



City of Sunnyvale

Notice and Agenda City Council

Tuesday, March 31, 2020

7:00 PM

Telepresence Meeting:
City Web Stream and
KMVT Channel 15

Regular Meeting - 7 PM

SPECIAL TELECONFERENCE NOTICE

Pursuant to Executive Order N-29-20:

The Brown Act, Government Code Section 54953, contains special requirements that apply when members of a legislative body participate in a public meeting by telephone. Certain of these requirements have been suspended by Paragraph 3 of Executive Order N-29-20, executed by the Governor of California on March 17, 2020 to mitigate the spread of the coronavirus known as COVID-19. In particular, the Executive Order suspends that provisions of the Brown Act that require noticing, posting of agendas, and public access to each location where a member will be participating telephonically, as well as provisions that require physical presence of members of the legislative body or the public for purposes of a quorum or to hold a meeting. Executive Order N-29-20 allows an agency to conduct a teleconference meeting that provides members of the public telephonic or other electronic participation in place of making a physical location for the public to observe the meeting and provide public comment, consistent with other provisions of the Brown Act.

The following members of the Sunnyvale City Council are listed to permit them to appear telephonically at the City Council Meeting on March 31, 2020: Mayor Klein; Vice Mayor Smith and Councilmembers Larsson, Hendricks, Melton, Goldman and Fong.

As always, members of the public can send written comments to the City Council prior to the meeting by emailing council@sunnyvale.ca.gov. These emails will be provided to the members of the City Council and will become part of the official record of the meeting.

Members of the public who wish to verbally address the City Council during the meeting should email those comments to cityclerk@sunnyvale.ca.gov. Comments must be received before the Chair announces that the time for public comment is closed. The City Clerk will read the first three minutes of each email into the public record. IMPORTANT: identify the Agenda Item Number or Oral Communications in the subject line of your email. Example: Public Comment for Agenda Item Number 20-0439

Pursuant to the Americans with Disabilities Act (ADA) and Executive Order N-29-20, if you need special assistance to provide public comment in this meeting, please contact the Office of the City Clerk at (408) 730-7483 or cityclerk@sunnyvale.ca.gov at least 2 hours prior to the meeting in order for the City to make reasonable alternative arrangements for you to communicate your comments. If you need special assistance in this meeting for purposes other than providing public comment, please contact the Office of the City Clerk at (408) 730-7483 or cityclerk@sunnyvale.ca.gov at least 48 hours prior to the meeting to enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.160 (b) (1))

Members of the public wanting to view and listen to the open session of the meeting may do so by tuning-in live via sunnyvaleca.legistar.com/calendar.aspx or KMVT Channel 15.

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)

ROLL CALL

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 [20-0078](#) Approve City Council Meeting Minutes of March 17, 2020

Recommendation: Approve the City Council Meeting Minutes of March 17, 2020 as submitted.

1.B [20-0442](#) Approve City Council Special Meeting Minutes of March 17, 2020

Recommendation: Approve the City Council Special Meeting Minutes of March 17, 2020 as submitted.

1.C [20-0059](#) Approve Budget Modification No. 20 to Appropriate \$302,900 in FY 2019/20 Transportation Fund for Clean Air County Program Manager Funds for the Retiming of Traffic Signals and Authorize the City Manager to Execute All Grant-Related Documents

Recommendation: Approve Budget Modification No. 20 to Appropriate \$302,900 in FY 2019/20 Transportation Fund for Clean Air (TFCA) County Program Manager Funds for Retiming of Traffic Signals and Authorize the City Manager to Execute All Grant-Related Documents.

1.D [20-0370](#) Approve Budget Modification No. 25 in the amount of \$464,435 for the Fair Oaks Avenue Overhead Bridge Rehabilitation and Authorize the City Manager to Execute the Construction Contract with Joseph J. Albanese

Recommendation: Authorize the City Manager to take the following actions:

- Award a construction contract to Joseph J. Albanese in the amount of \$18,386,002.86;
- Execute the construction contract when all necessary conditions have been met;
- Approve a 10% construction contingency;
- Approve Budget Modification No. 25 in the amount of \$464,435

1.E [20-0340](#)

Award a Contract to Macias Gini and O'Connell LLP in an amount not to exceed \$382,243 for Annual Financial Auditing Services (F20-142)

Recommendation: Take the following actions:

1. Award a three-year contract in substantially the same form as Attachment 1 to the report in the amount of \$382,243 to Macias Gini & O'Connell LLP; and
2. Authorize the City Manager to execute the contract when all necessary conditions have been met

1.F [20-0303](#)

Authorize Amending the Existing Contract with The Arcanum Group for the Infor Enterprise Asset Management Licensing and Maintenance and Support for the Water Pollution Control Plant and Related Actions Regarding Purchasing Additional Licenses and Renewing Existing Licenses and Maintenance and Support Services (F20-115)

Recommendation: Take the follow actions:

- Authorize the City Manager to execute the First Amendment to an existing contract with The Arcanum Group, in substantially the same format as Attachment 1 to the report, increasing the not-to-exceed contract amount by \$33,245 for a new not-to-exceed contract amount of \$667,206; and
- Authorize the City Manager to purchase additional licenses and renew existing licenses and maintenance and support for five (5) additional one-year periods with Infor or its VARS, within budgeted amounts.

1.G [20-0221](#)

Approve the Downtown Sunnyvale Business Improvement District Annual Report for Fiscal Year 2019/20; and Adopt Resolution of Intention to Levy and Collect an Annual Assessment and Reauthorize the BID for Fiscal Year 2020/21

Recommendation: Approve the Fiscal Year 2019/20 BID Annual Report, adopt the Resolution of Intention to Levy and Collect an Assessment and Reauthorize the Business Improvement District for Fiscal Year 2020/21, and schedule the public hearing for April 28, 2020.

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 [20-0439](#) Adopt an Emergency Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic; Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Nonpayment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic; and Provide Direction Regarding any Desired Enhanced Provisions on Temporary Moratorium on Evictions of Commercial Tenants Impacted by the COVID-19 Pandemic.

Recommendation: Alternative 1 and Alternative 4:
1) Adopt an Emergency Ordinance and Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic (Attachments 1 and 2); and, 4) provide direction to staff on whether the Council desires enhanced provisions, beyond those set forth in the County ordinance, for eviction moratoriums for commercial tenants impacted by the COVID-19 pandemic.

COUNCILMEMBERS REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

NON-AGENDA ITEMS & COMMENTS

-Council

-City Manager

INFORMATION ONLY REPORTS/ITEMS

Visit <http://Sunnyvale.ca.gov/TCMAC> to view the Tentative Council Meeting Agenda Calendar (TCMAC) online. The TCMAC is updated each Thursday afternoon.

[20-0357](#) Board/Commission Meeting Minutes

[20-0358](#) Information/Action Items

ADJOURNMENT**NOTICE TO THE PUBLIC**

The agenda reports to council (RTCs) may be viewed on the City's website at sunnyvale.ca.gov after 7 p.m. on Thursdays or in the Office of the City Manager located at 456 W. Olive Ave., 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 Manager located at 456 W. Olive Ave. 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.

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 <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

20-0078

Agenda Date: 3/31/2020

SUBJECT

Approve City Council Meeting Minutes of March 17, 2020

RECOMMENDATION

Approve the City Council Meeting Minutes of March 17, 2020 as submitted.



City of Sunnyvale

Meeting Minutes - Draft

City Council

Tuesday, March 17, 2020

7:00 PM

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

**Regular Meeting - 7 PM | (Special Meeting: Closed Session - 5:30 P.M. - Canceled) |
(Special Meeting: Study Session - 6 PM - Canceled)**

TELECONFERENCE SPECIAL NOTICE

Pursuant to Executive Order N-25-20:

The Brown Act, Government Code Section 54953, contains special requirements that apply when members of a legislative body participate in a public meeting by telephone. Certain of these requirements have been suspended by Paragraph 11 of Executive Order N-25-20, executed by the Governor of California on March 12, 2020 to mitigate the spread of the coronavirus known as COVID-19. In particular, the Executive Order suspends that provisions of the Brown Act that require noticing, posting of agendas, and public access to each location where a member will be participating telephonically, as well as provisions that require physical presence of members for purposes of a quorum or to hold a meeting. Executive Order N-25-20 requires that the agency to notice at least one publicly accessible location where members of the public have the right to observe and offer comment at the meeting, consistent with other provisions of the Brown Act.

The following members of the Sunnyvale City Council are listed to permit them to appear telephonically, if necessary, at the City Council Meeting on March 17, 2020: Mayor Klein; Vice Mayor Smith and Councilmembers Larsson, Hendricks, Melton, Goldman and Fong.

Members of the public may physically attend, observe and provide public comment at the meeting at the Sunnyvale City Council Chamber, located at 456 West Olive Ave., Sunnyvale, CA 94088.

Attendees are expected to comply with directions from City staff with regard to seating arrangements and other social distancing measures pursuant to Santa Clara Public Health Officer's Coronavirus Guidances.

Members of the public wanting to view and listen to the open session of the meeting may do so by tuning-in live via sunnyvaleca.legistar.com/calendar.aspx

5:30 P.M. SPECIAL COUNCIL MEETING (Closed Session) - CANCELED

1 Call to Order in the West Conference Room

2 Roll Call

3 Public Comment

4 Convene to Closed Session

[20-0296](#) CONFERENCE WITH LEGAL COUNSEL-SETTLEMENT OF WORKER'S COMPENSATION CLAIM Closed Session held pursuant to California Government Code Section 54956.95(b):
Claimant: Bart Carrigan
City of Sunnyvale Claim No. SYVX-227845

Agenda item not heard by Council.

[20-0324](#) CONFERENCE WITH LEGAL COUNSEL-PENDING LITIGATION
Closed Session held pursuant to California Government Code Section 54956.9 (d)(1).
Name of Case: Ronald D'Alba v. City of Sunnyvale (Workers Compensation Appeal Board Case Nos. AB ADJ7427931 and ADJ4363668)

Agenda item not heard by Council.

5 Adjourn Special Meeting

6 P.M. SPECIAL COUNCIL MEETING (Study Session) - CANCELED

1 Call to Order in the Council Chambers

2 Roll Call

3 Public Comment

4 Study Session

[20-0237](#) Transition from Level of Service (LOS) to Vehicle Miles Traveled (VMT)

Agenda item not heard by Council.

5 Adjourn Special Meeting

7 P.M. COUNCIL MEETING

CALL TO ORDER

Mayor Klein called the meeting to order at 7:00 p.m.

SALUTE TO THE FLAG

Mayor Klein provided details of Executive Order N-25-20 pertaining to temporary modifications to California's open meetings law, the Ralph M. Brown Act.

ROLL CALL

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

Vice Mayor Smith and Councilmembers Larsson and Melton attended via teleconference.

CLOSED SESSION REPORT

Agenda item not heard by Council.

SPECIAL ORDER OF THE DAY

[20-0365](#) SPECIAL ORDER OF THE DAY - Recognition of Sunnyvale
Resident Eric Steger

Agenda item not heard by Council.

[20-0350](#) SPECIAL ORDER OF THE DAY - American Red Cross Month

Agenda item not heard by Council.

PRESENTATION

[20-0030](#) PRESENTATION - Split Tax Roll Ballot Measure by Santa Clara County Assessor Larry Stone

Agenda item not heard by Council.

ORAL COMMUNICATIONS

Vice Mayor Smith announced the current recruitment for various Boards and Commissions.

CONSENT CALENDAR

MOTION: Vice Mayor Smith moved and Councilmember Hendricks seconded the motion to approve Items 1.A through 1.J.

The motion carried with the following vote:

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

No: 0

1.A [20-0219](#) Approve City Council Meeting Minutes of February 25, 2020
Approve the City Council Meeting Minutes of February 25, 2020 as submitted.

1.B [20-0346](#) Approve City Council Meeting Minutes of February 27, 2020
Approve the City Council Meeting Minutes of February 27, 2020 as submitted.

1.C [20-0071](#) Approve the List(s) of Claims and Bills Approved for Payment by the City Manager
Approve the list(s) of claims and bills.

1.D [20-0271](#) Receive and File the City of Sunnyvale Investment Report - 4th Quarter 2019
Receive and file the City of Sunnyvale - Fourth Quarter 2019 Investment Report.

1.E [20-0267](#) Award of Contract to Bellecci & Associates, Inc. for Water Line Replacement 2019 Project (F19-238)

Take the following actions:

- Award a Consultant Services Agreement in substantially the same form as Attachment 1 to the report in the not-to-exceed contract amount of \$557,511 to Bellecci & Associates, Inc.;
- Authorize the City Manager to execute the contract when all necessary conditions have been met; and
- Approve a 10% contingency in the amount of \$55,751.

1.F [20-0317](#) Award of Bid No. PW20-13 to Graham Contractors, Inc. for Slurry Seal 2020 and Finding of CEQA Categorical Exemption

Take the following actions:

- Make a finding of categorical exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301(c);
- Award a contract in substantially the same form as Attachment 2 to the report in the amount of \$856,215.84 to Graham Contractors, Inc.;
- Authorize the City Manager to execute the contract when all necessary conditions have been met; and
- Approve a 10% construction contingency in the amount of \$85,622.

1.G [20-0261](#) Authorize the Issuance of a Purchase Order to Tymco, Inc. for Two Sweeper Service Vehicles (F20-107)

Authorize the issuance of a Purchase Order in the amount of \$487,861 (including tire and delivery fees) excluding sales tax, in substantially the same form as Attachment 1 to the report, to Tymco, Inc. for two 2020 sweeper service vehicles.

1.H [20-0376](#) Approve a Revised Memorandum of Understanding with Santa Clara County for Crime Laboratory Services Related to Department of Public Safety Major Cases

Authorize the City Manager to execute a revised Memorandum of Understanding (MOU), in substantially the form as Attachment 1 to the report, between the City of Sunnyvale and Santa Clara County for services provided by the Santa Clara County Crime Laboratory related to Department of Public Safety Major Cases, for a term of ten years commencing with the last signature date of the MOU.

1.I [20-0336](#) Adopt a Resolution authorizing display of the Prisoners of War/Missing in Action (POW/MIA) flag on Armed Forces Day, Memorial Day, Flag Day, Independence Day, National

POW/MIA Recognition Day and Veterans Day

Adopt a Resolution authorizing display of the POW/MIA flag on Armed Forces Day, Memorial Day, Flag Day, Independence Day, National POW/MIA Recognition Day and Veterans Day.

1.J [20-0021](#) Annual Review and Approval of City's Code of Ethics and Conduct for Elected and Appointed Officials

Review and approve the 2020 Code of Ethics and Conduct for Elected and Appointed Officials with no changes from the 2019 Code as set forth in Attachment 1 to the report.

PUBLIC HEARINGS/GENERAL BUSINESS

2 [20-0405](#) Adopt a Resolution Ratifying the City Manager's Proclamation of a Local Health Emergency in Response to the 2019 Novel Coronavirus

City Manager Kent Steffens and Public Safety Chief Phan Ngo provided the staff report.

Public Hearing opened at 7:22 p.m.

No speakers.

Public Hearing closed at 7:22 p.m.

MOTION: Councilmember Hendricks moved and Councilmember Fong seconded the motion to approve Alternative 1: Adopt a Resolution confirming the City Manager/Director of Emergency Services' Proclamation of Existence of a Local Emergency (COVID-19).

The motion carried with the following vote:

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

No: 0

3 [20-0356](#) Proposed Project: Related applications on a 40.5 acre site:

MAJOR MOFFETT PARK SPECIAL DEVELOPMENT

PERMIT: Two new five-story R&D office buildings of 1,041,890 square feet resulting in 60 percent Floor Area Ratio (FAR). The existing 710,381 square feet of office & manufacturing buildings will be demolished.

VESTING TENTATIVE MAP: Merge ten existing parcels and create two new parcels.

Location: 360 W. Caribbean Drive (APNs: 110-26-020, 021, 022, 023, 025, 027, 028, 029, 030, 031)

File #: 2017-8042

Zoning: Moffett Park Industrial (MP-I) & Moffett Park Transit Oriented Development (MP-TOD)

Applicant / Owner: Google LLC (applicant) / Google Inc. (owner)

Environmental Review: Transportation Environmental Impact Report and Statement of Overriding Considerations and Mitigation Monitoring and Reporting program

Project Planners: Shaunn Mendrin, (408) 730-7431, smendrin@sunnyvale.ca.gov and Michelle King, (408) 730-7463, mking@sunnyvale.ca.gov.

Agenda item not heard by Council.

- 4 [20-0269](#) Approve the 2019 Annual Progress Report on Implementation of the General Plan Housing Element

Community Development Director Trudi Ryan provided the staff report.

Public Hearing opened at 7:41 p.m.

No speakers.

Public Hearing closed at 7:41 p.m.

MOTION: Councilmember Hendricks moved and Vice Mayor Smith seconded the motion to approve Alternative 1: Approve the 2019 Housing Element Annual Progress Report (Attachment 1 of the report) and direct staff to submit the report to the Governor's Office of Planning and Research and the California Department of Housing and Community Development.

The motion carried with the following vote:

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

No: 0

- 5** [20-0226](#) Introduce an Ordinance to Amend Title 10 (Vehicles and Traffic); Sections 10.04.090 (General), 10.16.020 (Parking Regulations), 10.36.065 (Loading and Special Zones), and 10.56.140 (Bicycles) of the Sunnyvale Municipal Code for Clarification and Cleanup

Agenda item not heard by Council.

COUNCILMEMBERS REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Vice Mayor Smith advised she will share February and March updates regarding Silicon Valley Clean Energy with staff.

Councilmember Hendricks shared details of Santa Clara Transportation Authority actions taken in response to the Covid-19 pandemic.

NON-AGENDA ITEMS & COMMENTS

-Council

Councilmember Fong proposed directing staff to explore various options to support local businesses experiencing financial hardship due to the Santa Clara County Shelter at Place of Residence Order.

Councilmember Goldman requested staff investigate aiding those unable to obtain a month-to-month rental agreement.

Vice Mayor Smith suggested staff consider temporarily waiving vehicle entry fees at Baylands Park. She noted reports of increases in shoplifting and requests for additional garbage pick-up.

-City Manager

City Manager Kent Steffens requested Council confirm support for each item Councilmembers proposed staff investigate in response to the Covid-19 pandemic and resulting Shelter at Place of Residence Order.

Mayor Klein confirmed staff is exploring an eviction moratorium.

MOTION: Vice Mayor Smith moved and Councilmember Larsson seconded the motion to direct staff to agendize consideration of waiving vehicle entry fees at Baylands Park for 30-, 60- or 90-days.

FRIENDLY AMENDMENT: Councilmember Larsson offered a friendly amendment to modify the motion to agendize a discussion of authorizing the City Manager to waive resident fees as he deems appropriate.

Vice Mayor Smith accepted the friendly amendment.

The motion as amended failed with the following vote:

Yes: 3 - Vice Mayor Smith
Councilmember Larsson
Councilmember Goldman

No: 4 - Mayor Klein
Councilmember Hendricks
Councilmember Melton
Councilmember Fong

MOTION: Councilmember Larsson moved and Vice Mayor Smith seconded the motion to direct staff to agendize consideration of waiving vehicle entry fees at Baylands Park for 30-, 60- or 90-days.

The motion failed with the following vote:

Yes: 3 - Vice Mayor Smith
Councilmember Larsson
Councilmember Fong

No: 4 - Mayor Klein
Councilmember Hendricks
Councilmember Melton
Councilmember Goldman

City Manager Kent Steffens advised staff may publish the Tentative Council Meeting Agenda Calendar (TCMAC) less frequently than the typical weekly publication schedule during the current local health emergency. He advised special Council meetings may be scheduled to hear agenda items postponed due to the Covid-19 pandemic.

INFORMATION ONLY REPORTS/ITEMS

- [20-0020](#) Tentative Council Meeting Agenda Calendar
- [20-0300](#) Board/Commission Meeting Minutes
- [20-0119](#) Information/Action Items
- [20-0388](#) Transportation Map Depicting Major Transit Stops and Stops along a High-Quality Transit Corridor with a One-Half Mile Buffer as defined by Senate Bill 743 (Information Only)
- [20-0341](#) Study Session Summary of December 10, 2019 - #HRD 19-01 Review Results of Workforce Initiative That Creates Partnerships to Develop a Pipeline for Students to Enter Public Sector Employment
- [20-0368](#) Study Session Summary of February 25, 2020 - Fines Amnesty (2019 Study Issue)

ADJOURNMENT

Mayor Klein adjourned the meeting at 8:25 p.m.



City of Sunnyvale

Agenda Item

20-0442

Agenda Date: 3/31/2020

SUBJECT

Approve City Council Special Meeting Minutes of March 17, 2020

RECOMMENDATION

Approve the City Council Special Meeting Minutes of March 17, 2020 as submitted.



City of Sunnyvale

Meeting Minutes - Draft

City Council

Tuesday, March 17, 2020

6:30 PM

Council Chambers, City Hall, 456 W. Olive
Ave., Sunnyvale, CA 94086

Special Meeting - 6:30 PM

6:30 P.M. COUNCIL MEETING

CALL TO ORDER

Mayor Klein called the meeting to order at 6:30 p.m.

Mayor Klein provided details of Executive Order N-25-20 pertaining to temporary modifications to California's open meetings law, the Ralph M. Brown Act.

ROLL CALL

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

Vice Mayor Smith and Councilmembers Larsson and Melton attended via teleconference.

PUBLIC HEARINGS/GENERAL BUSINESS

- 1 [20-0419](#) Authorize the City Manager to Negotiate and Execute an Emergency Assistance Agreement With Sunnyvale Community Services Related to the Santa Clara County Health Officer's Shelter at Place of Residence Order and Approve Budget Modification No. 25 in the Amount of \$250,000 and Authorize the City Manager to Suspend Interruption of Water Service for a 60-day Period

City Manager Kent Steffens provided the staff report.

Public Hearing opened at 6:44 p.m.

No speakers.

Public Hearing closed at 6:44 p.m.

MOTION: Councilmember Hendricks moved and Councilmember Fong seconded the motion to approve Alternatives 1 and 2:

1. Authorize the City Manager to negotiate and execute an emergency assistance agreement with Sunnyvale Community Services related to the Santa Clara County Health Officer's Shelter at Place of Residence Order, Issued on March 16, 2020 and approve Budget Modification No. 25 in the amount of \$250,000; and
2. Authorize the City Manager to suspend interruption of Water Service for a 60-day period and to waive late payment penalties for all water customers.

The motion carried with the following vote:

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

No: 0

ADJOURNMENT

Mayor Klein adjourned the meeting at 6:47 p.m.



City of Sunnyvale

Agenda Item

20-0059

Agenda Date: 3/31/2020

REPORT TO COUNCIL

SUBJECT

Approve Budget Modification No. 20 to Appropriate \$302,900 in FY 2019/20 Transportation Fund for Clean Air County Program Manager Funds for the Retiming of Traffic Signals and Authorize the City Manager to Execute All Grant-Related Documents

GRANT SUMMARY

On September 11, 2019, the City was awarded Transportation Fund for Clean Air (TFCA) County Program Manager funds in the amount of \$302,900 for the retiming of traffic signals on various city streets as noted below.

TFCA is a Bay Area Air Quality Management District (BAAQMD) program funded by a surcharge of \$4.00 on motor vehicle registration fees within the Bay Area. Sixty percent of the annually available TFCA funds are administered by the BAAQMD and the remaining forty percent are returned to the nine Bay Area counties in the form of County Program Manager funds as grants to local governments for projects that will reduce air pollution and improve bike and pedestrian facilities. In Santa Clara County, Valley Transportation Authority (VTA) administers these funds and awards them to individual cities on a competitive basis.

The intent of the Traffic Signals Retiming projects is to help reduce delays and improve vehicle travel time. Traffic signal timing improvements will be implemented along Duane Avenue, Wolfe Road, Homestead Road, Bernardo Avenue and Kifer Road for a total cost of \$302,900. The funds will be appropriated to five separate projects - one for each location. Additionally, the grant allows for a portion of the funds to be used to purchase equipment to monitor the timing for these intersections and is included within the project budgets. New traffic data will be collected that will be used to develop the retiming plans. The plans will also incorporate pedestrian and bicycle intersection crosswalk timing needs.

Granting Agency

The FY 2019/20 TFCA County Program Manager funds set aside for competitive local government grant awards are administered by VTA.

EXISTING POLICY

Council Policy 7.1.5 Donations, Contributions and Sponsorships:

The City Manager may apply for grants of any dollar amount, but shall notify the Council when grants are being pursued. Council approval of a budget modification to appropriate grant monies is required before funds can be expended by staff. Such a budget modification shall include the use to which the grant would be placed; the objectives or goals of the City which will be achieved through use of the grant; the local match required, if any, plus the source of the local match; any increased cost to be locally funded upon termination of the grant; and the ability of the City to administer the grant. For

grants under the amount of \$5,000 that do not have any external reporting requirements or any local match requirement, Council approval of a budget modification is not required. The City Manager is authorized to accept and administratively appropriate the grant funds.

This grant does not meet all the criteria to be administratively appropriated by the City Manager; therefore, a budget modification is required. Grant funds from VTA have external reporting requirements and fall under the federal single audit guidelines.

ENVIRONMENTAL REVIEW

The budget modification does not constitute a "project" within 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. It is anticipated that the projects funded by the grant will be a categorical exemption for existing facilities under CEQA Guidelines section 15301.

FISCAL IMPACT

Budget Modification No. 20 has been prepared to appropriate FY 2019/20 TFCA County Program Manager Funds in the amount of \$302,900 to five new projects for retiming of traffic signals. No matching funds or ongoing operating costs are required. All expenditures will be covered with the grant award appropriations.

Budget Modification No. 20 FY 2019/20

	Current	Increase/(Decrease)	Revised
Capital Project Fund - General Fund			
Assets Sub-Fund			
<u>Revenues</u>			
FY 2019/20 TFCA County Program Manager Funds	\$0	\$302,900	\$302,900
<u>Expenditures</u>			
New Project – Duane Avenue Traffic Signals Retiming	\$0	\$45,900	\$45,900
New Project – Wolfe Road Traffic Signals Retiming	\$0	\$116,600	\$116,600
New Project – Homestead Road Traffic Signals Retiming	\$0	\$61,100	\$61,100
New Project – Bernardo Avenue Traffic Signals Retiming	\$0	\$40,200	\$40,200
New Project – Kifer Road Traffic Signals Retiming	\$0	\$39,100	\$39,100

PUBLIC CONTACT

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

RECOMMENDATION

Approve Budget Modification No. 20 to Appropriate \$302,900 in FY 2019/20 Transportation Fund for Clean Air (TFCA) County Program Manager Funds for Retiming of Traffic Signals and Authorize the City Manager to Execute All Grant-Related Documents.

Prepared by: Carmen Talavera, Senior Traffic Engineer

Reviewed by: Timothy J. Kirby, Director of Finance

Reviewed by: Chip Taylor, Director, Public Works

Reviewed by: Jaqui Guzmán, Deputy City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Draft Sunnyvale 2019/20 TFCA Agreement

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
CONGESTION MANAGEMENT PROGRAM
TRANSPORTATION FUND FOR CLEAN AIR
AGREEMENT
FY 2019/20**

This agreement (“Agreement”) by and between the Santa Clara Valley Transportation Authority (“VTA”) and the City of Sunnyvale (“Sponsor”) shall be effective on the date that this Agreement is fully executed by the parties hereto (“Effective Date”).

RECITALS

This Agreement is made with reference to the following facts:

- A. VTA has been designated by resolutions of the County of Santa Clara, as well as a majority of the cities within Santa Clara County, as the Program Manager for Santa Clara County Transportation Fund for Clean Air (“TFCA”) County Program Manager under the State of California Health and Safety Code Section 44241.
- B. Pursuant to that designation, VTA is responsible for allocating and administering the County of Santa Clara’s TFCA County Program Manager Fund (“County Program Manager Fund”) to eligible project sponsors in accordance with its agreement with the Bay Area Air Quality Management District (“BAAQMD”).
- C. On October 3, 2019, the VTA Board approved the programming of Fiscal Year (“FY”) 2019/20 Transportation Fund for Clean Air Program Manager funds for the Kifer Road, Wolfe Road, Homestead Road, Bernado Avenue and Duane Road Signal Timing projects. (“Projects”).
- D. This Agreement specifies the conditions under which VTA will allocate and administer a grant from the County Program Manager Fund to Sponsor for FY 2019/20.

Now, therefore the parties agree as follows:

AGREEMENT

Section 1. Grant of TFCA Funds; Description of Projects

- A. Subject to appropriation and receipt of TFCA funds (as further set forth in Section 9, below), VTA hereby agrees to allocate to Sponsor a TFCA grant in an amount not to exceed three hundred two thousand nine hundred dollars (\$302,900) (the “Grant Funds”) in consideration for Sponsor’s agreement to implement and complete the Projects (as further set forth in the Project summaries attached hereto as **Attachment A**), in accordance with the terms and conditions set forth in this Agreement.
- B. In consideration of VTA’s providing Sponsor with the Grant Funds, Sponsor hereby agrees to implement and complete the Projects in conformance with the terms of this Agreement. In implementing the Projects, Sponsor shall comply with the Project schedule and monitoring requirements, as described in **Attachment A**.

Section 2. Proper Expenditure; Return of Funds

- A. Sponsor shall assure that all Grant Funds received under this Agreement are expended only in accordance with all applicable provisions of federal, state and local laws, and Sponsor shall require any other sub-recipients of Grant Funds for the Projects to do the same.
- B. Sponsor shall comply with: (i) all TFCA Project requirements, as set forth in the BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending (FYE) 2020," the Funding Agreement between VTA and BAAQMD for FY 2019/20 (FYE 2020); and (ii) the TFCA County Program Manager Fund Policies for FYE 2020 (hereinafter "Policies"). These documents, including appendices and revisions, are incorporated herein and made a part hereof by this reference as if fully set forth herein.
- C. Sponsor shall expend no more than six and a quarter percent (6.25%) of Grant Funds received hereunder on administrative costs, per California Health and Safety Code Section 44233.
- D. Sponsor shall return to VTA all Grant Funds that are not expended in accordance with applicable provisions of law.
- E. In addition, Sponsor shall return the Grant Funds to VTA if the Projects are not maintained and/or operated throughout and until the conclusion of the "Number of Years of Effectiveness" ("Project Life"). This is the default value stated in Appendix H of BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending 2020" for the applicable project type, unless a different value was approved by VTA and shown to yield a Project that meets the cost-effectiveness requirement in the Policies by the Program Manager. The amount of Grant Funds returned to the Program Manager shall be calculated on a prorated basis based on the length of the Project Life.

Section 3. Term

- A. The term of this Agreement shall commence July 1, 2019 and shall continue until either the Projects are completed or terminated in accordance with Section 15C, but no later than June 30, 2021 without written approval.
- B. Any requests for additional time to complete a Project beyond June 30, 2021 must be submitted in writing to VTA no later than sixty (60) days prior to that date. VTA may approve or deny, in writing, two 12-month requests in its sole discretion. In order to approve any time extensions, sponsor must prove to VTA that significant progress has been made on implementing the Project. Any subsequent schedule extensions for the Project can only be approved in writing by BAAQMD on a case-by-case basis, if BAAQMD finds that Sponsor has made significant progress on the Project. A formal amendment to this agreement is not required.
- C. In addition to the specific term of this Agreement, Sponsor must maintain each Project for the term prescribed in Section 2(E) herein.

Section 4. Work Product

Sponsor shall place in the public domain any software, written document, or other product developed with funds received through this Agreement, to the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act (California Government Code Sections 6250 et seq.).

Section 5. Acknowledgement of Funding Sources

A. Sponsor shall acknowledge both VTA and BAAQMD as Project's funding sources during the implementation of the Projects and shall use the VTA and the BAAQMD approved logos as specified below:

- (1) The logos shall be used on signs posted at the site of any Project construction;
- (2) The logos shall be displayed on any vehicles or equipment operated with or obtained as part of the Projects;
- (3) The logos shall be used on any material intended for public consumption associated with the Projects, such as websites and printed materials, including Project-related transit schedules, brochures, handbooks, maps created for public distribution, and promotional material; and
- (4) Sponsor will demonstrate to VTA, through evidence such as photographs of vehicles, equipment, construction signs, and copies of press releases, that the logos are used and displayed as required by this Section.

B. VTA shall provide a copy of BAAQMD and VTA logos to Sponsor solely for use in fulfilling Sponsor's obligations under this Section.

C. Sponsor shall acknowledge VTA and BAAQMD as a funding source in any related articles, news releases, or other publicity materials for the Projects that are produced or caused to be produced by Sponsor.

Section 6. Insurance Coverage

Sponsor shall obtain and maintain, throughout the term of this Agreement, the insurance coverage specified in Attachment B "Insurance Requirements," and shall comply with all insurance requirements set forth therein, including the provision regarding documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement. The Sponsor shall forward a copy of the required insurance documentation to VTA to the email address insurance.certificates@vta.org with a copy to VTA Programming and Grants.

Section 7. Invoicing

Sponsor shall submit invoices at quarterly intervals to VTA for reimbursement of costs incurred to implement the Projects. Sponsor shall send requests for reimbursement to VTA Accounts Payable at 3331 North 1st Street, Building A, San José, CA 95134-1927. Sponsor shall include relevant, auditable back-up documentation (time sheets, bills, etc.) with each invoice.

Section 8. Reimbursement

- A. All funds allocated by VTA to Sponsor shall be on a cost-reimbursement basis only. VTA shall pay no funds in advance.
- B. Upon review and approval of invoices and documentation, VTA shall, within fifteen (15) days of receipt of an invoice that conforms to the requirements set forth in this Agreement, reimburse Sponsor for all eligible expenditures up to the maximum amount described in Section 1 of this Agreement. Only those Project costs incurred by Sponsor on or after July 1, 2019 shall be considered reimbursable expenditures.
- C. Funds for the Projects described in this Agreement, which are not submitted for reimbursement prior to June 30, 2021, shall not be available to reimburse Project costs unless a Project schedule, which extends the Project completion date beyond June 30, 2021, has been approved by VTA and BAAQMD, as set forth in Section 3, above.

Section 9. Funds Subject to Appropriation/Allocation of Funds Contingent on Appropriation

VTA's obligations under the terms of this Agreement are contingent upon and subject to the allocation of TFCA funds to VTA by BAAQMD under VTA's "20-SC" agreement with BAAQMD for approved projects during Fiscal Year 2019/20.

Section 10. Audit

This Agreement shall be subject to the examination and audit of the California State Auditor pursuant to California Government Code Section 8546.7 for a period of five (5) years after final payment. Audits may also be conducted by an auditor chosen by BAAQMD or VTA.

Section 11. Sponsor's Record Keeping

Sponsor shall:

- A. Allow VTA and BAAQMD staff, authorized representatives and independent auditors, during the term of this Agreement and for five (5) years following completion of each Projects, to conduct performance and financial audits of the Projects and to inspect the Projects. During audits, the Sponsor shall make available to the auditor, in a timely manner, all records relating to Sponsor's implementation of the Projects. During inspections, Sponsor will provide, at the request of VTA or BAAQMD, access to inspect the Projects and related records.
- B. Maintain employee time sheets documenting those hourly labor costs incurred in the implementation of the Projects, including both administrative and Project implementation costs, or to establish an alternative method to document staff costs charged to the funded Projects.
- C. Keep all financial and Project implementation records necessary to demonstrate compliance with this Agreement and the TFCA Program. Such records shall include documentation that demonstrates significant progress made for those TFCA Program Projects seeking extensions to the completion date. Sponsor shall keep such documents in a central location for a period of five (5) years following completion of the Projects.

- D. Submit a mid-year progress report to VTA one (1) month after the end of the second quarter of each fiscal year (“fiscal year” means the period starting July 1 and ending June 30). The report shall itemize: (a) the expenditure of the funds; and (b) progress to-date in the implementation of each funded Project.
- E. Submit a year-end report within one (1) month of the end of each fiscal year until each Project is completed and all monitoring requirements have been fulfilled. The report shall itemize: (a) the expenditure of the funds; (b) progress to-date in the implementation of each funded Project; and (c) the results of the monitoring of the performance of the Projects as specified in Attachment A.

Section 12. Indemnity

- A. Sponsor shall comply with the indemnity provision set forth in Attachment B.

Section 13. Review

- A. VTA shall review Sponsor’s progress in implementing the Projects at the end of the sixth (6th) quarter following execution of this Agreement. If progress at the sixth (6th) quarter review is insufficient to implement the Projects or to expend the funds within the period described in Section 3, VTA shall develop an action plan with the Sponsor to ensure that the Grant Funds are not required to be repaid to VTA and/or BAAQMD, and the action plan may include reprogramming funds to other projects within Santa Clara County to ensure their expenditure prior to the term expiration date described in Section 3.
- B. VTA shall provide Sponsor with all BAAQMD-approved Program Manager reporting forms required pursuant to this Agreement.

Section 14. Non-Performance

- A. If Sponsor causes all or part of these Grant Funds to be subject to repayment to the County Program Manager Fund as a result of failure to complete the Projects according to the work scope described in Attachment A, Sponsor’s next grant allocation of any kind that is from or passes through VTA shall be reduced by the amount that VTA repaid to the County Program Manager Fund.
- B. Sponsor shall be ineligible for future funding under this program if Sponsor has five (5) or more projects greater than two (2) years old on BAAQMD’s annual “Less than 100% complete” list.

Section 15. General Terms and Conditions

- A. **Notices.** Any notice required to be given by either Party, or which either Party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA:	Santa Clara Valley Transportation Authority
	Director, Planning & Programming
	3331 North 1st Street
	San José, CA 95134-1906

To SPONSOR: City of Sunnyvale
City Manager
456 W. Olive Ave
Sunnyvale, CA, 94086

B. Program Liaison. Within thirty (30) days from the Effective Date of this Agreement, Sponsor shall notify VTA of Sponsor's "Program Liaison" and of the Program Liaison's address, telephone number, and email address. The Program Liaison shall be the liaison to VTA pertaining to implementation of this Agreement and shall be the contact for information about the Projects. Sponsor shall notify VTA of the change of Program Liaison or of the Program Liaison's contact information in writing no later than thirty (30) days from the date of any change.

C. Termination.

Voluntary. Either Party may terminate this Agreement and/or a Project at any time by giving written notice of termination to the other Party which shall specify the effective date thereof. Notice of termination under this paragraph shall be given at least ninety (90) days before the effective date of such termination, unless the Parties mutually agree to an earlier termination date. This Agreement shall also terminate at the end of the fiscal year during which the Santa Clara Valley Transportation Authority loses its designation as County Program Manager for Santa Clara County.

If VTA terminates this Agreement and/or a Project pursuant to this provision, the Sponsor shall cease all work under this Agreement and cease further expenditures of Grant Funds received under this Agreement for the terminated Project immediately upon receipt of the notice of termination, excepting any work permitted to continue that is specified in the notice of termination. VTA will reimburse Sponsor for eligible costs on the Project expended up to the effective date of the termination and no further Grant Funds will be provided for that Project.

If Sponsor terminates this Agreement and/or a Project pursuant to this provision, the Sponsor must return all Grant Funds provided by VTA for the specific Project up to and including the date of termination.

After Breach. VTA may terminate this Agreement and/or a Project for breach. VTA will deliver a written notice of breach that specifies the date of termination, which will be no less than ten (10) business days from delivery of such notice and will provide the Sponsor the opportunity to contest such breach within that period of time. If Sponsor contests the notice of termination for breach, VTA shall deliver a new written notice providing VTA's determination of Sponsor's contestation. If the termination for breach is upheld, the written notice shall specify the effective date of termination and Sponsor will have ten (10) business days to cure. If the breach is not cured within the allotted time, VTA will pursue the termination. The notice of termination will specify the Total Grant Funds VTA has paid to the Sponsor, which Sponsor must reimburse to the VTA within thirty (30) days of the effective date of termination.

D. Non-Waiver. The failure of either party to insist upon the strict performance of any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.

E. Assignment: Sponsor shall not assign, sell, license, or otherwise transfer any rights or

obligations under this Agreement without the prior written consent of VTA.

- F. **Integration.** This Agreement, including all attachments and references, constitutes the entire Agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties relative thereto.
- G. **Amendments.** Future amendments and modifications to this Agreement shall be made in writing and signed by both parties.
- H. **Attachments.** Each attachment hereto is incorporated into this Agreement as if fully set forth herein.
- I. **Severability.** If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- J. **Warranty of Authority to Execute Agreement.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.
- K. **Survival.** Any provision that, by its nature, extends beyond the term or termination of this Agreement shall survive the expiration or termination of this Agreement.

Signatures of Parties on following page.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date shown below.

City of Sunnyvale
(Sponsor)

Santa Clara Valley Transportation Authority
(VTA)

Dated: _____

Dated: _____

Kent Steffens
City Manager

Nuria I. Fernandez, General Manager/CEO
VTA

Approved as to Form:

Approved as to Form:

Rob Boco, Sr. Assistant City Attorney

VTA Counsel

ATTACHMENT A: PROJECT INFORMATION SUMMARY

- A. Project Number: 20SC09
- B. Project Title: Kifer Road Signal Retiming
- C. TFCA Program Manager Funds Allocated: \$39,100.00
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$39,100.00
- F. Total Project Cost: \$39,100.00

G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement weekday and weekend signal timing plans for Kifer Road from Fair Oaks Avenue to Costco Way.

- H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
- J. Comments (if any): None.

ATTACHMENT A: PROJECT INFORMATION SUMMARY

A. Project Number: 20SC10

B. Project Title: Wolfe Road Signal Retiming

C. TFCA Program Manager Funds Allocated: \$116,600.00

D. TFCA Regional Funds Awarded (if applicable): \$0

E. Total TFCA Funds Allocated (sum of C and D): \$116,600.00

F. Total Project Cost: \$116,600.00

G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement weekday and weekend signal timing plans for Wolfe Road from Fair Oaks Avenue to Inverness Way.

H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.

I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.

J. Comments (if any): None.

ATTACHMENT A: PROJECT INFORMATION SUMMARY

- A. Project Number: 20SC11
- B. Project Title: Homestead Road Signal Retiming
- C. TFCA Program Manager Funds Allocated: \$61,100.00
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$61,100.00
- F. Total Project Cost: \$61,100.00
- G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement weekday and weekend signal timing plans for Homestead Road from Belleville Way-Barranca Drive to Hollenbeck Avenue-Stelling Road.

- H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
- J. Comments (if any): None.

ATTACHMENT A: PROJECT INFORMATION SUMMARY

- A. Project Number: 20SC12
- B. Project Title: Bernardo Avenue Signal Retiming
- C. TFCA Program Manager Funds Allocated: \$40,200.00
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$40,200.00
- F. Total Project Cost: \$40,200.00

G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement weekday and weekend signal timing plans for Bernardo Avenue from Evelyn Avenue to Heatherstone Way.

- H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
- J. Comments (if any): None.

ATTACHMENT A: PROJECT INFORMATION SUMMARY

A. Project Number: 20SC13

B. Project Title: Duane Road Signal Retiming

C. TFCA Program Manager Funds Allocated: \$45,900.00

D. TFCA Regional Funds Awarded (if applicable): \$0

E. Total TFCA Funds Allocated (sum of C and D): \$45,900.00

F. Total Project Cost: \$45,900.00

G. Project Description:

Grantee will use TFCA funds to develop, optimize and implement weekday and weekend signal timing plans for Duane Avenue/Oakmead Parkway from Fair Oaks Avenue to Lakeside Drive.

H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.

I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.

J. Comments (if any): None.

ATTACHMENT B

INSURANCE REQUIREMENTS

I. INDEMNITY

The Sponsor must indemnify, defend, and hold harmless Santa Clara Valley Transportation Authority (hereinafter, “VTA”), the Bay Area Air Quality Management District, their respective officers, agents, employees, representatives, and successors-in-interest from any claim, liability, loss, expense, including reasonable attorneys’ fees, or claims for injury or damage arising out of, or in connection with, performance of this Agreement by Sponsor and/or its agents or employees or subcontractors, excepting only loss, injury or damage caused by the gross negligence or willful misconduct of personnel employed by VTA.

II. INSURANCE

Without limiting the Sponsor’s obligation to indemnify VTA, the Sponsor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Sponsor, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in the Sponsor’s Bid/Proposal. The Sponsor must furnish complete copies of all insurance policies, within three (3) business days of any such request by VTA.

A. Liability and Workers’ Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. Insurance Services Office General Liability coverage (“occurrence” form CG 0001). General Liability insurance written on a “claims made” basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 “any auto.” Auto Liability written on a “claims-made” basis is not acceptable.
- c. Workers’ Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance
- d. Property insurance covering all risks of loss, damage, or destruction of vehicles, vessels, engines or equipment funded under this Agreement.

2. Minimum Limits of Insurance

Sponsor must maintain limits no less than:

- a. General Liability: \$1,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- d. Property insurance in an amount not less than the replacement cost value (RCV) of vehicles, vessels, engines, or equipment funded under this Agreement.

3. Self-Insured Retention

Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Sponsor is a publicly-traded company) must be declared to and approved by VTA. If Sponsor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$50,000, Sponsor must provide a current financial report including balance sheet and income statement for the past three years, so that VTA can assess Sponsor's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if VTA, in its sole discretion, deems it necessary, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require Sponsor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom must be borne solely by the Sponsor.

B. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

1. The policy retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Sponsor must obtain or cause to be obtained the broadest extended reporting

period coverage available in the commercial insurance market. This extended reporting provision must be of at least two (2) years.

3. No prior acts exclusion may be added to the policy during the contract period.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Other Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Sponsor, including VTA's general supervision of the Sponsor; products and completed operations of the Sponsor or subcontractors; premises owned, occupied or used by the Sponsor; or automobiles owned, leased, hired or borrowed by the Sponsor. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. The Sponsor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by the Sponsor and its subcontractors for VTA.
- b. The Sponsor's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials,

employees, or volunteers may apply only as excess to the Sponsor's insurance. Sponsor's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Sponsor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

D. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

E. Certificates of Insurance

Sponsor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. The Sponsor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required above, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella policy must be listed, Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

All certificates and endorsements are to be received and approved by VTA before work commences. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If the Sponsor receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Sponsor or insurer must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

F. Maintenance of Insurance

If Sponsor fails to maintain such insurance as is called for herein, VTA, at its option, may suspend payment for work performed and/or may order the Sponsor to suspend work at Sponsor's expense until a new policy of insurance is in effect.



City of Sunnyvale

Agenda Item

20-0370

Agenda Date: 3/31/2020

REPORT TO COUNCIL

SUBJECT

Approve Budget Modification No. 25 in the amount of \$464,435 for the Fair Oaks Avenue Overhead Bridge Rehabilitation and Authorize the City Manager to Execute the Construction Contract with Joseph J. Albanese

BACKGROUND

In August 2019, after reviewing the final plans, specifications and cost estimate for construction of the Fair Oaks Overhead Bridge Rehabilitation Project, Caltrans authorized a construction budget of \$17,365,000, which consisted of \$15,373,235 in Federal funds (88.53%) and \$1,991,766 of City-paid local matching funds (11.47%). The approved budget included the costs of both construction and construction support services. The removal of the existing Pedestrian Overcrossing (POC) was included in the approved construction scope.

On November 6, 2019, six construction bids were received. The lowest bid in the amount of \$18,386,002 was by Joseph J Albanese, Inc (RTC No. 20-0173). Including the costs of contingency and construction support services, the total construction cost totals \$23,545,850. Comparing with the Caltrans authorized construction budget of \$17,365,000, an additional \$6,180,850 is required to construct the project.

On January 14, after reviewing RTC No. 20-0173 (Attachment 1), the Council took the following actions:

A. Authorized the City Manager to do the following actions upon receipt of confirmation of additional funding from Caltrans:

- Award a construction contract to Joseph J. Albanese in the amount of \$18,386,002.86;
- Execute the construction contract when all necessary conditions have been met;
- Approve a 10% construction contingency;
- Execute First Amendment to a construction management contract with Ghirardelli Associates, Inc.;
- Execute a Fifth Amendment to an engineering services contract with Biggs Cardosa Associates Inc.; and
- Execute Peninsula Corridor Joint Powers Board (PCJPB) Amended Service Agreement.

B. Approved Budget Modification No. 15 in the amount of \$6,826,145 to provide additional project funding upon confirmation of additional funding from Caltrans.

EXISTING POLICY

Pursuant to Sunnyvale Charter Section 1305, at any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by affirmative votes of at least four members so as to authorize the transfer of unused balances appropriated for one purpose to another, or to appropriate available revenue not included in the budget.

ENVIRONMENTAL REVIEW

The City Council certified the Environmental Impact Report and adopted the Mitigation Monitoring and Reporting Program for the Fair Oaks Avenue Overhead Bridge Rehabilitation Project on March 17, 2015 (RTC No. 15-0143 - Attachment 1). The project scope has not changed and no further environmental review is required.

DISCUSSION

Since Council action was taken in January, Staff has consulted with the Caltrans District 4 Local Assistance Engineer (DLAE) and prepared a Federal-HBP Fund Cost Change Request (Request) for additional construction budget in the amount of \$6,180,850. The Request was submitted to DLAE Office on December 5, 2019. The request was for the maximum allowable federal funding of \$5,471,907 (88.53%) federal funding, with the remainder being funded through the Council approved Budget Modification No.15 on January 14. DLAE reviewed the Request and recommended approval by Caltrans headquarters office in Sacramento for formal authorization.

On February 10, staff was informed that Caltrans Headquarters did not approve the request and determined that costs related to removal of the existing Pedestrian Overcrossing (POC) is now considered a non-participating cost and the City is responsible for all expenses related to its removal. By their definition, the non-participating cost of POC removal in the amount of \$524,608 includes:

- The contractor bid price of the POC removal in the amount of \$450,000 plus 10% contingency, subtotal is \$495,000
- The cost of Caltrain/PCJPB support and flagging related to the POC removal period of 4 weeks in the amount of \$29,608

Upon receipt of the Caltrans comments, staff revised and resubmitted the Federal-HBP Fund Cost Change form to address the comments received. Approval for the additional federal funding in the amount of \$5,051,995 was received on March 9. Because the revised request reduces the additional Federal funds needed from \$5,471,904 to \$5,051,995, the required local match was also reduced so the current City budget modification requested is \$464,435 rather than the full cost of \$524,608.

In accordance with the California Public Contract Code, low bid construction contracts should be awarded within 90 days of bid opening. Bids for this project were received on November 6, 2019 which is beyond the 90-day standard. Staff reached out to the contractor to request holding the bid price until March 31 and the contractor is structuring his contracts with subcontractors to be contingent upon the receipt of additional federal funding.

Staff reviewed the project files and found that removal of the POC was included in the original application for Federal Funds for Rehabilitation of the Fair Oaks Avenue Overhead Bridge dated in 2006 and has been included in all subsequent recent approvals by Caltrans. City staff looked into the appeal process; however, Caltrans provided an email showing that the City was informed in 2012 that the POC was potentially a non-participating cost.

There are several deficiencies with the POC and a major reason for widening and adding sidewalk to the Fair Oaks bridge was so this structure could be removed. The POC's access ramps currently do not meet standards set forth in the Americans with Disabilities Act (ADA), and the pedestrian access points to the POC are obscure and not easy to find. This makes it an attractive nuisance for graffiti

and garbage and the City regularly receives complaints about the area. Residents have reported feeling unsafe using the POC due to its remote location. In addition, at present, the POC structure may be too low to accommodate anticipated improvements associated with the electrification of Caltrain (the Peninsula Corridor Electrification Project or PCEP) and/or the introduction of California High-Speed Rail (CHSR) service.

Staff has discussed proceeding with the project without removing the POC with both the design firm and the contractor and the consensus is that the rehabilitation of the bridge and reconstruction of Hendy Avenue work can still be completed as designed. If City Council chooses not to approve the requested Budget Modification, it would be possible to execute the contract for the full bid amount, then staff can issue a construction change order to delete the POC removal work. Following construction, the POC would not be needed since its function is replaced with the new sidewalk on the bridge and staff would evaluate options such as installing gates at either end of the POC to restrict public access, and possibly creating a new project to fund removal in the future.

The removal of the POC is currently included as scope in the construction documents.

FISCAL IMPACT

Budget Modification No. 25 has been prepared to replace the portion of the Federal HBP Grant revenue that was designated for the POC renovation cost with the Infrastructure Renovation & Replacement Fund in the amount of \$464,435.

Budget Modification No. 25 FY 2019/20

	Current	Increase/ (Decrease)	Revised
Fund 385-100 (Capital Projects Fund- General Assets Subfund)			
<u>Revenues</u>			
Project 825610- Fair Oaks Avenue Overhead Bridge Repairs HBP Grant	\$22,916,303	\$(464,435)	\$22,451,868
<u>Transfers</u>			
Transfer in from Infrastructure Renovation & Replacement Fund	\$558,290	\$464,435	\$1,022,725
Fund 610-100 (Infrastructure Renovation & Replacement Fund - General SubFund)			
<u>Transfers</u>			
Transfer out to Capital Projects Fund	\$558,290	\$464,435	\$1,022,725

Reserves

Infrastructure Contingency	\$38,089,638	(\$464,435)	\$37,625,203
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PUBLIC CONTACT

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

RECOMMENDATION

Authorize the City Manager to take the following actions:

- Award a construction contract to Joseph J. Albanese in the amount of \$18,386,002.86;
- Execute the construction contract when all necessary conditions have been met;
- Approve a 10% construction contingency;
- Approve Budget Modification No. 25 in the amount of \$464,435

Prepared by: Nathan Scribner, Assistant City Engineer, Public Works

Reviewed by: Chip Taylor, Director, Public Works

Reviewed by: Jaqui Guzmán, Deputy City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS:

1. RTC 20-0173



City of Sunnyvale

Agenda Item

20-0173

Agenda Date: 1/14/2020

REPORT TO COUNCIL

SUBJECT

Award of Bid No. PW20-05 to Joseph J. Albanese, Inc. for Fair Oaks Avenue Overhead Bridge Rehabilitation, Approve Budget Modification No. 15 in the amount of \$6,826,145, Award a Contract to Ghirardelli Associates, Inc., Amend the Contract with Biggs Cardosa Associates Inc., and Approve a Peninsula Corridor Joint Powers Board Amended Service Agreement

REPORT IN BRIEF

Approval is requested for authorization for the City Manager to take certain actions related to the Fair Oaks Avenue Overhead Bridge Rehabilitation Project (Project No. TR-13/01-16) and for the City Council to Approve Budget Modification No. 15, both upon receipt of confirmation of additional funding from Caltrans. Council approval is recommended to:

- A. Authorize the City Manager to take the following actions upon confirmation of additional funding from Caltrans:
 - Award a construction contract in substantially the same form as Attachment 2 to the report to Joseph J. Albanese in the amount of \$18,386,002.86;
 - Execute the construction contract when all necessary conditions have been met;
 - Approve a 10% construction contingency in the amount of \$1,838,600;
 - Execute a First Amendment to a construction management contract to increase the contract amount by \$2,333,197.29 to a new amount not-to-exceed \$2,382,824.70 with Ghirardelli Associates, Inc.;
 - Execute a Fifth Amendment to an engineering services contract with Biggs Cardosa Associates Inc. of San Jose to increase the contract by \$442,731 to a new amount not-to-exceed \$2,626,075;
 - Execute Peninsula Corridor Joint Powers Board (PCJPB) Amended Service Agreement (Amendment #1) in an amount not-to-exceed \$177,506.
- B. Approve Budget Modification No. 15 in the amount of \$6,826,145 to provide additional project funding upon confirmation of additional funding from Caltrans.

EXISTING POLICY

Section 1309 of the City Charter requires public works construction contracts to be awarded to the lowest responsive and responsible bidder.

Pursuant to Section 2.09.040 of the Sunnyvale Municipal Code, City Council approval is required for public works contracts exceeding \$100,000 in any one transaction.

Pursuant to Section 2.08.040 of the Sunnyvale Municipal Code, Council approval is required for the procurement of goods and/or services exceeding \$100,000 in any one transaction.

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Pursuant to Sunnyvale Charter Section 1305, at any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by affirmative votes of at least four members so as to authorize the transfer of unused balances appropriated for one purpose to another, or to appropriate available revenue not included in the budget.

General Plan, Chapter 3, Policy LT-5.4 - Maintain Roadways and traffic control devices in good operating condition; and;

General Plan, Chapter 3, Policy LT-5.8 - Provide a safe and comfortable system of pedestrian and bicycle pathways.

ENVIRONMENTAL REVIEW

The project is within the scope of the certified Environmental Impact Report and adopted the Mitigation Monitoring and Reporting Program for the Fair Oaks Avenue Overhead Bridge Rehabilitation Project adopted by City Council on March 17, 2015 (RTC No. 15-0143).

BACKGROUND AND DISCUSSION

The Fair Oaks Avenue Overhead Bridge (bridge) is located on Fair Oaks Avenue between Kifer Road and Evelyn Avenue. The bridge crosses over Hendy Avenue, the railroad tracks owned by the Peninsula Corridor Joint Powers Board (Caltrain), and is adjacent to an apartment community and the Home Depot store. The bridge was constructed in 1967 and was seismically retrofitted in both 1981 and 1993. Caltrans inspects the bridge, and evaluates its structural integrity and functionality every two years. Recent Caltrans bridge inspection records indicate that the bridge has significant deck cracking and spalling; as well as inadequate sidewalk width, barriers and approach railings. The bridge is considered safe for driving but requires substantial rehabilitation.

The Fair Oaks Avenue Overhead Bridge Rehabilitation Project (Project) will rehabilitate the bridge to address the identified structural deficiencies and will expand bicycle and pedestrian amenities. The rehabilitated bridge will maintain its current automobile capacity of two travel lanes in each direction; however, the Project will widen existing bicycle lanes from five feet to six feet to meet current City standard, and will add a sidewalk on the east side of the bridge. Currently, the bridge does not have a sidewalk for pedestrians to use; the separate pedestrian overcrossing (POC) structure over the Caltrain tracks adjacent to the bridge serves this purpose. The Project will remove the POC, which has several inadequacies related to accessibility and making the POC an "attractive nuisance" for graffiti and improper disposal of garbage/waste. The project will also improve the portion of Hendy Avenue running beneath the bridge by reducing the curvature of the roadway to improve visibility for drivers. Improvements to the intersections at the northern and southern ends of the bridge will be completed. The improvements are intended to enhance safety of drivers, pedestrians, and bicyclists using the bridge and its connecting roadways, as well as complying with ADA requirements.

Federal grant funding from the Highway Bridge Program (HBP) will account for 88.53% of the overall project cost, with the remaining 11.47% funded by the City. The preliminary engineering/design (RTC Nos. 12-205 and 15-0143) and right-of-way acquisition/compensation (RTC Nos. 16-0996 and 18-0335) have been completed. The design phase cost was \$2.8 million, and right-of-way acquisition phase cost was \$3.3 million. The total construction phase cost will be approximately \$23.6 million. Total project cost is \$29.7 million.

Construction is anticipated to begin in early 2020, and is to be completed in approximately 16

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months. During this time, temporary lane reductions on the bridge and brief bridge closures may be required. In addition, the portion of Hendy Avenue beneath the bridge would be closed for up to several months. The temporary Hendy Avenue closure will include closing the driveway entrance on the western side of the Home Depot parking lot to the public. The contractor must maintain access for emergency vehicles, and all other entrances to the Home Depot parking lot will be unaffected. The anticipated construction method does not assume the use of pile driving, which substantially reduces the potential for disruptive noise and vibration effects.

Project Design and Construction Support Services

In 2012, the Council awarded a design contract (RTC No. 12-205) in the amount of \$2,183,344, plus a 10% contingency to Biggs Cardosa Associates (BCA) as the result of a Request for Proposals (RFP) (F1109-15) process utilizing Caltrans Local Assistance procedures required for federally-funded projects. The design was fully completed in September 2019.

Due to the federal grant restrictions, the engineering services during construction work scope for BCA was not included in the initial design contract even though these services were part of the RFP selection process. The work has now been authorized by Caltrans and is required during the construction period to perform review of Requests for Information, submittals, and other construction support services typically performed by the design firm. An amended contract with BCA to increase the not-to-exceed amount by \$442,731, for a new total not-to-exceed amount of \$2,626,075 is necessary for these services. Caltrans does not allow contingency on engineering services during construction; the existing BCA contract has a portion of the design contingency remaining that can be utilized if necessary.

Construction Management Services

In July 2014, staff conducted an RFP (F14-96) in accordance with Caltrans Local Assistance Procedures (LAPM) for constructability review and construction management services. These services include design constructability review, construction contract administration, quality assurance, inspection and material testing, public/community relations, and post construction closeout. The RFP was designed to separate the services into two phases of work, the first phase would allow initial constructability review to occur in preparation for bidding the project. The second phase is intended to provide construction management services and was expected to be awarded only after Caltrans provided issuance of the E-76 Form (Notice to Proceed) for construction. This delayed award was approved under the LAPM guidelines approved at the time of this RFP.

Ghirardelli Associates, Inc. (Ghirardelli) was awarded a contract in the amount of \$49,627.41 for Phase 1 (Design Constructability Review) in December 2014 under the City Manager's award authority. Due to the complex technical nature of the project and limited staff resources available, staff recommends amending Ghirardelli's contract to include Phase 2 (Construction Management Services) in the amount of \$2,382,824.70.

Caltrans does not allow contingency on construction management services. Should Ghirardelli's services be needed for any claims resolution, the City will request additional funding from Caltrans and a contract amendment for the services.

Peninsula Corridor Joint Powers Board (PCJPB) Amended Service Agreement

A portion of the bridge to be rehabilitated is above Peninsula Corridor Caltrain's railroad tracks. A Service Agreement between PCJPB and the City was signed in January 2015 with a deposit of

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\$50,000. The service agreement requires the City to reimburse the PCJPB for the permit application fee, the cost of railroad flaggers, inspections, engineering review, administrative and legal review, etc. for work above and adjacent to the railroad tracks. In 2019, PCJPB provided an estimated reimbursable cost of the work to be performed by PCJPB during the Project in the amount of \$227,756. With the original deposit of \$50,000, PCJPB requests a payment of \$177,756 for the Service Agreement (Amendment #1).

Construction Bidding

The project was advertised for competitive bidding on the City's DemandStar public procurement network and distributed to the Bay Area Builder's Exchange on September 6, 2019. Thirty-eight (38) contractors requested bid documents and sealed bids were opened on November 6, 2019, with six (6) bids received. Joseph J. Albanese, Inc. has the lowest responsive and responsible bid in the amount of \$18,386,002.86. The Bid Summary is contained in Attachment 1. This bid is 24.6% above the engineer's revised estimate dated October 2018. A preliminary comparison of the bids with the engineer's estimate show the largest discrepancy in bid items for metal (reinforcing steel, signal poles, lighting poles, and railings) and concrete work (concrete barriers, bridge structural concrete).

FISCAL IMPACT

The project is 88.53% funded from the Federal grant (HBP) and 11.47% from local matching funds.

In August, 2019, Caltrans authorized the project budget of \$23,630,505, which consists of \$20,920,086 Federal funds and \$2,710,419 local funds. This authorization was based on the engineer's construction cost estimate dated in May 2018.

The lowest responsive and responsible bid from Joseph J. Albanese, Inc. is \$18,386,002.86. By adding the cost of construction support services for BCA, Ghirardelli, PCJPB, and estimated City Staff support, the total project cost will be approximately \$29,675,145. Comparing with Caltrans authorized project budget of \$23,630,505, an additional \$6,044,641 will be required to complete the project (\$5,351,321 Federal funds and \$693,320 local funds).

After the bid opening, staff contacted the Caltrans District 4 Office of Local Assistance. Caltrans' Local Assistance Engineer indicated to staff that the Federal HBP grant can be increased to close the gap between the authorized \$23,630,505 and all eligible project costs of \$29,675,145 at the same ratio of 88.53% Federal and 11.47% local. The Local Assistance Engineer has instructed staff to obtain City Council's approval to award the construction contract to the lowest responsive and responsible bidder, as well as the approval of construction service contracts. Staff has submitted a request for construction cost increase to Caltrans Local Assistance Office, in accordance with Caltrans procedures to secure the additional federal funds of \$5,351,321 (88.53% of \$6,044,641). Caltrans has indicated that it could possibly take 3 months for the additional funding authorization to be completed.

Council has approved a \$22,849,000 budget for Project 825610 - Fair Oaks Avenue Overhead Bridge Repair, which \$20,003,551 was budgeted for the Federal funds and \$2,845,449 was budgeted as local matching funds. The project has spent \$4,763,911 by the end of FY2018/19, which left \$18,085,089 available in FY 2019/20.

Budget Modification No. 15 has been prepared to increase the budget for the HBP Grant revenue by \$6,267,855 and local matching fund by \$558,290 for the total of \$6,826,145. Total project cost will be

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increased to \$29,675,145 and available budget for FY 2019/20 will be increased to \$24,911,234.

Due to the timing of the project bid opening (valid for 90 days) and delay in funding increase authorization from Caltrans, staff is requesting authorization be granted to the City Manager to award the construction contract and approve all contracts and associated contingencies listed in this staff report upon receipt of confirmation from Caltrans for additional funding authorization. Staff would work with the contractor to move the start date for construction to Spring 2020.

**Budget Modification No. 15
FY 2019/20**

	Current	Increase/ (Decrease)	Revised
Fund 385-100 (Capital Projects Fund- General Assets Subfund)			
<u>Revenues</u>			
Project 825610- Fair Oaks Avenue	\$16,648,448	\$6,267,855	\$22,916,303
Overhead Bridge Repairs HPR			
Grant			
<u>Transfers</u>			
Transfer in From Infrastructure	\$0	\$558,290	\$558,290
Renovation & Replacement Fund			
<u>Expenditures</u>			
Project 825610 - Fair Oaks	\$18,085,089	\$6,826,145	\$24,911,234
Avenue Overhead Bridge Repairs			
Fund 610-100 (Infrastructure Renovation & Replacement Fund - General SubFund)			
<u>Transfers</u>			
Transfer out to Capital Projects	\$0	\$558,290	\$558,290
Fund			
<u>Reserves</u>			
Infrastructure Contingency	\$38,647,928	(\$558,290)	\$38,089,638

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.

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ALTERNATIVES

1. A. Authorize the City Manager upon receipt of confirmation of additional funding from Caltrans:
 - Award a construction contract in substantially the same form as Attachment 2 to the report to Joseph J. Albanese in the amount of \$18,386,002.86;
 - Execute the construction contract when all necessary conditions have been met;
 - Approve a 10% construction contingency in the amount of \$1,838,600;
 - Execute a First Amendment to a construction management contract to increase the contract amount by \$2,333,197.29 to a new amount not-to-exceed \$2,382,824.70 with Ghirardelli Associates, Inc.;
 - Execute a Fifth Amendment to an engineering services contract with Biggs Cardosa Associates Inc. of San Jose to increase the contract by \$442,731 to a new amount not-to-exceed \$2,626,075; and
 - Execute Peninsula Corridor Joint Powers Board (PCJPB) Amended Service Agreement (Amendment #1) in an amount not-to-exceed \$177,506.
- B. Approve Budget Modification No. 15 in the amount of \$6,826,145 to provide additional project funding upon confirmation of additional funding from Caltrans.
2. Do not award the construction contract and other actions stated in Alternative 1.
3. Take other action as determined by Council.

RECOMMENDATION

Alternative 1:

- A. Authorize the City Manager upon receipt of confirmation of additional funding from Caltrans:
 - Award a construction contract in substantially the same form as Attachment 2 to the report to Joseph J. Albanese in the amount of \$18,386,002.86;
 - Execute the construction contract when all necessary conditions have been met;
 - Approve a 10% construction contingency in the amount of \$1,838,600;
 - Execute First Amendment to a construction management contract to increase the contract amount by \$2,333,197.29 to a new amount not-to-exceed \$2,382,824.70 with Ghirardelli Associates, Inc.;
 - Execute a Fifth Amendment to an engineering services contract with Biggs Cardosa Associates Inc. of San Jose to increase the contract by \$442,731 to a new amount not-to-exceed \$2,626,075; and
 - Execute Peninsula Corridor Joint Powers Board (PCJPB) Amended Service Agreement (Amendment #1) in an amount not-to-exceed \$177,506.
- B. Approve Budget Modification No. 15 in the amount of \$6,826,145 to provide additional project funding upon confirmation of additional funding from Caltrans.

Prepared by: Gregory S. Card, Purchasing Officer
Reviewed by: Timothy J. Kirby, Director of Finance
Reviewed by: Chip Taylor, Director of Public Works
Reviewed by: Teri Silva, Assistant City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Bid Summary
2. Draft General Construction Contract - Joseph J. Albanese, Inc.

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3. Draft First Amendment to Consultant Services Agreement - Ghirardelli Associates
4. Draft Fifth Amendment to Consultant Services Agreement - Biggs Cardosa Associates
5. Draft Amended Service Agreement (Amendment #1) - PCJPB



City of Sunnyvale

Agenda Item

20-0340

Agenda Date: 3/31/2020

REPORT TO COUNCIL

SUBJECT

Award a Contract to Macias Gini and O'Connell LLP in an amount not to exceed \$382,243 for Annual Financial Auditing Services (F20-142)

REPORT IN BRIEF

Approval is requested to award a contract in an amount not-to-exceed \$382,243 to Macias Gini and O'Connell LLP, of Walnut Creek, for annual financial auditing services during fiscal year 2019/20, 2020/21 and 2021/22.

EXISTING POLICY

Pursuant to Section 2.08.40 of the Sunnyvale Municipal Code, City Council approval is required for the procurement of goods and/or services exceeding \$100,000 in any one transaction.

Consistent with the provision of Sunnyvale Municipal Code Section 2.08.070(b)(1), contracts for the procurement of professional or specialized services may be exempted from the competitive proposal process.

City Charter Section 1318 and certain government grants require an annual audit of the City's financial transactions and records by an independent Certified Public Accountant and issuance of a final report at the conclusion of the audit. An independent audit is conducted in accordance with generally accepted auditing standards in the United State of America and the standards applicable to financial audits contained in Governmental Auditing Standards issued by the Comptroller General of the United States. Moreover, the financial audits provide relevant financial information to City residents, creditors, investors, City Council, City staff, and other concerned readers.

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) (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.

BACKGROUND AND DISCUSSION

The City awarded a five-year contract with two additional years for annual financial auditing services to Macias Gini and O'Connell LLP (MGO) in March 2013 (RTC No. 13-064), which expires on March 31, 2020. MGO was selected through a competitive Request for Proposal process based on its past experience and performance, quality of professional personnel and management, audit approach, no

conflicts of interest, and pricing structure. During the current contract period, MGO conducted eight audits every fiscal year, totaling 56 audits. MGO assisted the City with meeting all financial reporting requirements and regulations by providing timely and quality services. MGO continues to be a well-reputed auditing firm specialized in governmental auditing, particularly with cities of similar size in the Bay Area.

Effective fiscal year 2013/14, the State of California required local agencies to not employ a public accounting firm to provide auditing services if the lead auditor had performed audit services for six consecutive years. To ensure compliance with the state requirement, MGO assigned a new lead auditor for the Sunnyvale audit engagement before conducting audits for fiscal year 2018/19.

The Enterprise Resource Planning (ERP) System implementation project was initially scheduled to go live in September 2019. However, after the City procured a new implementation consultant, this led to a revision of the system implementation schedule. The revised schedule now includes rolling out the financial functions (General Ledger, Purchasing, Accounts Payable, Cashiering, and Project & Grants) in September 2020. Human resources and payroll functions (Payroll, Time Entry, Human Resources, Benefits, Leave Management, Performance Reviews/ Management, Risk Management, and Learning Management) are currently scheduled to roll out in March 2021.

Implementation of a new ERP system is one of the largest and most complex City projects that is currently underway. The project requires focused effort, dedicated staffing resources, and effective coordination and oversight for a successful implementation. A reliable financial system with the ability to produce accurate financial reports and meet audit tests is of utmost importance and a requirement for successful completion of financial, grant and compliance audits. Procuring and selecting a new vendor to perform independent auditing services is not advised during the system implementation timeline. Continuation of the auditing services with MGO would mitigate any potential issues that could arise with onboarding a new firm to perform auditing services before the new system is fully operational and stabilized. Staff will initiate a competitive bid process for these auditing services during fiscal year 2021/2022.

FISCAL IMPACT

Total cost to the City for the three-year contract will not exceed \$382,243, which is in line with historical expenses for this service. Costs for auditing services are budgeted in the Department of Finance and allocated across all appropriate City funds through an administrative services allocation.

PUBLIC CONTACT

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

RECOMMENDATION

Take the following actions:

1. Award a three-year contract in substantially the same form as Attachment 1 to the report in the amount of \$382,243 to Macias Gini & O'Connell LLP; and
2. Authorize the City Manager to execute the contract when all necessary conditions have been met

Prepared by: Inderdeep Dhillon, Finance Manager
Reviewed by: Gregory Card, Purchasing Officer
Reviewed by: Tim Kirby, Director of Finance
Reviewed by: Jaqui Guzmán, Deputy City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Draft Consultant Services Agreement

**DRAFT SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE
AND MACIAS GINI & O'CONNELL LLP TO PROVIDE ANNUAL FINANCIAL AUDIT
SERVICES**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and MACIAS GINI & O'CONNELL LLP, ("AUDITOR").

WHEREAS, CITY is in need of specialized services to conduct the annual independent audit of the City's financial transactions and to express an opinion on the fairness of the presentation of the City's financial statements; and

WHEREAS, AUDITOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by AUDITOR

AUDITOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. AUDITOR shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be from April 1, 2020 to March 31, 2023, unless otherwise terminated. AUDITOR shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to CITY required by AUDITOR for performance of the services. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay AUDITOR as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit "B". Total compensation shall not exceed Three Hundred Eighty Two Thousand Two Hundred Forty Three and No/100 Dollars (\$382,243.00).

AUDITOR shall submit invoices to CITY no more frequently than monthly for services provided to date. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

6. Wage Rates

The successful bidder AUDITOR shall comply with the City's the minimum wage set forth in Section 3.80.040 of the Sunnyvale Municipal Code

7. Ownership of Documents

CITY shall have full and complete access to AUDITOR's working papers, drawings and other documents during progress of the work. All documents of any description prepared by AUDITOR shall become the property of the CITY at the completion of the project and upon payment in full to the AUDITOR. AUDITOR may retain a copy of all materials produced pursuant to this Agreement.

8. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement AUDITOR shall not accept employment or an obligation which is inconsistent or incompatible with AUDITOR's obligations under this Agreement.

Pursuant to CITY's Standard Conflict of Interest Code CITY has determined that certain any individuals performing services under this Agreement may be is required to file a Statement of Economic Interest (Form 700) depending on the position, which can be found at www.fppc.ca.gov. To facilitate electronic submittal of Form 700, send the following information to cityclerk@sunnyvale.ca.gov: 1. AUDITOR's employee(s) first and last name; 2. AUDITOR's employee(s) email address; 3. Date AUDITOR's employee(s) will begin work under this contract; 4. (if known) Date AUDITOR's employee(s) will cease work under this contract.

Government Code Section 91013 provides that any person who files a statement after its deadline shall be liable in the amount of \$10 per day, up to a maximum of \$100, in addition to any administrative penalty (up to the statutory maximum, currently \$5,000) imposed by the Fair Political Practices Commission (FPPC). If we do not receive your statement, our AUDITOR is required to refer this matter to the FPPC or other appropriate enforcement AUDITOR.

9. Confidential Information

AUDITOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which AUDITOR may become aware in the performance of its services.

10. Compliance with Laws

- A. AUDITOR shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of AUDITOR or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed

service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of AUDITOR's employment practices and to all of AUDITOR's activities as a provider of services to the City.

- B. AUDITOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

11. Independent Contractor

AUDITOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and AUDITOR. AUDITOR is responsible for paying all required state and federal taxes.

12. Hold Harmless/Indemnification

AUDITOR agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of AUDITOR, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to AUDITOR's performance under this Agreement. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of CITY, its officers, employees, agents or representatives.

13. Insurance

AUDITOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "C."

14. CITY Representative

Timothy J. Kirby, Director of Finance as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

15. AUDITOR Representative

David Bullock, CPA, Partner shall represent AUDITOR in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of AUDITOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the AUDITOR representative.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by first class with postage prepaid, or sent by commercial courier, to address below.

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

To CITY: Timothy J. Kirby, Director of Finance
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To AUDITOR: David Bullock, CPA, Partner
Macias Gini & O'Connell LLP
2121 North California Blvd., Ste 750
Walnut Creek, CA 94596

16. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

17. Termination

- A. If AUDITOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to AUDITOR. In the event of such termination, AUDITOR shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. AUDITOR shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to AUDITOR. In the event of such termination, AUDITOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification

from CITY to terminate. AUDITOR shall present CITY with any work product completed at that point in time.

- C. If CITY fails to pay AUDITOR, AUDITOR at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

18. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced in writing signed by all parties.

19. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

20. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

MACIAS GINI & O'CONNELL LLP
("AUDITOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

Exhibit A Scope of Work

Macias, Gini and O'Connell LLP (MGO) will audit the financial statements of governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City's Comprehensive Annual Financial report (CAFR). MGO will review management's discussion and analysis - a required supplementary information (RSI) - budgetary comparison schedules, modified approach for the City streets infrastructure capital assets, and required schedules for pension benefits and other post-employment benefits. MGO will report on supplementary information other than RSI, such as combining, and individual fund financial statements and schedules that accompanies the City's basic financial statements. MGO will also assist in preparing the basic financial statements and related footnotes of the City CAFR in conformity with U.S. generally accepted accounting principles.

In addition to conducting the City's annual financial audit and assistance with the CAFR preparation, MGO will audit and issue following reports:

Single Audit –Audit and separately report on the City's compliance with federal award program in accordance Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirement, Cost Principles, and Audit Requirements Federal Awards (Uniform Guidance). MGO will also assist in preparing schedule of expenditures of federal awards.

City of Sunnyvale Financing Authority -Audit and separately report on the financial statements and the fair presentation of the financial statements in conformity with generally accepted accounting principles.

City of Sunnyvale Materials Recovery and Transfer Station (SMART) – Audit and separately report as to whether the allocation of revenues and expenses complies with the provisions of the Second Memorandum of Understanding among cities of Mountain View, Palo Alto, and Sunnyvale.

Transportation Development Act Report –Audit and separately report on the City's financial statements with regard to grant funds received from the Metropolitan Transportation Commission (MTC), and on the City's compliance with prescribed operating procedures as promulgated by the MTC, the State of California Department of Transportation, and the State of California Controller's Office.

Independent Quarterly Agreed Upon Procedures Audit as required by the City Charter 1318- Perform audit that include surprise cash count at 2 -3 locations and a limited review of a subject area related to cash handling.

Gann Appropriation Limitation - Perform agreed-upon procedures to review compliance with appropriations limit requirements of Section 1.5 Article XIIB of the California

Constitution (commonly referred to as the Gann Limit) in accordance with the procedures agreed to by the City and the League of California Cities (as presented in the publication entitled Article XIII B California Constitution Appropriations Limit Procedures Guidelines for California Cities).

Other Post Employment Benefit Trust (OPEB)- Audit and separately report on the financial statements and the fair presentation of the financial statements in conformity with generally accepted accounting principles.

MGO will conduct audits in accordance with all applicable and generally accepted auditing standards, the standards set by the Government Accounting Standards Board, and any other applicable federal state, local reporting or programmatic audit requirements.

MGO will issue a separate "A Report to Council" that includes recommendations and disclosures of material and non-material weakness for improvements in the City's financial operations.

Exhibit B
Compensation Schedule

Standard Deliverables	Total Cost 2019 *	Total Cost 2020	Total Cost 2021	Total Cost 2022	Total Cost 2020 - 2022
General Purpose Financial Statement	\$ 77,168	\$ 79,483	\$ 79,483	\$ 81,867	\$ 240,833
Quarterly Investment AUP	\$ 9,879	\$ 10,175	\$ 10,175	\$ 10,480	\$ 30,830
SMaRT Station Audit Report	\$ 5,540	\$ 5,706	\$ 5,706	\$ 5,877	\$ 17,289
Sunnyvale Financing Authority Audit	\$ 5,111	\$ 5,264	\$ 5,264	\$ 5,422	\$ 15,950
GANN Appropriation Limit AUP	\$ 1,373	\$ 1,414	\$ 1,414	\$ 1,456	\$ 4,284
Transportation Development Act	\$ 3,089	\$ 3,182	\$ 3,182	\$ 3,277	\$ 9,641
Single Audit (Up To Two Major Programs)	\$ 9,963	\$ 10,262	\$ 10,262	\$ 10,570	\$ 31,094
Total not to exceed price	\$ 112,123	\$ 115,486	\$ 115,486	\$ 118,949	\$ 349,921
Optional Deliverables	Total Cost 2019 *	Total Cost 2020	Total Cost 2021	Total Cost 2022	Total Cost 2020 - 2022
Standalone OPEB Report	\$ 2,742	\$ 2,824	\$ 2,824	\$ 2,909	\$ 8,557
OPEB Report Preparation and Editing	\$ 2,320	\$ 2,390	\$ 2,390	\$ 2,462	\$ 7,242
CAFR Report Preparation and Editing	\$ -	\$ 3,000	\$ 3,000	\$ 3,090	\$ 9,090
Cost of Each Additional Major Program	\$ 2,382	\$ 2,453	\$ 2,453	\$ 2,527	\$ 7,433
Total not to exceed price	\$ 7,444	\$ 10,667	\$ 10,667	\$ 10,988	\$ 32,322
Grand Total	Total Cost 2019 *	Total Cost 2020	Total Cost 2021	Total Cost 2022	Total Cost 2020 - 2022
Standard Deliverables	\$ 112,123	\$ 115,486	\$ 115,486	\$ 118,949	\$ 349,921
Optional Deliverables	\$ 7,444	\$ 10,667	\$ 10,667	\$ 10,988	\$ 32,322
Total not to exceed price	\$ 119,567	\$ 126,153	\$ 126,153	\$ 129,937	\$ 382,243

* Cost for 2019 is for reference only.

EXHIBIT C
INSURANCE REQUIREMENTS FOR AUDITORS

Auditor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Auditor, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Auditor shall maintain limits no less than:

1. **Commercial General Liability:** \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☒ Professional Liability Insurance in the minimum amount of \$1,000,000 per occurrence.
- ☐ Errors and Omissions Liability in the minimum amount of \$X,XXX,XXX per occurrence.
- ☐ If working directly with children, the Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$X,XXX,XXX per occurrence and \$X,XXX,XXX aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five-year extended reporting clause.
- ☐ Pollution Liability Insurance in the minimum amount of \$X,XXX,XXX per occurrence
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnysvale. The Auditor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and automobile liability policies (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnysvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Auditor; products and completed operations of the Auditor; premises owned, occupied or used by the Auditor; or automobiles owned, leased, hired or borrowed by the Auditor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnysvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Auditor's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnysvale, its officers, officials, employees, agents and volunteers shall be excess of the Auditor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnysvale, its officers, officials, employees, agents or volunteers.
4. The Auditor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnysvale.
6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the AUDITOR'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnysvale.

Verification of Coverage

Auditor shall furnish the City of Sunnysvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnysvale prior to commencement of work.

Subcontractors

AUDITOR shall require all subcontractors to procure and maintain insurance policies subject to this insurance requirements. Failure of AUDITOR to verify existence of sub-contractor's insurance shall not relieve AUDITOR from any claim arising from sub-contractors work on behalf of AUDITOR.



City of Sunnyvale

Agenda Item

20-0303

Agenda Date: 3/31/2020

REPORT TO COUNCIL

SUBJECT

Authorize Amending the Existing Contract with The Arcanum Group for the Infor Enterprise Asset Management Licensing and Maintenance and Support for the Water Pollution Control Plant and Related Actions Regarding Purchasing Additional Licenses and Renewing Existing Licenses and Maintenance and Support Services (F20-115)

REPORT IN BRIEF

Approval is requested to amend the existing contract with The Arcanum Group of Denver, CO, increasing the contract amount from \$633,961.00 to \$667,206 for licensing and maintenance and support for the Enterprise Asset Management (EAM) System. Approval is also requested to delegate authority to the City Manager to renew the maintenance and support contract for five (5) additional one-year periods with an available Value Added Reseller (VAR) for this system, within budgeted funding.

EXISTING POLICY

Pursuant to Section 2.08.040 of the Sunnyvale Municipal Code, City Council approval is required for the procurement of goods and/or services exceeding \$100,000 in any one transaction.

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.

BACKGROUND AND DISCUSSION

On March 28, 2017, City Council approved the implementation of the Infor Enterprise Asset Management (EAM) system in the amount of \$365,047 (including the first year of licenses) and three additional years of licensing, maintenance and support in the amount of \$268,914 for the Water Pollution Control Plant (WPCP) (RTC No. 16-1065) for a total four year agreement. The total cost of \$633,961 was funded by Project 831670 - Asset Management Program in the Wastewater Management Capital Subfund. The current EAM system by Infor has met and is expected to continue to meet the expectations for managing assets throughout the WPCP. The current contract for the purchase of the system and year one to three of support will be expiring on April 11, 2021. The system is currently a Software as a Service (SaaS), and with the City aligning these types of solutions for up to a 10-year model, it is important to extend the licensing, support and maintenance of this existing system to realize the best value for the City.

During the EAM implementation process, staff were presented with an opportunity to upgrade the individual user licenses to enterprise licenses and mobile access licenses. During implementation, a limited number of enterprise and mobile licenses were implemented to determine the feasibility of migrating to a subscription of enterprise and mobile licenses for all potential users of the EAM system at the WPCP. After evaluation of the usage of enterprise and mobile licenses, staff concluded that these licenses will provide considerable benefit and efficiencies to staff's current workflow and access to the system.

Therefore, staff is recommending upgrading all licenses to the enterprise and mobile access model and to amend the existing maintenance and support contract for up to an additional five one-year periods, up to available budget amounts. The additional one-time purchase of the enterprise and mobile licenses will be included in the Year 4 renewal cost. Additionally, staff is requesting the City Manager to have authority to increase the amount of licenses, up to available budget amounts.

Staff is also aware that additional Value Added Resellers (VAR) are available in the marketplace that provide maintenance and support the Infor EAM system licenses. With approval of the additional five years of maintenance and support for the EAM system, staff is requesting that the City Manager have delegated authority to negotiate the renewal of license subscriptions with Infor or its VARS for maintenance and support for all future years.

FISCAL IMPACT

The additional licenses and on-going licenses renewal cost of \$33,245 is available in the General Services - Technology and Communication Services Subfund.

PUBLIC CONTACT

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

RECOMMENDATION

Take the follow actions:

- Authorize the City Manager to execute the First Amendment to an existing contract with The Arcanum Group, in substantially the same format as Attachment 1 to the report, increasing the not-to-exceed contract amount by \$33,245 for a new not-to-exceed contract amount of \$667,206; and
- Authorize the City Manager to purchase additional licenses and renew existing licenses and maintenance and support for five (5) additional one-year periods with Infor or its VARS, within budgeted amounts.

Prepared by: Gregory S. Card, Purchasing Officer

Reviewed by: Timothy J. Kirby, Director of Finance

Reviewed by: Kathleen Boutté Foster, Chief Information Officer

Reviewed by: Ramana Chinnakotla, Director of Environmental Services

Reviewed by: Jaqui Guzmán, Deputy City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENT

1. Draft Amendment to Software Agreement

**DRAFT FIRST AMENDMENT TO AGREEMENT FOR LICENSED SOFTWARE, SERVICES, AND
MAINTENANCE BETWEEN THE CITY OF SUNNYVALE AND THE ARCANUM GROUP, INC
FOR ENTERPRISE ASSET MANAGEMENT SYSTEM**

First Amendment to Consultant Service Agreement, dated _____,
is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and THE ARCANUM
GROUP, INC a corporation ("CONSULTANT").

WHEREAS, on April 4, 2017, CITY and Consultant entered into an Agreement for the
implementation and on going support of the Enterprise Asset Management System (EAMS) for the Water
Pollution Control Plant; and

WHEREAS, the parties now agree that a First Amendment to said Agreement is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS FIRST AMENDMENT TO
CONSULTANT SERVICES AGREEMENT:

Schedule E: Schedule of Charges and Payments:

3. Maintenance and Support Fees
[Replace the Year Four of this section with the following]:

Year Four \$124, 364.49 (All licenses SSO, Enterprise, and Mobile)

All other Terms and Conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this First Agreement Amendment.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

THE ARCANUM GROUP, INC. ("CONSULTANT")

By _____
City Attorney

By _____
Signature

Name and Title

By _____
Signature

Name and Title



City of Sunnyvale

Agenda Item

20-0221

Agenda Date: 3/31/2020

REPORT TO COUNCIL

SUBJECT

Approve the Downtown Sunnyvale Business Improvement District Annual Report for Fiscal Year 2019/20; and Adopt Resolution of Intention to Levy and Collect an Annual Assessment and Reauthorize the BID for Fiscal Year 2020/21

BACKGROUND

A Business Improvement District (BID) is a funding tool that provides funding for specific activities that must be authorized yearly by the City Council at the request of the BID Board (Board). Pursuant to Sunnyvale Municipal Code Section 3.60.050 (Establishment of benefit assessments), the formula for calculating the BID assessment amount is determined by the Board and enacted by the City. Business assessments are levied based on relative benefit from the activities to be funded. The City collects the assessment fee and forwards the collected funds to the BID, minus an administrative fee.

Downtown Sunnyvale BID

Approximately 200 businesses are located within the BID area, which is divided into three zones: Zone A, Zone B and Zone C. The current BID boundaries are Sunnyvale, Iowa, Mathilda and Evelyn Avenues (Attachment 1, Page 8).

The current Board members are:

- Dr. Gary Gold, Dr. Gary Gold & Associates & Style Eyes Optique, Chair
- Leigh Odum, Leigh's Favorite Books and Bookasaurus
- Irene Murphy, Fibbar MaGee's
- Amit Rajgarhia, Dish Dash
- Katie Voong, K Tea Cafe
- Rahul Nair, The Oxford

The Board informs BID businesses about current projects affecting downtown as well as other issues and programs. The BID offers businesses the means to pool their resources by assessing themselves to collectively pay for marketing and special events which would not be possible on an individual basis. Also, the Board promotes the downtown area by maintaining an active website and strong social media presence.

EXISTING POLICY

Municipal Code Sections - Downtown Sunnyvale Business Improvement District:

- 3.60.050. Establishment of benefit assessments.
- 3.60.060. Purpose and use of benefit assessments.
- 3.60.110. Annual budget process.
- 3.60.120. Decisions regarding expenditure of funds.

ENVIRONMENTAL REVIEW

This action is not a project within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it involves the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project which may result in a potentially significant impact on the environment.

DISCUSSION

The reauthorization process requires that the Board present the BID annual report for Fiscal year 2019/20 and proposed budget for Fiscal Year 2020/21. The Board is requesting that Council adopt the Resolution of Intention (ROI) (Attachment 2) to begin the BID renewal process for Fiscal Year 2020/21.

As of January 2020, the BID collected about \$35,000 in assessments for Fiscal Year 2019/20. Expenditures are approximately \$256,466 and revenues are approximately \$257,374. The proposed budget for Fiscal Year 2020/21 (Attachment 1, Page 7), as approved by the Board, is \$276,700. This proposed budget includes \$36,000 from BID assessments; \$184,300 from special events, such as the Summer Music Series and possible sponsorships; and, \$56,400 from corporate grants, matching funds from the City and other miscellaneous revenues.

During Fiscal Year 2019/20, the BID produced events that continued to draw visitors to Downtown Sunnyvale. Events included Summer Music Series, Magic of Sunnyvale Wine Stroll, Jazz & Beyond Series, and the Holiday Tree Lighting. The events attracted visitors and provided about 62% of the BID's annual revenue. The BID promotes BID businesses on their website (SunnyvaleDowntown.com). It also maintains a business directory, Twitter account, and Facebook account with (<https://www.facebook.com/sunnyvaledowntownassociation>) highlights of different downtown businesses and events.

For the BID to be reauthorized for Fiscal Year 2020/21, Council must approve the BID's Annual Report (Attachment 1) and adopt the Resolution of Intention (Attachment 2). Notice of the public hearing on the BID will be published in a local newspaper and mailed to all BID businesses. Pursuant to Sunnyvale Municipal Code Section 3.60.110, the Resolution of Intention sets a public hearing for April 28, 2020 for the Council to consider all oral and written protests received on or before that date regarding the levy and collection of the assessment and reauthorization of the BID for Fiscal Year 2020/21.

FISCAL IMPACT

Staff time from the Department of Finance is provided at an estimated cost of \$3,600 annually for the administration of the assessment. Because these costs are reimbursed by the BID, there is no fiscal impact to the City for providing this service.

PUBLIC CONTACT

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

The BID Board emailed the meeting announcement to all the BID members.

RECOMMENDATION

Approve the Fiscal Year 2019/20 BID Annual Report, adopt the Resolution of Intention to Levy and Collect an Assessment and Reauthorize the Business Improvement District for Fiscal Year 2020/21, and schedule the public hearing for April 28, 2020.

Prepared by: Maria Rodriguez, Administrative Analyst
Reviewed by: Connie Verceles, Economic Development Manager
Reviewed by: Jaqui Guzmán, Deputy City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. BID Annual Report and Budget
2. Draft Resolution



February 12, 2020

TO: Mayor and City Councilmembers

City of Sunnyvale
456 W Olive Ave
Sunnyvale, CA 94086

From: Michael Johnson & The SDA/BID Board

Sunnyvale Downtown Association (SDA)

RE: Sunnyvale Downtown Association's 2020/2021 BID Renewal Request

To the Mayor and City Councilmembers of Sunnyvale,

I would like to thank the City of Sunnyvale, the Mayor and City Council for your BID contribution support, attendance and support of our events last season. We are looking forward to another great year of exciting events for the community, our downtown businesses, and the City of Sunnyvale.

The SDA is requesting that the City reauthorize the BID for Fiscal Year 2020/21. On February 4, 2020, the Board of Directors approved the 2019/20 BID Budget. Attached is a copy of the SDA's expense & revenue report for July 1, 2019 through June 30, 2020 actuals along with projections for the 2020/21 fiscal year.

If you have any questions please do not hesitate to contact me at michael@sunnyvaledowntown.com or (408) 480-5437. Thank you for your continued support.

Sincerely,

Michael Johnson

Executive Director of the SDA



Sunnyvale Downtown Association's 2020/2021 BID Renewal Request

What is a BID

A BID (Business Improvement District, authorized by State of California law) is a private sector funding tool that provides funding for the promotion and improvement of a specific area. All business license holders inside the said district are self-assessed an annual fee based on anticipated benefits they receive from the BID. The BID is reauthorized yearly by the City Council at the request of the businesses' Board of Directors. A BID is a tool used by over 200 business areas in California, including Mountain View, Palo Alto, Santa Clara, Morgan Hill, and San Jose.

The BID has legal requirements to be reauthorized. Specifically, the City Council must first approve the Annual Budget and then adopt a Request of Information (ROI) to reauthorize the BID for another year. Once the ROI is adopted, a public hearing must be held during a Council meeting. Businesses pay into the BID and the funds collected can only be used for projects within the BID boundaries. The business community maintains full control of all BID funds collected.

The formula for defining our BID assessment amount is determined by the Board members, and not the City. The Sunnyvale Downtown Association (SDA) Board considers the type, size, and location of the businesses and determines the most equitable formula for each type of business. Assessments are levied on businesses based on relative benefit from the activities to be funded. The City collects the fee on an annual basis. Normally, BID assessments are included as a separate charge on the business license tax bill that every business within the BID boundaries receives. However, because Sunnyvale has a two-year business license tax cycle, a separate billing process is being used. All assessment funds collected by the City are returned to the BID through annual contract agreements. The City does collect a fee for administrative costs associated with this service. The cost is reviewed and adjusted annually as needed.

The current Sunnyvale Downtown Association Board of Directors are: Chair - Gary Gold, Dr. Gary Gold & Associates, Secretary – Leigh Odum, Leigh's Favorite Books, Treasurer – Katie Voong of KTea, Members At Large – Amit Rajgarhia, Dish Dash, Irene Murphy, Fibbar MaGees, Rahul Nair, from The Oxford Kitchen & Gastropub and Michael Johnson, SDA Executive Director.

Mission of the SDA

Sunnyvale Downtown Association (SDA) is a non-profit membership-based organization whose mission is to promote, advocate and enhance the vitality of downtown Sunnyvale. The SDA is funded by Business Improvement District (BID) fees, City grants, sponsorships and revenue producing events.

The Sunnyvale Downtown Association serves as the voice of downtown Sunnyvale by:

- Advocating for policies, programs and events that support the economic growth of the downtown
- Acting as the downtown marketing arm, voice, and ambassador for the City of Sunnyvale
- Producing attractive events for the community
- Promoting downtown as a premier venue for other groups to produce events
- Working with other community-based organization's that share in the growth, beautification, and continual vitality of downtown Sunnyvale
- Serving as the primary information portal to all events, attractions and programs stemming from the downtown core

Budget

2019/20 BID fees collected from the businesses totaled \$35,000 (14% of Income), and the City of Sunnyvale contribution \$40,000 (15%), acts as SDA foundational funding. The rest of SDA revenue comes from a combination of support from sponsorships, sales/concessions and event participant fees. By state law, the BID money can only be used to support general business activities, promote public events, decorate public places, and provide entertainment inside the BID area. BID funds are used for a myriad of projects including advertising, marketing materials, visitor guides, website, e-letters, street/holiday lighting and events.

We were fortunate this year to have received City grant support and a larger level of sponsorship. This helped us in reaching our projected budget for this year, and for that we are grateful. We can't always guarantee that we will have this level of sponsorship support, so we continue to rely on all support channels to ensure fiscal accountability.

On January 8, 2020, the Board of Director's approved the renewal of the BID. Below we have included a brief overview of some of the major expense areas.

Event Related Financial Breakdown

Our focus in 2019/20 has continued to be operations management, improving the quality of our events and continuing to ensure the safety and inclusion of our community and bands. This year we had a few financial challenges which included meeting the City and State regulations for our event stage to ensure ADA compliance. This required us to purchase a new portable wheelchair lift and equipment to move it. We also were required to add security to other events that in the past had not been required.

The good news was we were able to attract new sponsors and gained additional support from our existing sponsors. This helped offset the financial deficit to allow us to keep in line with our financial goals and budget. We have continued to increase interest in the Jazz & Beyond Series as well as grow our Magic of Sunnyvale and Wine Stroll audience.

The Wine Stroll is one of the last events in the fiscal year and the Summer Series spans both fiscal years. We are confident we will achieve final sponsorship commitments but are always dependent on City support and City grants as well. We also plan on continuing the fee structure plan for hosted guest events in our downtown, when requested as an event supporting member.

Account	2019/2020 Actual Forecast	2020/21 Projected
INCOME		
BID Fees	35,000	36,000
City Contributions	40,000	40,000
Community Grants	16,200	13,000
CityLine Marketing Support	1,200	1,800
Events Revenue (Sponsorship & Sales)		
<i>Summer Series</i>	59,000	62,500
<i>Jazz & Beyond</i>	35,300	41,200
<i>Wine Stroll</i>	37,500	40,000
<i>Tree Lighting</i>	17,200	18,000
<i>Tech Expo</i>	5,000	5,000
<i>Movie Night</i>	8,000	16,000
<i>Car Show</i>	3,000	3,200
TOTAL INCOME	257,400	276,700
EXPENSES		
Personnel Related Expenses	101,000	117,000
Office/General Admin Expenses	39,300	39,600
Sales Tax	11,600	9,500
City/Permit Fees	2,800	2,800
Equipment	4,700	500
**Event Expenses		
<i>Summer Series</i>	38,000	42,800
<i>Wine Stroll</i>	20,000	20,000
<i>Jazz & Beyond</i>	22,800	22,000
<i>Movie Night</i>	4,200	5,000
<i>Tech Expo</i>	5,000	5,000
<i>Tree Lighting</i>	5,000	5,000
<i>Car Show</i>	2,100	2,100
TOTAL EXPENSES	256,500	271,300

** The event expenses reflect general marketing and promotional material, the day of staffing, Wine, Beer, Performers and some equipment. It does not include pre-event preparation cost for Visitors Guide layout & design, Staff labor for follow up with wineries, host locations coordination, design time for Passport, booking bands, volunteer coordination, Posters design, Flyer design, Social Media outreach & Website, ticket sales and various other task required to deliver the 25 specific SDA events on annually.

Events

This year the SDA has produced 11 Summer Series Music + Market, 8 Jazz & Beyond, 4 VUDU Movie Nights on Historic Murphy Ave, the Technology Business Expo in conjunction with the City, and our Annual Holiday Tree Lighting as well as plans are underway for the Magic of Sunnyvale Wine Stroll. Our 2019/20 events will gross \$163K from the sales, sponsorships, and event participation fees.

Additionally, Sunnyvale Downtown was a destination for other community events including: PAL Classic Car Show, Halloween Pet Parade, Rides for Toys, Sunnyvale State of the City and the Winter Ice Rink. We were also a showcase destination for the KTVU Mornings on 2, Zip Trips, live broadcast from Historic Murphy Avenue.

The City contribution is a crucial part of our overall funding for annual events. We appreciate that you have continued to support the BID and want you to know, we don't take your support for granted. As always, we continued to be good stewards of all funds, grants, and sponsorships that we receive and consider each other partners with common goals for a vibrant downtown.

Our commercial marketing and promotion will continue. These resources for marketing include local and regional news outlets, radio and print publications as well as event collateral including community banner, event flyers, post cards and outreach with our visitor's guide. We will continue to expand our digital reach with online messaging via our SunnyvaleDowntown.com website, all of our social media sites like Facebook, Twitter, and YouTube as well as pin-point advertising.

We continue to maintain a strong local community internet presence with event calendars, downtown nightlife calendar and Eventbrite promotion. This past year was focused on improving the quality of our events with attention to our operations, financial oversight and strengthening partnerships with downtown businesses, other community organizations, property management, developers and our sponsors.

In the year ahead, we want to continue to grow with optimized resources and increased sponsorship as well as expand our event audience where appropriate. We continually improve our communications and want to build on that success to ensure our BID members are supported and promoted and the community is informed and proud of our downtown, our city and the direction we are heading.

Event Sponsorships & City Contribution

We are very grateful for the continued support from the City and the many Sponsors who have helped keep our SDA events growing and continuing to serve the community in 2019/20. We'd like to give special thanks to the City of Sunnyvale, CityLine Sunnyvale, Google, VUDU TV & Movies Streaming, Linked In, WalmartLabs, Baidu, Specialty Waste, Murphy Square, Premier One Credit Union and UFC Gym.

We believe our downtown businesses need City and Sponsorship support for these events more than ever. With ongoing downtown development, the new minimum wage increase, and the high cost to do business in downtown Sunnyvale, the events allow for business owners to maintain some level of profitability and their business livelihood.

Without sponsorship as well as the continued support from the City, we could not deliver the events which are so critical to attracting new consumers and visitors to our downtown. Each year we need to wait until early February before we have a sense of what amount of sponsorship support, we have and in May we receive notification of the City's Community Grant approvals, we will be receiving.

We are still actively working to secure sponsorship commitments for the late 2019/20 events as well as the 2020/21 events and are thankful for many of the returning sponsors.

Future

The BID's goal is to continue producing quality events and promoting downtown Sunnyvale as a great place to shop, dine, work and live. These events are especially important to continue to attract new visitors to our vibrant, growing downtown as well as community pride.

Our BID fees are a self-imposed tax of the downtown businesses. Outside of paying their standard fees, taxes and licenses associated with owning and operating a business. These businesses have been and continue to reach into their pockets and come up with additional monies to promote, market, and create events for the City of Sunnyvale and our downtown community.

Overview

The 2019/20 year proved to be another very successful season for the Sunnyvale Downtown Association. Early in the year, we added a CPA firm to assist the SDA in its accounting. The continuing outreach campaign to all BID members regularly has help to reduce late BID fee collection and improve member support.

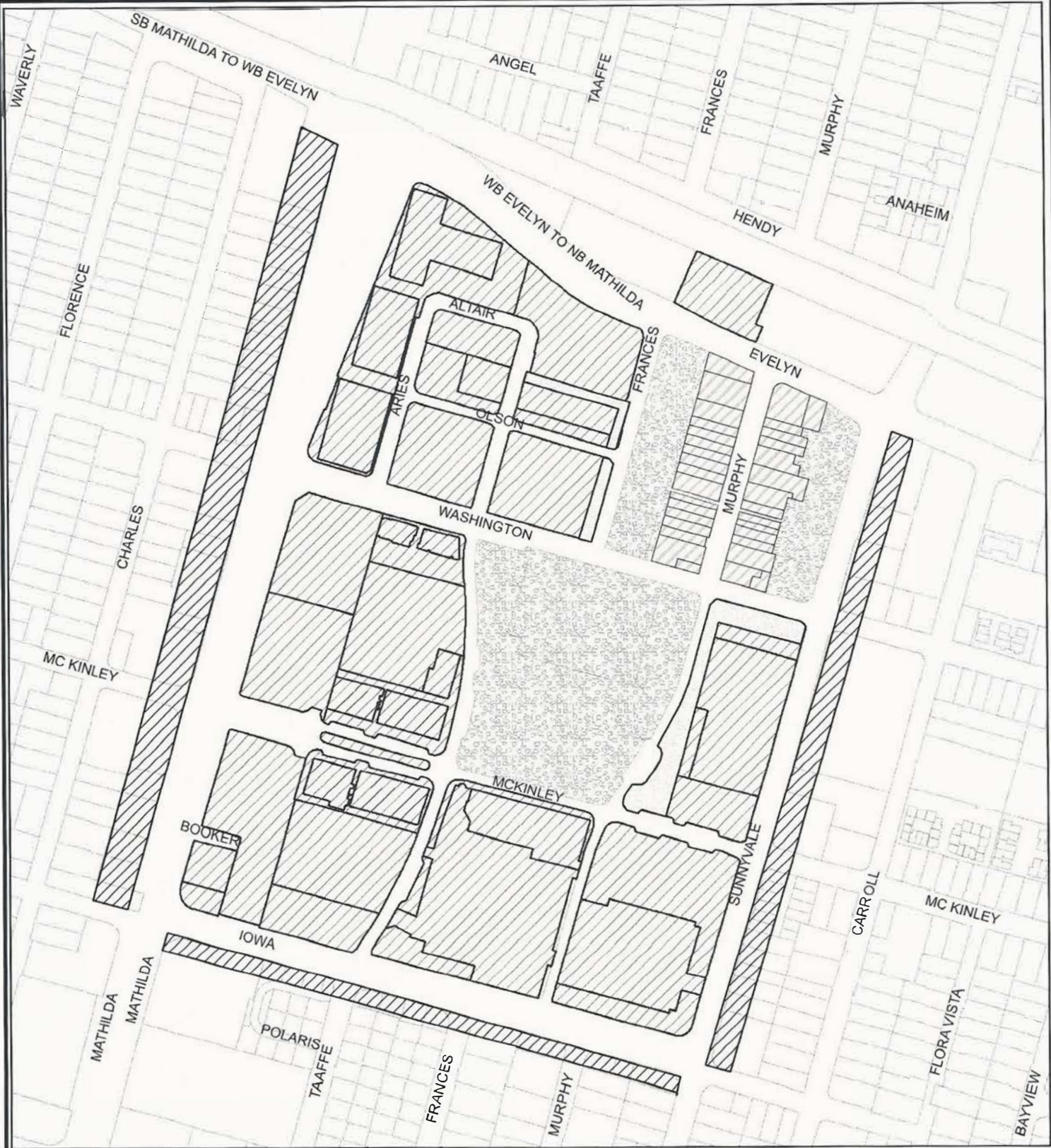
We continue to expand our reoccurring events with VUDU sponsored Movie Nights and expanded partnership with the City for the Technology Business Expo both on Historic Murphy Avenue. We celebrated returning guest events with the State of the City, PAL Classic Car Show and Rides for Toys as well as welcomed new guest events with the return of the Halloween Pet Parade and the inaugural Winter Ice Rink that was hosted by Google, City of Sunnyvale and Cityline team. These additional community events were in partnership with other local community organizations and were great additions in this season's downtown events.

Moving forward into the 2020/21 fiscal year, the SDA plan to host 11 Summer Series Music + Market concerts again, 8 Jazz & Beyond events, 3 VUDU Movie Nights on Historic Murphy Avenue, the Annual Holiday Tree Lighting and the Magic of Sunnyvale & Wine Stroll. We look forward to continuing to collaborate with the City Economic Department on the Technology Business Expo and are excited to be hosting for the third year the PAL Classic Car Show in downtown Sunnyvale. This year we expect the return of the Sunnyvale Halloween Pet Parade to the downtown community and will monitor plans for the Winter Ice Rink in 2020 as well as plan to celebrate the opening of the long-awaited AMC Movie Theater and Whole Foods, along with other businesses.

We are continually exploring new events and sponsorship opportunities to draw more attention to our growing business community and vibrant downtown. The SDA will continue to work with Cityline and other developers, property managers and the City of Sunnyvale to promote cohesion between the existing businesses in Sunnyvale and the expansion of a one Sunnyvale downtown.

The SDA continues to partner with the Cityline and new developers as we move into the next phase of the downtown's development. We provide support in the distribution of downtown construction, downtown news and any other project information that might affect the downtown business community. Thank you for your past support and once again, we ask that you continue to support our request for the BID assessments and matching funds.

Sunnyvale Downtown Association Budget		Actual	Projected	
FISCAL YEAR		19/20	2020/21	
Revenue				
Community Grants		\$ 16,200.00	\$ 13,000.00	
CityLine Marketing Support		\$ 1,200.00	\$ 1,800.00	
City Contributions		\$ 40,000.00	\$ 40,000.00	
BID Funds		\$ 35,000.00	\$ 36,000.00	
Total City Contributions		\$ 92,400.00	\$ 90,800.00	
Holiday Tree Lighting				
Sponsorships		\$ 17,200.00	\$ 18,000.00	
Total Holiday Tree Lighting		\$ 17,200.00	\$ 18,000.00	
Magic of Sunnyvale Wine Stroll				
Sales		\$ 18,500.00	\$ 20,000.00	
Sponsorships		\$ 19,000.00	\$ 20,000.00	
Total Magic of Sunnyvale Wine Stroll		\$ 37,500.00	\$ 40,000.00	
Summer Series				
Sales		\$ 26,580.00	\$ 30,000.00	
Vendors		\$ 1,400.00	\$ 1,500.00	
Sponsorships		\$ 31,000.00	\$ 31,000.00	
Total Summer Series		\$ 58,980.00	\$ 62,500.00	
Jazz & Beyond				
Sales		\$ 19,190.00	\$ 23,000.00	
Sponsorships		\$ 16,100.00	\$ 18,200.00	
Total Jazz & Beyond		\$ 35,290.00	\$ 41,200.00	
Tech Expo				
Sales		\$ -	\$ -	
Sponsorships		\$ 5,000.00	\$ 5,000.00	
Total Tech Expo		\$ 5,000.00	\$ 5,000.00	
Movie Night				
Sales		\$ -	\$ -	
Sponsorships		\$ 8,000.00	\$ 16,000.00	
Total Movie Night		\$ 8,000.00	\$ 16,000.00	
Classic Car Show				
Sales		\$ 1,129.00	\$ 1,200.00	
Event Operations Cost		\$ 1,875.00	\$ 2,000.00	
Total Classic Car Show		\$ 3,004.00	\$ 3,200.00	
Total Revenue		\$ 257,374.00	\$ 276,700.00	
Expenses				
Administrative				
Insurance		\$ 9,300.00	\$ 10,000.00	Event insurance, plus added Director & Officer Ins., Worker's Comp. on salary employee
Marketing & Advertisement		\$ 11,600.00	\$ 7,000.00	Develop Post Cards, Flyers, Banners, Menu's, Social Media, Explore Magazine and State of Downtown Outreach
Bookkeeping/Accounting		\$ 7,500.00	\$ 8,500.00	Added New CPA to reconcile and manage accounting information
Office Supplies & Expenses		\$ 5,500.00	\$ 8,500.00	
POD Rental & Permit Fee		\$ -	\$ -	
Telephone & Website		\$ 1,800.00	\$ 1,800.00	
Visitor Guide		\$ 2,800.00	\$ 3,300.00	New Design, updates & Printing - distribution
Travel Entertainment (CDA Conference)		\$ 800.00	\$ 500.00	CDA Membership & Conference / Training & Development
Total Administrative		\$ 39,300.00	\$ 39,600.00	
Event Expenses				
Wheelchare Lift		\$ 4,700.00	\$ 500.00	Lift maintenance
Building Permit Fees - New 18/19		\$ 800.00	\$ 800.00	Stage Inspections - City's Estimate
City (event) Permits & Rental Fees		\$ 2,000.00	\$ 2,000.00	Event permits (Planning, Building, PW, Fire, etc)
Holiday Tree Lighting		\$ 5,010.00	\$ 5,000.00	Tree, staff, stage, equipment. Free event for the community.
Magic of Sunnyvale Wine Stroll		\$ 20,000.00	\$ 20,000.00	
Summer Series*		\$ 38,000.00	\$ 42,800.00	Supplies, Staff, Bands, Security, Beverage Booth, Stage, Beverages, labor cost increases
Jazz & Beyond		\$ 22,758.00	\$ 22,000.00	Supplies, Staff, Bands, Security, Beverage Booth, Stage, Beverages, labor cost increases
Movie Night		\$ 4,198.00	\$ 5,000.00	
Tech Expo		\$ 5,000.00	\$ 5,000.00	
Sales Tax		\$ 11,600.00	\$ 9,500.00	
Classic Car Show		\$ 2,100.00	\$ 2,100.00	
Total Event Expenses		\$ 116,166.00	\$ 114,700.00	
Staffing				
Exec. Director Compensation		\$ 80,000.00	\$ 80,000.00	
Employee Taxes		\$ 10,000.00	\$ 12,000.00	
Contract Labor		\$ 11,000.00	\$ 25,000.00	Additional admin staff & part-time Event Coordinator, contract labor
Total Staff & ED Compensations/Commission		\$ 101,000.00	\$ 117,000.00	
Total Expense		\$ 256,466.00	\$ 271,300.00	
Profit or Loss		\$ 908.00	\$ 5,400.00	



**DOWNTOWN BUSINESS IMPROVEMENT
DISTRICT ZONES**

0 130 260 520 Feet

Legend

- ZONE A
- ZONE B
- ZONE C



**Downtown Sunnyvale Business Improvement District
Proposed Improvements and Activities for Fiscal Year 2019/2020**

Income		
Zone A	39 Businesses paying an average annual benefit fee of \$451.	\$17,100
Zone B	48 Businesses paying an average of \$179.	\$8,800
Zone C	112 Businesses paying an average of \$122.	\$14,100
Total potential BID assessment collections		\$40,000
Projected assessment collections (annual paid average at about 90%)		\$36,000
Revenues from SDA special events and fund-raisers		\$160,000
Grants, event sponsorships and other misc. revenue		\$38,800
Total BID Program annual budget		\$234,800

Expenditures		
Program	Amount	Percent
1) Commercial Marketing Program	\$152,620	65%
a) Advertising and promotion (Ads, social media, etc.)		
b) Theme development		
c) Special events and activities		
d) Visitor attraction		
2) Civic Beautification and Signage Program	\$2,348	1%
a) Streetscape beautification, lighting		
b) Public arts programs		
c) Public-private directional signage		
3) Programs Administration and BID Management	\$79,832	34%
Totals	\$234,800	100%

BID Zones & Fee Breakdown

	ZONE A	ZONE B	ZONE C
Retailers, Restaurants, Bars	\$500	\$300	\$150
Service Businesses	\$300	\$200	\$100
Lodging	\$10/rm.	\$10/rm.	\$10/rm
Professional Services Businesses	\$100	\$100	\$100
Financial Institutions	\$500	\$500	\$500

Business type definitions:

Retail and Restaurant: Businesses that buy and resell goods, examples are clothing stores, shoe stores, office supplies as well as businesses that sell prepared foods and drinks.

Service Businesses: Businesses that sell services. Examples are beauty and barber shops, repair shops, most automotive-oriented businesses, entertainment businesses such as theaters, etc.

Lodging: Includes renting rooms by the day or week to community visitors.

Professional Services Businesses: Includes Architects, Engineers, Attorneys, Dentists, Doctors, Accountants, Optometrists, Realtors, Insurance Offices, Mortgage Brokers and most other businesses that require advanced and/or specialized licenses and/or advanced academic degrees.

Financial Institutions: Includes banking and savings and loan institutions as well as credit unions, etc.

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE DECLARING CITY COUNCIL'S INTENTION TO LEVY AND COLLECT AN ASSESSMENT AND TO REAUTHORIZE THE DOWNTOWN SUNNYVALE BUSINESS IMPROVEMENT DISTRICT FOR FISCAL YEAR 2020/2021 AND HOLD A PUBLIC HEARING**

WHEREAS, under California Streets and Highways Code Section 36500, *et seq.*, the City Council of the City of Sunnyvale is authorized to reauthorize an improvement district and to act as the legislative body for an improvement district; and

WHEREAS, the City Council now desires to review the annual report and proceed with the reauthorization of an improvement district in order to finance improvements and/or activities necessary or incident to development in the City of Sunnyvale.

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

1. Authority. The City Council proposes to conduct proceedings and declares its intention to reauthorize an improvement district pursuant to California Streets and Highways Code Section 36500, *et seq.*
2. Name. The name of the district will continue to be the "Downtown Sunnyvale Business Improvement District" (the "District").
3. Boundaries. No changes are proposed in the boundaries of the Business Improvement District as established in fiscal year 2020-2021.
4. Annual Report. The annual report for the District (the "Report") with a detailed description of the improvements and activities is on file in the office of the City Clerk and is attached to the Report to Council No. 20-0221 and the City Council hereby approves the Report.
5. Improvements. A Report with the types of improvements and activities proposed to be funded by the levy of assessments on businesses in the District is on file in the Office of the City Clerk.
6. Benefit Fee. The City Council intends to levy an annual benefit fee on businesses in the District to pay for selected improvements and activities of the District. All funds of the District shall be expended on improvements and activities within the District. There are no changes proposed for the method and basis of levying the assessments in the Business Improvement District as established in fiscal year 2020-2021.

Adopted by the City Council at a regular meeting held on March 31, 2020, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk
(SEAL)

LARRY KLEIN
Mayor

APPROVED AS TO FORM:

ROBERT L. BOCO
Sr. Assistant City Attorney



City of Sunnyvale

Agenda Item

20-0439

Agenda Date: 3/31/2020

REPORT TO COUNCIL

SUBJECT

Adopt an Emergency Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic; Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Nonpayment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic; and Provide Direction Regarding any Desired Enhanced Provisions on Temporary Moratorium on Evictions of Commercial Tenants Impacted by the COVID-19 Pandemic.

BACKGROUND

On January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency. On February 10, 2020, the Santa Clara County Public Health Officer announced a local health emergency due to the spread of the novel coronavirus. On March 11, 2020, the World Health Organization declared the coronavirus outbreak a pandemic.

On March 12, 2020, in response to the spread of COVID-19, the Sunnyvale City Manager declared a local emergency, which was ratified by the City Council on March 17, 2020. In addition, on March 16, 2020, the Public Health Officer of the County of Santa Clara released an order directing all individuals living in the County to shelter at their place of residence except to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and government services. Further, the order directed all businesses and governmental agencies to cease non-essential operations at physical locations in the County. As a result, many business and employers have had to close or significantly reduce operating levels resulting in a reduction of workforce and a reduction in income to individuals and to the businesses.

On March 16, 2020, Governor Newsom issued Executive Order N-28-20, which suspends state law that would otherwise preempt or restrict local jurisdictions' authority to suspend the evictions of tenants for the non-payment of rent if the non-payment is a result of the COVID-19 pandemic.

On March 20, Governor Newsom issued Executive Order N-33-20 which included an Order by the State Health Officer to protect public health from COVID-19. The order states that all individuals living in the State of California are to stay home or at their place of residence except as further defined in the order; and is in effect until further notice.

The significant impacts of the shelter-in-place and stay at home orders, as well as the related closures of schools and non-essential businesses, have or have the potential to cause widespread economic impacts to Sunnyvale residents who may lose income as a result of COVID-19. A temporary moratorium on residential evictions due to nonpayment of rent will help prevent homelessness and promote housing stability and public health, safety, and welfare during this emergency.

EXISTING POLICY**CHARTER OF THE CITY OF SUNNYVALE****Article VII Ordinances and Legal Notices****Section 701 - Emergency Ordinances**

Any ordinance declared by the City Council to be necessary as an emergency measure for preserving the public peace, health or safety, and containing a statement of the reasons for its urgency, may be introduced and adopted at one and the same meeting if passed by at least five affirmative votes.

GENERAL PLAN**Housing Element****GOAL HE-5 EQUAL HOUSING OPPORTUNITIES**

Promote equal housing opportunities for all residents, including Sunnyvale's special needs populations, so that residents can reside in the housing of their choice.

Land Use and Transportation**GOAL LT-11 SUPPORTIVE ECONOMIC DEVELOPMENT ENVIRONMENT**

Facilitate an economic development environment that supports a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal, and land use constraints.

ENVIRONMENTAL REVIEW

Adoption of an emergency ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) as the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

DISCUSSION

The COVID-19 Emergency and the subsequent 'shelter in place' order will lead to severe economic stress for many of Sunnyvale's businesses and residents, particularly those who are already economically burdened. Displacement through eviction may create undue hardship for renters through stress, anxiety, and additional relocation costs that could increase the community's susceptibility to COVID-19. An urgency ordinance placing a moratorium on residential evictions is recommended to help prevent the spread of COVID-19, prevent homelessness and promote housing stability, and protect the health and welfare of Sunnyvale residents during this unprecedented emergency. Further the Council may wish to consider a similar future action related to commercial tenants.

Several other agencies throughout the state and county have enacted similar ordinances in recent weeks. On March 24, the Santa Clara County Board of Supervisors adopted an emergency ordinance that provides protections to tenants throughout Santa Clara County, including in cities, by using the emergency authority granted by the Governor, as well as Government Code section 8634. However, it states that where a city in the county enacts an ordinance or regulation that is more protective of tenants, the city ordinance or regulation will apply. The County's ordinance prohibits

evictions of both residential and commercial tenants for nonpayment of rent when the failure to pay is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the 2020 COVID-19 pandemic or any local, State, or federal government response to the pandemic. Tenants will have 120 days to repay unpaid rent after the emergency ends.

Attachment 5 includes a table of two local counties (Santa Clara and San Mateo) and other Cities in Santa Clara County that have adopted similar local ordinances; this table will be updated prior to the public hearing. After Santa Clara County adopted an ordinance on March 24, 2020 the cities of Cupertino and Gilroy considered local ordinances, which they did not adopt as they were satisfied with the provisions in the County ordinance. The provisions of the other eviction moratorium ordinances are substantially similar; but may differ in two key areas: the time period a tenant will have to repay unpaid rent, typically 90, 120, or 180 days; and whether the regulations include commercial tenants.

Sunnyvale Ordinances Prohibiting Evictions of Residential Tenants for Nonpayment of Rent Due to Impacts from COVID-19

If the Council desires to enact an ordinance that provides more stringent protections for residential tenants than the Santa Clara County ordinance, staff has provided a proposed emergency ordinance that would suspend residential evictions for nonpayment of rent as a result of impacts from COVID-19, protecting residential tenants suddenly facing financial hardship due to COVID-19 from eviction, and providing housing stability during this volatile period of time, helping ensure that residents remain housed and sheltered in place rather than suddenly facing homelessness.

The City Attorney has prepared two ordinances. The first is an emergency ordinance enacting a temporary moratorium on residential evictions for nonpayment of rent by tenants impacted by the COVID-19 pandemic, the details of which are discussed below. This Emergency Ordinance requires five (5) affirmative votes of the City Council to adopt the Ordinance. Adoption of the Second Ordinance, which is identical in content but a regular ordinance which requires a second reading and would be in effect thirty (30) days after the second reading, is also recommended as an administrative and procedural step to eliminate the need to return for an extension to the Emergency Ordinance in the likely event that the emergency extends longer than the duration an Emergency Ordinance can be in effect.

Key elements of the proposed Sunnyvale ordinances include:

1. On or after March 12, 2020 (the day Sunnyvale declared a local emergency) Landlords would be prohibited from evicting residential tenants for nonpayment of rent where the nonpayment of rent is due to impacts from COVID-19. Evictions for any other reason would be permitted under the ordinance.
2. Tenants would be required to notify their landlords within 30 days of the due date for rent of their inability or reduced ability to pay rent due to the COVID-19 pandemic. Tenants would be required to provide a landlord with supporting documentation. Examples of such documentation could include: communications from an employer showing a COVID-19 related job loss or reduction of compensated hours of work; communications related to school closure supporting the need to miss work to care for a home-bound school-age child; or, other similarly -caused loss of income that resulted from COVID-19. Tenants whose income is reduced must pay a reduced amount.

3. Tenants would have 180 days from the time the emergency ends to repay unpaid rent. It is important to note that the Ordinance does not excuse payment of rent, but rather prohibits evictions related to a tenant's inability to pay during the COVID-19 emergency and up to six months after the emergency ends. It may still be challenging for some renters to pay the back rent; however, the moratorium on evictions serves the immediate public health and safety purpose of ensuring the renter shelter during the COVID-19 emergency. This payback period is the only material difference between the provisions in the City and County ordinances (180 days and 120 days, respectively).
4. Provides a tenant with the right to civil enforcement of the provisions of either ordinance. That is, in a case where a landlord attempted to evict for nonpayment of rent a tenant claiming a reduction in income from the COVID-19 emergency, the tenant could raise either ordinance as an affirmative defense in that eviction action, and obtain civil penalties against any landlord found in violation of either ordinance.

If the ordinance is adopted, the City will provide notice to the community and educate landlords on its details, including that they are prohibited from evicting, for nonpayment of rent, tenants financially impacted by COVID-19 tenants.

Existing Tenant Resources

The City partners with Project Sentinel for Tenant-Landlord Dispute Resolution Services. The Dispute Resolution Services Program provides counseling and dispute resolution services to renters and landlords, including counseling services on rights and responsibilities, information and referral services, educational services, and various dispute resolution alternatives including tenant/landlord mediation. The Program helps to assure that City residents are treated in accordance with all applicable federal, state and local laws.

Effects on Landlords

This ordinance would reduce income flow for landlords. Some property owners may be able to more easily weather delayed payment of rent, whereas other landlords (such as those with fewer properties) may depend on that rent for their own living expenses, mortgage payments of the rented property and property maintenance. However, these smaller landlords may have an opportunity to work with the lending institutions which are also allowing a 90 day freeze on mortgage payments.

Commercial Tenant Evictions for Nonpayment of Rent

Sunnyvale businesses are also significantly impacted by the health crisis of this global pandemic. School closures have occurred, restaurants have been ordered to only serve food for delivery or pick-up, fitness centers and many other businesses have been determined to be non-essential, and thus ordered to effectively cease operations. The loss of income caused by the effects of COVID-19 and the public health orders have, and will, impact commercial tenants' ability to pay rent when due, leaving them vulnerable to eviction. Prohibiting evictions on a temporary basis may be needed to avoid business closures and job losses.

As discussed above, the County's ordinance also prohibits evictions for nonpayment of rent of commercial tenants financially impacted by COVID-19. Such tenants would, under the County ordinance, have 120 days after the emergency to repay unpaid rent. However, the Sunnyvale City Council may adopt an ordinance providing enhanced the protections to cover commercial evictions. If the Council desires to expand those protections, it should provide direction to staff on desired terms

and staff will return with an ordinance applying to commercial tenants. Until that time, it is the County's position (and there is an Attorney General's Opinion confirming that position) that the provisions of the County's eviction moratorium ordinance would apply to commercial tenants in Sunnyvale if the Council chooses not to adopt a local ordinance with greater protections than those offered by the County.

FISCAL IMPACT

Adoption of these ordinances will have no direct fiscal impact on the City. Staff time will be required to advise property owners of the moratorium and to inform and answer questions from the community about the ordinance.

PUBLIC CONTACT

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

An email was sent to individuals, agencies, advocacy groups, and businesses who have expressed an interest in housing related matters informing of this item on the City Council agenda. A similar email message was also sent to business associations in Sunnyvale.

Email and letters received from the public are included in Attachment 3.

ALTERNATIVES

1. Adopt an Emergency Ordinance and Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic (Attachments 1 and 2).
2. Adopt an Emergency Ordinance and Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic with modifications.
3. Do not adopt the Emergency or Regular Ordinances Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants. The provisions of the County's eviction moratorium ordinance would apply to residential tenants if the Council chooses not to adopt a local ordinance.
4. Provide direction to staff on whether the Council desires enhanced provisions, beyond those set forth in the County ordinance, for eviction moratoriums for commercial tenants impacted by the COVID-19 pandemic.

STAFF RECOMMENDATION

Alternative 1 and Alternative 4:

1) Adopt an Emergency Ordinance and Introduce a Regular Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic (Attachments 1 and 2); and, 4) provide direction to staff on whether the Council desires enhanced provisions, beyond those set forth in the County ordinance, for eviction moratoriums for commercial tenants impacted by the COVID-19 pandemic.

The adoption of the emergency ordinance establishing a temporary moratorium evictions for nonpayment of rent by for residential tenants impacted by the COVID-19 virus is an important step to

protect the public health and safety of Sunnyvale residents by helping prevent homelessness and ensuring that people remain housed, particularly given the shelter-in-place and stay at home orders.

If Council provides direction on expanding the protections offered in the County ordinance for commercial tenants City staff will return with another ordinance for Council consideration.

Prepared by: Jenny 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. Draft Emergency Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic
2. Ordinance Enacting a Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Pandemic
3. County of Santa Clara Uncodified Emergency ORDINANCE NO. NS-9.287 Relating to a Temporary Moratorium on Evictions of Residential and Commercial Tenants Impacted by the COVID-19 Pandemic
4. Letters from the Community
5. Table: Neighboring Jurisdictions with COVID-19 Eviction Moratoriums as of 3/24/20

DRAFT 3/25/20 *mc7*

ORDINANCE NO. _____

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF SUNNYVALE ENACTING A
MORATORIUM ON EVICTIONS FOR NONPAYMENT OF
RENT BY RESIDENTIAL TENANTS IMPACTED BY THE
COVID-19 PANDEMIC**

WHEREAS, the novel coronavirus (COVID-19) is a respiratory disease that may result in serious illness or death and is easily transmissible from person to person; and

WHEREAS, the City makes the following recitals and findings with respect to the COVID-19 outbreak:

1. On January 31, 2020, the United States Department of Public Health and Human Services Secretary Alex Azar declared a public emergency for the novel coronavirus (COVID-19) beginning on January 27, 2020.
2. On February 3, 2020, the Santa Clara County Director of Emergency Services proclaimed a state of emergency due to the COVID-19 outbreak, which was ratified by the Santa Clara County Board of Supervisors on February 10, 2020, thus enabling Santa Clara County to take extraordinary measures.
3. On March 4, 2020, Governor Gavin Newsom declared a state of emergency in the State of California due to the number of confirmed cases of COVID-19 in the State. Santa Clara County issued updated guidance for workplaces and businesses, stating that employers should take steps to make it more feasible for their employees to work in ways that minimize close contact with large numbers of people, including suspending nonessential employee travel and minimizing the number of employees working within arm's length of one another, particularly by canceling large in-person meetings and conferences. Santa Clara County also recommended that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm's length of one another.
4. On March 9, 2020, the Santa Clara County Department of Public Health issued a mandatory order prohibiting public gatherings of more than 1000 people, effective March 11, 2020.
5. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic; Santa Clara County announced that the number of confirmed COVID-19 cases in the County had increased to 48 from 24 on March 6, 2020; and the CDC and Governor of the State of California issued recommendations to cancel or postpone gatherings of more than 20 people.
6. On March 12, 2020, the City Manager acting as the Director of Emergency Services

proclaimed the existence of a local emergency within the City related to the COVID-19 outbreak.

7. On March 13, 2020, the Santa Clara County Department of Public Health issued a new Order mandating a countrywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons to mitigate the spread of COVID-19.
8. On March 16, 2020, the Health Departments for the six Bay Area counties jointly issued a “shelter in place” order, mandating the closure of all non-essential businesses. Where possible, employees must work from home. Further, the Santa Clara County Superintendent of Schools and all district superintendents in the County closed schools to students. These school closures have caused children to have to remain at home, and consequently required parents to adjust their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot work from home or cannot afford to take off time from work to stay at home.
9. On March 16, 2020, the Governor issued Executive Order N-28-20. Among other emergency actions related to the COVID-19 outbreak, that Order suspended any state law that would preempt or otherwise restrict the City’s exercise of its police power to impose substantive limitations on evictions based on nonpayment of rent resulting from the impacts of COVID-19.
10. On March 19, 2020, the Governor of the State of California issued Executive Order N-33-20 ordering all Californians to stay home for an undetermined period of time.
11. The City of Sunnyvale has been impacted by the health crisis of this global pandemic. The Centers for Disease Control and Prevention, the California Department of Health, and the Santa Clara County Department of Public Health have issued recommendations and orders including but not limited to social distancing, staying home if sick, self-quarantining if exposed to COVID-19, canceling or postponing group events, working from home, and various other precautions to protect public health and prevent transmission of this communicable virus. Sporting events, concerts, plays, and conferences have been cancelled. Non-essential services are closed. Schools are closed.
12. The Governor has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19, and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks.
13. As a result of these recommendations and orders, restaurant and retail business has significantly declined, and workers have been and will continue to be impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age

children. As the virus spreads, workers may have to stay home for extended periods.

14. As a further result of these recommendations and orders, many tenants in Sunnyvale have experienced or expect to soon experience sudden income loss. Further income impacts are anticipated. The loss of income caused by the effects of COVID-19 may impact tenants' ability to pay rent when due, leaving tenants vulnerable to eviction.
15. The City has broad authority under Article XI, Section 7 of the California Constitution to enact ordinances and regulations to promote the public health, safety, and welfare of the City and its residents.
16. Providing tenants with a short-term protection from eviction due to the inability to pay rent will help protect the health, safety and welfare of the Sunnyvale community affected by COVID-19 by avoiding unnecessary housing displacement, protecting the City's affordable housing stock, preventing housed individuals from falling into homelessness, and stabilizing the rental housing market by reducing displacement.
17. Displacement through eviction could destabilize the living situation of tenants and impact the health of Sunnyvale's residents in many ways, including uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City.
18. During this state of emergency, and in the interests of protecting the public health and preventing transmission of the coronavirus, it is essential to avoid unnecessary displacement of tenants. Prohibiting residential evictions on a temporary basis is needed during the COVID-19 pandemic outbreak. Affected tenants who have lost income due to the impacts of COVID-19 on the economy or their employment may be at risk of homelessness if they are evicted for non-payment because they are likely to have little or no income and thus be unable to secure other housing if evicted.
19. Nothing in this Ordinance will waive a tenant's obligations to pay back rent owed once this Ordinance is no longer effective.
20. This Ordinance is temporary and not a general ordinance in force required to be codified pursuant to Section 704 of the City Charter.

WHEREAS, to address the potential impacts discussed in the foregoing recitals and findings, the City of Sunnyvale desires to adopt an uncoded ordinance imposing a temporary moratorium on residential evictions for nonpayment of rent by tenants financially impacted by COVID-19.

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

SECTION 1. INCORPORATION OF FINDINGS AND RECITALS. The City Council hereby finds, determines, and declares that (1) all the foregoing recitals and findings and the staff

report presented with this Ordinance are true and correct and incorporates and adopts them as findings of the City Council as if fully set forth herein, and (2) this emergency ordinance adopted pursuant to Sunnyvale City Charter Section 701 is necessary for all the reasons stated such recitals and findings.

SECTION 2. URGENT NEED. Based on the foregoing recitals and findings, all of which are deemed true and correct, the City Council hereby this Ordinance is urgently needed to temporarily suspend residential evictions for nonpayment of rent related to the COVID-19 emergency, for the immediate preservation of the public peace, health, and safety. This emergency ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Sunnyvale City Charter Section 701.

SECTION 3. ORDINANCE ENACTING TEMPORARY MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT BY RESIDENTIAL TENANTS IMPACTED BY THE COVID-19 PANDEMIC. A moratorium on eviction for non-payment of rent by residential tenants impacted by the COVID-19 pandemic is adopted as follows:

1. Policy and Purpose. This Ordinance is designed to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness due to impacts from the COVID-19 pandemic. It is intended to enable tenants in the City whose employment and income have been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent, and to reduce the risk that impacts of COVID-19 will create anxiety, stress and potential homelessness for the affected City residents and their communities, thereby serving the public peace, health, safety, and welfare.
2. Definitions. The following terms are defined for purposes of this Ordinance:
 - (a) "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any rental unit, mobile home, or mobile home lot, and the agent, representative, or successor of any of the foregoing.
 - (b) "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.
 - (c) "Mobilehome Park" means any area or tract of land where two or more mobilehome lots are rented or leased, or held out for rent or lease, to accommodate mobilehomes used for human habitation for permanent, as opposed to transient, occupancy.
 - (d) "Mobilehome Owner" means a person who owns a mobilehome and rents or leases the mobilehome Park space on which the mobilehome is located.
 - (e) "Mobilehome Resident" means a person who rents a mobilehome from a mobilehome Owner.
 - (f) "Rental Unit" means a structure or the part of a structure, including a mobilehome or mobilehome space, that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the Sunnyvale Municipal Code.
 - (g) "Tenant" means a residential tenant, subtenant, lessee, sublessee, household,

mobilehome resident, mobilehome owner or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Rental Unit.

3. Applicability. This Ordinance applies to tenants affected by financial impacts related to COVID-19, as defined in Section 4 of this Ordinance, in any Rental Unit and Landlords of such tenants. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after March 12, 2020.
4. Moratorium on residential evictions.
 - (a) During the term of this ordinance, no landlord shall terminate or attempt to terminate the tenancy of a tenant in a rental unit or mobilehome located in the City of Sunnyvale where the basis for eviction is non-payment of rent, and the tenant's nonpayment of rent was due to financial impacts related to COVID-19. "Financial impacts related to COVID-19" include, but are not limited to lost household income as a result of any of the following:
 - (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;
 - (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19;
 - (3) compliance with a recommendation or order from a government health authority to stay home, self-quarantine, avoid congregating with others, or take other precautions recommended or ordered pursuant to the COVID-19 state of emergency;
 - (4) extraordinary out-of-pocket medical expenses;
 - (5) childcare needs arising from school or childcare closures related to COVID-19; or
 - (6) other similarly-caused reason resulting in a loss of income due to COVID-19.
 - (b) A landlord who has received notice that a tenant cannot pay some or all of the rent temporarily for the reasons set forth in Section (a) above shall not serve a notice pursuant to CCP Section 1161(2), file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict that tenant for non-payment of rent.
 - (c) Nothing in this Ordinance prohibits evictions for reasons other than those specified in subsection (a) of this section.
5. Documentation of inability to pay rent due to COVID-19.
 - (a) A landlord knows of a tenant's inability to pay rent due to financial impacts related to COVID-19, if the tenant notifies the landlord in writing of lost income or inability to pay full rent due to financial impacts related to COVID-19 within 30 days after the date rent is due, and provides documentation sufficient to support the claim.
 - (1) Written notification includes email or text message communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text.
 - (2) Documentation sufficient to demonstrate impacts to income due to COVID-19 may include, but is not limited to, notification from an employer citing COVID-19 as a reason for reduced work hours or termination, employer paycheck stubs, bank or medical billing statements, or notification from a school related to school

closure due to COVID-19.

- (b) A landlord shall hold in confidence all medical or financial information a tenant provides to support claiming an inability to pay rent due to financial impacts related to COVID-19, and only use such information to evaluate the tenant's claim or enforcing this Ordinance.

6. Six-month payback requirement.

- (a) Tenants who are afforded eviction protection pursuant to this Ordinance shall have up to one hundred eighty (180) days after the City of Sunnyvale proclaims the termination the local public health emergency declared on March 12, 2020, to pay their landlord all unpaid rent and monies owed. During that 180-day period, the protections against eviction in this Ordinance apply for such tenants.
- (b) No landlord may charge or collect a late fee for rent or any portion of that is delayed for the reasons stated in this Ordinance.
- (c) Nothing in this Ordinance relieves a tenant of liability for any unpaid rent or other monies owed, nor restricts the ability of any landlord to collect rent and other lawful amounts due following the termination of the local emergency.

7. Affirmative defense to eviction; civil penalties and remedies.

- (a) Affirmative defense. Each Landlord that seeks to terminate a tenancy of a tenant to whom this Ordinance applies must comply with this Ordinance. This Ordinance may be asserted as a complete affirmative defense in any unlawful detainer eviction action under California Code of Civil Procedure Section 1161, as amended for nonpayment of rent or, as to a Section 8 Program tenant, for non-payment of the tenant's share of the contract rent, where the notice to quit or pay rent was served on or after March 12, 2020.
- (b) Civil Remedies.
 - (1) Any landlord that fails to comply with this Ordinance may be subject to civil proceedings for displacement of tenants initiated by such tenant for actual and exemplary damages.
 - (2) Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.
 - (3) Treble damages shall be awarded for a landlord's willful failure to comply with the obligations established under this Ordinance.
 - (4) Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a tenant or non-tenant third party for the damage done to said landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

SECTION 4. EFFECTIVE DATE. This Urgency Ordinance shall be effective immediately upon adoption pursuant to section 701 of the City Charter and shall remain in effect until the regular non-urgency Ordinance No. ____ considered at the same time and first approved by the Council on March 31, 2020 becomes effective.

SECTION 5. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the

California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it can be seen with certainty it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 6. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 7. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this Ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on March 31, 2020, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney

DRAFT 3/25/20 *mc7*

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE ENACTING A MORATORIUM ON
EVICTIONS FOR NONPAYMENT OF RENT BY
RESIDENTIAL TENANTS IMPACTED BY THE COVID-19
PANDEMIC**

WHEREAS, the novel coronavirus (COVID-19) is a respiratory disease that may result in serious illness or death and is easily transmissible from person to person; and

WHEREAS, the City makes the following recitals and findings with respect to the COVID-19 outbreak:

1. On January 31, 2020, the United States Department of Public Health and Human Services Secretary Alex Azar declared a public emergency for the novel coronavirus (COVID-19) beginning on January 27, 2020.
2. On February 3, 2020, the Santa Clara County Director of Emergency Services proclaimed a state of emergency due to the COVID-19 outbreak, which was ratified by the Santa Clara County Board of Supervisors on February 10, 2020, thus enabling Santa Clara County to take extraordinary measures.
3. On March 4, 2020, Governor Gavin Newsom declared a state of emergency in the State of California due to the number of confirmed cases of COVID-19 in the State. Santa Clara County issued updated guidance for workplaces and businesses, stating that employers should take steps to make it more feasible for their employees to work in ways that minimize close contact with large numbers of people, including suspending nonessential employee travel and minimizing the number of employees working within arm's length of one another, particularly by canceling large in-person meetings and conferences. Santa Clara County also recommended that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm's length of one another.
4. On March 9, 2020, the Santa Clara County Department of Public Health issued a mandatory order prohibiting public gatherings of more than 1000 people, effective March 11, 2020.
5. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic; Santa Clara County announced that the number of confirmed COVID-19 cases in the County had increased to 48 from 24 on March 6, 2020; and the CDC and Governor of the State of California issued recommendations to cancel or postpone gatherings of more than 20 people.
6. On March 12, 2020, the City Manager acting as the Director of Emergency Services

- proclaimed the existence of a local emergency within the City related to the COVID-19 outbreak.
7. On March 13, 2020, the Santa Clara County Department of Public Health issued a new Order mandating a countrywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons to mitigate the spread of COVID-19.
 8. On March 16, 2020, the Health Departments for the six Bay Area counties jointly issued a “shelter in place” order, mandating the closure of all non-essential businesses. Where possible, employees must work from home. Further, the Santa Clara County Superintendent of Schools and all district superintendents in the County closed schools to students. These school closures have caused children to have to remain at home, and consequently required parents to adjust their work schedules to take time off work, whether paid or unpaid. Hourly wage earners are unlikely to be paid for time off. The inability to work due to school closures will economically strain those families who cannot work from home or cannot afford to take off time from work to stay at home.
 9. On March 16, 2020, the Governor issued Executive Order N-28-20. Among other emergency actions related to the COVID-19 outbreak, that Order suspended any state law that would preempt or otherwise restrict the City’s exercise of its police power to impose substantive limitations on evictions based on nonpayment of rent resulting from the impacts of COVID-19.
 10. On March 19, 2020, the Governor of the State of California issued Executive Order N-33-20 ordering all Californians to stay home for an undetermined period of time.
 11. The City of Sunnyvale has been impacted by the health crisis of this global pandemic. The Centers for Disease Control and Prevention, the California Department of Health, and the Santa Clara County Department of Public Health have issued recommendations and orders including but not limited to social distancing, staying home if sick, self-quarantining if exposed to COVID-19, canceling or postponing group events, working from home, and various other precautions to protect public health and prevent transmission of this communicable virus. Sporting events, concerts, plays, and conferences have been cancelled. Non-essential services are closed. Schools are closed.
 12. The Governor has stated that individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19, and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks.
 13. As a result of these recommendations and orders, restaurant and retail business has significantly declined, and workers have been and will continue to be impacted by lost wages and layoffs. Parents have had to miss work to care for home-bound school-age

children. As the virus spreads, workers may have to stay home for extended periods.

14. As a further result of these recommendations and orders, many tenants in Sunnyvale have experienced or expect to soon experience sudden income loss. Further income impacts are anticipated. The loss of income caused by the effects of COVID-19 may impact tenants' ability to pay rent when due, leaving tenants vulnerable to eviction.
15. The City has broad authority under Article XI, Section 7 of the California Constitution to enact ordinances and regulations to promote the public health, safety, and welfare of the City and its residents.
16. Providing tenants with a short-term protection from eviction due to the inability to pay rent will help protect the health, safety and welfare of the Sunnyvale community affected by COVID-19 by avoiding unnecessary housing displacement, protecting the City's affordable housing stock, preventing housed individuals from falling into homelessness, and stabilizing the rental housing market by reducing displacement.
17. Displacement through eviction could destabilize the living situation of tenants and impact the health of Sunnyvale's residents in many ways, including uprooting children from schools, disrupting the social ties and networks that are integral to citizens' welfare and the stability of communities within the City.
18. During this state of emergency, and in the interests of protecting the public health and preventing transmission of the coronavirus, it is essential to avoid unnecessary displacement of tenants. Prohibiting residential evictions on a temporary basis is needed during the COVID-19 pandemic outbreak. Affected tenants who have lost income due to the impacts of COVID-19 on the economy or their employment may be at risk of homelessness if they are evicted for non-payment because they are likely to have little or no income and thus be unable to secure other housing if evicted.
19. Nothing in this Ordinance will waive a tenant's obligations to pay back rent owed once this Ordinance is no longer effective.
20. This Ordinance is temporary and not a general ordinance in force required to be codified pursuant to Section 704 of the City Charter.

WHEREAS, to address the potential impacts discussed in the foregoing recitals and findings, the City of Sunnyvale desires to adopt an uncodified ordinance imposing a temporary moratorium on residential evictions for nonpayment of rent by tenants financially impacted by COVID-19.

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

SECTION 1. INCORPORATION OF FINDINGS AND RECITALS. The City Council hereby finds, determines, and declares that (1) all the foregoing recitals and findings and the staff

report presented with this Ordinance are true and correct and incorporates and adopts them as findings of the City Council as if fully set forth herein, and (2) this emergency ordinance adopted pursuant to Sunnyvale City Charter Section 701 is necessary for all the reasons stated such recitals and findings.

SECTION 2. URGENT NEED. Based on the foregoing recitals and findings, all of which are deemed true and correct, the City Council hereby this Ordinance is urgently needed to temporarily suspend residential evictions for nonpayment of rent related to the COVID-19 emergency, for the immediate preservation of the public peace, health, and safety. This emergency ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Sunnyvale City Charter Section 701.

SECTION 3. ORDINANCE ENACTING TEMPORARY MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT BY RESIDENTIAL TENANTS IMPACTED BY THE COVID-19 PANDEMIC. A moratorium on eviction for non-payment of rent by residential tenants impacted by the COVID-19 pandemic is adopted as follows:

1. **Policy and Purpose.** This Ordinance is designed to promote housing stability during the COVID-19 pandemic and to prevent avoidable homelessness due to impacts from the COVID-19 pandemic. It is intended to enable tenants in the City whose employment and income have been affected by the COVID-19 pandemic to be temporarily exempt from eviction for non-payment of rent, and to reduce the risk that impacts of COVID-19 will create anxiety, stress and potential homelessness for the affected City residents and their communities, thereby serving the public peace, health, safety, and welfare.
2. **Definitions.** The following terms are defined for purposes of this Ordinance:
 - (a) "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any rental unit, mobile home, or mobile home lot, and the agent, representative, or successor of any of the foregoing.
 - (b) "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.
 - (c) "Mobilehome Park" means any area or tract of land where two or more mobilehome lots are rented or leased, or held out for rent or lease, to accommodate mobilehomes used for human habitation for permanent, as opposed to transient, occupancy.
 - (d) "Mobilehome Owner" means a person who owns a mobilehome and rents or leases the mobilehome Park space on which the mobilehome is located.
 - (e) "Mobilehome Resident" means a person who rents a mobilehome from a mobilehome Owner.
 - (f) "Rental Unit" means a structure or the part of a structure, including a mobilehome or mobilehome space, that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the Sunnyvale Municipal Code.
 - (g) "Tenant" means a residential tenant, subtenant, lessee, sublessee, household,

- mobilehome resident, mobilehome owner or any other person entitled by written or oral rental agreement, or by sufferance, to use or occupancy of a Rental Unit.
3. Applicability. This Ordinance applies to tenants affected by financial impacts related to COVID-19, as defined in Section 4 of this Ordinance, in any Rental Unit and Landlords of such tenants. This Ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after March 12, 2020.
 4. Moratorium on residential evictions.
 - (a) During the term of this ordinance, no landlord shall terminate or attempt to terminate the tenancy of a tenant in a rental unit or mobilehome located in the City of Sunnyvale where the basis for eviction is non-payment of rent, and the tenant's nonpayment of rent was due to financial impacts related to COVID-19. "Financial impacts related to COVID-19" include, but are not limited to lost household income as a result of any of the following:
 - (1) being sick with COVID-19, or caring for a household or family member who is sick with COVID-19;
 - (2) lay-off, loss of hours, or other income reduction resulting from business closure or other economic or employer impacts of COVID-19;
 - (3) compliance with a recommendation or order from a government health authority to stay home, self-quarantine, avoid congregating with others, or take other precautions recommended or ordered pursuant to the COVID-19 state of emergency;
 - (4) extraordinary out-of-pocket medical expenses;
 - (5) childcare needs arising from school or childcare closures related to COVID-19; or
 - (6) other similarly-caused reason resulting in a loss of income due to COVID-19.
 - (b) A landlord who has received notice that a tenant cannot pay some or all of the rent temporarily for the reasons set forth in Section (a) above shall not serve a notice pursuant to CCP Section 1161(2), file or prosecute an unlawful detainer action based on a three-day pay or quit notice, or otherwise seek to evict that tenant for non-payment of rent.
 - (c) Nothing in this Ordinance prohibits evictions for reasons other than those specified in subsection (a) of this section.
 5. Documentation of inability to pay rent due to COVID-19.
 - (a) A landlord knows of a tenant's inability to pay rent due to financial impacts related to COVID-19, if the tenant notifies the landlord in writing of lost income or inability to pay full rent due to financial impacts related to COVID-19 within 30 days after the date rent is due, and provides documentation sufficient to support the claim.
 - (1) Written notification includes email or text message communications to a landlord or the landlord's representative with whom the tenant has previously corresponded by email or text.
 - (2) Documentation sufficient to demonstrate impacts to income due to COVID-19 may include, but is not limited to, notification from an employer citing COVID-19 as a reason for reduced work hours or termination, employer paycheck stubs, bank or medical billing statements, or notification from a school related to school

closure due to COVID-19.

- (b) A landlord shall hold in confidence all medical or financial information a tenant provides to support claiming an inability to pay rent due to financial impacts related to COVID-19, and only use such information to evaluate the tenant's claim or enforcing this Ordinance.

6. Six-month payback requirement.

- (a) Tenants who are afforded eviction protection pursuant to this Ordinance shall have up to one hundred eighty (180) days after the City of Sunnyvale proclaims the termination the local public health emergency declared on March 12, 2020, to pay their landlord all unpaid rent and monies owed. During that 180-day period, the protections against eviction in this Ordinance apply for such tenants.
- (b) No landlord may charge or collect a late fee for rent or any portion of that is delayed for the reasons stated in this Ordinance.
- (c) Nothing in this Ordinance relieves a tenant of liability for any unpaid rent or other monies owed, nor restricts the ability of any landlord to collect rent and other lawful amounts due following the termination of the local emergency.

7. Affirmative defense to eviction; civil penalties and remedies.

- (a) Affirmative defense. Each Landlord that seeks to terminate a tenancy of a tenant to whom this Ordinance applies must comply with this Ordinance. This Ordinance may be asserted as a complete affirmative defense in any unlawful detainer eviction action under California Code of Civil Procedure Section 1161, as amended for nonpayment of rent or, as to a Section 8 Program tenant, for non-payment of the tenant's share of the contract rent, where the notice to quit or pay rent was served on or after March 12, 2020.
- (b) Civil Remedies.
 - (1) Any landlord that fails to comply with this Ordinance may be subject to civil proceedings for displacement of tenants initiated by such tenant for actual and exemplary damages.
 - (2) Whoever is found to have violated this Ordinance shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.
 - (3) Treble damages shall be awarded for a landlord's willful failure to comply with the obligations established under this Ordinance.
 - (4) Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a tenant or non-tenant third party for the damage done to said landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it can be seen with

certainty it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 6. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 7. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this Ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on March 31, 2020, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney

ORDINANCE NO. NS-9.287

**AN UNCODIFIED URGENCY ORDINANCE
OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
TEMPORARILY BANNING EVICTIONS FOR NON-PAYMENT OF RENT BY
RESIDENTIAL AND COMMERCIAL REAL PROPERTY TENANTS IN SANTA
CLARA COUNTY DIRECTLY IMPACTED BY THE COVID-19 PANDEMIC,
AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY**

Summary

This Urgency Ordinance imposes a temporary moratorium on evictions in Santa Clara County for non-payment of rent by residential and commercial real property tenants directly impacted by the COVID-19 pandemic and sets forth the facts constituting such urgency.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
FINDS AND DECLARES AS FOLLOWS:**

WHEREAS, in late December 2019, several cases of a novel coronavirus known as COVID-19 emerged in the Hubei province of China;

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern;

WHEREAS, on January 31, 2020, in the wake of the spread of COVID-19, the United States Secretary of Health and Human Services declared a Public Health Emergency;

WHEREAS, on February 3, 2020, the County of Santa Clara (“County”) Health Officer declared a local health emergency, and the County’s Director of Emergency Services proclaimed a local emergency, to respond to the COVID-19 pandemic and manage its spread throughout the County;

WHEREAS, on February 10, 2020, the Board of Supervisors ratified the local health emergency and local emergency;

WHEREAS, on March 4, 2020, Governor Gavin Newsom (“the Governor”) issued a Proclamation of a State of Emergency in the State of California related to the COVID-19 pandemic;

WHEREAS, Government Code section 8634 authorizes the County Board of Supervisors to promulgate orders and regulations necessary to provide for the protection of life and property during a local emergency;

WHEREAS, on March 16, 2020, the County Public Health Officer issued an order requiring County residents to shelter in place through April 7, 2020, in order to stop community spread of COVID-19, subject to exceptions for the provision and receipt of essential services, and this order may be continued as necessary to address the pandemic;

WHEREAS, as of 5:00 p.m. on March 21, 2020, the County confirmed 302 cases of infection and 10 deaths from COVID-19;

WHEREAS, the COVID-19 pandemic and associated public health orders from the County Health Officer and from the State Health Officer are expected to result in the closure of many local businesses until at least April 7, 2020, and result in extreme restrictions on other local businesses until then, and likely thereafter;

WHEREAS, the COVID-19 pandemic and associated public health orders are expected to result in a significant loss of income to a widespread portion of the local population that depend on wages or business income to pay rent and may also result in substantial medical expenses for certain County residents;

WHEREAS, the County is already experiencing a humanitarian crisis of homelessness and is one of the least affordable communities in the world;

WHEREAS, the County is also experiencing a housing affordability crisis, which is driving homelessness and displacement of residents;

WHEREAS, many of the County's renters are rent-burdened, paying over 30 percent of their income on rent, and some renters are severely rent-burdened, paying over 50 percent of their income on rent, which leaves less money for families to spend on other necessities like food, healthcare, transportation, and education;

WHEREAS, in light of the COVID-19 pandemic and his state of emergency Proclamation, on March 16, 2020, the Governor issued an executive order suspending any provision of state law prohibiting a local government from exercising its police power to impose substantive limitations on residential or commercial evictions;

WHEREAS, without local protection, eviction notices for failure to pay rent are likely to surge as residents and businesses are unable to earn income due to the pandemic, or are forced to pay substantial medical expenses associated with the pandemic;

WHEREAS, the Board has determined that it is appropriate to temporarily prohibit evictions, through May 31, 2020, for any tenant (residential or commercial) who can demonstrate that they are being evicted for the failure to pay rent, and that such failure is a direct impact of the COVID-19 pandemic;

WHEREAS, the Board has determined that adoption of such a temporary moratorium prohibiting evictions is necessary for the protection of life and property as described herein;

WHEREAS, this Order shall serve as an order and regulation also applicable within the cities in Santa Clara County pursuant to Government Code section 8634 and the regulations contained herein shall apply to all cities within Santa Clara County and within unincorporated Santa Clara County; and

WHEREAS, there is an urgent need for the County to enact such substantive limitations to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the COVID-19 pandemic, including but not limited to the need to keep residents in their homes during the time that they need to shelter-in-place.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

**PROHIBITION ON EVICTIONS ARISING FROM SUBSTANTIAL INCOME
LOSS OR MEDICAL EXPENSES RELATED TO THE CORONAVIRUS
PANDEMIC**

SECTION 1. Scope.

This Ordinance is adopted to prohibit evictions through May 31, 2020, unless extended by action of the Board of Supervisors, which action shall not require amendment of this Ordinance, for any tenant in Santa Clara County who can demonstrate that they have received a notice of eviction or similar action for failure to pay rent, and that such a failure is related to a substantial loss of income or substantial out-of-pocket medical expenses resulting from the 2020 COVID-19 pandemic or any local, State, or federal government response to the pandemic. The regulations in this ordinance shall apply to cities within Santa Clara County and unincorporated Santa Clara County. To the extent that the governing body of a city enacts an ordinance or adopts a regulation that is more protective of residential and commercial tenants, such city ordinance or regulation shall apply in place of this Ordinance.

//

SECTION 2. Definitions.

For purposes of this Ordinance, the following definitions shall apply:

- (a) *Commercial Real Property* means any real property that is used for business, income-producing purposes, or any purpose other than for residential use, however organized, that meets the size standard for a small business in the industry in which that entity operates as defined in the U.S. Small Business Administration's table of size standards by industry, codified at 13 C.F.R. section 121.201;
- (b) *Owner* means any natural person, partnership, corporate or fictitious entity, acting as a lessor or sublessor, whether as a principal or through an agent, who receives or is entitled to receive rent in exchange for the use or occupancy of any residential or commercial real property for rent, and includes a predecessor in interest;
- (c) *Rent* means the financial obligation or monetary payment a tenant owes an owner for the occupancy or use of commercial or residential real property whether by written or oral agreement;
- (d) *Residential Real Property* means any dwelling unit that is intended or used for human habitation;
- (e) *Tenancy* means the lawful occupancy of residential or commercial real property and includes a lease or sublease;
- (f) *Tenant* means the lawful occupant of residential or commercial real property whether by lease or sublease.

SECTION 3. Prohibition on evictions stemming from coronavirus pandemic losses.

- (a) Through May 31, 2020 and any subsequent extensions approved by the Board of Supervisors, the Owner of Residential Real Property or Commercial Real Property shall not terminate a Tenancy for failure to pay rent if the Tenant demonstrates that the failure to pay rent is directly related to a substantial loss of income or substantial out-of-pocket medical expenses associated with the 2020 COVID-19 pandemic or any local, State, or federal government response to the pandemic.

- (b) Through May 31, 2020 and any subsequent extensions approved by the Board of Supervisors, the Owner of Residential Real Property or Commercial Real Property shall not terminate a Tenancy for any no-fault cause for eviction, as those causes are defined in Civil Code Section 1946.2(b)(2), if the Tenant demonstrates that the Tenant has suffered a substantial loss of income or substantial out-of-pocket medical expenses associated with the 2020 COVID-19 pandemic or any local, State, or federal government response to the pandemic.
- (c) For this Section to apply, a Tenant must demonstrate through documentation or other objectively verifiable means:
 - (1) Substantial loss of income from: (i) job loss; (ii) layoffs; (iii) a reduction in the number of compensable hours of work; (iv) a store, restaurant, office, or business closure; (v) a substantial decrease in business income caused by a reduction in opening hours or consumer demand; (vi) the need to miss work to care for a home-bound school-age child or a family member infected with coronavirus; or (vii) other similarly-caused loss of income, where the conditions listed in (i) through (vii) resulted from the 2020 COVID-19 pandemic or related guidance or public health orders from local, State, or federal authorities; or
 - (2) Substantial out-of-pocket medical expenses for themselves or their immediate family members related to the 2020 COVID-19 pandemic.
 - (3) This prohibition shall also apply to an Owner's action that constitutes constructive eviction under California law. The Owner shall immediately correct any conditions of the property that could be considered to constitute cause for a constructive eviction under California law.
 - (4) An Owner's failure to comply with this Ordinance shall render any notice of termination of Tenancy, where the termination would be in violation of this Section, void. Any notice of termination served on a Tenant during the 2020 COVID-19 pandemic must contain the reason for the termination of Tenancy. Any notice of termination served on a Tenant during the 2020 COVID-19 pandemic must also include a notice of Tenant's rights under this Ordinance as well as a notice of emergency rental assistance programs. These notices shall be provided on a form approved by the Santa Clara County Office of

Supportive Housing. An Owner's failure to comply with this Ordinance shall render any notice of termination of Tenancy, where the termination would be in violation of this Section, void.

- (5) This Section may be asserted as an affirmative defense in an unlawful detainer action.
- (6) Nothing in this Ordinance shall relieve a Tenant of the obligation to pay Rent, nor restrict an Owner's ability to recover Rent due.
- (7) Upon expiration or termination of this Ordinance, a Tenant who demonstrated substantial loss of income or substantial out-of-pocket medical expenses as required under this Ordinance shall pay all past-due Rent within 120 days from the date of expiration of this Ordinance.
- (8) An Owner's failure to comply with this Ordinance does not constitute a criminal offense, but will subject an Owner to civil fines and penalties as set forth in Division A1 of the County Ordinance Code.
- (9) Whenever an Owner endeavors to recover possession or recovers possession of Residential Real Property or Commercial Real Property in violation of this Ordinance, retaliates against a Tenant for the exercise of any rights under this Ordinance, or attempts to prevent a Tenant from acquiring any rights herein, the Tenant may institute a civil proceeding for injunctive relief, money damages of not more than three times actual damages (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Owner acted in knowing violation of or in reckless disregard of the limitations of this Ordinance. The prevailing party shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.
- (10) An Owner may not charge or collect a late fee for Rent that is delayed during this Ordinance and for a period of 120 days thereafter.
- (11) For the purposes of this Ordinance, adequate documentation of lost income or out-of-pocket medical expenses from the 2020 COVID-19

pandemic shall include, but not be limited to: letters from employers citing the 2020 COVID-19 pandemic or related government action as the basis for termination of employment or reduced work, employer paycheck stubs, bank statements, or letters or notifications from schools in which the Tenant has a dependent enrolled regarding COVID-19-related closures that substantially affected the Tenant's income. Any Tenant eligible for protection under this Ordinance can provide documentation of lost income or out-of-pocket medical expenses at any time prior to execution of a judgment for possession of their rental unit to stop such eviction from going forward.

SECTION 4. CEQA not applicable.

This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly).

SECTION 5. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be held invalid.

SECTION 6. Effective date.

This Ordinance shall take effect immediately upon adoption by a four-fifths vote of the Board of Supervisors as an Urgency Ordinance. This is based on the Board of Supervisors finding that this Ordinance is adopted in compliance with Government Code section 25123, that it is necessary for the protection of the public peace, health, or safety for the reasons contained in the findings set forth at the beginning of this Ordinance, which are incorporated by reference herein, and that it is necessary to prevent Santa Clara County from suffering potentially irreversible displacement of tenants resulting from the evictions that this Ordinance is designed to prevent.

//

SECTION 7. Expiration, Repeal.

This Ordinance shall expire and shall be repealed as of May 31, 2020, unless shortened or extended by the Board of Supervisors based on the existence of a local emergency.

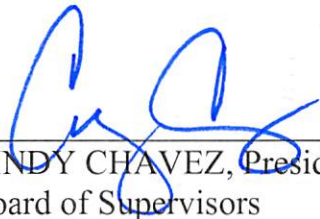
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on MAR 24 2020 by the following vote:

AYES: **CHAVEZ, CORTESE, ELLENBERG
SIMITIAN, WASSERMAN**

NOES: **NONE**

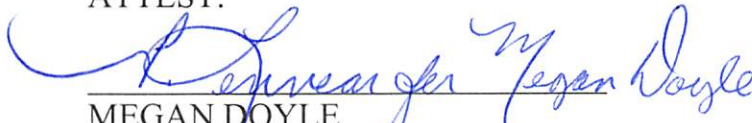
ABSENT: **NONE**

ABSTAIN: **NONE**



CINDY CHAVEZ, President
Board of Supervisors

~~Signed and certified that a copy of this document
has been delivered by electronic or other means to
the President, Board of Supervisors.~~

ATTEST:


MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

 For JAMES WILLIAMS
JAMES R. WILLIAMS
County Counsel

2189425



March 15, 2020

Mayor Larry Klein and Members of City Council
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, 94086
Via Electronic Mail Only

Re: Eviction Moratorium – Urgency Ordinance

Dear Mayor Klein and Members of City Council:

I write on behalf of the Law Foundation of Silicon Valley, Sacred Heart Community Service and Affordable Housing Network of Santa Clara County to ask that the City of Sunnyvale **enact an immediate moratorium on all evictions during the COVID -19 pandemic**. Specifically, we ask that the City of Sunnyvale pass an urgency ordinance prohibiting landlords from filing nonpayment of rent evictions through the duration of the COVID-19 public health crisis in Santa Clara County. Additionally, we request that Sunnyvale stop all homeless encampment sweeps and abatements while this crisis is ongoing. **A proposed ordinance is attached.**

We are in an unprecedented public health crisis, and those who are low-income, and are already highly rent-burdened are most at risk during this crisis. There are many different ways renters' incomes will likely be impacted, including illness, illness of a family member, work closures due to lost customers or governmental restrictions on public activities, absences from work due to school closures, and lost clients or work for those who are self-employed or work in the "gig" economy for companies such as Uber or Doordash.

Given that the severe consequences of eviction – including homelessness and forcing families to move into overcrowded conditions – have the potential to spread the virus even further, the City Council must take immediate action to prevent low-income tenants from losing their housing to limit the spread of COVID-19 in Santa Clara County.

It is critically important that any tenant who is unable to pay rent because of financial hardship related to COVID-19 can access the protection an eviction moratorium would provide. Therefore, City Council should enact an **unconditional moratorium** on evictions for nonpayment of rent without any documentation requirements or other obstacles for tenants in establishing that their inability to pay rent is related to the COVID-19 virus.

City Council must also ensure that landlords and tenants are aware of the moratorium and the urgency ordinance. Tenants must be given notice that these emergency protections are in place. One way that the City can ensure tenants receive this notification is to require landlords to provide their tenants written notice advising them of their rights during this public health crisis. In this notice, landlords should also be required to tell their tenants about organizations where a tenant can go to access emergency financial assistance to help them pay rent.

We acknowledge that landlords may be immediately impacted by instituting an unconditional moratorium and enacting an urgency ordinance to prohibit landlords from filing new evictions. However, given the serious and potentially devastating consequences to tenants and the community at large of proceeding with evictions while COVID-19 crisis is ongoing, the City of Sunnyvale should do everything it can to minimize the long-term impact of this public health crisis on its citizens and the long-term financial stability of the community.

Finally, it is imperative that the City of Sunnyvale take immediate action to halt all encampment sweeps within its jurisdiction. Encampment sweeps have a destabilizing impact upon unhoused residents of a community, even without the added trauma of a public health crisis such as COVID-19. Conducting encampment sweeps now would have an even greater impact upon the unhoused community as many people who are unhoused cannot access healthcare and may have weakened immune systems due to ongoing health problems. If an unhoused person is exposed to the virus and is forced from their encampment and moved to another location, there is great risk that the virus will spread from one encampment to another and throughout the community.

We welcome the opportunity to discuss these comments with you. I can be reached at (408) 280-2410 or by email to annettek@lawfoundation.org.

Sincerely,

/s/ Annette D. Kirkham
Annette D. Kirkham
Senior Attorney

Jenny Carloni

Subject: FW: Rent During State of Emergency

From: Devin Pacini <devinpacini@gmail.com>

Sent: Wednesday, March 18, 2020 10:24 AM

To: HousDiv AP <housing@sunnyvale.ca.gov>

Subject: Rent During State of Emergency

ATTN: Email is from an external source; Stop, Look, and Think before opening attachments or links.

Hello,

My name is Devin and I'm a resident of Sunnyvale. Due to the state of emergency, caused by Covid 19, my pay for this month has been impacted but as far as I'm aware rent is still due for all residents at the usual time(s) this month. Speaking as someone who would be helped greatly by rent being postponed I was wondering if the City was going to issue any action in regards to rent or if you were talking with State level government about this issue. Thank you for your time and I hope to hear back from someone soon about this matter.

Kind regards,
Devin Pacini

From: [Council AnswerPoint](#)
To: [Jennifer Nunez](#)
Cc: [Kent Steffens](#); [Teri Silva](#); [Trudi Ryan](#); [Deborah Gorman](#); [Jenny Carloni](#); [John A. Nagel](#); [Nelia Lopez](#); [Jacqueline Guzman](#)
Subject: POLICY--FW: Emergency Eviction Ordinance
Date: Monday, March 16, 2020 8:59:29 AM

Councilmembers:

Forwarding to you from Council AnswerPoint.

Regards,

Jennifer Nuñez

Executive Assistant- Mayor & Council

Office of the City Manager

City of Sunnyvale

Phone: 408-730-7913

From: Richard Mehlinger <rmehlinger@gmail.com>
Sent: Sunday, March 15, 2020 3:08 PM
To: Council AnswerPoint <council@sunnyvale.ca.gov>
Subject: Emergency Eviction Ordinance

ATTN: Email is from an external source; Stop, Look, and Think before opening attachments or links.

Dear Honorable Councilmembers,

I write this in my personal capacity. I urge you to vote Tuesday to agendize a temporary ban on evictions for individuals and small businesses for your March 31 meeting. This stay could be modeled on the ordinances passed or under consideration in the cities of San Jose or Oakland, but it should be passed as an emergency ordinance and made retroactive to Feb. 29.

We are facing unprecedented circumstances. Much of our society and economy will have to shut down. Evictions risk exacerbating this crisis now and making recovery harder. Please act to protect Sunnyvale's residents and small businesses.

Very Sincerely,
Richard Mehlinger

From: [Kriti Garg](#)
To: [Larry Klein](#); [Nancy Smith](#); [Gustav Larsson](#); [Glenn Hendricks](#); [Russ Melton](#); [Michael S. Goldman](#); [Mason Fong](#)
Cc: [Jenny Carloni](#)
Subject: SV@Home Position Regarding Emergency Eviction Moratorium
Date: Tuesday, March 17, 2020 4:16:02 PM
Attachments: [Outlook-Membership.png](#)

ATTN: Email is from an external source; Stop, Look, and Think before opening attachments or links.

Dear Mayor Klein, Vice Mayor Smith, and Councilmembers Larsson, Hendricks, Melton, Goldman, and Fong,

On behalf of SV@Home and members, we want to thank the City Council and city employees for all of their efforts to keep our communities safe during a difficult time as well as the social service agencies that are working around the clock to help those in need. We know that everyone is being impacted by this public health crisis and that the most vulnerable members of our community, especially those who are housing insecure or experiencing homelessness, are being hit the hardest.

We are encouraged by Governor Newsom's [Executive Order](#) issued last night that recognizes the severity of the impact of potentially losing one's home during the pandemic and authorizes cities to take action to stop evictions of residents who are experiencing extra hardships due to COVID-19.

To that end, we urge the city to consider emergency measures that would protect vulnerable residents from evictions during this time of financial and household strains as well as other actions that provide additional support to our neighbors who are experiencing homelessness. As other jurisdictions consider similar measures across the County, we encourage cities to coordinate approaches to avoid a patchwork of different policies that could confuse both tenants and landlords.

Even in this time of social distancing, this is how we can come together as a community and help those who need it most.

Sincerely,

Kriti Garg
Policy and Outreach Associate, SV@Home
408.752.2717 | kriti@siliconvalleyathome.org
Pronouns: she/her



Want to solve the housing crisis? Be a part of the solution. [Join as a member today!](#)

Check out our **Resource Hub** for all your housing data needs.

350 W Julian St. #5, San José, CA 95110

[Website](#) [Facebook](#) [LinkedIn](#) [Twitter](#) [Become a Member](#)

Neighboring Jurisdictions with COVID-19 Eviction Moratoriums as of 3/26/20

Jurisdiction	Date Adopted	Residential or Commercial	Moratorium Term	Repayment Term
Santa Clara County	3/24/20	Residential and Commercial	Until May 31, 2020	120 days after Term Expiration
San Mateo County	3/24/20	Residential	Period of Declared State Emergency	180 days after Term Expiration
Santa Clara	3/24/20	Residential	Until May 8, 2020	90 days after Term Expiration
San Mateo	3/23/20	Residential and Small Businesses	Period of Declared Local Emergency	180 days after Term Expiration
San Jose	3/17/20	Residential	30 days	
Palo Alto	3/23/20	Residential *Council will consider Commercial at a later time	Period of Declared Local Emergency	120 days after Term Expiration



City of Sunnyvale

Agenda Item

20-0357

Agenda Date: 3/31/2020

Board/Commission Meeting Minutes



City of Sunnyvale

Meeting Minutes

Zoning Administrator Hearing

Wednesday, February 26, 2020

3:00 PM

South Annex Conference Room, South
Annex, 603 All America Wy., Sunnyvale,
CA 94086

CALL TO ORDER

Michelle King, Zoning Administrator, called the meeting to order at 3:00p.m.

PUBLIC HEARINGS

Proposed Project:

SPECIAL DEVELOPMENT PERMIT: to allow sale of general alcoholic beverage service at the existing restaurant within the hotel.

Location: 711 East El Camino Real (APN: 211-10-031)

File #: 2019-8014

Zoning: C-2/ECR

Applicant / Owner: Maple Tree Inn

Environmental Review: Class 1 Categorical Exemption relieves this project from the California Environmental Quality Act (CEQA) provisions.

Project Planner: Aastha Vashist, 408-730-7458,
avashist@sunnyvale.ca.gov

Ms. King inquired with Aastha Vashist, project planner, if there were any additions or comments on the staff report.

Ms. Vashist stated there were no additions to the report, no public comments and recommended approval.

Ms. King opened the hearing to the applicant and asked if they had any comments or questions.

Pat Mitchell , applicant, stated there were no comments or questions.

Ms. King closed the hearing to the public.

ACTION: Approved subject to the findings and conditions of approval located in the staff report.

ADJOURNMENT

Ms. King adjourned the hearing at 3:02 p.m.



City of Sunnyvale

Meeting Minutes - Draft

Board of Library Trustees

Monday, March 9, 2020

7:00 PM

Library Program Room, Sunnyvale Public
Library, 665 W. Olive Ave., Sunnyvale, CA
94086

Special Meeting

CALL TO ORDER

Chair Lai called the meeting to order at 7:04 p.m.

ROLL CALL

Present: 5 - Chair Carey Wingyin Lai
Vice Chair Sharlene Wang
Board Member Daniel Bremond
Board Member Tina Hwang
Board Member Mark Isaak

Council Liaison Larsson (present)

ORAL COMMUNICATIONS

Chair Lai read the upcoming board and commission recruitment announcement.

CONSENT CALENDAR

- 1 [20-0032](#) Approve the Board of Library Trustees Meeting Minutes of
February 3, 2020

Board Member Isaak moved, and Board Member Bremond seconded, approval of the Board of Library Trustees minutes of February 3, 2020 as submitted. The motion carried by the following vote:

Yes: 5 - Chair Lai
Vice Chair Wang
Board Member Bremond
Board Member Hwang
Board Member Isaak

No: 0

PUBLIC HEARINGS/GENERAL BUSINESS

**2 [20-0101](#) Options and Recommendation for Elimination of Fines on
Overdue Library Materials**

Ellen Giarrizzo, Circulation Manager, spoke about the options and recommendations for elimination of fines on overdue library materials.

Important takeaways: fines are assessed when library materials are returned past the due date, fees are assessed when an item is lost or damaged during patron use, research supports fines doing more harm than good, more than 400 public libraries across the country and many more around the world have gone fine-free, fines can prevent low income households from utilizing the library, Sunnyvale is the only library in Santa Clara County still assessing fines on Children's materials, fines and fees revenue is decreasing while the number of suspended accounts and amount of patron debt is increasing which could be concluded that unrecovered debt may act as a growing barrier to access for library cardholders.

Board Members inquired: how long is material overdue before it changes to being lost, administrative costs to send accounts to collection, how fines are assessed if a book is lost and then returned, how many materials were borrowed and not returned, is changing collection resources going to affect the library, and where will funding come from for future years.

Chair Lai opened the public hearing, and there being no public testimony, closed the public hearing.

Board Member Bremond moved, and Board Member Hwang seconded, the motion to recommend that the City Council approve alternatives 1, 2, 3 and 4. The motion carried by the following vote:

Yes: 5 - Chair Lai
 Vice Chair Wang
 Board Member Bremond
 Board Member Hwang
 Board Member Isaak

No: 0

3 [20-0031](#) Census 2020 Overview

Steve Sloan, Superintendent of Libraries, spoke about the Census in 2020. The

Library and Community Services department is conducting outreach, which began in February and will end mid May. The project is aimed at ensuring all California residents get counted.

Chair Lai opened the public hearing, and there being no public testimony, closed the public hearing.

STANDING ITEM: CONSIDERATION OF POTENTIAL STUDY ISSUES

None.

NON-AGENDA ITEMS & COMMENTS

-Board Member Comments

How would community organizations go about collaborating with the library?

-Staff Comments

-Council approved postponing a decision on the Library Foundation at the February 4 Council meeting.

-Design contracts for the Branch Library will be discussed at the April 7 Council meeting.

-The library has canceled all programs through March 31, due to the Coronavirus. The decision was based on County of Santa Clara guidelines to cancel events to prevent the spread of the virus.

-The library has also canceled upcoming staff conferences and in-service training days.

ADJOURNMENT

Chair Lai adjourned the meeting at 8:31 p.m.



City of Sunnyvale

Agenda Item

20-0358

Agenda Date: 3/31/2020

Information/Action Items

Date Requested	Directive/Action Required	Dept	Due Date	Completed
2/7/19	Produce quarterly report on staff vacancies and include, actual staff total numbers for each department, including part-time positions.	HRD	Apr 2020	
12/3/19	Prepare a Resolution for Council action to annually fly the POW/MIA flag	OCM	Mar 2020	3/17/20
1/14/20	Provide map to Council that identifies major transit sites.	CDD	Mar 2020	3/17/20
2/7/20	El Camino Real Specific Plan Project, request staff coordinate with VTA	CDD	Mar 2020	3/17/20
2/7/20	Provide information on how many rounds of golf is necessary at each facility to break even. Also provide information on the maximum potential of play at each course.	DPW	Mar 2020	
2/7/20	Provide information on the Speakers Series to Council to include number of participants attending and specifically new attendees	ESD	Mar 2020	3/17/20
2/7/20	Metric on how many electric vehicles are registered by auto dealers in Sunnyvale if data is available	ESD	Mar 2020	3/17/20
2/7/20	Provide Council information on the fees the City pays for the management of the pension and OPEB Trust accounts	FIN	Mar 2020	3/17/20
2/7/20	Provide more information on the combination of fixed tax and per employee tax rate	FIN	Mar 2020	3/17/20
2/7/20	Provide more data on existing businesses and number of employees	FIN	Mar 2020	
2/7/20	How do we expect costs to change and what's budgeted for Washington Pool	LCS	Apr 2020	
2/7/20	Research the viability of live streaming our Council meetings via social media	IT	Apr 2020	
2/7/20	Provide more detailed information on staffing (Term Limited v. Permanent) during the Budget hearing to address increased demand in services	FIN	June 2020	
2/25/20	Direct staff to explore City ownership of Sonora property with Mid-Pen Housing	CDD	June 2020	

New Study/Budget Issues Sponsored by Council

Date Requested	Study/Budget Issue Topic	Requested By	Dept	Approved by City Manager
n/a				

Initial Sponsor in **Bold**.

Following approval by the City Manager, study issues papers are posted to:

<https://sunnyvale.ca.gov/government/council/study/studyissues.htm>