



Public Works Department

AGENDA

SPECIAL MEETING OF THE CITIZEN STREET OVERSIGHT COMMITTEE

Thursday, April 3, 2014, 7:00 p.m.
El Cerrito City Hall
Hillside Conference Room
10890 San Pablo Avenue

1. Roll Call

2. Comments from the Public

(Speakers are limited to 3 minutes for comment on non-agenda items. Comments related to items appearing on the agenda are taken up during discussion of those items and are subject to the same time limit.)

3. Approval of Minutes

Review and approve minutes from January 27, 2014 Meeting. (*Attachments; Action Requested: Approval*)

4. Discussion of Permissible Uses of Measure A Funds and Role of the Committee

Continued discussion of permissible uses of Measure A funds. The City Attorney has prepared a memorandum on this item. (*Attachments; No Action Requested: the Committee will provide comments to staff*)

5. Review of Fiscal Year 2012 – 2013 Audit and Auditor's Report

Review annual audit report as it pertains to Measure A and Agreed Upon Procedures Report from City's auditor; Consider approving and signing Annual Report Memorandum to City Council (*Attachments; Action Requested: Approve and sign Annual Report Memorandum to Council*)

6. Staff Liaison Report

- Quick Facts about Meeting Attendance (*Attachment; Information only*)

7. Future Agenda Items and Meeting Schedule

Set agenda for next meeting (*Action Requested: Set agenda and confirm date*)

8. Adjournment

Any writings or documents provided to a majority of the Citizen Street Oversight Committee regarding any item on this agenda will be made available for public inspection in the Public Works Department located at 10890 San Pablo Avenue during normal business hours.

COMMUNICATION ACCESS INFORMATION

To request a meeting agenda in large print, Braille, or on cassette, or to request a sign language interpreter for the meeting, call Jerry Bradshaw, Staff Liaison at 215-4382 (voice) at least FIVE (5) WORKING DAYS NOTICE PRIOR TO THE MEETING to ensure availability.

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Public Works Department

Draft Minutes
REGULAR MEETING
OF THE
CITIZEN STREET OVERSIGHT COMMITTEE

Monday, January 27, 2014, 7:00 p.m.
El Cerrito City Hall
Hillside Conference Room
10890 San Pablo Avenue

Call to Order at 7:00 p.m.

1. Roll Call

Present: Vice Chair Lynne Kessler, Committee Members Al Miller, Thomas Miller, Liz Ozselcuk (arrived at 8:04 p.m.)

Absent: none

Other Attendees: Staff Liaisons Jerry Bradshaw, Interim Senior Engineer, and Yvetteh Ortiz, Interim Public Works Director / City Engineer, City Attorney Woodruff, City Attorney

2. Comments from the Public

None.

3. Approval of Minutes

Comment by Committee Member Thomas Miller – he stated that the record did not reflect his statement that what had transpired constituted an insult to the Committee. Liaison Bradshaw indicated that he would review the November 4, 2013 meeting recording and correct the minutes if appropriate to reflect this comment.

Action taken: M/S Al Miller/Thomas Miller/Lynne Kessler to approve minutes as corrected. Approved unanimously.

4. Discussion of Non-Pavement Expenditures

Liaison Bradshaw summarized the packet items, which were listed in the staff report on page 4-1 and 4-2. That report referenced two letters written by Thomas Miller on November 11 and Lynne Kessler on November 23. The letters were written subsequent to the last meeting and there were also two articles printed in the Contra Costa Times and the El Cerrito Journal subsequent to the last meeting about how Measure A money was spent. Staff responded to the

letter from Lynne Kessler and is included in the packet and Thomas Miller stated that he has yet to receive the courtesy of an answer to his letter that he addressed to City Council.

Committee member, Thomas Miller, references the first paragraph in the response letter on page 4-10 to Lynne Kessler stating that the City staff has not been transparent and that the opposite is the case. He references the third paragraph and states that the diversion of Measure A funds for non-pavement purposes was never mentioned in 2012 since he has been to every meeting. Lynne Kessler stated she was stunned at the November meeting and did not know about the memo to City Council recommending the transfer of funds and if she would have had a chance to discuss it she would not have a problem with it now.

Thomas Miller feels that this should go back to the voters because Measure A is defective because it was a specific measure to raise funds for a specific purpose and there was no sunset clause included in the measure and should be included. He stated that there was no provision for what to do with the funds and that the funds belong to the taxpayers and not the City. He stated that the City Council went along with the staff and had no legal authority to do what they did and that they “disenfranchised the voters.”

Al Miller stated that he disagrees and that the primary purpose of the measure is to fix the streets, curbs, and gutters but that there are several categories that include improving handicap ramps, bicycle lanes, crosswalks, maintain road markings, and signage. He states that this was approved by City Council and the funds can be spent on those items as well. He doesn't agree that the funds were expended on items outside of the provisions of Measure A and doesn't see how Thomas Miller comes to that conclusion. Thomas Miller states that the measure states that the funds are for improving the streets, fixing potholes, sealing cracks, and maintaining the streets. He states that it is ridiculous that the money is being spent on purchasing radars.

Lynne Kessler does not completely agree with Thomas Miller and her main concern is that she was not advised of the recommendation of transferring \$100,000 from Measure A funds to other projects not only once but on three occasions. She did not see the memo from Jerry Bradshaw from August until the November meeting and was stunned about the transfers. She states that all that the Oversight Committee is able to do is review the annual report and object. Thomas Miller stated that the Committee is shorn any ability to oversee anything once this diversion of funds began and should be informed before, during or right after something has happened not one year and several months later. He stated that the voters voted for the Committee and that the City has no legal authority to spend money because it should be used exclusively for street improvements and that is what the voters voted for. Al Miller disagrees and feels that the monies that are taken in by Measure A are spent on road improvement projects as approved by City Council. The Committee is not tasked to approve the policy of the City Council and not asked to comment on decisions or considerations that the City Council has made. As individuals, they have the opportunity to do that at a City Council meeting when the staff is making the recommendation. The recommendation then goes through the City Attorney and City manager and is approved in a resolution. He feels that if people feel this strongly about a cause then they should be present at City Council meetings.

Liaison Bradshaw interjects to begin discussing the five items Lynne Kessler requested be discussed at the January 27 meeting.

1. Description of the Traffic Safety and Management Program, and an accounting for expenditures of Measure Funds

Liaison Bradshaw asks that the Committee go to page 4-12, Attachment B. It is page 204 from the budget document and reads the project description. He explains that the table above the paragraph is a ten year projection of what might be spent but only one year is adopted at a time. Lynne Kessler asks if City Council adopts \$100,000 each year and Bradshaw responds that they can if they choose to in that particular year. He stated that at this point in time only prior years 2013 and 2014 have been adopted totaling \$200,000 of authorization. Staff will review this anew next year if another \$100,000 is recommended and will come up with a recommendation for Council for the next budget cycle next May and June.

2. Summary of Measure A funds allocated for non-pavement projects

Liaison Bradshaw addresses the second item and directs the Committee to page 4-13 that shows only \$46,415 has been spent to date out of the \$200,000. He states that this is what he showed in the September meeting and only about \$6,000 more has been spent since then. Thomas Miller asks if \$200,000 has already been diverted and Bradshaw states that \$100,000 was done back in August of 2012 and another \$100,000 has been allocated in the current budget year and that only \$46,000 has been spent. He asks that the Committee review page 4-14 that provides a summary of all the non-paving projects as defined in the recent discussions of Measure A. The Traffic Safety and Management Program is listed along with three other projects that received money from Measure A and in order of when they received the funds.

- The Moeser/Ashbury project received \$30,000 with the Fiscal Year (FY) 10-11 budget and that money has not been spent through the last year because the project was waiting to move forward. It finally did this spring and summer so it wasn't in the last fiscal year reports and not brought to the Committee. In February of 2013, Council awarded an additional \$78,000 to the same project.
- The Traffic and Safety Management Program has received an allocation of \$200,000.
- The Central/Liberty project has two allocations totaling \$260,000 all together and is by far the biggest allocation.
- The Arlington Safety project is a project for long-term improvements on Arlington and spins off from earlier work that was done as interim improvements done through the Traffic and Safety Management Program. A grant was applied for to perform long-term improvements and budgeted another \$50,000 of Measure A funds to go with the grant.

With these four projects and seven different actions by Council, the total allocation of Measure A funds equals \$618,000. The column next to the Measure A column shows that Measure A

funds used to supplement or leverage the grant funds helped to secure \$2.2 million worth of grant funds. \$14.8 million of Measure A funds have been spent since its inception and the funds were used to leverage another \$2.8 million worth of grant money. Measure A funds allocated are only \$618,000 out of about \$15.5 million to the four projects. Three projects are one time projects whereas the Traffic Safety Management project is an ongoing project and has the potential of capturing Measure A money each year but must be evaluated each year by staff and ultimately City Council. The Arlington project has yet to begin whereas the other two projects are close to finishing. Thomas Miller believes the projects should not be funded by Measure A because the voters did not vote for the money to be used for these projects and thanks Bradshaw for documenting the City's transgressions.

3. Committee's Annual Report with certain exceptions noted

Liaison Bradshaw addresses the third item but unfortunately the annual report cannot be added to the agenda because the audit wasn't completed on time. This is the audit for the whole City not just the audit for this and staff is still working with the auditors to draft the report. This will be discussed later to schedule a subsequent meeting to review the audit.

4. Amend Measure A to allow for non-pavement projects

Liaison Bradshaw addresses the fourth item. He states there was discussion that Measure A be amended to allow for non-pavement projects and put back in front of the voters. He introduces the City Attorney, City Attorney Woodruff, and asks him to give his opinion on what the measure would or wouldn't support and what his stand is on this. City Attorney Woodruff was not with the City at the time of Measure A and would be reading it with a fresh set of eyes just like a voter would have at the time Measure A was put in front of the voter.

City Attorney Woodruff states that besides City Attorney work he also specializes in election law and has worked with dozens of cities on dozens of ballot measures. He has litigated issues regarding the interpretation of voter intent and one way the courts approach the issue is to understand what the voters intended is to look at all of the documents they had in front of them at the time the measure was proposed. The things that the courts have said should be looked at among others are the ballot question itself, the City Attorney's impartial analysis, the legislation proposed, in this case the Measure A Ordinance, and the ballot arguments. In addition to these, any information documents sent out by the City, opponents or proponents of Measure A are also looked at in attempting to understand what the voters intended. City Attorney Woodruff has reviewed all of these things and worked with the staff in the past on implementing it and looked at it again when it was brought to his attention to give it a fresh set of eyes. The documentation is replete with a variety of types of work that Measure A intended to fund. It is very clear that paving is a top priority and the City has honored that within a few years by basically repaving every street in the City. Beyond that, the documents speak to a variety of projects including pedestrian safety, curb ramps for the disabled, sidewalk improvements for mobility, signage, striping streets, and striping crosswalks. The documentation put in front of the voters in time of the ballot does not to him indicate that the voters intended to spend money only on paving. He states

that it is a discredit to the voters of the City to say that all they intended to vote for was for paving and that in his experience voters vote for things for a lot of reasons. This is true for El Cerrito because the voters wanted the streets repaved and intended to have it done but many voters thought it an equally high priority to have disabled curb ramps or bicycle lanes installed and to say that the only thing money should be spent on is paving is to say that those voters don't count. The priority of Measure A has been satisfied and now City Council is attempting to fund a variety of other projects that were priorities to the voters when they voted for Measure A and were specifically identified by type in the ballot question, in the Ordinance, and by the City Attorney's impartial analysis. All of these documents speak to things beyond paving and the City Council is trying to honor this by funding other projects.

Liaison Bradshaw would like to add that when the measure was building momentum, they had neighborhood meetings before it was drafted to describe the different types of problems people saw and to get thoughts from the members of the community what was important to them. It was a two-way exchange of information, to inform and be informed about what the priorities were and what was in the best interest of the community. Some wanted curbs and gutters to be repaired and others wanted other things and it was important to have the one-on-one interaction at the meetings. Polling questionnaires were sent and reviewed and they clearly spoke to bicycle lanes, traffic safety, and pedestrian safety in addition to paving, potholes and other issues. Some items ranked higher in the polls than others but there was support for all items and all having different levels of support. At the end of summer 2007, staff put together a measure which is all of those things combined. The measure was put before the voters in November, December and January and the actual election was in February of 2008. The ballot was based on all kinds of input not just what was recalled from meetings and what one particular person recalled from their interactions but what was voted on by the public and was a broader spectrum than just paving. It is clear from the poll that paving was paramount but there were things on there that were also important in the realm of what Measure A covers and what Council is able to do with the money.

Thomas Miller states that the proposal was for paving only and what was put on the ballot was what the voters voted for and not getting it now. Lynne Kessler stated that many don't read the fine print. Al Miller stated that just because they don't read everything or don't understand it doesn't make it wrong. He disagrees entirely with Thomas Miller and doesn't think the staff put something past the public to confuse or cover their eyes to get support for something that is not what it is. Lynne Kessler states that there wasn't much you could put on the ballot and Bradshaw states that Contra Costa County limits the ballot to 75 words and believes they succeeded in reflecting the broad scope of Measure A in mentioning bicycle lanes, crosswalks, and handicap ramps. The Ordinance itself is ten pages or so. Thomas Miller stated that the City took advantage of the fact that the streets were in terrible condition and that the voters would vote on almost anything to get them fixed. He is not concerned about buying radars or traffic management. He states that the measure is defective and should include a sunset clause to know what to do with the money that keeps coming in and considers this a wrongful action and has not been able to sleep well since September. Bradshaw responds to the sunset clause comment by stating that if the measure was intended to build or finance a facility then he might agree with the sunset clause to pay

off debt that may be appropriate. This was a measure that includes maintenance of streets and the maintenance will not end.

Lynne Kessler asks if all of the streets have been repaved and Bradshaw responds that about 70% of the streets have been repaved. When they started the repaving, only 44% were in the good category and some slipped below good as they went forward so about 20-30% of the streets did not require attention.

Lynne Kessler asks if there is enough Measure A money retained to redo the streets when they need replacing. Bradshaw responded that before any actions are taken, they halted to make sure they are not shortchanging and that the primary mission is there be enough to manage the streets in the foreseeable future. The street saver program software and all the analysis that goes with it is based on a five year projection that is done every two years and a report was completed in 2012 that showed that there was enough money left to do these projects. The last three years the total of \$600,000 is finite and they don't anticipate projects coming up and don't foresee Measure A money going away.

5. Justification for continued existence of the Committee

Liaison Bradshaw interjects to discuss item number five and that both the letters mention why the Committee should continue if they are limited to such a narrow role. He reviewed the Ordinance and it is clear what the role is and was summed up by Al Miller. The role is to review expenditures made according to the expenditure plan which is defined by City Council each year primarily during the budget process or as amended throughout the year. Lynne Kessler asks if City the City Council can take funds away from Measure A that might not be for streets and Bradshaw responds by stating that non-pavement projects are Measure A eligible and not taking money away from Measure A but bringing Measure A money to these projects within the scope of the Ordinance. Technically speaking the role of the Committee is to review and make sure what the City Council deemed an appropriate expense and what the money was actually spent on. The role is fairly narrow and not much more than an auditing role. Lynne Kessler reads the purpose of the Committee stating that the citizens shall review the expenditures or revenue collected and issue a report on its findings to City Council and publicly at least annually. She asks if the Committee can issue a report and say to their findings that they want the public to know how the money was spent. City Attorney Woodruff responds by stating that he views the Committee as verifying the funds were spent the way Council determined as appropriate under Measure A. He doesn't think that the voters intended for the Committee to opine on Council's decision how to spend the money but ultimately it is the report of the Committee and if want to bring it to the public's attention and issue that in the report they can but doesn't think that's what the voters authorized the Committee to do. Thomas Miller states that it should go back to the voters to clarify what they wanted to do and that this is an unsound situation because we have people of intelligence, good faith, good intention and are unable to agree on what's right so it should go back to the voters and let them decide if they want to continue paying one of the highest sales tax in the area to do these projects that have great merit but also a cost. Al Miller responds as to how the streets will be taken care of for the rest of the life of the streets if the voters do not want it. Thomas Miller states that this is

a problem the City brought on to itself by being dishonest with the voters. Lynne Kessler states that the wording on the ballot does cover bicycle lanes, signage and other things and that she voted for that. Thomas Miller states that there is no question about what is mentioned on the ballot but what is not mentioned is not appropriate for use of Measure A funds.

Liaison Bradshaw interjects by stating that there has been no action and these are just discussion items. He brings up item no. 3, the annual report, and states that since it is not in front of the Committee tonight that there will be a request to schedule another meeting and that it does not have to be done tonight according to the standing rules. The Chair can call a special meeting once the audit is ready which may be a month or so from now.

Thomas Miller submits attached questions to City staff and Liaison Bradshaw said he will take the request and give him a written response.

Thomas Miller is bothered that the audit is not ready and Bradshaw agrees that the staff is upset about it too. The annual report was not added to the agenda as explained earlier and deferred by virtue of fact that it is not on tonight's agenda.

Public comment: Would like to clarification regarding the project related to traffic radars.

Staff member Yvetteh Ortiz responds that the radar is a component of the traffic safety management program. She states that Barrett and Arlington are arterial streets and have a posted speed limit of 25 mph and that the City can only legally set the speed limit based on prevailing speeds and only set the speeds 5 miles below the prevailing speeds if collisions on the street show that the street is unsafe for the speed set and that setting the speed based on prevailing speeds allows the police department to use radar and lidar for enforcement purposes. If the speed limit was set based prevailing speeds, the City would have to raise the speed limit on Arlington and Barrett to 30 and there are already concerns about safety on those streets. City Council instead set the speed limit to 25 mph and the police department has to use other measures such as pacing for enforcement. City staff has to use other measures to calm speeds such as bulb-outs and speed feedback signs and asked City Council to approve the use of Measure A funds to install these devices to reduce speed and improve safety.

Thomas Miller asks what useful purpose the Committee serves and believes it is a waste of taxpayer money. Al Miller states that it is required as part of Measure A. Thomas Miller asks what benefit does the City get from the Committee and City Attorney Woodruff responds that the Committee reviews the expenditures approved by City Council to ensure that the money spent is consistent with what City Council decides is consistent with Measure A and that the Committee is set up as for post review after the expenditures are authorized by City Council. City Council adopts a budget set of expenditures consistent with Measure A and adopts a budget authorizing staff to move forward with projects. The Committee is to review the money spent with the City Council ultimately making the determination that it is spent consistent with Measure A. Al Miller states that after the audit, a list is provided by City staff of projects approved as funded by Measure A including invoices of expenditures to match up with Measure A. Thomas Miller asks what if the money spent is gone and City Attorney Woodruff

indicates that if that occurred they would have to find money from another place to repay it. Lynne Kessler states that she has never seen an approved list of projects in the seven years she's been on the Committee. Bradshaw states that they show pages from the capital improvement budget as approved by City Council and has shown excerpts of the budget in prior years.

Public comment: Have all the projects been submitted to the Oversight Committee?

Liaison Bradshaw responds that most of the committees formed help to advise Council on what they should do regarding policy decisions and the Council takes the input and takes action based on the information but this Committee does the opposite. It does not help Council on policy or which projects should be put in the approved plan and only reviews the funds after they have been collected and spent and that they conform to what Council. This Committee is does not have an advisory role and is not apprised ahead of time of endeavors but given a heads-up.

Public follow-up question: When does the Committee review the funds after they are spent?

Liaison Bradshaw responds by saying that every September the Committee reviews a summary of expenditures that are unaudited and most are what was spent in the prior year, item by item and project by project.

5. Staff Liaison Report

- a. Report on MTC's recent Pothole Report; El Cerrito wins the Most Improved Streets Award again: In December, the City received notice that they won the Metropolitan Transportation Commission (MTC) 2012 Most Improved Roads award. The MTC is a regional agency that gauges pavement conditions in all of the Bay Area. The letter from the MTC is included at page 5-1. The award is based on three years of data and El Cerrito has the most improved roadway conditions out all Bay Area jurisdictions. El Cerrito has in the third highest pavement condition index and is one of seven jurisdictions in the Bay Area to have very good pavement conditions in the 80's. MTC recognized the City's investment and commitment to the roads and improving streets by passing Measure A to do that. In 2006, the City had some of the worst pavement conditions and was in the bottom 10. The PCI was 51 and had dropped to 48 at that time. The initial push was to get a PCI of 70 but we are at 84 which is more than we anticipated. There are 9 counties and 107 jurisdictions that are included in the review.

6. Committee Standing Rules

Thomas Miller requests to revise and amend the standing rules. He hands out suggested changes in writing (attached). He would like to delete rule 10 and insert a new rule 10 stating that meeting proceed if no City staff is present. City Attorney Woodruff states that City Council recently amended the code and believes that it doesn't require liaisons to be present but doesn't recall and will have to wait to review the Ordinance once it's adopted. Thomas Miller's next request is to add a new rule number 16 that the meetings be conducted by the Chair or Vice Chair and that the Roberts Rules of Order shall be followed. Thomas Miller states that there has been sloppiness at

the meetings and that the Committee should vote to adjourn the meeting and should not be adjourned by the staff. Al Miller doesn't recall the meeting ever being adjourned by the staff. Thomas Miller states that the Robert Rules of Order were given to him by the City clerk when the Committee first formed and should be implemented.

Action taken: Motion made by Thomas Miller: rule 16 be adopted. Lynne Kessler seconded the motion.

Ayes: Thomas Miller

Nays: Lynne Kessler, Al Miller, Liz Ozselcuk

Motion fails

Thomas Miller would like to add another rule number 17 that "Meetings can only be ended by a motion to adjourn, seconded and approved by a majority of the members present. In the event of a tie vote, the Chair shall decide whether to continue the meeting or declare it adjourned."

Action taken: Motion made by Thomas Miller: rule 17 be adopted. Lynne Kessler seconded the motion.

Ayes: Thomas Miller, Lynne Kessler

Nays: Al Miller, Liz Ozselcuk

Motion fails

Action taken: Delete rule 10 and insert a new rule 10. Lynne Kessler seconded the motion.

Ayes: Thomas Miller, Lynne Kessler

Nays: Al Miller, Liz Ozselcuk

Motion fails

7. Election of Committee Officers

The Chair position is up for nomination. Lynne Kessler nominates Thomas Miller and he accepts the nomination. Al Miller seconds the nomination.

Action taken: Call for approval for Thomas Miller as Chairman in 2014

Ayes: Lynne Kessler, Al Miller, Liz Ozselcuk

Nays: none

Thomas Miller appointed Chair.

The Vice-Chair position is up for nomination. Thomas Miller nominates Lynne Kessler and she accepts the nomination. Al Miller seconds the nomination.

Action taken: Call for approval for Lynne Kessler as Vice-Chair in 2014

Ayes: Thomas Miller, Al Miller, Liz Ozselcuk

Nays: none

Lynne Kessler appointed Vice Chair.

8. Future Agenda Items

Call for special meeting once audit is complete to review the annual report. Thomas Miller would like every Committee member to draft a report for City Council because he believes this is a

significant report before the Committee. He would like a draft by the next meeting. Liaison Bradshaw states that he has no objection and will add to the agenda but it will take some effort to sort through the drafts and prepare a memo and a special meeting should be called to approve the final draft. He states that Council is conducting interviews and there is one candidate so there may be a fifth member at the next meeting. Thomas Miller asked if it is possible to have a stand-by member in case one falls to the wayside. Bradshaw responds that he does not see that in the structure here because this Committee is set at five members. He also states that the new Ordinance not yet in effect regarding Committees states that annual terms not expire in January and re-elect in March but felt that it is appropriate for this Committee to have elections in January since the next meeting doesn't happen until September and March is in between January and September and the Chairpersons don't take a seat until September.

9. Adjourned at approximately 9:02 p.m.

Thos. N. Miller

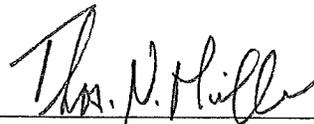
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Member of the El Cerrito Street Oversight Committee

The City of El Cerrito Liason is requested to respond, IN WRITING, to the following questions:

- 1) The approximate date when City Staff decided that Measure A Funds should be spent for items other than Streets.
- 2) Name the individuals fostering that action.
- 3) Referring to Exhibit 1, City of El Cerrito, Pothole Repair and Street Improvement and Maintenance Services, PAYMENT EXPENDITURE PLAN:
 - A) Was this adopted by the City Council as written?
 - B) Quote the authority for ignoring the provisions thereof.
- 4) Name the party or parties that composed RESOLUTION 2012-XX and subsequent documents of like kind.
- 5) Why is the scope of work outlined in your November 5, 2007 Agenda Bill now being ignored?

You are requested to present your written response at the next meeting of the Committee subsequent to the meeting of January 27, 2014.



Thomas N. Miller

Date: 1/27/2014

Thos. N. Miller

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Suggested Changes to the Standing Rules: 1/27/14

1) Delete Rule 10 and insert a new Rule 10:

"In the event the City Liason fails to appear at any properly Called meeting the committee shall proceed with the meeting and the Chair shall submit a written Report to the City Council of the outcome of that meeting. The presence of the City Liason is not a requirement for the Committee to function".

2) Add new Rule 16:

"All meetings shall be conducted by the Chair or Vice Chair. Roberts Rules of Order shall be followed.

3) Add new Rule 17:

"Meetings can only be ended by a motion to adjourn, seconded and approved by a majority of the members present. In the event of a tie vote the Chair shall decide whether to continue the meeting or declare it adjourned".

Thos. N. Miller



STAFF REPORT

Date: April 3, 2014
To: El Cerrito Citizen Street Oversight Committee
From: Yvetteh Ortiz, Interim Public Works Director/City Engineer, Staff Liaison
Subject: Continued Discussion of Permissible Use of Measure A Funds and Role of the Committee

At the January 27, 2014 Regular Meeting of the Committee, City staff presented several documents illustrating the authority of the City Council to allocate Measure A funds to projects that are not primarily pavement-related as well as copies of staff correspondence with two committee members who had questioned the use of Measure A funds for non-pavement work. At the meeting, Committee Member Thomas Miller provided a written request for additional information regarding this matter (Attachment A). The two Committee Members, who previously questioned the use of Measure A funds, wrote letters subsequent to the meeting as follows:

- January 28, 2014 letter from Lynne Kessler to staff
- January 31, 2014 letter from Thomas Miller to staff

Copies of those letters are attached (Attachment B):

Mr. Miller, in his January 27, 2014 request, listed five items related to the use of Measure A funds. Three items requested information on the dates and names of individuals requesting City Council action related to the use of Measure A funds. These dates and names have previously been provided in the copies of the Agenda Bills and Fiscal Year Budget Book excerpts contained in the November 4, 2013 and January 27, 2014 Agenda Packets. As shown in those documents, City staff first requested that City Council approve Measure A funds for a street improvement project that was not primarily pavement work as part of the 2010-2011 Fiscal Year Budget. This project was the Moeser and Ashbury Pedestrian and Bicycle Project. This request was part of the Capital Improvement Program managed by the Public Works Department and specifically overseen by the Public Works Director/City Engineer. The Agenda Bills and Resolutions requesting City Council action related to the use of Measure A funds on specific projects have been prepared by Public Works staff, reviewed by the City Manager and adopted by the City Council. A fourth item asked whether Exhibit 1, Pavement Expenditure Plan to the Measure A Ordinance was adopted by the City Council. This Expenditure Plan was part of the Ordinance No. 2008-3 passed and adopted by the voters on February 5, 2008. A copy of the executed Ordinance is attached (Attachment C). The City Council has updated the Expenditure Plan on an annual basis as contemplated in the Ordinance. The fifth item asked why the scope of work in the November 5, 2007 Agenda Bill is being ignored. Staff considers the accelerated work plan, which the Agenda Bill indicates would be completed in five years and result in a Pavement Condition Index (PCI) of up to

70, to have been achieved given that the work plan was completed a year early (in 2011) and the City currently has a PCI of above 80. As also indicated in the Agenda Bill, the pavement program has now switched to on-going maintenance.

In her letter, Ms. Kessler requested clarification regarding the role of the Committee in reviewing expenditures from Measure A. The role of the Committee is explained in detail in the attached memorandum from the City Attorney (Attachment D). Ms. Kessler also inquired how the Committee is to be informed about City Council actions related to the expenditure of Measure A funds and if it possible for the Committee to receive copies of the City Council Resolutions(s) in the agenda packet of the next meeting of the Committee following adoption of the Resolutions(s). Staff considers this as a practical procedure to keep the Committee informed of City Council actions related to the use of Measure A funds. Staff has recently realized that, although we provided the Committee information regarding capital projects indentified in the current 2013-14 Fiscal Year Budget, we have not previously informed you that the City Council also authorized personnel expenditures for maintenance work not specifically related to a capital project in the current 2013-14 Fiscal Year Budget (Attachment E). This is work related to various street maintenance activities.

Mr. Miller, in his letter, requested that the City Attorney provide in writing the legal interpretation of the permissible use of Measure A funds as communicated at the January 27, 2014 meeting. As indicated above, the City Attorney memorandum is attached. Mr. Miller also requested that four items be placed on the agenda including two items related to the "Expenditure of Measure A funds on non street projects" and "Composition of the Committee Report to the City Council", which are on the current agenda, and two items related to the "Further existence of the Committee" and "Retention of Counsel to advise and represent the Committee", which are matters beyond the Committee's jurisdiction as indicated in the City Attorney memorandum.

No action is requested by staff. The Committee has been provided with information that two Committee members requested and may discuss that information and provide comments to staff.

Attachments:

- Attachment A - Written Request from Thomas Miller provided at the January 27, 2014
- Attachment B
 - Letter from Lynne Kessler dated January 28, 2014
 - Letter from Thomas Miller dated January 31, 201
- Attachment C – Executed Measure A Ordinance No. 2008-3
- Attachment D – City Attorney Memorandum dated February 24, 2014
- Attachment E – Excerpt from 2013-14 Fiscal Year Budget

ATTACHMENT A

Thos. N. Miller

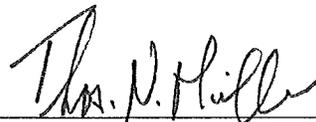
2700 Tulare Avenue
El Cerrito, California 94530-1439
Telephone: 510-233-1047
FAX: 510-233-2720
e-mail: schwabbi@aol.com

Member of the El Cerrito Street Oversight Committee

The City of El Cerrito Liason is requested to respond, IN WRITING, to the following questions:

- 1) The approximate date when City Staff decided that Measure A Funds should be spent for items other than Streets.
- 2) Name the individuals fostering that action.
- 3) Referring to Exhibit 1, City of El Cerrito, Pothole Repair and Street Improvement and Maintenance Services, PAYMENT EXPENDITURE PLAN:
 - A) Was this adopted by the City Council as written?
 - B) Quote the authority for ignoring the provisions thereof.
- 4) Name the party or parties that composed RESOLUTION 2012-XX and subsequent documents of like kind.
- 5) Why is the scope of work outlined in your November 5, 2007 Agenda Bill now being ignored?

You are requested to present your written response at the next meeting of the Committee subsequent to the meeting of January 27, 2014.



Thomas N. Miller

Date: 1/27/2014



ATTACHMENT B

LYNNE KESSLER
1035 Liberty Street
El Cerrito, CA. 94530

Email: lynne1035@gmail.com
Phone: (510) 524-0883

RECEIVED

JAN 30 2014

City of El Cerrito
Public Works

January 28, 2014

Mr. Jerry Bradshaw
Ms. Yvetteh Ortiz
Staff Liaison for Citizen Street Oversight Committee

Re: Jan 27, 2014 Oversight Meeting & Agenda Item for Next Meeting

Dear Jerry and Ms. Ortiz,

Thank you for your information and patience in last evening's Oversight meeting.

Regretfully, I am still confused about the procedure the Oversight Committee is to follow when reviewing expenditures from Measure A funds. (I appreciate Jerry addressed this subject in his January 9, 2014 letter to me)

Is the following correct?

- 1) Staff makes recommendations to the City Council for projects to be funded by from Measure A Funds (for example your 8/2012 Agenda Bill memo)
- 2) The Oversight Committee is not advised of these recommendations until the Council makes resolution to fund or budget the project.
- 3) The Oversight Committee is to verify that the funds were spent according to the Council's resolution.

If the above is true please clarify how the Oversight Committee is to be informed when the City Council resolves to spend or reallocate Measure A funds? Is it possible for the Oversight Committee to receive copies of the Resolution(s) in the next Meeting Agenda package following the passage of the Resolution?

May we include this on the next meeting agenda? Or does this request need to come from our new Chairman, Thomas Miller? Please advise. Thank you.

Regards,


Lynne Kessler

cc: Mr. Thomas Miller

RECEIVED

FEB 4 2014

City of El Cerrito
Public Works

Thos. N. Miller

2700 Tulare Avenue
El Cerrito, California 94530-1439
Telephone: 510-233-1047
FAX: 510-233-2720
e-mail: schwabbi@aol.com

Chair of the El Cerrito Street Oversight Committee

Mr. Jerry Bradshaw, Staff Liason
City Engineer Ortiz, Staff Liason
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

1/31/14

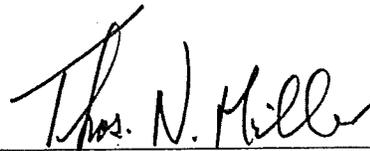
At the last meeting of the committee on January 27, 2014 you introduced the City Attorney who proceeded to give legal advice to as to two issues:

- 1) The effectiveness of Ballot Language in setting parameters for expenditures of Measure A funds.
- 2) The function of the Oversight Committee.

If these issues are to be determined, even partially, by this advice it is important that the Committee knows what that advice was. Accordingly you are requested to have that advice provided to the Committee in written form. Since any Committee Member may choose to retain Counsel to examine these matters it will be most helpful if all relevant precedents and authorities be referenced. Please have this in the package for the next meeting.

As to the Agenda for the next meeting please include the following in that Agenda:

- 1) Expenditure of Measure A funds on non street projects.
- 2) Further existence of the Committee.
- 3) Retention of Counsel to advise and represent the Committee.
- 4) Composition of the Committee Report to the City Council.



Thomas N. Miller

ATTACHMENT C

ORDINANCE NO. 2008-03

AN ORDINANCE OF THE VOTERS OF THE CITY OF EL CERRITO AMENDING THE EL CERRITO MUNICIPAL CODE, IMPOSING A 1/2 CENT TRANSACTIONS AND USE TAX FOR THE REPAIR AND MAINTENANCE OF CITY STREETS TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION AND AUTHORIZING THE INCURRENCE BY THE CITY OF INDEBTEDNESS PAYABLE SOLELY FROM SUCH TAX

THE PEOPLE OF THE CITY OF EL CERRITO DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 4.60 is hereby added to Title 4 ("Revenue and Finance") of the El Cerrito Municipal Code, to read as follows:

"Chapter 4.60 Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax

4.60.010. TITLE. This ordinance shall be known as the "El Cerrito Pothole Repair and Local Street Improvement and Maintenance" Transactions and Use Tax Ordinance. The City of El Cerrito hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

4.60.020. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

4.60.030. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

4.60.040. CONTRACT WITH STATE. Prior to the Operative Date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

4.60.050. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 0.50% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance. Such tax shall be in addition to any other transactions tax imposed by this Code or applicable State law.

4.60.060. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

4.60.070. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of 0.50% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. Such tax shall be in addition to any other use tax imposed by this Code or applicable State law.

4.60.080. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

4.60.090. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:
1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
 2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
 3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
 - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
 4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

4.60.100. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

4.60.110. EXEMPTIONS AND EXCLUSIONS.

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point

by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

- a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
 3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is

obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

4.60.120. AMENDMENTS.

- A. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance unless any increase in the rate of this tax is first approved by 2/3 of the voters of the City of El Cerrito voting on such question.
- B. Pursuant to California Elections Code Section 9217 or any successor statute, the City Council of the City of El Cerrito may amend or repeal this ordinance and any of its exhibits, provided that written notification is submitted to the State Board of Equalization 110 days prior to the operative date of the amendment or repeal, but not increase or extend the rate of tax imposed herein, or the indebtedness authorized hereunder, without the approval of 2/3 of the voters of the City of El Cerrito voting on such question..

4.60.130. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

4.60.140. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

4.60.150. USE OF TAX PROCEEDS AND EXPENDITURE PLAN.

(a) All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund designated for use by the City of El Cerrito only for the Pothole Repair and Street Improvement and Maintenance Services set forth in the Expenditure Plan for the administration and expenditure of the tax proceeds, attached to this ordinance as Exhibit "1". The Expenditure Plan may be amended from time to time by a majority vote of the City Council, so long as the funds are utilized for pothole repair and street improvement and maintenance services. For the purposes of this Part, "Pothole Repair and Street Improvement and Maintenance Services" means (1) all aspects of street repair and maintenance including repair, reconstruction and sealing of city streets; repair, maintenance and reconstruction of curbs and ramps adjacent to City streets; crosswalk and pedestrian improvements on or adjacent to City streets; other related services such as lane line, crosswalk and bicycle lane striping and other necessary pavement markings; and other such improvements as are deemed necessary by the City Council for the benefit of the residents of the City; (2) No revenues collected pursuant to the tax levied hereby may be spent on department administrators' salaries, General Fund operating expenses in effect at the time this ordinance becomes effective, or projects not a part of the Expenditure Plan. It is the intent of the People that revenues collected hereunder shall supplement, rather than supplant, existing City expenditures for Street Repair and Maintenance.

(b) The City is hereby authorized to incur indebtedness in the form of bonds, notes, contractual obligations or other evidences of indebtedness authorized by law to finance or refinance costs described in subsection (a) above, and to pay any and all costs of issuing or incurring such indebtedness, to fund reserve funds, capitalized interest, costs of credit enhancement, costs of interest rate hedging arrangements or any other financing costs associated with such indebtedness. Such indebtedness shall be solely payable from, and may be secured by a pledge and lien on, the proceeds of the tax levied and imposed hereunder. Such indebtedness shall be limited in amount such that the annual debt service in each year is not in excess of 75% of the amount of tax proceeds projected by the City to be received in each year.

4.60.160. ANNUAL AUDIT.

By no later than December 31st of each year, the City's independent auditors shall complete a Streets Repair and Maintenance Tax Ordinance Compliance and Internal Control Audit Report. Such report shall review whether the Tax revenue is collected, managed and expended in accordance with this Chapter."

SECTION 2. Chapter 2.04 (“City Council”) of Title 2 (“Administration”) of the El Cerrito Municipal Code is hereby amended by adding a new Section 2.04.320, to read as follows:

2.04.320. CITIZENS' OVERSIGHT COMMITTEE.

- A. Committee Established. There is hereby established in the City of El Cerrito a Citizens' Oversight Committee to monitor the expenditures of revenue collected pursuant to Chapter 4.60 (the “**Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax**”) only and report to the People and the City Council. The title of this Committee shall be the “Street Repair and Maintenance Citizens' Oversight Committee” (hereinafter the “Citizens' Oversight Committee” or the “Committee”).
- B. Selection of Members.
1. Members of the Citizens' Oversight Committee shall be appointed by majority vote of the City Council. The Committee shall consist of five members. The Citizens' Oversight Committee members shall not be current City of El Cerrito employees, officials, contractors or vendors of the City. Past employees, officials or vendors shall be eligible to serve on the Committee, provided that such service would not be a violation of law, as determined by the City Attorney.
 2. Of the members of the Committee first appointed, three shall be appointed for terms of four years and two for terms of three years. Their successors shall be appointed for terms of four years. No member may serve more than two consecutive four-year terms.
 3. The City Council shall solicit Citizens' Oversight Committee members through an open application process that is promoted through the City's normal recruiting process. Any El Cerrito resident is eligible to apply for Committee membership, subject to the limitations specified above. All applications will be reviewed by the City Council, which will have the authority to make all final decisions on Committee representation, subject to these guidelines.
- C. Purpose and Jurisdiction.
1. The Citizens' Oversight Committee shall review expenditures of revenue collected pursuant to this Chapter only to determine whether such funds are expended for the purposes specified in the then-current Street Repair and Maintenance Expenditure Plan, and issuing reports on their findings to the City Council and public at least annually. The Committee may also review the annual financial or performance audits performed by an independent auditor. The Committee shall confine its oversight specifically to revenues generated under Chapter 4.60. Revenue generated through other sources shall be outside the jurisdiction of the Street Repair and Maintenance Citizens' Oversight Committee.
 2. In order to preserve the integrity and independence of the oversight process, Committee members will not play a formal role in contracting, project management, or any other aspect of the Street Repair and Maintenance Measure funding.

3. The Committee is not charged with decision-making on spending priorities, schedules, project details, funding source decisions (e.g. leveraged funds, developer fees, etc.), financing plans, or tax rate assumptions. The Committee shall serve in an advisory-only role to the City Council. The Committee shall have no jurisdiction other than that delegated to it by the People pursuant to this Ordinance. The failure of the Committee to carry out any of its duties under this Section shall not affect the validity of any of the provisions of Chapter 4.60.
 4. The City of El Cerrito City Manager or his designee shall provide any reasonable administrative or technical assistance required by the Committee to fulfill its responsibilities or publicize its findings.
- D. Meetings. The Citizens' Oversight Committee shall meet semi-annually (or as otherwise provided for in approved or amended by-laws) with specific meeting dates to be determined by the Committee. Citizens' Oversight Committee meetings are subject to the requirements of the Ralph M. Brown Act (Government Code § 54950 et seq., as may be amended from time to time). Meetings must be noticed and open to the public. Additional meetings may be scheduled by the Committee as necessary. All Committee members shall attend a training and orientation session upon commencing their duties.
- E. Attendance. Committee members are expected to attend all regular meetings.
- F. Committee Operations. At the first meeting of each calendar year, the Citizens' Oversight Committee will select members to serve as Chair and Vice Chair of the Committee. A City staff person will be appointed by the City Manager or his designee to serve as Secretary. The Secretary will be responsible for preparing, posting and distributing agendas and taking minutes at each meeting. Approved minutes shall be made available to the public. Committee decisions, positions, findings and procedures shall require a simple majority of those Members voting.
- G. Vacancies. In the event of removal, resignation, or death, the City Council shall appoint a person to fill the vacant seat.
- H. Miscellaneous. With the exception of those items specifically addressed in this ordinance, the Committee may draft and adopt its own standard procedures and by-laws by majority vote. All Citizens' Oversight Committee procedures and by-laws remain subject to review and approval by the City Council. Citizens' Oversight Committee reports and audits are subject to review and approval of the City Council."

SECTION 3. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect 10 days following certification of the vote by the City Council.

SECTION 4. The City Clerk shall certify the passage of this ordinance; publish the same as required by applicable law, and forward a copy of the adopted ordinance to the Board of Equalization.

PASSED AND ADOPTED by the voters of El Cerrito at an election held
February 5, 2008 by the following vote:

AYES: 6,860

NOES: 2,791

ATTEST:


Cheryl Morse, City Clerk

APPROVED:

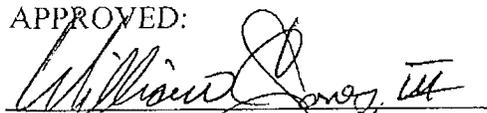

William C. Jones, III
Mayor of El Cerrito

EXHIBIT 1

CITY OF EL CERRITO POTHOLE REPAIR AND STREET IMPROVEMENT AND MAINTENANCE SERVICES

PAVEMENT EXPENDITURE PLAN

OF ONE-HALF (1/2) CENT TRANSACTIONS AND USE TAX REVENUE

The City of El Cerrito street system consists of approximately 68 miles of streets, the majority of which were constructed to the standards and conditions of the early to mid-20th century, with many streets unable to meet today's traffic demands. The City's Pavement Condition Index (PCI), which was compiled by staff and its consulting engineers, illustrates that El Cerrito's streets have a very low average pavement condition rating (51 on a 100-point scale). Further analysis shows that the residential streets are in the worst condition of all categories with an average PCI of 38, while the neighborhood collectors and arterials are in better condition with PCIs of 68 and 80, respectively.

The needed improvements and maintenance on the City of El Cerrito street system far exceed the available revenues for these activities. While the City remains committed to continue efforts to obtain all possible Federal and State funding for street improvements, it is apparent that without the one-half (1/2) cent transactions and use tax revenue, the City will be unable to improve the street system to a level that will adequately serve the traveling public. This Pavement Expenditure Plan describes the specific projects for which the revenues from the tax will be expended, and satisfies the requirements of Section 7285.91(c) of the Revenue and Taxation Code.

The Expenditure Plan is a simple one, as it proposes to utilize the one-half cent transactions and use tax for street maintenance and improvement-related purposes, rather than specific capital improvement projects. The goal of this plan is to rapidly improve the City's street system to provide the traveling public with the best and most efficient road maintenance possible given the existing facilities and the available funds.

Annual Program of Maintenance and Improvement

The City shall prepare a "Maintenance and/or Improvement Program" that the tax revenues will fund. This Program will be a flexible document that responds to the most significant maintenance and improvement needs as they are identified. It will be updated annually as part of the City's annual Capital Improvement Program budget, and available funds will be appropriated. It will follow recommendations and priorities established annually by the City Council and Citizens' Oversight Committee, and will itemize each year's particular capital projects and debt service payments. An annual independent audit will be performed by the City's external auditors that will include review of compliance with the requirement that all expenditures are related to street improvement, maintenance and associated debt service.

Accelerated Work Plan in First Five Years

The initial years will be devoted to the rehabilitation of the residential streets within the City of El Cerrito along with an effort to maintain the arterials in good condition. When possible, the City will utilize these funds as matching funds for Federal and State Grants related to street

improvement and rehabilitation projects. In addition, approximately 15% of the transactions and use tax would be set aside to improve the non-vehicular mobility and accessibility (curb ramps, improved striping) and significant drainage problems associated with the City's street system.

The first five years of the Pavement Expenditure Plan include a significantly accelerated work plan. This is intended to bring the City's Street System average PCI up to or near 70. Most of the accelerated work will occur in the first four years, and the fifth year would be used to transition to an annual comprehensive ongoing maintenance program.

The work plan is broken into two categories:

1. Preparatory Work: The Preparatory Work will consist of repair and other activities as aimed at preparing a street for the final resurfacing work. This typically includes:
 - Crack sealing
 - Structural pavement repairs
 - Leveling and rideability corrections
 - Installation of curb ramps pursuant to the Americans with Disabilities Act
 - Curb, gutter, and sidewalk repair (as needed)
 - Temporary or restored pavement markings and striping

2. Finish Resurfacing: Finish Resurfacing will consist of installing the final pavement surface and pavement markings. Typical activities would be:
 - Leveling and rideability corrections
 - Edge conform grinding
 - Asphalt overlay, micropaving, slurry seal, and cape seal
 - Replacement and enhancement of pavement markings, striping and signage.

The table below demonstrates how the accelerated (shown as "XXX") work will be performed for the various work items, and also indicates where a normal level of work (shown as "X") would be performed. This also indicates the approximate annual monetary value of work in each construction season.

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	
Preparation Work	<i>Curb Ramps</i>	XXX	XXX	X	X	X
	<i>Crack Seal</i>	XXX	XXX	XXX	X	X
	<i>Structural Repairs</i>	XXX	XXX	X	X	X
Finish Work	<i>Slurry / Cape Seal</i>		XXX	XXX	XXX	X
	<i>Asphalt Overlay</i>		XXX	XXX	XXX	X
	\$16.9 million	\$2.6 M	\$5.5 M	\$4.5 M	\$3.3 M	\$1.0 M

Subsequent Years

After completion of the accelerated work plan, the subsequent years will be devoted to ongoing maintenance of the system in a manner to protect the City's valuable street infrastructure. Maintenance priorities will be reviewed annually by the City Council and the Citizen Oversight Committee with funds for each year to be expended on the priority items first.

Annual Debt Services

The transactions and use tax revenues will also be used for the payment of interest and principal on obligations resulting from the issuance of bonds, notes, leases, and other indebtedness.

Administrative Costs

In addition to the above expenditures directly related to the goals of the transactions and use tax, the tax will be used for certain administrative costs.

1. Financial Administration Costs: Staff accounting, auditing, and financial activities and contract services that are necessary and reasonable for the City to carry out its responsibilities under the Revenue and Taxation Code.
2. Costs Related to Bonds or Other Indebtedness: Expenses in the sale or issuance of bonds and/or other forms of debt
3. Project Management and Engineering Costs: Expenditures approved by the City Council that are necessary and reasonable for implementing the projects identified in the Maintenance and/or Improvement Program
4. Mandatory Independent Annual Fiscal Audit: Expenditures related to the independent annual audit required by the ordinance, which ensures that the expenditure of funds is in accordance with this plan.

ATTACHMENT D

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MEMORANDUM

DATE: February 24, 2014
TO: Chair and Members of the Street Repair and Maintenance Citizens' Oversight Committee
City of El Cerrito
FROM: Sky Woodruff, City Attorney
COPY: Yvetteh Ortiz, Interim Public Works Director/City Engineer
RE: **Permissible Uses of Measure A Funds and Role of the Committee**

I. INTRODUCTION

As members of the Committee will recall, at your January 27, 2014 meeting, I provided my interpretation of Measure A with regard to the permissible use of funds and the role of the Committee. On January 31, 2014, the Chair of the Committee, Mr. Thomas Miller, sent a letter (Attachment 1) to Public Works Director Yvetteh Ortiz requesting that I provide the Committee with my advice in writing. A summary follows.

II. FACTUAL BACKGROUND

As part of the 2010-11 and 2012-13 Fiscal Year Budgets, which also approved the Measure A Expenditure Plan for those years, and through subsequent budget amendments that also amended the Expenditure Plans, the City Council approved the use of Measure A funds for three general purposes that members of the Committee have questioned: the Moeser-Ashbury Pedestrian and Bicycle Corridor Improvement Project, the Central-Liberty Streetscape Improvements Project, and the Traffic Safety and Management Program. The City Council has also approved the use of Measure A funds for the Arlington Curve at Brewster Drive Safety Project as part of the 2013-14 Budget and the Measure A Expenditure Plan for the year (not described below, since the Committee will not review them until next year).

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- The Moeser-Ashbury Project is described more fully in the attached staff report to the City Council, dated February 5, 2013 (Attachment 2). Generally, it includes new and reconstructed sidewalks and curb ramps, intersection bulb-outs for improved pedestrian safety, pedestrian refuge areas, median island reconstruction for wheelchair accessibility, raised crosswalks, a bikeway, and signage and striping for bicyclist use and safety.
- The Central-Liberty Project is described more fully in the attached staff report to the City Council, dated November 20, 2012 (Attachment 3). Generally, it includes sidewalk replacement, decorative concrete on median noses, pedestrian level lighting, curb bulb-outs, curb ramps, high-visibility crosswalk signing and striping, bike route signing and striping, a speed table, street trees, and street furniture.
- As described in Attachment 4, the Traffic Safety and Management Program ("TSMP") "contains various projects that would improve safety for motorists, pedestrians and bicyclists travelling on city streets and implement various improvements . . . consisting of educational, engineering and enforcement measures to address speeding, high traffic volumes, pedestrian and bicycle access and livability on residential streets." Examples include traffic calming measures (such as signs displaying motorists' speeds and road modifications), speed assessments related to traffic calming, and improvements projects to reduce congestion.

III. USE OF MEASURE A FUNDS

All of the projects listed above are allowable uses of Measure A funds because they all fit within specifically listed categories of work in materials related to the ballot measure or are sufficiently similar to those listed categories, which the ballot materials describe as examples of allowable projects. The permissible uses of Measure A funds are described in several documents including the ballot question, the ordinance approved by the voters, and the expenditure plan attached to the ordinance, among others. California courts have said that the ballot question, the proposed ordinance, the city attorney's impartial analysis, ballot arguments, and other contemporaneous writings regarding its meaning are all relevant. *See, e.g., Horneff v. City and County of San Francisco* (2003) 110 Cal.App.4th 814; *Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87. Thus, all of those documents are relevant to a determination of what the voters said the City Council may do with revenue from Measure A.

Here is the text of the ballot question (with emphasis added): "The El Cerrito Pothole Repair, Local Street Improvement and Maintenance Measure. To improve neighborhood

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streets; enhance road safety citywide by fixing potholes; maintaining, repairing and repaving streets; sealing cracks; improving handicap ramps, crosswalks, bicycle lanes; and maintaining road markings and signage, shall the City of El Cerrito incur debt to immediately begin and accelerate street improvements, paid by establishing a dedicated one-half cent sales tax used exclusively for street improvements, with citizens' oversight and independent audits of expenditure?" The question ends by stating that the funds from Measure A will be used "exclusively for street improvements," and all of the text that precedes that statement establishes the meaning "street improvements" for the purpose of determining the allowable uses of the revenue. Thus, the question itself informed voters that the revenue would be used for street paving, but would also to improve neighborhood streets and to enhance road safety through a program that would include improvement, maintenance and repair of handicap ramps, crosswalks, bike lanes, and road markings and signage.

The ordinance approved by the voters was codified, in part, as Chapter 4.60 of the El Cerrito Municipal Code. Section 4.60.150(A) states that the proceeds of the tax may be used for the "pothole repair and street improvement and maintenance services set forth in the expenditure plan." It also defines "pothole repair and street improvement and maintenance services" as "all aspects of street repair and maintenance including repair, reconstruction and sealing of city streets; repair, maintenance and reconstruction of curbs and ramps adjacent to city streets; crosswalk and pedestrian improvements on or adjacent to city streets; other related services such as lane line, crosswalk and bicycle lane striping and other necessary pavement markings; and other such improvements as are deemed necessary by the city council for the benefit of the residents of the city" (emphasis added). It is plain from the emphasized text that the ordinance approved by Measure A authorizes the use of tax revenue for more than just street paving. It also allows for the money to be used for "all aspects" of maintenance, curbs and ramps, crosswalks and pedestrian improvements, and services "related" to road maintenance like striping for bike lanes. Additionally, it confers on the City Council the ability to determine what improvements similar to those listed would benefit the public and use Measure A funds for those purposes.

The City Council has updated the expenditure plan annually, as contemplated in Measure A (see section 4.60.150(A), which permits amendment as long as the use of the revenue is consistent with the definition of "pothole repair and street improvement and maintenance services"). Nevertheless, it is instructive to review the original expenditure plan attached to the Measure A ordinance to see what the voters were told the revenue would be used for at the time that they were considering the measure. The third paragraph of the plan states that it is intended for "street maintenance and improvement-related purposes, rather than specific capital projects. The goal of this plan is to rapidly improve the City's street system to

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provide the traveling public with the best and most efficient road maintenance possible given the existing facilities and the available funds." The plan also states that it is intended to be a "flexible document that responds to the most significant maintenance and improvement needs as they are identified." Among the specific kinds of work contemplated in the original plan are curb ramps for disabled access; curb, gutter, and sidewalk repair; and pavement markings and striping." The document emphasizes that the types of work funded in later years will be different and part of a process of identification by the City Council of what the community's needs are each year.

If you refer back to the description of the projects in Section II of the memo and compare them to the types of projects described in the ballot question, ordinance, and expenditure plan, I believe it is plain that most of the work at issue is exactly the kind identified in the Measure A documents. Those not of a kind directly referred to in the Measure A materials are allowed through other concepts included in the documents, including "enhancing road safety," "improvement" of roads, and "all aspects of street repair and maintenance." For example, the use of Measure A funds as part of the Central-Liberty Project to install street trees and street furniture is allowed as an "improvement" and as a standard aspect of contemporary "aspect of street repair and maintenance." For another, the TSMP uses Measure A funds to address "speeding, high traffic volumes, pedestrian and bicycle access and livability on residential streets;" such programs are encompassed within Measure A's purpose of "enhancing road safety" and is also an "aspect of street repair and maintenance" when viewing the totality of a roadway from the perspective of contemporary best practices for roadway engineering and community planning. As part of the expenditure plan quoted above makes clear, the voters intended for Measure A to be used, in part, for the City Council to look at the roads from that perspective and spend funds on roadway projects and programs "for the benefit of the residents of the city." All of the expenditures at issue are therefore allowable.

IV. ROLE OF THE COMMITTEE

The role of the Committee and the nature of the oversight that it is intended to provide was established in the Measure A ordinance and codified in 2.04.320 of the Municipal Code. Paragraph C.1. of that section states that the Committee's charge is to "review expenditures of revenue collected pursuant to this chapter only to determine whether such funds are expended for the purposes specified in the then-current street repair and maintenance expenditure plan, and issuing reports on their findings to the city council and public at least annually. The committee may also review the annual financial or performance audits performed by an independent auditor." Paragraph C.2. specifically excludes from that charge "decision-making on spending priorities, schedules, project details,

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funding source decisions (e.g., leveraged funds, developer fees, etc.), financing plans, or tax rate assumptions.” As I and the staff liaisons to the Committee explained at the January 27 meeting, the Committee’s role is limited to a determination that funds appropriated in a given year’s budget in support of that year’s expenditure plan were actually spent for those purposes.

To help explain that, it might be useful to review the process by which the City Council adopts a budget and its interaction with the expenditure plan established by Measure A. Annually by June 30 each year the City Council adopts a budget and appropriates funds and directs the expenditure of those funds for the following July 1 to June 30 period. So, for example, in June of 2012, the City Council adopted a budget for the period from July 1, 2012 through June 30, 2013. As part of that budget, the City Council also amended the Measure A expenditure plan to appropriate funds and direct that they be used on projects that the City Council considered to be consistent with the purposes of Measure A and for the benefit of the residents of the City. The expenditure of appropriated funds is completed by June 30, and only after that can anyone, including the Committee and the City’s auditors, look back and say with certainty how funds were spent.

As a consequence of that timing and the specific role that the City’s voters assigned to the Committee, the Committee has not historically reviewed expenditures until after the end of the fiscal year in which the funds were spent. As noted in the quoted text above, the voters asked the Committee to make sure that Measure A funds are spent as was directed in the expenditure plan. The expenditure plan has been updated annually to reflect each year’s plan for the use of Measure A funds. Only once the year ends can the Committee determine whether the funds were spent in a manner consistent with the expenditure plan. Thus, right now, the Committee is supposed to be reviewing expenditures that already occurred in a completed budget year that can be subjected to an audit, not reviewing the budgeting decisions for the current fiscal year. Generally, the Committee’s role is to look back at the previous fiscal year and review actual expenditures against budgeted expenditures (as the Council might have amended them during the year) to make sure that they are consistent. If the Committee’s role were to ensure that the expenditures were consistent with Measure A, the text of section 2.04.320 would have been written differently. But that would be another kind of oversight and not the one that the voters specifically approved.

If a member of the Committee believed that a project or program included in any year’s expenditure plan were inconsistent with the purposes of Measure A, that member would be free, as an individual, to raise those concerns. But those concerns are not part of the Committee’s jurisdiction, as assigned to it be the City’s voters.

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That said, the staff liaison to the Committee can inform the Committee about what is included in each year's expenditure plan subsequent to the plan's approval but before the Committee engages in its formal review of the expenditures. There would be nothing for the Committee to review at that time, but it would provide the Committee with information about the Council's decisions and about what the Committee would have to review in the following year.

IV. OTHER REQUESTS

In his letter, Chair Miller also asked that four items be placed on the upcoming Committee agenda. Two of them are "Further existence of the Committee" and "Retention of counsel to advise and represent the Committee." Both matters are beyond the Committee's jurisdiction. Paragraph C.3. of section 2.04.320 states, "The committee shall have no jurisdiction other than that delegated to it by the people pursuant to this chapter." The Committee's jurisdiction is limited to the matters described in Section III of this memo. The voters authorized the Committee neither to discuss whether or not it would continue, nor to retain counsel of its own. Therefore, neither item appears on the Committee's agenda.

V. CONCLUSION

As discussed in more detail above, the expenditures of Measure A funds that members of the Committee have questions were permissible under the purposes of Measure A set forth in the ballot question, ordinance, and expenditure plan, among other documents explaining what is allowed. The Committee's role is review those expenditures, after the fiscal year in which they were made, to ensure that funds were expended consistent with the expenditure plan. That is the limit of its jurisdiction. Other topics outside of that jurisdiction will not be included in Committee agendas for consideration or action.

SW:SW
Attachment
1079.6001 2243399.3

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ATTACHMENT E

PUBLIC WORKS DEPARTMENT BUDGET SUMMARY

PUBLIC WORKS DEPARTMENT EXPENDITURES

ALL FUNDS	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 2,474,790	\$ 2,590,843	\$ 2,855,619	\$ 2,343,027
Purchased Professional & Technical Services	221,614	332,264	607,335	172,900
Purchased Property Services	1,302,110	1,064,469	1,149,106	1,127,500
Other Purchased Services	145,734	169,310	158,600	131,850
Supplies	248,662	239,610	208,550	212,000
Property & Capital	604,194	575,757	413,888	11,000
Other Objects	130,607	317,405	237,391	426,411
Other Financing Uses	657,366	697,007	714,128	723,192
TOTAL EXPENDITURES—ALL FUNDS	\$ 5,785,076	\$ 5,986,666	\$ 6,344,617	\$ 5,147,880
General Fund (101)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 598,424	\$ 525,324	\$ 435,111	\$ 110,675
Purchased Professional & Technical Services	46,925	84,318	44,229	28,200
Purchased Property Services	262,171	249,417	256,100	170,100
Other Purchased Services	37,948	67,534	54,650	36,950
Supplies	47,201	49,080	42,300	40,300
Property & Capital	4,490	11,189	4,500	6,000
Other Objects	550	-	-	-
Total Expenditures	\$ 997,709	\$ 986,862	\$ 836,890	\$ 392,225
Gas Tax Fund (201)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 280,723	\$ 365,686	\$ 457,349	\$ 456,492
Purchased Professional & Technical Services	882	839	36,000	36,300
Purchased Property Services	108,156	72,429	80,300	77,300
Other Purchased Services	3,181	-	-	-
Supplies	27,803	21,091	30,000	30,000
Property & Capital	-	385	-	-
Other Financing Uses	99,609	102,597	105,675	108,845
Total Expenditures	\$ 520,353	\$ 563,027	\$ 709,324	\$ 708,937
National Pollution Discharge Elimination System Fund (202)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 69,887	\$ 130,712	\$ 148,892	\$ 155,485
Purchased Professional & Technical Services	-	7,646	10,000	10,000
Purchased Property Services	161,672	147,115	148,100	152,100
Other Purchased Services	13,638	12,000	22,300	22,300
Supplies	1,103	1,326	5,000	5,000
Other Financing Uses	100,519	103,535	106,641	109,840
Total Expenditures	\$ 346,819	\$ 402,333	\$ 440,933	\$ 454,725
Landscape & Lighting Assessment Fund (203)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 305,128	\$ 377,247	\$ 425,284	\$ 279,109
Purchased Professional & Technical Services	18,736	23,064	37,000	21,200
Purchased Property Services	695,247	524,143	568,000	680,000
Other Purchased Services	13,235	1,323	900	1,900
Supplies	43,362	50,073	47,500	47,000
Other Financing Uses	134,399	138,431	161,169	146,861
Total Expenditures	\$ 1,210,107	\$ 1,114,281	\$ 1,239,853	\$ 1,176,070
Measure J- Return to Source Fund (204)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Other Purchased Services	\$ 43,134	\$ 42,772	\$ 45,000	\$ 42,700
Other Financing Uses	27,706	28,537	29,393	30,275

Total Expenditures	\$ 70,840	\$ 71,309	\$ 74,393	\$ 72,975
Storm Drain Fund (205)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 95,801	\$ 108,603	\$ 118,035	\$ 134,102
Purchased Professional & Technical Services	11,146	11,238	11,300	11,300
Purchased Property Services	29,940	-	15,000	10,000
Other Purchased Services	134	-	-	-
Supplies	2,171	2,035	10,000	10,000
Total Expenditures	\$ 139,192	\$ 121,876	\$ 154,335	\$ 165,402
Street Improvement Fund (211)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ -	\$ -	\$ -	\$ 54,539
Total Expenditures	\$ -	\$ -	\$ -	\$ 54,539
Federal, State & Local Grants Fund (221)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 2,393	\$ 5,227	\$ -	-
Purchased Professional & Technical Services	94,841	44,634	437,591	-
Purchased Property Services	-	9,356	21,606	-
Other Purchased Services	1,105	1,251	3,500	-
Supplies	27,464	13,178	-	-
Property & Capital	-	-	81,000	-
Other Objects	83,338	95,830	75,708	-
Other Financing Uses	1,750	21,723	-	-
Total Expenditures	\$ 210,891	\$ 191,198	\$ 619,405	\$ 0
Capital Improvement Fund (301)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 286,910	\$ 253,660	\$ 314,421	\$ 50,405
Other Purchased Services	1,775	-	-	-
Total Expenditures	\$ 288,684	\$ 253,660	\$ 314,421	\$ 50,405
Integrated Waste Management (501)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Personnel Services	\$ 835,524	\$ 824,385	\$ 956,527	\$ 1,102,220
Purchased Professional & Technical Services	49,084	160,525	31,216	65,900
Purchased Property Services	44,924	62,010	60,000	38,000
Other Purchased Services	31,585	44,430	32,250	28,000
Supplies	99,558	102,827	73,750	79,700
Property & Capital	186,888	188,626	328,388	5,000
Other Objects	46,719	221,575	161,683	426,411
Other Financing Uses	293,383	302,184	311,250	327,371
Total Expenditures	\$ 1,587,666	\$ 1,906,562	\$ 1,955,064	\$ 2,072,602
Vehicle/Equipment Replacement (601)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Property & Capital	\$ 412,816	\$ 375,557	-	-
Total Expenditures	\$ 412,816	\$ 375,557	\$ 0	\$ 0

PUBLIC WORKS DEPARTMENT REVENUES

ALL FUNDS	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Use of Money & Property	\$ 1,030	\$ 529	\$ 1,000	\$ 250
Intergovernmental Revenues	210,538	211,752	581,714	32,000
Charges for Services	1,933,121	2,014,693	2,084,148	2,205,542
Other Revenue	15,348	37,124	37,000	10,822
Other Financing Sources	-	-	18,585	-
TOTAL REVENUES—ALL FUNDS	\$ 2,160,037	\$ 2,264,098	\$ 2,722,447	\$ 2,248,614
General Fund (101)	FY 2010-11 Actual	FY 2011-12 Actual	FY 2012-13 Amended	FY 2013-14 Adopted
Intergovernmental Revenues	\$ 23,180	\$ 32,355	\$ 57,500	\$ 16,000
Charges for Services	187,857	183,753	194,820	190,000
Other Revenue	1,506	6,321	12,000	-



Comprehensive Annual Financial Report

Fiscal Year Ended June 30, 2013

10890 San Pablo Ave. El Cerrito, CA 94530
www.el-cerrito.org



December 31, 2013

To the Citizens of the City of El Cerrito
and the Honorable Mayor and Members of
the City Council:

I hereby submit this Comprehensive Annual Financial Report (CAFR) of the City of El Cerrito for the fiscal year ended June 30, 2013. Responsibility for both the accuracy of the data, and the completeness and fairness of the presentation, including all disclosures, rests with City management. To the best of our knowledge and belief, the enclosed data are accurate in all material respects and are reported in a manner designed to present fairly the financial position and results of operations of the various funds of the City. We have included all disclosures necessary to enable the reader to gain an understanding of the City's financial activities. This transmittal letter is intended to be read in conjunction with the Management Discussion and Analysis (MD&A) and the Financial Statements.

REPORTING ENTITY

The City of El Cerrito provides a full range of services, including police and fire protection; building permits and inspections; parks and recreation facilities and services, planning and environmental services, construction and maintenance of streets, public buildings, and other infrastructure and operation of a state of the art Recycling Center. The activities of several legally separate entities are included in the City's financial statements. The City serves as the reporting body for these entities, including the El Cerrito Successor Agency, the Pension Trust of the City of El Cerrito, the Municipal Services Corporation (MSC) and the El Cerrito Public Financing Authority. The City Council serves as the Board for these entities with the exception of the El Cerrito Successor Agency that has its own Oversight Board and the MSC which has a separate Board of Directors comprised of four City Councilmembers and two City staff.

CITY PROFILE

The City of El Cerrito is located across the Bay from the City of San Francisco in an area locally referred to as the East Bay. The City consists of about 3.9 square miles and has approximately 24,000 residents. El Cerrito is part of the West Contra Costa Unified School District (WCCUSD) which also serves other West County Communities. In El Cerrito, WCCUSD operates one early intervention preschool, three public elementary schools, one

public middle school, and one public high school. In 2013, there were also six independent schools in El Cerrito, and one campus in transition that is expected to re-open soon as a public charter school. The City has a variety of green spaces for public enjoyment including 32 acres of developed park grounds, over 100 acres of open space in the hillside natural area, a 2.7-mile multi-use trail known as the Ohlone Greenway, school recreation facilities, the privately owned Mira Vista Country Club (127 acres), and Boy Scouts of America's Camp Herms (18 acres). A portion of the Sunset View Cemetery and the City's eastern boundary are contiguous with the East Bay Regional Park District's Wildcat Canyon Regional Park (about 2,600 acres). El Cerrito also has a regional office of the California Department of Motor Vehicles, two Bay Area Rapid Transit (BART) Stations, a major regional shopping center, five banks, seventeen churches and some of the most spectacular views of four Bay Area bridges, San Francisco and the surrounding area.

ECONOMIC CONDITION AND FUTURE OUTLOOK

El Cerrito continued to provide services and programs at a level consistent with recent years. Even as the economy is slowly improving, El Cerrito like other California cities has been affected by the significant decline in property values and the loss of revenue from the dissolution of redevelopment. While some City revenues improved, revenue from property, sales and utility users taxes did not increase at the levels anticipated. The impact of property value reductions related to Proposition 8 were significant and while the housing market remained strong in El Cerrito, growth in assessed values lagged behind the strengthening real estate market. Still of significance is the ongoing impact of dissolution of the El Cerrito Redevelopment Agency and the loss of approximately \$1 million annually to the General Fund related to overhead support of the Agency. The loss of property tax increment revenue to the Redevelopment Agency is permanent; however, depending on the outcome of legal issues around the dissolution of redevelopment agencies, the Municipal Services Corporation may be able to collect revenues from the Redevelopment Successor Agency. This could fund development projects that benefit the City, but the outcome of relevant litigation is still uncertain and any recapturing of revenue will occur in future years.

El Cerrito's retail base consists of a regional shopping center, the El Cerrito Plaza, smaller retail nodes in the Del Norte area, a successful car dealership, and infill retail along the San Pablo Avenue corridor. Sales taxes have increased both locally and statewide. However, increases in sales tax revenues in El Cerrito during FY 2012-13 were partly the result of a misallocation of Home Depot sales tax that was due to the City of Richmond. This also affected the Measure R and Measure A district tax allocations. The Board of Equalization (BOE) made an adjustment at the end of FY 2012-13 reducing sales tax revenue the City received in the fiscal year. The impact of this correction totaled \$1.3 million. As the economy improves, sales tax collections are projected to increase, but this may be offset by further reductions by the BOE and the ongoing loss of sales tax revenues due to the closure of Guitar Center and Orchard Supply Hardware.

MAJOR INITIATIVES AND ACCOMPLISHMENTS

Despite the financial constraints, several significant projects were completed in FY 2012-13. Activities included continuing to provide high quality city services and a focus on long term planning that will strengthen City services over time. Accomplishments of note for the year include:

- Adoption of City's first formal Strategic Plan
- Completion of first Climate Action Plan
- Secured grants totaling more than \$2 million to purchase specialized fire equipment and apparatus
- Overall reductions in serious crimes throughout the City
- Completion of major street improvements resulting in a street quality ranking second in the Bay Area; up from the bottom ten, less than five years ago
- Opened a new state-of-the-art Recycling and Environmental Resource Center.

While there are many concerns still evident when evaluating the local, state and national economy, there are many positive factors to consider, especially in El Cerrito. Those positive factors include the trust of our residents as they have continued to support the recommendations of the City Council. This trust has provided for the development of programs that have made positive changes in the City such as the Measure A Street Improvement Program. The passage of the Measure R sales tax in 2010 demonstrates the continuation of that trust from our community by providing funds to maintain facilities, parks and programs that could be in jeopardy during these difficult times. In an era where trust in government is difficult to obtain, El Cerrito continues to receive the tremendous support of its residents and recognizes the responsibility to use those resources to maintain our high level of service.

FINANCIAL INFORMATION

Accounting System

The City's accounting and budgeting records for general government operations are maintained on a modified accrual basis, with the revenues being recorded when available and measurable, and expenditures being recorded when the service or goods are received and the liabilities are incurred. Accounting and budgeting for the City's proprietary funds are maintained on the accrual basis. Capital Assets are recorded in accordance within financial reporting standards.

Non-exchange transactions in which the City gives or receives value without directly receiving or giving equal value in exchange include taxes, grants entitlements and donations. On an accrual basis, revenue from taxes is recognized in the fiscal year for which the taxes are levied or assessed. Revenue from grants, entitlements and donations are recognized in the fiscal year in which all eligibility requirements have been met.

The City maintains an internal control structure designed to provide reasonable assurance that the City's assets are protected from loss, theft, or misuse, and to ensure that adequate accounting data are compiled to allow for the preparation of financial statements in conformity with generally accepted accounting principles. The internal control structure is designed to provide reasonable, but not absolute assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived; and (2) the valuation of costs and benefits requires estimates and judgments by management.

Budgeting Controls

The City of El Cerrito maintains budgetary controls to ensure compliance with legal provisions embodied in the annual appropriated budget approved by the City Council. Activities of the general fund, special revenue funds, capital projects funds, debt service funds, and proprietary funds are included in the annual appropriated budget. The level of budgetary control (that is the level at which expenditures cannot legally exceed the appropriated amount) is at the fund level.

Only the City Council has the authority to create or modify total appropriations of any fund, subject to only the appropriations limits established by State law. The City Council approved various supplemental appropriations during the year. The statements and schedules included in the financial section of this report indicate that the City continued to meet its responsibility for sound financial management.

OTHER INFORMATION

Independent Audit

The City Council selects an independent certified public accounting firm to perform a required annual audit of the City's financial records and transactions. Such an audit is also required through covenants related to the City's bonded indebtedness. The City has contracted with Maze & Associates, an independent auditor, to perform the audit and prepare the financial section of this report.

Awards

The City has once again been awarded the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association of the United States and Canada (GFOA) for its FY 2011-12 comprehensive annual financial report (CAFR). This is the ninth year that the City has received the award for the CAFR. In order to be awarded a Certificate of Achievement, a government must publish an easily readable and efficiently organized comprehensive annual financial report. This report must satisfy both generally accepted accounting principles and applicable legal requirements. A Certificate of Achievement is valid for a period of one year only. We believe that our current comprehensive annual financial report continues to meet the Certificate of Achievement Program's requirements and we are submitting it to the GFOA to determine its eligibility for another certificate.

Acknowledgments

The preparation of this Comprehensive Annual Financial Report was made possible by the dedicated efforts of staff Citywide and our audit firm, Maze & Associates. I would like to express special appreciation to Geoffrey Thomas, Finance Manager, and Lori Trevino, Senior Financial Analyst, for their dedication and hard work in preparing this report.

I would also like to thank the City Manager and the City Council for their outstanding leadership and ongoing commitment to the El Cerrito community.

Respectfully submitted,



Lisa K. Malek-Zadeh
Finance Director/City Treasurer

CITY OF EL CERRITO
NON-MAJOR GOVERNMENTAL FUNDS
COMBINING BALANCE SHEETS
JUNE 30, 2013

SPECIAL REVENUE FUNDS

	Gas Tax Fund	Landscape and Lighting Assessment Fund	Measure A Parcel Tax Fund	National Pollution Discharge Elimination System Fund	Federal, State, and Local Grants Fund
Assets					
Cash and investments			\$170,038		\$100,411
Cash and investments with fiscal agent					
Accounts receivable					
Due from other governments	\$43,060	\$9,122		\$4,465	101,334
Due from other funds			355,797		
Total Assets	<u>\$43,060</u>	<u>\$9,122</u>	<u>\$525,835</u>	<u>\$4,465</u>	<u>\$201,745</u>
Liabilities					
Accounts payable	\$7,509	\$37,932		\$9,664	\$5,787
Due to other funds	34,667	28,161		40,454	
Deposits payable					
Total Liabilities	<u>42,176</u>	<u>66,093</u>		<u>50,118</u>	<u>5,787</u>
Fund Balances					
Restricted for:					
Debt Service					
Street Improvements					
Transportation	884				
Public Safety					
Grants					195,958
Park and Recreation			\$525,835		
Storm Drains					
Public Art					
Unassigned		(56,971)		(45,653)	
Total fund balances (deficits)	<u>884</u>	<u>(56,971)</u>	<u>525,835</u>	<u>(45,653)</u>	<u>195,958</u>
Total liabilities and fund balances	<u>\$43,060</u>	<u>\$9,122</u>	<u>\$525,835</u>	<u>\$4,465</u>	<u>\$201,745</u>



SPECIAL REVENUE FUNDS

CAPITAL PROJECTS FUNDS

Asset Seizure Fund	Vehicle Abatement Fund	Park In Lieu Fund	Public Art Fund	Storm Drain Fund	Measure J Fund	Street Improvement Fund
\$225,567	\$156,206	\$12,000	\$48,089	\$161,611		\$131,135
					\$30 376,114	93,663
<u>\$225,567</u>	<u>\$156,206</u>	<u>\$12,000</u>	<u>\$48,089</u>	<u>\$161,611</u>	<u>\$376,144</u>	<u>\$224,798</u>
				\$44	\$31 375,638	\$26,721
<u>\$68,824</u>						
<u>68,824</u>				<u>44</u>	<u>375,669</u>	<u>26,721</u>
					475	198,077
156,743	\$156,206					
		\$12,000		161,567		
			\$48,089			
<u>156,743</u>	<u>156,206</u>	<u>12,000</u>	<u>48,089</u>	<u>161,567</u>	<u>475</u>	<u>198,077</u>
<u>\$225,567</u>	<u>\$156,206</u>	<u>\$12,000</u>	<u>\$48,089</u>	<u>\$161,611</u>	<u>\$376,144</u>	<u>\$224,798</u>

(Continued)

CITY OF EL CERRITO
NON-MAJOR GOVERNMENTAL FUNDS
COMBINING STATEMENTS OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
FOR THE YEAR ENDED JUNE 30, 2013

SPECIAL REVENUE FUNDS

	Gas Tax Fund	Landscape and Lighting Assessment Fund	Measure A Parcel Tax Fund	National Pollution Discharge Elimination System Fund	Federal, State, and Local Grants Fund
Revenues:					
Taxes and assessments		\$771,101	\$439,268		
Use of money and property			279		\$461
Intergovernmental revenues	\$565,287			\$315,202	2,960,501
Charges for services					
Other		3,188			
Total revenues	<u>565,287</u>	<u>774,289</u>	<u>439,547</u>	<u>315,202</u>	<u>2,960,962</u>
Expenditures:					
Current:					
General Government			11,390		32
Public works	494,511	1,078,514		308,165	2,719,257
Recreation		71,611			
Community development					97,008
Public safety					170,787
Capital outlay			42,276		457,473
Debt service:					
Principal					
Interest and fiscal agent fees					
Total expenditures	<u>494,511</u>	<u>1,150,125</u>	<u>53,666</u>	<u>308,165</u>	<u>3,444,557</u>
Excess (deficiency) of revenues over (under) expenditures	<u>70,776</u>	<u>(375,836)</u>	<u>385,881</u>	<u>7,037</u>	<u>(483,595)</u>
Other Financing Sources (Uses):					
Issuance of debt					
Transfers in	572,000	537,000	185,333	104,000	18,585
Transfers (out)	(642,675)	(161,169)	(359,513)	(106,641)	(5,369)
Total other financing sources (uses)	<u>(70,675)</u>	<u>375,831</u>	<u>(174,180)</u>	<u>(2,641)</u>	<u>13,216</u>
Net changes in fund balances	101	(5)	211,701	4,396	(470,379)
Fund Balances (Deficits) - July 1, 2012	<u>783</u>	<u>(56,966)</u>	<u>314,134</u>	<u>(50,049)</u>	<u>666,337</u>
Fund Balances (Deficits) - June 30, 2013	<u>\$884</u>	<u>(\$56,971)</u>	<u>\$525,835</u>	<u>(\$45,653)</u>	<u>\$195,958</u>



SPECIAL REVENUE FUNDS

CAPITAL PROJECTS FUNDS

Asset Seizure Fund	Vehicle Abatement Fund	Park In Lieu Fund	Public Art Fund	Storm Drain Fund	Measure J Fund	Street Improvement Fund
\$26,647	\$136 25,988	\$10	\$38	\$698,101 155	\$480,485	\$1,141,958 308
					13,553	28,565
<u>26,647</u>	<u>26,124</u>	<u>10</u>	<u>38</u>	<u>698,256</u>	<u>494,038</u>	<u>1,170,831</u>
				130,722	36,978 92,482	325,805
	6,144 32,700					
	<u>38,844</u>			<u>130,722</u>	<u>129,460</u>	<u>325,805</u>
<u>26,647</u>	<u>(12,720)</u>	<u>10</u>	<u>38</u>	<u>567,534</u>	<u>364,578</u>	<u>845,026</u>
				(406,000)	(363,786)	(996,722)
				(406,000)	(363,786)	(996,722)
26,647	(12,720)	10	38	161,534	792	(151,696)
<u>130,096</u>	<u>168,926</u>	<u>11,990</u>	<u>48,051</u>	<u>33</u>	<u>(317)</u>	<u>349,773</u>
<u>\$156,743</u>	<u>\$156,206</u>	<u>\$12,000</u>	<u>\$48,089</u>	<u>\$161,567</u>	<u>\$475</u>	<u>\$198,077</u>

(Continued)

CITY OF EL CERRITO
 BUDGETED NON-MAJOR FUNDS
 COMBINING SCHEDULE OF REVENUES, EXPENDITURES
 AND CHANGES IN FUND BALANCES
 BUDGET AND ACTUAL
 FOR THE YEAR ENDED JUNE 30, 2013

	Street Improvement Fund			Storm Drain - Debt Service Fund		
	Budget	Actual	Variance Positive (Negative)	Budget	Actual	Variance Positive (Negative)
Revenues:						
Taxes and assessments	\$1,385,000	\$1,141,958	(\$243,042)			
Use of money and property		308	308	\$100		(\$100)
Intergovernmental						
Charges for services						
Other	40,000	28,565	(11,435)			
Total Revenues	<u>1,425,000</u>	<u>1,170,831</u>	<u>(254,169)</u>	<u>100</u>		<u>(100)</u>
Expenditures:						
Current:						
General government				3,000	\$2,280	720
Public works						
Recreation						
Community development						
Public safety						
Capital outlay	754,232	325,805	428,427			
Debt service :						
Principal payments				480,000	512,300	(32,300)
Interest and fiscal fees				40,974	6,106	34,868
Total Expenditures	<u>754,232</u>	<u>325,805</u>	<u>428,427</u>	<u>523,974</u>	<u>520,686</u>	<u>3,288</u>
Excess (deficiency) of revenues over (under) expenditures	<u>670,768</u>	<u>845,026</u>	<u>174,258</u>	<u>(523,874)</u>	<u>(520,686)</u>	<u>3,188</u>
Other Financing Sources (Uses):						
Issuance of debt						
Transfers in						
Transfers (out)	(1,000,000)	(996,722)	3,278			
Total other financing sources (uses)	<u>(1,000,000)</u>	<u>(996,722)</u>	<u>3,278</u>			
Net Change in Fund Balances	<u>(\$329,232)</u>	<u>(151,696)</u>	<u>\$177,536</u>	<u>(\$523,874)</u>	<u>(520,686)</u>	<u>\$3,188</u>
Fund Balances (Deficits) - July 1, 2012		349,773			549,722	
Fund Balances (Deficits) - June 30, 2013		<u>\$198,077</u>			<u>\$29,036</u>	

**INDEPENDENT ACCOUNTANT'S REPORT ON
APPLYING AGREED UPON PROCEDURES
FOR THE CITY OF EL CERRITO
MASTER INSTALLMENT SALE AGREEMENT
COMPLIANCE WITH BOND COVENANTS
FOR THE 2008 SALES TAX REVENUE BONDS
FOR THE YEAR ENDED JUNE 30, 2013**

**INDEPENDENT ACCOUNTANT'S REPORT ON
APPLYING AGREED UPON PROCEDURES
FOR THE CITY OF EL CERRITO
MASTER INSTALLMENT SALE AGREEMENT
COMPLIANCE WITH BOND COVENANTS
FOR THE 2008 SALES TAX REVENUE BONDS**

Honorable Mayor and Members
of the City Council
City of El Cerrito, California

We have performed the procedures described below, which were agreed to by the City of El Cerrito solely to assist you with respect to determining compliance with the Master Installment Sale Agreement for the 2008 Sales Tax Revenue Bonds between the City and the Financing Authority for the year ended June 30, 2013. The activity for the 2008 Sales Tax Revenue Bonds is reported in the City's Comprehensive Annual Financial Report in the Street Improvement Capital Projects Fund and the Public Financing Authority Debt Service Fund. Management is responsible for the accounting records. This agreed upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States. The sufficiency of these procedures is solely the responsibility of the City. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and findings are as follows:

1. We obtained the Master Installment Sale Agreement (Agreement) between the City and the Financing Authority dated June 1, 2008.
2. Section 2.03 of the Agreement – Improvement Fund – requires that the proceeds be used for acquisition and construction of the Projects (or to reimburse the City for costs paid by it) including the payment of interest on the Obligations upon receipt of a sequentially numbered “Request of the City” filed with the City Manager (see Attachment A to the Agreement), therefore we:
 - a. Obtained a listing of City Council-designated Projects for the fiscal year.
 - b. Obtained a listing of “Request of the City” filed with the City Manager for the fiscal year. In fiscal year 2013, there were no remaining funds available for the City to draw from, therefore a “Request of the City” was not filed with the City Manager during the year.
 - c. Selected a sample of six expenditures totaling \$280,807 charged to the Improvement Fund during the fiscal year, of total capital improvement expenditures of \$325,805.
 - d. Tested the above expenditures to determine that they were made in accordance with the City's purchasing policy.

- e. Selected a sample of three transfers out totaling \$755,914 charged to the Improvement Fund during the fiscal year, of total transfers out of \$996,722. Two of the transfers were related to the prefunding of a project being constructed by the City and \$187,717 of the funds remained unspent and held by the City's Capital Improvement Capital Projects Fund as of June 30, 2013.
 - f. Determined that the expenditures and transfers out were related to a City Council-designated project (2a above).
 - g. Inquired as to whether the projects were complete as of the end of the fiscal year and, if so, whether excess funds were available from the Improvement Fund. The Agreement indicates that excess funds in the Improvement Fund, when all Projects are complete, can be transferred to the City "for any lawful purpose of the City subject to the provisions of any Tax Certificate". However, Section 4.60.150 of the City's Municipal Code limits the use of funds for pothole repair and street improvement and maintenance services. We found that two Projects were completed as of the end of the fiscal year. However, no excess funds were available as of June 30, 2013, as defined in the Master Installment Sale Agreement, as all proceeds from the 2008 Sales Tax Revenue Bonds were fully expended in fiscal year 2011.
3. We obtained a confirmation of Sales Tax Add-On Revenues for the fiscal year from the State Controller's Office to reconcile to the revenues recorded in the general ledger in the Street Improvement Capital Projects Fund.
 - a. The State Controller's Office confirmation reconciled to the general ledger total in the Street Improvement Capital Projects Fund of \$1,141,958, which is net of a State Board of Equalization (BOE) adjustment of \$293,357. During fiscal year 2013, the BOE completed two separate reviews related to the allocation of sales taxes between the City of El Cerrito and the City of Richmond for one commercial property that borders both cities. The reviews date back to 2006. In April 2013, the BOE found that the Street Improvement sales tax add-on revenues had been misallocated by \$292,357 from fiscal year 2009 through 2013, and the June 2013 remittance was reduced in that amount.
 4. Section 4 of the Agreement – Covenants of the City – Based on the testing above, we obtained documentation of the City's compliance with the provisions of this Section which generally require that the City pay its bills timely and use the proceeds in accordance with the definition of "Projects" above, and complete the Projects in a timely manner.
 - a. It appears that the City paid its bills timely and used the proceeds in accordance with the Agreement. Two Projects were completed during the fiscal year, but not all Projects were complete as of the end of the fiscal year.

5. Section 7.01 of the Agreement – Liability Limited to Revenues – We inquired as to whether the City advanced funds for payment of the Obligations other than from the Revenues. Revenues, as defined in the Agreement include the Sales Tax Add-On Revenues and interest earned from the investment of those funds. If yes, we obtained documentation that the City was reimbursed from the Revenues as defined in the Agreement. (Other subsections of Section 7 do not appear to be of compliance significance, therefore only this covenant is being included in the agreed upon procedures).
 - a. The City made payments of the Obligations only from the Revenues during the fiscal year. The City did not advance funds for payment of the Obligations during the fiscal year.
6. We obtained documentation of compliance with provisions of Section 2.02 of the Agreement – Revenue Fund; Pledge of Revenues:
 - a. Were principal and interest payments made from the Revenue Fund for all parity obligations?
 - i. Not applicable – the City does not have any parity obligations outstanding at June 30, 2013.
 - b. Were excess revenue funds (after the payment of parity obligations) used for the payment of any supplemental or subordinate obligations?
 - i. Not applicable – the City does not have any supplemental or subordinate obligations outstanding at June 30, 2013.
 - c. Revenues cannot be used for termination payments unless specific conditions are met as defined in 2.02(B)(1) – were any termination payments made with pledged revenues?
 - i. No termination payments were made during the fiscal year.
7. Section 3.01 of the Agreement -- Parity Obligations – We inquired as to whether the City issued any parity obligations during the fiscal year, and if yes, obtained documentation that the City complied with provisions of this Section.
 - a. The City did not issue any parity obligations during fiscal year 2013.
8. Section 3.02 of the Agreement – Subordinate Obligations – We inquired as to whether the City issued any subordinate obligations during the fiscal year, and if yes, obtained documentation that the City complied with the provisions of this Section.
 - a. The City did not issue any subordinate obligations during fiscal year 2013.
9. Section 3.03 of the Agreement – Execution of Supplemental Installment Sale Agreements (other than the First Supplement) – We inquired as to whether the City executed any supplemental installment sales agreements during the fiscal year, and if yes, obtained documentation that the City complied with the provisions of this Section.
 - a. The City did not execute any supplemental installment sales agreements during fiscal year 2013.

10. Section 5 of the Agreement – Events of Default and Remedies – We inquired as to whether any of the Events of Default, as defined in the Section, occurred during the fiscal year. If yes, we obtained documentation that the revenues were applied in the manner set forth in this Section.

a. No Events of Default, as defined in the Section, occurred during the fiscal year.

11. Section 6 of the Agreement – Discharge of Obligations – This Section is applicable only if the City pays all of the Obligations (debt to the Authority), therefore, we would obtain documentation of compliance with this Section if the City has repaid all of the Obligations during the fiscal year.

a. The City did not pay all of the debt to the Authority during the fiscal year.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or internal controls. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the City; however, this restriction is not intended to limit the distribution of this report, which is a matter of public record.

Mane & Associates

Pleasant Hill, California
December 31, 2013



Date: April 3, 2014
To: El Cerrito City Council
From: Citizen Street Oversight Committee
Subject: Annual Report to City Council and Citizens of El Cerrito

On this date, the Citizen Street Oversight Committee met to review expenditures of revenue collected pursuant to Chapter 4.60 of the El Cerrito Municipal Code to determine whether such funds were expended for the purposes specified in the current Street Repair and Maintenance Expenditure Plan. The expenditures reviewed were reported for Fiscal Year 2012-13, and were summarized in the City's Comprehensive Annual Financial Report. Further, the Committee reviewed the Agreed Upon Procedures Report issued by the City's independent auditors, Maze and Associates, which stated that nothing came to their attention that caused them to believe that the City had failed to comply with the terms, covenants and conditions of the Master Installment Sale Agreement related to the bond issue. The Committee also reviewed a detailed list of vendors to whom the expenditures were made.

By a unanimous vote, the Committee found that the expenditures were an appropriate use of the Pothole and Local Street Improvement and Maintenance Transactions and Use Tax. The Committee is hereby reporting their findings to the City Council and the citizens of the City of El Cerrito pursuant to Section 2.04.320 C of the El Cerrito Municipal Code.

Thomas Miller, Chair, Citizen Street Oversight Committee



**Need to miss a Commission Meeting?
Excused and Unexcused Absences on El Cerrito Boards and Commission**

If you know in advance that you will miss a board, commission or committee meeting for any reason, you are encouraged to contact your staff liaison regarding any absence from the meeting in order for it to be excused. The request must be made in advance of the commission meeting.

Quick facts about Absences:

- Members who are absent for three consecutive regularly scheduled meetings without cause are presumed to have resigned.
- Members who miss half the regular meetings in a calendar year are presumed to have resigned.
- An absence shall be considered excused if either:
 1. The member informs the staff liaison of his or her intended absence at least twenty-four hours prior to the scheduled time of the meeting; or
 2. Such absence is due to unforeseeable and unavoidable circumstances and reported and explained in writing to the staff liaison prior to the next meeting of the board or commission. Excused absences for reasons (*an extended leave of absence*) shall not exceed a period of one hundred twenty calendar days.

For additional information, please contact your staff liaison or refer to the El Cerrito Municipal Code 2.04.220, Sections 4(b) and 4(c) which are available on the City's website at: <http://www.el-cerrito.org/index.aspx?nid=119>.