>
xxx313202	4/25/19	CAPTURE TECHNOLOGIES INC	59870	Software Licensing & Support	9,373.99	0.00	9,373.99	<b>\$22,143.99</b>
			59870	Hardware Maintenance	12,770.00	0.00	12,770.00	
xxx313203	4/25/19	CHAITALI HEINZE	208546-0036258	DED Services/Training - Books	100.08	0.00	100.08	<b>\$100.08</b>
xxx313204	4/25/19	CLEANRIVER RECYCLING SOLUTIONS	IN19040025	General Supplies	979.00	0.00	979.00	<b>\$979.00</b>
xxx313205	4/25/19	CONSOLIDATED PARTS INC	5054405	Electrical Parts & Supplies	615.85	0.00	615.85	<b>\$615.85</b>
xxx313206	4/25/19	CONSTANT CONTACT INC	UZLSICDAB112	Miscellaneous Services	3,654.00	0.00	3,654.00	<b>\$3,654.00</b>
			19					
xxx313207	4/25/19	CORIX WATER PRODUCTS US INC	17913009077	Water Backflow Valves	2,211.36	0.00	2,211.36	<b>\$2,211.36</b>
xxx313208	4/25/19	COUNTY OF SANTA CLARA	NV18-023REV	Election Services	451.00	0.00	451.00	<b>\$451.00</b>
xxx313209	4/25/19	CRISTIAN ARRIAGA	CMS-BA-4ARE	Rec Instructors/Officials	1,000.00	0.00	1,000.00	<b>\$1,000.00</b>
xxx313210	4/25/19	D & M TRAFFIC SERVICES INC						<b>\$1,733.10</b>

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			64230	Inventory Purchase	1,733.10	0.00	1,733.10	
xxx313211	4/25/19	EOA INC	SU58-0119	Consultants	33,637.98	0.00	33,637.98	<b>\$54,137.32</b>
			SU58-0219	Consultants	20,499.34	0.00	20,499.34	
xxx313212	4/25/19	FARANAK PARSINEJAD	CK REQ 19-163	DED Services/Training - Books	177.71	0.00	177.71	<b>\$177.71</b>
xxx313213	4/25/19	FLEETPRIDE INC	25503308	Inventory Purchase	247.94	0.00	247.94	<b>\$247.94</b>
xxx313214	4/25/19	FOSTER BROS SECURITY SYSTEMS INC	309098	Miscellaneous Services	72.05	0.00	72.05	<b>\$72.05</b>
xxx313215	4/25/19	GARDENLAND POWER EQUIPMENT	658726	Misc Equip Maint & Repair - Materials	134.21	0.00	134.21	<b>\$134.21</b>
xxx313216	4/25/19	GOODYEAR COMMERCIAL TIRE & SERVICE CTR	189-1101070	Inventory Purchase	1,011.78	0.00	1,011.78	<b>\$1,313.78</b>
			189-1101102	Inventory Purchase	302.00	0.00	302.00	
xxx313217	4/25/19	HUMANE SOCIETY SILICON VALLEY	125437	Contracts/Service Agreements	14,087.31	0.00	14,087.31	<b>\$14,087.31</b>
xxx313218	4/25/19	HYDROSCIENCE ENGINEERS INC	262001097	Engineering Services	460.00	0.00	460.00	<b>\$460.00</b>
xxx313219	4/25/19	ID WHOLESALER	1563312	Bldg Maint Matls & Supplies	673.70	0.00	673.70	<b>\$673.70</b>
xxx313220	4/25/19	INFRASTRUCTURE ENGINEERING CORP	11545	Engineering Services	555.00	0.00	555.00	<b>\$555.00</b>
xxx313221	4/25/19	JAKES OF SUNNYVALE	41619	Food Products	233.92	0.00	233.92	<b>\$233.92</b>
xxx313222	4/25/19	KME FIRE APPARATUS	CA 548018	Parts, Vehicles & Motor Equip	267.99	0.00	267.99	<b>\$357.53</b>
			CA 548036	Parts, Vehicles & Motor Equip	89.54	0.00	89.54	
xxx313223	4/25/19	KEN OLEVSON	030619-030819	Training and Conferences	824.35	0.00	824.35	<b>\$824.35</b>
xxx313224	4/25/19	KIMLEY HORN & ASSOC INC	13149081	Engineering Services	17,725.79	0.00	17,725.79	<b>\$17,725.79</b>
xxx313225	4/25/19	L N CURTIS & SONS INC	INV262653	Supplies, Fire Protection	790.25	0.00	790.25	<b>\$790.25</b>
xxx313226	4/25/19	LAVANYA DUGGIRALA	1UCINETID	DED Services/Training - Books	10.00	0.00	10.00	<b>\$32.30</b>
			392988-3208241	DED Services/Training - Books	22.30	0.00	22.30	
xxx313227	4/25/19	LAWSON PRODUCTS INC	9306647270	Miscellaneous Equipment Parts & Supplies	647.75	0.00	647.75	<b>\$647.75</b>
xxx313228	4/25/19	MAD SCIENCE OF THE BAY AREA	23149	Professional Services	225.00	0.00	225.00	<b>\$225.00</b>
xxx313229	4/25/19	MAKAI SOLUTIONS	1060	Equipment Maintenance & Repair Labor	425.00	0.00	425.00	<b>\$425.00</b>
xxx313230	4/25/19	MALLORY SAFETY & SUPPLY LLC	4630076	Supplies, Safety	315.20	0.00	315.20	<b>\$432.92</b>
			4630438	Inventory Purchase	117.72	0.00	117.72	
xxx313231	4/25/19	MARINA WIDJAJA	CK REQ 19-167	DED Services/Training - Books	551.87	0.00	551.87	<b>\$551.87</b>
xxx313232	4/25/19	MCMaster CARR SUPPLY CO	92368713	Miscellaneous Equipment Parts & Supplies	907.55	0.00	907.55	<b>\$1,043.51</b>
			92419464	Miscellaneous Equipment Parts & Supplies	135.96	0.00	135.96	
xxx313233	4/25/19	MIDWEST TAPE	97242207	Library Acquis, Audio/Visual	44.08	0.00	44.08	<b>\$5,024.35</b>
			97242839	Library Acquis, Audio/Visual	75.17	0.00	75.17	



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			97244411	Library Acquis, Audio/Visual	4,794.81	0.00	4,794.81	
			97273267	Library Acquis, Audio/Visual	110.29	0.00	110.29	
xxx313234	4/25/19	MIHIRI KODITUWAKKU	CK REQ 19-161	DED Services/Training - Books	34.18	0.00	34.18	<b>\$34.18</b>
xxx313235	4/25/19	MUNICIPAL MAINTENANCE EQUIPMENT INC	0135461-IN	Misc Equip Maint & Repair - Materials	14.47	0.00	14.47	<b>\$14.47</b>
xxx313236	4/25/19	NEOPOST USA INC.	15692474	General Supplies	334.62	0.00	334.62	<b>\$334.62</b>
xxx313237	4/25/19	OCCUPATIONAL TRAINING INSTITUTE	WIA-1439	DED Services/Training - Training	1,015.72	0.00	1,015.72	<b>\$4,829.02</b>
			WIA-1440	DED Services/Training - Training	1,152.71	0.00	1,152.71	
			WIA-1441	DED Services/Training - Training	1,058.00	0.00	1,058.00	
			WIA-1442	DED Services/Training - Training	1,602.59	0.00	1,602.59	
xxx313238	4/25/19	OVERDRIVE INC	910DA19072103	Library Periodicals/Databases	277.95	0.00	277.95	<b>\$505.50</b>
			910DA1907210R E	Library Periodicals/Databases	-277.95	0.00	-277.95	
			MR91019073643	Library Periodicals/Databases	505.50	0.00	505.50	
xxx313239	4/25/19	PENINSULA BATTERY INC	128836	Inventory Purchase	250.35	0.00	250.35	<b>\$250.35</b>
xxx313240	4/25/19	PETERSON	PC240033798	Fuel, Oil & Lubricants	4,255.25	0.00	4,255.25	<b>\$10,899.13</b>
			SW240156559	Misc Equip Maint & Repair - Labor	4,396.04	0.00	4,396.04	
			SW240156559	Misc Equip Maint & Repair - Materials	2,247.84	0.00	2,247.84	
xxx313241	4/25/19	POLYDYNE INC	1340425	Chemicals	49,275.51	0.00	49,275.51	<b>\$49,275.51</b>
xxx313242	4/25/19	R & R PRODUCTS INC	CD2323536	Parts, Vehicles & Motor Equip	107.32	0.00	107.32	<b>\$107.32</b>
xxx313243	4/25/19	R.E.P NUT N BOLT GUY	30374	Inventory Purchase	37.54	0.00	37.54	<b>\$1,500.27</b>
			30378	Inventory Purchase	228.74	0.00	228.74	
			30505	Inventory Purchase	105.45	0.00	105.45	
			30507	Inventory Purchase	43.68	0.00	43.68	
			30510	Inventory Purchase	242.78	0.00	242.78	
			30539	Inventory Purchase	388.53	0.00	388.53	
			30545	Inventory Purchase	431.90	0.00	431.90	
			30563	Inventory Purchase	21.65	0.00	21.65	
xxx313244	4/25/19	RAYVERN LIGHTING SUPPLY CO INC	61226-0	Inventory Purchase	438.75	0.00	438.75	<b>\$438.75</b>
xxx313245	4/25/19	READYREFRESH BY NESTLE	19C0029664380	Food Products	204.91	0.00	204.91	<b>\$286.51</b>
			19D0029664380	Food Products	81.60	0.00	81.60	
xxx313246	4/25/19	REED & GRAHAM INC	943542	Materials - Land Improve	1,622.88	0.00	1,622.88	<b>\$3,645.68</b>

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			943654	Materials - Land Improve	2,022.80	0.00	2,022.80	
xxx313247	4/25/19	S & L FENCE CO	03817	Facilities Maint & Repair - Labor	2,710.55	0.00	2,710.55	<b>\$2,710.55</b>
xxx313248	4/25/19	SAFEWAY INC	431769-041119	General Supplies	13.64	0.00	13.64	<b>\$209.98</b>
			702692-040319	Food Products	17.99	0.00	17.99	
			803446-033019	Food Products	60.12	0.00	60.12	
			806484-041919	Food Products	72.37	0.00	72.37	
			807050-041419	Food Products	45.86	0.00	45.86	
xxx313249	4/25/19	SANACT INC	11035	Construction Services	49,000.00	0.00	49,000.00	<b>\$139,675.00</b>
			11508	Construction Services	41,675.00	0.00	41,675.00	
			11554	Construction Services	49,000.00	0.00	49,000.00	
xxx313250	4/25/19	SANTA CLARA VLY TRANSPORTATION AUTHORITY	0000019638	DED Services/Training - Transportation	395.00	0.00	395.00	<b>\$395.00</b>
xxx313251	4/25/19	SILICON VALLEY POLYTECHNIC INSTITUTE	04102019-619	DED Services/Training - Training	300.00	0.00	300.00	<b>\$300.00</b>
xxx313252	4/25/19	SOUTH VALLEY DENTS	016585	Miscellaneous Services	150.00	0.00	150.00	<b>\$150.00</b>
xxx313253	4/25/19	SPARTAN ENGINEERING INC	23966	Equipment Maintenance & Repair Labor	268.75	0.00	268.75	<b>\$268.75</b>
xxx313254	4/25/19	STUDIO EM GRAPHIC DESIGN	17483	Graphics Services	3,924.00	0.00	3,924.00	<b>\$4,251.00</b>
			17484	Special Events	327.00	0.00	327.00	
xxx313255	4/25/19	TALON ECOLOGICAL RESEARCH GROUP	SUNNYVALE20 192	Services Maintain Land Improv	1,560.00	0.00	1,560.00	<b>\$1,560.00</b>
xxx313256	4/25/19	TAYLORMADE GOLF CO	33643869	Inventory Purchase	176.68	3.19	173.49	<b>\$173.49</b>
xxx313257	4/25/19	THE HOME DEPOT PRO	488020348	Inventory Purchase	1,911.77	17.54	1,894.23	<b>\$1,894.23</b>
xxx313258	4/25/19	UC REGENTS	1018810-192	DED Services/Training - Training	468.50	0.00	468.50	<b>\$468.50</b>
xxx313259	4/25/19	UNIVERSITY OF CALIFORNIA SANTA CRUZ	577986	DED Services/Training - Training	413.00	0.00	413.00	<b>\$30,097.00</b>
			57808	DED Services/Training - Training	581.00	0.00	581.00	
			57940	DED Services/Training - Training	578.00	0.00	578.00	
			58070	DED Services/Training - Training	765.00	0.00	765.00	
			58119	DED Services/Training - Training	388.50	0.00	388.50	
			58133	DED Services/Training - Training	600.00	0.00	600.00	
			58163	DED Services/Training - Training	458.00	0.00	458.00	
			58172	DED Services/Training - Training	495.00	0.00	495.00	
			58183	DED Services/Training - Training	600.00	0.00	600.00	

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			58190	DED Services/Training - Training	728.00	0.00	728.00	
			58193	DED Services/Training - Training	629.00	0.00	629.00	
			58226	DED Services/Training - Training	258.50	0.00	258.50	
			58236	DED Services/Training - Training	813.00	0.00	813.00	
			58271	DED Services/Training - Training	365.00	0.00	365.00	
			58273	DED Services/Training - Training	320.00	0.00	320.00	
			58275	DED Services/Training - Training	476.00	0.00	476.00	
			58318	DED Services/Training - Training	245.00	0.00	245.00	
			58461	DED Services/Training - Training	4,630.50	0.00	4,630.50	
			58463	DED Services/Training - Training	4,995.00	0.00	4,995.00	
			58467	DED Services/Training - Training	3,586.50	0.00	3,586.50	
			58470	DED Services/Training - Training	3,429.00	0.00	3,429.00	
			58476	DED Services/Training - Training	4,743.00	0.00	4,743.00	
xxx313261	4/25/19	VERDE DESIGN INC	15-1713500	Engineering Services	61,556.56	0.00	61,556.56	<b>\$61,556.56</b>
xxx313262	4/25/19	WOWZY CREATION CORP	92435	Customized Products	10.00	0.00	10.00	<b>\$10.00</b>
xxx313263	4/25/19	WALKER PARKING CONSULTANTS ENGINEERS INC	33207500002	Consultants	32,042.25	0.00	32,042.25	<b>\$32,042.25</b>
xxx313264	4/25/19	WENDY NASH	CK REQ 19-162	DED Services/Training - Books	196.95	0.00	196.95	<b>\$196.95</b>
xxx313265	4/25/19	WEST COAST ARBORISTS INC	146043	Services Maintain Land Improv	35,025.15	0.00	35,025.15	<b>\$35,025.15</b>
xxx313266	4/25/19	WINSUPPLY OF SILICON VALLEY	002413 00	Water Backflow Valves	105.71	0.00	105.71	<b>\$308.79</b>
			002551 00	Miscellaneous Equipment Parts & Supplies	203.08	0.00	203.08	
xxx313267	4/25/19	ACKERLY ENTERTAINMENT	19-0423SVL	Special Events	500.00	0.00	500.00	<b>\$500.00</b>
xxx313268	4/25/19	ALBERT J SCOTT	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	144.56	0.00	144.56	<b>\$144.56</b>
xxx313269	4/25/19	CHARLES S EANEFF JR	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,385.92	0.00	1,385.92	<b>\$1,385.92</b>
xxx313270	4/25/19	CYNTHIA J HOWELLS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	564.78	0.00	564.78	<b>\$564.78</b>
xxx313271	4/25/19	DEAN S RUSSELL	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,413.19	0.00	1,413.19	<b>\$1,413.19</b>
xxx313272	4/25/19	GLEN FORTIN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	484.56	0.00	484.56	<b>\$484.56</b>
xxx313273	4/25/19	LC ACTION POLICE SUPPLY	394019	Clothing, Uniforms & Access	160.62	0.00	160.62	<b>\$4,919.64</b>

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			394020	Clothing, Uniforms & Access	55.05	0.00	55.05	
			394021	Clothing, Uniforms & Access	15.46	0.00	15.46	
			394022	Clothing, Uniforms & Access	21.80	0.00	21.80	
			394023	Clothing, Uniforms & Access	21.80	0.00	21.80	
			394093	Clothing, Uniforms & Access	829.76	0.00	829.76	
			394277	Clothing, Uniforms & Access	829.76	0.00	829.76	
			394598	Clothing, Uniforms & Access	829.76	0.00	829.76	
			394600	Clothing, Uniforms & Access	829.76	0.00	829.76	
			394748	Clothing, Uniforms & Access	74.98	0.00	74.98	
			394749	Clothing, Uniforms & Access	17.63	0.00	17.63	
			394750	Clothing, Uniforms & Access	16.76	0.00	16.76	
			394751	Clothing, Uniforms & Access	844.76	0.00	844.76	
			395042	Clothing, Uniforms & Access	89.13	0.00	89.13	
			395043	Clothing, Uniforms & Access	34.08	0.00	34.08	
			395044	Clothing, Uniforms & Access	34.08	0.00	34.08	
			395045	Clothing, Uniforms & Access	74.98	0.00	74.98	
			395046	Clothing, Uniforms & Access	139.47	0.00	139.47	
xxx313275	4/25/19	MARCELA URIARTE-GARCIA	00605	Special Events	400.00	0.00	400.00	<b>\$400.00</b>
xxx313276	4/25/19	NANCY BOLGARD STEWARD	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,344.82	0.00	1,344.82	<b>\$1,344.82</b>
xxx313277	4/25/19	OFFICE DEPOT INC	293826149002	Supplies, Office	54.49	0.00	54.49	<b>\$11,059.45</b>
			295429236002	Supplies, Office	34.35	0.00	34.35	
			295442584001	Supplies, Office	68.21	0.00	68.21	
			295461227002	Supplies, Office	13.46	0.00	13.46	
			295650129001	Supplies, Office	13.90	0.00	13.90	
			295702764001	Supplies, Office	114.34	0.00	114.34	
			295706740001	Supplies, Office	44.66	0.00	44.66	
			295869412001	Supplies, Office	114.97	0.00	114.97	
			295892777001	Supplies, Office	28.43	0.00	28.43	
			295948027001	Supplies, Office	106.91	0.00	106.91	
			295948027002	Supplies, Office	25.62	0.00	25.62	

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			296067647001	Supplies, Office	127.41	0.00	127.41	
			296076291001	Supplies, Office	117.00	0.00	117.00	
			296076292001	Supplies, Office	16.86	0.00	16.86	
			296076293001	Supplies, Office	34.95	0.00	34.95	
			296101520001	Supplies, Office	-44.66	0.00	-44.66	
			296664540001	Supplies, Office	46.12	0.00	46.12	
			296664781001	Supplies, Office	82.63	0.00	82.63	
			296664782001	Supplies, Office	157.28	0.00	157.28	
			296664783001	Supplies, Office	556.99	0.00	556.99	
			296664784001	Supplies, Office	35.59	0.00	35.59	
			296665269001	Inventory Purchase	192.23	0.00	192.23	
			296975171001	Supplies, Office	195.88	0.00	195.88	
			297118987001	Supplies, Office	102.23	0.00	102.23	
			297134114001	Supplies, Office	1,045.30	0.00	1,045.30	
			297287766001	Supplies, Office	100.27	0.00	100.27	
			297299431001	Supplies, Office	186.73	0.00	186.73	
			297299627001	Supplies, Office	42.89	0.00	42.89	
			297374006001	Supplies, Office	6.53	0.00	6.53	
			297374174001	Supplies, Office	383.71	0.00	383.71	
			297771436001	Supplies, Office	1,569.56	0.00	1,569.56	
			297793274001	Supplies, Office	100.06	0.00	100.06	
			297850973001	Supplies, Office	49.80	0.00	49.80	
			297857583001	Supplies, Office	22.88	0.00	22.88	
			297878354001	Supplies, Office	186.05	0.00	186.05	
			297880226001	Supplies, Office	11.23	0.00	11.23	
			297880227001	Supplies, Office	33.92	0.00	33.92	
			297880228001	Supplies, Office	25.76	0.00	25.76	
			297904356001	Supplies, Office	68.52	0.00	68.52	
			297941215001	Supplies, Office	1.62	0.00	1.62	
			297942617001	Supplies, Office	5.55	0.00	5.55	
			298052742001	Supplies, Office	121.76	0.00	121.76	

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			298053560001	Supplies, Office	2.50	0.00	2.50	
			298065360001	Supplies, Office	28.66	0.00	28.66	
			298259799001	Supplies, Office	164.00	0.00	164.00	
			298318369001	Supplies, Office	94.44	0.00	94.44	
			298429834001	Supplies, Office	54.81	0.00	54.81	
			298646379001	Supplies, Office	71.16	0.00	71.16	
			298646630001	Supplies, Office	4.13	0.00	4.13	
			298701690001	Supplies, Office	198.53	0.00	198.53	
			299077396001	Supplies, Office	45.22	0.00	45.22	
			299159158001	Supplies, Office	8.33	0.00	8.33	
			299159732001	Supplies, Office	4.57	0.00	4.57	
			299492322001	Supplies, Office	59.07	0.00	59.07	
			299494560001	Supplies, Office	26.04	0.00	26.04	
			299494561001	Supplies, Office	20.49	0.00	20.49	
			299539274001	Supplies, Office	26.14	0.00	26.14	
			299625359001	Supplies, Office	65.47	0.00	65.47	
			299723288001	Supplies, Office	87.30	0.00	87.30	
			299740116001	Supplies, Office	30.07	0.00	30.07	
			300218334001	Supplies, Office	108.10	0.00	108.10	
			300233363001	Supplies, Office	50.55	0.00	50.55	
			300275953001	Supplies, Office	104.45	0.00	104.45	
			300282565001	Supplies, Office	6.31	0.00	6.31	
			300284788001	Supplies, Office	-121.76	0.00	-121.76	
			300288425001	Supplies, Office	121.76	0.00	121.76	
			300527512001	Supplies, Office	12.74	0.00	12.74	
			300533373001	Supplies, Office	104.86	0.00	104.86	
			300537451001	Supplies, Office	57.18	0.00	57.18	
			300650846001	Supplies, Office	112.66	0.00	112.66	
			300811825001	Supplies, Office	125.02	0.00	125.02	
			300845943001	Supplies, Office	32.69	0.00	32.69	
			300871184001	Supplies, Office	34.15	0.00	34.15	

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			300928874001	Supplies, Office	-51.32	0.00	-51.32	
			300931748001	Supplies, Office	51.84	0.00	51.84	
			300976165001	Supplies, Office	1,936.40	0.00	1,936.40	
			301028776001	Supplies, Office	12.74	0.00	12.74	
			301131758001	Supplies, Office	-96.13	0.00	-96.13	
			301273046001	Supplies, Office	45.81	0.00	45.81	
			301363409001	Supplies, Office	130.77	0.00	130.77	
			301374924001	Supplies, Office	13.51	0.00	13.51	
			301374925001	Supplies, Office	18.88	0.00	18.88	
			301384083001	Supplies, Office	87.18	0.00	87.18	
			301717821001	Supplies, Office	145.96	0.00	145.96	
			301765518001	Supplies, Office	25.26	0.00	25.26	
			301952314001	Supplies, Office	294.29	0.00	294.29	
			301980146001	Supplies, Office	27.24	0.00	27.24	
			301980348001	Supplies, Office	21.79	0.00	21.79	
			302367596001	Supplies, Office	225.98	0.00	225.98	
			302367597001	Supplies, Office	111.42	0.00	111.42	
			302438743001	Supplies, Office	111.80	0.00	111.80	
			302445217001	Supplies, Office	4.40	0.00	4.40	
xxx313285	4/25/19	PACIFIC GAS & ELECTRIC CO	03142830050319	Utilities - Electric	30,496.85	0.00	30,496.85	<b>\$97,369.19</b>
			03153947310319	Utilities - Electric	1,567.87	0.00	1,567.87	
			12847684120319	Utilities - Electric	7.83	0.00	7.83	
			22868920920319	Utilities - Electric	20.21	0.00	20.21	
			24528699500319	Utilities - Electric	9.53	0.00	9.53	
			25900730020319	Utilities - Electric	48.24	0.00	48.24	
			32702441030319	Utilities - Electric	572.72	0.00	572.72	
			32709321910319	Utilities - Electric	83.98	0.00	83.98	
			32725920040319	Utilities - Electric	38.59	0.00	38.59	
			32725920070319	Utilities - Electric	12.03	0.00	12.03	
			32725920140319	Utilities - Electric	36.01	0.00	36.01	
			32725920350319	Utilities - Gas	7.84	0.00	7.84	

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			32725921110319	Utilities - Electric	14.51	0.00	14.51	
			32725921170319	Utilities - Electric	73.59	0.00	73.59	
			32725921260319	Utilities - Electric	11.09	0.00	11.09	
			32725921320319	Utilities - Electric	105.32	0.00	105.32	
			32725921430319	Utilities - Electric	3.57	0.00	3.57	
			32725921480319	Utilities - Electric	130.74	0.00	130.74	
			32725921490319	Utilities - Electric	10.90	0.00	10.90	
			32725921610319	Utilities - Electric	53.19	0.00	53.19	
			32725921710319	Utilities - Electric	156.87	0.00	156.87	
			32725921790319	Utilities - Electric	1.43	0.00	1.43	
			32725921800319	Utilities - Electric	15.51	0.00	15.51	
			32725922050319	Utilities - Electric	35.02	0.00	35.02	
			32725922090319	Utilities - Electric	1,127.36	0.00	1,127.36	
			32725922410319	Utilities - Electric	578.93	0.00	578.93	
			32725922520319	Utilities - Electric	289.21	0.00	289.21	
			32725922580319	Utilities - Electric	18.22	0.00	18.22	
			32725922850319	Utilities - Electric	2.76	0.00	2.76	
			32725923120319	Utilities - Electric	72.89	0.00	72.89	
			32725923350319	Utilities - Electric	106.63	0.00	106.63	
			32725923370319	Utilities - Electric	6.39	0.00	6.39	
			32725923400319	Utilities - Electric	17.41	0.00	17.41	
			32725923710319	Utilities - Electric	10.98	0.00	10.98	
			32725923770319	Utilities - Electric	50.21	0.00	50.21	
			32725923850319	Utilities - Electric	0.86	0.00	0.86	
			32725924030319	Utilities - Electric	422.68	0.00	422.68	
			32725924040319	Utilities - Electric	141.33	0.00	141.33	
			32725924170319	Utilities - Electric	20.52	0.00	20.52	
			32725924960319	Utilities - Electric	644.42	0.00	644.42	
			32725924970319	Utilities - Electric	11.74	0.00	11.74	
			32725925000319	Utilities - Electric	138.88	0.00	138.88	
			32725925010319	Utilities - Electric	53.14	0.00	53.14	



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			32725925200319	Utilities - Electric	314.56	0.00	314.56	
			32725925210319	Utilities - Electric	70.97	0.00	70.97	
			32725925230319	Utilities - Electric	138.40	0.00	138.40	
			32725925370319	Utilities - Electric	137.14	0.00	137.14	
			32725925630319	Utilities - Electric	923.07	0.00	923.07	
			32725925690319	Utilities - Electric	25.87	0.00	25.87	
			32725925890319	Utilities - Electric	258.02	0.00	258.02	
			32725926210319	Utilities - Electric	263.06	0.00	263.06	
			32725926440319	Utilities - Electric	742.28	0.00	742.28	
			32725926470319	Utilities - Electric	647.56	0.00	647.56	
			32725926830319	Utilities - Electric	318.69	0.00	318.69	
			32725926850319	Utilities - Electric	154.89	0.00	154.89	
			32725926870319	Utilities - Electric	0.51	0.00	0.51	
			32725926940319	Utilities - Electric	236.30	0.00	236.30	
			32725926950319	Utilities - Electric	20.52	0.00	20.52	
			32725927040319	Utilities - Electric	10.42	0.00	10.42	
			32725927250319	Utilities - Electric	217.82	0.00	217.82	
			32725927290319	Utilities - Electric	4.34	0.00	4.34	
			32725927340319	Utilities - Electric	385.97	0.00	385.97	
			32725927360319	Utilities - Gas	453.31	0.00	453.31	
			32725927380319	Utilities - Electric	79.18	0.00	79.18	
			32725927400319	Utilities - Electric	77.71	0.00	77.71	
			32725927510319	Utilities - Electric	432.46	0.00	432.46	
			32725927630319	Utilities - Electric	527.86	0.00	527.86	
			32725927680319	Utilities - Electric	0.83	0.00	0.83	
			32725928000319	Utilities - Electric	234.89	0.00	234.89	
			32725928250319	Utilities - Electric	16.05	0.00	16.05	
			32725929100319	Utilities - Electric	1.25	0.00	1.25	
			32725929140319	Utilities - Electric	41.56	0.00	41.56	
			32725929220319	Utilities - Electric	611.46	0.00	611.46	
			32725929250319	Utilities - Electric	0.79	0.00	0.79	

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<b>Payment No.</b>	<b>Payment Date</b>	<b>Vendor Name</b>	<b>Invoice No.</b>	<b>Description</b>	<b>Invoice Amount</b>	<b>Discount Taken</b>	<b>Amount Paid</b>	<b>Payment Total</b>
			32725929280319	Utilities - Electric	29.74	0.00	29.74	
			32725929390319	Utilities - Electric	65.30	0.00	65.30	
			32725929440319	Utilities - Electric	414.39	0.00	414.39	
			32725929750319	Utilities - Electric	85.54	0.00	85.54	
			32730750560319	Utilities - Electric	361.37	0.00	361.37	
			32753650070319	Utilities - Electric	158.55	0.00	158.55	
			32754254880319	Utilities - Electric	197.65	0.00	197.65	
			32784398000319	Utilities - Electric	387.50	0.00	387.50	
			32799419320319	Utilities - Gas	83.67	0.00	83.67	
			36207652980319	Utilities - Electric	56.01	0.00	56.01	
			43357992720319	Utilities - Electric	11.00	0.00	11.00	
			45039216730319	Utilities - Electric	10.92	0.00	10.92	
			52896844240319	Utilities - Gas	612.24	0.00	612.24	
			52896847890319	Utilities - Electric	738.34	0.00	738.34	
			56825387840319	Utilities - Electric	0.39	0.00	0.39	
			56891435920319	Utilities - Electric	0.64	0.00	0.64	
			56892570110319	Utilities - Electric	0.82	0.00	0.82	
			56892570120319	Utilities - Electric	12.54	0.00	12.54	
			56892570160319	Utilities - Electric	0.80	0.00	0.80	
			56892570470319	Utilities - Electric	10.88	0.00	10.88	
			56892570610319	Utilities - Electric	12.02	0.00	12.02	
			56892570850319	Utilities - Electric	11.90	0.00	11.90	
			56892571070319	Utilities - Electric	0.22	0.00	0.22	
			56892571110319	Utilities - Electric	22.68	0.00	22.68	
			56892571230319	Utilities - Electric	0.81	0.00	0.81	
			56892571500319	Utilities - Electric	11.33	0.00	11.33	
			56892571930319	Utilities - Electric	0.92	0.00	0.92	
			56892572230319	Utilities - Electric	9.53	0.00	9.53	
			56892572310319	Utilities - Electric	0.96	0.00	0.96	
			56892572410319	Utilities - Electric	0.76	0.00	0.76	
			56892572990319	Utilities - Electric	0.78	0.00	0.78	

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			56892573010319	Utilities - Electric	1.43	0.00	1.43	
			56892573210319	Utilities - Electric	11.14	0.00	11.14	
			56892573280319	Utilities - Electric	9.53	0.00	9.53	
			56892573340319	Utilities - Electric	10.66	0.00	10.66	
			56892573450319	Utilities - Electric	9.53	0.00	9.53	
			56892573610319	Utilities - Electric	1.73	0.00	1.73	
			56892573790319	Utilities - Electric	0.91	0.00	0.91	
			56892573860319	Utilities - Electric	0.77	0.00	0.77	
			56892574540319	Utilities - Electric	10.94	0.00	10.94	
			56892574610319	Utilities - Electric	11.13	0.00	11.13	
			56892574640319	Utilities - Electric	1.08	0.00	1.08	
			56892574690319	Utilities - Electric	10.98	0.00	10.98	
			56892574720319	Utilities - Electric	10.88	0.00	10.88	
			56892574750319	Utilities - Electric	0.94	0.00	0.94	
			56892574930319	Utilities - Electric	10.77	0.00	10.77	
			56892574970319	Utilities - Electric	0.17	0.00	0.17	
			56892574980319	Utilities - Electric	0.71	0.00	0.71	
			56892575010319	Utilities - Electric	14.34	0.00	14.34	
			56892575240319	Utilities - Electric	10.89	0.00	10.89	
			56892575250319	Utilities - Electric	11.12	0.00	11.12	
			56892575560319	Utilities - Electric	11.15	0.00	11.15	
			56892575840319	Utilities - Electric	12.13	0.00	12.13	
			56892576280319	Utilities - Electric	9.91	0.00	9.91	
			56892576480319	Utilities - Electric	11.38	0.00	11.38	
			56892576590319	Utilities - Electric	10.90	0.00	10.90	
			56892576670319	Utilities - Electric	11.06	0.00	11.06	
			56892576690319	Utilities - Electric	11.06	0.00	11.06	
			56892576720319	Utilities - Electric	0.66	0.00	0.66	
			56892577190319	Utilities - Electric	0.79	0.00	0.79	
			56892577220319	Utilities - Electric	10.68	0.00	10.68	
			56892577390319	Utilities - Electric	11.21	0.00	11.21	

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			56892577590319	Utilities - Electric	0.73	0.00	0.73	
			56892578070319	Utilities - Electric	0.92	0.00	0.92	
			56892578180319	Utilities - Electric	9.82	0.00	9.82	
			56892578260319	Utilities - Electric	0.76	0.00	0.76	
			56892578540319	Utilities - Electric	2.04	0.00	2.04	
			56892578610319	Utilities - Electric	0.82	0.00	0.82	
			56892578660319	Utilities - Electric	0.88	0.00	0.88	
			56892578670319	Utilities - Electric	10.80	0.00	10.80	
			56892578890319	Utilities - Electric	10.88	0.00	10.88	
			56892578980319	Utilities - Electric	11.13	0.00	11.13	
			56892579010319	Utilities - Electric	9.53	0.00	9.53	
			56892579190319	Utilities - Electric	0.78	0.00	0.78	
			56892579380319	Utilities - Electric	0.69	0.00	0.69	
			56892579430319	Utilities - Electric	1.49	0.00	1.49	
			56892579640319	Utilities - Electric	10.94	0.00	10.94	
			56892579760319	Utilities - Electric	0.81	0.00	0.81	
			56892579810319	Utilities - Electric	10.92	0.00	10.92	
			56892579830319	Utilities - Electric	0.72	0.00	0.72	
			56892579860319	Utilities - Electric	0.64	0.00	0.64	
			60225900040319	Utilities - Electric	17,729.80	0.00	17,729.80	
			60225900080319	Utilities - Electric	5,640.31	0.00	5,640.31	
			60225900140319	Utilities - Electric	33.78	0.00	33.78	
			60225900150319	Utilities - Electric	19.00	0.00	19.00	
			60225900160319	Utilities - Electric	8.81	0.00	8.81	
			60225900170319	Utilities - Electric	9.61	0.00	9.61	
			60225900220319	Utilities - Electric	570.08	0.00	570.08	
			60225900260319	Utilities - Electric	25.48	0.00	25.48	
			60225900450319	Utilities - Electric	160.05	0.00	160.05	
			60225901980319	Utilities - Electric	13.48	0.00	13.48	
			60225902640319	Utilities - Electric	38.91	0.00	38.91	
			60225902900319	Utilities - Electric	79.48	0.00	79.48	

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			60225904170319	Utilities - Electric	2.15	0.00	2.15	
			60225904580319	Utilities - Electric	41.51	0.00	41.51	
			60225905100319	Utilities - Electric	2.78	0.00	2.78	
			60225905570319	Utilities - Electric	63.11	0.00	63.11	
			60225905580319	Utilities - Electric	8.83	0.00	8.83	
			60225905590319	Utilities - Electric	8.83	0.00	8.83	
			60225905600319	Utilities - Electric	1,806.47	0.00	1,806.47	
			60225906210319	Utilities - Electric	2.78	0.00	2.78	
			60225906600319	Utilities - Electric	24.18	0.00	24.18	
			60225908580319	Utilities - Electric	44.15	0.00	44.15	
			60225909050319	Utilities - Electric	8.55	0.00	8.55	
			60225909410319	Utilities - Electric	61.40	0.00	61.40	
			60225909830319	Utilities - Electric	16.85	0.00	16.85	
			81004444430319	Utilities - Electric	6.36	0.00	6.36	
			81008620210319	Utilities - Electric	0.90	0.00	0.90	
			81008621120319	Utilities - Electric	1.78	0.00	1.78	
			81008622290319	Utilities - Electric	4.37	0.00	4.37	
			81008622550319	Utilities - Electric	12.75	0.00	12.75	
			81008623480319	Utilities - Electric	9.72	0.00	9.72	
			81008623720319	Utilities - Electric	0.78	0.00	0.78	
			81008624270319	Utilities - Electric	69.52	0.00	69.52	
			81008624310319	Utilities - Electric	7.46	0.00	7.46	
			81008624650319	Utilities - Electric	9.72	0.00	9.72	
			81008624800319	Utilities - Electric	19.89	0.00	19.89	
			81008625370319	Utilities - Electric	35.12	0.00	35.12	
			81008626650319	Utilities - Electric	8.24	0.00	8.24	
			81008628100319	Utilities - Electric	0.78	0.00	0.78	
			81008628260319	Utilities - Electric	2.35	0.00	2.35	
			81008628350319	Utilities - Electric	0.78	0.00	0.78	
			81008629370319	Utilities - Electric	2.35	0.00	2.35	
			81008629450319	Utilities - Electric	2.40	0.00	2.40	

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			81009280180319	Utilities - Electric	683.76	0.00	683.76	
			81011846090319	Utilities - Electric	13.17	0.00	13.17	
			81015536310319	Utilities - Electric	1,507.09	0.00	1,507.09	
			81020785620319	Utilities - Electric	7.21	0.00	7.21	
			81024370710319	Utilities - Electric	66.49	0.00	66.49	
			81029727040319	Utilities - Electric	6.36	0.00	6.36	
			81033823480319	Utilities - Electric	35.35	0.00	35.35	
			81035854770319	Utilities - Electric	19.60	0.00	19.60	
			81049144670319	Utilities - Electric	10.74	0.00	10.74	
			81052655700319	Utilities - Electric	12.95	0.00	12.95	
			81063868990319	Utilities - Electric	14,709.26	0.00	14,709.26	
			81073831150319	Utilities - Electric	22.09	0.00	22.09	
			81074135340319	Utilities - Electric	77.27	0.00	77.27	
			81080547220319	Utilities - Electric	13.43	0.00	13.43	
			81081601140319	Utilities - Electric	16.11	0.00	16.11	
			81703231610319	Utilities - Electric	13.16	0.00	13.16	
			91475900360319	Utilities - Electric	118.53	0.00	118.53	
			91475900450319	Utilities - Gas	158.79	0.00	158.79	
			91475901220319	Utilities - Electric	32.79	0.00	32.79	
			91475903190319	Utilities - Electric	76.34	0.00	76.34	
			91475903550319	Utilities - Electric	209.86	0.00	209.86	
			91475904100319	Utilities - Electric	504.64	0.00	504.64	
			91475904310319	Utilities - Electric	212.92	0.00	212.92	
			91475904900319	Utilities - Electric	72.05	0.00	72.05	
			91475906250319	Utilities - Electric	153.80	0.00	153.80	
			91475906620319	Utilities - Electric	679.46	0.00	679.46	
			91475907050319	Utilities - Electric	144.33	0.00	144.33	
			91475907470319	Utilities - Electric	417.22	0.00	417.22	
			91475907600319	Utilities - Electric	306.77	0.00	306.77	
			91475907800319	Utilities - Electric	173.01	0.00	173.01	
			91475908690319	Utilities - Electric	287.56	0.00	287.56	

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			91475909640319	Utilities - Electric	1,207.67	0.00	1,207.67	
			91475909790319	Utilities - Electric	536.63	0.00	536.63	
			94639783770319	Utilities - Electric	35.31	0.00	35.31	
xxx313303	4/25/19	ROBERT VAN HEUSEN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	796.85	0.00	796.85	<b>\$796.85</b>
xxx313304	4/25/19	SHARON MANGOLD	TOT0812-090918	Transient Occupancy Tax - Tax Payments	406.00	0.00	406.00	<b>\$406.00</b>
xxx313305	4/25/19	STATE WATER RESOURCES CONTROL BOARD	JACKMAN OIT I	Membership Fees	125.00	0.00	125.00	<b>\$125.00</b>
xxx313306	4/25/19	JP DINAPOLI COMPANIES INC	PROJ2013-7609	Miscellaneous Reimbursement	4,887.29	0.00	4,887.29	<b>\$4,887.29</b>
xxx002804	4/25/19	INTERNAL REVENUE SERVICE	950002804	Employer Taxes - FICA - Total	466.77	0.00	466.77	<b>\$61,553.63</b>
			950002804	Employer Taxes - Medicare - Total	61,086.86	0.00	61,086.86	
xxx002805	4/25/19	UNION BANK OF CALIFORNIA PARS	950002805	Retirement Benefits - PARS	1,407.97	0.00	1,407.97	<b>\$1,407.97</b>
xxx002806	4/25/19	ICMA RETIREMENT CORP	950002806	Retirement Benefits - Deferred Comp - City Portion	14,441.86	0.00	14,441.86	<b>\$14,441.86</b>
xxx100807	4/22/19	SANTA CLARA VALLEY WATER DISTRICT	TI002280	Water for Resale	162,651.90	0.00	162,651.90	<b>\$162,651.90</b>
xxx100808	4/23/19	WELLS FARGO BANK	04222019	Purchasing Card Statement	178,774.03	0.00	178,774.03	<b>\$178,774.03</b>
xxx100809	4/25/19	SPECIALTY SOLID WASTE & RECYCLING INC	MAR2019	Franchise - Specialty Garbage	-168,887.91	0.00	-168,887.91	<b>\$1,449,651.70</b>
			MAR2019	Refuse Serv Fees - Specialty	-248,830.91	0.00	-248,830.91	
			MAR2019	Pymt to Franch Garb Collector	1,867,370.52	0.00	1,867,370.52	
xxx906532	4/25/19	US BANK		Insurances - OPEB Trust Contribution	954,750.00	0.00	954,750.00	<b>\$954,750.00</b>
<b>Grand Total Payment Amount</b>								<b><u>\$6,797,401.76</u></b>

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xxx9451	4/29/19	ABEL A VARGAS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	214.55	0.00	214.55	<b>\$214.55</b>
xxx9452	4/29/19	AIMEE FOSBENNER	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	93.46	0.00	93.46	<b>\$93.46</b>
xxx9453	4/29/19	ALI FATAPOUR	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	2,011.50	0.00	2,011.50	<b>\$2,011.50</b>
xxx9454	4/29/19	ANNABEL YURUTUCU	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	649.07	0.00	649.07	<b>\$649.07</b>
xxx9455	4/29/19	BRICE MCQUEEN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,344.82	0.00	1,344.82	<b>\$1,344.82</b>
xxx9456	4/29/19	BYRON K PIPKIN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	937.56	0.00	937.56	<b>\$937.56</b>
xxx9457	4/29/19	CATHY HAYNES	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,374.86	0.00	1,374.86	<b>\$1,374.86</b>
xxx9458	4/29/19	CHRIS CARRION	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	749.50	0.00	749.50	<b>\$749.50</b>
xxx9459	4/29/19	CHRISTINE MENDOZA	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	649.07	0.00	649.07	<b>\$649.07</b>
xxx9460	4/29/19	CORYN CAMPBELL	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	330.86	0.00	330.86	<b>\$330.86</b>
xxx9461	4/29/19	DAN HAMMONS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,064.36	0.00	1,064.36	<b>\$1,064.36</b>
xxx9462	4/29/19	DAVID A LEWIS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	649.07	0.00	649.07	<b>\$649.07</b>
xxx9463	4/29/19	DAVID KAHN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	761.63	0.00	761.63	<b>\$761.63</b>
xxx9464	4/29/19	DAVID L VERBRUGGE	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,413.19	0.00	1,413.19	<b>\$1,413.19</b>
xxx9465	4/29/19	DEAN CHU	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,058.15	0.00	1,058.15	<b>\$1,058.15</b>
xxx9466	4/29/19	DON JOHNSON	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	383.38	0.00	383.38	<b>\$383.38</b>
xxx9467	4/29/19	DOUGLAS MORETTO	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,120.01	0.00	1,120.01	<b>\$1,120.01</b>



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xxx9468	4/29/19	ENCARNACION HERNANDEZ	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	113.38	0.00	113.38	<b>\$113.38</b>
xxx9469	4/29/19	ERWIN YOUNG	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	749.50	0.00	749.50	<b>\$749.50</b>
xxx9470	4/29/19	ESTRELLA KAWCZYNSKI	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	187.74	0.00	187.74	<b>\$187.74</b>
xxx9471	4/29/19	EUGENE J WADDELL	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	424.68	0.00	424.68	<b>\$424.68</b>
xxx9472	4/29/19	FRANK J GRGURINA	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	560.01	0.00	560.01	<b>\$560.01</b>
xxx9473	4/29/19	GAIL SWEGLES	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	98.02	0.00	98.02	<b>\$98.02</b>
xxx9474	4/29/19	GARY K CARLS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	349.24	0.00	349.24	<b>\$349.24</b>
xxx9475	4/29/19	GARY LUEBBERS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	636.69	0.00	636.69	<b>\$636.69</b>
xxx9476	4/29/19	GREGORY E KEVIN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	745.56	0.00	745.56	<b>\$745.56</b>
xxx9477	4/29/19	JAMES BOUZIANE	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	749.50	0.00	749.50	<b>\$749.50</b>
xxx9478	4/29/19	JEFFREY PLECQUE	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,198.56	0.00	1,198.56	<b>\$1,198.56</b>
xxx9479	4/29/19	JEROME P AMMERMAN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	659.06	0.00	659.06	<b>\$659.06</b>
xxx9480	4/29/19	JOHN DEBATTISTA	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	214.55	0.00	214.55	<b>\$214.55</b>
xxx9481	4/29/19	JOHN HOWE	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	649.07	0.00	649.07	<b>\$649.07</b>
xxx9482	4/29/19	JOHN S WITTHAUS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,374.86	0.00	1,374.86	<b>\$1,374.86</b>
xxx9483	4/29/19	KAREN WOBLESKY	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,344.82	0.00	1,344.82	<b>\$1,344.82</b>
xxx9484	4/29/19	KELLY FITZGERALD	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	745.56	0.00	745.56	<b>\$745.56</b>
xxx9485	4/29/19	KELLY MENEHAN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	233.69	0.00	233.69	<b>\$233.69</b>

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xxx9486	4/29/19	KLAUS DAEHNE	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	449.70	0.00	449.70	<b>\$449.70</b>
xxx9487	4/29/19	MARK G PETERSEN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,374.86	0.00	1,374.86	<b>\$1,374.86</b>
xxx9488	4/29/19	MICHAEL A CHAN	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,344.82	0.00	1,344.82	<b>\$1,344.82</b>
xxx9489	4/29/19	MIKE ECCLES	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,120.01	0.00	1,120.01	<b>\$1,120.01</b>
xxx9490	4/29/19	PETE GONDA	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,646.90	0.00	1,646.90	<b>\$1,646.90</b>
xxx9491	4/29/19	UNIT #303	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	361.17	0.00	361.17	<b>\$361.17</b>
xxx9492	4/29/19	ROBERT WALKER	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,945.72	0.00	1,945.72	<b>\$1,945.72</b>
xxx9493	4/29/19	RONALD DALBA	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	745.56	0.00	745.56	<b>\$745.56</b>
xxx9494	4/29/19	SCOTT MORTON	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	659.06	0.00	659.06	<b>\$659.06</b>
xxx9495	4/29/19	SILVIA MARTINS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	749.50	0.00	749.50	<b>\$749.50</b>
xxx9496	4/29/19	SIMON C LEMUS	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,385.92	0.00	1,385.92	<b>\$1,385.92</b>
xxx9497	4/29/19	STEPHEN QUICK	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,374.86	0.00	1,374.86	<b>\$1,374.86</b>
xxx9498	4/29/19	STEVEN D PIGOTT	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	591.23	0.00	591.23	<b>\$591.23</b>
xxx9499	4/29/19	TAMMY PARKHURST	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	330.86	0.00	330.86	<b>\$330.86</b>
xxx9500	4/29/19	THERESE BALBO	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	1,481.51	0.00	1,481.51	<b>\$1,481.51</b>
xxx9501	4/29/19	TIM CARLYLE	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	745.56	0.00	745.56	<b>\$745.56</b>
xxx9502	4/29/19	TIM JOHNSON	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	745.56	0.00	745.56	<b>\$745.56</b>
xxx9503	4/29/19	VINCENT CHETCUTI	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	2,011.50	0.00	2,011.50	<b>\$2,011.50</b>

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xxx9504	4/29/19	WILLIAM BIELINSKI	MAY 2019	Insurances - Retiree Medical - Retiree Reimbursement	330.86	0.00	330.86	<b>\$330.86</b>
xxx313307	4/30/19	ACUSHNET CO	907025669	Cost of Merchandise Sold	2,537.37	0.00	2,537.37	<b>\$2,537.37</b>
xxx313308	4/30/19	ADIDAS AMERICA INC.	6177442507	Cost of Merchandise Sold	89.25	0.00	89.25	<b>\$116.87</b>
			6177517313	Cost of Merchandise Sold	27.62	0.00	27.62	
xxx313309	4/30/19	ADVANTAGE	75867	Printing & Related Services	433.82	0.00	433.82	<b>\$2,500.98</b>
			75904	Printing & Related Services	135.16	0.00	135.16	
			76010	Printing & Related Services	1,932.00	0.00	1,932.00	
xxx313310	4/30/19	ALADTEC INC	2019-0811	Software As a Service	1,460.47	0.00	1,460.47	<b>\$1,460.47</b>
xxx313311	4/30/19	ALMADEN PRESS	139010	Printing & Related Services	1,194.64	0.00	1,194.64	<b>\$1,194.64</b>
xxx313312	4/30/19	BKF ENGINEERS	19040511	Engineering Services	27,031.19	0.00	27,031.19	<b>\$27,031.19</b>
xxx313313	4/30/19	BAKER & TAYLOR	4012524984	Library Acquisitions, Books	267.35	0.00	267.35	<b>\$276.27</b>
			4012524984	Library Materials Preprocessing	8.92	0.00	8.92	
xxx313314	4/30/19	BAUER COMPRESSORS INC	0000252449	Safety Equipment Maintenance & Repair	7,861.25	0.00	7,861.25	<b>\$7,861.25</b>
xxx313315	4/30/19	BAY-VALLEY PEST CONTROL INC	0255848	Facilities Maintenance & Repair Labor	56.00	0.00	56.00	<b>\$142.00</b>
			0255856	Facilities Maintenance & Repair Labor	42.00	0.00	42.00	
			0255859	Facilities Maintenance & Repair Labor	86.00	0.00	86.00	
			255856REV	Facilities Maintenance & Repair Labor	-42.00	0.00	-42.00	
xxx313316	4/30/19	BOUND TREE MEDICAL LLC	83186806	Inventory Purchase	495.40	0.00	495.40	<b>\$495.40</b>
xxx313317	4/30/19	CALIFORNIA SPORTS CENTER	CSC0419	Rec Instructors/Officials	8,754.40	0.00	8,754.40	<b>\$8,754.40</b>
xxx313318	4/30/19	CALTRONICS BUSINESS SYSTEMS	2751834	Equipment Rental/Lease	14,276.57	0.00	14,276.57	<b>\$14,421.93</b>
			2754990	Equipment Rental/Lease	145.36	0.00	145.36	
xxx313319	4/30/19	CARBONIC SERVICE INC	207578	Equipment Rental/Lease	240.53	0.00	240.53	<b>\$240.53</b>
xxx313320	4/30/19	CHERRYROAD TECHNOLOGIES INC	3007658-IN	Professional Services	41,710.00	0.00	41,710.00	<b>\$41,710.00</b>
xxx313321	4/30/19	CHIU FEN CHEN	19-169	DED Services/Training - Books	84.18	0.00	84.18	<b>\$84.18</b>
xxx313322	4/30/19	CITY & COUNTY OF SAN FRANCISCO	REGP-08	Contracts/Service Agreements	17,768.66	0.00	17,768.66	<b>\$17,768.66</b>
xxx313323	4/30/19	CITY OF SAN JOSE	SUNN012319-1	Automotive Maintenance & Repair Labor	325.00	0.00	325.00	<b>\$975.00</b>
			SUNN012319-2	Automotive Maintenance & Repair Labor	325.00	0.00	325.00	
			SUNN012319-3	Automotive Maintenance & Repair Labor	325.00	0.00	325.00	
xxx313324	4/30/19	CITY OF SAN JOSE - WORK2FUTURE	0008	Contracts/Service Agreements	12,662.11	0.00	12,662.11	<b>\$12,662.11</b>
xxx313325	4/30/19	CITY OF SANTA CLARA MUNICIPAL UTILITIES	APRIL2019	Utilities - Electric	556.62	0.00	556.62	<b>\$556.62</b>
xxx313326	4/30/19	CLAY PLANET						<b>\$140.17</b>

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			221045	General Supplies	99.84	0.00	99.84	
			221072	General Supplies	40.33	0.00	40.33	
xxx313327	4/30/19	COUNTY OF SANTA CLARA OFC OF THE SHERIFF	1800067153	Prisoner Transport - Transport	405.01	0.00	405.01	<b>\$693.87</b>
			1800067595	Prisoner Transport - Transport	288.86	0.00	288.86	
xxx313328	4/30/19	D & M TRAFFIC SERVICES INC	64222	Misc Equip Maint & Repair - Materials	4,142.00	0.00	4,142.00	<b>\$4,142.00</b>
xxx313329	4/30/19	DELL MARKETING LP	10310537739	Computer Hardware	52.42	0.00	52.42	<b>\$1,212.20</b>
			10310850428	Computer Hardware	1,159.78	0.00	1,159.78	
xxx313330	4/30/19	DOWNTOWN FORD SALES	311301	Vehicles & Motorized Equip	27,517.33	0.00	27,517.33	<b>\$102,738.08</b>
			311302	Parts, Vehicles & Motor Equip	75,220.75	0.00	75,220.75	
xxx313332	4/30/19	FAST RESPONSE ON-SITE TESTING INC	151710	Medical Services	240.00	0.00	240.00	<b>\$1,300.00</b>
			151710	Contracts/Service Agreements	480.00	0.00	480.00	
			151711	Medical Services	60.00	0.00	60.00	
			151711	Contracts/Service Agreements	120.00	0.00	120.00	
			151746	Medical Services	120.00	0.00	120.00	
			151746	Contracts/Service Agreements	280.00	0.00	280.00	
xxx313333	4/30/19	FERGUSON WATERWORKS 1423	1440601	Water Meter Boxes, Vaults, and Lids	4,223.75	0.00	4,223.75	<b>\$4,223.75</b>
xxx313334	4/30/19	FITGUARD INC	0000157682	Facilities Maintenance & Repair Labor	145.00	0.00	145.00	<b>\$145.00</b>
xxx313335	4/30/19	FOSTER BROS SECURITY SYSTEMS INC	309276	Bldg Maint Matls & Supplies	40.81	0.00	40.81	<b>\$40.81</b>
xxx313336	4/30/19	FRANK A OLSEN CO INC	242380	Miscellaneous Equipment Parts & Supplies	318.90	0.00	318.90	<b>\$318.90</b>
xxx313337	4/30/19	GALE/CENGAGE LEARNING	66908275	Library Acquisitions, Books	581.18	0.00	581.18	<b>\$767.77</b>
			66920477	Library Acquisitions, Books	27.90	0.00	27.90	
			66930363	Library Acquisitions, Books	130.80	0.00	130.80	
			66941194	Library Acquisitions, Books	27.89	0.00	27.89	
xxx313338	4/30/19	GARDENLAND POWER EQUIPMENT	660282	Misc Equip Maint & Repair - Materials	28.36	0.00	28.36	<b>\$28.36</b>
xxx313339	4/30/19	GRANITEROCK CO	1166743	Materials - Land Improve	2,889.90	0.00	2,889.90	<b>\$2,889.90</b>
xxx313340	4/30/19	HAUTE CUISINE INC	142-2019	Food Products	12.00	0.00	12.00	<b>\$12.00</b>
xxx313342	4/30/19	IMAGEX	218019	Printing & Related Services	383.29	0.00	383.29	<b>\$383.29</b>
xxx313343	4/30/19	JOANNE BOND COACHING	3557	City Training Program	2,500.00	0.00	2,500.00	<b>\$2,500.00</b>
xxx313344	4/30/19	JUMBO SHRIMP VOLLEYBALL LLC	TV2019MA	Rec Instructors/Officials	5,216.40	0.00	5,216.40	<b>\$5,216.40</b>
xxx313345	4/30/19	KELLER SUPPLY COMPANY	D012838935001R	Chemicals	-876.32	0.00	-876.32	<b>\$1,637.12</b>
			S012838935.001	Chemicals	876.32	0.00	876.32	

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			S012895609.002	Chemicals	1,602.24	0.00	1,602.24	
			S012902022.001	Chemicals	34.88	0.00	34.88	
xxx313346	4/30/19	KELLY MOORE PAINT CO INC	820-377661	Bldg Maint Matls & Supplies	48.98	0.00	48.98	<b>\$48.98</b>
xxx313347	4/30/19	KRONOS INC	11442181	Computer Software	533.16	0.00	533.16	<b>\$533.16</b>
xxx313348	4/30/19	LC ACTION POLICE SUPPLY	394014	Clothing, Uniforms & Access	849.76	0.00	849.76	<b>\$849.76</b>
xxx313349	4/30/19	LEIGHTON STONE CORP	1205625	Miscellaneous Equipment Parts & Supplies	380.48	0.00	380.48	<b>\$589.79</b>
			1205640	Miscellaneous Equipment Parts & Supplies	209.31	0.00	209.31	
xxx313350	4/30/19	LESLIES POOL SUPPLIES INC	3025-02-006188	Facilities Maint & Repair	220.76	0.00	220.76	<b>\$220.76</b>
xxx313351	4/30/19	LINH HOANG	19-168	DED Services/Training - Books	199.70	0.00	199.70	<b>\$199.70</b>
xxx313352	4/30/19	MM COMMUNICATIONS	INV-0425	Miscellaneous Services	2,400.00	0.00	2,400.00	<b>\$2,400.00</b>
xxx313353	4/30/19	MCMaster CARR SUPPLY CO	92668955	Miscellaneous Equipment Parts & Supplies	524.20	0.00	524.20	<b>\$592.92</b>
			92808322	Miscellaneous Equipment Parts & Supplies	24.84	0.00	24.84	
			92823212	Supplies, Safety	43.88	0.00	43.88	
xxx313354	4/30/19	MUSIC FOR FAMILIES INC	M4FAM-SV-F18	Rec Instructors/Officials	22,925.52	0.00	22,925.52	<b>\$22,925.52</b>
xxx313355	4/30/19	NAPA AUTO PARTS	5983-459816	Parts, Vehicles & Motor Equip	18.76	0.00	18.76	<b>\$1,029.47</b>
			5983-460891	Parts, Vehicles & Motor Equip	34.42	0.00	34.42	
			5983-460956	Parts, Vehicles & Motor Equip	41.32	0.00	41.32	
			5983-461146	Parts, Vehicles & Motor Equip	14.14	0.00	14.14	
			5983-461320	Parts, Vehicles & Motor Equip	7.69	0.00	7.69	
			5983-461322	Parts, Vehicles & Motor Equip	96.02	0.00	96.02	
			5983-461324	Parts, Vehicles & Motor Equip	25.79	0.00	25.79	
			5983-461325	Parts, Vehicles & Motor Equip	115.34	0.00	115.34	
			5983-461341	Parts, Vehicles & Motor Equip	18.60	0.00	18.60	
			5983-461501	Parts, Vehicles & Motor Equip	91.60	0.00	91.60	
			5983-461553	Parts, Vehicles & Motor Equip	43.95	0.00	43.95	
			5983-461712	Parts, Vehicles & Motor Equip	64.10	0.00	64.10	
			5983-462211	Parts, Vehicles & Motor Equip	-64.10	0.00	-64.10	
			5983-464115	Inventory Purchase	476.74	9.53	467.21	
			5983-464117	Inventory Purchase	55.74	1.11	54.63	
xxx313357	4/30/19	NI GOVERNMENT SERVICES INC	9031286406	Miscellaneous Services	78.77	0.00	78.77	<b>\$78.77</b>
xxx313358	4/30/19	NATIONAL CINEMEDIA LLC	INV-174889	Advertising Services	3,250.00	0.00	3,250.00	<b>\$3,250.00</b>

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xxx313359	4/30/19	NET TRANSCRIPTS INC	0024306-IN	Investigation Expense	39.80	0.00	39.80	<b>\$1,063.16</b>
			0024306-IN	Professional Services	1,023.36	0.00	1,023.36	
xxx313360	4/30/19	PACIFIC TELEMAGEMENT SERVICES	2017273	Utilities - Telephone	75.00	0.00	75.00	<b>\$75.00</b>
xxx313361	4/30/19	PAN ASIAN PUBLICATIONS INC	U-15982	Library Acquisitions, Books	2,849.73	0.00	2,849.73	<b>\$3,581.15</b>
			U-15989	Library Acquisitions, Books	641.42	0.00	641.42	
			U-15989	Library Materials Preprocessing	90.00	0.00	90.00	
xxx313362	4/30/19	PEARSON BUICK GMC	335086	Parts, Vehicles & Motor Equip	171.58	0.00	171.58	<b>\$655.27</b>
			336149	Parts, Vehicles & Motor Equip	390.24	0.00	390.24	
			336421	Parts, Vehicles & Motor Equip	93.45	0.00	93.45	
xxx313363	4/30/19	PINE CONE LUMBER CO INC	1470	Inventory Purchase	995.13	9.13	986.00	<b>\$986.00</b>
xxx313364	4/30/19	POMI MECHANICAL INC	2019/204	Facilities Maint & Repair	10,475.00	0.00	10,475.00	<b>\$10,475.00</b>
xxx313365	4/30/19	R & R REFRIGERATION & AIR CONDITIONING	66189	Facilities Maintenance & Repair Labor	300.00	0.00	300.00	<b>\$1,184.14</b>
			66190	Facilities Maint & Repair - Labor	165.00	0.00	165.00	
			66190	Facilities Maint & Repair - Materials	343.14	0.00	343.14	
			66207	Facilities Maintenance & Repair Labor	376.00	0.00	376.00	
xxx313366	4/30/19	READYREFRESH BY NESTLE	19B0025819772	General Supplies	75.11	0.00	75.11	<b>\$244.80</b>
			19D0024199309	Miscellaneous Services	114.05	0.00	114.05	
			19D5727863002	General Supplies	55.64	0.00	55.64	
xxx313367	4/30/19	REFRIGERATION SUPPLIES DISTRIBUTOR	38411949-00	Bldg Maint Matls & Supplies	556.87	0.00	556.87	<b>\$604.32</b>
			38415790-00	Bldg Maint Matls & Supplies	47.45	0.00	47.45	
xxx313368	4/30/19	REGIONAL GOVERNMENT SERVICES AUTHORITY	9494	City Training Program	4,500.00	0.00	4,500.00	<b>\$4,500.00</b>
xxx313369	4/30/19	RENEE MAYNE ARBITRATOR AND MEDIATOR	18-10-03ARB	Professional Services	3,818.11	0.00	3,818.11	<b>\$3,818.11</b>
xxx313370	4/30/19	SCP DISTRIBUTORS LLC	36951979	Facilities Maint & Repair - Materials	97.01	0.00	97.01	<b>\$439.68</b>
			36955422	General Supplies	342.67	0.00	342.67	
xxx313371	4/30/19	SFO REPROGRAPHICS	55795	Printing & Related Services	608.66	0.00	608.66	<b>\$2,687.60</b>
			55953	Printing & Related Services	246.17	0.00	246.17	
			56152	Printing & Related Services	116.89	0.00	116.89	
			56165	Printing & Related Services	91.56	0.00	91.56	
			56223	Printing & Related Services	13.08	0.00	13.08	
			56382	Printing & Related Services	115.54	0.00	115.54	

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			56383	Printing & Related Services	63.22	0.00	63.22	
			56426	Printing & Related Services	189.44	0.00	189.44	
			56587	Printing & Related Services	1,243.04	0.00	1,243.04	
xxx313372	4/30/19	STC VENTURES LLC	DEC18-MAR19	Construction Services	25,584.10	0.00	25,584.10	<b>\$25,584.10</b>
xxx313373	4/30/19	SAFEWAY INC	437767-042319	Food Products	22.14	0.00	22.14	<b>\$232.59</b>
			626487-041219	Food Products	11.52	0.00	11.52	
			723654-042519	General Supplies	33.90	0.00	33.90	
			724440-041019	Food Products	33.90	0.00	33.90	
			724594-042619	Food Products	33.90	0.00	33.90	
			802476-032519	Food Products	17.40	0.00	17.40	
			803446-033019R	Food Products	-60.12	0.00	-60.12	
			803696-040919	Food Products	33.90	0.00	33.90	
			804427-041619	Food Products	11.98	0.00	11.98	
			805446-033019	Food Products	60.12	0.00	60.12	
			806084-041919	Food Products	72.37	0.00	72.37	
			806484-041919R	Food Products	-72.37	0.00	-72.37	
			808782-042519	General Supplies	33.95	0.00	33.95	
xxx313374	4/30/19	SAN JOSE BOILER WORKS	6367	Facilities Maint & Repair	8,774.75	0.00	8,774.75	<b>\$8,774.75</b>
xxx313375	4/30/19	SECURITY CONTRACTOR SERVICES INC	0267600-IN	Equipment Rental/Lease	513.13	0.00	513.13	<b>\$513.13</b>
xxx313376	4/30/19	SIERRA PACIFIC TURF SUPPLY INC	0548156-IN	Materials - Land Improve	362.69	0.00	362.69	<b>\$362.69</b>
xxx313377	4/30/19	SILICON VALLEY POLYTECHNIC INSTITUTE	04082019-614	DED Services/Training - Training	2,497.50	0.00	2,497.50	<b>\$5,062.50</b>
			04082019-615	DED Services/Training - Training	2,565.00	0.00	2,565.00	
xxx313378	4/30/19	SMART & FINAL INC	047128-042519	Food Products	379.69	0.00	379.69	<b>\$379.69</b>
xxx313379	4/30/19	SPECTRATURF	16054	Services Maintain Land Improv	14,460.00	0.00	14,460.00	<b>\$19,368.00</b>
			16077	Services Maintain Land Improv	4,908.00	0.00	4,908.00	
xxx313380	4/30/19	STEELHEAD ENGINEERS INC	1903119	Engineering Services	3,950.00	0.00	3,950.00	<b>\$3,950.00</b>
xxx313381	4/30/19	SUAREZ & MUNOZ CONSTRUCTION INC	PRKIRGTNPMP #02	Construction Services	88,777.50	0.00	88,777.50	<b>\$88,777.50</b>
xxx313382	4/30/19	SUPERIOR AUTOMATIC SPRINKLER CO INC	41572	Facilities Maintenance & Repair Labor	2,015.00	0.00	2,015.00	<b>\$2,015.00</b>
xxx313383	4/30/19	THE HOME DEPOT PRO	487128365	Inventory Purchase	4,367.09	40.07	4,327.02	<b>\$6,504.86</b>
			488914532	Inventory Purchase	2,199.84	22.00	2,177.84	

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xxx313384	4/30/19	TRANSOFT SOLUTIONS INC	134992	Software Licensing & Support	920.00	0.00	920.00	<b>\$920.00</b>
xxx313385	4/30/19	TURF & INDUSTRIAL EQUIPMENT CO	IV29917	Parts, Vehicles & Motor Equip	134.72	0.00	134.72	<b>\$3,846.61</b>
			IV29917A	Parts, Vehicles & Motor Equip	11.34	0.00	11.34	
			UI18329	Materials - Land Improve	3,700.55	0.00	3,700.55	
xxx313386	4/30/19	UC REGENTS	1044687-191	DED Services/Training - Training	4,477.50	0.00	4,477.50	<b>\$4,477.50</b>
xxx313387	4/30/19	UNITED RENTALS	167905293-001	Equipment Rental/Lease	1,251.23	0.00	1,251.23	<b>\$1,251.23</b>
xxx313388	4/30/19	UNITED SITE SERVICES INC	114-8261674	Equipment Rental/Lease	245.00	0.00	245.00	<b>\$245.00</b>
xxx313389	4/30/19	UNITED STATES POSTAL SERVICE	P#112-042519	Mailing & Delivery Services	235.00	0.00	235.00	<b>\$235.00</b>
xxx313391	4/30/19	UNIVERSITY OF CALIFORNIA SANTA CRUZ	58327	DED Services/Training - Training	255.50	0.00	255.50	<b>\$5,102.00</b>
			58479	DED Services/Training - Training	4,846.50	0.00	4,846.50	
xxx313392	4/30/19	VWR INTERNATIONAL LLC	8084798522	General Supplies	27.00	0.00	27.00	<b>\$27.00</b>
xxx313393	4/30/19	W G FRITZ CONSTRUCTION INC	4087	Facilities Maint & Repair - Labor	2,392.14	0.00	2,392.14	<b>\$6,462.25</b>
			4087	Facilities Maint & Repair - Materials	598.03	0.00	598.03	
			4088	Miscellaneous Equipment	3,472.08	0.00	3,472.08	
xxx313394	4/30/19	WHCI PLUMBING SUPPLY	S2398321.001	Bldg Maint Matls & Supplies	44.89	0.00	44.89	<b>\$270.35</b>
			S2410430.001	Bldg Maint Matls & Supplies	174.19	0.00	174.19	
			S2410446.001	Bldg Maint Matls & Supplies	51.27	0.00	51.27	
xxx313395	4/30/19	WEST LITE SUPPLY CO INC	74803H	Electrical Parts & Supplies	122.63	0.00	122.63	<b>\$122.63</b>
xxx313396	4/30/19	WEST VALLEY STAFFING GROUP	251941	Salaries - Contract Personnel	1,532.80	0.00	1,532.80	<b>\$7,025.79</b>
			252175	Salaries - Contract Personnel	1,062.14	0.00	1,062.14	
			252993	Salaries - Contract Personnel	1,475.33	0.00	1,475.33	
			253219	Salaries - Contract Personnel	1,108.32	0.00	1,108.32	
			253751	Salaries - Contract Personnel	1,847.20	0.00	1,847.20	
xxx313397	4/30/19	WILSEY HAM	22664	Consultants	3,558.00	0.00	3,558.00	<b>\$3,558.00</b>
xxx313398	4/30/19	GRAINGER	9104376869	Financial Services	1,007.39	0.00	1,007.39	<b>\$13,507.15</b>
			9104376877	Financial Services	266.09	0.00	266.09	
			9104376885	Chemicals	13.10	0.00	13.10	
			9104659884	Miscellaneous Equipment Parts & Supplies	264.15	0.00	264.15	
			9104659892	Miscellaneous Equipment Parts & Supplies	116.11	0.00	116.11	
			9105149968	Parts, Vehicles & Motor Equip	89.61	0.00	89.61	
			9105534854	Clothing, Uniforms & Access	478.85	0.00	478.85	



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			9106251607	Clothing, Uniforms & Access	38.72	0.00	38.72	
			9106311096	Parts, Vehicles & Motor Equip	32.15	0.00	32.15	
			9109518911	Water Backflow Valves	628.71	0.00	628.71	
			9109931098	Miscellaneous Equipment Parts & Supplies	797.73	0.00	797.73	
			9110582955	Miscellaneous Equipment Parts & Supplies	663.59	0.00	663.59	
			9112094223	Electrical Parts & Supplies	5.50	0.00	5.50	
			9112182556	Electrical Parts & Supplies	924.70	0.00	924.70	
			9115754872	Miscellaneous Equipment Parts & Supplies	375.72	0.00	375.72	
			9116672867	Parts, Vehicles & Motor Equip	26.52	0.00	26.52	
			9119436567	Hand Tools	54.43	0.00	54.43	
			9119436575	General Supplies	335.53	0.00	335.53	
			9119436583	Miscellaneous Equipment Parts & Supplies	18.96	0.00	18.96	
			9119436591	Miscellaneous Equipment Parts & Supplies	1,686.56	0.00	1,686.56	
			9120543476	Miscellaneous Equipment Parts & Supplies	82.38	0.00	82.38	
			9120567129	Miscellaneous Equipment Parts & Supplies	108.23	0.00	108.23	
			9120589677	Supplies, Safety	16.20	0.00	16.20	
			9120654216	Hand Tools	509.65	0.00	509.65	
			9120738563	Supplies, Safety	175.28	0.00	175.28	
			9120785689	Chemicals	15.52	0.00	15.52	
			9120785697	Miscellaneous Equipment Parts & Supplies	101.13	0.00	101.13	
			9120795761	Parts, Vehicles & Motor Equip	29.09	0.00	29.09	
			9120824645	Supplies, Safety	350.56	0.00	350.56	
			9121093893	Miscellaneous Equipment Parts & Supplies	77.70	0.00	77.70	
			9121707773	General Supplies	50.36	0.00	50.36	
			9122017073	Hand Tools	44.82	0.00	44.82	
			9122048508	Hand Tools	190.89	0.00	190.89	
			9127377993	Miscellaneous Equipment Parts & Supplies	172.06	0.00	172.06	
			9127526771	Miscellaneous Equipment Parts & Supplies	34.08	0.00	34.08	
			9127946904	General Supplies	39.22	0.00	39.22	
			9129240488	Parts, Vehicles & Motor Equip	166.67	0.00	166.67	
			9129248002	Supplies, Safety	1,485.42	0.00	1,485.42	

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xxx313402	4/30/19	PACIFIC GAS & ELECTRIC CO	9129251949	Supplies, Safety	458.30	0.00	458.30	<b>\$9,170.34</b>
			9129301900	Supplies, Safety	354.14	0.00	354.14	
			9129746914	Hand Tools	207.41	0.00	207.41	
			9129746922	Hand Tools	33.08	0.00	33.08	
			9130258289	Parts, Vehicles & Motor Equip	226.02	0.00	226.02	
			9130289235	Hand Tools	864.49	0.00	864.49	
			9130338792	Supplies, Safety	-358.26	0.00	-358.26	
			9130357073	Hand Tools	111.98	0.00	111.98	
			9130630727	Hand Tools	185.32	0.00	185.32	
			9131692494	Clothing, Uniforms & Access	117.96	0.00	117.96	
			9131913213	Parts, Vehicles & Motor Equip	-166.67	0.00	-166.67	
			11059228290319	Utilities - Electric	57.97	0.00	57.97	
			11059229930319	Utilities - Electric	64.06	0.00	64.06	
			35600081570319	Utilities - Electric	27.34	0.00	27.34	
			35602171200319	Utilities - Electric	26.05	0.00	26.05	
			35604437160319	Utilities - Electric	26.20	0.00	26.20	
			35606224450319	Utilities - Electric	15.04	0.00	15.04	
			35607191900319	Utilities - Electric	36.75	0.00	36.75	
			35608567660319	Utilities - Electric	32.27	0.00	32.27	
			35611839590319	Utilities - Electric	0.65	0.00	0.65	
			35612262510319	Utilities - Electric	35.10	0.00	35.10	
			35613458020319	Utilities - Electric	19.75	0.00	19.75	
			35615386140319	Utilities - Electric	12.51	0.00	12.51	
			35615568540319	Utilities - Electric	43.04	0.00	43.04	
			35616646260319	Utilities - Electric	25.98	0.00	25.98	
			35617117850319	Utilities - Electric	19.61	0.00	19.61	
			35619832010319	Utilities - Electric	9.33	0.00	9.33	
			35620251620319	Utilities - Electric	13.47	0.00	13.47	
			35621388650319	Utilities - Electric	19.97	0.00	19.97	
			35622378290319	Utilities - Electric	29.66	0.00	29.66	
			35622803790319	Utilities - Electric	32.12	0.00	32.12	

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			35623203290319	Utilities - Electric	28.80	0.00	28.80	
			35623495080319	Utilities - Electric	26.41	0.00	26.41	
			35624668430319	Utilities - Electric	28.01	0.00	28.01	
			35625361150319	Utilities - Electric	16.50	0.00	16.50	
			35629588410319	Utilities - Electric	34.73	0.00	34.73	
			35630250570319	Utilities - Electric	16.93	0.00	16.93	
			35630370110319	Utilities - Electric	34.44	0.00	34.44	
			35630869420319	Utilities - Electric	19.90	0.00	19.90	
			35631755360319	Utilities - Electric	25.41	0.00	25.41	
			35632810380319	Utilities - Electric	17.72	0.00	17.72	
			35634101590319	Utilities - Electric	41.39	0.00	41.39	
			35635840130319	Utilities - Electric	24.81	0.00	24.81	
			35635878160319	Utilities - Electric	21.27	0.00	21.27	
			35638635000319	Utilities - Electric	34.01	0.00	34.01	
			35639668520319	Utilities - Electric	17.80	0.00	17.80	
			35641783140319	Utilities - Electric	28.15	0.00	28.15	
			35642309020319	Utilities - Electric	23.88	0.00	23.88	
			35642590020319	Utilities - Electric	23.59	0.00	23.59	
			35642590100319	Utilities - Electric	50.73	0.00	50.73	
			35642590150319	Utilities - Electric	41.05	0.00	41.05	
			35642590200319	Utilities - Electric	43.24	0.00	43.24	
			35642590250319	Utilities - Electric	68.79	0.00	68.79	
			35642590300319	Utilities - Electric	71.57	0.00	71.57	
			35642590350319	Utilities - Electric	53.79	0.00	53.79	
			35642590400319	Utilities - Electric	79.41	0.00	79.41	
			35642590450319	Utilities - Electric	49.77	0.00	49.77	
			35642590460319	Utilities - Electric	11.73	0.00	11.73	
			35642590500319	Utilities - Electric	42.16	0.00	42.16	
			35642590650319	Utilities - Electric	44.03	0.00	44.03	
			35642590700319	Utilities - Electric	75.01	0.00	75.01	
			35642590750319	Utilities - Electric	63.80	0.00	63.80	

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			35642590800319	Utilities - Electric	60.09	0.00	60.09	
			35642590850319	Utilities - Electric	38.27	0.00	38.27	
			35642590950319	Utilities - Electric	20.59	0.00	20.59	
			35642591000319	Utilities - Electric	45.36	0.00	45.36	
			35642591050319	Utilities - Electric	49.87	0.00	49.87	
			35642591100319	Utilities - Electric	43.44	0.00	43.44	
			35642591150319	Utilities - Electric	52.65	0.00	52.65	
			35642591210319	Utilities - Electric	29.45	0.00	29.45	
			35642591250319	Utilities - Electric	68.52	0.00	68.52	
			35642591300319	Utilities - Electric	30.79	0.00	30.79	
			35642591310319	Utilities - Electric	11.37	0.00	11.37	
			35642591350319	Utilities - Electric	64.31	0.00	64.31	
			35642591400319	Utilities - Electric	54.36	0.00	54.36	
			35642591430319	Utilities - Electric	24.17	0.00	24.17	
			35642591450319	Utilities - Electric	39.00	0.00	39.00	
			35642591500319	Utilities - Electric	32.38	0.00	32.38	
			35642591550319	Utilities - Electric	35.09	0.00	35.09	
			35642591600319	Utilities - Electric	47.45	0.00	47.45	
			35642591650319	Utilities - Electric	59.65	0.00	59.65	
			35642591700319	Utilities - Electric	49.37	0.00	49.37	
			35642591750319	Utilities - Electric	54.64	0.00	54.64	
			35642591800319	Utilities - Electric	40.28	0.00	40.28	
			35642591850319	Utilities - Electric	46.66	0.00	46.66	
			35642591900319	Utilities - Electric	39.65	0.00	39.65	
			35642591930319	Utilities - Electric	30.47	0.00	30.47	
			35642591940319	Utilities - Electric	20.33	0.00	20.33	
			35642591950319	Utilities - Electric	52.55	0.00	52.55	
			35642592000319	Utilities - Electric	67.27	0.00	67.27	
			35642592050319	Utilities - Electric	67.92	0.00	67.92	
			35642592070319	Utilities - Electric	23.31	0.00	23.31	
			35642592100319	Utilities - Electric	60.46	0.00	60.46	

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			35642592130319	Utilities - Electric	15.78	0.00	15.78	
			35642592150319	Utilities - Electric	52.82	0.00	52.82	
			35642592190319	Utilities - Electric	39.36	0.00	39.36	
			35642592200319	Utilities - Electric	56.61	0.00	56.61	
			35642592250319	Utilities - Electric	26.03	0.00	26.03	
			35642592300319	Utilities - Electric	43.52	0.00	43.52	
			35642592350319	Utilities - Electric	11.61	0.00	11.61	
			35642592400319	Utilities - Electric	74.83	0.00	74.83	
			35642592450319	Utilities - Electric	42.55	0.00	42.55	
			35642592500319	Utilities - Electric	41.59	0.00	41.59	
			35642592550319	Utilities - Electric	55.96	0.00	55.96	
			35642592600319	Utilities - Electric	49.33	0.00	49.33	
			35642592650319	Utilities - Electric	60.49	0.00	60.49	
			35642592700319	Utilities - Electric	53.63	0.00	53.63	
			35642592750319	Utilities - Electric	44.29	0.00	44.29	
			35642592800319	Utilities - Electric	76.13	0.00	76.13	
			35642592850319	Utilities - Electric	45.27	0.00	45.27	
			35642592900319	Utilities - Electric	53.75	0.00	53.75	
			35642592950319	Utilities - Electric	63.02	0.00	63.02	
			35642593000319	Utilities - Electric	58.41	0.00	58.41	
			35642593100319	Utilities - Electric	57.08	0.00	57.08	
			35642593200319	Utilities - Electric	51.65	0.00	51.65	
			35642593210319	Utilities - Electric	29.38	0.00	29.38	
			35642593250319	Utilities - Electric	12.95	0.00	12.95	
			35642593260319	Utilities - Electric	23.09	0.00	23.09	
			35642593300319	Utilities - Electric	58.48	0.00	58.48	
			35642593350319	Utilities - Electric	68.49	0.00	68.49	
			35642593400319	Utilities - Electric	57.08	0.00	57.08	
			35642593410319	Utilities - Electric	13.83	0.00	13.83	
			35642593480319	Utilities - Electric	17.80	0.00	17.80	
			35642593500319	Utilities - Electric	53.99	0.00	53.99	

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			35642593550319	Utilities - Electric	41.59	0.00	41.59	
			35642593600319	Utilities - Electric	64.44	0.00	64.44	
			35642593650319	Utilities - Electric	56.09	0.00	56.09	
			35642593700319	Utilities - Electric	53.39	0.00	53.39	
			35642593750319	Utilities - Electric	36.31	0.00	36.31	
			35642593830319	Utilities - Electric	19.82	0.00	19.82	
			35642593850319	Utilities - Electric	9.53	0.00	9.53	
			35642593900319	Utilities - Electric	42.32	0.00	42.32	
			35642593950319	Utilities - Electric	36.67	0.00	36.67	
			35642593960319	Utilities - Electric	18.53	0.00	18.53	
			35642594000319	Utilities - Electric	49.58	0.00	49.58	
			35642594030319	Utilities - Electric	18.46	0.00	18.46	
			35642594050319	Utilities - Electric	29.42	0.00	29.42	
			35642594100319	Utilities - Electric	28.79	0.00	28.79	
			35642594150319	Utilities - Electric	41.35	0.00	41.35	
			35642594250319	Utilities - Electric	76.37	0.00	76.37	
			35642594260319	Utilities - Electric	18.31	0.00	18.31	
			35642594300319	Utilities - Electric	42.46	0.00	42.46	
			35642594310319	Utilities - Electric	19.18	0.00	19.18	
			35642594350319	Utilities - Electric	43.80	0.00	43.80	
			35642594400319	Utilities - Electric	40.98	0.00	40.98	
			35642594450319	Utilities - Electric	49.08	0.00	49.08	
			35642594500319	Utilities - Electric	32.99	0.00	32.99	
			35642594550319	Utilities - Electric	59.40	0.00	59.40	
			35642594600319	Utilities - Electric	59.40	0.00	59.40	
			35642594650319	Utilities - Electric	62.83	0.00	62.83	
			35642594700319	Utilities - Electric	59.53	0.00	59.53	
			35642594750319	Utilities - Electric	48.96	0.00	48.96	
			35642594800319	Utilities - Electric	53.75	0.00	53.75	
			35642594850319	Utilities - Electric	35.43	0.00	35.43	
			35642594900319	Utilities - Electric	46.74	0.00	46.74	

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<b>Payment No.</b>	<b>Payment Date</b>	<b>Vendor Name</b>	<b>Invoice No.</b>	<b>Description</b>	<b>Invoice Amount</b>	<b>Discount Taken</b>	<b>Amount Paid</b>	<b>Payment Total</b>
			35642594950319	Utilities - Electric	61.24	0.00	61.24	
			35642595000319	Utilities - Electric	44.05	0.00	44.05	
			35642595050319	Utilities - Electric	52.52	0.00	52.52	
			35642595100319	Utilities - Electric	60.61	0.00	60.61	
			35642595150319	Utilities - Electric	43.20	0.00	43.20	
			35642595180319	Utilities - Electric	15.27	0.00	15.27	
			35642595200319	Utilities - Electric	50.56	0.00	50.56	
			35642595250319	Utilities - Electric	45.44	0.00	45.44	
			35642595260319	Utilities - Electric	39.28	0.00	39.28	
			35642595270319	Utilities - Electric	25.33	0.00	25.33	
			35642595300319	Utilities - Electric	44.72	0.00	44.72	
			35642595350319	Utilities - Electric	43.04	0.00	43.04	
			35642595400319	Utilities - Electric	44.41	0.00	44.41	
			35642595450319	Utilities - Electric	79.06	0.00	79.06	
			35642595500319	Utilities - Electric	38.93	0.00	38.93	
			35642595550319	Utilities - Electric	43.76	0.00	43.76	
			35642595600319	Utilities - Electric	41.63	0.00	41.63	
			35642595650319	Utilities - Electric	43.29	0.00	43.29	
			35642595700319	Utilities - Electric	51.71	0.00	51.71	
			35642595750319	Utilities - Electric	50.83	0.00	50.83	
			35642595800319	Utilities - Electric	45.44	0.00	45.44	
			35642595840319	Utilities - Electric	23.23	0.00	23.23	
			35642595850319	Utilities - Electric	76.90	0.00	76.90	
			35642595900319	Utilities - Electric	45.06	0.00	45.06	
			35642595950319	Utilities - Electric	84.68	0.00	84.68	
			35642596000319	Utilities - Electric	69.20	0.00	69.20	
			35642596050319	Utilities - Electric	48.72	0.00	48.72	
			35642596100319	Utilities - Electric	50.56	0.00	50.56	
			35642596150319	Utilities - Electric	40.62	0.00	40.62	
			35642596180319	Utilities - Electric	18.74	0.00	18.74	
			35642596200319	Utilities - Electric	52.52	0.00	52.52	

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Payment No.	Payment Date	Vendor Name	Invoice No.	Description	Invoice Amount	Discount Taken	Amount Paid	Payment Total
			35642596250319	Utilities - Electric	40.85	0.00	40.85	
			35642596300319	Utilities - Electric	42.08	0.00	42.08	
			35642596310319	Utilities - Electric	20.55	0.00	20.55	
			35642596350319	Utilities - Electric	39.76	0.00	39.76	
			35642596380319	Utilities - Electric	31.40	0.00	31.40	
			35642596390319	Utilities - Electric	23.95	0.00	23.95	
			35642596400319	Utilities - Electric	38.30	0.00	38.30	
			35642596450319	Utilities - Electric	67.32	0.00	67.32	
			35642596500319	Utilities - Electric	40.46	0.00	40.46	
			35642596510319	Utilities - Electric	19.32	0.00	19.32	
			35642596700319	Utilities - Electric	21.92	0.00	21.92	
			35642596890319	Utilities - Electric	20.55	0.00	20.55	
			35642597310319	Utilities - Electric	19.39	0.00	19.39	
			35642597410319	Utilities - Electric	26.05	0.00	26.05	
			35642597560319	Utilities - Electric	16.93	0.00	16.93	
			35642597580319	Utilities - Electric	34.22	0.00	34.22	
			35642597780319	Utilities - Electric	24.45	0.00	24.45	
			35642598090319	Utilities - Electric	29.38	0.00	29.38	
			35642598240319	Utilities - Electric	9.53	0.00	9.53	
			35642598320319	Utilities - Electric	30.10	0.00	30.10	
			35642598500319	Utilities - Electric	18.53	0.00	18.53	
			35642598680319	Utilities - Electric	20.18	0.00	20.18	
			35642599030319	Utilities - Electric	24.17	0.00	24.17	
			35642599140319	Utilities - Electric	20.78	0.00	20.78	
			35642599220319	Utilities - Electric	35.17	0.00	35.17	
			35642599230319	Utilities - Electric	16.00	0.00	16.00	
			35642599630319	Utilities - Electric	40.96	0.00	40.96	
			35642599650319	Utilities - Electric	19.75	0.00	19.75	
			35642657100319	Utilities - Electric	23.73	0.00	23.73	
			35644680670319	Utilities - Electric	21.06	0.00	21.06	
			35646567580319	Utilities - Electric	6.52	0.00	6.52	



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			35647525510319	Utilities - Electric	27.34	0.00	27.34	
			35647587030319	Utilities - Electric	39.22	0.00	39.22	
			35650040160319	Utilities - Electric	25.84	0.00	25.84	
			35650072020319	Utilities - Electric	17.36	0.00	17.36	
			35650295620319	Utilities - Electric	21.14	0.00	21.14	
			35650736240319	Utilities - Electric	20.47	0.00	20.47	
			35651995910319	Utilities - Electric	25.11	0.00	25.11	
			35652446010319	Utilities - Electric	31.19	0.00	31.19	
			35652837430319	Utilities - Electric	19.03	0.00	19.03	
			35653850930319	Utilities - Electric	28.01	0.00	28.01	
			35654460380319	Utilities - Electric	20.33	0.00	20.33	
			35655027900319	Utilities - Electric	32.34	0.00	32.34	
			35656758090319	Utilities - Electric	18.60	0.00	18.60	
			35658641990319	Utilities - Electric	18.89	0.00	18.89	
			35659521990319	Utilities - Electric	25.48	0.00	25.48	
			35659719430319	Utilities - Electric	38.20	0.00	38.20	
			35661606410319	Utilities - Electric	21.92	0.00	21.92	
			35662710140319	Utilities - Electric	18.89	0.00	18.89	
			35663598020319	Utilities - Electric	29.81	0.00	29.81	
			35664661630319	Utilities - Electric	26.20	0.00	26.20	
			35666020590319	Utilities - Electric	19.46	0.00	19.46	
			35666267910319	Utilities - Electric	31.62	0.00	31.62	
			35669864390319	Utilities - Electric	23.23	0.00	23.23	
			35671931870319	Utilities - Electric	21.50	0.00	21.50	
			35674252920319	Utilities - Electric	27.42	0.00	27.42	
			35674989850319	Utilities - Electric	19.25	0.00	19.25	
			35675679620319	Utilities - Electric	25.48	0.00	25.48	
			35676150740319	Utilities - Electric	38.28	0.00	38.28	
			35677237450319	Utilities - Electric	30.02	0.00	30.02	
			35677708710319	Utilities - Electric	19.74	0.00	19.74	
			35677904120319	Utilities - Electric	28.51	0.00	28.51	

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			35679500460319	Utilities - Electric	33.72	0.00	33.72	
			35679745900319	Utilities - Electric	29.52	0.00	29.52	
			35680001590319	Utilities - Electric	23.09	0.00	23.09	
			35681394250319	Utilities - Electric	17.36	0.00	17.36	
			35685267030319	Utilities - Electric	44.06	0.00	44.06	
			35690738200319	Utilities - Electric	24.31	0.00	24.31	
			35693522670319	Utilities - Electric	20.84	0.00	20.84	
			35695460940319	Utilities - Electric	26.13	0.00	26.13	
			35695887370319	Utilities - Electric	23.45	0.00	23.45	
			35699206580319	Utilities - Electric	1.45	0.00	1.45	
			74408230820319	Utilities - Electric	48.90	0.00	48.90	
xxx313423	4/30/19	ZUNZUN	5119	General Supplies	500.00	0.00	500.00	<b>\$500.00</b>
xxx313424	4/30/19	ELIZABETH M PEREZ	950842	Lib - Lost & Damaged Circulation	4.43	0.00	4.43	<b>\$4.43</b>
xxx313425	4/30/19	HOLLY MCCULLOUGH	964124	Lib - Lost & Damaged Circulation	17.99	0.00	17.99	<b>\$17.99</b>
xxx313426	4/30/19	REBECCA REED	2019-7226	Minor Permit Application Fees - Other	311.00	0.00	311.00	<b>\$311.00</b>
xxx313427	4/30/19	RUTH ROWE	426753	Refund Recreation Fees	30.00	0.00	30.00	<b>\$30.00</b>
xxx313428	4/30/19	SANQUI RODRIGUEZ & MIKE MCKAY	128701-52322	Refund Utility Account Credit	351.16	0.00	351.16	<b>\$351.16</b>
xxx313429	4/30/19	SOUTH BAY CONSTRUCTION	46119-32142	Refund Utility Account Credit	4,340.62	0.00	4,340.62	<b>\$4,340.62</b>
xxx313430	4/30/19	UMA B CHINTA	953857	Lib - Lost & Damaged Circulation	2.97	0.00	2.97	<b>\$2.97</b>
xxx313431	4/30/19	ZUPING MA	949481	Lib - Lost & Damaged Circulation	12.95	0.00	12.95	<b>\$12.95</b>
xxx313432	5/2/19	AAA SPEEDY SMOG TEST ONLY STATION	028815	Automotive Maintenance & Repair Labor	40.00	0.00	40.00	<b>\$160.00</b>
			028826	Automotive Maintenance & Repair Labor	40.00	0.00	40.00	
			028827	Automotive Maintenance & Repair Labor	40.00	0.00	40.00	
			028837	Automotive Maintenance & Repair Labor	40.00	0.00	40.00	
xxx313433	5/2/19	ACCESS HARDWARE	5719865-IN	Bldg Maint Matls & Supplies	439.11	0.00	439.11	<b>\$439.11</b>
xxx313434	5/2/19	ADVANCED FUEL SERVICES INC	906877	Misc Equip Maint & Repair - Labor	127.50	0.00	127.50	<b>\$253.66</b>
			906877	Misc Equip Maint & Repair - Materials	126.16	0.00	126.16	
xxx313435	5/2/19	ALL CITY MANAGEMENT SERVICES INC	59930	Contracts/Service Agreements	16,088.47	0.00	16,088.47	<b>\$78,880.08</b>
			60196	Contracts/Service Agreements	31,782.26	0.00	31,782.26	
			60569	Contracts/Service Agreements	31,009.35	0.00	31,009.35	
xxx313436	5/2/19	ALL STAR GLASS	ISJ062750	Auto Maint & Repair - Labor	225.50	0.00	225.50	<b>\$538.52</b>

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			ISJ062750	Auto Maint & Repair - Materials	313.02	0.00	313.02	
xxx313437	5/2/19	APEX SYSTEMS LLC	0004578953	Salaries - Contract Personnel	1,320.00	0.00	1,320.00	<b>\$3,960.00</b>
			0004578954	Salaries - Contract Personnel	1,320.00	0.00	1,320.00	
			0004593966	Salaries - Contract Personnel	1,320.00	0.00	1,320.00	
xxx313438	5/2/19	APPLEONE EMPLOYMENT SERVICES	01-5204164	Salaries - Regular	937.86	0.00	937.86	<b>\$12,820.23</b>
			01-5204164	Salaries - Contract Personnel	11,867.87	0.00	11,867.87	
			01-5204164	Travel Expenses - Mileage	14.50	0.00	14.50	
xxx313440	5/2/19	ARNE SIGN & DECAL CO INC	19-11536	Parts, Vehicles & Motor Equip	1,308.55	0.00	1,308.55	<b>\$1,308.55</b>
xxx313441	5/2/19	BAY AREA VIDEO COALITION INC	28585	DED Services/Training - Training	498.00	0.00	498.00	<b>\$498.00</b>
xxx313442	5/2/19	CALIFORNIA DEPT OF GENERAL SERVICES	1416105	Utilities - Gas	47,259.87	0.00	47,259.87	<b>\$47,259.87</b>
xxx313443	5/2/19	CALTEST ANALYTICAL LABORATORY	595296	Water Lab Services	115.66	0.00	115.66	<b>\$2,854.20</b>
			597705	Water Lab Services	57.83	0.00	57.83	
			597706	Water Lab Services	57.83	0.00	57.83	
			597972	Water Lab Services	1,693.57	0.00	1,693.57	
			598013	Water Lab Services	250.92	0.00	250.92	
			598018	Water Lab Services	504.90	0.00	504.90	
			598216	Water Lab Services	173.49	0.00	173.49	
xxx313444	5/2/19	CENTURY GRAPHICS	51347	Clothing, Uniforms & Access	129.49	0.00	129.49	<b>\$129.49</b>
xxx313445	5/2/19	CORIX WATER PRODUCTS US INC	17913009815	Inventory Purchase	2,864.36	26.28	2,838.08	<b>\$5,233.65</b>
			17913009882	Inventory Purchase	2,417.75	22.18	2,395.57	
xxx313446	5/2/19	COUNTY OF SANTA CLARA OFC OF THE SHERIFF	1800066207	Real Property Rental/Lease	500.00	0.00	500.00	<b>\$500.00</b>
xxx313447	5/2/19	D & M TRAFFIC SERVICES INC	64231	Inventory Purchase	1,205.54	0.00	1,205.54	<b>\$2,883.60</b>
			64377	Inventory Purchase	1,108.53	0.00	1,108.53	
			64488	Inventory Purchase	569.53	0.00	569.53	
xxx313448	5/2/19	DAHLIN GROUP	1903-128	Consultants	440.33	0.00	440.33	<b>\$440.33</b>
xxx313449	5/2/19	DE ANZA APPLIANCE	0419-4316-8947	Facilities Maintenance & Repair Labor	155.00	0.00	155.00	<b>\$155.00</b>
xxx313450	5/2/19	DELL MARKETING LP	10311573608	Computer Hardware	177.44	0.00	177.44	<b>\$2,499.31</b>
			10312127892	Computer Hardware	2,321.87	0.00	2,321.87	
xxx313451	5/2/19	E-Z-GO TEXTRON INC	91771472	Parts, Vehicles & Motor Equip	67.81	0.00	67.81	<b>\$888.80</b>
			91773399	Parts, Vehicles & Motor Equip	545.25	0.00	545.25	

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xxx313452	5/2/19	ENVIRONMENTAL RESOURCE ASSOC	91777621	Parts, Vehicles & Motor Equip	275.74	0.00	275.74	
			897844	Water Lab Services	470.95	0.00	470.95	<b>\$1,633.20</b>
			898612	General Supplies	334.26	0.00	334.26	
			900644	General Supplies	528.93	0.00	528.93	
			900672	General Supplies	299.06	0.00	299.06	
xxx313453	5/2/19	F&M BANK	PRMRYTRTMT 2#20	Construction Project Contract Retainage	141,944.11	0.00	141,944.11	<b>\$141,944.11</b>
xxx313454	5/2/19	FAMCON PIPE & SUPPLY INC	S000210697.001	Materials - Land Improve	9,417.60	0.00	9,417.60	<b>\$9,417.60</b>
xxx313455	5/2/19	FAST RESPONSE ON-SITE TESTING INC	151749	Medical Services	2,760.00	0.00	2,760.00	<b>\$13,860.00</b>
			151749	Contracts/Service Agreements	5,160.00	0.00	5,160.00	
			151752	Medical Services	1,980.00	0.00	1,980.00	
			151752	Contracts/Service Agreements	3,960.00	0.00	3,960.00	
xxx313456	5/2/19	FEDEX	6-512-74583	Mailing & Delivery Services	6.40	0.00	6.40	<b>\$43.67</b>
			6-519-29355	Postage	30.03	0.00	30.03	
			6-526-25954	Mailing & Delivery Services	7.24	0.00	7.24	
xxx313457	5/2/19	FEHR & PEERS	127418	Services Maintain Land Improv	2,964.94	0.00	2,964.94	<b>\$7,694.17</b>
			128143	Services Maintain Land Improv	2,467.19	0.00	2,467.19	
			128768	Services Maintain Land Improv	2,262.04	0.00	2,262.04	
xxx313458	5/2/19	FISHER SCIENTIFIC CO LLC	8955413	General Supplies	147.35	0.00	147.35	<b>\$147.35</b>
xxx313459	5/2/19	FLEETPRIDE INC	25635616	Inventory Purchase	37.52	0.00	37.52	<b>\$37.52</b>
xxx313460	5/2/19	FOSTER BROS SECURITY SYSTEMS INC	309563	Bldg Maint Matls & Supplies	616.50	0.00	616.50	<b>\$616.50</b>
xxx313461	5/2/19	FREMONT UNION HIGH SCHOOL DISTRICT	V190320	DED Services/Training - Training	39.50	0.00	39.50	<b>\$39.50</b>
xxx313462	5/2/19	GOODYEAR COMMERCIAL TIRE & SERVICE CTR	189-1101058	Auto Maint & Repair - Labor	31.13	0.00	31.13	<b>\$1,367.91</b>
			189-1101058	Auto Maint & Repair - Materials	23.56	0.00	23.56	
			189-1101086	Parts, Vehicles & Motor Equip	467.60	0.00	467.60	
			189-1101090	Parts, Vehicles & Motor Equip	381.96	0.00	381.96	
			189-1101100	Auto Maint & Repair - Labor	97.84	0.00	97.84	
			189-1101100	Auto Maint & Repair - Materials	28.63	0.00	28.63	
			189-1101132	Parts, Vehicles & Motor Equip	253.79	0.00	253.79	
			189-1101138	Parts, Vehicles & Motor Equip	223.91	0.00	223.91	
			189-1101159	Parts, Vehicles & Motor Equip	113.85	0.00	113.85	

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			189-1101160	Parts, Vehicles & Motor Equip	-254.36	0.00	-254.36	
xxx313464	5/2/19	H K AVERY CONSTRUCTION	1219	Facilities Maint & Repair - Labor	1,650.00	0.00	1,650.00	<b>\$2,080.00</b>
			1219	Facilities Maint & Repair - Materials	430.00	0.00	430.00	
xxx313465	5/2/19	INTERSTATE BATTERY SYSTEM OF SAN JOSE	10284319	Parts, Vehicles & Motor Equip	554.14	0.00	554.14	<b>\$1,230.01</b>
			10284494	Parts, Vehicles & Motor Equip	121.73	0.00	121.73	
			10284664	Parts, Vehicles & Motor Equip	554.14	0.00	554.14	
xxx313466	5/2/19	JACQUELINE R ORRELL	MASP005	Professional Services	600.00	0.00	600.00	<b>\$600.00</b>
xxx313467	5/2/19	JAKES OF SUNNYVALE	42419NOON	Food Products	479.77	0.00	479.77	<b>\$479.77</b>
xxx313468	5/2/19	KELLER SUPPLY COMPANY	S011715951.001	Facilities Maint & Repair	313.44	0.00	313.44	<b>\$1,664.26</b>
			S012883141.001	Hand Tools	110.87	0.00	110.87	
			S012935113.001	Chemicals	234.90	0.00	234.90	
			S012957033.001	Chemicals	1,005.05	0.00	1,005.05	
xxx313469	5/2/19	L N CURTIS & SONS INC	INV273780	General Supplies	152.59	0.00	152.59	<b>\$841.88</b>
			INV275794	Clothing, Uniforms & Access	196.20	0.00	196.20	
			INV276430	Miscellaneous Equipment	493.09	0.00	493.09	
xxx313470	5/2/19	LC ACTION POLICE SUPPLY	395380	General Supplies	201.60	0.00	201.60	<b>\$201.60</b>
xxx313471	5/2/19	LANDSCAPING BAY AREA	011596A	Services Maintain Land Improv	350.00	0.00	350.00	<b>\$350.00</b>
xxx313472	5/2/19	LAW ENFORCEMENT PSYCHOLOGICAL SERV INC	1902486	Investigation Expense	3,240.00	0.00	3,240.00	<b>\$5,595.00</b>
			1904628	Investigation Expense	675.00	0.00	675.00	
			1904631	Investigation Expense	1,680.00	0.00	1,680.00	
xxx313473	5/2/19	LEHR AUTO ELECTRIC	SI27275	Communication Equipment	271.60	0.00	271.60	<b>\$271.60</b>
xxx313474	5/2/19	MSI FUEL MANAGEMENT INC	4676	Equipment Maintenance & Repair Labor	570.00	0.00	570.00	<b>\$570.00</b>
xxx313475	5/2/19	MWA ARCHITECTS INC	201727.00-10R	Engineering Services	83,272.94	0.00	83,272.94	<b>\$83,272.94</b>
xxx313476	5/2/19	MALLORY SAFETY & SUPPLY LLC	4632851	Inventory Purchase	1,648.08	0.00	1,648.08	<b>\$2,116.78</b>
			4637343	Inventory Purchase	468.70	0.00	468.70	
xxx313477	5/2/19	MARK THOMAS & CO INC	32743	Consultants	7,341.00	0.00	7,341.00	<b>\$14,183.00</b>
			32919	Consultants	6,842.00	0.00	6,842.00	
xxx313478	5/2/19	MISSION VALLEY FORD TRUCK SALES INC	734617	Parts, Vehicles & Motor Equip	94.21	0.00	94.21	<b>\$392.68</b>
			734684	Parts, Vehicles & Motor Equip	298.47	0.00	298.47	
xxx313479	5/2/19	MUSSON THEATRICAL INC	00436637	General Supplies	326.73	0.00	326.73	<b>\$326.73</b>
xxx313480	5/2/19	NET TRANSCRIPTS INC	0024838-IN	Investigation Expense	204.97	0.00	204.97	<b>\$204.97</b>

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<b>Payment No.</b>	<b>Payment Date</b>	<b>Vendor Name</b>	<b>Invoice No.</b>	<b>Description</b>	<b>Invoice Amount</b>	<b>Discount Taken</b>	<b>Amount Paid</b>	<b>Payment Total</b>
xxx313481	5/2/19	OCCUPATIONAL TRAINING INSTITUTE	WIA-1438	DED Services/Training - Training	1,185.37	0.00	1,185.37	<b>\$1,185.37</b>
xxx313482	5/2/19	OPTONY INC	191604	Consultants	359.75	0.00	359.75	<b>\$359.75</b>
xxx313483	5/2/19	P&R PAPER SUPPLY CO INC	30252164-00	Inventory Purchase	878.63	0.00	878.63	<b>\$878.63</b>
xxx313484	5/2/19	PACIFIC CRANE INSPECTIONS	1651	Equipment Maintenance & Repair Labor	500.00	0.00	500.00	<b>\$500.00</b>
xxx313485	5/2/19	PACIFIC ECO-RISK	15350	Water Lab Services	2,985.00	0.00	2,985.00	<b>\$2,985.00</b>
xxx313486	5/2/19	PACIFIC WEST SECURITY INC	19604	Alarm Services	177.00	0.00	177.00	<b>\$177.00</b>
xxx313487	5/2/19	PAN ASIAN PUBLICATIONS INC	U-15990	Library Acquis, Audio/Visual	3,074.13	0.00	3,074.13	<b>\$5,404.93</b>
			U-16003	Library Acquisitions, Books	2,035.80	0.00	2,035.80	
			U-16003	Library Materials Preprocessing	295.00	0.00	295.00	
xxx313488	5/2/19	PETERSON	R3224419	Equipment Rental/Lease	8,569.14	0.00	8,569.14	<b>\$8,569.14</b>
xxx313489	5/2/19	PRIORITY 1 PUBLIC SAFETY EQUIPMENT	7321	Auto Maint & Repair - Labor	1,700.00	0.00	1,700.00	<b>\$5,001.15</b>
			7321	Auto Maint & Repair - Materials	2,381.15	0.00	2,381.15	
			7324	Automotive Maintenance & Repair Labor	460.00	0.00	460.00	
			7341	Automotive Maintenance & Repair Labor	460.00	0.00	460.00	
xxx313490	5/2/19	QUALITY CODE PUBLISHING LLC	2019-137	Books & Publications	979.45	0.00	979.45	<b>\$979.45</b>
xxx313491	5/2/19	RADGOV INC	CSV19040701	Professional Services	2,800.00	0.00	2,800.00	<b>\$8,400.00</b>
			CSV19041401	Professional Services	2,800.00	0.00	2,800.00	
			CSV19042101	Professional Services	2,800.00	0.00	2,800.00	
xxx313492	5/2/19	RDO EQUIPMENT CO	P84421	Parts, Vehicles & Motor Equip	941.62	0.00	941.62	<b>\$1,128.53</b>
			P84553	Parts, Vehicles & Motor Equip	186.91	0.00	186.91	
xxx313493	5/2/19	READYREFRESH BY NESTLE	09C0036688802	General Supplies	43.31	0.00	43.31	<b>\$155.08</b>
			09D0036688802	General Supplies	23.19	0.00	23.19	
			19C0025819772	General Supplies	49.15	0.00	49.15	
			19D0023249071	General Supplies	3.26	0.00	3.26	
			19D0028805083	General Supplies	36.17	0.00	36.17	
xxx313494	5/2/19	ROGER D HIGDON	2019-9639B	Consultants	1,698.40	0.00	1,698.40	<b>\$1,698.40</b>
xxx313495	5/2/19	ROYAL BRASS INC	892744-001	Parts, Vehicles & Motor Equip	100.82	0.00	100.82	<b>\$670.27</b>
			893070-001	Parts, Vehicles & Motor Equip	3.52	0.00	3.52	
			893162-001	Parts, Vehicles & Motor Equip	266.38	0.00	266.38	
			893163-001	Parts, Vehicles & Motor Equip	31.60	0.00	31.60	
			893412-001	Parts, Vehicles & Motor Equip	27.35	0.00	27.35	

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			894014-001	Parts, Vehicles & Motor Equip	61.53	0.00	61.53	
			894021-001	Parts, Vehicles & Motor Equip	58.10	0.00	58.10	
			894159-001	Parts, Vehicles & Motor Equip	113.46	0.00	113.46	
			894160-001	Parts, Vehicles & Motor Equip	7.51	0.00	7.51	
xxx313496	5/2/19	SCS ENGINEERS	0347000	Engineering Services	2,000.00	0.00	2,000.00	<b>\$2,000.00</b>
xxx313497	5/2/19	SAN JOSE BMW	257984	Auto Maint & Repair - Labor	300.00	0.00	300.00	<b>\$1,146.87</b>
			257984	Auto Maint & Repair - Materials	846.87	0.00	846.87	
xxx313498	5/2/19	SANTA CLARA VALLEY HEALTH & HOSPITAL SYS	H6838426400	Medical Services	1,159.00	0.00	1,159.00	<b>\$2,820.00</b>
			H6842022400	Medical Services	1,661.00	0.00	1,661.00	
xxx313499	5/2/19	SETCOM CORP	37699	Communication Equipment	8,103.88	0.00	8,103.88	<b>\$8,103.88</b>
xxx313500	5/2/19	SIERRA PACIFIC TURF SUPPLY INC	0548983-IN	Materials - Land Improve	1,776.71	0.00	1,776.71	<b>\$2,515.41</b>
			0549505-IN	Materials - Land Improve	412.79	0.00	412.79	
			0549506-IN	Materials - Land Improve	325.91	0.00	325.91	
xxx313501	5/2/19	SILICON VALLEY SECURITY & PATROL INC	2041570	Miscellaneous Services	330.00	0.00	330.00	<b>\$330.00</b>
xxx313502	5/2/19	SILVER & WRIGHT LLP	25579	Legal Services	1,490.00	0.00	1,490.00	<b>\$1,490.00</b>
xxx313503	5/2/19	SMART & FINAL INC	057505-042519	Food Products	39.81	0.00	39.81	<b>\$39.81</b>
xxx313504	5/2/19	STATE WATER RESOURCES CONTROL BOARD	OP#15038 D3	Membership Fees	120.00	0.00	120.00	<b>\$120.00</b>
xxx313505	5/2/19	STUDIO EM GRAPHIC DESIGN	17514	Graphics Services	81.75	0.00	81.75	<b>\$163.50</b>
			17515	Graphics Services	81.75	0.00	81.75	
xxx313506	5/2/19	SUNNYVALE FORD	FOCS794825	Auto Maint & Repair - Labor	787.50	0.00	787.50	<b>\$875.06</b>
			FOCS794825	Auto Maint & Repair - Materials	87.56	0.00	87.56	
xxx313507	5/2/19	TJKM	0048236	Engineering Services	2,632.50	0.00	2,632.50	<b>\$2,632.50</b>
xxx313508	5/2/19	TMT ENTERPRISES INC	99409	Materials - Land Improve	1,437.11	0.00	1,437.11	<b>\$1,437.11</b>
xxx313509	5/2/19	TAYLORMADE GOLF CO	33697812	Inventory Purchase	721.61	0.00	721.61	<b>\$721.61</b>
xxx313510	5/2/19	TURF & INDUSTRIAL EQUIPMENT CO	IV30254	Inventory Purchase	633.29	0.00	633.29	<b>\$633.29</b>
xxx313511	5/2/19	US HEALTHWORKS MEDICAL GROUP PC	3485774-CA	Pre-Employment Testing	330.50	0.00	330.50	<b>\$330.50</b>
xxx313512	5/2/19	USA BLUEBOOK	860491	General Supplies	227.81	0.00	227.81	<b>\$1,693.89</b>
			860539	General Supplies	1,043.33	0.00	1,043.33	
			866167	General Supplies	163.17	0.00	163.17	
			872697	General Supplies	259.58	0.00	259.58	

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xxx313513	5/2/19	UNITED ROTARY BRUSH CORP	CI232582	Parts, Vehicles & Motor Equip	3,411.18	0.00	3,411.18	<b>\$3,708.20</b>
			TX232582	Parts, Vehicles & Motor Equip	297.02	0.00	297.02	
xxx313514	5/2/19	UNITED STATES POSTAL SERVICE	P#584-042519	Postage	235.00	0.00	235.00	<b>\$235.00</b>
xxx313515	5/2/19	UNITED STATES POSTAL SERVICE	P#584-042919	Postage	183.04	0.00	183.04	<b>\$183.04</b>
xxx313516	5/2/19	UNIVERSITY OF CALIFORNIA SANTA CRUZ	58265	DED Services/Training - Training	344.00	0.00	344.00	<b>\$344.00</b>
xxx313517	5/2/19	VMI INC	300232	Misc Equip Maint & Repair - Labor	220.00	0.00	220.00	<b>\$220.00</b>
xxx313518	5/2/19	VWR INTERNATIONAL LLC	8085872835	General Supplies	69.00	0.00	69.00	<b>\$2,563.00</b>
			8085880285	General Supplies	84.04	0.00	84.04	
			8085881348	General Supplies	584.08	0.00	584.08	
			8085959827	General Supplies	23.50	0.00	23.50	
			8085964530	General Supplies	919.02	0.00	919.02	
			8085964531	General Supplies	75.12	0.00	75.12	
			8085967756	General Supplies	56.34	0.00	56.34	
			8085987592	General Supplies	36.48	0.00	36.48	
			8085998214	General Supplies	31.14	0.00	31.14	
			8086022725	General Supplies	300.91	0.00	300.91	
			8086042434	General Supplies	383.37	0.00	383.37	
xxx313519	5/2/19	VISTA ANALYTICAL LABORATORY INC	47272	Water Lab Services	975.00	0.00	975.00	<b>\$975.00</b>
xxx313520	5/2/19	WAN LING HSIEH	592508-9006618	DED Services/Training - Books	56.76	0.00	56.76	<b>\$56.76</b>
xxx313521	5/2/19	WECK LABORATORIES INC	W9D0835	Water Lab Services	772.78	0.00	772.78	<b>\$772.78</b>
xxx313522	5/2/19	WEST COAST INDUSTRIAL COATINGS INC	MRYCRSTANK 2#06	Construction Services	168,955.56	0.00	168,955.56	<b>\$168,955.56</b>
xxx313523	5/2/19	WEST COAST RUBBER & RECYCLING INC	19-767	Auto Maint & Repair - Labor	380.00	0.00	380.00	<b>\$399.00</b>
			19-767	Auto Maint & Repair - Materials	19.00	0.00	19.00	
xxx313524	5/2/19	WINSUPPLY OF SILICON VALLEY	002507 00	Materials - Land Improve	229.68	0.00	229.68	<b>\$487.88</b>
			002756 00	Bldg Maint Matls & Supplies	64.87	0.00	64.87	
			002803 00	Bldg Maint Matls & Supplies	39.93	0.00	39.93	
			002849 00	Bldg Maint Matls & Supplies	153.40	0.00	153.40	
xxx313526	5/2/19	YAMAHA MOTOR FINANCE CORP USA	667490	Equipment Rental/Lease	5,973.20	0.00	5,973.20	<b>\$5,973.20</b>
xxx313527	5/2/19	BGC ENVIRONMENTAL BROKERAGE SERVICES LP	04261905	Taxes & Licenses	2,189.00	0.00	2,189.00	<b>\$2,189.00</b>
xxx313528	5/2/19	PACIFIC GAS & ELECTRIC CO						<b>\$175,943.55</b>



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			11008300870319	Utilities - Electric	313.83	0.00	313.83	
			11023476280319	Utilities - Electric	396.36	0.00	396.36	
			11023824480319	Utilities - Electric	445.08	0.00	445.08	
			11054204050119	Utilities - Electric	-14.91	0.00	-14.91	
			11054204050219	Utilities - Electric	-14.77	0.00	-14.77	
			11054204050319	Utilities - Electric	4,492.52	0.00	4,492.52	
			11059220090319	Utilities - Electric	2,283.85	0.00	2,283.85	
			11059220250319	Utilities - Gas	1,701.61	0.00	1,701.61	
			11059220400319	Utilities - Gas	681.34	0.00	681.34	
			11059220450319	Utilities - Gas	2,979.83	0.00	2,979.83	
			11059220500319	Utilities - Gas	168.35	0.00	168.35	
			11059220550319	Utilities - Electric	682.44	0.00	682.44	
			11059220600319	Utilities - Gas	5,419.52	0.00	5,419.52	
			11059220640319	Utilities - Electric	990.95	0.00	990.95	
			11059220750319	Utilities - Gas	2,944.39	0.00	2,944.39	
			11059220900319	Utilities - Gas	346.19	0.00	346.19	
			11059220930319	Utilities - Electric	284.26	0.00	284.26	
			11059221020319	Utilities - Electric	435.45	0.00	435.45	
			11059221050319	Utilities - Gas	183.50	0.00	183.50	
			11059221060319	Utilities - Electric	820.42	0.00	820.42	
			11059221080319	Utilities - Electric	473.15	0.00	473.15	
			11059221150319	Utilities - Gas	193.26	0.00	193.26	
			11059221180319	Utilities - Electric	4,236.08	0.00	4,236.08	
			11059221280319	Utilities - Electric	733.45	0.00	733.45	
			11059221350319	Utilities - Gas	198.84	0.00	198.84	
			11059221400319	Utilities - Gas	4,207.02	0.00	4,207.02	
			11059221600319	Utilities - Gas	114.10	0.00	114.10	
			11059221680319	Utilities - Electric	248.93	0.00	248.93	
			11059221700319	Utilities - Gas	251.90	0.00	251.90	
			11059221730319	Utilities - Electric	1,262.11	0.00	1,262.11	
			11059221930319	Utilities - Electric	6,708.38	0.00	6,708.38	

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			11059222190319	Utilities - Electric	0.37	0.00	0.37	
			11059222630319	Utilities - Electric	943.78	0.00	943.78	
			11059222720319	Utilities - Electric	500.57	0.00	500.57	
			11059224060319	Utilities - Electric	7,111.40	0.00	7,111.40	
			11059224270319	Utilities - Electric	10.49	0.00	10.49	
			11059224730319	Utilities - Electric	230.37	0.00	230.37	
			11059225100319	Utilities - Gas	877.79	0.00	877.79	
			11059225290319	Utilities - Electric	503.07	0.00	503.07	
			11059225550319	Utilities - Electric	1,444.69	0.00	1,444.69	
			11059225650319	Utilities - Gas	2,599.13	0.00	2,599.13	
			11059226380319	Utilities - Electric	4,932.83	0.00	4,932.83	
			11059226470319	Utilities - Electric	464.00	0.00	464.00	
			11059226810319	Utilities - Electric	5,017.73	0.00	5,017.73	
			11059227030319	Utilities - Electric	409.04	0.00	409.04	
			11059227060319	Utilities - Electric	1,882.80	0.00	1,882.80	
			11059227230319	Utilities - Electric	3,265.03	0.00	3,265.03	
			11059227650319	Utilities - Electric	286.26	0.00	286.26	
			11059227850319	Utilities - Electric	2,662.46	0.00	2,662.46	
			11059228050319	Utilities - Electric	4,077.19	0.00	4,077.19	
			11059228670319	Utilities - Electric	267.69	0.00	267.69	
			11059229250319	Utilities - Electric	3,363.69	0.00	3,363.69	
			11059229470319	Utilities - Electric	2,695.07	0.00	2,695.07	
			11059229910319	Utilities - Electric	5,047.94	0.00	5,047.94	
			11059229990319	Utilities - Electric	1,992.70	0.00	1,992.70	
			11082505320319	Utilities - Electric	156.22	0.00	156.22	
			35922924580319	Utilities - Electric	22.08	0.00	22.08	
			60209026830319	Utilities - Electric	5.31	0.00	5.31	
			60211953740319	Utilities - Electric	3.02	0.00	3.02	
			60225901000319	Utilities - Electric	9.53	0.00	9.53	
			60225901010319	Utilities - Electric	346.50	0.00	346.50	
			60225901310319	Utilities - Electric	11.75	0.00	11.75	

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			60225901820319	Utilities - Electric	406.41	0.00	406.41	
			60225902010319	Utilities - Electric	113.27	0.00	113.27	
			60225902290319	Utilities - Electric	23.29	0.00	23.29	
			60225902660319	Utilities - Electric	907.18	0.00	907.18	
			60225902810319	Utilities - Electric	170.25	0.00	170.25	
			60225902950319	Utilities - Electric	27.30	0.00	27.30	
			60225903300319	Utilities - Electric	82.54	0.00	82.54	
			60225903370319	Utilities - Electric	2.22	0.00	2.22	
			60225903550319	Utilities - Electric	102.96	0.00	102.96	
			60225904270319	Utilities - Electric	3.20	0.00	3.20	
			60225904460319	Utilities - Electric	1.27	0.00	1.27	
			60225904500319	Utilities - Electric	4.58	0.00	4.58	
			60225905410319	Utilities - Electric	24.62	0.00	24.62	
			60225906090319	Utilities - Electric	1,474.18	0.00	1,474.18	
			60225906400319	Utilities - Electric	4.50	0.00	4.50	
			60225906510319	Utilities - Electric	6,480.85	0.00	6,480.85	
			60225906590319	Utilities - Electric	713.98	0.00	713.98	
			60225906650319	Utilities - Electric	44.07	0.00	44.07	
			60225906780319	Utilities - Electric	21,498.45	0.00	21,498.45	
			60225906940319	Utilities - Electric	748.06	0.00	748.06	
			60225906980319	Utilities - Electric	238.66	0.00	238.66	
			60225907190319	Utilities - Electric	3,400.71	0.00	3,400.71	
			60225907630319	Utilities - Electric	2.44	0.00	2.44	
			60225907690319	Utilities - Electric	160.05	0.00	160.05	
			60225907730319	Utilities - Electric	27.90	0.00	27.90	
			60225907760319	Utilities - Electric	11.59	0.00	11.59	
			60225908160319	Utilities - Electric	11,212.18	0.00	11,212.18	
			60225908170319	Utilities - Electric	22.92	0.00	22.92	
			60225908610319	Utilities - Electric	26.85	0.00	26.85	
			60225908940319	Utilities - Electric	41.56	0.00	41.56	
			60243005770319	Utilities - Electric	0.91	0.00	0.91	

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			60255379990319	Utilities - Electric	16,279.18	0.00	16,279.18	
			60279502630319	Utilities - Electric	10,385.91	0.00	10,385.91	
			61266000050319	Utilities - Gas	4,162.33	0.00	4,162.33	
			65170651530319	Utilities - Electric	1,602.17	0.00	1,602.17	
			72891152060319	Utilities - Electric	10.72	0.00	10.72	
			96226800430319	Utilities - Electric	67.21	0.00	67.21	
			96226804090319	Utilities - Electric	136.48	0.00	136.48	
			97331850980319	Utilities - Electric	12.67	0.00	12.67	
xxx313536	5/2/19	POLICE EXECUTIVE RESEARCH FORUM	5337	Training and Conferences	9,500.00	0.00	9,500.00	<b>\$9,500.00</b>
xxx313537	5/2/19	UNITED STATES POSTAL SERVICE	P#2661000-0419	Postage	800.00	0.00	800.00	<b>\$800.00</b>
xxx313538	5/2/19	BEATRIZ GONZALEZ	428829	Refund Recreation Fees	350.00	0.00	350.00	<b>\$350.00</b>
xxx313539	5/2/19	HAYWARD PROPERTY MGNT	195325-32994	Refund Utility Account Credit	781.79	0.00	781.79	<b>\$781.79</b>
xxx313540	5/2/19	PCS SERVICES	BL020829 19-20	Business License Tax	38.89	0.00	38.89	<b>\$38.89</b>
xxx313541	5/2/19	ROBERT MONTALVO	427378	Refund Recreation Fees	70.00	0.00	70.00	<b>\$70.00</b>
xxx313542	5/2/19	SILICON LABS	BL057051 19-20	Business License Tax	234.01	0.00	234.01	<b>\$234.01</b>
xxx313543	5/2/19	SQUARE TYPE	BL069309 19-20	Business License Tax	38.89	0.00	38.89	<b>\$38.89</b>
xxx313544	5/2/19	VIRGINIA BANSIL	428817	Refund Recreation Fees	350.00	0.00	350.00	<b>\$350.00</b>
xxx002811	4/30/19	PUBLIC EMPLOYEES RETIREMENT SYSTEM	950002811	Retirement Benefits - Misc Tier 1 & 2 Employer Required Cont.	171,328.15	0.00	171,328.15	<b>\$678,205.06</b>
			950002811	Retirement Benefits - Misc Tier 1&2 Employer Paid Member Cont.	68,617.38	0.00	68,617.38	
			950002811	Retirement Benefits - Misc PEPR Employer Required Cont.	88,163.16	0.00	88,163.16	
			950002811	Retirement Benefits - Safety Tier 1&2 Employer Required Cont.	204,723.57	0.00	204,723.57	
			950002811	Retirement Benefits - Safety Tier 1&2 Emplyr Paid Member Cont	89,994.74	0.00	89,994.74	
			950002811	Retirement Benefits - Safety PEPR Employer Required Cont.	55,378.06	0.00	55,378.06	
xxx100810	4/29/19	STATE BOARD OF EQUAL DIRECT DEPOSIT	5918362	Use Tax Payable	16,960.74	0.00	16,960.74	<b>\$16,960.74</b>

**Grand Total Payment Amount**

**\$2,189,130.65**



# City of Sunnyvale

## Agenda Item

19-0301

Agenda Date: 5/21/2019

### REPORT TO COUNCIL

#### SUBJECT

Approve the FY 2019/20 Preliminary Engineer's Report for the Downtown Parking District Assessment, Adopt a Resolution of Intention to Levy and Collect an Assessment for the Downtown Parking Maintenance District for FY 2019/20, and Set the Date of June 25, 2019 for the Public Hearing on the Proposed Assessment

#### BACKGROUND

The operation and maintenance of certain downtown parking areas are supported by an assessment district (the Downtown Parking Maintenance District, hereinafter called the "District"). On July 28, 2009, in response to property owners ballot approval, the City Council adopted Resolution No. 398-09 (RTC No. 09-196) ordering the formation of the District. Council also confirmed the final Engineer's Report to levy an assessment for FY 2009/10 and for each fiscal year thereafter by adjusting the annual assessment rate based upon the previous year's change in the Consumer Price Index (All Urban Consumers for the San Francisco-Oakland-San Jose area, as determined by the United States Department of Labor), the "CPI".

On June 26, 2018, the City Council approved the current (FY 2018/19) assessment rates, as shown in Table 1 below:

Table 1 - FY 2018/19 Assessment Rates per Benefit Zone					
Benefit Zone No.	Assessment Rate Per Deficit Parking Space	Total Deficit Parking Spaces	Total Assessment Revenue	Less County Administration (1%)	Net Assessment Revenue
1	\$0.00	56.80	\$0.00	\$0.00	\$0.00
2	\$173.24	172.38	\$29,863.10	(\$298.63)	\$29,564.47
3	\$75.22	2,137.46	\$160,779.58	(\$1,607.80)	\$159,171.78
4	\$22.66	371.28	\$8,413.18	(\$84.13)	\$8,329.05
<b>Total</b>		<b>2,737.92</b>	<b>\$199,055.86</b>	<b>(\$1,990.56)</b>	<b>\$197,065.30</b>

The benefit zones are shown on the District diagram in the Engineer's Report (Attachment 1, Appendix A). Property owners in Zone 1 (commonly known as CityLine Sunnyvale, formerly Town Center) are not assessed because the developer of CityLine is required to maintain the new parking facilities as well as the existing parking structure adjacent to Target. Additionally, property owners in Zone 1 south of Iowa Avenue, are able to use the available parking facilities, even though the

CityLine Sunnyvale project developer pays for the maintenance and operation of those parking facilities. Benefit zones 2, 3, and 4 have a different assessment rate based upon the City's operating and maintenance costs for those public parking lots within each benefit zone.

### **EXISTING POLICY**

Council Resolution No. 6643, dated September 1, 1964 authorized the City to levy an annual assessment on all lands and improvements within the Parking District to pay debt service, operations, maintenance, and improvement costs.

### **ENVIRONMENTAL REVIEW**

Adoption of the subject Resolution of Intention is not a project within the meaning of the California Environmental Quality Act as the Act does not apply to governmental funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment (CEQA Guideline Section 15378(b)(4)).

### **DISCUSSION**

Francisco & Associates, Inc. (the Assessment Engineer) has prepared the FY 2019/20 preliminary Engineer's Report (Attachment 1) for the FY 2019/20 assessment. In brief, the number of deficit parking spaces for each parcel is determined based upon the difference between the number of parking spaces needed per the City's Parking Demand Guidelines and the number of existing parking spaces located on the parcels included within the parking district. The assessment for each parcel is based upon an assessment rate multiplied by each parcel's corresponding deficit parking spaces.

The County Tax Collector requires all individual assessments to be levied in even pennies so that the property tax bill can be split evenly in two payments. This results in having the Total Deficit Parking Space multiplied by the FY2019/20 Assessment per Deficit Parking Space off by pennies from the FY2019/20 Assessment Revenue. Individual assessment roll calculations are in Appendix B of the Engineer's Report.

A public hearing process is required by state law to provide the City authority to levy and collect the assessment for the District for FY 2019/20. Adoption of the Resolution of Intention (Attachment 2) will approve the preliminary Engineer's Report, authorize publication of the Notice of Public Hearing, and set a public hearing date for June 25, 2019.

The February CPI is published each fiscal year in mid to late March. The CPI change between February 2018 and February 2019 is +3.526%. Based on this change, the proposed FY 2019/20 assessment rates are shown in Table 2 below:

Table 2 - FY 2019/20 Proposed Assessment Rates per Benefit Zone					
Benefit Zone No.	Assessment Rate Per Deficit Parking Space	Total Deficit Parking Spaces	Total Assessment Revenue	Less County Administration (1%)	Net Assessment Revenue
1	\$0.00	56.80	\$0.00	\$0.00	\$0.00
2	\$179.35	172.38	\$30,916.34	(\$309.16)	\$30,607.18

3	\$77.87	2,131.14	\$165,951.62	(\$1,659.52)	\$164,292.10
4	\$23.46	371.28	\$8,710.20	(\$87.10)	\$8,623.10
<b>Total</b>		<b>2,731.60</b>	<b>\$205,578.16</b>	<b>(\$2,055.78)</b>	<b>\$203,522.38</b>

The overall deficit parking spaces within the parking district has decreased by 6.32 spaces from the prior fiscal year, as described in Section II, Part IV of the Engineer's Report. This decrease is within benefit Zone 3, because of the change in use for a portion of the property located at 165 S. Murphy Avenue; the Brandon (wine bar) changed to Street Closet (clothing store).

A Council study issue on Downtown Development Policies for Parking is underway and will include a parking needs and capacity study for the Downtown Parking Maintenance District. The outcome of the study may result in necessary changes to parking requirements for properties within the District. While CityLine Sunnyvale is part of the Downtown Parking Maintenance District, it is obligated to provide all its parking space requirements within the Project, so no effect on the District is anticipated. However, the study will explore options to increase parking efficiency and/or the feasibility of expanding the supply of public or shared parking. The outcome of the study may suggest possible modifications to parking standards/options within the maintenance district. Property owners will be invited to be a part of the process throughout the study.

### **FISCAL IMPACT**

The proposed budget for maintenance and administration of the parking lots for FY 2019/20 is \$148,422 which includes operating costs only, with no capital projects scheduled. Approval of the recommended FY 2019/20 assessment will generate revenue of approximately \$205,578. The City receives assessment revenue of \$203,522 after County administrative fees (1% of the assessment) are subtracted. The difference of \$55,100 between net assessment revenues and planned expenditures will be added to the Parking District Fund reserve and will continue to be used to fund future periodic capital improvements as well as to supplement annual operating and maintenance costs.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

On March 12, 2019, informational letters were mailed to each property owner explaining the proposed assessment methodology and assessment rate per deficit parking space. Specific information pertaining to the assessment methodology, the demand for on-site private parking, the number of on-site private parking spaces, and any respective deficit was provided for each parcel within the District.

### **RECOMMENDATION**

Approve the Fiscal Year (FY) 2019/20 preliminary Engineer's Report for the Downtown Parking District Assessment, adopt a Resolution of Intention to Levy and Collect an Assessment for the Downtown Parking Maintenance District for FY 2019/20, and set the date of June 25, 2019 for the public hearing on the levy of the proposed Assessment

Prepared by: Sherine Nafie, City Property Administrator  
Reviewed by: Chip Taylor, Director, Public Works  
Reviewed by: Timothy J. Kirby, Director of Finance  
Reviewed by: Teri Silva, Assistant City Manager  
Approved by: Kent Steffens, City Manager

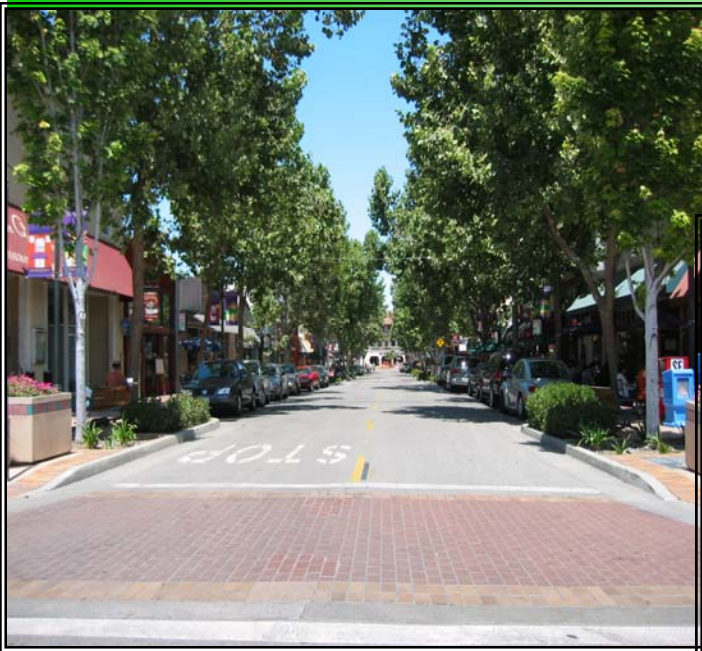
**ATTACHMENTS**

1. Fiscal Year 2019/20 Preliminary Engineer's Report
2. Resolution of Intention





# CITY OF SUNNYVALE DOWNTOWN PARKING MAINTENANCE DISTRICT



**Fiscal Year 2019-20  
Preliminary Engineer's Report**

May 21, 2019

Prepared by:  
Francisco & Associates, Inc.  
231 Market Place, Suite 543  
San Ramon, CA 94583  
(925) 867-3400



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**COUNCIL MEMBERS**

Larry Klein  
Mayor

Russ Melton  
Vice Mayor

Gustav Larsson  
Councilmember

Glenn Hendricks  
Councilmember

Mason Fong  
Councilmember

Nancy Smith  
Councilmember

Michael Goldman  
Councilmember

**CITY STAFF**

Kent Steffens  
City Manager

John Nagel  
City Attorney

Charles Taylor  
Director of Public Works

Tim Kirby  
Director of Finance

Jennifer Ng  
Assistant Director of Public Works

Sherine Nafie  
City Property Administrator

**ENGINEER**

Francisco & Associates, Inc.  
Assessment Engineer

The undersigned, acting on behalf of Francisco & Associates, Inc., respectfully submits the enclosed Engineer's Report as directed by City Council of the City of Sunnyvale pursuant to the provisions of the City of Sunnyvale Municipal Code (Chapter 14.26). The undersigned certifies that he is a Professional Engineer, registered in the State of California.



Dated: March 21, 2019

By: Joseph A. Francisco, P.E.  
R.C.E. No. 40688

I HEREBY CERTIFY that the enclosed Engineer's Report, including the Assessment Roll and Maintenance District Diagram, thereto attached, was filed with me on the \_\_\_\_ day of \_\_\_\_\_, 2019.

City Clerk  
City of Sunnyvale  
Sunnyvale, California

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

I HEREBY CERTIFY that the enclosed Engineer's Report, together with the Assessment Roll and the Maintenance District Diagram, thereto attached, was approved and confirmed by the City Council of the City of Sunnyvale, on the \_\_\_\_ day of \_\_\_\_\_, 2019.

City Clerk  
City of Sunnyvale  
Sunnyvale, California

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

I HEREBY CERTIFY that the enclosed Engineer's Report, including the Assessment Roll and the Maintenance District Diagram, thereto attached, was filed with the County Auditor of the County of Santa Clara on the \_\_\_\_ day of \_\_\_\_\_, 2019.

Joseph A. Francisco, P.E.  
Francisco & Associates, Inc.

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

## SECTION I

### INTRODUCTION

#### ENGINEER'S REPORT

#### SUNNYVALE DOWNTOWN PARKING MAINTENANCE DISTRICT

#### FISCAL YEAR 2019-20

### HISTORY

On September 1, 1964, the City Council adopted Resolution No. 6643, which authorized the City of Sunnyvale to levy an ad-valorem assessment on all taxable properties within the boundaries of the Sunnyvale Downtown Parking Maintenance District. This ad-valorem assessment was used to pay for the operation and maintenance of existing public parking facilities and the debt service payments associated with the acquisition and construction of various public parking facilities within the boundaries of the Sunnyvale Downtown Parking Maintenance District ("District").

### IMPACTS OF PROPOSITION 218

Proposition 218 requires that all affected property owners be given the opportunity to vote either in favor or against their proposed assessment. Therefore, in order to comply with the requirements of Proposition 218 and the levy of assessments commencing in FY 1997-98 and each fiscal year thereafter, the City implemented the following procedures:

- 1) Every property owner subject to the proposed assessment was mailed a ballot allowing the property owner to vote either in favor or against the proposed formation of the Sunnyvale Downtown Parking Maintenance District and the levying of assessments within the proposed District. The ballots were accompanied by a public notice describing the total assessment, the individual property owner's assessment, the duration of the assessment, the reason for the assessment and the basis upon which the assessment was calculated.
- 2) The ballots returned to the City Clerk before the close of the public input portion of the public hearing were tabulated to determine whether a majority protest against the assessment levy existed. A majority protest existed if over 50% of the ballots received, weighted by assessment amount, oppose the levy of assessment.
- 3) The levy of assessments each year thereafter is modified by adjusting the annual assessment based upon the prior year's change in the Consumer Price Index (All Urban Consumers, for the San Francisco-Oakland-San Jose area as determined by the U.S. Department of Labor).

## SECTION II

### ENGINEER'S REPORT PREPARED PURSUANT TO THE PROVISIONS OF THE CITY OF SUNNYVALE MUNICIPAL CODE (CHAPTER 14.26)

#### FISCAL YEAR 2019-20

Pursuant to City of Sunnyvale Municipal Code (Chapter 14.26), I, Joseph A. Francisco, the duly appointed Engineer of Work and acting for Francisco & Associates, Inc., Assessment and Administration Engineer for the District, submit the following Report, consisting of Section I (Introduction) above, which is largely based on information provided by the City of Sunnyvale and this Section II, which consists of five (5) parts, as follows:

#### PART I

##### DESCRIPTION OF IMPROVEMENTS

##### Parking Facilities:

The parking facility improvements that can be operated, maintained, and serviced by the Maintenance District for Fiscal Year 2019-20 consist of the public parking facilities shown in Appendix "A" of this report.

#### PART II

##### ESTIMATE OF COST

The City of Sunnyvale Municipal Code (Chapter 14.26) provides that the total cost of operation, maintenance and servicing of public parking facilities can be recovered by the levying of assessments.

Operation, maintenance and servicing costs include, but are not limited to; the repair and replacement of existing parking facilities, personnel, electrical energy, utilities such as water, materials, contractual services and other items necessary or appropriate for the parking facilities. Incidental expenses include the administration of the Maintenance District, engineering fees, legal fees, printing, posting and mailing of notices. Insurance and all other costs associated with the annual collection process are also included.

The operation, maintenance and servicing costs for Fiscal Year 2019-20 are summarized below in Table 1. These cost estimates were provided by the City of Sunnyvale.

TABLE I City of Sunnyvale Downtown Parking Maintenance District Budget FY 2019-20	
	FY 2019-20 Amounts
Revenues:	
Assessment Revenue	\$ 205,578.16
Total Revenues	\$ 205,578.16
Expenses:	
Parking Lot Maintenance	\$ 148,422.00
County Administration	\$ 2,055.78
Transfer into Reserve Fund	\$ 55,100.38
Total Expenses	\$ 205,578.16

The City of Sunnyvale Municipal Code (Chapter 14.26) requires that a special fund be set up for the revenues and expenditures of the District. Funds raised by assessments shall be used only for the purpose as stated herein. The City of Sunnyvale or, subject to the discretionary approval of the City of Sunnyvale City Council, any other person may contribute to the District to reduce assessments. Any balance remaining on July 1 must be carried over to the next fiscal year unless the funds are being accumulated for future capital improvements or operating reserves.

### PART III

#### MAINTENANCE DISTRICT DIAGRAM

The boundaries of the Maintenance District are within the boundaries of the City of Sunnyvale. A diagram (the "Downtown Parking Maintenance District Diagram") of the District showing the exterior boundaries of the District has been prepared by the Engineer of Work and is on file in the Office of the Clerk of the City of Sunnyvale and a copy of the Assessment Diagram is shown in Appendix "A" of this Report. For a detailed description of the lines and dimensions of each lot or parcel within the Downtown Parking Maintenance District are those lines and dimensions shown on the maps of the Assessor of the County of Santa Clara for Fiscal Year 2019-20. The Assessor's parcel maps for the lots and parcels within the Downtown Parking Maintenance District are incorporated by reference herein and made part of this Report.

## **PART IV**

### **METHOD OF APPORTIONMENT OF ASSESSMENT**

#### **GENERAL**

The City of Sunnyvale Municipal Code (Chapter 14.26) permits the establishment of assessment districts by agencies for the purpose of providing certain public improvements, which include the operation, maintenance and servicing of public parking facilities.

The City of Sunnyvale Municipal Code (Chapter 14.26) requires that the assessments must be levied according to benefit rather than according to assessed value. In addition, Article XIII D, Section 4(a) of the California Constitution, limits the amount of any assessment to the proportional special benefit conferred on the property.

Because assessments are levied on the basis of benefit, they are not considered to be a tax governed by Article XIII A of the California Constitution.

The City of Sunnyvale Municipal Code (Chapter 14.26) permits the designation of zones of benefit within any individual assessment district if "by reasons or variations in the nature, location and extent of the improvements, the various areas will receive different degrees of benefit from the improvement".

Article XIII D provides that publicly owned properties must be assessed unless there is clear and convincing evidence that those properties receive no special benefit from the assessment. Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts, and public parkways and that portion of public property that is not developed and used for business purposes similar to private commercial, industrial and institutional activities.

#### **PUBLIC PARKING BENEFIT ANALYSIS**

Property owners within the Downtown Parking Maintenance District receive a special and direct benefit from the District parking facilities because this allows property owners to develop or redevelop their properties without providing needed on-site parking to support their development. This Parking District allows property owners to maximize their parcel's development capabilities (i.e. by only requiring property owners who construct additional building square footage on their parcel to provide additional on-site parking for that additional building square footage constructed). The ability to maximize a parcel's development capabilities increases the value of these properties within the boundaries of the District.



## **BENEFIT ASSESSMENT METHODOLOGY**

The total cost to operate, maintain and service the parking facilities are apportioned to each parcel within the boundaries of the Maintenance District in accordance with a methodology that is consistent with standard assessment engineering practices. The method for spreading the costs to each parcel is based on each parcel's pro-rata share of deficit parking spaces. The number of deficit parking spaces for each parcel is equal to the number of parking spaces needed per the City's Parking Demand Guidelines (see Table 2 below) less the number of existing parking spaces located on their parcel.

<b>TABLE 2 City of Sunnyvale Downtown Parking Maintenance District Parking Demand Guidelines</b>	
<b>Current Type of Use</b>	<b>One Parking Space Per</b>
Apartments (1 Bedroom)	0.66667 Units
Apartments (2-3 Bedrooms)	0.57143 Units
Churches	3 Seats
Condos	0.50 Units
Financial Institutions	180 sq. ft.
General Offices (Free Standing)	250 sq. ft.
General Offices (In Center)	250 sq. ft.
Hotels	Rooms + Employees
Industrial Warehouses	2,500 sq. ft.
Medical/Dental	180 sq. ft.
Nightclubs and Bars	50 sq. ft.
Other Uses <sup>1</sup>	180 sq. ft.
Repair Garages	180 sq. ft.
Research & Development	500 sq. ft.
Rest Homes	2.25 Units
Restaurants w/ Bars	75 sq. ft.
Restaurants w/o Bars	110 sq. ft.
Retail	250 sq. ft.
Senior Citizen Apartments	2.0 Units + Employees
Shopping Centers	225 sq. ft.

<sup>1</sup> Each year in May all parcels within the boundaries of the Maintenance District are analyzed to determine their current use. If a parcel is vacant and the proposed use is not available it will be classified as "Other Uses". Other Uses has been used for Vacant parcels because it is the average of all land uses within the Maintenance District.

Because of the varying size and location of parking facilities located within the Maintenance District, special benefit zones have been established to accurately track the operation and maintenance costs and assess only those properties that benefit from the improvements located within their respective benefit zone. All parcels within the boundaries of the District are located within either Benefit Zone No. 1, 2, 3 or 4. Properties located within each benefit zone will only be required to pay for the operation and maintenance of the parking facilities located within their respective benefit zone. The total cost to operate and maintain the parking

**SUNNYVALE DOWNTOWN PARKING  
MAINTENANCE DISTRICT - FY 2018-19**

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facilities within each benefit zone will be spread to each parcel within that benefit zone based upon their proportionate number of deficit parking spaces.

Parcels will be assessed based upon their pro-rata share of the number of parking spaces they are in deficit of based upon the City of Sunnyvale Parking Demand Guidelines. If the parcel has fewer parking spaces than that which is required under the City of Sunnyvale Parking Demand Guidelines, then they are considered in deficit.

For example, if an office building has 25,000 square feet of office space, the City of Sunnyvale would require one (1) parking space for every 250 square feet of office space. Therefore, in this case, the office building would require 100 parking spaces (25,000 sq. ft./ 1 parking space per 250 sq. ft.). If the property owner for the office building had 100 or more parking spaces, then the property owner would not be placing a demand for additional parking and therefore would not be assessed. However, if the property owner only had 70 on-site parking spaces then there would be a parking deficit of 30 parking spaces for that parcel.

Based upon the annual budget needed to operate and maintain the existing public parking facilities for Fiscal Year 2019-20, the assessment rates per deficit parking space for each benefit zone are summarized below in Tables No. 3.

TABLE 3						
FY 2019-20 - Assessment Rates per Benefit Zone						
Benefit Zone No.	Total No. of Deficit Parking Spaces <sup>1</sup>	FY 2019-20 Budgeted Maintenance	FY 2019-20 County Administration	FY 2019-20 Transfer to Reserves	FY 2019-20 Total Assessment Revenue <sup>2</sup>	FY 2019-20 Assessment Rate Per Deficit Parking Space
1	56.80	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2	172.38	\$22,320.78	\$309.16	\$8,286.40	\$30,916.34	\$179.35
3	2,131.14	\$119,812.69	\$1,659.52	\$44,479.41	\$165,951.62	\$77.87
4	371.28	\$6,288.53	\$87.10	\$2,334.57	\$8,710.20	\$23.46
Total	2,731.60	\$148,422.00	\$2,055.78	\$55,100.38	\$205,578.16	

<sup>1</sup> The Total Number of Deficit Parking Spaces for Benefit Zone No. 3 decreased by 6.32 spaces from the prior fiscal year. The decrease was due to the change in use for a portion of the property located at 165 S. Murphy Avenue. The Brandon (wine bar) changed to Secret Closet (clothing store).

<sup>2</sup> The County Tax Collector requires all individual assessments to be levied in even pennies so that the property tax bills can be split evenly into two payments. Therefore, in some Benefit Zones the Total Deficit Parking Demand multiplied by the FY 2019-20 Assessment per Deficit Space does not equal the FY 2019-20 Assessment Revenue and is off by pennies.

### **Maximum Annual Assessment Rate Increases**

The FY 2019-20 assessment rates per deficit parking space shown above for each Benefit Zone are the maximum annual assessment rates that can be levied in FY 2019-20. Each subsequent fiscal year the maximum annual assessment rates shown above will be increased based upon the change in the Consumer Price Index (All Urban Consumers) for the San Francisco-Oakland-San Jose Area as determined by the U. S. Department of Labor. The base CPI index used to calculate last year's maximum assessment rates was 281.308 (February 2018). For FY 2019-20 City staff will use the February 2019 CPI Index which is 291.227. Therefore, the CPI increase is +3.526% for FY 2019-20 (291.227/281.308).

**Exempt Parcels.** Exempted from the assessment would be the areas of public streets, public avenues, public lanes, public roads, public drives, public courts, public alleys, public easements and rights-of-ways, public greenbelts and public parkways and that portion of public property that is not developed and used for business purposes similar to private commercial, industrial and institutional activities. A variance may be granted by the District for any parcel, which is determined not to benefit from the assessment.

## **PART V**

### **PROPERTY OWNER LIST & ASSESSMENT ROLL**

A list of names and addresses of the owners of all lots and parcels of land within the Maintenance District was compiled from the last equalized secured property tax assessment roll of the Assessor of the County of Santa Clara. Such list was further defined by excluding from it all parcels that are not being assessed by the District, and as so defined, is a part of the Assessment Roll. The Assessment Roll is keyed to Assessor's parcel numbers referenced in Appendix "B" to this Report.

The total proposed annual assessment for FY 2019-20 is \$205,578.16.

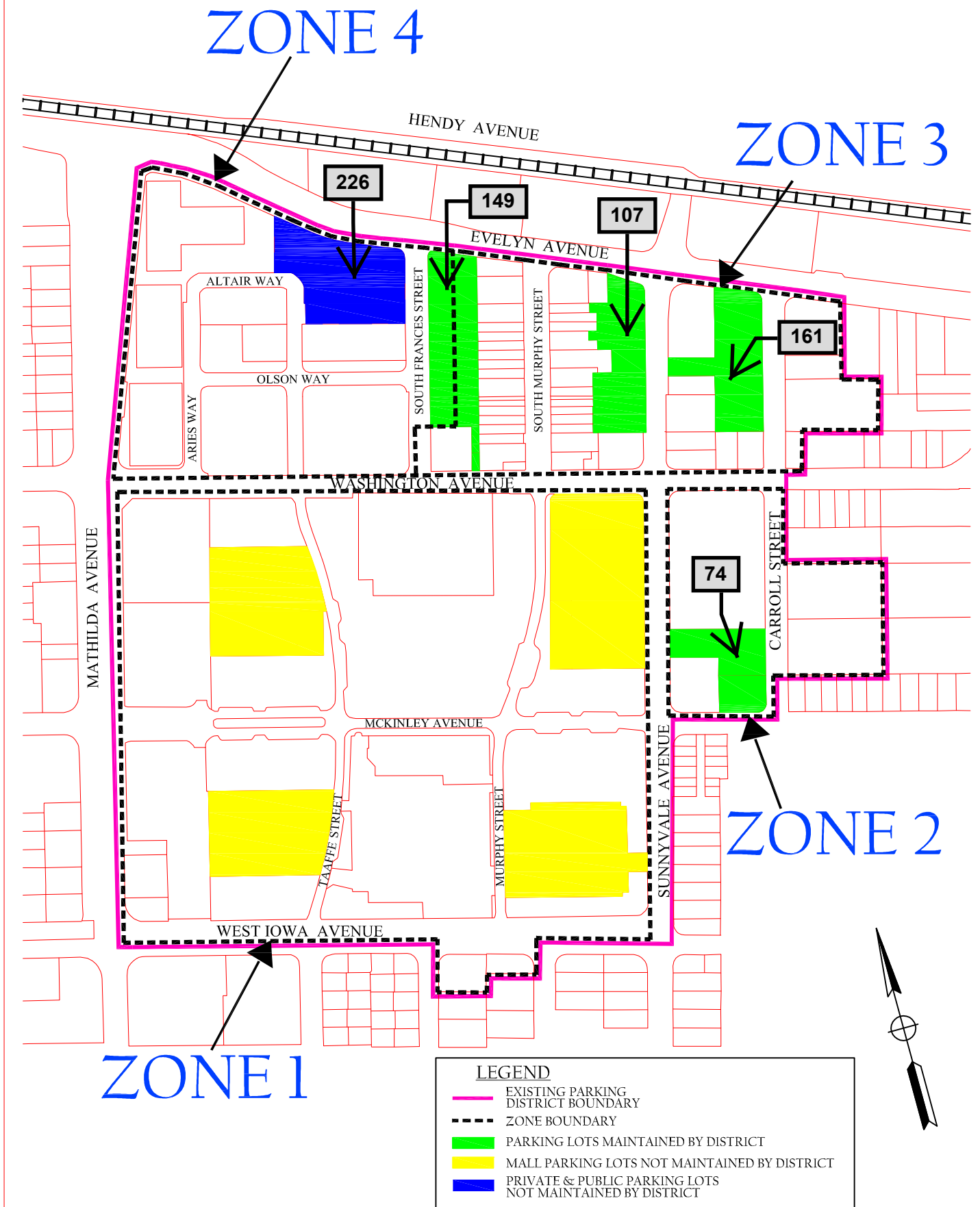
APPENDIX A

FY 2019-20

MAINTENANCE DISTRICT DIAGRAM

# CITY OF SUNNYVALE

## DOWNTOWN PARKING MAINTENANCE DISTRICT DIAGRAM



APPENDIX B

FY 2019-20

ASSESSMENT ROLL CALCULATIONS

City of Sunnyvale  
Downtown Parking Maintenance District  
Preliminary FY 2019-20 Assessment Roll

Assessor Parcel Number	Property Owner Name	Property Address	Benefit Zone	Total Parking Demand	Existing On-Site Parking	Deficit Parking Space	FY 2019-20 Assessment
209-05-011	SMITH GREGORY B	299 E WASHINGTON AVE	3	32.12	8.00	24.12	\$1,878.22
209-05-012	HILL MARIANNE TRUSTEE & ET AL	219 E WASHINGTON AVE	3	27.35	4.00	23.35	\$1,818.26
209-05-013	ASKARINAM BEHZAD AND LOUISE TRUSTEE	205 E WASHINGTON AVE	3	21.67	24.00	0.00	\$0.00
209-05-014	INFINITE LOOP SUNNYVALE HOTEL LLC	170 S SUNNYVALE AVE	3	110.00	0.00	110.00	\$8,565.70
209-05-033	ASSEMBLIES OF GOD NTHRN CA & NV DIST COUNC	305 E WASHINGTON AVE	3	60.00	0.00	60.00	\$4,672.20
209-05-034	CARROLL STREET ASSOCIATES	174 CARROLL ST	3	64.00	34.00	30.00	\$2,336.10
209-05-036	UNIVERSITY AVENUE PARTNERS CARROLL LLC	124 CARROLL ST	3	54.80	0.00	54.80	\$4,267.28
209-05-039	ACCOLA RALPH A TRUSTEE & ET AL	122 S SUNNYVALE AVE	3	70.25	7.00	63.25	\$4,925.28
209-05-040	GOLD GARY M TRUSTEE	130 S SUNNYVALE AVE	3	16.00	0.00	16.00	\$1,245.92
209-05-047	SUNNYVALE CITY OF	S SUNNYVALE AVE	3	0.00	0.00	0.00	\$0.00
209-05-048	HUANG ROBERT	134 CARROLL ST #101	3	2.00	1.00	1.00	\$77.86
209-05-049	KEAT LIM CHENG AND LEE SIT CHIN ET AL	134 CARROLL ST #201	3	2.00	1.00	1.00	\$77.86
209-05-050	SHARPE MATTHEW D AND ALEXIS C	134 CARROLL ST #301	3	2.00	1.00	1.00	\$77.86
209-05-051	MCCAFFREY SHANNON T	134 CARROLL ST #102	3	2.00	1.00	1.00	\$77.86
209-05-052	GEORGIEV STANISLAV	134 CARROLL ST #202	3	2.00	1.00	1.00	\$77.86
209-05-053	EPHRATI JEREMY	134 CARROLL ST #302	3	2.00	1.00	1.00	\$77.86
209-05-054	ZHANG XUEDONG AND CAI YUNYUN	134 CARROLL ST #203	3	2.00	1.00	1.00	\$77.86
209-05-055	STRUCK DAVID P	134 CARROLL ST #303	3	2.00	1.00	1.00	\$77.86
209-06-003	HUBBARD JOHN W	127 S MURPHY AVE	3	26.14	0.00	26.14	\$2,035.52
209-06-004	HUBBARD JOHN W	133 S MURPHY AVE	3	48.33	0.00	48.33	\$3,763.46
209-06-005	KIEHL ROBERT E TRUSTEE & ET AL	135 S MURPHY AVE	3	35.00	0.00	35.00	\$2,725.44
209-06-006	PODGURSKI JOHN AND ANGELIKA TRUSTEE	139 S MURPHY AVE	3	32.47	0.00	32.47	\$2,528.44
209-06-007	141 SOUTH MURPHY LLC	141 S MURPHY AVE	3	76.27	0.00	76.27	\$5,939.14
209-06-008	GERA NICHOLAS AND SUEANNE TRUSTEE	151 S MURPHY AVE	3	39.99	0.00	39.99	\$3,114.02
209-06-009	GERA NICHOLAS AND SUEANNE TRUSTEE & ET AL	155 S MURPHY AVE	3	45.45	0.00	45.45	\$3,539.18
209-06-010	LI GEORGE J AND LINDA	163 S MURPHY AVE	3	54.02	0.00	54.02	\$4,206.54
209-06-011	BOURSALIAN HRAIR AND ARAKNAZ TRUSTEE	165 S MURPHY AVE	3	6.32	0.00	6.32	\$492.14
209-06-012	ACEVEDO JOSE AND ESPERANZA	173 S MURPHY AVE	3	13.64	0.00	13.64	\$1,062.14

City of Sunnyvale  
Downtown Parking Maintenance District  
Preliminary FY 2019-20 Assessment Roll

Assessor Parcel Number	Property Owner Name	Property Address	Benefit Zone	Total Parking Demand	Existing On-Site Parking	Deficit Parking Space	FY 2019-20 Assessment
209-06-013	MERGEN CAPITAL LLC	175 S MURPHY AVE	3	35.43	0.00	35.43	\$2,758.92
209-06-014	MERGEN CAPITAL LLC	181 S MURPHY AVE	3	40.67	0.00	40.67	\$3,166.96
209-06-016	SUNNY 195 LLC	123 W WASHINGTON AVE	3	206.47	0.00	206.47	\$16,077.82
209-06-017	ESCALANTE NANCY G TRUSTEE & ET AL	197 S MURPHY AVE	3	12.00	0.00	12.00	\$934.44
209-06-018	HASS EVON K TRUSTEE & ET AL	165 W WASHINGTON AVE	3	132.88	0.00	132.88	\$10,347.36
209-06-022	PERRY MARIA L TRUSTEE	105 S MURPHY AVE	3	64.78	0.00	64.78	\$5,044.42
209-06-025	CALI CAROL M ET AL	141 E WASHINGTON AVE	3	8.28	0.00	8.28	\$644.76
209-06-026	DUBROVNIK PROPERTIES LLC	192 S MURPHY AVE	3	50.67	0.00	50.67	\$3,945.66
209-06-027	CALI CAROL M TRUSTEE & ET AL	190 S MURPHY AVE	3	50.67	0.00	50.67	\$3,945.66
209-06-028	CHESWYCKE LLC	182 S MURPHY AVE	3	9.64	0.00	9.64	\$750.66
209-06-029	WHITFIELD WENDELL L AND MARY A TRUSTEE & ET	178 S MURPHY AVE	3	25.45	0.00	25.45	\$1,981.78
209-06-030	WONG CHICK CHUEN TRUSTEE & ET AL	172 S MURPHY AVE	3	17.37	0.00	17.37	\$1,352.60
209-06-031	JAYAN ELLE LLC	168 S MURPHY AVE	3	25.48	0.00	25.48	\$1,984.12
209-06-034	SUN CHRISTOPHER S ET AL	146 S MURPHY AVE	3	137.50	0.00	137.50	\$10,707.12
209-06-037	BILIC ANTE TRUSTEE	130 S MURPHY AVE	3	36.00	0.00	36.00	\$2,803.32
209-06-038	UNLU ISMAIL	124 S MURPHY AVE	3	30.00	0.00	30.00	\$2,336.10
209-06-059	SUNNYVALE HOUSE OF KABOBS INC	161 S MURPHY AVE	3	16.56	0.00	16.56	\$1,289.52
209-06-070	YOUNG PATRICK TRUSTEE & ET AL	114 S MURPHY AVE	3	7.24	0.00	7.24	\$563.78
209-06-071	SUNNYVALE CITY OF	S SUNNYVALE AVE	3	0.00	0.00	0.00	\$0.00
209-06-072	GOODWILL INDUSTRIES OF SANTA CLARA COUNTY	151 E WASHINGTON AVE	3	36.72	0.00	36.72	\$2,859.38
209-06-073	SUNNYVALE CITY OF	130 S FRANCES ST	3	0.00	0.00	0.00	\$0.00
209-06-075	DUBROVNIK PROPERTIES LLC	100 S MURPHY AVE #5	3	101.84	0.00	101.84	\$7,930.28
209-06-076	SUNNYVALE CITY OF	S MURPHY AVE	3	0.00	0.00	0.00	\$0.00
209-06-077	GERA NICHOLAS AND SUEANNE TRUSTEE & ET AL	117 S MURPHY AVE	3	160.00	0.00	160.00	\$12,459.20
209-06-079	BALFE LIAM ET AL	159 S SUNNYVALE AVE	3	39.00	0.00	39.00	\$3,036.92
209-06-080	WHITFIELD WENDELL L AND MARY A TRUSTEE & ET	187 S MURPHY AVE	3	16.67	0.00	16.67	\$1,298.08
209-06-081	BILIC ANTE TRUSTEE	136 S MURPHY AVE	3	102.67	0.00	102.67	\$7,994.90
209-07-007	KASIK 1990 FAMILY LIVING TRUST	143 S TAAFFE ST	4	77.20	20.00	57.20	\$1,341.90



City of Sunnyvale  
Downtown Parking Maintenance District  
Preliminary FY 2019-20 Assessment Roll

Assessor Parcel Number	Property Owner Name	Property Address	Benefit Zone	Total Parking Demand	Existing On-Site Parking	Deficit Parking Space	FY 2019-20 Assessment
209-07-022	SPF MATHILDA LLC	190 MATHILDA PL	4	413.00	357.00	56.00	\$1,313.76
209-07-023	SPF MATHILDA LLC	150 MATHILDA PL	4	443.00	384.00	59.00	\$1,384.14
209-07-024	SPF MATHILDA LLC	100 MATHILDA PL, #101	4	704.00	609.00	95.00	\$2,228.70
209-07-025	SUNNYVALE REDEVELOPMENT AGENCY	200 W EVELYN AVE	4	0.00	0.00	0.00	\$0.00
209-07-026	BRE PROPERTIES INC	145 S FRANCES ST	4	74.03	30.00	44.03	\$1,032.94
209-07-027	BRE PROPERTIES INC	331 W WASHINGTON AVE	4	53.04	23.00	30.04	\$704.74
209-07-028	SC LOFT HOUSE ONE LLC ET AL	235 OLSON WAY	4	31.01	1.00	30.01	\$704.02
209-07-029	SC LOFT HOUSE ONE LLC ET AL	TAAFFE ST	4	0.00	0.00	0.00	\$0.00
209-07-030	SC LOFT HOUSE ONE LLC ET AL	155 TAAFFE ST	4	0.00	0.00	0.00	\$0.00
209-07-031	SC LOFT HOUSE ONE LLC ET AL	315 OLSON WAY	4	0.00	0.00	0.00	\$0.00
209-10-050	PACIFIC BELL	234 CARROLL ST	2	56.49	54.00	2.49	\$446.58
209-10-060	SUNNYVALE CITY OF	MC KINLEY AVE	2	0.00	0.00	0.00	\$0.00
209-10-061	CHANG YUN SO TRUSTEE & ET AL	298 S SUNNYVALE AVE	2	108.00	0.00	108.00	\$19,369.80
209-10-062	SUNNYVALE CITY OF	S SUNNYVALE AVE	2	0.00	0.00	0.00	\$0.00
209-10-063	CCHNC PLAZA DE LAS FLORES LLC	200 E WASHINGTON AVE	2	95.89	34.00	61.89	\$11,099.96
209-26-001	ABSAR ILYAS AND SABA M TRUSTEE	405 S MURPHY	1	2.22	0.00	2.22	\$0.00
209-26-066	HHF ENTERPRISE, LLC	150 W IOWA	1	47.58	9.00	38.58	\$0.00
209-34-001	ARCHDEACON DARLENE HEIDI ROMANO ET AL	379 S MATHILDA	1	0.00	0.00	0.00	\$0.00
209-34-002	ARCHDEACON DARLENE HEIDI ROMANO ET AL	380 S MATHILDA	1	34.00	18.00	16.00	\$0.00
209-34-019	STC VENTURE BLOCK B LLC	300 S MATHILDA AVE	1	0.00	0.00	0.00	\$0.00
209-34-020	STC VENTURE BLOCK FI LLC	333 W IOWA AVE	1	0.00	0.00	0.00	\$0.00
209-34-021	REDUS SVTC LLC	325 S TAAFFE ST	1	0.00	0.00	0.00	\$0.00
209-34-024	STC VENTURE LLC	241 S TAAFFE ST	1	0.00	0.00	0.00	\$0.00
209-34-025	REDUS SVTC LLC	225 S TAAFFE ST	1	0.00	0.00	0.00	\$0.00
209-34-029	SUNNYVALE OFFICE ACQUISITION	250 S MATHILDA AVE	1	0.00	0.00	0.00	\$0.00
209-34-030	SUNNYVALE OFFICE ACQUISITION	200 S MATHILDA AVE	1	0.00	0.00	0.00	\$0.00
209-35-013	STC VENTURE LLC	379 S SUNNYVALE AVE	1	0.00	0.00	0.00	\$0.00
209-35-014	REDEV AGENCY CITY OF SUNNYVALE	330 S MURPHY AVE	1	0.00	0.00	0.00	\$0.00

City of Sunnyvale  
Downtown Parking Maintenance District  
Preliminary FY 2019-20 Assessment Roll

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209-35-015	STC VENTURE LLC	150 E MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-35-016	STC VENTURE BLOCK 6 LLC	240 S MURPHY AVE	1	0.00	0.00	0.00	\$0.00
209-35-017	STC VENTURE BLOCK 6 LLC	301 S SUNNYVALE AVE	1	0.00	0.00	0.00	\$0.00
209-35-018	REDUS SVTC LLC	230 S MURPHY AVE	1	0.00	0.00	0.00	\$0.00
209-35-019	STC VENTURE BLOCK 6 LLC	100 E WASHINGTON AVE	1	0.00	0.00	0.00	\$0.00
209-35-022	STC VENTURE 200WA LLC	200 W WASHINGTON AVE	1	0.00	0.00	0.00	\$0.00
209-35-023	STC VENTURE BLOCK 3RWS LLC	200 S TAAFFE ST	1	0.00	0.00	0.00	\$0.00
209-35-024	STC VENTURE LLC	221 W IOWA AVE	1	0.00	0.00	0.00	\$0.00
209-35-028	TARGET CORPORATION	298 W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-35-029	STC VENTURE LLC	319 S MURPHY AVE	1	0.00	0.00	0.00	\$0.00
209-39-001	STC VENTURE LLC	W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-39-002	STC VENTURE LLC	W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-39-003	STC VENTURE LLC	W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-39-004	STC VENTURE LLC	W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-40-001	STC VENTURE LLC	W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-40-002	STC VENTURE LLC	W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-40-003	STC VENTURE LLC	W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-40-004	STC VENTURE LLC	W MC KINLEY AVE	1	0.00	0.00	0.00	\$0.00
209-41-001	STC VENTURE LLC	W WASHINGTON AVE	1	0.00	0.00	0.00	\$0.00
209-41-002	STC VENTURE LLC	W WASHINGTON AVE	1	0.00	0.00	0.00	\$0.00
209-41-003	STC VENTURE LLC	W WASHINGTON AVE	1	0.00	0.00	0.00	\$0.00
209-41-004	STC VENTURE LLC	W WASHINGTON AVE	1	0.00	0.00	0.00	\$0.00
209-45-001	LIANG PAKYAN TRUSTEE & ET AL	238 CARROLL ST, 101	2	2.00	2.00	0.00	\$0.00
209-45-002	YANG SHENGQI AND BU HE	238 CARROLL ST, 102	2	2.00	2.00	0.00	\$0.00
209-45-003	QU LIANG	238 CARROLL ST, 103	2	2.00	2.00	0.00	\$0.00
209-45-004	PATHAN SHAMMA AND KANAPARTHI GAUTAM	238 CARROLL ST, 104	2	2.00	2.00	0.00	\$0.00
209-45-005	BARRDAHL VIKTORIA ANNA S	238 CARROLL ST, 105	2	2.00	2.00	0.00	\$0.00
209-45-006	TRAN DANNY AND BUI ANNIE	238 CARROLL ST, 106	2	2.00	2.00	0.00	\$0.00

City of Sunnyvale  
Downtown Parking Maintenance District  
Preliminary FY 2019-20 Assessment Roll

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209-45-007	WANG GAONAN AND LI XIAOBIN	238 CARROLL ST, 107	2	2.00	2.00	0.00	\$0.00
209-45-008	ALBA JULIO C CORREA AND BENAVIDES MARIA I	238 CARROLL ST, 108	2	2.00	2.00	0.00	\$0.00
209-45-009	XU XIAOYING	238 CARROLL ST, 109	2	2.00	2.00	0.00	\$0.00
209-45-010	SUN MICHAEL L AND TAMMY Y	238 CARROLL ST, 110	2	2.00	2.00	0.00	\$0.00
209-45-011	SUN TING AND YANG ANNIE TRUSTEE	238 CARROLL ST, 111	2	2.00	2.00	0.00	\$0.00
209-45-012	WEN YUE AND YAO PEI	238 CARROLL ST, 112	2	2.00	2.00	0.00	\$0.00
209-45-013	THAKUR RANDHIR AND SHALINI	258 CARROLL ST, 101	2	2.00	2.00	0.00	\$0.00
209-45-014	SUN TIANBO AND BAI YANG	258 CARROLL ST, 102	2	2.00	2.00	0.00	\$0.00
209-45-015	BHULLER BANDHA AND GURINDER J	258 CARROLL ST, 103	2	2.00	2.00	0.00	\$0.00
209-45-016	ZHU JIAXIN	258 CARROLL ST, 104	2	2.00	2.00	0.00	\$0.00
209-45-017	KONG DEGUANG AND PAN QIHE	258 CARROLL ST, 105	2	2.00	2.00	0.00	\$0.00
209-45-018	MURPHY DAVID AND ZHANG JIECHEN	258 CARROLL ST, 106	2	2.00	2.00	0.00	\$0.00
209-45-019	WANG MEI R	258 CARROLL ST, 107	2	2.00	2.00	0.00	\$0.00
209-45-020	KWONG STEPHEN HAO-KAI AND MYRA YUEN-CHING	258 CARROLL ST, 108	2	2.00	2.00	0.00	\$0.00
209-45-021	COLOPRISCO JAMES M	258 CARROLL ST, 109	2	2.00	2.00	0.00	\$0.00
209-45-022	KUNG EDEN YIH- CHEN AND CHANG TINA	258 CARROLL ST, 110	2	2.00	2.00	0.00	\$0.00
209-45-023	SETH HESTER J AND NEIL K	258 CARROLL ST, 111	2	2.00	2.00	0.00	\$0.00
209-45-024	VAZE NIKHIL P AND PRIYANKA	258 CARROLL ST, 112	2	<u>2.00</u>	<u>2.00</u>	<u>0.00</u>	<u>\$0.00</u>
				4,401.27	1,672.00	2,731.60	\$205,578.16

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SUNNYVALE DECLARING ITS INTENTION TO LEVY  
AND COLLECT AN ASSESSMENT FOR THE  
DOWNTOWN PARKING MAINTENANCE DISTRICT FOR  
FISCAL YEAR 2019-2020, AND FOR EACH FISCAL YEAR  
THEREAFTER AND TO SET DATE AND TIME FOR  
PUBLIC HEARING ON THE LEVY OF THE PROPOSED  
ASSESSMENT**

WHEREAS, the City Council created an assessment district known as the Downtown Parking Maintenance District (the "District"), City of Sunnyvale, Santa Clara County, California, which includes all parcels of land, including land owned by the City of Sunnyvale or any other federal, state or local public agency, shown on the map designated "Downtown Parking Maintenance District Assessment Diagram, City of Sunnyvale, County of Santa Clara, State of California," which is on file with the City Clerk; and

WHEREAS, the City Council intends to levy and collect assessments to be used to maintain existing parking facilities pursuant to Streets and Highways Code section 22500 *et seq* and Chapter 14.26 of the Sunnyvale Municipal Code located within the boundaries of Mathilda Avenue, Evelyn Avenue, West Iowa Avenue, Sunnyvale Avenue, McKinley to Carroll Street, including several parcels located east of Carroll Street, as more particularly shown in the diagram and map attached to this Resolution; and

WHEREAS, on July 28, 2009, in response to property owners' ballot approval, the City Council adopted a resolution and confirmed the formation of the District, approved the final Engineer's report, and levied an assessment for FY 2009/10 and for each fiscal year thereafter by adjusting the annual assessment rate based upon previous year's change in the Consumer Price Index (All Urban Consumers, for the San Francisco-Oakland-San Jose area as determined by the U.S. Department of Labor).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. Francisco & Associates, the assessment Engineer, has filed with the City Clerk the preliminary Engineer's Report (the "Report") required by Chapter 14.26 of the Sunnyvale Municipal Code, which Report is open to public inspection. The Report includes the total amount of the proposed assessment to the entire district for fiscal year 2019-2020, the amount chargeable to the record owner's parcel for that year, the duration of the payments, the reason for the assessment, and the basis upon which the proposed assessment was calculated. All interested persons are referred to that Report for a full and detailed description of the improvements, the boundaries of the assessment district, the assessment zones, and the proposed assessments upon assessable lots and parcels of land within the assessment district.

2. The City Council hereby approves the Report on file in the office of the City Clerk of the City of Sunnyvale.

3. The City Council hereby declares its intention to levy and collect an assessment for the Downtown Parking Maintenance District for fiscal year 2019-2020.

4. The City Clerk is authorized and directed to give the notice of hearing required by Article XIII D of the California Constitution, Proposition 218 Omnibus Implementation Act and Streets and Highways Code 22626.

5. On June 25, 2019, at the hour of 7:00 p.m., the City Council will conduct a public hearing on the levy of the proposed assessment for fiscal year 2019-2020 by adjusting the annual assessment rate per deficit parking space with inflation factor based upon previous year's change in the Consumer Price Index (all urban consumers for the San Francisco-Oakland-San Jose Area as determined by the U.S. Department of Labor) until a new voter-approval assessment process is implemented, as authorized by state law. The hearing will be held at the meeting place of the City Council located at City Hall, Council Chambers, 456 West Olive Avenue, Sunnyvale, California.

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

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

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19-0461

Agenda Date: 5/21/2019

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### REPORT TO COUNCIL

#### SUBJECT

Adopt a Resolution to Authorize the Filing of Fiscal Year 2019/20 Transportation Development Act (TDA) Article 3 Application for the Design and Implementation of Pedestrian and Bicycle Safety Improvements at the Intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue

#### BACKGROUND

TDA Article 3 is a source of funds created by state legislation and processed through the Santa Clara Valley Transportation Authority (VTA) and Metropolitan Transportation Commission (MTC) that annually returns sales tax revenues to local agencies earmarked for bicycle and pedestrian projects.

In FY 2019/20, \$172,712 is guaranteed to the City for eligible projects.

Projects eligible to utilize this funding source must meet the following criteria:

1. The project shall fit within one of these eligible project types:
  - Construction and/or engineering of a bicycle or pedestrian capital project.
  - Maintenance of a multi-purpose path, which is closed to motorized traffic.
  - Bicycle safety education project (no more than 5% of county total).
  - Development of a comprehensive bicycle or pedestrian facilities plan (allocations to a claimant for this purpose may not be made more than once every five years).
  - Restriping Class II bicycle lanes.
2. Environmental clearance is required for construction projects only.
3. Potential projects must have been reviewed by the City's Bicycle and Pedestrian Advisory Commission (BPAC).
4. Bicycle projects funded by TDA Article 3 funds must comply the VTA Bicycle Technical Guidelines as adopted on December 13, 2012.
5. Have an authorizing resolution (Attachment 1).
6. The project must be ready to implement within one year of the application cycle.

The BPAC considered FY 2019/20 TDA candidate projects at its February 21, 2019 meeting (Attachment 2 - Excerpt of February 21, 2019 BPAC meeting minutes) and March 21, 2019 meeting (Attachment 3 - Excerpt of March 21, 2019 BPAC meeting minutes). At the March 21, 2019 meeting, BPAC voted 6-0 in favor of two of staff's recommended projects, with one commissioner absent.

#### EXISTING POLICY

General Plan, Chapter 3, *Land Use and Transportation Element* :

- **Goal A: Coordinated Regional and Local Planning** - Protect the quality of life, the natural environment, and property investment, preserve home rule, secure fair share funding, and

provide leadership in the region.

- **Goal B: Environmentally Sustainable Land Use and Transportation Planning and Development** - Support the sustainable vision by incorporating sustainable features into land use and transportation decisions and practices.
- **Goal C: An Effective Multimodal Transportation System** - Offer the community a variety of transportation modes for local travel that are also integrated with the regional transportation system and land use pattern. Favor accommodation of alternative modes to the automobile as a means to enhance efficient transit use, bicycling, and walking and corresponding benefits to the environment, person-throughput, and qualitative improvements to the transportation system environment.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

### **DISCUSSION**

The determination of candidate TDA Article 3 projects for FY 2019/20 is based on the review of TDA eligibility requirements, consideration of the Pedestrian Safety and Opportunities Study, Bicycle Capital Improvement Program, Bicycle Plan, Comprehensive School Traffic Study, resident requests, and BPAC’s and staff’s knowledge of bicycle and pedestrian facility safety priority needs in the City. Staff and the BPAC have identified the following seven (7) candidate TDA Article 3 projects:

#### **Project #1. Upgrade Off-Street Pathways**

Description: Upgrade off-street paths with improvements such as removal of barriers, installation of curb ramps, and installation of no parking zones near the entrance to the off-street paths. The off-street path locations include:

- Bicycle Pedestrian Bridge on The Dalles Avenue over SR 85 - Staff finds that the bridge is not compliant with current ADA standards. In addition, a regulatory sign was installed at the entrance of the bridge to direct bicyclists to walk their bikes.
- Bicycle Pedestrian Bridge east of Fair Oaks Avenue over US 101 - Staff finds that the bridge is not complaint with current ADA standards. In addition, a regulatory sign was installed at the entrance of the bridge to direct bicyclists to walk their bikes.
- Bicycle Pedestrian Path on the east end of Evelyn Avenue between Reed Avenue and Cassia Way - Staff finds that the path width is not built to Caltrans Highway Design Manual Class I Bikeway Path standards.
- Bicycle Pedestrian Path between SR 85 and Bernardo Avenue north of Homestead Road - This pathway is outside of City of Sunnyvale’s jurisdiction. In addition, this location is currently under evaluation in the Homestead Road Corridor Study led by Santa Clara County.

Approximate Cost: \$4.0 to \$10.0 M

#### **Project #2. Americans with Disability Act (ADA) Compliant Curb Ramp Installations**

Description: Installation of ADA compliant curb ramps at the following intersections based on public request and BPAC’s request:

- Syracuse Drive and Kelsey Drive (two ramps).

- Leota Avenue and Noriega Avenue (two ramps).
- Clarence Avenue and Sara Avenue (four ramps).
- Bayview Avenue and McKinley Avenue (two ramps).
- Peach Avenue/ Heatherstone Avenue and Hanover Avenue (two ramps).
- Angel Avenue at Sunnyvale Caltrain Station - There is no designated pedestrian or bicycle path within the Sunnyvale Caltrain Station parking lot, therefore the installation of a ramp will not lead to any bicycle/pedestrian facility connecting to the Caltrain pedestrian path.

Approximate Cost: \$195,000 (\$13,000/ramp)

**Project #3. Installation of pedestrian crossing on California Avenue at Pajaro Avenue**

Description: Installation of an enhanced pedestrian crossing and an advance crossing beacon on the west leg of California Avenue at Pajaro Avenue.

Approximate Cost: \$150,000

**Project #4. Java Drive "Road Diet" (Lane Removal) - Matching Grant Funds**

Description: The project includes installation of 5,000 linear feet of bicycle facilities (each side of the road) via a road diet on Java Drive (removal of one lane). The project also includes bicycle detection at five (5) signalized intersections and pavement color treatments, when warranted. The total cost of the project is \$632,911, of which \$500,000 would be funded by the One Bay Area Grant (OBAG) program and a required matching contribution of \$132,911 by the City.

Approximate Cost: \$132,911

**Project #5. Active Transportation Plan (ATP) Project Contingencies**

Description: Funding to be used for project contingencies that includes additional analysis of existing community conditions such as bicycle level of service on the City's roadway network, additional data collection for identifying key bicycle and pedestrian activity centers, and development of density maps for safe routes to school plan.

Approximate Cost: \$170,000

**Project #6. Green Bicycle Pavement Markings**

Description: Installation of green bicycle pavement markings at up to five (5) intersections. Marking would be installed if the selected locations meet the City's Green Bike Lane Design Standards.

Approximate Cost: \$170,000

**Project #7. Pedestrian and Bicycle Safety Improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue**

Description: Design and implementation of the following possible pedestrian and bicycle safety improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue:

- Curb extension on the northwest corner with bi-directional ADA compliant curb ramps.
- Installation of high visibility crosswalks.
- Installation of countdown pedestrian signals.
- Replace 8" vehicle signal heads with 12" vehicle signal heads to improve visibility.

Approximate Cost: \$300,000

BPAC's recommendation for the use of the TDA Article 3 grant funds is for the following two projects, in the order of preference (Attachment 3 - Excerpt from BPAC March 21, 2019 meeting minutes):



Project #1. Upgrade off-street paths with improvements such as removal of barriers, installation of curb ramps, and installation of no parking zones near the entrance to the off-street paths.

Project #7. Design and implementation of pedestrian and bicycle safety improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue.

BPAC voted in favor of their recommendation for use of TDA Article 3 grant funds 6-0, with one commissioner absent.

Although BPAC's top preference for the use of the TDA Article 3 grant funds is for Project # 1 - to upgrade off-street paths, two of the locations (the Bicycle Pedestrian Bridge on The Dalles Avenue over SR 85 and the one east of Fair Oaks Avenue over US 101) would remain non-ADA compliant due to the existing slope on the bridge. In order for these two facilities to be fully ADA compliant, the entire bridge would need to be retrofitted and/or replaced to allow for an ADA compliant ramp slope ratio, and the design and construction cost would be approximately \$4.0 to \$10.0 million. For the Bicycle Pedestrian Path on the east end of Evelyn Avenue between Reed Avenue and Cassia Way, the width is not built to Caltrans Highway Designed Manual Class 1 Bikeway Path standards, and there are existing residential units on either side of the path, the proposed improvement would not be feasible due to right-of-way constraints. For Bicycle Pedestrian Path between SR 85 and Bernardo Avenue north of Homestead Road, Staff does not recommend the use of TDA Article 3 grant funds for this location since this pathway is outside of City of Sunnyvale's jurisdiction, and that this location is currently under evaluation in the Homestead Road Corridor Study led by Santa Clara County.

Staff's recommended use of the TDA Article 3 grant funds is for Project #7 (BPAC's Priority 2 Project) - to design and implement pedestrian and bicycle safety improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue. The project would be implemented over two fiscal years. The FY 2019/20 funds would be utilized for design and environmental clearance of the project. Remaining funds would be combined with TDA Article 3 FY 2020/21 funds to construct the project.

### **FISCAL IMPACT**

No fiscal impact to submit an application for TDA Article 3 grant funds. TDA Article 3 is a program that reimburses cities for the incurred costs of selected projects. No local matching funds are required for Guarantee Fund projects. The VTA estimates the City will receive funds in the amount of \$172,712 from the City Guarantee Fund apportionment for Fiscal Year 2019/20. New revenue constitutes a positive fiscal impact.

The estimated cost to complete the project is \$300,000. Implementation of the project would occur over a two-year period, with FY 2019/20 funds used for design and environmental clearance. Remainder FY 2019/20 funds will be combined with FY 2020/21 TDA Article 3 funds to construct the project in the second year.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

The BPAC also held a public hearing on this item at its February 21, 2019 and March 21, 2019 meetings (Attachment 2 and 3 respectively).

**RECOMMENDATION**

Adopt a resolution authorizing the filing of Fiscal Year 2019/20 Transportation Development Act Article 3 application requesting MTC for an allocation of \$172,712 for FY 2019/20 to be used for the design and implementation of pedestrian and bicycle safety improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue.

In recent years, there were two pedestrian fatalities that occurred at this intersection. Residents have repeatedly expressed safety concerns at this location due to the recent fatalities. The Sunnyvale Community Center is located north of the intersection, Stockmeir Elementary School is located south of the intersection, and Fremont High School is located west of the intersection. Elders, children and teenagers often cross at this intersection to travel to their destination. The safety improvements as recommended at this intersection are consistent with the City's forthcoming Vision Zero Plan.

Prepared by: Lillian Tsang, Principal Transportation Engineer  
Reviewed by: Shahid Abbas, Transportation and Traffic Manager  
Reviewed by: Chip Taylor, Director, Public Works  
Reviewed by: Jaqui Guzmán, Deputy City Manager  
Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. Resolution Approving FY 2019/20 TDA Article 3 Application
2. Excerpt from the BPAC meeting minutes of February 21, 2019
3. Excerpt from the BPAC Draft meeting minutes of March 21, 2019

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AUTHORIZE THE SUBMISSION OF AN APPLICATION TO THE METROPOLITAN TRANSPORTATION COMMISSION FOR THE ALLOCATION OF FISCAL YEAR 2019-2020 TRANSPORTATION DEVELOPMENT ACT, ARTICLE 3 (TDA ARTICLE 3) PEDESTRIAN/BICYCLE PROJECT FUNDING FOR THE DESIGN AND IMPLEMENTATION OF PEDESTRIAN AND BICYCLE SAFETY IMPROVEMENTS AT THE INTERSECTION OF FREMONT AVENUE AND MANET DRIVE/ BOBWHITE AVENUE

WHEREAS, Article 3 of the Transportation Development Act ("TDA"), Public Utilities Code ("PUC") Section 99200 et seq., authorizes the submission of claims to a regional transportation planning agency for the funding of projects exclusively for the benefit and/or use of pedestrians and bicyclists; and

WHEREAS, the Metropolitan Transportation Commission ("MTC"), as the regional transportation planning agency for the San Francisco Bay region, has adopted MTC Resolution No.4108, entitled "Transportation Development Act, Article 3, Pedestrian and Bicycle Projects," which delineates procedures and criteria for submission of requests for the allocation of "TDA Article 3" funding; and

WHEREAS, MTC Resolution No. 4108 requires that requests for the allocation of TDA Article 3 funding be submitted as part of a single, countywide coordinated claim from each county in the San Francisco Bay region; and

WHEREAS, the City of Sunnyvale desires to submit a request to MTC for the allocation of TDA Article 3 funds to support the projects described in Exhibit B to this resolution, which are for the exclusive benefit and/or use of pedestrians and/or bicyclists.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The City of Sunnyvale declares it is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the Public Utilities Code.
2. There is no pending or threatened litigation that might adversely affect the project or projects described in Exhibit B to this resolution, or that might impair the ability of the City of Sunnyvale to carry out the project.

3. The project has been reviewed by the Bicycle and Pedestrian Advisory Commission (“BPAC”) of the City of Sunnyvale.
4. The City of Sunnyvale attests to the accuracy of and approves the statements in Exhibit A to this resolution.
5. A certified copy of this resolution and its attachments, and any accompanying supporting materials shall be forwarded to the congestion management agency, countywide transportation planning agency, or county association of governments, as the case may be, Santa Clara County for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

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

## **EXHIBIT A**

### **Findings**

#### **Request to the Metropolitan Transportation Commission for the Allocation of Fiscal Year 2019-20 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding**

1. That the CITY OF SUNNYVALE is not legally impeded from submitting a request to the Metropolitan Transportation Commission for the allocation of Transportation Development Act (TDA) Article 3 funds, nor is the CITY OF SUNNYVALE legally impeded from undertaking the project(s) described in “Attachment B” of this resolution.
2. That the CITY OF SUNNYVALE has committed adequate staffing resources to complete the project(s) described in Attachment B.
3. A review of the project(s) described in Attachment B has resulted in the consideration of all pertinent matters, including those related to environmental and right-of-way permits and clearances, attendant to the successful completion of the project(s).
4. Issues attendant to securing environmental and right-of-way permits and clearances for the projects described in Attachment B have been reviewed and will be concluded in a manner and on a schedule that will not jeopardize the deadline for the use of the TDA funds being requested.
5. That the project(s) described in Attachment B comply with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.).
6. That as portrayed in the budgetary description(s) of the project(s) in Attachment B, the sources of funding other than TDA are assured and adequate for completion of the project(s).
7. That the project(s) described in Attachment B are for capital construction and/or design engineering; and/or for the maintenance of a Class I bikeway which is closed to motorized traffic; and/or for the purposes of restriping Class II bicycle lanes; and/or for the development or support of a bicycle safety education program; and/or for the development of a comprehensive bicycle and/or pedestrian facilities plan, and an allocation of TDA Article 3 funding for such a plan has not been received by the CITY OF SUNNYVALE within the prior five fiscal years.
8. That the project(s) described in Attachment B is included in a locally approved bicycle, pedestrian, transit, multimodal, complete streets, or other relevant plan.
9. That any project described in Attachment B that is a bikeway meets the mandatory minimum safety design criteria published in Chapter 1000 of the California Highway Design Manual.
10. That the project(s) described in Attachment B will be completed before the funds expire.
11. That the CITY OF SUNNYVALE agrees to maintain, or provide for the maintenance of, the project(s) and facilities described in Attachment B, for the benefit of and use by the public.

## **EXHIBIT B**

### **TDA Article 3 Project Application Form**

Fiscal Year of this Claim: FY19-20

Applicant: City of Sunnyvale

Contact person: Shahid Abbas

Mailing Address: 456 West Olive Avenue, Sunnyvale, CA 94086

E-Mail Address: sabbas@sunnyvale.ca.gov

Telephone: 408-730-7330

Secondary Contact (in event primary not available) Lillian Tsang

E-Mail Address: ltsang@sunnyvale.ca.gov

Telephone: 408-730-7556

Short Title Description of Project: Safety Improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue

Amount of claim: \$172,712

Functional Description of Project:

Design and implementation of pedestrian and bicycle safety improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue

Financial Plan:

List the project elements for which TDA funding is being requested (e.g., planning, engineering, construction, contingency). Use the table below to show the project budget for the phase being funded or total project. Include prior and proposed future funding of the project. Planning funds may only be used for comprehensive bicycle and pedestrian plans. Project level planning is not an eligible use of TDA Article 3.

Project Elements: Design Engineering

Funding Source	All Prior FYs	Application FY	Next FY	Following FYs	Totals
TDA Article 3		\$172,712			\$172,712
list all other sources:					
1.					
2.					
3.					
4.					
Totals		\$172,712			\$172,712

Project Eligibility:	YES?/NO?
A. Has the project been approved by the claimant's governing body? (If "NO," provide the approximate date approval is anticipated).	No 5/21/2019
B. Has this project previously received TDA Article 3 funding? If "YES," provide an explanation on a separate page.	No
C. For "bikeways," does the project meet Caltrans minimum safety design criteria pursuant to Chapter 1000 of the California Highway Design Manual? (Available on the internet via: <a href="http://www.dot.ca.gov">http://www.dot.ca.gov</a> ).	Yes
D. Has the project been reviewed by a Bicycle Advisory Committee (BAC)? (If "NO," provide an explanation). Enter date the project was reviewed by the BAC: _____	Yes 3/21/2019
E. Has the public availability of the environmental compliance documentation for the project (pursuant to CEQA) been evidenced by the dated stamping of the document by the county clerk or county recorder? (required only for projects that include construction).	No – Exempt
F. Will the project be completed before the allocation expires? Enter the anticipated completion date of project (month and year) _____	Yes 6/2020
G. Have provisions been made by the claimant to maintain the project or facility, or has the claimant arranged for such maintenance by another agency? (If an agency other than the Claimant is to maintain the facility provide its name: _____)	Yes

Bill Rupel, from the Sunnyvale Community Theater, requested to have volunteers from the BPAC to help valet bike parking at the Hands on the Arts Festival on Saturday, May 18, from 10 a.m. to 4 p.m. at the Sunnyvale Community Center. Mr. Rupel also welcomed any suggestions that would help facilitate bikes at the event.

4. [19-0255](#) Discussion of Utility Bill Concepts

Lillian Tsang, Principal Transportation Engineer, asked the Commissioners to provide their input on the Utility Bill Stuffer. The commissioners discussed several ideas. Ms. Tsang will present the ideas to the graphic designer and submit a draft to the Commissioners at the next BPAC meeting.

Council Member Hendricks suggested to keep it simple, not complex.

5. [19-0256](#) Discussion of TDA Funding

Ms. Tsang provided a list of bicycle and pedestrian project ideas where the Transportation Development Act (TDA) funding could be used.

1. Install Green Bicycle Pavement Markings at 4-5 locations.
2. Install ADA compliant curb ramps at 5 locations.
3. Java Drive Road Diet Project - as matching fund.
4. Active Transportation Plan - as contingency fund.
5. Install a pedestrian crossing on California Avenue at Pajaro Avenue.

Commissioner Mehlinger asked if a 4-way stop at the intersection of Pajaro Avenue and California Avenue had been considered. Ms. Tsang explained that the location was analyzed but it does not meet the warrant to convert the traffic control into a 4-way stop control intersection.

Chair Cordes would like to add: Upgrading Off Street Pathways, to the staff's recommended list to include the following locations:

1. Bicycle Pedestrian Bridge on The Dalles Aveune over SR 85.
2. Bicycle Pedestrian Bridge east of Fair Oaks Avenue over US 101.
3. Bicycle Pedestrian Path on the east end of Evelyn Avenue between Reed Avenue and Cassia Way.

4. Bicycle Pedestrian Path between SR 85 and Bernardo Avenue north of Homestead Road.

Mr. Simons noted that Caltrans District 4 has money allotted for non-ADA replacement capital projects, on a complaint basis only and that some of these recommended projects may be eligible.

Mr. Jackson noted that TDA funding is best used to pay for things that cannot be funded any other way.

Chair Cordes recommended that the Commissioners give staff a list of projects in the order of priority.

Commissioner Mehlinger moved and Commissioner Oey seconded the motion to rank the projects for the TDA funding in the following order.

1. Upgrade off-street pathways.
2. Install ADA compliant curb ramps at the 5 locations proposed by staff plus an additional ramp at Angel Avenue near Sunnyvale Caltrain Station.
3. Install a pedestrian crossing on California Avenue at Pajaro Avenue.
4. Java Drive Road Diet - as matching fund.
5. Active Transportation Plan - as contingency fund.
6. Install Green Bicycle Pavement Markings at 4-5 locations.

The motion was carried by the following vote:

**Yes 6 -** Chair Cordes  
Vice Chair Bremond  
Commissioner Mehlinger  
Commissioner Mehlman  
Commissioner Oey  
Commissioner Welch

**No 0**

**Absent 1 -** Commissioner Swail

**STANDING ITEM: CONSIDERATION OF POTENTIAL STUDY ISSUES**



- 1.A**      [19-0353](#)      Approve the Bicycle and Pedestrian Advisory Commission Meeting Minutes of February 21, 2019

Commissioner Mehlinger moved and Vice Chair Bremond seconded the motion to approve the Bicycle and Pedestrian Commission minutes of February 21, 2019 as amended. The motion carried by the following vote:

**Yes 6 -**    Chair Cordes  
                  Vice Chair Bremond  
                  Commissioner Mehlinger  
                  Commissioner Mehلمان  
                  Commissioner Swail  
                  Commissioner Welch

**No 0**

**Absent 1 -**    Commissioner Oey

### **PUBLIC HEARINGS/GENERAL BUSINESS**

- 2.**      [19-0372](#)      Report and Discussion of Recent VTA BPAC Meeting

Dave Simons, VTA BPAC Representative gave the meeting summary report regarding the following topics:

- The Moffett Park Specific Plan.
- VTA checklist for Complete Streets Project requirements.
- Chair Cordes new VTA ex officio member.
- Presentation from City of San Jose regarding their Bicycle Plan.

- 3.**      [19-0365](#)      Recommend to City Council a Project To Be Used in the Application of Transportation Development Act (TDA) Article 3 Funding for Fiscal Year 2019/20

Staff Report: Ralph Garcia, Senior Transportation Engineer, provided a staff report on the agenda item.

Projects:

1. Upgrade Off-Street Pathway
2. Americans with Disability Act (ADA) Compliant Curb Ramp Installations
3. Installation of pedestrian crossing on California Avenue at Pajaro Avenue
4. Java Drive "Road Diet" (Lane Removal) - Matching Grant Funds

5. Active Transportation Plan (ATP) Project Contingencies
6. Green Bicycle Pavement Markings
7. Safety Improvements at the intersection of Fremont Avenue and Manet Drive/Bobwhite Avenue

Commissioner Mellinger ask for more details on the breakdown of costs for project #1.

There was a discussion regarding the alternatives for project #3.

Chair Cordes asked questions of Staff regarding ADA compliance.

Chair Cordes opened the public hearing.

Mr. Jackson expressed his support for project #1.

Mr. Simons expressed his support for project #1.

Chair Cordes closed the public hearing.

Commissioner Mehlman made a motion to recommend Alternative #1. If that is not accepted by the City Council, move to Alternative #3.

Commissioner Mehlinger seconded the motion with the distinction of project #1 and project #3, not alternatives which are listed differently.

Chair Cordes made a motion to recommend project #1 and project #7 as a second choice. Commissioner Mehlman accepted the friendly amendment, however, Commissioner Mehlinger did not accept the friendly amendment.

Vice Chair Bremond moved and Commissioner Welch seconded the motion the recommendation project #1, if feasible, as a project to the City Council . If that project is not accepted by City Council, then project #7 is the Commissions second choice. The motion carried by the following vote:

**Yes 6 -** Chair Cordes  
Vice Chair Bremond  
Commissioner Mehlinger  
Commissioner Mehلمان  
Commissioner Swail  
Commissioner Welch

**No 0**

**Absent 1 -** Commissioner Oey

**4. [19-0377](#)** Discussion on Design Concepts for Future Utility Bill Inserts

Mr. Garcia provided information on the agenda item.

A discussion about the bill insert concepts and options followed.

Commissioner Mehlinger moved and Commissioner Welch seconded the motion to create a utility bill insert with the following: One side of the flyer should read, "Enjoy Sunnyvale, Walk and Ride." The other side should read "Avoid a Right Turn into the Bike Lane " illustrated with a new graphic. The motion carried by the following vote:

**Yes 6 -** Chair Cordes  
Vice Chair Bremond  
Commissioner Mehlinger  
Commissioner Mehلمان  
Commissioner Swail  
Commissioner Welch

**No 0**

**Absent 1 -** Commissioner Oey

**5. [19-0379](#)** Appoint a member of the Bicycle and Pedestrian Advisory Commission to the City of Sunnyvale Systemic Safety Analysis Report Program (SSARP) Technical Advisory Group

Alternative 1: Appoint a member of the Bicycle and Pedestrian Advisory Commission to represent the BPAC in the Systemic Safety Analysis Report Program Technical Advisory Group.

Staff Report: Mr. Garcia explained the purpose of the Technical Advisory Group and the length of the assignment.



# City of Sunnyvale

## Agenda Item

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19-0489

Agenda Date: 5/21/2019

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### REPORT TO COUNCIL

#### SUBJECT

Approval of Modifications to the Local and Regional Workforce Development Strategic Plans

#### BACKGROUND

The Workforce Innovation and Opportunity Act (WIOA) requires local workforce development boards in a planning region (Regional Planning Unit or RPU) to engage in a regional planning process resulting in the preparation and submission of a single regional plan that describes workforce development activities and service strategies and that incorporates local plans for each of the local areas within the planning region. The Bay-Peninsula RPU includes the workforce boards located in the counties of Santa Clara, San Mateo, San Benito, and San Francisco.

The State Plan is the controlling policy document for regional and local plans. It sets the State's policy direction for these plans and serves as a conceptual map for local boards and their partners as they jointly develop the regional and local plans. The State Plan also designates required regional partners, including industry sector leaders, economic development, community colleges, adult education, and the Department of Rehabilitation. The Plan encourages the participation of other organizations including community-based organizations and nonprofits. The primary purpose of the local plans and partnerships is to facilitate access to services at the local level.

The Bay-Peninsula RPU's current WIOA local and regional plans cover program years 2017-2020. Under WIOA, a biennial update is required to ensure plans remain current.

The State issued guidance for preparation of the regional and local plan modifications with a specific framework for required content. The local plan for the NOVA workforce area was submitted to the State on March 15, 2019 concurrent with the regional plan. The State requires each local area in a region to submit evidence of approval of the regional plan by its Chief Elected Official. The Sunnyvale City Council serves in this capacity for NOVA and is therefore requested to approve the Bay-Peninsula RPU Regional Plan modification, which also incorporates an update to the Local Plan for the NOVA local workforce development area.

#### EXISTING POLICY

Council Policy 5.1.1: Socio-Economic - Goals and Policies: Education and Training Goal 5.1F: Provide job training and employment services, within constraints of operative Federal regulations and available Federal funding, to address the locally-determined employment and training needs of economically disadvantaged residents and others with special needs.

#### ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a

governmental, organizational or administrative activity that will not result in direct or indirect changes in the environment.

### **DISCUSSION**

The California Workforce Development Board (CWDB) made changes to the State Plan which required that RPUs and local boards update their Plans to be consistent with the State's policy direction. The State Board required local boards to focus on the following priorities in their Local Plan modifications:

- Partnerships with county human service CalFresh programs.
- Partnerships with Local Child Support Agencies to provide workforce services to non-custodial parents.
- Partnerships with programs that serve individuals with disabilities, including strategies to implement Competitive Integrated Employment.
- Services for English language learners, the foreign born, and refugees.

The Regional Plan modification was required to be focused on:

- Aligning, coordinating, and integrating reentry and workforce services to the formerly incarcerated and other justice-involved individuals.

The four workforce development boards (WDBs) in the Bay-Peninsula RPU worked closely together in coordinating their stakeholder engagement process, developing strategies to strengthen the system of reentry and workforce services for formerly incarcerated and other justice-involved individuals, and planning for the successful deployment of upcoming Prison to Employment grant resources. The Regional Plan includes an assessment of services needed and regional alignment of services, current programming and programming in development, coordination with partners, the role of employers, and the importance of supportive services to assist with overcoming barriers to success.

Extensive and robust community and stakeholder engagement was conducted as part of the development of the regional plan modification. In addition to required partners, meeting invitations were sent to more than 1,000 additional stakeholders and partners across the region. Listening sessions open to all partners and members of the general public were held in all four counties both during and after business hours to provide the opportunity for input on the topics required for the local and regional plans. Public meeting notices were posted in job centers as well as online and on the CWDB website.

The RPU WDBs also held smaller stakeholder sessions with the planning partners who work more closely with justice-involved individuals. These planning partners include members of local Community Corrections Partnerships including County Probation Departments, County Sheriffs, Parole Units and California Department of Corrections and Rehabilitation representatives, community-based organizations that serve justice involved individuals both in custody and post release, and core WIOA partners. No state prisons are located within the RPU.

The NOVA Workforce Board approved NOVA's Local Plan modification at its January 23, 2019 meeting and approved the Bay-Peninsula RPU Regional Plan at its March 27, 2019 meeting. Both

the local and regional plan modifications are available on NOVA's website at <https://novaworks.org/about/plans>.

**FISCAL IMPACT**

No fiscal impact.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

**RECOMMENDATION**

Approve modifications to the NOVA Local Workforce Development Strategic Plan and the Bay-Peninsula Regional Workforce Development Strategic Plan.

Prepared by: Jeanette Langdell, Employment Training Manager

Reviewed by: Kris Stadelman, Director, NOVA Workforce Services

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager



# City of Sunnyvale

## Agenda Item

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19-0490

Agenda Date: 5/21/2019

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### REPORT TO COUNCIL

#### SUBJECT

Approve Application for Subsequent Local Area Designation and Local Workforce Board Recertification for NOVA Workforce Development Area

#### BACKGROUND

The federal Workforce Innovation and Opportunity Act (WIOA) of 2014 stipulates the criteria for Local Workforce Area designation and Local Workforce Board certification. With the transition from the federal Workforce Investment Act (WIA) to WIOA in 2015, WIOA required that Local Areas apply for initial Local Area designation demonstrating that the area performed successfully and sustained fiscal integrity defined as not found to be in violation of significant findings from audits and other reviews, gross negligence and failure to observe accepted standards of administration. Then, following a period after the Local Area is initially designated, WIOA requires that areas apply for subsequent designation demonstrating that the Local Area performed successfully; sustained fiscal integrity; provided assurances of compliance with WIOA requirements and other federal and state laws, regulations and guidance; and engaged in a regional planning process. The Governor approves initial and subsequent Local Area designations.

WIOA also requires that Local Workforce Boards apply for initial certification and recertification, demonstrating compliance with WIOA membership requirements, met or exceeded WIOA performance accountability measures, and has achieved sustained fiscal integrity. Membership requirements include: majority of members represent business; 20 percent represent the workforce targeting the needs of individuals with barriers to employment, Labor/management apprenticeships and organized labor; and there is representation from adult and higher education and economic and community development that includes the State employment service and rehabilitation programs. The Governor also approves Local Workforce Board certifications.

California Workforce Services Directive WSD14-10 specified the requirements for initial Local Area designation and initial Local Workforce Board certification under WIOA. On February 10 and 24, 2015 (RTC No.15-0136, RTC No.15-0182 ), the Council approved the certification of the NOVA Local Workforce Board and a modified initial designation of the NOVA Workforce Area to add San Mateo County to the now eight-jurisdiction consortium, which comprises the cities of Cupertino, Los Altos, Milpitas, Mountain View, Palo Alto, Santa Clara and Sunnyvale, and the County of San Mateo. The Governor approved the modified initial designation of the NOVA Workforce Area in 2015 and initial certification of the NOVA Local Workforce Board in 2015 and recertification in 2016.

#### EXISTING POLICY

Council Policy 5.1.1: Socio-Economic - Goals and Policies: Education and Training Goal 5.1F: Provide job training and employment services, within constraints of operative Federal regulations and available

Federal funding, to address the locally-determined employment and training needs of economically disadvantaged residents and others with special needs.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental, organizational or administrative activity that will not result in direct or indirect changes in the environment.

### **DISCUSSION**

California Workforce Services Draft Directive WSDD-196 requires that Local Areas must apply for Local Area subsequent designation and Local Workforce Board recertification by May 31, 2019. The subsequent Local Area designation and recertification of Local Workforce Boards will be effective July 1, 2019, for a two-year period ending June 30, 2021.

The application titled, Existing Local Area: Subsequent Local Area Designation and Local Board Recertification Program Year 2019-21 for the NOVA Workforce Development Area, has been attached to this report for review. There are no proposed changes to the current eight-jurisdiction NOVA Workforce Area. In addition, the NOVA Workforce Area has satisfied all requirements for subsequent designation. It has performed successfully by negotiating its performance goals as part of a region; sustained fiscal integrity through successful fiscal monitoring reports with no findings; adhered to “Local Area Assurances” described in the application by complying with all WIOA requirements and federal and state laws, regulations and guidance; and engaged in regional planning processes, including a leadership role on behalf of the four Local Workforce Boards (i.e., San Francisco, NOVA, San Jose-based work2future and San Benito County) that comprise the Bay-Peninsula workforce region, participated in the development of a regional plan and regional plan modifications, partnered on the development of regional sector-based initiatives targeting tech apprenticeships and business engagement activities with the healthcare industry, and contributed to regular meetings with other Workforce Board directors in the region to create a cohesive regional service-delivery system.

As stipulated in WIOA, the Council, serving as the Chief Elected Official for the NOVA consortium, appoints all members to the NOVA Local Workforce Board. The NOVA Local Workforce Board satisfies all requirements for WIOA Board recertification. It has exceeded most of WIOA performance accountability measures, achieved sustained fiscal integrity, and is in compliance with all mandated WIOA membership categories that include those who achieved 55 percent representation from business (minimum 51 percent required) and 24 percent representation from the workforce (minimum 20 percent required.)

The NOVA Local Workforce Board approved the application for subsequent Local Area designation and Board recertification for the NOVA Workforce Area at its March 27, 2019, Board meeting.

### **FISCAL IMPACT**

No fiscal impact.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.



**RECOMMENDATION**

Approve application for subsequent Local Area designation and Local Workforce Board recertification for NOVA Workforce Development Area.

Prepared by: Eileen Stanly, Analyst, NOVA Workforce Services

Reviewed by: Kris Stadelman, Director, NOVA Workforce Services

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. Existing Local Area: Application for Subsequent Local Area Designation and Local Board Recertification Program Year 2019-21 for NOVA Workforce Development Area

# **Existing Local Area**

**Application for Subsequent Local Area Designation  
and  
Local Board Recertification  
Program Year 2019-21**

**Local Workforce Development Area**

**NOVA Workforce Development Area**

**Existing Local Area**  
**Application for Subsequent Local Area Designation**  
**and Local Board Recertification**

This application will serve as your request for Local Workforce Development Area (Local Area) subsequent designation and Local Workforce Development Board (Local Board) recertification for PY 2019-21 under the *Workforce Innovation and Opportunity Act* (WIOA).

If the California Workforce Development Board (State Board) determines the application is incomplete, it will either be returned or held until the necessary documentation is submitted. Please contact your [Regional Advisor](#) for technical assistance or questions related to completing and submitting this application.

NOVA Workforce Development Area

Name of Local Area

505 West Olive Avenue, Suite 550

Mailing Address

Sunnyvale, California 94086

City, State ZIP

May 22, 2019

Date of Submission

Kris Stadelman, Director of NOVA

Contact Person

(408) 730-7233

Contact Person's Phone Number

## Local Board Membership

The WIOA Section 107(b)(2)(A) through (E) states the requirements for nominating and selecting members in each membership category. The WIOA Section 107(b)(2)(A) requires that business members constitute a majority of the Local Board. The chairperson shall be a business representative, per WIOA Section 107(b)(3).

The local Chief Elected Official (CEO) is required to provide the names of the individuals appointed for each category listed on the following pages or, attach a roster of the current Local Board which identifies each member's respective membership category.

**BUSINESS** – A majority of the members **must** be representatives of business in the Local Area who (i) are owners of businesses, chief executives or operating officers of businesses, or other business executives or employers with optimum policy-making or hiring authority; (ii) represent businesses, including small businesses, or organizations; and (iii) are appointed from among individuals nominated by local business organizations and business trade association (WIOA Section 107[b][2][A]).

Please identify the Local Board chairperson by typing CHAIR after his/her name.

Name	Title	Entity	Appointment Date	Term End Date
Julian Chu	Dir., Global Customer Services	Google	2018	2022
Thomas Baity	Dir. Strategic Solutions	Roth Staffing Companies	2017	2021
Sinead Borgersen	Senior Director, HR and Operations	Cupertino Electric Inc.	2018	2022
Ladan Dalla Betta	Management System Manager	Amazon	2017	2021
Van Dang	Investor, Entrepreneur & Legal Advisor	Private Consultant	2017	2021
Rosanne Foust	President & CEO	San Mateo County Economic Development Assoc.	2016	2020
Christopher Galy (Co-CHAIR)	Senior Vice President & Chief People Officer	Couchbase	2017	2021
Elaine Hamilton	Vice President & COO	MM Hamilton Financial Group	2017	2021
James Hill	CEO	Organizational Performance	2017	2021

		Systems		
Stephen Levy	Director	Center for Continuing Study of the CA Economy	2017	2021
Anita Manwani	Founder & Principal	Carobar Business Solutions	2018	2022
Jennifer Morrill (Co-CHAIR)	Business Consultant	Private Consultant	2018	2022
Stacey Porter	Vice President of People Operations	Outset Medical	2018	2022
Cindy Springsteel	Vice President of Reg. Employee Experience Team	Adobe Inc.	2019	2023
Judy Sugiyama	Senior Dir., Talent Acquisition and Diversity/Inclusion	Applied Materials	2017	2021
Andy Switky	Founder/Healthcare Strategy and Design Consultant	Code Name Collective	2017	2021

**LABOR** – Not less than 20 percent of the members must be representatives of workforce within the Local Area who

**must** include (i) representatives of labor organizations who have been nominated by state labor federations; (ii) a member of a labor organization or a training director from a joint labor-management apprenticeship program, or if no such joint program exists in the area, such a representative of an apprenticeship program in the area; and

**may** include (iii) representatives of community based organizations with demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, veterans, or individuals with disabilities; and (iv) representatives of organizations with demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth and/or out-of-school youth (WIOA Section 107[b][2][B]).

Name	Title	Entity	Appointment Date	Term End Date
Monica Alvarado	Secretary-Treasurer	Labor Organization/ Communications Workers of America	2019	2023
Carl Cimino	Director of Training	Registered Apprenticeship/ Pipe Trades Training Center	2017	2021
Ben Field	Executive Officer	Labor Organization/	2018	2022

		South Bay Labor Council/AFL-CIO		
Poncho Guevara	Executive Director	Sacred Heart Community Service	2017	2021
Brenda Guidry-Brown	Dir., 2nd Careers Employment Program	Peninsula Family Service	2017	2021
Katherine Harasz	Executive Director	Move to Work and P.R.I.D.E. (SCC Housing Authority)	2018	2022
James Ruigomez	Business Manager	Labor Organization/ San Mateo County Building & Construction Trades Council	2016	2020

**Education** – Each Local Board shall include representatives of entities administering education and training activities in the Local Area who

**must** include (i) a representative of eligible providers administering Title II adult education and literacy activities; (ii) a representative of institutions of higher education providing workforce investment activities; and

**may** include (iii) representatives of local educational agencies, and community-based organizations with demonstrated experience and expertise in addressing the education or training needs of individuals with barriers to employment (WIOA Section 107[b][2][C]).

Name	Title	Entity	Appointment Date	Term End Date
Lionel de Maine	Chief Operations Officer	Sequoia District Adult School	2015	2019
Hilary Goodkind	Dean	San Mateo County Community College District	2017	2021
Judy Miner	Chancellor	Foothill-De Anza Community College District	2016	2020

**Economic and Community Development** – Each Local Board shall include representatives of governmental, economic, and community development entities serving the Local Area who

**must** include (i) a representative of economic and community development entities; (ii) a representative from the State employment service office under the *Wagner-Peyser Act*; (iii) a representative of the Vocational Rehabilitation program; and

**may** include (iv) representatives of agencies or entities administering programs serving the Local Area relating to transportation, housing, and public assistance; (v) Representatives of philanthropic organizations serving the Local Area; and (E) individuals or representatives of entities as the chief elected official in the Local Area may determine to be appropriate (WIOA Section 107[b][2][D] and [E]).

Name	Title	Entity	Appointment Date	Term End Date
Bruce Knopf	Dir. of Asset and Economic Development	County of Santa Clara	2017	2021
Linda Labit	Staff Services Mgr.	CA Department of Rehabilitation	2017	2021
Maria Lucero	Employment Program Mgr.	CA Employment Development Dept.	2017	2021

## Sustained Fiscal Integrity

The Local Area hereby certifies that it has not been found in violation of one or more of the following during PYs 16-17 or 17-18:

- **Final determination of significant finding(s)** from audits, evaluations, or other reviews conducted by state or local governmental agencies or the Department of Labor identifying issues of fiscal integrity or misexpended funds due to the willful disregard or failure to comply with any WIA requirement, such as failure to grant priority of service or verify participant eligibility.
- **Gross negligence** – defined as a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both.
- **Failure to observe accepted standards of administration.** Local Areas must have adhered to the applicable uniform administrative requirements set forth in Title 29 *Code of Federal Regulations* (CFR) Parts 95 and 97, appropriate Office of Management and Budget circulars or rules, WIOA regulations, and state guidance.

Highlights of these responsibilities include the following:

- Timely reporting of WIOA participant and expenditure data
- Timely completion and submission of the required annual single audit
- ***Have not been placed on cash hold for longer than 30 days***

(In alignment with WIOA Section 106[e][2])

## **Engaged in Regional Planning**

The Local Area hereby certifies that it has participated in and contributed to regional planning and negotiating regional performance measures in the following ways:

The NOVA Workforce Development Area has actively engaged in regional planning and regional plan implementation. Activities include:

- NOVA has served as the lead workforce board, on behalf of the four workforce boards in the Bay-Peninsula region, for the past two years.
- Participated in the development of the regional plan and regional plan modifications that was approved by the NOVA Workforce Board on March 27, 2019 and agendized for approval by the Sunnyvale City Council (CEO) on May 21, 2019.
- Participated in negotiating WIOA performance measures as a region representing four workforce boards.
- Participated in the development and implementation of several regional sector initiatives that include: a Business Services Engagement Initiative to promote shared business service strategies targeting the healthcare sector and streamline business services across the region and with common employers; and a regional Slingshot Tech Apprenticeship Initiative that will cultivate a regional network committed to collaboratively growing innovative talent development pathways and new talent pipelines. In addition, for the new regional Prison to Employment (P2E) initiative, NOVA will not only participate in implementing strategies developed for this venture, but will also serve as the project's fiscal agent.
- Participated in the bi-weekly conference calls and quarterly face-to-face meetings with the workforce board directors in the region that have served as a forum to discuss regional plan implementation strategies and create a more cohesive regional service-delivery system. This has also prompted the development of guiding principles for regional collaboration among the four workforce boards in the region that will improve regional effectiveness.



## Local Area Assurances

Through PY 19-21, the Local Area assures the following:

- A. It will comply with the applicable uniform administrative requirements, cost principles, and audit requirements included in the appropriate circulars or rules of the Office of Management and Budget (WIOA Section 184[a][2] and [3]).

Highlights of this assurance include the following:

- The Local Area's procurement procedures will avoid acquisition of unnecessary or duplicative items, software, and subscriptions (in alignment with Title 2 CFR Section 200.318).
- The Local Area will maintain and provide accounting and program records, including supporting source documentation, to auditors at all levels, as permitted by law (Title 2 CFR Section 200.508).

Note that failure to comply with the audit requirements specified in Title 2 CFR Part 200 Subpart F will subject the Local Area to potential cash hold (Title 2 CFR Section 200.338).

- B. All financial reporting will be done in compliance with federal and state regulations and guidance.

Highlights of this assurance include the following:

- Reporting will be done in compliance with Workforce Services Directive *Quarterly and Monthly Financial Reporting Requirements* (WSD16-13) (November 28, 2016).
- All close out reports will comply with the policies and procedures listed in Workforce Services Directive *WIOA Closeout Requirements* (WSD16-05) (July 29, 2016).

Note that failure to comply with financial reporting requirements will subject the Local Area to potential cash hold. (Title 2 CFR Section 200.338)

- C. Funds will be spent in accordance with federal and state laws, regulations, and guidance.

Highlights of this assurance include the following:

- The Local Area will meet the requirements of State Assembly Bill 1149 (Chapter 324, Statutes of 2017), to spend a minimum of 30 percent of combined total of adult and dislocated worker formula fund allocations on training services (*California Unemployment Insurance Code* Section, 14211).

- The Local Area will not use funds to assist, promote, or deter union organizing (WIOA Section 181[b][7]).
- D. The Local Board will select the America's Job Center of California<sup>SM</sup> (AJCC) Operator(s), with the agreement of the local CEO, through a competitive process such as a Request for Proposal (RFP), unless granted a waiver by the state (WIOA Section 121[d][2][A] and 107[g][2]).
  - E. The Local Board will collect, enter, and maintain data related to participant enrollment, activities, and performance necessary to meet all CalJOBS<sup>SM</sup> reporting requirements and deadlines.
  - F. The Local Board will comply with the nondiscrimination provisions of WIOA Section 188, including the collection of necessary data.
  - G. The Local Area will engage in and contribute to, regional planning and regional plan implementation (for example, the Local Area has participated in regional planning meetings and regional plan implementation efforts, and the Local Board and local CEO have reviewed and approved the regional plan and modifications).
  - H. The Local Area will participate in regional performance negotiations.
  - I. It will comply with State Board policies and guidelines, legislative mandates and/or other special provisions as may be required under federal law or policy, including the WIOA or state legislation.
  - J. Priority shall be given to veterans, recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient for receipt of career and training services funded by WIOA Adult funding (WIOA Section 134[c][3][E] and Training and Employment Guidance Letter 19-16, Subject: *Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Service (ES), as amended by title III of the WIOA Final Rules*, (March 1, 2017).

# Application Signature Page

By signing the application below, the local CEO and Local Board chair request subsequent designation of the existing Local Area and subsequent certification of the existing Local Board. They certify that the Local Area has performed successfully, sustained fiscal integrity during PYs 2016-2017 or 2017-2018, and engaged in the regional planning process as described in Section 106 (c)(1). Additionally, they agree to abide by the Local Area assurances included in this application.

Local Workforce Development Board Chair

Local Workforce Development Board Chair

Signature

Christopher Galy

Name

NOVA Workforce Board Co-Chair

Title

Date

Signature

Jennifer Morrill

Name

NOVA Workforce Board Co-Chair

Title

Date

Local Chief Elected Official

Signature

Honorable Larry Klein

Name

Mayor, City of Sunnyvale

Title

Date



# City of Sunnyvale

## Agenda Item

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19-0439

Agenda Date: 5/21/2019

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### REPORT TO COUNCIL

#### **SUBJECT**

Receive and File the City of Sunnyvale Investment Report - 1st Quarter 2019

#### **REPORT IN BRIEF**

In accordance with California Government Code Section 53646, staff is submitting the attached investment report for Council's review. The report includes all investments held by the City of Sunnyvale. Funds not immediately needed for disbursement and held in investments are managed by Chandler Asset Management.

Funds for the City's Deferred Compensation Plan, the City's Retirement Plan, the City's Pension Trust, Other Post-Employment Benefits (OPEB) Trust, and any proceeds from debt issuance are not included in this report. These funds are managed and held by third party administrators and trustee custodial banks.

#### **EXISTING POLICY**

California Government Code Section 53600 et seq., strictly governs which investments public agencies can hold. In some cases, State law also governs what percentage of the portfolio can be invested in certain security types, maximum maturities, and minimum credit ratings by the major rating agencies (Standard & Poor's and Moody's Investors Service). Public agencies can only invest in fixed income securities. The purchase of stock is prohibited. As a result, the City primarily invests in highly rated securities such as U.S. Treasury, Federal agencies, and government sponsored enterprise debt as well as high credit quality, non-governmental debt securities.

The California Government Code also requires investment objectives of safety, liquidity, and return in that order. As such, safety of principal is the foremost objective of the City's investment program. The portfolio must remain sufficiently liquid to enable the City to meet all cash requirements.

The City Council first adopted a policy (7.1.2 Investment and Cash Management) governing the investment of City funds on July 30, 1985. This policy is reviewed and adopted annually. Council adopted an updated policy for FY 2018/19 at its August 14, 2018 meeting. The City's investment policy follows the Government Code and includes additional restrictions on some investments such as a lower allowable percentage per investment type or issuer than State law.

#### **ENVIRONMENTAL REVIEW**

This action does not require environmental review because it is not a project that has the potential for causing a significant impact on the environment. (CEQA Guideline 15061(b)(3)). Furthermore, the action being considered does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378 (b) (4) in that it is a

fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

### **DISCUSSION**

This report provides information on the values (par, book and market), the type of investment, issuer, maturity date and yield of each investment. The par value of a bond is the amount that the issuer agrees to repay the City by the maturity date. The book value is what the City initially paid for the bond and it changes gradually if a premium or discount is amortized. The market value is what the bond is worth now.

The City has adopted a portfolio structure to address liquidity and return, all while maintaining safety. Funds formerly held in a separate liquidity portfolio have recently been rolled into the core investments portfolio. These funds continue to be actively managed with maturities ranging between 0 and 5 years and have an average duration target of approximately 2.5 years to capture yield and enhance long-term returns. The duration for these funds is currently 1.6 years, which is slightly lower than at the end of last quarter because of the co-mingling of shorter-term investments. The duration, however, continues to be deliberately moved closer to its target slowly in consideration of volatile rates and an inverted yield curve. These funds currently total \$563,755,782.

Funds needed to meet cash needs (liquid investments) are now solely managed in Local Agency Investment Fund (totaling \$59,999,044). Local Agency Investment Fund (LAIF) is a program created by statute as an investment alternative for California's local governments and special districts.

Summary and detailed information on each security is provided in Attachment 1. Also included is an activity report of sales, purchases and maturities for this accounting period as required by Government Code section 53607. The current portfolio market value is \$623,754,826. This amount does not include \$2,961,467 of accrued interest, which has been earned, but not yet received. The portfolio's average yield to maturity was 2.48 percent as of April 6, 2019. The value of the portfolio is impacted by market forces in the bond market, as well as by growing property tax revenues, development related activity such as park impact fees, housing impact fees, developer contributions, building and planning fees, increased utility enterprise fund revenues and other City financial activities.

### **Economic Update**

The Federal Open Market Committee kept the target fed funds rate unchanged in March at a range of 2.25%-2.50%. However, the Fed's economic projections, along with the tone of the policy statement and the Fed Chair's press conference, were more dovish than expected. The Fed's median forecast now calls for a target fed funds rate of 2.4% at year-end, which implies that there will be no further rate hikes this year. The Fed is projecting one rate hike in 2020 (to an effective rate of 2.6%) and then expects to keep policy on hold in 2021. The Fed's longer-run fed funds rate target is still 2.8%. This implies that the Fed intends to keep the target fed funds rate below the neutral rate for the foreseeable future. Furthermore, the Fed announced that they will begin slowing down the reduction of their balance sheet and conclude their balance sheet reduction program at the end of September 2019. This will leave the Fed with a larger balance sheet (slightly higher than \$3.5 trillion) than they originally expected.

Domestic and global economic growth has slowed and inflation pressures remain muted. However, the labor market remains a bright spot in the US economy. We believe some of the factors hindering current economic growth (e.g., trade disputes, recent government shutdown, Brexit uncertainty) may be somewhat transitory. While economic growth is likely to remain under pressure over the near-term, we believe a strong labor market coupled with an increasingly dovish Fed may lead to better than expected economic growth later this year. Overall, the economy is expected to grow 2.0%-2.5% this year versus 2.9% in 2018.

The yield curve inverted in March with the 10-year Treasury yield temporarily falling below the 3-month T-bill yield. At month-end, the 3-month T-bill yield was down 5 basis points to 2.38%, the 2-year Treasury yield was down about 25 basis points to 2.26%, and the 10-year Treasury yield was down 31 basis points to 2.41%. The spread between 2- and 10-year Treasury yields was less than 15 basis points at March month-end. An inversion of the yield curve in which the 10-year Treasury yield is lower than the 3-month T-bill is generally viewed as a powerful predictive signal of an upcoming recession. However, staff, in consultation with our investment manager, does not expect a recession is imminent.

Generally lower-than-last-quarter yields have impacted the City's investments up to March 2019 primarily in two ways:

- Interest income continued to grow as portions of the portfolio that were purchased when yields were low have been maturing. Reinvestment of these funds continue to be at higher yields than that of the initial investment. Interest income for this fiscal year's first ten reporting periods totaled \$9,039,087. In comparison, interest income for the same period last year totaled \$3,991,333.
- Yields fell slightly for a period, causing the fair value of the City's investments to appreciate.

### **FISCAL IMPACT**

The City-wide projection for interest income for FY 2018/19 totals approximately \$6.6 million. Interest earnings as of the end of the first quarter of 2019 (third quarter of FY 2018/19) totaled \$9,039,087, tracking above our forecast.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **RECOMMENDATION**

Receive and file the City of Sunnyvale - First Quarter 2019 Investment Report.

Prepared by: Inderdeep Dhillon, Finance Manager  
Reviewed by: Timothy J. Kirby, Director, Finance  
Reviewed by: Teri Silva, Assistant City Manager  
Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. City of Sunnyvale First Quarter Investment Report



Sunnyvale

## Memorandum

Date: 4/29/2019  
To: Honorable Mayor and Councilmembers  
From: Timothy J. Kirby, Director of Finance  
Subject: Investment Report First Quarter 2019

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Pursuant to the California Government Code Section 53646, attached is detailed information on all securities, investments, and moneys held by the City. I hereby certify that the City's portfolio complies with the City's adopted Investment Policy and the reporting requirements of State Law Section 53607, and that sufficient funds are available to meet expenditure requirements for the next 6 months, ending October 2019.

A handwritten signature in blue ink, appearing to read "Timothy J. Kirby", written over a horizontal line.

Timothy J. Kirby, Director of Finance

cc: Kent Steffens, City Manager  
Teri Silva, Assistant City Manager

**TOTAL PORTFOLIO EVALUATION - PERIOD 10 FY 2018/2019 (3/10/2019 - 4/6/2019)**

DESCRIPTION		FY 18/19 PERIOD 10 (3/10/19 - 4/6/19)	FY 18/19 PERIOD 9 (2/10/19 - 3/9/19)	FY 17/18 PERIOD 10 (2/25/18- 3/24/18)
CORE PORTFOLIO MARKET VALUE		\$563,755,781.51	\$561,013,026.66	\$392,206,466.43
LIQUIDITY PORTFOLIO MARKET VALUE		-	-	-
LAIF PORTFOLIO MARKET VALUE		59,999,044.24	55,999,044.24	64,960,443.50
<b>TOTAL PORTFOLIO MARKET VALUE</b>		<b>\$623,754,825.75</b>	<b>\$617,012,070.90</b>	<b>\$457,166,909.93</b>
AVERAGE LIFE OF PORTFOLIO (DAYS)		746	672	372
CITY - WEIGHTED YIELD (Current Period)		2.48%	2.45%	1.54%
STATE (LAIF) POOL YIELD		2.44%	2.40%	1.50%
90 DAY T-BILL RATE (Current Period)		2.43%	2.44%	1.70%
VARIANCE FROM CITY YIELD		0.05%	0.01%	-0.16%
1 YEAR TREASURY RATE (Current Period)		2.42%	2.52%	2.05%
VARIANCE FROM CITY YIELD		0.06%	-0.07%	-0.51%
TREASURY YIELD WITH SAME AVG LIFE AS PORTFOLIO		2.39%	2.49%	2.09%
VARIANCE FROM CITY YIELD		0.09%	-0.04%	-0.55%
<hr/>				
TOTAL INVESTMENTS MATURING WITHIN 0 TO 1 YEAR	\$262,109,640.56	42.02%	42.46%	54.62%
TOTAL INVESTMENTS MATURING WITHIN 1 TO 3 YEARS	\$188,024,678.56	30.14%	29.89%	43.66%
TOTAL INVESTMENTS MATURING WITHIN 3 TO 5 YEARS	\$173,620,506.63	27.83%	27.65%	1.72%
TOTAL INVESTMENTS MATURING OVER 5 YEARS **	\$0.00	0.00%	0.00%	0.00%
<b>TOTAL</b>	<b>\$623,754,825.75</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

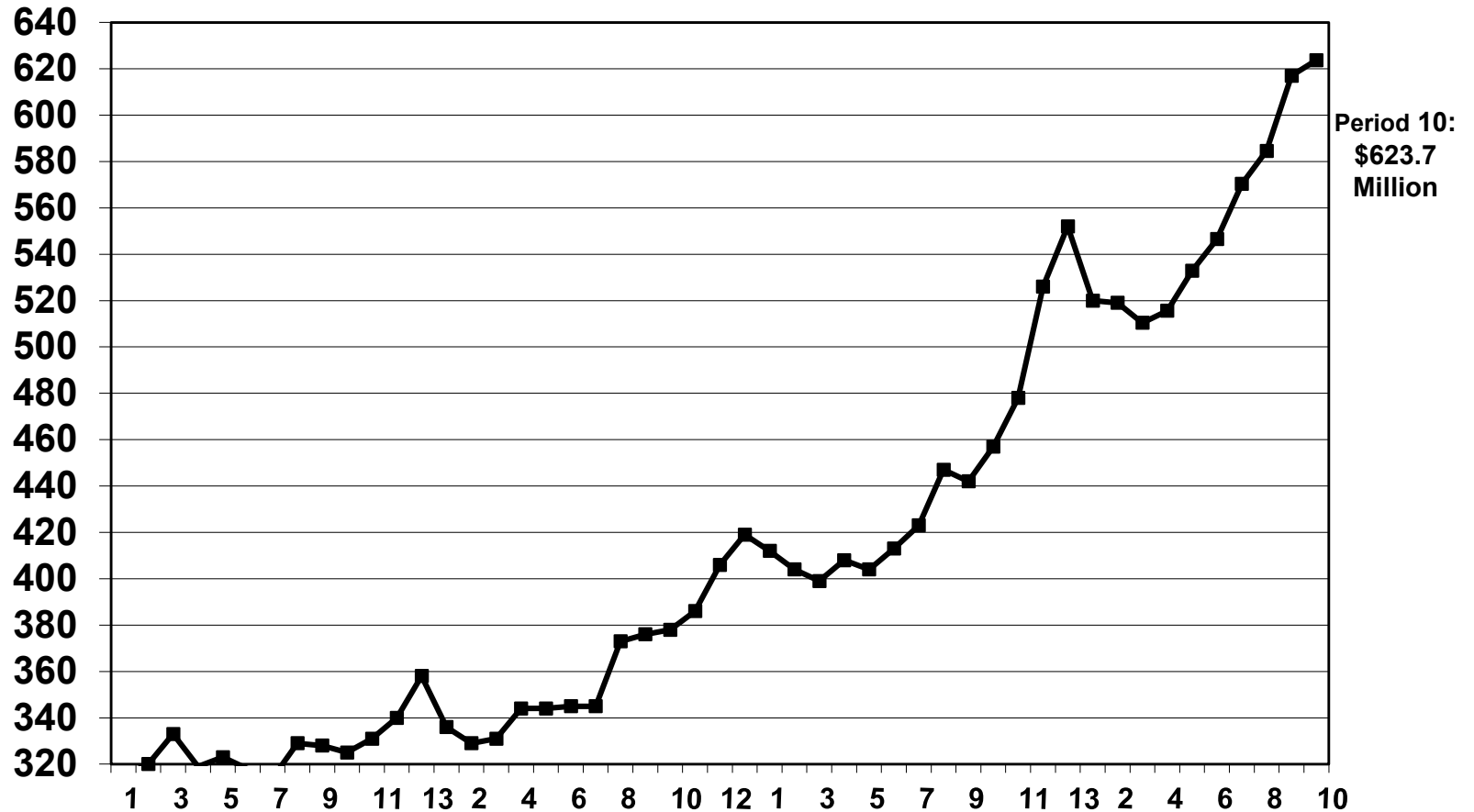
\*\* In accordance with Government Code 53601, the City Council, as part of the City's investment program, granted express authority to invest in US Treasury and US Agency and Government Sponsored Enterprise securities with final stated maturities up to seven years. No investment shall be made in any other security type that at the time of investment has a term remaining to maturity in excess of five years unless granted express authority by the City Council to do so.



# INVESTMENT PORTFOLIO

## PORTFOLIO BALANCE TREND

\$ Million



Accounting Periods

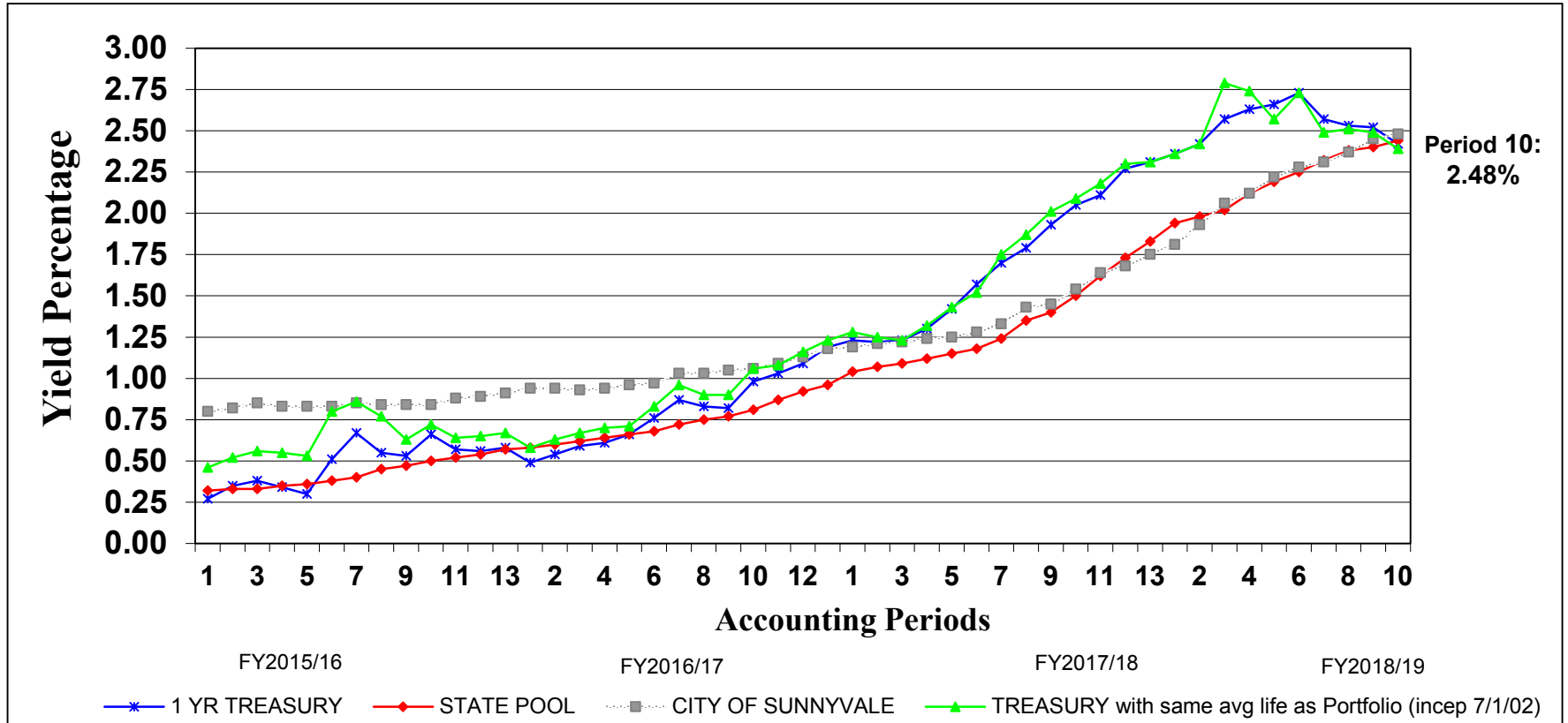
FY2015/16

FY2016/17

FY2017/18

FY2018/19

# INVESTMENT PORTFOLIO COMPARISON OF ANNUAL YIELDS





# **| City of Sunnyvale Consolidated - Account #10597**

## **MONTHLY ACCOUNT STATEMENT**

MARCH 10, 2019 THROUGH APRIL 6, 2019

### **Chandler Team:**

For questions about your account, please call (800) 317-4747,  
or contact **[operations@chandlerasset.com](mailto:operations@chandlerasset.com)**

**CHANDLER** ASSET MANAGEMENT  
[chandlerasset.com](http://chandlerasset.com)

*Information contained herein is confidential. We urge you to compare this statement to the one you receive from your qualified custodian. Please see Important Disclosures.*

## Portfolio Summary

As of April 06, 2019



## PORTFOLIO CHARACTERISTICS

Average Modified Duration	1.60
Average Coupon	2.42%
Average Purchase YTM	2.48%
Average Market YTM	2.52%
Average S&P/Moody Rating	AA/Aa1
Average Final Maturity	1.85 yrs
Average Life	1.69 yrs

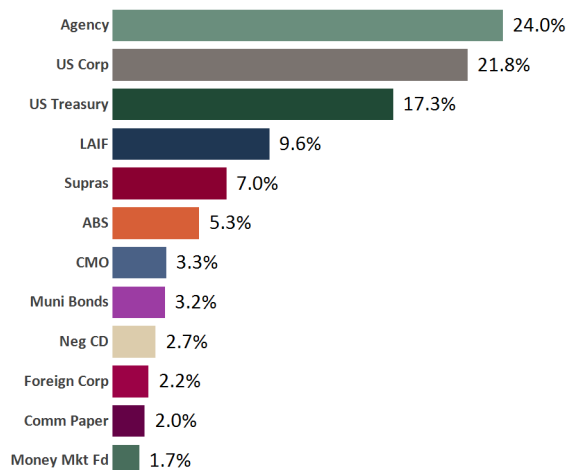
## ACCOUNT SUMMARY

	Beg. Values as of 3/9/19	End Values as of 4/6/19
Market Value	617,012,071	623,754,826
Accrued Interest	3,244,967	2,961,467
Total Market Value	<b>620,257,038</b>	<b>626,716,293</b>
Income Earned	1,116,948	1,117,157
Cont/WD		
Par	617,363,842	622,527,432
Book Value	615,742,047	621,153,760
Cost Value	616,637,564	621,963,752

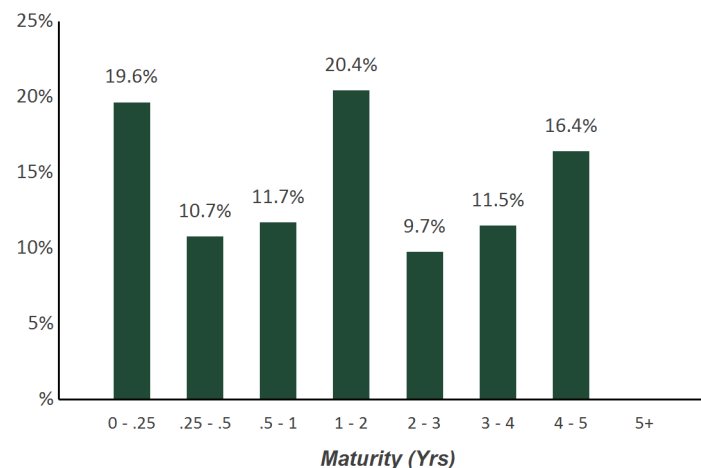
## TOP ISSUERS

Government of United States	17.3%
Federal Home Loan Bank	14.0%
Local Agency Investment Fund	9.6%
Federal Home Loan Mortgage Corp	6.3%
Federal National Mortgage Assoc	4.5%
Intl Bank Recon and Development	2.4%
Federal Farm Credit Bank	2.4%
Inter-American Dev Bank	2.4%
<b>Total</b>	<b>58.9%</b>

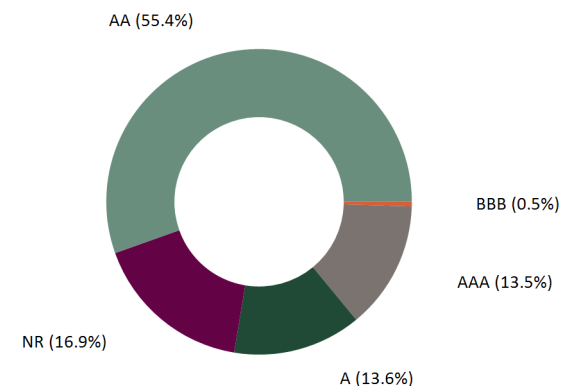
## SECTOR ALLOCATION



## MATURITY DISTRIBUTION



## CREDIT QUALITY (S&amp;P)



# Statement of Compliance

As of April 6, 2019



## City of Sunnyvale Consolidated

This portfolio is a consolidation of assets managed by Chandler Asset Management and assets managed internally by City of Sunnyvale. Chandler relies on City of Sunnyvale to provide accurate information for reporting assets and producing this compliance statement.

Category	Standard	Comment
Treasury Issues	7 years max maturity	Complies
Agency Issues	30% max per single issuer; 7 years max maturity	Complies
Supranational Securities	"AA" rated category or better by a Nationally Recognized Statistical Rating Organization ("NRSRO"); 30% maximum; 10% max per issuer; 5 years max maturity; U.S. dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development ("IBRD"), the International Finance Corporation ("IFC") or the Inter-American Development Bank ("IADB")	Complies
Municipal Securities	"A" rated category or better by a NRSRO; For Municipal Obligations in the form of variable rate demand obligations, the obligations shall be supported by a third-party liquidity facility from a financial institution with short-term ratings of at least A-1 by S&P or P-1 by Moody's; The right of the bondholder to tender the obligation converts these obligations to a short term investment; 30% maximum; 5% max per issuer; 5 years max maturity	Complies
Banker's Acceptances	"A-1" rated or equivalent by a NRSRO; 30% maximum; 5% max per issuer; 180 days max maturity	Complies
Commercial Paper	"A-1" rated or higher by a NRSRO; or "A" rated issuer or higher by a NRSRO, if any long-term debt; 25% maximum; 5% max per issuer; 270 days max maturity; 10% max outstanding commercial paper of any single issuer; Entity organized and operating in the U.S. as a general corporation and has total assets >\$500 million; or Entity is organized within the U.S. as a special purpose corporation, trust, or limited liability company and has credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond.	Complies
Negotiable Certificates of Deposit (NCD)	"A" long-term rated issuer or higher by a NRSRO or "A" short-term rated or higher by a NRSRO, if any amount above FDIC insured limit; The amount of NCD insured up to the FDIC limit does not require any credit ratings; 30% maximum (including CDARs); 5% max per issuer; 5 years max maturity; Issued by nationally or state-chartered bank, a savings association or a federal association, or by a federally or state-licensed branch of a foreign bank.	Complies
Certificates of Deposit (CD)/ Bank Deposit (FDIC Insured/ Collateralized)	20% maximum combined FDIC insured and collateralized time deposits; For FDIC insured CDs, amount per institution is limited to maximum covered under FDIC; 5 years max maturity; For collateralized CDs, 5% max per issuer; 365 days max maturity	Complies
Corporate Medium Term Notes	"A" rated category or higher by a NRSRO; 30% maximum; 5% max per issuer; 5 years max maturity; Issued by corporations organized and operating within the U.S. or by depository institutions licensed by the U.S. or any state and operating within the U.S.	Complied at time of purchase *
Mortgage-Backed (MBS), Mortgage Pass-Throughs (MPT), Asset-Backed Securities, Collateralized Mortgage Obligations (CMO)	"AA" rated category or higher by a NRSRO; "A" rated long-term debt issuer or higher by a NRSRO; 20% maximum (combined MPT,MBS,ABS, CMOs); 5% max per issuer in any Asset Backed or Commercial Mortgage security issuer; No issuer limitation on any Mortgage security where the issuer is U.S. Treasury or a Federal Agency/GSE; 5 years max maturity	Complies
Money Market Mutual Funds	Highest rating or AAA rated by two NRSROs; 20% maximum; SEC registered investment adviser with assets under management in excess of \$500 million and experience greater than 5 years; Maintain NAV of %1; Invest only in US Treasury and federal agency securities, and in repurchase agreements backed by US Treasury and federal agency securities	Complies
Repurchase Agreements	10% maximum; 15 days max maturity; Not used by Investment Adviser	Complies
Local Agency Investment Fund (LAIF)	Maximum permitted by LAIF; Thorough investigation of the pool/fund is required prior to investing and on a continual basis; City staff will annually perform the due diligence analysis of LAIF based on a standardized questionnaire developed to address investment policy and practices.	Complies
Local Government Investment Pools (LGIP)	Pursuant to CGC; SEC registered investment adviser with assets under management in excess of \$500 million and experience greater than 5 years	
Prohibited	Inverse floaters, Range notes, Mortgage derived interest-only strips; Zero interest accrual securities; Mutual funds (other than government money market funds, unregulated and/ or unrated investment pools or trusts, and futures and options; 144A	Complies
Social and Environmental Responsibility	Investments are discouraged in entities that manufacture tobacco products, firearms, or nuclear weapons not used in the national defense of the U.S., and are direct or indirect investments to support the production or drilling of fossil fuels; Investments in entities that support community well-being through safe and environmentally sound practices and fair labor practices and equality of rights regardless of sex, race, age, disability, or sexual orientation is encouraged.	Complies
Max Callables	20% maximum (does not include "make whole call" securities)	Complies
Max Per Issuer	5% max per single issuer, unless otherwise stated	Complies
Maximum maturity	5 years, except as otherwise stated in the policy (i.e. Treasury & Agency issues have 7 years max maturity)	Complies

\*GE (36962G4D3,36962G4R2) was downgraded by Moody's (Baa1) and S&P (BBB+) in October 2018 and by Fitch (BBB+) in November 2018; Complied at time of purchase.



BOOK VALUE RECONCILIATION		
<b>BEGINNING BOOK VALUE</b>		<b>\$615,742,046.55</b>
<b><u>Acquisition</u></b>		
+ Security Purchases	\$18,805,238.00	
+ Money Market Fund Purchases	\$22,956,900.85	
+ Money Market Contributions	\$0.00	
+ Security Contributions	\$10,000,000.00	
+ Security Transfers	\$0.00	
<b>Total Acquisitions</b>		<b>\$51,762,138.85</b>
<b><u>Dispositions</u></b>		
- Security Sales	\$598,546.88	
- Money Market Fund Sales	\$18,855,244.85	
- MMF Withdrawals	\$23,678.77	
- Security Withdrawals	\$6,000,000.00	
- Security Transfers	\$0.00	
- Other Dispositions	\$0.00	
- Maturities	\$20,395,000.00	
- Calls	\$0.00	
- Principal Paydowns	\$530,387.39	
<b>Total Dispositions</b>		<b>\$46,402,857.89</b>
<b><u>Amortization/Accretion</u></b>		
+/- Net Accretion	\$54,446.17	
		\$54,446.17
<b><u>Gain/Loss on Dispositions</u></b>		
+/- Realized Gain/Loss	(\$2,013.86)	
		(\$2,013.86)
<b>ENDING BOOK VALUE</b>		<b>\$621,153,759.82</b>

## Holdings Report

As of April 06, 2019



CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
<b>ABS</b>									
47788BAB0	John Deere Owner Trust 2017-B A2A 1.59% Due 4/15/2020	415,095.20	07/30/2018 2.11%	413,635.88 414,219.14	99.97 1.67%	414,959.05 403.33	0.07% 739.91	Aaa / NR AAA	1.03 0.43
161571HF4	Chase CHAIT 2016-A5 1.27% Due 7/15/2021	3,000,000.00	09/27/2018 2.11%	2,964,960.94 2,971,515.75	99.64 1.59%	2,989,200.00 2,328.33	0.48% 17,684.25	NR / AAA AAA	2.28 1.13
161571FK5	Chase CHAIT 2012-A4 1.58% Due 8/15/2021	2,500,000.00	07/30/2018 2.38%	2,470,019.53 2,476,744.88	99.63 1.90%	2,490,780.00 2,413.89	0.40% 14,035.12	NR / AAA AAA	2.36 1.17
43814WAB1	HAROT 2019-1 A2 2.75% Due 9/20/2021	4,045,000.00	02/19/2019 2.77%	4,044,739.50 4,044,750.35	100.06 2.72%	4,047,552.40 5,870.87	0.65% 2,802.05	NR / AAA AAA	2.46 1.25
47788BAD6	John Deere Owner Trust 2017-B A3 1.82% Due 10/15/2021	4,610,000.00	10/26/2018 3.17%	4,545,712.11 4,555,167.96	99.37 2.53%	4,580,837.14 5,127.34	0.73% 25,669.18	Aaa / NR AAA	2.53 0.89
47789JAB2	John Deere Owner Trust 2019-A A2 2.85% Due 12/15/2021	3,640,000.00	03/05/2019 2.87%	3,639,834.02 3,639,838.14	100.13 2.77%	3,644,768.40 6,916.00	0.58% 4,930.26	Aaa / NR AAA	2.70 1.32
43815HAC1	Honda Auto Receivables Owner 2018-3 A3 2.95% Due 8/22/2022	3,605,000.00	08/21/2018 2.98%	3,604,505.39 3,604,580.86	100.56 2.32%	3,625,328.60 4,726.56	0.58% 20,747.74	Aaa / NR AAA	3.38 0.87
02587AAJ3	American Express Credit 2017-1 1.93% Due 9/15/2022	4,000,000.00	07/17/2018 2.93%	3,939,843.76 3,950,219.62	99.39 2.67%	3,975,552.00 4,717.78	0.64% 25,332.38	Aaa / NR AAA	3.45 0.84
47788EAC2	John Deere Owner Trust 2018-B A3 3.08% Due 11/15/2022	3,920,000.00	07/18/2018 3.10%	3,919,702.86 3,919,751.19	100.63 2.74%	3,944,856.72 7,378.31	0.63% 25,105.53	Aaa / NR AAA	3.61 1.76
65479GAD1	Nissan Auto Receivables Owner 2018-B A3 3.06% Due 3/15/2023	3,600,000.00	07/17/2018 3.08%	3,599,883.36 3,599,900.99	100.76 2.28%	3,627,356.40 6,732.00	0.58% 27,455.41	Aaa / AAA NR	3.94 0.95
<b>Total ABS</b>		<b>33,335,095.20</b>	<b>2.85%</b>	<b>33,142,837.35</b> <b>33,176,688.88</b>	<b>2.43%</b>	<b>33,341,190.71</b> <b>46,614.41</b>	<b>5.33%</b> <b>164,501.83</b>	<b>Aaa / AAA</b> <b>AAA</b>	<b>2.97</b> <b>1.12</b>
<b>AGENCY</b>									
3136G3MN2	FNMA Callable Note 1X 5/24/2017 1.5% Due 5/24/2019	4,000,000.00	09/21/2017 1.40%	4,006,560.00 4,000,505.44	99.87 2.45%	3,994,912.00 22,166.67	0.64% (5,593.44)	NR / AA+ AAA	0.13 0.13
3137EADK2	FHLMC Note 1.25% Due 8/1/2019	3,994,000.00	04/19/2018 2.35%	3,938,802.92 3,980,347.84	99.62 2.46%	3,978,663.04 9,152.92	0.64% (1,684.80)	Aaa / AA+ AAA	0.32 0.32
3130A8Y72	FHLB Note 0.875% Due 8/5/2019	3,000,000.00	11/08/2017 1.63%	2,961,000.00 2,992,629.92	99.49 2.44%	2,984,604.00 4,520.83	0.48% (8,025.92)	Aaa / AA+ AAA	0.33 0.33



CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
<b>AGENCY</b>									
3133X8AS1	FHLB Note 5.125% Due 8/15/2019	4,000,000.00	05/02/2017 1.43%	4,331,600.00 4,051,626.35	100.95 2.45%	4,037,812.00 29,611.11	0.65% (13,814.35)	Aaa / AA+ AAA	0.36 0.36
3130A0JR2	FHLB Note 2.375% Due 12/13/2019	7,000,000.00	Various 1.84%	7,074,530.00 7,025,125.23	99.94 2.46%	6,995,849.00 52,645.83	1.12% (29,276.23)	Aaa / AA+ AAA	0.69 0.67
3137EAE5	FHLMC Note 1.5% Due 1/17/2020	5,000,000.00	10/23/2017 1.67%	4,981,000.00 4,993,363.97	99.29 2.43%	4,964,345.00 16,666.67	0.79% (29,018.97)	Aaa / AA+ AAA	0.78 0.77
3133EG6C4	FFCB Note 1.55% Due 2/3/2020	4,000,000.00	01/10/2018 2.03%	3,961,760.00 3,984,683.71	99.30 2.41%	3,972,176.00 11,022.22	0.64% (12,507.71)	Aaa / AA+ AAA	0.83 0.81
3130ACQ56	FHLB Note 1.65% Due 3/13/2020	4,000,000.00	01/09/2018 2.03%	3,968,000.00 3,986,256.93	99.28 2.43%	3,971,204.00 29,700.00	0.64% (15,052.93)	Aaa / AA+ NR	0.94 0.91
3133ECKU7	FFCB Note 1.49% Due 4/2/2020	4,000,000.00	01/10/2018 2.03%	3,952,720.00 3,979,006.05	99.10 2.42%	3,964,000.00 827.78	0.63% (15,006.05)	Aaa / AA+ AAA	0.99 0.97
3135G0D75	FNMA Note 1.5% Due 6/22/2020	4,000,000.00	02/28/2018 2.33%	3,925,200.00 3,960,873.85	98.92 2.41%	3,956,632.00 17,500.00	0.63% (4,241.85)	Aaa / AA+ AAA	1.21 1.19
3135G0T60	FNMA Note 1.5% Due 7/30/2020	4,000,000.00	10/04/2017 1.65%	3,983,600.00 3,992,357.28	98.76 2.46%	3,950,548.00 11,166.67	0.63% (41,809.28)	Aaa / AA+ AAA	1.32 1.29
313370U55	FHLB Note 2.875% Due 9/11/2020	7,000,000.00	03/29/2019 2.38%	7,049,350.00 7,048,515.13	100.62 2.43%	7,043,148.00 14,534.72	1.13% (5,367.13)	Aaa / AA+ AAA	1.44 1.39
3137EAEJ4	FHLMC Note 1.625% Due 9/29/2020	4,000,000.00	03/22/2018 2.45%	3,919,520.00 3,952,776.92	98.85 2.42%	3,953,936.00 1,444.44	0.63% 1,159.08	Aaa / AA+ AAA	1.48 1.45
3130AD4X7	FHLB Note 2% Due 12/11/2020	3,000,000.00	04/04/2018 2.45%	2,965,200.00 2,978,241.14	99.32 2.41%	2,979,594.00 19,333.33	0.48% 1,352.86	Aaa / AA+ NR	1.68 1.63
313371U79	FHLB Note 3.125% Due 12/11/2020	8,000,000.00	01/30/2019 2.63%	8,071,680.00 8,064,722.82	101.05 2.48%	8,084,016.00 80,555.56	1.30% 19,293.18	Aaa / AA+ AAA	1.68 1.62
3130A0XD7	FHLB Note 2.375% Due 3/12/2021	8,000,000.00	02/22/2019 2.54%	7,973,440.00 7,974,899.73	99.93 2.41%	7,994,032.00 13,194.44	1.28% 19,132.27	Aaa / AA+ AAA	1.93 1.88
3133EJHD4	FFCB 2.48% Due 3/22/2021	4,000,000.00	03/27/2018 2.53%	3,994,480.00 3,996,382.40	100.13 2.41%	4,005,296.00 4,133.33	0.64% 8,913.60	Aaa / AA+ AAA	1.96 1.90
313383ZU8	FHLB Note 3% Due 9/10/2021	5,000,000.00	09/07/2018 2.82%	5,025,700.00 5,020,799.18	101.37 2.41%	5,068,555.00 11,250.00	0.81% 47,755.82	Aaa / AA+ NR	2.43 2.33
3130AF5B9	FHLB Note 3% Due 10/12/2021	8,000,000.00	10/18/2018 3.06%	7,986,160.00 7,988,320.51	101.64 2.33%	8,130,880.00 116,666.67	1.32% 142,559.49	Aaa / AA+ NR	2.52 2.38





CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
<b>AGENCY</b>									
3135G0S38	FNMA Note 2% Due 1/5/2022	2,150,000.00	07/30/2018 2.87%	2,089,198.00 2,101,319.61	99.10 2.34%	2,130,675.80 10,988.89	0.34% 29,356.19	Aaa / AA+ AAA	2.75 2.64
3135G0T45	FNMA Note 1.875% Due 4/5/2022	6,000,000.00	07/30/2018 2.88%	5,791,200.00 5,830,039.29	98.62 2.36%	5,917,122.00 625.00	0.94% 87,082.71	Aaa / AA+ AAA	3.00 2.89
3133EH7F4	FFCB Note 2.35% Due 1/17/2023	3,000,000.00	01/17/2018 2.35%	3,000,000.00 3,000,000.00	99.84 2.39%	2,995,317.00 15,666.67	0.48% (4,683.00)	Aaa / AA+ AAA	3.79 3.58
3130ADRG9	FHLB Note 2.75% Due 3/10/2023	7,000,000.00	01/16/2019 2.71%	7,011,060.00 7,010,475.20	101.39 2.38%	7,097,188.00 14,437.50	1.13% 86,712.80	Aaa / AA+ NR	3.93 3.70
3137EAEN5	FHLMC Note 2.75% Due 6/19/2023	6,000,000.00	07/20/2018 2.86%	5,969,880.00 5,974,216.47	101.56 2.36%	6,093,504.00 49,500.00	0.98% 119,287.53	Aaa / AA+ AAA	4.21 3.92
313383YJ4	FHLB Note 3.375% Due 9/8/2023	7,000,000.00	10/29/2018 3.08%	7,091,910.00 7,083,719.49	104.05 2.40%	7,283,766.00 19,031.25	1.17% 200,046.51	Aaa / AA+ NR	4.43 4.09
3135G0U43	FNMA Note 2.875% Due 9/12/2023	8,205,000.00	09/12/2018 2.96%	8,171,359.50 8,175,140.37	102.08 2.38%	8,375,959.38 16,381.51	1.34% 200,819.01	Aaa / AA+ AAA	4.44 4.14
3130A0F70	FHLB Note 3.375% Due 12/8/2023	7,000,000.00	12/28/2018 2.77%	7,194,320.00 7,183,865.73	104.32 2.39%	7,302,330.00 78,093.75	1.18% 118,464.27	Aaa / AA+ AAA	4.68 4.27
3130A0XE5	FHLB Note 3.25% Due 3/8/2024	8,000,000.00	02/27/2019 2.59%	8,247,280.00 8,242,159.22	103.95 2.40%	8,315,632.00 20,944.44	1.33% 73,472.78	Aaa / AA+ NR	4.93 4.53
<b>Total Agency</b>		<b>148,349,000.00</b>	<b>2.45%</b>	<b>148,636,510.42</b> <b>148,572,369.78</b>	<b>2.41%</b>	<b>149,541,696.22</b> <b>691,762.20</b>	<b>23.97%</b> <b>969,326.44</b>	<b>Aaa / AA+</b> <b>AAA</b>	<b>2.39</b> <b>2.26</b>
<b>CMO</b>									
3137B6ZM6	FHLMC K714 A2 3.034% Due 10/25/2020	7,903,609.21	02/19/2019 2.60%	7,918,428.47 7,917,361.29	100.24 2.52%	7,922,317.05 3,996.59	1.26% 4,955.76	Aaa / NR NR	1.56 0.83
3137B4WB8	FHLMC K033 A2 3.06% Due 7/25/2023	6,545,000.00	Various 2.79%	6,585,492.97 6,584,198.19	101.55 2.35%	6,646,355.87 6,675.90	1.06% 62,157.68	Aaa / NR NR	4.30 2.13
3137B5JM6	FHLMC K034 A2 3.531% Due 7/25/2023	1,500,000.00	03/12/2019 2.76%	1,544,414.06 1,543,772.80	103.33 2.66%	1,549,947.00 882.75	0.25% 6,174.20	NR / NR AAA	4.30 3.94
3137B7MZ9	FHLMC K036 A2 3.527% Due 10/25/2023	4,400,000.00	01/18/2019 3.03%	4,495,906.25 4,491,871.00	103.44 2.70%	4,551,241.20 5,172.93	0.73% 59,370.20	Aaa / NR AAA	4.56 3.99
<b>Total CMO</b>		<b>20,348,609.21</b>	<b>2.77%</b>	<b>20,544,241.75</b> <b>20,537,203.28</b>	<b>2.52%</b>	<b>20,669,861.12</b> <b>16,728.17</b>	<b>3.30%</b> <b>132,657.84</b>	<b>Aaa / NR</b> <b>AAA</b>	<b>3.31</b> <b>2.18</b>



CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
<b>COMMERCIAL PAPER</b>									
62479MRF2	MUFG Bank Ltd/NY Discount CP 2.78% Due 4/15/2019	7,000,000.00	12/21/2018 2.84%	6,937,836.11 6,995,675.56	99.94 2.84%	6,995,675.56 0.00	1.12% 0.00	P-1 / A-1 NR	0.02 0.02
02665KSN8	American Honda Discount CP 2.53% Due 5/22/2019	5,400,000.00	02/22/2019 2.58%	5,366,224.50 5,382,922.50	99.68 2.58%	5,382,922.50 0.00	0.86% 0.00	P-1 / A-1 F-1	0.13 0.12
<b>Total Commercial Paper</b>		<b>12,400,000.00</b>	<b>2.73%</b>	<b>12,304,060.61 12,378,598.06</b>	<b>2.73%</b>	<b>12,378,598.06 0.00</b>	<b>1.98% 0.00</b>	<b>Aaa / AA AA</b>	<b>0.07 0.07</b>
<b>FOREIGN CORPORATE</b>									
404280BA6	HSBC Holdings PLC Note 3.6% Due 5/25/2023	7,000,000.00	Various 3.84%	6,930,000.00 6,937,461.37	101.62 3.18%	7,113,561.00 92,400.00	1.15% 176,099.63	A2 / A AA-	4.14 3.77
89114QC48	Toronto Dominion Bank Note 3.5% Due 7/19/2023	5,000,000.00	07/27/2018 3.56%	4,985,500.00 4,987,498.35	102.61 2.85%	5,130,540.00 37,916.67	0.82% 143,041.65	Aa1 / AA- AA-	4.29 3.94
89114QCB2	Toronto Dominion Bank Note 3.25% Due 3/11/2024	1,500,000.00	03/26/2019 2.97%	1,518,990.00 1,518,885.08	100.98 3.03%	1,514,685.00 3,520.83	0.24% (4,200.08)	Aa3 / A AA-	4.93 4.52
<b>Total Foreign Corporate</b>		<b>13,500,000.00</b>	<b>3.64%</b>	<b>13,434,490.00 13,443,844.80</b>	<b>3.04%</b>	<b>13,758,786.00 133,837.50</b>	<b>2.22% 314,941.20</b>	<b>A1 / A+ AA-</b>	<b>4.28 3.92</b>
<b>LAIF</b>									
90LAIF\$00	Local Agency Investment Fund State Pool	59,999,044.24	Various 2.44%	59,999,044.24 59,999,044.24	1.00 2.44%	59,999,044.24 354,205.59	9.63% 0.00	NR / NR NR	0.00 0.00
<b>Total LAIF</b>		<b>59,999,044.24</b>	<b>2.44%</b>	<b>59,999,044.24 59,999,044.24</b>	<b>2.44%</b>	<b>59,999,044.24 354,205.59</b>	<b>9.63% 0.00</b>	<b>NR / NR NR</b>	<b>0.00 0.00</b>
<b>MONEY MARKET FUND FI</b>									
60934N807	Federated Investors Govt Oblig Fund Inst.	10,350,683.11	Various 2.07%	10,350,683.11 10,350,683.11	1.00 2.07%	10,350,683.11 0.00	1.65% 0.00	Aaa / AAA AAA	0.00 0.00
<b>Total Money Market Fund FI</b>		<b>10,350,683.11</b>	<b>2.07%</b>	<b>10,350,683.11 10,350,683.11</b>	<b>2.07%</b>	<b>10,350,683.11 0.00</b>	<b>1.65% 0.00</b>	<b>Aaa / AAA AAA</b>	<b>0.00 0.00</b>



CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
<b>MUNICIPAL BONDS</b>									
91412GTA3	Univ of California CA Revenues TE-REV 2.566% Due 5/15/2019	1,000,000.00	12/06/2016 1.55%	1,024,240.00 1,001,034.97	100.01 2.49%	1,000,060.00 10,121.44	0.16% (974.97)	Aa2 / AA AA	0.11 0.11
91412GSB2	Univ of California CA Revenues TE-REV 1.796% Due 7/1/2019	2,275,000.00	04/11/2017 1.50%	2,289,628.25 2,276,533.17	99.83 2.50%	2,271,178.00 10,895.73	0.36% (5,355.17)	Aa2 / AA AA	0.24 0.23
13034PYF8	California Housing Finance TE-REV 1.938% Due 8/1/2019	1,385,000.00	09/22/2017 1.50%	1,396,066.15 1,386,893.32	99.96 2.06%	1,384,418.30 4,920.91	0.22% (2,475.02)	A1 / AA NR	0.32 0.32
53301TAV3	Lincoln CA Dissolved Redev Agy Tax Allocation 2% Due 9/15/2019	705,000.00	12/29/2016 2.10%	703,138.80 704,697.32	99.58 2.96%	702,031.95 861.67	0.11% (2,665.37)	NR / AA NR	0.44 0.44
13063A7G3	California State TE-GO 6.2% Due 10/1/2019	5,690,000.00	Various 1.59%	6,303,783.00 5,814,249.65	101.75 2.56%	5,789,518.10 5,879.67	0.92% (24,731.55)	Aa3 / AA- AA-	0.49 0.48
798170AC0	San Jose CA Redev Agy Tax Allocation 2.259% Due 8/1/2020	1,000,000.00	12/21/2017 2.00%	1,006,540.00 1,003,304.28	99.50 2.64%	995,020.00 4,141.50	0.16% (8,284.28)	NR / AA AA	1.32 1.29
13063DDE5	California St TE-GO 2.3% Due 10/1/2020	8,000,000.00	Various 2.14%	8,036,080.00 8,018,908.31	99.81 2.43%	7,984,400.00 3,066.66	1.27% (34,508.31)	Aa3 / AA- AA-	1.49 1.45
<b>Total Municipal Bonds</b>		<b>20,055,000.00</b>	<b>1.83%</b>	<b>20,759,476.20</b> <b>20,205,621.02</b>	<b>2.48%</b>	<b>20,126,626.35</b> <b>39,887.58</b>	<b>3.22%</b> <b>(78,994.67)</b>	<b>Aa3 / AA-</b> <b>AA-</b>	<b>0.87</b> <b>0.85</b>
<b>NEGOTIABLE CD</b>									
06370RQY8	Bank of Montreal Chicago Yankee CD 2.86% Due 6/11/2019	8,000,000.00	12/10/2018 2.86%	8,000,000.00 8,000,000.00	100.00 2.86%	8,000,000.00 74,360.00	1.29% 0.00	P-1 / A-1 F-1+	0.18 0.18
78012UFA8	Royal Bank of Canada Yankee CD 2.74% Due 7/16/2019	1,270,000.00	01/25/2019 2.71%	1,269,942.48 1,269,966.56	100.00 2.71%	1,269,966.56 25,518.53	0.21% 0.00	P-1 / A-1+ F-1+	0.28 0.27
96130ABJ6	Westpac Banking Corp NY Yankee CD 2.97% Due 9/13/2019	7,200,000.00	12/13/2018 2.97%	7,200,000.00 7,200,000.00	100.00 2.97%	7,200,000.00 67,716.00	1.16% 0.00	P-1 / A-1+ F-1+	0.44 0.43
<b>Total Negotiable CD</b>		<b>16,470,000.00</b>	<b>2.90%</b>	<b>16,469,942.48</b> <b>16,469,966.56</b>	<b>2.90%</b>	<b>16,469,966.56</b> <b>167,594.53</b>	<b>2.65%</b> <b>0.00</b>	<b>Aaa / AAA</b> <b>AAA</b>	<b>0.30</b> <b>0.30</b>
<b>SUPRANATIONAL</b>									
4581X0BY3	Inter-American Dev Bank Note 1.125% Due 9/12/2019	4,000,000.00	05/24/2017 1.43%	3,972,280.00 3,994,792.20	99.37 2.59%	3,974,888.00 3,125.00	0.63% (19,904.20)	Aaa / AAA AAA	0.44 0.43
45950KCD0	International Finance Corp Note 1.75% Due 9/16/2019	4,000,000.00	05/31/2017 1.43%	4,028,527.96 4,005,514.95	99.61 2.63%	3,984,460.00 4,083.33	0.64% (21,054.95)	Aaa / AAA NR	0.45 0.44



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<b>SUPRANATIONAL</b>									
459058DW0	Intl. Bank Recon & Development Note 1.875% Due 10/7/2019	4,000,000.00	12/06/2017 1.91%	3,997,800.00 3,999,399.10	99.68 2.53%	3,987,000.00 37,500.00	0.64% (12,399.10)	Aaa / AAA AAA	0.50 0.49
4581X0CH9	Inter-American Dev Bank Note 1.75% Due 10/15/2019	4,000,000.00	10/05/2017 1.61%	4,011,440.00 4,002,952.76	99.61 2.50%	3,984,356.00 33,444.44	0.64% (18,596.76)	NR / AAA AAA	0.53 0.51
45905UZI6	Intl. Bank Recon & Development Callable Note S/A 4/25/2017 1.3% Due 10/25/2019	7,000,000.00	Various 1.57%	6,954,260.00 6,989,880.60	99.25 2.68%	6,947,178.00 40,950.00	1.12% (42,702.60)	Aaa / AAA NR	0.55 0.54
4581X0CP1	Inter-American Dev Bank Note 1.875% Due 6/16/2020	2,000,000.00	03/01/2018 2.44%	1,975,100.00 1,987,044.87	99.25 2.51%	1,985,054.00 11,562.50	0.32% (1,990.87)	Aaa / AAA AAA	1.20 1.17
45950KCG3	International Finance Corp Note 1.625% Due 7/16/2020	4,000,000.00	01/17/2018 2.15%	3,948,960.00 3,973,891.72	98.88 2.52%	3,955,280.00 14,625.00	0.63% (18,611.72)	Aaa / AAA NR	1.28 1.25
4581X0CD8	Inter-American Dev Bank Note 2.125% Due 11/9/2020	4,000,000.00	05/09/2017 1.76%	4,049,040.00 4,022,297.88	99.41 2.50%	3,976,400.00 34,944.44	0.64% (45,897.88)	Aaa / AAA AAA	1.60 1.54
45950KCM0	International Finance Corp Note 2.25% Due 1/25/2021	6,000,000.00	Various 2.61%	5,945,620.00 5,962,405.50	99.65 2.45%	5,979,240.00 27,000.00	0.96% 16,834.50	Aaa / AAA NR	1.81 1.75
4581X0CZ9	Inter-American Dev Bank Note 1.75% Due 9/14/2022	5,000,000.00	08/21/2018 2.87%	4,787,000.00 4,819,603.51	97.89 2.39%	4,894,700.00 5,590.28	0.78% 75,096.49	NR / NR AAA	3.44 3.31
<b>Total Supranational</b>		<b>44,000,000.00</b>	<b>1.97%</b>	<b>43,670,027.96</b> <b>43,757,783.09</b>	<b>2.54%</b>	<b>43,668,556.00</b> <b>212,824.99</b>	<b>7.00%</b> <b>(89,227.09)</b>	<b>Aaa / AAA</b> <b>AAA</b>	<b>1.21</b> <b>1.17</b>
<b>US CORPORATE</b>									
037833AQ3	Apple Inc Note 2.1% Due 5/6/2019	3,000,000.00	12/19/2016 1.75%	3,024,540.00 3,000,819.88	99.97 2.48%	2,999,010.00 26,425.00	0.48% (1,809.88)	Aa1 / AA+ NR	0.08 0.08
06406HCU1	Bank of New York Callable Note Cont 4/15/2019 2.2% Due 5/15/2019	2,000,000.00	12/07/2016 1.79%	2,018,820.00 2,000,175.27	99.96 2.59%	1,999,116.00 17,355.56	0.32% (1,059.27)	A1 / A AA-	0.11 0.11
36962G4D3	General Electric Capital Corp Note 6% Due 8/7/2019	1,000,000.00	05/31/2017 1.62%	1,093,655.34 1,014,318.23	101.00 2.98%	1,009,965.00 10,000.00	0.16% (4,353.23)	Baa1 / BBB+ BBB+	0.34 0.33
17275RBG6	Cisco Systems Note 1.4% Due 9/20/2019	4,000,000.00	05/30/2017 1.59%	3,982,680.00 3,996,589.42	99.45 2.62%	3,978,044.00 2,644.44	0.64% (18,545.42)	A1 / AA- NR	0.46 0.45
90331HML4	US Bank NA Callable Note Cont 9/28/2019 2.125% Due 10/28/2019	3,000,000.00	05/31/2017 1.71%	3,028,590.00 3,005,852.54	99.74 2.60%	2,992,167.00 28,156.25	0.48% (13,685.54)	A1 / AA- AA-	0.56 0.55



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<b>US CORPORATE</b>									
459200AG6	IBM Corp Note 8.375% Due 11/1/2019	3,000,000.00	11/04/2016 1.39%	3,612,360.00 3,116,640.00	103.14 2.77%	3,094,254.00 108,875.00	0.51% (22,386.00)	A1 / A A	0.57 0.54
594918AY0	Microsoft Callable Note Cont 1/12/2020 1.85% Due 2/12/2020	4,000,000.00	01/12/2018 2.06%	3,983,040.00 3,993,068.91	99.42 2.55%	3,976,692.00 11,305.56	0.64% (16,376.91)	Aaa / AAA AA+	0.85 0.83
904764AV9	Unilever Capital Note 1.8% Due 5/5/2020	2,000,000.00	12/21/2017 2.07%	1,987,580.00 1,994,349.33	99.11 2.64%	1,982,220.00 15,200.00	0.32% (12,129.33)	A1 / A+ A+	1.08 1.05
037833CS7	Apple Inc Note 1.8% Due 5/11/2020	4,000,000.00	01/26/2018 2.26%	3,959,120.00 3,980,440.19	99.16 2.58%	3,966,360.00 29,200.00	0.64% (14,080.19)	Aa1 / AA+ NR	1.10 1.07
478160AW4	Johnson & Johnson Note 2.95% Due 9/1/2020	4,000,000.00	04/05/2018 2.46%	4,045,880.00 4,026,745.95	100.58 2.53%	4,023,068.00 11,800.00	0.64% (3,677.95)	Aaa / AAA AAA	1.41 1.36
36962G4R2	General Electric Capital Corp Note 4.375% Due 9/16/2020	2,000,000.00	06/30/2017 1.87%	2,155,600.00 2,069,980.24	101.84 3.06%	2,036,780.00 5,104.17	0.33% (33,200.24)	Baa1 / BBB+ BBB+	1.45 1.39
594918AH7	Microsoft Note 3% Due 10/1/2020	3,817,000.00	04/20/2017 1.74%	3,977,619.36 3,886,219.30	100.55 2.62%	3,837,867.54 1,908.50	0.61% (48,351.76)	Aaa / AAA AA+	1.49 1.45
00440EAT4	Chubb INA Holdings Inc Callable Note Cont 10/3/2020 2.3% Due 11/3/2020	5,975,000.00	Various 2.99%	5,889,921.00 5,912,680.94	99.36 2.72%	5,936,748.05 58,787.36	0.96% 24,067.11	A3 / A A	1.58 1.52
92826CAB8	Visa Inc Note 2.2% Due 12/14/2020	4,000,000.00	03/28/2018 2.73%	3,945,320.00 3,965,990.36	99.51 2.50%	3,980,264.00 27,622.22	0.64% 14,273.64	A1 / AA- NR	1.69 1.64
78012KKU0	Royal Bank of Canada Note 2.5% Due 1/19/2021	6,567,000.00	Various 3.10%	6,482,368.32 6,498,848.48	99.93 2.54%	6,562,271.76 35,571.25	1.05% 63,423.28	Aa2 / AA- AA	1.79 1.73
459200JF9	IBM Corp Note 2.25% Due 2/19/2021	4,000,000.00	04/05/2018 2.81%	3,939,080.00 3,960,352.73	99.06 2.77%	3,962,272.00 12,000.00	0.63% 1,919.27	A1 / A A	1.88 1.81
037833AR1	Apple Inc Note 2.85% Due 5/6/2021	3,000,000.00	06/30/2017 2.01%	3,092,400.00 3,049,945.95	100.65 2.53%	3,019,362.00 35,862.50	0.49% (30,583.95)	Aa1 / AA+ NR	2.08 1.99
369550BE7	General Dynamics Corp Note 3% Due 5/11/2021	5,100,000.00	Various 2.99%	5,098,778.86 5,100,466.13	100.75 2.63%	5,138,127.60 62,050.00	0.83% 37,661.47	A2 / A+ NR	2.10 2.00
857477AV5	State Street Bank Note 1.95% Due 5/19/2021	4,916,000.00	Various 2.87%	4,818,802.80 4,823,615.84	98.55 2.66%	4,844,570.52 36,747.10	0.78% 20,954.68	A1 / A AA-	2.12 2.04
594918BP8	Microsoft Callable Note Cont 7/8/21 1.55% Due 8/8/2021	2,000,000.00	06/30/2017 1.97%	1,967,000.00 1,981,212.00	97.69 2.57%	1,953,842.00 5,080.56	0.31% (27,370.00)	Aaa / AAA AA+	2.34 2.27
89236TDP7	Toyota Motor Credit Corp Note 2.6% Due 1/11/2022	6,750,000.00	Various 3.14%	6,640,111.50 6,654,004.32	99.82 2.67%	6,737,870.25 41,925.00	1.08% 83,865.93	Aa3 / AA- A+	2.77 2.63



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<b>US CORPORATE</b>									
69353RFE3	PNC Bank Callable Note Cont 6/28/2022 2.45% Due 7/28/2022	4,290,000.00	Various 3.39%	4,142,985.00 4,165,976.55	99.43 2.63%	4,265,375.40 20,145.13	0.68% 99,398.85	A2 / A A+	3.31 3.14
48128BAB7	JP Morgan Chase & Co Callable Note 1X 1/15/2022 2.972% Due 1/15/2023	5,250,000.00	09/07/2018 3.54%	5,131,770.00 5,147,265.80	100.13 2.92%	5,256,977.25 35,540.17	0.84% 109,711.45	A2 / A- AA-	3.78 2.63
808513AT2	Charles Schwab Corp Callable Note Cont 12/25/2022 2.65% Due 1/25/2023	5,580,000.00	Various 3.31%	5,431,072.20 5,450,676.53	99.80 2.71%	5,568,795.36 29,574.00	0.89% 118,118.83	A2 / A A	3.81 3.58
24422ETG4	John Deere Capital Corp Note 2.8% Due 3/6/2023	6,268,000.00	Various 3.50%	6,092,335.66 6,108,505.27	100.03 2.79%	6,269,635.95 15,112.84	1.00% 161,130.68	A2 / A A	3.92 3.68
084670BR8	Berkshire Hathaway Callable Note Cont 1/15/2023 2.75% Due 3/15/2023	4,232,000.00	Various 3.42%	4,120,054.64 4,128,794.64	100.49 2.61%	4,252,698.71 7,112.11	0.68% 123,904.07	Aa2 / AA A+	3.94 3.56
06406RAG2	Bank of NY Mellon Corp Note 3.5% Due 4/28/2023	4,280,000.00	Various 3.12%	4,342,247.36 4,341,073.43	102.30 2.89%	4,378,619.76 66,161.67	0.71% 37,546.33	A1 / A AA-	4.06 3.71
097023BQ7	Boeing Co Callable Note Cont 4/15/2023 1.875% Due 6/15/2023	4,250,000.00	02/13/2019 2.98%	4,061,172.50 4,067,263.71	95.98 2.90%	4,079,158.50 24,791.67	0.65% 11,894.79	A2 / A A	4.19 3.97
931142EK5	Wal-Mart Stores Callable Note Cont 5/26/2023 3.4% Due 6/26/2023	4,480,000.00	Various 3.10%	4,533,297.00 4,531,892.27	102.69 2.71%	4,600,579.21 42,734.22	0.74% 68,686.94	Aa2 / AA AA	4.22 3.81
02665WCJ8	American Honda Finance Note 3.45% Due 7/14/2023	5,070,000.00	Various 3.44%	5,073,141.30 5,072,691.64	102.39 2.85%	5,190,924.57 40,327.63	0.83% 118,232.93	A2 / A NR	4.27 3.93
69371RP59	Paccar Financial Corp Note 3.4% Due 8/9/2023	4,095,000.00	08/06/2018 3.41%	4,093,321.05 4,093,542.64	100.98 3.16%	4,135,217.00 22,431.50	0.66% 41,674.36	A1 / A+ NR	4.35 3.99
06406RAJ6	Bank of NY Mellon Corp Note 3.45% Due 8/11/2023	1,750,000.00	09/14/2018 3.56%	1,741,687.50 1,742,621.96	102.31 2.88%	1,790,362.00 9,391.67	0.29% 47,740.04	A1 / A AA-	4.35 4.00
02665WCQ2	American Honda Finance Note 3.625% Due 10/10/2023	1,000,000.00	10/03/2018 3.64%	999,180.00 999,260.38	103.11 2.88%	1,031,126.00 17,822.92	0.17% 31,865.62	A2 / A NR	4.52 4.08
06051GHF9	Bank of America Corp Callable Note 1X 3/5/2023 3.55% Due 3/5/2024	6,750,000.00	03/06/2019 3.44%	6,777,472.50 6,776,907.22	101.41 3.16%	6,845,478.75 21,300.00	1.10% 68,571.53	A2 / A- A+	4.92 3.62
<b>Total US Corporate</b>		<b>135,420,000.00</b>	<b>2.81%</b>	<b>135,283,003.89</b> <b>134,658,788.05</b>	<b>2.73%</b>	<b>135,695,820.18</b> <b>936,066.00</b>	<b>21.80%</b> <b>1,037,032.13</b>	<b>A1 / A+</b> <b>AA-</b>	<b>2.60</b> <b>2.36</b>



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<b>US TREASURY</b>									
912828D23	US Treasury Note 1.625% Due 4/30/2019	7,000,000.00	Various 1.33%	7,047,890.63 7,001,294.17	99.95 2.36%	6,996,507.00 49,647.79	1.12% (4,787.17)	Aaa / AA+ AAA	0.07 0.07
912828WL0	US Treasury Note 1.5% Due 5/31/2019	3,000,000.00	12/15/2016 1.39%	3,008,203.13 3,000,493.83	99.86 2.43%	2,995,764.00 15,824.18	0.48% (4,729.83)	Aaa / AA+ AAA	0.15 0.15
912828WS5	US Treasury Note 1.625% Due 6/30/2019	5,400,000.00	Various 1.29%	5,440,394.54 5,404,076.09	99.80 2.47%	5,389,243.20 23,513.12	0.86% (14,832.89)	Aaa / AA+ AAA	0.23 0.23
912828XV7	US Treasury Note 1.25% Due 6/30/2019	4,000,000.00	03/09/2018 2.12%	3,955,120.00 3,992,113.14	99.71 2.46%	3,988,592.00 13,397.79	0.64% (3,521.14)	Aaa / AA+ AAA	0.23 0.23
912828WW6	US Treasury Note 1.625% Due 7/31/2019	7,000,000.00	Various 1.74%	7,001,562.50 6,997,549.10	99.75 2.40%	6,982,500.00 20,738.95	1.12% (15,049.10)	Aaa / AA+ AAA	0.32 0.32
9128282K5	US Treasury Note 1.375% Due 7/31/2019	4,900,000.00	Various 2.51%	4,870,175.78 4,882,598.90	99.67 2.41%	4,883,732.00 12,283.84	0.78% 1,133.10	Aaa / AA+ AAA	0.32 0.32
9128282T6	US Treasury Note 1.25% Due 8/31/2019	11,000,000.00	Various 2.20%	10,937,539.06 10,959,102.14	99.51 2.49%	10,945,858.00 14,198.37	1.75% (13,244.14)	Aaa / AA+ AAA	0.40 0.40
912828F39	US Treasury Note 1.75% Due 9/30/2019	4,000,000.00	05/19/2017 1.31%	4,041,250.00 4,008,402.78	99.66 2.46%	3,986,408.00 1,338.80	0.64% (21,994.78)	Aaa / AA+ AAA	0.48 0.48
912828UB4	US Treasury Note 1% Due 11/30/2019	4,000,000.00	11/02/2016 1.00%	4,000,000.00 4,000,000.00	99.07 2.44%	3,962,968.00 14,065.93	0.63% (37,032.00)	Aaa / AA+ AAA	0.65 0.64
9128283H1	US Treasury Note 1.75% Due 11/30/2019	4,000,000.00	03/15/2018 2.23%	3,968,125.00 3,987,913.00	99.54 2.46%	3,981,720.00 24,615.38	0.64% (6,193.00)	Aaa / AA+ AAA	0.65 0.64
912828G95	US Treasury Note 1.625% Due 12/31/2019	4,000,000.00	11/09/2017 1.67%	3,996,600.00 3,998,834.78	99.41 2.44%	3,976,248.00 17,417.13	0.64% (22,586.78)	Aaa / AA+ AAA	0.74 0.72
912828H52	US Treasury Note 1.25% Due 1/31/2020	3,000,000.00	10/23/2017 1.60%	2,976,630.00 2,991,581.17	99.05 2.42%	2,971,641.00 6,837.02	0.48% (19,940.17)	Aaa / AA+ AAA	0.82 0.81
912828J50	US Treasury Note 1.375% Due 2/29/2020	4,000,000.00	04/17/2018 2.38%	3,927,200.00 3,965,038.95	99.07 2.43%	3,962,656.00 5,679.35	0.63% (2,382.95)	Aaa / AA+ AAA	0.90 0.89
912828J84	US Treasury Note 1.375% Due 3/31/2020	5,000,000.00	01/16/2018 2.01%	4,931,600.00 4,969,496.15	98.99 2.42%	4,949,610.00 1,314.89	0.79% (19,886.15)	Aaa / AA+ AAA	0.99 0.97
912828VA5	US Treasury Note 1.125% Due 4/30/2020	4,000,000.00	03/23/2018 2.32%	3,902,500.00 3,950,679.45	98.66 2.41%	3,946,248.00 19,625.00	0.63% (4,431.45)	Aaa / AA+ AAA	1.07 1.05
912828XE5	US Treasury Note 1.5% Due 5/31/2020	4,000,000.00	01/25/2018 2.12%	3,943,593.75 3,972,356.33	98.96 2.42%	3,958,280.00 21,098.90	0.63% (14,076.33)	Aaa / AA+ AAA	1.15 1.13





CUSIP	Security Description	Par Value/Units	Purchase Date Book Yield	Cost Value Book Value	Mkt Price Mkt YTM	Market Value Accrued Int.	% of Port. Gain/Loss	Moody/S&P Fitch	Maturity Duration
<b>US TREASURY</b>									
912828VJ6	US Treasury Note 1.875% Due 6/30/2020	4,000,000.00	01/23/2018 2.14%	3,974,800.00 3,987,244.09	99.36 2.41%	3,974,220.00 20,096.69	0.64% (13,024.09)	Aaa / AA+ AAA	1.24 1.21
912828VV9	US Treasury Note 2.125% Due 8/31/2020	4,000,000.00	04/17/2018 2.46%	3,968,906.25 3,981,637.83	99.60 2.42%	3,984,064.00 8,777.17	0.64% 2,426.17	Aaa / AA+ AAA	1.41 1.37
912828L57	US Treasury Note 1.75% Due 9/30/2022	8,000,000.00	09/07/2018 2.79%	7,684,062.50 7,728,647.87	98.14 2.31%	7,851,560.00 2,677.60	1.25% 122,912.13	Aaa / AA+ AAA	3.49 3.35
912828N30	US Treasury Note 2.125% Due 12/31/2022	8,000,000.00	10/03/2018 2.97%	7,730,937.50 7,763,072.14	99.35 2.31%	7,947,816.00 45,552.49	1.28% 184,743.86	Aaa / AA+ AAA	3.74 3.55
912828B66	US Treasury Note 2.75% Due 2/15/2024	6,000,000.00	02/28/2019 2.53%	6,062,343.75 6,061,037.04	101.97 2.32%	6,118,362.00 23,245.86	0.98% 57,324.96	Aaa / AA+ AAA	4.87 4.52
<b>Total US Treasury</b>		<b>108,300,000.00</b>	<b>2.07%</b>	<b>107,369,434.39</b> <b>107,603,168.95</b>	<b>2.41%</b>	<b>107,753,997.20</b> <b>361,946.25</b>	<b>17.25%</b> <b>150,828.25</b>	<b>Aaa / AA+</b> <b>AAA</b>	<b>1.28</b> <b>1.23</b>
<b>TOTAL PORTFOLIO</b>		<b>622,527,431.76</b>	<b>2.48%</b>	<b>621,963,752.40</b> <b>621,153,759.82</b>	<b>2.52%</b>	<b>623,754,825.75</b> <b>2,961,467.22</b>	<b>100.00%</b> <b>2,601,065.93</b>	<b>Aa1 / AA</b> <b>AAA</b>	<b>1.85</b> <b>1.60</b>
<b>TOTAL MARKET VALUE PLUS ACCRUED</b>						<b>626,716,292.97</b>			





Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>ACQUISITIONS</b>										
Purchase	03/10/2019	60934N807	171,250.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	171,250.00	0.00	171,250.00	0.00
Purchase	03/12/2019	60934N807	234,136.35	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	234,136.35	0.00	234,136.35	0.00
Purchase	03/13/2019	47789JAB2	3,640,000.00	John Deere Owner Trust 2019-A A2 2.85% Due 12/15/2021	99.995	2.87%	3,639,834.02	0.00	3,639,834.02	0.00
Purchase	03/14/2019	60934N807	43,750.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	43,750.00	0.00	43,750.00	0.00
Purchase	03/15/2019	3137B4WB8	1,590,000.00	FHLMC K033 A2Due 7/25/2023	101.086	2.57%	1,607,266.41	1,892.10	1,609,158.51	0.00
Purchase	03/15/2019	3137B5JM6	1,500,000.00	FHLMC K034 A2 3.531% Due 7/25/2023	102.961	2.76%	1,544,414.06	2,059.75	1,546,473.81	0.00
Purchase	03/15/2019	60934N807	81,347.50	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	81,347.50	0.00	81,347.50	0.00
Purchase	03/15/2019	60934N807	1,895,000.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	1,895,000.00	0.00	1,895,000.00	0.00
Purchase	03/15/2019	60934N807	6,433.33	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	6,433.33	0.00	6,433.33	0.00
Purchase	03/15/2019	60934N807	3,291.67	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	3,291.67	0.00	3,291.67	0.00
Purchase	03/15/2019	60934N807	3,175.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	3,175.00	0.00	3,175.00	0.00
Purchase	03/15/2019	60934N807	515,054.05	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	515,054.05	0.00	515,054.05	0.00
Purchase	03/15/2019	60934N807	6,991.83	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	6,991.83	0.00	6,991.83	0.00
Purchase	03/15/2019	60934N807	10,061.33	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	10,061.33	0.00	10,061.33	0.00
Purchase	03/15/2019	60934N807	9,180.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	9,180.00	0.00	9,180.00	0.00
Purchase	03/15/2019	931142EK5	1,725,000.00	Wal-Mart Stores Callable Note Cont 5/26/2023 3.4% Due 6/26/2023	102.363	2.80%	1,765,761.75	12,870.42	1,778,632.17	0.00



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>ACQUISITIONS</b>										
Purchase	03/16/2019	60934N807	78,750.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	78,750.00	0.00	78,750.00	0.00
Purchase	03/18/2019	06406RAG2	756,000.00	Bank of NY Mellon Corp Note 3.5% Due 4/28/2023	101.871	3.01%	770,144.76	10,290.00	780,434.76	0.00
Purchase	03/18/2019	60934N807	600,620.78	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	600,620.78	0.00	600,620.78	0.00
Purchase	03/18/2019	60934N807	6,488.86	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	6,488.86	0.00	6,488.86	0.00
Purchase	03/19/2019	60934N807	12,500,000.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	12,500,000.00	0.00	12,500,000.00	0.00
Purchase	03/20/2019	60934N807	28,000.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	28,000.00	0.00	28,000.00	0.00
Purchase	03/21/2019	60934N807	8,862.29	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	8,862.29	0.00	8,862.29	0.00
Purchase	03/22/2019	404280BA6	900,000.00	HSBC Holdings PLC Note 3.6% Due 5/25/2023	101.053	3.33%	909,477.00	10,530.00	920,007.00	0.00
Purchase	03/22/2019	60934N807	49,600.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	49,600.00	0.00	49,600.00	0.00
Purchase	03/25/2019	60934N807	12,635.25	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	12,635.25	0.00	12,635.25	0.00
Purchase	03/25/2019	60934N807	36,589.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	36,589.00	0.00	36,589.00	0.00
Purchase	03/25/2019	60934N807	12,932.33	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	12,932.33	0.00	12,932.33	0.00
Purchase	03/28/2019	89114QCB2	1,500,000.00	Toronto Dominion Bank Note 3.25% Due 3/11/2024	101.266	2.97%	1,518,990.00	2,302.08	1,521,292.08	0.00
Purchase	03/29/2019	313370US5	7,000,000.00	FHLB Note 2.875% Due 9/11/2020	100.705	2.38%	7,049,350.00	10,062.50	7,059,412.50	0.00
Purchase	03/29/2019	60934N807	32,500.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	32,500.00	0.00	32,500.00	0.00
Purchase	03/31/2019	60934N807	6,000,000.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.07%	6,000,000.00	0.00	6,000,000.00	0.00



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>ACQUISITIONS</b>										
Purchase	03/31/2019	60934N807	186,250.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.07%	186,250.00	0.00	186,250.00	0.00
Purchase	04/01/2019	60934N807	325,645.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.07%	325,645.00	0.00	325,645.00	0.00
Purchase	04/01/2019	60934N807	12,306.28	Federated Investors Govt Oblig Fund Inst.	1.000	2.07%	12,306.28	0.00	12,306.28	0.00
Purchase	04/02/2019	60934N807	29,800.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.07%	29,800.00	0.00	29,800.00	0.00
Purchase	04/05/2019	60934N807	56,250.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.07%	56,250.00	0.00	56,250.00	0.00
<b>Subtotal</b>			<b>41,567,900.85</b>				<b>41,762,138.85</b>	<b>50,006.85</b>	<b>41,812,145.70</b>	<b>0.00</b>
Security Contribution	03/15/2019	90LAIF\$00	5,000,000.00	Local Agency Investment Fund State Pool	1.000		5,000,000.00	0.00	5,000,000.00	0.00
Security Contribution	04/03/2019	90LAIF\$00	5,000,000.00	Local Agency Investment Fund State Pool	1.000		5,000,000.00	0.00	5,000,000.00	0.00
<b>Subtotal</b>			<b>10,000,000.00</b>				<b>10,000,000.00</b>	<b>0.00</b>	<b>10,000,000.00</b>	<b>0.00</b>
Short Sale	03/13/2019	60934N807	-3,639,834.02	Federated Investors Govt Oblig Fund Inst.	1.000		-3,639,834.02	0.00	-3,639,834.02	0.00
Short Sale	03/15/2019	60934N807	-1,778,632.17	Federated Investors Govt Oblig Fund Inst.	1.000		-1,778,632.17	0.00	-1,778,632.17	0.00
Short Sale	03/15/2019	60934N807	-3,155,632.32	Federated Investors Govt Oblig Fund Inst.	1.000		-3,155,632.32	0.00	-3,155,632.32	0.00
Short Sale	03/18/2019	60934N807	-780,434.76	Federated Investors Govt Oblig Fund Inst.	1.000		-780,434.76	0.00	-780,434.76	0.00
<b>Subtotal</b>			<b>-9,354,533.27</b>				<b>-9,354,533.27</b>	<b>0.00</b>	<b>-9,354,533.27</b>	<b>0.00</b>
<b>TOTAL ACQUISITIONS</b>			<b>42,213,367.58</b>				<b>42,407,605.58</b>	<b>50,006.85</b>	<b>42,457,612.43</b>	<b>0.00</b>
<b>DISPOSITIONS</b>										
Closing Purchase	03/13/2019	60934N807	-3,639,834.02	Federated Investors Govt Oblig Fund Inst.	1.000		-3,639,834.02	0.00	-3,639,834.02	0.00



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>DISPOSITIONS</b>										
Closing Purchase	03/15/2019	60934N807	-641,135.00	Federated Investors Govt Oblig Fund Inst.	1.000		-641,135.00	0.00	-641,135.00	0.00
Closing Purchase	03/15/2019	60934N807	-1,137,497.17	Federated Investors Govt Oblig Fund Inst.	1.000		-1,137,497.17	0.00	-1,137,497.17	0.00
Closing Purchase	03/15/2019	60934N807	-1,137,497.17	Federated Investors Govt Oblig Fund Inst.	1.000		-1,137,497.17	0.00	-1,137,497.17	0.00
Closing Purchase	03/15/2019	60934N807	-2,018,135.15	Federated Investors Govt Oblig Fund Inst.	1.000		-2,018,135.15	0.00	-2,018,135.15	0.00
Closing Purchase	03/18/2019	60934N807	-780,434.76	Federated Investors Govt Oblig Fund Inst.	1.000		-780,434.76	0.00	-780,434.76	0.00
<b>Subtotal</b>			<b>-9,354,533.27</b>				<b>-9,354,533.27</b>	<b>0.00</b>	<b>-9,354,533.27</b>	<b>0.00</b>
Sale	03/13/2019	60934N807	3,639,834.02	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	3,639,834.02	0.00	3,639,834.02	0.00
Sale	03/15/2019	60934N807	1,778,632.17	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	1,778,632.17	0.00	1,778,632.17	0.00
Sale	03/15/2019	60934N807	3,155,632.32	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	3,155,632.32	0.00	3,155,632.32	0.00
Sale	03/18/2019	60934N807	780,434.76	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	780,434.76	0.00	780,434.76	0.00
Sale	03/18/2019	912828WS5	600,000.00	US Treasury Note 1.625% Due 6/30/2019	99.758	2.47%	598,546.88	2,073.90	600,620.78	-2,013.86
Sale	03/22/2019	60934N807	920,007.00	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	920,007.00	0.00	920,007.00	0.00
Sale	03/28/2019	60934N807	1,521,292.08	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	1,521,292.08	0.00	1,521,292.08	0.00
Sale	03/29/2019	60934N807	7,059,412.50	Federated Investors Govt Oblig Fund Inst.	1.000	2.04%	7,059,412.50	0.00	7,059,412.50	0.00
<b>Subtotal</b>			<b>19,455,244.85</b>				<b>19,453,791.73</b>	<b>2,073.90</b>	<b>19,455,865.63</b>	<b>-2,013.86</b>
Paydown	03/15/2019	02587AAJ3	0.00	American Express Credit 2017-1 1.93% Due 9/15/2022	100.000		0.00	6,433.33	6,433.33	0.00
Paydown	03/15/2019	161571FK5	0.00	Chase CHAIT 2012-A4 1.58% Due 8/15/2021	100.000		0.00	3,291.67	3,291.67	0.00



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>DISPOSITIONS</b>										
Paydown	03/15/2019	161571HF4	0.00	Chase CHAIT 2016-A5 1.27% Due 7/15/2021	100.000		0.00	3,175.00	3,175.00	0.00
Paydown	03/15/2019	47788BAB0	513,823.23	John Deere Owner Trust 2017-B A2A 1.59% Due 4/15/2020	100.000		513,823.23	1,230.82	515,054.05	0.00
Paydown	03/15/2019	47788BAD6	0.00	John Deere Owner Trust 2017-B A3 1.82% Due 10/15/2021	100.000		0.00	6,991.83	6,991.83	0.00
Paydown	03/15/2019	47788EAC2	0.00	John Deere Owner Trust 2018-B A3 3.08% Due 11/15/2022	100.000		0.00	10,061.33	10,061.33	0.00
Paydown	03/15/2019	65479GAD1	0.00	Nissan Auto Receivables Owner 2018-B A3 3.06% Due 3/15/2023	100.000		0.00	9,180.00	9,180.00	0.00
Paydown	03/18/2019	43814WAB1	0.00	HAROT 2019-1 A2 2.75% Due 9/20/2021	100.000		0.00	6,488.86	6,488.86	0.00
Paydown	03/21/2019	43815HAC1	0.00	Honda Auto Receivables Owner 2018-3 A3 2.95% Due 8/22/2022	100.000		0.00	8,862.29	8,862.29	0.00
Paydown	03/25/2019	3137B4WB8	0.00	FHLMC K033 A2Due 7/25/2023	100.000		0.00	12,635.25	12,635.25	0.00
Paydown	03/25/2019	3137B6ZM6	16,564.16	FHLMC K714 A2 3.034% Due 10/25/2020	100.000		16,564.16	20,024.84	36,589.00	0.00
Paydown	03/25/2019	3137B7MZ9	0.00	FHLMC K036 A2Due 10/25/2023	100.000		0.00	12,932.33	12,932.33	0.00
<b>Subtotal</b>			<b>530,387.39</b>				<b>530,387.39</b>	<b>101,307.55</b>	<b>631,694.94</b>	<b>0.00</b>
Maturity	03/15/2019	084664CG4	1,895,000.00	Berkshire Hathaway Note 1.7% Due 3/15/2019	100.000		1,895,000.00	0.00	1,895,000.00	0.00
Maturity	03/19/2019	912796UT4	12,500,000.00	US Treasury Bill 2.362% Due 3/19/2019	100.000		12,500,000.00	0.00	12,500,000.00	0.00
Maturity	03/31/2019	912828C65	3,000,000.00	US Treasury Note 1.625% Due 3/31/2019	100.000		3,000,000.00	0.00	3,000,000.00	0.00
Maturity	03/31/2019	912828SN1	3,000,000.00	US Treasury Note 1.5% Due 3/31/2019	100.000		3,000,000.00	0.00	3,000,000.00	0.00
<b>Subtotal</b>			<b>20,395,000.00</b>				<b>20,395,000.00</b>	<b>0.00</b>	<b>20,395,000.00</b>	<b>0.00</b>
Security Withdrawal	03/22/2019	90LAIF\$00	6,000,000.00	Local Agency Investment Fund State Pool	1.000		6,000,000.00	0.00	6,000,000.00	0.00



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>DISPOSITIONS</b>										
Security Withdrawal	04/03/2019	60934N807	23,678.77	Federated Investors Govt Oblig Fund Inst.	1.000		23,678.77	0.00	23,678.77	0.00
<b>Subtotal</b>			<b>6,023,678.77</b>				<b>6,023,678.77</b>	<b>0.00</b>	<b>6,023,678.77</b>	<b>0.00</b>
<b>TOTAL DISPOSITIONS</b>			<b>37,049,777.74</b>				<b>37,048,324.62</b>	<b>103,381.45</b>	<b>37,151,706.07</b>	<b>-2,013.86</b>

<b>OTHER TRANSACTIONS</b>										
Interest	03/10/2019	3130ADRG9	7,000,000.00	FHLB Note 2.75% Due 3/10/2023	0.000		96,250.00	0.00	96,250.00	0.00
Interest	03/10/2019	313383ZU8	5,000,000.00	FHLB Note 3% Due 9/10/2021	0.000		75,000.00	0.00	75,000.00	0.00
Interest	03/12/2019	3130A0XD7	8,000,000.00	FHLB Note 2.375% Due 3/12/2021	0.000		95,000.00	0.00	95,000.00	0.00
Interest	03/12/2019	3135G0U43	8,205,000.00	FNMA Note 2.875% Due 9/12/2023	0.000		116,636.35	0.00	116,636.35	0.00
Interest	03/12/2019	4581X0BY3	4,000,000.00	Inter-American Dev Bank Note 1.125% Due 9/12/2019	0.000		22,500.00	0.00	22,500.00	0.00
Interest	03/14/2019	4581X0CZ9	5,000,000.00	Inter-American Dev Bank Note 1.75% Due 9/14/2022	0.000		43,750.00	0.00	43,750.00	0.00
Interest	03/15/2019	084664CG4	1,895,000.00	Berkshire Hathaway Note 1.7% Due 3/15/2019	0.000		16,107.50	0.00	16,107.50	0.00
Interest	03/15/2019	084670BR8	4,232,000.00	Berkshire Hathaway Callable Note Cont 1/15/2023 2.75% Due 3/15/2023	0.000		58,190.00	0.00	58,190.00	0.00
Interest	03/15/2019	53301TAV3	705,000.00	Lincoln CA Dissolved Redev Agy Tax Allocation 2% Due 9/15/2019	0.000		7,050.00	0.00	7,050.00	0.00
Interest	03/16/2019	36962G4R2	2,000,000.00	General Electric Capital Corp Note 4.375% Due 9/16/2020	0.000		43,750.00	0.00	43,750.00	0.00



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
<b>OTHER TRANSACTIONS</b>										
Interest	03/16/2019	45950KCD0	4,000,000.00	International Finance Corp Note 1.75% Due 9/16/2019	0.000		35,000.00	0.00	35,000.00	0.00
Interest	03/20/2019	17275RBG6	4,000,000.00	Cisco Systems Note 1.4% Due 9/20/2019	0.000		28,000.00	0.00	28,000.00	0.00
Interest	03/22/2019	3133EJHD4	4,000,000.00	FFCB 2.48% Due 3/22/2021	0.000		49,600.00	0.00	49,600.00	0.00
Interest	03/29/2019	3137EAEJ4	4,000,000.00	FHLMC Note 1.625% Due 9/29/2020	0.000		32,500.00	0.00	32,500.00	0.00
Interest	03/31/2019	912828C65	3,000,000.00	US Treasury Note 1.625% Due 3/31/2019	0.000		24,375.00	0.00	24,375.00	0.00
Interest	03/31/2019	912828F39	4,000,000.00	US Treasury Note 1.75% Due 9/30/2019	0.000		35,000.00	0.00	35,000.00	0.00
Interest	03/31/2019	912828J84	5,000,000.00	US Treasury Note 1.375% Due 3/31/2020	0.000		34,375.00	0.00	34,375.00	0.00
Interest	03/31/2019	912828L57	8,000,000.00	US Treasury Note 1.75% Due 9/30/2022	0.000		70,000.00	0.00	70,000.00	0.00
Interest	03/31/2019	912828SN1	3,000,000.00	US Treasury Note 1.5% Due 3/31/2019	0.000		22,500.00	0.00	22,500.00	0.00
Interest	04/01/2019	13063A7G3	5,690,000.00	California State TE-GO 6.2% Due 10/1/2019	0.000		176,390.00	0.00	176,390.00	0.00
Interest	04/01/2019	13063DDE5	8,000,000.00	California St TE-GO 2.3% Due 10/1/2020	0.000		92,000.00	0.00	92,000.00	0.00
Interest	04/01/2019	594918AH7	3,817,000.00	Microsoft Note 3% Due 10/1/2020	0.000		57,255.00	0.00	57,255.00	0.00
Interest	04/02/2019	3133ECKU7	4,000,000.00	FFCB Note 1.49% Due 4/2/2020	0.000		29,800.00	0.00	29,800.00	0.00
Interest	04/05/2019	3135G0T45	6,000,000.00	FNMA Note 1.875% Due 4/5/2022	0.000		56,250.00	0.00	56,250.00	0.00
<b>Subtotal</b>			<b>112,544,000.00</b>				<b>1,317,278.85</b>	<b>0.00</b>	<b>1,317,278.85</b>	<b>0.00</b>



Transaction Type	Settlement Date	CUSIP	Quantity	Security Description	Price	Acq/Disp Yield	Amount	Interest Pur/Sold	Total Amount	Gain/Loss
OTHER TRANSACTIONS										
Dividend	04/01/2019	60934N807	108,711,440.87	Federated Investors Govt Oblig Fund Inst.	0.000		12,306.28	0.00	12,306.28	0.00
Subtotal			108,711,440.87				12,306.28	0.00	12,306.28	0.00
TOTAL OTHER TRANSACTIONS			221,255,440.87				1,329,585.13	0.00	1,329,585.13	0.00





# City of Sunnyvale

## Agenda Item

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19-0448

Agenda Date: 5/21/2019

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### REPORT TO COUNCIL

#### **SUBJECT**

Consider Below Market Rate Alternative Compliance Plans for Residential Development at 1142 Dahlia Court. Applicant: Trumark Homes; Planning Files 2018-7989 and 2018-7451.

#### **SUMMARY OF COMMISSION ACTION**

The Housing and Human Services Commission (HHSC) considered this item on April 17, 2019 and was unable to forward a recommendation to City Council.

The first motion was to deny the Applicant's request for approval of the BMR Alternative Compliance Plan allowing payment of BMR in-lieu fees (ILF) and require onsite BMR homes within the project. The motion failed with a 2-2 vote.

A second motion was to approve the Applicant's request for approval of the BMR Alternative Compliance Plan allowing payment of BMR in-lieu fees (ILF) rather than providing BMR homes within the project. The motion failed with a 2-2 vote.

The detailed report to HHSC is available as Attachment 3 and the draft minutes of the HHSC meeting are Attachment 4.

#### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

#### **ALTERNATIVES**

1. Approve the Applicant's BMR Alternative Compliance Plan for the project located at 1142 Dahlia Court, as shown in Attachment 2 to the report.
2. Approve the Applicant's BMR Alternative Compliance Plan for the project located at 1142 Dahlia Court, with modifications.
3. Do not approve the BMR Alternative Compliance Plan for the project and require the Applicant to comply with the BMR conditions of approval by providing BMR units within the project, or other alternative specified by Council.

#### **STAFF RECOMMENDATION**

Alternative 1: Approve the Applicant's BMR Alternative Compliance Plan for the project located at 1142 Dahlia Court, as shown in Attachment 2 to the report.

Staff recommends approving the ILF option for this project, allowing the City to use the fees to meet

other affordable housing objectives identified by City Council at a date to be determined. From a public policy perspective, this approach can be preferable to providing seven large homes (with sales price discounts of \$2 million or more) affordable to moderate-income households; ILFs could leverage additional funding for a significantly larger number of new affordable housings units or potentially be used for a new housing assistance program.

Prepared by: Ernie Defrenchi, Affordable Housing Manager

Reviewed by: Jennifer Carloni, Housing Officer

Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Market Feasibility Analysis
2. BMR Alternative Compliance Plan

### **Additional Attachments for Report to Council**

3. Report to Housing and Human Services Commission 19-0459, April 17, 2019 (without attachments)
4. Excerpt of Draft Minutes of the Housing and Human Services Commission Meeting of April 17, 2019



# Market Feasibility Analysis

Corn Palace | Sunnyvale, CA

*for Trumark Homes*

*December 12, 2018*



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# Introduction

## Background

Client	Trumark Homes (“Client”)
Subject	Corn Palace (“Subject”)
Location	Sunnyvale, Santa Clara County, CA
Setting	Residential community - 58 lots
Objective	Recommend pricing, forecast absorption, and appropriate standard specifications in this market. Provide guidance regarding the new home market and relevant economic and demographic trends.

## Methodology

Subject	Review Subject information and visit site
Market	Collect and analyze information on actively selling new-home projects and resale transactions in the Competitive Market Area (CMA)  Compile and analyze macro-economic, housing market, and demographic data and trends
Survey Period	December 2018

## Authors and Contact

Authors	Dean Wehrli, Kristin Matthews
Contact	Dean Wehrli      916-647-3263 <a href="mailto:dean@jbrec.com">dean@jbrec.com</a>  Kristin Matthews   858-281-7215 <a href="mailto:kmatthews@realestateconsulting.com">kmatthews@realestateconsulting.com</a>

## Assumptions

### *Home Specifications and Execution*

We assume that the Builder will construct homes:

- of the same sizes and types described for the Subject in this study; and
- of slightly superior quality than key comparables (e.g. Radius Villas by Pulte, Estancia by Lennar).

### *Project or Community Specifications and Execution*

We assume that the developer and Builder will:

- execute their work in a “market-appropriate” manner;
- have advertising and marketing efforts generating qualified shopper traffic commensurate with communities achieving sales rates similar to those projected for the Subject;
- have an on-site sales office open at least 7 days a week;
- have fully decorated model homes for most floor plans;
- have experienced sales agent(s) familiar with the local market; and
- come to market within 12 months.

Failure to meet these conditions could adversely impact achievable prices and/or sales rates.

### *Level of Competition*

Our pricing and absorption recommendations assume competition during the Subject’s sell-out will be similar to today’s competition.

See appendix for [Limiting Conditions](#)

## EXECUTIVE SUMMARY





# Recommendations

## Price

Average base price	\$2,497,069
• Average incentive	(\$10,000)
• Average options	\$62,447
• Average premiums	\$2,000
<b>Average total net price</b>	<b>\$2,551,516</b>

## Price Change

Remainder	2018	2019	2020	2021
	0.3%	2.0%	-1.5%	-4.0%

## Sales Per Month and Sell-Out

Remainder	2018	2019	2020	2021
	2.50	2.50	2.50	2.50

**Sell Out 23 Months**



Resales in the Subject Area  
Excellent accessibility  
Strong elementary/middle schools  
Surrounded by tech jobs

## Project

<i>Corn Palace</i>	
Sunnyvale, Santa Clara County, CA	
<b>Homes</b>	58
<b>Product Type</b>	SFD
<b>Average Lot</b>	3,750 SqFt
<b>Lot Dimensions</b>	50 ' x 75'
<b>Home Size Range</b>	2,618 - 2,897 SqFt
<b>Average Home Size</b>	2,773 SqFt
<b>Eff. Tax Rate</b>	1.25%
<b>HOA/Month</b>	\$0

**Amenities:**  
None

**Target Market:**  
Young and mature families, dual income professionals.



Slowing new home market  
Lower priced alternative product  
Home sizes pushing prices  
Adjacent to busy expressway

## PRICING AND ABSORPTION RECOMMENDATIONS







# Recommendations Detail

## JBREC Pricing Detail

- Based on the locational and competitive market factors outlined in this analysis, we recommend the price points detailed in the table below for the product types at the Subject property. We have assumed an **incentive** in line with the CMA. However, incentives have been increasing in the CMA and the wider market, so incentives so should be closely monitored going forward.
- We estimate average **option/upgrade spending** of +/- 2.5% of base pricing or \$62,447 given CMA norms and experience at key comparables.
- We estimate average **premium revenue** of +/- \$2,000 per home given product type and pricing levels and a review of the site plan. Premiums will be garnered by oversized lots, end units, and any favorable adjacencies such as against the planned park at the southern end of the site. This may be mitigated by the potential for discounting for lots located along busy Lawrence Expressway (though there will be a 13' sound wall along the eastern side of the Subject, this will be a less desirable adjacency).

				MIX	PRODUCT				TAX & HOA		JBREC RECOMMENDED												
				Sq. Ft.					Tax Rate	HOA	Monthly Pace	Base Price		Net Base Price	Net Base Price/ Sq. Ft.	Options	Premiums	Total Price	Total Price/ Sq. Ft.	80% 4.90% Net Pmt.	31% Income to Qualify*		
Project Name	Builder	Bed	Bath																			Levels	Pkg
CORN PALACE																							
Corn Palace				TBD	12	2,618	4	4.5	2	2	1.25%	\$0	2.50	\$2,420,000	(\$10,000)	\$2,410,000	\$921	\$60,500	\$2,000	\$2,472,500	\$944	\$13,073	\$506,000
					4	2,662	4	4.0	2	2	1.25%	\$0		\$2,435,000	(\$10,000)	\$2,425,000	\$911	\$60,900	\$2,000	\$2,487,900	\$935	\$13,155	\$509,000
Product:	SFD	Total Units:	58	21	2,758	4	4.5	2	2	1.25%	\$0		\$2,490,000	(\$10,000)	\$2,480,000	\$899	\$62,300	\$2,000	\$2,544,300	\$923	\$13,453	\$521,000	
Configuration:	3,750	Units Sold:	0	21	2,897	4	4.5	2	2	1.25%	\$0		\$2,560,000	(\$10,000)	\$2,550,000	\$880	\$64,000	\$2,000	\$2,616,000	\$903	\$13,832	\$535,000	
Lot Dimensions:	50' x 75'	3 Mon. Sold:	0																				
% Remaining:	100%	Units Remaining:	58																				
Totals/Averages:				58	2,773							\$2,497,069	(\$10,000)	\$2,487,069	\$897	\$62,447	\$2,000	\$2,551,516	\$920	\$13,491	\$522,138		



# Positioning & Absorption

## Price Positioning

**The Subject is positioned at the top of the CMA** against key comparables. Specifically, the Subject is positioned (per net base pricing unless otherwise noted):

- Above **Radius – Villas** given the Subject's detached product. However, based on our adjustment analysis, recommended prices are generally in-line with Radius – Villas after adjusting for product, lot size, home sizes, location, etc. The Villas also sold out in April 2018, thus pricing is substantially out of date. While Mountain View still carries a substantial premium against Sunnyvale, Radius is in a comparatively slightly less desirable (but still highly desirable) part of Mountain View compared to the city, while the Subject is within an appealing neighborhood within Sunnyvale with very strong schools.
- For similar reasons, the Subject is priced similarly above **Estancia** SFD. While this comparable is within a somewhat superior location within Mountain View than Radius, it has sold without models or any on-site sales presence and is essentially a construction zone.
- Above townhome product at **The Vale** by Landsea and Taylor Morrison based on location (the Subject is within a superior part of Sunnyvale) and far less dense product. Detached homes with conventional (or nearly conventional) lot sizes in the CMA and throughout the core Bay Area are very rare and extremely valued. Further, though the Landsea comparables (Echo and Nexus) have experienced slower sales of late, all three of the townhome communities at The Vale have sold briskly, indicating they may have been priced under market until conditions slowed this summer.
- Competitively with Sunnyvale and Subject Area **resales** based on the premium for new construction mitigated by generally smaller lots than the bulk of detached resales. Critically, the Subject is positioned roughly in-line with the one relatively recent transaction from the neighborhood located immediately west of the Subject. This neighborhood, built in 2013, provides the best comparison to the Subject, but, unfortunately, this transaction is the only sale in the last two years and there are no currently actively listed homes nor pending or contingent sales in this neighborhood.
- Appropriately below the Mountain View resale trend line. Mountain View commands a premium over Sunnyvale, thus newly built product in this area should be priced appropriately. Like Sunnyvale, however, the vast majority of resales in Mountain are comparatively small and old (typically built in the late 1950s to early 1960s). This, along with limited competition regionally for detached new homes with lots of about 3,000 SF or larger, should accentuate the appeal of the Subject.



# Positioning & Absorption

## Absorption

- Since the Subject is price positioned at the top of the market, our targeted pace is slower than what the surveyed comparables have achieved in terms of overall sales paces. Moreover, absorption has slowed dramatically in recent months in the region. Although overall absorptions are higher, the average sales pace for comparables over the last three months is only 2.3 sales per month. While the Subject's size and location warrant its pricing and given that we expect some normalization in the CMA with the spring selling season next year, we believe a pace of 2.5 sales per month for the Subject is achievable. The Subject's high absolute price points, however, strongly indicate that Client should not expect a higher sales pace than this given market normalization (i.e., the CMA will no longer support rapid sales pace of four per month or higher for top of the market new home communities).
- The table below shows Sunnyvale sales over the last year segmented by price niches. The figures to the right show the Subject's necessary capture rate for various monthly sales rates at the price category relevant to Subject pricing. Even at 2.5 sales per month, the Subject would need to capture about half the Sunnyvale market. However, an offering like the Subject – new homes larger than most resales in Sunnyvale – will expand this market niche. Low inventory (0.4 months at the \$2.5-3.0M price range) indicate limited options at these price points in a market characterized by relatively smaller, older homes. Further, low days on market (average 20 days all Sunnyvale and 30 days at the \$2.5-3.0M niche) indicates latent demand. Still, the top of the market pricing of the Subject, slower recent new home sales, and expectation of a more normalized market sales going forward indicate our absorption estimate is appropriate.

Sunnyvale Sales and Closings by Price Range over Last Year							Capture	Capture	Capture
Price Categories	Sales	%	Sales / Mth	Closings	%	Sales / Mth	3.0/mo.	2.5/mo.	2.0/mth
<\$500,000	0	0.0%	0.0	0	0.0%	0.0			
\$500k-\$1M	60	6.8%	5.0	64	6.9%	5.3			
\$1.0-1.5M	289	32.8%	24.1	301	32.4%	25.1			
\$1.5-2.0M	286	32.5%	23.8	300	32.3%	25.0			
\$2.0-\$2.5M	182	20.7%	15.2	198	21.3%	16.5			
\$2.5-3.0M	61	6.9%	5.1	63	6.8%	5.3	57%	48%	38%
\$3.0M+	3	0.3%	0.3	3	0.3%	0.3			
	<b>881</b>	<b>100%</b>	<b>73</b>	<b>929</b>	<b>100%</b>	<b>77</b>			

Notes: Sales and closings over last year (12/11/17-12/1-18). Months of supply are per closing data.  
Listings as of 12/11/18. All data per MLS.



# Basements

- All Subject floor plans have basement options that would add between 677 and 1,136 SF to home sizes. Since there are no resale or new home transactions in the CMA (or even the wider region) upon which to base pricing, we are not able to formally price the value of basement space at the Subject. Clearly, basements would increase the price of Subject homes solely given the added space. However, our experience in other markets is that basement space is priced far lower on a per square foot basis than normal house space. In the CMA, this is likely to be exaggerated given the complete unfamiliarity with basements among buyers.
- The one recent new home community in California that offered a basement of which we are aware is Lumiere by Lennar. This is a smaller lot detached community with pricing averaging about \$2M, so is reasonably comparable to the Subject from the standpoint of product and pricing if not in terms of location. This community had a basement option on one plan that sold for about \$250,000 for an additional 2,000 SF. That is, its value ratio was \$125 per square foot. This compares to a value ratio of roughly \$400 to \$425/SF for normal home space, or less than 1/3<sup>rd</sup> of above-ground home pricing. The sales agent at Lumiere told us that the basement was desirable, but few buyers wanted to pay for it. When selling (the relevant plan is sold out) buyers chose the basement option on five of 23 purchases. This may offer some guidance to pricing and demand for an optional basement at the Subject but should not be considered conclusive.
- While Subject basements could be offered as options, this would likely lead to logistical problems. Basements would have to be laid prior to foundation slabs and thus buyers would have to purchase the basements very early in the development process. If that buyer should cancel prior to closing, Client could be left with a home that is difficult to sell. Pre-plotting basements would also be perilous given the uncertainty of the market for basements.
- Beyond the market unfamiliarity and uncertain pricing of basements is the fact that any substantial increase in pricing at the Subject will push the Subject into very high absolute price points for Sunnyvale. Currently, most homes will be priced in the \$2.5-3.0M range, and mainly toward the bottom half of that range (and some slightly below that threshold). At 30% of the Subject's average value ratio, the typical basement value at the Subject would be about \$250,000. This would increase Subject pricing into a thin part of the market (see table previous page for lack of \$3.0M+ sales) even allowing for the Subject to expand the size of this niche.
- Given this absolute price factor, pre-plotting basements could thus diminish absorption and necessitate price discounting should basements prove difficult to sell. Given the lack of transactions, basements may also be difficult to appraise.



# Basements

- We thus strongly recommend the Subject is planned without basements. The following summarize the key factors:
  - Total unfamiliarity in the market with basements.
  - No data with which to price or appraise basements.
  - Would likely slow absorption if pre-plotted (or if a buyer option and then canceled).
  - Basements would push Subject pricing into market niche with very limited activity in Sunnyvale.
  - Basements would increase home sizes which are already large for the CMA.
  - Basements are often poorly lit in terms of natural lighting (one planned basement has no natural lighting conduits) and could add a security concern given the alternative exits, which would provide another ingress into the house.
  - Basements are not favorable from a multi-generational standpoint since grandparents residing in the basement would necessitate climbing stairs to join the family.

## LOCATION AND PROPERTY ANALYSIS



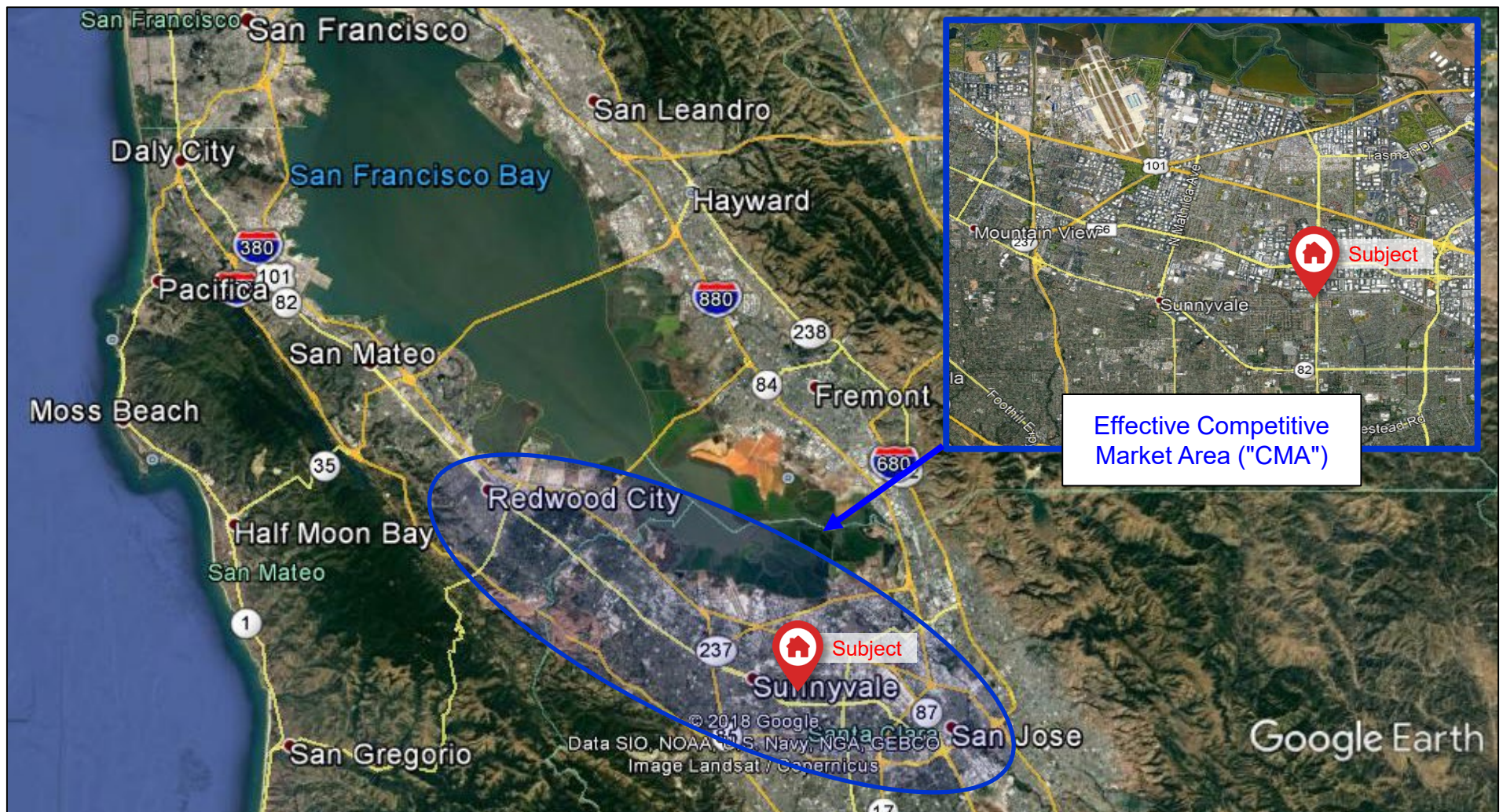




# Regional Location

MSA	San Jose-Sunnyvale-Santa Clara
County	Santa Clara
City	Sunnyvale
Distances	Subject is along the eastern boundary of Sunnyvale, which is about five miles southeast of Mountain View and five miles west of Santa Clara.

Sunnyvale is a bedroom community with excellent accessibility both regionally and immediately. With Highway 101 so close, employment hubs in San Francisco, San Jose, and the entire Silicon Valley are easily accessible.

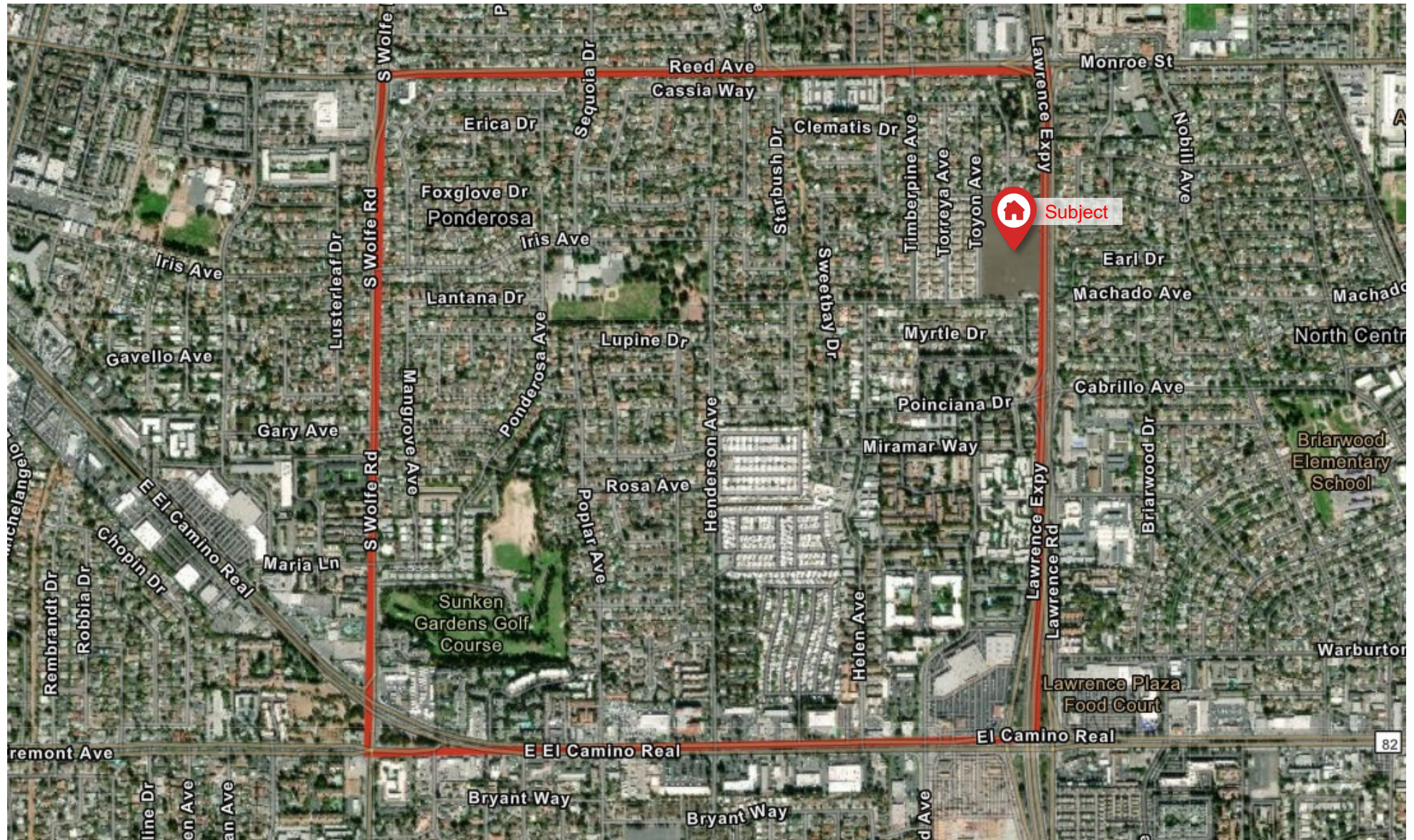






# Subject Area

The red polygon capturing the Subject was used to gather Subject Area key resale transactions that are examined later in the report. The Subject area is defined by the area bounded by Reed Avenue, Lawrence Expressway, El Camino Real, and Wolfe Road.





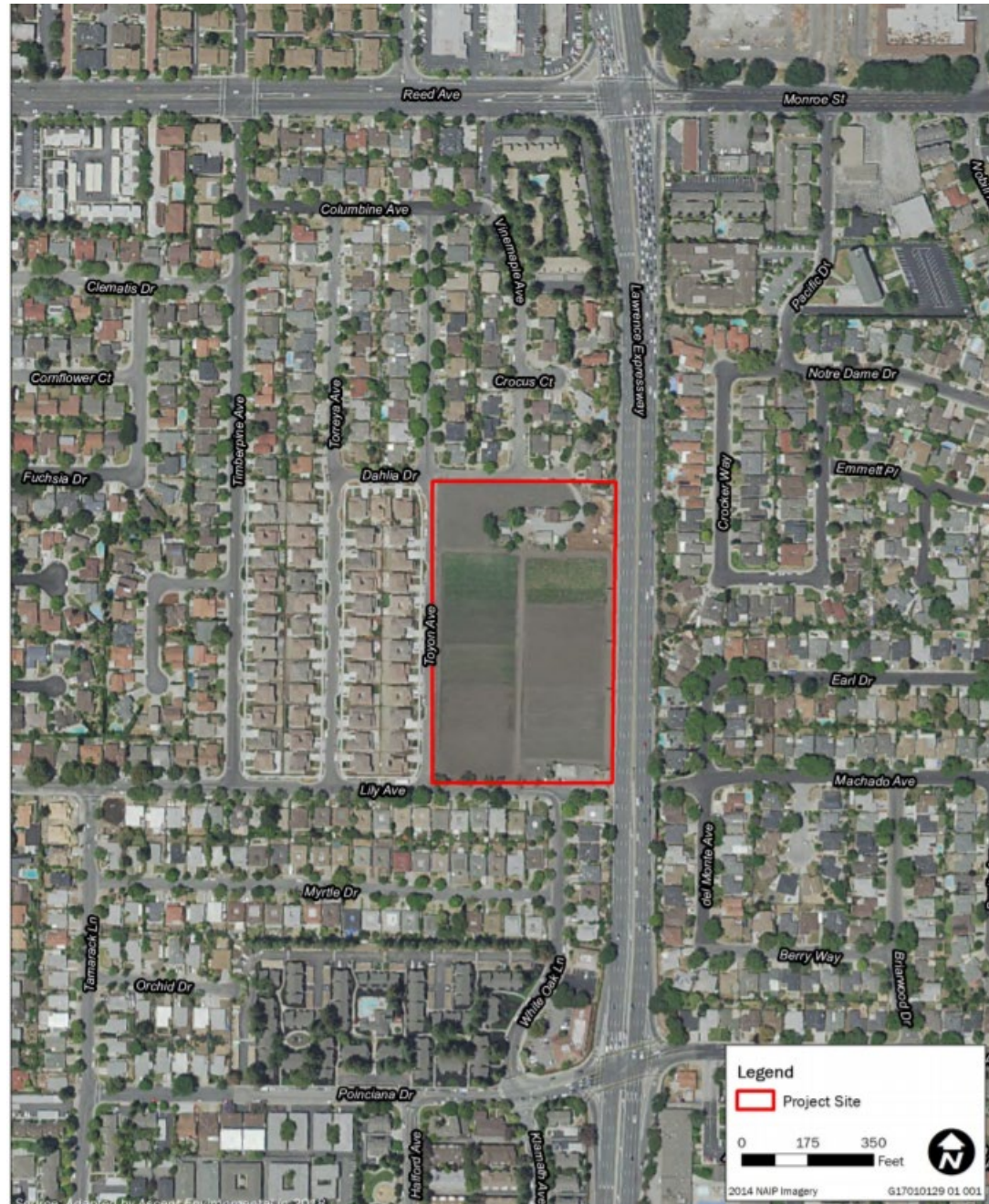
# Subject Vicinity



The Subject site is located west of Lawrence Expressway and is bounded by Lily, Toyon and Dahlia avenues. The 8.8 acre-project site, commonly known as the “Corn Palace,” is a former cornfield that has a closed produce stand, farm structures and a house on site.

The Subject is surrounded by existing residential, which includes most conventional lot single-family detached homes, some townhomes, and apartments toward El Camino Real to the south of the Subject site. The best resale comparables are homes adjacent west of the Subject built in 2013 on lots roughly 6,000 SF.

The proposed project by Trumark Homes includes developing the land with 58 single-family homes (9.5 dwelling units per acre) and a 2-acre public park on the southern edge of the site (against Lily).



# Subject Site Plan



Architecture + Planning  
 The Learning Building  
 1914 Franklin St., Ste. 400  
 Oakland, CA 94612  
 510.272.2910  
 ktgy.com

TRUMARK HOMES

CORN PALACE

DECEMBER 11, 2018

HOME LAYOUT PLAN

Source: Client

John Burns Real Estate Consulting





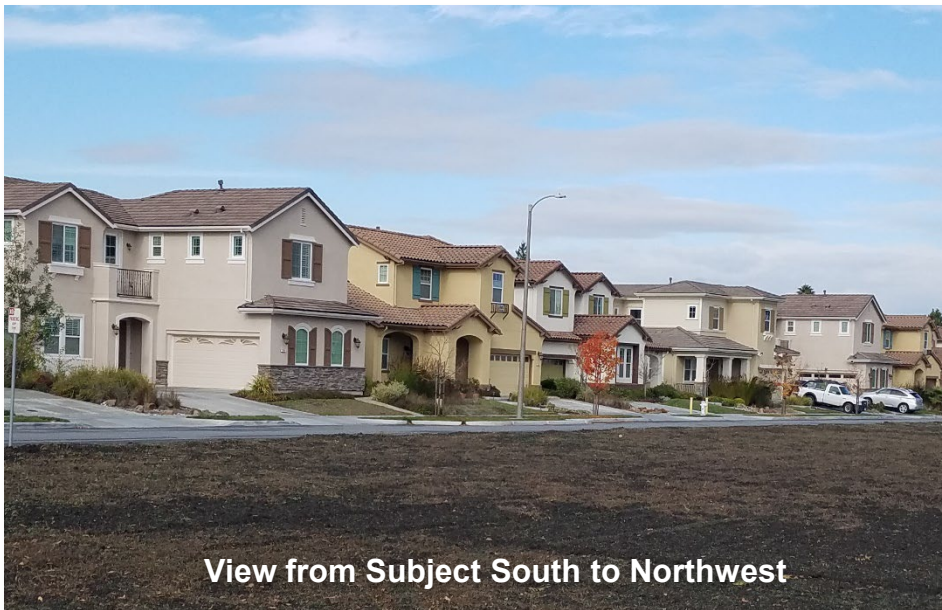
# Site Photography



View from Subject South to Northeast



View from Subject South to North



View from Subject South to Northwest



Radius Villas





# School Rankings – Subject & Key Comps

The Subject will be within the Santa Clara Unified School District. The district scores average on the School Digger metric (School Digger illustrates test scores on a 1-100 scoring index with 50 as the approximate average). However, Santa Clara County is known for strong school districts.. The Subject's elementary and middle schools will be perceived as higher performing against most comparable schools. The Subject high school is strong, though comparable high schools are equally as strong, if not better. Overall, Subject schools will be a strong plus.

## School Digger Rating by District Major Santa Clara County School Districts

2017 Rank	District	2017 Score	2016 Score	2016-17 Growth
1	Los Altos Elementary	98.1	97.9	0.2
2	Saratoga Union Elementary	98.1	99.2	-1.1
3	Cupertino Union	96.5	96.5	-0.1
4	Los Gatos-Saratoga Joint Union High	95.6	98.0	-2.4
5	Union Elementary	94.8	94.4	0.4
6	Palo Alto Unified	94.5	96.2	-1.7
7	Fremont Union High	93.4	94.8	-1.4
8	Los Gatos Union Elementary	92.4	94.4	-2.0
9	Moreland	81.2	82.0	-0.9
10	Mountain View Whisman	78.5	78.4	0.1
11	Campbell Union High	77.7	78.6	-0.9
12	Milpitas Unified	77.4	75.6	1.8
13	Mountain View-Los Altos Union High	74.7	71.2	3.5
14	Cambrian	74.6	79.2	-4.7
15	Berryessa Union Elementary	73.0	73.7	-0.7
16	Evergreen Elementary	71.3	72.1	-0.8
17	Orchard Elementary	68.5	64.4	4.1
18	<b>Santa Clara Unified</b>	<b>66.7</b>	<b>66.8</b>	<b>-0.1</b>
19	Sunnyvale	64.4	66.6	-2.2
20	Campbell Union	63.3	62.4	0.9
21	Santa Clara County Office Of Educati	61.7	57.9	3.8
22	Gilroy Unified	61.0	59.7	1.3
23	Morgan Hill Unified	60.0	63.7	-3.7
24	Franklin-McKinley Elementary	58.6	60.3	-1.7
25	Oak Grove Elementary	56.9	53.9	3.1
26	San Jose Unified	54.1	50.6	3.6
	CALIFORNIA STATE AVERAGE	52.0	52.7	-0.7
27	East Side Union High	50.3	47.4	2.9
28	Alum Rock Union Elementary	44.3	42.2	2.1
29	Mount Pleasant Elementary	41.1	49.3	-8.3
30	Luther Burbank	34.8	43.9	-9.0
31	Ravenswood City Elementary	9.9	15.1	-5.2

## Assigned Schools of Subject and Key Competitors

### Elementary Schools - Ranked by School Digger Score

Project	City	District	Elementary	School Digger (1-100)	Great Schools (1-10)
<b>Subject</b>	<b>Sunnyvale</b>	<b>Santa Clara Unified</b>	<b>Ponderosa</b>	<b>85</b>	<b>6</b>
Radius	Mountain View	Mountain View Whisman	Edith Landels	74	6
Palmero	Mountain View	Mountain View Whisman	Theuerkauf	62	5
Classics at Permanente	Mountain View	Mountain View Whisman	Monta Loma	60	6
Estancia	Mountain View	Mountain View Whisman	Castro	47	6
The Vale	Sunnyvale	Sunnyvale	San Miguel	34	4

### Middle Schools - Ranked by School Digger Score

Project	City	District	Middle	School Digger (1-100)	Great Schools (1-10)
Estancia	Mountain View	Mountain View Whisman	Graham	89	7
<b>Subject</b>	<b>Sunnyvale</b>	<b>Santa Clara Unified</b>	<b>Marian A. Peterson</b>	<b>87</b>	<b>7</b>
Palmero	Mountain View	Mountain View Whisman	Crittenden	82	7
Classics at Permanente	Mountain View	Mountain View Whisman	Crittenden	82	7
Radius	Mountain View	Mountain View Whisman	Crittenden	82	7
The Vale	Sunnyvale	Sunnyvale	Columbia	32	3

### High Schools - Ranked by School Digger Score

Project	City	District	High	School Digger (1-100)	Great Schools (1-10)
Radius	Mountain View	MV-Los Altos Union High	Mountain View	95	9
Classics at Permanente	Mountain View	MV-Los Altos Union High	Los Altos	94	9
Palmero	Mountain View	MV-Los Altos Union High	Los Altos	94	9
Estancia	Mountain View	MV-Los Altos Union High	Los Altos	94	9
<b>Subject</b>	<b>Sunnyvale</b>	<b>Santa Clara Unified</b>	<b>Adrian Wilcox</b>	<b>80</b>	<b>8</b>
The Vale	Sunnyvale	Fremont Union	Fremont	75	7

Source: School Digger, Great Schools, JBREC

John Burns Real Estate Consulting

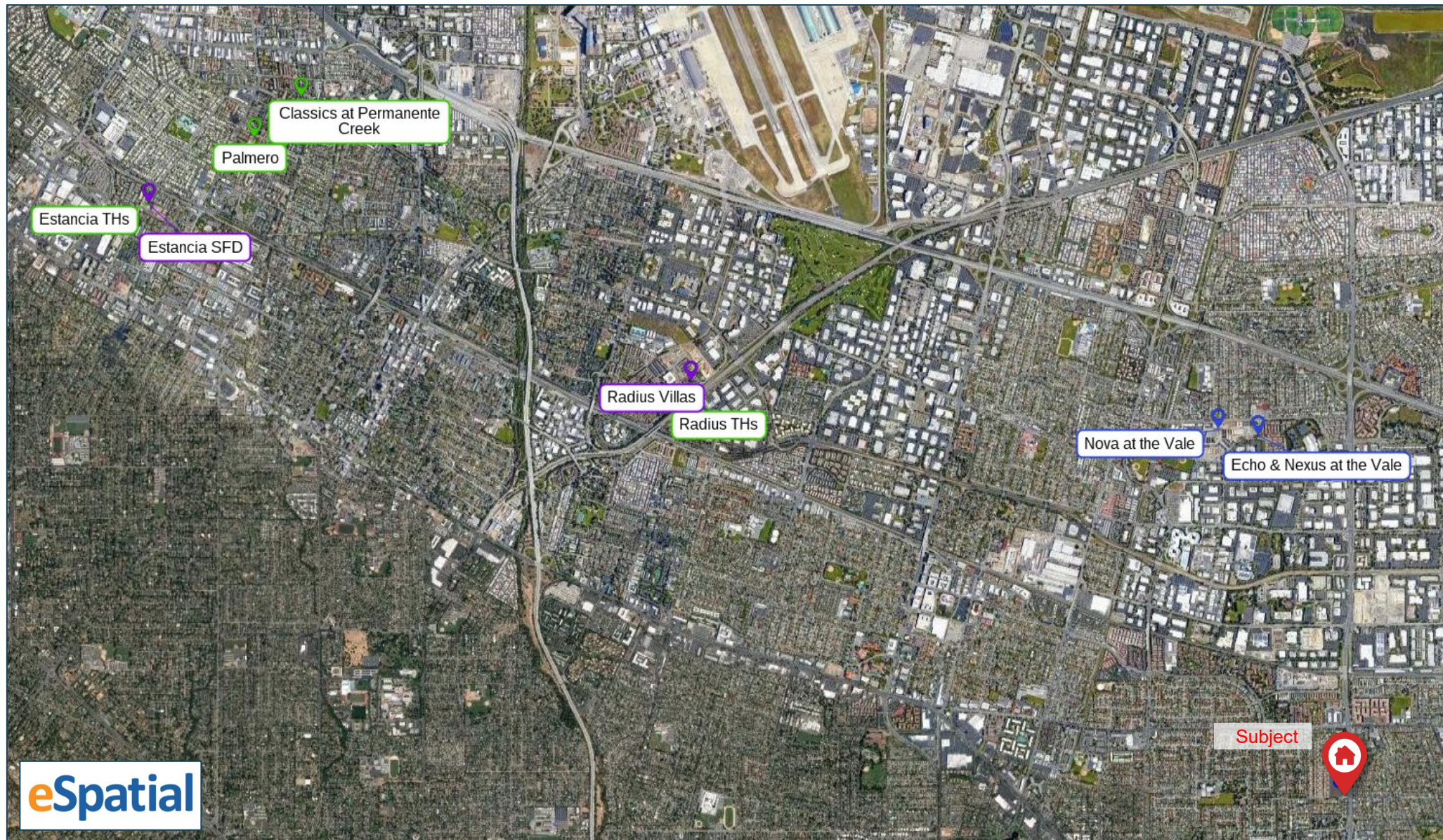
## NEW-HOME ANALYSIS







# Comparable New Home Communities Map







# Comparable New Home Communities Summary

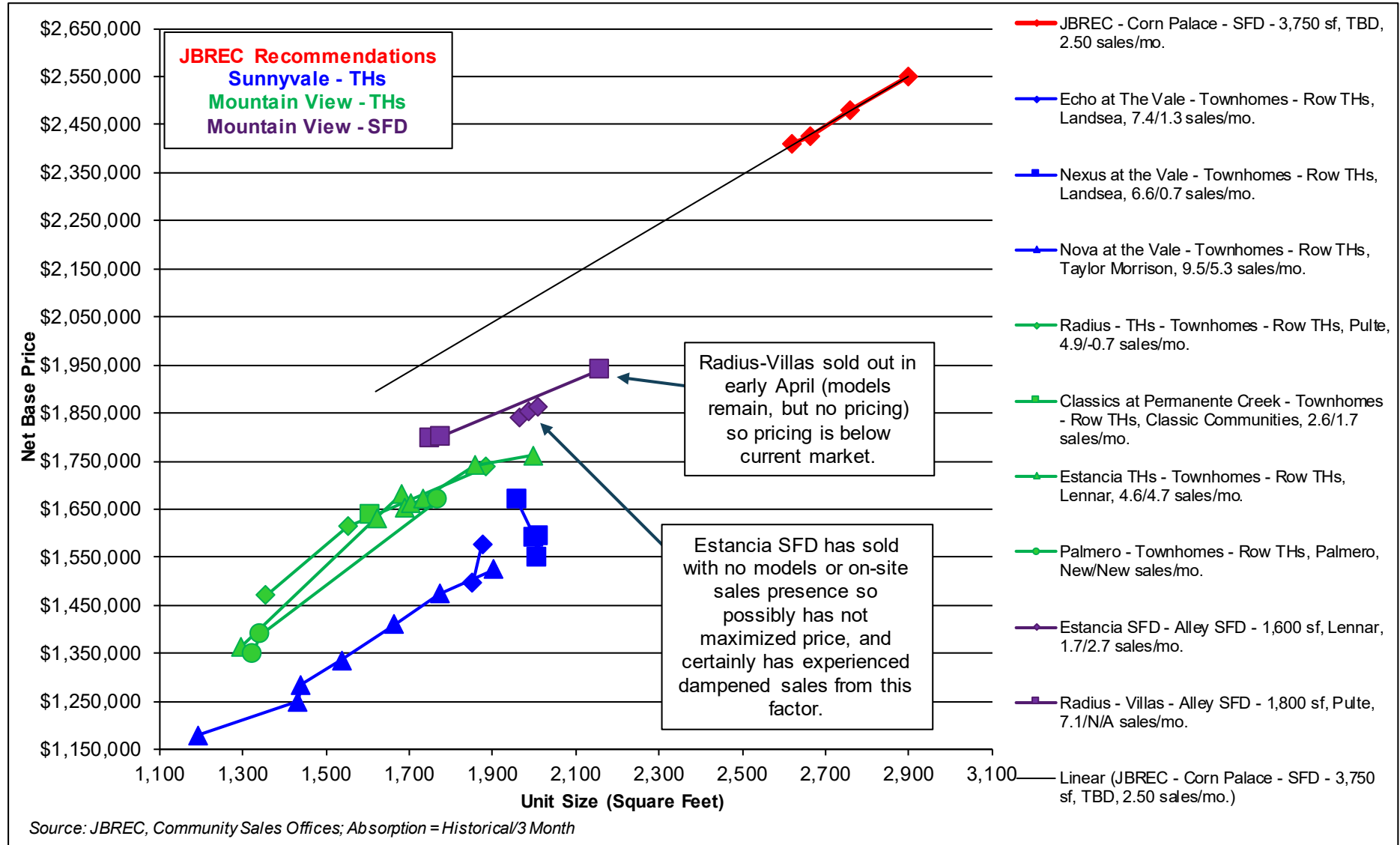
Due to the lack of direct comparables in the area, we surveyed actively selling townhomes and small lot detached projects in the CMA. The comparable set includes nine actively selling and recently sold out new home projects, including three neighborhoods in Sunnyvale and six in Mountain View.

Community	Builder	Location	SIZE (SF)		ABSORPTION		AVG. INCENTIVE		AVG. OPTION EXP.		AVG. PREM.		PRICING SUMMARY		
			Min. Lot	Avg. Unit	Overall	L3M	Total	% Base	Total	% Base	Total	% Base	Base Price	Total Price	Total \$/SF
Corn Palace	TBD	Carson City	3,750	2,773	2.5	N/A	(\$10,000)	-0.4%	\$62,447	2.5%	\$2,000	0.1%	\$2,497,069	\$2,551,516	\$920
Echo at The Vale	Landsea Homes	Sunnyvale	Row THs	1,859	7.4	1.3	(\$2,500)	-0.2%	\$40,000	2.6%	\$10,000	0.7%	\$1,526,833	\$1,574,333	\$847
Nexus at the Vale	Landsea	Sunnyvale	Row THs	1,996	6.6	0.7	(\$2,500)	-0.2%	\$40,000	2.5%	\$10,000	0.6%	\$1,602,000	\$1,649,500	\$827
Nova at the Vale	Taylor Morrison	Sunnyvale	Row THs	1,563	9.5	5.3	(\$10,000)	-0.7%	\$40,856	3.0%	\$5,000	0.4%	\$1,361,857	\$1,397,713	\$894
Radius - THs	Pulte	Mountain View	Row THs	1,597	4.9	(0.7)	(\$10,000)	-0.6%	\$50,000	3.1%	\$5,000	0.3%	\$1,618,323	\$1,663,323	\$1,042
Palmero	Palmero	Mountain View	Row THs	1,479	New	New	\$0	0.0%	\$35,000	2.4%	\$0	0.0%	\$1,468,000	\$1,503,000	\$1,016
Estancia THs	Lennar	Mountain View	Row THs	1,697	4.6	4.7	(\$7,500)	-0.5%	\$16,536	1.0%	\$25,000	1.5%	\$1,653,630	\$1,687,666	\$994
Classics at Permanente Creek	Classic Communities	Mountain View	Row THs	1,609	2.6	1.7	\$0	0.0%	\$22,000	1.3%	\$0	0.0%	\$1,638,000	\$1,660,000	\$1,032
Estancia SFD	Lennar	Mountain View	1,600	1,987	1.7	2.7	(\$7,500)	-0.4%	\$18,599	1.0%	\$25,000	1.3%	\$1,859,880	\$1,895,979	\$954
Radius - Villas	Pulte	Mountain View	1,800	1,896	7.1	N/A	(\$10,000)	-0.5%	\$64,925	3.5%	\$5,000	0.3%	\$1,854,990	\$1,914,915	\$1,010
COMPARABLE AVERAGE				1,743	5.6	2.2	(\$5,556)	-0.3%	\$36,435	2.3%	\$9,444	0.6%	\$1,620,390	\$1,660,714	\$953
COMPARABLE MEDIAN				1,697	5.8	1.7	(\$7,500)	-0.4%	\$40,000	2.5%	\$5,000	0.4%	\$1,618,323	\$1,660,000	\$978



# Net Base Price Comparison

The Subject is positioned above Radius – Villas and Estancia SFD based on net base pricing. Both of those key comparables are very small lot alley loaded detached offerings in Mountain View (the black trend line helps to illustrate this relationship). However, Radius – Villas pricing is dated (from April when all but the models sold out) and Estancia has never had models or an on-site sales presence. The chart below also illustrates the Subject's very large home sizes compared to even detached competition.

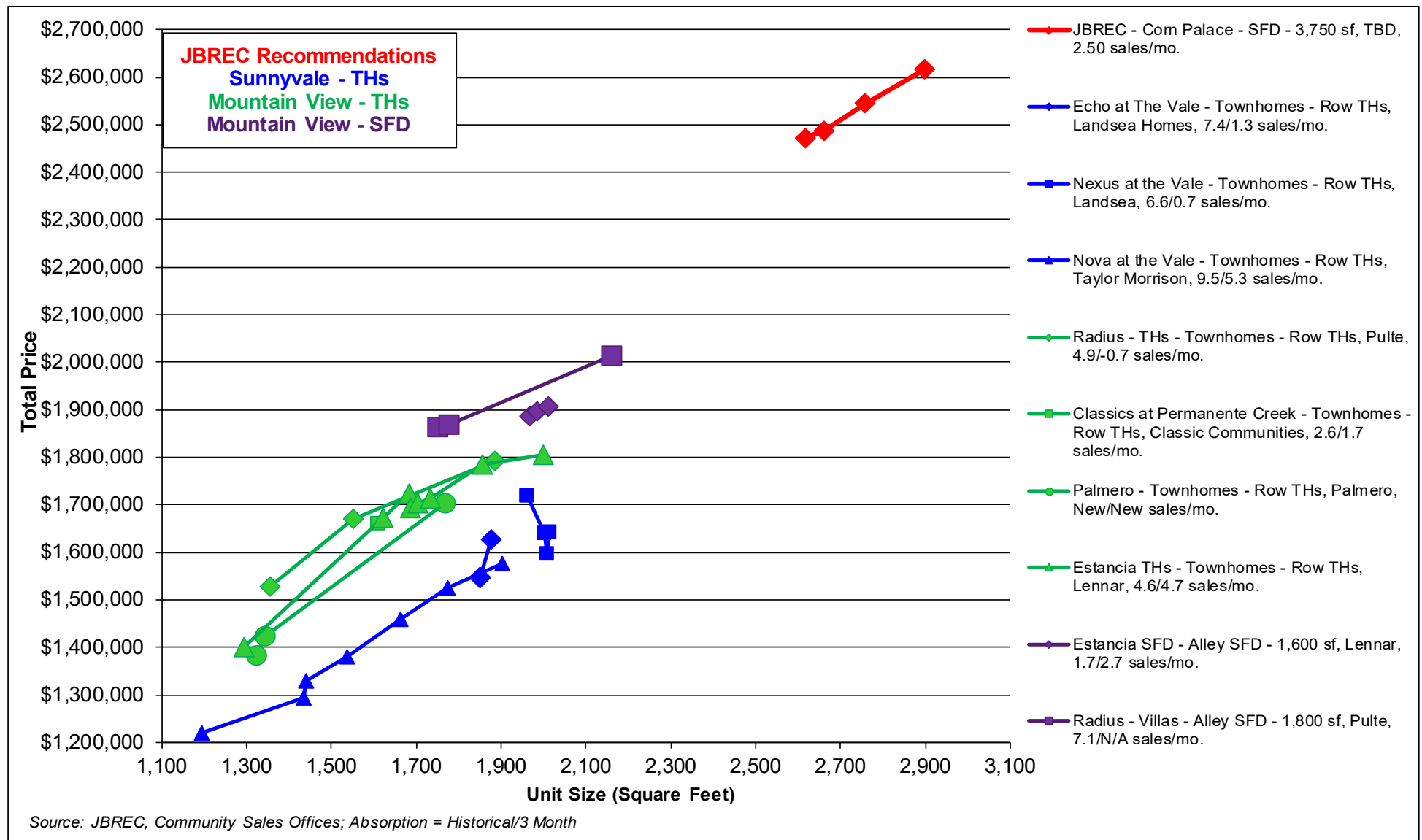






# Total Net Price Comparison

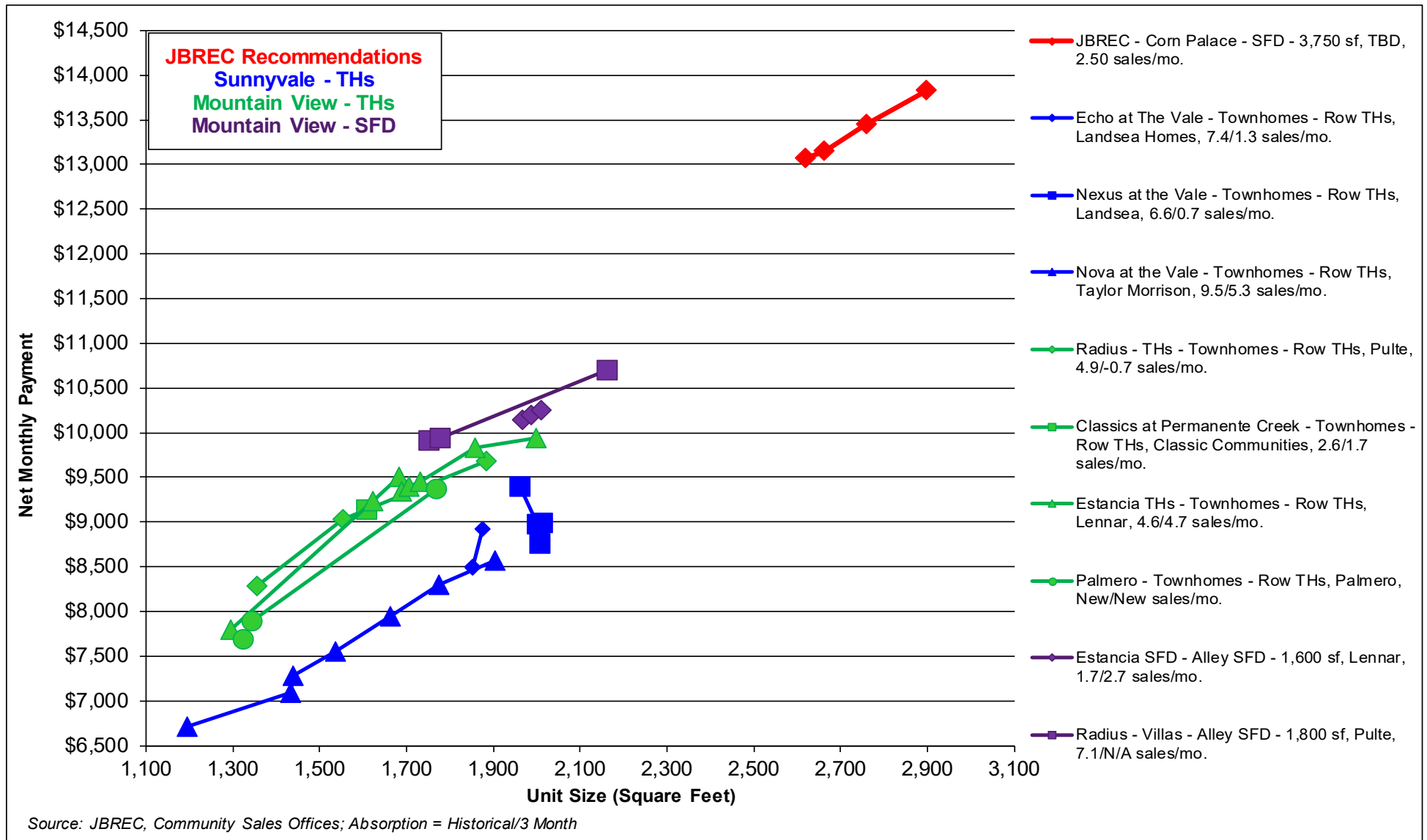
On a total price comparison (base price + options + premiums - incentives), JBREC recommendations position the Subject similarly to net base price positioning, with highly comparable option and premium expectations.





# Total Monthly Cost-to-Own Comparison

Converting total prices to monthly payments again shows very similar Subject positioning against comparables given similar tax and HOA profiles.





# New Home Comps Detail

Project Name		Builder	MIX	PRODUCT					TAX & HOA			MARKET PRICE												
				Sq. Ft.	Plan Configuration				Tax Rate	Add'l Taxes	HOA	Absorption		Base Price	Incent's	Net Base Price	Net Base Price/ Sq. Ft.	Options	Premiums	Total Price	Total Price/ Sq. Ft.	80% 4.90% Net Pmt.	31% Income to Qualify*	
					Bed	Extra	Bath	Level				Pkg	Overall											L3M
ECHO AT THE VALE																								
Echo at The Vale		Landsea Homes	1	1,851	3		3.5	3	2	1.20%	\$0	\$380	7.4	1.3	\$1,501,500	(\$2,500)	\$1,499,000	\$810	\$40,000	\$10,000	\$1,549,000	\$837	\$8,506	\$329,000
City:	Sunnyvale		1	1,851	3	Den	4.0	4	2	1.20%	\$0	\$380			\$1,499,000	(\$2,500)	\$1,496,500	\$808	\$40,000	\$10,000	\$1,546,500	\$835	\$8,493	\$329,000
Product:	Townhomes	Total Units: 171	1	1,875	4		3.5	3	2	1.20%	\$0	\$380			\$1,580,000	(\$2,500)	\$1,577,500	\$841	\$40,000	\$10,000	\$1,627,500	\$868	\$8,918	\$345,000
Configuration:	Row THs	Units Sold: 120																						
Lot Dimensions:	Attached	3 Mon. Sold: 4																						
% Remaining	30%	Units Remaining: 51																						
Sales Open Date: Aug-17		Overall Sales Rate: 7.4																						
		3 Mon. Sales Rate: 1.3																						
Totals/Averages:				1,859								\$1,526,833 (\$2,500) \$1,524,333 \$820 \$40,000 \$10,000 \$1,574,333 \$847 \$8,639 \$334,333												
NEXUS AT THE VALE																								
Nexus at the Vale		Landsea	1	1,960	4		3.5	3	2+	1.20%	\$0	\$380	6.6	0.7	\$1,671,000	(\$2,500)	\$1,668,500	\$851	\$40,000	\$10,000	\$1,718,500	\$877	\$9,395	\$364,000
City:	Sunnyvale		1	2,002	4		3.5	3	2	1.20%	\$0	\$380			\$1,592,000	(\$2,500)	\$1,589,500	\$794	\$40,000	\$10,000	\$1,639,500	\$819	\$8,981	\$348,000
Product:	Townhomes	Total Units: 143	1	2,007	3		3.5	3	2	1.20%	\$0	\$380			\$1,550,000	(\$2,500)	\$1,547,500	\$771	\$40,000	\$10,000	\$1,597,500	\$796	\$8,760	\$339,000
Configuration:	Row THs	Units Sold: 107	1	2,014	4		3.5	3	2	1.20%	\$0	\$380			\$1,595,000	(\$2,500)	\$1,592,500	\$791	\$40,000	\$10,000	\$1,642,500	\$816	\$8,996	\$348,000
Lot Dimensions:	Attached	3 Mon. Sold: 2																						
% Remaining	25%	Units Remaining: 36																						
Sales Open Date: Aug-17		Overall Sales Rate: 6.6																						
		3 Mon. Sales Rate: 0.7																						
Totals/Averages:				1,996								\$1,602,000 (\$2,500) \$1,599,500 \$801 \$40,000 \$10,000 \$1,649,500 \$827 \$9,033 \$349,750												
NOVA AT THE VALE																								
Nova at the Vale		Taylor Morrison	1	1,194	2		2.5	3	1	1.18%	\$0	\$324	9.5	5.3	\$1,190,000	(\$10,000)	\$1,180,000	\$988	\$35,700	\$5,000	\$1,220,700	\$1,022	\$6,707	\$260,000
City:	Sunnyvale		1	1,433	2		2.5	3	1	1.18%	\$0	\$324			\$1,260,000	(\$10,000)	\$1,250,000	\$872	\$37,800	\$5,000	\$1,292,800	\$902	\$7,084	\$274,000
Product:	Townhomes	Total Units: 136	1	1,439	2	Tech	2.5	3	2	1.18%	\$0	\$324			\$1,296,000	(\$10,000)	\$1,286,000	\$894	\$38,880	\$5,000	\$1,329,880	\$924	\$7,278	\$282,000
Configuration:	Row THs	Units Sold: 87	1	1,537	3		3.5	3	2	1.18%	\$0	\$324			\$1,346,000	(\$10,000)	\$1,336,000	\$869	\$40,380	\$5,000	\$1,381,380	\$899	\$7,547	\$292,000
Lot Dimensions:	Attached	3 Mon. Sold: 16	1	1,663	3		3.5	3	2T	1.18%	\$0	\$324			\$1,421,000	(\$10,000)	\$1,411,000	\$848	\$42,630	\$5,000	\$1,458,630	\$877	\$7,951	\$308,000
% Remaining	36%	Units Remaining: 49	1	1,773	3		3.5	3	2T	1.18%	\$0	\$324			\$1,485,000	(\$10,000)	\$1,475,000	\$832	\$44,550	\$5,000	\$1,524,550	\$860	\$8,296	\$321,000
			1	1,903	4		3.5	3	2	1.18%	\$0	\$324			\$1,535,000	(\$10,000)	\$1,525,000	\$801	\$46,050	\$5,000	\$1,576,050	\$828	\$8,565	\$332,000
Sales Open Date: Mar-18		Overall Sales Rate: 9.5																						
		3 Mon. Sales Rate: 5.3																						
Totals/Averages:				1,563								\$1,361,857 (\$10,000) \$1,351,857 \$865 \$40,856 \$5,000 \$1,397,713 \$894 \$7,633 \$295,571												



# New Home Comps Detail

Project Name		Builder		MIX	PRODUCT						TAX & HOA			MARKET PRICE												
					Sq. Ft.	Plan Configuration					Tax Rate	Add'l Taxes	HOA	Absorption		Base Price	Incent's	Net Base Price	Net Base Price/ Sq. Ft.	Options	Premiums	Total Price	Total Price/ Sq. Ft.	80% 4.90% Net Pmt.	31% Income to Qualify*	
						Bed	Extra	Bath	Level	Pkg				Overall	L3M											
RADIUS - THS																										
Radius - THs		Pulte		1	1,355	2		Den	2.5	3	2	1.20%	\$0	\$271	4.9	-0.7	\$1,481,990	(\$10,000)	\$1,471,990	\$1,086	\$50,000	\$5,000	\$1,526,990	\$1,127	\$8,281	\$321,000
City: Mountain View				1	1,552	3			3.5	3	2	1.20%	\$0	\$271			\$1,624,990	(\$10,000)	\$1,614,990	\$1,041	\$50,000	\$5,000	\$1,669,990	\$1,076	\$9,031	\$350,000
Product: Townhomes		Total Units: 113		1	1,884	4			3.5	3	2	1.20%	\$0	\$271			\$1,747,990	(\$10,000)	\$1,737,990	\$923	\$50,000	\$5,000	\$1,792,990	\$952	\$9,677	\$375,000
Configuration: Row THs		Units Sold: 97																								
Lot Dimensions: Attached		3 Mon. Sold: -2																								
% Remaining 14%		Units Remaining: 16																								
Sales Open Date: May-17		Overall Sales Rate: 4.9																								
		3 Mon. Sales Rate: -0.7																								
Totals/Averages:					1,597																					
CLASSICS AT PERMANENTE CREEK																										
Classics at Permanente Creek		Classic Communities		1	1,609	3		Den	2.5	3	2	1.22%	\$0	\$400	2.6	1.7	\$1,638,000	\$0	\$1,638,000	\$1,018	\$22,000	\$0	\$1,660,000	\$1,032	\$9,136	\$354,000
City: Mountain View																										
Product: Townhomes		Total Units: 29																								
Configuration: Row THs		Units Sold: 29																								
Lot Dimensions: Attached		3 Mon. Sold: 5																								
% Remaining 0%		Units Remaining: 0																								
Sales Open Date: Jan-18		Overall Sales Rate: 2.6																								
Sold Out Date: Dec-18		3 Mon. Sales Rate: 1.7																								
Sold out approximately 12/5/2018																										
Totals/Averages:					1,609																					
ESTANCIA THS																										
Estancia THs		Lennar		1	1,295	2			2.5	3	1T	1.25%	\$0	\$391	4.6	4.7	\$1,369,880	(\$7,500)	\$1,362,380	\$1,052	\$13,699	\$25,000	\$1,401,079	\$1,082	\$7,799	\$302,000
City: Mountain View				1	1,621	3			3.5	3	2	1.25%	\$0	\$391			\$1,639,880	(\$7,500)	\$1,632,380	\$1,007	\$16,399	\$25,000	\$1,673,779	\$1,033	\$9,241	\$358,000
Product: Townhomes		Total Units: 61		1	1,682	3			3.5	3	2	1.25%	\$0	\$391			\$1,689,880	(\$7,500)	\$1,682,380	\$1,000	\$16,899	\$25,000	\$1,724,279	\$1,025	\$9,508	\$368,000
Configuration: Row THs		Units Sold: 32		1	1,687	3			3.5	3	2	1.25%	\$0	\$391			\$1,659,880	(\$7,500)	\$1,652,380	\$979	\$16,599	\$25,000	\$1,693,979	\$1,004	\$9,348	\$362,000
Lot Dimensions: Attached		3 Mon. Sold: 14		1	1,705	3			3.5	3	2	1.25%	\$0	\$391			\$1,669,880	(\$7,500)	\$1,662,380	\$975	\$16,699	\$25,000	\$1,704,079	\$999	\$9,401	\$364,000
% Remaining 48%		Units Remaining: 29		1	1,732	3			3.5	3	2	1.25%	\$0	\$391			\$1,679,880	(\$7,500)	\$1,672,380	\$966	\$16,799	\$25,000	\$1,714,179	\$990	\$9,455	\$366,000
				1	1,857	3			3.5	3	2	1.25%	\$0	\$391			\$1,749,880	(\$7,500)	\$1,742,380	\$938	\$17,499	\$25,000	\$1,784,879	\$961	\$9,829	\$380,000
Sales Open Date: May-18		Overall Sales Rate: 4.6		1	1,998	3			3.5	3	2	1.25%	\$0	\$391			\$1,769,880	(\$7,500)	\$1,762,380	\$882	\$17,699	\$25,000	\$1,805,079	\$903	\$9,935	\$385,000
		3 Mon. Sales Rate: 4.7																								
*Options estimated based on EI program.																										
Totals/Averages:					1,697																					
PALMERO																										
Palmero		Palmero		1	1,324	2			2.5	3	2T	1.25%	\$0	\$372	New	New	\$1,348,000	\$0	\$1,348,000	\$1,018	\$35,000	\$0	\$1,383,000	\$1,045	\$7,685	\$297,000
City: Mountain View				1	1,343	2			2.5	3	2T	1.25%	\$0	\$372			\$1,388,000	\$0	\$1,388,000	\$1,034	\$35,000	\$0	\$1,423,000	\$1,060	\$7,896	\$306,000
Product: Townhomes		Total Units: 33		1	1,769	3			3.5	3	2	1.25%	\$0	\$372			\$1,668,000	\$0	\$1,668,000	\$943	\$35,000	\$0	\$1,703,000	\$963	\$9,377	\$363,000
Configuration: Row THs		Units Sold: 11																								
Lot Dimensions: Attached		3 Mon. Sold: 11																								
% Remaining 67%		Units Remaining: 22																								
Sales Open Date: Nov-18		Overall Sales Rate: New																								
		3 Mon. Sales Rate: New																								
Note: Community temporarily sold out as of Dec. 8, 2018.																										
Totals/Averages:					1,479																					



# New Home Comps Detail

		MIX	PRODUCT						TAX & HOA			MARKET PRICE											
		Sq. Ft.	Plan Configuration				Tax Rate	Add'l Taxes	HOA	Absorption		Base Price	Incent's	Net Base Price	Net Base Price/Sq. Ft.	Options	Premiums	Total Price	Total Price/Sq. Ft.	80% 4.90% Net Pmt.	31% Income to Qualify*		
Project Name	Builder		Bed	Extra	Bath	Level	Pkg				Overall	L3M											
ESTANCIA SFD																							
Estancia SFD	Lennar	1	1,966	3		3.5	3	2	1.25%	\$0	\$175	1.7	2.7	\$1,849,880	(\$7,500)	\$1,842,380	\$937	\$18,499	\$25,000	\$1,885,879	\$959	\$10,147	\$393,000
City: Mountain View		1	1,986	3		3.5	3	2	1.25%	\$0	\$175			\$1,859,880	(\$7,500)	\$1,852,380	\$933	\$18,599	\$25,000	\$1,895,979	\$955	\$10,200	\$395,000
Product: Alley SFD	Total Units: 14	1	2,010	3		3.5	3	2	1.25%	\$0	\$175			\$1,869,880	(\$7,500)	\$1,862,380	\$927	\$18,699	\$25,000	\$1,906,079	\$948	\$10,253	\$397,000
Configuration: 1,600	Units Sold: 12																						
Lot Dimensions: 30' x 52'	3 Mon. Sold: 8																						
% Remaining 14%	Units Remaining: 2																						
Sales Open Date: May-18	Overall Sales Rate: 1.7																						
	3 Mon. Sales Rate: 2.7																						
*Options estimated based on EI program. Lot size estimated.																							
Totals/Averages:			1,987									\$1,859,880 (\$7,500) \$1,852,380 \$932 \$18,599 \$25,000 \$1,895,979 \$954 \$10,200 \$395,000											
RADIUS - VILLAS																							
Radius - Villas	Pulte	1	1,751	3	Den	2.5	3	2	1.20%	\$0	\$144	7.1	N/A	\$1,804,990	(\$10,000)	\$1,794,990	\$1,025	\$63,175	\$5,000	\$1,863,165	\$1,064	\$9,918	\$384,000
City: Mountain View		1	1,776	3		3.0	3	2	1.20%	\$0	\$144			\$1,809,990	(\$10,000)	\$1,799,990	\$1,014	\$63,350	\$5,000	\$1,868,340	\$1,052	\$9,945	\$385,000
Product: Alley SFD	Total Units: 85	1	2,161	3	Den	2.5	3	2	1.20%	\$0	\$144			\$1,949,990	(\$10,000)	\$1,939,990	\$898	\$68,250	\$5,000	\$2,013,240	\$932	\$10,705	\$414,000
Configuration: 1,800	Units Sold: 82																						
Lot Dimensions: 31' x 58'	3 Mon. Sold: N/A																						
% Remaining 4%	Units Remaining: 3																						
Sales Open Date: May-17	Overall Sales Rate: 7.1																						
Sold out Date: Apr-18	3 Mon. Sales Rate: N/A																						
*Sold out April 2018, 3 models left. Pricing is last base pricing in April.																							
Totals/Averages:			1,896									\$1,854,990 (\$10,000) \$1,844,990 \$973 \$64,925 \$5,000 \$1,914,915 \$1,010 \$10,189 \$394,333											

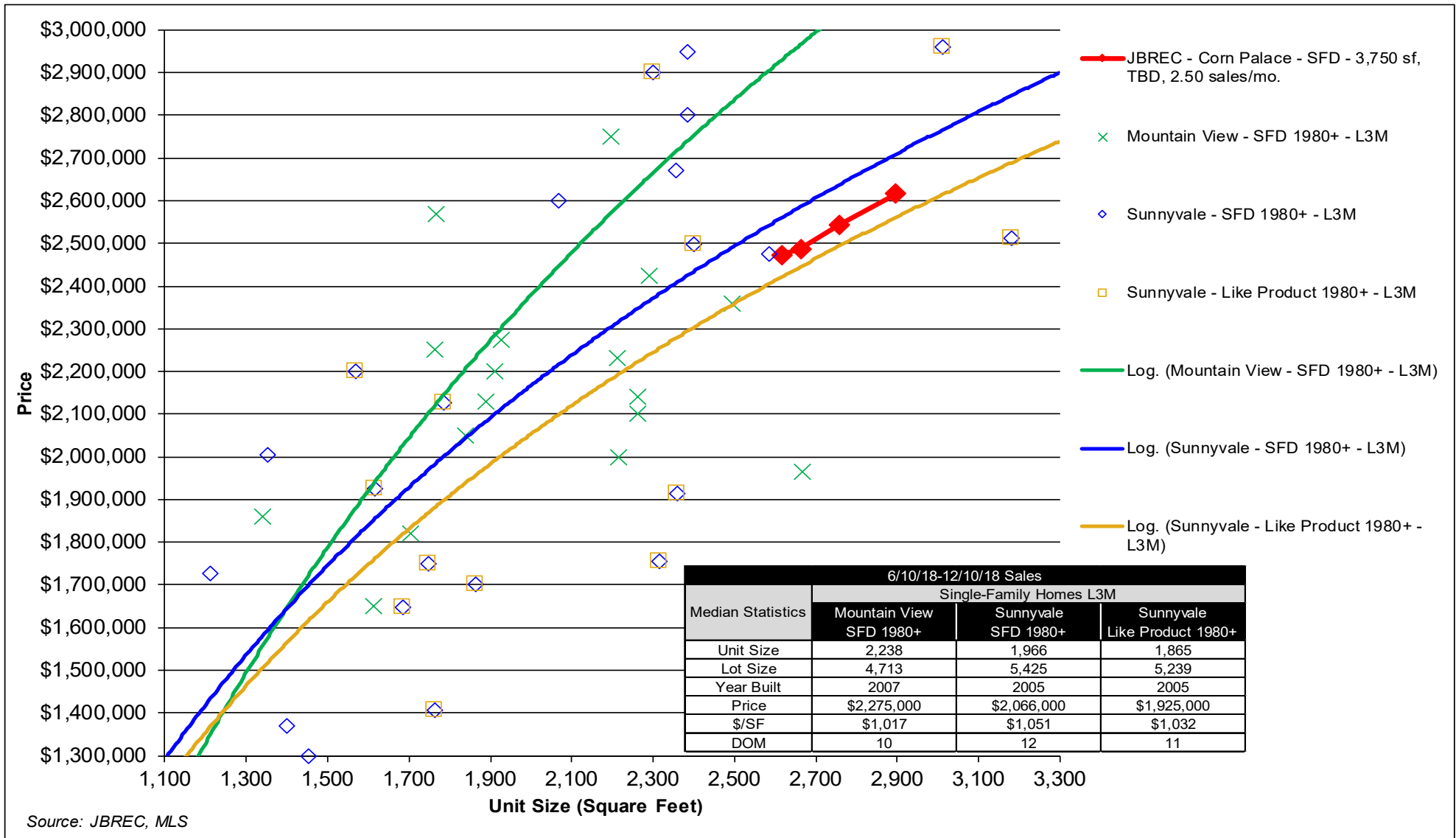
## RESALE ANALYSIS



# Resales Graph



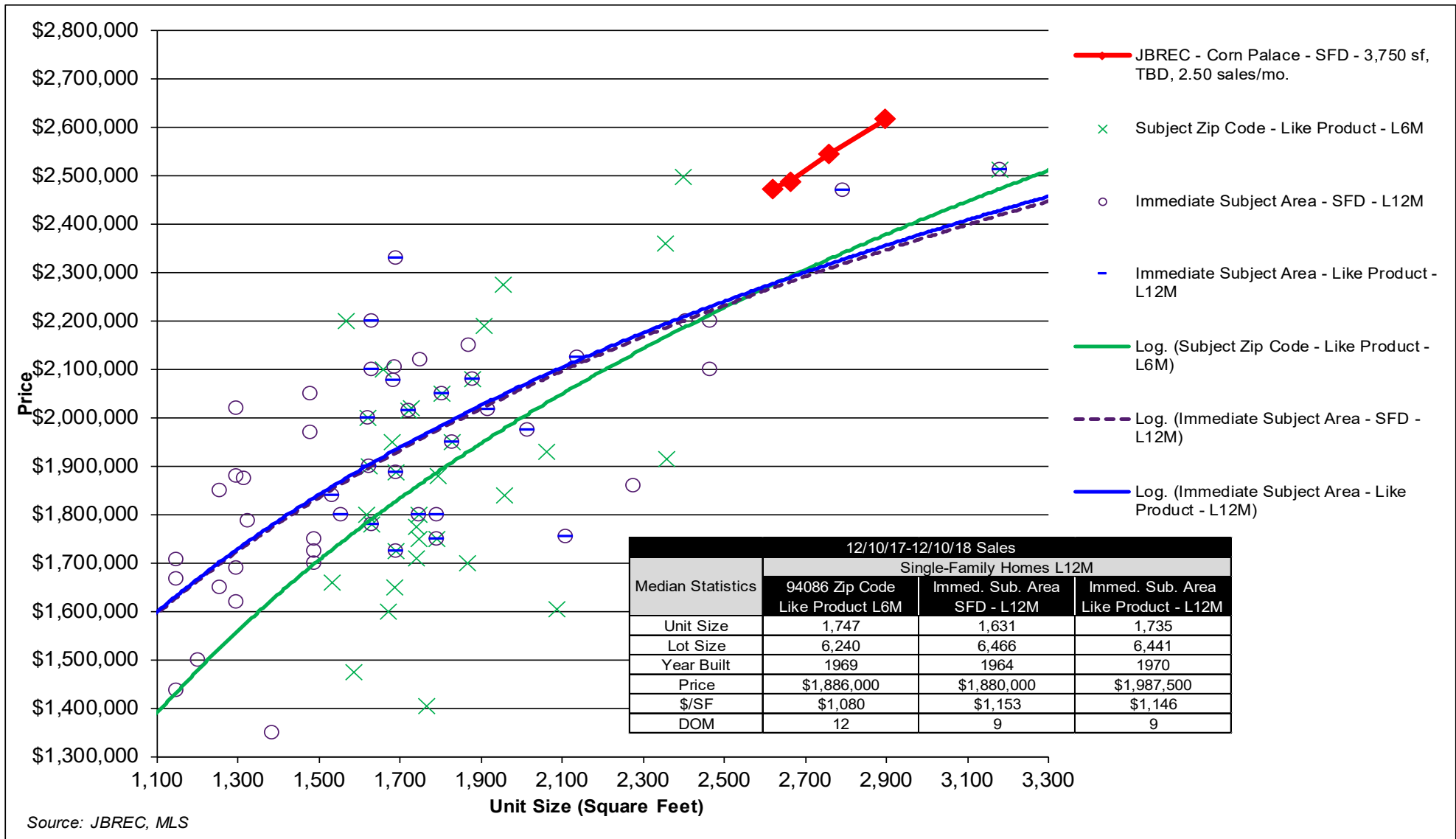
We positioned the Subject homes in-line with the resale trends for Sunnyvale and below the Mountain View trend. Mountain View commands a premium over Sunnyvale, thus newly built product in this area should be priced appropriately. Subject home sizes are far larger than the CMA norm, which increases absolute price points, and this has impacted our recommendations. (Note that "Like Product" includes transactions with comparatively similar lot and home sizes to the Subject.)





# Resales Graph

The Subject homes are positioned about \$200K to \$250K above the pricing trend line for recent resale transactions in the Subject zip code and the immediate Subject area (polygon shown in locational section). As mentioned previously, the existing home market generally consists of relatively older homes and smaller homes than the Subject - about 1,600 to 1,700 SF compared to 2,773 SF at the Subject.







# Resale Price Adjustment Grid

The table below takes average values for the Subject and compares it to key variables derived from recent resale data. "1980+" = minimum year built. The Adjusted Price figures at the bottom of the page indicate the implied average total price for the Subject. These figures average somewhat above our weighted average total recommended price. However, a similar analyses using new home data showed implied pricing below our recommendations. Adjustments for the best comparable, Radius Villas, are very close to Subject pricing, as is the value implied by the single transaction at the key neighborhood just west of the Subject.

Subject Price Adjustments from Key Resale Comparables							
	Sunnyvale SFD L3M	Sunnyvale 1990+ L3M	Sunnyvale Like Prod. 1980+ L3M	Subject Zip Code SFD 1990+ L3M	Subject Area SFD L12M	Subject Area Like Prod. L12M	726 Torreyia
<b>Avg. Total Price</b>	\$1,800,000	\$2,066,000	\$1,925,000	\$1,832,500	\$1,880,000	\$1,987,500	\$2,512,000
<b>Sale Date</b>	↑ \$38,268	↑ \$41,660	↑ \$49,364	↑ \$49,804	↑ \$79,527	↑ \$81,025	↑ \$100,205
<b>Year Built</b>	↑ \$432,000	↑ \$241,722	↑ \$225,225	↑ \$233,644	↑ \$406,080	↑ \$429,300	↑ \$125,600
<b>Lot Size</b>	↓ -\$101,925	↓ -\$64,245	↓ -\$56,805	↓ -\$22,405	↓ -\$105,885	↓ -\$104,885	↓ -\$87,245
<b>Unit Size</b>	↑ \$457,545	↑ \$403,500	↑ \$454,000	↑ \$457,545	↑ \$457,545	↑ \$457,545	↓ -\$203,500
<b>Location</b>	↑ \$36,000	↑ \$41,320	↑ \$38,500	↑ \$18,325	⇒ \$0	⇒ \$0	⇒ \$0
<b>Product</b>	↓ -\$54,000	↓ -\$61,980	↓ -\$57,750	↓ -\$54,975	↓ -\$56,400	↓ -\$39,750	⇒ \$0
<b>Tax Rate</b>	⇒ \$0	⇒ \$0	⇒ \$0	⇒ \$0	⇒ \$0	⇒ \$0	⇒ \$0
<b>HOA</b>	⇒ \$0	⇒ \$0	⇒ \$0	⇒ \$0	⇒ \$0	⇒ \$0	⇒ \$0
<b>Adj. Price</b>	<b>\$2,607,889</b>	<b>\$2,667,977</b>	<b>\$2,577,535</b>	<b>\$2,514,438</b>	<b>\$2,660,867</b>	<b>\$2,810,735</b>	<b>\$2,447,060</b>

**Avg. Implied  
Subject Price**

**\$2,612,357**

The price figures seen at the bottom of the table indicate the Subject's imputed value derived from key variable adjustments. Adjustments on median values are from empirically based rules of thumb and observed data. The sale date adjustment is based on continued (annualized) appreciation from the median sale date. Location and product adjustments are based on an assessment of superiority / inferiority of Subject vs. comparison (positive figures indicate Subject superiority). Tax rate and HOA calculated at 50% of present value difference. Note that year built, lot size, and unit size adjustments are capped to prevent extreme adjustments.

# MSA ECONOMIC AND HOUSING MARKET TRENDS





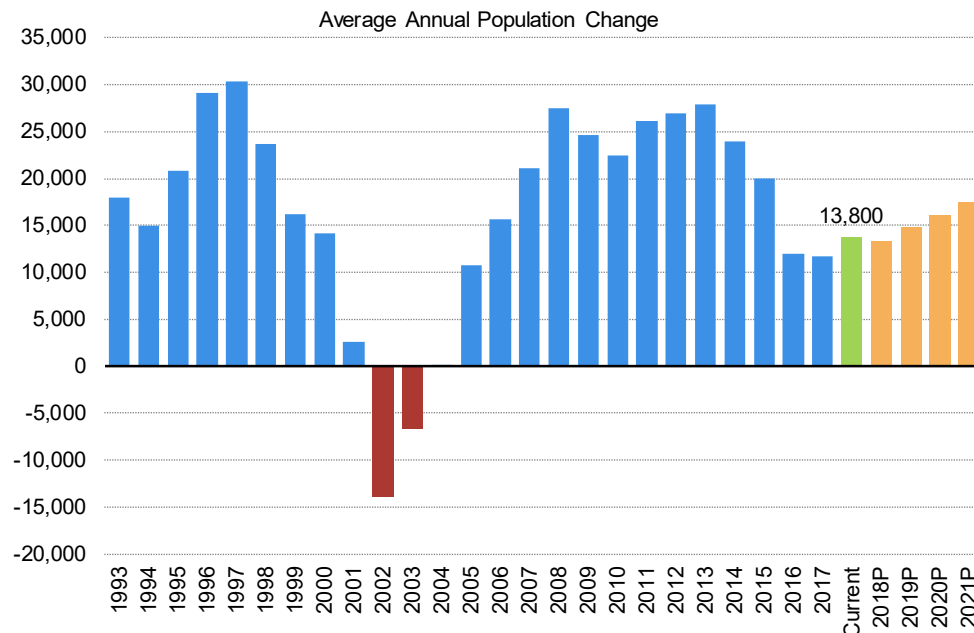
# Population and Employment Change

From the mid-2000s, the San Jose MSA population experienced significant growth. Since 2013, population growth has eased, but remains strong and growth is projected to be positive over the next four years.

Total household formations resemble overall population growth changes in the San Jose MSA and households are also projected to increase through 2021.

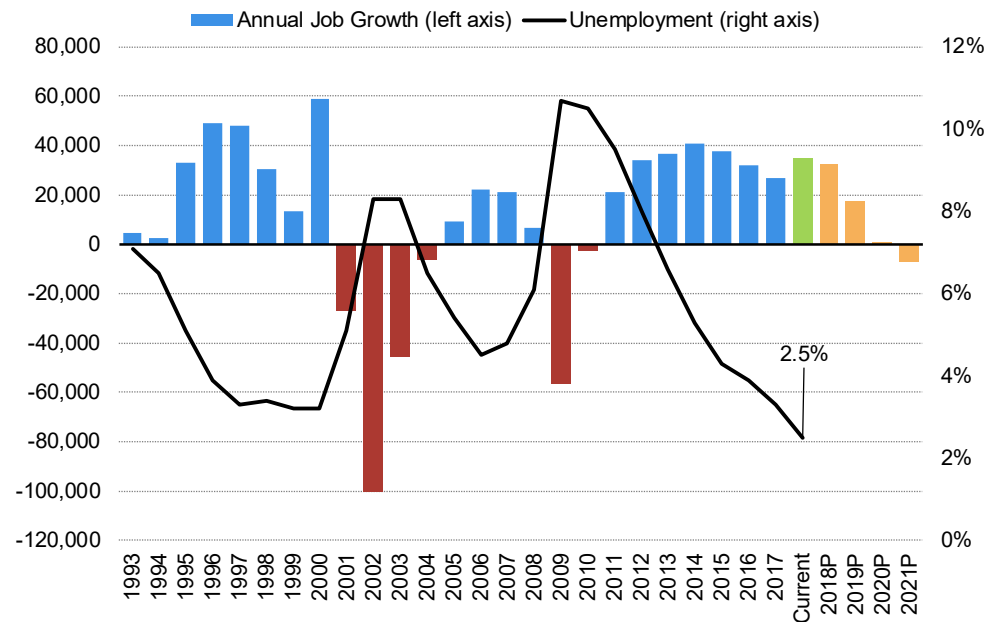
## Population Change

2018P	2019P	2020P	2021P
13,400	14,800	16,100	17,400
0.7%	0.7%	0.8%	0.9%



## Employment Change

2018P	2019P	2020P	2021P
32,500	17,500	1,200	-7,200
3.0%	1.5%	0.1%	-0.6%



Sources: U.S. Bureau of Labor Statistics (BLS); Moody's Economics; JBREC (Data as of October 2018, projections as of December 2018)



# Permits and Employment Relationship

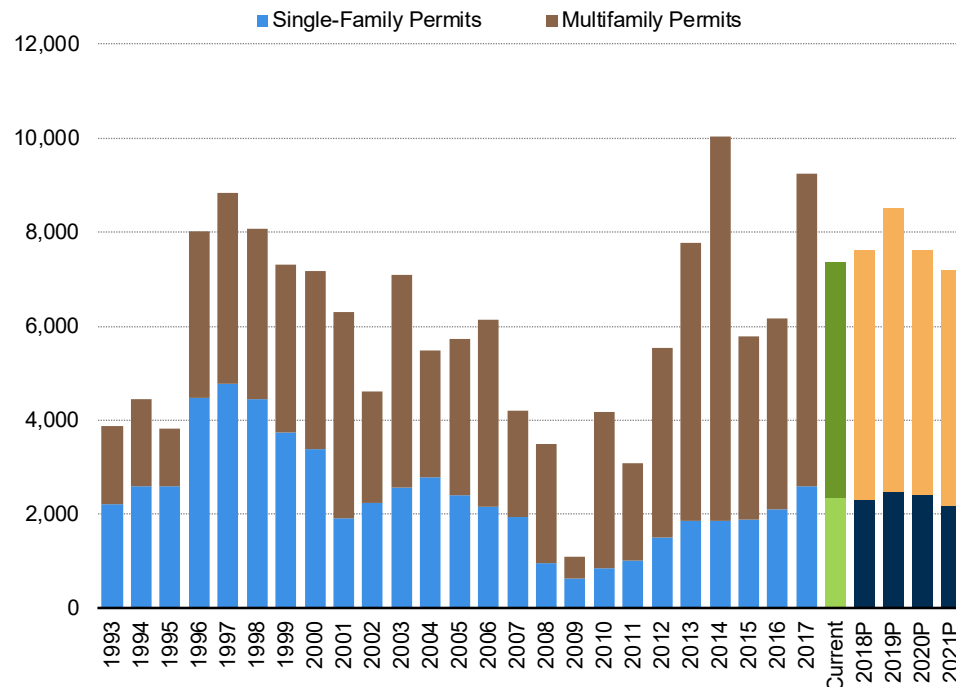
Permit levels in San Jose troughed with 2009's low of 1,094 permits and have risen since. We forecast 7,800 total permits pulled in 2018 then decrease incrementally primarily due to a lesser proportion of multifamily homes.

The E/P Ratio (new jobs divided by permitted dwelling units) can be a leading indicator as permits respond to job-based migration.

- >1.0 generally means healthy housing demand
- The San Jose MSA ratio is 3.9 but is projected to go negative in 2021.

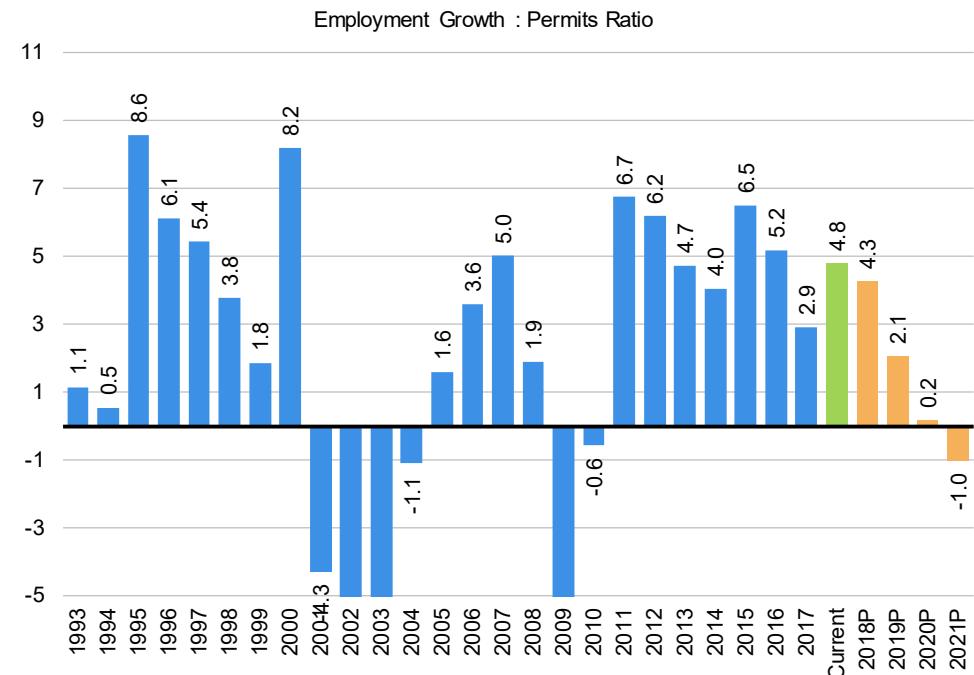
## Total Permits

2018P	2019P	2020P	2021P
7,600	8,500	7,600	7,200



## Employment Growth : Permits Ratio

2018P	2019P	2020P	2021P
4.3	2.1	0.2	-1.0



Note: Chart cropped at -5 to better illustrate variations between years

Sources: U.S. Bureau of Labor Statistics (BLS); U.S. Census Bureau; JBREC (Data as of October 2018, projections as of December 2018)



# Resale Market

Months of supply (ratio of homes listed for sale to average monthly sales) depicts housing surpluses or shortages.

- 4-5 months generally means equilibrium
- The San Jose MSA supply has risen throughout 2018 but has averaged around 1 month since 2014.

Existing home sales in the San Jose MSA have generally been decreasing since 2012 as distressed properties that once fueled activity have dramatically declined. Price appreciation in the existing home market has remained stronger than the new home market with an increase of 15% in 2017. .

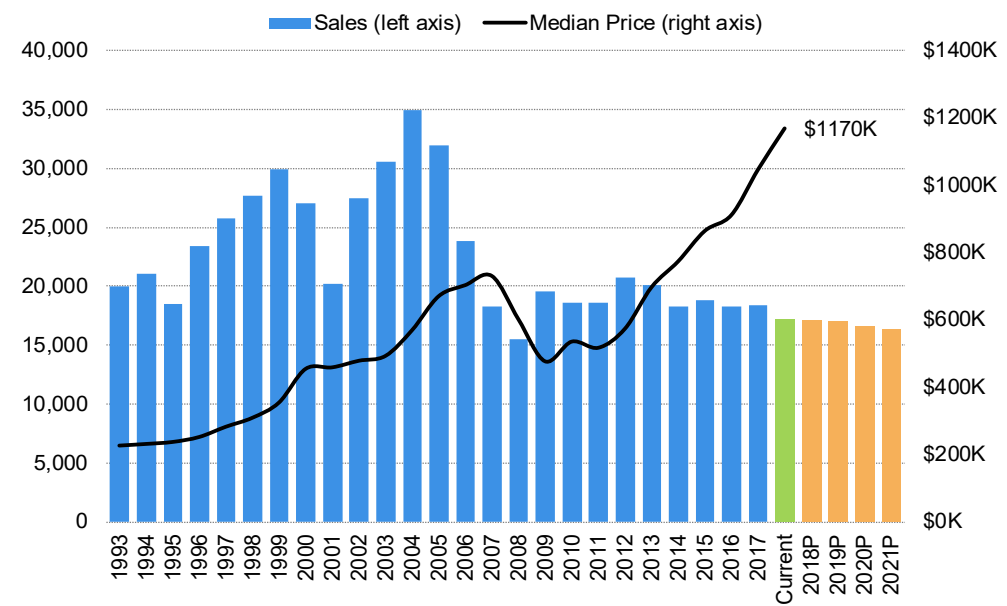
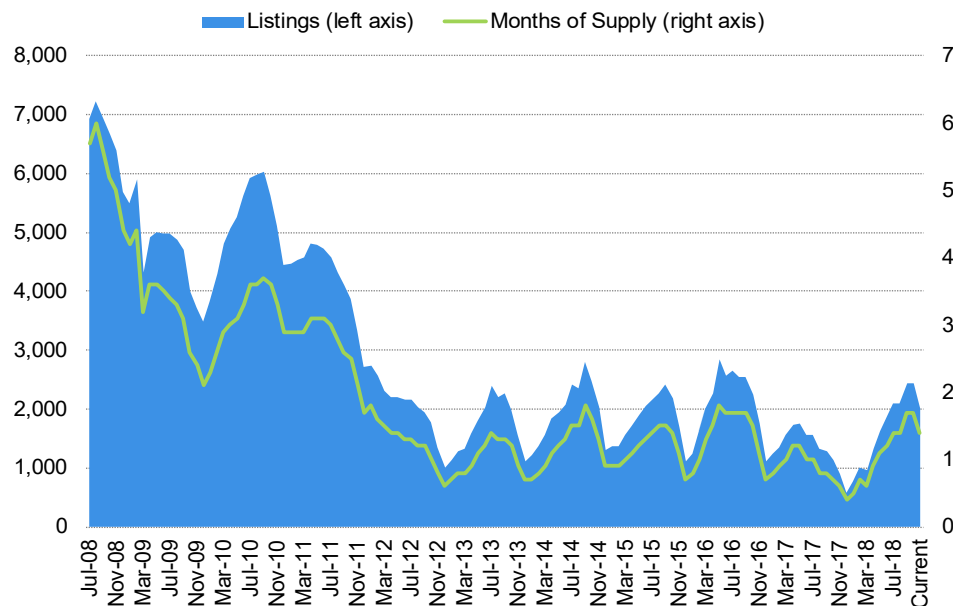
## Resale Listings

## Months of Supply

Current	Year-Ago	Current	Year-Ago
2,005	899	1.4	0.6

## Resale Volume & Price

2018P	2019P	2020P	2021P
17,100	17,000	16,550	16,400
-7.2%	-0.6%	-2.6%	-0.9%



Sources: CoreLogic, Texas Real Estate Center, M.O.R.E., RB Intel, NAR, Various MLS's; John Burns Real Estate Consulting, LLC (Data as of October 2018, projections as of December 2018)



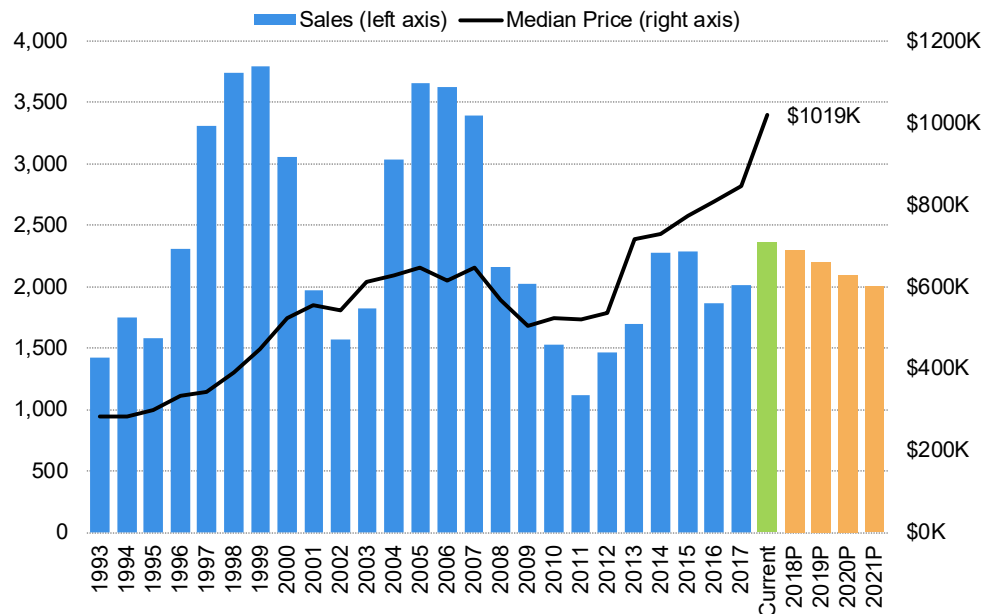
# New Home Market

New home sales troughed in 2011, though have increased gradually since with a slight downturn in 2016. We project 2,250 annual sales from 2018 to 2021.

The new home median price appreciated swiftly from 2012 – 2017 and is currently just over \$1M. Note, the current figure represents year-over-year growth and can fluctuate considerably due to new home supply..

## New Home Volume and Price

2018P	2019P	2020P	2021P
2,300	2,200	2,100	2,000
14.5%	-4.3%	-4.5%	-4.8%

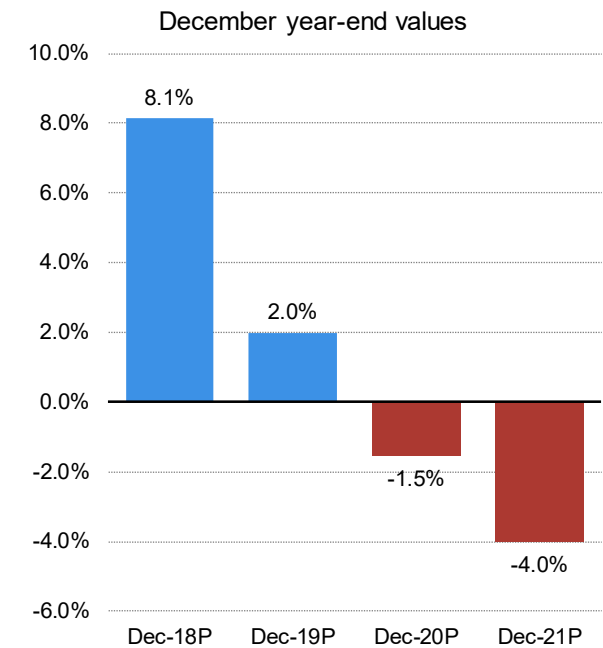


## New Home Prices

### Historical Prices

Year	Med. Price	YOY%
1998	\$391,700	13.8%
1999	\$448,600	14.5%
2000	\$523,400	16.7%
2001	\$556,600	6.3%
2002	\$543,000	-2.4%
2003	\$610,600	12.4%
2004	\$628,900	3.0%
2005	\$646,400	2.8%
2006	\$616,600	-4.6%
2007	\$645,400	4.7%
2008	\$568,900	-11.9%
2009	\$503,100	-11.6%
2010	\$523,800	4.1%
2011	\$521,900	-0.4%
2012	\$536,800	2.9%
2013	\$716,700	33.5%
2014	\$728,400	1.6%
2015	\$773,100	6.1%
2016	\$807,700	4.5%
2017	\$846,000	4.7%

### Forecasted Appreciation<sup>1</sup>



Sources: CoreLogic, Texas Real Estate Center, M.O.R.E, RB Intel, NAR, Various MLS's; John Burns Real Estate Consulting, LLC (Data as of October 2018, projections as of December 2018)



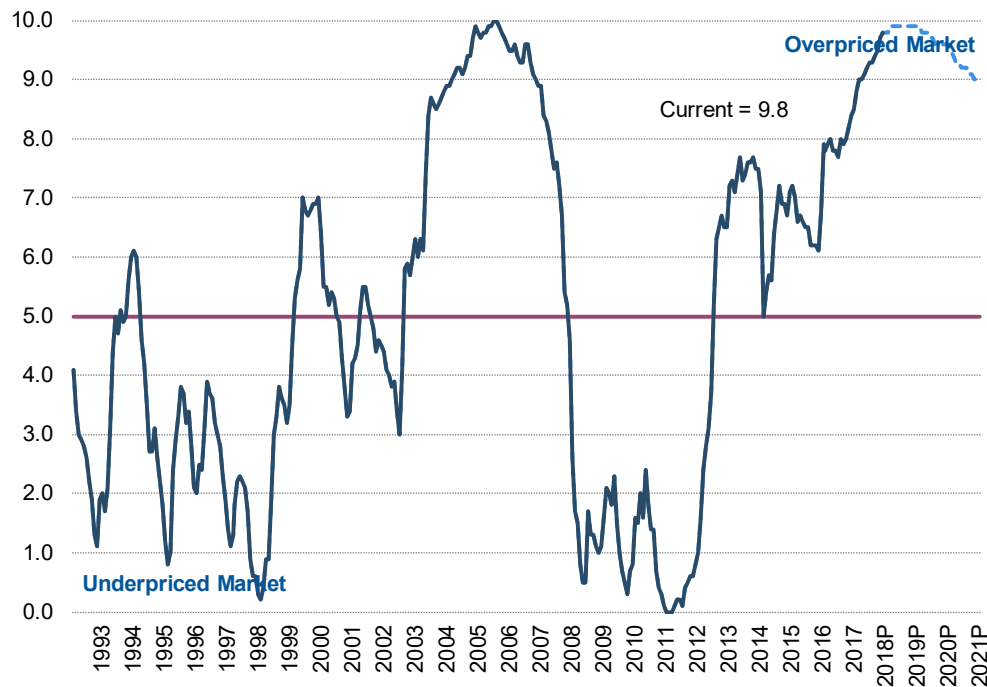
# Affordability and Value

The Burns Affordability Index™ grades on a scale of 0–10 using the annual housing cost to income ratio as its basis. A value of 0–1 represents the 10% most affordable months in a market's history; 9–10 represents the 10% most expensive months; 5 is the median.

[BAI Methodology](#)

## Burns Affordability Index™

2018P	2019P	2020P	2021P
9.8	9.9	9.6	9.0

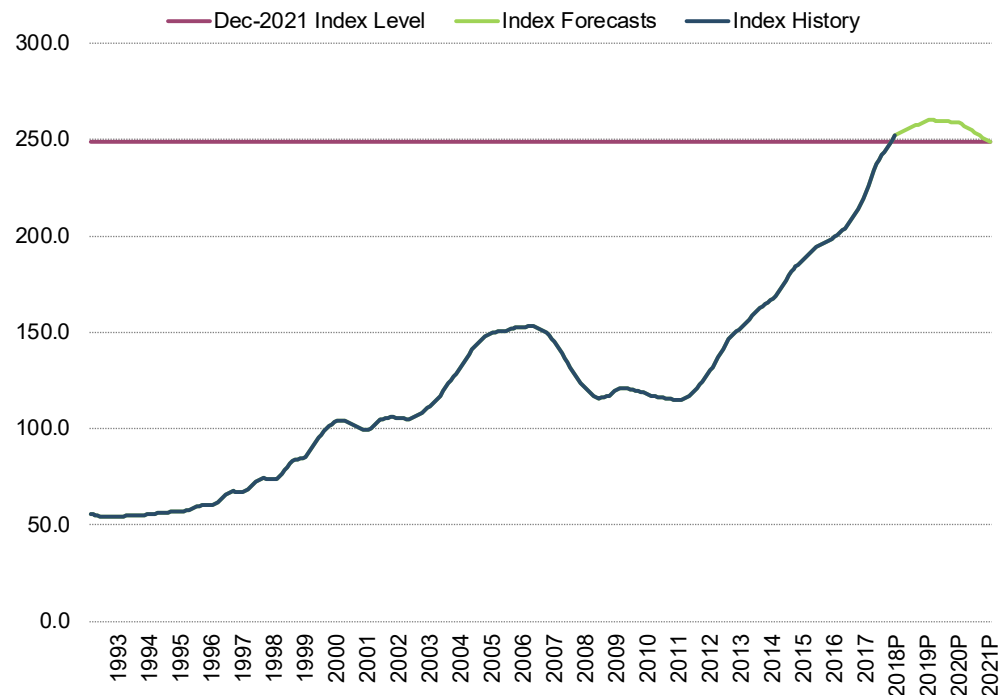


The Burns Home Value Index™ (BHVI) provides our view of home value trends in existing single-family homes. Each month's BHVI is based on an "electronic appraisal" of every home in the market, rather than just actual transactions, removing the influence of shifts in mix of home sales.

[BHVI Methodology](#)

## Burns Home Value Index™

2018P	2019P	2020P	2021P
13.6%	2.8%	-0.5%	-4.0%



Sources: John Burns Real Estate Consulting, LLC (Data as of November 2018, projections as of December 2018)

John Burns Real Estate Consulting

San Jose

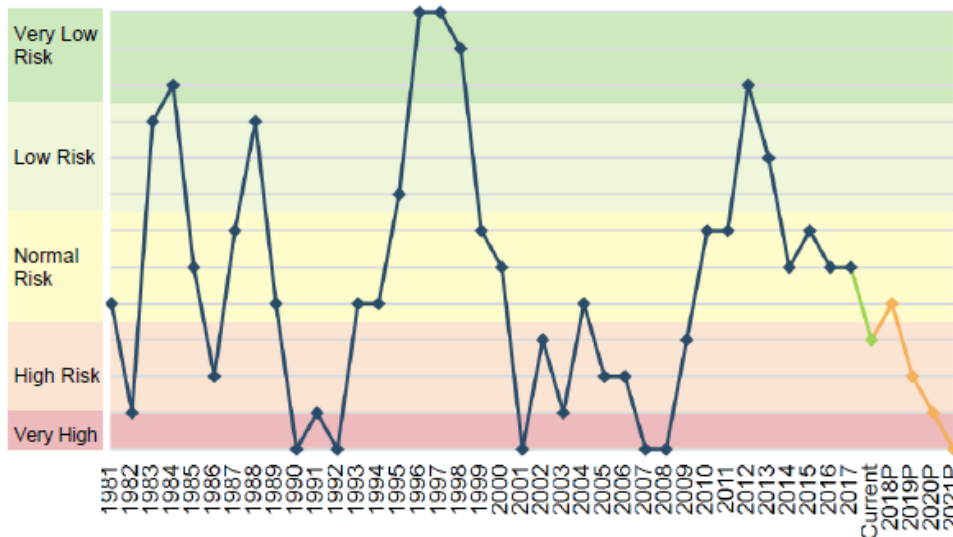
# Housing Cycle Risk Index™ San Jose MSA



Our Housing Cycle Risk Index™ score for this market is currently **High Risk**. We forecast that the risk level will trend to **Very High Risk** by 2021.

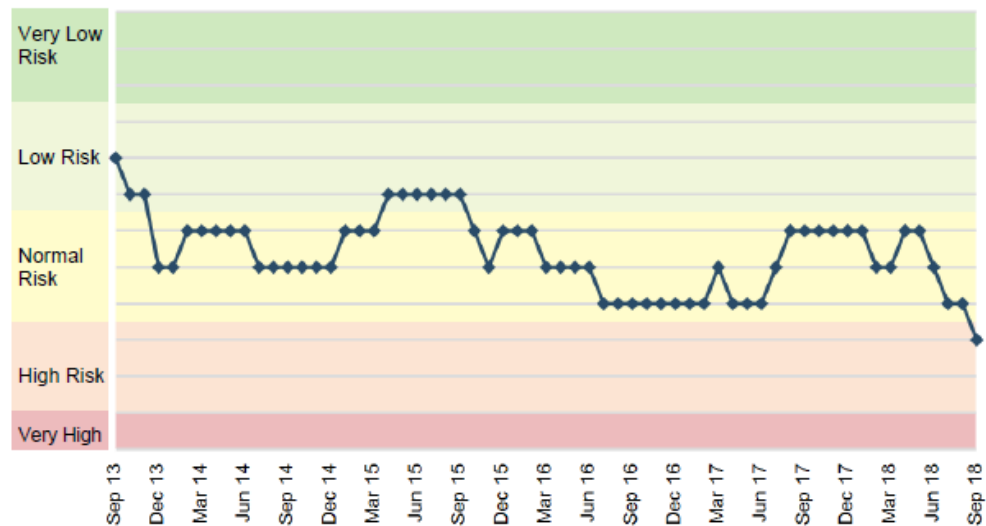
## Annual

Housing Cycle Risk Index™

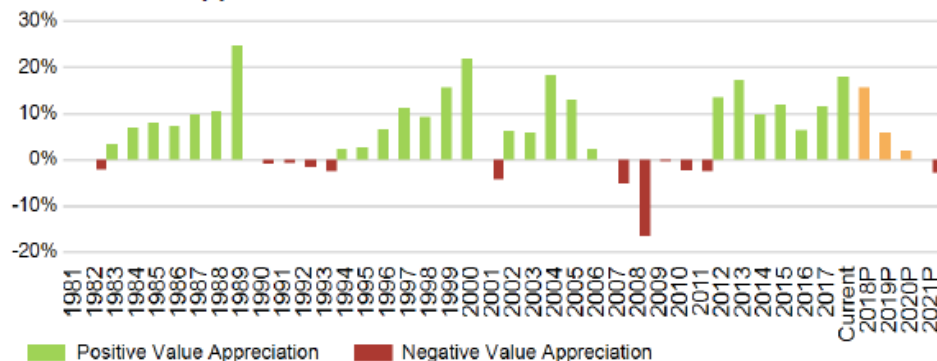


## Monthly

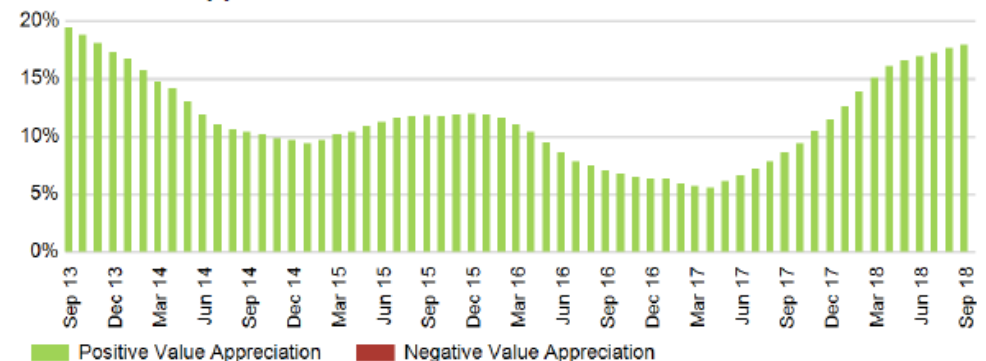
Housing Cycle Risk Index™



Home Value Appreciation YOY



Home Value Appreciation YOY



Housing is a cyclical business. Low-risk conditions occur when demand is strong and rising, supply is low and falling, and mortgage payments are lower than usual in relation to incomes. High-risk times happen when the opposite trends are occurring. Our Housing Cycle Risk Index (HCRI) evaluates, demand, supply, and affordability in each market to determine whether market risks are high or low compared to the market's history, providing a fuller perspective for our clients.

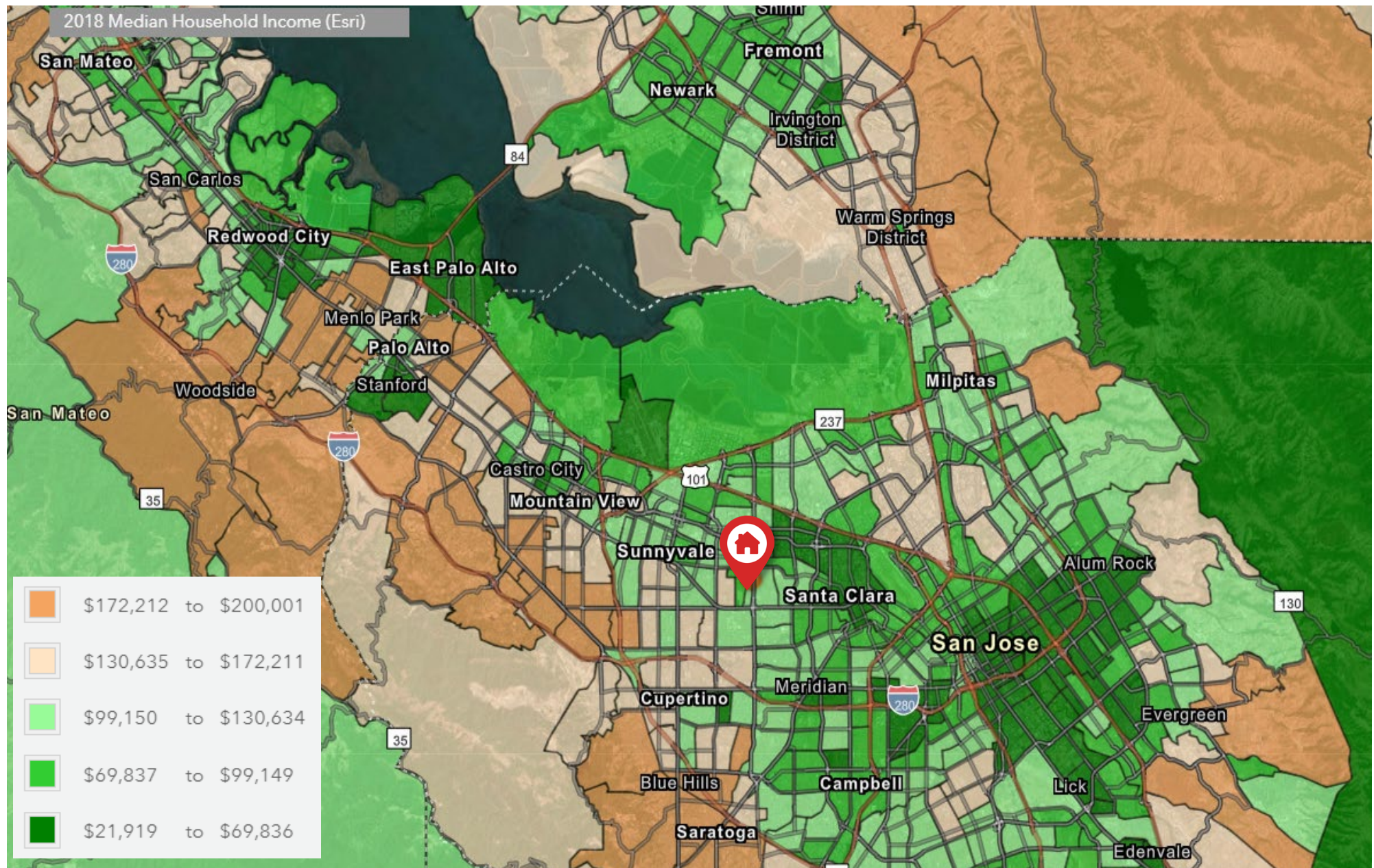


## DEMOGRAPHIC TRENDS





# Median Household Income



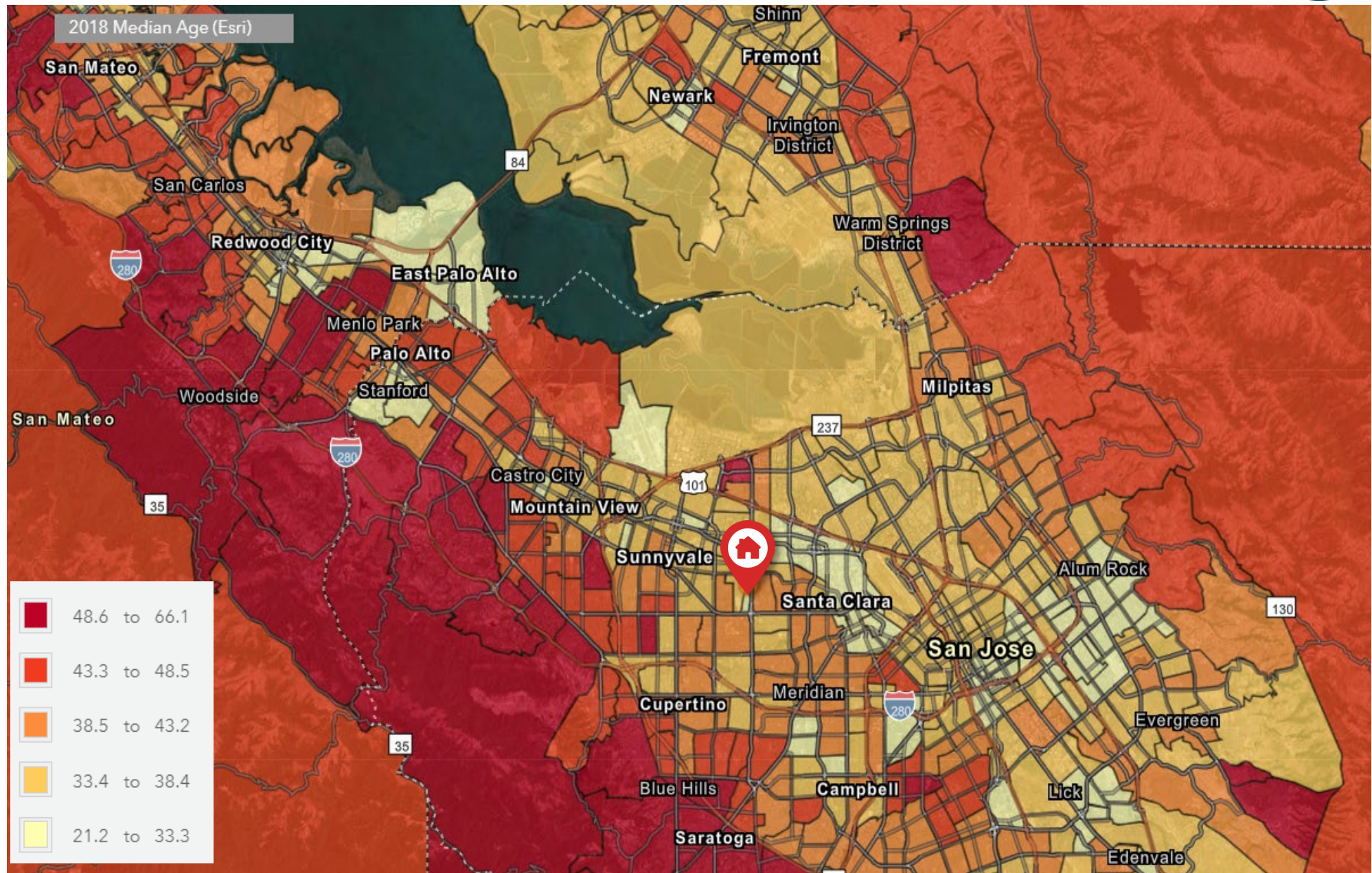
Source: ESRI

John Burns Real Estate Consulting





# Median Age



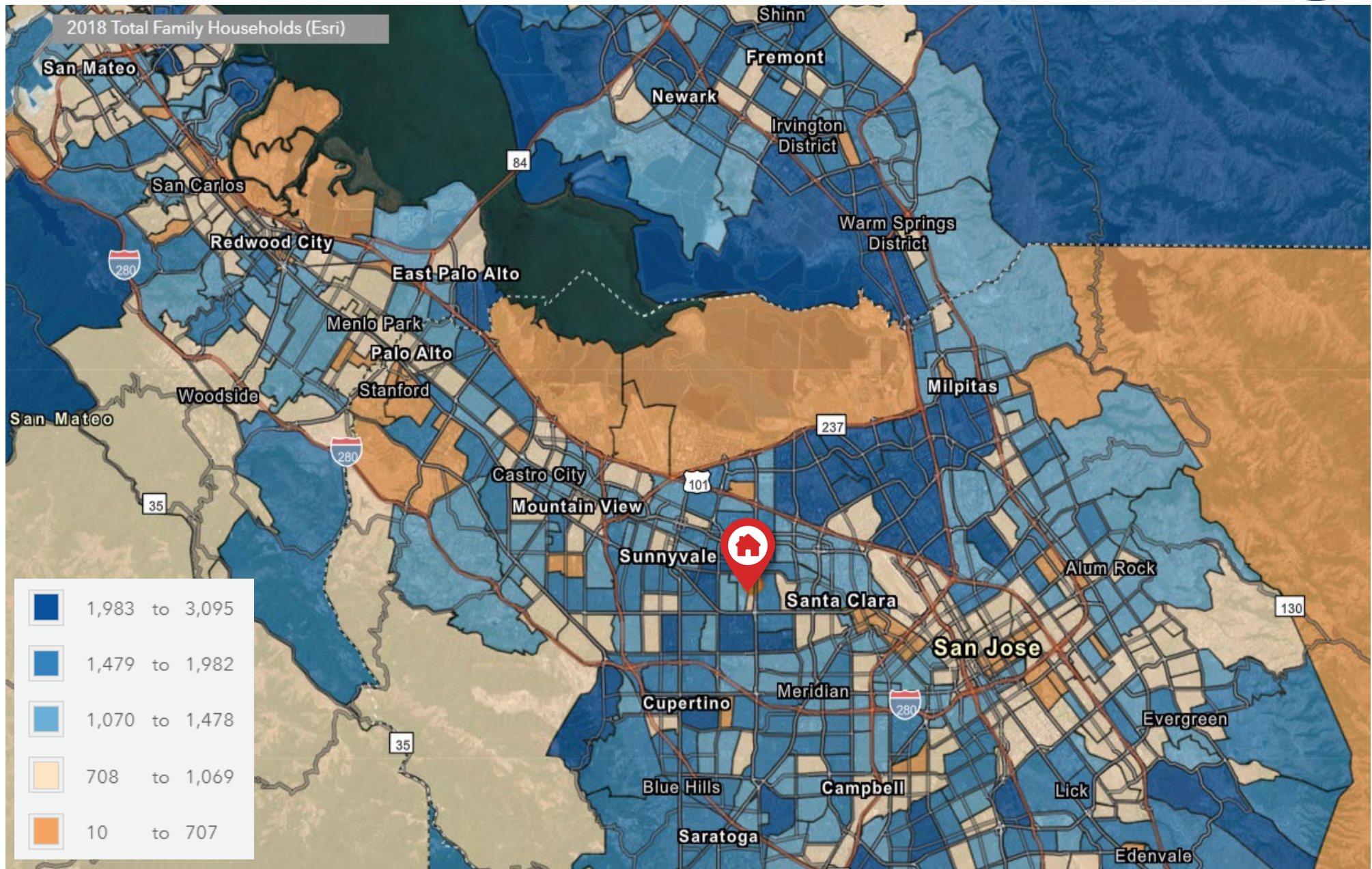
Source: ESRI

John Burns Real Estate Consulting





# Concentration of Family Households



Source: ESRI

John Burns Real Estate Consulting

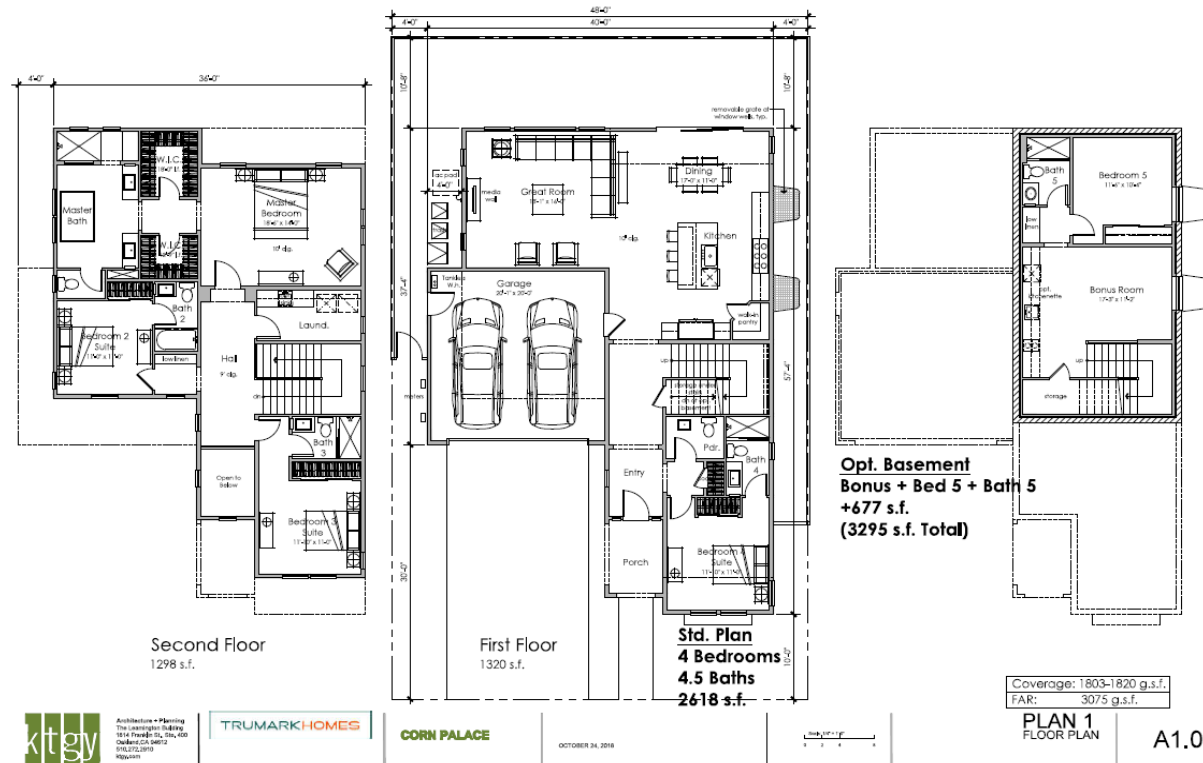
# APPENDIX



## Floor Plans and Elevations



# Subject Floor Plans – Plan 1 (2,618 sf)



**Front Elevation-1-Agrarian A**

- Agrarian A Material Legend:
- 1 Flat Concrete tile roofing / All Presidential Series Composition Shingle
  - 2 Stone Veneer
  - 3 Cementitious board and batten siding
  - 4 Decorative Kicker / Corbel
  - 5 2x Cementitious Trim / All 2x Wood Trim
  - 6 Enhanced Sills



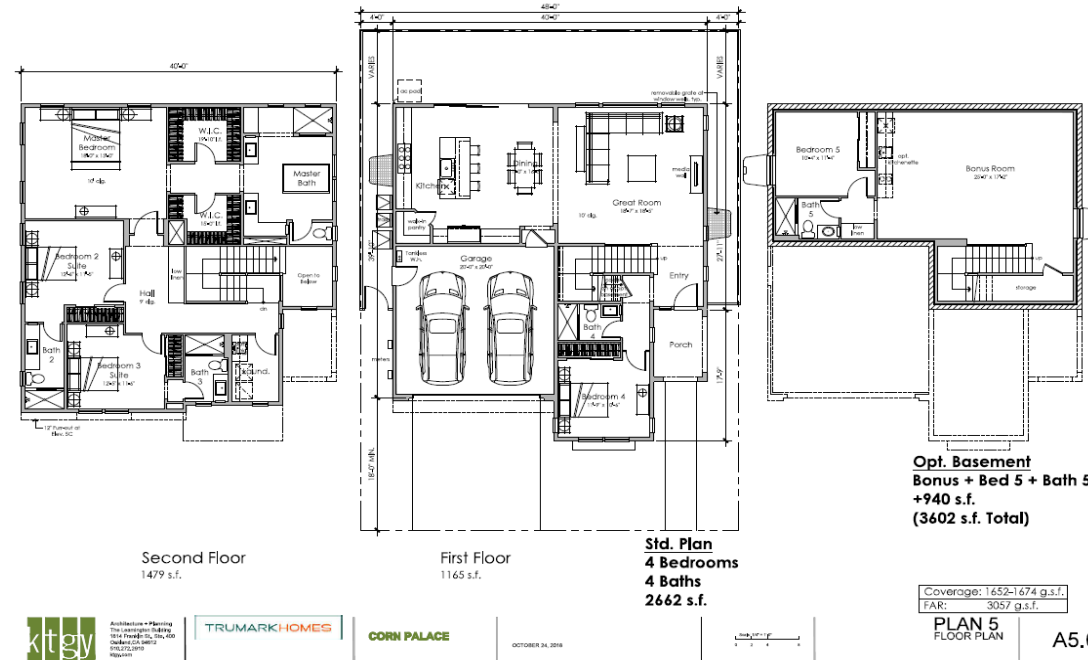
**Front Elevation-1-Agrarian B**

- Agrarian B Material Legend:
- 1 Flat Concrete tile roofing / All Presidential Series Composition Shingle
  - 2 Stone Veneer
  - 3 Cementitious Siding
  - 4 Accent Metal Roofing
  - 5 Decorative Kicker / Corbel
  - 6 2x Cementitious Trim / All 2x Wood Trim
  - 7 Enhanced Sills

Source: Client

John Burns Real Estate Consulting

# Subject Floor Plans – Plan 2 (2,662 sf)



Front Elevation - 5 - Agrarian A

Agrarian A - Material Legend

1. Flat Conc. Tile Roofing / Alt. Presidential Series Composition Shingle
2. Stone Veneer
3. Cementitious Board and Batten Siding
4. Decorative Kicker / Corbel
5. 2x Cementitious Trim / Alt 2x Wood Trim
6. Enhanced Sills
7. Wood Trellis



Front Elevation - 5 - Agrarian B

Agrarian B - Material Legend

1. Flat Conc. Tile Roofing / Alt. Presidential Series Composition Shingle
2. Stone Veneer
3. Cementitious Siding
4. Accent Metal Roofing
5. Decorative Kicker / Corbel
6. 2x Cementitious Trim / Alt 2x Wood Trim
7. Enhanced Sills

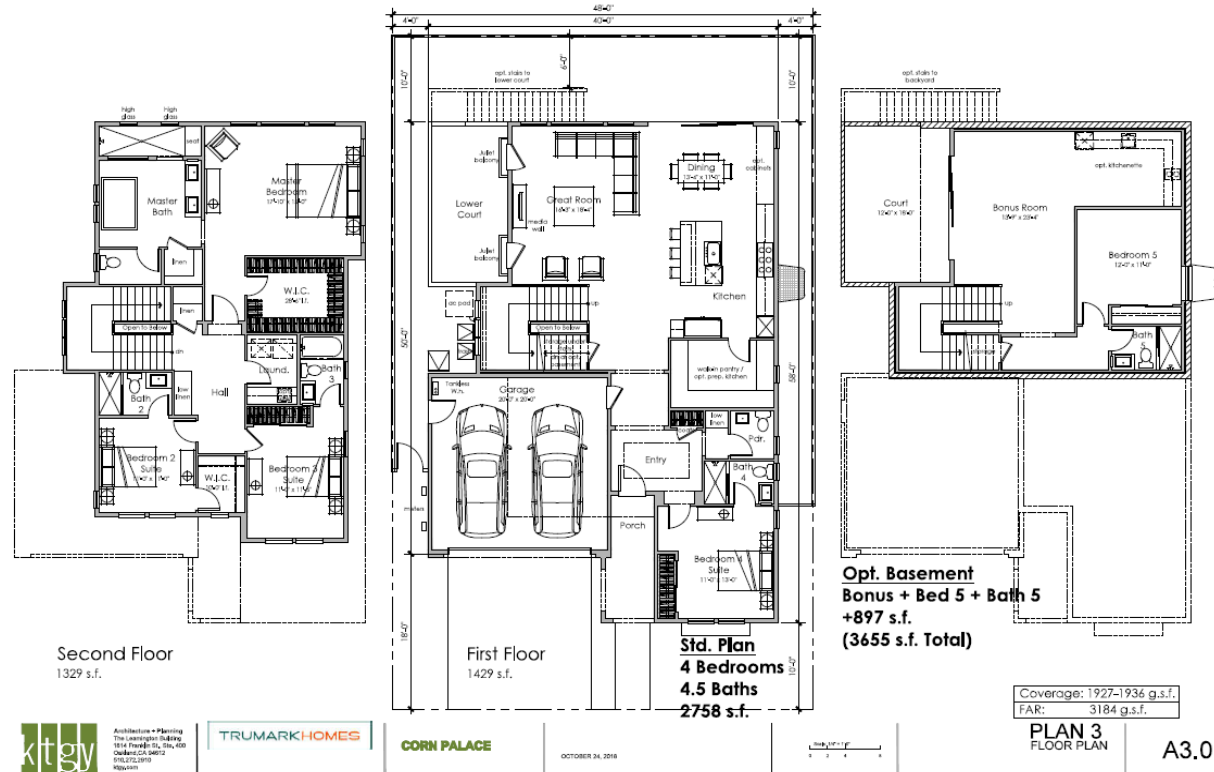


Front Elevation - 5 - Agrarian C

Agrarian C - Material Legend

1. Flat Conc. Tile Roofing / Alt. Presidential Series Composition Shingle
2. Stone Veneer
3. Cementitious Board and Batten Siding
4. Decorative Awning Shutter
5. 2x Cementitious Trim / Alt 2x Wood Trim
6. Enhanced Sills

# Subject Floor Plans – Plan 3 (2,758 sf)



**Front Elevation-3-Agrarian A**

- Agrarian A**  
**Material Legend:**
1. Flat Concrete Tile Roofing / All Presidential Series Composition Shingle
  2. Stone Veneer
  3. Cementitious Board and Batton Siding
  4. Decorative Kicker / Corbel
  5. 2x Cementitious Trim / All 2x Wood Trim
  6. Enhanced Sills
  7. Wood Posts
  8. Wood Trellis

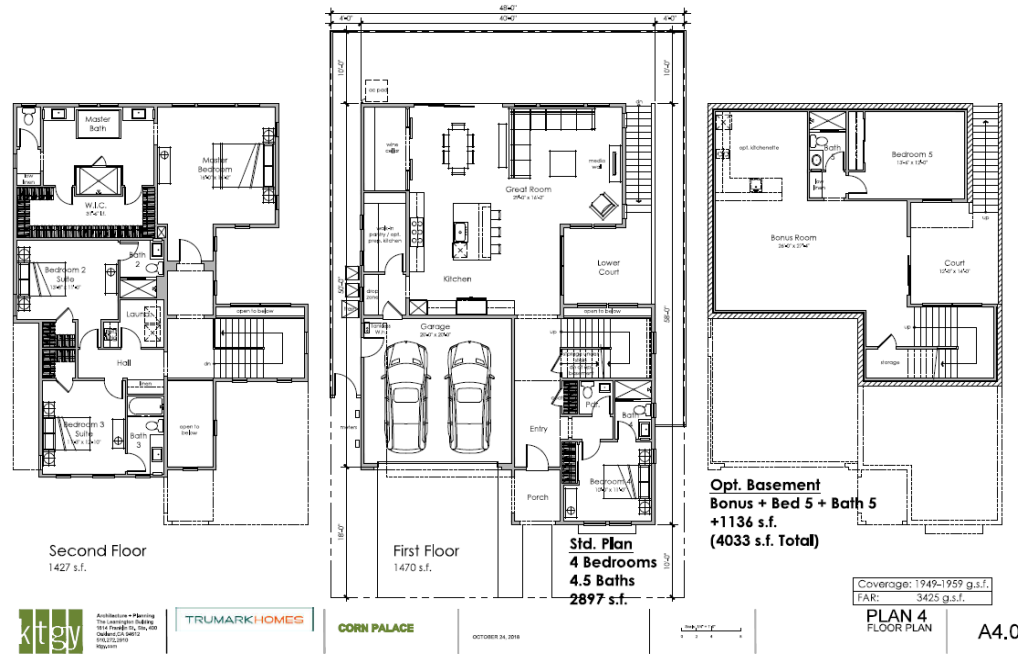


**Front Elevation-3-Agrarian B**

- Agrarian B**  
**Material Legend:**
1. Flat Concrete Tile Roofing / All Presidential Series Composition Shingle
  2. Stone Veneer
  3. Cementitious Siding
  4. Acrylic Metal Roofing
  5. Decorative Kicker / Corbel
  6. 2x Cementitious Trim / All 2x Wood Trim
  7. Enhanced Sills



# Subject Floor Plans – Plan 4 (2,897 sf)



Front Elevation - 4 - Agrarian A  
Agrarian A - Material Legend  
1. Flat Conc. Tile Roofing / Alt.  
Presidential Series Composition Shingle  
2. Stone Veneer  
3. Cementitious Board and Batten Siding  
4. Decorative Kicker / Corbel  
5. 2x Cementitious Trim / Alt 2x Wood Trim  
6. Enhanced Sills



Front Elevation - 4 - Agrarian B  
Agrarian B - Material Legend  
1. Flat Conc. Tile Roofing / Alt.  
Presidential Series Composition Shingle  
2. Stone Veneer  
3. Cementitious Siding  
4. Accent Metal Roofing  
5. Decorative Kicker / Corbel  
6. 2x Cementitious Trim / Alt 2x Wood Trim  
7. Enhanced Sills  
8. Wood Posts and Corbels



Front Elevation - 4 - Agrarian C

Agrarian C - Material Legend  
1. Flat Conc. Tile Roofing / Alt.  
Presidential Series Composition Shingle  
2. Stone Veneer  
3. Cementitious Board and Batten Siding  
4. Decorative Awning Shutter  
5. 2x Cementitious Trim / Alt 2x Wood Trim  
6. Enhanced Sills



# Limiting Conditions

This report's conclusions and recommendations are based on our analysis of the information available to us from our research and from the client as of the date of this report. We assume that the information is correct and reliable and that we have been informed about any issues that would affect project marketability or success potential.

Our conclusions and recommendations are based on current and expected performance of the national, and/or local economy and real estate market. Given that economic conditions can change and real estate markets are cyclical, it is critical to monitor the economy and real-estate market continuously and to revisit key project assumptions periodically to ensure that they are still justified.

Due to changes in market conditions, as well as changes in consumer psychology, projected and actual results will likely differ. Events and circumstances frequently do not occur as expected, and the differences may be material. We do not express any form of assurance on the achievability of any pricing or absorption estimates or reasonableness of the underlying assumptions.

In general, for projects out in the future, we are assuming "normal" real estate market conditions and not a condition of either prolonged "boom" or "bust" market conditions. We do assume that economic, employment, and household growth will occur more or less in accordance with current expectations. We are not taking into account major shifts in the level of consumer confidence; in the ability of developers to secure needed project entitlements; in the cost of development or construction; in tax laws that favor or disfavor real estate markets; or in the availability and/or cost of capital and mortgage financing for real estate developers, owners and buyers. Should there be such major shifts affecting real estate markets, this analysis should be updated, with the conclusions and recommendations summarized herein reviewed and reevaluated under a potential range of build-out scenarios reflecting changed market conditions.

We have no responsibility to update our analysis for events and circumstances occurring after the date of our report.



# John Burns Real Estate Consulting

*JBREC is a national consulting and research firm designed to help real estate professionals make informed investment decisions.*

## JBREC SERVICES

### Consulting

- Project & Product Positioning
- Market / Portfolio Analysis
- Consumer Research & Focus Groups
- Demand Analysis
- SFR / Build-to-Rent Feasibility
- Financial Modeling
- Home Builder Operations Assessment
- Economic Analysis & Forecasting
- Strategic Direction & Planning
- Litigation Support & Expert Witness

### DesignLens

- Model Homes
- Master-planned Communities
- Historical Neighborhoods
- Town/Commercial Centers

### Research

- Exclusive Access to our Research & Consulting Executives
- Metro Analysis & Forecast
- Regional Analysis & Forecast
- Home Builder Analysis & Forecast
- Apartment Analysis & Forecast
- Exclusive Client Events
- Public-Builder Call Summaries
- Weekly Insight
- Presentations & Webinars
- Consumer Research
- Proprietary Surveys

### Consumer & Product Insights

- Consumer & Product Insights National Report
- Product Segmentation
- Mapping Studies
- Consumer Segmentation
- Site & Product Validation
- Custom Survey Analysis
- Focus Groups



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*Senior Vice President*

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 dean@jbrec.com



**Kristin Matthews**  
*Manager*

(858) 281-7215  
 kmatthews@realestateconsulting.com

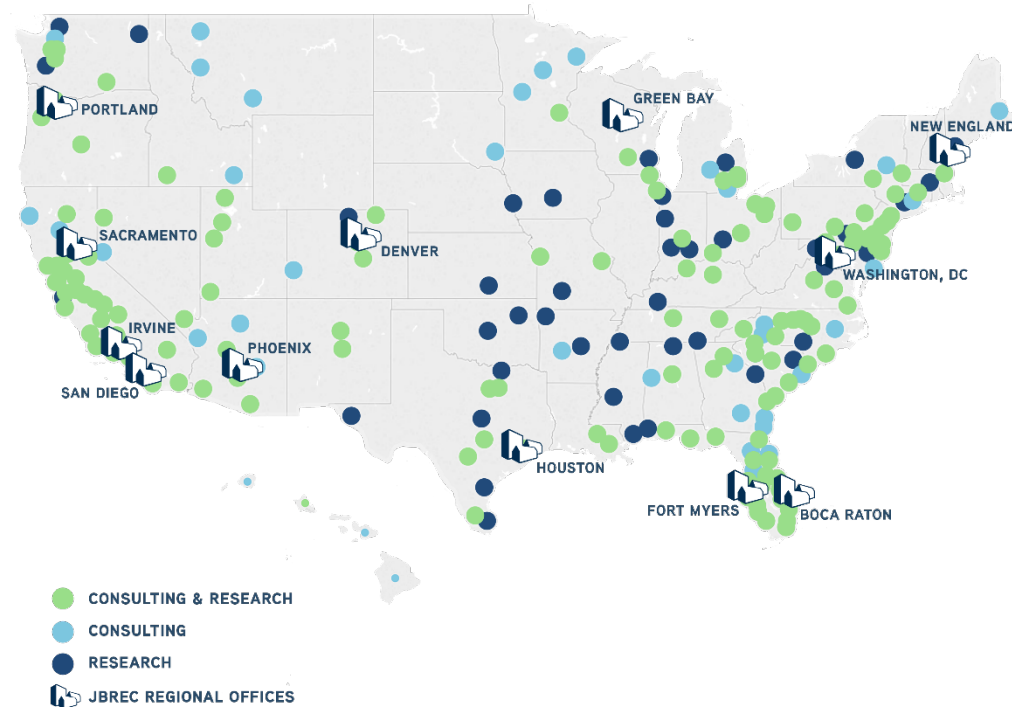


**Michael Gladwill**  
*Consultant*

(949-870-1239  
 mgladwill@realestateconsulting.com

## PEER REVIEW

**Dana Kuhn**  
*Director of Quality Control*  
 (858) 281-7208  
 dkuhn@realestateconsulting.com



## Our Experts

### BOCA RATON

1900 Glades Road  
 Suite 240  
 Boca Raton, FL 33431  
 (561) 998-5814

### FORT MYERS

8831 Business Park Drive  
 Suite 301  
 Fort Meyers, FL 33912  
 (239) 300-5057

### IRVINE

9140 Irvine Center Drive  
 Suite 200  
 Irvine, CA 92618  
 (949) 870-1200

### SACRAMENTO

111 Woodmere Road  
 Suite 250  
 Folsom, CA 95630  
 (949) 870-1227

### WASHINGTON D.C.

11710 Plaza America Drive  
 Suite 2000  
 Reston, VA, 20190  
 (703) 447-7171

### OTHER OFFICES

(949) 870-1200  
 Phoenix, AZ  
 New Hartford, NY  
 Portland, OR

### COLORADO

1630-A 30th Street  
 Suite 475  
 Boulder, CO 80301  
 (720) 328-1530

### HOUSTON

5909 West Loop South  
 Suite 590  
 Bellaire, TX 77401  
 (713) 906-3829

### NEW ENGLAND

155 Fleet Street  
 Suite 11  
 Portsmouth, NH 03801  
 (603) 235-5760

### SAN DIEGO

4250 Executive Square  
 Suite 540  
 La Jolla, CA 92037  
 (858) 281-7200

### WISCONSIN

2300 Riverside Drive  
 Suite 124  
 Green Bay, WI 54301  
 (920) 373-6727

Exhibit B



**CITY OF SUNNYVALE - HOUSING DIVISION**  
 456 West Olive Avenue, Sunnyvale, CA 94086  
 Office: (408) 730-7250  
 Fax: (408) 737-4909  
 TDD: (408)-730-7501

**Below Market Rate (BMR) Compliance Plan**  
**Pursuant to Sunnyvale Municipal Code Chapter 19.67**

Developer Information	
Developer Company Name: Trumark Homes	
Representative (Name): Heide Antonescu	Daytime Phone Number: (925) 999-3967
Representative Email: hantonescu@trumarkco.com	
Mailing Address: 3001 Bishop Drive, Suite 100, San Ramon, CA 94583	
Property Owner (if different from Developer): Gabriel Francia	
Project Information	
Project Name: Corn Palace	Project APN(s): 213-12-001
Project Situs Address: 1142 Dahlia Court, Sunnyvale, CA 94086	
Planning Application # (if applicable): 2017-7451	Building Permit # (if applicable):
Type of Housing (SF, Condo, Townhouse): S.F. Detached	
Total Number of Housing Units: 58	
Number of BMR Units Required (Total Number of Housing Units multiplied by 12.5%): 7	

\* If project has 7 or fewer units, it is exempt from Chapter 19.67 – Do Not Complete this Form

Select Your Proposed Method(s) of Complying with the City's Inclusionary Housing Policy
Standard Compliance:
<input type="radio"/> Will Provide the Required Number of BMR Units for Sale Within the Project
Alternative Compliance Options*:
<input checked="" type="radio"/> Payment of In-lieu Fees
<input type="radio"/> Transfer of Credits
<input type="radio"/> Will utilize the Unit Conversion Program

\* All of the alternative options require recordation of an additional legal agreement with the City.

**If you mark any of the last two options above, please attach a separate signed letter further describing, in detail, your proposed alternative for compliance with Chapter 19.67.**

If Calculation Results in a Fractional Unit, Select an Option Below
<input type="radio"/> Elect to Pay an In-lieu Fee for the Fractional Amount Prior to the Issuance of the First Building Permit for the Project.
<input type="radio"/> Elect to Provide an Additional Affordable Unit Instead of Paying the Fraction Fee.

Details regarding payment of a fractional in-lieu fee can be obtained by calling the City at (408) 730-7250.

Signatures	
Developer's Signature: <i>Heide Antonescu</i>	Date: 10/24/18
City's Approval of Plan: <i>Trumark</i>	Date: 10/25/18



# City of Sunnyvale

## Agenda Item

19-0459

Agenda Date: 4/17/2019

### REPORT TO HOUSING AND HUMAN SERVICES COMMISSION

#### **SUBJECT**

Consider a Below Market Rate Alternative Compliance Plan for Residential Development at 1142 Dahlia Court. Applicant: Trumark Homes; Planning Files 2018-7989 and 2018-7451.

#### **BACKGROUND**

In March, 2019, the Planning Commission approved a new residential development proposed by Trumark Homes for 58 single-family homes at 1142 Dahlia Court, aka "The Corn Palace", Planning File 2018-1055. The Conditions of Approval require compliance with the Below Market Rate Housing requirements (BMR), codified in Sunnyvale Municipal Code (SMC) Chapter 19.67 (Chapter 19.67).

SMC Chapter 19.67 requires that residential projects of eight or more new ownership units provide 12.5% of the units in the project as BMR homes, affordable to moderate- or lower-income home buyers. Further, it allows the applicant to apply for City Council approval of an alternative compliance option, as defined in SMC Section 19.67.090, to satisfy the BMR requirements. Additionally, the City's Administrative Policy requires the Housing and Human Services Commission to review and make a recommendation to City Council when an alternative compliance option is requested by an applicant.

Prior to the public hearing date for this project with the Planning Commission, the Applicant filed an application, Planning File 2018-7989, requesting City Council approval for the alternative compliance option of paying BMR in-lieu fees (ILF) rather than providing BMR homes within the project. This ILF option is set forth in SMC Section 19.67.090(b), while SMC Section 19.67.090 (a) allows Council discretion to approve or deny the Applicant's proposal to pay ILF to satisfy the BMR requirements for each project.

The City Council is scheduled to consider this item on May 21, 2019.

#### **EXISTING POLICY**

Sunnyvale General Plan, Housing Element

**Goal A:** Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale's households of all income levels.

**Policy A.3:** Utilize the BMR Housing requirements as a tool to integrate affordable units within market rate developments, and increase the availability of affordable housing throughout the community.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably

foreseeable indirect physical change in the environment.

### **DISCUSSION**

The Zoning Code defines “ownership housing” as a residential development where each dwelling unit is developed to be sold separately to a home buyer, primarily intended for owner-occupancy. BMR requirements apply to ownership housing projects of eight or more new ownership units (e.g., single-family homes, townhouses, or condominiums). The standard requirement is for 12.5% of the ownership units in such projects to be provided as BMR homes. The BMR requirement for the Corn Palace site would equal 7.25 BMR units. Fractional units may be rounded up to the nearest whole number, or a pro-rated in lieu fee (ILF) may be paid by the applicant prior to issuance of the Building Permit. Sunnyvale Municipal Code Chapter 19.67 allows developers to seek City Council approval of one of several alternative compliance options, such as an ILF payment for the entire BMR obligation.

The ILF rate is set at 7% of the final contract sales price of each market-rate home in the project. Payment of this fee for each home in the project would fully satisfy the BMR requirement for that component. The applicant is requesting City Council approval of the alternative to pay ILF for all units in this project.

### **Estimated In-Lieu Fee Amount**

Staff estimated the potential ILF revenue to be \$10,400,000, based on the Market Feasibility Study of potential home prices, provided by the applicant and included in this report as Attachment 2. The actual ILF paid could be higher or lower than these estimates if local home values increase or decrease by the time these homes are sold.

### **Process for Collecting the BMR In-Lieu Fee**

The requirement to pay the ILF is enforced by recording a BMR Developer Agreement against each property within the project, creating a lien against title until the BMR requirements are satisfied in full. With the ILF option, staff also places a Demand for Payment into escrow for the sale of each home to collect the ILF. At the close of escrow of each new home, the escrow officer will send a check to the City for the ILF due from the sales proceeds of that home. Staff then provides a partial lien release for the escrow officer to record, releasing that home from requirements of the BMR agreement. This process repeats until all the homes in the project are sold.

### **Considerations Related to Use of In-Lieu Fee as Alternative Compliance Plan**

Historically, most ownership projects in Sunnyvale provide on-site BMR units, even in single-family developments, and pay ILF only for fractional units. This project is the third to apply for City Council approval of any alternative compliance option since those options were created through amendments to the SMC adopted in 2012. On October 3, 2017, City Council approved two Alternative Compliance Plan requests for payment of an ILF rather than provide on-site BMR units.

SMC Chapter 19.67 does provide additional compliance options available to the Applicant. The rationale behind most of these alternatives is largely the same: to provide a greater number of affordable housing units to more households than could be achieved through the standard compliance option. Often these alternatives also result in deeper income-targeting of the units, serving very low or even extremely low income households, for example.

These alternatives are most preferable when a project consists of large, luxury, expensive homes. In



**19-0459****Agenda Date: 4/17/2019**

such cases, more units of affordable housing could be provided to assist more households through payment of an ILF, which the City would award to a non-profit development partner, compared to the standard compliance option. The ILF can fund affordable projects where economies of scale, modest unit sizes, and higher density reduces the per-unit cost compared to that of market-rate units, allowing more affordable housing units to be created. Also, most affordable projects leverage local funds with federal tax credits or other sources that far exceed the local funding amount, often by a 6:1 ratio, so the impact of the ILF can be much greater.

The level of unmet demand for all types of rental housing affordable to lower-income households, particularly very low-income households, far exceeds the unmet demand for moderate-income, BMR for-sale housing. This is because a larger segment of the population is in the lower-income ranges, and very few market-rate homes or rentals are affordable to lower-income households.

The standard BMR compliance option in higher-priced, luxury projects can also create difficulties for staff in handling the sale of very few, highly desirable BMR homes, given the high demand. In these cases, staff would hold a lottery, which is often time intensive for staff and stressful for potential buyers. In addition, large and luxury homes, while sold at BMR prices, are extremely expensive to maintain and insure for a household at a lower income level and can often cause a financial burden they may have been unaware of.

For the above reasons, some housing policy advocates assert that, particularly in cases of projects of larger, higher-priced homes, greater public benefit results from using ILF payments to assist many more households, and often with greater need for assistance, than could benefit from a few BMR homes provided within the project.

### **FISCAL IMPACT**

If approved, staff estimates that the Alternative Compliance Plan for Corn Palace could result in total revenues of approximately \$10.4 million, deposited to the BMR sub-fund of the Housing Special Revenue Fund (70-200). This Fund can be used to assist various affordable housing projects with an emphasis on creating new affordable units for rent or sale. The funds can also be used to fund rehabilitation projects, provide First Time Home Buyer loans, and create new affordable housing programs. The Alternative Compliance Plan would have no impact on the General Fund.

Staff periodically issues Requests for Proposals for new affordable housing projects to be funded using BMR and/or other available Housing funds. Use of these Housing-related funds would be reviewed by the Housing and Human Services Commission and approved by City Council during the City's normal budgeting process or prior to awarding and funding proposals.

### **PUBLIC CONTACT**

Public contact was made through posting of the Housing and Human Services Commission agenda on the City's official-notice bulletin board, on the City's website, and the availability of the agenda and report in the Office of the City Clerk.

### **ALTERNATIVES**

1. Recommend City Council approval of the Applicant's BMR Alternative Compliance Plan project located at 1142 Dahlia Court, as shown in Attachment 2 to this report.
2. Recommend City Council approval of the Applicant's BMR Alternative Compliance Plan project



**19-0459****Agenda Date: 4/17/2019**

located at 1142 Dahlia Court, with modifications.

3. Do not recommend City Council approval of the BMR Alternative Compliance Plan the project and require the Applicant to comply with the BMR conditions of approval by providing BMR units within the project, or other alternative specified by City Council.

**STAFF RECOMMENDATION**

Alternative 1) Recommend City Council approval of the Applicant's BMR Alternative Compliance Plan project located at 1142 Dahlia Court, as shown in Attachment 2 to the report

Staff recommends approving the Alternative Compliance Plan, as requested, to allow payment of an In-Lieu Fee to satisfy the Inclusionary Housing requirement for the Corn Place project. Through this Alternative Compliance Plan, the City would receive over \$10 million to use for new affordable housing projects to be determined at a future date. This approach allows the City to use these funds to assist our non-profit partners develop a much larger number of extremely low, very few, and low income units in our community.

Prepared by: Ernie Defrenchi, Affordable Housing Manager

Reviewed by: Jennifer Carloni, Housing Officer

Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. *Reserved for Report to Council*
2. Corn Palace Market Feasibility Analysis
3. BMR Alternative Compliance Plan



# City of Sunnyvale

## Meeting Minutes - Draft (excerpt)

### Housing and Human Services Commission

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Wednesday, April 17, 2019

7:00 PM

West Conference Room, City Hall, 456 W.  
Olive Ave., Sunnyvale, CA 94086

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#### Special Meeting

- 3**      [19-0459](#)      Consider a Below Market Rate Alternative Compliance Plan for Residential Development at 1142 Dahlia Court. Applicant: Trumark Homes; Planning Files 2018-7989 and 2018-7451.

Housing Officer Jenny Carloni provided the staff report and noted that a representative from Trumark was available to answer questions.

After clarifying questions of staff, Commissioner Evans opened the public hearing at 7:48 p.m.

Mr. Ray Crump spoke in support of accepting the BMR Alternative Compliance Plan.

Commissioner Evans closed the public hearing at 7:50 p.m.

Heide Antonescu from Trumark briefly spoke to clarify the applicants project and Alternative Compliance Plan request.

After questions and discussion, Commissioner Evans asked for a motion:

**MOTION:** Commissioner Hiremath moved and Commissioner Kwok seconded the motion to reject Alternative 1) Recommend approval of the Applicant's BMR Alternative Compliance Plan project located at 1142 Dahlia Court.

The motion failed by the following vote:

**Yes:** 2 -    Commissioner Hiremath  
                         Commissioner Kwok

**No:** 2 -    Commissioner Evans  
                         Commissioner Stetson

**Absent:** 2 - Chair Gilbert  
Vice Chair Grossman

Commissioners Evans and Stetson dissented because, in their opinion, receiving the in-lieu fee had the potential to leverage the production of a greater number of affordable housing units.

After additional discussion, Commissioner Evans asked for a motion.

MOTION: Commissioner Stetson moved and Commissioner Evans seconded the motion to approve Alternative 1) Recommend City Council approval of the Applicant's BMR Alternative Compliance Plan project located at 1142 Dahlia Court, as shown in Attachment 2 to the report.

The motion failed by the following vote:

**Yes:** 2 - Commissioner Evans  
Commissioner Stetson

**No:** 2 - Commissioner Hiremath  
Commissioner Kwok

**Absent:** 2 - Chair Gilbert  
Vice Chair Grossman

Commissioners Hiremath and Kwok dissented because in their opinion there is merit in providing affordable home ownership opportunities even while benefitting a smaller number of households.



# City of Sunnyvale

## Agenda Item

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19-0523

Agenda Date: 5/21/2019

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### REPORT TO COUNCIL

#### SUBJECT

Authorize the City Manager or His Designee to Execute a Small Cell License Agreement with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless and Delegate Authority for Term Extensions and Find the Project Categorically Exempt under CEQA

#### BACKGROUND

Over the past year, AT&T and other wireless carriers have approached the City with requests to deploy small cell facilities within the public right-of-way on City owned street lights as these existing vertical infrastructures are ideally suited to support small cell networks to enhance broadband services throughout the community.

Small cells are wireless telecommunication devices that consist of radio receivers, antennas and other associated power and electronics. Small cells base station equipment can range in sizes upwards of eight cubic feet while antennas can range in size upwards of three cubic feet. Small cells produce considerably less emissions than typical macro-cell towers, and help to mitigate and manage the use of the wireless frequency spectrum. A macro-cell's range is typically between two and three kilometers, given small cells typically use low-power radios and smaller antennas that have a shorter signal propagation range. This requires the small cells to be spaced closer together and closer to the user in order to deliver high capacity data services.

The City adopted wireless telecommunications zoning regulations in 1997, with a focus on wireless projects on private property. Since that time, there has been rapid growth and revolutionary changes in the wireless telecommunications fields, requiring increased demand and reliability for data coverage and capacity. As more consumers are accessing services that are associated with the "Internet of Things" (e.g., smart phones, home security, internet shopping, control of home devices and future autonomous vehicles), the demand for data capacity and speed is rapidly rising with no plateau anticipated. Zoning Regulations were updated in 2014 to better address telecommunications facilities in the public right-of-way.

To date, the City has not allowed small cell wireless technology on City-owned assets. Wireless providers have been directed to utilize other vertical infrastructure, most notably, wooden joint utility poles, located in the public right-of-way. However, the City has limited control over the aesthetics associated with hanging equipment off these poles, as they are not City-owned. Allowing the wireless carriers to utilize City structures gives the City more ability to regulate consistent size and look of equipment on streetlights throughout the City.

Wireless providers are reacting to customer demands and are now in the process of deploying the infrastructure to meet current data demands and to prepare for consumer deployment of fifth

generation wireless systems (i.e., 5G - small cell) technology as it becomes available (estimated in 2021). This new small cell infrastructure will be located primarily on existing vertical infrastructure in the public right of way and tend to move away from the large towers located on private property. Wireless providers noted that new locations for wireless installations on private property are limited and more difficult to negotiate and permit. Given the increasing cost and frequent public concern and resulting delay associated with leases on private property, the wireless providers have been looking for alternatives to allow continued expansion, leading them to advocate for less expensive and more streamlined deployment on utility poles and other City-owned facilities in the City's rights-of-way. The City owns over 9,000 street lights in the right-of-way.

### **FCC Rules**

On September 26, 2018, the Federal Communications Commission ("FCC") voted to approve a declaratory ruling and report and order (FCC Order 18-133) (Attachment 2), enacting new regulations over small cell wireless facility deployment and management of local rights of way. The FCC has jurisdiction over interstate telecommunications facilities.

The Order that went into effect on January 14, 2019, preempts and limits cities' ability to regulate the use of city-owned vertical infrastructure for small cell facilities in several important ways, including:

- Reducing the time limit for cities to process applications for small cells to either 60 or 90 days, depending on whether they are being mounted on an existing or new structure;
- Limiting application fees and rents for access to the rights-of-way and municipal infrastructure to cost and establishing safe harbor amounts;
- Limiting aesthetic review and requirements (including undergrounding and historic/environmental requirements) to those that are "reasonable," objective and comparable to requirements for other rights of way users;
- Requiring cities to publish such aesthetic requirements in advance.

These new regulations severely limit the City's ability to negotiate favorable terms for leasing its vertical infrastructure to carriers. The regulations are currently under appeal in the Ninth Circuit; however, the court did not grant an injunction and therefore the FCC Order is currently in effect. A house bill introduced by Representative Anna Eschoo (D-California) entitled the Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019 (H.R. 530) is also under legislative review to overturn the FCC's regulations. The proposed Small Cell License Agreement has provisions for the parties to meet and confer should the FCC Order be reversed, altered or stayed in federal court.

### **EXISTING POLICY**

Council Policy 7.2.1 - Telecommunications: The purpose of this policy is to enable the City to retain and maintain regulatory authority with the confines of the state and federal legislation.

Sunnyvale Municipal Code (SMC) Section 19.54.160 - Telecommunication Facilities in the Public ROW: The wireless telecommunication facilities ordinance (SMC Chapter 19.54) adopted by the City Council in 2013 includes SMC Section 19.54.160, which regulates telecommunication facilities in the public right-of-way. The regulations adopted by the City Council in 2012 require applications for wireless communication the public ROW to be submitted to the Planning Division. This changed the practice prior to 2012, where all such applications were processed by the Department of Public

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Works through consideration of an encroachment permit.

### **ENVIRONMENTAL REVIEW**

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15302, the replacement of existing facilities located on the same site as the structure replaced and Section 15303, the installation of small new equipment in small structures, the installation of small cell facilities on existing street light poles is categorically exempt from environmental review.

### **DISCUSSION**

The City has been in discussions with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless to enter in a Small Cell License Agreement. The proposed Small Cell License Agreement would be used as a Master License Agreement (MLA) to provide a consistent and comprehensive approach to any requests from other wireless carriers wishing to deploy small cells in the City. It is anticipated that once this first MLA agreement is executed, other telecom carriers will also want to execute similar agreements with the City.

#### **General Overview**

The MLA does not grant possessory rights to any individual City owned streetlight, but establishes guiding procedures, terms, and conditions in which a telecom provider may request a site license supplement for deployment of a small cell site. The MLA contains the uniform terms and conditions applicable to all wireless facilities on City owned streetlights, and each individual site license supplement identifies a specific site location with detail plans and equipment to be deployed. Wireless carriers are still subject to obtaining all necessary applications and permits to (i.e., planning applications and encroachment permits) and subject to City's Wireless Telecommunication Facilities ordinance (SMC Section 19.54.160).

Sunnyvale is part of a working group primarily consisting of nearby cities focused on consistency amongst small cell deployments. Several nearby cities, most notably Cupertino, Fremont, and Campbell, have already executed MLA agreements with telecom carriers. Sunnyvale's MLA is largely consistent with these other city agreements.

#### **Term**

The MLA will have a minimum term of ten (10) years with the option to extend two (2) additional periods of five (5) years.

In addition, each Site License Supplement shall be a period of ten (10) years and may be extended for two (2) successive five (5) year renewals.

#### **Base Rent**

The annual rent will be set at \$270 per pole per year, adjusted annually by 2%.

#### **Processing**

Upon approval of the MLA, the telecom carrier is required to complete the City's process of review by the Planning Division and Public Works Engineering as well as obtaining an encroachment permit for the installation.

#### **Design Standards**

Small cells facilities will be of the same or substantially similar design as shown in Exhibit B - Initial

Approved Antenna Design of the Small Cell License Agreement.

### **FISCAL IMPACT**

The Small Cell License Agreement is expected to generate revenue through annual rent for each small cell attachment to City's street light infrastructure (base rent \$270 per site adjusted annually by 2%). The initial fiscal impact of this License will be minimal with the assumption that 24 poles will be utilized by AT&T for their initial build-out. This would result in a total annual revenue to the City's General Fund of \$6,480 in the first year.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Authorize the City Manager or his designee to execute the Small Cell License Agreement in substantially the same form as in Attachment 1 to the report, with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless and authorize the City Manager or his designee to extend the term for two (2) additional five (5) year terms and make a finding that the action is exempt from CEQA pursuant to CEQA Guidelines Sections 15302 and 15303.
2. Do not authorize the City Manager or his designee to execute the Small Cell License Agreement with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless.
3. Provide staff direction regarding the negotiation of different terms.

### **STAFF RECOMMENDATION**

Alternative 1: Authorize the City Manager or his designee to execute the Small Cell License Agreement, in substantially the same form as in Attachment 1 to the report, with New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless and authorize the City Manager or his designee to extend the term for two (2) additional five (5) year terms, and make a finding and make a finding that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15302 and 15303.

Using City street light poles offers several advantages over the current practice of using wooden power poles as a host for small cell installations. Street light poles are typical hollow allowing wiring to be concealed and a more consistent installation depending on pole type. In some cases, poles will be replaced which renews City assets at no cost to the City. City poles offer new options for areas with coverage gaps, taking pressure off the limited number of wooden poles, particularly where utilities have been undergrounded.

Prepared by: Arnold Chu, Senior Engineer  
Reviewed by: Jennifer Ng, Assistant Director, Public Works  
Reviewed by: Chip Taylor, Director, Public Works  
Reviewed by: Jaqui Guzmán, Deputy City Manager  
Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Small Cell License Agreement
2. FCC Order 18-133



**SMALL CELL LICENSE AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE  
AND NEW CINGULAR WIRELESS PCS, LLC**

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**SMALL CELL LICENSE AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE  
AND NEW CINGULAR WIRELESS PCS, LLC**

This SMALL CELL LICENSE AGREEMENT (hereinafter "LICENSE") is dated for identification this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the CITY OF SUNNYVALE, a California charter city and municipal corporation, whose address is \_\_\_\_\_ (hereinafter "CITY"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, whose address is 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (hereinafter "LICENSEE"). The CITY and LICENSEE may be collectively referred to as "Parties."

**RECITALS**

A. WHEREAS, LICENSEE holds a Federal Communications Commission (FCC) spectrum license to provide wireless telecommunications services to CITY residents, businesses and visitors, and is authorized to construct, install, operate, repair, replace and maintain small cell cellular antenna and radio sites, including antennas, transmitters, receivers, radios and all other equipment or apparatus used to provide wireless telecommunications services (collectively "Network" or "Antenna") to provide such service in the public rights-of-way within the State of California pursuant to Public Utilities Code §7901; and

B. WHEREAS, to the extent LICENSEE's Network is in CITY public rights-of-way; and

C. WHEREAS, CITY owns, operates, and maintains the street light poles ("CITY POLES") within the public right-of-way and owns or controls public right-of-way within CITY for the purpose of providing street lighting to the public; and

D. WHEREAS, local entities, such as CITY, may allow LICENSEE to install, construct, and maintain its Network within the public rights-of-way and/or public utility or service easements within CITY in accordance with Public Utilities Code §§5885(a) and 7901; and

E. WHEREAS, pursuant to Public Utility Code §7901.1, CITY has the right to exercise reasonable control as to the time, place, and manner for the construction, installation, and maintenance of LICENSEE's Network in the public rights-of-way; and

F. WHEREAS, LICENSEE is a limited liability company organized under the laws of the State of Delaware, legally qualified to do business within the State of California whose business includes the installation of Antennas; and

G. WHEREAS, LICENSEE requests the use of certain CITY POLES for the installation and operation of LICENSEE's Antennas; and

H. WHEREAS, CITY is willing to grant non-exclusive rights to LICENSEE to construct and maintain Antennas on CITY POLES in accordance with the terms, conditions, and covenants of this LICENSE.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, and other good and valuable consideration, CITY hereby grants to LICENSEE the non-exclusive rights to construct and maintain Antennas on CITY POLES and agrees to issue Site License Supplement(s) for LICENSEE's Network in the form shown in Exhibit A, attached hereto and incorporated herein, pursuant to the terms and conditions below:

1. **License to use City Poles.** CITY hereby licenses use to LICENSEE from CITY for the term, at the rental rate and upon all of the other terms and conditions set forth herein, CITY POLES.

2. **Improvements.** CITY licenses to LICENSEE the limited right to use CITY POLES only to locate Antennas of the same or substantially similar initial design as previously approved by CITY and as shown on Exhibit B, attached hereto and incorporated herein. It is understood and agreed that the final Antenna design will be shown on the plans submitted to CITY in connection with CITY's Site License Supplement process.

Notwithstanding the foregoing, from time to time during the term of this LICENSE, LICENSEE may propose revisions or new Antenna installation designs to the CITY to become a pre-approved Antenna installation upon the CITY's prior written consent ("Pre-Approved Antenna Installation"). Any such LICENSEE proposed Antenna installation designs that become a Pre-Approved Antenna Installation shall meet the City's current Small Cell Design Guidelines. An Amendment to Exhibit B will be required upon approval of any Pre-Approved Antenna Installation. A request by the LICENSEE for a Pre-Approved Antenna Installation shall not be considered a planning application for purposes of triggering the time period for CITY approval under the FCC 2018 Order referenced in Section 9(a)(ii) of this LICENSE. LICENSEE hereby acknowledges that the CITY considers physical dimensions, coloring and shrouding as concealment elements, and that such concealment elements are a material factor in the

CITY's decision to provide its written consent to any Pre-Approved Antenna Installation. All other municipal reviews and approvals pursuant to Section 21, including the planning application, building permits, right-of-way permits, and the execution of a Site License Supplement shall apply to the installation of any Pre-Approved Antenna Installation.

3. **Limitation of Rights.** This grant of permission does not constitute a deed or grant of an easement or any other real property interest by CITY. LICENSEE is not authorized to use any CITY property located outside the public rights-of-way without the express written consent of CITY.

4. **Additional Use Request.** It is the sole responsibility of LICENSEE to obtain any other agreements, authorizations, licenses, permits, environmental clearances, and/or easements, and to comply with all local, State, or Federal rules, regulations, laws, and legal rights of private or public property holders.

5. **Scope of Agreement.** All rights expressly granted to LICENSEE under this LICENSE, which shall be exercised at LICENSEE's sole cost and expense, shall be subject to the prior and continuing right of the CITY to use all parts of the public right-of-way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the right-of-way as of the date of this LICENSE.

6. **Term.** The term of this LICENSE shall be for a period of ten (10) years commencing on the Commencement Date and terminating on the tenth anniversary of the Commencement Date, unless terminated by either Party in accordance with the provisions herein.

The initial term of each Site License Supplement shall be for a period of ten (10) years commencing upon the mutual execution of the Site License Supplement ("Site License Supplement Commencement Date") and may be extended for two (2) successive five (5) year renewal terms, upon mutual written agreement by the parties. Notwithstanding anything herein, after the expiration or earlier termination of this LICENSE, the terms and conditions of a Site License Supplement which was signed during the term of the LICENSE shall survive and remain in full force and effect until the expiration or earlier termination of such Site License Supplement.

7. **Commencement Date.** The Commencement Date of this LICENSE shall be the date this License is (i) approved by the City Council, and (ii) executed by both Parties.

8. **Option to Extend.** Provided LICENSEE is not in default beyond any applicable cure periods either at the time of exercise or at the time the extended Term commences, LICENSEE shall have the option to extend the Term of this Lease for two (2) additional periods of five (5) years each ("Option Term") on the same terms and conditions provided, subject to the written consent of CITY. LICENSEE shall provide CITY written notice ("Option Notice") at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration of the Term of this LICENSE.

9. **Base Rent.**

a. LICENSEE shall pay to CITY as annual rent ("Base Rent") for each CITY POLE for which a Site License Supplement has been issued, the higher of the following amounts:

(i) Two Hundred Seventy Dollars (\$270.00), or

(ii) CITY's cost, which is CITY's cost set in accordance with the requirements of the Federal Communications Commission's Declaratory Ruling and Third Report and Order, FCC 18-133, Released September 27, 2018 ("FCC 2018 Order"), calculated pursuant to a cost study which has been reviewed, adopted and approved by CITY's Council and is not subject to further appeals or subject to a complaint before a competent regulatory agency or court ("Cost Approval") which reflects a reasonable approximation of the City's objective costs that are no higher than the fees charged to similarly situated licensees. After CITY's Cost Approval is final as described in the preceding sentence, CITY shall provide written notice to LICENSEE of the Base Rent in accordance with the notice requirements of this LICENSE. The Base Rent payable under this LICENSE will adjust to CITY's cost starting with Base Rent payments that are due at least 90 days after the date of such notice. CITY shall deliver to LICENSEE a copy of CITY's cost study no less than ninety (90) days before the cost study is presented to CITY's Council for adoption or approval.

The Base Rent is per CITY POLE, and includes all appurtenant equipment and facilities used in connection with each Antenna. Except in the event of a voluntary termination of a Site License Supplement, the Base Rent will be prorated for any partial year based on a 360-day calculation.

b. Reserved.

c. The Base Rent under each Site License Supplement shall commence on the first day of the month following the date that Licensee commences installation of

an Antenna ("Base Rent Commencement Date"). LICENSEE shall make the first payment of the Base Rent under any Site License Supplement within ninety (90) days after the Base Rent Commencement Date. Thereafter, the Base Rent for each Site License Supplement shall be paid on or before each anniversary of the Commencement Date during the term of the Site License Supplement. All payments, including the Transactional Costs in Section 12 below and all rent, shall be mailed or delivered to: City Property Administrator - Department of Public Works, City of Sunnyvale, 650 W. Olive Ave, Sunnyvale, CA 94086.

10. **Annual Increase.** The Base Rent shall be increased by 2% annually on the anniversary of the Commencement Date of each successive year resulting in a compound rate of increase. This annual increase is in lieu of a cost study and is presumed to be consistent with the FCC 2018 Order justifiable cost requirement.

11. **Reserved.**

12. **Transactional Costs.** LICENSEE shall pay to CITY upon execution of this LICENSE, as additional rent, any reasonable and actual transactional costs, which shall include any reasonable attorneys' fees, third party consultant fees, and staff time incurred by CITY as a result of the negotiation, preparation, execution, and delivery of this LICENSE, any amendment, any future consent of CITY required, and the preparation and negotiation of an amendment to the LICENSE ("Transactional Costs"). The Parties agree that a reasonable amount for these costs shall be \$10,000.

13. **Late Charge.** LICENSEE acknowledges late payment by LICENSEE to CITY of rent will cause CITY to incur costs not contemplated by this LICENSE, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed by CITY. Any installment of rent (excepting Base Rent) due from LICENSEE not received by CITY within ten (10) days of the date of billing shall be deemed delinquent. LICENSEE shall pay to CITY an additional sum of twelve percent (12%) per year non-compounding daily basis of the overdue rent that shall accrue, on a daily basis, from the thirty-first (31st) day after the date of billing. The Parties agree this late charge represents a fair and reasonable estimate of the costs CITY will incur because of late payment by LICENSEE. Acceptance of any late charge shall not constitute a waiver of LICENSEE's default with respect to the overdue amount, nor prevent CITY from exercising any of the other rights and remedies available to CITY.

14. **Permitted Uses.** LICENSEE represents, warrants, and covenants that the Antennas installed pursuant to this LICENSE will be utilized solely for providing the telecommunications services identified herein. LICENSEE is not authorized to and shall not use its Antennas to offer or provide any services not specified herein.



LICENSEE shall be solely responsible for all costs associated with the construction, installation, maintenance, and use of the Antenna.

15. **Prohibited Uses.** LICENSEE shall not use CITY POLES for any purpose not expressly permitted herein. LICENSEE shall not: (a) create, cause, or permit any nuisance or waste in, on, or about the CITY POLES or permit CITY POLES to be used for any unlawful purpose; or (b) do or permit to be done anything that unreasonably disturbs the CITY's use of CITY POLES or the occupants of neighboring property. Specifically, and without limiting the above, LICENSEE agrees not to cause any unreasonable odors, noise, vibration, electro-magnetic emissions or other item to emanate from the Antenna on CITY POLES. No materials or articles of any nature shall be stored outside adjacent to any portion of CITY POLES.

16. **Compliance with Laws.** LICENSEE shall not do or permit anything to be done in or on CITY POLES, or bring or keep anything in or on CITY POLES which will conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted.

17. **Co-Location.** LICENSEE acknowledges this is a non-exclusive LICENSE and that the CITY has the right to license additional positions on CITY POLES to third parties. All operations by LICENSEE shall comply with all FCC requirements. If CITY adds new CITY POLES or other facilities in the future, LICENSEE's Antenna shall not electromagnetically or physically interfere with CITY-owned and operated equipment. LICENSEE shall reasonably cooperate with current and future Licensees. Any future license of the CITY POLE site, which permits installation of Antennas, shall be conditioned upon the new Antennas not interfering with LICENSEE's Antenna. LICENSEE shall be responsible for re-installing its Antenna on new CITY POLES that accommodate the addition of other third party equipment at such third party's cost and expense.

18. **CITY POLE Access.** LICENSEE may enter onto CITY POLES during normal business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m. upon reasonable notice to CITY for purposes of installing its Antenna(s). In the event of an emergency, LICENSEE's access shall be twenty-four (24) hours per day, seven (7) days per week. During times of high security alert by the Homeland Security Advisory System, LICENSEE must obtain CITY's consent to access CITY POLES. LICENSEE acknowledges that other licensees also have rights to access CITY POLES, and that if another licensee or multiple licensees request simultaneous access, the CITY may have to delay LICENSEE's access to CITY POLES to accommodate others or vice versa.

19. **Ladder Access.** It is anticipated, after installation of the Antenna is completed, that LICENSEE shall require reasonable access for the purpose of ordinary tuning of LICENSEE's equipment and appropriate maintenance and repair of the

Antenna, including replacement of all or part of an Antenna with substantially similar components and shall make commercially reasonable efforts to utilize the smallest equipment available that provides equivalent performance effectiveness. As a part of this LICENSE, the CITY grants to LICENSEE reasonable ladder access to the area adjacent to the CITY POLES ("City Property") for the purposes of maintaining or repairing the Antennas.

20. **City Access.** The CITY or its agents, may enter onto CITY POLES at all times during the term of this LICENSE to determine whether LICENSEE is complying with the terms and conditions or for any other purpose incidental to rights of the CITY.

21. **Approval by the City and Other Agencies.** In accordance with Sunnyvale Municipal Code section 19.54.160, LICENSEE, at its sole cost and expense, may install the Antennas, subject to LICENSEE's obtaining all required permits, licenses, and approvals from CITY and any other governmental agencies having jurisdiction. LICENSEE shall maintain permits, licenses, and approvals in force through the Term and the Option Term, if any. The revocation or expiration of any permit, license, or approval is a breach of this LICENSE. If LICENSEE replaces the Antenna, it shall not do so without the prior written approval of CITY, and all required permits, licenses, and approvals from CITY and any other governmental agencies with jurisdiction. If LICENSEE replaces the Antenna, it shall not do so without the prior written approval of CITY, and all required permits, licenses, and approvals from CITY and any other governmental agencies with jurisdiction; provided, however, CITY approval shall not be required in the case of replacement with a substantially similarly functioning and sized Antenna. If a modification to the Antenna is approved in accordance with Section 33, LICENSEE and CITY shall amend Exhibit B to reflect the change. Should LICENSEE change or expand any Antenna without the prior approval of CITY, CITY may require that LICENSEE remove the expansion at LICENSEE's sole cost and expense within 15 days of written notification by City. LICENSEE shall be solely responsible for conducting any environmental review required in association with LICENSEE's use of CITY POLES and for all costs associated, as well as all fees, charges, or other expenses imposed by CITY or other regulatory agencies in connection with LICENSEE's use of CITY POLES prior to LICENSE commencement, or at any time during the Term of LICENSE.

22. **Reserved.**

23. **Condition, Use of City Poles.** CITY makes no warranty or representation concerning the condition of CITY POLES and facilities, which include but are not limited to poles, power supplies, conduits and other forms of infrastructure for the delivery of power, or the fitness of CITY POLES and facilities for the use intended by LICENSEE, and disclaims any personal knowledge. LICENSEE has personally inspected the CITY POLES and facilities,

knows their condition, finds them fit for LICENSEE's intended use, accepts them "as is", and has ascertained that they can be used for the limited purposes specified in Section 14.

**24. Hazardous Materials.**

a. Hazardous Materials on City Poles. LICENSEE shall not introduce any Hazardous Materials (as defined below) to the City Property, (excluding any Hazardous Materials which are components of commercially available products) unless the Hazardous Materials are transported, obtained, handled, stored, and/or disposed of in accordance with all Federal, State, and local laws, ordinances, rules, regulations, or policies.

b. Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material, or waste or any pollutant or contaminant or infectious or radioactive material, including, but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the: (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Secs. 9601, *et seq.*; (b) RCRA, 42 U.S.C. Secs. 6901, *et seq.*; (c) CWA, 33 U.S.C. Secs. 1251, *et seq.*; (d) CAA, 42 U.S.C. Secs. 7401, *et seq.*; (e) TSCA, 15 U.S.C. Secs. 2601, *et seq.*; (f) The Refuse Act of 1899, 33 U.S.C. Secs. 407; (g) OSHA, 29 U.S.C. Secs. 651, *et seq.*; (h) Hazardous Materials Transportation Act, 49 U.S.C. Secs. 5101, *et seq.*; (i) USDOT Table (49 CFR Sec. 172.101 App. A and amendments) or the EPA Table (40 CFR Part 302 and amendments); (j) Carpenter-Presley-Tanner Hazardous Substance Account, Act, Cal. Health & Safety Code Secs. 25300, *et seq.*; (k) California Hazardous Waste Control Act, Cal. Health & Safety Code Secs. 25100, *et seq.*; (l) Porter-Cologne Act, Cal. Water Code Secs. 13000, *et seq.*; (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220, *et seq.*; (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5, *et seq.*; (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280, *et seq.*; (p) California Hazardous Substance Act, Cal. Health & Safety Code Secs. 108100, *et seq.*; (q) Air Resources Law, Cal. Health & Safety Code Secs. 39000, *et seq.*; (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500, *et seq.*; (s) TPCA, Cal. Health and Safety Code Secs. 25208, *et seq.*; and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the Federal, State, and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become regulated under applicable local, State or Federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any Federal, State, or local law, regulation or order or by

common law decision, including, without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene, and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos; (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and (vii) radioactive materials and waste.

c. Hazardous Materials Indemnity. LICENSEE shall indemnify, defend (by counsel acceptable CITY), protect, and hold CITY harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including, without limitation, diminution in value of CITY POLES or City Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of CITY POLES or, damages arising from any adverse impact or marketing of CITY POLES and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings, or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, or caused or resulting, either prior to or during the License Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about CITY POLES by LICENSEE, LICENSEE's agents, employees, LICENSEEs or invitees or at LICENSEE's direction, of Hazardous Material, or by LICENSEE's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability, except to the extent of the negligence or willful misconduct of the CITY or its agents, employees, or invitees. LICENSEE's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup, or detoxification or decontamination of CITY POLES and City Property, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the License Term. For purposes of the indemnity, any acts or omissions of LICENSEE or its employees, agents, customers, assignees, contractors, or subcontractors of LICENSEE (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to LICENSEE.

d. City's Right to Perform Tests. At any time during the License Term, CITY shall have the right to enter upon CITY POLES in order to conduct tests of water and soil and to deliver to LICENSEE the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of LICENSEE's use of CITY POLES. LICENSEE shall be solely responsible for and shall indemnify, protect, defend and hold CITY harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return CITY POLES and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials. The testing shall be at LICENSEE's expense if CITY has a reasonable basis for suspecting and confirms

the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about CITY POLES, which has been caused by or resulted from the activities of LICENSEE, its agents, employees, contractors, or invitees. LICENSEE shall demonstrate that the Antenna meets or exceeds all appropriate Federal Communications Commission (FCC) requirements. LICENSEE shall provide results of any test results on the Antenna prepared for the FCC or any other testing body.

e. Survival. This entire Section 24 of this LICENSE shall survive termination of the LICENSE, as to any activities during the Term or Option Term of this LICENSE.

25. Termination of License. CITY shall have the right to immediately terminate the Term of the LICENSE in CITY's sole and absolute discretion in the event that: (i) any anticipated use of CITY POLES or City Property by LICENSEE involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) LICENSEE has been required to take remedial action in connection with Hazardous Material contaminating CITY POLES or City Property, if the contamination resulted from LICENSEE's action or use of CITY POLES or City Property; or (iii) LICENSEE is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on CITY POLES or City Property. Should termination under this provision be required, all other clauses in this agreement for removal of ANTENNA shall survive.

26. Electromagnetic Emissions. LICENSEE's operations on the CITY POLES shall comply with all applicable Federal, State, and local laws and regulations regarding electromagnetic emissions. LICENSEE shall conduct all necessary tests after its Antenna are constructed on the CITY POLES to ensure that its facilities comply with those laws and regulations. The tests shall be conducted by a licensed professional engineer, and the results shall be provided to the CITY.

27. Telecommunications Services. At any time that LICENSEE ceases to operate as a provider of telecommunications services under Federal Law, and LICENSEE has not cured said condition within sixty (60) days of receiving notice thereof from CITY, the CITY shall have the right, in its sole and absolute discretion and upon sixty (60) days written notice to LICENSEE, to terminate this LICENSE and to require the removal of LICENSEE's Antennas and any related appurtenances from CITY POLES, including the cost of any City Property remediation, at no cost to the CITY, without any liability to CITY related directly or indirectly to such termination.

28. Antenna Design Criteria. LICENSEE will submit to CITY, no more than two (2) proposed designs for any proposed Antenna installations. Assuming that all of

CITY's requirements are met, CITY will authorize up to two acceptable designs for Antennas. LICENSEE may only use Antenna designs that are authorized. All Antenna installations shall, to the maximum extent practicable, be placed behind equipment shrouds or existing signage, or otherwise located so as to minimize aesthetic impacts, to the satisfaction of the Public Works Director. The Public Works Director will require photo simulations of all Antenna installations and may require a physical mock-up. If required, the mock-up shall be the actual size of the equipment and include the actual color(s) to be used for the final installation. LICENSEE is prohibited from installing ground-mounted cabinets. LICENSEE shall install all wires within the CITY POLE to be hidden or shrouded from view. Each Antenna shall have identifying information printed on it, including emergency contact information. Advertising or logos may not be placed on any Antenna or CITY POLE.

29. **Covenant of Non-Interference.** LICENSEE shall be responsible for inspecting CITY POLES and finding adequate space at the site without moving or relocating any of CITY'S POLES or equipment, or any other facility, or utility located at the City Property (unless permitted by CITY or other party), at the time Licensee's facilities are installed. LICENSEE will comply with all FCC regulations regarding radio frequency ("RF") emissions and exposure limitations. LICENSEE's equipment shall not negatively impact any other existing facility or antenna. In the event that Licensee's equipment does negatively impact other existing facilities, LICENSEE shall be required to take reasonable measures to correct the problem. LICENSEE shall be required to coordinate with other existing utilities located at the City Property, to ensure that LICENSEE's equipment does not interfere with the frequencies utilized by existing utilities or other parties existing at the time of Antenna installation.

30. **No Interference.** LICENSEE shall not interfere in any manner with the existence and operation of any public or private property, including, but not limited to, sanitary sewer mains and laterals; water mains and services; storm drain lines; gas mains and services; utility poles and signs; aerial and underground electrical and telecommunication equipment; traffic signals; and electroliers without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable law or this LICENSE. However, CITY agrees that CITY and/or any other licensees, or users of City Property who currently have, or in the future take possession of, space within City Property adjacent to any of LICENSEE's Antennas will be permitted to install only equipment that is of the type and electromagnetic frequencies which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LICENSEE. LICENSEE shall act reasonably to accommodate future providers of FCC/PUC-regulated telecommunications services so that City Property may be used by additional providers.

31. **PG&E Power Connection, Metering, and Costs.** LICENSEE shall cause a separate electric line to be run to its equipment as permitted by PG&E. LICENSEE shall pay all electricity costs directly to Pacific Gas and Electric Company ("PG&E") or CITY's other electric service provider (as applicable). If feasible, LICENSEE may use and access CITY's existing power supply, conduit or other form of infrastructure for the delivery of power and fiber access to CITY POLES to power its Antenna upon approval from the CITY. LICENSEE shall make good faith efforts to negotiate a flat rate with PG&E to avoid above ground metering facilities where practicable. Should LICENSEE be unable to secure a flat rate service from PG&E, then pole-mounted and concealed smart meters may be utilized, subject to PG&E requirements, with written approval by CITY's Public Works Director. All electric meters shall have a master cutoff switch installed which will allow power shut down to the Antenna in case of emergencies.

32. **Site License Supplement.** For each new site, LICENSEE shall submit to CITY all required applications and permits to enter upon the right-of-way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace the Antenna on CITY POLES in the right-of-way for the purposes of providing telecommunications services. Each application for a site location is subject to any applicable public outreach and CITY reserves the right to deny any application for the installation of an Antenna to CITY POLES if all lawful CITY requirements have not been met. After the CITY approves all required applications and permits, LICENSEE shall submit a Site License Supplement ("Site License Supplement") to memorialize each new site location.

33. **Site License Supplement Application Priority.** LICENSEE expressly acknowledges that the CITY either already has or may in the future enter into similar master license agreements for its CITY POLES with other persons or entities, and that LICENSEE and such third parties may from time-to-time desire to license the same CITY POLES (including the utility infrastructure serving the CITY POLES, as the case may be) from the CITY. To promote a fair and competitively neutral process, the CITY shall implement a first-in-time prioritization process as provided in this Section. The CITY shall review each Site License Supplement application, which includes without limitation any Site License Supplement applications submitted by other licensees, in the order received. Each Site License Supplement application will be date and time stamped when received by the CITY, and such stamp shall control the Site License Supplement application's priority relative to other Site License Supplement applications. In the event that the CITY receives two Site License Supplement applications for the same CITY POLES, the applications with lower priority will be held in abeyance until the higher-priority application is withdrawn, denied or timed-out as provided in this LICENSE, at which time the CITY will commence to review the next-highest priority Site License Supplement application for that CITY POLE (including the utility infrastructure serving the CITY POLE, as the case may be).

In order to facilitate the timely review of all applications, the CITY will limit the submission of site applications as follows:

- a. LICENSEE is limited to no more than 20 new site applications at any one time; and
- b. LICENSEE shall submit a map which shows the locations of poles in the area.

34. **Conditions Precedent.** Before construction of any improvements are commenced on CITY POLES and before any building materials have been delivered to CITY POLES by LICENSEE or its agents, LICENSEE shall comply with the following conditions or procure CITY's written waiver of the conditions specified:

a. **Protection of Adjacent Property, Indemnity of CITY.** LICENSEE shall protect City Property and adjacent property against damage resulting from the performance of work undertaken by LICENSEE or LICENSEE's agents, employees, contractors (excluding any damage caused by gross negligence or the willful act of CITY) and shall indemnify CITY against all liens or liability arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment, or power.

b. **Insurance.** CITY shall require any third party contractor performing work at the CITY POLES to maintain workers' compensation insurance as contractor's sole cost and expense at all times when any work is in process and shall otherwise conform to the requirements of this LICENSE with respect to insurance.

c. **Security Requirements.** LICENSEE shall provide a bond to CITY in the amount of Fifty Thousand Dollars (\$50,000), for the first twenty-five (25) installed Antennas, and an additional \$50,000 (or pro rata portion thereof) for each additional twenty-five (25) Antennas thereafter, to protect CITY in that event that LICENSEE fails to remove its Antennas upon termination of this LICENSE. The bonding company shall be a United States based entity with legal rights to issue bonds in the State of California. Subsequent increases in the number of installed antennas shall require a proportionate increase in bond amounts. The bond forms shall be in a form approved by the City Attorney.

35. **LICENSEE Payment for Labor or Materials.** LICENSEE shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for LICENSEE at or for use on CITY POLES, which claims are or may be secured by any mechanic or material lien against CITY POLES or any interest therein. LICENSEE shall give CITY not less than ten (10) days' notice prior to the commencement of new installation on CITY POLES. If CITY shall require a surety bond, LICENSEE shall furnish to CITY a surety bond satisfactory to CITY in an amount equal to the contested lien, claim indemnifying CITY against liability for and holding CITY POLES free from



the lien or claim. In addition, CITY shall have the right to require LICENSEE to pay CITY's attorneys' fees and costs in participating in the action if CITY decides to participate.

36. **Changes to Installation Plans.** Upon completion of the installation of any Antenna, and prior to final inspection approval, LICENSEE shall give CITY notice of all changes in the plans and specifications made during the course of the work and at the same time deliver to CITY "as built" drawings accurately reflecting all changes, provided that no change that substantially alters the final plans last approved by CITY shall be made without CITY's prior written approval.

37. **Final Inspection.** LICENSEE shall not provide service to its customers from the Antenna in any way without receiving final inspection approval of the Antenna from CITY.

38. **As Built Plans.** LICENSEE shall provide as-built plans, to the CITY, for each Antenna installation within thirty (30) days of the completion of the installation.

39. **Commencement of Installation and Operation.** LICENSEE shall commence installation of an Antenna no later than nine (9) months after the mutual execution of an applicable Site License Supplement. LICENSEE shall commence operations no later than three (3) months after LICENSEE commences installation, excepting delays due to any force majeure event. Failure of LICENSEE to commence installation or commence operation of the applicable telecommunications service as provided above shall afford CITY the right to terminate the right to use the applicable CITY POLE and Site License Supplement upon thirty (30) days' notice to LICENSEE, unless within such thirty (30) day period, LICENSEE shall commence installation or commence operation, as applicable.

40. **General.** LICENSEE shall keep in good order, condition, and repair the Antenna placed on CITY POLES. LICENSEE shall keep the Antenna and CITY POLES clean and free of debris and graffiti attributed to LICENSEE's use of the CITY POLES. Graffiti shall be removed within a 48 hour period.

41. **Discontinued Use of Antenna.** On the last day of the Term, or of the Option Term, CITY POLES shall be in the same condition as when installed, clean and free of debris and graffiti, normal wear and tear excepted. LICENSEE shall also remove all LICENSEE improvements including equipment, cables, and wires located above ground or below ground that LICENSEE placed with CITY POLES, and repair any damage to CITY POLES or City Property, including the Right-of-Way, by the installation, maintenance, or removal of LICENSEE's Antenna and any related cables, wires or other equipment within sixty (60) days of such expiration of the Term or Option Term.

42. **CITY's Rights.** If LICENSEE is in default after expiration of the applicable cure periods, CITY may (but shall not be required to) enter upon CITY POLES, (except in the case of an emergency, in which case no notice shall be required), to perform obligations on LICENSEE's behalf and put CITY POLES and/or Antenna in good order, condition and repair, and the cost, together with interest at the maximum rate then allowable by law, shall become due and payable as additional rent to CITY with LICENSEE's next rental installment, provided, however, in the case of a non-emergency, CITY shall notify LICENSEE of CITY's intention to perform LICENSEE's obligations ten (10) days prior to performing any work on LICENSEE's behalf. If no rental installment is due to CITY, these costs shall become due and payable within thirty (30) days from the date of CITY's invoice.

43. **City Repair Obligations.** CITY shall have no obligation to repair and maintain the CITY POLES nor the improvements and facilities. City's obligation is to maintain safety lighting related components on the CITY POLES only. LICENSEE expressly waives the benefit of any statute now or hereinafter in effect which would afford LICENSEE the right to make repairs at CITY's expense or to terminate this LICENSE because of CITY's failure to keep CITY POLES in good order, condition, and repair.

44. **Relocation and Displacement of Equipment.** Upon the CITY's ninety (90) days written notice to LICENSEE, LICENSEE shall relocate its equipment at LICENSEE's sole cost and expense when the CITY determines that the equipment relocation is necessary for the construction, modification, completion, or relocation of roads, streets, sidewalks, curbs, gutters, storm drainage facilities, sewer lines, water utility lines or other capital improvement project within CITY's jurisdiction undertaken by or on behalf of CITY. If LICENSEE shall fail to relocate any Antenna as requested by the CITY in accordance with this provision, the CITY shall be entitled to remove or relocate the equipment at LICENSEE's sole cost and expense, without further notice to LICENSEE. LICENSEE shall pay to the CITY actual costs and expenses incurred by the CITY in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the CITY's written demand for such payment. If any CITY POLE is damaged or downed for any reason, and as a result disrupts use of the Antenna, the CITY will have no obligation to repair or replace the CITY POLE for the use of LICENSEE's Antenna. LICENSEE shall bear all risk of loss to LICENSEE's Antenna due to damaged or downed CITY POLES, and may choose to replace CITY POLES pursuant to the provisions herein.

45. **Damages Caused by Licensee.** LICENSEE shall, at its sole cost and expense and to the satisfaction of the CITY: (a) remove, repair, or replace any of its Antennas that are damaged or become detached; and/or (b) repair any damage to public right-of-way, City Property, or other property, whether public or private, caused

by LICENSEE, its agents, employees, or contractors in their actions relating to attachment, operation, repair, or maintenance of its Antennas. If LICENSEE does not remove, repair or replace such damage to its Antenna or to the public right-of-way, City Property or other property, the CITY shall have the option, upon thirty (30) days' prior written notice to LICENSEE, to perform or cause to be performed such removal, repair, or replacement on behalf of LICENSEE and shall charge LICENSEE for the actual costs incurred by the CITY. If such damage causes a public health or safety emergency, as reasonably determined by the CITY, the CITY may immediately perform reasonable and necessary repair or removal work on behalf of LICENSEE and will notify LICENSEE as soon as practicable; provided, such repair work involves reattachment of its Antennas to a Pole or repair of the Pole itself, and shall not include any technical work on LICENSEE's equipment. Upon the receipt of a demand for payment from the CITY, LICENSEE shall within thirty (30) days of such receipt, reimburse the CITY for such costs. The terms of this provision shall survive the expiration, completion, or earlier termination of this LICENSE.

46. **Indemnity.** To the fullest extent permitted by law, LICENSEE shall indemnify, defend (with competent counsel reasonably acceptable to the City Attorney), and hold harmless CITY and its directors, officers, employees, and volunteers from and against all liabilities (including, without limitation, all claims, lawsuits, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs, including, but not limited to, reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) regardless of nature or type that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of LICENSEE or the acts or omissions of an employee, agent, or subcontractor of LICENSEE in the performance of this LICENSE, related to the installation of Antenna as described in this LICENSE, except to the extent of the negligence or willful misconduct of the CITY or its agents, employees, or invitees. The provisions of this paragraph survive completion of the services or termination of this LICENSE.

47. **Insurance.**

a. **Commercial General Liability Insurance.** LICENSEE shall obtain and maintain Commercial General Liability insurance including premises operations, products and completed operations with a limit of \$2,000,000.00 per occurrence for bodily injury and property damage and \$5,000,000.00 general aggregate, such insurance to be written on an occurrence basis.

b. **Automobile Liability Insurance.** LICENSEE shall obtain and maintain Automobile Liability insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence or per accident.

c. Workers' Compensation Insurance. LICENSEE shall obtain and maintain statutory Workers' Compensation insurance and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident/per disease per employee/per disease policy limit.

d. Acceptability of Insurers. Insurance is to be placed with California eligible insurers with a current A.M. Best's Rating of A minus:VII unless otherwise acceptable to CITY.

e. Verification of Coverage. Original Certificates of Insurance with endorsements shall be received and on an ACORD form or Licensee's form for self insurance as approved by City before work commences, and insurance must be in effect for the duration of the LICENSE. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to CITY or increase the duration of the project.

f. Other Insurance Provisions:

(1) Reserved.

(2) The City of Sunnyvale, its officers, officials, employees, and volunteers are to be included as an additional insured by an endorsement at least as broad as ISO Form CG 20 10 or its equivalent as approved by City.

(3) For any claims related to this LICENSE, LICENSEE's required general liability insurance coverage shall be primary coverage at least as broad as ISO CG 00 01 with respect to CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, and volunteers shall not contribute to it.

(4) To the extent permitted by law, LICENSEE grants CITY a waiver of any rights to subrogation which any insurer of LICENSEE may acquire against CITY by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not CITY has received a waiver of subrogation endorsement from the insurer.

(5) LICENSEE shall provide thirty (30) days' notice to CITY in the event of cancellation or non-renewal of any required insurance that is not replaced.

(6) In the event LICENSEE employs subcontractors as part of the work covered by this LICENSE, LICENSEE will endeavor to ensure that all subcontractors comply with the same insurance requirements as stated in this LICENSE.

(7) Approval of the insurance by CITY or acceptance of the Certificate of Insurance by CITY shall not relieve or decrease the extent to which LICENSEE may be held responsible for payment of damages resulting from LICENSEE's services or operations pursuant to this LICENSE, nor shall it be deemed a waiver of CITY's rights to insurance coverage hereunder.

(8) If, for any reason, LICENSEE fails to maintain insurance coverage that is required pursuant to this LICENSE, the same shall be deemed a material breach of LICENSE. CITY, at its sole option, may terminate this LICENSE and obtain damages from LICENSEE resulting from said breach. Alternately, CITY may purchase such required insurance coverage, and without further notice to LICENSEE, CITY may deduct from sums due to LICENSEE any reasonable premium costs advanced by CITY for such insurance.

g. Notwithstanding the foregoing, LICENSEE shall have the right to self-insure the coverages required in this section. In the event LICENSEE elects to self-insure its obligation to include CITY as an additional insured, the following additional provisions shall apply:

(1) CITY shall promptly and no later than thirty (30) days after notice thereof provide LICENSEE with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide LICENSEE with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(2) CITY shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of LICENSEE; and

(3) CITY shall fully cooperate with LICENSEE in the defense of the claim, demand, lawsuit, or the like.

48. **Nontermination and Nonabatement.** Except as provided herein, no destruction or damage to the CITY POLES by fire, windstorm, earthquake, vehicular incident, or other casualty, whether insured or uninsured, shall entitle LICENSEE to terminate this LICENSE, unless CITY POLES are rendered unusable for the Antenna.

49. **Force Majeure.** Prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire, or other casualty, and other causes beyond the reasonable control of LICENSEE, shall excuse the

performance by LICENSEE for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by LICENSEE pursuant to this LICENSE. In the event any work performed by LICENSEE or LICENSEE's contractor's results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by LICENSEE of the provisions of this LICENSE.

50. **Waiver.** CITY and LICENSEE waive the provisions of any statutes, which relate to termination of Licenses when licensed property is destroyed and agree that such event shall be governed by the terms of this LICENSE.

51. LICENSEE shall pay for all power and telecommunication services supplied to the LICENSEE's Antenna, together with any taxes.

52. LICENSEE shall not place any signs upon CITY POLES without prior written consent of CITY, except as required by law.

53. **Assignment and Subletting.**

a. **City's Consent Required.** LICENSEE shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of LICENSEE's interest in this LICENSE or in CITY POLES, without CITY's prior written consent, which consent shall not be unreasonably withheld. CITY shall respond to LICENSEE's request for consent in a reasonably timely manner and any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this LICENSE.

b. **Net Worth Requirements.** Notwithstanding the foregoing, LICENSEE may assign or transfer this Agreement or sublet its equipment attached to the CITY POLES, or any portion thereof, without the CITY's consent, to any entity which controls, is controlled by, or is under the common control with LICENSEE, or to any entity resulting from any merger or consolidation with Licensee, or to any partner of LICENSEE or to any partnership in which LICENSEE is a general partner, or to any person or entity which acquires all or substantially all of the assets of LICENSEE that are the subject of this Agreement, or to any entity which obtains a security interest in a substantial portion of LICENSEE's assets that are the subject of this Agreement, provided, however, that LICENSEE shall upon request provide CITY with documentation demonstrating adequate financial qualifications of any assignee or transferee covered by this paragraph.

c. **No Release of Licensee.** No subletting or assignment as approved by CITY shall eliminate LICENSEE's obligation or alter the primary liability of LICENSEE to pay the rent and to perform all other obligations of LICENSEE hereunder.

The acceptance of rent by CITY from any other entity shall not be deemed to be a waiver by CITY of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of LICENSEE or any successor of LICENSEE in the performance of any of the terms hereof, CITY may proceed directly against LICENSEE without the necessity of exhausting remedies against said assignee.

54. **Defaults.** The occurrence of any one or more of the following events shall constitute a material default or breach of this LICENSE by LICENSEE:

a. The abandonment of the Antenna by LICENSEE as defined by Civil Code §1951.3.

b. If any installment of rent due from LICENSEE is not received by CITY within thirty (30) days of the due date shall be deemed delinquent, LICENSEE shall pay to CITY an additional sum of twelve percent (12%) per year of the overdue rent that shall accrue, on a daily basis, from the thirty-first (31st) day after the date of billing. The parties agree this late charge represents a fair and reasonable estimate of the costs CITY will incur because of late payment by LICENSEE. Acceptance of any late charge shall not constitute a waiver of LICENSEE's default with respect to the overdue amount, nor prevent CITY from exercising any of the other rights and remedies available to CITY.

c. The failure by LICENSEE to make any payment of rent or any other payment required to be made by LICENSEE hereunder, as and when due, where the failure shall continue for a period of thirty (30) business days after written notice from CITY to LICENSEE. In the event CITY serves LICENSEE with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

d. The failure by LICENSEE to observe or perform any of the covenants, conditions, or provisions of this LICENSE in any material respect to be observed or performed by LICENSEE, where the failure shall continue for a period of thirty (30) days after written notice from CITY to LICENSEE; provided, however, that if the nature of LICENSEE's default is that more than thirty (30) days are reasonably required for its cure, then LICENSEE shall not be deemed to be in default if LICENSEE commences cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

e. The making by LICENSEE of any general arrangement or assignment for the benefit of creditors; LICENSEE's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against LICENSEE, it is dismissed within sixty (60) days); the appointment of a

bankruptcy trustee or receiver to take possession of all or substantially all of LICENSEE's Antenna on CITY POLES or of LICENSEE's interest in this LICENSE where possession is not restored to LICENSEE within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of LICENSEE's Antenna located at the CITY POLES or of LICENSEE's interest in this LICENSE, where seizure is not discharged within thirty (30) days.

f. The failure of LICENSEE to maintain CITY-approved insurance.

55. **Remedies.** In the event of any material default or breach by LICENSEE, CITY may at any time thereafter, following any notice required by this LICENSE, and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of default or breach:

a. Terminate LICENSEE's right to use of CITY POLES and applicable Site License Supplement to which the material default or breach relates, in which case this LICENSE shall terminate as to those CITY POLES and LICENSEE shall immediately cease use of Antenna on those CITY POLES. In that event, CITY shall be entitled to recover from LICENSEE all damages incurred by CITY by reason of LICENSEE's default including, but not limited to, expenses of reletting, including if necessary, removal of Antenna and, if requested by City, restoration of CITY POLES to their original condition/type, normal wear and tear excepted; reasonable attorneys' fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this LICENSE; and the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of such award exceeds the amount of rental loss for the same period that LICENSEE proves could be reasonably avoided;

b. Maintain LICENSEE's right to use, in which case this LICENSE shall continue in effect whether or not LICENSEE shall have abandoned Antenna on CITY POLES. In that event, CITY shall be entitled to enforce all of CITY's rights and remedies under this LICENSE, including the right to recover rent as it becomes due; and

c. Pursue any other remedy now or hereafter available to CITY under the laws or judicial decisions of the State of California.

56. **No Relief from Forfeiture after Default.** LICENSEE waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event LICENSEE is evicted or CITY otherwise lawfully uses CITY POLES by reason of any default or breach of this LICENSE by LICENSEE.



57. **Termination by LICENSEE.** Except as provided otherwise herein or by applicable law, LICENSEE may terminate this LICENSE for cause upon the giving of not less than thirty (30) days written notice to CITY if any of the following occur:

a. The failure by CITY to observe or perform any of the covenants, conditions, or provisions of this LICENSE in any material respect to be observed or performed by CITY, where the failure shall continue for a period of thirty (30) days after written notice from LICENSEE to CITY; provided, however, that if the nature of the CITY's default is such that more than thirty (30) days are reasonably required for its cure, then CITY shall not be deemed to be in default, if CITY commenced to cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion;

b. LICENSEE fails to obtain or loses any permits necessary for operation of the CITY POLES as a cellular telecommunications facility; or

c. LICENSEE determines that the site is inappropriate for technological reasons, beyond its control, including, but not limited to telecommunications signal interference.

In addition to termination, in the event of any material default or breach by CITY of this LICENSE, LICENSEE may pursue any other remedy now or hereafter available to LICENSEE under the laws or judicial decisions of the State of California.

Notwithstanding the foregoing, LICENSEE may terminate its use of specific CITY POLES and applicable Site License Supplement(s) at any time upon providing sixty (60) days' written notice to CITY.

58. **Termination by CITY.** Except as otherwise provided or by applicable law, CITY may terminate this LICENSE as to the affected CITY POLES and applicable Site License Supplement(s) for cause upon giving thirty (30) days written notice if any of the following occur:

a. The City Council of CITY determines in accordance with FCC standards with regard to Antenna operated on CITY POLES, that the Antenna is a threat to public health or safety; or

b. LICENSEE loses or fails to satisfy any condition of any permit required by CITY necessary for operation of CITY POLES as a location for the Antenna.

59. **Condemnation of Licensed CITY POLES.** Should all or part of the Licensed CITY POLES be taken by any public or quasi-public agency or entity under the power of eminent domain under the term of this LICENSE:

a. Either CITY or LICENSEE may terminate this LICENSE as to the affected CITY POLES and applicable Site License Supplement(s) by giving the other thirty (30) days written notice of termination; and

b. Any damages and compensation awarded or paid because of the taking shall belong to the CITY, except for amounts paid LICENSEE for moving expenses or for damage to property owned by LICENSEE.

60. The term "CITY" as used herein, shall mean the City of Sunnyvale only while the CITY is the owner of the title of CITY POLES. In the event of any transfer of title or interest, the CITY (and in case of any subsequent transfer, then the grantor) shall, after the date of such transfer, be relieved from all liability with respect to its obligations hereunder occurring after the transfer date, provided that any funds in the hands of CITY at the time of transfer, in which LICENSEE has an interest, shall be delivered to the CITY's grantee.

61. Reserved.

62. Unless the LICENSE is terminated early, LICENSEE shall contact CITY at least six (6) months prior to the expiration of the Term or Option Term in order to request additional Term extensions.

63. Reserved.

64. To the extent applicable by law to LICENSEE's activities under this Agreement, LICENSEE shall pay prevailing wages.

65. CITY reserves to itself the right to grant such easements, rights, and dedications that CITY deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with LICENSEE's use of the CITY POLES. LICENSEE shall sign any of the aforementioned documents upon request of CITY and failure to do so shall constitute a material breach of this LICENSE.

66. **Severability.** If any provision of this LICENSE is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this LICENSE.

67. **Time of Essence.** Time is of the essence under this LICENSE.

68. **Additional Rent.** Any monetary obligations of LICENSEE to CITY under the terms of this LICENSE shall be deemed to be rent and all references herein to "rent" shall be deemed to include the Base Rent and all other sums paid or payable by LICENSEE to CITY.

69. **Entire LICENSE.** This LICENSE contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this LICENSE which are not fully expressed herein.

70. **No Warranty.** Except as otherwise stated in this LICENSE, LICENSEE hereby acknowledges that neither the CITY nor any employees or agents of the CITY has made any oral or written warranties or representations to LICENSEE relative to the condition or use by LICENSEE of CITY POLES. LICENSEE assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of CITY POLES, and compliance with all applicable laws and regulations in effect during the Term of this LICENSE.

71. **Notices.** Any notice required to be given to LICENSEE shall be in writing and deemed to be duly and properly given if mailed to LICENSEE, postage prepaid, addressed to:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Small Cell License Agreement; Sunnyvale, CA  
1025 Lenox Park Blvd NE  
3rd Floor  
Atlanta, GA 30319

With a copy to:  
New Cingular Wireless PCS, LLC  
Re: Small Cell License Agreement; Sunnyvale, CA  
AT&T Legal Department – Network  
208 S. Akard Street,  
Dallas, TX 75202-4206

or personally delivered to LICENSEE at such address or at such other addresses as LICENSEE may designate in writing to CITY.

Any notice required to be given CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

City of Sunnyvale  
Department of Public Works  
ATTN: Real Property Administrator  
456 W. Olive Avenue  
Sunnyvale, CA 94086

or personally delivered to CITY or at such other addresses as CITY may designate in writing to LICENSEE.

72. **Waivers.** The failure of CITY to insist upon a strict performance of any of the terms, conditions, and covenants contained herein shall not be deemed a waiver of any rights or remedies that CITY may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, and covenants contained herein.

73. **Cumulative Remedies.** No remedy or election under this LICENSE shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

74. **Choice of Law.** This LICENSE shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a Party to this LICENSE, the Parties agree that trial of such action shall be conducted exclusively in the state or federal courts of California, County of Santa Clara. The language of all parts of this LICENSE shall be construed with its fair meaning and not strictly for or against the CITY or LICENSEE.

75. **Condition to Effectiveness of License.** The approval of the City Council of CITY constitutes an express condition precedent to the effectiveness of this LICENSE.

76. **Applicable Laws and Attorneys' Fees.** This LICENSE shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this LICENSE or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and other such costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on applicable law.

77. **Brokers.** Each Party represents that it has not had dealings with any real estate broker or finder, with respect to this LICENSE in any manner. Each Party shall hold harmless the other Party from all damages resulting from any claims that may be

asserted against the other Party by any broker, finder, or other person with whom the indemnifying Party has or purportedly has dealt.

78. **Authority.** Each individual executing this LICENSE on behalf of LICENSEE and CITY represents and warrants that he or she is duly authorized to execute and deliver this LICENSE on behalf of said Party.

79. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable for any default or liability under this LICENSE.

80. **Non-Discrimination.** LICENSEE shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, physical or mental disability, military or veteran status, gender identity or expression, or genetic information.

81. **Independent Contractor.** It is agreed that LICENSEE shall act and be an independent contractor and not an agent nor employee of CITY.

82. **Conflict of Interest.** LICENSEE shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this LICENSE.

83. **FCC Order Validity.** In the event the FCC 2018 Order is reversed, stayed, or altered in a significant manner by the FCC or a court of competent jurisdiction ("Subsequent Action"), either Party to this Agreement may request that the Parties confer whether the Agreement should be modified, and, if so, both Parties agree to negotiate in good faith any changes required as a result of the Subsequent Action.

IN WITNESS WHEREOF, this LICENSE, dated \_\_\_\_ [DP insert Variable 2]\_\_ for identification, between the City of Sunnyvale and \_\_\_\_ [DP insert Variable 1]\_\_ for \_\_\_\_\_, is executed on \_\_\_\_ [Month Day, Year] \_\_\_\_, by CITY and by LICENSEE.

“CITY”:  
CITY OF SUNNYVALE,  
a California charter city and municipal  
corporation

By: \_\_\_\_\_  
\_\_\_\_\_  
City Manager

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

APPROVED AS TO FORM:

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

“LICENSEE”:  
NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Taxpayer I.D. Number

Attachments:  
Notaries (for owner)  
General Acknowledgement (for City)  
Form Site License Supplement (Exhibit A)  
Initial Approved Antenna Design (Exhibit B)

**EXHIBIT A**  
**FORM OF SITE LICENSE SUPPLEMENT**

This Site License Supplement, is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between CITY OF SUNNYVALE, a California charter city and municipal corporation ("Licensor") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("Licensee").

1. License Agreement for Wireless Installations on Public Structures. This Site License Supplement as referenced in that certain Small Cell License Agreement between Licensor and Licensee dated \_\_\_\_\_, 20\_\_\_\_ ("Agreement"). Licensee has submitted a Site License Application pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site License Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction or inconsistency between the terms of the Agreement and this Site License Supplement, the terms of this Site License Supplement shall govern. Capitalized terms used in this Site License Supplement shall have the same meaning ascribed to them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. Licensee shall have the right to install and attach Antennas on, under, and above the public right of way owned or controlled by Licensor, on, in and adjacent to the specific City Poles as identified and described in Exhibit 1 attached hereto (collectively the "Licensed Site").

3. Term. The Site License Term of this Site License Supplement shall be as set forth in Section \_\_\_\_ of the Agreement. Should the Agreement expire prior to the expiration of the Site License Supplement, the terms of the Agreement shall survive as long as the Site License Supplement is valid.

4. Fee. The Fee shall be in the amount and otherwise payable in accordance with the Agreement as set forth in Section \_\_\_\_ of the Agreement.

5. Special Provisions, If Any (Specific to the Licensed Site).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

LICENSOR: CITY OF SUNNYVALE,  
a California charter city and municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LICENSEE: NEW CINGULAR WIRELESS PCS, LLC,  
a Delaware Limited Liability Company

By: AT&T Mobility Corporation  
Its: Manager

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBITS

- 1 Licensed Site, Antenna Equipment List and Plans



## **EXHIBIT 1 TO SITE LICENSE SUPPLEMENT**

### **Licensed Site, Antenna Equipment List and Plans**

Licensee Antenna Reference: [LICENSEE TO COMPLETE]

FA / USID:

Site Name: CRAN\_POLYGON NAME\_NODE #

PTN / PACE:

City Pole number: [LICENSOR TO COMPLETE]

City Pole Latitude and Longitude (Approximate): [LICENSEE TO COMPLETE]

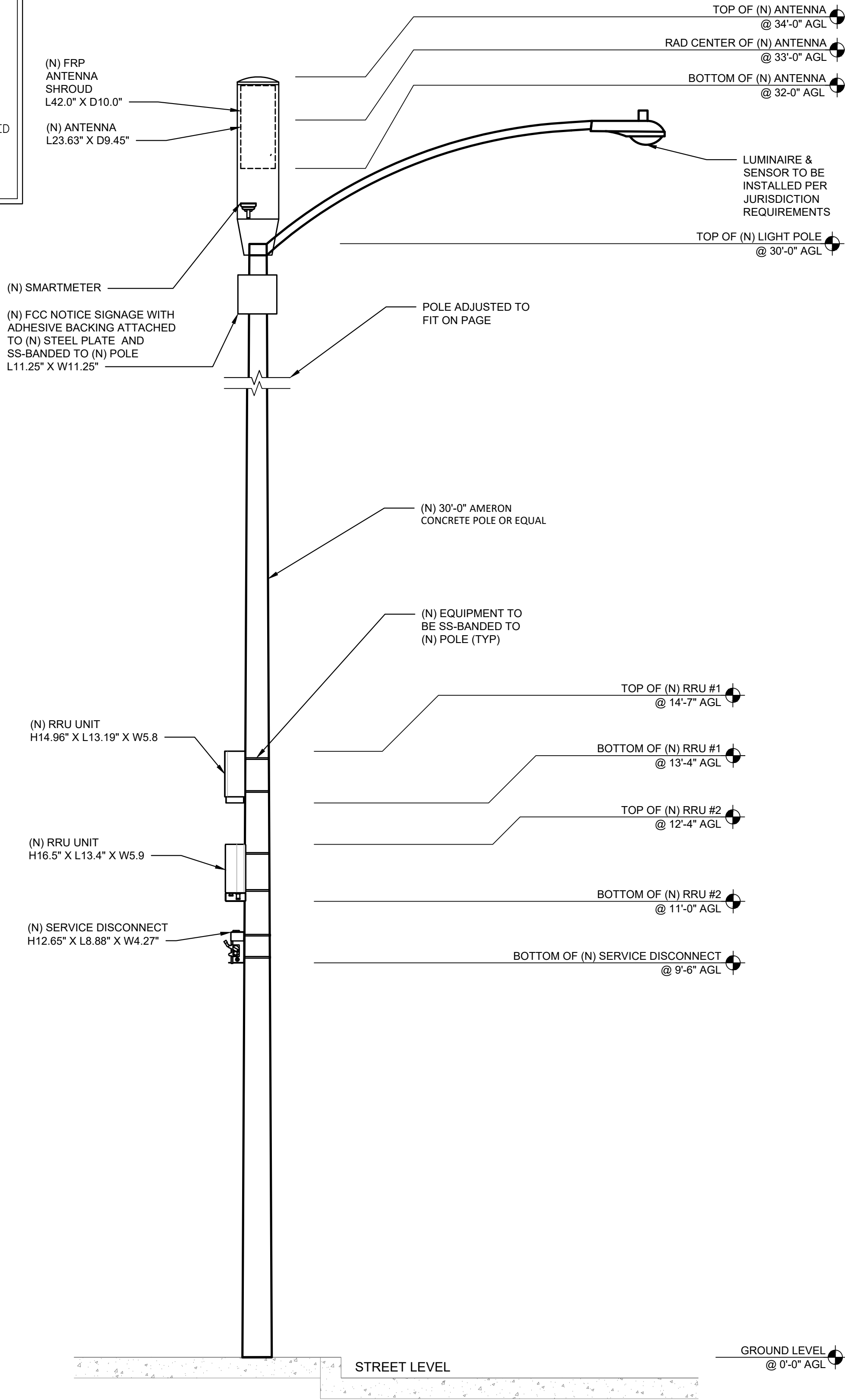
Antenna Equipment List: [LICENSEE TO COMPLETE]

Antenna Plans: See the attached plan set dated \_\_\_\_\_ 20\_\_ prepared by \_\_\_\_\_ consisting of (\_\_\_\_) page(s).

**EXHIBIT B**  
**INITIAL APPROVED ANTENNA DESIGN**

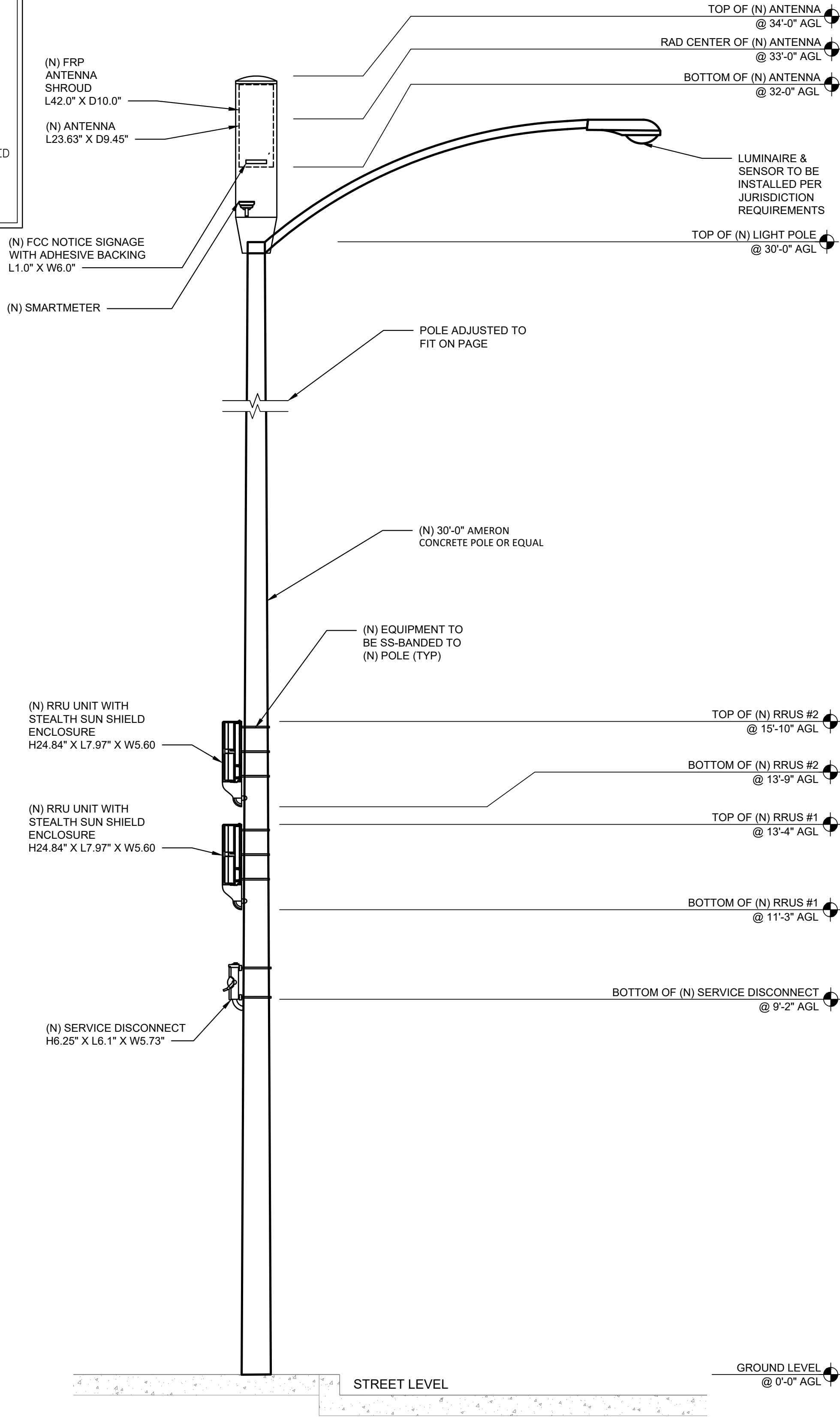
NOTES


1. (N) RRU SOLAR SHIELD, MOUNTING COMPONENTS & CABLE SWEEP, (N) FRP ANTENNA CONCEALMENT SHROUD & SKIRT TO MATCH AS CLOSELY AS POSSIBLE TO THE EXISTING POLE COLOR
2. REMOVE (E) ABANDONED VACANT BAND MOUNTS ON (E) POLE
3. IDENTIFICATION AND WARNING LABELS SHALL BE INSTALLED ON ALL DEVICES AS REQUIRED BY CODES AND STANDARDS
4. (E) POLE FOUNDATION TO BE REPAIRED OR REPLACED AS REQUIRED FOR (N) POLE INSTALLATION
5. ALL (N) CONDUIT AND CABLING TO BE LOCATED WITHIN POLE



NOTES

1. (N) RRU SOLAR SHIELD, MOUNTING COMPONENTS & CABLE SWEEP, (N) FRP ANTENNA CONCEALMENT SHROUD & SKIRT TO MATCH AS CLOSELY AS POSSIBLE TO THE EXISTING POLE COLOR
2. REMOVE (E) ABANDONED VACANT BAND MOUNTS ON (E) POLE
3. IDENTIFICATION AND WARNING LABELS SHALL BE INSTALLED ON ALL DEVICES AS REQUIRED BY CODES AND STANDARDS
4. (E) POLE FOUNDATION TO BE REPAIRED OR REPLACED AS REQUIRED FOR (N) POLE INSTALLATION
5. ALL (N) CONDUIT AND CABLING TO BE LOCATED WITHIN POLE



  
5001 EXECUTIVE PARKWAY  
SAN RAMON, CA 94583

  
6140 STONERIDGE MALL MD  
THIRD FLOOR  
PLEASANTON, CA 94588

  
2033 GATEWAY PL  
5TH FLR  
SAN JOSE, CA 95110

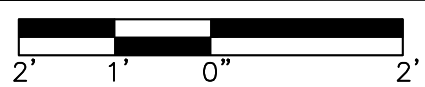
REV	DATE	DESCRIPTION	BY
A	04/25/19	SUNNYVALE SUBMISSION	LEL

SUNNYVALE  
CONCRETE  
LIGHT POLE

SHEET TITLE  
PICO & MICRO  
PROPOSED ELEVATIONS

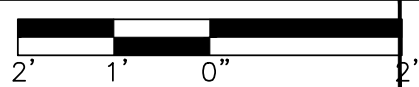
SHEET NUMBER

24"x36" SCALE: 1/2" = 1'-0"  
11"x17" SCALE: 1/4" = 1'-0"



CONCRETE LIGHT POLE MICRO 4G ELEVATION 2

24"x36" SCALE: 1/2" = 1'-0"  
11"x17" SCALE: 1/4" = 1'-0"



CONCRETE LIGHT POLE PICO 4G ELEVATION 1



Date:	February 15, 2018						
Scale:	Per Plan						
Designed:	RC						
Drawn:	RC						
Checked:	ZLN						
Proj. Engr:	ZLN						
File:							
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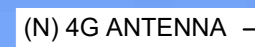
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SAN JOSE, CA 95110

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SUNNYVALE  
CONCRETE  
LIGHT POLE

SHEET TITLE  
PICO & MICRO  
PROPOSED ELEVATIONS

SHEET NUMBER



(N) SMARTMETER  
LOCATED IN (N)  
4G ANTENNA  
SHROUD \_\_\_\_\_

(N) RRU UNIT —

(N) RRU UNIT —

(N) DISCONNECT -



(N) SMARTMETER  
LOCATED IN (N)  
4G ANTENNA  
SHROUD \_\_\_\_\_

(N) RRU UNIT  
WITH STEALTH  
SUN SHIELD  
ENCLOSURE \_\_\_\_\_

(N) RRU UNIT  
WITH STEALTH  
SUN SHIELD  
ENCLOSURE \_\_\_\_\_

(N) DISCONNECT

CONCRETE LIGHT POLE MICRO 4G SIMULATION	2
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CONCRETE LIGHT POLE PICO 4G SIMULATION	1
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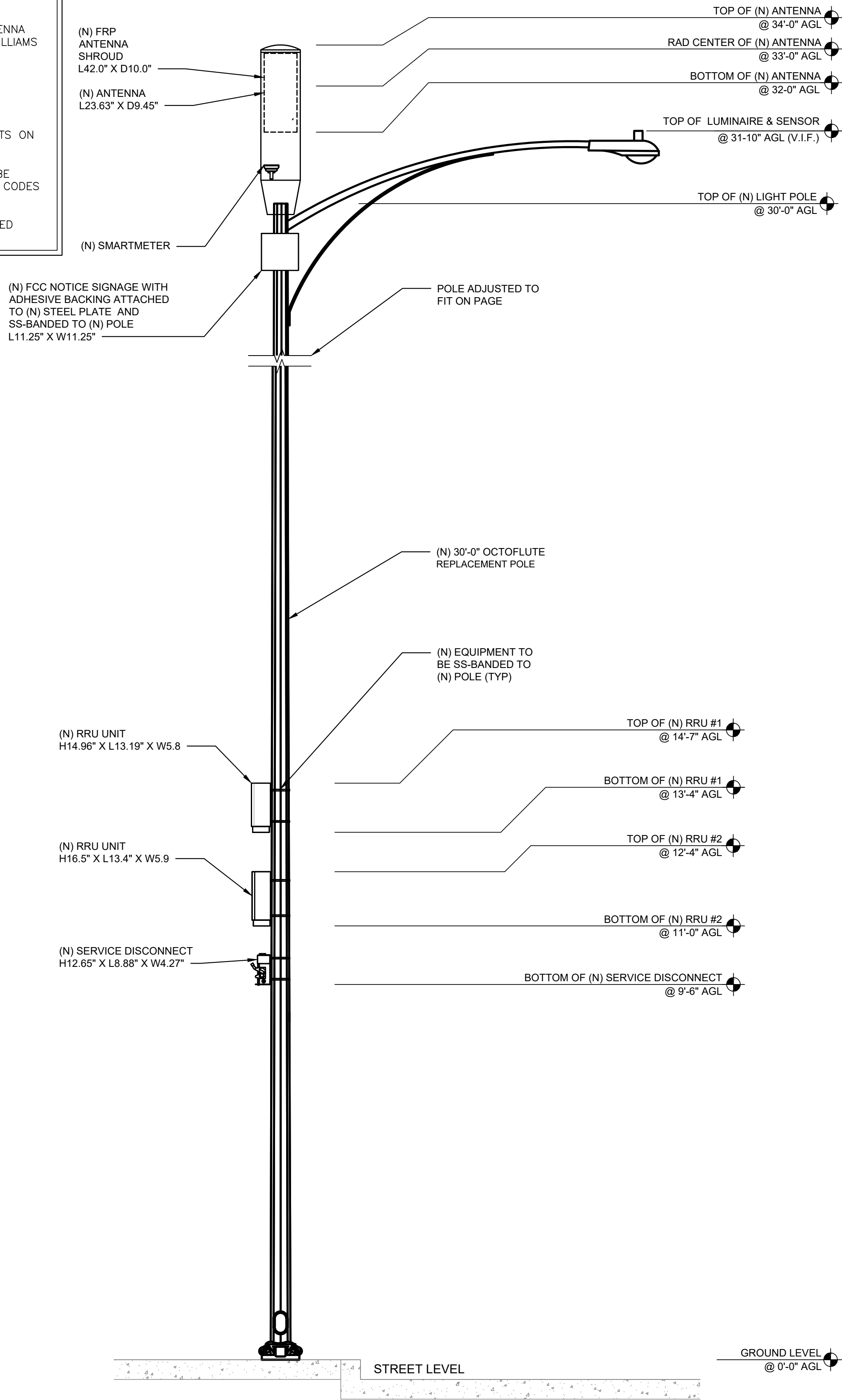


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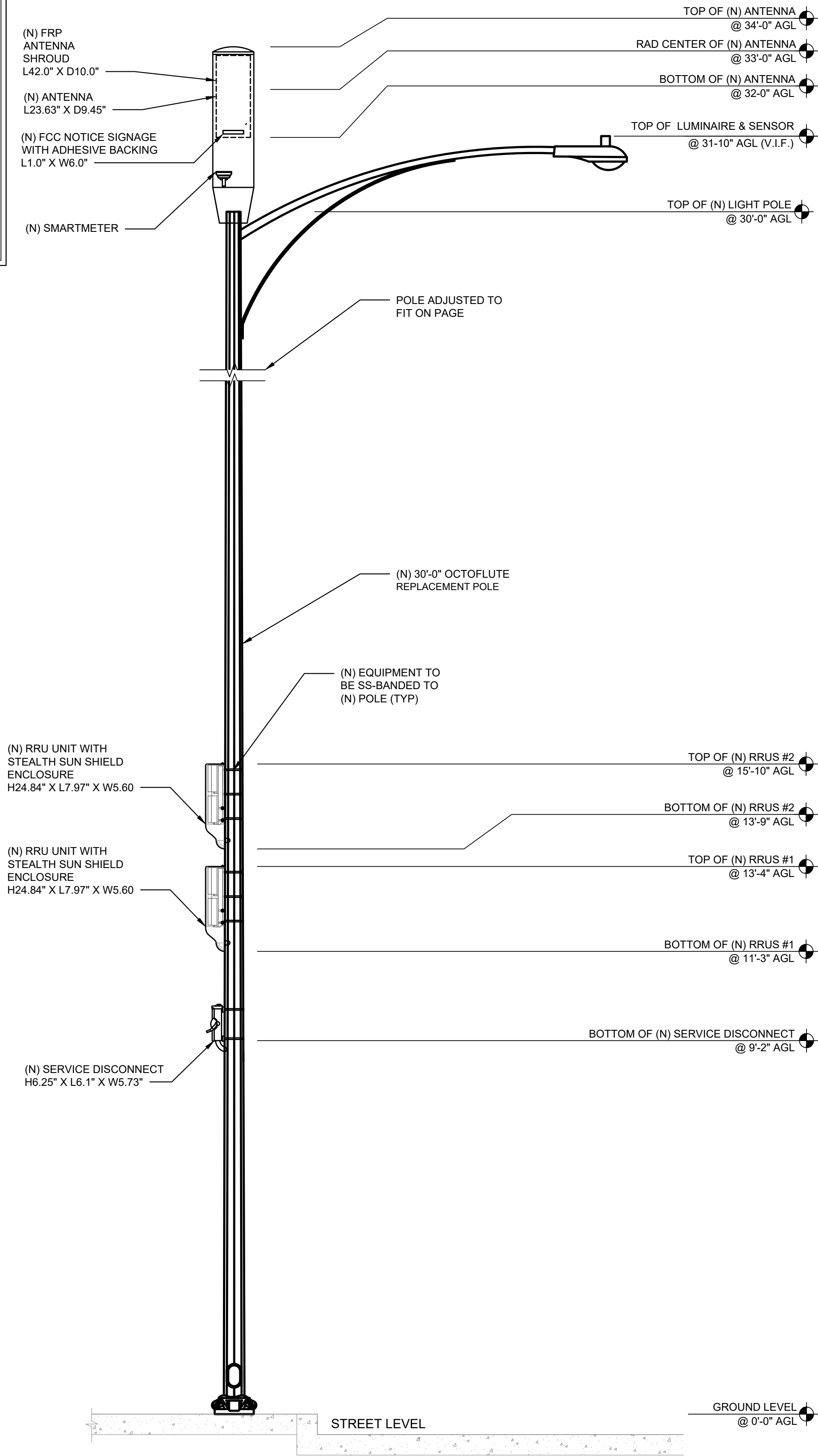
NOTES

1. PAINT (N) RRU SOLAR SHIELD, MOUNTING COMPONENTS & CABLE SWEEP, (N) FRP ANTENNA CONCEALMENT SHROUD & SKIRT SHERMAN-WILLIAMS LIGHT POLE GREEN (PRODUCT #8035)
2. POWDER COAT (N) METAL LIGHT POLE SHERMAN-WILLIAMS LIGHT POLE GREEN (PRODUCT #8035)
3. REMOVE (E) ABANDONED VACANT BAND MOUNTS ON (E) POLE
4. IDENTIFICATION AND WARNING LABELS SHALL BE INSTALLED ON ALL DEVICES AS REQUIRED BY CODES AND STANDARDS
5. ALL (N) CONDUIT AND CABLING TO BE LOCATED WITHIN POLE



NOTES

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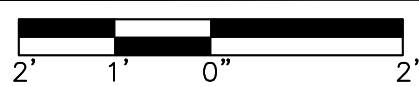
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METAL  
LIGHT POLE

SHEET TITLE  
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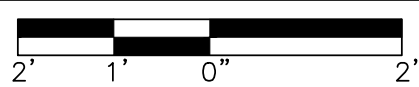
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11"x17" SCALE: 1/4" = 1'-0"



METAL LIGHT POLE MICRO 4G ELEVATION 2

24"x36" SCALE: 1/2" = 1'-0"  
11"x17" SCALE: 1/4" = 1'-0"



METAL LIGHT POLE PICO 4G ELEVATION 1



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THIRD FLOOR  
PLEASANTON, CA 94588



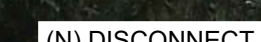
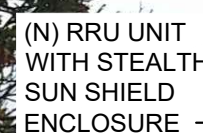
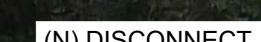
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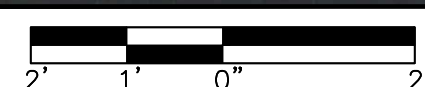
SUNNYVALE  
METAL  
LIGHT POLE

SHEET TITLE  
PICO & MICRO  
PROPOSED ELEVATIONS

SHEET NUMBER



24"x36" SCALE: 1/2" = 1'-0"  
11"x17" SCALE: 1/4" = 1'-0"



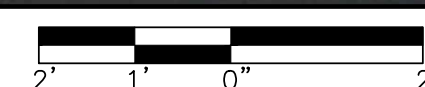
METAL LIGHT POLE MICRO 4G SIMULATION	2
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REV. DATE JANUARY 29, 2018

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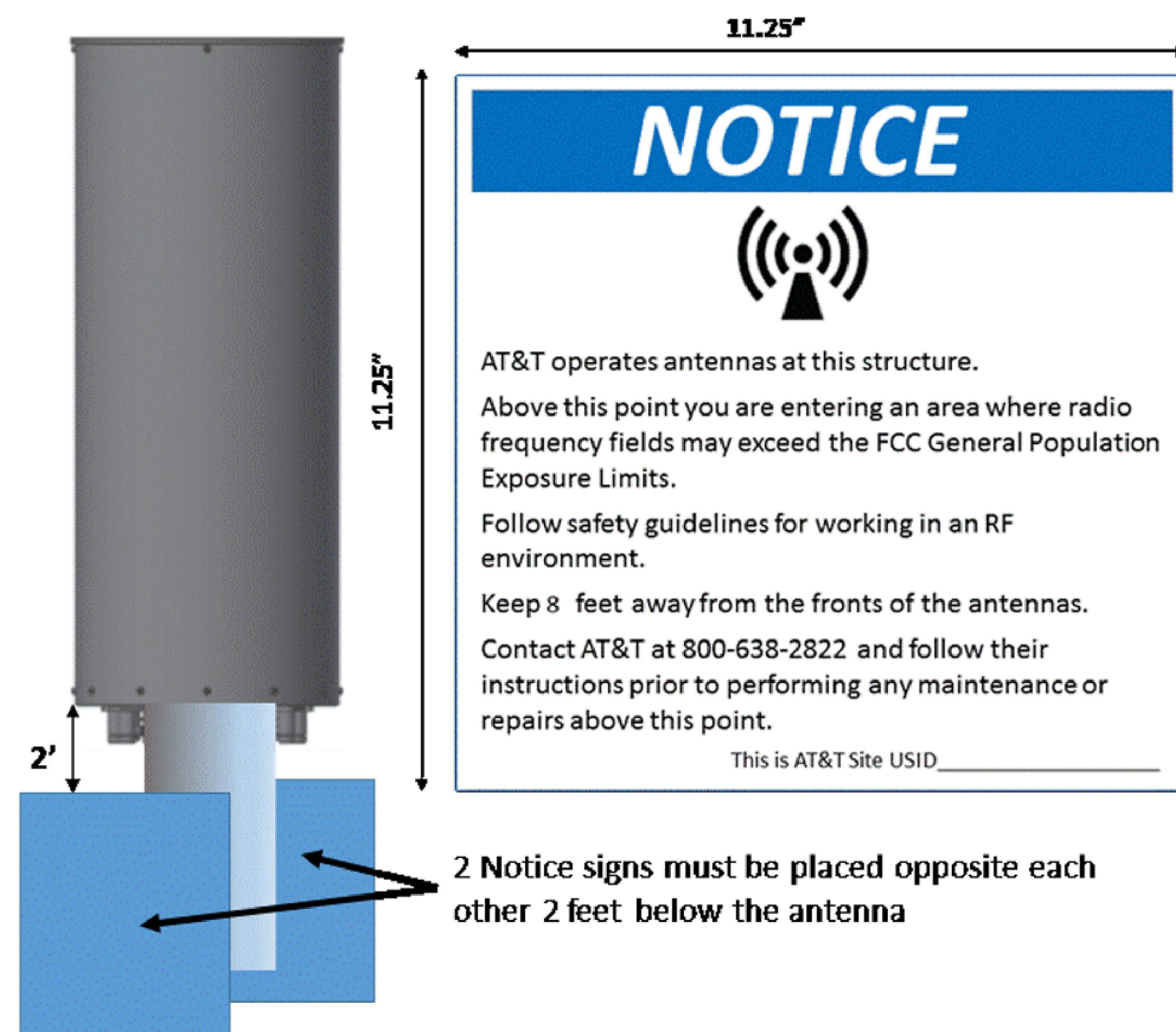


## METAL LIGHT POLE PICO 4G SIMULATION 1





DAS (Distributed Antenna System) and CRAN (Centralized Radio Access Network) Signage Standard.”  
Use this link to access the document:  
<http://apex.web.att.com/bookview/bookview.jsp?bookname=ATT-790-202-062&fulltext>



**Available from Excel Sign and Decal:**  
<https://www.weneedsigns.com/home.php?cat=1135> and  
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**NO1-DC-16 1"X6" NOTICE DECAL**

**"For 1 Foot Distance" VINYL DECAL WITH ADHESIVE BACKING**



1 order comes in a pack of 25

**Apply two NOTICE stickers opposite each other around the bottom of the radome.**

A	04/25/19	SUNNYVALE SUBMISSION	LEL
REV	DATE	DESCRIPTION	BY



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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by	)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment	)	
	)	
Accelerating Wireline Broadband Deployment by	)	WC Docket No. 17-84
Removing Barriers to Infrastructure Investment	)	

**DECLARATORY RULING AND THIRD REPORT AND ORDER**

**Adopted: September 26, 2018**

**Released: September 27, 2018**

By the Commission: Chairman Pai and Commissioners O’Rielly and Carr issuing separate statements;  
Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement.

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## I. INTRODUCTION

1. America is in the midst of a transition to the next generation of wireless services, known as 5G. These new services can unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country. The FCC is committed to doing our part to help ensure the United States wins the global race to 5G to the benefit of all Americans. Today's action is the next step in the FCC's ongoing efforts to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services. We proceed by drawing on the balanced and commonsense ideas generated by many of our state and local partners in their own small cell bills.

2. Supporting the deployment of 5G and other next-generation wireless services through smart infrastructure policy is critical. Indeed, upgrading to these new services will, in many ways, represent a more fundamental change than the transition to prior generations of wireless service. 5G can enable increased competition for a range of services—including broadband—support new healthcare and Internet of Things applications, speed the transition to life-saving connected car technologies, and create jobs. It is estimated that wireless providers will invest \$275 billion<sup>1</sup> over the next decade in next-generation wireless infrastructure deployments, which should generate an expected three million new jobs and boost our nation's GDP by half a trillion dollars.<sup>2</sup> Moving quickly to enable this transition is important, as a new report forecasts that speeding 5G infrastructure deployment by even one year would unleash an additional \$100 billion to the U.S. economy.<sup>3</sup> Removing barriers can also ensure that every community gets a fair shot at these deployments and the opportunities they enable.

3. The challenge for policymakers is that the deployment of these new networks will look different than the 3G and 4G deployments of the past. Over the last few years, providers have been increasingly looking to densify their networks with new small cell deployments that have antennas often no larger than a small backpack. From a regulatory perspective, these raise different issues than the construction of large, 200-foot towers that marked the 3G and 4G deployments of the past. Indeed, estimates predict that upwards of 80 percent of all new deployments will be small cells going forward.<sup>4</sup> To support advanced 4G or 5G offerings, providers must build out small cells at a faster pace and at a far greater density of deployment than before.

4. To date, regulatory obstacles have threatened the widespread deployment of these new services and, in turn, U.S. leadership in 5G. The FCC has lifted some of those barriers, including our decision in March 2018, which excluded small cells from some of the federal review procedures designed for those larger, 200-foot towers. But as the record here shows, the FCC must continue to act in partnership with our state and local leaders that are adopting forward leaning policies.

5. Many states and localities have acted to update and modernize their approaches to small cell deployments. They are working to promote deployment and balance the needs of their communities. At the same time, the record shows that problems remain. In fact, many state and local officials have urged the FCC to continue our efforts in this proceeding and adopt additional reforms. Indeed, we have

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<sup>1</sup> See Accenture Strategy, Accelerating Future Economic Value from the Wireless Industry at 2 (2018) (Accelerating Future Economic Value Report), <https://www.ctia.org/news/accelerating-future-economic-value-from-the-wireless-industry>, attached to Letter from Scott K. Bergmann, Senior Vice Pres., Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed July 19, 2018).

<sup>2</sup> See Accenture Strategy, Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities, (2017) <http://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf>; attached to Letter from Scott Bergmann, Vice Pres. Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-421, (filed Jan. 13, 2017).

<sup>3</sup> Accelerating Future Economic Value Report at 2.

<sup>4</sup> Letter from John T. Scott, Counsel for Mobilitie, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2-3 (filed Sept. 12, 2018).

heard from a number of local officials that the excessive fees or other costs associated with deploying small scale wireless infrastructure in large or otherwise “must serve” cities are materially inhibiting the buildout of wireless services in their own communities.

6. We thus find that now is the appropriate time to move forward with an approach geared at the conduct that threatens to limit the deployment of 5G services. In reaching our decision today, we have benefited from the input provided by a range of stakeholders, including state and local elected officials.<sup>5</sup> FCC leadership spent substantial time over the course of this proceeding meeting directly with local elected officials in their jurisdictions. In light of those discussions and our consideration of the record here, we reach a decision today that does not preempt nearly any of the provisions passed in recent state-level small cell bills. We have reached a balanced, commonsense approach, rather than adopting a one-size-fits-all regime. This ensures that state and local elected officials will continue to play a key role in reviewing and promoting the deployment of wireless infrastructure in their communities.

7. Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches.<sup>6</sup> We have carefully considered these views, but nevertheless find our actions here necessary and fully supported. By building on state and local ideas, today’s action boosts the United States’ standing in the race to 5G. According to a study submitted by Corning, our action would eliminate around \$2 billion in unnecessary costs, which would stimulate around \$2.4 billion of additional buildouts.<sup>7</sup> And that study shows that such new service would be

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<sup>5</sup> See, e.g., Letter from Brian D. Hill, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 31, 2018) (“While the FCC and the Ohio Legislature have worked to reduce the timeline for 5G deployment, the same cannot be said for all local and state governments. Regulations written in a different era continue to dictate the regulatory process for 5G infrastructure”); Letter from Maureen Davey, Commissioner, Stillwater County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) (“[T]he Commission’s actions to lower regulatory barriers can enable more capital spending to flow to areas like ours. Reducing fees and shortening review times in urban areas, thereby lowering the cost of deployment in such areas, can promote speedier deployment across all of America.”); Letter from Board of County Commissioners, Yellowstone County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 21, 2018) (“Reducing these regulatory barriers by setting guidelines on fees, siting requirements and review timeframes, will promote investment including rural areas like ours.”); Letter from Board of Commissioners, Harney County, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 5, 2018) (“By taking action to speed and reduce the costs of deployment across the country, and create a more uniform regulatory framework, the Commission will lower the cost of deployment, enabling more investment in both urban and rural communities.”); Letter from Niraj J. Antani, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 4, 2018) (“[T]o truly expedite the small cell deployment process, broader government action is needed on more than just the state level.”); Letter from Michael C. Taylor, Mayor, City of Sterling Heights, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 30, 2018) (“[T]here are significant, tangible benefits to having a nation-wide rule that promotes the deployment of next-generation wireless access without concern that excessive regulation or small cell siting fees slows down the process.”).

<sup>6</sup> See, e.g., Letter from Linda Morse, Mayor, City of Manhattan, KS to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 13, 2018) (City of Manhattan, KS Sept. 13, 2018 *Ex Parte* Letter); Letter from Ronny Berdugo, Legislative Representative, League of California Cities to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) (Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter); Letter from Damon Connolly, Marin County Board of Supervisors to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 17, 2018) (Damon Connolly Sept. 17, 2018 *Ex Parte* Letter).

<sup>7</sup> See Letter from Thomas J. Navin, Counsel to Corning, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1, Attach. A at 2-3 (filed Sept. 5, 2018) (Corning Sept. 5, 2018 *Ex Parte* Letter).

deployed where it is needed most: 97 percent of new deployments would be in rural and suburban communities that otherwise would be on the wrong side of the digital divide.<sup>8</sup>

8. The FCC will keep pressing ahead to ensure that every community in the country gets a fair shot at the opportunity that next-generation wireless services can enable. As detailed in the sections that follow, we do so by taking the following steps.

9. In the Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. We thus address and reconcile this split in authorities by taking three main actions.

10. First, we express our agreement with the U.S. Courts of Appeals for the First, Second, and Tenth Circuits that the “materially inhibit” standard articulated in 1997 by the Clinton-era FCC’s *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

11. Second, we note, as numerous courts and prior FCC cases have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress’s limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision.<sup>9</sup> Namely, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality’s reasonable costs. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation over fees.

12. Third, we focus on a subset of other, non-fee provisions of local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332. This responds in particular to many concerns we heard from state and local governments about deployments in historic districts.

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<sup>8</sup> *Id.*

<sup>9</sup> “Small Wireless Facilities,” as used herein and consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

- (1) The facilities—
  - (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
  - (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
  - (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facilities do not require antenna structure registration under part 17 of this chapter;
- (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

13. Next, we issue a Report and Order that addresses the “shot clocks” governing the review of wireless infrastructure deployments. We take three main steps in this regard. First, we create a new set of shot clocks tailored to support the deployment of Small Wireless Facilities. In particular, we read Sections 253 and 332 as allowing 60 days for reviewing the application for attachment of a Small Wireless Facility using an existing structure and 90 days for the review of an application for attachment of a small wireless facility using a new structure. Second, while we do not adopt a “deemed granted” remedy for violations of our new shot clocks, we clarify that failing to issue a decision up or down during this time period is not simply a “failure to act” within the meaning of applicable law. Rather, missing the deadline also constitutes a presumptive prohibition. We would thus expect any locality that misses the deadline to issue any necessary permits or authorizations without further delay. We also anticipate that a provider would have a strong case for quickly obtaining an injunction from a court that compels the issuance of all permits in these types of cases. Third, we clarify a number of issues that are relevant to all of the FCC’s shot clocks, including the types of authorizations subject to these time periods.

## II. BACKGROUND

### A. Legal Background

14. In the Telecommunications Act of 1996 (the 1996 Act), Congress enacted sweeping new provisions intended to facilitate the deployment of telecommunications infrastructure. As U.S. Courts of Appeals have stated, “[t]he [1996] Act ‘represents a dramatic shift in the nature of telecommunications regulation.’”<sup>10</sup> The Senate floor manager, Senator Larry Pressler, stated that “[t]his is the most comprehensive deregulation of the telecommunications industry in history.”<sup>11</sup> Indeed, the purpose of the 1996 Act is to “provide for a pro-competitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition.”<sup>12</sup> The conference report on the 1996 Act similarly indicates that Congress “intended to remove all barriers to entry in the provision of telecommunications services.”<sup>13</sup> The 1996 Act thus makes clear Congress’s commitment to a competitive telecommunications marketplace unhindered by unnecessary regulations, explicitly directing the FCC to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”<sup>14</sup>

15. Several provisions of the 1996 Act speak directly to Congress’s determination that certain state and local regulations are unlawful. Section 253(a) provides that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”<sup>15</sup> Courts have observed that Section 253 represents a “broad preemption of laws that inhibit competition.”<sup>16</sup>

16. The Commission has issued several rulings interpreting and providing guidance regarding the language Congress used in Section 253. For instance, in the 1997 *California Payphone* decision, the Commission, under the leadership of then Chairman William Kennard, stated that, in determining whether a state or local law has the effect of prohibiting the provision of telecommunications services, it

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<sup>10</sup> *Sprint Telephony PCS LP v. County of San Diego*, 543 F.3d 571, 575 (9th Cir. 2008) (en banc) (*County of San Diego*) (quoting *Cablevision of Boston, Inc. v. Pub. Improvement Comm’n*, 184 F.3d 88, 97 (1st Cir. 1999)).

<sup>11</sup> 141 Cong. Rec. S8197 (daily ed. June 12, 1995).

<sup>12</sup> H.R. Conf. Rep. No. 104-458, at 113 (1996), reprinted in 1996 U.S.C.C.A.N. (100 Stat. 5) 124.

<sup>13</sup> S. Rep. No. 104-230, at 126 (1996) (Conf. Rep.).

<sup>14</sup> Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996); see also *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371 (1999) (noting that the 1996 Act “fundamentally restructures local telephone markets” to facilitate market entry); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 857-58 (1997) (“The Telecommunications Act was an unusually important legislative enactment . . . designed to promote competition.”).

<sup>15</sup> 47 U.S.C. § 253(a).

<sup>16</sup> *Puerto Rico Tel. Co. v. Telecomm. Reg. Bd. of Puerto Rico*, 189 F.3d 1, 11 n.7 (1st Cir. 1999).

“consider[s] whether the ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”<sup>17</sup>

17. Similar to Section 253, Congress specified in Section 332(c)(7) that “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—(I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”<sup>18</sup> Clause (B)(ii) of that section further provides that “[a] State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”<sup>19</sup> Section 332(c)(7) generally preserves state and local authority over the “placement, construction, and modification of personal wireless service facilities” but with the important limitations described above.<sup>20</sup> Section 332(c)(7) also sets forth a judicial remedy, stating that “[a]ny person adversely affected by any final action or failure to act by a State or local government” that is inconsistent with the requirements of Section 332(c)(7) “may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction.”<sup>21</sup> The provision further directs the court to “decide such action on an expedited basis.”<sup>22</sup>

18. The Commission has previously interpreted the language Congress used and the limits it imposed on state and local authority in Section 332. For instance, in interpreting Section 332(c)(7)(B)(i)(II), the Commission has found that “a State or local government that denies an application for personal wireless service facilities siting solely because ‘one or more carriers serve a given geographic market’ has engaged in unlawful regulation that ‘prohibits or ha[s] the effect of prohibiting the provision of personal wireless services,’ within the meaning of Section 332(c)(7)(B)(i)(II).”<sup>23</sup> In adopting this interpretation, the Commission explained that its “construction of the provision achieves a balance that is most consistent with the relevant goals of the Communications Act” and its understanding that “[i]n promoting the construction of nationwide wireless networks by multiple carriers, Congress sought ultimately to improve service quality and lower prices for consumers.”<sup>24</sup> The Commission also noted that an alternative interpretation would “diminish the service provided to [a wireless provider’s] customers.”<sup>25</sup>

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<sup>17</sup> *California Payphone Ass’n*, 12 FCC Rcd 14191, 14206, para. 31 (1997) (*California Payphone*).

<sup>18</sup> 47 U.S.C. § 332(c)(7)(B)(i).

<sup>19</sup> 47 U.S.C. § 332(c)(7)(B)(ii).

<sup>20</sup> 47 U.S.C. § 332(c)(7)(A) (stating that, “[e]xcept as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless services facilities”). The statute defines “personal wireless services” to include CMRS, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. § 332(c)(7)(C). In 2012, Congress expressly modified this preservation of local authority by enacting Section 6409(a), which requires local governments to approve certain types of facilities siting applications “[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified in substantial part as Section 332(c)(7)] . . . or any other provision of law.” Spectrum Act, 47 U.S.C. § 6409(a)(1).

<sup>21</sup> 47 U.S.C. § 332(c)(7)(B)(v).

<sup>22</sup> 47 U.S.C. § 332(c)(7)(B)(v).

<sup>23</sup> *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994, 14016, para. 56 (2009) (*2009 Declaratory Ruling*), *aff’d*, *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012) (*City of Arlington*), *aff’d*, 569 U.S. 290 (2013).

<sup>24</sup> *2009 Declaratory Ruling*, 24 FCC Rcd at 14017-18, para. 61.

<sup>25</sup> *Id.*

19. In the *2009 Declaratory Ruling*, the Commission acted to speed the deployment of then-new 4G services and concluded that, “[g]iven the evidence of unreasonable delays [in siting decisions] and the public interest in avoiding such delays,” it should offer guidance regarding the meaning of the statutory phrases “reasonable period of time” and “failure to act” “in order to clarify when an adversely affected service provider may take a dilatory State or local government to court.”<sup>26</sup> The Commission interpreted “reasonable period of time” under Section 332(c)(7)(B)(ii) to be 90 days for processing collocation applications and 150 days for processing applications other than collocations.<sup>27</sup> The Commission further determined that failure to meet the applicable time frame enables an applicant to pursue judicial relief within the next 30 days.<sup>28</sup> In litigation involving the 90-day and 150-day time frames, the locality may attempt to “rebut the presumption that the established timeframes are reasonable.”<sup>29</sup> If the agency fails to make such a showing, it may face “issuance of an injunction granting the application.”<sup>30</sup> In its *2014 Wireless Infrastructure Order*,<sup>31</sup> the Commission clarified that the time frames under Section 332(c)(7) are presumptively reasonable and begin to run when the application is submitted, not when it is found to be complete by a siting authority.<sup>32</sup>

20. In 2012, Congress adopted Section 6409 of the Middle Class Tax Relief and Job Creation Act (the Spectrum Act), which provides further evidence of Congressional intent to limit state and local laws that operate as barriers to infrastructure deployment. It states that, “[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified as 47 U.S.C. § 332(c)(7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”<sup>33</sup> Subsection (a)(2) defines the term “eligible facilities request” as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.<sup>34</sup> In implementing Section 6409 and in an effort to “advance[e] Congress’s goal

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<sup>26</sup> *Id.* at 14008, para. 37; *see also id.* at 14029 (Statement of Chairman Julius Genachowski) (“[T]he rules we adopt today . . . will have an important effect in speeding up wireless carriers’ ability to build new 4G networks—which will in turn expand and improve the range of wireless choices available to American consumers.”).

<sup>27</sup> *Id.* at 14012, para. 45.

<sup>28</sup> *Id.* at 14005, 14012, paras. 32, 45.

<sup>29</sup> *Id.* at 14008-10, 14013-14, paras. 37-42, 49-50.

<sup>30</sup> *Id.* at 14009, para. 38; *see also City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005) (proper remedies for Section 332(c)(7) violations include injunctions but not constitutional tort damages).

<sup>31</sup> Specifically, the Commission determined that once a siting application is considered complete for purposes of triggering the Section 332(c)(7) shot clocks, those shot clocks run regardless of any moratoria imposed by state or local governments, and the shot clocks apply to DAS and small-cell deployments so long as they are or will be used to provide “personal wireless services.” *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report & Order, 29 FCC Rcd 12865, 12966, 12973, paras. 243, 270, (2014) (*2014 Wireless Infrastructure Order*), *aff’d*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015) (*Montgomery County*); *see also Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330, 3339, para. 22 (2017) (*Wireless Infrastructure NPRM/NOI*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket No. 17-84 and WT Docket No. 17-79, FCC 18-111, paras. 140-68 (rel. Aug. 3, 2018) (*Moratoria Declaratory Ruling*).

<sup>32</sup> *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, para. 258. (“Accordingly, to the extent municipalities have interpreted the clock to begin running only after a determination of completeness, that interpretation is incorrect.”).

<sup>33</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409(a)(2), 126 Stat. 156 (2012).

<sup>34</sup> *Id.*

of facilitating rapid deployment,”<sup>35</sup> the Commission adopted rules to expedite the processing of eligible facilities requests, including documentation requirements and a 60-day period for states and localities to review such requests.<sup>36</sup> The Commission further determined that a “deemed granted” remedy was necessary for cases in which the reviewing authority fails to issue a decision within the 60-day period in order to “ensur[e] rapid deployment of commercial and public safety wireless broadband services.”<sup>37</sup> The Fourth Circuit, affirming that remedy, explained that “[f]unctionally, what has occurred here is that the FCC—pursuant to properly delegated Congressional authority—has preempted state regulation of wireless towers.”<sup>38</sup>

21. Consistent with these broad federal mandates, courts have recognized that the Commission has authority to interpret Sections 253 and 332 of the Act to further elucidate what types of state and local legal requirements run afoul of the statutory parameters Congress established.<sup>39</sup> For instance, the Fifth Circuit affirmed the *2009 Declaratory Ruling in City of Arlington*. The court concluded that the Commission possessed the “authority to establish the 90– and 150–day time frames” and that its decision was not arbitrary and capricious.<sup>40</sup> More generally, as the agency charged with administering the Communications Act, the Commission has the authority, responsibility, and expert judgement to issue interpretations of the statutory language and to adopt implementing regulations that clarify and specify the scope and effect of the Act. Such interpretations are particularly appropriate where the statutory language is ambiguous, or the subject matter is “technical, complex, and dynamic,” as it is in the Communications Act, as recognized by the Supreme Court.<sup>41</sup> Here, the Commission has ample experience monitoring and regulating the telecommunications sector. It is well-positioned, in light of this experience and the record in this proceeding, to issue a clarifying interpretation of Sections 253 and 332(c)(7) that accounts both for the changing needs of a dynamic wireless sector that is increasingly reliant on Small Wireless Facilities and for state and local oversight that does not materially inhibit wireless deployment.

22. The congressional and FCC decisions described above point to consistent federal action, particularly when faced with changes in technology, to ensure that our country’s approach to wireless infrastructure deployment promotes buildout of the facilities needed to provide Americans with next-generation services. Consistent with that long-standing approach, in the *2017 Wireless Infrastructure NPRM/NOI*, the Commission sought comment on whether the FCC should again update its approach to infrastructure deployment to ensure that regulations are not operating as prohibitions in violation of Congress’s decisions and federal policy.<sup>42</sup> In August 2018, the Commission concluded that state and local moratoria on telecommunications services and facilities deployment are barred by Section 253(a).<sup>43</sup>

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<sup>35</sup> *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12872, para. 15.

<sup>36</sup> *Id.* at 12922, 12956-57, paras. 135, 214-15.

<sup>37</sup> *Id.* at 12961-62, paras. 226, 228.

<sup>38</sup> *Montgomery County*, 811 F.3d at 129.

<sup>39</sup> See, e.g., *City of Arlington*, 668 F.3d at 253-54; *County of San Diego*, 543 F.3d at 578; *RT Commc’ns., Inc. v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000).

<sup>40</sup> *City of Arlington*, 668 F.3d at 254, 260-61.

<sup>41</sup> *Nat’l Cable & Telecomm. Ass’n v. Gulf Power Co.*, 534 U.S. 327, 328 (2002); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000) (recognizing “agency’s greater familiarity with the ever-changing facts and circumstances surrounding the subjects regulated”); see also, e.g., *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 983-986 (2005) (Commission’s interpretation of an ambiguous statutory provision overrides earlier court decisions interpreting the same provision).

<sup>42</sup> See generally *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3332-39, paras. 4-22.

<sup>43</sup> See generally *Moratoria Declaratory Ruling*, FCC 18-111, paras. 140-68.

## B. The Need for Commission Action

23. In response to the opportunities presented by offering new wireless services, and the problems facing providers that seek to deploy networks to do so, we find it necessary and appropriate to exercise our authority to interpret the Act and clarify the preemptive scope that Congress intended. The introduction of advanced wireless services has already revolutionized the way Americans communicate and transformed the U.S. economy. Indeed, the FCC's most recent wireless competition report indicates that American demand for wireless services continues to grow exponentially. It has been reported that monthly data usage per smartphone subscriber rose to an average of 3.9 gigabytes per subscriber per month, an increase of approximately 39 percent from year-end 2015 to year-end 2016.<sup>44</sup> As more Americans use more wireless services, demand for new technologies, coverage and capacity will necessarily increase, making it critical that the deployment of wireless infrastructure, particularly Small Wireless Facilities, not be stymied by unreasonable state and local requirements.

24. 5G wireless services, in particular, will transform the U.S. economy through increased use of high-bandwidth and low-latency applications and through the growth of the Internet of Things.<sup>45</sup> While the existing wireless infrastructure in the U.S. was erected primarily using macro cells with relatively large antennas and towers, wireless networks increasingly have required the deployment of small cell systems to support increased usage and capacity. We expect this trend to increase with next-generation networks, as demand continues to grow, and providers deploy 5G service across the nation.<sup>46</sup> It is precisely "[b]ecause providers will need to deploy large numbers of wireless cell sites to meet the country's wireless broadband needs and implement next-generation technologies" that the Commission has acknowledged "an urgent need to remove any unnecessary barriers to such deployment, whether caused by Federal law, Commission processes, local and State reviews, or otherwise."<sup>47</sup> As explained below, the need to site so many more 5G-capable nodes leaves providers' deployment plans and the underlying economics of those plans vulnerable to increased per site delays and costs.

25. Some states and local governments have acted to facilitate the deployment of 5G and other next-gen infrastructure, looking to bring greater connectivity to their communities through forward-looking policies. Leaders in these states are working hard to meet the needs of their communities and balance often competing interests. At the same time, outlier conduct persists. The record here suggests that the legal requirements in place in other state and local jurisdictions are materially impeding that deployment in various ways.<sup>48</sup> Crown Castle, for example, describes "excessive and unreasonable" "fees

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<sup>44</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd 8968, 8972, para. 20 (2017) (*Twentieth Wireless Competition Report*).

<sup>45</sup> See *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3331, para. 1.

<sup>46</sup> See, e.g., Letter from Brett Haan, Principal, Deloitte Consulting, U.S., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Sept. 17, 2018) ("Significant investment in new network infrastructure is needed to deploy 5G networks at-scale in the United States. 5G's speed and coverage capabilities rely on network densification, which requires the addition of towers and small cells to the network. . . . This requires carriers to add 3 to 10 times the number of existing sites to their networks. Most of this additional infrastructure will likely be built with small cells that use lampposts, utility poles, or other structures of similar size able to host smaller, less obtrusive radios required to build a densified network." (citation omitted)); see also Deloitte LLP, 5G: The Chance to Lead for a Decade (2018) (Deloitte 5G Paper), available at <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-5gdeployment-imperative.pdf>.

<sup>47</sup> See *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3331, para. 2.

<sup>48</sup> See, e.g., Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 10, 2018) ("Unfortunately, many municipalities are unable, unwilling, or do not make it a priority to act on applications within the shot clock period."); Letter from Keith Buell, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Aug. 13, 2018) (Sprint Aug. 13, 2018 *Ex Parte* Letter); Letter from Katherine R. Saunders, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21,



to access the [rights-of-way] that are completely unrelated to their maintenance or management.” It also points to barriers to market entry “for independent network and telecommunications service providers,” including municipalities that “restric[t] access to the [right-of-way] only to providers of commercial mobile services” or that impose “onerous zoning requirements on small cell installations when other similar [right of way] utility installations are erected with simple building permits.”<sup>49</sup> Crown Castle is not alone in describing local regulations that slow deployment. AT&T states that localities in Maryland, California, and Massachusetts have imposed fees so high that it has had to pause or decrease deployments.<sup>50</sup> Likewise, AT&T states that a Texas city has refused to allow small cell placement on any structures in a right-of-way (ROW).<sup>51</sup> T-Mobile states that the Town of Hempstead, New York requires service providers who seek to collocate or upgrade equipment on existing towers that have been properly constructed pursuant to Class II standards to upgrade and certify these facilities under Class III standards that apply to civil and national defense and military facilities.<sup>52</sup> Verizon states that a Minnesota town has proposed barring construction of new poles in rights-of-way and that a Midwestern suburb where it has been trying to get approval for small cells since 2014 has no established procedures for small cell approvals.<sup>53</sup> Verizon states that localities in New York and Washington have required special use permits involving multiple layers of approval to locate small cells in some or all zoning districts.<sup>54</sup> While some localities dispute some of these characterizations, their submissions do not persuade us that there is no basis or need for the actions we take here.

26. Further, the record in this proceeding demonstrates that many local siting authorities are not complying with our existing Section 332 shot clock rules.<sup>55</sup> WIA states that its members routinely face lengthy delays and specifically cite localities in New Jersey, New Hampshire, and Maine as being

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2018) (“[L]ocal permitting delays continue to stymie deployments.”); Letter from Kenneth J. Simon, Crown Castle, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018); Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 30, 2018) (CTIA Aug. 30, 2018 *Ex Parte* Letter).

<sup>49</sup> Crown Castle Comments at 7; *see also* Letter from Kenneth J. Simon, Senior Vice President and General Counsel, Crown Castle International Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 19, 2018) (“In Hillsborough, California, Crown Castle submitted applications covering 16 nodes, and was assessed \$60,000 in application fees. Not only did Hillsborough go on to deny these applications, following that denial it also then sent Crown Castle an invoice for an additional \$351,773 (attached as Exhibit A), most of which appears to be related to outside counsel fees—all for equipment that was not approved and has not yet been constructed.”).

<sup>50</sup> Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Aug. 6, 2018) (AT&T Aug. 6, 2018 *Ex Parte* Letter).

<sup>51</sup> AT&T Comments at 6-7.

<sup>52</sup> T-Mobile Reply Comments at 7-9; *see also* CCA Reply Comments at 12; CTIA Reply Comments at 18; WIA Reply Comments at 22-23.

<sup>53</sup> *See* Verizon Comments at 7.

<sup>54</sup> *See* Verizon Comments at 35.

<sup>55</sup> *See, e.g.,* T-Mobile Comments at 8 (stating that “roughly 30% of all of its recently proposed sites (including small cells) involve cases where the locality failed to act in violation of the shot clocks.”). According to WIA, one of its members “reports that 70% of its applications to deploy Small Wireless Facilities in the public ROWs during a two-year period exceeded the 90-day shot clock for installation of Small Wireless Facilities on an existing utility pole, and 47% exceeded the 150-day shot clock for the construction of new towers.” WIA Comments at 7. A New Jersey locality took almost five years to deny a Sprint application. *See Sprint Spectrum L.P. v. Zoning Bd. of Adjustment of the Borough of Paramus, N.J.*, 21 F. Supp. 3d 381, 383, 387 (D.N.J. 2014), *aff’d*, 606 Fed. Appx. 669 (3d Cir. 2015). Another locality took almost three years to deny a Crown Castle application to install a DAS system. *See Crown Castle NG East, Inc. v. Town of Greenburgh*, 2013 WL 3357169, \*6-8 (S.D.N.Y. 2013), *aff’d*, 552 Fed. Appx. 47 (2d Cir. 2014).

problematic.<sup>56</sup> Similarly, AT&T identified an instance in which it took a locality in California 800 days to process an application.<sup>57</sup> GCI provides an example in which it took an Alaska locality nine months to decide an application.<sup>58</sup> T-Mobile states that a community in Colorado and one in California have lengthy pre-application processes for all small cell installations that include notification to all nearby households, a public meeting, and the preparation of a report, none of which these jurisdictions view as triggering a shot clock.<sup>59</sup> Similarly, Lighttower provides examples of long delays in processing siting applications.<sup>60</sup> Finally, Crown Castle describes a case in which a “town took approximately two years and nearly twenty meetings, with constantly shifting demands, before it would even ‘deem complete’ Crown Castle’s application.”<sup>61</sup>

27. Our Declaratory Ruling and Third Report and Order are intended to address these issues and outlier conduct. Our conclusions are also informed by findings, reports, and recommendations from the FCC Broadband Deployment Advisory Committee (BDAC), including the Model Code for Municipalities, the Removal of State and Local Regulatory Barriers Working Group report, and the Rates and Fees Ad Hoc Working Group report, which the Commission created in 2017 to identify barriers to deployment of broadband infrastructure, many of which are addressed here.<sup>62</sup> We also considered input from numerous state and local officials about their concerns, and how they have approached wireless deployment, much of which we took into account here. Our action is also consistent with congressional efforts to hasten deployment, including bi-partisan legislation pending in Congress like the STREAMLINE Small Cell Deployment Act and SPEED Act. The STREAMLINE Small Cell Deployment Act proposes to streamline wireless infrastructure deployments by requiring siting agencies to act on deployment requests within specified time frames and by limiting the imposition of onerous

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<sup>56</sup> WIA Comments at 8. WIA states that one of its “member reports that the wireless siting approval process exceeds 90 days in more than 33% of jurisdictions it surveyed and exceeds 150 days in 25% of surveyed jurisdictions.” WIA Comments at 8. In some cases, WIA members have experienced delays ranging from one to three years in multiple jurisdictions—significantly longer than the 90- and 150-day time frames that the Commission established in 2009.

<sup>57</sup> See WIA Comments at 9 (citing and discussing AT&T’s Comments in the 2016 Streamlining Public Notice, WT Docket No. 16-421).

<sup>58</sup> GCI Comments at 5-6.

<sup>59</sup> T-Mobile Comments at 21.

<sup>60</sup> Lighttower submits that average processing timeframes have increased from 300 days in 2016 to approximately 570 days in 2017, much longer than the Commission’s shot clocks. Lighttower states that “forty-six separate jurisdictions in the last two years had taken longer than 150 days to consider applications, with twelve of those jurisdictions—representing 101 small wireless facilities—taking more than a year.” Lighttower Comments at 5-6. See also WIA Comments at 9 (citing and discussing Lighttower’s Comments in the 2016 Streamlining Public Notice, WT Docket No. 16-421).

<sup>61</sup> WIA Comments at 8 (citing and discussing Crown Castle’s Comments in 2016 Streamlining Public Notice, WT Docket No. 16-421).

<sup>62</sup> BDAC Report of the Removal of State and Local Regulatory Barriers Working Group, <https://www.fcc.gov/sites/default/files/bdac-regulatorybarriers-01232018.pdf> (approved by the BDAC on January 23, 2018) (BDAC Regulatory Barriers Report); Draft Final Report of the Ad Hoc Committee on Rates and Fees to the BDAC, <https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-rates-fees-wg-report-07242018.pdf> (July 26, 2018) (Draft BDAC Rates and Fees Report); BDAC Model Municipal Code (Harmonized), <https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-harmonization-wg-model-code-muni.pdf> (approved July 26, 2018) (BDAC Model Municipal Code). The Draft Final Report of the Ad Hoc Committee on Rates and Fees to the BDAC was presented to the BDAC on July 26, 2018 but has not been voted by the BDAC as of the adoption of this Declaratory Ruling. Certain members of the Removal of State and Local Barriers Working Group also submitted a minority report disagreeing with certain findings in the BDAC Regulatory Barriers Report. See Minority Report Submitted by McAllen, TX, San Jose, CA, and New York, NY, GN Docket No. 17-83 (Jan 23, 2018); Letter from Kevin Pagan, City Attorney of McAllen to Marlene Dortch, Secretary, FCC (filed September 14, 2018).

conditions and fees.<sup>63</sup> The SPEED Act would similarly streamline federal permitting processes.<sup>64</sup> In the same vein, the Model Code for Municipalities adopts streamlined infrastructure siting requirements while other BDAC reports and recommendations emphasize the negative impact of high fees on infrastructure deployments.<sup>65</sup>

28. As do members of both parties of Congress and experts on the BDAC, we recognize the urgent need to streamline regulatory requirements to accelerate the deployment of wireless infrastructure for current needs and for the next generation of wireless service in 5G.<sup>66</sup> State government officials also have urged us to act to expedite the deployment of 5G technology, in particular, by streamlining overly burdensome regulatory processes to ensure that 5G technology will expand beyond just urban centers. These officials have expressed their belief that reducing high regulatory costs and delays in urban areas would leave more money and encourage development in rural areas.<sup>67</sup> “[G]etting [5G] infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources. The solution is to streamline relevant policies—allowing more modern rules for modern infrastructure.”<sup>68</sup> State officials have acknowledged that current regulations are “outdated” and “could hinder the timely arrival of 5G throughout the country,” and urged the FCC “to push for more reforms that will streamline infrastructure rules from coast to coast.”<sup>69</sup> Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches, arguing, among other points,

<sup>63</sup> See, e.g., STREAMLINE Small Cell Deployment Act, S.3157, 115th Congress (2017-2018).

<sup>64</sup> See, e.g., Streamlining Permitting to Enable Efficient Deployment of Broadband Infrastructure Act of 2017 (SPEED Act), S. 1988, 115th Cong. (2017).

<sup>65</sup> See BDAC Model Municipal Code; Draft BDAC Rates and Fees Report; BDAC Regulatory Barriers Report.

<sup>66</sup> See, e.g., Letter from Patricia Paoletta, Counsel to Deloitte Consulting LLP, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 20, 2018) (“Deloitte noted that, as with many technology standard evolutions, the value of being a first-mover in 5G will be significant. Being first to LTE afforded the United States macroeconomic benefits, as it became a test bed for innovative mobile, social, and streaming applications. Being first to 5G can have even greater and more sustained benefits to our national economy given the network effects associated with adding billions of devices to the 5G network, enabling machine-to-machine interactions that generates data for further utilization by vertical industries”).

<sup>67</sup> Letter from Montana State Senator Duane Ankney to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (Duane Ankney July 31, 2018 *Ex Parte* Letter); Letter from Fred A. Lamphere, Butte County Sheriff, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1 (filed Sept. 11, 2018) (Fred A. Lamphere Sept. 11, 2018 *Ex Parte* Letter); Letter from Todd Nash, Susan Roberts, Paul Catstilleja, Wallowa County Board of Commissioners, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Aug. 20, 2018); Letter from Lonnie Gilbert, First Responder, National Black Growers Council Member, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1 (filed Sept. 12, 2018); Letter from Jason R. Saine, North Carolina House of Representatives, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed Sept. 14, 2018) (Jason R. Saine Sept. 14, 2018 *Ex Parte* Letter) (minimal regulatory standard across the United States is critical to ensure that the United States wins the race to the 5G economy).

<sup>68</sup> Letter from LaWana Mayfield, City Council Member, Charlotte, NC, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (LaWana Mayfield July 31, 2018 *Ex Parte* Letter); see also Letter from South Carolina State Representative Terry Alexander to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed August 7, 2018) (“[P]olicymakers at all levels of government must streamline complex siting stipulations that will otherwise slow down 5G buildout for small cells in particular.”); Letter from Sal Pace, Pueblo County Commissioner, District 3, CO, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 30, 2018) (Sal Pace July 30, 2018 *Ex Parte* Letter) (“[T]he FCC should ensure that localities are fully compensated for their costs . . . Such fees should be reasonable and non-discriminatory, and should ensure that localities are made whole. Lastly, the FCC should set reasonable and enforceable deadlines for localities to act on wireless permit applications. . . . The distinction between siting large macro-towers and small cells should be reflected in any rulemaking.”)

<sup>69</sup> Letter from Dr. Carolyn A. Prince, Chairwoman, Marlboro County Council, SC, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (Dr. Carolyn Prince July 31, 2018 *Ex Parte* Letter)

that the FCC lacks authority to take certain actions.<sup>70</sup> We have carefully considered these views, but nevertheless find our actions here necessary and fully supported.

29. Accordingly, in this Declaratory Ruling and Third Report and Order, we act to reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology.

### III. DECLARATORY RULING

30. In this Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. In light of these diverging views, Congress's vision for a consistent, national policy framework, and the need to ensure that our approach continues to make sense in light of the relatively new trend towards the large-scale deployment of Small Wireless Facilities, we take this opportunity to clarify and update the FCC's reading of the limits Congress imposed. We do so in three main respects.

31. First, in Part III.A, we express our agreement with the views already stated by the First, Second, and Tenth Circuits that the "materially inhibit" standard articulated in 1997 by the Clinton-era FCC's *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

32. Second, in Part III.B, we note, as numerous courts have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can effectively prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress's limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision. Namely, fees are only permitted to the extent that they represent a reasonable approximation of the local government's objectively reasonable costs, and are non-discriminatory.<sup>71</sup> In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation, while recognizing that it is the standard itself, not the particular, presumptive fee levels we articulate, that ultimately will govern whether a particular fee is allowed under Sections 253 and 332. So fees above

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<sup>70</sup> See, e.g., *City of Manhattan*, KS Sept. 13, 2018 *Ex Parte* Letter at 1-2; Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter at 1-2; Damon Connolly Sept. 17, 2018 *Ex Parte* Letter at 1-2.

<sup>71</sup> Fees charged by states or localities in connection with Small Wireless Facilities would be "compensation" for purposes of Section 253(c). This Declaratory Ruling interprets Section 253 and 332(c)(7) in the context of three categories of fees, one of which applies to all deployments of Small Wireless Facilities while the other two are specific to Small Wireless Facilities deployments inside the ROW. (1) "Event" or "one-time" fees are charges that providers pay on a non-recurring basis in connection with a one-time event, or series of events occurring within a finite period. The one-time fees addressed in this Declaratory Ruling are not specific to the ROW. For example, a provider may be required to pay fees during the application process to cover the costs related to processing an application building or construction permits, street closures, or a permitting fee, whether or not the deployment is in the ROW. (2) Recurring charges for a Small Wireless Facility's use of or attachment to property inside the ROW owned or controlled by a state or local government, such as a light pole or traffic light, is the second category of fees addressed here, and is typically paid on a per structure/per year basis. (3) Finally, ROW access fees are recurring charges that are assessed, in some instances, to compensate a state or locality for a Small Wireless Facility's access to the ROW, which includes the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property (including when such property is government-owned). A ROW access fee may be charged even if the Small Wireless Facility is not using government owned property within the ROW. AT&T Comments at 18 (describing three categories of fees); Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 11 (filed Aug. 10, 2018) (Verizon Aug. 10, 2018 *Ex Parte* Letter) (characterizing fees as recurring or non-recurring); see also Draft BDAC Rates and Fees Report at p. 15-16. Unless otherwise specified, a reference to "fee" or "fees" herein refers to any one of, or any combination of, these three categories of charges.

those levels would be permissible under Sections 253 and 332 to the extent a locality's actual, reasonable costs (as measured by the standard above) are higher.

33. Finally, in Part III.C, we focus on a subset of other, non-fee provisions of state and local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities. We note that the Small Wireless Facilities that are the subject of this Declaratory Ruling remain subject to the Commission's rules governing Radio Frequency (RF) emissions exposure.<sup>72</sup>

**A. Overview of the Section 253 and Section 332(c)(7) Framework Relevant to Small Wireless Facilities Deployment**

34. In Sections 253(a) and 332(c)(7)(B) of the Act, Congress determined that state or local requirements that prohibit or have the effect of prohibiting the provision of service are unlawful and thus preempted.<sup>73</sup> Section 253(a) addresses "any interstate or intrastate telecommunications service," while Section 332(c)(7)(B)(i)(II) addresses "personal wireless services."<sup>74</sup> Although the provisions contain identical "effect of prohibiting" language, the Commission and different courts over the years have each employed inconsistent approaches to deciding what it means for a state or local legal requirement to have the "effect of prohibiting" services under these two sections of the Act. This has caused confusion among both providers and local governments about what legal requirements are permitted under Sections 253 and 332(c)(7). For example, despite Commission decisions to the contrary construing such language under Section 253, some courts have held that a denial of a wireless siting application will "prohibit or have the effect of prohibiting" the provision of a personal wireless service under Section 332(c)(7)(B)(i)(II) only if the provider can establish that it has a significant gap in service coverage in the

<sup>72</sup> See 47 CFR §§ 1.1307, 1.1310. We disagree with commenters who oppose the Declaratory Ruling on the basis of concerns regarding RF emissions. See, e.g., Comments from Judy Aizuss, Comments from Jeffrey Arndt, Comments from Jeanice Barcelo, Comments from Kristin Beatty, Comments from James M. Benster, Comments from Terrie Burns, Comments from EMF Safety Network, Comments from Kate Reese Hurd, Comments from Marilynne Martin, Comments from Lisa Mayock, Comments from Kristen Moriarty Termunde, Comments from Sage Associates, Comments from Elizabeth Shapiro, Comments from Paul Silver, Comments from Natalie Ventrice. The Commission has authority to adopt and enforce RF exposure limits, and nothing in this Declaratory Ruling changes the applicability of the Commission's existing RF emissions exposure rules. See, e.g., Section 704(b) of the Telecommunications Act of 1996, Pub. L. No. 104-104 (directing Commission to "prescribe and make effective rules regarding the environmental effects of radio frequency emissions" upon completing action in then-pending rulemaking proceeding that included proposals for, *inter alia*, maximum exposure limits); 47 U.S.C. § 332(c)(7)(B)(iv) (recognizing legitimacy of FCC's existing regulations on environmental effects of RF emissions of personal wireless service facilities, by proscribing state and local regulation of such facilities on the basis of such effects, to the extent such facilities comply with Commission regulations concerning such RF emissions); 47 U.S.C. § 151 (creating the FCC "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service, . . . for the purpose of [*inter alia*] promoting safety of life and property through the use of wire and radio communications"). See also H.R. Rep. No. 204(I), 104th Cong., 1st Sess. 94 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 61 (1996) (in legislative history of Section 704 of 1996 Telecommunications Act, identifying "adequate safeguards of the public health and safety" as part of a framework of uniform, nationwide RF regulations); ; *Reassessment of FCC Radiofrequency Exposure Limits and Policies*, First Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 3498, 3530-31, para. 103, n.176 (2013).

<sup>73</sup> 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II).

<sup>74</sup> *Id.* The actions in this proceeding update the FCC's approach to Sections 253 and 332 by addressing effective prohibitions that apply to the deployment of services covered by those provisions. Our interpretations in this proceeding do not provide any basis for increasing the regulation of services deployed consistent with Section 621 of the Cable Communications Policy Act of 1984.

area and a lack of feasible alternative locations for siting facilities.<sup>75</sup> Other courts have held that evidence of an already-occurring or complete inability to offer a telecommunications service is required to demonstrate an effective prohibition under Section 253(a).<sup>76</sup> Conversely, still other courts like the First, Second, and Tenth Circuits have endorsed prior Commission interpretations of what constitutes an effective prohibition under Section 253(a) and recognized that, under that analytical framework, a legal requirement can constitute an effective prohibition of services even if it is not an insurmountable barrier.<sup>77</sup>

35. In this Declaratory Ruling, we first reaffirm, as our definitive interpretation of the effective prohibition standard, the test we set forth in *California Payphone*, namely, that a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”<sup>78</sup> We then explain how this “material inhibition” standard applies in the context of state and local fees and aesthetic requirements. In doing so, we confirm the First, Second, and Tenth Circuits’ understanding that under this analytical framework, a legal requirement can “materially inhibit” the provision of services even if it is not an insurmountable barrier.<sup>79</sup> We also resolve the conflicting court interpretations of the

<sup>75</sup> Courts vary widely regarding the type of showing needed to satisfy the second part of that standard. The First, Fourth, and Seventh Circuits have imposed a “heavy burden” of proof on applicants to establish a lack of alternative feasible sites, requiring them to show “not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try.” *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 40 (1st Cir. 2014); *accord New Cingular Wireless PCS, LLC v. Fairfax County*, 674 F.3d 270, 277 (4th Cir. 2012); *T-Mobile Northeast LLC v. Fairfax County*, 672 F.3d 259, 266-68 (4th Cir. 2012) (*en banc*); *Helcher v. Dearborn County*, 595 F.3d 710, 723 (7th Cir. 2010) (*Helcher*). The Second, Third, and Ninth Circuits have held that an applicant must show only that its proposed facilities are the “least intrusive means” for filling a coverage gap in light of the aesthetic or other values that the local authority seeks to serve. *Sprint Spectrum, LP v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999) (*Willoth*); *APT Pittsburgh Ltd. P’ship v. Penn Township*, 196 F.3d 469, 480 (3d Cir. 1999) (*APT*); *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1056-57 (9th Cir. 2014); *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995-99 (9th Cir. 2009) (*City of Anacortes*).

<sup>76</sup> See, e.g., *County of San Diego*, 543 F.3d at 579-80; *Level 3 Commc’ns, LLC v. City of St. Louis*, 477 F.3d 528, 533-34 (8th Cir. 2007) (*City of St. Louis*).

<sup>77</sup> See *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9, 18 (1st Cir. 2006) (*Municipality of Guayanilla*); *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002) (*City of White Plains*); *RT Communications v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000) (“[Section] 253(a) forbids any statute which prohibits or has ‘the effect of prohibiting’ entry. Nowhere does the statute require that a bar to entry be insurmountable before the FCC must preempt it.”) (*RT Communications*) (*affirming Silver Star Tel. Co. Petition for Preemption and Declaratory Ruling*, 12 FCC Rcd 15639 (1997)).

<sup>78</sup> *California Payphone*, 12 FCC Rcd at 14206, para. 31. A number of circuit courts have cited *California Payphone* as the leading authority regarding the standard to be applied under Section 253(a). See, e.g., *County of San Diego*, 543 F.3d at 578; *City of St. Louis*, 477 F.3d at 533; *Municipality of Guayanilla*, 450 F.3d at 18; *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1270 (10th Cir. 2004) (*City of Santa Fe*); *City of White Plains*, 305 F.3d at 76. Crown Castle argues that the Eighth and Ninth Circuit cited the FCC’s *California Payphone* decision, but read the standard in an overly narrow fashion. See, e.g., Letter from Kenneth J. Simon, Senior Vice Pres. and Gen. Counsel, Crown Castle, *et al.*, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 12 (filed June 7, 2018) (Crown Castle June 7, 2018 *Ex Parte* Letter); see also Smart Communities Comments at 60-61 (describing circuit split). Some commenters cite selected dictionary definitions or otherwise argue for a narrow definition of “prohibit.” See, e.g., Smart Communities Reply at 53. But because they do not go on to dispute the validity of the *California Payphone* standard that has been employed not only by the Commission but also many courts, those arguments do not persuade us to depart from the *California Payphone* standard here.

<sup>79</sup> See, e.g., *City of White Plains*, 305 F.3d at 76; *Municipality of Guayanilla*, 450 F.3d at 18; see also, e.g., Crown Castle June 7, 2018 *Ex Parte* Letter at 12. Because the clarifications in this order should reduce uncertainty regarding the application of these provisions for state and local governments as well as stakeholders, we are not persuaded by some commenters’ arguments that an expedited complaint process is required. See, e.g., AT&T Comments at 28; CTIA Reply at 21. We do not address, at this time, recently-filed petitions for reconsideration of our August 2018 *Moratoria Declaratory Ruling*. See, e.g., Smart Communities Petition for Reconsideration, WC

‘effective prohibition’ language so that continuing confusion on the meaning of Sections 253 and 332(c)(7) does not materially inhibit the critical deployments of Small Wireless Facilities and our nation’s drive to deploy 5G.<sup>80</sup>

36. As an initial matter, we note that our Declaratory Ruling applies with equal measure to the effective prohibition standard that appears in both Sections 253(a) and 332(c)(7).<sup>81</sup> This ruling is consistent with the basic canon of statutory interpretation that identical words appearing in neighboring provisions of the same statute generally should be interpreted to have the same meaning.<sup>82</sup> Moreover, both of these provisions apply to wireless telecommunications services<sup>83</sup> as well as to commingled services and facilities.<sup>84</sup>

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Docket No. 17-84 & WT Docket No. 17-79 (filed Sept. 4, 2018); New York City Petition for Reconsideration, WC Docket No. 17-84 & WT Docket No. 17-79 (filed Sept. 4, 2018). Nor do we address requests for clarification and/or action on other issues raised in the record beyond those expressly discussed in this order. These other issues include arguments regarding other statutory interpretations that we do not address here. *See, e.g.*, CTIA Reply at 23 (raising broader questions about the precise interplay of Section 253 and Section 332(c)(7)); Crown Castle June 7, 2018 *Ex Parte* Letter at 16-17 (raising broader questions about the scope of “legal requirements” under Section 253(a)). Consequently, this order should not be read as impliedly taking a position on those issues.

<sup>80</sup> *See, e.g.*, Crown Castle June 7, 2018 *Ex Parte* Letter at 11-12 (arguing that “[d]espite the Commission’s efforts to define the boundaries of federal preemption under Section 253, courts have issued a number of conflicting decisions that have only served to confuse the preemption analysis under section 253” and that “the Commission should clarify that the *California Payphone* standard as interpreted by the First and Second Circuits is the appropriate standard going forward”); *see also* BDAC Regulatory Barriers Report at p. 9 (“The Commission should provide clarity on what actually constitutes an “excessive” fee for right-of-way access and use. The FCC should provide guidance on what constitutes a fee that is excessive and/or duplicative, and that therefore is not “fair and reasonable.” The Commission should specifically clarify that “fair and reasonable” compensation for right-of way access and use implies some relation to the burden of new equipment placed in the ROW or on the local asset, or some other objective standard.”). Because our decision provides clarity by addressing conflicting court decisions and reaffirming that the “materially inhibits” standard articulated in the Commission’s *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as an effective prohibition within the meaning of Sections 253 and 332, we reject arguments that our action will increase conflicts and lead to more litigation. *See e.g.*, Letter from Michael Dylan Brennan, Mayor, City of University Heights, Ohio, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Sept. 19, 2018) (stating that “...this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding”).

<sup>81</sup> *See infra* Part III.A, B.

<sup>82</sup> *See County of San Diego*, 543 F.3d at 579 (“We see nothing suggesting that Congress intended a different meaning of the text ‘prohibit or have the effect of prohibiting’ in the two statutory provisions, enacted at the same time, in the same statute. \* \* \* \* As we now hold, the legal standard is the same under either [Section 253 or 332(c)(7)].”); *see also, e.g., Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (citing *Sullivan v. Stroup*, 496 U.S. 478, 484 (1990) (reading same term used in different parts of the same Act to have the same meaning); *Northcross v. Board of Ed. of Memphis City Schools*, 412 U.S. 427, 428 (1973) (per curiam) (“[S]imilarity of language . . . is . . . a strong indication that the two statutes should be interpreted *pari passu*”); Verizon Comments at 9-10; AT&T Reply at 3-4; Crown Castle June 7, 2018 *Ex Parte* Letter at 15.

<sup>83</sup> Common carrier wireless services meet the definition of “telecommunications services,” and thus are within the scope of Section 253(a) of the Act. *See, e.g., Moratoria Declaratory Ruling*, FCC 18-111, para 142 n.523; *see also, e.g.*, League of Minnesota Cities Comments at 11; Verizon Reply at 9-10. While some commenters cite certain distinguishing factual characteristics between wireline and wireless services, the record does not reveal why those distinctions would be material to whether wireless telecommunications services are covered by Section 253 in the first instance. *See, e.g., City of San Antonio et al. Comments*, Exh. A at 13; Virginia Joint Commenters Comments at 5, Exh. A at 45-46. To the contrary, Section 253(e) expressly preserves “application of section 332(c)(3) of this title to commercial mobile service providers” notwithstanding Section 253—a provision that would be meaningless if wireless telecommunications services already fell outside the scope of Section 253. 47 U.S.C. § 253(e). For this same reason, we also reject claims that the existence of certain protections for personal wireless services in Section 332(c)(7), or the phrase “nothing in this chapter” in Section 332(c)(7)(A), demonstrate that states’ or localities’

37. As explained in *California Payphone* and reaffirmed here, a state or local legal requirement will have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services. We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service.<sup>85</sup> This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service

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regulations affecting wireless telecommunications services must fall outside the scope of Section 253. *See, e.g.,* Virginia Joint Commenters Comments, Exh. A at iii, 45-46; Smart Communities Comments at 56. Even if, as some parties argue, the phrase "nothing in this chapter" could be construed as preserving state or local decisions on the placement, construction, or modification of personal wireless service facilities from preemption by other sections of the Communications Act, Section 332(c)(7)(A) goes on to make clear that such state or local decisions are *not* immune from preemption if they violate any of the standards set forth in Section 332(c)(7)(B)—including Section 332(c)(7)(B)(i)(II)'s ban of requirements that "prohibit or have the effect of prohibiting" the provision of service, which is identical to the preemption provision in Section 253(a). Thus, states and localities may charge fees and dispose of applications relating to the matters subject to Section 332(c)(7) in any manner they deem appropriate, so long as that conduct does not amount to a prohibition or effective prohibition, as interpreted in this Declaratory Ruling or otherwise run afoul of federal or state law; but because Sections 332(c)(7)(B)(i)(II) and 253(a) use identical "effective prohibition" language, the standard for what is saved and what is preempted is the same under both provisions.

<sup>84</sup> *See infra* para. 40 (discussing use of small cells to close coverage gaps, including voice gaps); *see also, e.g.,* *Moratoria Declaratory Ruling*, FCC 18-111, para 145 n.531; *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 425, para. 190 (2018); Letter from Andre J. Lachance, Associate General Counsel, Verizon to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 3 (filed Sept. 19, 2018) (confirming that "telecommunications services can be provided over small cells and Verizon has deployed Small Wireless Facilities in its network that provide telecommunications services."); Letter from David M. Crawford, Senior Corporate Counsel, Fed. Reg. Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 19, 2018) (stating that "small wireless facilities are a critical component of T-Mobile's network deployment plans to support both the 5G evolution of wireless services, as well as more traditional services such as mobile broadband and even voice calls. T-Mobile, for example, uses small wireless facilities to densify our network to provide better coverage and greater capacity, and to provide traditional services such as voice calls in areas where our macro site coverage is insufficient to meet demand."); Letter from Henry G. Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 20, 2018) ("AT&T has operated and continues to operate commercial mobile radio services as well as information services from small wireless facilities..."); *see also, e.g.,* *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d 425, 441-42 (E.D.N.Y. 2009) (finding that a restriction on advertising on newly-installed payphones was subject to Section 253(a) where the advertising was a material factor in the provider's ability to provide the payphone service itself). The fact that facilities are sometimes deployed by third parties not themselves providing covered services also does not place such deployment beyond the purview of Section 253(a) or Section 332(c)(7)(B)(i) insofar as the facilities are used by wireless service providers on a wholesale basis to provide covered services (among other things). *See, e.g.,* T-Mobile Comments at 26. Given our conclusion that neither commingling of services nor the identity of the entity engaged in the deployment activity changes the applicability of Section 253(a) or Section 332(c)(7)(B)(i)(II) where the facilities are being used for the provisioning of services within the scope of the relevant statutory provisions, we reject claims to the contrary. *See, e.g.,* Colorado Communications and Utility Alliance *et al.* Comments at 15-16; City of San Antonio *et al.* Comments, Exh. A at 12; *id.*, Exh. C at 13-15. Because local jurisdictions do not have the authority to regulate these interstate services, there is no basis for local jurisdictions to conduct proceedings on the types of personal wireless services offered over particular wireless service facilities or the licensee's service area, which are matters within the Commission's licensing authority. Furthermore, local jurisdictions do not have the authority to require that providers offer certain types or levels of service, or to dictate the design of a provider's network. *See* 47 U.S.C. § 332(c)(3)(A); *see also* *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 989 (7th Cir. 2000).

<sup>85</sup> By "covered service" we mean a telecommunications service or a personal wireless service for purposes of Section 253 and Section 332(c)(7), respectively.



capabilities.<sup>86</sup> Under the *California Payphone* standard, a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.<sup>87</sup>

38. Our reading of Section 253(a) and Section 332(c)(7)(B)(i)(II) reflects and supports a marketplace in which services can be offered in a multitude of ways with varied capabilities and performance characteristics consistent with the policy goals in the 1996 Act and the Communications Act. To limit Sections 253(a) and 332(c)(7)(B)(i)(II) to protecting only against coverage gaps or the like would be to ignore Congress’s contemporaneously-expressed goals of “promot[ing] competition[,] . . . secur[ing] . . . higher quality services for American telecommunications consumers and encourage[ing] the rapid deployment of new telecommunications technologies.”<sup>88</sup> In addition, as the Commission recently explained, the implementation of the Act “must factor in the fundamental objectives of the Act, including the deployment of a ‘rapid, efficient . . . wire and radio communication service with adequate facilities at reasonable charges’ and ‘the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays[, and] efficient and

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<sup>86</sup> See, e.g., Crown Castle Comments at 54-55; Free State Foundation Comments at 12; T-Mobile Comments at 43-45; CTIA Reply at 14; WIA Reply at 26; Crown Castle June 7, 2018 *Ex Parte* Letter at 13-14; Letter from Kara Romagnino Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 8-9 (filed June 27, 2018) (CTIA June 27, 2018 *Ex Parte* Letter). As T-Mobile explains, for example, a provider might need to improve “signal strength or system capacity to allow it to provide reliable service to consumers in residential and commercial buildings.” T-Mobile Comments at 43; see also, e.g., *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, *et al.*, Notice of Proposed Rulemaking, 28 FCC Rcd 14238, 14253, para. 38 (2013) (observing that “DAS and small cell facilities[ ] are critical to satisfying demand for ubiquitous mobile voice and broadband services”). The growing prevalence of smart phones has only accelerated the demand for wireless providers to take steps to improve their service offerings. See, e.g., *Twentieth Wireless Competition Report*, 32 FCC Rcd at 9011-13, paras. 62-65.

<sup>87</sup> Our conclusion finds further support in our broad understanding of the statutory term “service,” which, as we explained in our recent *Moratoria Declaratory Ruling*, means “any covered service a provider wishes to provide, incorporating the abilities and performance characteristics it wishes to employ, including to provide existing services more robustly, or at a higher level of quality—such as through filling a coverage gap, densification, or otherwise improving service capabilities.” *Moratoria Declaratory Ruling*, FCC 18-111, para. 162 n.594; see also *Public Utility Comm’n of Texas Petition for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3496, para. 74 (1997) (*Texas PUC Order*) (interpreting the scope of ‘telecommunications services’ covered by Section 253(a) and clarifying that it would be an unlawful prohibition for a state or locality to specify “the means or facilities” through which a service provider must offer service); Crown Castle June 7, 2018 *Ex Parte* Letter at 10-11 (discussing this precedent). We find this interpretation of “service” warranted not only under Section 253(a), but Section 332(c)(7)(B)(i)(II)’s reference to “services” as well.

<sup>88</sup> Preamble to the Telecommunications Act of 1996, Pub. Law. No. 104-104, § 202, 110 Stat. 56 (1996). Consequently, we reject arguments suggesting that the provision of some level of wireless service in the past necessarily demonstrates that there is no effective prohibition of service under the state or local legal requirements that applied during those periods or that an effective prohibition only is present if a provider can provide no covered service whatsoever. See, e.g., City and County of San Francisco Comments at 25-26; Virginia Joint Commenters Comments, Exh. A at 31-33. Nor, in light of these goals, do we find it reasonable to interpret the protections of these provisions as doing nothing more than guarding against a monopoly as some suggest. See, e.g., Smart Communities Comments, WC Docket No. 17-84, at 8-9 (filed June 15, 2017) cited in Smart Communities Comments at 57 n.141.

intensive use of the electromagnetic spectrum.”<sup>89</sup> These provisions demonstrate that our interpretation of Section 253 and Section 332(c)(7)(B)(i)(II) is in accordance with the broader goals of the various statutes that the Commission is entrusted to administer.

39. *California Payphone* further concluded that providers must be allowed to compete in a “fair and balanced regulatory environment.”<sup>90</sup> As reflected in decisions such as the Commission’s *Texas PUC Order*, a state or local legal requirement can function as an effective prohibition either because of the resulting “financial burden” in an absolute sense, or, independently, because of a resulting competitive disparity.<sup>91</sup> We clarify that “[a] regulatory structure that gives an advantage to particular services or facilities has a prohibitory effect, even if there are no express barriers to entry in the state or local code; the greater the discriminatory effect, the more certain it is that entities providing service using the disfavored facilities will experience prohibition.”<sup>92</sup> This conclusion is consistent with both Commission and judicial precedent recognizing the prohibitory effect that results from a competitor being treated materially differently than similarly-situated providers.<sup>93</sup> We provide our authoritative interpretation below of the circumstances in which a “financial burden,” as described in the *Texas PUC Order*, constitutes an effective prohibition in the context of certain state and local fees.

40. As we explained above, we reject alternative readings of the effective prohibition language that have been adopted by some courts and used to defend local requirements that have the effect of prohibiting densification of networks. Decisions that have applied solely a “coverage gap”-based approach under Section 332(c)(7)(B)(i)(II) reflect both an unduly narrow reading of the statute and an outdated view of the marketplace.<sup>94</sup> Those cases, including some that formed the foundation for

<sup>89</sup> *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, FCC 18-30, para. 62 (rel. Mar. 30, 2018) (*Wireless Infrastructure Second R&O*) (quoting 47 U.S.C. §§ 151, 309(j)(3)(A), (D)).

<sup>90</sup> *California Payphone*, 12 FCC Rcd at 14206, para. 31.

<sup>91</sup> *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81; *see also, e.g.*, Crown Castle June 7, 2018 *Ex Parte* at 10-11, 13.

<sup>92</sup> Crown Castle June 7, 2018 *Ex Parte* Letter at 13.

<sup>93</sup> *See, e.g.*, *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81; *Federal-State Joint Board on Universal Service*; *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities*, Declaratory Ruling, 15 FCC Rcd 15168, 15173, paras. 12-13 (2000) (*Western Wireless Order*); *Pittencrieff Communications, Inc. Petition for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 1735, 1751-52, para. 32 (1997) (*Pittencrieff*), *aff’d*, *Cellular Telecomm. Indus. Ass’n v. FCC*, 168 F.3d 1332 (5th Cir. 1999); *City of White Plains*, 305 F.3d at 80.

<sup>94</sup> Smart Communities seeks clarification of whether this Declaratory Ruling is meant to say that the “coverage gap” standard followed by a number of courts should include consideration of capacity as well as coverage issues. Letter from Gerard Lavery Lederer, Counsel, Smart Communities and Special Districts Coalition, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Att. at 17 (Sept. 19, 2018) (Smart Communities Sept. 19 *Ex Parte* Letter). We are not holding that prior “coverage gap” analyses are consistent with the standards we articulate here as long as they also take into account “capacity gaps”; rather, we are articulating here the effective prohibition standard that should apply while, at the same time, noting one way in which prior approaches erred by requiring coverage gaps. Accordingly, we reject both the version of the “coverage gap” test followed by the First, Fourth, and Seventh Circuits (requiring applicants to show “not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try”) and the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the “least intrusive means” for filling a coverage gap) *See supra* n. 75. We also note that some courts have expressed concern about alternative readings of the statute that would lead to extreme outcomes—either always requiring a grant under some interpretations, or never preventing a denial under other interpretations. *See, e.g.*, *Willoth*, 176 F.3d at 639-41; *APT*, 196 F.3d at 478-79; *Town of Amherst v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9, 14 (1st Cir. 1999); *AT&T Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 428 (4th Cir. 1998) (*City Council of Virginia Beach*); *see also, e.g.*, Greenling Comments at 2; City and County of San Francisco Reply

“coverage gap”-based analytical approaches, appear to view wireless service as if it were a single, monolithic offering provided only via traditional wireless towers.<sup>95</sup> By contrast, the current wireless marketplace is characterized by a wide variety of offerings with differing service characteristics and deployment strategies.<sup>96</sup> As Crown Castle explains, coverage gap-based approaches are “simply

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at 16. Our interpretation avoids those concerns while better reflecting the text and policy goals of the Communications Act and 1996 Act than coverage gap-based approaches ultimately adopted by those courts. Our approach ensures meaningful constraints on state and local conduct that otherwise would prohibit or have the effect of prohibiting the provision of personal wireless services. At the same time, our standard does not preclude all state and local denials of requests for the placement, construction, or modification of personal wireless service facilities, as explained below. *See infra* III.B, C.

<sup>95</sup> *See, e.g., Willoth*, 176 F.3d at 641-44; *360 Degrees Commc’ns Co. v. Board of Supervisors of Albemarle County*, 211 F.3d 79, 86-88 & n.1 (4th Cir. 2000) (*Albemarle County*); *see also, e.g.,* ExteNet Comments at 29; T-Mobile Comments at 42; Verizon Comments at 18; WIA Comments at 38-40. Even some cases that implicitly recognize the limitations of a gap-based test fail to account for those limitations in practice when applying Section 332(c)(7)(B)(i)(II). *See, e.g., Second Generation Properties v. Town of Pelham*, 313 F.3d 620, 633 n.14 (4th Cir. 2002) (discussing scenarios where a carrier has coverage but insufficient capacity to adequately handle the volume of calls or where new technology emerges and a carrier would like to use it in areas that already have coverage using prior-generation technology). Courts that have sought to identify limited set of characteristics of personal wireless services covered by the Act essentially allow actual or effective prohibition of many personal wireless services that providers wish to offer with additional or more advanced characteristics. *See, e.g., Willoth*, 176 F.3d at 641-43 (drawing upon certain statutory definitions); *Cellular Tel. Co. v. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus*, 197 F.3d 64, 70 (3d Cir. 1999) (*Borough of Ho-Ho-Kus*) (concluding that it should be up to state or local authorities to assess and weigh the benefits of differing service qualities); *Albemarle County*, 211 F.3d at 87 (citing 47 CFR §§ 22.99, 22.911(b) as noting the possibility of some ‘dead spots’); *cf. USCOC of Greater Iowa, Inc. v. Zoning Bd. of Adjustment of the City of Des Moines*, 465 F.3d 817 (8th Cir. 2006) (describing as a “dubious proposition” the argument that a denial of a request to construct a tower resulting in “less than optimal” service quality could be an effective prohibition). An outcome that allows the actual or effective prohibition of some covered services is contrary to the Act. Section 253(a) applies to any state or local legal requirement that prohibits or has the effect of prohibiting any entity from providing “any” interstate or intrastate telecommunications service, 47 U.S.C. § 253(a). Similarly, Section 332(c)(7)(B)(i)(II) categorically precludes state or local regulation of the placement, construction, or modification of personal wireless service facilities that prohibits or has the effect of prohibiting the provision of personal wireless “services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). We find the most natural interpretation of these sections is that any service that meets the definition of “telecommunications service” or “personal wireless service” is encompassed by the language of each provision, rather than only some subset of such services or service generally. The notion that such state or local regulation permissibly could prohibit some personal wireless services, so long as others are available, is at odds with that interpretation. In addition, as we explain above, a contrary approach would fail to advance important statutory goals as well as the interpretation we adopt. Further, the approach reflected in these court decisions could involve state or local authorities “inquir[ing] into and regulat[ing] the services offered—an inquiry for which they are ill-qualified to pursue and which could only delay infrastructure deployment.” Crown Castle June 7, 2018 *Ex Parte* Letter at 14. Instead, our effective prohibition analysis focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.

<sup>96</sup> *See generally, e.g., Twentieth Wireless Competition Report*, 32 FCC Rcd at 8968; *see also, e.g.,* T-Mobile Comments at 42-43; AT&T Reply at 4-5; CTIA Reply at 13-14; WIA Reply at 23-24; Crown Castle June 7, 2018 *Ex Parte* Letter at 15. We do not suggest that viewing wireless service as if it were a single, monolithic offering provided only via traditional wireless towers would have reflected an accurate understanding of the marketplace in the past, even if it might have been somewhat more understandable that courts held such a simplified view at that time. Rather, the current marketplace conditions highlight even more starkly the shortcomings of coverage gap-based approaches, which do not account for other characteristics and deployment strategies. *See, e.g., Twentieth Wireless Competition Report*, 32 FCC Rcd at 8974-75, para. 12 (observing that “[p]roviders of mobile wireless services typically offer an array of mobile voice and data services,” including “interconnected mobile voice services”); *id.* at 8997-97, paras. 42-43 (discussing various types of wireless infrastructure deployment to, among

incompatible with a world where the vast majority of new wireless builds are going to be designed to add network capacity and take advantage of new technologies, rather than plug gaps in network coverage.”<sup>97</sup> Moreover, a critical feature of these new wireless builds is to accommodate increased in-building use of wireless services, necessitating deployment of small cells in order to ensure quality service to wireless callers within such buildings.<sup>98</sup>

41. Likewise, we reject the suggestion of some courts like the Eighth and Ninth Circuits that evidence of an existing or complete inability to offer a telecommunications service is required under 253(a).<sup>99</sup> Such an approach is contrary to the material inhibition standard of *California Payphone* and the correct recognition by courts “that a prohibition does not have to be complete or ‘insurmountable’” to constitute an effective prohibition.<sup>100</sup> Commission precedent beginning with *California Payphone* itself makes clear that an insurmountable barrier is not required to find an effective prohibition under Section 253(a).<sup>101</sup> The “effectively prohibit” language must have some meaning independent of the “prohibit”

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other things, “improve spectrum efficiency for 4G and future 5G services,” “to fill local coverage gaps, to densify networks and to increase local capacity”).

<sup>97</sup> Crown Castle June 7, 2018 *Ex Parte* Letter at 15; *see also id.* at 13 (“Densification of networks will be key for augmenting the capacity of existing networks and laying the groundwork for the deployment of 5G.”); *id.* at 15-16 (“When trying to maximize spectrum re-use and boost capacity, moving facilities by just a few hundred feet can mean the difference between excellent service and poor service. The FCC’s rules, therefore, must account for the effect siting decisions would have on every level of service, including increasing capacity and adding new spectrum bands. Practices and decisions that prevent carriers from doing either materially prohibit the provision of telecommunications service and thus should be considered impermissible under Section 332.”). Contrary approaches appear to occur in part when courts’ policy balancing places more importance on broadly preserving state and local authority than is justified. *See, e.g., APT*, 196 F.3d at 479; *Albemarle County*, 211 F.3d at 86; *City Council of Virginia Beach*, 155 F.3d at 429; *National Tower, LLC v. Plainville Zoning Bd. of Appeals*, 297 F.3d 14 (1st Cir. 2002); *see also, e.g., League of Arizona Cities et al. Joint Comments* at 45; *Smart Communities Reply* at 33. As explained above, our interpretation that “telecommunications services” in Section 253(a) and “personal wireless services” in Section 332(c)(7)(B)(i)(II) are focused on the covered services that providers seek to provide—including the relevant service characteristics they seek to incorporate—not only is consistent with the text of those provisions but better reflects the broader policy goals of the Communications Act and the 1996 Act.

<sup>98</sup> *See WIA Comments* at 39; *T-Mobile Comments* at 43-44.

<sup>99</sup> *See, e.g., County of San Diego*, 543 F.3d at 577, 579-80; *City of St. Louis*, 477 F.3d at 533-34; *see also, e.g., Virginia Joint Commenters Comments*, Exh. A at 39-41. Although the Ninth Circuit in *County of San Diego* found that “the unambiguous text of §253(a)” precluded a prior Ninth Circuit approach that found an effective prohibition based on broad governmental discretion and the “mere possibility of prohibition,” that holding is not implicated by our interpretations here. *County of San Diego*, 543 F.3d at 578; *cf. City of St. Louis*, 477 F.3d at 532. Consequently, those decisions do not preclude the Commission’s interpretations here, *see, e.g., Verizon Reply* at 7, and we reject claims to the contrary. *See, e.g., Smart Communities Comments* at 60.

<sup>100</sup> *City of White Plains*, 305 F.3d at 76 (citing *RT Commc’ns*, 201 F.3d at 1268); *see also, e.g., Municipality of Guayanilla*, 450 F.3d at 18 (quoting *City of White Plains*, 305 F.3d at 76 and citing *City of Santa Fe*, 380 F.3d at 1269); Crown Castle June 7, 2018 *Ex Parte* Letter at 12; Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach at 5. Indeed, the Eighth Circuit’s *City of St. Louis* decision acknowledges that under Section 253 “[t]he plaintiff need not show a complete or insurmountable prohibition,” even while other aspects of that decision suggest that an insurmountable barrier effectively would be required. *City of St. Louis*, 477 F.3d at 533 (citing *City of White Plains*, 305 F.3d at 76).

<sup>101</sup> In *California Payphone*, the Commission concluded that the ordinance at issue “does not ‘prohibit’ the ability of any payphone service provider to provide payphone service in the Central Business District within the meaning of section 253(a),” but went on to evaluate the possibility of an effective prohibition by considering “whether the Ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” *California Payphone*, 12 FCC Rcd at 14205, 14206, paras. 28, 31. In the *Texas PUC Order*, the Commission found that state law build-out requirements would require “substantial financial investment” and a “comparatively high cost per loop sold” in particular areas, interfering with the

language, and we find that the interpretation of the First, Second, and Tenth Circuits reflects that principle, while being more consistent with the *California Payphone* standard than the approach of the Eighth and Ninth Circuits.<sup>102</sup> The reasonableness of our interpretation that ‘effective prohibition’ does not require a showing of an insurmountable barrier to entry is demonstrated not only by a number of circuit courts’ acceptance of that view, but in the Supreme Court’s own characterization of Section 253(a) as “prohibit[ing] state and local regulation that *impedes* the provision of ‘telecommunications service.’”<sup>103</sup>

42. The Eighth and Ninth Circuits’ suggestion that a provider must show an insurmountable barrier to entry in the jurisdiction imposing the relevant regulation is at odds with relevant statutory purposes and goals, as well. Section 253(a) is designed to protect “any entity” seeking to provide telecommunications services from state and local barriers to entry, and Sections 253(b) and (c) emphasize the importance of “competitively neutral” and “nondiscriminatory” treatment of providers.<sup>104</sup> Yet focusing on whether the carrier seeking relief faces an insurmountable barrier to entry would lead to disparities in statutory protections among providers based merely on considerations such as their access to capital and the breadth or narrowness of their entry strategies.<sup>105</sup> In addition, the Commission has observed in connection with Section 253: “Each local government may believe it is simply protecting the

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“statewide entry” plans that new entrants “may reasonable contemplate” in violation of Section 253(a) notwithstanding claims that the specific new entrants at issue had “‘vast resources and access to capital’ sufficient to meet those added costs. *Texas PUC Order*, 13 FCC Rcd at 3498, para. 78. The Commission also has expressed “great concern” about an exclusive rights-of-way access agreement that “appear[ed] to have the potential to adversely affect the provision of telecommunications services by facilities-based providers, in violation of the provision of section 253(a).” *Minnesota Order*, 14 FCC Rcd at 21700, para. 3. As another example, in the *Western Wireless Order*, the Commission stated that a “universal service fund mechanism that provides funding only to ILECs” would likely violate Section 253(a) not because it was insurmountable but because it would “effectively lower the price of ILEC-provided service relative to competitor-provided service” and thus “give customers a strong incentive to choose service from ILECs rather than competitors.” *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8.

<sup>102</sup> We discuss specific applications of the *California Payphone* standard in the context of certain fees and non-fee regulations in the sections below; we leave others to be addressed case-by-case as they arise or otherwise are taken up by the Commission or courts in the future.

<sup>103</sup> *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 491 (2002) (emphasis added); see also, e.g., *Level 3 Communications*, Petition for a Writ of Certiorari, *Level 3 Communications, LLC v. City of St. Louis*, No. 08-626, at 13 (filed Nov. 7, 2008) (“[T]he term ‘[p]rohibit’ commonly has a less absolute meaning than that adopted below, and properly refers to actions that ‘hold back,’ ‘hinder,’ or ‘obstruct.’” (quoting Random House Webster’s Unabridged Dictionary 1546 (2d ed. 1998))). We thus are not compelled to interpret ‘effective prohibition’ to set the high bar suggested by some commenters based on other dictionary definitions. Smart Communities Petition for Reconsideration, WC Docket No. 17-84, WT Docket No. 17-79 at 7 (filed Sept. 4, 2018). Because we are unpersuaded that the statutory terminology requires us to interpret an effective prohibition as satisfied only by an insurmountable barrier to entry, we likewise reject commenters’ attempts to argue that “effective prohibition” must be understood to set a higher bar by comparison to the “impairment” language in Section 251 of the Act and associated regulatory interpretations of network unbundling requirements taken from that context. *Id.* at 6. In addition, commenters do not demonstrate why the statutory framework and regulatory context of network unbundling under Section 251—and the specific concerns about access by non-facilities-based providers to competitive networks underlying the court precedent they cite—is sufficiently analogous to that of Section 253 and Section 332(c)(7)(B)(i)(II) that statements from that context should inform our interpretation here. See, e.g., *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. at 392. In responding to these discrete arguments raised in a petition for reconsideration of the *Moratoria Declaratory Ruling* that bear on actions we take in this order we do not thereby resolve any of the petition’s arguments with respect to that order. The requests for relief raised in the petition remain pending in full.

<sup>104</sup> 47 U.S.C. § 253(a), (b), (c).

<sup>105</sup> See, e.g., *Texas PUC Order*, 13 FCC Rcd at 3498, para. 78 (rejecting claims that there should be a higher bar to find an effective prohibition for providers with significant financial resources and recognizing that the effects of the relevant state requirements on a given provider could differ depending on the planned geographic scope of entry).

interests of its constituents. The telecommunications interests of constituents, however, are not only local. They are statewide, national and international as well. We believe that Congress' recognition of this fact was the genesis of its grant of preemption authority to this Commission."<sup>106</sup> As illustrated by our consideration of effective prohibitions flowing from state and local fees, there also can be cases where a narrow focus on whether an insurmountable barrier can be shown within the jurisdiction imposing a particular legal requirement would neglect the serious effects that flow through in other jurisdictions as a result, including harms to regional or national deployment efforts.<sup>107</sup>

## B. State and Local Fees

43. Federal courts have long recognized that the fees charged by local governments for the deployment of communications infrastructure can run afoul of the limits Congress imposed in the effective prohibition standard embodied in Sections 253 and 332.<sup>108</sup> In *Municipality of Guayanilla*, for example, the First Circuit addressed whether a city could lawfully charge a 5 percent gross revenue fee. The court found that the "5% gross revenue fee would constitute a substantial increase in costs" for the provider, and that the ordinance consequently "will negatively affect [the provider's] profitability."<sup>109</sup> The fee, together with other requirements, thus "place a significant burden" on the provider.<sup>110</sup> In light of this analysis, the First Circuit agreed that the fee "'materially inhibits or limits the ability'" of the provider "'to compete in a fair and balanced legal and regulatory environment.'"<sup>111</sup> The court thus held that the fee does not survive scrutiny under Section 253. In doing so, the First Circuit also noted that the inquiry is not limited to the impact that a fee would have on deployment in the jurisdiction that imposes the fee. Rather, the court noted the aggregate effect of fees when totaled across all relevant jurisdictions.<sup>112</sup> At the same time, the First Circuit did not decide whether the fair and reasonable compensation allowed under Section 253 must be limited to cost recovery or, at the very least, related to the actual use of the ROW.<sup>113</sup>

44. In *City of White Plains*, the Second Circuit likewise faced a 5 percent gross revenue fee, which it found to be "[t]he most significant provision" in a franchise agreement implementing an ordinance that the court concluded effectively prohibited service in violation of Section 253.<sup>114</sup> While the court noted that "compensation is . . . sometimes used as a synonym for cost,"<sup>115</sup> it ultimately did not resolve whether fair and reasonable compensation "is limited to cost recovery, or whether it also extends to a reasonable rent," relying instead on the fact that "White Plains has not attempted to charge Verizon

<sup>106</sup> *TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e), and 253*, Memorandum Opinion and Order, 12 FCC Rcd 21396, 21442, para. 106 (1997) (*TCI Cablevision Order*).

<sup>107</sup> See *infra* Part III.B.

<sup>108</sup> The Commission also has recognized the potential for fees to result in an effective prohibition. See, e.g., *Pittencrieff*, 13 FCC Rcd at 1751-52, para. 37 (observing that "even a neutral [universal service] contribution requirement might under some circumstances effectively prohibit an entity from offering a service").

<sup>109</sup> *Municipality of Guayanilla*, 450 F.3d at 18-19.

<sup>110</sup> *Id.* at 19.

<sup>111</sup> *Id.* (quoting *City of White Plains*, 305 F.3d at 76).

<sup>112</sup> *Municipality of Guayanilla*, 450 F.3d at 17 (looking at the aggregate cost of fees charged across jurisdictions given the interconnected nature of the service).

<sup>113</sup> *Id.* at 22 ("We need not decide whether fees imposed on telecommunications providers by state and local governments must be limited to cost recovery. We agree with the district court's reasoning that fees should be, at the very least, related to the actual use of rights of way and that 'the costs [of maintaining those rights of way] are an essential part of the equation.'").

<sup>114</sup> *City of White Plains*, 305 F.3d at 77.

<sup>115</sup> *Id.* In this context, the court stated that the term "compensation" is "flexible" and capable of different meanings depending on the context in which it is used. *Id.*

the fee that it seeks to charge TCG,” thus failing Section 253’s “competitively neutral and nondiscriminatory” standard.<sup>116</sup> But the court did observe that “Section 253(c) requires compensation to be reasonable essentially to prevent monopolist pricing by towns.”<sup>117</sup>

45. In another example, the Tenth Circuit in *City of Santa Fe* addressed a \$6,000 per foot fee set for Qwest’s use of the ROW.<sup>118</sup> The court held “that the rental provisions are prohibitive because they create[d] a massive increase in cost” for Qwest.<sup>119</sup> The court recognized that Section 253 allows the recovery of cost-based fees, though it ultimately did not decide whether to “measure ‘fair and reasonable’ by the City’s costs or by a ‘totality of circumstances test’” applied in other courts because it determined that the fees at issue were not cost-based and “fail[ed] even the totality of the circumstances test.”<sup>120</sup> Consequently, the fee was preempted under Section 253.

46. At the same time, the courts have adopted different approaches to analyzing whether fees run afoul of Section 253, at times failing even to articulate a particular test.<sup>121</sup> Among other things, courts have expressed different views on whether Section 253 limits states’ and localities’ fees to recovery of their costs or allows fees set in excess of that level.<sup>122</sup> We articulate below the Commission’s interpretation of Section 253(a) and the standards we adopt for evaluating when a fee for Small Wireless Facility deployment is preempted, regardless how the fee is challenged. We also clarify that the Commission interprets Section 332(c)(7)(B)(i)(II) to have the same substantive meaning as Section 253(a).

47. *Record Evidence on Costs Associated with Small Wireless Facilities.* Keeping pace with the demands on current 4G networks and upgrading our country’s wireless infrastructure to 5G require

<sup>116</sup> *City of White Plains*, 305 F.3d at 79. In particular, the court concluded that “fees that exempt one competitor are inherently not ‘competitively neutral,’ regardless of how that competitor uses its resulting market advantage,” *id.* at 80, and thus “[a]llowing White Plains to strengthen the competitive position of the incumbent service provider would run directly contrary to the pro-competitive goals of the [1996 Act],” *id.* at 79.

<sup>117</sup> *Id.*

<sup>118</sup> *City of Santa Fe*, 380 F.3d at 1270-71.

<sup>119</sup> *Id.* at 1271.

<sup>120</sup> *Id.* at 1272 (observing that “[t]he City acknowledges . . . that the rent required by the Ordinance is not limited to recovery of costs”).

<sup>121</sup> Compare, e.g., *Municipality of Guayanilla*, 450 F.3d at 18-19 (finding that fees were significant and had the effect of prohibiting service); *City of Santa Fe*, 380 F.3d at 1271 (similar); with, e.g., *Qwest v. Elephant Butte Irrigation Dist.*, 616 F. Supp. 2d 1110, 1123-24 (D.N.M. 2008) (rejecting Qwest’s reliance on preceding finding of effective prohibition from quadrupled costs where the fee at issue was a penny per foot); *Qwest v. City of Portland*, 2006 WL 2679543, \*15 (D. Or. 2006) (asserting with no explanation that “a registration fee of \$35 and a refundable deposit of \$2,000 towards processing expenses . . . could not possibly have the effect of prohibiting Qwest from providing telecommunications services”).

<sup>122</sup> For example and as noted above, in *Municipality of Guayanilla* the First Circuit reserved judgment on whether the fair and reasonable compensation allowed under Section 253 must be limited to cost recovery or if it was sufficient if the compensation was related to the actual use of rights of way. *Municipality of Guayanilla*, 450 F.3d at 22. Other courts have found reasonable compensation to require cost-based fees. *XO Missouri v. City of Maryland Heights*, 256 F. Supp. 2d 987, 993-95 (E.D. Mo. 2003) (*City of Maryland Heights*); *Bell Atlantic–Maryland, Inc. v. Prince George’s County*, 49 F. Supp. 2d 805, 818 (D. Md. 1999) (*Prince George’s County*) vacated on other grounds, 212 F.3d 863 (4th Cir. 2000). Still other courts have applied a test that weighs a number of considerations when evaluating whether compensation is fair and reasonable. *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 625 (6th Cir. 2000) (*City of Dearborn*) (considering “the amount of use contemplated . . . the amount that other providers would be willing to pay . . . and the fact that TCG had agreed in earlier negotiations to a fee almost identical to what it now was challenging as unfair”).

the deployment of many more Small Wireless Facilities.<sup>123</sup> For example, Verizon anticipates that network densification and the upgrade to 5G will require 10 to 100 times more antenna locations than currently exist. AT&T estimates that providers will deploy hundreds of thousands of wireless facilities in the next few years alone—equal to or more than the number providers have deployed in total over the last few decades.<sup>124</sup> Sprint, in turn, has announced plans to build at least 40,000 new small sites over the next few years.<sup>125</sup> A report from Accenture estimates that, overall, during the next three or four years, 300,000 small cells will need to be deployed—a total that it notes is “roughly double the number of macro cells built over the last 30 years.”<sup>126</sup>

48. The many-fold increase in Small Wireless Facilities will magnify per-facility fees charged to providers. Per-facility fees that once may have been tolerable when providers built macro towers several miles apart now act as effective prohibitions when multiplied by each of the many Small Wireless Facilities to be deployed. Thus, a per-facility fee may affect a prohibition on 5G service or the densification needed to continue 4G service even if that same per-facility fee did not effectively prohibit previous generations of wireless service.

49. Cognizant of the changing technology and its interaction with regulations created for a previous generation of service, the *2017 Wireline Infrastructure NPRM/NOI* sought comment on whether government-imposed fees could act as a prohibition within the meaning of Section 253, and if so, what fees would qualify for 253(c)’s savings clause.<sup>127</sup> The *2017 Wireless Infrastructure NPRM/NOI* similarly sought comment on the scope of Sections 253 and 332(c)(7) and on any new or updated guidance the Commission should provide, potentially through a Declaratory Ruling.<sup>128</sup> In particular, the Commission sought comment on whether it should provide further guidance on how to interpret and apply the phrase “prohibit or have the effect of prohibiting.”<sup>129</sup>

50. We conclude that ROW access fees, and fees for the use of government property in the ROW,<sup>130</sup> such as light poles, traffic lights, utility poles, and other similar property suitable for hosting

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<sup>123</sup> See CTIA June 27, 2018 *Ex Parte* Letter at 6 (“[s]mall cell technology is needed to support 4G densification and 5G connectivity.”); see also *Accelerating Wireless Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, 32 FCC Rcd 9760, 9765, para. 12 (2017) (*2017 Pole Replacement Order*) (recognizing that Small Wireless Facilities will be increasingly necessary to support the rollout of next-generation services).

<sup>124</sup> See Verizon Comments at 3; AT&T Comments at 1.

<sup>125</sup> See Letter from Keith C. Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Feb. 21, 2018).

<sup>126</sup> *Accelerating Future Economic Value* Report at 6; see also Deloitte 5G Paper.

<sup>127</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3266, 3296-97, paras. 100 -101 and 3298-99, paras. 104-105 (2017).

<sup>128</sup> *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3360, para. 87. In addition, in 2016, the Wireless Telecommunications Bureau released a public notice seeking comment on ways to expedite the deployment of next generation wireless infrastructure, including providing guidance on application processing fees and charges for use of rights of way. See *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*, Public Notice, 31 FCC Rcd 13360 (WTB 2016).

<sup>129</sup> *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3362, para. 90.

<sup>130</sup> We do not find these fees to be taxes within the meaning of Section 601(c)(2) of the 1996 Act. See, e.g., Smart Communities Reply at 36 (quoting the savings clause for “State or local law pertaining to taxation” in Section 601(c)(2) of the 1996 Act). It is ambiguous whether a fee charged for access to ROWs should be viewed as a tax for purposes of Section 601(c)(2) of the 1996 Act. See, e.g., *City of Dallas v. FCC*, 118 F.3d 393, 397-98 (5th Cir. 1997) (distinguishing “the price paid to rent use of public right-of-ways” from a “tax” and citing similar precedent). Given that Congress clearly contemplated in Section 253(c) that states’ and localities’ fees for access to ROWs could be subject to preemption where they violate Section 253—or else the savings clause in that regard would be superfluous—we find the better view is that such fees do not represent a tax encompassed by Section 601(c)(2) of



Small Wireless Facilities, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW, violate Sections 253 or 332(c)(7) unless these conditions are met: (1) the fees are a reasonable approximation of the state or local government's costs,<sup>131</sup> (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.<sup>132</sup>

51. We base our interpretation on several considerations, including the text and structure of the Act as informed by legislative history, the economics of capital expenditures in the context of Small Wireless Facilities (including the manner in which capital budgets are fixed *ex ante*), and the extensive record evidence that shows the actual effects that state and local fees have in deterring wireless providers from adding to, improving, or densifying their networks and consequently the service offered over them (including, but not limited to, introducing next-generation 5G wireless service). We address each of these considerations in turn.

52. *Text and Structure.* We start our analysis with a consideration of the text and structure of Section 253. That section contains several related provisions that operate in tandem to define the roles that Congress intended the federal government, states, and localities to play in regulating the provision of telecommunications services. Section 253(a) sets forth Congress's intent to preempt state or local legal requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."<sup>133</sup> Section 253(b), in turn, makes clear Congress's intent that state "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights

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the 1996 Act. We do not address whether particular fees could be considered taxes under other statutes not administered by the FCC, but we reject the suggestion that tests courts use to determine what constitute "taxes" in the context of such other statutes should apply to the Commission's interpretation of Section 601(c)(2) here in light of the statutory context for Section 601(c)(2) in the 1996 Act and the Communications Act discussed above. *See, e.g., Qwest Corp. v. City of Surprise*, 434 F.3d 1176, 1183-84 & n.3 (9th Cir. 2006) (holding that particular fees at issue there were taxes for purposes of the Tax Injunction Act and stating in dicta that had the Tax Injunction Act not applied it would agree with the conclusion of the district court that it was covered by Section 601(c)(2) of the 1996 Act); *MCI Communications Services, Inc. v. City of Eugene*, 359 F. Appx. 692, 696 (9th Cir. 2009) (asserting without analysis that the same test would apply to determine if a fee constitutes a tax under both the Tax Injunction Act and Section 601(c)(2) of the 1996 Act).

<sup>131</sup> By costs, we mean those costs specifically related to and caused by the deployment. These include, for instance, the costs of processing applications or permits, maintaining the ROW, and maintaining a structure within the ROW. *See Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 354 F. Supp. 2d 107, 114 (D.P.R. 2005) (*Guayanilla District Ct. Opinion*), *aff'd*, 450 F.3d 9 (1st Cir. 2006) ("fees charged by a municipality need to be related to the degree of actual use of the public rights-of way" to constitute fair and reasonable compensation under Section 253(c)).

<sup>132</sup> We explain above what we mean by "fees." *See supra* note 71. Contrary to some claims, we are not asserting a "general ratemaking authority." Virginia Joint Commenters Comments at 6. Our interpretations in this order bear on whether and when fees associated with Small Wireless Facility deployment have the effect of prohibiting wireless telecommunications service and thus are subject to preemption under Section 253(a), informed by the savings clause in Section 253(c). While that can implicate issues surrounding how those fees were established, it does so only to the extent needed to vindicate Congress's intent in Section 253. We do not interpret Section 253(a) or (c) to authorize the regulation or establishment of state and local fees as an exercise in itself. We likewise are not persuaded by undeveloped assertions that the Commission's interpretation of Section 253 in the context of fees would somehow violate constitutional separation of powers principles. *See, e.g.,* Virginia Joint Commenters Comments, Exh. A at 52.

<sup>133</sup> 47 U.S.C. § 253(a).

of consumers” are not preempted.<sup>134</sup> Of particular importance in the fee context, Section 253(c) reflects a considered policy judgment that “[n]othing in this section” shall prevent states and localities from recovering certain carefully delineated fees. Specifically, Section 253(c) makes clear that fees are not preempted that are “fair and reasonable” and imposed on a “competitively neutral and nondiscriminatory basis,” for “use of public rights-of-way on a “nondiscriminatory basis,” so long as they are “publicly disclosed” by the government.<sup>135</sup> Section 253(d), in turn, provides one non-exclusive mechanism by which a party can obtain a determination from the Commission of whether a specific state or local requirement is preempted under Section 253(a)—namely, by filing a petition with the Commission.<sup>136</sup>

53. In reviewing this statutory scheme, the Commission previously has construed Section 253(a) as “broadly limit[ing] the ability of state[s] to regulate,” while the remaining subsections set forth “defined areas in which states may regulate.”<sup>137</sup> We reaffirm this conclusion, consistent with the view of most courts to have considered the issue—namely, that Sections 253(b) and (c) make clear that certain state or local laws, regulations, and legal requirements are not preempted under the expansive scope of Section 253(a).<sup>138</sup> Our interpretation of Section 253(a) is informed by this statutory context,<sup>139</sup> and the observation of courts that when a preemption provision precedes a narrowly-tailored savings clause, it is reasonable to infer that Congress intended a broad preemptive scope.<sup>140</sup> We need not decide today whether Section 253(a) preempts all fees not expressly saved by Section 253(c) with respect to all types of deployments. Rather, we conclude, based on the record before us, that with respect to Small Wireless Facilities, even fees that might seem small in isolation have material and prohibitive effects on deployment,<sup>141</sup> particularly when considered in the aggregate given the nature and volume of anticipated Small Wireless Facility deployment.<sup>142</sup> Against this backdrop, and in light of significant evidence, set forth herein, that Congress intended Section 253 to preempt legal requirements that effectively prohibit service, including wireless infrastructure deployment, we view the substantive standards for fees that Congress sought to insulate from preemption in Section 253(c) as an appropriate ceiling for state and local fees that apply to the deployment of Small Wireless Facilities in public ROWs.<sup>143</sup>

<sup>134</sup> 47 U.S.C. § 253(b).

<sup>135</sup> 47 U.S.C. § 253(c).

<sup>136</sup> 47 U.S.C. § 253(d).

<sup>137</sup> *Texas PUC Order*, 13 FCC Rcd at 3481, para. 44.

<sup>138</sup> See, e.g., *Connect America Fund*; *Sandwich Isles Communications, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5881, 5885-87, paras. 8, 19-25 (2017) (*Sandwich Isles Section 253 Order*); *Texas PUC Order*, 13 FCC Rcd at 3480-81, paras. 41-44; *Global Network Commc’ns, Inc. v. City of New York*, 562 F.3d 145, 150-51 (2d Cir. 2009); *Southwestern Bell Tel. Co. v. City of Houston*, 529 F.3d 257, 262 (5th Cir. 2008); *City of St. Louis*, 477 F.3d at 531-32 (8th Cir. 2007); *Municipality of Guayanilla*, 450 F.3d at 15-16; *City of Santa Fe*, 380 F.3d at 1269; *BellSouth Telecomm’s, Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1187-89 (11th Cir. 2001). Some courts appear to have viewed Section 253(c) as an independent basis for preemption. See, e.g., *City of Dearborn*, 206 F.3d at 624 (after concluding that a franchise fee did not violate Section 253(a), going on to evaluate whether it was “fair and reasonable” under Section 253(c)). We find more persuasive the Commission and other court precedent to the contrary, which we find better adheres to the statutory language.

<sup>139</sup> See, e.g., *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2442 (2014).

<sup>140</sup> See, e.g., *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44-45 (1987); *City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 189-90 (2d Cir. 2010); *Frank v. Delta Airlines, Inc.*, 314 F.3d 195, 199 (5th Cir. 2002); cf. *United States v. Kay*, 359 F.3d 738 (5th Cir. 2004) (justifying a broad reading of a statute given that Congress “narrowly defin[ed] exceptions and affirmative defenses against a backdrop of broad applicability”).

<sup>141</sup> See *infra* paras. 62-63.

<sup>142</sup> See, e.g., *Wireless Infrastructure Second R&O*, FCC 18-30, at para. 64.

<sup>143</sup> See, e.g., Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 9-10. We therefore reject the view of those courts that have concluded that Section 253(a) necessarily requires some additional showing beyond the fact that a particular fee is not cost-based. See, e.g., *Qwest v. City of Berkeley*, 433 F.3d 1253, 1257 (9th Cir. 2006) (“we

54. In addition, notwithstanding that Section 253(c) only expressly governs ROW fees, we find it appropriate to look to its substantive standards as a ceiling for other state and local fees addressed by this *Declaratory Ruling*.<sup>144</sup> For one, our evaluation of the material effects of fees on the deployment of Small Wireless Facilities does not differ whether the fees are for ROW access, use of government property within the ROW, or one-time application and review fees or the like—any of which drain limited capital resources that otherwise could be used for deployment—and we see no reason why the Act would tolerate a greater prohibitory effect in the case of application or review fees than for ROW fees.<sup>145</sup> In addition, elements of the substantive standards for ROW fees in Section 253(c) appear at least analogous to elements of the *California Payphone* standard for evaluating an effective prohibition under Section 253(a). In pertinent part, both incorporate principles focused on the legal requirements to which a provider may be fairly subject,<sup>146</sup> and seek to guard against competitive disparities.<sup>147</sup> Without resolving the precise interplay of those concepts in Section 253(c) and the *California Payphone* standard, their similarities support our use of the substantive standards of Section 253(c) to inform our evaluation of fees at issue here that are not directly governed by that provision.

55. From the foregoing analysis, we can derive the three principles that we articulate in this Declaratory Ruling about the types of fees that are preempted. As explained in more detail below, we also interpret Section 253(c)'s "fair and reasonable compensation" provision to refer to fees that represent a reasonable approximation of actual and direct costs incurred by the government, where the costs being passed on are themselves objectively reasonable.<sup>148</sup> Although there is precedent that "fair and reasonable" compensation could mean not only cost-based charges but also market-based charges in certain instances,<sup>149</sup> the statutory context persuades us to adopt a cost-based interpretation here. In particular, while the general purpose of Section 253(c) is to preserve certain state and local conduct from preemption, it includes qualifications and limitations to cabin state and local action under that savings clause in ways that ensure appropriate protections for service providers. The reasonableness of interpreting the qualifications and limitations in the Section 253(c) savings clause as designed to protect the interests of service providers is emphasized by the statutory language. The "competitively neutral and

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decline to read" prior Ninth Circuit precedent "to mean that all non-cost based fees are automatically preempted, but rather that courts must consider the substance of the particular regulation at issue"). At the same time, our interpretation does not take the broader view of the preemptive scope of Section 253 adopted by the Sixth Circuit, which interpreted Section 253(c) as an independent prohibition on conduct that is not itself prohibited by Section 253(a). *City of Dearborn*, 206 F.3d at 624.

<sup>144</sup> See *supra* note 71.

<sup>145</sup> Cf. *Cheney R. Co. v. ICC*, 902 F.2d 66, 69 (D.C. Cir. 1990) (observing that the *expressio unius* canon is a "feeble helper in an administrative setting, where Congress is presumed to have left to reasonable agency discretion questions that it has not directly resolved," and concluding there that "Congress's mandate in one context with its silence in another suggests not a prohibition but simply a decision not to mandate any solution in the second context, i.e., to leave the question to agency discretion").

<sup>146</sup> For ROW compensation to be saved under Section 253(c) it must be "fair and reasonable," while the *California Payphone* standard looks to whether a legal requirement "materially limits or inhibits" the ability to compete in a "fair" legal environment for a covered service. *California Payphone*, 12 FCC Rcd at 14206, para. 31.

<sup>147</sup> For ROW compensation to be saved under Section 253(c) it also must be "competitively neutral and nondiscriminatory," while the *California Payphone* standard also looks to whether a legal requirement "materially limits or inhibits" the ability to compete in a "balanced" legal environment for a covered service. *California Payphone*, 12 FCC Rcd at 14206, para. 31.

<sup>148</sup> See *infra* paras. 69-77; see also, e.g., *City of Maryland Heights*, 256 F. Supp. 2d at 993-95; *Bell Atlantic–Maryland*, 49 F. Supp. 2d at 818.

<sup>149</sup> See, e.g., *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) (statute did not unambiguously require the SEC to interpret "fair and reasonable" to mean cost-based, and the SEC's reliance on market-based rates as "fair and reasonable" where there was competition was a reasonable interpretation).

nondiscriminatory” and public disclosure qualifications in Section 253(c) appear most naturally understood as protecting the interest of service providers from fees that otherwise would have been saved from preemption under Section 253(c) absent those qualifiers. Under the *noscitur a sociis* canon of statutory interpretation, that context persuades us that the “fair and reasonable” qualifier in Section 253(c) similarly should be understood as focused on protecting the interest of providers.<sup>150</sup> As discussed in greater detail below, while it might well be fair for providers to bear basic, reasonable costs of entry,<sup>151</sup> the record does not reveal why it would be fair or reasonable from the standpoint of protecting providers to require them to bear costs beyond that level, particularly in the context of the deployment of Small Wireless Facilities. In addition, the text of Section 253(c) provides that ROW access fees must be imposed on a “competitively neutral and nondiscriminatory basis.” This means, for example, that fees charged to one provider cannot be materially higher than those charged to a competitor for similar uses.<sup>152</sup>

56. Other considerations support our approach, as well. By its terms, Section 253(a) preempts state or local legal requirements that “prohibit” or have the “effect of prohibiting” the provision of services, and we agree with court precedent that “[m]erely allowing the [local government] to recoup its processing costs . . . cannot in and of itself prohibit the provision of services.”<sup>153</sup> The Commission has long understood that Section 253(a) is focused on state or local barriers to entry for the provision of service,<sup>154</sup> and we conclude that states and localities do not impose an unreasonable barrier to entry when they merely require providers to bear the direct and reasonable costs caused by their decision to enter the market.<sup>155</sup> We decline to interpret a government’s recoupment of such fundamental costs of entry as having the effect of prohibiting the provision of services, nor has any commenter argued that recovery of cost by a government would prohibit service in a manner restricted by Section 253(a).<sup>156</sup> Reasonable state and local regulation of facilities deployment is an important predicate for a viable marketplace for

<sup>150</sup> See, e.g., *Life Technologies Corp. v. Promega Corp.*, 137 S. Ct. 734 (2017) (“A word is given more precise content by the neighboring words with which it is associated.” (internal alteration and quotation marks omitted)).

<sup>151</sup> See *infra* para. 56.

<sup>152</sup> See, e.g., *City of White Plains*, 305 F.3d at 80.

<sup>153</sup> *City of Santa Fe*, 380 F.3d at 1269; see also Verizon Comments at 17.

<sup>154</sup> See, e.g., *Sandwich Isles Section 253 Order*, 32 FCC Rcd at 5878, 5882-83, paras. 1, 13; *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8; *Petition of the State of Minnesota for a Declaratory Ruling regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights of Way*, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21707, para. 18 (*Minnesota Order*); *Hyperion Order*, 14 FCC Rcd at 11070, para. 13; *Texas PUC Order*, 13 FCC Rcd at 3480, para. 41; *TCI Cablevision Order*, 12 FCC Rcd at 21399, para. 7; *California Payphone*, 12 FCC Rcd at 14209, para. 38; see also, e.g., *AT&T Comm’ns of the Sw. v. City of Dallas*, 8 F. Supp. 2d 582, 593 (N.D. Tx. 1998) (*AT&T v. City of Dallas*) (“[A]ny fee that is not based on AT&T’s use of City rights-of-way violates § 253(a) of the FTA as an economic barrier to entry.”); Verizon Comments at 11-12; Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 7. Because we view the *California Payphone* standard as reflecting a focus on barriers to entry, we decline requests to adopt a distinct, additional standard with that as an explicit focus. See, e.g., T-Mobile Comments at 35.

<sup>155</sup> See, e.g., *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5301-03, paras. 142-45 (2011) (rejecting an approach to defining a lower bound rate for pole attachments that “would result in pole rental rates below incremental cost” as contrary to cost causation principles); *Investigation of Interstate Access Tariff Non-Recurring Charges*, Memorandum Opinion and Order, 2 FCC Rcd 3498, 3502, para. 34 (1987) (observing in the rate regulation context that “the public interest is best served, and a competitive marketplace is best encouraged, by policies that promote the recovery of costs from the cost-causer”). Our interpretation limiting states and localities to the recovery of a reasonable approximation of objectively reasonable cost also takes into account state and local governments’ exclusive control over access to the ROW.

<sup>156</sup> For example, Verizon states that “[a]lthough any fee could be said to raise the cost of providing service,” Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 9, “[t]he Commission should interpret . . . Section 253(a) to allow cost-based fees for access to public rights-of-way and structures within them, but to prohibit above-cost fees that generate revenue in excess of state and local governments’ actual costs.” *Id.*, Attach. at 6.

communications services by protecting property rights and guarding against conflicting deployments that could harm or otherwise interfere with others' use of property.<sup>157</sup> By contrast, fees that recover more than the state or local costs associated with facilities deployment—or that are based on unreasonable costs, such as exorbitant consultant fees or the like—go beyond such governmental recovery of fundamental costs of entry. In addition, interpreting Section 253(a) to prohibit states and localities from recovering a reasonable approximation of reasonable costs could interfere with the ability of states to exercise the police powers reserved to them under the Tenth Amendment.<sup>158</sup> We therefore conclude that Section 253(a) is circumscribed to permit states and localities to recover a reasonable approximation of their costs related to the deployment of Small Wireless Facilities.

57. *Commission Precedent.* We draw further confidence in our conclusions from the Commission's *California Payphone* decision, which we reaffirm here, finding that a state or local legal requirement would violate Section 253(a) if it "materially limits or inhibits" an entity's ability to compete in a "balanced" legal environment for a covered service.<sup>159</sup> As explained above, fees charged by a state or locality that recover the reasonable approximation of reasonable costs do not "materially inhibit" a provider's ability to compete in a "balanced" legal environment. To the contrary, those costs enable localities to recover their necessary expenditures to provide a stable and predictable framework in which market participants can enter and compete. On the other hand, in the *Texas PUC Order* interpreting *California Payphone*, the Commission concluded that state or local legal requirements such as fees that impose a "financial burden" on providers can be effectively prohibitive.<sup>160</sup> As the record shows, excessive state and local governments' fees assessed on the deployment of Small Wireless Facilities in the ROW in fact materially inhibit the ability of many providers to compete in a balanced environment.<sup>161</sup>

58. *California Payphone* and *Texas PUC* separately support the conclusion that fees cannot be discriminatory or introduce competitive disparities, as such fees would be inconsistent with a "balanced" regulatory marketplace. Thus, fees that treat one competitor materially differently than other competitors in similar situations are themselves grounds for finding an effective prohibition—even in the case of fees that are a reasonable approximation of the actual and reasonable costs incurred by the state or locality. Indeed, the Commission has previously recognized the potential for subsidies provided to one

<sup>157</sup> See, e.g., *TCI Cablevision Order*, 12 FCC Rcd at 21441, para. 103; see also, e.g., Garrett Hardin, *The Tragedy of the Commons*, 162 Sci. 1243 (1968). States' or localities' regulation premised on addressing effects of deployment besides these costs caused by facilities deployment are distinct issues, which we discuss below. See *infra* Part III.C.

<sup>158</sup> The Supreme Court has recognized that land use regulation can involve an exercise of police powers. See, e.g., *Hodel v. Va. Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 289 (1981). As that Court observed, "[i]t would . . . be a radical departure from long-established precedent for this Court to hold that the Tenth Amendment prohibits Congress from displacing state police power laws regulating private activity." *Id.* at 292. At the same time, the Court also has held that "historic police powers of the States" are not to be preempted by federal law "unless that was the clear and manifest purpose of Congress." *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605 (1991) (internal quotation marks omitted). As relevant here, we see no clear and manifest intent that Congress intended to preempt publicly disclosed, objectively reasonable cost-based fees imposed on a nondiscriminatory basis, particularly in light of Section 253(c).

<sup>159</sup> We disagree with suggestions that the Commission applied an additional and more stringent "commercial viability" test in *California Payphone*. See, e.g., Crown Castle June 7, 2018 *Ex Parte* Letter at 10. Instead, the Commission was simply evaluating the Section 253 petition on its own terms, see, e.g., *California Payphone*, 12 FCC Rcd at 14204, 14210, paras. 27, 41, and, without purporting to define the bounds of Section 253(a), explaining that the petitioner "ha[d] not sufficiently supported its allegation" that the provision of service at issue "would be 'impractical and uneconomic.'" *Id.* at 14210, para. 41. Confirming that this language was simply the Commission's short-hand reference to arguments put forward by the petitioner itself, and not a Commission-announced standard for applying Section 253, the Commission has not applied a "commercial viability" standard in other decisions, as these same commenters recognize. See, e.g., Crown Castle June 7, 2018 *Ex Parte* Letter at 10.

<sup>160</sup> *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81.

<sup>161</sup> See *infra* paras. 60-65.

competitor to distort the marketplace and create a barrier to entry in violation of Section 253(a).<sup>162</sup> We reaffirm that conclusion here.

59. *Legislative History.* While our interpretation follows directly from the text and structure of the Act, our conclusion finds further support in the legislative history, which reflects Congress's focus on the ability of states and localities to recover the reasonable costs they incur in maintaining the rights of way.<sup>163</sup> Significantly, Senator Dianne Feinstein, during the floor debate on Section 253(c), "offered examples of the types of restrictions that Congress intended to permit under Section 253(c), including [to] 'require a company to pay fees to *recover an appropriate share of the increased street repair and paving costs* that result from repeated excavation.'" <sup>164</sup> Representative Bart Stupak, a sponsor of the legislation, similarly explained during the debate on Section 253 that "if a company plans to run 100 miles of trenching in our streets and wires to all parts of the cities, it *imposes a different burden* on the right-of-way than a company that just wants to string a wire across two streets to a couple of buildings," making clear that the compensation described in the statute is related to the burden, or cost, from a provider's use of the ROW.<sup>165</sup> These statements buttress our interpretation of the text and structure of Section 253 and confirm Congress's apparent intent to craft specific safe harbors for states and localities, and to permit recovery of reasonable costs related to the ROW as "fair and reasonable compensation," while preempting fees above a reasonable approximation of cost that improperly inhibit service.<sup>166</sup>

60. *Capital Expenditures.* Apart from the text, structure, and legislative history of the 1996 Act, an additional, independent justification for our interpretation follows from the simple, logical premise, supported by the record, that state and local fees in one place of deployment necessarily have the effect of reducing the amount of capital that providers can use to deploy infrastructure elsewhere, whether the reduction takes place on a local, regional or national level.<sup>167</sup> We are persuaded that providers and infrastructure builders, like all economic actors, have a finite (though perhaps fluid)<sup>168</sup> amount of resources to use for the deployment of infrastructure. This does not mean that these resources are limitless, however. We conclude that fees imposed by localities, above and beyond the recovery of localities' reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere.<sup>169</sup> This and regulatory uncertainty created by such effectively prohibitive conduct<sup>170</sup> creates an

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<sup>162</sup> See, e.g., *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8.

<sup>163</sup> See, e.g., WIA Comments, Attach. 2 at 70.

<sup>164</sup> WIA Comments, Attach. 2 at 70 (quoting 141 Cong. Rec. S8172 (daily ed. June 12, 1995) (statement of Sen. Feinstein, quoting letter from Office of City Attorney, City and County of San Francisco)) (emphasis added)); see also, e.g., Verizon Comments at 15 (similar); *City of Maryland Heights*, 256 F. Supp. 2d at 995-96.

<sup>165</sup> 141 Cong. Rec. H8460-01, H8460 (daily ed. Aug. 4, 1995).

<sup>166</sup> We reject other comments downplaying the relevance of legislative statements by some commenters as inconsistent with the text and structure of the Act. See, e.g., League of Arizona Cities *et al.* Joint Comments at 27-28; NATOA Comments, Exh. A at 26-28; Smart Communities Reply at 57-58; Cities of San Antonio *et al.* Reply at 20-21; see also, e.g., *City of Portland v. Electric Lightwave, Inc.*, 452 F. Supp. 2d 1049, 1071-72 (D. Or. 2005).

<sup>167</sup> At a minimum, this analysis complements and reinforces the justifications for our interpretation provided above. While the relevant language of Section 253(a) and Section 332(c)(7)(B)(i)(II) is not limited just to Small Wireless Facilities, we proceed incrementally in our Declaratory Ruling here and address the record before us, which indicates that our interpretation of the effective prohibition standard here is particularly reasonable in the context of Small Wireless Facility deployment.

<sup>168</sup> For example, the precise amount of these resources might shift as a service provider encounters unexpected costs, recovers costs passed on to subscribers, or earns a profit above those costs.

<sup>169</sup> As Verizon observes, "[a] number of states enacted infrastructure legislation because they determined that rate relief was necessary to ensure wireless deployment," and thus could be seen as having "acknowledged that excessive fees impose a substantial barrier to the provision of service." Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 7-8. In view of the evidence in the record regarding the effect of state and local fees on capital expenditures, see, e.g., Corning Sept. 5, 2018 *Ex Parte* Letter (noting that cost savings from reduced small cell attachment and application

appreciable impact on resources that materially limits plans to deploy service. This record evidence emphasizes the importance of evaluating the effect of fees on Small Wireless Facility deployment on an aggregate basis. Consistent with the First Circuit's analysis in *Municipality of Guayanilla*, the record persuades us that fees associated with Small Wireless Facility deployment lead to "a substantial increase in costs"—particularly when considered in the aggregate—thereby "plac[ing] a significant burden" on carriers and materially inhibiting their provision of service contrary to Section 253 of the Act.<sup>171</sup>

61. The record is replete with evidence that providers have limited capital budgets that are constrained by state and local fees.<sup>172</sup> As AT&T explains, "[a]ll providers have limited capital dollars to invest, funds that are quickly depleted when drained by excessive ROW fees."<sup>173</sup> AT&T added that "[c]ompetitive demands will force carriers to deploy small cells in the largest cities. But, when those largest cities charge excessive fees to access ROWs and municipal ROW structures, carriers' finite capital dollars are prematurely depleted, leaving less for investment in mid-level cities and smaller communities. Larger municipalities have little incentive to not overcharge, and mid-level cities and smaller

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fees could result in \$2.4 billion in capital expenditure and that 97% of this capital expenditure would go toward investments in rural and suburban areas), we disagree with arguments that fees do not affect the deployment of wireless facilities in rural and underserved areas. *See, e.g.*, Letter from Sam Liccardo, Mayor, City of San Jose, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 4 (filed Sept. 18, 2018) (City of San Jose Sept. 18, 2018 *Ex Parte* Letter) (stating that "whether or not a provider wishes to invest in a dense urban area, including underserved urban areas, or a rural area is fundamentally based on the size of the customer base and the market demand for service—not on the purported wiles of a 'must-serve' jurisdiction somehow forcing investment away from rural areas because a right of way or attachment fee is charged."); Letter from Joanne Hovis, Chief Executive Officer, Coalition for Local Internet Choice, James Baller, President, Coalition for Local Internet Choice, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 3 (filed Sept. 18, 2018) ("in lucrative areas, carriers will pay market fees for access to property just as they would any other cost of doing business. But they will not, as rational economic actors, necessarily apply new profits (created by FCC preemption) to deploying in otherwise unattractive areas.").

<sup>170</sup> *See, e.g.*, CTIA Comments at 32 (identifying "disparate interpretations" regarding the fees that are preempted and seeking FCC clarification to "dispel the resulting uncertainty"); Verizon Comments at 10 (similar); Letter from Cathleen A. Massey, Vice Pres.-Fed. Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 7 (filed Sept. 21, 2017) (seeking clarification of Section 253); BDAC Regulatory Barriers Report, p. 9 ("The FCC should provide guidance on what constitutes a fee that is excessive and/or duplicative, and that therefore is not 'fair and reasonable.' The Commission should specifically clarify that 'fair and reasonable' compensation for right-of way access and use implies some relation to the burden of new equipment placed in the ROW or on the local asset, or some other objective standard.").

<sup>171</sup> *Municipality of Guayanilla*, 450 F.3d at 19.

<sup>172</sup> *See, e.g.*, AT&T Comments at 2; Conterra Broadband et al. Comments at 6; Mobilitie Comments at 3; Sprint Comments at 17; Letter from Courtney Neville, Associate General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2-3 (filed July 16, 2018) (CCA July 16, 2018 *Ex Parte* Letter); Letter from Henry Hultquist, Vice President, Federal Regulatory, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed June 8, 2018) (AT&T June 8, 2018 *Ex Parte* Letter); Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed June 21, 2018) (Verizon June 21, 2018 *Ex Parte* Letter); Letter from Ronald W. Del Sesto, Jr., Counsel for Uniti Fiber, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 5 (filed Oct. 30, 2017); Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 2-4. When developing capital budgets, companies rationally would account for anticipated revenues associated with the services that can be provided by virtue of planned facilities deployment, and the record does not reveal—nor do we see any basis to assume—that such revenues would be so great as to eliminate constraints on providers' capital budgets so as to enable full deployment notwithstanding the level of state and local fees.

<sup>173</sup> AT&T Aug. 6, 2018 *Ex Parte* Letter at 2.

municipalities have no ability to avoid this harm.”<sup>174</sup> As to areas that might not be sufficiently crucial to deployment to overcome high fees, AT&T identified jurisdictions in Maryland, California, and Massachusetts where high fees have directly resulted in paused or decreased deployments.<sup>175</sup> Limiting localities to reasonable cost recovery will “allow[] AT&T and other providers to stretch finite capital dollars to additional communities.”<sup>176</sup> Verizon similarly explains that “[c]apital budgets are finite. When providers are forced to spend more to deploy infrastructure in one locality, there is less money to spend in others. The leverage that some cities have to extract high fees means that other localities will not enjoy next generation wireless broadband services as quickly, if at all.”<sup>177</sup> Sprint, too, affirms that, because “all carriers face limited capital budgets, they are forced to limit the number and pace of their deployment investments to areas where the delays and impediments are the least onerous, to the detriment of their customers and, ultimately and ironically, to the very jurisdictions that imposed obstacles in the first place.”<sup>178</sup> Sprint gives a specific example of its deployments in two adjacent jurisdictions—the City of Los Angeles and Los Angeles County—and describes how high fees in the county prevented Sprint from activating any small cells there, while more than 500 deployments occurred in the city, which had significantly lower fees.<sup>179</sup> Similarly, Conterra Broadband states that “[w]hen time and capital are diverted away from actual facility installation and instead devoted to clearing regulatory roadblocks, consumers and enterprises, including local small businesses, schools and healthcare centers, suffer.”<sup>180</sup> Based on the record, we find that fees charged by states and localities are causing *actual* delays and restrictions on deployments of Small Wireless Facilities in a number of places across the country in violation of Section 253(a).<sup>181</sup>

62. Our conclusion finds further support when one considers the aggregate effects of fees imposed by individual localities, including, but not limited to, the potential limiting implications for a nationwide wireless network that reaches all Americans, which is among the key objectives of the statutory provisions in the 1996 Act that we interpret here.<sup>182</sup> When evaluating whether fees result in an effective prohibition of service due to financial burden, we must consider the marketplace regionally and nationally and thus must consider the cumulative effects of state or local fees on service in multiple geographic areas that providers serve or potentially would serve. Where providers seek to operate on a regional or national basis, they have constrained resources for entering new markets or introducing, expanding, or improving existing services, particularly given that a provider’s capital budget for a given

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<sup>174</sup> *Id.*

<sup>175</sup> *Id.* (pausing or delaying deployments in Citrus Heights, CA, Oakland, CA and three Maryland counties; decreasing deployments in Lowell, MA and decreasing deployments from 98 to 25 sites in Escondido, CA).

<sup>176</sup> *Id.*

<sup>177</sup> Verizon Aug. 10, 2018 *Ex Parte* Letter at 5, Attach. at 2-4.

<sup>178</sup> Sprint Comments at 17.

<sup>179</sup> Sprint Aug. 13, 2018 *Ex Parte* Letter at 1-2.

<sup>180</sup> Conterra Broadband *et al.* Comments at 6; *see also* Letter from John Scott, Counsel for Mobilitie, LLC to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (“high fees imposed by some cities hurt other cities that have reasonable fees, because they reduce capital resources that might have gone to those cities, and because they pressure other financially strapped cities not to turn away what appears to be a revenue opportunity”).

<sup>181</sup> Letter from Kenneth J. Simon, Senior Vice President and General Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 4 (filed August 10, 2018) (Crown Castle Aug. 10, 2018 *Ex Parte* Letter).

<sup>182</sup> *New England Public Comms. Council Petition for Preemption Pursuant to Section 253*, Memorandum Opinion and Order, 11 FCC Rcd 19713, 19717, para. 9 (1996) (1996 Act intent of “accelerat[ing] deployment of advanced telecommunications services to all Americans by opening all telecommunications markets to competition.”); *see also* Crown Castle Aug. 10, 2018 *Ex Parte* Letter at 7.



period of time is often set in advance.<sup>183</sup> In such cases, the resources consumed in serving one geographic area are likely to deplete the resources available for serving other areas.<sup>184</sup> The text of Section 253(a) is not limited by its terms only to effective prohibitions within the geographic area targeted by the state or local fee. Where a fee in a geographic area affects service outside that geographic area, the statute is most naturally read to encompass consideration of all affected areas.

63. A contrary, geographically-restrictive interpretation of Section 253(a) would exacerbate the digital divide by giving dense or wealthy states and localities that might be most critical for a provider to serve the ability to leverage their unique position to extract fees for their own benefit at the expense of regional or national deployment by decreasing the deployment resources available for less wealthy or dense jurisdictions.<sup>185</sup> As a result, the areas likely to be hardest hit by excessive government fees are not necessarily jurisdictions that charge those fees, but rather areas where the case for new, expanded, or improved service was more marginal to start—and whose service may no longer be economically justifiable in the near-term given the resources demanded by the “must-serve” areas. To cite some examples of harmful aggregate effects, AT&T notes that high annual recurring fees are particularly harmful because of their “continuing and compounding nature.”<sup>186</sup> It also states that, “if, as S&P Global Market Intelligence estimates, small-cell deployments reach nearly 800,000 by 2026, a ROW fee of \$1000 per year ... would result in nearly \$800 million annually in forgone investment.”<sup>187</sup> Yet another commenter notes that, “[f]or a deployment that requires a vast number of small cell facilities across a metropolitan area, these fees quickly mount up to hundreds of thousands of dollars, often making deployment economically infeasible,” and “far exceed[ing] any costs the locality incurs by orders of magnitude, while taking capital that would otherwise go to investment in new infrastructure.”<sup>188</sup> Endorsing such a result would thwart the purposes underlying Section 253(a). As Crown Castle observes, “[e]ven where the fees do not result in a direct lack of service in a high-demand area like a city or urban core, the high cost of building and operating facilities in these jurisdictions consume [sic] capital and revenue that could otherwise be used to expand wireless infrastructure in higher cost areas. This impact of egregious fees is prohibitory and should be taken into account in any prohibition analysis.”<sup>189</sup>

64. Some municipal commenters endorse a cost-based approach to “ensure that localities are fully compensated for their costs [and that] fees should be reasonable and non-discriminatory, and should ensure that localities are made whole”<sup>190</sup> in recognition that “getting [5G] infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources.”<sup>191</sup> Commenters from smaller municipalities recognize that “thousands and thousands of small cells are needed for 5G... [and]

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<sup>183</sup> See, e.g., AT&T June 8, 2018 *Ex Parte* Letter at 2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Verizon June 21, 2018 *Ex Parte* Letter at 2.

<sup>184</sup> See, e.g., *Municipality of Guayanilla*, 450 F.3d at 17 (“Given the interconnected nature of utility services across communities and the strain that the enactment of gross revenue fees in multiple municipalities would have on PRTC’s provision of services, the Commonwealth-wide estimates are relevant to determining how the ordinance affects PRTC’s ‘ability . . . to provide any interstate or intrastate telecommunications service’” under Section 253(a)).

<sup>185</sup> See, e.g., Letter from Sam Liccardo, Mayor of San Jose, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, Attachment at 1-2 (filed Aug. 2, 2018) (describing payment by providers of \$24 million to a Digital Inclusion Fund in order to deploy small cells in San Jose on city owned light poles).

<sup>186</sup> AT&T Comments at 19.

<sup>187</sup> AT&T Comments at 19-20.

<sup>188</sup> Mobilitie Comments at 3.

<sup>189</sup> Crown Castle Aug. 10, 2018 *Ex Parte* Letter at 2.

<sup>190</sup> Sal Pace July 30, 2018 *Ex Parte* Letter at 1.

<sup>191</sup> LaWana Mayfield July 31, 2018 *Ex Parte* Letter at 1

old regulations could hinder the timely arrival of 5G throughout the country”<sup>192</sup> and urge the Commission to “establish some common-sense standards insofar as it relates to fees associated with the deployment of small cells [due to] a cottage industry of consultants [] who have wrongly counseled communities to adopt excessive and arbitrary fees.”<sup>193</sup> Representatives from non-urban areas in particular caution that, “if the investment that goes into deploying 5G on the front end is consumed by big, urban areas, it will take longer for it to flow outwards in the direction of places like Florence, [SC].”<sup>194</sup> “[R]educing the high regulatory costs in urban areas would leave more dollars to development in rural areas [because] most of investment capital is spent in the larger urban areas [since] the cost recovery can be made in those areas. This leaves the rural areas out.”<sup>195</sup> We agree with these commenters, and we further agree with courts that have considered “the *cumulative effect* of future similar municipal [fees ordinances]” across a broad geographic area when evaluating the effect of a particular fee in the context of Section 253(a).<sup>196</sup> To the extent that other municipal commenters argue that our interpretation gives wireless providers preferential treatment compared to other users of the ROW, the record does not contain data about other users that would support such a conclusion.<sup>197</sup> In any event, Section 253 of the Communications Act expressly bars legal requirements that effectively prohibit telecommunications service without regard to whether it might result in preferential treatment for providers of that service.<sup>198</sup>

65. Applying this approach here, the record reveals that fees above a reasonable approximation of cost, even when they may not be perceived as excessive or likely to prohibit service in isolation, will have the effect of prohibiting wireless service when the aggregate effects are considered, particularly given the nature and volume of anticipated Small Wireless Facility deployment.<sup>199</sup> The record reveals that these effects can take several forms. In some cases, the fees in a particular jurisdiction will lead to reduced or entirely forgone deployment of Small Wireless Facilities in the near term for that

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<sup>192</sup> Dr. Carolyn Prince July 31, 2018 *Ex Parte* Letter at 2.

<sup>193</sup> Letter from Ashton J. Hayward III, Mayor, Pensacola, FL to the Hon. Brendan Carr, Commissioner, WT Docket No. 17-79 at 1 (filed June 8, 2018).

<sup>194</sup> Representative Terry Alexander Aug. 7, 2018 *Ex Parte* Letter at 1.

<sup>195</sup> Senator Duane Ankney July 31, 2018 *Ex Parte* Letter at 1; *see also* Letter from Elder Alexis D. Pipkins, Sr. to the Hon. Brendan Carr, Commissioner, FCC at 1 (filed July 26, 2018) (“the race to 5G is global...instead of each city or state for itself, we should be working towards aligned, streamlined frameworks that benefit us all.”); Letter from Jeffrey Bohm, Chairman of the Board of Commissioners, County of St. Clair to Brendan Carr, Commissioner, FCC, WT Docket 17-79 at 1-2 (filed August 22, 2018) (“Smaller communities, such as those located in St. Clair County would benefit from having the Commissions reduce the costly and unnecessary fee’s that some larger communities place on small cells as a condition of deployment. These fees, wholly disproportionate to any cost, put communities like ours at an unfair disadvantage”); Letter from Scott Niesler, Mayor, City of Kings Mountain, to Brendan Carr, Commissioner, FCC, WT Docket 17-79 at 1-2 (filed June 4, 2018) (“the North Carolina General Assembly has enacted legislation to encourage the deployment of small cell technology to limit exorbitant fees which can siphon off capital from further expansion projects. I was encouraged to see the FCC taking similar steps to enact policies that help clear the way for the essential investment”).

<sup>196</sup> *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 111-12; *but see, e.g.*, Letter from Nina Beety to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 at 5 (filed Sept. 17, 2018) (Nina Beety Sept. 17, 2018 *Ex Parte* Letter) (asserting that providers artificially under-capitalize their deployment budgets to build the case for poverty).

<sup>197</sup> Letter from Larry Hanson, Executive Director, Georgia Municipal Association to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Sept. 17, 2018) (Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter).

<sup>198</sup> 47 U.S.C. § 253(a).

<sup>199</sup> *See, e.g., Wireless Infrastructure Second R&O*, FCC 18-30, at para. 64. In addition, although one could argue that, in theory, a sufficiently small departure from actual and reasonable costs might not have the effect of prohibiting service in a particular instance, the record does not reveal an alternative, administrable approach to evaluating fees without a cost-based focus.

jurisdiction.<sup>200</sup> In other cases, where it is essential for a provider to deploy in a given area, the fees charged in that geographic area can deprive providers of capital needed to deploy elsewhere, and lead to reduced or forgone near-term deployment of Small Wireless Facilities in other geographic areas.<sup>201</sup> In both of those scenarios the bottom-line outcome on the national development of 5G networks is the same—diminished deployment of Small Wireless Facilities critical for wireless service and building out 5G networks.<sup>202</sup>

66. Some have argued that our decision today regarding Sections 253 and 332 should not be applied to preempt agreements (or provisions within agreements) entered into prior to this Declaratory Ruling.<sup>203</sup> We note that courts have upheld the Commission’s preemption of the enforcement of provisions in private agreements that conflict with our decisions.<sup>204</sup> We therefore do not exempt existing agreements (or particular provisions contained therein) from the statutory requirements that we interpret here. That said, however, this Declaratory Ruling’s effect on any particular existing agreement will depend upon all the facts and circumstances of that specific case.<sup>205</sup> Without examining the particular features of an agreement, including any exchanges of value that might not be reflected by looking at fee provisions alone, we cannot state that today’s decision does or does not impact any particular agreement entered into before this decision.

67. *Relationship to Section 332.* While the above analysis focuses on the text and structure of the Act, legislative history, Commission orders, and case law interpreting Section 253(a), we reiterate that in the fee context, as elsewhere, the statutory phrase “prohibit or have the effect of prohibiting” in Section 332(c)(7)(B)(i)(II) has the same meaning as the phrase “prohibits or has the effect of prohibiting” in Section 253(a). As noted in the prior section, there is no evidence to suggest that Congress intended for virtually identical language to have different meanings in the two provisions.<sup>206</sup> Instead, we find it

<sup>200</sup> See, e.g., AT&T June 8, 2018 *Ex Parte* Letter at 1-2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2.

<sup>201</sup> AT&T June 8, 2018 *Ex Parte* Letter at 1-2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Verizon June 21, 2018 *Ex Parte* Letter at 2; CCA July 16, 2018 *Ex Parte* Letter at 2-3.

<sup>202</sup> See, e.g., Letter from Thomas J. Navin, Counsel to Corning, Inc. to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Jan 25, 2018), Attach. at 6-7 (comparing different effects on deployment between a base case and a high fee case, and estimating that pole attachment fees nationwide assuming high fees would result in 28.2M fewer premises passed, or 31 percent of the 5G Base case results, and an associated \$37.9B in forgone network deployment).

<sup>203</sup> City of San Jose Sept. 18, 2018 *Ex Parte* Letter at 1-2.

<sup>204</sup> See, e.g., *Building Owners and Managers Ass’n Int’l v. FCC*, 254 F.3d 89 (D.C. Cir. 2001) (OTARD rules barring exclusivity provisions in lease agreements). As the D.C. Circuit has recognized, “[w]here the Commission has been instructed by Congress to prohibit restrictions on the provision of a regulated means of communication, it may assert jurisdiction over a party that directly furnishes those restrictions, and, in so doing, the Commission may alter property rights created under State law.” *Id.* at 96; see also *Lansdowne on the Potomac Homeowners Ass’n v. OpenBand at Lansdowne, LLC*, 713 F.3d 187 (4th Cir. 2013).

<sup>205</sup> For example, the City of Los Angeles asserts that fee provisions in its agreements with providers are not prohibitory and must be examined in light of a broader exchange of value contemplated by the agreements in their entirety. Letter from Eric Garcetti, Mayor, City of Los Angeles to the Hon. Ajit Pai, Chairman, FCC, WT Docket No. 17-79 (filed Sept 18, 2018). We agree that agreements entered into before this decision will need to be examined in light of their potentially unique circumstances before a decision can be reached about whether those agreements or any particular provisions in those agreements are or are not impacted by today’s FCC decision.

<sup>206</sup> We reject the claims of some commenters that Section 332(c)(7)(B)(i)(II) is limited exclusively to decisions on individual requests and therefore must be interpreted differently than Section 253(a). See, e.g., San Francisco Comments at 24-26. Section 332(c)(7)(B)(i) explicitly applies to “regulation of the placement, construction, and modification,” and it would be irrational to interpret “regulation” in that paragraph to mean something different from the term “regulation” as used in 253(a) or to find that it does not encompass generally applicable “regulations” as well as decisions on individual applications. Moreover, even assuming *arguendo* that San Francisco’s position reflects the appropriate interpretation of the scope of Section 332(c)(7)(B)(i)(II), the record does not reveal why a

more reasonable to conclude that the language in both sections generally should be interpreted to have the same meaning and to reflect the same standard, including with respect to preemption of fees that could “prohibit” or have “the effect of prohibiting” the provision of covered service. Both sections were enacted to address concerns about state and local government practices that undermined providers’ ability to provide covered services, and both bar state or local conduct that prohibits or has the effect of prohibiting service.

68. To be sure, Sections 253 and 332(c)(7) may relate to different categories of state and local fees. Ultimately, we need not resolve here the precise interplay between Sections 253 and 332(c)(7). It is enough for us to conclude that, collectively, Congress intended for the two provisions to cover the universe of fees charged by state and local governments in connection with the deployment of telecommunications infrastructure. Given the analogous purposes of both sections and the consistent language used by Congress, we find the phrase “prohibit or have the effect of prohibiting” in Section 332(c)(7)(B)(i)(II) should be construed as having the same meaning and governed by the same preemption standard as the identical language in Section 253(a).<sup>207</sup>

69. *Application of the Interpretations and Principles Established Here.* Consistent with the interpretations above, the requirement that compensation be limited to a reasonable approximation of objectively reasonable costs and be non-discriminatory applies to all state and local government fees paid in connection with a provider’s use of the ROW to deploy Small Wireless Facilities including, but not limited to, fees for access to the ROW itself, and fees for the attachment to or use of property within the ROW owned or controlled by the government (e.g., street lights, traffic lights, utility poles, and other infrastructure within the ROW suitable for the placement of Small Wireless Facilities). This interpretation applies with equal force to any fees reasonably related to the placement, construction, maintenance, repair, movement, modification, upgrade, replacement, or removal of Small Wireless Facilities within the ROW, including, but not limited to, application or permit fees such as siting applications, zoning variance applications, building permits, electrical permits, parking permits, or excavation permits.

70. Applying the principles established in this Declaratory Ruling, a variety of fees not reasonably tethered to costs appear to violate Sections 253(a) or 332(c)(7) in the context of Small Wireless Facility deployments.<sup>208</sup> For example, we agree with courts that have recognized that gross

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distinction between broadly-applicable requirements and decisions on individual requests would call for a materially different analytical approach, even if it arguably could be relevant when evaluating the application of that analytical approach to a particular preemption claim. In addition, although some commenters assert that such an interpretation “would make it virtually impossible for local governments to enforce their zoning laws with regard to wireless facility siting,” they provide no meaningful explanation why that would be the case. *See, e.g.,* San Francisco Reply at 16. While some local commenters note that the savings clauses in Section 253(b) and (c) do not have express counterparts in the text of Section 332(c)(7)(B)(i), *see, e.g.,* San Francisco Comments at 26, we are not persuaded that this compels a different interpretation of the virtually identical language restricting actual or effective prohibitions of service in Section 253(a) and Section 332(c)(7)(B)(i)(II), particularly given our reliance on considerations in addition to the savings clauses themselves when interpreting the “effective prohibition” language. *See supra* paras. 57-65. We offer these interpretations both to respond to comments and in the event that some court decision could be viewed as supporting a different result.

<sup>207</sup> Section 253(a) expressly addresses state or local activities that prohibit or have the effect of prohibiting “any entity” from providing a telecommunications service. 47 U.S.C. § 253(a). In the *2009 Declaratory Ruling*, the Commission likewise interpreted Section 332(c)(7)(B)(i)(II) as implicated where the state or local conduct prohibits or has the effect of prohibiting the provision of personal wireless service by one entity even if another entity already is providing such service. *See 2009 Declaratory Ruling*, 24 FCC Rcd at 14016-19, paras. 56-65.

<sup>208</sup> We acknowledge that a fee not calculated by reference to costs might nonetheless happen to land at a level that is a reasonable approximation of objectively reasonable costs, and otherwise constitute fair and reasonable compensation as we describe herein. If all these criteria are met, the fee would not be preempted.

revenue fees generally are not based on the costs associated with an entity's use of the ROW,<sup>209</sup> and where that is the case, are preempted under Section 253(a). In addition, although we reject calls to preclude a state or locality's use of third party contractors or consultants, or to find all associated compensation preempted,<sup>210</sup> we make clear that the principles discussed herein regarding the reasonableness of cost remain applicable. Thus, fees must not only be limited to a reasonable approximation of costs, but in order to be reflected in fees, the *costs themselves* must also be reasonable. Accordingly, any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual "cost" to the government. If a locality opts to incur unreasonable costs, Sections 253 and 332(c)(7) do not permit it to pass those costs on to providers. Fees that depart from these principles are not saved by Section 253(c), as we discuss below.

71. *Interpretation of Section 253(c) in the Context of Fees.* In this section, we turn to the interpretation of several provisions in Section 253(c), which provides that state or local action that otherwise would be subject to preemption under Section 253(a) may be permissible if it meets specified criteria. Section 253(c) expressly provides that state or local governments may require telecommunications providers to pay "fair and reasonable compensation" for use of public ROWs but requires that the amounts of any such compensation be "competitively neutral and nondiscriminatory" and "publicly disclosed."<sup>211</sup>

72. We interpret the ambiguous phrase "fair and reasonable compensation," within the statutory framework we outlined for Section 253, to allow state or local governments to charge fees that recover a reasonable approximation of the state or local governments' actual and reasonable costs. We conclude that an appropriate yardstick for "fair and reasonable compensation," and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government's objectively reasonable costs of, respectively, maintaining the ROW, maintaining a structure within the ROW, or processing an application or permit.<sup>212</sup>

73. We disagree with arguments that "fair and reasonable compensation" in Section 253(c) should somehow be interpreted to allow state and local governments to charge "any compensation," and we give weight to BDAC comments that, "[a]s a policy matter, the Commission should recognize that local fees designed to maximize profit are barriers to deployment."<sup>213</sup> Several commenters argue, in

<sup>209</sup> See, e.g., *Municipality of Guayanilla*, 450 F.3d at 21; *City of Maryland Heights*, 256 F. Supp. 2d at 993-96; *Prince George's County*, 49 F. Supp. 2d at 818; *AT&T v. City of Dallas*, 8 F. Supp. 2d at 593; see also, e.g., CTIA Comments at 30, 45; *id.* Attach. at 17; ExteNet Comments, Exh. 1 at 41; T-Mobile Comments at 7; WIA Comments at 52-53.

<sup>210</sup> See, e.g., CCA Comments at 17-21 (asking the Commission to declare franchise fees or percentage of revenue fees outside the scope of fair and reasonable compensation and to prohibit state and localities from requiring service providers to obtain business licenses for individual cell sites). For example, although fees imposed by a state or local government calculated as a percentage of a provider's revenue are unlikely to be a reasonable approximation of cost, if such a percentage-of-revenue fee were, in fact, ultimately shown to amount to a reasonable approximation of costs, the fee would not be preempted.

<sup>211</sup> 47 U.S.C. § 253(c).

<sup>212</sup> *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 114 ("fees charged by a municipality need to be related to the degree of actual use of the public rights-of way" to constitute fair and reasonable compensation under Section 253(c)); *New Jersey Payphone Ass'n, Inc. v. Town of West New York*, 130 F. Supp. 2d 631, 638 (D.N.J. 2001), *aff'd* 299 F. 3d 235 (3d Cir. 2002) (*New Jersey Payphone*) ("Plainly, a fee that does more than make a municipality whole is not compensatory in the literal sense, and risks becoming an economic barrier to entry.")

<sup>213</sup> BDAC Regulatory Barriers Report, Appendix C, p. 3 (a "[ROW] burden-oriented [fee] standard is flexible enough to suit varied localities and network architectures, would ensure that fees are not providing additional

particular, that Section 253(c)'s language must be read as permitting localities latitude to charge any fee at all<sup>214</sup> or a "market-based rent."<sup>215</sup> Many of these arguments seem to suggest that Section 253 or 332 have not previously been read to impose limits on fees, but as noted above courts have long read these provisions as imposing such limits. Still others argue that limiting the fees state and local governments may charge amounts to requiring taxpayers to subsidize private companies' use of public resources.<sup>216</sup> We find little support in the record, legislative history, or case law for that position.<sup>217</sup> Indeed, our

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revenues for other localities purposes unrelated to providing and maintaining the ROW, and would provide some basis to challenge fees that, on their face, are so high as to suggest their sole intent is to maximize revenue.")

<sup>214</sup> See, e.g., Baltimore Comments at 15-16 (noting that local governments traditionally impose fees based on rent, and other ROW users pay market-based fees and arguing that citizens should not have to "subsidize" wireless deployments); Bellevue *et al.* Reply at 12-13 (stating that "the FCC should compensate municipalities at fair market value because any physical invasion is a taking under the Fifth Amendment, and just compensation is "typically" calculated using fair market value."); NLC Comments at 5 ("local governments, like private landlords, are entitled to collect rent for the use of their property and have a duty to their residents to assess appropriate compensation. This does not necessarily translate to restricting this compensation to just the cost of managing the asset—just as private property varies in value, so does municipal property."); Smart Communities Reply at 7-10 (stating that "fair and reasonable compensation (i.e., fair market value) is not, as some commenters contend, measured by the regulatory cost for use of a ROW or other property; rather it is measured by what it would cost the user of the ROW to purchase rights from a local property owner.").

<sup>215</sup> Draft BDAC Rates and Fees Report, p. 10 (listing "Local Government Perspectives").

<sup>216</sup> See, e.g., NLC Comments, Statement of the Hon. Gary Resnick, Mayor, Wilton Manors, FL Comments at 6-7 ("preemption of local fees or rent for use of government-owned light and traffic poles, or fees for use of the right-of-way amounts to a taxpayer subsidy of wireless providers and wireless infrastructure companies. There is no corresponding benefit for such taxpayers such as requiring the broadband industry to reduce consumer rates or offer advanced services to all communities within a certain time frame."); Letter from Rondella M. Hawkins, Officer, City of Austin—Telecommunications & Regulatory Affairs, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 7, 2018) at 1. These commenters do not explain why allowing recovery of a reasonable approximation of the state or locality's objectively reasonable costs would involve a taxpayer subsidy of service providers, and we are not persuaded that our interpretation would create a subsidy.

<sup>217</sup> As discussed more fully above, Congress intended through Section 253 to preempt state and local governments from imposing barriers in the form of excessive fees, while also preserving state and local authority to protect specified interests through competitively neutral regulation consistent with the Act. Our interpretation of Section 253(c) is consistent with Congress's objectives. Our interpretation of "fair and reasonable compensation" in Section 253(c) is also consistent with prior Commission action limiting fees, and easing access, to other critical communications infrastructure. For example, in implementing the requirement in the Pole Attachment Act that utilities charge "just and reasonable" rates, the Commission adopted rules limiting the rates utilities can impose on cable companies for pole attachments. Based on the costs associated with building and operation of poles, the rates the Commission adopted were upheld by the Supreme Court, which found that the rates imposed were permissible and not "confiscatory" because they "provid[ed] for the recovery of fully allocated cost, including the actual cost of capital." See *FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987). Here, based on the specific language in the separate provision of Section 253, we interpret the "effective prohibition" language, as applied to small cells, to permit state and local governments to recover only "fair and reasonable compensation" for their maintenance of ROW and government-owned structures within ROW used to host Small Wireless Facilities. Relatedly, Smart Communities errs in arguing that the Commission's Order "provides localities 60 days to provide access and sets the rate for access," making it a "classic taking." Smart Communities Sept. 19, 2018 *Ex Parte* Letter at 25. To the contrary, the Commission has not given providers any right to compel access to any particular state or local property. Cf. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). There may well be legitimate reasons for states and localities to deny particular placement applications, and adjudication of whether such decisions amount to an effective prohibition must be resolved on a case-by-case basis. In this regard, we note that the record in this proceeding reflects that the vast majority of local jurisdictions voluntarily accept placement of wireless, utility, and other facilities in their rights-of-way. And in any event, cost-based recovery of the type we provide here has been approved as just compensation for takings purposes in the context of such facilities. See *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1368, 1370-71 (11th Cir. 2002). See also *United States v. 564.54 Acres*

approach to compensation ensures that cities are not going into the red to support or subsidize the deployment of wireless infrastructure.

74. The existence of Section 253(c) makes clear that Congress anticipated that “effective prohibitions” could result from state or local government fees, and intended through that clause to provide protections in that respect, as discussed in greater detail herein.<sup>218</sup> Against that backdrop, we find it unlikely that Congress would have left providers entirely at the mercy of effectively unconstrained requirements of state or local governments.<sup>219</sup> Our interpretation of Section 253(c), in fact, is consistent with the views of many municipal commenters, at least with respect to one-time permit or application fees, and the members of the BDAC Ad Hoc Committee on Rates and Fees, who unanimously concurred that one-time fees for municipal applications and permits, such as an electrical inspection or a building permit, should be based on the cost to the government of processing that application.<sup>220</sup> The Ad Hoc Committee noted that “[the] cost-based fee structure [for one-time fees] unanimously approved by the committee accommodates the different siting related costs that different localities may incur to review and process permit applications, while precluding excessive fees that impede deployment.”<sup>221</sup> We find that the same reasoning should apply to other state and local government fees such as ROW access fees or fees for the use of government property within the ROW.<sup>222</sup>

75. We recognize that state and local governments incur a variety of direct and actual costs in connection with Small Wireless Facilities, such as the cost for staff to review the provider’s siting application, costs associated with a provider’s use of the ROW, and costs associated with maintaining the ROW itself or structures within the ROW to which Small Wireless Facilities are attached.<sup>223</sup> We also recognize that direct and actual costs may vary by location, scope, and extent of providers’ planned deployments, such that different localities will have different fees under the interpretation set forth in this Declaratory Ruling.

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*of Land*, 441 U.S. 506, 513 (1979) (recognizing that alternative measure of compensation might be appropriate “with respect to public facilities such as roads or sewers”).

<sup>218</sup> See *supra* Parts III.A, B.

<sup>219</sup> See, e.g., *City of White Plains*, 305 F.3d at 78-79; *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 114. We disagree with arguments that competition between municipalities, or competition from adjacent private landowners, would be sufficient to ensure reasonable pricing in the ROW. See e.g., Smart Communities Comments, Exh. 2, The Economics of Government Right of Way Fees, Declaration of Kevin Cahill, Ph.D at para. 15. We find this argument unpersuasive in view of the record evidence in this proceeding showing significant fees imposed on providers in localities across the country. See, e.g., AT&T Comments at 18; Verizon Comments at 6-7; see also BDAC Regulatory Barriers Report, Appendix. C, p. 2.

<sup>220</sup> See, e.g., Smart Communities Comments Cahill 2A at 2-3 (noting that “...a common model is to charge a fee that covers the costs that a municipality incurs in conducting the inspections and proceedings required to allow entry, fees that cover ongoing costs associated with inspection or expansion of facilities ...”); Colorado Comm. and Utility All. *et al.* Comments at 19 (noting that “application fees are based upon recovery of costs incurred by localities.”); Draft BDAC Rates and Fees Report, p. 15-16.

<sup>221</sup> See also Draft BDAC Rates and Fees Report, p. 15-16. Although the BDAC Ad Hoc Rates and Fees Committee and municipal commenters only support a cost-based approach for one-time fees, we find no reason not to extend the same reasoning to ROW access fees or fees for the use of government property within the ROW, when all three types of fees are a legal requirement imposed by a government and pose an effective prohibition. The BDAC Rates and Fees Report did not provide a recommendation on fees for ROW access or fees for the use of government property within the ROW, and we disagree with suggestions that our ruling, which was consistent with the committee’s recommendation for one-time fees, circumvents the efforts of the Ad Hoc Rates and Fees Committee. See Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter at 3.

<sup>222</sup> See *supra* para. 50.

<sup>223</sup> See, e.g., Colorado Comm. and Utility All. *et al.* Comments at 18-19 (discussing range of costs that application fees cover).

76. Because we interpret fair and reasonable compensation as a *reasonable approximation* of costs, we do not suggest that localities must use any specific accounting method to document the costs they may incur when determining the fees they charge for Small Wireless Facilities within the ROW. Moreover, in order to simplify compliance, when a locality charges both types of recurring fees identified above (i.e., for access to the ROW and for use of or attachment to property in the ROW), we see no reason for concern with how it has allocated costs between those two types of fees. It is sufficient under the statute that the total of the two recurring fees reflects the total costs involved.<sup>224</sup> Fees that cannot ultimately be shown by a state or locality to be a reasonable approximation of its costs, such as high fees designed to subsidize local government costs in another geographic area or accomplish some public policy objective beyond the providers' use of the ROW, are not "fair and reasonable compensation...for use of the public rights-of-way" under Section 253(c).<sup>225</sup> Likewise, we agree with both industry and municipal commenters that excessive and arbitrary consulting fees or other costs should not be recoverable as "fair and reasonable compensation,"<sup>226</sup> because they are not a function of the provider's "use" of the public ROW.

77. In addition to requiring that compensation be "fair and reasonable," Section 253(c) requires that it be "competitively neutral and nondiscriminatory." The Commission has previously interpreted this language to prohibit states and localities from charging fees on new entrants and not on incumbents.<sup>227</sup> Courts have similarly found that states and localities may not impose a range of fees on one provider but not on another<sup>228</sup> and even some municipal commenters acknowledge that governments should not discriminate as to the fees charged to different providers.<sup>229</sup> The record reflects continuing concerns from providers, however, that they face discriminatory charges.<sup>230</sup> We reiterate the Commission's previous determination that state and local governments may not impose fees on some providers that they do not impose on others. We would also be concerned about fees, whether one-time or recurring, related to Small Wireless Facilities, that exceed the fees for other wireless telecommunications infrastructure in similar situations, and to the extent that different fees are charged

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<sup>224</sup> See *supra* note 71 (identifying three categories of fees charged by states and localities).

<sup>225</sup> 47 U.S.C. § 253(c) (emphasis added). Our interpretation is consistent with court decisions interpreting the "fair and reasonable" compensation language as requiring fees charged by municipalities relate to the degree of actual use of a public ROW. See, e.g., *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 283 F. Supp. 2d 534, 543-44 (D.P.R. 2003); see also *Municipality of Guayanilla*, 450 F.3d at 21-24; *City of Maryland Heights*, 256 F. Supp. 2d at 984.

<sup>226</sup> See Letter from Ashton J. Hayward III, Mayor, Pensacola, FL to the Hon. Brendan Carr, Commissioner, WT Docket No. 17-79 at 1 (filed June 8, 2018); see also, Illinois Municipal League Comments at 2 (noting that proposed small cell legislation in Illinois allows municipalities to recover "reasonable costs incurred by the municipality in reviewing the application.").

<sup>227</sup> *TCI Cablevision of Oakland County*, 12 FCC Rcd. at 21443, para. 108 (1997).

<sup>228</sup> *City of White Plains*, 305 F.3d 80.

<sup>229</sup> City of Baltimore Reply at 15 ("The City does agree that rates to access the right of way by similar entities must be nondiscriminatory."). Other commenters argue that nothing in Section 253 can apply to property in the ROW. City of San Francisco Reply at 2-3, 19 (denying that San Francisco is discriminatory to different providers but also asserting that "[l]ocal government fees for use of their poles are simply beyond the purview of section 253(c)").

<sup>230</sup> See, e.g., CFP Comments at 31-33 (noting that the City of Baltimore charges incumbent Verizon "less than \$.07 per linear foot for the space that it leases in the public right-of-way" while it charges other providers "\$3.33 per linear foot to lease space in the City's conduit). Some municipal commenters argue that wireless infrastructure occupies more space in the ROW. See Smart Communities Reply Comments at 82 ("wireless providers are placing many of those permanent facilities in the public rights-of-way, in ways that require much larger deployments. It is not discrimination to treat such different facilities differently, and to focus on their impacts"). We recognize that different uses of the ROW may warrant charging different fees, and we only find fees to be discriminatory and not competitively neutral when different amounts are charged for similar uses of the ROW.



for similar use of the public ROW.<sup>231</sup>

78. *Fee Levels Likely to Comply with Section 253.* Our interpretation of Section 253(a) and “fair and reasonable compensation” under Section 253(c) provides guidance for local and state fees charged with respect to one-time fees generally, and recurring fees for deployments in the ROW. Following suggestions for the Commission to “establish a presumptively reasonable ‘safe harbor’ for certain ROW and use fees,”<sup>232</sup> and to facilitate the deployment of specific types of infrastructure critical to the rollout of 5G in coming years, we identify in this section three particular types of fee scenarios and supply specific guidance on amounts that presumptively are not prohibited by Section 253. Informed by our review of information from a range of sources, we conclude that fees at or below these amounts presumptively do not constitute an effective prohibition under Section 253(a) or Section 332(c)(7), and are presumed to be “fair and reasonable compensation” under Section 253(c).

79. Based on our review of the Commission’s pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) \$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (*i.e.*, not a collocation) intended to support one or more Small Wireless Facilities; and (b) \$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.<sup>233</sup>

80. By presuming that fees at or below the levels above comply with Section 253, we assume

<sup>231</sup> Our interpretation is consistent with principles described by the BDAC’s Ad Hoc Committee on Rates and Fees. Draft BDAC Rates and Fees Report at 5 (Jul. 24, 2018) (listing “neutral treatment and access of all technologies and communication providers based upon extent/nature of ROW use” as principle to guide evaluation of rates and fees).

<sup>232</sup> BDAC Regulatory Barriers Report, Appendix C, p. 3.

<sup>233</sup> These presumptive fee limits are based on a number of different sources of data. Many different state small cell bills, in particular, adopt similar fee limits despite their diversity of population densities and costs of living, and we expect that these presumptive fee limits will allow for recovery in excess of costs in many cases. 47 CFR § 1.1409; National Conference of State Legislatures, *Mobile 5G and Small Cell Legislation*, (May 7, 2018), <http://www.ncsl.org/research/telecommunications-and-information-technology/mobile-5g-and-small-cell-legislation.aspx> (providing description of state small cell legislation); Little Rock, Ark. Ordinance No. 21,423 (June 6, 2017); NCTA August 20, 2018 *Ex Parte* Letter, Attachment; *see also* H.R. 2365, 2018 Leg. 2d Reg. Sess. (Ariz. 2018) (\$100 per facility for first 5 small cells in application; \$50 annual utility attachment rate, \$50 ROW access fee); H.R. 189 149<sup>th</sup> Gen. Assemb. Reg. Sess. (Del. 2017) (\$100 per small wireless facility on application; fees not to exceed actual, direct and reasonable cost); S. 21320<sup>th</sup> Gen. Assemb. Reg. Sess. (Ind. 2017) (\$100 per small wireless facility); H.R. 1991, 99<sup>th</sup> Gen. Assemb. 2<sup>nd</sup> Reg. Sess. (Missouri, 2018) (\$100 for each facility collocated on authority pole; \$150 annual fee per pole); H.R. 38 2018 Leg. Assemb. 2d Reg. Sess. (N.M. 2018) (\$100 for each of first 5 small facilities in an application; \$20 per pole annually; \$250 per facility annually for access to ROW); S. 189, 2018 Leg. Gen. Sess. (Utah 2018) (\$100 per facility to collocate on existing or replacement utility pole; \$250 annual ROW fee per facility for certain attachments). *See also* Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA, and D. Zachary Champ, Director, Government Affairs, WIA to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018) Attach. (listing fees in twenty state small cell legislations) (CTIA/WIA Aug. 10, 2018 *Ex Parte* Letter); Letter from Scott K. Bergmann, Sen. Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 4, 2018) at 3, Attach. (analyzing average and median recurring fee levels permitted under state legislation). These examples suggest that the fee levels we discuss above may be higher than what many states already allow and further support our finding that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. We recognize that certain fees in a minority of state small cell bills are above the levels we presume to be allowed under Section 253. Any party may still charge fees above the levels we identify by demonstrating that the fee is a reasonable approximation of cost that itself is objectively reasonable.

that there would be almost no litigation by providers over fees set at or below these levels. Likewise, our review of the record, including the many state small cell bills passed to date, indicate that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. In those limited circumstances, a locality could prevail in charging fees that are above this level by showing that such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory.<sup>234</sup> Allowing localities to charge fees above these levels upon this showing recognizes local variances in costs.<sup>235</sup>

### C. Other State and Local Requirements that Govern Small Facilities Deployment

81. There are also other types of state and local land-use or zoning requirements that may restrict Small Wireless Facility deployments to the degree that they have the effect of prohibiting service in violation of Sections 253 and 332. In this section, we discuss how those statutory provisions apply to requirements outside the fee context, both generally and with a particular focus on aesthetic and undergrounding requirements.

82. As discussed above, a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”<sup>236</sup> Our interpretation of that standard, as set forth above, applies equally to fees and to non-fee legal requirements. And as with fees, Section 253 contains certain safe harbors that permit some legal requirements that might otherwise be preempted by Section 253(a). Section 253(b) saves state “requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”<sup>237</sup> And Section 253(c) preserves state and local authority to manage the public rights-of-way.<sup>238</sup>

83. Given the wide variety of possible legal requirements, we do not attempt here to determine which of every possible non-fee legal requirements are preempted for having the effect of prohibiting service, although our discussion of fees above should prove instructive in evaluating specific requirements. Instead, we focus on some specific types of requirements raised in the record and provide guidance on when those particular types of requirements are preempted by the statute.

84. *Aesthetics.* The *Wireless Infrastructure NPRM/NOI* sought comment on whether deployment restrictions based on aesthetic or similar factors are widespread and, if so, how Sections 253 and 332(c)(7) should be applied to them.<sup>239</sup> Parties describe a wide range of such requirements that allegedly restrict deployment of Small Wireless Facilities. For example, many providers criticize

<sup>234</sup> Several state and local commenters express concern about the presumptively reasonable fee levels we establish, including concerns about the effect of the fee levels on existing fee-related provisions included in state and local legislation. *See e.g.*, Letter from Kent Scarlett, Exec. Director, Ohio Municipal League to Marlene H. Dortch, Secretary, FCC at 1 (filed Sept. 18, 2018); Letter from Liz Kniss, Mayor, City of Palo Alto to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 at 1 (filed Sept. 17, 2018). As stated above, while the fee levels we establish reflect our presumption regarding the level of fees that would be permissible under Section 253 and 332(c)(7), state or local fees that exceed these levels may be permissible if the fees are based on a reasonable approximation of costs and the costs themselves are objectively reasonable.

<sup>235</sup> We emphasize that localities may charge fees to recover their objectively reasonable costs and thus reject arguments that our approach requires localities to bear the costs of small cell deployment or applies a one-size-fits-all standard. *See, e.g.*, Letter from Mike Posey, Mayor, City of Huntington Beach, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Sept. 11, 2018) (Mike Posey Sept. 11, 2018 *Ex Parte* Letter).

<sup>236</sup> *California Payphone*, 12 FCC Rcd at 14206, para. 31; *see supra* paras. 34-42.

<sup>237</sup> 47 U.S.C. § 253(b).

<sup>238</sup> 47 U.S.C. § 253(c).

<sup>239</sup> *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3362-66, paras. 90-92, 95, 97-99.

burdensome requirements to deploy facilities using “stealth” designs or other means of camouflage,<sup>240</sup> as well as unduly stringent mandates regarding the size of equipment, colors of paint, and other details.<sup>241</sup> Providers also assert that the procedures some localities use to evaluate the appearance of proposed facilities and to decide whether they comply with applicable land-use requirements are overly restrictive.<sup>242</sup> Many providers are particularly critical of the use of unduly vague or subjective criteria that may apply inconsistently to different providers or are only fully revealed after application, making it impossible for providers to take these requirements into account in their planning and adding to the time necessary to deploy facilities.<sup>243</sup> At the same time, we have heard concerns in the record about carriers deploying unsightly facilities that are significantly out of step with similar, surrounding deployments.

85. State and local governments add that many of their aesthetic restrictions are justified by factors that the providers fail to mention. They assert that their zoning requirements and their review and enforcement procedures are properly designed to, among other things, (1) ensure that the design, appearance, and other features of buildings and structures are compatible with nearby land uses; (2) manage ROW so as to ensure traffic safety and coordinate various uses; and (3) protect the integrity of

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<sup>240</sup> See, e.g., CCIA Comments at 14-15 (discussing regulations enacted by Village of Skokie, Illinois); WIA Reply Comments (WT Docket No. 16-421) at 9-10 (discussing restrictions imposed by Town of Hempstead, New York); see also AT&T Comments at 14-17; PTA-FLA Comments at 19; Verizon Comments at 19-20; AT&T Aug. 6, 2018 *ex parte* at 3.

<sup>241</sup> See, e.g., CCIA Comments at 13-14 (describing regulations established by Skokie, Illinois that prescribe in detail the permissible colors of paint and their potential for reflecting light); AT&T Aug. 6, 2018 *ex parte* at 3 (“Some municipalities require carriers to paint small cell cabinets a particular color when like requirements were not imposed on similar equipment placed in the ROW by electric incumbents, competitive telephone companies, or cable companies,” and asserts that it often “is highly burdensome to maintain non-factory paint schemes over years or decades, including changes to the municipal paint scheme,” due to “technical constraints as well such as manufacture warranty or operating parameters, such as heat dissipation, corrosion resistance, that are inconsistent with changes in color, or finish.”); AT&T Comments at 16-17 (contending that some localities “allow for a single size and configuration for small cell equipment while requiring case-by-case approval of any non-conforming equipment, even if smaller and upgraded in design and performance,” and thus effectively compel “providers [to] incur the added expense of conforming their equipment designs to the approved size and configuration, even if newer equipment is smaller, to avoid the delays associated with the approval of an alternative equipment design and the risk of rejection of that design.”); *id.* at 17 (some local governments “prohibit the placement of wireless facilities in and around historic properties and districts, regardless of the size of the equipment or the presence of existing more visually intrusive construction near the property or district”).

<sup>242</sup> See, e.g., Crown Castle Comments at 14-15 (criticizing San Francisco’s aesthetic review procedures that discriminate against providers and criteria and referring to extended litigation); CTIA Reply Comments at 17 (“San Francisco imposes discretionary aesthetic review for wireless ROW facilities.”); T-Mobile Comments at 40; *but see* San Francisco Comments at 3-7 (describing aesthetic review procedures). See also AT&T Comments at 13-17; Extenet Comments at 37; CTIA Comments at 21-22; Sprint Comments at 38-40; T-Mobile Comments at 8-12; Verizon Comments at 5-8.

<sup>243</sup> See, e.g., AT&T Comments at 13-17; Sprint Comments at 38-40; T-Mobile Comments at 8-12; Verizon Comments at 5-8. WIA cites allegations that an unnamed city in California recently declined to support approval of a proposed small wireless installation, claiming that the installations do not meet “Planning and Zoning Protected Location Compatibility Standards,” even though the same equipment has been deployed elsewhere in the city dozens of times, and even though the “Protected Location” standards should not apply because the proposals are not on “protected view” streets). WIA Reply Comments, WT Docket No. 16-421 at 9-10; *id.* at 8 (noting that one city changed its aesthetic standards after a proposal was filed); AT&T Comments at 17 (noting that a design approval took over a year); Virginia Joint Commenters, WT Docket No. 16-421 (state law providing discretion for zoning authority to deny application because of “aesthetics” concerns without additional guidance); Extenet Reply Comments at 13 (noting that some “local governments impose aesthetic requirements based entirely on subjective considerations that effectively give local governments latitude to block a deployment for virtually any aesthetically-based reason”).

their historic, cultural, and scenic resources and their citizens' quality of life.<sup>244</sup>

86. Given these differing perspectives and the significant impact of aesthetic requirements on the ability to deploy infrastructure and provide service, we provide guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. We conclude that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.

87. Like fees, compliance with aesthetic requirements imposes costs on providers, and the impact on their ability to provide service is just the same as the impact of fees. We therefore draw on our analysis of fees to address aesthetic requirements. We have explained above that fees that merely require providers to bear the direct and reasonable costs that their deployments impose on states and localities should not be viewed as having the effect of prohibiting service and are permissible.<sup>245</sup> Analogously, aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible. In assessing whether this standard has been met, aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment. For example, a minimum spacing requirement that has the effect of materially inhibiting wireless service would be considered an effective prohibition of service.

88. Finally, in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—*i.e.*, they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance.<sup>246</sup> “Secret” rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers’ costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.<sup>247</sup>

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<sup>244</sup> See, e.g., NLC Comments, WT Docket No. 16-421 at 8-10; Smart Communities Comments, WT Docket No. 16-421 at 35-36; New York City Comments at 10-15; New Orleans Comments at 1-2, 5-8; San Francisco Comments at 3-12; CCUA Reply Comments at 5; Irvine (CA) Comments at 2; Oakland County (MI) Comments at 3-5; Florida Coalition of Local Gov’ts Reply Comments at 6-12 (justifications for undergrounding requirements); *id.* at 16-421 (justifications for municipal historic-preservation requirements); *id.* at 22-16 (justifications for aesthetics and design requirements).

<sup>245</sup> See *supra* paras. 55-56.

<sup>246</sup> Our decision to adopt this objective requirement is supported by the fact that many states have recently adopted limits on their localities’ aesthetic requirements that employ the term “objective.” See, e.g., Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 8 (filed Sept. 19, 2018) (noting requirements enacted in the states of Arizona, Delaware, Missouri, North Carolina, Ohio, and Oklahoma, that local siting requirements for small wireless facilities be “objective”); see also Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 8 (filed Sept. 4, 2018).

<sup>247</sup> Some local governments argue that, because different aesthetic concerns may apply to different neighborhoods, particularly those considered historic districts, it is not feasible for them to publish local aesthetic requirements in advance. See, e.g., Letter from Mark J. Schwartz, County Manager, Arlington County, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018) (Arlington County Sept. 18 *Ex Parte* Letter); Letter from Allison Silberberg, Mayor, City of Alexandria, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018). We believe this concern is unfounded. As noted above, the fact that our approach here (including the publication requirement) is consistent with that already enacted in many state-level small cell bills supports the feasibility of our decision. Moreover, the aesthetic requirements to be published in advance need not

89. We appreciate that at least some localities will require some time to establish and publish aesthetics standards that are consistent with this Declaratory Ruling. Based on our review and evaluation of commenters' concerns, we anticipate that such publication should take no longer than 180 days after publication of this decision in the Federal Register.

90. *Undergrounding Requirements.* We understand that some local jurisdictions have adopted undergrounding provisions that require infrastructure to be deployed below ground based, at least in some circumstances, on the locality's aesthetic concerns. A number of providers have complained that these types of requirements amount to an effective prohibition.<sup>248</sup> In addressing this issue, we first reiterate that, while undergrounding requirements may well be permissible under state law as a general matter, any local authority to impose undergrounding requirements under state law does not remove such requirements from the provisions of Section 253. In this regard, we believe that a requirement that *all* wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals. In this sense, we agree with the U.S. Court of Appeals for the Ninth Circuit when it observed that, "[i]f an ordinance required, for instance, that all facilities be underground and the plaintiff introduced evidence that, to operate, wireless facilities must be above ground, the ordinance would effectively prohibit it from providing services."<sup>249</sup> Further, a requirement that materially inhibits wireless service, even if it does not go so far as requiring that all wireless facilities be deployed underground, also would be considered an effective prohibition of service. Thus, the same criteria discussed above in the context of aesthetics generally would apply to state or local undergrounding requirements.

91. *Minimum Spacing Requirements.* Some parties complain of municipal requirements regarding the spacing of wireless installations—*i.e.*, mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead "clutter" that would be visible from public areas.<sup>250</sup> We acknowledge that while some such requirements may violate 253(a), others may be reasonable aesthetic requirements.<sup>251</sup> For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use. Such a rule change with retroactive effect would

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prescribe in detail every specification to be mandated for each type of structure in each individual neighborhood. Localities need only set forth the objective standards and criteria that will be applied in a principled manner at a sufficiently clear level of detail as to enable providers to design and propose their deployments in a manner that complies with those standards.

<sup>248</sup> See, e.g., AT&T Comments at 14-15; Crown Castle Comments at 54-56; T-Mobile Comments at 38; Verizon Comments at 6-8; WIA Comments at 56; CTIA Reply at 16. But see Chicago Comments at 15; City of Claremont (CA) Comments at 1; City of Kenmore (WA) Comments at 1; City of Mukilteo (WA) Comments at 2; Florida Coalition of Local Gov'ts Comments at 6-12; Smart Communities Comments at 74.

<sup>249</sup> *County of San Diego*, 543 F.3d at 580, *accord*, BDAC Model Municipal Code at 13, § 2.3.e (providing for municipal zoning authority to allow providers to deploy small wireless facilities on existing vertical structures where available in neighborhoods with undergrounding requirements, or if no technically feasible structures exist, to place vertical structures commensurate with other structures in the area).

<sup>250</sup> See, e.g., Verizon Comments at 8 (describing requirements imposed by Buffalo Grove, Illinois); CCIA Comments at 14-15 ("These restrictions stifle technological innovation and unnecessarily burden the ability of a provider to use the best available technological to serve a particular area. For example, 5G technology will require higher band spectrum for greater network capacity, yet some millimeter wave spectrum simply cannot propagate long distances over a few thousand feet—let alone a few hundred. Therefore, a local requirement of, for example, a thousand-foot minimum separation distance between small cells would unnecessarily forestall any network provider seeking to use higher band spectrum with greater capacity when that provider needs to boost coverage in a specific area of a few hundred feet."). See also AT&T Comments at 15; CTIA Reply at 17.

<sup>251</sup> 47 U.S.C. § 253(a).

almost certainly have the effect of prohibiting service under the standards we articulate here. Therefore, such requirements should be evaluated under the same standards for aesthetic requirements as those discussed above.<sup>252</sup>

**D. States and Localities Act in Their Regulatory Capacities When Authorizing and Setting Terms for Wireless Infrastructure Deployment in Public Rights of Way**

92. We confirm that our interpretations today extend to state and local governments' terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within such ROW, such as new, existing and replacement light poles, traffic lights, utility poles, and similar property suitable for hosting Small Wireless Facilities.<sup>253</sup> As explained below, for two alternative and independent reasons, we disagree with state and local government commenters who assert that, in providing or denying access to government-owned structures, these governmental entities function solely as "market participants" whose rights cannot be subject to federal preemption under Section 253(a) or Section 332(c)(7).<sup>254</sup>

93. First, this effort to differentiate between such governmental entities' "regulatory" and "proprietary" capacities in order to insulate the latter from preemption ignores a fundamental feature of the market participant doctrine.<sup>255</sup> As the Ninth Circuit has observed, at its core, this doctrine is "a

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<sup>252</sup> Another type of restriction that imposes substantial burdens on providers, but does not meaningfully advance any recognized public-interest objective, is an explicit or implicit *quid pro quo* in which a municipality makes clear that it will approve a proposed deployment only on condition that the provider supply an "in-kind" service or benefit to the municipality, such as installing a communications network dedicated to the municipality's exclusive use. See, e.g., Comcast Comments at 9-10 Verizon Comments at 7, Crown Castle Comments at 55-56. Such requirements impose costs, but rarely, if ever, yield benefits directly related to the deployment. Additionally, where such restrictions are not cost-based, they inherently have "the effect of prohibiting" service, and thus are preempted by Section 253(a). See also BDAC Regulatory Barriers Report, Appendix E at 1 (describing "conditions imposed that are unrelated to the project for which they were seeking ROW access" as "inordinately burdensome"); BDAC Model Municipal Code at 19, § 2.5a.(v)(F) (providing that municipal zoning authority "may not require an Applicant to perform services . . . or in-kind contributions [unrelated] to the Communications Facility or Support Structure for which approval is sought").

<sup>253</sup> See *supra* paras. 50-91. Some have argued that Section 224 of the Communications Act's exception of state-owned and cooperative-owned utilities from the definition of "utility," "[a]s used in this section," suggests that Congress did not intend for any other portion of the Act to apply to poles or other facilities owned by such entities. City of Mukilteo, et. al. Ex Parte Comments on the Draft Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from James Bradford Ramsay, General Counsel, NARUC to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79 at 7 (filed Sept. 19, 2018). We see no basis for such a reading. Nothing in Section 253 suggests such a limited reading, nor does Section 224 indicate that other provisions of the Act do not apply. We conclude that our interpretation of effective prohibition extends to fees for all government-owned property in the ROW, including utility poles. Compare 47 U.S.C. § 224 with 47 U.S.C. § 253. We are not addressing here how our interpretations apply to access or attachments to government-owned property located outside the public ROW.

<sup>254</sup> See, e.g., AASHTO Comments, Att. 1 (Del. DOT Comments) at 3-5; New York City Comments at 2-8; San Antonio et al. Comments at 14-15; Smart Communities Comments at 62-66; San Francisco Comments at 28-30; League of Arizona Cities et al. Comments, WT Docket No. 16-421 at 3-9; San Antonio et al. Comments, WT Docket No. 16-421 at 14-15. See also *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3364-65, para. 96 (seeking comment on this issue).

<sup>255</sup> The market participant doctrine establishes that, unless otherwise specified by Congress, federal statutory provisions may be interpreted as preempting or superseding state and local governments' activities involving regulatory or public policy functions, but not their activities as "market participants" to serve their "purely proprietary interests," analogous to similar transactions of private parties. *Building & Construction Trades Council*

presumption about congressional intent,” which “may have a different scope under different federal statutes.”<sup>256</sup> The Supreme Court has likewise made clear that the doctrine is applicable only “[i]n the absence of any express or implied indication by Congress.”<sup>257</sup> In contrast, where state action conflicts with express or implied federal preemption, the market participant doctrine does not apply, whether or not the state or local government attempts to impose its authority over use of public rights-of-way by permit or by lease or contract.<sup>258</sup> Here, both Sections 253(a) and Section 332(c)(7)(B)(i)(II) expressly address preemption, and neither carves out an exception for proprietary conduct.<sup>259</sup>

94. Specifically, Section 253(a) expressly preempts certain state and local “legal requirements” and makes no distinction between a state or locality’s regulatory and proprietary conduct. Indeed, as the Commission has long recognized, Section 253(a)’s sweeping reference to “State [and] local statute[s] [and] regulation[s]” and “other State [and] local legal requirement[s]” demonstrates Congress’s intent “to capture a broad range of state and local actions that prohibit or have the effect of prohibiting entities from providing telecommunications services.”<sup>260</sup> Section 253(b) mentions “requirement[s],” a phrase that is even broader than that used in Section 253(a) but covers “universal service,” “public safety and welfare,” “continued quality of telecommunications,” and “safeguard[s] for the] rights of consumers.” The subsection does not recognize a distinction between regulatory and proprietary. Section 253(c), which expressly insulates from preemption certain state and local government activities, refers in relevant part to “manag[ing] the public rights-of-way” and “requir[ing] fair and reasonable compensation,” while eliding any distinction between regulatory and proprietary action in either context. The Commission has previously observed that Section 253(c) “makes explicit a local government’s continuing authority to issue construction permits regulating how and when construction is conducted on roads and other public

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*v. Associated Builders & Contractors*, 507 U.S. 218, 229, 231 (1993) (*Boston Harbor*); see also *Wisconsin Dept. of Industry, Labor, and Human Relations v. Gould, Inc.*, 475 U.S. 282, 289 (1986) (*Gould*).

<sup>256</sup> See, e.g., *Engine Mfrs. Ass’n v. South Coast Air Quality Mgmt. Distr.*, 498 F.3d 1031, 1042 (9th Cir. 2007); *Johnson v. Rancho Santiago Comm. College*, 623 F.3d 1011, 1022 (9th Cir. 2010).

<sup>257</sup> See *Boston Harbor*, 507 U.S. at 231.

<sup>258</sup> See *American Trucking Ass’n v. City of Los Angeles*, 569 U.S. 641, 650 (2013) (*American Trucking*).

<sup>259</sup> At a minimum, we conclude that Congress’s language has not unambiguously pointed to such a distinction. See Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Aug. 23, 2018) (Verizon Aug. 23, 2018 *Ex Parte* Letter). Furthermore, we contrast these statutes with those that do not expressly or impliedly preempt proprietary conduct. Compare, e.g., *American Trucking*, 569 U.S. 641 (finding that FAA Authorization Act of 1994’s provision that “State [or local government] may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property” expressly preempted the terms of a standard-form concession agreement drafted to govern the relationship between the Port of Los Angeles and any trucking company seeking to operate on the premises), and *Gould*, 475 U.S. at 289 (finding that NLRA preempted a state law barring state contracts with companies with disfavored labor practices because the state scheme was inconsistent with the federal scheme), with *Boston Harbor*, 507 U.S. at 224-32. In *Boston Harbor*, the Supreme Court observed that the NLRA contained no express preemption provision or implied preemption scheme and consequently held:

In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction.

*Id.* (internal citations omitted).

<sup>260</sup> See *Minnesota Order*, 14 FCC Rcd at 21707, para. 18. We find these principles to be equally applicable to our interpretation of the meaning of “regulation[s]” referred to under Section 332(c)(7)(B) insofar as such actions impermissibly “prohibit or have the effect of prohibiting the provision of personal wireless services.” *Supra* paras. 34-42.

rights-of-way.”<sup>261</sup> We conclude here that, as a general matter, “manage[ment]” of the ROW includes any conduct that bears on access to and use of those ROW, notwithstanding any attempts to characterize such conduct as proprietary.<sup>262</sup> This reading, coupled with Section 253(c)’s narrow scope, suggests that Congress’s omission of a blanket proprietary exception to preemption was intentional, and thus, that such conduct can be preempted under Section 253(a). We therefore construe Section 253(c)’s requirements, including the requirement that compensation be “fair and reasonable,” as applying equally to charges imposed via contracts and other arrangements between a state or local government and a party engaged in wireless facility deployment.<sup>263</sup> This interpretation is consistent with Section 253(a)’s reference to “State or local legal requirement[s],” which the Commission has consistently construed to include such agreements.<sup>264</sup> In light of the foregoing, whatever the force of the market participant doctrine in other contexts,<sup>265</sup> we believe the language, legislative history, and purpose of Sections 253(a) and (c) are incompatible with the application of this doctrine in this context. We observe once more that “[o]ur conclusion that Congress intended this language to be interpreted broadly is reinforced by the scope of section 253(d),” which “directs the Commission to preempt any statute, regulation, or legal requirement *permitted* or imposed by a state or local government if it contravenes sections 253(a) or (b). A more restrictive interpretation of the term ‘other legal requirements’ easily could permit state and local restrictions on competition to escape preemption based solely on the way in which [state] action was structured. We do not believe that Congress intended this result.”<sup>266</sup>

95. Similarly, and as discussed elsewhere,<sup>267</sup> we interpret Section 332(c)(7)(B)(ii)’s references to “any request[s] for authorization to place, construct, or modify personal wireless service facilities” broadly, consistent with Congressional intent. As described below, we find that “any” is unqualifiedly broad, and that “request” encompasses anything required to secure all authorizations necessary for the deployment of personal wireless services infrastructure. In particular, we find that Section 332(c)(7) includes authorizations relating to access to a ROW, including but not limited to the

<sup>261</sup> See *Minnesota Order*, 14 FCC Rcd at 21728-29, para. 60, quoting H. R. Rep. No. 104-204, U.S. Congressional & Administrative News, March 1996, vol.1, Legislative History section at 41 (1996).

<sup>262</sup> Indeed, to permit otherwise could limit the utility of ROW access for telecommunications service providers and thus conflict with the overarching preemption scheme set up by Section 253(a), for which 253(b) and 253(c) are exceptions. By construing “manage[ment]” of a ROW to include some proprietary behaviors, we mean to suggest that conduct taken in a proprietary capacity is likewise subject to 253(c)’s general limitations, including the requirement that any compensation charged in such capacity be “fair and reasonable.”

<sup>263</sup> Cf. *Minnesota Order*, 14 FCC Rcd at 21729-30, para. 61-62 (internal citations omitted) (“Moreover, Minnesota has not shown that the compensation required for access to the right-of-way is ‘fair and reasonable.’ The compensation appears to reflect the value of the exclusivity inherent in the Agreement [which provides the developer with exclusive physical access, for at least ten years, to longitudinal rights-of-way along Minnesota’s interstate freeway system] rather than fair and reasonable charges for access to the right-of-way. Nor has Minnesota shown that the Agreement provides for ‘use of public rights-of-way on a nondiscriminatory basis.’”)

<sup>264</sup> Cf. Crown Castle June 7, 2018 *Ex Parte* Letter at 17 n.83 (“Section 253(c), which carves out ROW management, would hardly be necessary if all ROW decisions were proprietary and shielded from the statute’s sweep.”).

<sup>265</sup> We acknowledge that the Commission previously concluded that “Section 6409(a) applies only to State and local governments acting in their role as land use regulators” and found that “this conclusion is consistent with judicial decisions holding that Sections 253 and 332(c)(7) of the Communications Act do not preempt ‘non regulatory decisions[.]’” See *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12964-65, paras. 237-240. To the extent necessary, we clarify here that the actions and analysis there were limited in scope given the different statutory scheme and record in that proceeding, which did not, at the time, suggest a need to “further elaborate as to how this principle should apply to any particular circumstance” (there, in connection with application of Section 6409(a)). Here, in contrast, as described herein, we find that further elucidation by the Commission is needed.

<sup>266</sup> *Minnesota Order*, 14 FCC Rcd at 21707, para. 18 (internal citations omitted) (emphasis omitted).

<sup>267</sup> See *infra* Part IV.C.1 (Authorizations Subject to the “Reasonable Period of Time” Provision of Section 332(c)(7)(B)(ii)).



“place[ment], construct[ion], or modif[ication]” of facilities on government-owned property, for the purpose of providing “personal wireless service.” We observe that this result, too, is consistent with Commission precedent such as the *Minnesota Order*, which involved a contract that provided exclusive access to a ROW. As but one example, to have limited that holding to exclude government-owned property within the ROW even if the carrier needed access to that property would have the effect of diluting or completely defeating the purpose of Section 332(c)(7).<sup>268</sup>

96. Second, and in the alternative, even if Section 253(a) and Section 332(c)(7) were to permit leeway for states and localities acting in their proprietary role, the examples in the record would be excepted because they involve states and localities fulfilling regulatory objectives.<sup>269</sup> In the proprietary context, “a State acts as a ‘market participant with no interest in setting policy.’”<sup>270</sup> We contrast state and local governments’ purely proprietary actions with states and localities acting with respect to managing or controlling access to property within public ROW, or to decisions about where facilities that will provide personal wireless service to the public may be sited. As several commenters point out, courts have recognized that states and localities “hold the public streets and sidewalks in trust for the public” and “manage public ROW in their regulatory capacities.”<sup>271</sup> These decisions could be based on a number of regulatory objectives, such as aesthetics or public safety and welfare, some of which, as we note elsewhere, would fall within the preemption scheme envisioned by Congress. In these situations, the state or locality’s role seems to us to be indistinguishable from its function and objectives as a regulator.<sup>272</sup> To

<sup>268</sup> See also *infra* para. 134-36 and cases cited therein. Precedent that may appear to reach a different result can be distinguished in that it resolves disputes arising under Section 332 and/or 253(a) without analyzing the scope of Section 253(c). Furthermore, those situations did not involve government-owned property or structures within a public ROW. See, e.g., *Sprint Spectrum L.P. v. Mills*, 283 F.3d 404, 420-21 (2d Cir. 2002) (declining to find preemption under Section 332 applicable to terms of a school rooftop lease); *Omnipoint Commc’ns, Inc. v. City of Huntington Beach*, 738 F.3d 192, 195-96, 200-01 (9th Cir. 2013) (declining to find preemption under Section 332 applicable to restrictions on lease of parkland).

<sup>269</sup> In this regard, also relevant to our interpretations here is courts’ admonition that government activities that are characterized as transactions but in reality are “tantamount to regulation” are subject to preemption, *Gould*, 475 U.S. at 289, and that government action disguised as private action may not be relied on as a pretext to advance regulatory objectives. See, e.g., *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d 425, 441-42 (E.D.N.Y. 2009) (finding that a restriction on advertising on newly-installed payphones was subject to section 253(a) where the advertising was a material factor in the provider’s ability to provide the payphone service itself).

<sup>270</sup> See, e.g., *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60, 70 (2008).

<sup>271</sup> See Verizon Comments at 26-28 & n.85; T-Mobile Comments at 50 & n.210 and cases cited therein.

<sup>272</sup> Indeed, the Commission has long recognized that, in enacting Sections 253(c) and 332(c)(7), Congress affirmatively protected the ability of state and local governments to carry out their responsibilities for maintaining, managing, and regulating the use of ROW and structures therein for the benefit of the public. *TCI Cablevision Order*, 12 FCC Rcd at 21441, para. 103 (1997) (“We recognize that section 253(c) preserves the authority of state and local governments to manage public rights-of-way. Local governments must be allowed to perform the range of vital tasks necessary to preserve the physical integrity of streets and highways, to control the orderly flow of vehicles and pedestrians, to manage gas, water, cable (both electric and cable television), and telephone facilities that crisscross the streets and public rights-of-way.”); *Moratoria Declaratory Ruling*, FCC 18-111, para. 142 (same); *Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling, and Injunctive Relief*, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13103, para. 39 (1996) (same). We find these situations to be distinguishable from those where a state or locality might be engaged in a discrete, *bona fide* transaction involving sales or purchases of services that do not otherwise violate the law or interfere with a preemption scheme. Compare, e.g., *Cardinal Towing & Auto Repair, Inc., v. City of Bedford*, 180 F.3d 686, 691, 693-94 (5th Cir. 1999) (declining to find that the FAA Authorization Act of 1994, as amended by the ICC Termination Act of 1995, preempted an ordinance and contract specifications that were designed only to procure services that a municipality itself needed, not to regulate the conduct of others), with *NextG Networks of N.Y., Inc. v. City of New York*, 2004 WL 2884308 (N.D.N.Y., Dec. 10, 2004) (crediting allegations that a city’s actions, such as issuing a request for proposal and implementing a general franchising scheme, were not of a purely proprietary nature, but rather, were taken in pursuit of a regulatory objective or policy). This action could include, for example, procurement of services for the state or locality, or a

the extent that there is some distinction, the temptation to blend the two roles for purposes of insulating conduct from federal preemption cannot be underestimated in light of the overarching statutory objective that telecommunications service and personal wireless services be deployed without material impediments.

97. Our interpretation of both provisions finds ample support in the record of this proceeding. Specifically, commenters explain that public ROW and government-owned structures within such ROW are frequently relied upon to supply services for the benefit of the public, and are often the best-situated locations for the deployment of wireless facilities.<sup>273</sup> However, the record is also replete with examples of states and localities refusing to allow access to such ROW or structures, or imposing onerous terms and conditions for such access.<sup>274</sup> These examples extend far beyond governments' treatment of single structures;<sup>275</sup> indeed, in some cases it has been suggested that states or localities are using their proprietary roles to effectuate a general municipal policy disfavoring wireless deployment in public ROW.<sup>276</sup> We believe that Section 253(c) is properly construed to suggest that Congress did not intend to permit states and localities to rely on their ownership of property within the ROW as a pretext to advance regulatory objectives that prohibit or have the effect of prohibiting the provision of covered services, and thus that such conduct is preempted.<sup>277</sup> Our interpretations here are intended to facilitate the implementation of the scheme Congress intended and to provide greater regulatory certainty to states, municipalities, and regulated parties about what conduct is preempted under Section 253(a). Should factual questions arise about whether a state or locality is engaged in such behavior, Section 253(d) affords state and local governments and private parties an avenue for specific preemption challenges.

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contract for employment services between a state or locality and one of its employees. We do not intend to reach these scenarios with our interpretations today.

<sup>273</sup> See, e.g., Verizon Aug. 23, 2018 *Ex Parte* Letter at 4-5.

<sup>274</sup> See *supra* para. 25.

<sup>275</sup> Cf. *Sprint Spectrum L.P. v. Mills*, 283 F.3d 404.

<sup>276</sup> See *NextG Networks of N.Y., Inc. v. City of New York*, 2004 WL 2884308; *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d at 441-42.

<sup>277</sup> We contrast this instance to others in which we either declined to act or responded to requests for action with respect to specific disputes. See, e.g., *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12964-65, paras. 237-240; *Continental Airlines Petition for Declaratory Ruling Regarding the Over-the-Air Reception Devices (OTARD) Rules*, Memorandum Opinion and Order, 21 FCC Rcd 13201, 13220, para. 43 (2006) (observing, in the context of a different statutory and regulatory scheme, that “[g]iven that the Commission intended to preempt restrictions [regarding restrictions on Continental's use of its Wi-Fi antenna] in private lease agreements, however, Massport would be preempted even if it is acting in a private capacity with regard to its lease agreement with Continental.”); *Sandwich Isles Section 253 Order*, 32 FCC Rcd at 5883, para. 14 (rejecting argument that argument that Section 253(a) is inapplicable where it would affect the state’s ability to “deal[] with its real estate interests . . . as it sees fit,” such as by granting access to “rights-of-way over land that it owns); *Minnesota Order*, 14 FCC Rcd at 21706-08, paras. 17-19; cf. *Amigo.Net Petition for Declaratory Ruling*, Memorandum Opinion and Order, 17 FCC Rcd 10964, 10967 (WCB 2002) (Section 253 did not apply to carrier’s provision of network capacity to government entities exclusively for such entities’ internal use); *T-Mobile West Corp. v. Crow*, 2009 WL 5128562 (D. Ariz., Dec. 17, 2009) (Section 332(c)(7) did not apply to contract for deployment of wireless facilities and services for use on state university campus). We clarify here that such prior instances are not to be construed as a concession that Congress did not make preemption available, or that the Commission lacked the authority to support parties’ attempts to avail themselves of relief offered under preemption schemes, when confronted with instances in which a state or locality is relying on its proprietary role to skirt federal regulatory reach. Indeed, these instances demonstrate the opposite—that preemption is available to effectuate Congressional intent—and merely illustrate application of this principle. Also, we do not find it necessary to await specific disputes in the form of Section 253(d) petitions to offer these interpretations. In the alternative and as an independent means to support the interpretations here, we clarify that we intend for our views to guide how preemption should apply in fact-specific scenarios.

### E. Responses to Challenges to Our Interpretive Authority and Other Arguments

98. We reject claims that we lack authority to issue authoritative interpretations of Sections 253 and 332(c)(7) in this Declaratory Ruling. As explained above, we act here pursuant to our broad authority to interpret key provisions of the Communications Act, consistent with our exercise of that interpretive authority in the past.<sup>278</sup> In this instance, we find that issuing a Declaratory Ruling is necessary to remove what the record reveals is substantial uncertainty and to reduce the number and complexity of legal controversies regarding certain fee and non-fee state and local legal requirements in connection with Small Wireless Facility infrastructure. We thus exercise our authority in this Declaratory Ruling to interpret Section 253 and Section 332(c)(7) and explain how those provisions apply in the specific scenarios at issue here.<sup>279</sup>

99. Nothing in Sections 253 or 332(c)(7) purports to limit the exercise of our general interpretive authority.<sup>280</sup> Congress's inclusion of preemption provisions in Section 253(d) and Section 332(c)(7)(B)(v) does not limit the Commission's ability pursuant to other sections of the Act to construe and provide its authoritative interpretation as to the meaning of those provisions.<sup>281</sup> Any preemption under Section 253 and/or Section 332(c)(7)(B) that subsequently occurs will proceed in accordance with the enforcement mechanisms available in each context. But whatever enforcement mechanisms may be available to preempt specific state and local requirements, nothing in Section 253 or Section 332(c)(7) prevents the Commission from declaring that a category of state or local laws is inconsistent with Section 253(a) or Section 332(c)(7)(B)(i)(II) because it prohibits or has the effect of prohibiting the relevant covered service.<sup>282</sup>

<sup>278</sup> See, e.g., *Moratoria Declaratory Ruling*, FCC 18-111, paras. 161-68; *2009 Declaratory Ruling*, 24 FCC Rcd at 14001, para. 23.

<sup>279</sup> Targeted interpretations of the statute like those we adopt here fall far short of a “federal regulatory program dictating the scope and policies involved in local land use” that some commenters fear. League of Minnesota Cities Comments at 9.

<sup>280</sup> We also reject claims that Section 601(c)(1) of the 1996 Act constrains our interpretation of these provisions. See, e.g., NARUC Reply at 3; Smart Communities Reply at 33, 35-36. That provision guards against implied preemption, while Section 253 and Section 332(c)(7)(B) both expressly restrict state and local activities. See, e.g., *Texas PUC Order*, 13 FCC Rcd at 3485-86, para. 51. Courts also have read that provision narrowly. See, e.g., *In re FCC 11-161*, 753 F.3d 1015, 1120 (10th Cir. 2014); *Qwest Corp. v. Minnesota Pub. Utilities Comm'n*, 684 F.3d 721, 730-31 (8th Cir. 2012); *Farina v. Nokia Inc.*, 625 F.3d 97, 131 (3d Cir. 2010). Although the Ninth Circuit in *County of San Diego* asserted that there is a presumption that express preemption provisions should be read narrowly, and that the presumption would apply to the interpretation of Section 253(a), *County of San Diego*, 543 F.3d at 548, the cited precedent applies that presumption where “the State regulates in an area where there is no history of significant federal presence.” *Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n*, 410 F.3d 492, 496 (9th Cir. 2005). Whatever the applicability of such a presumption more generally, there is a substantial history of federal involvement here, particularly insofar as interstate telecommunications services and wireless services are implicated. See, e.g., *Ting v. AT&T*, 319 F.3d 1126, 1136 (9th Cir. 2003); *Ivy Broadcasting Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 490-92 (2d Cir. 1968); 47 U.S.C., Title III.

<sup>281</sup> See, e.g., California PUC Comments at 11; Verizon Comments at 31-33; CTIA Reply at 22-23; WIA Reply at 16-18. We thus reject claims to the contrary. See, e.g., City of New York Comments at 8; Virginia Joint Commenters Comments, Exh. A at 41-44; City of New York Reply at 1-2; NATOA Reply at 9-10; Smart Communities Reply at 34. Indeed, the Fifth Circuit upheld just such an exercise of authority with respect to the interpretation of Section 332(c)(7) in the past. See generally *City of Arlington*, 668 F.3d at 249-54. While some commenters assert that the questions addressed by the Commission in the order underlying the Fifth Circuit's *City of Arlington* decision are somehow more straightforward than our interpretations here, they do not meaningfully explain why that is the case, instead seemingly contemplating that the Commission would address a wider, more general range of circumstances than we actually do here. See, e.g., Virginia Joint Commenters Comments, Exh. A at 44-45.

<sup>282</sup> Consequently, we reject claims that relying on our general interpretative authority to interpret Section 253 and Section 332(c)(7) would render any provisions of the Act mere surplusage, see, e.g., Smart Communities Reply at 34-35, or would somehow “usurp the role of the judiciary.” Washington State Cities Reply at 14. We likewise

100. Although some commenters contend in general terms that differences in judicial approaches to Section 253 are limited and thus there is little need for Commission guidance,<sup>283</sup> the interpretations we offer in this Declaratory Ruling are intended to help address certain specific scenarios that have caused significant uncertainty and legal controversy, irrespective of the degree to which this uncertainty has been reflected in court decisions. We also reject claims that a Supreme Court brief joined by the Commission demonstrates that there is no need for the interpretations in this Declaratory Ruling.<sup>284</sup> To the contrary, that brief observed that some potential interpretations of certain court decisions “would create a serious conflict with the Commission’s understanding of Section 253(a), and [] would undermine the federal competition policies that the provision seeks to advance.”<sup>285</sup> The brief also noted that, if warranted, “the Commission can restore uniformity by issuing authoritative rulings on the application of Section 253(a) to particular types of state and local requirements.”<sup>286</sup> Rather than cutting against the need for, or desirability of, the interpretations we offer in this Declaratory Ruling, the brief instead presaged them.<sup>287</sup>

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reject other arguments insofar as they purport to treat Section 253(d)’s provision for preemption as more specific than, or otherwise controlling over, other Communications Act provisions enabling the Commission to authoritatively interpret the Act. *See, e.g.*, Virginia Joint Commenters Comments, Exh. A at 43. To the contrary, “[t]he specific controls but only within its self-described scope.” *Nat’l Cable & Telecomm. Ass’n v. Gulf Power*, 534 U.S. 327, 336 (2002). In addition, concerns that the Commission might interpret Section 253(c) in a manner that would render it a nullity or in a manner divorced from relevant context—things we do not do here—bear on the reasonableness of a given interpretation and not on the existence of interpretive authority in the first instance, as some contend. *See, e.g.*, Virginia Joint Commenters Comments, Exh. A at 43-44.

<sup>283</sup> *See, e.g.*, City of San Antonio *et al.* Comments, Exh. B at 26-27; Fairfax County Comments at 20; Smart Communities Comments at 61. Some commenters assert that there are reasonable, material reliance interests arising from past court interpretations that would counsel against our interpretations in this order because “localities and providers have adjusted to the tests within their circuits” and “reflected those standards in local law.” Smart Communities Comments, WT Docket No. 16-141 at 67 (filed Mar. 8, 2017) cited in City of Austin Comments at 2 n.3. Arguments such as these, however, merely underscore the regulatory patchwork that inhibits the development of a robust nationwide telecommunications and private wireless service as envisioned by Congress. By offering interpretations of the relevant statutes here, we intend, thereby, to eliminate potential regional regulatory disparities flowing from differing interpretations of those provisions. *See, e.g.*, WIA Reply at 19-20.

<sup>284</sup> *See* City of San Antonio *et al.* Comments, Exh. B at 27 (citing Brief for the United States as Amicus Curiae, *Level 3 Commc’ns v. City of St. Louis*, Nos. 08-626, 08-759 at 9, 11 (filed May 28, 2009) (Amicus Brief)).

<sup>285</sup> Amicus Brief at 12-13. The brief also identified other specific areas of concern with those cases. *See, e.g., id.* at 13 (“The court appears to have accorded inordinate significance to Level 3’s inability to ‘state with specificity what additional services it might have provided’ if it were not required to pay St. Louis’s license fee. That specific failure of proof—which the court of appeals seems to have regarded as emblematic of broader evidentiary deficiencies in Level 3’s case—is not central to a proper Section 253(a) inquiry.” (citation omitted)); *id.* at 14 (“Portions of the Ninth Circuit’s decision, moreover, could be read to suggest that a Section 253 plaintiff must show effective preclusion—rather than simply material interference—in order to prevail. As discussed above, limiting the preemptive reach of Section 253(a) to legal requirements that completely preclude entry would frustrate the policy of open competition that Section 253 was intended to promote.” (citation omitted)).

<sup>286</sup> *Id.* at 18.

<sup>287</sup> Contrary to some claims, the need for these clarifications also is not undercut by prior determinations that advanced telecommunications capability is being deployed in a reasonable and timely fashion to all Americans. *See, e.g.*, Letter from Nancy Werner, General Counsel, NATOA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21, 2018) (NATOA June 21, 2018 *Ex Parte* Letter) (citing *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 33 FCC Rcd 1660, 1707-08, para. 94 (2018) (2018 *Broadband Deployment Report*)). These commenters do not explain why the distinct standard for evaluating deployment of advanced telecommunications capability, *see* 2018 *Broadband Deployment Report*, 33 FCC Rcd at 1663-76, paras. 9-39, should bear on the application of Section 253 or Section 332(c)(7). Further, as the Commission itself observed, “[a] finding that deployment of advanced

101. Our interpretations of Sections 253 and Section 332(c)(7) are likewise not at odds with the Tenth Amendment and constitutional precedent, as some commenters contend.<sup>288</sup> In particular, our interpretations do not directly “compel the states to administer federal regulatory programs or pass legislation.”<sup>289</sup> The outcome of violations of Section 253(a) or Section 332(c)(7)(B) of the Act are no more than a consequence of “the limits Congress already imposed on State and local governments” through its enactment of Section 332(c)(7).<sup>290</sup>

102. We also reject the suggestion that the limits Section 253 places on state and local ROW fees and management will unconstitutionally interfere with the relationship between a state and its political subdivisions.<sup>291</sup> As relevant to our interpretations here, it is not clear, at first blush, that such concerns would be implicated.<sup>292</sup> Because state and local legal requirements can be written and structured in myriad ways, and challenges to such state or local activities could be framed in broad or narrow terms, we decline to resolve such questions here, divorced from any specific context.

#### IV. THIRD REPORT AND ORDER

103. In this Third Report and Order, we address the application of shot clocks to state and local review of wireless infrastructure deployments. We do so by taking action in three main areas. First, we adopt a new set of shot clocks tailored to support the deployment Small Wireless Facilities. Second, we adopt a specific remedy that applies to violations of these new Small Wireless Facility shot clocks, which we expect will operate to significantly reduce the need for litigation over missed shot clocks. Third, we clarify a number of issues that are relevant to all of the FCC’s shot clocks, including the types of authorizations subject to these time periods.

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telecommunications capability is reasonable and timely in no way suggests that we should let up in our efforts to foster greater deployment.” *Id.* at 1664, para. 13.

<sup>288</sup> See, e.g., City of San Antonio *et al.* Comments, Exh. A at 28; Smart Communities Comments at 77-78; Smart Communities Reply at 48-50; NATOA June 21, 2018 *Ex Parte* Letter at 3.

<sup>289</sup> *Montgomery County*, 811 F.3d at 128; see *Printz v. United States*, 521 U.S. 898 (1997) (*Printz*); *New York v. United States*, 505 U.S. 144 (1992) (*New York*). These provisions preempting state law thus do not “compel the States to enact or administer a federal regulatory program,” *Printz*, 521 U.S. at 900, or “dictate what a state . . . may or may not do.” *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1478 (2018) (*Murphy*).

<sup>290</sup> *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25. The Communications Act establishes its own framework for oversight of wireless facility deployment—one that is largely deregulatory, see, e.g., *Wireless Infrastructure Second R&O*, FCC 18-30, at para. 63; *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480-81, para. 182 (1994)—and it is reasonable to expect state and local governments electing to act in that area to do so only in a manner consistent with the Act’s framework. See, e.g., *Murphy*, 138 S. Ct. at 1470-71, 1480. Thus, the application of Section 253 and Section 332(c)(7)(B) is clearly distinguishable from the statute the Supreme Court struck down in *Murphy*, which did not involve a preemption scheme but nonetheless prohibited state authorization of sports gambling. *Id.* at 1481. The application here is also clearly distinguishable from the statute in *Printz*, which mandated states to run background checks on handgun purchases, *Printz*, 521 U.S. at 904-05, and the statute in *New York*, which required states to enact state laws that provide for the disposal of radioactive waste or else take title to such waste. *New York*, 505 U.S. at 151-52.

<sup>291</sup> See, e.g., City of New York Comments at 9-10; Smart Communities Comments at 78.; see also, e.g., *Nixon v. Mo. Mun. League*, 541 U.S. 125, 134 (2004) (identifying Tenth Amendment issues with the application of Section 253 where that application would implicate “state or local governmental self-regulation (or regulation of political inferiors)”).

<sup>292</sup> For example, where a state or local law or other legal requirement simply sets forth particular fees to be paid, or where the legal requirement at issue is simply an exercise of discretion that governing law grants the state or local government, it is not clear that preemption would unconstitutionally interfere with the relationship between a state and its political subdivisions.

### A. New Shot Clocks for Small Wireless Facility Deployments

104. In 2009, the Commission concluded that we should use shot clocks to define a presumptive “reasonable period of time” beyond which state or local inaction on wireless infrastructure siting applications would constitute a “failure to act” within the meaning of Section 332.<sup>293</sup> We adopted a 90-day clock for reviewing collocation applications and a 150-day clock for reviewing siting applications other than collocations. The record here suggests that our two existing Section 332 shot clocks have increased the efficiency of deploying wireless infrastructure. Many localities already process wireless siting applications in less time than required by those shot clocks, and a number of states have enacted laws requiring that collocation applications be processed in 60 days or less.<sup>294</sup> Some siting agencies acknowledge that they have worked to gain efficiencies in processing siting applications and welcome the addition of new shot clocks tailored to the deployment of small scale facilities.<sup>295</sup> Given siting agencies’ increased experience with existing shot clocks, the greater need for rapid siting of Small Wireless Facilities nationwide, and the lower burden siting of these facilities places on siting agencies in many cases, we take this opportunity to update our approach to speed the deployment of Small Wireless Facilities.<sup>296</sup>

#### 1. Two New Section 332 Shot Clocks for Deployment of Small Wireless Facilities

105. In this section, using authority confirmed in *City of Arlington*, we adopt two new Section 332 shot clocks for Small Wireless Facilities—60 days for review of an application for collocation of Small Wireless Facilities using a preexisting structure and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure. These new Section 332 shot clocks carefully balance the well-established authority that states and local authorities have over review of wireless siting applications with the requirements of Section 332(c)(7)(ii) to exercise that authority “within a reasonable period of time... taking into account the nature and scope of the request.”<sup>297</sup> Further, our decision is consistent with the BDAC’s Model Code for Municipalities’ recommended timeframes, which utilize this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures<sup>298</sup> and are similar to shot clocks enacted in state level small cell bills and the real world

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<sup>293</sup> 2009 Declaratory Ruling, 24 FCC Rcd at 13994.

<sup>294</sup> See *infra* para. 106.

<sup>295</sup> Chicago Comments at 7 (“[T]he City has worked to achieve efficient processing times even for applications where no federal deadline exists.”); New Orleans Comments at 3 (“City supports the concept proposed by the Commission . . . to establish . . . more narrowly defined classes of deployments, with distinct reasonable time frames for action within each class.”).

<sup>296</sup> See LaWana Mayfield July 31, 2018 *Ex Parte* Letter at 2 (“However, getting this infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources. The solution is to streamline relevant policies—allowing more modern rules for modern infrastructure.”); Letter from John Richard C. King, House of Representatives, South Carolina, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed Aug. 27, 2018) (“A patchwork system of town-to-town, state-to-state rules slows the approval of small cell installations and delays the deployment of 5G. We need a national framework with guardrails to streamline the path forward to our wireless future”); Letter from Andy Thompson, State Representative, Ohio House District 95, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 24, 2018) (“In order for 5G to arrive as quickly and as effectively as possible, relevant infrastructure regulations must be streamlined. It makes very little sense for rules designed for 100-foot cell towers to govern the path to deployment for modern equipment called small cells that can fit into a pizza box.”); Letter from Todd Nash, Wallowa County Board of Commissioners, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 2 (filed Sept. 10, 2018) (FCC should streamline regulatory processes by, for example, tightening the deadlines for states and localities to approve new network facilities).

<sup>297</sup> 47 U.S.C. § 332(c)(7)(ii).

<sup>298</sup> The BDAC Model Municipal Code recommended, for certain types of facilities, shot clocks of 60 days for collocations and 90 days for new constructions on applications for siting Small Wireless Facilities. BDAC Model

experience of many municipalities which further supports the reasonableness of our approach.<sup>299</sup> Our actions will modernize the framework for wireless facility siting by taking into consideration that states and localities should be able to address the siting of Small Wireless Facilities in a more expedited review period than needed for larger facilities.<sup>300</sup>

106. We find compelling reasons to establish a new presumptively reasonable Section 332 shot clock of 60 days for collocations of Small Wireless Facilities on existing structures. The record demonstrates the need for, and reasonableness of, expediting the siting review of these collocations.<sup>301</sup> Notwithstanding the implementation of the current shot clocks, more streamlined procedures are both reasonable and necessary to provide greater predictability for siting applications nationwide for the deployment of Small Wireless Facilities. The two current Section 332 shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the existing Section 332 shot clocks were adopted nine years ago. Since 2009, localities have gained significant experience processing wireless siting applications.<sup>302</sup> Indeed, many localities already process wireless siting applications in less than the required time<sup>303</sup> and several

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Municipal Code at §§ 2.2, 2.3, 3.2a(i)(B). Our approach utilizes the same timeframes set forth in the Model Municipal Code, and we disagree with comments that it is inconsistent with or ignores the work of the BDAC. GMA September 17 *Ex Parte* Letter at 4-5.

<sup>299</sup> For instance, while the City of Chicago opposes the shot clocks adopted here, we note that the City has also stated that, “[d]espite th[e] complex review process, involving many utilities and other entities, CDOT on average processed small cell applications last year in 55 days.” Letter from Edward N. Siskel, Corp. Counsel, Dept. of Law, City of Chicago, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 19, 2018).

<sup>300</sup> Just like the shot clocks originally established in 2009—later affirmed by the Fifth Circuit and the Supreme Court—the shot clocks framework in this Third Report and Order are no more than an interpretation of “the limits Congress already imposed on State and local governments” through its enactment of Section 332(c)(7). *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25. *See also City of Arlington*, 668 F.3d at 259. As explained in the *2009 Declaratory Ruling*, the shot clocks derived from Section 332(c)(7) “will not preempt State or local governments from reviewing applications for personal wireless service facilities placement, construction, or modification,” and they “will continue to decide the outcome of personal wireless service facility siting applications pursuant to the authority Congress reserved to them in Section 332(c)(7)(A).” *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25.

<sup>301</sup> CTIA Comments, WT Docket No. 16-421, at 33 (filed Mar. 8, 2017); Letter from Juan Huizar, City Manager of the City of Pleasanton, TX, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed June 4, 2018) (describing the firsthand benefit of small cells and noting that communications infrastructure is a critical component of local growth); Letter from Sara Blackhurst, President, Action 22, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 2 (filed May 18, 2018) (Action 22 *Ex Parte*) (“While we understand the need for relevant federal rules and protections appropriate for larger wireless infrastructure, we feel these same rules are not well-suited for smaller wireless facilities and risk slowing deployment in communities that need connectivity now.”); Letter from Maurita Coley Flippin, President and CEO, MMTC, to the Hon. Ajit Pai, Chairman, FCC, WT Docket No. 17-79 at 2 (filed Sept. 5, 2018) (encourages the Commission to remove unnecessary barriers such as unreasonable delays so deployment can proceed expeditiously); Fred A. Lamphere Sept. 11, 2018 *Ex Parte* Letter at 1 (It is critical that the Commission continue to remove barriers to building new wireless infrastructure such as by setting reasonable timelines to review applications).

<sup>302</sup> T-Mobile Comments at 20; Crown Castle Reply at 5 (noting that the adoption of similar time frames by several states for small cell siting review confirms their reasonableness, and the Commission should apply these deadlines on a nationwide basis).

<sup>303</sup> Alaska Dep’t of Natural Resources Comments at 2 (“[W]e are currently meeting or exceeding the proposed timeframe of the ‘Shot Clock.’”); *see also* CTIA Aug. 30, 2018 *Ex Parte* Letter at 5 (“Eleven states—Delaware, Florida, Indiana, Kansas, Missouri, North Carolina, Rhode Island, Tennessee, Texas, Utah, and Virginia—recently adopted small cell legislation that includes 45-day or 60-day shot clocks for small cell collocations.”); Jason R. Saine Sept. 14, 2018 *Ex Parte* Letter.

jurisdictions require by law that collocation applications be processed in 60 days or less.<sup>304</sup> With the passage of time, siting agencies have become more efficient in processing siting applications.<sup>305</sup> These facts demonstrate that a shorter, 60-day shot clock for processing collocation applications for Small Wireless Facilities is reasonable.<sup>306</sup>

107. As we found in 2009, collocation applications are generally easier to process than new construction because the community impact is likely to be smaller.<sup>307</sup> In particular, the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community.<sup>308</sup> The size of Small Wireless Facilities poses little or no risk of adverse effects on the environment or historic preservation.<sup>309</sup> Indeed, many jurisdictions do not require public hearings for approval of such attachments, underscoring their belief that such attachments do not implicate complex issues requiring a more searching review.<sup>310</sup>

108. Further, we find no reason to believe that applying a 60-day time frame for Small Wireless Facility collocations under Section 332 creates confusion with collocations that fall within the scope of “eligible facilities requests” under Section 6409 of the Spectrum Act, which are also subject to a 60-day review.<sup>311</sup> The type of facilities at issue here are distinctly different and the definition of a Small Wireless Facility is clear. Further, siting authorities are required to process Section 6409 applications involving the swap out of certain equipment in 60 days, and we see no meaningful difference in processing these applications than processing Section 332 collocation applications in 60 days. There is

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<sup>304</sup> North Carolina requires its local governments to decide collocation applications within 45 days of submission of a complete application. N.C. Gen. Stat. Ann. § 153A-349.53(a2). The same 45-day shot clock applies to certain collocations in Florida. Fla. Stat. Ann. § 365.172(13)(a)(1), (d)(1). In New Hampshire, applications for collocation or modification of wireless facilities generally have to be decided within 45 days (subject to some exceptions under certain circumstances) or the application is deemed approved. N.H. Rev. Stat. Ann. § 12-K:10. Wisconsin requires local governments to decide within 45 days of receiving complete applications for collocation on existing support structure that does not involve substantial modification, or the application will be deemed approved, unless the local government and applicant agree to an extension. Wis. Stat. Ann. § 66.0404(3)(c). Local governments in Indiana have 45 days to decide complete collocation applications, unless an extension is allowed under the statute. Ind. Code Ann. § 8-1-32.3-22. Minnesota requires any zoning application, including both collocation and non-collocation applications, to be processed in 60 days. Minn. Stat. § 15.99, subd. 2(a). By not requiring hearings, collocation applications in these states can be processed in a timely manner.

<sup>305</sup> Chicago Comments at 7 (“[T]he City has worked to achieve efficient processing times even for applications where no federal deadline exists.”); New Orleans Comments at 3 (“City supports the concept proposed by the Commission . . . to establish . . . more narrowly defined classes of deployments, with distinct reasonable times frames for action within each class.”); Action 22 *Ex Parte* at 2 (“While we understand the need for relevant federal rules and protections appropriate for larger wireless infrastructure, we feel these same rules are not well-suited for smaller wireless facilities and risk slowing deployment in communities that need connectivity now.”).

<sup>306</sup> CCA Comments at 11-14; T-Mobile Comments at 20; Incompas Reply at 9; Sprint Comments at 45-47 (noting that Florida, Indiana, Kansas, Texas and Virginia all have passed small cell legislation that requires small cell application attachments to be acted upon in 60 days); T-Mobile Comments at 18 (arguing that the Commission should accelerate the Section 332 shot clocks for all sites to 60 days for collocations, including small cells).

<sup>307</sup> 2009 *Declaratory Ruling*, 24 FCC Rcd at 14012, para. 40.

<sup>308</sup> TIA Comments at 4.

<sup>309</sup> *Wireless Infrastructure Second R&O*, FCC 18-30 at para. 42 (citing Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR Part 1, Appx. B, § VI (Collocation NPA)); *see also* 47 CFR § 1.1306(c)(1) (excluding certain wireless facilities from NEPA review).

<sup>310</sup> 2009 *Declaratory Ruling*, 24 FCC Rcd at 14012, para. 46.

<sup>311</sup> DESHPO Comments at 2 (“opposes the application of separate time limits for review of facility deployments not covered by the Spectrum Act, as it would lead to confusion within the process for all parties involved (Applicants/Carrier, Consultants, SHPO)”).



no reason to apply different time periods (60 vs. 90 days) to what is essentially the same review: modification of an existing structure to accommodate new equipment.<sup>312</sup> Finally, adopting a 60-day shot clock will encourage service providers to collocate rather than opting to build new siting structures which has numerous advantages.<sup>313</sup>

109. Some municipalities argue that smaller facilities are neither objectively “small” nor less obtrusive than larger facilities.<sup>314</sup> Others contend that shorter shot clocks for a broad category of “smaller” facilities are too restrictive,<sup>315</sup> and would fail to take into account the varied and unique climate, historic architecture, infrastructure, and volume of siting applications that municipalities face.<sup>316</sup> We take those considerations into account by clearly defining the category of “Small Wireless Facility” in our rules and allowing siting agencies to rebut the presumptive reasonableness of the shot clocks based upon the actual circumstances they face. For similar reasons, we disagree that establishing shorter shot clocks for smaller facilities would impair states’ and localities’ authority to regulate local rights of way.<sup>317</sup>

110. While some commenters argue that additional shot clock classifications would make the siting process needlessly more complex without any proven benefits,<sup>318</sup> any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process.<sup>319</sup> We

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<sup>312</sup> CTIA Aug. 30, 2018 *Ex Parte* Letter at 6.

<sup>313</sup> Letter from Richard Rossi, Senior Vice President, General Counsel, American Tower, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 3 (filed Aug. 10, 2018) (“The reason to encourage collocation is straightforward, it is faster, cheaper, more environmentally sound, and less disruptive than building new structures.”).

<sup>314</sup> League of Az Cities and Towns Comments at 13, 29 (arguing that many small cells or micro cells can be taller and more visually intrusive than macro cells).

<sup>315</sup> See, e.g., Letter from Geoffrey C. Beckwith, Executive Director & CEO, Mass. Municipal. Assoc., Boston, MA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, (filed Sept. 11, 2018) (Geoffrey C. Beckwith Sept. 11, 2018 *Ex Parte* Letter); Mike Posey Sept. 11, 2018 *Ex Parte* Letter; Letter from John A. Barbish, Mayor, City of Wickliffe, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 13, 2018); Letter from Pauline Russo Cutter, Mayor, City of San Leandro, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 12, 2018); Letter from Ed Waage, Mayor, City of Pismo Beach, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from Scott A. Hancock, Executive Director, MML, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Sept. 18, 2018); Letter from Leon Towarnicki, City Manager, Martinsville, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from Thomas Aujero Small, Mayor, City of Culver City, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018).

<sup>316</sup> Philadelphia Comments at 4-5 (arguing that shorter shot clocks should not be implemented because “cities are already resource constrained and any further attempt to further limit the current time periods for review of applications will seriously and adversely affect public safety as well as diminish the proper role, under our federalist system, of state and local governments in regulating local rights of way”); Smart Communities Comments, Docket 16-421, at 13 (filed Mar. 8, 2017) (included by reference by Austin’s Comments); Alaska Dept. of Trans. Comments at 2. See, e.g., TX Hist. Comm. Comments at 2 (current shot clocks are appropriate and that further shortening these shot clocks is not warranted); Arlington, TX Comments at 2; Letter from William Tomko, Mayor of Chagrin Falls, OH, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 1-2 (filed Sept. 17, 2018); Nina Beety Sept. 17, 2018 *Ex Parte* Letter; Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter at 4.

<sup>317</sup> League of Az Cities and Towns *et al.* Comments at 26-27, 29-35; Cities of San Antonio *et. al* Comments at 8; Philadelphia Comments at 4.

<sup>318</sup> T-Mobile Comments at 22; Florida Coalition Comments at 9 (creating new shot clocks would result in “too many ‘shot clocks’ and both the industry and local governments would be confused as to which shot clock applied to what application”).

<sup>319</sup> While several parties proposed additional shot clock categories, we believe that the any benefit from a closer tailoring of categories to circumstances is not outweighed by the administrative burden on siting authorities and

also reject the assertion that revising the period of time to review siting decisions would amount to a nationwide land use code for wireless siting.<sup>320</sup> Our approach is consistent with the Model Code for Municipalities that recognizes that the shot clocks that we are adopting for the review of Small Wireless Facility deployment applications correctly balance the needs of local siting agencies and wireless service providers.<sup>321</sup> Our balance of the relevant considerations is informed by our experience with the previously adopted shot clocks, the record in this proceeding, and our predictive judgment about the effectiveness of actions taken here to promote the provision of personal wireless services.

111. For similar reasons as set forth above, we also find it reasonable to establish a new 90 day Section 332 shot clock for new construction of Small Wireless Facilities. Ninety days is a presumptively reasonable period of time for localities to review such siting applications. Small Wireless Facilities have far less visual and other impact than the facilities we considered in 2009, and should accordingly require less time to review.<sup>322</sup> Indeed, some state and local governments have already adopted 60-day maximum reasonable periods of time for review of *all* small cell siting applications, and, even in the absence of such maximum requirements, several are already reviewing and approving small-cell siting applications within 60 days or less after filing.<sup>323</sup> Numerous industry commenters advocated a 90-day shot clock for all non-collocation deployments.<sup>324</sup> Based on this record, we find it reasonable to conclude that review of an application to deploy a Small Wireless Facility using a new structure warrants more review time than a mere collocation, but less than the construction of a macro tower.<sup>325</sup> For the reasons explained below, we

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providers to manage these categories. *See* TX Hist. Comm. Comments at 2 (stating that it “could support a shorter review period for new structures less than fifty (50) feet tall, or where structures are located within or adjacent to existing utility rights-of-way (but not transportation rights-of-way) with existing utility structures taller than the proposed telecommunications structure”); Georgia Dept. of Trans. Comments at 2 (stating that time frames based on the zoning area are reasonable).

<sup>320</sup> Cities of San Antonio *et. al* Comments, Exh. A at 17-18. In the same vein, the Florida Department of Transportation contends that “[p]ermit review times should comply with state statutes,” especially if the industry insists on being treated similarly as other utilities. AASHTO Comments, Attach. at 13 (Florida Dept. of Trans. Comments); *see also* Alaska Dept. of Trans. Comments at 2; TX Dept. of Trans. Comments at 2 (explaining that variations in topography, weather, government interests, and state and local political structure counsel against standardized nationwide shot clocks). The Maryland Department of Transportation is concerned about the shortened shot clocks proposed because they would conflict with a Maryland law that requires a 90-day comment period in considering wireless siting applications and because certain applications can be complex and necessitate longer review periods. AASHTO Comments, Attach. at 40 (MD Dept. of Trans. Comments).

<sup>321</sup> BDAC Model Municipal Code at § 3.2a(i)(B).

<sup>322</sup> CTIA Comments, Attach. 1 at 38.

<sup>323</sup> T-Mobile Comments at 19-20 (stating that some states already have adopted more expedited time frames to lower siting barriers and speed deployment, which demonstrates the reasonableness of the proposed 60-day and 90-day revised shot clocks); Incompas Reply at 9 (stating that there is no basis for differing time-periods for similarly-situated small cell installation requests, and the lack of harmonization could discourage the use of a more efficient infrastructure); CCA Comments at 14 n.52 (citing CCA Streamlining Reply at 7-8 that in Houston, Texas, the review process for small cell deployments “usually takes 2 weeks, but no more than 30 days to process and complete the site review. In Kenton County, Kentucky, the maximum time permitted to act upon new facility siting requests is 60 days. Louisville, Kentucky generally processes small cell siting requests within 30 days, and Matthews, North Carolina generally processes wireless siting applications within 10 days”).

<sup>324</sup> CTIA Reply at 3 (stating that the Commission should shorten the shot clocks to 90 days for new facilities); CTIA Comments at 11-12 (asserting that the existing 150-day review period for new wireless sites should be shortened to 90 days); Crown Castle Comments at 29 (stating that a 90-day shot clock for new facilities is appropriate for macro cells and small cells alike, to the extent such applications require review under Section 332 at all); ExteNet Comments at 8 (asserting that the Commission should accelerate the shot clock for all other non-collocation applications, including those for new DNS poles, from 150 days to 90 days); WIA Reply at 2.

<sup>325</sup> CCUA argues that the new shot clocks would force siting authorities to deny applications when they find that applications are incomplete. Letter from Kenneth S. Fellman, Counsel, CCUA, to Marlene H. Dortch, Secretary,

also specify today a provision that will initially reset these two new shot clocks in the event that a locality receives a materially incomplete application.

112. Finally, we note that our 60- and 90-day approach is similar to that in pending legislation that has bipartisan congressional support, and is consistent with the Model Code for Municipalities. Specifically, the draft STREAMLINE Small Cell Deployment Act, would apply a 60-day shot clock to collocation of small personal wireless service facilities and a 90-day shot clock to any other action relating to small personal wireless service facilities.<sup>326</sup> Further, the Model Code for Municipalities recommended by the FCC’s Broadband Deployment Advisory Committee also utilizes this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures.<sup>327</sup>

## 2. Batched Applications for Small Wireless Facilities

113. Given the way in which Small Wireless Facilities are likely to be deployed, in large numbers as part of a system meant to cover a particular area, we anticipate that some applicants will submit “batched” applications: multiple separate applications filed at the same time, each for one or more sites *or* a single application covering multiple sites.<sup>328</sup> In the *Wireless Infrastructure NPRM/NOI*, the Commission asked whether batched applications should be subject to either longer or shorter shot clocks than would apply if each component of the batch were submitted separately.<sup>329</sup> Industry commenters contend that the shot clock applicable to a batch or a class of applications should be no longer than that applicable to an individual application of the same class.<sup>330</sup> On the other hand, several commenters, contend that batched applications have often been proposed in historic districts and historic buildings (areas that require a more complex review process), and given the complexities associated with reviews of that type, they urge the Commission not to apply shorter shot clocks to batched applications.<sup>331</sup> Some localities also argue that a single, national shot clock for batched applications would fail to account for unique local circumstances.<sup>332</sup>

114. We see no reason why the shot clocks for batched applications to deploy Small Wireless Facilities should be longer than those that apply to individual applications because, in many cases, the batching of such applications has advantages in terms of administrative efficiency that could actually

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FCC, WT Docket No. 17-79 et al., at 3 (filed Sept. 18, 2018) (Kenneth S. Fellman Sept. 18, 2018 *Ex Parte* Letter). We disagree that this would be the outcome in such an instance because, as explained below, siting authorities can toll the shot clocks upon a finding of incompleteness.

<sup>326</sup> STREAMLINE Small Cell Deployment Act, S. 3157, 115th Cong. (2018).

<sup>327</sup> BDAC Model Municipal Code at § 3.2a(i)(B),

<sup>328</sup> We define either scenario as “batching” for the purpose of our discussion here.

<sup>329</sup> *Wireless Infrastructure NPRM/NOI*, 32 FCC Red at 3338, para. 18; *see also Mobilitie PN*, 31 FCC Red at 13371.

<sup>330</sup> *See, e.g.*, Extenet Comments at 10-11 (“The Commission should not adopt a longer shot clock for batches of multiple DNS applications.”); Sprint Comments, Docket No. 16-421, at 43-44 (filed Mar. 8, 2017); CCA Comments at 16 (“The FCC also should ensure that batch applications are not saddled with a longer shot clock than those afforded to individual siting applications . . . .”); Verizon Comments at 42 (“The same 60-day shot clock should apply to applications proposing multiple facilities—so called ‘batch applications.’”); Crown Castle Comments at 30 (“Crown Castle also does not support altering the deadline for ‘batches’ of requests.”); T-Mobile Comments at 22-23 (“[A]n application that batches together similar numbers of small cells of like character and in proximity to one another should also be able to be reviewed within the same time frame . . . .”); CTIA Comments at 17 (“There is, however, no need for the Commission to establish different shot clocks for batch processing of similar facilities . . . .”).

<sup>331</sup> San Antonio Comments, Exh. A at 17, 19-20; *see also* Smart Communities Comments, Docket No. 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin’s Comments).

<sup>332</sup> Cities of San Antonio *et al.* Comments, Exh. A at 17, 19-20; *see also* Smart Communities Comments, Docket 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin’s Comments).

make review easier.<sup>333</sup> Our decision flows from our current Section 332 shot clock policy. Under our two existing Section 332 shot clocks, if an applicant files multiple siting applications on the same day for the same type of facilities, each application is subject to the same number of review days by the siting agency.<sup>334</sup> These multiple siting applications are equivalent to a batched application and therefore the shot clocks for batching should follow the same rules as if the applications were filed separately. Accordingly, when applications to deploy Small Wireless Facilities are filed in batches, the shot clock that applies to the batch is the same one that would apply had the applicant submitted individual applications. Should an applicant file a single application for a batch that includes both collocated and new construction of Small Wireless Facilities, the longer 90-day shot clock will apply, to ensure that the siting authority has adequate time to review the new construction sites.

115. We recognize the concerns raised by parties arguing for a longer time period for at least some batched applications, but conclude that a separate rule is not necessary to address these concerns. Under our approach, in extraordinary cases, a siting authority, as discussed below, can rebut the presumption of reasonableness of the applicable shot clock period where a batch application causes legitimate overload on the siting authority's resources.<sup>335</sup> Thus, contrary to some localities' arguments,<sup>336</sup> our approach provides for a certain degree of flexibility to account for exceptional circumstances. In addition, consistent with, and for the same reasons as our conclusion below that Section 332 does not permit states and localities to prohibit applicants from requesting multiple types of approvals simultaneously,<sup>337</sup> we find that Section 332(c)(7)(B)(ii) similarly does not allow states and localities to refuse to accept batches of applications to deploy Small Wireless Facilities.

#### **B. New Remedy for Violations of the Small Wireless Facilities Shot Clocks**

116. In adopting these new shot clocks for Small Wireless Facility applications, we also provide an additional remedy that we expect will substantially reduce the likelihood that applicants will need to pursue additional and costly relief in court at the expiration of those time periods.

117. At the outset, and for the reasons the Commission articulated when it adopted the 2009 shot clocks, we determine that the failure of a state or local government to issue a decision on a Small Wireless Facility siting application within the presumptively reasonable time periods above will constitute a "failure to act" within the meaning of Section 332(c)(7)(B)(v). Therefore, a provider is, at a minimum, entitled to the same process and remedies available for a failure to act within the new Small Wireless Facility shot clocks as they have been under the FCC's 2009 shot clocks. But we also add an additional remedy for our new Small Wireless Facility shot clocks.

118. State or local inaction by the end of the Small Wireless Facility shot clock will function not only as a Section 332(c)(7)(B)(v) failure to act but also amount to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II). Accordingly, we would expect the state or local government to issue all necessary permits without further delay. In cases where such action is not taken, we assume, for the reasons discussed below, that the applicant

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<sup>333</sup> See, e.g., Sprint Comments, Docket No. 16-421, at 43-44 (filed Mar. 8, 2017); Verizon Comments at 42; CTIA Comments at 17.

<sup>334</sup> WIA Comments at 27 ("Merely bundling similar sites into a single batched application should not provide a locality with more time to review a single batched application than to process the same applications if submitted individually.").

<sup>335</sup> See *infra* paras. 117, 119. See Letter from Nina Beety, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 17, 2018); Letter from Dave Ruller, City Manager, City of Kent, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Sept. 18, 2018).

<sup>336</sup> Cities of San Antonio *et al.* Comments, Exh. A at 17, 19-20; see also Smart Communities Comments, Docket 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin's Comments).

<sup>337</sup> See *infra* para. 144.

would have a straightforward case for obtaining expedited relief in court.<sup>338</sup>

119. As discussed in the Declaratory Ruling, a regulation under Section 332(c)(7)(B)(i)(II) constitutes an effective prohibition if it materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.<sup>339</sup> Missing shot clock deadlines would thus presumptively have the effect of unlawfully prohibiting service in that such failure to act can be expected to materially limit or inhibit the introduction of new services or the improvement of existing services.<sup>340</sup> Thus, when a siting authority misses the applicable shot clock deadline, the applicant may commence suit in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II), in addition to a violation of Section 332(c)(7)(B)(ii), as discussed above. The siting authority then will have an opportunity to rebut the presumption of effective prohibition by demonstrating that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services.

120. Given the seriousness of failure to act within a reasonable period of time, we expect, as noted above, siting authorities to issue without any further delay all necessary authorizations when notified by the applicant that they have missed the shot clock deadline, absent extraordinary circumstances. Where the siting authority nevertheless fails to issue all necessary authorizations and litigation is commenced based on violations of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii), we expect that applicants and other aggrieved parties will likely pursue equitable judicial remedies.<sup>341</sup> Given the relatively low burden on state and local authorities of simply acting—one way or the other—within the Small Wireless Facility shot clocks, we think that applicants would have a relatively low hurdle to clear in establishing a right to expedited judicial relief. Indeed, for violations of Section 332(c)(7)(B), courts commonly have based the decision whether to award preliminary and permanent injunctive relief on several factors. As courts have concluded, preliminary and permanent injunctions fulfill Congressional intent that action on applications be timely and that courts consider violations of Section 332(c)(7)(B) on an expedited basis.<sup>342</sup> In addition, courts have observed that “[a]lthough Congress in the Telecommunications Act left intact some of local zoning boards’ authority under state law,” they should not be owed deference on issues relating to Section 332(c)(7)(B)(ii), meaning that “in the majority of cases the proper remedy for a zoning board decision that violates the Act will be an order. . . instructing the board to authorize construction.”<sup>343</sup> Such relief also is supported where few or no issues remain to be decided, and those that remain can be addressed by a court.<sup>344</sup>

121. Consistent with those sensible considerations reflected in prior precedent, we expect that

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<sup>338</sup> Where we discuss litigation here, we refer, for convenience, to “the applicant” or the like, since that is normally the party that pursues such litigation. But we reiterate that under the Act, “[a]ny person adversely affected by” the siting authority’s failure to act could pursue such litigation. 47 U.S.C. § 332(c)(7)(B)(v).

<sup>339</sup> See *supra* paras. 34-42.

<sup>340</sup> *Id.*

<sup>341</sup> See, e.g., *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12978, para. 284.

<sup>342</sup> See, e.g., *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 41 (1st Cir. 2014) (addressing claimed violation of Section 332(c)(7)(B)(i)(II) of the Act); *Nat’l Tower, LLC v. Plainville Zoning Bd. of Appeals*, 297 F.3d 14, 21-22 (1st Cir. 2002) (*Nat’l Tower*) (same); *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 497 (2d Cir. 1999) (addressing violation of Section 332(c)(7)(B)(v) of the Act); *AT&T Mobility Servs., LLC v. Vill. of Corrales*, 127 F. Supp. 3d 1169, 1175-76 (D.N.M. 2015) (addressing violation of Section 332(c)(7)(B)(i)(II)); *Bell Atl. Mobile of Rochester v. Town of Irondequoit*, 848 F. Supp. 2d 391, 403 (W.D.N.Y. 2012) (addressing violation of Section 332(c)(7)(B)(ii)); *New Cingular Wireless PCS, LLC v. City of Manchester*, 2014 WL 79932, \*8 (D.N.H. Feb. 28, 2014) (addressing violation of Section 332(c)(7)(B)(i)(II)).

<sup>343</sup> See, e.g., *Nat’l Tower*, 297 F.3d at 21-22; *AT&T Mobility*, 127 F. Supp. 3d at 1176.

<sup>344</sup> See, e.g., *Green Mountain Realty*, 750 F.3d at 41-42; *Nat’l Tower*, 297 F.3d at 24-25; *Cellular Tel. Co.*, 166 F.3d at 497; *Bell Atl. Mobile*, 848 F. Supp. 2d at 403; *New Cingular Wireless PCS*, 2014 WL 79932, \*8.

courts will typically find expedited and preliminary and permanent injunctive relief warranted for violations of Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii) of the Act when addressing the circumstances discussed in this Order. Prior findings that preliminary and permanent injunctive relief best advances Congress's intent in assuring speedy resolution of issues encompassed by Section 332(c)(7)(B) appear equally true in the case of deployments of Small Wireless Facilities covered by our interpretation of Section 332(c)(7)(B)(ii) in this Third Report and Order.<sup>345</sup> Although some courts, in deciding whether an injunction is the appropriate form of relief, have considered whether a siting authority's delay resulted from bad faith or involved other abusive conduct,<sup>346</sup> we do not read the trend in court precedent overall to treat such considerations as more than relevant (as opposed to indispensable) to an injunction. We believe that this approach is sensible because guarding against barriers to the deployment of personal wireless facilities not only advances the goal of Section 332(c)(7)(B) but also policies set out elsewhere in the Communications Act and 1996 Act, as the Commission recently has recognized in the case of Small Wireless Facilities.<sup>347</sup> This is so whether or not these barriers stem from bad faith. Nor do we anticipate that there would be unresolved issues implicating the siting authority's expertise and therefore requiring remand in most instances.

122. In light of the more detailed interpretations that we adopt here regarding reasonable time frames for siting authority action on specific categories of requests—including guidance regarding circumstances in which longer time frames nonetheless can be reasonable—we expect that litigation generally will involve issues that can be resolved entirely by the relevant court. Thus, as the Commission has stated in the past, “in the case of a failure to act within the reasonable time frames set forth in our rules, and absent some compelling need for additional time to review the application, we believe that it would also be appropriate for the courts to treat such circumstances as significant factors weighing in favor of [injunctive] relief.”<sup>348</sup> We therefore caution those involved in potential future disputes in this area against placing too much weight on the Commission's recognition that a siting authority's failure to act within the associated timeline might not always result in a preliminary or permanent injunction under the Section 332(c)(7)(B) framework while placing too little weight on the Commission's recognition that policies established by federal communications laws are advanced by streamlining the process for deploying wireless facilities.

123. We anticipate that the traditional requirements for awarding preliminary or permanent injunctive relief would likely be satisfied in most cases and in most jurisdictions where a violation of 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii) is found. Typically, courts require movants to establish the following elements of preliminary or permanent injunctive relief: (1) actual success on the merits for permanent injunctive relief and likelihood of success on the merits for preliminary injunctive relief, (2) continuing irreparable injury, (3) the absence of an adequate remedy at law, (4) the injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party, and (5) award of injunctive relief would not be adverse to the public interest.<sup>349</sup> Actual success on the merits would be

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<sup>345</sup> See *Green Mountain Realty Corp.*, 750 F.3d at 41 (reasoning that remand to the siting authority “would not be in accordance with the text or spirit of the Telecommunications Act”); *Cellular Tel. Co.*, 166 F.3d at 497 (noting “that injunctive relief best serves the TCA's stated goal of expediting resolution” of cases brought under 47 U.S.C. § 332(c)(7)(B)(v)).

<sup>346</sup> See, e.g., *Nat'l Tower*, 297 F.3d at 23; *Up State Tower Co. v. Town of Kiantone*, 718 Fed. Appx. 29, 32 (2d Cir. 2017) (Summary Order).

<sup>347</sup> See, e.g., *Wireless Infrastructure Second R&O*, FCC 18-30 at para. 62; *Wireless Infrastructure NPRM/NOI*, 32 FCC Red at 3332, para. 5.

<sup>348</sup> *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12978, para. 284.

<sup>349</sup> *Pub. Serv. Tel. Co. v. Georgia Pub. Serv. Comm'n*, 755 F. Supp. 2d 1263, 1273 (N.D. Ga.), *aff'd*, 404 F. App'x 439 (11th Cir. 2010); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004); *Nat. Res. Def. Council v. Texaco Ref. & Mktg., Inc.*, 906 F.2d 934, 941 (3d Cir. 1990); *Randolph v. Rodgers*, 170 F.3d 850, 857 (8th Cir. 1999); *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007); *Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998); *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 914–15 (1st Cir. 1989).

demonstrated when an applicant prevails in its failure-to-act or effective prohibition case; likelihood of success would be demonstrated because, as discussed, missing the shot clocks, depending on the type of deployment, presumptively prohibits the provision of personal wireless services and/or violates Section 332(c)(7)(B)(ii)'s requirement to act within a reasonable period of time.<sup>350</sup> Continuing irreparable injury likely would be found because remand to the siting authority "would serve no useful purpose" and would further delay the applicant's ability to provide personal wireless service to the public in the area where deployment is proposed, as some courts have previously determined.<sup>351</sup> There also would be no adequate remedy at law because applicants "have a federal statutory right to participate in a local [personal wireless services] market free from municipally-imposed barriers to entry," and money damages cannot directly substitute for this right.<sup>352</sup> The public interest and the balance of harms also would likely favor the award of a preliminary or permanent injunction because the purpose of Section 332(c)(7) is to encourage the rapid deployment of personal wireless facilities while preserving, within bounds, the authority of states and localities to regulate the deployment of such facilities, and the public would benefit if further delays in the deployment of such facilities—which a remand would certainly cause—are prevented.<sup>353</sup> We also expect that the harm to the siting authority would be minimal because the only right of which it would be deprived by a preliminary or permanent injunction is the right to act on the siting application beyond a reasonable time period,<sup>354</sup> a right that "is not legally cognizable, because under [Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii)], the [siting authority] has no right to exercise this power."<sup>355</sup> Thus, in the context of Small Wireless Facilities, we expect that the most appropriate remedy in typical cases involving a violation of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii) is the award of injunctive relief in the form of an order to issue all necessary authorizations.<sup>356</sup>

124. Our approach advances Section 332(c)(7)(B)(v)'s provision that certain siting disputes, including those involving a siting authority's failure to act, shall be heard and decided by a court of competent jurisdiction on an expedited basis. The framework reflected in this Order will provide the courts with substantive guiding principles in adjudicating Section 332(c)(7)(B)(v) cases, but it will not dictate the result or the remedy appropriate for any particular case; the determination of those issues will remain within the courts' domain.<sup>357</sup> This accords with the Fifth Circuit's recognition in *City of Arlington*

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Note that the standards for permanent injunctive relief differ in some respects among the circuits and the states. For example, "most courts do not consider the public interest element in deciding whether to issue a permanent injunction, though the Third Circuit has held otherwise." *Klay*, 376 F.3d at 1097. Courts in the Second Circuit consider only irreparable harm and success on the merits. *Omnipoint Commc'ns, Inc. v. Vill. of Tarrytown Planning Bd.*, 302 F. Supp. 2d 205, 225 (S.D.N.Y. 2004). The Third and Fifth Circuits have precedents holding that irreparable harm is not an essential element of a permanent injunction. *See Roe v. Operation Rescue*, 919 F.2d 857, 873 n. 8 (3d Cir. 1990); *Lewis v. S. S. Baune*, 534 F.2d 1115, 1123–24 (5th Cir. 1976). For the sake of completeness, our analysis discusses all of the elements that have been used in decided cases.

<sup>350</sup> *See New Jersey Payphone*, 130 F. Supp. 2d at 640.

<sup>351</sup> *See Vill. of Tarrytown Planning Bd.*, 302 F. Supp. 2d at 225–26 (quoting *Nextel Partners, Inc. v. Town of Amherst, N.Y.*, 251 F. Supp. 2d 1187, 1201 (W.D.N.Y. 2003)); *see Upstate Cellular Network v. City of Auburn*, 257 F. Supp. 3d 309, 318 (N.D.N.Y. 2017).

<sup>352</sup> *New Jersey Payphone*, 130 F. Supp. 2d at 641.

<sup>353</sup> *City of Arlington*, 668 F.3d at 234.

<sup>354</sup> *Contra* 47 U.S.C. 332(c)(7)(B)(ii).

<sup>355</sup> *New Jersey Payphone*, 130 F. Supp. 2d at 641.

<sup>356</sup> *See Cellular Tel. Co.*, 166 F.3d at 496. While our discussion here focused on cases that apply the permanent injunction standard, we have the same view regarding relief under the preliminary injunction standard when a locality fails to act within the applicable shot clock periods. *See, e.g., Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (discussing the standard for preliminary injunctive relief).

<sup>357</sup> Several commenters support this position, urging the Commission to reaffirm that adversely affected applicants must seek redress from the courts. *See, e.g., League of Ar Cities and Towns et al. Comments* at 14-21; Philadelphia

that the Act could be read “as establishing a framework in which a wireless service provider must seek a remedy for a state or local government’s unreasonable delay in ruling on a wireless siting application in a court of competent jurisdiction while simultaneously allowing the FCC to issue an interpretation of § 332(c)(7)(B)(ii) that would guide courts’ determinations of disputes under that provision.”<sup>358</sup>

125. The guidance provided here should reduce the need for, and complexity of, case-by-case litigation and reduce the likelihood of vastly different timing across various jurisdictions for the same type of deployment.<sup>359</sup> This clarification, along with the other actions we take in this Third Report and Order, should streamline the courts’ decision-making process and reduce the possibility of inconsistent rulings. Consequently, we believe that our approach helps facilitate courts’ ability to “hear and decide such [lawsuits] on an expedited basis,” as the statute requires.<sup>360</sup>

126. Reducing the likelihood of litigation and expediting litigation where it cannot be avoided should significantly reduce the costs associated with wireless infrastructure deployment. For instance, WIA states that if one of its members were to challenge every shot clock violation it has encountered, it would be mired in lawsuits with forty-six localities.<sup>361</sup> And this issue is likely to be compounded given the expected densification of wireless networks. Estimates indicate that deployments of small cells could reach up to 150,000 in 2018 and nearly 800,000 by 2026.<sup>362</sup> If, for example, 30 percent (based on T-Mobile’s experience<sup>363</sup>) of these expected deployments are not acted upon within the applicable shot clock

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Comments at 2; Philadelphia Reply at 4-6; City of San Antonio *et al.* Comments, Exh. B at 14-15; San Francisco Comments at 16-17; Colorado Munis Comments at 7; CWA Reply at 5; Fairfax County Comments at 12-15; AASHTO Comments at 20-21, 23 (ID Dept. of Trans. Comments); NATOA Comments, Attach. 3 at 53-55; NLC Comments at 3-4; Smart Communities Comments at 39-43. Our interpretation thus preserves a meaningful role for courts under Section 332(c)(7)(B)(v), contrary to the concern some commenters expressed with particular focus on alternative proposals we do not adopt, such as a deemed granted remedy. *See, e.g.,* Colorado Comm. and Utility All. *et al.* Comments at 6-7; League of Az Cities and Towns *et al.* Comments at 14-23; Philadelphia Comments at 2; Baltimore Reply at 11; City of San Antonio *et al.* Reply at 2; San Francisco Reply at 6; League of Az Cities and Towns *et al.* Reply at 2-3. In addition, our interpretation of Section 332(c)(7)(B)(ii) does not result in a regime in which the Commission could be seen as implicitly issuing local land use permits, a concern that states and localities raised regarding an absolute deemed granted remedy, because applicants are still required to petition a court for relief, which may include an injunction directing siting authorities to grant the application. *See* Alexandria Comments at 2; Baltimore Reply at 10; Philadelphia Reply at 8; Smart Cities Coal Comments at ii, 4, 39.

<sup>358</sup> *City of Arlington*, 668 F.3d at 250.

<sup>359</sup> The likelihood of non-uniform or inconsistent rulings on what time frames are reasonable or what circumstances could rebut the presumptive reasonableness of the shot clock periods stems from the intrinsic ambiguity of the phrase “reasonable period of time,” which makes it susceptible of varying constructions. *See City of Arlington*, 668 F.3d at 255 (noting “that the phrase ‘a reasonable period of time,’ as it is used in § 332(c)(7)(B)(ii), is inherently ambiguous”); *Capital Network System, Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994) (“Because ‘just,’ ‘unjust,’ ‘reasonable,’ and ‘unreasonable’ are ambiguous statutory terms, this court owes substantial deference to the interpretation the Commission accords them.”). *See also* Lighttower Comments at 3 (“The lack of consistent guidance regarding statutory interpretation is creating uncertainty at the state and local level, with many local jurisdictions seeming to simply make it up as they go. Differences in the federal courts are only exacerbating the patchwork of interpretations at the state and local level.”).

<sup>360</sup> 47 U.S.C. § 332(c)(7)(B)(v).

<sup>361</sup> WIA Comments at 16.

<sup>362</sup> *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd 13360, 13363-64 (2016) (citing S&P Global Market Intelligence, John Fletcher, Small Cell and Tower Projections through 2026, SNL Kagan Wireless Investor (Sept. 27, 2016)).

<sup>363</sup> T-Mobile Comments at 8.



period, that would translate to 45,000 violations in 2018 and 240,000 violations in 2026.<sup>364</sup> These sheer numbers would render it practically impossible to commence Section 332(c)(7)(B)(v) cases for all violations, and litigation costs for such cases likely would be prohibitive and could virtually bar providers from deploying wireless facilities.<sup>365</sup>

127. Our updated interpretation of Section 332(c)(7) for Small Wireless Facilities effectively balances the interest of wireless service providers to have siting applications granted in a timely and streamlined manner<sup>366</sup> and the interest of localities to protect public safety and welfare and preserve their authority over the permitting process.<sup>367</sup> Our specialized deployment categories, in conjunction with the acknowledgement that in rare instances, it may legitimately take longer to act, recognize that the siting process is complex and handled in many different ways under various states' and localities' long-established codes. Further, our approach tempers localities' concerns about the inflexibility of the *Wireless Infrastructure NPRM/NOI*'s deemed granted proposal because the new remedy we adopt here accounts for the breadth of potentially unforeseen circumstances that individual localities may face and the possibility that additional review time may be needed in truly exceptional circumstances.<sup>368</sup> We further find that our interpretive framework will not be unduly burdensome on localities because a number of states have already adopted even more stringent deemed granted remedies.<sup>369</sup>

128. At the same time, there may be merit in the argument made by some commenters that the FCC has the authority to adopt a deemed granted remedy.<sup>370</sup> Nonetheless, we do not find it necessary to decide that issue today, as we are confident that the rules and interpretations adopted here will provide substantial relief, effectively avert unnecessary litigation, allow for expeditious resolution of siting applications, and strike the appropriate balance between relevant policy considerations and statutory

<sup>364</sup> These numbers would escalate under WIA's estimate that 70 percent of small cell deployment applications exceed the applicable shot clock. WIA Comments at 7.

<sup>365</sup> See CTIA Comments at 9 (explaining that, "[p]articularly for small cells, the expense of litigation can rarely be justified"); WIA Comments at 16 (quoting and discussing Lighttower's Comments in 2016 Streamlining Public Notice); T-Mobile Comment, Attach. A at 8.

<sup>366</sup> See, e.g., AT&T Comments at 26; CCA Comments at 7, 9, 11-12; CCA Reply at 5-6, 8; Cityscape Consultants Comments at 1; CompTIA Comments at 3; CIC Comments at 17-18; Crown Castle Comments at 23-28; Crown Castle Reply at 3; CTIA Comments at 7-9, Attach. 1 at 5, 39-43, Attach. 2 at 3, 23-24; GCI Comments at 5-9; Lighttower Comments at 7, 18-19; Samsung Comments at 6; T-Mobile Comments at 13, 16, Attach. A at 25; WIA Comments at 15-17.

<sup>367</sup> See, e.g., Arizona Munis Comments at 23; Arizona Munis Reply at 8-9; Baltimore Reply at 10; Lansing Comments at 2; Philadelphia Reply at 9-12; Torrance Comments at 1-2; CPUC Comments at 14; CWA Reply at 5; Minnesota Munis Comments at 9; *but see* CTIA Reply at 9.

<sup>368</sup> See, e.g., Chicago Comments at 2 (contending that wireless facilities siting entails fact-specific scenarios); AASHTO Comments, Attach. at 40 (MD Dept. of Trans. SHA Comments) (describing the complexity of reviewing proposed deployments on rights-of-way); AASHTO Comments, Attach. at 51 (Wyoming DOT Comments); Baltimore Reply at 11; Philadelphia Comments at 4; Alexandria Comments at 6; Mukilteo Comments at 1; Alaska Dept. of Trans. Comments at 2; Alaska SHPO Reply at 1.

<sup>369</sup> See Fla. Stat. Ann. § 365.172(13)(d)(3.b); Ariz. Rev. Stat. Ann. § 9-594(C) (3); 53 Pa. Stat. Ann. § 11702.4; Cal. Gov't Code § 65964.1; Va. Code Ann. § 15.2-2232; Va. Code Ann. § 15.2-2316.4; Va. Code Ann. § 56-484.29; Va. Code Ann. § 56-484.28; Ky. Rev. Stat. Ann. § 100.987; N.H. Rev. Stat. Ann. § 12-K:10; Wis. Stat. Ann. § 66.0404; Kan. Stat. Ann. § 66-2019(h)(3); Del. Code Ann. tit. 17, § 1609; Iowa Code Ann. § 8C.7A(3)(c)(2); Iowa Code Ann. § 8C.4(4)(5); Iowa Code Ann. § 8C.5; Mich. Comp. Laws Ann. § 125.3514. See also CCA Reply at 9.

<sup>370</sup> See, e.g., CTIA Comments at 10-11; T-Mobile Comments at 15-18, Verizon Comments at 37, 39-41, WIA Comments at 17-20.

objectives<sup>371</sup> guiding our analysis.<sup>372</sup>

129. We expect that our decision here will result in localities addressing applications within the applicable shot clocks in a far greater number of cases. Moreover, we expect that the limited instances in which a locality does not issue a decision within that time period will result in an increase in cases where the locality then issues all needed permits. In what we expect would then be only a few cases where litigation commences, our decision makes clear the burden that localities would need to clear in those circumstances.<sup>373</sup> Our updated interpretation of Section 332 for Small Wireless Facilities will help courts to decide failure-to-act cases expeditiously and avoid delays in reaching final dispositions.<sup>374</sup> Placing this burden on the siting authority should address the concerns raised by supporters of a deemed granted remedy—that filing suit in court to resolve a siting dispute is burdensome and expensive on applicants, the judicial system, and citizens—because our interpretations should expedite the courts’

<sup>371</sup> *City of Arlington*, 668 F.3d at 234 (noting that the purpose of Section 332(c)(7) is to balance the competing interests to preserve the traditional role of state and local governments in land use and zoning regulation and the rapid development of new telecommunications technologies).

<sup>372</sup> See *supra* paras. 119-20 (explaining how the remedy strikes the proper balance between competing interests). Because our approach to shot clocks involves our interpretation of Section 332(c)(7)(B)(ii) and the consequences that flow from that—and does not rely on Section 253 of the Act—we need not, and thus do not, resolve disputes about the potential use of Section 253 in this specific context, such as whether it could serve as authority for a deemed granted or similar remedy. See, e.g., San Francisco Comments at 9-10; CPUC Comments at 10; Smart Communities Comments at 4-11, 21; Smart Communities Reply at 78-79; League of Az Cities and Towns *et al.* Reply at 4; Alexandria Comments at 5; Irvine Comments at 5; Minnesota Cities Comments at 11-13; Philadelphia Reply at 2, 7; Fairfax County Comments at 17; Greenlining Reply at 4; NRUC Reply at 3-5; NATOA June 21, 2018 *Ex Parte* Letter. To the extent that commenters raise arguments regarding the proper interpretation of “prohibit or have the effect of prohibiting” under Section 253 or the scope of Section 253, these issues are discussed in the Declaratory Ruling, see *supra* paras. 34-42.

<sup>373</sup> See App Association Comments at 9; CCI Comments at 6-8; Conterra Comments at 14-17; ExteNet Comments at 13; T-Mobile Comments at 17; Quintillion Reply at 6; Verizon Comments at 8-18; WIA Comments at 9-10. WIA contends that adoption of a deemed granted remedy is needed because various courts faced with shot clock claims have failed to provide meaningful remedies, citing as an example a case in which the court held that the town failed to act within the shot clock period but then declined to issue an injunction directing the siting agency to grant the application. WIA Comments at 16-17. However, a number of cases involving violations of the “reasonable period of time” requirement of Section 332(c)(7)(B)(ii)—decided either before or after the promulgation of the Commission’s Section 332(c)(7)(B)(ii) shot clocks—have concluded with an award of injunctive relief. See, e.g., *Upstate Cellular Network*, 257 F. Supp. 3d at 318 (concluding that the siting authority’s failure to act within the 150-day shot clock was unreasonable and awarding a permanent injunction in favor of the applicant); *Am. Towers, Inc. v. Wilson County*, No. 3:10-CV-1196, 2014 WL 28953, at \*13-14 (M.D. Tenn. Jan. 2, 2014) (finding that the county failed to act within a reasonable period of time, as required under Section 332(c)(7)(B)(ii), and granting an injunction directing the county to approve the applications and issue all necessary authorizations for the applicant to build and operate the proposed tower); *Cincinnati Bell Wireless, LLC v. Brown County*, Ohio, No. 1:04-CV-733, 2005 WL 1629824, at \*4-5 (S.D. Ohio July 6, 2005) (finding that the county failed to act within a reasonable period of time under Section 332(c)(7)(B)(ii) and awarding injunctive relief). But see *Up State Tower Co. v. Town of Kiantone*, 718 Fed. Appx. 29 (2d Cir. 2017) (declining to reverse district court’s refusal to issue injunction compelling immediate grant of application). Courts have also held “that injunctive relief best serves the TCA’s stated goal of expediting resolution of” cases brought under Section 332(c)(7)(B)(v). *Cellular Tel. Co.*, 166 F.3d at 497; *Brehmer v. Planning Bd. of Town of Wellfleet*, 238 F.3d 117, 121 (1st Cir. 2001). Under these circumstances, we do not agree with WIA that courts have failed to provide meaningful remedies to such an extent as would require the adoption of a deemed granted remedy.

<sup>374</sup> *Zoning Bd. of Adjustment of the Borough of Paramus, N.J.*, 21 F. Supp. 3d at 383, 387 (more than four-and-a-half years for Sprint to prevail in court), *aff’d*, 606 F. App’x 669 (3d Cir. 2015); *Vill. of Corrales*, 127 F. Supp. 3d 1169 (nineteen months from complaint to grant of summary judgment); *Orange County–Poughkeepsie Ltd. P’ship v. Town of E. Fishkill*, 84 F. Supp. 3d 274, 293 (S.D.N.Y.), *aff’d sub nom.*, *Orange County–County Poughkeepsie Ltd. P’ship v. Town of E. Fishkill*, 632 F. App’x 1 (2d Cir. 2015) (seventeen months from complaint to grant of summary judgment).

decision-making process.

130. We find that the more specific deployment categories and shot clocks, which presumptively represent the reasonable period within which to act, will prevent the outcome proponents of a deemed granted remedy seek to avoid: that siting agencies would be forced to reject applications because they would be unable to review the applications within the prescribed shot clock period.<sup>375</sup> Because the more specific deployment categories and shot clocks inherently account for the nature and scope of a variety of deployment applications, our new approach should ensure that siting agencies have adequate time to process and decide applications and will minimize the risk that localities will fail to act within the established shot clock periods. Further, in cases where a siting authority misses the deadline, the opportunity to demonstrate exceptional circumstances provides an effective and flexible way for siting agencies to justify their inaction if genuinely warranted. Our overall framework, therefore, should prevent situations in which a siting authority would feel compelled to summarily deny an application instead of evaluating its merits within the applicable shot clock period.<sup>376</sup> We also note that if the approach we take in this Order proves insufficient in addressing the issues it is intended to resolve, we may again consider adopting a deemed granted remedy in the future.

131. Some commenters also recommend that the Commission issue a list of “Best Practices” or “Recommended Practices.”<sup>377</sup> The joint comments filed by NATOA and other government associations suggest the “development of an informal dispute resolution process to remove parties from an adversarial relationship to a partnership process designed to bring about the best result for all involved” and the development of “a mediation program which could help facilitate negotiations for deployments for parties who seem to have reached a point of intractability.”<sup>378</sup> Although we do not at this time adopt these proposals, we note that the steps taken in this order are intended to facilitate cooperation between parties to reach mutually agreed upon solutions. For example, as explained below, mutual agreement between the parties will toll the running of the shot clock period, thereby allowing parties to resolve disagreements in a collaborative, instead of an adversarial, setting.<sup>379</sup>

### **C. Clarification of Issues Related to All Section 332 Shot Clocks**

#### **1. Authorizations Subject to the “Reasonable Period of Time” Provision of Section 332(c)(7)(B)(ii)**

132. As indicated above, Section 332(c)(7)(B)(ii) requires state and local governments to act “within a reasonable period of time” on “any request for authorization to place, construct, or modify personal wireless service facilities.”<sup>380</sup> Neither the *2009 Declaratory Ruling* nor the *2014 Wireless Infrastructure Order* addressed the specific types of authorizations subject to this requirement. Industry commenters contend that the shot clocks should apply to all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment.<sup>381</sup> Local siting authorities, on the other hand, argue that a broad application of Section 332 will harm public safety and welfare by not

<sup>375</sup> Baltimore Reply at 12; Mukilteo Comments at 1; Cities of San Antonio *et al.* Reply at 10; Washington Munis Comments, Attach. 1 at 8-9; *but see* CTIA Reply at 9.

<sup>376</sup> We also note that a summary denial of a deployment application is not permitted under Section 332(c)(7)(B)(iii), which requires the siting authority to base denials on “substantial evidence contained in a written record.”

<sup>377</sup> KS Rep. Sloan Comments at 2; Nokia Comments at 10.

<sup>378</sup> NATOA *et al.* Comments at 16-17.

<sup>379</sup> *See infra* paras. 145-46.

<sup>380</sup> *See* 47 U.S.C. § 332(c)(7)(B)(ii).

<sup>381</sup> *See, e.g.,* CTIA Comments at 15; CTIA Reply at 10; Mobilitie Comments at 6-7; WIA Comments at 24; WIA Reply at 13; T-Mobile Comments at 21-22; CCA Reply at 9; Sprint June 18 *Ex Parte* at 3.

giving them enough time to evaluate whether a proposed deployment endangers the public.<sup>382</sup> They assert that building and encroachment permits should not be subsumed within the shot clocks because these permits incorporate essential health and safety reviews.<sup>383</sup> After carefully considering these arguments, we find that “any request for authorization to place, construct, or modify personal wireless service facilities” under Section 332(c)(7)(B)(ii) means all authorizations necessary for the deployment of personal wireless services infrastructure. This interpretation finds support in the record and is consistent with the courts’ interpretation of this provision and the text and purpose of the Act.

133. The starting point for statutory interpretation is the text of the statute,<sup>384</sup> and here, the statute is written broadly, applying to “any” request for authorization to place, construct, or modify personal wireless service facilities. The expansive modifier “any” typically has been interpreted to mean “one or some indiscriminately of whatever kind,” unless Congress “add[ed] any language limiting the breadth of that word.”<sup>385</sup> The title of Section 332(c)(7) (“Preservation of local zoning authority”) does not restrict the applicability of this section to zoning permits in light of the clear text of Section 332(c)(7)(B)(ii).<sup>386</sup> The text encompasses not only requests for authorization to *place* personal wireless service facilities, e.g., zoning requests, but also requests for authorization to *construct* or *modify* personal wireless service facilities. These activities typically require more than just zoning permits. For example, in many instances, localities require building permits, road closure permits, and the like to make construction or modification possible.<sup>387</sup> Accordingly, the fact that the title standing alone could be read

<sup>382</sup> League of Az Cities and Towns *et al.* Reply at 21-22. *See also* Arlington County, Sept. 18 *Ex Parte* Letter at 1-2 (asserting that it is infeasible to have the shot clock encompass all steps related the small cell siting process because there is no single application to get ROW access, public notice, lease negotiations, road closures, etc.; because these are separate processes involving different departments; and because the timeline in some instances will depend on the applicant, or the required information may interrelate in a manner that makes doing them all at once infeasible); Letter from Robert McBain, Mayor, Piedmont, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 *et al.*, at 3 (filed Sept. 18, 2018).

<sup>383</sup> League of Az Cities and Towns *et al.* Reply at 21-22.

<sup>384</sup> *Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 11233 (1996); *2002 Biennial Regulatory Review*, Report, 18 FCC Rcd 4726, 4731–32 (2003); *Perrin v. United States*, 444 U.S. 37, 42 (1979) (“A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”); *Communications Assistance for Law Enf’t Act & Broadband Access & Servs.*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 14989, 14992–93, para. 9 (2005) (interpreting an ambiguous statute by considering the “structure and history of the relevant provisions, including Congress’s stated purposes” in order to “faithfully implement[] Congress’s intent”); *Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 116 (2d Cir. 2007) (using legislative history “to identify Congress’s clear intent”); *Arnold v. United Parcel Serv., Inc.*, 136 F.3d 854, 858 (1st Cir. 1998) (same).

<sup>385</sup> *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster’s Third New International Dictionary 97 (1976)); *HUD v. Rucker*, 535 U.S. 125, 131 (2002).

<sup>386</sup> *See Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528–29 (1947) (“[H]eadings and titles are not meant to take the place of the detailed provisions of the text.”). Our conclusion is also consistent with our interpretation that Sections 253 and 332(c)(7) apply to fees for all applications related to a Small Wireless Facility. *See supra* para. 50.

<sup>387</sup> *See, e.g.*, Virginia Joint Commenters Comments at 21-22 (stating that deployment of personal wireless facilities generally requires excavation and building permits); San Francisco Comments at 4-7, 12, 20-22 (describing the permitting process in San Francisco, the layers of multi-departmental review involved, and the required authorizations before certain personal wireless facilities can be constructed); Smart Cities Coal. Comments at 33-34 (describing several authorizations necessary to deploy personal wireless facilities depending on the location, e.g., public rights-of-way and other public properties, of the proposed site and the size of the proposed facility).

to limit Section 332(c)(7) to zoning decisions does not overcome the specific language of Section 332(c)(7)(B)(ii), which explicitly applies to a variety of authorizations.<sup>388</sup>

134. The purpose of the statute also supports a broad interpretation. As noted above, the Supreme Court has stated that the 1996 Act was enacted “to promote competition and higher quality in American telecommunications services and to encourage the rapid deployment of new telecommunications technologies” by, *inter alia*, reducing “the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers.”<sup>389</sup> A narrow reading of the scope of Section 332 would frustrate that purpose by allowing local governments to erect impediments to the deployment of personal wireless services facilities by using or creating other forms of authorizations outside of the scope of Section 332(c)(7)(B)(ii).<sup>390</sup> This is especially true in jurisdictions requiring multi-departmental siting review or multiple authorizations.<sup>391</sup>

135. In addition, our interpretation remains faithful to the purpose of Section 332(c)(7) to balance Congress’s competing desires to preserve the traditional role of state and local governments in regulating land use and zoning, while encouraging the rapid development of new telecommunications technologies.<sup>392</sup> Under our interpretation, states and localities retain their authority over personal wireless facilities deployment. At the same time, deployment will be kept on track by ensuring that the entire approval process necessary for deployment is completed within a reasonable period of time, as defined by the shot clocks addressed in this Third Report and Order.

136. A number of courts have either explicitly or implicitly adopted the same view, that all necessary permits are subject to Section 332. For example, in *Cox Communications PCS, L.P. v. San Marcos*, the court considered an excavation permit application as falling within the parameters of Section 332.<sup>393</sup> In *USCOC of Greater Missouri, LLC v. County of Franklin*, the Eighth Circuit reasoned that “[t]he issuance of the requisite building permits” for the construction of a personal wireless services facility arises under Section 332(c)(7).<sup>394</sup> In *Ogden Fire Co. No. 1 v. Upper Chichester Township*, the Third Circuit affirmed the district court’s order compelling the township to issue a building permit for the

<sup>388</sup> See *Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528-29 (1947). If the title of Section 332(c)(7) were to control the interpretation of the text, it would render superfluous the provision of Section 332(c)(7)(B)(ii) that applies to “authorization to . . . construct, or modify personal wireless service facilities” and give effect only to the provision that applies to “authorization to place . . . personal wireless service facilities.” This result would “flout[] the rule that ‘a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous.’” *Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)).

<sup>389</sup> *City of Rancho Palos Verdes v. Abrams*, 544 U.S. at 115 (internal quotation marks and citations omitted).

<sup>390</sup> For example, if we were to interpret Section 332(c)(7)(B)(ii) to cover only zoning permits, states and localities could delay their consideration of other permits (e.g., building, electrical, road closure or other permits) to thwart the proposed deployment.

<sup>391</sup> See, e.g., Virginia Joint Commenters Comments at 21-22; San Francisco Comments at 4-7, 12, 20-22; Smart Communities Comments at 33-34; CTIA Comments at 15 (stating that some jurisdictions “impose multiple, sequential stages of review”); WIA Comments at 24 (noting that “[m]any jurisdictions grant the application within the shot clock period only to stall on issuing the building permit”); Verizon Comments at 6 (stating that “[a] large Southwestern city requires applicants to obtain separate and sequential approvals from three different governmental bodies before it will consider issuing a temporary license agreement to access city rights-of-way”); Sprint June 18 *Ex Parte* at 3 (noting that “after a land-use permit or attachment permit is received, many localities still require electric permits, road closure permits, aesthetic approval, and other types of reviews that can extend the time required for final permission well beyond just the initial approval.”).

<sup>392</sup> *City of Arlington*, 668 F.3d at 234.

<sup>393</sup> *Cox Commc’ns PCS, L.P. v. San Marcos*, 204 F. Supp. 2d 1272 (S.D. Cal. 2002).

<sup>394</sup> *USCOC of Greater Mo., LLC v. County of Franklin*, 636 F.3d 927, 931-32 (8th Cir. 2011).

construction of a wireless facility after finding that the township had violated Section 332(c)(7).<sup>395</sup> In *Upstate Cellular Network v. Auburn*, the court directed the city to approve the application, including site plan approval by the planning board, granting a variance by the zoning authority, and “any other municipal approval or permission required by the City of Auburn and its boards or officers, including but not limited to, a building permit.”<sup>396</sup> And in *PI Telecom Infrastructure V, LLC v. Georgetown–Scott County Planning Commission*, the court ordered that the locality grant “any and all permits necessary for the construction of the proposed wireless facility.”<sup>397</sup> Our interpretation is also consistent with judicial precedents involving challenges under Section 332(c)(7)(B) to denials by a wide variety of governmental entities, many of which involved variances,<sup>398</sup> special use/conditional use permits,<sup>399</sup> land disturbing activity and excavation permits,<sup>400</sup> building permits,<sup>401</sup> and a state department of education permit to install an antenna at a high school.<sup>402</sup> Notably, a lot of cases have involved local agencies that are separate and distinct from the local zoning authority,<sup>403</sup> confirming that Section 332(c)(7)(B) is not limited in application to decisions of zoning authorities. Our interpretation also reflects the examples in the record where providers are required to obtain other types of authorizations besides zoning permits before they can “place, construct, or modify personal wireless service facilities.”<sup>404</sup>

137. We reject the argument that this interpretation of Section 332 will harm the public because it would “mean that building and safety officials would have potentially only a few days to

<sup>395</sup> *Ogden Fire Co. No. 1 v. Upper Chichester TP.*, 504 F.3d 370, 395-96 (3d Cir. 2007).

<sup>396</sup> *Upstate Cellular Network*, 257 F. Supp. 3d at 319.

<sup>397</sup> *PI Telecom Infrastructure V, LLC v. Georgetown–Scott County Planning Commission*, 234 F. Supp. 3d 856, 872 (E.D. Ky. 2017). *Accord T-Mobile Ne. LLC v. Lowell*, Civil Action No. 11–11551–NMG, 2012 WL 6681890, \*6-7, \*11 (D. Mass. Nov. 27, 2012) (directing the zoning board “to issue all permits and approvals necessary for the construction of the plaintiffs’ proposed telecommunications facility”); *New Par v. Franklin County Bd. of Zoning Appeals*, No. 2:09–cv–1048, 2010 WL 3603645, \*4 (S.D. Ohio Sept. 10, 2010) (enjoining the zoning board to “grant the application and issue all permits required for the construction of the” proposed wireless facility).

<sup>398</sup> See, e.g., *New Par v. City of Saginaw*, 161 F. Supp. 2d 759, 760 (E.D. Mich. 2001), *aff’d*, 301 F.3d 390 (6th Cir. 2002).

<sup>399</sup> See, e.g., *Virginia Metronet, Inc. v. Bd. of Sup’rs of James City County*, 984 F. Supp. 966, 968 (E.D. Va. 1998); *Cellular Tel. Co.*, 166 F.3d at 491; *T-Mobile Cent., LLC v. Unified Gov’t of Wyandotte County*, 546 F.3d 1299, 1303 (10th Cir. 2008); *City of Anacortes*, 572 F.3d at 989; *Helcher*, 595 F.3d at 713-14; *AT&T Wireless Servs. of California LLC v. City of Carlsbad*, 308 F. Supp. 2d 1148, 1152 (S.D. Cal. 2003); *PrimeCo Pers. Commc’ns L.P. v. City of Mequon*, 242 F. Supp. 2d 567, 570 (E.D. Wis.), *aff’d*, 352 F.3d 1147 (7th Cir. 2003); *Preferred Sites, LLC v. Troup County*, 296 F.3d 1210, 1212 (11th Cir. 2002).

<sup>400</sup> See, e.g., *Tennessee ex rel. Wireless Income Properties, LLC v. City of Chattanooga*, 403 F.3d 392, 394 (6th Cir. 2005); *Cox Commc’ns PCS, L.P. v. San Marcos*, 204 F. Supp. 2d 1272 (S.D. Cal. 2002).

<sup>401</sup> See, e.g., *Upstate Cellular Network*, 257 F. Supp. 3d at 319; *Ogden Fire Co. No. 1 v. Upper Chichester Twp.*, 504 F.3d 370, 395-96 (3rd Cir. 2007).

<sup>402</sup> *Sprint Spectrum, L.P. v. Mills*, 65 F. Supp. 2d 148, 150 (S.D.N.Y. 1999), *aff’d*, 283 F.3d 404 (2d Cir. 2002).

<sup>403</sup> See, e.g., *Tennessee ex rel. Wireless Income Props., LLC v. City of Chattanooga*, 403 F.3d 392, 394 (6th Cir. 2005) (city public works department); *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 720 (9th Cir. 2009) (city public works director, city planning commission, and city council); *Sprint Spectrum, L.P. v. Mills*, 65 F. Supp. 2d at 150 (New York State Department of Education).

<sup>404</sup> See, e.g., Virginia Joint Commenters Comments at 21-22 (stating that deployment of personal wireless facilities generally requires excavation and building permits); San Francisco Comments at 4-7, 12, 20-22 (describing the permitting process in San Francisco, the layers of multi-departmental review involved, and the required authorizations before certain personal wireless facilities can be constructed); Smart Communities Comments at 33-34 (describing several authorizations necessary to deploy personal wireless facilities depending on the location, e.g., public rights-of-way and other public properties, of the proposed site and the size of the proposed facility).

evaluate whether a proposed deployment endangers the public.”<sup>405</sup> Building and safety officials will be subject to the same applicable shot clock as all other siting authorities involved in processing the siting application, with the amount of time allowed varying in the rare case where officials are unable to meet the shot clock because of exceptional circumstances.

## 2. Codification of Section 332 Shot Clocks

138. In addition to establishing two new Section 332 shot clocks for Small Wireless Facilities, we take this opportunity to codify our two existing Section 332 shot clocks for siting applications that do not involve Small Wireless Facilities. In the *2009 Declaratory Ruling*, the Commission found that 90 days is a reasonable time frame for processing collocation applications and 150 days is a reasonable time frame to process applications other than collocations.<sup>406</sup> Since these Section 332 shot clocks were adopted as part of a declaratory ruling, they were not codified in our rules. In the *Wireless Infrastructure NPRM/NOI*, the Commission sought comment on whether to modify these shot clocks.<sup>407</sup> We find no need to modify them here and will continue to use these shot clocks for processing Section 332 siting applications that do not involve Small Wireless Facilities.<sup>408</sup> We do, though, codify these two existing shot clocks in our rules alongside the two newly-adopted shot clocks so that all interested parties can readily find the shot clock requirements in one place.<sup>409</sup>

139. While some commenters argue for a 60-day shot clock for all collocation categories,<sup>410</sup> we conclude that we should retain the existing 90-day shot clock for collocations not involving Small Wireless Facilities. Collocations that do not involve Small Wireless Facilities include deployments of

<sup>405</sup> League of Az Cities and Towns *et al.* Reply at 21-22.

<sup>406</sup> *2009 Declaratory Ruling*, 24 FCC Rcd at 14012-013, paras. 45, 48.

<sup>407</sup> *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3332-33, 3334, 3337-38, paras. 6, 9, 17-19.

<sup>408</sup> Chicago Comments at 2 (supporting maintaining existing shot clocks); Bellevue *et al.* Comments at 13-14 (supporting maintaining existing shot clocks).

<sup>409</sup> We also adopt a non-substantive modification to our existing rules. We redesignate the rule adopted in 2014 to codify the Commission’s implementation of the 2012 Spectrum Act, formerly designated as section 1.40001, as section 1.6100, and we move the text of that rule from Part 1, Subpart CC, to the same Subpart as the new rules promulgated in this Third Report and Order (Part 1, Subpart U). This recognizes that both sets of requirements pertain to “State and local government regulation of the placement, construction, and modification of personal wireless service facilities” (the caption of new Subpart U). The reference in paragraph (a) of that preexisting rule to 47 U.S.C. § 1455 has been consolidated with new rule section 1.6001 to reflect that all rules in Subpart U, collectively, implement both § 332(c)(7) and § 1455. With those non-substantive exceptions, the text of the 2014 rule has not been changed in any way. Contrary to the suggestion submitted by the Washington Joint Counties, *see* Letter from W. Scott Snyder *et al.*, Counsel for the Washington Cities of Bremerton, Mountlake Terrace, Kirkland, Redmond, Issaquah, Lake Stevens, Richland, and Mukilteo, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 *et al.*, at 6-7 (filed June 19, 2018), this change is not substantive and does not require advance notice. We find that “we have good cause to reorganize and renumber our rules in this fashion without expressly seeking comment on this change, and we conclude that public comment is unnecessary because no substantive changes are being made. Moreover, the delay engendered by a round of comment would be contrary to the public interest.” *See 2017 Pole Replacement Order*, 32 FCC Rcd at 9770, para. 26; *see also* 5 U.S.C. § 553(b)(B) (notice not required “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

<sup>410</sup> CCIA Comments at 10; CCA Comments at 13-14; CCA Reply at 6 (arguing for 30-day shot clock for collocations and a 60-to-75-day shot clock for all other siting applications); WIA Reply at 21. *See also* Letter from Jill Canfield, NTCA Vice President Legal & Industry and Assistant General Counsel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 19, 2018) (stating that NTCA supports a revised interpretation of the phrase “reasonable period of time” as found in Section 332(c) (7)(B)(ii) of the Communications Act as applicable to small cell facilities and that sixty days for collocations and 90 days for all other small cell siting applications should provide local officials sufficient time for review of requests to install small cell facilities in public rights-of-way).

larger antennas and other equipment that may require additional time for localities to review and process.<sup>411</sup> For similar reasons, we maintain the existing 150-day shot clock for new construction applications that are not for Small Wireless Facilities. While some industry commenters such as WIA, Samsung, and Crown Castle argue for a 90-day shot clock for macro cells and small cells alike, we agree with commenters such as the City of New Orleans that there is a significant difference between the review of applications for a single 175-foot tower versus the review of a Small Wireless Facility with much smaller dimensions.<sup>412</sup>

### 3. Collocations on Structures Not Previously Zoned for Wireless Use

140. Wireless industry commenters assert that they should be able to take advantage of the Section 332 collocation shot clock even when collocating on structures that have not previously been approved for wireless use.<sup>413</sup> Siting agencies respond that the wireless industry is effectively seeking to have both the collocation definition and a reduced shot clock apply to sites that have never been approved by the local government as suitable for wireless facility deployment.<sup>414</sup> We take this opportunity to clarify that for purposes of the Section 332 shot clocks, attachment of facilities to existing structures constitutes collocation, regardless whether the structure or the location has previously been zoned for wireless facilities. As the Commission stated in the *2009 Declaratory Ruling*, “an application is a request for collocation if it does not involve a ‘substantial increase in the size of a tower’ as defined in the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas.”<sup>415</sup> The definition of “[c]ollocation” in the NPA provides for the “mounting or installation of an antenna on an existing tower, *building or structure* for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, *whether or not there is an existing antenna on the structure.*”<sup>416</sup> The NPA’s definition of collocation explicitly encompasses collocations on structures and buildings that have not yet been zoned for wireless use. To interpret the NPA any other way would be unduly narrow and there is no persuasive reason to accept a narrower interpretation. This is particularly true given that the NPA definition of collocation stands in direct contrast with the definition of collocation in the

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<sup>411</sup> *Wireless Infrastructure Second R&O*, FCC 18-30 at paras. 74-76.

<sup>412</sup> New Orleans Comments at 2-3; Samsung Comments at 4-5 (arguing that the Commission should reduce the shot clock applicable to new construction from 150 days to 90 days); Crown Castle Comments at 29 (stating that a 90-day shot clock for new facilities is appropriate for macro cells and small cells alike, to the extent such applications require review under Section 332 at all); TX Hist. Comm. Comments at 2 (arguing that the reasonable periods of time that the FCC proposed in 2009, 90 days for collocation applications and 150 days for other applications appear to be appropriate); WIA Comments at 20-23; WIA Reply at 11 (arguing for a 90-day shot clock for applications involving substantial modifications, including tower extensions; and a 120-day shot clock for applications for all other facilities, including new macro sites); CTIA Reply at 3 (stating that the Commission should shorten the shot clocks to 90 days for new facilities).

<sup>413</sup> AT&T Comments at 10; AT&T Reply at 9; Verizon Reply at 32; WIA Comments at 22; ExteNet Comments at 9.

<sup>414</sup> Bellevue *et al.* Reply at 6-7 (arguing that the Commission has rejected this argument twice and instead determined that a collocation occurs when a wireless facility is attached to an existing infrastructure that houses wireless communications facilities; San Francisco Reply at 7-8 (arguing that under Commission definitions, a utility pole is neither an existing base station nor a tower; thus, the Commission simply cannot find that adding wireless facilities to utility pole that has not previously been used for wireless facilities is an eligible facilities request). *See, e.g.*, Letter from Bonnie Michael, City Council President, Worthington, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 *et al.*, at 2 (filed Sept. 18, 2018); Letter from Jill Boudreau, Mayor, Mount Vernon, WA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 *et al.*, at 2 (filed Sept. 18, 2018).

<sup>415</sup> *2009 Declaratory Ruling*, 24 FCC Rcd at 14012, para 46.

<sup>416</sup> 47 CFR Part 1, App. B, NPA, Subsection C, Definitions.



Spectrum Act, pursuant to which facilities only fall within the scope of an “eligible facilities request” if they are attached to towers or base stations that have already been zoned for wireless use.<sup>417</sup>

#### 4. When Shot Clocks Start and Incomplete Applications

141. In the *2014 Wireless Infrastructure Order*, the Commission clarified, among other things, that a shot clock begins to run when an application is first submitted, not when the application is deemed complete.<sup>418</sup> The clock can be paused, however, if the locality notifies the applicant within 30 days that the application is incomplete.<sup>419</sup> The locality may pause the clock again if it provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.<sup>420</sup> In the *Wireless Infrastructure NPRM/NOI*, the Commission sought comment on these determinations.<sup>421</sup> Localities contend that the shot clock period should not begin until the application is deemed complete.<sup>422</sup> Industry commenters argue that the review period for incompleteness should be decreased from 30 days to 15 days.<sup>423</sup>

142. With the limited exception described in the next paragraph, we find no cause or basis in the record to alter the Commission’s prior determinations, and we now codify them in our rules. Codified rules, easily accessible to applicants and localities alike, should provide helpful clarity. The complaints by states and localities about the sufficiency of some of the applications they receive are adequately addressed by our current policy, particularly as amended below, which preserves the states’ and localities’ ability to pause review when they find an application to be incomplete.<sup>424</sup> We do not find it necessary at this point to shorten our 30-day initial review period for completeness because, as was the case when this review period was adopted in the *2009 Declaratory Ruling*, it remains consistent with review periods for completeness under existing state wireless infrastructure deployment statutes<sup>425</sup> and still “gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants

<sup>417</sup> See 47 CFR § 1.40001(b)(3), (4), (5) (definitions of eligible facilities request, eligible support structure, and existing). Each of these definitions refers to facilities that have already been approved under local zoning or siting processes.

<sup>418</sup> *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, at para. 258.

<sup>419</sup> *2009 Declaratory Ruling*, 24 FCC Rcd at 14014, paras. 52-53 (providing that the “timeframes do not include the time that applicants take to respond to State and local governments’ requests for additional information”).

<sup>420</sup> *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, para. 259.

<sup>421</sup> *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3338, para. 20.

<sup>422</sup> See, e.g., Maine DOT Comments at 2-3; Philadelphia Comments at 6; League of Az Cities and Towns *et al.* at 4, 8-9; Letter from Barbara Coler, Chair, Marin Telecommunications Agency, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 4, 2018) (Barbara Coler Sept. 4, 2018 *Ex Parte* Letter); Letter from Sam Liccardo, Mayor, San Jose, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 5 (filed Sept. 18, 2018).

<sup>423</sup> Verizon Comments at 43. See Sprint June 18 *Ex Parte* at 2 (asserting that the shot clocks should begin to run when the application is complete and that a siting authority should review the application for completeness within the first 15 days of receipt or it would waive the right to object on that basis).

<sup>424</sup> See, e.g., Barbara Coler Sept. 4, 2018 *Ex Parte* Letter at 2 (the pace of installation may be affected by incomplete applications); Kenneth S. Fellman Sept. 18, 2018 *Ex Parte* Letter at 3 (not uncommon to find documents not properly prepared and not in compliance with relevant regulations).

<sup>425</sup> Most states have a 30-day review period for incompleteness. See, e.g., Colo. Rev. Stat. Ann. § 29-27-403; Ga. Code Ann. § 36-66B-5; Iowa Code Ann. § 8C.4; Kan. Stat. Ann. § 66-2019; Minn. Stat. Ann. § 237.163(3c)(b); 53 Pa. Stat. Ann. § 11702.4(b)(1); Cal. Gov’t Code § 65943. A minority of states have adopted either a longer or shorter review period for incompleteness, ranging from 5 days to 45 days. See N.C. Gen. Stat. Ann. § 153A-349.53 (45 days); Wash. Rev. Code Ann. § 36.70B.070 (28 days); N.H. Rev. Stat. Ann. § 12-K:10 (15 days); Del. Code Ann. tit. 17, § 1609 (14 days); Va. Code Ann. §§ 15.2-2316.4; 56-484.28; 56-484.29 (10 days); Wis. Stat. Ann. § 66.0404(3) (5 days).

from a last minute decision that an application should be denied as incomplete.”<sup>426</sup>

143. However, for applications to deploy Small Wireless Facilities, we implement a modified tolling system designed to help ensure that providers are submitting complete applications on day one. This step accounts for the fact that the shot clocks applicable to such applications are shorter than those established in the *2009 Declaratory Ruling* and, because of which, there may instances where the prevailing tolling rules would further shorten the shot clocks to such an extent that it might be impossible for siting authorities to act on the application.<sup>427</sup> For Small Wireless Facilities applications, the siting authority has 10 days from the submission of the application to determine whether the application is incomplete. The shot clock then resets once the applicant submits the supplemental information requested by the siting authority. Thus, for example, for an application to collocate Small Wireless Facilities, once the applicant submits the supplemental information in response to a siting authority’s timely request, the shot clock resets, effectively giving the siting authority an additional 60 days to act on the Small Wireless Facilities collocation application. For subsequent determinations of incompleteness, the tolling rules that apply to non-Small Wireless Facilities would apply—that is, the shot clock would toll if the siting authority provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.

144. As noted above, multiple authorizations may be required before a deployment is allowed to move forward. For instance, a locality may require a zoning permit, a building permit, an electrical permit, a road closure permit, and an architectural or engineering permit for an applicant to place, construct, or modify its proposed personal wireless service facilities.<sup>428</sup> All of these permits are subject to Section 332’s requirement to act within a reasonable period of time, and thus all are subject to the shot clocks we adopt or codify here.

145. We also find that mandatory pre-application procedures and requirements do not toll the shot clocks.<sup>429</sup> Industry commenters claim that some localities impose burdensome pre-application requirements before they will start the shot clock.<sup>430</sup> Localities counter that in many instances, applicants submit applications that are incomplete in material respects, that pre-application interactions smooth the application process, and that many of their pre-application requirements go to important health and safety matters.<sup>431</sup> We conclude that the ability to toll a shot clock when an application is found incomplete or by

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<sup>426</sup> *2009 Declaratory Ruling*, 24 FCC Rcd at 14014-15, para. 53.

<sup>427</sup> See, e.g., Geoffrey C. Beckwith Sept. 11, 2018 *Ex Parte* Letter at 1; Jessica DeWalt, Assistant Counsel, Illinois Municipal League, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al. at 1 (filed Sept. 14, 2018); Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter at 2.

<sup>428</sup> See Sprint June 18 *Ex Parte* at 3; cf. Virginia Joint Commenters Comments at 21-22; San Francisco Comments at 4-7, 12, 20-22; CTIA Comments at 15 (“The Commission should declare that the shot clocks apply to the entire local review process.”).

<sup>429</sup> *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3338, para. 20.

<sup>430</sup> See, e.g., CCA Reply at 7 (noting also that some localities unreasonably request additional information after submission that is either already provided or of unreasonable scope); GCI Comments at 8-9; WIA Comments at 24; Crown Castle Comments at 21-22; CTIA Reply at 21; CIC Comments at 18; WIA Reply at 14; Conterra Comments at 2-3; Crown Castle Comments at 30-31; CTIA Comments at 15; ExteNet Comments at 4, 15-16; Mobilite Comments at 6; T-Mobile Comments at 21-22; Verizon Comment at 42-43; AT&T Comments at 26.

<sup>431</sup> See, e.g., Philadelphia Reply at 9 (arguing that shot clocks should not run until a complete application with a full set of engineering drawings showing the placement, size and weight of the equipment, and a fully detailed structural analysis is submitted, to assess the safety of proposed installations); Philadelphia Comments at 6; League of Az Cities and Towns *et al.* Comments at 4 (arguing that the shot clock should not begin until after an application has been “duly filed,” because “some applicants believe the shot clock commences to run no matter how they submit their request, or how inadequate their submittal may be”); Colorado Comm. and Utility All. *et al.* Comments at 14 (explaining that the pre-application meetings are intended “to give prospective applicants an opportunity to discuss code and regulatory provisions with local government staff, and gain a better understanding of the process that will be followed, in order to increase the probability that once an application is filed, it can proceed smoothly to final decision”); Smart

mutual agreement by the applicant and the siting authority should be adequate to address these concerns. Much like a requirement to file applications one after another, requiring pre-application review would allow for a complete circumvention of the shot clocks by significantly delaying their start date. An application is not ruled on within “a reasonable period of time after the request is duly filed” if the state or locality takes the full ordinary review period after having delayed the filing in the first instance due to required pre-application review. Indeed, requiring a pre-application review before an application may be filed is similar to imposing a moratorium, which the Commission has made clear does not stop the shot clocks from running.<sup>432</sup> Therefore, we conclude that if an applicant proffers an application, but a state or locality refuses to accept it until a pre-application review has been completed,<sup>433</sup> the shot clock begins to run when the application is proffered. In other words, the request is “duly filed” at that time,<sup>434</sup> notwithstanding the locality’s refusal to accept it.

146. That said, we encourage *voluntary* pre-application discussions, which may well be useful to both parties. The record indicates that such meetings can clarify key aspects of the application review process, especially with respect to large submissions or applicants new to a particular locality’s processes, and may speed the pace of review.<sup>435</sup> To the extent that an applicant voluntarily engages in a pre-application review to smooth the way for its filing, the shot clock will begin when an application is filed, presumably after the pre-application review has concluded.

147. We also reiterate, consistent with the *2009 Declaratory Ruling*, that the remedies granted under Section 332(c)(7)(B)(v) are independent of, and in addition to, any remedies that may be available under state or local law.<sup>436</sup> Thus, where a state or locality has established its own shot clocks, an applicant may pursue any remedies granted under state or local law in cases where the siting authority fails to act within those shot clocks.<sup>437</sup> However, the applicant must wait until the Commission shot clock period has expired to bring suit for a “failure to act” under Section 332(c)(7)(B)(v).<sup>438</sup>

## V. PROCEDURAL MATTERS

148. *Final Regulatory Flexibility Analysis.* With respect to this Third Report and Order, a Final Regulatory Flexibility Analysis (FRFA) is contained in Appendix C. As required by Section 603 of

(Continued from previous page)

Communities Comments at 15, 35 (pre-application procedures “may translate into faster consideration of individual applications over the longer term, as providers and communities alike, gain a better understanding of what is required of them, and providers submit applications that are tailored to community requirements”); UT Dept. of Trans. Comments at 5 (“The purpose of the pre-application access meeting is to help the entity or person with the application and provide information concerning the requirements contained in the rule.”); CCUA *et al.* Reply at 6 (“[Pre-application meetings] provide an opportunity for informal discussion between prospective applicants and the local jurisdiction. Pre-application meetings serve to educate, answer questions, clarify process issues, and ultimately result in a more efficient process from application filing to final action.”); AASHTO Comments, Attach. at 3 (GA Dept. of Trans. contending that pre-application procedures “should be encouraged and separated from an ‘official’ ‘application submittal’”); League of Az Cities and Towns *et al.* Comments at 5-7 (providing examples of incomplete applications).

<sup>432</sup> *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12971, at para. 265.

<sup>433</sup> See, e.g., CCA Reply at 7; GCI Comments at 8-9; WIA Comments at 24; Crown Castle Comments at 21-22; CTIA Reply at 21; CIC Comments at 18; WIA Reply at 14; Conterra Comments at 2-3; Crown Castle Comments at 30-31; CTIA Comments at 15; ExteNet Comments at 4, 15-16; Mobilitie Comments at 6; T-Mobile Comments at 21-22; Verizon Comment at 42-43; AT&T Comments at 26.

<sup>434</sup> 47 U.S.C. § 332(c)(7)(B)(ii).

<sup>435</sup> See CCUA *et al.* Comments at 14; Smart Communities Comments at 15, 35; UT Dept. of Trans. Comments at 5; CCUA *et al.* Reply at 6; Mukilteo Reply, Docket No. WC 17-84, at 1 (filed July 10, 2017).

<sup>436</sup> *2009 Declaratory Ruling*, 24 FCC Rcd at 14013-14, para. 50.

<sup>437</sup> *2009 Declaratory Ruling*, 24 FCC Rcd at 14013-14, para. 50.

<sup>438</sup> 47 U.S.C. § 332(c)(7)(B)(v).

the Regulatory Flexibility Act, the Commission has prepared a FRFA of the expected impact on small entities of the requirements adopted in this Third Report and Order. The Commission will send a copy of the Third Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

149. *Paperwork Reduction Act.* This Third Report and Order does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

150. *Congressional Review Act.* The Commission will send a copy of this Declaratory Ruling and Third Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. § 801(a)(1)(A).

## VI. ORDERING CLAUSES

151. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i)-(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 157, 201, 253, 301, 303, 309, 319, 332, that this Declaratory Ruling and Third Report and Order in WT Docket No. 17-79 IS hereby ADOPTED.

152. IT IS FURTHER ORDERED that Part 1 of the Commission's Rules is AMENDED as set forth in Appendix A, and that these changes SHALL BE EFFECTIVE 90 days after publication in the Federal Register.

153. IT IS FURTHER ORDERED that this Third Report and Order SHALL BE effective 90 days after its publication in the Federal Register. The Declaratory Ruling and the obligations set forth therein ARE EFFECTIVE on the same day that this Third Report and Order becomes effective. It is our intention in adopting the foregoing Declaratory Ruling and these rule changes that, if any provision of the Declaratory Ruling or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such Declaratory Ruling and the rules not deemed unlawful, and the application of such Declaratory Ruling and the rules to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

154. IT IS FURTHER ORDERED that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Declaratory Ruling and Third Report and Order will commence on the date that a summary of this Declaratory Ruling and Third Report and Order is published in the Federal Register.

155. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Declaratory Ruling and Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

156. IT IS FURTHER ORDERED that this Declaratory Ruling and Third Report and Order SHALL BE sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Rules

**Streamlining State and Local Review of Wireless Facility Siting Applications**

## Part 1—Practice and Procedure

1. Add subpart U to Part 1 of Title 47 to read as follows:

**Subpart U—State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities****§ 1.6001 Purpose.**

This subpart implements 47 U.S.C. 332(c)(7) and 1455.

**§ 1.6002 Definitions.**

Terms used in this subpart have the following meanings:

(a) *Action* or *to act* on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna*, consistent with section 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this title.

(c) *Antenna equipment*, consistent with section 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antenna equipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) *Collocation*, consistent with section 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, Appendix B of this part, section I.B, means—

- (1) Mounting or installing an antenna facility on a pre-existing structure, and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (3) The definition of “collocation” in paragraph (b)(2) of section 1.6100 applies to the term as used in that section.

- (h) *Deployment* means placement, construction, or modification of a personal wireless service facility.
- (i) *Facility* or *personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
- (j) *Siting application* or *application* means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.
- (k) *Siting authority* means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.
- (l) *Small wireless facilities*, consistent with section 1.1312(e)(2), are facilities that meet each of the following conditions:
- (1) The facilities—
    - (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
    - (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
    - (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
  - (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;
  - (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
  - (4) The facilities do not require antenna structure registration under part 17 of this chapter;
  - (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
  - (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).
- (m) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in Part 1 of Title 47 and the Communications Act of 1934, 47 U.S.C. 151 *et seq.*

**§ 1.6003 Reasonable periods of time to act on siting applications**

(a) *Timely action required.* A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) *Shot clock period.* The shot clock period for a siting application is the sum of—

(1) the number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section, plus

(2) the number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) *Presumptively reasonable periods of time.*

(1) The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth below:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching.*

(i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (c)(2)(ii).

(d) *Tolling period.* Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth below.

(1) *For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.*

(2) *For all other initial applications*, the tolling period shall be the number of days from –

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(2)(i) is effectuated on or before the 30th day after the date when the application was submitted; or

(3) *For resubmitted applications following a notice of deficiency*, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or paragraph (d)(2) of this section, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(3)(i) is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or paragraph (d)(2) of this section.

(e) *Shot clock date.* The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; *provided*, that if the date calculated in this manner is a "holiday" as defined in section 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term "business day" means any day as defined in section 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

3. Redesignate section 1.40001 as section 1.6100, and remove and reserve paragraph (a).

4. Remove subpart CC.



**APPENDIX B****Comments and Reply Comments****Comments**

5G Americas  
Aaron Rosenzweig  
ACT | The App Association  
Advisory Council on Historic Preservation  
Advisors to the International EMF Scientist Appeal  
African American Mayors Association  
Agua Caliente Band of Cahuilla Indians Tribal Historic Preservation Office  
Alaska Department of Transportation & Public Facilities  
Alaska Native Health Board  
Alaska Office of History and Archaeology  
Alexandra Ansell  
American Association of State Highway and Transportation Officials  
American Bird Conservancy  
American Cable Association  
American Petroleum Institute  
American Public Power Association  
Angela Fox  
Arctic Slope Regional Corporation  
Arizona State Parks & Trails, State Historic Preservation Office  
Arkansas SHPO  
Arnold A. McMahon  
Association of American Railroads  
AT&T  
B. Golomb  
Bad River Band of Lake Superior Tribe of Chippewa Indians  
Benjamin L. Yousef  
BioInitiative Working Group  
Blue Lake Rancheria  
Board of County Road Commissioners of the County of Oakland  
Bristol Bay Area Health Corporation  
Cahuilla Band of Indians  
California Office of Historic Preservation, Department of Parks and Recreation  
California Public Utilities Commission  
Cape Cod Bird Club, Inc.  
Catawba Indian Nation Tribal Historic Preservation Office  
Charter Communications, Inc.  
Cheyenne River Sioux Tribe Cultural Preservation Office  
Chickasaw Nation  
Chippewa Cree Tribe  
Choctaw Nation of Oklahoma  
Chuck Matzker  
Cindy Li  
Cindy Russell  
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee  
Citizen Potawatomi Nation  
Citizens Against Government Waste

City and County of San Francisco  
City of Alexandria, Virginia; Arlington County, Virginia; and Henrico County, Virginia  
City of Arlington, Texas  
City of Austin, Texas  
City of Bellevue, City of Bothell, City of Burien, City of Ellensburg, City of Gig Harbor, City of  
Kirkland, City of Mountlake Terrace, City of Mukilteo, City of Normandy Park, City of Puyallup,  
City of Redmond, and City of Walla Walla  
City of Chicago  
City of Claremont (Tony Ramos, City Manager)  
City of Eden Prairie, MN  
City of Houston  
City of Irvine, California  
City of Kenmore, Washington, and David Baker, Vice-Chair, National League of Cities Information  
Technology and Communications Committee  
City of Lansing, Michigan  
City of Mukilteo  
City of New Orleans, Louisiana  
City of New York  
City of Philadelphia  
City of Springfield, Oregon  
Cityscape Consultants, Inc.  
Coalition for American Heritage, Society for American Archaeology, American Cultural Resources  
Association, Society for Historical Archaeology, and American Anthropological Association  
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC),  
City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey  
Access Group (JAG), and Colorado Municipal League (CML)  
Colorado River Indian Tribes  
Colorado State Historic Preservation Office  
Comcast Corporation  
Commissioner Sal Pace, Pueblo Board of County Commissioners  
Community Associations Institute  
Competitive Carriers Association  
CompTIA (The Computing Technology Industry Association)  
Computer & Communications Industry Association (CCIA)  
Confederated Tribes of the Colville Reservation  
Confederated Tribes of the Umatilla Indian Reservation Cultural Resources Protection Program  
Consumer Technology Association  
Conterra Broadband Services, Southern Light, LLC, and Uniti Group, Inc.  
Critical Infrastructure Coalition  
Crow Creek Sioux Tribe  
Crown Castle  
CTIA  
CTIA and Wireless Infrastructure Association  
David Roetman, Minnehaha County GOP Chairman  
Defenders of Wildlife  
Department of Arkansas Heritage (Arkansas Historic Preservation Program)  
DuPage Mayors and Managers Conference  
East Bay Municipal Utility District  
Eastern Shawnee Tribe of Oklahoma  
Edward Czelada  
Elijah Mondy  
Elizabeth Doonan

Ellen Marks  
EMF Safety Network, Ecological Options Network  
Environmental Health Trust  
ExteNet Systems, Inc.  
Fairfax County, Virginia  
FibAire Communications, LLC d/b/a AireBeam  
Florida Coalition of Local Governments  
Fond du Lac Band of Lake Superior Chippewa  
Forest County Potawatomi Community of Wisconsin  
Fort Belknap Indian Community  
Free State Foundation  
General Communication, Inc.  
Georgia Department of Transportation  
Georgia Historic Preservation Division  
Georgia Municipal Association, Inc.  
Gila River Indian Community  
Greywale Advisors  
History Colorado (Colorado State Historic Preservation Office)  
Hongwei Dong  
Hualapai Department of Cultural Resources  
Illinois Department of Transportation  
Illinois Municipal League  
INCOMPAS  
Information Technology and Innovation Foundation  
International Telecommunications Users Group  
Jack Li  
Jackie Cale  
Jerry Day  
Joel M. Moskowitz, Ph.D.  
Jonathan Mirin  
Joyce Barrett  
Karen Li  
Karen Spencer  
Karon Gubbrud  
Kate Kheel  
Kaw Nation  
Kevin Mottus  
Keweenaw Bay Indian Community  
Kialegee Tribal Town  
League of Arizona Cities and Towns, League of California Cities, and League of Oregon Cities  
League of Minnesota Cities  
Leo Cashman  
Lower Brule Sioux Tribe  
Li Sun  
Lighttower Fiber Networks  
Lisbeth Britt  
Lower Brule Sioux Tribe  
Maine Department of Transportation  
Marty Feffer  
Mary Whisenand, Iowa Governor's Commission on Community Action Agencies  
Mashantucket (Western) Pequot Tribe  
Mashpee Wampanoag Tribe

Matthew Goulet  
Mayor Patrick Furey, City of Torrance, California  
McLean Citizens Association  
Miami Tribe of Oklahoma  
Missouri State Historic Preservation Office  
Mobile Future  
Mobilitie, LLC  
Mohegan Tribe of Indians of Connecticut  
Montana State Historic Preservation Office  
Monte R. Lee and Company  
Muckleshoot Indian Tribe  
Muscogee (Creek) Nation  
National Association of Tower Erectors (NATE)  
National Association of Tribal Historic Preservation Officers  
National Black Caucus of State Legislators  
National Conference of State Historic Preservation Officers  
National Congress of American Indians  
National Congress of American Indians, National Association of Tribal Historic Preservation Officers,  
and United South and Eastern Tribes Sovereignty Protection Fund  
National Congress of American Indians and United South and Eastern Tribes Sovereignty Protection  
Fund  
National League of Cities  
National League of Cities, United States Conference of Mayors, International Municipal Lawyers  
Association, Government Finance Officers Association, National Association of Counties,  
National Association of Regional Councils, National Association of Towns and Townships, and  
National Association of Telecommunications Officers and Advisors  
National Tribal Telecommunications Association  
National Trust for Historic Preservation  
Native Public Media  
NATOA  
Natural Resources Defense Council  
Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission  
Naveen Albert  
NCTA—The Internet & Television Association  
nepsa solutions LLC  
New Mexico Department of Cultural Affairs, Historic Preservation Division  
Nez Perce Tribe  
Nina Beety  
Nokia  
North Carolina State Historic Preservation Office  
Northern Cheyenne Tribal Historic Preservation Office  
NTCA—The Rural Broadband Association  
Office of Historic Preservation for the Mashantucket Pequot Tribal Nation of Connecticut  
Ohio State Historic Preservation Office  
Oklahoma History Center State Historic Preservation Office  
Olemara Peters  
Omaha Tribe of Nebraska  
ONE Media, LLC  
Oregon State Historic Preservation Office  
Osage Nation  
Otoe-Missouria Tribe  
Pala Band of Mission Indians

Patrick Wronkiewicz  
Pechanga Band of Luiseno Indians  
Pennsylvania State Historic Preservation Office  
Prairie Island Indian Community  
PTA-FLA, Inc.  
Pueblo of Laguna  
Pueblo of Pojoaque  
Pueblo of Tesuque  
Puerto Rico State Historic Preservation Office  
Quad Cities Cable Communications Commission  
Quapaw Tribe of Oklahoma  
R Street Institute  
Rebecca Carol Smith  
Red Cliff Band of Lake Superior Chippewa  
Representative Tom Sloan, State of Kansas House of Representatives  
Representatives Anna G. Eshoo, Frank Pallone, Jr., and Raul Ruiz, U.S. House of Representatives  
Rhode Island Historical Preservation and Heritage Commission  
Rosebud Sioux Tribe Tribal Historic Preservation Cultural Resource Management Office  
Ronald M. Powell, Ph.D.  
S. Quick  
Sacred Wind Communications, Inc.  
Samsung Electronics America, Inc.  
Santa Clara Pueblo  
Sault Ste. Marie Tribe of Chippewa Indians  
SCAN NATOA, Inc.  
Seminole Nation of Oklahoma  
Seminole Tribe of Florida  
Senator Duane Ankney, Montana State Senate  
Shawnee Tribe  
Sisseton Wahpeton Oyate  
Skokomish Indian Tribe Tribal Historic Preservation Office  
Skull Valley Band of Goshute  
Smart Communities and Special Districts Coalition  
Soula Culver  
Sprint  
Standing Rock Sioux Tribe  
Starry, Inc.  
State of Washington Department of Archaeology & Historic Preservation  
Sue Present  
Swinomish Indian Tribal Community  
Table Mountain Rancheria Tribal Government Office  
Tanana Chiefs Conference  
Telecommunications Industry Association  
Texas Department of Transportation  
Texas Historical Commission  
Thlopthlocco Tribal Town  
T-Mobile USA, Inc.  
Tonkawa Tribe of Oklahoma  
Triangle Communication System, Inc.  
Twenty-Nine Palms Band of Mission Indians  
United Keetoowah Band of Cherokee Indians In Oklahoma  
Utah Department of Transportation

Ute Mountain Ute Tribe  
Utilities Technology Council  
Verizon  
Wampanoag Tribe of Gay Head (Aquinnah)  
WEC Energy Group, Inc.  
Wei Shen  
Wei-Ching Lee, MD, California Medical Association Delegate of Los Angeles County  
Winnebago Tribe of Nebraska  
Wireless Infrastructure Association  
Wireless Internet Service Providers Association  
Xcel Energy Services Inc.

**Reply Comments**

Alaska State Historic Preservation Office  
American Cable Association  
American Public Power Association  
Association of American Railroads  
California Public Utilities Commission  
Catherine Kleiber  
Chippewa Cree Tribe  
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee  
City of Baltimore, Maryland  
City of New York  
City of Philadelphia  
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey Access Group (JAG), and Colorado Municipal League (CML)  
Comcast Corporation  
Communications Workers of America  
Competitive Carriers Association  
Consumer Technology Association  
Conterra Broadband Services, Southern Light, LLC, and Uniti Group Inc.  
Critical Infrastructure Coalition  
CTIA  
Dan Kleiber  
Enterprise Wireless Alliance  
Environmental Health Trust  
ExteNet Systems, Inc.  
Florida Coalition of Local Governments  
Confederated Tribes of Grand Ronde Community of Oregon Historic Preservation Department  
INCOMPAS  
Irregularators  
League of Arizona Cities and Towns, League of California Cities, and League of Oregon Cities  
National Association of Regulatory Utility Commissioners  
National Association of Telecommunications Officers and Advisors, National League of Cities, National Association of Towns and Townships, National Association of Regional Councils, United States Conference of Mayors, and Government Finance Officers Association  
National Congress of American Indians, United South and Eastern Tribes Sovereignty Protection Fund, and National Association of Tribal Historic Preservation Officers  
National Organization of Black Elected Legislative (NOBEL) Women  
National Rural Electric Cooperative Association

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Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission  
NCTA—The Internet & Television Association  
Pueblo of Acoma  
Puerto Rico Telephone Company, Inc., d/b/a Claro  
Quintillion Networks, LLC, and Quintillion Subsea Operations, LLC  
Rebecca Carol Smith  
SDN Communications  
Skyway Towers, LLC  
SmallCellSite.Com  
Smart Communities and Special Districts Coalition  
Sue Present  
The Greenlining Institute  
T-Mobile USA, Inc.  
Triangle Communication System, Inc.  
United States Conference of Mayors  
Verizon  
Washington, D.C. Office of the Chief Technology Officer  
Wireless Internet Service Providers Association  
Xcel Energy Services Inc.

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)*, released in April 2017.<sup>2</sup> The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are addressed below in Section B. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for and Objectives of the Rules**

2. In the *Third Report and Order*, the Commission continues its efforts to promote the timely buildout of wireless infrastructure across the country by eliminating regulatory impediments that unnecessarily delay bringing personal wireless services to consumers. The record shows that lengthy delays in approving siting applications by siting agencies has been a persistent problem.<sup>4</sup> With this in mind, the *Third Report and Order* establishes and codifies specific rules concerning the amount of time siting agencies may take to review and approve certain categories of wireless infrastructure siting applications. More specifically, the Commission addresses its Section 332 shot clock rules for infrastructure applications which will be presumed reasonable under the Communications Act. As an initial matter, the Commission establishes two new shot clocks for Small Wireless Facilities applications. For collocation of Small Wireless Facilities on preexisting structures, the Commission adopts a 60-day shot clock which applies to both individual and batched applications. For applications associated with Small Wireless Facilities new construction we adopt a 90-day shot clock for both individual and batched applications.<sup>5</sup> The Commission also codifies two existing Section 332 shot clocks for all other Non-Small Wireless Facilities that were established in the *2009 Declaratory Ruling* without codification.<sup>6</sup> These existing shot clocks require 90-days for processing of all other Non-Small Wireless Facilities collocation applications, and 150-days for processing of all other Non-Small Wireless Facilities applications other than collocations.

3. The *Third Report and Order* addresses other issues related to both the existing and new shot clocks. In particular we address the specific types of authorizations subject to the “Reasonable Period of Time” provisions of Section 332(c)(7)(B)(ii), finding that “any request for authorization to place, construct, or modify personal wireless service facilities” under Section 332(c)(7)(B)(ii) means all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment of personal wireless services infrastructure.<sup>7</sup> The Commission also addresses collocation on structures not previously zoned for wireless use,<sup>8</sup> when the four Section 332 shot clocks begin to run,<sup>9</sup>

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Notice of Proposed Rulemaking, 32 FCC Rcd 3330 (2017).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See *supra* paras. 23-9.

<sup>5</sup> See *supra* paras. 111-12.

<sup>6</sup> See *supra* paras. 138-39; *2009 Declaratory Ruling*.

<sup>7</sup> See *supra* paras. 132-37.

<sup>8</sup> See *supra* para. 140.



the impact of incomplete applications on our Section 332 shot clocks,<sup>10</sup> and how state imposed shot clocks remedies effect the Commission's Section 332 shot clocks remedies.<sup>11</sup>

4. The Commission discusses the appropriate judicial remedy that applicants may pursue in cases where a siting authority fails to act within the applicable shot clock period.<sup>12</sup> In those situations, applicants may commence an action in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II) and seek injunctive relief granting the application. Notwithstanding the availability of a judicial remedy if a shot clock deadline is missed, the Commission recognizes that the Section 332 time frames might not be met in exceptional circumstances and has refined its interpretation of the circumstances when a period of time longer than the relevant shot clock would nonetheless be a reasonable period of time for action by a siting agency.<sup>13</sup> In addition, a siting authority that is subject to a court action for missing an applicable shot clock deadline has the opportunity to demonstrate that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services thereby rebutting the effective prohibition presumption.

5. The rules adopted in the *Third Report and Order* will accelerate the deployment of wireless infrastructure needed for the mobile wireless services of the future, while preserving the fundamental role of localities in this process. Under the Commission's new rules, localities will maintain control over the placement, construction and modification of personal wireless facilities, while at the same time the Commission's new process will streamline the review of wireless siting applications.

#### **B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

6. Only one party—the Smart Communities and Special Districts Coalition—filed comments specifically addressing the rules and policies proposed in the IRFA. They argue that any shortening or alteration of the Commission's existing shot clocks or the adoption of a deemed granted remedy will adversely affect small local governments, special districts, property owners, small developers, and others by placing their siting applications behind wireless provider siting applications.<sup>14</sup> Subsequently, NATOA filed comments concerning the draft FRFA.<sup>15</sup> NATOA argues that the new shot clocks impose burdens on local governments and particularly those with limited resources. NATOA asserts that the new shot clocks will spur more deployment applications than localities currently process.

7. These arguments, however, fail to acknowledge that Section 332 shot clocks have been in place for years and reflect Congressional intent as seen in the statutory language of Section 332. The record in this proceeding demonstrates the need for, and reasonableness of, expediting the siting review of certain facility deployments.<sup>16</sup> More streamlined procedures are both reasonable and necessary to provide greater predictability. The current shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the original shot clocks were adopted nine years ago. Localities have gained significant experience processing wireless siting applications and several jurisdictions already have in place laws that require

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<sup>9</sup> See *supra* paras. 141-46.

<sup>10</sup> *Id.*

<sup>11</sup> See *supra* para. 147.

<sup>12</sup> See *supra* paras. **Error! Reference source not found.**-131.

<sup>13</sup> See *supra* para. 127.

<sup>14</sup> Smart Communities Comments at 81; see also Letter from Gerard Lavery Lederer, Counsel, Smart Communities, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, *Ex Parte* Submission at 33 (filed Sept. 19, 2018).

<sup>15</sup> Letter from Nancy Werner, NATOA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 4-5 (filed Sept. 19, 2018).

<sup>16</sup> See *supra* para. 106.

applications to be processed in less time than the Commission's new shot clocks. With the passage of time, siting agencies have become more efficient in processing siting applications and this, in turn, should reduce any economic burden the Commission's new shot clock provisions have on them.

8. The Commission has carefully considered the impact of its new shot clocks on siting authorities and has established shot clocks that take into consideration the nature and scope of siting requests by establishing shot clocks of different lengths of time that depend on the nature of the siting request at issue.<sup>17</sup> The length of these shot clocks is based in part on the need to ensure that local governments have ample time to take any steps needed to protect public safety and welfare and to process other pending utility applications.<sup>18</sup> Since local siting authorities have gained experience in processing siting requests in an expedited fashion, they should be able to comply with the Commission's new shot clocks.

9. The Commission has taken into consideration the concerns of the Smart Communities and Special Districts Coalition and NATOA. It has established shot clocks that will not favor wireless providers over other applicants with pending siting applications. Further, instead of adopting a deemed granted remedy that would grant a siting application when a shot clock lapses without a decision on the merits, the Commission provides guidance as to the appropriate judicial remedy that applicants may pursue and examples of exceptional circumstance where a siting authority may be justified in needing additional time to review a siting application then the applicable shot clock allows.<sup>19</sup> Under this approach, the applicant may seek injunctive relief as long as several minimum requirements are met. The siting authority, however, can rebut the presumptive reasonableness of the applicable shot clock under certain circumstances. The circumstances under which a siting authority might have to do this will be rare. Under this carefully crafted approach, the interests of siting applicants, siting authorities, and citizens are protected.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

10. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>20</sup>

11. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.<sup>21</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>22</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>23</sup> A "small business

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<sup>17</sup> See *supra* paras. 105-112.

<sup>18</sup> *Id.*

<sup>19</sup> See *supra* paras. 116-131.

<sup>20</sup> 5 U.S.C. § 604(a)(3).

<sup>21</sup> See 5 U.S.C. § 604(a)(3).

<sup>22</sup> 5 U.S.C. § 601(6).

<sup>23</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an

concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>24</sup>

13. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>25</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>26</sup> These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 28.8 million businesses.<sup>27</sup>

14. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>28</sup> Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).<sup>29</sup>

15. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>30</sup> U.S. Census Bureau data from the 2012 Census of Governments<sup>31</sup> indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>32</sup> Of this number there were

(Continued from previous page)

agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>24</sup> 15 U.S.C. § 632.

<sup>25</sup> See 5 U.S.C. § 601(3)-(6).

<sup>26</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1—What is a small business?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>27</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>28</sup> 5 U.S.C. § 601(4).

<sup>29</sup> Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

<sup>30</sup> 5 U.S.C. § 601(5).

<sup>31</sup> See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.CO G#>.

<sup>32</sup> See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

37, 132 General purpose governments (county<sup>33</sup>, municipal and town or township<sup>34</sup>) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts<sup>35</sup> and special districts<sup>36</sup>) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.<sup>37</sup> Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”<sup>38</sup>

16. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.<sup>39</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>40</sup> For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>41</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>42</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications

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<sup>33</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

<sup>34</sup> See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

<sup>35</sup> See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

<sup>36</sup> See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

<sup>37</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

<sup>38</sup> *Id.*

<sup>39</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517210 Wireless Telecommunications Carriers (Except Satellite),” See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&typib&id=ib.en/ECN.NAICS2012.517210>.

<sup>40</sup> 13 CFR § 121.201, NAICS Code 517210.

<sup>41</sup> U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210*, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210).

<sup>42</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

carriers (except satellite) are small entities.

17. The Commission's own data—available in its Universal Licensing System—indicate that, as of May 17, 2018, there are 264 Cellular licensees that will be affected by our actions.<sup>43</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>44</sup> Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>45</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

18. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under Part 95 of our rules.<sup>46</sup> These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service.<sup>47</sup> There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons.<sup>48</sup> For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>49</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>50</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. We note however that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

19. *Public Safety Radio Licensees.* Public Safety Radio Pool licensees as a general matter, include police, fire, local government, forestry conservation, highway maintenance, and emergency

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<sup>43</sup> See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

<sup>44</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>45</sup> See *id.*

<sup>46</sup> 47 CFR Part 90.

<sup>47</sup> The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of Part 95 of the Commission's rules. See generally 47 CFR Part 95.

<sup>48</sup> 13 CFR § 121.201, NAICS Code 517312.

<sup>49</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210*, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210).

<sup>50</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

medical services.<sup>51</sup> Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>52</sup> For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>53</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>54</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services.<sup>55</sup> There are 3,121 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of March 29, 2017.<sup>56</sup> We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

20. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications.<sup>57</sup> The appropriate size standard for this category under SBA rules is that such a business

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<sup>51</sup> See subparts A and B of Part 90 of the Commission's Rules, 47 CFR §§ 90.1-90.22. Police licensees serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees are comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include state, county, or municipal entities that use radio for official purposes. State departments of conservation and private forest organizations comprise forestry service licensees that set up communications networks among fire lookout towers and ground crews. State and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Additional licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

<sup>52</sup> See 13 CFR § 121.201, NAICS Code 517210.

<sup>53</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210*. [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210).

<sup>54</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>55</sup> This figure was derived from Commission licensing records as of June 27, 2008. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of public safety licensees that have less than 1,500 employees.

<sup>56</sup> Based on an FCC Universal Licensing System search of March 29, 2017. Search parameters: Radio Service = PA—Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

<sup>57</sup> U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Carriers (Except Satellite)," See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210> (last visited Mar. 6, 2018).

is small if it has 1,500 or fewer employees.<sup>58</sup> For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>59</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>60</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

21. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users.<sup>61</sup> Of this number there are a total of 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz, which is the range affected by the *Third Report and Order*.<sup>62</sup> The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

22. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define "small entity" for MAS licensees as an entity that has average annual gross revenues of less than \$15 million over the three previous calendar years.<sup>63</sup> A "Very small business" is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than \$3 million over the preceding three calendar years.<sup>64</sup> The SBA has approved these definitions.<sup>65</sup> The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications.

23. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS

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<sup>58</sup> See 13 CFR § 121.201, NAICS Code 517210.

<sup>59</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210*. [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210).

<sup>60</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>61</sup> This figure was derived from Commission licensing records as of September 19, 2016. Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees.

<sup>62</sup> This figure was derived from Commission licensing records as of August 16, 2013. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of licensees that have fewer than 1,500 employees.

<sup>63</sup> See *Amendment of the Commission's Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008 para. 123 (2000).

<sup>64</sup> *Id.*

<sup>65</sup> See Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (June 4, 1999).



licenses in 176 EAs was conducted.<sup>66</sup> Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

24. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The closest applicable definition of a small entity is the "Wireless Telecommunications Carriers (except Satellite)" definition under the SBA rules.<sup>67</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>68</sup> For this category, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>69</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>70</sup> Thus under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by our action can be considered small.

25. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high-speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).<sup>71</sup>

26. *BRS* - In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.<sup>72</sup> The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent

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<sup>66</sup> See *Multiple Address Systems Spectrum Auction Closes*, Public Notice, 16 FCC Rcd 21011 (2001).

<sup>67</sup> 13 CFR § 121.201, NAICS Code 517210.

<sup>68</sup> *Id.*

<sup>69</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210).

<sup>70</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>71</sup> *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

<sup>72</sup> 47 CFR § 21.961(b)(1).



BRS licensees do not meet the small business size standard).<sup>73</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

27. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.<sup>74</sup> The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.<sup>75</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>76</sup> Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

28. *EBS* - The Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>77</sup> The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees.<sup>78</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>79</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>80</sup> Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational

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<sup>73</sup> 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

<sup>74</sup> *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

<sup>75</sup> *Id.* at 8296 para. 73.

<sup>76</sup> *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

<sup>77</sup> U.S. Census Bureau, 2017 NAICS Definitions, "517311 Wired Telecommunications Carriers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2017>.

<sup>78</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>79</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517110).

<sup>80</sup> *Id.*

institutions and school districts, which are by statute defined as small businesses.<sup>81</sup>

29. *Location and Monitoring Service (LMS).* LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$15 million.<sup>82</sup> A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$3 million.<sup>83</sup> These definitions have been approved by the SBA.<sup>84</sup> An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

30. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>85</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>86</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>87</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year.<sup>88</sup> Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more.<sup>89</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

31. The Commission has estimated the number of licensed commercial television stations to be 1,377.<sup>90</sup> Of this total, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 384.<sup>91</sup> Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how

<sup>81</sup> The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

<sup>82</sup> *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, 15192 para. 20 (1998); *see also* 47 CFR § 90.1103.

<sup>83</sup> *Id.*

<sup>84</sup> *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Feb. 22, 1999).

<sup>85</sup> U.S. Census Bureau, 2017 NAICS Definitions, “515120 Television Broadcasting,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017>.

<sup>86</sup> *Id.*

<sup>87</sup> 13 CFR § 121.201; 2012 NAICS Code 515120.

<sup>88</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~515120](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515120).

<sup>89</sup> *Id.*

<sup>90</sup> *Broadcast Station Totals as of June 30, 2018*, Press Release (MB, rel. Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals Press Release), <https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf>.

<sup>91</sup> *Id.*

many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations.<sup>92</sup> Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

32. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included.<sup>93</sup> Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

33. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”<sup>94</sup> The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.<sup>95</sup> Economic Census data for 2012 show that 2,849 radio station firms operated during that year.<sup>96</sup> Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.<sup>97</sup> Therefore, based on the SBA’s size standard the majority of such entities are small entities.

34. According to Commission staff review of the BIA/Kelsey, LLC’s Publications, Inc. Media Access Pro Radio Database (BIA) as of January 2018, about 11,261 (or about 99.92 percent) of 11,270 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition.<sup>98</sup> The Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371.<sup>99</sup> We note, that the Commission has also estimated the number of licensed NCE radio stations to be 4,128.<sup>100</sup> Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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<sup>92</sup> *Id.*

<sup>93</sup> See 13 CFR § 21.103(a)(1) “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.”

<sup>94</sup> U.S. Census Bureau, 2017 NAICS Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

<sup>95</sup> 13 CFR § 121.201, NAICS Code 515112.

<sup>96</sup> U.S. Census Bureau, 2012 Economic Census of the United States, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* NAICS Code 515112, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~515112](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112).

<sup>97</sup> *Id.*

<sup>98</sup> BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

<sup>99</sup> Broadcast Station Totals as of June 30, 2018, Press Release (MB Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals), <https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf>.

<sup>100</sup> *Id.*

35. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.<sup>101</sup> The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation.<sup>102</sup> We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

36. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations.<sup>103</sup> This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public.<sup>104</sup> Programming may originate in their own studio, from an affiliated network, or from external sources.<sup>105</sup> The SBA has established a small business size standard which consists of all radio stations whose annual receipts are \$38.5 million dollars or less.<sup>106</sup> U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year.<sup>107</sup> Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.<sup>108</sup> Therefore, based on the SBA's size standard, we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

37. *Multichannel Video Distribution and Data Service (MVDDS).* MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years.<sup>109</sup> These definitions were approved by the SBA.<sup>110</sup> On January 27, 2004, the Commission

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<sup>101</sup> 13 CFR § 121.103(a)(1). "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both."

<sup>102</sup> 13 CFR § 121.102(b).

<sup>103</sup> See, U.S. Census Bureau, 2017 NAICS Definitions, "515112 Radio Stations," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> 13 CFR § 121.201, NAICS code 515112.

<sup>107</sup> U.S. Census Bureau, 2012 *Economic Census of the United States*, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 515112*, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~515112](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112).

<sup>108</sup> *Id.*

<sup>109</sup> *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers,*

completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.<sup>111</sup> Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.<sup>112</sup>

38. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>113</sup> Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.<sup>114</sup> For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.<sup>115</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>116</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

39. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>117</sup> This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.<sup>118</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>119</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>120</sup> For this category, U.S. Census data for 2012 show that there

(Continued from previous page) \_\_\_\_\_

*Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

<sup>110</sup> See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 13, 2002).

<sup>111</sup> See “*Multichannel Video Distribution and Data Service Spectrum Auction Closes; Winning Bidders Announced*,” Public Notice, 19 FCC Rcd 1834 (2004).

<sup>112</sup> See “*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63*,” Public Notice, 20 FCC Rcd 19807 (2005).

<sup>113</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517410 Satellite Telecommunications,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

<sup>114</sup> 13 CFR § 121.201, NAICS Code 517410.

<sup>115</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS Code 517410, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~517410](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~517410).

<sup>116</sup> *Id.*

<sup>117</sup> See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code “517919 All Other Telecommunications,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> 13 CFR § 121.201, NAICS Code 517919.



were 1,442 firms that operated for the entire year.<sup>121</sup> Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million and 42 firms had annual receipts of \$25 million to \$49, 999,999.<sup>122</sup> Thus, a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

40. *Fixed Microwave Services.* Microwave services include common carrier,<sup>123</sup> private-operational fixed,<sup>124</sup> and broadcast auxiliary radio services.<sup>125</sup> They also include the Local Multipoint Distribution Service (LMDS),<sup>126</sup> the Digital Electronic Message Service (DEMS),<sup>127</sup> the 39 GHz Service (39 GHz),<sup>128</sup> the 24 GHz Service,<sup>129</sup> and the Millimeter Wave Service<sup>130</sup> where licensees can choose between common carrier and non-common carrier status.<sup>131</sup> At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services.<sup>132</sup> The Commission has not yet defined a small business size standard for microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>133</sup> U.S. Census Bureau data for 2012, show that there were 967 firms in this category that operated for the entire year.<sup>134</sup> Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

41. The Commission notes that the number of firms does not necessarily track the number of

<sup>121</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS code 517919, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~517919](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919).

<sup>122</sup> *Id.*

<sup>123</sup> See 47 CFR Part 101, Subpart I.

<sup>124</sup> Persons eligible under parts 80 and 90 of the Commission’s rules can use Private-Operational Fixed Microwave services. See 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

<sup>125</sup> See 47 CFR Parts 74, 78 (governing Auxiliary Microwave Service) Available to licensees of broadcast stations, cable operators, and to broadcast and cable network entities. Auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes TV pickup and CARS pickup, which relay signals from a remote location back to the studio.

<sup>126</sup> See 47 CFR §§ 101, 1001-101, 1017.

<sup>127</sup> See 47 CFR §§ 101, 101.501-101.538.

<sup>128</sup> See 47 CFR Part 101, Subpart N (reserved for Competitive bidding procedures for the 38.6-40 GHz Band).

<sup>129</sup> See *id.*

<sup>130</sup> See 47 CFR §§ 101, 101.1501-101.1527.

<sup>131</sup> See 47 CFR §§ 101.533, 101.1017.

<sup>132</sup> These statistics are based on a review of the Universal Licensing System on September 22, 2015.

<sup>133</sup> 13 CFR § 121.201.

<sup>134</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series, “Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210).

licensees. The Commission also notes that it does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. The Commission estimates however, that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

42. *Non-Licensee Owners of Towers and Other Infrastructure.* Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission's Antenna Structure Registration ("ASR") system and comply with applicable rules regarding review for impact on the environment and historic properties.

43. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a "Constructed" status and 13,987 registration records reflecting a "Granted, Not Constructed" status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.<sup>135</sup> Regarding towers that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which we seek comment. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, we are unable to determine the number of non-licensee tower owners that are small entities. We believe, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which we seek comment. We do not have any basis for estimating the number of such non-licensee owners that are small entities.

44. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>136</sup> For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>137</sup> Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999.<sup>138</sup> Thus, under this SBA size standard a majority of the firms potentially affected by our action can be considered small.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

45. The *Third Report and Order* does not establish any reporting, recordkeeping, or other

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<sup>135</sup> We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

<sup>136</sup> 13 CFR § 121.201, NAICS Code 517919.

<sup>137</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS code 517919, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~517919](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~517919).

<sup>138</sup> *Id.*

compliance requirements for companies involved in wireless infrastructure deployment.<sup>139</sup> In addition to not adopting any reporting, recordkeeping or other compliance requirements, the Commission takes significant steps to reduce regulatory impediments to infrastructure deployment and, therefore, to spur the growth of personal wireless services. Under the Commission's approach, small entities as well as large companies will be assured that their deployment requests will be acted upon within a reasonable period of time and, if their applications are not addressed within the established time frames, applicants may seek injunctive relief granting their siting applications. The Commission, therefore, has taken concrete steps to relieve companies of all sizes of uncertainty and has eliminated unnecessary delays.

46. The *Third Report and Order* also does not impose any reporting or recordkeeping requirements on state and local governments. While some commenters argue that additional shot clock classifications would make the siting process needlessly complex without any proven benefits, the Commission concludes that any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process.<sup>140</sup> The Commission's actions are consistent with the statutory language of Section 332 and therefore reflect Congressional intent. Further, siting agencies have become more efficient in processing siting applications and will be able to take advantage of these efficiencies in meeting the new shot clocks. As a result, the additional shot clocks that the Commission adopts will foster the deployment of the latest wireless technology and serve consumer interests.

**F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>141</sup>

48. The steps taken by the Commission in the *Third Report and Order* eliminate regulatory burdens for small entities as well as large companies that are involved with the deployment of personal wireless services infrastructure. By establishing shot clocks and guidance on injunctive relief for personal wireless services infrastructure deployments, the Commission has standardized and streamlined the permitting process. These changes will significantly minimize the economic burden of the siting process on all entities, including small entities, involved in deploying personal wireless services infrastructure. The record shows that permitting delays imposes significant economic and financial burdens on companies with pending wireless infrastructure permits. Eliminating permitting delays will remove the associated cost burdens and enabling significant public interest benefits by speeding up the deployment of personal wireless services and infrastructure. In addition, siting agencies will be able to utilize the efficiencies that they have gained over the years processing siting applications to minimize financial impacts.

49. The Commission considered but did not adopt proposals by commenters to issue “Best Practices” or “Recommended Practices,”<sup>142</sup> and to develop an informal dispute resolution process and

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<sup>139</sup> See *supra* para. 144.

<sup>140</sup> See *supra* para. 110.

<sup>141</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>142</sup> KS Rep. Sloan Comments at 2; Nokia Comments at 10.



mediation program,<sup>143</sup> noting that the steps taken in the *Third Report and Order* address the concerns underlying these proposals to facilitate cooperation between parties to reach mutually agreed upon solutions.<sup>144</sup> The Commission anticipates that the changes it has made to the permitting process will provide significant efficiencies in the deployment of personal wireless services facilities and this in turn will benefit all companies, but particularly small entities, that may not have the resources and economies of scale of larger entities to navigate the permitting process. By adopting these changes, the Commission will continue to fulfill its statutory responsibilities, while reducing the burden on small entities by removing unnecessary impediments to the rapid deployment of personal wireless services facilities and infrastructure across the country.

#### **Report to Congress**

<sup>50.</sup> The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>145</sup> In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and FRFA (or summaries thereof) also will be published in the *Federal Register*.<sup>146</sup>

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<sup>143</sup> NATOA *et al.* Comments at 16-17.

<sup>144</sup> *See supra* para. 131.

<sup>145</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>146</sup> 5 U.S.C. § 604(b).

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

Perhaps the defining characteristic of the communications sector over the past decade is that the world is going wireless. The smartphone's introduction in 2007 may have seemed an interesting novelty to some at the time, but it was a precursor of a transformative change in how consumers access and use the Internet. 4G LTE was a key driver in that change.

Today, a new transition is at hand as we enter the era of 5G. At the FCC, we're working hard to ensure that the United States leads the world in developing this next generation of wireless connectivity so that American consumers and our nation's economy enjoy the immense benefits that 5G will bring.

Spectrum policy of course features prominently in our 5G strategy. We're pushing a lot more spectrum into the commercial marketplace. On November 14, for example, our 28 GHz band spectrum auction will begin, and after it ends, our 24 GHz band spectrum auction will start. And in 2019, we plan to auction off three additional spectrum bands.

But all the spectrum in the world won't matter if we don't have the infrastructure needed to carry 5G traffic. New physical infrastructure is vital for success here. That's because 5G networks will depend less on a few large towers and more on numerous small cell deployments—deployments that for the most part don't exist today.

But installing small cells isn't easy, too often because of regulations. There are layers of (sometimes unnecessary and unreasonable) rules that can prevent widespread deployment. At the federal level, we acted earlier this year to modernize our regulations and make our own review process for wireless infrastructure 5G fast. And many states and localities have similarly taken positive steps to reform their own laws and increase the likelihood that their citizens will be able to benefit from 5G networks.

But as this *Order* makes clear, there are outliers that are unreasonably standing in the way of wireless infrastructure deployment. So today, we address regulatory barriers at the local level that are inconsistent with federal law. For instance, big-city taxes on 5G slow down deployment there and also jeopardize the construction of 5G networks in suburbs and rural America. So today, we find that all fees must be non-discriminatory and cost-based. And when a municipality fails to act promptly on applications, it can slow down deployment in many other localities. So we mandate shot clocks for local government review of small wireless infrastructure deployments.

I commend Commissioner Carr for his leadership in developing this *Order*. He worked closely with many state and local officials to understand their needs and to study the policies that have worked at the state and local level. It should therefore come as no surprise that this *Order* has won significant support from mayors, local officials, and state legislators.

To be sure, there are some local governments that don't like this *Order*. They would like to continue extracting as much money as possible in fees from the private sector and forcing companies to navigate a maze of regulatory hurdles in order to deploy wireless infrastructure. But these actions are not only unlawful, they're also short-sighted. They slow the construction of 5G networks and will delay if not prevent the benefits of 5G from reaching American consumers. And let's also be clear about one thing: When you raise the cost of deploying wireless infrastructure, it is those who live in areas where the

investment case is the most marginal—rural areas or lower-income urban areas—who are most at risk of losing out. And I don’t want 5G to widen the digital divide; I want 5G to help close that divide.

In conclusion, I’d like to again thank Commissioner Carr for leading this effort and his staff for their diligent work. And I’m grateful to the hardworking staff across the agency who have put many hours into this *Order*. In particular, thanks to Jonathan Campbell, Stacy Ferraro, Garnet Hanly, Leon Jackler, Eli Johnson, Jonathan Lechter, Kate Mataves, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Dana Shaffer, Jiaming Shang, David Sieradzki, Michael Smith, Don Stockdale, Cecilia Sulhoff, Patrick Sun, Suzanne Tetreault, and Joseph Wyer from the Wireless Telecommunications Bureau; Matt Collins, Adam Copeland, Dan Kahn, Deborah Salons, and John Visclosky from the Wireline Competition Bureau; Chana Wilkerson from the Office of Communications Business Opportunities; and Ashley Boizelle, David Horowitz, Tom Johnson, Marcus Maher, Bill Richardson, and Anjali Singh from the Office of General Counsel.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

I enthusiastically support the intent of today's item and the vast majority of its content, as it will lower the barriers that some localities place to infrastructure siting. By tackling exorbitant fees, ridiculous practices, and prolonged delays, we are taking the necessary steps to expedite deployment and make it more cost efficient. Collectively, these provisions will help facilitate the deployment of 5G and enable providers to expand services throughout our nation, with ultimate beneficiaries being the American people.

While this is a tremendous step in the right direction, there are some things that could have been done to improve the situation further. For instance, the agreement reached by all parties in the 1996 Telecommunications Act was that states and localities would have no role over radio frequency emission issues, could not regulate based on the aesthetics of towers and antennas, and were prohibited from imposing any moratoriums on processing wireless siting applications. State and localities did not honor this agreement and the courts have sadly enabled their efforts via harmful and wrongly decided cases. Accordingly, I would have preferred that the aesthetics related provisions in the item be deleted, but I will have to swallow it recognizing that I can't get the rest without it. At the very least, I do appreciate that, at my request, it was clarified that the aesthetic requirements, which must be published in advance, must be objective.

I am also concerned that by setting application and recurring fees that are presumed to be reasonable, the Commission is inviting localities to adopt these rates, even if they are not cost based. Providers should be explicitly provided the right to challenge these rates if they believe they are not cost based. Even if not stated, I hope that providers will challenge unreasonable rates. I thank my colleagues for agreeing to my edits that the application fee presumption applies to all non-recurring costs, not just the application fee.

Further, I think there should be a process and standards in place if a locality decides that it needs more time to review batched applications. Objective criteria are needed regarding what are considered "exceptional circumstances" or "exceptional cases" warranting a longer review period for batch processing, when localities need to inform the applicant that they need more time, how this notification will occur, and how much time they will get. For instance, the item appears to excuse a locality that does not act within the shot clocks for any application if there are "extraordinary circumstances," but there are no parameters on what circumstances we are envisioning. Is a lack of adequate staff or having processing rules or policies in place a sufficient excuse? Such things should be determined upfront, as opposed to allowing courts to decide such matters. Without further clarity, I fear that we may be creating unnecessary loopholes, resulting in further delay.

Finally, I would have liked today's item to be broader and cover the remaining infrastructure issues in the record. First, the Commission's new interpretation of sections 253 and 332 applies beyond small cells. While our focus has been on these newer technologies, there needs to be a recognition that macro towers will continue to play a crucial role in wireless networks. One tower provider states that "[m]acro cell sites will continue to be a central component of wireless infrastructure . . .," because 80 [percent] of the population lives in suburban or rural areas where "macro sites are the most efficient way

to transmit wireless signals.”<sup>1</sup> Further, many of the interpretations in today’s item apply not only to these macro towers, but also to other telecommunications services, including those provided by traditional wireline carriers and potentially cable companies.

Second, the Commission needs to close loopholes in section 6409 that some localities have been exploiting. While these rules pertaining to the modification of existing structures are clear, some localities are trying to undermine Congress’s intent and our actions. For instance, localities are refusing ancillary permissions, such as building or highway permits, to slow down or prevent siting; using the localities’ concealment and aesthetic additions to increase the size of the facility or requiring that poles be replaced with stealth infrastructure for the purpose of excluding facilities from section 6409; placing improper conditions on permits; and forcing providers to sign agreements that waive their rights under section 6409. And, I have been told that some are claiming that section 6409 does not apply to their siting processes. This must stop. I appreciate the Chairman’s firm commitment to my request for an additional item to address such matters, and I expect that it will be coming in the very near future.

Third, there is a need to harmonize our rules regarding compound expansion. Currently, an entity seeking to replace a structure is allowed to expand the facility’s footprint by 30 feet, but if the same entity seeks to expand the tower area to hold new equipment associated with a collocation, a new review is needed. It doesn’t make sense that these situations are treated differently. And while we are at it, the Commission should also harmonize its shot clocks and remedies. These issues should also be added to any future item.

Lastly, the Commission also must finish its review of the comments filed in response to the twilight towers notice, make the revisions to the program comment, and submit it to Advisory Council on Historic Preservation for their review and vote. These towers are eligible, yet not permitted, to hold an estimated 6,500 collocations that will be needed for next-generation services and FirstNet. It is time to bring this embarrassment, which started in 2001, to an end.

Not only do I thank the Chairman for agreeing to additional infrastructure items, but I also thank the Chairman and Commissioner Carr for implementing several of my edits to the item today. Besides those already mentioned, they include applying the aesthetic criteria, including that any requirements must be reasonable, objective, and published in advance, to undergrounding; stating that undergrounding requirements that apply to some, but not all facilities, will be considered an effective prohibition if they materially inhibit wireless service; and adding similar language to the minimum spacing section of the item. Further, the minimum spacing requirements will not apply to replacement facilities or prevent collocations on existing structures. Additionally, localities claiming that an application is incomplete will need to specifically state what rule requires the submission of the missing information.

With this, I approve.

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<sup>1</sup> American Tower Ex Parte Letter, WT Docket No. 17-79, n.6 (Aug. 10, 2018).

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

The United States is on the cusp of a major upgrade in wireless technology to 5G. The WALL STREET JOURNAL has called it transformative from a technological and economic perspective. And they're right. Winning the global race to 5G—seeing this new platform deployed in the U.S. first—is about economic leadership for the next decade. Those are the stakes, and here's how we know it.

Think back ten years ago when we were on the cusp of upgrading from 3G to 4G. Think about the largest stocks and some of the biggest drivers of our economy. It was big banks and big oil. Fast forward to today: U.S.-based technology companies, from FAANG (Facebook, Apple, Amazon, Netflix, and Google) down to the latest startup, have transformed our economy and our lives.

Think about your own life. A decade ago, catching a ride across town involved calling a phone number, waiting 20 minutes for a cab to arrive, and paying rates that were inaccessible to many people. Today, we have Lyft, Uber, Via, and other options.

A decade ago, sending money meant going to a brick-and-mortar bank, standing in that rope line, getting frustrated when that pen leashed to the table was out of ink (again!), and ultimately conducting your transaction with a teller. Now, with Square, Venmo, and other apps you can send money or deposit checks from anywhere, 24 hours a day.

A decade ago, taking a road trip across the country meant walking into your local AAA office, telling them the stops along your way, and waiting for them to print out a TripTik booklet filled with maps that you would unfold as you drove down the highway. Now, with Google Maps and other apps you get real-time updates and directions right on your smartphone.

American companies led the way in developing these 4G innovations. But it's not by chance or luck that the United States is the world's tech and innovation hub. We have the strongest wireless economy in the world because we won the race to 4G. No country had faster 4G deployment and more intense investment than we did. Winning the race to 4G added \$100 billion to our GDP. It led to \$125 billion in revenue for U.S. companies that could have gone abroad. It grew wireless jobs in the U.S. by 84 percent. And our world-leading 4G networks now support today's \$950 billion app economy. That history should remind policymakers at all levels of government exactly what is at stake. 5G is about our leadership for the next decade.

And being first matters. It determines whether capital will flow here, whether innovators will start their new businesses here, and whether the economy that benefits is the one here. Or as Deloitte put it: "First-adopter countries . . . could sustain more than a decade of competitive advantage."

We're not the only country that wants to be first to 5G. One of our biggest competitors is China. They view 5G as a chance to flip the script. They want to lead the tech sector for the next decade. And they are moving aggressively to deploy the infrastructure needed for 5G.

Since 2015, China has deployed 350,000 cell sites. We've built fewer than 30,000. Right now, China is deploying 460 cell sites a day. That is twelve times our pace. We have to be honest about this infrastructure challenge. The time for empty statements about carrots and sticks is over. We need a concrete plan to close the gap with China and win the race to 5G.

We take this challenge seriously at the FCC. And we are getting the government out of the way, so that the private sector can invest and compete.

In March, we held that small cells should be treated differently than large, 200-foot towers. And we're already seeing results. That decision cut \$1.5 billion in red tape, and one provider reports that it is now clearing small cells for construction at six times the pace as before.

So we're making progress in closing the infrastructure gap with China. But hurdles remain. We've heard from dozens of mayors, local officials, and state lawmakers who get what 5G means—they understand the economic opportunity that comes with it. But they worry that the billions in investment needed to deploy these networks will be consumed by the high fees and long delays imposed by big, “must-serve” cities. They worry that, without federal action, they may not see 5G. I'd like to read from a few of the many comments I've received over the last few months.

Duane Ankney is a retired coal miner from Montana with a handlebar mustache that would be the envy of nearly any hipster today. But more relevantly, he's a Member of the Montana State Legislature and chairs its Energy and Telecommunications Committee. He writes: “Where I see the problem is, that most of investment capital is spent in the larger urban areas. This is primarily due to the high regulatory cost and the cost recovery [that] can be made in those areas. This leaves the rural areas out.”

Mary Whisenand, an Iowa commissioner, writes: “With 99 counties in Iowa, we understand the need to streamline the network buildout process so it's not just the big cities that get 5G but also our small towns. If companies are tied up with delays and high fees, it's going to take that much longer for each and every Iowan to see the next generation of connectivity.”

Ashton Hayward, the Mayor of Pensacola, Florida, writes: “[E]xcessive and arbitrary fees . . . result[] in nothing more than telecom providers being required to spend limited investment dollars on fees as opposed to spending those limited resources on the type of high-speed infrastructure that is so important in our community.”

And the entire board of commissioners from a more rural area in Michigan writes: “Smaller communities such as those located in St. Clair County would benefit by having the [FCC] reduce the costly and unnecessary fees that some larger communities place on small cells as a condition of deployment. These fees, wholly disproportionate to any cost, put communities like ours at an unfair disadvantage. By making small cell deployment less expensive, the FCC will send a clear message that all communities, regardless of size, should share in the benefits of this crucial new technology.”

They're right. When I think about success—when I think about winning the race to 5G—the finish line is not the moment we see next-gen deployments in New York or San Francisco. Success can only be achieved when all Americans, no matter where they live, have a fair shot at fast, affordable broadband.

So today, we build on the smart infrastructure policies championed by state and local leaders. We ensure that no city is subsidizing 5G. We prevent excessive fees that would threaten 5G deployment. And we update our shot clocks to account for new small cell deployments. I want to thank Commissioner Rosenworcel for improving the new shot clocks with edits that protect municipalities from providers that submit incomplete applications and provide localities with more time to adjust their operations. Her ideas improved this portion of the order.

More broadly, our decision today has benefited from the diverse views expressed by a range of stakeholders. On the local government side, I met with mayors, city planners, and other officials in their home communities and learned from their perspectives. They pushed back on the proposed “deemed

granted” remedy, on regulating rents on their property outside of rights-of-way, and on limits to reasonable aesthetic reviews. They reminded me that they’re the ones that get pulled aside at the grocery store when an unsightly small cell goes up. Their views carried the day on all of those points. And our approach respects the compromises reached in state legislatures around the country by not preempting nearly any of the provisions in the 20 state level small cells bills.

This is a balanced approach that will help speed the deployment of 5G. Right now, there is a cottage industry of consultants spurring lawsuits and disputes in courtrooms and city halls around the country over the scope of Sections 253 and 332. With this decision, we provide clear and updated guidance, which will eliminate the uncertainty inspiring much of that litigation.

Some have also argued that we unduly limit local aesthetic reviews. But allowing reasonable aesthetic reviews—and thus only preventing unreasonable ones—does not strike me as a claim worth lodging.

And some have asked whether this reform will make a real difference in speeding 5G deployment and closing the digital divide. The answer is yes. It will cut \$2 billion in red tape. That’s about \$8,000 in savings per small cell. Cutting these costs changes the prospects for communities that might otherwise get left behind. It will stimulate \$2.4 billion in new small cell deployments. That will cover 1.8 million more homes and businesses—97% of which are in rural and suburban communities. That is more broadband for more Americans.

\* \* \*

In closing, I want to thank my colleagues for working to put these ideas in place. I want to thank Chairman Pai for his leadership in removing these regulatory barriers. And I want to recognize the exceptionally hard-working team at the FCC that helped lead this effort, including, in the Wireless Telecommunications Bureau, Donald Stockdale, Suzanne Tetrault, Garnet Hanly, Jonathan Campbell, Stacy Ferraro, Leon Jackler, Eli Johnson, Jonathan Lechter, Marcus Maher, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Jiaming Shang, and David Sieradzki. I also want to thank the team in the Office of General Counsel, including Tom Johnson, Ashley Boizelle, Bill Richardson, and Anjali Singh.



**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL  
APPROVING IN PART, DISSENTING IN PART**

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84

A few years ago, in a speech at a University of Colorado event, I called on the Federal Communications Commission to start a proceeding on wireless infrastructure reform. I suggested that if we want broad economic growth and widespread mobile opportunity, we need to avoid unnecessary delays in the state and local approval process. That's because they can slow deployment.

I believed that then. I still believe it now.

So when the FCC kicked off a rulemaking on wireless infrastructure last year, I had hopes. I hoped we could provide a way to encourage streamlined service deployment nationwide. I hoped we could acknowledge that we have a long tradition of local control in this country but also recognize more uniform policies across the country will help us in the global race to build the next generation of wireless service, known as 5G. Above all, I hoped we could speed infrastructure deployment by recognizing the best way to do so is to treat cities and states as our partners.

In one respect, today's order is consistent with that vision. We shorten the time frames permitted under the law for state and local review of the deployment of small cells—an essential part of 5G networks. I think this is the right thing to do because the shot clocks we have now were designed in an earlier era for much bigger wireless facilities. At the same time, we retain the right of state and local authorities to pursue court remedies under Section 332 of the Communications Act. This strikes an appropriate balance. I appreciate that my colleagues were willing to work with me to ensure that localities have time to update their processes to accommodate these new deadlines and that they are not unfairly prejudiced by incomplete applications. I support this aspect of today's order.

But in the remainder of this decision, my hopes did not pan out. Instead of working with our state and local partners to speed the way to 5G deployment, we cut them out. We tell them that going forward Washington will make choices for them—about which fees are permissible and which are not, about what aesthetic choices are viable and which are not, with complete disregard for the fact that these infrastructure decisions do not work the same in New York, New York and New York, Iowa. So it comes down to this: three unelected officials on this dais are telling state and local leaders all across the country what they can and cannot do in their own backyards. This is extraordinary federal overreach.

I do not believe the law permits Washington to run roughshod over state and local authority like this and I worry the litigation that follows will only slow our 5G future. For starters, the Tenth Amendment reserves powers to the states that are not expressly granted to the federal government. In other words, the constitution sets up a system of dual sovereignty that informs all of our laws. To this end, Section 253 balances the interests of state and local authorities with this agency's responsibility to expand the reach of communications service. While Section 253(a) is concerned with state and local requirements that may prohibit or effectively prohibit service, Section 253(d) permits preemption only on a case-by-case basis after notice and comment. We do not do that here. Moreover, the assertion that fees above cost or local aesthetic requirements in a single city are tantamount to a service prohibition elsewhere stretches the statute beyond what Congress intended and legal precedent affords.

In addition, this decision irresponsibly interferes with existing agreements and ongoing deployment across the country. There are thousands of cities and towns with agreements for infrastructure deployment—including 5G wireless facilities—that were negotiated in good faith. So

many of them could be torn apart by our actions here. If we want to encourage investment, upending commitments made in binding contracts is a curious way to go.

Take San Jose, California. Earlier this year it entered into agreements with three providers for the largest small cell-driven broadband deployment of any city in the United States. These partnerships would lead to 4,000 small cells on city-owned light poles and more than \$500 million of private sector investment. Or take Little Rock, Arkansas, where local reforms to the permitting process have put it on course to become one of the first cities to benefit from 5G service. Or take Troy, Ohio. This town of under 26,000 spent time and energy to develop streamlined procedures to govern the placement, installation, and maintenance of small cell facilities in the community. Or take Austin, Texas. It has been experimenting with smart city initiatives to improve transportation and housing availability. As part of this broader effort, it started a pilot project to deploy small cells and has secured agreements with multiple providers.

This declaratory ruling has the power to undermine these agreements—and countless more just like them. In fact, too many municipalities to count—from Omaha to Overland Park, Cincinnati to Chicago and Los Angeles to Louisville—have called on the FCC to halt this federal invasion of local authority. The National Governors Association and National Conference of State Legislatures have asked us to stop before doing this damage. This sentiment is shared by the United States Conference of Mayors, National League of Cities, National Association of Counties, and Government Finance Officers Association. In other words, every major state and municipal organization has expressed concern about how Washington is seeking to assert national control over local infrastructure choices and stripping local elected officials and the citizens they represent of a voice in the process.

Yet cities and states are told to not worry because with these national policies wireless providers will save as much as \$2 billion in costs which will spur deployment in rural areas. But comb through the text of this decision. You will not find a single commitment made to providing more service in remote communities. Look for any statements made to Wall Street. Not one wireless carrier has said that this action will result in a change in its capital expenditures in rural areas. As Ronald Reagan famously said, “trust but verify.” You can try to find it here, but there is no verification. That’s because the hard economics of rural deployment do not change with this decision. Moreover, the asserted \$2 billion in cost savings represents no more than 1 percent of investment needed for next-generation networks.

It didn’t have to be this way. So let me offer three ideas to consider going forward.

First, we need to acknowledge we have a history of local control in this country but also recognize that more uniform policies can help us be first to the future. Here’s an idea: Let’s flip the script and build a new framework. We can start with developing model codes for small cell and 5G deployment—but we need to make sure they are supported by a wide range of industry and state and local officials. Then we need to review every policy and program—from universal service to grants and low-cost loans at the Department of Commerce, Department of Agriculture, and Department of Transportation and build in incentives to use these models. In the process, we can create a more common set of practices nationwide. But to do so, we would use carrots instead of sticks.

Second, this agency needs to own up to the impact of our trade policies on 5G deployment. In this decision we go on at length about the cost of local review but are eerily silent when it comes to the consequences of new national tariffs on network deployment. As a result of our escalating trade war with China, by the end of this year we will have a 25 percent duty on antennas, switches, and routers—the essential network facilities needed for 5G deployment. That’s a real cost and there is no doubt it will diminish our ability to lead the world in the deployment of 5G.

Finally, in this decision the FCC treats the challenge of small cell deployment with a bias toward more regulation from Washington rather than more creative marketplace solutions. But what if instead we focused our efforts on correcting the market failure at issue? What if instead of micromanaging costs we fostered competition? One innovative way to do this involves dusting off our 20-year old over-the-air-reception-device rules, or OTARD rules.

Let me explain. The FCC's OTARD rules were designed to protect homeowners and renters from laws that restricted their ability to set up television and broadcast antennas on private property. In most cases they accomplished this by providing a right to install equipment on property you control—and this equipment for video reception was roughly the size of a pizza box.

Today OTARD rules do not contemplate 5G deployment and small cells. But we could change that by clarifying our rules. If we did, a lot of benefits would follow. By creating more siting options for small cells, we would put competitive pressure on public rights-of-way, which could bring down fees through competition instead of the government ratemaking my colleagues offer here. Moreover, this approach would create more opportunities for rural deployment by giving providers more siting and backhaul options and creating new use cases for signal boosters. Add this up and you get more competitive, more ubiquitous, and less costly 5G deployment.

We don't explore these market-based alternatives in today's decision. We don't say a thing about the real costs that tariffs impose on our efforts at 5G leadership. And we don't consider creative incentive-based systems to foster deployment, especially in rural areas.

But above all we neglect the opportunity to recognize what is fundamental: if we want to speed the way for 5G service we need to work with cities and states across the country because they are our partners. For this reason, in critical part, I dissent.



# City of Sunnyvale

## Agenda Item

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**19-0514**

**Agenda Date:** 5/21/2019

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Tentative Council Meeting Agenda Calendar



## City of Sunnyvale

### Tentative Council Meeting Agenda Calendar

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#### **Thursday, May 23, 2019 - City Council**

##### **Public Hearings/General Business**

**19-0103**                      8:30 A.M. SPECIAL COUNCIL MEETING  
Budget Workshop

#### **Tuesday, June 11, 2019 - City Council**

##### **Closed Session**

**19-0271**                      4:30 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section 54957.6:  
CONFERENCE WITH LABOR NEGOTIATORS  
Agency designated representatives: Tina Murphy, Director of Human Resources; Kent Steffens, City Manager  
Employee organization: Sunnyvale Managers Association (SMA) and Sunnyvale Employees Association (SEA)

**19-0581**                      CONFERENCE WITH LEGAL COUNSEL-SETTLEMENT OF WORKERS' COMPENSATION CLAIM  
Closed Session held pursuant to California Government Code Section 54956.95(b):  
Name of Case: Barrett, Todd v. City of Sunnyvale (WCAB ADJ2680765; ADJ7694661; ADJ7695117; ADJ7794588; ADJ7694697; ADJ8037174; ADJ7694730; and ADJ8714689)

**19-0583**                      Closed Session held pursuant to California Government Code Section 54956.95(b): CONFERENCE WITH LEGAL COUNSEL-SETTLEMENT OF WORKER'S COMPENSATION CLAIMS  
Barrett, Todd v. City of Sunnyvale (WCAB ADJ2680765; ADJ7694661; ADJ7695117; ADJ7794588; ADJ7694697; ADJ8037174; ADJ7694730; and ADJ8714689)

##### **Study Session**

**19-0524**                      5:30 P.M. SPECIAL COUNCIL MEETING (Study Session)  
California Voting Rights Act (CVRA) Update on Community Education and Outreach Phase 1, and Ballot Measure to Amend City Council Elections

##### **Public Hearings/General Business**

**19-0356**                      Annual City Council Public Hearing on FY 2019/20 Budget and Resource

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Allocation Plan and Establishment of Appropriations Limit and Sunnyvale  
Financing Authority Public Hearing on FY 2019/20 Budget

- 19-0039** Appoint Applicants to the Bicycle and Pedestrian Advisory Commission,  
Board of Library Trustees, Heritage Preservation Commission, Housing and  
Human Services Commission, Parks and Recreation Commission,  
Personnel Board, and Planning Commission and Sustainability Commission
- 19-0357** Annual Review of Proposed Fees and Charges for Fiscal Year 2019/20
- 19-0309** Approve Budget Modification No. 19 for the Golf and Tennis Operations

**Tuesday, June 18, 2019 - City Council**

**Closed Session**

- 19-0273** 5:00 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section  
54957.6:  
CONFERENCE WITH LABOR NEGOTIATORS  
Agency designated representatives: Tina Murphy, Director of Human  
Resources; Kent Steffens, City Manager  
Employee organization: Sunnyvale Managers Association (SMA) and  
Sunnyvale Employees Association (SEA)

**Study Session**

- 19-0424** 6 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Master Plan for Public Art - Preliminary Findings and Recommendations

**Special Order of the Day**

- 19-0075** SPECIAL ORDER OF THE DAY - Ceremonial Oath of Office for Board and  
Commission Members

**Public Hearings/General Business**

- 19-0362** Report on California Voting Rights Act Community Education and Outreach  
Phase I and Potential Direction on Substance of a March 2020 Ballot  
Measure to Amend the City Charter to Implement City Council By-District  
Elections

**Tuesday, June 25, 2019 - City Council**

**Closed Session**

- 19-0324** 5:00 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section  
54957.6:  
CONFERENCE WITH LABOR NEGOTIATORS

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Agency designated representatives: Council Compensation Subcommittee  
Members Glenn Hendricks, Larry Klein, Russ Melton  
Unrepresented employee: City Attorney

- 19-0274** 6:00 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section 54957.6:  
CONFERENCE WITH LABOR NEGOTIATORS  
Agency designated representatives: Tina Murphy, Director of Human Resources; Kent Steffens, City Manager  
Employee organization: Sunnyvale Managers Association (SMA) and Sunnyvale Employees Association (SEA)

#### **Public Hearings/General Business**

- 19-0224** Authorize the City Manager or His Designee to Waive Transient Occupancy Taxes for Short-term Rental Hosts Who Come into Full Compliance with the Sunnyvale Municipal Code.
- 19-0319** FY 2019/20 General Fund Human Services Grant Funding Allocations
- 19-0327** Adopt a Resolution to Approve the Final Engineer's Report, Confirm the Assessment, and Levy and Collect an Annual Assessment for The Downtown Parking Maintenance District for Fiscal Year 2019/20
- 19-0358** City Council Adoption of the FY 2019/20 Budget, Fee Schedule, and Appropriations Limit and Sunnyvale Financing Authority Adoption of the FY 2019/20 Budget
- 19-0376** Proposed Utility Rate Increases for FY 2019/20 Rates for Water, Wastewater, and Solid Waste Utilities for Services Provided to Customers Within and Outside City Boundaries; Finding of CEQA Exemption Pursuant to Public Resource Code Section 21080(b)(8) and CEQA Guidelines Section 15273
- 19-0551** Adopt a Resolution to Cause Charges for Non-Payment of Delinquent Utility Charges to be placed on the FY 2019/20 County of Santa Clara Property Tax Roll

#### **Tuesday, July 16, 2019 - City Council** **Special Order of the Day**

- 19-0315** SPECIAL ORDER OF THE DAY - Parks and Recreation Month **Public**

#### **Hearings/General Business**

- 19-0369** Provide a Comprehensive Review and Update of Title 6 (Animals) of the Sunnyvale Municipal Code to Amend, Modernize, and Reorganize Content
- 19-0381** Telecommunications Facilities in Right of Way - Overview of Design Criteria

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- 19-0491** Adopt a Resolution Confirming the Report and Assessment List for Unpaid Administrative Citations to be Placed on the FY 2019/20 County of Santa Clara Property Tax Roll, and Find that this Action is Exempt from CEQA
- 19-0594** Updates to the Design Guidelines for the Murphy Station Heritage Landmark District: Adopt a Resolution Updating the Design Guidelines for the Murphy Station Heritage Landmark District, and Find that the Action is Exempt from CEQA Pursuant to CEQA Guideline Sections 15308 and 15061(b)(3). (Study Issue)

**Tuesday, July 30, 2019 - City Council**

**Public Hearings/General Business**

- 19-0519** Proposed Project: To consider a public engagement plan that allows for a preparation of a Village Center Precise Plan for a 7.81-acre site.  
Location: Street 102-166 E. Fremont Ave. (APNs: 309-01-002, 006, and 009) and 1300 Sunnyvale Saratoga Road (APN: 309-01-007)  
File #: 2018-7632  
Zoning: Neighborhood Business with a Planned Development Combining District (C-1-PD)  
Applicant / Owner: True Life Companies /Fremont Corners, Inc Et Al, Gahrahmat Family Lpii LP, Au Energy LLC (owner)  
Environmental Review: Exempt from further environmental review pursuant to Section 15378 (a) of the California Environmental Quality Act. The Public Engagement Plan is not considered a project as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.  
Project Planner: Cindy Hom, (408) 730-7411, Chom@sunnyvale.ca.gov

**Tuesday, August 13, 2019 - City Council**

**Study Session**

- 19-0110** 6 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Board and Commission Interviews (as needed)

**Presentation**

- 19-0435** PRESENTATION - Overview of Census 2020

**Public Hearings/General Business**

- 19-0126** Proposed Project: General Plan Amendment Initiation request to study changing the General Plan designation of the site from Commercial to Medium Density Residential  
Location: 870 W. Evelyn Street (APNs:165-16-004)  
File #: 2019-7298



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Zoning: C4  
Applicant / Owner: Trumark Homes  
Environmental Review: The project is exempt from the California  
Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section  
15378(a).  
Project Planner: Margaret Netto, (408) 730-7628, mnetto@sunnyvale.ca.gov

**19-0530** Proposed Project: General Plan Amendment Initiation request to study  
changing the General Plan designation of the site from Low Medium Density  
Residential to High Density Residential.  
Location: 828 Morse Avenue and 560 W. Ahwanee Avenue on Drive (APN:  
204-08-027 and 204-08-029)  
File #: 2019-7301  
Zoning: R-3  
Applicant / Owner: FNZ Architects Inc. (applicant) / Sia Vassoughi (owner)  
Environmental Review: The project is exempt from the California  
Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section  
15378(a).  
Project Planner: Ryan Kuchenig, (408) 730-7431,  
rkuchenig@sunnyvale.ca.gov

**Tuesday, August 27, 2019 - City Council**

**Public Hearings/General Business**

**19-0230** Appoint Applicants to Boards and Commissions (as needed)

**Tuesday, September 10, 2019 - City Council**

**Special Order of the Day**

**19-0232** SPECIAL ORDER OF THE DAY - Ceremonial Oath of Office for Board and  
Commission Members (as needed)

**19-0316** SPECIAL ORDER OF THE DAY - Senior Initiative - Active Aging Week

**Public Hearings/General Business**

**19-0096** Agenda Items Pending - to be scheduled

**Tuesday, September 24, 2019 - City Council**

**Public Hearings/General Business**

**19-0112** Agenda Items Pending - to be scheduled

**Tuesday, October 8, 2019 - City Council**

**Special Order of the Day**

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**19-0317** SPECIAL ORDER OF THE DAY - Arts and Humanities Month

**Public Hearings/General Business**

**19-0113** Agenda Items Pending - to be scheduled

**Tuesday, October 29, 2019 - City Council**

**Closed Session**

**19-0325** 6:00 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section  
54957:  
PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager

**Public Hearings/General Business**

**19-0114** Agenda Items Pending - to be scheduled

**Tuesday, November 5, 2019 - City Council**

**Study Session**

**19-0228** 6 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Board and Commission Interviews (as needed)

**Tuesday, November 12, 2019 - City Council**

**Closed Session**

**19-0278** 6:00 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section  
54957:  
PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager and City Attorney

**Public Hearings/General Business**

**19-0127** 2019 3rd Quarterly Consideration of General Plan Amendment Initiation  
Requests

**Tuesday, December 3, 2019 - City Council**

**Closed Session**

**19-0276** 6:00 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section  
54957:

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PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: City Manager

**Public Hearings/General Business**

**19-0231** Appoint Applicants to Boards and Commissions (as needed)

**Tuesday, December 10, 2019 - City Council**

**Closed Session**

**19-0326** 5:00 P.M. SPECIAL COUNCIL MEETING (Closed Session)  
Closed Session held pursuant to California Government Code Section 54957:  
PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager and City Attorney

**Study Session**

**19-0234** 6:45 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Discussion of Upcoming Selection of Vice Mayor for 2020

**Special Order of the Day**

**19-0233** SPECIAL ORDER OF THE DAY - Ceremonial Oath of Office for Board and  
Commission Members (as needed)

**Public Hearings/General Business**

**19-0247** Adopt a Resolution Approving the City Council Regular Meeting Calendar for  
2020 through February 2021

**Tuesday, January 7, 2020 - City Council**

**Public Hearings/General Business**

**19-0119** Agenda Items Pending - to be scheduled

**Tuesday, January 14, 2020 - City Council**

**Public Hearings/General Business**

**19-0120** Agenda Items Pending - to be scheduled

**Thursday, January 30, 2020 - City Council**

**Public Hearings/General Business**

**19-0123** 8:30 A.M. SPECIAL COUNCIL MEETING  
Strategic Session - Policy Prioritization Workshop

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Location: TBD

**Tuesday, February 4, 2020 - City Council**

**Study Session**

**19-0229**                      6 P.M. SPECIAL COUNCIL MEETING (Study Session)  
Board and Commission Interviews (as needed)

**Public Hearings/General Business**

**19-0128**                      2019 4th Quarterly Consideration of General Plan Amendment Initiation  
Requests

**Tuesday, February 25, 2020 - City Council**

**Public Hearings/General Business**

**19-0122**                      Agenda Items Pending - to be scheduled

**Thursday, February 27, 2020 - City Council**

**Public Hearings/General Business**

**19-0124**                      8:30 A.M. SPECIAL COUNCIL MEETING  
Study/Budget Issues Workshop

**Date to be Determined - City Council**

**Public Hearings/General Business**

**18-0416**                      Eco-district Feasibility and Incentives (Study Issue ESD 13-05C)

**18-0653**                      Approve the Bernardo Avenue Undercrossing Design Options and Selection  
of a Preferred Design Alternative

**19-0493**                      Climate Action Playbook



# City of Sunnyvale

## Agenda Item

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**19-0516**

**Agenda Date: 5/21/2019**

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Information/Action Items

## Information/Action Items - Council Directions to Staff

Date	Directive/Action Required	Dept	Due Date	Completed
5/8/18	Provide information report to Council on the findings when the speed survey for Caribbean is complete.	DPW	Jun 2019	
5/25/18	Bring back the sales tax chart by City when the Council considers the El Camino Real Precise Plan update	CDD	Fall 2019	
7/17/18	Staff to work with the Chamber of Commerce in gathering information or making a recommendation on what options may be available to the hotels to encourage occupancy on the weekend.	OCM	Jun 2019	
8/28/18	Staff to provide quarterly updates to Council on ERP implementation progress	OCM	Jul 2019	
12/18/18	Conduct a special audit of the Capital Improvement Project reserves and bring findings back	FIN	5/23/19	
2/7/19	Produce quarterly report on staff vacancies and include, actual staff total numbers for each department, including part-time positions.	HRD	Jul 2019	
2/7/19	Once more data is available, would be helpful for Council to receive periodically the Hiring Manager Satisfaction Survey results mentioned on slide 24.	HRD	Jul 2019	
4/23/19	Look into safety concerns regarding left turns from San Miguel neighborhood onto E. Duane Avenue.	DPW	Jun 2019	

## New Study/Budget Issues Sponsored by Council

Date Requested	Study/Budget Issue Topic	Requested By	Dept	Approved by City Manager
N/A	No Study/Budget Issues			



# City of Sunnyvale

## Agenda Item

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**19-0517**

**Agenda Date: 5/21/2019**

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Board/Commission Meeting Minutes





# City of Sunnyvale

## Meeting Minutes - Draft Bicycle and Pedestrian Advisory Commission

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Thursday, April 18, 2019

6:30 PM

Council Chambers, City Hall, 456 W. Olive  
Ave., Sunnyvale, CA 94086

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### **CALL TO ORDER**

Chair Cordes called the meeting to order at 6:31 p.m.

### **SALUTE TO THE FLAG**

Chair Cordes led the salute to the flag.

### **ROLL CALL**

**Present 5 -** Chair John Cordes  
Vice Chair Susan Bremond  
Commissioner Richard Mehlinger  
Commissioner Scott Swail  
Commissioner Kyle Welch  
**Absent 2 -** Commissioner Leia Mehlman  
Commissioner Timothy Oey

Late arrival: Commissioner Mehlinger arrived at 6:32 p.m.

Status of an absence: Commissioner Oey (excused)

Commissioner Mehlman (excused)

Council Liason Member Glenn Hendricks (absent)

### **ORAL COMMUNICATIONS**

Serge Rudaz, member of the public, spoke about raising awareness of a brand new option for district elections. A handout was given to the members of the Board.

Daniel Bremond, member of the public, offered each Commissioner a bike toy in recognition of their dedication to make Sunnyvale a safe place to ride a bike.

### **CONSENT CALENDAR**

**1.A**     [19-0460](#)     Approve the Bicycle and Pedestrian Advisory Commission Meeting

Minutes of March 21, 2019.

Approve the Bicycle and Pedestrian Advisory Commission Minutes of March 21, 2019 as submitted.

Commissioner Swail moved and Commissioner Welch seconded the motion to approve the Bicycle and Pedestrian Commission minutes of March 21, 2019. The motion was carried by the following vote:

**Yes 5 -** Chair Cordes  
Vice Chair Bremond  
Commissioner Mehlinger  
Commissioner Swail  
Commissioner Welch

**No 0**

**Absent 2 -** Commissioner Mehlman  
Commissioner Oey

#### **PUBLIC HEARINGS/GENERAL BUSINESS**

**2**      [19-0480](#)      Report and Discussion of Recent VTA BPAC Meeting

Dave Simons, VTA BPAC representative, gave the meeting summary report regarding the following topics:

- Caltrans District 4 pilot program for safety projects
- Viva CalleSJ - May 19, 2019
- VTA "Get on Board" - April 25, 2019
- San Jose "Walk to Work Day" - April 10, 2019
- VTA's new Transit Service Plan
- Criteria for Measure B Bicycle and Pedestrian Capital Projects competitive process
- Santa Clara County Roads and Airports - update of the County Expressway Bicycle Accommodation Guidelines

Commissioner Mehlinger asked about Caltrans' plan to have protected bike lanes on El Camino Real.

**3**      [19-0481](#)      Introduction to Active Transportation Plan (ATP) Project

Lillian Tsang, Principal Transportation Engineer, provided a staff report on the agenda item.

Active Transportation Plan consists of 3 major components:

1. Bicycle Master Plan
2. Pedestrian Safety and Circulation Plan
3. Safe Routes to School Plan

- Ms. Tsang introduced Jeff Knowles from Alta Planning and Design who will be working on the Active Transportation Plan. Jeff Knowles presented an overview of the project and the community outreach engagement process.

The Commissioners asked questions and made suggestions for the ATP.

Mr. Rudaz commented and made suggestions to the project.

Mr. Simons provided comments for the project.

#### **STANDING ITEM: CONSIDERATION OF POTENTIAL STUDY ISSUES**

4      [19-0482](#)      BPAC 2020 Proposed Study Issues

None.

5      [19-0483](#)      Improve Caltrain Station Access (Information Only)

None.

6      [19-0484](#)      Install a Guided Bike Route from Santa Clara to Mountain View  
(Information Only)

Commissioner Mehlinger gave an update on the proposed Bike Route study issue.

#### **NON-AGENDA ITEMS & COMMENTS**

##### **-Commissioner Comments**

Commissioner Mehlinger gave 2 updates relating to the Stevens Creek Trail.

Commissioner Welch stated that the Silicon Valley Kids Triathlon is looking for volunteers. The event is on June 2, 2019.

Chair Cordes stated that Bike to Work Day is on May 9, 2019.

Chair Cordes mentioned that Viva CalleSJ bike event will be held on May 19, 2019.

Chair Cordes had questions about the Slurry Seal list and projects with VTA Complete Streets Checklist.

Ms. Tsang addressed his questions.

**-Staff Comments**

Ms. Tsang provided information and updates on the following topics:

1. Upcoming Sunnyvale Roadway Safety Plan workshop on April 22, 2019
2. Vision Zero Plan
3. Interactive Bike Map on City website
4. Portable bike racks for special events
5. Stevens Creek Trail Feasibility Study
6. Truck loadings blocking bike lanes
7. Explore no stopping for through bicycles at intersections
8. Traffic signal timings consideration for side streets
9. El Camino Real Corridor Plan
10. County BPAC staff liaison to present at an upcoming Sunnyvale BPAC meeting to present on the update of County Expressway Bicycle Accommodation Guidelines

**INFORMATION ONLY REPORTS/ITEMS**

- |   |                         |                              |
|---|-------------------------|------------------------------|
| 7 | <a href="#">19-0485</a> | Active Items List-April 2019 |
| 8 | <a href="#">19-0486</a> | BPAC 2019 Annual Work Plan   |

**ADJOURNMENT**

Chair Cordes adjourned the meeting at 7:45 p.m.