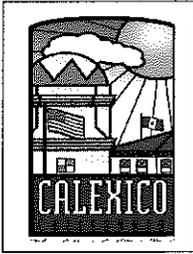


**AGENDA  
ITEM**

**7**



# AGENDA STAFF REPORT

**DATE:** September 1, 2015

**TO:** Mayor and City Council

**APPROVED BY:** Richard N. Warne, City Manager *RW*

**PREPARED BY:** Gabriela T. Garcia, Deputy City Clerk

**SUBJECT:** Approval of City Council/Calexico Community Redevelopment Agency Successor Agency/Calexico Financing Authority Minutes for Meetings of February 23, 2010, March 16, 2010, March 24, 2010, June 1, 2010, December 15, 2009, June 30, 2009, July 15, 2009, August 4, 2009.

=====

**Recommendation:**

Approval of City Council/Calexico Community Redevelopment Agency Successor Agency/Calexico Financing Authority Minutes for Meetings of February 23, 2010, March 16, 2010, March 24, 2010, June 1, 2010, December 15, 2009, June 30, 2009, July 15, 2009, August 4, 2009.

**Background:**

In accordance with Municipal Code Section 2.04.070, the City Clerk shall prepare minutes of the proceedings of each City Council Meeting.

**Discussion & Analysis:**

Approval of City Council/Calexico Community Redevelopment Agency Successor Agency/Calexico Financing Authority Minutes for Meetings of February 23, 2010, March 16, 2010, March 24, 2010, June 1, 2010, December 15, 2009, June 30, 2009, July 15, 2009, August 4, 2009 have been prepared for City Council review and approval.

**Fiscal Impact:**

None.

**Coordinated With:**

None.

AGENDA  
ITEM  
**7**

**Attachments:**

Minutes for City Council/Calexico Community Redevelopment Agency Successor Agency/Calexico Financing Authority Minutes for Meetings of February 23, 2010, March 16, 2010, March 24, 2010, June 1, 2010, December 15, 2009, June 30, 2009, July 15, 2009, August 4, 2009.

**THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY MET IN SPECIAL SESSION ON THE 23<sup>RD</sup> DAY OF FEBRUARY, 2010 6:30P.M. AT THE CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.**

**SPECIAL SESSION – 5:30P.M.**

**CALL TO ORDER**

The Special Session portion of the agenda was called to order at 5:30p.m.

**ATTENDANCE**

Mayor: David B. Ouzan  
Mayor Pro Tem: John M. Moreno  
Councilman: Luis J. Castro  
Councilman: Daniel F. Romero  
Councilman: Guillermo Hermosillo

**PLEDGE OF ALLEGIANCE**

Jennifer Lyon, City Attorney led those present in the Pledge of Allegiance

**APPROVAL OF AGENDA**

Motion was made by Mayor Pro Tem Moreno to approve the agenda, seconded by Councilman Hermosillo and passed by the following vote to wit:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:**

No public comments.

**BUSINESS ITEMS**

**CONSIDER RESOLUTION AND ORDINANCES TO SUBMIT A BALLOT MEASURE TO THE VOTERS FOR THE JUNE 8, 2010 ELECTION RELATED TO A HALF CENT SALES TAX FOR PUBLIC SAFETY**

City Attorney Lyon stated that the item before the City Council is whether or not that City Council would like to submit a ballot measure to the voters for the June 8, 2010 election related to a half cent sales tax. She informed the City Council that it requires 4 Council member vote in order to put a special tax or general tax on the ballot. She said that the City Council would need to make a

decision tonight in order for the City Council to do the first reading of the ordinance and schedule the second reading of the ordinance for next week regular City Council meeting. City Attorney Lyon stated that the item on the agenda is for a half cent sales tax that would be a special tax and it will go specifically to fund Police and Fire purposes.

City Attorney Lyon stated that she drafted a general tax measure which will only go into to the general fund and would not be specified for any special purpose. She said it will be used for anything the general fund provides funding for. She stated that the difference between the special tax and the general tax is that the special tax once it goes to voters needs to be approved by 2/3 vote. She informed the City Council that the general tax only requires the majority vote of the voters to be approved. She stated that tonight she did provide the general tax item to the City Council in hard copy form.

City Attorney Lyon informed the City Council that they can change, amend and/or if like a special tax option but do not want it to go to Police and Fire they can make those changes tonight.

Victor Carrillo, City Manager informed the City Council that the tax itself will generate approximately \$2,000,000 annual and it can be determined by the City Council if the funding will supplement an existing account, department or it can be used to supplant (possibly go to Police, Fire and/or Recreation).

Mayor Ouzan stated that he has received calls from unions that are willing to help and campaign for this measure. He said that this money can assist the City in have another substation, equipment and additional Police Officers. He stated that his intention is to create jobs where it is needed with the money that will be received if the measure is approved. Mayor Ouzan said that his concern is the 2/3 vote and the voters will make the ultimate decision. He does understand that if approved down the line the City Council will need to create a subcommittee which will discuss how the money will be spent. He said that the City will have to have a good plan to show the community how the money will be spent. Mayor Ouzan stated that this is a twenty (20) year plan to generate more revenue, get back on track, and bring more police officers and firefighters.

Mayor Pro Tem Moreno stated that a strategic plan is necessary as to where this money is going to go so the community can be informed. He inquired if there are hidden administrative cost if the measure is approved and how will that affect the funding to the general fund.

City Attorney Lyon informed Mayor Pro Tem Moreno that the City would need to enter into a contract with the State to provide the sales tax revenue to the City which is part of the ordinance if adopted but she is not aware of additional administrative costs.

Judith Hashem, Finance Director stated that she is not aware of any additional fee they would charge.

Councilman Hermosillo said that he agrees that this measure should go to the poll and the voters to decide the quality of services they will receive in the future.

Mayor Ouzan stated that the City Council needs to make a decision tonight whether they want a special tax or a general tax.

Councilman Romero said that a measure similar to this was attempted in 2008 and he voted against it because it was for parks, recreation and other general fund issues. He stated that at that time he made a comments that if a measure was ever put forward for public safety he would full support it. Councilman Romero said that all this time there has been discussions of putting a measure together for public safety and now the City Council wants to include recreation, street repairs, etc. He stated that for the record he will oppose the measure because all this time he always believed that the measure was going for public safety.

City Manager Carrillo informed the City Council that the Imperial County last year passed Measure "D" to extend forty (40) years which is a half cent sales tax for public works projects, street repairs, bus stops, etc. He said that the City currently get \$1,600,000 to \$2,000,000 annually, therefore, the City can use that funding for roads and street repairs and the City can earmark possible 50% or 75% of the general tax to Police and Fire, and have the remaining percentage on a rotating basis for recreation, parks and library.

City Attorney Lyon stated that the ordinance does not have a provision that requires a Citizens Advisory Committee and inquired if the City Council would like to add a provision that stipulates a Citizens Advisory Committee into the ordinance.

Mayor Ouzan informed City Attorney Lyon to add the provision of a Citizens Advisory Committee into the ordinance.

City Attorney Lyon inquired if there are any changes to the general tax ballot question. She continued and read the ballot question:

*"Shall the ordinance to prevent further cuts and preserve funding for general City services including fire protection and paramedics, police protection and crime prevention, street repair and maintenance, and avoiding closure of recreation programs, parks and library by enacting a half cent sales tax for twenty years be adopted."*

Mayor Ouzan informed City Attorney Lyon that the general tax ballot question is good as is.

Motion was made by Mayor Ouzan to adopt a resolution of the City Council of the City of Calexico calling and giving notice of the holding of a General Municipal Election on Tuesday, June 8, 2010; ordering submission of a ballot measure to the voters as required by the provisions of the laws of the State of California relating to general law cities; requesting the Board of Supervisors of the County of Imperial to render specified services to the City; and authorizing the filing of an impartial analysis and written arguments relating to a measure to approve an ordinance implementing a 0.50 percent transactions and use tax (a sales tax) and approve the ballot question. Motion seconded by Councilman Hermosillo and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Hermosillo  
NOES: Romero

ABSENT: None

Motion was made by Mayor Ouzan to adopt an ordinance of the City of Calexico ordering the submission of a measure to impose transactions and use tax (sales tax) in the amount of 0.50 percent to the Qualified Voters of the City at the General Municipal Election to be held on June 8, 2010, add Citizen Advisor Committee to the ordinance and approve the ballot question. Motion was seconded by Councilman Hermosillo and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Hermosillo  
NOES: Romero  
ABSENT: None

Motion was made by Mayor Ouzan to adopt an ordinance of the City of Calexico to add Chapter 3.27 "General Fund Transactions and Use Tax" to Title 3 "Revenue and Finance" of the Calexico Municipal Code to impose a transactions and use tax to be administered by the State Board of Equalization and add a provision in Section 17 that requires a Citizens Advisory Committee to advise on the use of the proceeds of the general tax. Motion was seconded by Mayor Pro Tem Moreno and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Hermosillo  
NOES: Romero  
ABSENT: None

**ADJOURNMENT**

There being no further business in Special Session, Mayor Ouzan convened the City Council into Closed Session to discuss the following item:

- A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager

Closed Session Report: No reportable action taken.

There being no further business, meeting was adjourned.

\_\_\_\_\_  
David Ouzan, Mayor

Attest:

\_\_\_\_\_  
Lourdes Cordova, City Clerk

**THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY MET IN REGULAR SESSION ON THE 16<sup>TH</sup> DAY OF MARCH, 2010 6:30P.M. AT THE CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.**

**CLOSED SESSION – 5:30P.M.**

**CALL TO ORDER**

The Closed Session portion of the agenda was called to order at 5:30p.m.

**ATTENDANCE**

Mayor: David B. Ouzan  
Mayor Pro Tem: John M. Moreno  
Councilman: Luis J. Castro  
Councilman: Daniel F. Romero  
Councilman: Guillermo Hermosillo

The City Council convened into Closed Session at 5:30p.m. to discuss the following:

- A. CONFERENCE WITH LABOR NEGOTIATORS  
Agency Representatives: Victor M. Carrillo, Judith Hashem, Rosalind Guerrero, Jennifer Lyon.  
Employee Organization: SEIU/CMEA; SEIU/Water-Wastewater Operators Assoc.; Supervisors Assoc.; Police officers Assoc.; Fire Fighters Assoc.; and Unrepresented Employees.
- B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager.
- C. RDA ITEM – CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: 2441 Scaroni Rd, Parcel No. 1  
Negotiators: Victor Carrillo and Rosalind Guerrero  
Negotiating Parties: Warren Owen/MTC  
Under Negotiation: Price and terms of sale

City Council reconvened from Closed Session at 6:25p.m.

Jennifer Lyon, City Attorney reported that the City Council meet in closed session and discussed Item A, direction was given and no reportable action. She stated that City Council will discuss Item B and C after open session.

**REGULAR SESSION – 6:30P.M.**

**CALL TO ORDER**

The regular session portion of the agenda was called to order at 6:30p.m. by Mayor Ouzan.

**ATTENDANCE**

(All Council members were present: Ouzan, Moreno, Castro, Romero, Hermosillo)

**PLEDGE OF ALLEGIANCE**

Mayor Pro Tem Moreno led those present in the Pledge of Allegiance

**APPROVAL OF AGENDA**

Victor Carrillo, City Manager pulled presentation 2010-2011 Budget Discussion Related to Increasing Revenue and Decreasing Costs from the agenda.

Motion was made by Mayor Pro Tem Moreno to approve the agenda with the removal of Item No. 22, 23 and 2010-2011 Budget Discussion Related to Increasing Revenue and Decreasing Costs, seconded by Councilman Hermosillo and passed by the following vote to wit:

AYES:	Ouzan, Moreno, Castro, Romero, Hermosillo
NOES:	None
ABSENT:	None
ABSTAIN:	None

**ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:**

Rosanna Bayon Moore, Southern Association of Governments (SCAG) invited the City Council to SCAG's Regional Conference and General Assembly scheduled for May 5, 2010 thru May 7, 2010 in La Quinta, California.

**GENERAL COMMENTS BY CITY COUNCIL MEMBERS/RDA BOARD MEMBERS**

Mayor Pro Tem Moreno made a PowerPoint presentation regarding his trip to Washington, D.C. on March 3, 2010 thru March 4, 2010 and provided a brief synopsis of who they met with and projects that were discussed. He stated that a delegation of Calexico representatives went to Washington, D.C. to advocate for the City.

Councilman Castro requested an update on the half cent sales tax measure.

City Manager Carrillo informed Councilman Castro that he met with Mark Capitola from Duffy & Capitola who assisted the Imperial County, IVAG and all the cities in getting Measure D extension passed in 2008. He also said that he would be meeting with bargaining units and will setup a plan to meet with stakeholders and develop a committee in order to get public education out to the community in the next two (2) months.

**PRESENTATIONS:**

**PROCLAMATION – CESAR E. CHAVEZ DAY**

Ricardo Ortega, Calexico Neighborhood House introduced members of the Cesar E. Chavez Committee. He invited the City Council and those present to a community BBQ at 6:00p.m. on March 26, 2010.

Mayor Ouzan presented the proclamation for Cesar E. Chavez Day to Rosa Corona, UFW.

**PROCLAMATION – HONORING CALEXICO HIGH SCHOOL PRINCIPLE GILBERT BARRAZA**

Mayor Pro Tem Moreno read and presented the proclamation honoring Calexico High School principle Gilbert Barraza.

Mr. Barraza said he accepted the proclamation on behalf of this staff and thanked the City Council for the recognition.

**CONSENT**

Councilman Hermosillo pulled Item No. 7.

Mayor Ouzan pulled Item No. 10.

Councilman Castro pulled Item No. 2.

Motion was made by Mayor Pro Tem Moreno, seconded by Councilman Romero to approve consent agenda consisting of the following: Approve City Council/RDA minutes for March 2, 2010; Approve Alcoholic Beverage License for Tacomex, 2451 Rockwood Ave., Ste. 120; Approve Budget Amendment Resolution for Adult Literacy Program that is based on additional grant funds received; Authorize the City Manager to execute the Agreement with David Taussing and Associates, Inc. for Mello-Roos Administration Services for CFD No. 2003-1; Authorize City Manager to execute a professional consultant agreement with Dudek, Inc. to prepare a comprehensive update to the Zoning Code/Map and to prepare a General Plan/Zoning consistency program; Authorize City Manager to sign an agreement with BJ Engineering and Surveying, Inc. to provide consultant engineering services for the design completion of the Central Main Bridge Widening; Approve a lease agreement with the Calexico Parents Athletic League for the office trailer located at 601 Kloke Avenue; Approve the proposed ambulance zone change recommended by the Fire Chief to the Imperial County Emergency Medical Services Manager; Authorization to observe Cesar Chavez holiday on Monday, March 29, 2010 (Cesar Chavez Day falls on Wednesday, March 31, 2010), motion passed by the following vote to wit:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None  
ABSTAIN: None

**APPROVE CITY COUNCIL/RDA/CALEXICO SCHOOL BOARD JOINT MEETING MINUTES FOR FEBRUARY 17, 2010**

Councilman Castro stated that he didn't attend the meeting and requested an update.

City Manager Carrillo informed Councilman Castro that the joint meeting between the City of Calexico and Calexico Unified School District (CUSD) was to talk about the passed through monies that the City, RDA and CUSD have in a joint sharing agreement.

Motion was made by Mayor Pro Tem Moreno to approve City Council/RDA/Calexico School Board Joint Meeting minutes for February 17, 2010. Motion seconded by Councilman Hermosillo and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

**AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT WITH DYNAMIC CONSULTING ENGINEERS, INC. TO PROVIDE AS NEEDED CONSULTANT ENGINEERING SERVICES ASSISTANCE FOR CAPITAL IMPROVEMENT PROJECTS AND PRIVATE DEVELOPMENT PROJECTS**

Councilman Hermosillo requested a list of transportation project for the next City Council meeting.

Motion was made by Mayor Pro Tem Moreno to authorize the City Manager to execute agreement with Dynamic Consulting Engineers, Inc. to provide as needed consultant engineering services assistance for capital improvement project and private development projects. Motion seconded by Councilman Hermosillo and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

**AUTHORIZE THE AWARD OF A CONTRACT TO W2 DESIGN INC. AND TRAFFIC SAFETY ENGINEERS TO PROVIDE CONSULTANT SERVICES FOR ADMINISTERING THE ECONOMIC DEVELOPMENT ADMINISTRATION GRANT NO. 71-01-06185**

Mayor Ouzan stated that he pulled this item because he would like to discuss the property in closed session.

Motion was made by Mayor Ouzan to table this item and have it moved to closed session. Motion seconded by Councilman Romero and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None

ABSENT: None

## **PUBLIC HEARINGS**

### **GENERAL PLAN AMENDMENT NO. 2010-02 FOR HOUSING ELEMENT AMENDMENT**

Motion was made by Mayor Pro Tem Moreno to set a public hearing on April 6, 2010. Motion seconded by Councilman Hermosillo and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

### **GENERAL PLAN AMENDMENT NO. 2010-01 AND ZONE CHANGE NO. 2010-01 (CHELSEA). PROPOSED GENERAL PLAN AMENDMENT FOR LDR, LOW DENSITY RESIDENTIAL TO HDR, HIGH DENSITY RESIDENTIAL AND SUBSEQUENT ZONE CHANGE FROM PUD, PLANNED UNIT DEVELOPMENT TO R-A, RESIDENTIAL APARTMENT (20-30 UNITS/ACRE) FOR APPROXIMATELY 6 ACRES LOCATED WITHIN THE MEADOWS VILLAGE SUBDIVISION, LOT 2, UNIT 8**

*Mayor Ouzan opened the public hearing at 7:13p.m.*

No comments in-favor nor against.

*Mayor Ouzan closed the public hearing at 7:18p.m.*

Motion was made by Mayor Ouzan to adopt resolution approving Negative Declaration No. 2010-01 without monitoring plan for General Plan Amendment No. 2010-01 and Zone Change No. 2010-01. Motion seconded by Councilman Hermosillo and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

Motion was made by Mayor Pro Tem Moreno to adopt resolution approving General Plan Amendment No. 2010-01. Motion seconded by Councilman Hermosillo and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

Motion was made by Mayor Pro Tem Moreno to adopt ordinance of the City Council of the City of Calexico, California approving a change of zone change from PUD, Planned Unit Development to RA, Residential Apartments (20-30 units per acre) for approximately 6 acres of land generally

located within the Meadows Village Subdivision Unit 2, Lot 8 (Zone Change No. 2010-01. Motion seconded by Councilman Hermosillo and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

## **BUSINESS ITEMS**

### **CONSIDER RESOLUTION REGARDING RECOGNITION FOR CITY DONATIONS OR IN-KIND CONTRIBUTIONS**

Motion was made by Councilman Romero to adopt resolution of the City Council of the City of Calexico regarding recognition for City donations or in-kind contributions. Motion seconded by Councilman Hermosillo and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

### **APPOINTMENT TO LIBRARY BOARD BY COUNCILMAN HERMOSILLO**

Councilman Hermosillo appointed Annette Chew to the Library Board.

## **FUTURE AGENDA ITEMS**

Mayor Ouzan stated he would like staff to look into increasing the amount for the Storefront Improvement Program.

Councilman Castro request an item on the next City Council agenda to reduce Department Heads salaries by twenty percent (20%).

## **INFORMATION ITEMS**

### **FINANCIAL REPORT AS OF FEBRUARY 2010**

Councilman Romero stated that Item No. 19 will be discussed next week, therefore he does not have any comments at this moment.

### **ARTS COMMISSION MINUTES FOR FEBRUARY 3, 2010**

City Council acknowledged receipt Arts Commission minutes for February 3, 2010.

### **CODE ENFORCEMENT REPORT ON ILLEGAL GARAGE CONVERSIONS**

Armando Villa, Director of Community Development Services informed the City Council that Code Enforcement has been working on a project for several weeks in which they have inventoried every house in the City.

Ralph Morales, Building Manager gave a presentation to City Council regarding garage enclosures that are in compliance with those that are not in compliance within City limits. Building Manager Morales stated that staff has come up with two (2) options to correct this problem. He said Option No. 1 would be to draft an amnesty program which will be for about three (3) to six (6) months, waiving the zoning standards, only focus on building standards for healthy and safety, and reducing permit fees possibly by fifty percent (50%) to encourage owners to come in and comply. Building Manager Morales said that Option No. 2 would be to use Code Enforcement to contact the property owner and request them to comply through a conversion process in which Code Enforcement will issue notice of violation to the property owner and they will be given a timeframe to comply. He mentioned that if they fail to comply a citation will be given to them. He stated that the 1<sup>st</sup> citation will be for \$150, 2<sup>nd</sup> citation will be for \$300, 3<sup>rd</sup> citation will be for \$500 and if they don't comply after that the property owner will be taken to court. Building Manager Morales requested City Council direction as to proceed with illegal garage enclosures.

City Council gave direction to staff to proceed in developing an amnesty program and bring it back to City Council for review and approval.

## **REDEVELOPMENT AGENCY BOARD**

### **CONSENT**

City Manager Carrillo informed the City Council that the project applicant has requested that the public hearing be set for March 30, 2010 instead of April 6, 2010.

Motion was made by Mayor Ouzan, seconded by Councilman Romero to approve consent agenda consisting of the following: Set Public Hearing for March 30, 2010 for the Agency's proposed land transfer to Warren Owen doing business as Medical Office Building, LLC.; motion passed by the following vote to wit:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None  
ABSTAIN: None

### **BUSINESS**

#### **REQUEST BY FELIX MEZA (DOING BUSINESS AS EL SOL DEL VALLE) FOR A \$50,000 LOW INTEREST LOAN**

Motion was made by Mayor Ouzan to approve request by Felix Mesa (doing business as El Sol Del Valle) for a \$50,000 low interest loan. Motion seconded by Councilman Romero and passed by the following:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

**ADJOURNMENT**

There being no further business in Special Session, Mayor Ouzan convened the City Council into Closed Session to discuss the following items:

**B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: City Manager.

**C. RDA ITEM – CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Property: 2441 Scaroni Rd, Parcel No. 1

Negotiators: Victor Carrillo and Rosalind Guerrero

Negotiating Parties: Warren Owen/MTC

Under Negotiation: Price and terms of sale

Closed Session Report: No reportable action taken.

There being no further business, meeting was adjourned.

---

David B. Ouzan, Mayor

Attest:

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Lourdes Cordova, City Clerk

**THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY MET IN SPECIAL SESSION ON THE 24<sup>TH</sup> DAY OF MARCH, 2010 6:30P.M. AT THE CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.**

**SPECIAL SESSION – 5:30P.M.**

**CALL TO ORDER**

The Special Session portion of the agenda was called to order at 5:40p.m. by Mayor Ouzan.

**ATTENDANCE**

Mayor: David B. Ouzan  
Councilman: Luis J. Castro  
Councilman: Daniel F. Romero  
Councilman: Guillermo Hermosillo

**ABSENT**

Mayor Pro Tem: John M. Moreno  
*(Mayor Pro Tem Moreno arrived at 5:50p.m)*

**PLEDGE OF ALLEGIANCE**

Lourdes Cordova, City Clerk led those present in the Pledge of Allegiance

**APPROVAL OF AGENDA**

Motion was made by Councilman Romero to approve the agenda, seconded by Councilman Hermosillo and passed by the following vote to wit:

AYES: Ouzan, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: Moreno  
ABSTAIN: None

**ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:**

No public comments.

**PUBLIC WORKSHOP**

**FISCAL YEAR 2009-2010 BUDGET UPDATE**

Judith Hashem, Finance Director gave a short update on February 2010 financial. She said that there was no significant change from the January 2010 financial, the year to date revenue is 52% of the budget while the expenditures are 61% of the budget. She stated that the original budget

appropriation were \$20.1 million and the revenues were \$19 million, the difference was to come from fund balance carry over from FY 2008-2009 including sales of property. Finance Director Hashem informed the City Council that because revenues seem to continue to decline, budget adjustments are necessary to reduce appropriations to meet the revenue level. She said that the latest estimate of revenues that will be received as of June 30, 2010 is \$17.8 million. She stated that departments have been given a bottom line maximum and have been asked to submit line item reduction in their budget to meet the adjusted budget amount. Finance Director Hashem stated that the adopted budget must be reduced by 6%-7%, the reduction were based on an analysis performed on the level of expenditures for July 2009 through December 2009, which is the first 6 months of the fiscal year.

Finance Director Hashem informed the City Council that the City cannot continue to cut supplies and services to unrealistic levels. She states that departments need basic operating supplies and equipment. She said that the \$20 million budget was based on service levels and it is not feasible to continue the service level if the resources are not available.

Victor Carrillo, City Manager said that the goal of the City is to continue to deliver the maximum level and quality of services at a lower cost that does not exceed projected revenue. He stated that the City will be looking at long term vs. short term objectives and see where the City can come up with increase and sources of revenue as well as trimming expenditures. City Manager Carrillo said that the City will need to prioritize services and programs. He said that the City will do whatever it can to look at the saving and cut in costs in order for the employees not to be impacted. He stated that he want to maintain the same level of workforce.

City Manager Carrillo gave a brief overview of the handout that was provided to the City Council and those in attendance.

*Mayor Pro Tem Moreno arrived at 5:50p.m.*

#### **FISCAL YEAR 2010-2011 BUDGET DISCUSSION. DISCUSSION REGARDING REVENUE RAISING OPPORTUNITIES AND POTENTIAL COST-SAVING MEASURES**

City Manager Carrillo went over the potential reduction and increase revenue on non-meet and confer items:

1. Terminating any unused data and phone lines that are currently incurring charges.
2. Paper reduction at 25%, the City impact would be cost saving and staff time, storage, shredding, copier usage, and improving use of technology.
3. Cooperative purchasing of products and services.
4. Department heads conducting a City to City comparison of services.
5. Participating the in U.S. Community National Cooperative Purchasing Program.
6. Renaming facilities for a price to the highest bidder.
7. Central purchasing
8. Eliminate video of City Council meetings
9. Eliminate translation services

10. Consider adjusting ambulance and emergency response fee schedule.
11. Consider fire recovery cost on vehicle accidents.
12. Reduce contractual services agreement in the General Services Department.
13. Long term financing for energy efficient air conditioners for City facilities.
14. Eliminating all none essential general fund overtime.
15. Workers compensation and wellness program.
16. General liability insurance prevention program.
17. Eliminate community promotion projects.
18. Eliminating Townsend agreement.
19. Using general fund reserves for FY 2010-2011.
20. Eliminating the provision for contingencies budget for FY 2010-2011.
21. Consider a utility users tax that will support recreation programs.
22. Address the demarcation points that are not being utilized.
23. Consider having the Calexico Unified School District pay 100% of the crossing guard program.

Mayor Ouzan stated that through the Maximus Study the City increased most of the fees it charges and inquired how the new fees reflect on the budget.

City Manager Carrillo gave Mayor Ouzan a general overview of the Maximum Study and explained that for business license and fire inspection fees the businesses are paying the full amount but instead of getting the fees in the month of January the City Council allowed the businesses to pay the fees in 4 month payments.

Mayor Ouzan inquired if the City is using reserves to balance the budget.

City Manager Carrillo informed Mayor Ouzan that the City has not used reserves to balance the budget.

Finance Director Hashem informed the City Council that the City has approximately 100 funds and all the money is deposited into investment accounts. She stated that right now there is approximately negative \$700,000 in general fund and the City has \$1.2 million in reserves so if the City went out of business tomorrow the general fund reserves will pay the negative general fund operating fund.

Councilman Hermosillo stated that if salaries are 75% of the budget and expenses are 25% how much can you cut from expenses.

Finance Director Hashem informed Councilman Hermosillo that a negligible amount can be cut from expense. She stated that departments are getting down to bare bones.

Finance Director Hashem informed the City Council that she has been notified by the County of Imperial Assessors Office that they are going to start devaluating commercial property.

Councilman Romero said that the projections for FY 2010-2011 are going to need to be much more conservative both on revenue and expenses. He gave an example, that if the budget ends with

\$17.5 million for both revenue and expenditures for FY 2010-2011 and this fiscal year ends with a \$2 million deficit the actual availability is going to be adjusted to \$15.5 million. He said that he is glad that the City Council is having this workshop but the City needs to resolve this issue before the end of this fiscal year even if it means making difficult choices.

Mayor Ouzan stated that the City needs to set priorities as to where the City needs to make cuts. He feels that public safety is a priority. He recommends making cuts in purchase of equipment. He would also like for the City to look into making a plan for 2 years not only 1 year. He would like to cut items that have less impact to the community.

City Manager Carrillo informed the City Council that on non-meet and confer items the City would be saving the following:

1. Public safety general fund \$155,000
2. Non-Public safety general fund \$1.1 million to \$2.2 million
3. Non-General fund \$58,400

City Manager Carrillo informed the City Council that in the potential meet and confer items the City would save the following:

1. Public safety general fund \$1.9 million
2. Non-Public safety general fund \$1.7 million
3. Non-General fund \$1 million

City Manager Carrillo stated that the potential meet and confer items can be discussed and direction given in closed session.

Councilman Romero inquired if a cost analysis has been made for all overtime to see if maybe there is a cost saving if the City hires personnel.

City Manager Carrillo stated that staff has been discussing this issue in department heads meeting.

Jim Neujahr, Police Chief informed the City Council that the goal of the Police Department is to reduce overtime. He said the police officers, staff and administration has done a great job on overtime. He did an audit of every single hour that the officers worked, the Police Department overtime to this date is \$70,000. He said that the extra money that is in the account is M.O.U. stuff that he can't do anything about (shift differential, holiday overtime). Police Chief Neujahr said that they are issues that no one at this time can control.

Mayor Ouzan stated that the City needs to look into bringing more revenue to the City not cutting down the services.

## ADJOURNMENT

There being no further business in Special Session, Mayor Ouzan convened the City Council into Closed Session to discuss the following item:

A. CONFERENCE WITH LABOR NEGOTIATORS

Agency Representatives; Victor M. Carrillo, Judith Hashem, Rosalind Guerrero, Jessica Michelli

Employee Organization: SEIU/CMEA; SEIU/Water-Wastewater Operators Assoc.; Supervisors Assoc.; Police Officers Assoc.; Fire Fighters Assoc.; and Unrepresented Employees

Closed Session Report: No reportable action taken.

There being no further business, meeting was adjourned.

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David Ouzan, Mayor

Attest:

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Lourdes Cordova, City Clerk

**THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY MET IN REGULAR SESSION ON THE 1<sup>ST</sup> DAY OF JUNE, 2010 6:30P.M. AT THE CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.**

**CLOSED SESSION – 5:30P.M.**

**CALL TO ORDER**

The Closed Session portion of the agenda was called to order at 5:30p.m.

**ATTENDANCE**

Mayor: David B. Ouzan  
Mayor Pro Tem: John M. Moreno  
Councilman: Luis J. Castro  
Councilman: Daniel F. Romero  
Councilman: Guillermo Hermosillo

The City Council convened into Closed Session at 5:30p.m. to discuss the following:

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION- 1 CASE  
(Alarcon et. al v. City of Calexico- CASE NO: 09 CV 1421 W MLM)
  
- B. CONFERENCE WITH LABOR NEGOTIATORS  
Agency Representatives: Victor M. Carrillo, Judith Hashem, Rosalind Guerrero, Jennifer Lyon.  
Employee Organization: SEIU/CMEA; SEIU/Water-Wastewater Operators Assoc.; Supervisors Assoc.; Police officers Assoc.; Fire Fighters Assoc.; and Unrepresented Employees.
  
- C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager
  
- D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: APN 059-342-012  
Negotiators: Armando Villa, Luis Estrada, Jennifer Lyon, Victor Carrillo  
Negotiating Party: Small World Montessori Preschool  
Under Negotiation: Price and terms of easement

City Council reconvened from Closed Session at 6:30p.m.

Jennifer Lyon, City Attorney reported that the City Council meet in closed session and discussed Item A, B and D. Direction was given, no reportable action. Item C will be discussed after open session.

**REGULAR SESSION – 6:30P.M.**

**CALL TO ORDER**

The regular session portion of the agenda was called to order at 6:35p.m. by Mayor Ouzan.

**ATTENDANCE**

(All Council members were present: Ouzan, Moreno, Castro, Romero, Hermosillo)

**PLEDGE OF ALLEGIANCE**

Councilman Romero led those present in the Pledge of Allegiance

**APPROVAL OF AGENDA**

Motion was made by Mayor Pro Tem Moreno to approve the agenda, seconded by Councilman Hermosillo and passed by the following vote to wit:

AYES:	Ouzan, Moreno, Castro, Romero, Hermosillo
NOES:	None
ABSENT:	None
ABSTAIN:	None

**PRESENTATIONS:****PRESENTATION OF ACKNOWLEDGEMENT PLAQUE TO MEXICAN CONSUL PABLO JESUS ARNAUD CARREÑO**

Mayor Ouzan and Mayor Pro Tem Moreno presented a plaque to Pablo Jesus Arnaud Carreño, Mexican Consul.

Mr. Arnaud Carreño thanked the City Council for recognizing him as he leave his post as Mexican Consul.

**MMG (MEDICAL CARE PROGRAM)**

Richard Hoff provided a brief description of the MMG (Medical Care Program). He informed the City Council that there is a job program that he has been working with State legislator, other cities and would like to bring the program to Calexico because on the Enterprise Zone. He said that this program is made possible due to the recently approved healthcare plan.

Mayor Ouzan gave direction to Victor Carrillo, City Manager to meet with Mr. Hoff to discuss his proposed project.

**ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:**

Edgar Martinez, Calexico Parents Athletic League presented a certificate of appreciation to Norma Galindo, Councilman Hermosillo and Councilman Romero for their continuous support.

Antonio Garcia, Calexico Parents Athletic League presented a certificate of appreciation to Mayor Ouzan, Councilman Castro and John Renison for their continuous support.

Jose Inguez, Calexico Parents Athletic League presented a certificate of appreciation to Ulises Cardenas and Bill Hodge for their continuous support. He requested City Council support in developing more field for the children so they can have more places to practice.

Mayor Ouzan thanked Mr. Martinez, Mr. Garcia, Mr. Inguez and Carmen Estrada for all their hard work in the Calexico Parents Athletic League.

Jose Ruiz, Conway Freight Manager stated that he received a call on May 19<sup>th</sup> that their business licenses expiring so he came to City Hall and was given a \$400 penalty. He said that then on May 26<sup>th</sup> he received a call from Judith Hashem, Finance Director advising him that his company was business exempt because they are a transportation company and they voided the penalty. Mr. Ruiz inquired if he is company will need to pay a penalty fee for the fire inspection fees because his company does carry hazmat material. He stated he doesn't have an issue paying but would like a resolution if he will need to pay the penalty fees.

City Manager Carrillo informed Mr. Ruiz that he will be meeting with Finance Director Hashem regarding this matter and will contact him as soon as a decision has been made.

Rudy Alarcon, Calexico Police Officers Association (CPOA) said that they have been making progress with the current negotiations, they look forwarding in working with the City and informed that City Council that the CPOA proposed a counter offer to the City. He thanked the City Council for their time and they hope that the City Council accepts their counter proposal.

## **CONSENT**

City Attorney Lyon informed the City Council that on Item No. 7 a new set of resolutions were set on the dais and recommended that the new resolutions be approved.

Motion was made by Councilman Hermosillo, seconded by Mayor Pro Tem Moreno to approve consent agenda consisting of the following: Approve claim rejection – Moran vs. City; Approve claim rejection – Gonzalez vs. City; Alcoholic Beverage License for Mike Place, 18 E. 2<sup>nd</sup> Street, Calexico; Resolution Authorizing the City Manager to accept grants of Easement Related to the economic development grant; Authorize Director of Utility Services to Purchase Modular Office Building for the relocation of the Utility Services Department Administration Office to the Water Treatment Plant; Adopt Budget Amendment Resolution for the Utility Services Department; Adopt resolution to extend the price fixing limitations of Penal Code 396 for an additional 30-day period during the time of continuing local emergency; Adopt a Resolution of the City Council of the City of Calexico, California, ratifying the City Manager's actions relating the existence of a local emergency; Adopt a Resolution of the City Council of the City of Calexico, California, finding and declaring the continuing existence of an emergency within the City due to an

earthquake, suspending notice and bidding requirements in connection with repairs required thereby; and ratifying various expenditures and contracts by the City Manager; motion passed by the following vote to wit:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None  
ABSTAIN: None

## **PUBLIC HEARING**

### **ITEM NO. 8 – PUBLIC HEARING FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAMS**

City Manager Carrillo gave a brief description of the Community Development Block Grant (CDBG) Program.

*Mayor Ouzan opened the public hearing at 7:03p.m.*

No comments in favor or against.

Oscar Rodriquez, Redevelopment Agency Assistant Executive Director provided a brief overview of the procedures done to let the community know about this program (workshop, public hearing and advertisement).

Bill Hodge, 402 Clark Street, Calexico, CA inquired as to what public services are available through the CDBG grant.

City Manager Carrillo informed Mr. Hodge that the public services that this grant provides is temporary housing, rental subsidies, and senior transportation.

*Mayor Ouzan closed the public hearing at 7:11p.m.*

Motion was made by Councilman Hermosillo to approve public hearing to receive comments on program and/or project activities under the State of California Community Development Block Grant Program (CDBG). Motion was seconded by Mayor Pro Tem Moreno and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Hermosillo  
NOES: None  
ABSENT: None

## **BUSINESS ITEMS**

### **ITEM NO. 9 – CALEXICO DIAL A RIDE PROGRAM FARE INCREASE**

City Manager Carrillo gave a brief description of the Calexico Dial-A-Ride Program.

Mr. Hodge inquired if the increase in fee will provide additional services.

Luis Estrada, Director of Utility Services informed Mr. Hodge the services will remain the same.

Mr. Hodge stated that he was in opposition of the fare increase.

Councilman Hermosillo asked Director of Utility Services Estrada that if the City does not meet the 10% farebox ratio the City will lose funding for the program.

Director of Utility Services Estrada informed Councilman Hermosillo that the City will lose funding if the 10% farebox ratio is not met.

Director of Utility Services Estrada stated that last Thursday he met with three (3) groups of senior citizens at the Community Center and explained the reason why the fare fee needs to be increase and the seniors supported the increase. He also said that he we to Alegria and there was no opposition either.

Glafira Brandon stated that the service provided to the seniors is bad. She said that she has called a day before to make an appointment and was told that they did not have time or space to pick her up. She is in opposition of the fare increase.

Soledad Salazar stated that the services provided is not good. She has been told that seniors call at 3:30p.m., and they are told it is too late for them to be picked-up. She is in opposition of the service the seniors are not receiving.

Mayor Ouzan requested that a questionnaire be prepared in English and Spanish in order to find out if the seniors are satisfied with the service, write any comments and/or concerns.

Ana Castro, Calexico Transit System stated that her company formally had the contract that provided the Dial-A-Ride program. She said that her company did meet the 10% farebox ratio, in fact her company's farebox ratio was 11%. Mrs. Castro provided a handout to the City Council that shows that her company was meeting the 10% farebox ratio. She stated that First Transit, Inc. is not giving the right service the seniors deserve.

Mayor Pro Tem Moreno asked when First Transit, Inc. contract will expire.

Director of Utility Services Estrada informed Mayor Pro Tem Moreno that the contract will expire in three (3) years.

Julia Escobar informed the City Council that she has seen the buses without riders and has loan seniors her phone to call for appointments and no one answers the phone and they only get an answering machine.

City Council tabled the item and provided direction to City Attorney Lyon to review the current contract with First Transit, Inc.

**ITEM NO. 10 – REQUEST FROM MARTINEZ TOWING TO BE PLACED ON CALEXICO POLICE DEPARTMENT TOWING ROTATION**

Lt. Gerardo Gonzalo informed the City Council that the City ordinance stipulates that in order for a company to be in rotation the company must be established within City limits and Martinez Towing is outside City limits on Kloke Road. He said that there are two (2) companies that are currently in rotation that are outside City limits but those two (2) companies were grandfathered in before the ordinance took effect.

Frank Martinez informed that City Council that when he submitted his application to be part of the towing rotation he was asked to pay \$1,000, which he did and was not told that he could not be part of the rotation because his business was outside City limits.

City Manager Carrillo said he would meet with Mr. Martinez on Wednesday, June 2, 2010 to discuss this item and a possible reimbursement.

Mayor Ouzan stated that if the City Council needs to revise the ordinance to include Mr. Martinez business go ahead a do so and bring it back for City Council consideration.

City Council tabled the item and provided direction to staff to meet with Mr. Martinez and possible reconsider changing the ordinance.

**ITEM NO. 11 – FUTURE AGENDA ITEMS**

Councilman Romero requested a monthly summary towing services report from the Police Department that includes the service provider, how many call the Police Department made to the company, how many services did the provider receive, if other services were required and explanation of why the provider did not respond to the service request.

**INFORMATIONAL**

**ITEM NO. 12 – ARTS COMMISSION MINUTES FOR MARCH 1, 2010**

City Council acknowledged receipt of Arts Commission minutes for March 1, 2010.

**ITEM NO. 13 – ARTS COMMISSION MINUTES FOR SPECIAL MEETING OF APRIL 12, 2010**

City Council acknowledged receipt of Arts Commission minutes for special meeting of April 12, 2010.

**ADJOURNMENT**

There being no further business in Regular Session, Mayor Ouzan convened the City Council into Closed Session at 7:45p.m. to discuss the following item:

C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: City Manager

Closed Session Report: No reportable action taken.

There being no further business, meeting was adjourned.

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David B. Ouzan, Mayor

Attest:

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Gabriela T. Garcia, Deputy City Clerk

**THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY MET IN REGULAR SESSION ON THE 15<sup>TH</sup> DAY OF DECEMBER, 2009 AT 6:30 PM. AT THE FERNANDO "NENE" TORRES COUNCIL CHAMBERS, 608 HEBER AVENUE, CALEXICO, CA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.**

**CLOSED SESSION- 5:30 P.M.**

**CALL TO ORDER.**

The Closed Session portion of the agenda was called to order at 5:30 p.m. by Mayor Ouzan.

**ATTENDANCE.**

Mayor:	David B. Ouzan
Mayor Pro Tem:	John M. Moreno
Councilman:	Luis J. Castro
Councilman:	Daniel F. Romero
Councilman:	Guillermo Hermosillo

The City Council convened into Closed Session at 5:30 p.m. to discuss the following:

1. CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION  
(Subdivision (a) of Section 54956.9) (5 cases)
  - A. Citizens for Honesty and Integrity in Calexico v. City of Calexico (ECU 05244)
  - B. Citizens for Responsible Equitable Environmental Development v. City of Calexico (ECU 05535)
  - C. Chico v. Heffernan Et. Al (ECU05585)
  - D. Orozco V. City of Calexico
  - E. Victoria Place v. Calexico Case NO. ECU04890
2. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager
3. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION  
INITIATION OF LITIGATION PURSUANT TO GOVT. CODE SECTION 54956.9(C) (1 CASE)

City Attorney reported that Council met in closed session and discussed items 1A through D, direction was given and no reportable action was taken at this time. Item 1E, 2 and 3 will be continued after the regular Council meeting.

**CALEXICO CITY COUNCIL/  
CALEXICO COMMUNITY REDEVELOPMENT AGENCY**

**REGULAR MEETING-6:30 P.M.**

**CALL TO ORDER.**

The regular meeting portion of the agenda was called to order at 6:30 p.m. by Mayor Ouzan and those present were led in the Pledge of Allegiance by City Manager Carrillo

**ATTENDANCE.**

(All Council members were present: Ouzan, Moreno, Castro, Romero and Hermosillo)

**APPROVAL OF AGENDA.**

A motion was made by Mayor Pro Tem Moreno, second by Councilman Hermosillo and passed unanimously to approve the agenda as presented.

**ANNOUNCEMENTS/PUBLIC COMMENTS.**

Bill Hodge, 402 Clark St., Chairman of the Arts Commission and concerned citizen proposed that Police Chief Jim Neujahr hold a public meeting to eliminate concerns of troubling events that have occurred in the past few months regarding the police department. Mr. Hodge would like more transparency and accountability for the public.

**GENERAL COMMENTS BY COUNCIL MEMBERS.**

Mayor Pro Tem Moreno wished everyone happy holidays and a time of good will. Councilmember Moreno commends the City of Calexico and Baja Runners who coordinated with Chamber of Commerce to put on a very good parade.

Councilmember Hermosillo wished everyone happy holidays. Councilmember Hermosillo commented about a press release on the deficient air quality of the Imperial Valley and would like to inquire the federal government about programs for cars who are gross polluters that cross the border and also ask the Mexican government for information on this matter.

Councilmember Romero wished everyone happy holidays and would like to extend his apology for not being in the past reunion due to illness. Councilmember Romero has seen some reports on improvements on Cole Road between Kloke and Dogwood and expressed concerns with the conditions of Cole Road between Highway 111 up to Andrade Avenue and would like to know if it is a City issue or a County issue or State issue to fix.

General Services Director stated there is grant funding put aside to improve Cole Road from Highway 111 to the railroad tracks. The area of concern mentioned by Councilmember Romero will be coming up for funding next year.

Mayor Ouzan wishes everyone happy holidays and a happy New Year. Thanked the City staff and Department Heads for a wonderful job done the past year. He thanked the Chamber of Commerce and Business Improvement District for the wonderful parade.

**PRESENTATIONS.**

Employee of the 4<sup>th</sup> Quarter- Liliana Falomir item will continue for the next meeting

Calexico Neighborhood House Clean-Up and Graffiti Project by Ricardo Ortega, Director gave a brief report on the Clean-Up and Graffiti Project. Mr. Ortega reported that within the past year shelter was provided for 96 homeless women and 192 children. Additionally, he described the shelter replacement project to construct new women’s shelter in Calexico. Acquired state deferred loan of 425,000 dollars for construction.

**CONSENT AGENDA.**

Mayor Pro Tem Moreno requested Item 9 to be pulled out for discussion.

Councilmember Romero requested Item 6 to be pulled out for discussion.

Motion was made by Councilmember Romero to approve the Consent Agenda consisting of Items 4, 5, 7, 8, 10, 11 and 12 as follows: Approve City Council minutes for December 1, 2009; Adoption of Resolution Authorizing the City Manager to endorse Agreement for Statewide Prop 84 Park Grant Funds; Authorize Director of Utility Services to File Notice of Completion for the Eastside Water Distribution and Transmission Main Line Project; Authorize the City Manager to sign Tetra Tech Inc. Proposal for Structural and Geotechnical Engineering Services for Code Update to the Plans and Specifications for the Wastewater Treatment Plant Upgrade Project; Adopt the IRS 2010 Standard Mileage Rate of \$0.50 per mile; Approve for Budget Amendment Resolution for Asset Forfeiture Fund #218. Expense will be for purchase of re-stocking of police unit gear/equipment and purchase of police explorer badges; Approve out of state travel for Officer Isaias Navarro to attend a less lethal recertification course in Scottsdale, AZ at Teaser Co. Headquarters on January 11 through 14, 2010. Motion was second by Councilmember Hermosillo and passed unanimously.

**ITEM NO. 6- SECOND READING ORDINANCE REPEALING ORDINANCE NO. 1099 AND CHAPTER 2.07 “CITY COUNCIL- ELIGIBILITY FOR FUTURE CITY EMPLOYMENT”, SECTION 2.07.010, IN ITS ENTIRETY AND AMENDING CHAPTER 2.02 BY REINSTATING SECTION 2.02.030.**

Councilman Romero made motion for Item not to pass. Motion died due to lack of second.

Councilman Hermosillo motioned for approval of Second Reading of the Ordinance Repealing Ordinance No. 1099 and Chapter 2.07 “City Council- Eligibility for Future City Employment”, Section 2.02.030. Motion was second by Mayor Ouzan and passed by the following vote to wit:

- AYES: Ouzan, Moreno, Castro, Hermosillo
- NOES: Romero
- ABSENT: NONE
- ABSTAIN: NONE

**ITEM NO. 9- AUTHORIZE CITY MANAGER TO SIGN AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR ENGINEERING CONSULTING SERVICES FOR REPLACEMENT OF STREET LIGHTS WITH SOLAR POWERED LIGHTS PROJECT.**

Mr. Estrada gave update on replacement of lights with solar energy powered lights. There are twenty four lights to be replaced with solar energy lighting, funding that is leftover will be used for solar lights in bus stops.

City attorney Jennifer Lyon clarified that the motion will have City of Calexico standard professional services agreement because Kimley-Horn and Associates, Inc. contract is attached.

A motion was made by Mayor Pro Tem Moreno, second by Councilman Guillermo Hermosillo and passed unanimously to authorize City Manager to Sign an Agreement with Kimley-Horn and Associates, Inc. for Engineering Consulting Services for Replacement of Street Lights with Solar Powered Lights Project.

### **BUSINESS ITEMS.**

City Manager Carrillo requested items 13 and 14 to be pulled from agenda as a result of what was discussed in closed session. Councilmembers concurred with pulling items 13 and 14 from agenda.

### **CHARTER CITIES- CITY MANAGER TO PROVIDE INFORMATION.**

City Manager Carrillo gave a brief presentation on what a charter city form of government is, its benefits and what it might mean for the future governance of the City of Calexico. A city's charter is a unique document, which to some extent acts like a constitution for the city adopting it, it can only be adopted, amended or repealed by a majority vote of a city's voters. The primary advantage of a city's charter is that it allows greater authority for city governance than that provided by State law. For example, a city may tailor its organization and elective offices taking into account the unique local conditions and needs of the community.

The California Constitution gives cities the power to become charter cities. Charter cities have supreme authority over municipal affairs and city's law concerning a municipal affairs and will trump a State law covering the same topic. Cities who have not adopted a charter are considered general law cities and are bound by the State's general law.

The charter city provision is based on the principal that the city rather than the state is in the best position to know the needs of its residents and knows best how to satisfy those needs, thus maximizing local control. The California League of Cities position advocates cities to become a charter city to restore and protect local control of accountability, elections, City Council Members, allocation of funding, projects and prevailing wage requirements.

To become a charter city, a city must adopt a charter. There are two ways to adopt a charter. One, the city's voters elect a charter commission. The commission has the responsibility of drafting and debating the charter. Second, the governing board of the city, on its own motion, drafts the charter. In either case, the charter is not adopted until it is ratified by a majority vote of city's voters.

Direction was given for City Manager Carrillo to follow-up with conference calls with other city managers who have experience with Charter Cities, to get the pros and cons and what the efforts were to make it successful on the ballot if the Council chooses to go this direction. City Manager

Carrillo states he will invite Catherine Hill, Public Affairs Manager for California League of Cities for a formal presentation. The potential next step will be to select a Task Force of community stakeholders and two council members to conduct a feasibility study on the benefits of a charter city. Then conduct public meetings to gain public input. City Manager Carrillo will continue to explore options.

**HERMOSILLO'S APPOINTMENT TO THE ARTS COMMISSION, BEAUTIFICATION COMMISSION, ECONOMIC DEVELOPMENT COMMISSION, BUSINESS IMPROVEMENT DISTRICT, PERSONNEL COMMISSION, PLANNING COMMISSION, POLICE COMMISSION AND RECREATION COMMISSION (STAFF RECOMMENDATION: MAKE APPOINTMENTS).**

Councilman Hermosillo appointed the following:

Arts Commission: Hildy Carrillo

Beautification Commission: Mario Alvarado

Economic Development Commission: Erick Ortega

Business Improvement Commission District: Eduardo Lopez

Personnel Commission: None.

Planning Commission: Eduardo Lopez

Police Commission: Lorenzo Calderon

Recreation Commission: Yolanda Vernal

Library Award: Carina Tabarez

Housing Authority: Not advertised. None.

**MORENO'S APPOINTMENTS TO BEAUTIFICATION, POLICE AND PERSONNEL COMMISSIONS (STAFF RECOMMENDATION: MAKE APPOINTMENTS).**

Mayor Pro Tem Moreno appointed the following:

Beautification Commission: Armando Real

Police Commission: Fernando Garcia

Personnel Commission: Doctor Gilbert Mendez

**ROMERO'S APPOINTMENT TO PERSONNEL COMMISSION (STAFF RECOMMENDATION: MAKE APPOINTMENT).**

Councilman Romero did not have any appointment. Item will be revisited next meeting.

**AFFIRMATION OF CASTRO'S APPOINTEE TO THE PLANNING COMMISSION  
(STAFF RECOMMENDATION: COUNCILMAN CASTRO SHOULD AFFIRM HIS  
APPOINTMENT OF ULISSES CARDENAS TO THE PLANNING COMMISSION).**

Councilman Castro repeated name of person appointed for planning commission last meeting  
Ulises Cardenas.

**RESOLUTION TO AMEND TRAVEL AND EXPENSE REIMBURSEMENT POLICIES  
(STAFF RECOMMENDATION: CONSIDER RESOLUTION AND IF APPROPRIATE,  
ADOPT RESOLUTION).**

A motion was made by Councilman Romero to approve a Resolution to Amend Travel and  
Expense Reimbursement Policies, motion was second by Councilman Hermosillo and passed  
anonymously.

**PUBLIC HEARING.**

*Councilman Guillermo Hermosillo left the Chambers due to conflict of interest of topic to be  
discussed at 6:52 p.m.*

**CONSIDER APPEAL TO THE DENIAL BY THE CITY OF CALEXICO PLANNING  
COMMISSION OF CUP 2009-04-PLAZOLA AND SONS.**

City Manager Carrillo states this item is a Conditional Use Permit Number 2009-04 involving  
Plazola and Sons, the applicant, it is a public hearing to consider an appeal to the denial by the  
City of Calexico Planning Commission of Conditional Use Permit. The Council has two options,  
to either sustain the Planning Commission decision of disapproval with the adoption of resolution  
or the Council can elect to approve the proposal and overturn the Planning Commission decision  
and then the following action will need to be taken for a motion to adopt the applicable findings  
and conditions under City Council resolution.

*Public Hearing opened at 6:54 p.m.*

City Attorney Jennifer Lyon stated that the applicant has the burden of proof because they  
appealed the Planning Commission's decision and recommends that if the applicant wants to  
speak and those in favor of the applicants position, which will be overturning the Planning  
Commission's decision, speak first because they have the burden to change what happened at the  
Planning Commission level. Public hearing will start with those in favor of the CUP and granting  
the project.

In favor of bar coming to Calexico, Ricardo Plazola states that when he bought the property the  
zoning was commercial and industrial not residential. Mr. Plazola acquired signatures and phone  
numbers from all the neighbors who are in accordance with the establishment of the sports bar.  
The sports bar will serve beer and wine no hard liquor. Mr. Plazola states he has paid property  
taxes, insurance and mortgage and is undergoing economic hardship due to lack of property  
renters and therefore wants to diversify property by creating a bar.

In favor of bar coming to Calexico, Tony Tirado resident of Calexico, appeals overturn of the decision of the Planning Commission. Everything in Herold, Sherman and Emmerson Avenue is commercial and industrial. Mr. Tirado states Mr. Plazola is in the proper zoning and not violating any City law. Mr. Plazola came in good faith to the Planning Commission because of economic problems due to properties he cannot rent. Additionally, Mr. Plazola has paid the big mortgage, insurance and property taxes and he wants to diversify and bring revenue to the city. Mr. Tirado asks the Councilmembers to support Mr. Plazola's business in the City of Calexico.

Against project, Chief Police Jim Neujahr points out that the intersection between Sherman and Herold Avenue where the new business will be located is in close proximity of residences. The only separation between the business and the residences is a brick wall. Noise will carry over the wall and into the apartments and residences and there are houses to the north that face Herold Avenue. Although the zoning is correct the problem is the compatible uses for the land. Chief Neujahr appeals businesses cannot be put anywhere, there are various considerations that need to be taken into account. Establishments that have on-sale alcohol should have difficulty placing businesses near residences. Chief Neujahr understands residents have given permission to proceed with project, but the problem is the changing conditions. Even if renters of a property give permission now for such project, as far as public safety goes, in order to defend the people that come later after the current renters have changed and new people are living under different conditions, it is important to protect the future renters as well as the current renters' interests. Chief Neujahr is not one-hundred percent opposed to the project, he believes it is something that can be established with stringent regulation. The CUP must go through tough guidelines in order for it to be consistent within the same zone.

*Public Hearing closed at 7:09 p.m.*

City Attorney Jennifer Lyon, would like to add or revise a few WHERE AS to the resolution that is pre-drafted if the Council is going to take action to approve it. Based on the testimony that was presented by the applicant as well as Mr. Tirado, the applicant has presented a letter from nearby neighbors that shows that they are in agreement that the use is compatible and that they would want the bar to be there. Also, with the conditions that staff has proposed that are part of the pre-drafted resolution that would help mitigate the conditions and keep this use in conformance with the nearby uses, as well as the information that this is the consistent zoning of nearby establishments are commercial in nature, it would meet the standards and findings in Calexico municipal code 17.01.540 and they will be met. This language will be added to the recitals in the pre-drafted resolution that Council will take action.

Motion was made by Mayor. Ouzan for City Council to draw a resolution of approval in support of establishment of business and second by Daniel F. Romero and passed by the following vote to wit:

AYES:	Ouzan, Moreno, Romero
NOES:	Castro
ABSENT:	None
ABSTAIN:	None

**INFORMATION ITEMS.**

Mayor Ouzan states informational items 22 through 24 were provided to all Council members. Councilmembers acknowledge receipt of Information Items consisting of the following: Information Regarding the City Manager's Appointment, Management and Removal Authority for all Department Heads; Recreation Commission Minutes for October 21, 2009

**FUTURE AGENDA ITEMS BY CITY COUNCIL MEMBERS.**

Mayor Ouzan advised Council Members to submit future agenda items to be discussed at the January 5, 2010 City Council meeting before December 18, 2009.

**ADJOURNMENT.**

There being no further business in open session, Mayor Ouzan convened in closed session at 7:15 p.m. to discuss pending items as follows:

1. CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION  
(Subdivision (a) of Section 54956.9 (1 case)  
E. VICTORIA PLACE V. CALEXICO CASE NO. ECU04890
2. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Title: City Manager
3. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION  
INITIATION OF LITIGATION PURSUANT TO GOVT. CODE SECTION 54956.9(C)  
(1 Case)

Council reconvened from closed session and no reportable action was taken.

**ADJOURNMENT**

There being no further business, meeting was adjourned.

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David B. Ouzan, Mayor

Attest:

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Lourdes Cordova, City Clerk

**THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY MET IN SPECIAL SESSION ON THE 30<sup>TH</sup> DAY OF JUNE, 2009 AT 6:30P.M. AT THE CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.**

**CLOSED SESSION – 5:30P.M.**

**CALL TO ORDER**

The closed session portion of the agenda was called to order at 5:30p.m.

**ATTENDANCE**

Mayor: Louis Fuentes  
Mayor Pro Tem: David B. Ouzan  
Councilman: John M. Moreno  
Councilman: Luis J. Castro  
Councilman: Daniel F. Romero

The City Council convened into Closed Session at 5:30p.m. to discuss the following:

- A. CONFERENCE WITH LABOR NEGOTIATORS  
Agency Representatives: Judith Hashem, Jennifer Lyon, Jessica Falk Michelli  
Employee Organizations: SEIU/CMEA; Water/Wastewater Operators Assoc.; Supervisors Assoc.; Police Officers Assoc.; Fire Fighters Assoc.
- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (3 cases)
  - 1. Victoria Place LLC v. City of Calexico
  - 2. Coalition for Honesty and Integrity in Calexico v. City of Calexico (Hallwood Calexico Investments, LLC, real party in interest)
  - 3. Jason Jung v. City of Calexico
- C. PUBLIC EMPLOYEE APPOINTMENT  
Title: Interim City Manager/City Manager

City Council reconvened from Closed Session at 6:27p.m.

Jennifer Lyon, City Attorney reported that the City Council met in closed session and discussed Item A thru B, direction was given, no reportable action taken. She stated that Item C. will be discussed after open session.

Councilman Moreno stated that he will recuse himself from Item C because a family member applied for the City Manager’s position.

**SPECIAL SESSION – 6:30P.M.**

**CALL TO ORDER**

The regular session portion of the agenda was called to order at 6:30p.m. by Mayor Fuentes.

#### **ATTENDANCE**

(All Council Members were present: Fuentes, Ouzan, Moreno, Castro, Romero)

#### **PLEDGE OF ALLEGIANCE**

Councilman Romero led those present in the Pledge of Allegiance

#### **APPROVAL OF AGENDA**

Motion was made by Mayor Pro Tem Ouzan to approve the agenda, seconded by Councilman Moreno and passed by the following vote to wit:

AYES:	Fuentes, Ouzan, Moreno, Castro, Romero
NOES:	None
ABSENT:	None
ABSTAIN:	None

#### **ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:**

Salvador Cuevas stated that four (4) soccer teams from PAL will be going to the National Tournament in Las Vegas and one (1) soccer team will be going to a Tournament in San Diego at Qualcomm Stadium. He said that they have been selling carne asada plates as well as receiving donation. He requested City Council assistance in helping obtain more donations in order for all teams to attend the tournaments.

#### **BUSINESS ITEMS**

#### **ITEM NO. 1 – PRESENTATION BY TOWNSEND PUBLIC AFFAIRS AND CONSIDERATION OF APPROVAL OF THE PROFESSIONAL SERVICES AGREEMENT WITH TOWNSEND PUBLIC AFFAIRS**

Jennifer Thompson, Townsend Public Affairs Senior Director provided a brief description of the services that Townsend Public Affairs offers, office locations, staff and projects they have worked on. She stated that Townsend Public Affairs has been working for the City for about two (2) months, they have met with staff and have identified various projects.

Mayor Fuentes inquired if Townsend Public Affairs has already helped the City apply for grants.

Ms. Thompson informed Mayor Fuentes that they have been working on getting a contract together and identifying the various projects.

Mayor Pro Tem Ouzan stated that he does not agree in paying Townsend Public Affairs \$7,000 a month. He feels that the City can only afford \$5,000 a month, therefore, he will not support Item No. 1.

Mayor Fuentes asked Ms. Thompson what funding opportunities are coming up that the City can apply for.

Ms. Thompson informed Mayor Fuentes that the opportunities that are coming up are for park improvements.

Mayor Fuentes stated that one of the concerns is that the City does not have funding for the local match and asked Ms. Thompson if local match is required for the parks grant.

Ms. Thompson informed Mayor Fuentes that the parks grant does require a local match but it does not have to be a cash match. She said it can be in the form of in-kind services or community support.

Mayor Fuentes inquired if Townsend Public Affair is willing to reduce its monthly fee from \$7,000 to \$5,000.

Ms. Thompson informed Mayor Fuentes that their company is willing to reduce its monthly fee from \$7,000 to \$5,000 but they would like to revisit their monthly fee in six (6) month once the City has evaluated their services.

Niccolo De Luca, Townsend Public Affair gave a brief description of various parks, public works and public safety projects he has worked on.

Motion was made by Mayor Fuentes to approve Townsend Public Affair professional services agreement with a monthly fee of \$5,000.00. Motion seconded by Mayor Pro Tem Ouzan and passed by the following vote:

AYES: Fuentes, Ouzan, Moreno, Castro, Romero

NOES: None

ABSENT: None

ABSTAIN: None

**ITEM NO. 2 – ENTERING INTO MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF IMPERIAL ALLOWING THE CITY OF CALEXICO TO BE INCLUDED IN ITS MASS NOTIFICATION SYSTEM, ALSO REFERRED TO AS “REVERSE 911”**

Pete Mercado, Fire Chief provided a brief description on the County of Imperial Mass Notification System.

Motion was made by Mayor Fuentes to approve entering into Memorandum of Understanding with the County of Imperial to allow the City of Calexico to be included in the Mass Notification System. Motion was seconded and passed unanimously.

**ITEM NO. 3 – ACCEPTANCE OF JUSTICE ASSISTANCE GRANT (JAG) FOR THE CALEXICO POLICE DEPARTMENT IN THE AMOUNT OF \$55,311**

Jim Neujahr, Police Chief provided a brief description of the Justice Assistance Grant.

Motion was made by Councilman Moreno to approve the acceptance of Justice Assistance Grant (JAG) for the Calexico Police Department in the amount of \$55,311. Motion seconded by Mayor Pro Tem Ouzan and passed by the following vote:

- AYES: Fuentes, Ouzan, Moreno, Castro, Romero
- NOES: None
- ABSENT: None
- ABSTAIN: None

**ITEM NO. 4 – ACCEPTANCE OF A CALIFORNIA OFFICE OF TRAFFIC SAFETY GRANT (OTS) FOR THE CALEXICO POLICE DEPARTMENT IN THE AMOUNT OF \$83,456**

Police Chief Neujahr provided a brief description of the California Office of Traffic Safety Grant (OTS).

Motion was made by Councilman Moreno to approve the acceptance of a California Office of Traffic Safety Grants (OTS) for the Calexico Police Department in the amount of \$83,456. Motion was seconded and passed unanimously.

**PUBLIC WORKSHOP**

**ITEM NO. 5 – PRESENTATION OF PROPOSED FISCAL YEAR 2009/2010 BUDGETS FOR FIRE DEPARTMENT AND CITY MANAGERS**

City Attorney Lyon informed the City Council and those in attendance that there was a typo in the agenda and Community Services Department will be making their FY 2009/2010 budget presentation. She stated that the City Council will not be taking any final action on adopting Community Services Department budget or the whole City budget.

Sandra Tauler, Community Services Director gave a PowerPoint presentation on the Community Services Department FY 2009/2010 budget which included the following divisions:

1. Library
2. Cultural Art Center
3. Recreation Department
4. Carnegie Technology Center
5. Library Branch at Willie Moreno

Community Services Director Tauler recommended that the City Council authorize staff to rent the swimming pool with limited hours and rent the swimming pool twice a day to generate more revenue.

Mayor Fuentes informed Community Services Director Tauler that her recommendation is a policy decision, she should do it now and project the revenues.

Mayor Fuentes commended Community Services Director Tauler and staff for their recent Tiny Tots Olympics.

Bill Hodge, Cultural Arts Commission Chairman commended Community Services Director Tauler and staff for all the work they do for the Community Services Department.

Margarita De Necochea said that the Carnegie Technology Center received a grant for \$750,000 as well as generous donations, it is a technology center, it has been declared a historical building and it is closed. She requested City Council assistance in giving the Carnegie Technology Center attention.

Mayor Fuentes gave direction to Community Services Director Tauler to open up the Cultural Arts Center for rentals.

Community Services Director Tauler informed Mayor Fuentes that the Cultural Arts Center is open for rentals but no one has been wanting to rent it because they cannot rent it after 10:00p.m., but she will go ahead a promote it more.

Motion was made by Mayor Fuentes to close the Cultural Arts Center for FY 2009/2010. Motion was second by Councilman Moreno and passed by the following vote:

AYES: Fuentes, Ouzan, Moreno, Castro, Romero  
NOES: None  
ABSENT: None  
ABSTAIN: None

Mr. Hodge stated that he is very disappointed that the Cultural Arts Center will be closed for a year. He hopes that the City Council keeps its promise of only closing it for a year.

Sol Salazar stated that she is also very disappointed that the Cultural Arts Center will be closed for a year.

#### **CITY COUNCIL/REDEVELOPMENT AGENCY**

#### **ITEM NO. 6 – CALEXICO CHAMBER OF COMMERCE BUDGET ALLOCATION REQUEST FOR FISCAL YEAR 2009/2010**

Motion was made by Mayor Fuentes to table this item because the Callexico Chamber of Commerce Executive Director is not present and the City has not received a report as to how the

\$150,000 will be used for. Motion was seconded by Councilman Romero and denied by the following vote:

AYES: Fuentes, Romero  
NOES: Ouzan, Moreno, Castro  
ABSENT: None  
ABSTAIN: None

Motion was made by Mayor Pro Tem Ouzan to approve Calexico Chamber of Commerce budget allocation request of \$150,000 for Fiscal Year 2009/2010 contingent on the Calexico Chamber of Commerce providing a report on how the funding will be spent. Motion seconded by Councilman Moreno and passed by the following vote:

AYES: Ouzan, Moreno, Castro  
NOES: Fuentes, Romero  
ABSENT: None  
ABSTAIN: None

#### **CLOSED SESSION**

The City Council convened to Closed Session at 8:14p.m. to discuss the following:

D. PUBLIC EMPLOYEE APPOINTMENT  
Title: Interim City Manager/City Manager

City Council reconvened from closed session and no reportable action was taken.

#### **ADJOURNMENT**

There being no further business the meeting adjourned.

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Louis Fuentes, Mayor

Attest:

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Lourdes Cordova, City Clerk

**THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY MET IN SPECIAL SESSION ON THE 15<sup>TH</sup> DAY OF JULY, 2009 AT 5:30P.M. AT THE CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.**

**SPECIAL SESSION – 5:30P.M.**

**CALL TO ORDER**

The special session portion of the agenda was called to order at 5:30 p.m. by Mayor Ouzan.

**ATTENDANCE**

Mayor: David B. Ouzan  
Mayor Pro Tem: John M. Moreno  
Councilman: Luis J. Castro  
Councilman: Daniel F. Romero

**ABSENT**

Councilman: Louis Fuentes  
*(Councilman Fuentes arrived at 5:40p.m.)*

**PLEDGE OF ALLEGIANCE**

Councilman Romero led those present in the Pledge of Allegiance

**APPROVAL OF AGENDA**

Motion was made by Mayor Pro Tem Moreno to approve the agenda, seconded by Councilman Castro and passed by the following vote to wit:

AYES: Ouzan, Moreno, Castro, Romero  
NOES: None  
ABSENT: Fuentes  
ABSTAIN: None

**ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:**

Norma Aguilar, 839 Heber Avenue, Calexico, CA inquired if the money that will be used to fund the swimming pool is from the Special Financing Authority (JPA).

Councilman Romero informed Ms. Aguilar that the money that will be used to fund the swimming pool will be from the Heffernan Memorial Health Care District not from the Special Financing Authority (JPA).

**BUSINESS ITEMS**



**ITEM NO. 1 – ALLOW STAFF TO OPEN THE SWIMMING POOL FOR PUBLIC SWIM DURING THE WEEKENDS FOR THE DURATION OF THE SUMMER SCHOOL VACATION SCHEDULE**

Sandra Tauler, Community Services Director informed the City Council that the City will be receiving the following contributions for the swimming pool:

1. \$10,000 from Heffernan Memorial Health Care District
2. \$7,000 from Federal Agency (Drug Prevention Activities)
3. \$2,000 from small donations

Mayor Pro Tem Moreno asked how much revenue the City is receiving in rentals on Saturday and Sundays.

Community Services Director informed Mayor Pro Tem Moreno that the revenue coming in from the rentals is lower than last year. She stated that last year it was rented out every Saturday and Sunday and this year they still have days available.

***Councilman Fuentes arrived at 5:40p.m.***

Mayor Ouzan stated that he visited the swimming pool with Assemblyman Manuel Perez Representative and Chamber of Commerce Representative. He said that the facility is outdated and the City along with the Calexico Unified School District need to request grants to update and renovate the facility.

Motion was made by Mayor Pro Tem Moreno to allow staff to open the swimming pool for public swim during the weekends for the duration of the summer school vacation schedule. Motion seconded by Councilman Fuentes and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ITEM NO. 2 – APPROVAL OF CITY TO INITIATE THE PROCESS AND BE DESIGNATED AS THE AUTHORIZED AGENCY TO RECEIVE AND MANAGE STATE AND FEDERAL FUNDS FOR THE NEW RIVER IMPROVEMENT PROJECT (PHASE I)**

Motion was made by Mayor Pro Tem Moreno to approve the letter to the Imperial Valley Association of Governments (IVAG), and hereby formally initiate the process to apply for, receive and manager funds for Phase I of the New River Improvement Project. Motion seconded by Councilman Castro and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None

ABSENT: None

ABSTAIN: None

The City Council convened to Closed Session at 5:54p.m.

**CLOSED SESSION**

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Citizens for Honesty and Integrity in Calexico v. City of Calexico
  
- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Initiation of Litigation pursuant to subdivision (c) of Section 54956.9 (1 case)
  
- C. PUBLIC EMPLOYEE EMPLOYMENT/APPOINTMENT  
Title: City Manager
  
- D. CONFERENCE WITH LABOR NEGOTIATORS  
Agency Representatives: Judith Hashem, Jennifer Lyon  
Employee Organizations: Police Officers Assoc.; Fire Fighter Assoc.

City Council reconvened from Closed Session and no reportable action was taken.

**ADJOURNMENT**

There being no further business the meeting adjourned.

\_\_\_\_\_  
David Ouzan, Mayor

Attest:

\_\_\_\_\_  
Lourdes Cordova, City Clerk

**THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY MET IN REGULAR SESSION ON THE 4<sup>TH</sup> DAY OF AUGUST, 2009 AT 6:30P.M. AT THE CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.**

**CLOSED SESSION – 5:30P.M.**

**CALL TO ORDER**

The Closed Session portion of the agenda was called to order at 5:30p.m.

**ATTENDANCE**

Mayor: David B. Ouzan  
Mayor Pro Tem: John M. Moreno  
Councilman: Luis J. Castro  
Councilman: Daniel F. Romero  
Councilman: Louis Fuentes

The City Council convened into Closed Session at 5:30p.m. to discuss the following:

- A. CONFERENCE WITH LABOR NEGOTIATORS  
Agency Representatives: Judith Hashem, James Lough, Jennifer Lyon, Victor Carrillo  
Employee Organizations: SEIU/CMEA; Water/Wastewater Operators Assoc.; Supervisors Assoc.; Police Officers Assoc.; Fire Fighters Assoc. & Unrepresented Employee
- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Citizens for Honesty and Integrity in Calexico v. City of Calexico
- C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to subdivision (b)(3)(A) of Government Code Section 54956.9(1 case)
- D. RDA ITEM: CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Location: 421 Heffernan Street  
Agency Negotiators: Jennifer Lyon, Rosalind Guerrero, Sandra Tauler, Victor Carrillo  
Negotiating Parties: Chamber of Commerce, De Anza Hotel Limited Partnership  
Under Negotiation: Price and terms of lease

City Council reconvened from Closed Session at 6:30p.m.

Jennifer Lyon, City Attorney reported that the City Council met in closed session and discussed Item A and B. Direction was given, no reportable action taken. She stated that Item C and D will be continued after regular session.

**REGULAR SESSION – 6:30P.M.**

**CALL TO ORDER**

The regular session portion of the agenda was called to order at 6:35p.m. by Mayor Ouzan.

**ATTENDANCE**

(All Council Members were present: Ouzan, Moreno, Castro, Romero, Fuentes)

**PLEDGE OF ALLEGIANCE**

Victor Carrillo, City Manager led those present in the Pledge of Allegiance

**APPROVAL OF AGENDA**

Motion was made by Mayor Ouzan to approve the agenda, seconded by Councilman Fuentes and passed by the following vote to wit:

AYES:	Ouzan, Moreno, Castro, Romero, Fuentes
NOES:	None
ABSENT:	None
ABSTAIN:	None

**ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:**

No public comments.

**GENERAL COMMENTS BY CITY COUNCIL MEMBERS/RDA BOARD MEMBERS**

Councilman Fuentes informed City employees that there will be a meeting with Clinica Santa Monica and the City insurance provider tomorrow at 9:00a.m. at the City Council Chambers, City Hall, 608 Heber Avenue, Calexico, CA. He informed Nick Fenley, General Services Director that he requested a stop sign on Lacy Avenue and it was placed on the wrong intersection but he will discuss that issue with him later. Councilman Fuentes stated that there is a group of senior citizens that are requesting City Council support in putting together a musical event at Crummet Park. He said he would forward City Manager Carrillo the information of the senior citizens group.

Councilman Romero stated that he was not able to attend City Manager Carrillo welcome event last Tuesday due to a family matter but he let City Manager Carrillo know that he has his undeniable support.

Councilman Castro congratulated City Manager Carrillo for his appointment as City Manager. He stated that the City is going through a difficult time and he knows that the City Council and City Manager need to unite as a team.

Mayor Ouzan stated that he attended the press conference today at 4:45p.m. where Assemblyman Manuel Perez presented the City a check for \$2,500 for the swimming pool.

**CONSENT**

Mayor Pro Tem Moreno pulled Item No. 5 and 6.

Councilman Romero pulled Item No. 2, 4 and 10.

Motion was made by Mayor Pro Tem Moreno, seconded by Councilman Fuentes to approve consent agenda consisting of the following: Adopt seconding reading, title only, waive full reading of an ordinance of the City Council for the City of Calexico, California prohibiting special meetings on city holidays; Authorize City Manager to sign agreement for the City's participation in the CalWorks program; Adopt Resolution No. 09-, updating Resolution No. 08-30 regarding Assessment District 90-1 and establishing the special tax requirement for Fiscal Year 2009-10; Adopt Resolution No. 09- establishing the special tax requirement for Community Facilities District #2003-1 for Fiscal Year 2009-10; Adopt Resolution No. 09- authorizing the submittal of an application to the State Home Program; Adopt Resolution No. 09- authorizing the destruction of City records; motion passed by the following vote to wit:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ITEM NO. 2 – EMPLOYMENT AGREEMENT BETWEEN THE CITY OF CALEXICO AND VICTOR CARRILLO FOR THE POSITION OF CITY MANAGER**

Motion was made by Mayor Ouzan to approve employment agreement between the City of Calexico and Victor Carrillo for the position of City Manager. Motion seconded by Councilman Fuentes and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ITEM NO. 4 – AUTHORIZATION OF FOUR WASTEWATER AND FOUR WATER TREATMENT PLANT OPERATORS TO ATTEND THE 25<sup>TH</sup> ANNUAL TRI-STATE SEMINAR ON-THE RIVER IN PRIMM, NEVADA FROM MONDAY, SEPTEMBER 21, 2009 THROUGH THURSDAY, SEPTEMBER 24, 2009**

Councilman Romero inquired if all eight (8) employees needed to go to the training.

City Manager Carrillo informed Councilman Romero that the City sends employees to this training on an annual basis.

Motion was made by Councilman Romero to authorize four wastewater and four water treatment plant operators to attend the 25<sup>th</sup> Annual Tri-State Seminar On-The River in Primm, Nevada from

Monday, September 21, 2009 through Thursday, September 24, 2009. Motion seconded by Councilman Fuentes and passed by the following vote:

- AYES: Ouzan, Moreno, Castro, Romero, Fuentes
- NOES: None
- ABSENT: None
- ABSTAIN: None

**ITEM NO. 5 – AWARD BID PROPOSAL FROM CORA CONSTRUCTORS, INC. IN THE AMOUNT OF \$1,546,475 (BASE BID) FOR THE CHLORINATION FACILITIES PROJECT PLUS 15% CONTINGENCY (\$231,971) FOR INSPECTIONS, ENGINEERING, SOILS TESTING AND ADMINISTRATIVE FEES**

Mayor Pro Tem Moreno inquired if this is an annual bid.

Luis Estrada, Director of Utility Services informed Mayor Pro Tem Moreno that the bid is for the construction of the chlorination facility at the Water Treatment Plant and 6.0 M.G. Water Storage Tank.

Motion was made by Mayor Pro Tem Moreno to award bid proposal from Cora Constructors, Inc. in the amount of \$1,546,475 (base bid) for the Chlorination Facilities Project plus 15% contingency (\$231,971) for inspections, engineering, soils testing and administrative fees. Motion seconded by Councilman Romero and passed by the following vote:

- AYES: Ouzan, Moreno, Castro, Romero, Fuentes
- NOES: None
- ABSENT: None
- ABSTAIN: None

**ITEM NO. 6 – AUTHORIZE CITY MANAGER TO EXECUTE AGREEMENT WITH THE ELPER COMPANY, BENEFITS AND COMPENSATION CONSULTING AND ACTUARIAL SERVICES CONSULTANTS, TO PROVIDE SERVICES IN CONNECTION WITH THE GASB 45 REQUIRED IMPLEMENTATION FOR OPEBS**

Mayor Pro Tem Moreno requested a brief description of the scope of work.

Judith Hashem, Finance Director gave a brief description of the scope of work that Elper Company will be doing for the City.

Motion was made by Mayor Pro Tem Moreno to authorize City Manager to execute agreement with The Elper Company, Benefits and Compensation Consulting and Actuarial Services Consultant, to provide services in connection with the GASB 45 required implementation for OPEBS. Motion seconded by Councilman Romero and passed by the following vote:

- AYES: Ouzan, Moreno, Castro, Romero, Fuentes
- NOES: None

ABSENT: None  
ABSTAIN: None

**ITEM NO. 10 – ADOPT RESOLUTION NO. 09- IN SUPPORT OF ENCASING THE NEW RIVER**

Tony Tirado, 809 Beach Avenue, Calexico, CA is in support of encasing the New River.

Motion was made by Councilman Romero to adopt Resolution No. 09- in support of encasing the New River. Motion seconded by Mayor Pro Tem Moreno and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

**BUSINESS ITEMS**

**ITEM NO. 12 – APPROVE THE ACCEPTANCE OF THE COPS HIRING RECOVERY PROGRAM (CHRP) GRANT AND THE HIRING OF TWO (2) POLICE OFFICERS WITH THESE FUNDS**

Motion was made by Councilman Fuentes to approve the acceptance of the COPS Hiring Recovery Program (CHRP). Motion seconded by Mayor Pro Tem Moreno and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ITEM NO. 13 – APPROVE MAYOR TO SIGN LETTER OF SUPPORT FOR THE CITY OF CALEXICO PARTNERING WITH IMPERIAL COUNTY OFFICE OF EDUCATION AND IMPERIAL VALLEY TELECOMMUNICATIONS AUTHORITY ON A STIMULUS GRANT APPLICATION TO PROVIDE A WIRELESS MESH NETWORK FOR USE BY PUBLIC SAFETY**

Motion was made by Councilman Fuentes to authorize the Mayor to sign letter of support for the City of Calexico Partnering with Imperial County Office of Education and Imperial Valley Telecommunications Authority on a stimulus grant application to provide a wireless mesh network for use by public safety. Motion seconded by Councilman Romero and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ITEM NO. 14 – DISCUSSION/ACTION ON PROPOSAL BY GARCIA FOOD UTILITY PAYMENT CENTER TO PROVIDE A WATER BILL PAY STATION TO THE CITY OF CALEXICO**

Motion was made by Councilman Fuentes to approve the proposal by Garcia Food Utility Payment Center to provide a water bill pay station to the City of Calexico. Motion seconded by Councilman Castro and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ITEM NO. 15 – APPOINTMENTS TO HOUSING AUTHORITY BOARD**

Motion was made by Mayor Ouzan to appoint Karla Flores to the Housing Authority Board. Motion was seconded Councilman Fuentes and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

Motion was made by Councilman Fuentes to appoint Raul Palomino to the Housing Authority Board. Motion was seconded by Mayor Ouzan and passed by the following vote:

AYES: Ouzan, Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: None  
ABSTAIN: None

Motion was made by Mayor Pro Tem Moreno to appoint John Anthony Romo as Resident Tenant Commissioner for the Housing Authority Board. Motion was not seconded, therefore, motion died.

Mayor Ouzan requested that the vacant Resident Tenant Commissioner position be re-advertised and brought back to City Council for review and approval.

**INFORMATION ITEMS****ITEM NO. 16 – MEMORANDUM REGARDING CONFLICTS OF INTEREST, PERSONAL FINANCIAL GAIN AND FAIR PROCESS**

City Council acknowledged receipt memorandum regarding conflicts of interest, personal financial gain and fair process.

**ITEM NO. 17 – FUTURE AGENDA REQUESTS BY CITY COUNCIL MEMBERS**

Councilman Romero requested a City ordinance that prohibits City Hall employing business owners or person currently employed elsewhere.

Mayor Ouzan stated that he would not support the ordinance that Councilman Romero is requesting.

Mayor Pro Tem Moreno inquired if other cities have similar ordinance that Councilman Romero is proposing.

*Mayor Ouzan left the Council Chambers at 7:13p.m.*

**REDEVELOPMENT AGENCY BOARD****AGENDA****AUGUST 4, 2009****6:30P.M.**

City Manager Carrillo requested that Item No. 20 be presented before Item No. 18.

**ITEM NO. 20 – PRESENTATION ON THE SCAG COMPASS BLUE PRINT PROJECT – DOWNTOWN IMPROVEMENT PLAN**

Glenn Fregonese, Fregonese Associates made a PowerPoint presentation on SCAG Compass Blue Print Project – Downtown Improvement Plan.

Councilman Romero inquired if the Business Improvement District (BID) has seen the presentation.

Rosalind Guerrero, RDA Director informed Councilman Romero that several BID Members have seen the presentation.

RDA Director recommended that the City Council accept the Compass Blue Print Project – Downtown Improvement Plan so it can be submitted to SCAG.

Motion was made by Councilman Fuentes to accept the plan that will be submitted to SCAG as the City's Compass Blue Print Project. Motion was seconded by Councilman Romero and passed by the following vote:

AYES: Moreno, Castro, Romero, Fuentes

NOES: None

ABSENT: Ouzan

ABSTAIN: None

**ITEM NO. 18 – CALTRANS APPLICATION FOR TRANSPORTATION ENHANCEMENT (TE) APPLICATION FOR FUNDING OF IMPROVEMENTS TO 1<sup>ST</sup> STREET**

Motion was made by Councilman Fuentes to approve Caltrans application for Transportation Enhancement (TE) application for funding of improvements to 1<sup>st</sup> Street and set aside \$750,000 as local match. Motion seconded by Councilman Castro and passed by the following vote:

AYES: Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: Ouzan  
ABSTAIN: None

**ITEM NO. 19 – APPROVE THE COMMUNITY REDEVELOPMENT AGENCY BASIC FINANCIAL STATEMENT FOR FISCAL YEAR ENDING JUNE 30, 2008**

Motion was made by Councilman Romero to approve the Community Redevelopment Agency Basic Financial Statement for Fiscal Year ending June 30, 2008. Motion seconded by Councilman Fuentes and passed by the following vote:

AYES: Moreno, Castro, Romero, Fuentes  
NOES: None  
ABSENT: Ouzan  
ABSTAIN: None

**INFORMATION ITEMS****ITEM NO. 21 – HOUSING REHABILITATION CONTRACTOR SELECTION PROCEDURES**

City Council acknowledged receipt of Housing Rehabilitation Contractors Selection Procedures.

**CLOSED SESSION**

The City Council convened to Closed Session at 8:03p.m to discuss Items C and D as follows:

- C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to subdivision (b)(3)(A) of Government Code Section 54956.9(1 case)
  
- D. RDA ITEM: CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Location: 421 Heffernan Street  
Agency Negotiators: Jennifer Lyon, Rosalind Guerrero, Sandra Tauler, Victor Carrillo  
Negotiating Parties: Chamber of Commerce, De Anza Hotel Limited Partnership  
Under Negotiation: Price and terms of lease

City Council reconvened from Closed Session and no reportable action was taken.

**ADJOURNMENT**

There being no further business the meeting adjourned.

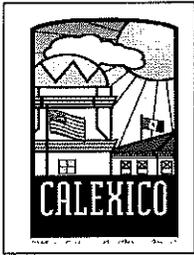
\_\_\_\_\_  
John M. Moreno, Mayor Pro Tem

Attest:

\_\_\_\_\_  
Erica LaCuesta, Deputy City Clerk

**AGENDA  
ITEM**

**8**



# AGENDA STAFF REPORT

**DATE:** September 15, 2015

**TO:** Mayor and City Council

**APPROVED BY:** Richard N. Warne, City Manager *REW*

**PREPARED BY:** Richard N. Warne, City Manager *REW*

**SUBJECT:** Warrants from August 20, 2015 to September 02, 2015

=====

**Recommendation:**

Approve the Affidavit of Warrants from August 20, 2015 to September 02, 2015.

**Background:**

The City Council approves the City Manager's Affidavit of Warrants.

**Discussion & Analysis:**

Attached is a list of claims paid. These warrants have been reviewed and audited by the Callexico City Manager. His affidavit is attached to this report.

**Fiscal Impact:**

Total disbursement is \$1,458,357.15.

**Coordinated With:**

All Departments

**Attachment:**

City Manager's Affidavit of Warrants for August 20, 2015 to September 02, 2015.





# City of Calexico

## Finance Department

608 HEBER AVENUE

• CALEXICO, CA 92231

• (760) 768-2130

### AFFIDAVIT

I, RICHARD N. WARNE, CITY MANAGER do hereby declare and certify that the claims against the City of Calexico from August 20, 2015 to September 02, 2015 in the amount of \$ 1,458,357.15 are a valid and audited record of the purchases and reimbursements, and to the best of my knowledge, are a complete and accurate reflection of the bi-weekly warrants paid.

DATE: 9-10-2015

BY: \_\_\_\_\_

  
Richard N. Warne, City Manager

# Bank Reconciliation

## Checks by Date

User: mgutierrez  
 Printed: 09/02/2015 - 4:22PM  
 Cleared and Not Cleared Checks



Check No	Check Date	Name	Comment	Module	Clear Date	Amount
0	8/20/2015	BIESCO		AP		2,702.96
0	8/20/2015	Q GRAPHIX SIGN CO.		AP		700.92
0	8/20/2015	UNDERGROUND SERVICE ALERT C		AP		46.50
0	8/20/2015	EVANGELINA A. HERRERA		AP		932.00
0	8/20/2015	FIRE ETC		AP		1,251.38
0	8/20/2015	HUMANE SOCIETY OF IMPERIAL C		AP		1,349.75
0	8/20/2015	DAVID TAUSSIG & ASSOCIATES IN		AP		1,251.21
0	8/20/2015	HUNTER EMPLOYMENT SERVICES		AP		23,752.07
0	8/20/2015	DC FROST ASSOCIATES, INC		AP		14,159.10
0	8/20/2015	ET&MS, INC		AP		1,875.00
0	8/20/2015	UNIFIRST CORPORATION		AP		579.18
0	8/20/2015	NORMAN A TRAUB ASSOCIATES		AP		6,202.83
0	8/20/2015	PARKER DESIGN AND CONSTRUCT		AP		37,069.35
0	8/20/2015	HECHOS Y OPINION/EL LECHUGO		AP		2,300.00
0	8/20/2015	ALSCO		AP		3,062.47
0	8/20/2015	AVFUEL CORPORATION		AP		1,729.87
0	8/20/2015	LUPE VALADEZ		AP		342.00
0	8/20/2015	IV WARRIORS INVESTMENT LLC		AP		712.00
0	8/20/2015	VILLA DEL ESTE APARTMENTS		AP		1,205.00
0	8/20/2015	EMPIRE SOUTHWEST LLC		AP		4,636.54
0	8/20/2015	CASTANEDA & ASSOCIATES		AP		8,194.00
0	8/20/2015	STARNIK SYSTEMS, INC		AP		3,755.00
0	8/20/2015	IMPERIAL PRINTERS		AP		162.75
0	8/20/2015	THE MC MARKETING		AP		400.00
0	8/20/2015	INFOSEND, INC		AP		5,901.07
0	8/20/2015	COUNTY OF SAN DIEGO, RCS		AP		4,207.50
0	8/20/2015	J & S AIR CONDITIONING		AP		825.00
1898	8/20/2015	2nd STREET INVESTMENT LLC		AP		725.00
1899	8/20/2015	SAUL AGUILAR		AP		695.00
1900	8/20/2015	CALEXICO CHRONICLE		AP		1,437.00
1901	8/20/2015	CALEXICO TOWING SERVICE		AP		551.41
1902	8/20/2015	CALIFORNIA SUPER MARKET		AP		209.44
1903	8/20/2015	CALIFORNIA SUPER MARKET		AP		14.28
1904	8/20/2015	CASA BLANCA REAL ESTATE		AP		2,076.00
1905	8/20/2015	CASA SONOMA APARTMENTS		AP		1,376.00
1906	8/20/2015	CITY OF SAN DIEGO		AP		25.00
1907	8/20/2015	CURTIS ROADRUNNER LOCK & SA		AP		65.00
1908	8/20/2015	DEPARTMENT OF JUSTICE		AP		32.00
1909	8/20/2015	KARLA DUARTE		AP		112.00
1910	8/20/2015	EASTON AVIATION, LLC		AP		14.27
1911	8/20/2015	LOURDES ESPINOZA		AP		49.00
1912	8/20/2015	JOSIE B FELIX		AP		300.00
1913	8/20/2015	ALEJANDRA GALBAN		AP		30.00
1914	8/20/2015	JAVIER GALINDO		AP		492.00
1915	8/20/2015	GREG GELMAN		AP		100.00
1916	8/20/2015	HR DYNAMICS & PERFORMANCE		AP		5,795.80

Check No	Check Date	Name	Comment	Module	Clear Date	Amount
1917	8/20/2015	GUADALUPE HUIE		AP		597.00
1918	8/20/2015	IMPERIAL VALLEY PRESS		AP		632.41
1919	8/20/2015	IV SERVICES		AP		753.00
1920	8/20/2015	GERARDO & LUPE JIMENEZ		AP		786.00
1921	8/20/2015	KARB COMPANY		AP		1,440.00
1922	8/20/2015	ANA MARIA LAMADRID		AP		579.00
1923	8/20/2015	JOHN LEMON		AP		311.00
1924	8/20/2015	VERONICA LOZANO FAUSNIGHT		AP		54.00
1925	8/20/2015	LUIS MORENO SENIOR APARTMEN		AP		432.00
1926	8/20/2015	ESTHER MARQUEZ		AP		42.00
1927	8/20/2015	ADRIANA MARTINEZ		AP		766.00
1928	8/20/2015	FEDERICO MIRANDA		AP		573.00
1929	8/20/2015	NITZIA MORALES		AP		71.00
1930	8/20/2015	MARCO CESAR MORALES GARCIA		AP		798.00
1931	8/20/2015	NATIONAL HOSPITALITY SUPPLY		AP		79.81
1932	8/20/2015	ORANGE COUNTY CHAPTER, CLS/		AP		45.00
1933	8/20/2015	DAVID OUZAN		AP		200.00
1934	8/20/2015	PUBLIC SAFETY CONSULTING, INC		AP		4,926.48
1935	8/20/2015	R&H CLEAN-TEK		AP		1,656.00
1936	8/20/2015	ROBINSON FORD SALES, INC		AP		1,487.97
1937	8/20/2015	CESAR RODRIGUEZ		AP		850.00
1938	8/20/2015	KARLA M. RODRIGUEZ		AP		396.00
1939	8/20/2015	DANIEL ROMERO		AP		200.00
1940	8/20/2015	SHIFFER, EDDIE		AP		500.00
1941	8/20/2015	SPECTRUM		AP		1,450.00
1942	8/20/2015	STAPLES CREDIT PLAN		AP		1,552.33
1943	8/20/2015	SUPERIOR PRINTING INC.,		AP		165.21
1944	8/20/2015	THE HOME DEPOT CREDIT SERVIC		AP		2,766.47
1945	8/20/2015	TIME WARNER CABLE		AP		63.99
1946	8/20/2015	TMAND, LLC		AP		562.00
1947	8/20/2015	RODOLFO VALDEZ		AP		649.00
1948	8/20/2015	DAVID WOO		AP		585.00
0	8/27/2015	ALLIANT INSURANCE SERVICE		AP		6,000.00
0	8/27/2015	AIRGAS USA, LLC		AP		245.79
0	8/27/2015	PINNACLE MEDICAL CLAIMS		AP		110,594.16
0	8/27/2015	STARNIK SYSTEMS, INC		AP		18,500.00
0	8/27/2015	OFFICE SUPPLY COMPANY,INC.		AP		661.63
0	8/27/2015	HUNTER EMPLOYMENT SERVICES		AP		26,336.31
0	8/27/2015	AGGREGATE PRODUCTS, INC		AP		788,830.38
0	8/27/2015	PINNACLE INSURANCE ADMN		AP		7,412.35
0	8/27/2015	NORTHEND AUTO PARTS, INC		AP		2,812.14
0	8/27/2015	LIEBERT CASSIDY WHITMORE		AP		20,729.60
0	8/27/2015	I V TERMITE & PEST CONTROL INC		AP		1,028.00
0	8/27/2015	VALLEY PETROLEUM EQUIPMENT		AP		2,278.85
0	8/27/2015	THATCHER COMPANY OF CA		AP		7,654.00
0	8/27/2015	PADRE JANITORIAL SUPPLIES, INC		AP		209.97
0	8/27/2015	HDL COREN & CONE		AP		3,037.50
0	8/27/2015	PRUDENTIAL INSURANCE CO.		AP		3,012.96
0	8/27/2015	TURBO DATA SYSTEMS, INC		AP		1,627.00
0	8/27/2015	CINTAS FIRST AID & SAFETY		AP		361.08
0	8/27/2015	QUILL CORPORATION		AP		1,868.68
0	8/27/2015	RUTAN & TUCKER LLP		AP		28,314.09
0	8/27/2015	W-PNP, INC		AP		25,700.00
0	8/27/2015	K-C WELDING & RENTALS, INC		AP		5,262.77
0	8/27/2015	INFOSEND, INC		AP		5,901.07
0	8/27/2015	TASER INTERNATIONAL,INC.		AP		60,393.60

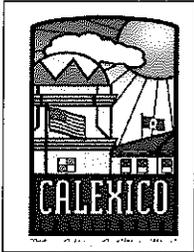
Check No	Check Date	Name	Comment	Module	Clear Date	Amount
0	8/27/2015	ORANGE COMMERCIAL CREDIT		AP		7,067.00
0	8/27/2015	PUN & McGEADY, LLP		AP		25,000.00
1949	8/27/2015	AHERN ADCOCK DEVLIN LLP		AP		5,780.00
1950	8/27/2015	AIRWAVE COMMUNICATIONS - IM		AP		1,668.88
1951	8/27/2015	AT & T MOBILITY		AP		63.02
1952	8/27/2015	BAJA BUSH PILOTS		AP		49.00
1953	8/27/2015	JENI BATE		AP		100.00
1954	8/27/2015	BNI BUILDING NEWS		AP		128.95
1955	8/27/2015	BUENAS IDEAS		AP		732.38
1956	8/27/2015	CALEXICO CHAMBER OF COMMEI		AP		5,000.00
1957	8/27/2015	CALIFORNIA POLICE CHIEFS ASSC		AP		630.00
1958	8/27/2015	CANONS SOLUTIONS		AP		12,304.90
1959	8/27/2015	CARQUEST AUTO PARTS		AP		95.40
1960	8/27/2015	CITY OF CALEXICO		AP		71.00
1961	8/27/2015	CITY OF CALEXICO PETTY CASH		AP		1,270.00
1962	8/27/2015	COSTELLO INSURANCE ASSOC		AP		3,512.50
1963	8/27/2015	ESPARZA ADVERTISING		AP		900.00
1964	8/27/2015	FIRE SERVICE CORP.		AP		350.24
1965	8/27/2015	GRANITE CONSTRUCTION COMPA		AP		36,938.69
1966	8/27/2015	HELIX LABORATORIES		AP		7,161.00
1967	8/27/2015	IMP CO COMMUNITY & ECONOMIC		AP		11,197.40
1968	8/27/2015	IMPERIAL COUNTY AUDITOR-CON		AP		27,324.65
1969	8/27/2015	IMPERIAL COUNTY DISTRICT ATT		AP		2,109.79
1970	8/27/2015	JOHNSON LIFT/HYSTER		AP		947.93
1971	8/27/2015	JORGE PADILLA		AP		1,820.00
1972	8/27/2015	PIONEER VAN & STORAGE		AP		269.38
1973	8/27/2015	PITNEY BOWES GLOBAL FINANCI		AP		2,821.00
1974	8/27/2015	PRO RECORD STORAGE		AP		633.96
1975	8/27/2015	ROGERS & ROGERS NISSAN		AP		811.18
1976	8/27/2015	ROMAN'S WATER SYSTEM		AP		157.50
1977	8/27/2015	ROTO-ROOTER		AP		376.73
1978	8/27/2015	SPARKLETTS		AP		136.77
1979	8/27/2015	SUSAN G. MAYER		AP		2,571.65
1980	8/27/2015	EDGARDO VELASQUEZ		AP		210.00

Total Check Count: 136

Total Check Amount: 1,458,357.15

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# AGENDA STAFF REPORT

**DATE:** September 15, 2015

**TO:** Mayor and City Council

**APPROVED BY:** Richard N. Warne, City Manager *RW*

**PREPARED BY:** Nick Servin, Public Works Director/ City Engineer  
Mark Austin, Interim City Attorney  
Mark Vasquez, Assistant City Planner

**SUBJECT:** Second Reading and Adopt Ordinance No. 1162 of the City Council of the City of Calexico Adding Chapter 8.47 to Title 8 (Health and Safety of the Calexico Municipal Code) Pertaining to Hookah Parlors

=====

## Recommendation:

Conduct Second Reading and Adopt the proposed Ordinance No. 1162, by title only, and waive full reading.

## Background:

At its meeting of June 8, 2015, the Calexico Planning Commission reviewed a resolution and draft ordinance prepared by staff prohibiting Hookah Parlors from operating in Calexico. Planning Staff studied its options, evaluating other cities' ordinances involving Hookah Parlors, which are popular in larger metropolitan cities, prior to presenting this information to the Planning Commission. Staff presented their findings, which indicated that this type of use promotes associated increases in noise, loitering, public and underage drinking, dangerous behavior of tobacco use, and smoking. It was determined that this use would be contrary to the goals and policies of the General Plan and Title 8 - Health and Safety Ordinance of the City's Municipal Code. After much discussion, the Planning Commission passed a resolution recommending that the City Council adopt an Ordinance that would amend Title 8 to prohibit Hookah Parlors from operating in all zones within the City of Calexico.

Since the hearing before the Planning Commission, minor modifications to the proposed municipal code amendments have been made by the City Attorney's office, to make the language more consistent with other provisions of the Municipal Code. In addition, City staff has done further investigation regarding the adverse effects of smoking, including second-hand smoke, and have included this information in the proposed ordinance.

For instance, the United States Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating

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smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke.<sup>1</sup> In addition, the United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen.<sup>2</sup> Furthermore, the California Air Resources Board has identified environmental tobacco smoke (commonly known as secondhand smoke) as a toxic air contaminant without a threshold exposure level below which no significant adverse health effects are anticipated.<sup>3</sup> Also, the California Office of Environmental Health Hazard Assessment has included tobacco smoke and environmental tobacco smoke (commonly known as secondhand smoke) on the Proposition 65 list of chemicals known to the State of California to cause cancer and developmental harm.<sup>4</sup>

Based on these factors and the findings and recommendation of the Planning Commission, the ordinance is now being presented to the City Council for consideration.

First Reading of Ordinance No. 1162 was approved at the City Council meeting of August 18, 2015.

**Discussion & Analysis:**

The Planning Commission reviewed the attached resolution and draft ordinance prohibiting Hookah Parlors from operating in Calexico. (Attachments #1 and #2) City staff recommends that the Council take all required steps including adopting the necessary ordinance prohibiting Hookah Parlors from operating in Calexico.

**Fiscal Impact:**

None.

**Coordinated With:**

City Attorney's Office.

**ATTACHMENTS:**

1. Planning Commission Staff Report and Planning Commission Resolution No. 2015-01.
2. City Council Ordinance

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<sup>1</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 9 (2006).

<sup>2</sup> U.S. Environmental Protection Agency. *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders* 1-4 (1992).

<sup>3</sup> Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006).

<sup>4</sup> Cal. Env'tl. Prot. Agency, Office of Env'tl. Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity* (May 11, 2015).

# ATTACHMENT 1



## *PLANNING COMMISSION STAFF REPORT*

**DATE:** Monday, June 8, 2015

**TO:** Chairperson and Members of the Planning Commission

**FROM:** Nick Servin, Public Works Director/City Engineer

**PREPARED BY:** Mark Vasquez, Assistant City Planner

**PROJECT TITLE:** An Ordinance Adding Chapter 8.47 to Title 8, Health and Safety of the Calexico Municipal Code

**APPLICANT:** City of Calexico

**OWNER:** N/A

### **PROJECT REQUESTS**

**Municipal Code Text Amendments:** Adding Chapter 8.47 to Title 8, Health and Safety of the Calexico Municipal Code pertaining to Hookah Bars.

### **BACKGROUND**

At its March 11, 2015 meeting, the Project Review Committee (PRC) reviewed a proposal for a Hookah Parlor located at 101 Hacienda Avenue. The committee was not in favor of the proposed business due to its associated increases in noise, loitering, public and underage drinking, dangerous behavior of tobacco use and smoking. The PRC and City Manager subsequently provided instruction to adopt an ordinance, prohibiting Hookah Parlors from operating as a primary, accessory or secondary use in all zones in the City of Calexico.

As part of its investigation process, the City studied its options, evaluating other cities' ordinances involving Hookah Parlors which are popular in larger metropolitan areas and determined that this use would be contrary to the goals and policies of the City of Calexico General Plan and Title 8 - Health and Safety Ordinance, respectively.

**PLANNING COMMISSION STAFF REPORT**

**MAY 26, 2015**

**PAGE 2 of 2**

**PROJECT TITLE: An Ordinance Adding Chapter 8.47 to Title 8, Health and Safety of the Calexico Municipal Code, (CMC) pertaining to Hookah Bars and Lounges**

**PROJECT LOCATION AND SETTING**

City-wide.

**ANALYSIS AND DISCUSSION**

After evaluating other local cities' ordinances involving Hookah Parlors which are usually popular in larger metropolitan areas, it was determined that such uses would be contrary to the goals and policies of the City of Calexico General Plan and Title 8 - Health and Safety Ordinance, respectively.

**RECOMMENDATIONS**

It is recommended that the Planning Commission receive the staff report, take public comment, and adopt: Resolution No. 2015-\_\_\_ recommending adoption of the draft Ordinance submitted prohibiting Hookah Parlors from operating as a primary, accessory or secondary use in all zones in the City of Calexico.

**ATTACHMENTS**

- 1. PLANNING COMMISSION RESOLUTION**

**RESOLUTION NO. 2015-01**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALEXICO, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE AMENDING THE CALEXICO MUNICIPAL CODE TO PROHIBIT HOOKAH PARLORS FROM OPERATING AS PRIMARY, SECONDARY OR ACCESSORY USE IN ALL ZONES**

WHEREAS, on May 26, 2015, the Planning Commission of the City of Calexico reviewed a draft ordinance banning Hookah Parlors from operating within the City in all zones; and

WHEREAS, after proper public notice was given, on May 14, 2015, this Commission considered the proposed ordinance; and

WHEREAS, the Planning Commission has afforded the public the opportunity to provide input into the proposed ordinance and has considered legal and land use aspects of Hookah Parlors and businesses; and

WHEREAS, the Planning Commission finds that proposals submitted to the City for operation of Hookah Parlors and Bars may bring associated increases in noise, loitering, public drinking, dangerous behavior of tobacco use and smoking, and underage drinking to name a few.

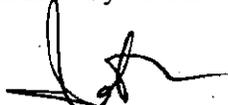
NOW THEREFORE, the Planning Commission of the City of Calexico DOES HEREBY RESOLVE as follows:

SECTION 1. The Planning Commission finds the facts recited above are true and correct and incorporates them herein by this reference.

SECTION 2. The proposed ordinance prohibiting the operation of Hookah Parlors and Bars is consistent with Calexico's General Plan Policies and Goals.

SECTION 3. The Planning Commission believes that the ordinance will avoid the potential for legal liability risks associated with Health and Safety.

NOW, THEREFORE, based on the above findings, the Planning Commission of the City of Calexico DOES HEREBY RECOMMEND that the City Council of the City of Calexico adopt the proposed Ordinance to ban Hookah Parlors in the City of Calexico.

  
\_\_\_\_\_  
Cesar Rodriguez, Chairman  
Calexico Planning Commission

**CERTIFICATION**

I, Nick Servin, Secretary to the Planning Commission, hereby certify that the preceding Resolution No. 2015-01 was presented to the Planning Commission at a meeting conducted on May 26, 2015 by the following vote:

AYES:	Rodriguez, Romero, Ouzan
NOES:	None
ABSENT:	Felix, Gelman
ABSTAIN:	None

ATTEST:

  
\_\_\_\_\_  
Nick Servin, Public Works Director/City Engineer  
Secretary to the Planning Commission

# ATTACHMENT 2

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO ADOPTING AMENDMENTS TO TITLE 8 – “HEALTH & SAFETY” – OF THE CITY OF CALEXICO MUNICIPAL CODE, BY THE ADDITION OF CHAPTER 8.47, ENTITLED “HOOKAH PARLORS PROHIBITED,” PROHIBITING THE OPERATION OF HOOKAH PARLORS WITHIN THE CITY OF CALEXICO**

**WHEREAS**, on June 8, 2015, the Planning Commission of the City of Calexico adopted Resolution No. 2015-01, “A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALEXICO, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE AMENDING THE CALEXICO MUNICIPAL CODE TO PROHIBIT HOOKAH PARLORS FROM OPERATING AS A PRIMARY, SECONDARY, OR ACCESSORY USE IN ALL ZONES”; and

**WHEREAS**, the Planning Commission of the City of Calexico determined that the operation of hookah parlors and bars may bring associated increases in noise, loitering, public drinking, dangerous behavior of tobacco use and smoking, and underage drinking;

**WHEREAS**, the Planning Commission of the City of Calexico further determined that the prohibition of hookah parlors and bars will avoid the potential for legal liability risks associated with health and safety;

**WHEREAS**, the Planning Commission of the City of Calexico further determined that the prohibition of hookah parlors and bars is consistent with the City of Calexico’s General Plan and Goals;

**WHEREAS**, the United States Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke;<sup>1</sup>

**WHEREAS**, the United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;<sup>2</sup>

**WHEREAS**, the California Air Resources Board has identified environmental tobacco smoke (commonly known as secondhand smoke) as a toxic air contaminant without a threshold exposure level below which no significant adverse health effects are anticipated;<sup>3</sup>

<sup>1</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* 9 (2006).

<sup>2</sup> U.S. Environmental Protection Agency. *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders* 1-4 (1992).

<sup>3</sup> Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006).

**WHEREAS**, the California Office of Environmental Health Hazard Assessment has included tobacco smoke and environmental tobacco smoke (commonly known as secondhand smoke) on the Proposition 65 list of chemicals known to the State of California to cause cancer and developmental harm;<sup>4</sup> and

**WHEREAS**, with certain exceptions, state law and the City of Calexico Municipal Code prohibit smoking inside an enclosed place of employment.

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

**SECTION 1.** Title 8 “HEALTH AND SAFETY” of the City of Calexico Municipal Code is hereby amended by adding Chapter 8.47, entitled “HOOKAH PARLORS PROHIBITED,” to read as follows:

**“CHAPTER 8.47 - HOOKAH PARLORS PROHIBITED**

**8.47.010 – Purpose.**

The City Council finds that substantial scientific evidence exists that the use of tobacco products causes cancer, heart disease, and various other medical diseases. The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and that neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke. The United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen. The California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant. The California Office of Environmental Health Hazard Assessment has included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm. In addition, the City Council also finds that the operation of hookah parlors is associated with increases in noise, loitering, public drinking, dangerous behavior of tobacco use and smoking, and underage drinking. Accordingly, the City Council finds and declares that it is in the public interest to prohibit hookah parlors in all zones throughout the City. In order to serve the public health, safety, and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit hookah parlors in all zones whether operating as a primary or accessory use.

**8.47.020 – Definitions.**

For the purposes of this chapter, the following words are defined:

‘Accessory use’ shall have the same meaning as “accessory use” as defined in Section 17.01.900 of Title 17 “ZONING” of the City of Calexico Municipal Code.

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<sup>4</sup> Cal. Env'tl. Prot. Agency, Office of Env'tl. Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity* (May 11, 2015).

'Hookah parlor' shall mean any business, establishment, facility, or location whose business operation, whether as its primary use or accessory use, is denoted by the smoking of tobacco or other substances through one or more pipes (commonly known as a hookah, waterpipe, shisha, or narghile) designed with a tube passing through an urn of water that cools the smoke as it is drawn through it, including but not limited to establishments known variously as hookah bars, hookah lounges, or hookah cafes.

'Hookah pipe' shall mean a water pipe, bong, hookah, or similar device through which a person can cause tobacco or another lawful substance to combust and then pass through the air, gas, or a liquid before it is inhaled by a person using the device. A hookah pipe does not include cigarettes, cigars, or a device where (a) the smoke is inhaled without passing through the air, gas, or a liquid, or (b) the length of any pipe or tube used for inhaling the smoke is not more than ten inches.

'Primary use' shall mean a use that is not an accessory use.

#### **8.47.030 – Prohibition.**

It shall be unlawful for any person or entity to own, manage, conduct, or operate any hookah parlor, or to participate as an employee, contractor, agent, or volunteer, or in any other manner or capacity, in any hookah parlor in the City. Hookah parlors are prohibited in all zones whether operating as a primary use or accessory use.”

**SECTION 2.** Except as expressly modified pursuant to this Ordinance, all provisions of the City of Calexico Municipal Code shall remain unmodified and in full force and effect.

**SECTION 3.** No use, business, or activity of any kind which operated as a hookah parlor prior to the enactment of this Ordinance shall be deemed to have been a legally-established use under the provisions of the City of Calexico Municipal Code, and any such use shall not be entitled to claim legal nonconforming status.

**SECTION 4.** The City Clerk shall certify the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and, within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation.

First read at a regular meeting of the City Council held on the 21<sup>st</sup> day of July, 2015, and adopted and ordered published at a regular meeting of said Council on the 4<sup>th</sup> day of August 2015.

**PASSED, APPROVED, AND ADOPTED** this 4<sup>th</sup> day of August, 2015.

**CITY OF CALEXICO**

\_\_\_\_\_  
Joong Kim, Mayor

**ATTEST:**

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Gabriela T. Garcia, City Clerk

**APPROVED AS TO FORM:  
RUTAN & TUCKER LLP**

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Mark J. Austin, Interim City Attorney

STATE OF CALIFORNIA )  
COUNTY OF IMPERIAL ) ss  
CITY OF CALEXICO )

I, Gabriela T. Garcia, City Clerk of the City of Calexico, California, do hereby certify that the foregoing Ordinance No. \_\_\_\_ had its first reading on \_\_\_\_\_, 2015, and had its second reading on \_\_\_\_\_, 2015, and was passed by the following vote:

AYES:

NOES:

ABSENT:

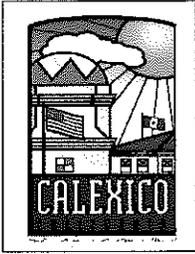
ABSTAINED:

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Gabriela T. Garcia, City Clerk

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# AGENDA STAFF REPORT

**DATE:** September 15, 2015

**TO:** Mayor and City Council

**APPROVED BY:** Richard Warne, City Manager *new*

**PREPARED BY:** Mark J. Austin, Interim City Attorney

**SUBJECT:** Second Reading and Adopt Ordinance No. 1163 of the City Council of the City of Calexico Approving and Adopting a Zoning Code Amendment to Add New Provisions to the Calexico Zoning Code (Title 17 to the Calexico Municipal Code) Relating to Expedited Permitting Procedures for Small Residential Rooftop Solar Energy Systems and a Checklist of Requirements for Expedited Processing of Permits for Small Residential Rooftop Solar Energy Systems

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## RECOMMENDATIONS

City staff recommends that the City Council take the following actions:

- (1) Approve the second reading and adopt (by title only, waiving full reading) of Ordinance No. 1163 submitted herewith as **Attachment 1**, amending the Zoning Code (Title 17 to the Calexico Municipal Code) to create an expedited and streamlined permitting process for small residential rooftop solar energy systems (hereinafter, the "Zoning Code Amendment"); and
- (2) Adopt the Resolution submitted herewith as **Attachment 2**, adopting the "Checklist of Requirements for Expedited Processing of Permits for Small Residential Rooftop Solar Energy Systems" that will be used to implement the new provisions of the Zoning Code (hereinafter, the "Checklist").

## BACKGROUND

To promote and encourage the installation and use of solar-energy systems by limiting obstacles to their use and minimizing permitting costs, Section 65850.5 of the California Government Code requires cities to administratively approve applications to install solar-energy systems through the issuance of a building permit or similar nondiscretionary permit. Under that law, a city may only require a discretionary permit (such as a conditional use permit) for a solar energy system if the

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system could have a “specific, adverse impact on the public health and safety.” As a result, the vast majority of solar energy systems are currently approved administratively via building permit.

On September 21<sup>st</sup>, 2014, Governor Brown signed Assembly Bill 2188 (“AB 2188”) into law, amending Section 65850.5 of the California Government Code to further streamline the process by which certain solar-energy systems (referred to as “small residential rooftop solar energy systems”) can obtain a building permit. AB 2188 requires cities to adopt an ordinance that creates an expedited, streamlined permitting process for “small residential rooftop solar energy systems,” and to adopt a checklist of all requirements with which these systems must comply to be eligible for expedited permit review.

To qualify as a “small residential rooftop solar energy system,” a system must meet all of the following criteria:

- a. It cannot be larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
- b. It must conform to all applicable State fire, structural, electrical, and other building codes as adopted or amended by the City and paragraph (iii) of subdivision (c) of Section 714 of the Civil Code, as such section or subdivision may be amended, renumbered, or re-designated from time to time.
- c. It must be installed on a single or duplex family dwelling.
- d. Its solar panel or module array cannot exceed the maximum legal building height.

To assist in expediting and streamlining the process, AB 2188 also requires cities to accept applications for “small residential rooftop solar energy systems” electronically (*i.e.*, by email, fax, or website). As with other types of solar energy systems, AB 2188 limits the City’s ability to deny such applications or require discretionary permits (*i.e.*, a CUP requirement) unless there is a “specific, adverse impact” resulting from the proposal.

At the meeting of September 1, 2015, City Council held a public hearing to obtain input from the public regarding the Ordinance No. 1163. One person spoke in favor of the Ordinance. There were no speakers opposing the Ordinance. City Council approved Introduction of Ordinance No. 1163 (by title only, waive full reading) and approved Resolution No. 2015-47 by a unanimous vote.

### **ZONING CODE AMENDMENT**

The City does not currently have a streamlined permitting procedure for solar energy systems. If adopted, the proposed Zoning Code Amendment will add a new Article XI to

Chapter 17.11 of the Zoning Code that provides standards and streamlined permit-processing requirements for “small residential rooftop solar energy systems” (as that term is defined in AB 2188). The purpose of the proposed Zoning Code Amendment is to ensure that the City’s Zoning Code complies with state law—specifically, Government Code Section 65850.5.

**CHECKLIST FOR EXPEDITED PERMIT PROCESSING**

As noted above, AB 2188 also requires cities to adopt a “checklist” of eligibility requirements for streamlined permitting. The “checklist” must substantially conform to the recommendations for expedited permit processing contained in the most current version of the Governor’s Office of Planning and Research’s “California Solar Permitting Guidebook” (which is available online at: [http://www.opr.ca.gov/s\\_renewableenergy.php#A](http://www.opr.ca.gov/s_renewableenergy.php#A)).

The proposed Checklist is submitted herewith for the City’s review and approval by separate Resolution. The proposed Resolution and its attached Checklist are attached hereto as **Attachment 2**.

**PLANNING COMMISSION ACTION**

After a public hearing held on August 10, 2015, the Planning Commission voted to recommend the approval of the Zoning Code Amendment. (The Planning Commission was not asked or required to make a recommendation relating to the proposed Checklist.)

**CEQA REVIEW**

This action is exempt under Section 15061, subsection (b)(3), of Title 14 of the California Code of Regulations. The amendments are intended to bring the City’s Zoning Code into compliance with recent changes to state law. It can be seen with reasonable certainty that there is no possibility that the activity in question will have a significant effect on the environment.

**ALTERNATIVES**

As an alternative to following staff’s recommendations, the City Council can choose to not approve of the Zoning Code Amendment or the Resolution adopting the Checklist as they are currently drafted.

**PUBLIC NOTIFICATION**

Consistent with local and state-mandated noticing requirements, Summary of Ordinance No. 1163 was published in the Calexico Chronicle on September 10, 2015 and posted at City Hall, 608 Heber Avenue, Calexico, CA 92231.

**FISCAL IMPACT**

None.

**COORDINATED WITH**

None.

**ATTACHMENTS**

1. Proposed Ordinance.
2. Resolution No. 2015-47 and Checklist.

**ORDINANCE NO. 1163**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO APPROVING AND ADOPTING A ZONING CODE AMENDMENT TO ADD NEW PROVISIONS TO THE CALEXICO ZONING CODE (TITLE 17 TO THE CALEXICO MUNICIPAL CODE) RELATING TO EXPEDITED PERMITTING PROCEDURES FOR SMALL RESIDENTIAL ROOFTOP SOLAR ENERGY SYSTEMS**

**WHEREAS**, on September 21, 2014, the Governor signed Assembly Bill 2188 (Stats. 2014, Ch. 521) into law; and

**WHEREAS**, Assembly Bill 2188 provides that the implementation of consistent statewide standards to achieve the timely and cost-effective installation of small residential rooftop solar energy systems is a matter of statewide concern; and

**WHEREAS**, Assembly Bill 2188 amended Section 714 of the California Civil Code, and Section 65850.5 of the California Government Code; and

**WHEREAS**, Section 65850.5 of the California Government Code now requires every city to adopt an ordinance that creates an expedited and streamlined permitting process for small residential rooftop solar energy systems; and

**WHEREAS**, the City of Calexico ("City") does not currently have an expedited and streamlined permitting process for small residential rooftop solar energy systems; and

**WHEREAS**, if adopted, the proposed amendments to the Calexico Zoning Code (Title 17 of the Calexico Municipal Code), as identified in Exhibit "A" attached to this Resolution and incorporated herein by this reference (the "Zoning Code Amendment"), will create an expedited and streamlined permitting process for small residential rooftop solar energy systems; and

**WHEREAS**, the Zoning Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061, subsection (b)(3), of Title 14 of the California Code of Regulations, in that the proposed amendments are consistent with California law, specifically Government Code Section 65850.5 and Civil Code Section 714, and because it can be seen with certainty that the proposed text amendments will have no significant effect on the environment; and

**WHEREAS**, pursuant to Sections 17.01.230 and 17.01.325 of the Calexico Municipal Code, a duly noticed public hearing on the Zoning Code Amendment was held by the Planning Commission on August 10, 2015; and

**WHEREAS**, although it was not required by law, in conjunction with the public hearing on the Zoning Code Amendment, the Planning Commission also considered a proposed "Checklist of Requirements for Small Residential Solar Rooftop Energy Systems" ("Checklist"), a copy of which was included with the Planning Commission's staff report for the Zoning Code Amendment, dated August 10, 2015, and is attached hereto with the City Council's staff report for the Zoning Code Amendment, dated September 1, 2015.

**WHEREAS**, on August 10, 2015, the Planning Commission of the City of Calexico, adopted Resolution No. 2015-08 recommending to the City Council approval of the Zoning Code Amendment; and

**WHEREAS**, pursuant to Section 17.01.325 of the Calexico Municipal Code, a duly noticed public hearing on the Zoning Code Amendment was held by the City Council on September 1, 2015.

**WHEREAS**, in conjunction with the public hearing on the Zoning Code Amendment, the City Council also considered a proposed "Checklist of Requirements for Small Residential Solar Rooftop Energy Systems," a copy of which was included with the City Council's staff report for the Code Amendment, dated September 1, 2015.

**NOW, THEREFORE, the City Council of the City of Calexico does hereby ordain as follows:**

**SECTION 1.** The Recitals set forth above are true and correct, and are incorporated herein by this reference.

**SECTION 2.** The City Council has read and considered the Zoning Code Amendment, as identified in Exhibit "A."

**SECTION 3.** After consideration of the staff report, all of the information, testimony, and evidence presented at the public hearing, and the Planning Commission's recommendation, the City Council finds and determines that (i) the Zoning Code Amendment complies with all applicable requirements of State law, including, without limitation, Assembly Bill 2188 (Stats. 2014, Ch. 521), codified at Civil Code Section 714 and Government Code Section 65850.5, (ii) the Zoning Code Amendment will not adversely affect the health, safety, or welfare of the residents within the community, (iii) the Zoning Code Amendment is in the public interest of the City of Calexico, (iv) the Zoning Code Amendment is consistent with the Calexico General Plan and its various elements, and (v) the Zoning Code Amendment will not be contrary to other goals, objectives, and/or policies of the Calexico Zoning Code (Title 17 to the Calexico Municipal Code).

**SECTION 4.** The City Council hereby certifies that the Zoning Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061, section (b)(3), of Title 14 of the California Code of Regulations.

**SECTION 5.** The Council hereby accepts the recommendation of the Planning Commission to adopt the Zoning Code Amendment.

**SECTION 6.** The City Council hereby adopts the Zoning Code Amendment. The Calexico Zoning Code (Title 17 of the Calexico Municipal Code) is hereby amended as identified in Exhibit "A" attached to this Ordinance and incorporated herein by this reference.

**SECTION 7.** All of the above-referenced documents and information have been and are on file with the Planning Department of the City.

**SECTION 8.** This ordinance shall take effect thirty (30) day after its adoption.

**SECTION 9.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

**SECTION 10.** The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Calexico on September 15, 2015.

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JOONG S. KIM, MAYOR

ATTEST:

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GABBY GARCIA, CITY CLERK  
CITY OF CALEXICO

APPROVED AS TO FORM:  
BEST BEST & KRIEGER

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CARLOS CAMPOS, INTERIM CITY ATTORNEY

I, GABRIELA T. GARCIA, Deputy City Clerk of the City of Calexico, California, DO  
HEREBY CERTIFY that the foregoing Ordinance was adopted at a regular meeting of the City  
Council of the City of Calexico held on the 15<sup>th</sup> day of September, 2015, and was carried by the  
following roll call vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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GABRIELA T. GARCIA, DEPUTY CITY CLERK  
CITY OF CALEXICO

## EXHIBIT "A"

### ZONING CODE AMENDMENT

*A new Article XI ("Small Residential Rooftop Solar Energy Systems") is added to Chapter 17.11 ("Special Uses and Conditions") of Title 17 ("Zoning") the Calexico Municipal Code as set forth below:*

#### **Article XI – Small Residential Rooftop Solar Energy Systems**

##### **17.11.1110 – Purpose.**

- A. The purpose of this Section is to create an expedited, streamlined permitting process for small residential rooftop solar energy systems, in accordance with California Civil Code Section 714 and California Government Code Section 65850.5.
- B. It is also the purpose of this Section to promote and encourage the use of small residential rooftop solar energy systems and to limit obstacles to their use, in accordance with the standards adopted by the City pursuant to this Section and State law, while allowing the City to protect the public health and safety.
- C. It is hereby declared that in any instance where the provisions of this Section conflict with any applicable State law or regulation, such State law or regulation shall govern.

**17.11.1120 – Definitions.** The following definitions shall govern the meaning of words and phrases used herein:

- A. "Checklist of Requirements for Small Residential Rooftop Solar Energy Systems" or "Checklist" means the rules, regulations, guidelines, and checklist adopted by resolution of the City Council that sets forth implementing and additional requirements for small residential rooftop solar energy systems consistent with Section 65850.5 of the Government Code.
- B. "Director" means the director of the City's Planning Department or his or her designee.
- C. "Electronic submittal" shall have the same meaning as the term is defined in Subsection (j)(2) of Section 65850.5 of the Government Code, as amended from time to time or replaced by a successor statute.
- D. "Small residential rooftop solar energy system" shall have the same meaning as the term is defined in Subsection (j)(3) of Section 65850.5 of the Government Code, as amended from time to time or replaced by a successor statute.
- E. "Solar energy system" shall have the same meaning as the term is defined in Subsection (j)(4) of Section 65850.5 of the Government Code, as amended from time to time or replaced by a successor statute.

- F. "Specific, adverse impact" shall have the same meaning as the term is defined in Subsection (j)(5) of Section 65850.5 of the Government Code, as amended from time to time or replaced by a successor statute.

**17.11.1130 – Applicability.** This Section applies to the permitting of all small residential rooftop solar energy systems, as defined herein, in the City. Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Section are not subject to the requirements stated herein, unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop solar energy system in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

**17.11.1140 – Development Standards.** In addition to the Checklist of Requirements for Small Residential Rooftop Solar Energy Systems, the following standards shall apply to each small residential rooftop solar energy system:

- A. Systems shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities, consistent with Section 65850.5 of the Government Code.
- B. Systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
- C. The Director may from time to time revise the Checklist of Requirements for Small Residential Rooftop Solar Energy Systems as long as any revisions are consistent with the most recently adopted resolution of the City Council adopting the Checklist, and are consistent with Section 65850.5 of the Government Code.
- D. The Checklist of Requirements for Small Residential Rooftop Solar Energy Systems shall be made available to the public during regular business hours at the Office of the City Clerk and by posting the Checklist on the City's web site.

**17.11.1150 – Application; Documents and Requirements.** All documents required for the submission of an expedited small residential rooftop solar energy system application shall be made available on the City's website. The applicant may submit the permit application and associated documentation to the City's Planning Department in person or by electronic submittal, together with any required permit processing and inspection fees. For electronic submittal, the City shall accept an electronic signature on all forms, applications, and other documentation in lieu of a wet signature by an applicant to the extent permitted by law and to the extent such electronic submittal complies with the requirements set forth in this Section and the Checklist of Requirements for Small Residential Rooftop Solar Energy Systems.

**17.11.1160 – Review.** Review of the application to install a small residential rooftop solar energy system shall be limited to an expedited administrative, nondiscretionary review by the Planning Department of whether the application meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the small residential rooftop solar energy system will not have a specific, adverse impact upon the public health or safety. If the building official makes a finding based on substantial evidence, that a small residential rooftop solar energy system could have a specific, adverse impact upon the public health and safety, the City may require the applicant to apply for a conditional use permit or other applicable license or permit in accordance with the in accordance with the procedure and standards set forth in Section 65650.5 of the Government Code.

**17.11.1170 – Approval Requirements.**

- A. An application that satisfies the requirements of this Section and the Checklist of Requirements for Small Residential Rooftop Solar Energy Systems shall be deemed complete upon confirmation by the Director that the application and supporting documents are complete and meet the requirements of this Section and the Checklist. Upon the Director's determination that an application is complete, the City's Planning Department shall approve the application and, in conjunction with any other City Departments, issue all required permits or authorizations. Upon receipt of an incomplete application, the Director shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.
- B. If the City denies an application for a use permit to install a small residential rooftop solar energy system, the City shall make written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- C. The decision of the Director pursuant to paragraphs (1) and (2) above may be appealed to the Planning Commission and the decision of the Planning Commission may be appealed to the City Council in accordance with this Code.

**17.11.1180 – Inspections.** For a small residential rooftop solar energy system eligible for expedited review, only one inspection shall be required, which shall be done in a timely manner and may include a consolidated inspection, except that a separate fire safety inspection may be performed if the City does not have an agreement with a local fire authority to conduct a fire safety inspection on behalf of the fire authority. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized, however the subsequent inspection need not conform to the requirements of this Section.

**17.11.1190 – Approval by Association Not Required.** The City shall not condition approval for any small residential rooftop solar energy system permit on the approval of the system by an association, as that term is defined in Section 4080 of the Civil Code.

## RESOLUTION NO. 2015-47

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, ADOPTING A CHECKLIST OF REQUIREMENTS FOR EXPEDITED PROCESSING OF PERMITS FOR SMALL RESIDENTIAL ROOFTOP SOLAR ENERGY SYSTEMS

**WHEREAS**, on September 21, 2014, the Governor signed Assembly Bill 2188 (Stats. 2014, Ch. 521) into law; and

**WHEREAS**, Assembly Bill 2188 provides that the implementation of consistent statewide standards to achieve the timely and cost-effective installation of small residential rooftop solar energy systems is a matter of statewide concern; and

**WHEREAS**, Assembly Bill 2188 amended Section 714 of the California Civil Code, and Section 65850.5 of the California Government Code; and

**WHEREAS**, Section 65850.5 of the California Government Code now requires every city to adopt an ordinance that creates an expedited and streamlined permitting process for small residential rooftop solar energy systems and to adopt a checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review; and

**WHEREAS**, the City of Calexico ("City") does not currently have an expedited and streamlined permitting process or checklist for small residential rooftop solar energy systems; and

**WHEREAS**, if adopted, the proposed "Checklist of Requirements for Expedited Processing of Permits for Small Residential Rooftop Solar Energy Systems," as set forth in Exhibit "A" attached to this Resolution and incorporated herein by this reference (the "Checklist"), will list the requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review; and

**WHEREAS**, the Checklist is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061, subsection (b)(3), of Title 14 of the California Code of Regulations, in that the proposed Checklist is consistent with California law, specifically Government Code Section 65850.5 and Civil Code Section 714, and because it can be seen with certainty that the proposed Checklist will have no significant effect on the environment; and

**WHEREAS**, a duly noticed public meeting on the Checklist was held by the City Council on September 1, 2015; and

**WHEREAS**, in conjunction with the public meeting on the Checklist, the City Council also held a duly noticed public hearing on an ordinance to add a new Article XI of the Calexico Municipal Code to create an expedited permitting process for small residential solar energy systems, a copy of which was included with the City Council's staff report for this item, dated September 1, 2015.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The Recitals set forth above are true and correct, and are incorporated herein by this reference.

**SECTION 2.** The City Council has read and considered the Checklist, as set forth in Exhibit "A" hereto.

**SECTION 3.** After consideration of the staff report and all of the information and public comments presented at the public meeting, the City Council finds and determines that (i) the Checklist complies with all applicable requirements of State law, including, without limitation, Assembly Bill 2188 (Stats. 2014, Ch. 521), codified at Civil Code Section 714 and Government Code Section 65850.5, (ii) the Checklist will not adversely affect the health, safety, or welfare of the residents within the community, (iii) the Checklist is in the public interest of the City of Calexico, (iv) the Checklist is consistent with the Calexico General Plan and its various elements, and (v) the Checklist will not be contrary to other goals, objectives, and/or policies of the Calexico Zoning Code (Title 17 to the Calexico Municipal Code).

**SECTION 4.** The City Council hereby certifies that the Checklist is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061, section (b)(3), of Title 14 of the California Code of Regulations.

**SECTION 5.** Based on the findings herein, the City Council does hereby approve and adopt the Checklist, as set forth in Exhibit "A" hereto.

**SECTION 6.** The City Clerk shall certify to the adoption of this resolution.

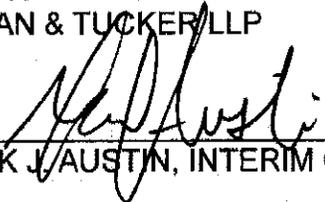
PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Calexico on September 1, 2015.

  
\_\_\_\_\_  
JOONG S. KIM, MAYOR

ATTEST:

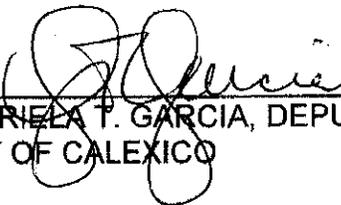
  
\_\_\_\_\_  
GABRIELA T. GARCIA, DEPUTY CITY CLERK  
CITY OF CALEXICO

APPROVED AS TO FORM:  
RUTAN & TUCKER LLP

  
\_\_\_\_\_  
MARK J. AUSTIN, INTERIM CITY ATTORNEY

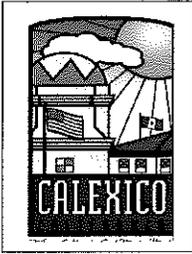
I, GABRIELA T. GARCIA, City Clerk of the City of Calexico, California, DO  
HEREBY CERTIFY that the foregoing Ordinance was adopted at a regular meeting of  
the City Council of the City of Calexico held on the 1<sup>st</sup> day of September, 2015, and was  
carried by the following roll call vote:

AYES:	Kim, Castro, Real, Hurtado, Moreno
NOES:	None
ABSENT:	None
ABSTAIN:	None

  
\_\_\_\_\_  
GABRIELA T. GARCIA, DEPUTY CITY CLERK  
CITY OF CALEXICO

**AGENDA  
ITEM**

**11**



# AGENDA STAFF REPORT

**DATE:** September 15, 2015

**TO:** Mayor and City Council

**APPROVED BY:** Richard Warne, City Manager *me*  
| Nick Servin, Public Works Director/City Engineer

**PREPARED BY:** Mark J. Austin, Interim City Attorney

**SUBJECT:** Second Reading and Adopt Ordinance No. 1164 of the City Council of the City of Calexico Adding Chapter 8.59 to Title 8 ("Health and Safety") of the Calexico Municipal Code, Prohibiting Smoking in and Around Multi-Unit Public Housing

=====

**Recommendation:**

Conduct Second Reading and Adopt Ordinance No. 1164 of the City Council of the City of Calexico adding Chapter 8.59 to Title 8 – "Health and Safety" – of the Calexico Municipal Code, prohibiting smoking in and around multi-unit public housing.

**Background:**

At the City Council meeting of July 21, 2015, the American Cancer Society's Cancer Action Network gave a detailed presentation on the adverse health impacts of secondhand cigarette smoke in multi-unit housing, and appealed to the City Council to adopt an ordinance that would completely prohibit smoking in such housing. As part of their presentation, the Cancer Action Network provided handouts that included a draft ordinance, as well as a list of notable communities that have adopted similar bans. A copy of the group's handout materials are included with agenda report. (**Attachments 1 and 2.**)

Based on the Cancer Action Network's presentation, City staff was directed to return to the Council with an ordinance that was based on the model ordinance provided. To that end, City staff, in conjunction with the City Attorney's office, prepared a draft ordinance that would add Chapter 8.59 to the City Municipal Code, prohibiting smoking in and around multi-unit housing in the City.



An existing chapter of the Calexico Municipal Code, Chapter 8.58, contains limited prohibitions on smoking in and around multi-unit housing. Specifically, under Chapter 8.58, smoking is prohibited in the common areas, and only the common areas, of apartment buildings, retirement facilities, and nursing homes.

The original version of the ordinance adding Chapter 8.59—which ordinance was presented to the City Council at its meeting of August 18, 2015—would have broadened this smoking prohibition to all indoor and outdoor areas in various types of multi-unit residences, both public and private. This smoking prohibition would also have extended into a 25-foot “buffer zone” surrounding all multi-unit residences, both public and private. Penalties for violations were also provided.

Upon consideration of the draft ordinance at its meeting of August 18, 2015, the City Council directed staff to revise the ordinance so that it applied only to “public housing”—i.e., housing that is owned and/or operated by the Calexico Housing Authority or an entity to which the Housing Authority belongs. In response to that direction, the City Attorney’s office prepared the draft ordinance attached hereto as **Attachment 3**, which would impose all of the above-referenced smoking prohibitions, but only in multi-unit public housing.

The health and welfare basis for the adoption of the Ordinance is reflected in the attached materials (**Attachments 1 and 2**), and can be summarized as follows:

Tobacco use causes death and disease and continues to be an urgent public health threat. Nonsmokers who live in multi-unit dwellings can be exposed to neighbors’ secondhand smoke. Harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this “thirdhand smoke” a potential health hazard. Smoking is the number one cause of fire deaths, is a leading cause of fire-related injury, and contributes to fire-related health inequities. The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure. Smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing. Secondhand smoke in multi-unit housing is a significant threat to the health and safety of Calexico children.

At the September 1, 2015 City Council Meeting, the City Council approved the first reading of Ordinance No. 1164 by a unanimous vote.

### **Environmental Analysis:**

The proposed ordinance is not subject to environmental review because it is not a “project” under Section 15378 of the CEQA Guidelines, and/or because it is exempt from formal environmental review pursuant to Section 15061(b)(3) of the CEQA Guidelines.

**Fiscal Impact:**

None.

**Coordinated With:**

None.

**Attachments:**

1. Cancer Action Network, Presentation Materials.
2. ChangeLab Solutions, Smokefree Housing Model Ordinance packet.
3. Proposed Ordinance.

## ORDINANCE \_\_\_\_\_

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, ADDING CHAPTER 8.59 TO TITLE 8 OF THE CALEXICO MUNICIPAL CODE TO PROHIBIT SMOKING IN AND AROUND MULTI-UNIT PUBLIC HOUSING

**WHEREAS**, tobacco use may cause death and disease and continues to be an urgent public health threat, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death;<sup>1</sup>
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;<sup>2</sup> and

**WHEREAS**, secondhand smoke has repeatedly been identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>3</sup>
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;<sup>4,5</sup>
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>6</sup>
- The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) recommends that multi-unit housing be free from environmental tobacco smoke, marijuana smoke, and electronic smoking devices' aerosol;<sup>7</sup> and

**WHEREAS**, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;<sup>8</sup>
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States;<sup>8</sup>
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent<sup>9</sup> and increases the risk of stroke by 20 percent to 30 percent;<sup>10</sup>
- Secondhand smoke kills more than 400 infants every year;<sup>11</sup> and

**WHEREAS**, secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard, as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,<sup>6, 12, 13, 14</sup> such as formaldehyde, acetaldehyde, lead, nickel, and toluene;<sup>15,16, 17</sup>
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;<sup>15,17,18</sup>
- The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned,"<sup>19</sup> and

**WHEREAS**, secondhand marijuana smoke has been identified as a health hazard, as evidenced by the following:

- The California EPA included marijuana smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer;<sup>6,20</sup>
- Marijuana smoke contains at least 33 known carcinogens;<sup>20</sup>
- Research on the health effects of marijuana smoke has found statistically significant associations with cancers of the lung, head and neck, bladder, brain, and testes;<sup>20</sup> and

**WHEREAS**, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Several peer-reviewed studies on drifting secondhand smoke in multi-unit housing have confirmed that secondhand smoke can and does transfer between units,<sup>21,22</sup> creeping under doorways and through wall cracks;<sup>11</sup>
- More than one study has found that residents of multi-unit housing have high levels of cotinine (a biomarker for nicotine) in their blood and saliva;<sup>21,22</sup>
- 13 peer-reviewed journal articles have found that between 26 percent and 64 percent of residents of multi-unit housing report secondhand smoke drifting into their home;<sup>21</sup> and

**WHEREAS**, harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this "thirdhand smoke" a potential health hazard, as evidenced by the following:

- Thirdhand smoke contains carcinogenic materials that accumulate over time, presenting a health hazard long after the initial smoke is gone;<sup>23</sup>
- A study found that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived;<sup>24</sup>
- Human exposure to these thirdhand smoke carcinogens can be through inhalation,

- ingestion, or skin absorption through contact with carpeting, furnishings, or clothing;<sup>25</sup>
- Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and suck on items in the home;<sup>25</sup>
  - Nonsmoking people who are exposed to thirdhand smoke have significantly higher nicotine and cotinine levels than those who have not been exposed to thirdhand smoke;<sup>24</sup>
  - Research has shown that thirdhand smoke damages human cellular DNA;<sup>26</sup> and

**WHEREAS**, smoking is the number one cause of fire deaths, is a leading cause of fire-related injury,<sup>27</sup> and contributes to fire-related health inequities, as evidenced by the following:

- In 2011, U.S. fire departments responded to an estimated 90,000 smoking-related fires, which resulted in an estimated 1,640 injuries, 540 deaths, and \$621 million in direct property damage;<sup>28</sup>
- One in four fatalities is NOT the smoker whose cigarette started the fire, and 25 percent of those who die are neighbors or friends of the smoker;<sup>28</sup>
- African-American males and American-Indian males have the highest fire death rates;<sup>27</sup>
- The elderly (people 85 and older) have the highest fire death rate (49.2%),<sup>29</sup> and the risk of dying from smoking-related fires increases with age;<sup>28</sup>
- The U.S. Fire Administration recommends that people smoke outdoors;<sup>30</sup> and

**WHEREAS**, the Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure;<sup>3</sup> and

**WHEREAS**, several studies have confirmed that smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing;<sup>21</sup> and

**WHEREAS**, 32 percent of Californians (or 11.8 million people) live in multi-unit housing,<sup>31</sup> which accounts for one-seventh of the total multi-unit housing population in the country;<sup>32</sup> and

**WHEREAS**, between 44 percent to 46.2 percent of Californians living in multi-unit housing with personal smokefree home policies are exposed to secondhand smoke in their home;<sup>31</sup> and

**WHEREAS**, surveys have found that between 65 percent and 90 percent of multi-unit housing residents who experience secondhand smoke in their home are bothered by the secondhand smoke incursion;<sup>21</sup> and

**WHEREAS**, secondhand smoke exposure in multi-unit housing contributes to tobacco-related health inequities. For example, when compared with adults who live in single family homes,

adults who live in multi-unit housing are more likely to

- Be from communities of color (62.9% of residents of multi-unit homes versus 49.6% of residents of single family homes);<sup>32</sup>
- Be low-income or below the poverty line (46.8% versus 27%);<sup>32</sup>
- Have less than a high school diploma (21.4% versus 14.8%);<sup>32</sup>
- Be current smokers (17.5% versus 13.2%);<sup>32</sup> as well as
- Be uninsured (23.4% versus 14.2%);<sup>32</sup> and

**WHEREAS**, secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children, as evidenced by the following:

- About a quarter of those who live in multi-unit housing (25.2%) are under the age of 18;<sup>31</sup>
- The home is the primary source of secondhand smoke for children;<sup>11</sup>
- 56.4 percent of youth living in apartment units in which no one smokes have elevated blood cotinine levels above .05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke;<sup>21,33</sup>
- Children who live in apartments have mean cotinine levels that are 45 percent higher than cotinine levels in children who live in detached homes;<sup>21,33</sup> and

**WHEREAS**, there are significant savings from adopting a smokefree multi-unit housing policy, as evidenced by the following research:

- Multi-unit housing property owners in California would save \$18.1 million in renovation expenses each year;<sup>21,34</sup>
- If all subsidized housing were to go smokefree in California, there would be approximately \$72.4 million saved per year, including \$61.1 million in secondhand smoke-related healthcare expenditures, \$5.9 million in renovation expenses, and \$5.4 million in smoking-attributable fire losses;<sup>35</sup> and

**WHEREAS**, a majority of multi-unit housing residents, including a large portion of smokers, support smokefree policies in multi-unit residences,<sup>21</sup> as evidenced by the following:

- 74 percent of Californians surveyed approve of apartment complexes requiring that at least half of rental units be nonsmoking;<sup>36</sup>
- 69 percent of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings;<sup>36</sup>
- 78 percent support laws that create nonsmoking units;<sup>36</sup> and

**WHEREAS**, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California

law;<sup>37</sup> and

**WHEREAS**, there is no Constitutional right to smoke;<sup>38</sup> and

**WHEREAS**, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance;<sup>39</sup> and

**WHEREAS**, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance;<sup>40-42</sup> and

**WHEREAS**, at least 55 California cities and counties have adopted smokefree multi-unit housing ordinances,<sup>43</sup> and at least 25 of these jurisdictions have restricted smoking in 100 percent of units;<sup>44</sup> and

**WHEREAS**, Chapter 8.58 of Title 8 of the Calexico Municipal Code contains only limited prohibitions on smoking in and around multi-unit housing;

**NOW THEREFORE**, THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

**SECTION I.** The above recitals are true and correct.

**SECTION II.** Title 8 of the City of Calexico Municipal Code is hereby amended by adding Chapter 8.59 to read as follows:

**CHAPTER 8.59 - SMOKING IN AND AROUND MULTI-UNIT PUBLIC RESIDENCES PROHIBITED**

**Sections:**

**8.59.010 – Purpose.**

The purpose of this chapter is to protect the health and welfare by regulating smoking in and around public housing within the City of Calexico, which are exclusively multi-unit residences, and to recognize the need to breathe clean air. Tobacco use causes death and disease and continues to be an urgent public health threat. Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke. Harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this "thirdhand smoke" a potential health hazard. Smoking is the number one cause of fire deaths, is a leading cause of fire-related injury, and contributes to fire-related health inequities. The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke

exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure. Smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing. Secondhand smoke in multi-unit housing is a significant threat to the health and safety of children.

#### 8.59.020 - Definitions.

For the purposes of this chapter the following definitions shall govern unless the context clearly requires otherwise:

A. "Adjacent Unenclosed Property" means any Unenclosed Area of property, publicly or privately owned, that abuts a Public Multi-Unit Residence, but does not include property containing detached single-family homes.

B. "City" means the City of Calexico.

C. "Common Area" means every Enclosed Area and every Unenclosed Area of a Public Multi-Unit Residence that residents of more than one Unit are entitled to enter or use, including, without limitation, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

D. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

E. "Enclosed Area" means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

(1) any type of overhead cover, whether or not that cover includes vents or other openings and at least three (3) walls or other physical boundaries of any height, whether or not those boundaries include vents or other openings; or

(2) four (4) walls or other vertical boundaries that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

F. "Landlord" means any Person or agent of a Person who owns, manages, or is otherwise legally responsible for a Unit in a Public Multi-Unit Residence that is leased

to a residential tenant, except that "Landlord" does not include a tenant who sublets a Unit (e.g., a sublessor).

G. "Public Multi-Unit Residence" means property commonly known as public housing that contains two (2) or more Units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities that are owned and/or operated by the Housing Authority of the City of Calexico or an entity of which the Housing Authority is a part. Public Multi-Unit Residences do not include the following:

- (1) a single-family home, except if used as a child care or health care facility subject to licensing requirements; and
- (2) a single-family home with a detached or attached in-law or second unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections, except if the single-family home or in-law/second unit is used as a child care or health care facility subject to licensing requirements.

H. "New Unit" means a Unit that is issued a certificate of occupancy after October 16, 2015 and also means a Unit that is let for residential use for the first time after October 16, 2015.

I. "Nonsmoking Area" means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by

- (1) this chapter or other law;
- (2) binding agreement relating to the ownership, occupancy, or use of real property;  
or
- (3) designation of a Person with legal control over the area.

J. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

K. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine *and* the purpose of inhalation is solely olfactory, such as, for example, smoke

from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.

L. "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

M. "Unenclosed Area" means any area that is not an Enclosed Area.

N. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes, without limitation, an apartment; a condominium; a townhouse; a room in a senior facility; a room in a long-term health care facility, assisted living facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit. Unit includes, without limitation, a New Unit.

8.59.030 - Smoking restrictions in new and existing units of public multi-unit residences.

A. Smoking is prohibited in all New Units of a Public Multi-Unit Residence, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in a New Unit of a Public Multi-Unit Residence, on or after October 16, 2015, is a violation of this chapter.

B. Smoking is prohibited in all Units of a Public Multi-Unit Residence that are not New Units, including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio. Smoking in a Unit of a Public Multi-Unit Residence that is not a New Unit, on or after October 16, 2016, is a violation of this chapter.

8.59.040 - No smoking permitted in common areas except in designated smoking areas.

A. Smoking in a Common Area, on or after, October 16, 2015, other than in a designated Smoking area established pursuant to paragraph B, is a violation of this chapter.

B. Person with legal control over a Common Area, such as, for example, a Landlord or homeowners' association, may designate a portion of the Common Area as a designated Smoking area provided the designated Smoking area complies with paragraph C below at all times.

C. A designated Smoking area:

- (1) Must be an Unenclosed Area;
- (2) Must be at least twenty-five (25) feet from Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;
- (3) Must be located at least twenty-five (25) feet from any Nonsmoking Area. The location of Nonsmoking Areas may change due to the new enactment of a law, execution of an agreement, or other event that affects the area's Smoking designation. If an event occurs that changes a Nonsmoking Area, a Person with legal control over a designated Smoking area within less than twenty-five (25) feet of that Nonsmoking Area must modify, relocate, or eliminate that designated Smoking area so as to maintain compliance with the requirements of this paragraph. In the case of a Nonsmoking Area on a neighboring property established only by private agreement or designation and not by this chapter or other law, it shall not be a violation of this chapter for a Person with legal control to designate a Smoking area within twenty-five (25) feet of the Nonsmoking Area unless that Person has actual knowledge of, or a reasonable person would know of, the private agreement or designation. It shall not be a violation of this chapter for a Person to Smoke within a Nonsmoking Area if the area is erroneously designated as a Smoking area unless a reasonable person would know of the error;
- (4) Must be no more than ten percent (10%) of the total Unenclosed Area of the Public Multi-Unit Residence for which it is designated;
- (5) Must have a clearly marked perimeter;
- (6) Must be identified by conspicuous signs; and
- (7) Must not overlap any Enclosed or Unenclosed Area where Smoking is prohibited by this chapter or other law.

D. No Person with legal control over a Common Area in which Smoking is prohibited by this chapter or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the area.

8.59.050 - Nonsmoking buffer zones.

Smoking is prohibited in Adjacent Unenclosed Property within twenty-five (25) feet in any direction of any doorway, window, opening, or other vent into an Enclosed Area of a Public Multi-Unit Residence.

8.59.060 - Required and implied lease terms for all new and existing units in public multi-unit residences.

A. Every lease or other rental agreement for the occupancy of a Unit in a Public Multi-Unit Residence, entered into, renewed, or continued month-to-month after October 16, 2015, shall include the provisions set forth in paragraph B below on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.

B. Every lease or other rental agreement for the occupancy of a Unit in a Public Multi-Unit Residence, entered into, renewed, or continued month-to-month after October 16, 2015, shall be amended to include the following provisions:

(1) A clause providing that as of October 16, 2015, it is a material breach of the agreement to allow or engage in Smoking in the Unit, including exclusive-use areas such as balconies, porches, or patios. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant to engage in smoking in the unit or exclusive use areas such as balconies, porches, or patios as of October 16, 2015."

(2) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to engage in Smoking in any Common Area of the Public Multi-Unit Residence other than a designated Smoking area. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists."

(3) A clause providing that it is a material breach of the agreement for tenant or any other Person subject to the control of the tenant to violate any law regulating Smoking while anywhere on the property. Such a clause might state, "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."

(4) A clause expressly conveying third-party beneficiary status to all occupants of the Public Multi-Unit Residence as to the Smoking provisions of the lease or other

rental agreement. Such a clause might state, "Other occupants of the property are express third-party beneficiaries of those provisions in this agreement regarding smoking. As such, other occupants of the property may enforce such provisions by any lawful means, including by bringing a civil action in a court of law."

C. Whether or not a Landlord complies with paragraphs A and B above, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which paragraphs A and B apply and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to paragraphs A and B.

D. A tenant who breaches a Smoking provision of a lease or other rental agreement for the occupancy of a Unit in a Public Multi-Unit Residence, or who knowingly permits any other Person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to (i) the Landlord; and (ii) any occupant of the Public Multi-Unit Residence who is exposed to Smoke or who suffers damages as a result of the breach.

E. This chapter shall not create additional liability for a Landlord to any Person for a tenant's breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Public Multi-Unit Residence if the Landlord has fully complied with this Section.

F. Failure to enforce any Smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

#### 8.59.070 - Other requirements and prohibitions.

A. Every Landlord shall deliver the following, on or before April 16, 2016, to each Unit of a Public Multi-Unit Residence:

(1) A written notice clearly stating:

(i) All Units are designated nonsmoking Units, and Smoking will be illegal in a Unit, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of October 16, 2016; and

(ii) Smoking in all Common Areas, except for specifically designated Smoking areas, will be a violation of this chapter as of October 16, 2015.

(2) A copy of this chapter.

B. As of October 16, 2015, every Landlord shall provide prospective tenants with written notice clearly stating that:

(1) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of October 16, 2015; and

(2) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of October 16, 2015.

C. As of October 16, 2015, every seller of a Unit in a Public Multi-Unit Residence shall provide prospective buyers with written notice clearly stating that:

(1) Smoking is prohibited in Units, including any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio, as of October 16, 2015; and

(2) Smoking is prohibited in all Common Areas, except for specifically designated Smoking areas, as of October 16, 2015.

D. Clear and unambiguous "No Smoking" signs shall be posted in sufficient numbers and locations in Common Areas where Smoking is prohibited by this chapter or other law. In addition, signs shall be posted in sufficient numbers and locations in the Public Multi-Unit Residence to indicate that Smoking is prohibited in all Units. Such signs shall be maintained by the Person or Persons with legal control over the Common Areas. The absence of signs shall not be a defense to a violation of any provision of this chapter. "No Smoking" signs are not required inside or on doorways of Units, except for hotels or motels as defined in California Civil Code section 1940, subdivision (b)(2).

E. No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as otherwise provided in Section 8.59.040.

#### 8.59.080 - Smoking and smoke generally.

A. The provisions of this chapter are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (i) any provision of this chapter or of this Municipal Code, (ii) any failure by any Person to restrict Smoking under this chapter, or (iii) any explicit or implicit provision of this Municipal Code that allows Smoking in any place, nothing in this Municipal Code shall be interpreted to limit any Person's legal rights under other laws with regard to Smoking, including, for example,

rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

B. For all purposes within the jurisdiction of the City, nonconsensual exposure to Smoke occurring on or drifting into property is a nuisance, and the uninvited presence of Smoke on property is a nuisance and a trespass.

8.59.090 - Penalties and enforcement.

A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Every instance of Smoking in violation of this chapter is an infraction subject to a one hundred dollar (\$100) fine. Other violations of this chapter may, in the discretion of the City Prosecutor be prosecuted as infractions or misdemeanors when the interests of justice so require. Any peace officer or code enforcement official may enforce this chapter.

C. Violations of this chapter are subject to a civil action brought by the City, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

D. No Person shall intimidate, harass, or otherwise retaliate against any Person who seeks compliance with this chapter. Moreover, no Person shall intentionally or recklessly expose another Person to Smoke in response to that Person's effort to achieve compliance with this chapter. Violation of this paragraph shall constitute a misdemeanor.

E. Causing, permitting, aiding, or abetting a violation of any provision of this chapter shall also constitute a violation of this chapter.

F. Any violation of this chapter is hereby declared to be a public nuisance.

G. In addition to other remedies provided by this chapter or otherwise available at law or in equity, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, without limitation, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

H. Any Person, including a legal entity or organization acting for the interests of itself, its members, or the general public, may bring a civil action to enforce this chapter by way of a conditional judgment or an injunction to prevent future such violations and may sue to recover such actual or statutory damages as he or she may prove.

I. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any Person against the City or its agents to compel public enforcement of this chapter against private parties.

8.59.100 – Coordination with Chapter 8.58.

If any sections of this chapter conflict with Chapter 8.58, this chapter shall govern.

**SECTION III.** It is the intent of the City Council of the City of Calexico to supplement applicable state and federal law and not to duplicate or contradict such law, and this Ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Calexico hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

**SECTION IV.** This ordinance shall take effect thirty (30) days after its adoption. The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance or a summary thereof to be published in the manner required by law.

First introduced and read at a regular meeting of the City Council held on the September 1, 2015, and adopted and at a regular meeting of said Council on the September 15, 2015.

**PASSED, APPROVED, AND ADOPTED** this September 15, 2015.

CITY OF CALEXICO

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Joong S. Kim, Mayor

**ATTEST:**

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Gabriela T. Garcia, City Clerk

**APPROVED AS TO FORM:**  
RUTAN & TUCKER LLP

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Mark J. Austin, Interim City Attorney

STATE OF CALIFORNIA    )  
COUNTY OF IMPERIAL    ) ss  
CITY OF CALEXICO    )

I, Gabriela T. Garcia, City Clerk of the City of Calexico, California, do hereby certify that the foregoing Ordinance No. \_\_\_ had its first reading on September 1, 2015, and had its second reading on September 15, 2015, and was passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

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Gabriela T. Garcia, City Clerk

1. U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary.*; 2014. Available at: [www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf).
2. U.S. Surgeon General. Factsheet: The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. 2014. Available at: [www.surgeongeneral.gov/library/reports/50-years-of-progress/fact-sheet.html](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/fact-sheet.html). Accessed June 2, 2015.
3. U.S. Department of Health and Human Services. 2006 Surgeon General's Report—The Health Consequences of Involuntary Exposure to Tobacco Smoke. 2006. Available at: [www.cdc.gov/tobacco/data\\_statistics/sgr/2006/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm). Accessed June 14, 2014.
4. California Environmental Protection Agency Air Resources Board. *Environmental Tobacco Smoke: A Toxic Air Contaminant. California Environmental Protection Agency Air Resources Fact Sheet.*; 2006. Available at: [www.arb.ca.gov/toxics/ets/factsheetets.pdf](http://www.arb.ca.gov/toxics/ets/factsheetets.pdf).
5. California Environmental Protection Agency Air Resource Board. California Identifies Secondhand Smoke as a "Toxic Air Contaminant." *News Release.* 2006. Available at: [www.arb.ca.gov/newsrel/nr012606.htm](http://www.arb.ca.gov/newsrel/nr012606.htm).
6. Chemicals known to the state to cause cancer or reproductive toxicity. State of California Environmental Agency Office of Health Hazard Assessment Safe Drinking Water and Toxic Enforcement Act of 1986. 2015. Available at: [www.oehha.ca.gov/prop65/prop65\\_list/files/P65single012315.pdf](http://www.oehha.ca.gov/prop65/prop65_list/files/P65single012315.pdf).
7. The American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE). *Ventilation for Acceptable Indoor Air Quality. ANSI/ASHRAE Standard 62.1-2013. Addenda 2015 Supplement.* Atlanta, GA; 2015. Available at: [www.tcspartners.org/files.cfm?filesID=58](http://www.tcspartners.org/files.cfm?filesID=58).
8. Centers for Disease Control and Prevention. Secondhand Smoke (SHS) Facts. 2014. Available at: [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm). Accessed June 13, 2014.
9. Institute of Medicine. *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence.* Washington, DC; 2010. Available at: [www.iom.edu/en/Reports/2009/Secondhand-Smoke-Exposure-and-Cardiovascular-Effects-Making-Sense-of-the-Evidence.aspx](http://www.iom.edu/en/Reports/2009/Secondhand-Smoke-Exposure-and-Cardiovascular-Effects-Making-Sense-of-the-Evidence.aspx).
10. U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General.*; 2014. Available at: [www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf).
11. Centers for Disease Control and Prevention (CDC). Secondhand Smoke: An Unequal Danger. *CDC Vital Signs.* 2015. Available at: [www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf](http://www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf).
12. California Department of Public Health California Tobacco Control Program. *State Health Officer's Report on E-Cigarettes: A Community Health Threat.* Sacramento, CA Available at: <http://cdph.ca.gov/programs/tobacco/Documents/Media/StateHealth-e-cig-report.pdf>.
13. Grana R, Benowitz N, Glantz S. *Background Paper on E-cigarettes (Electronic Nicotine Delivery Systems).*; 2013. Available at: <http://escholarship.org/uc/item/13p2b72n>.
14. Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P. Metal and silicate particles including nanoparticles are present in electronic cigarette cartomizer fluid and aerosol. *PLoS One.* 2013;8(3):e57987. doi:10.1371/journal.pone.0057987.
15. German Cancer Research Center. "Electronic Cigarettes - An Overview" *Red Series Tobacco Prevention and Control.* Heidelberg; 2013. Available at: [www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band\\_19\\_e-cigarettes\\_an\\_overview.pdf](http://www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band_19_e-cigarettes_an_overview.pdf).
16. Goniewicz ML, Knysak J, Gawron M, et al. Levels of selected carcinogens and toxicants in vapour from electronic cigarettes. *Tob Control.* 2013;1:1–8. doi:10.1136/tobaccocontrol-2012-050859.
17. Schripp T, Markewitz D, Uhde E, Salthammer T. Does e-cigarette consumption cause passive vaping? *Indoor Air.* 2013;23(1):25–31. doi:10.1111/j.1600-0668.2012.00792.x.

18. Schober W, Szendrei K, Matzen W, et al. Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarette consumers. *Int J Hyg Environ Health*. 2013. doi:10.1016/j.ijheh.2013.11.003.
19. Tobacco Education and Research Oversight Committee (TEROC). *Position on Electronic-Cigarettes (e-cigarettes)*; 2013. Available at: [www.cdph.ca.gov/services/boards/teroc/Documents/Positions/TEROC Official Position of E-Cigs\\_June 2013\\_final.pdf](http://www.cdph.ca.gov/services/boards/teroc/Documents/Positions/TEROC%20Official%20Position%20of%20E-Cigs_June%202013_final.pdf).
20. Tomar R, Beaumont J, Hsieh J. *Evidence on the Carcinogenicity of Marijuana Smoke.*; 2009. Available at: [http://oehha.ca.gov/prop65/hazard\\_ident/pdf\\_zip/FinalMJsmokeHID.pdf](http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf).
21. Snyder K, Vick JH, King BA. Smoke-free multiunit housing: a review of the scientific literature. *Tob Control*. 2015;0:1–12. doi:10.1136/tobaccocontrol-2014-051849.
22. Martínez-Sánchez JM, Sureda X, Fu M, et al. Secondhand smoke exposure at home: Assessment by biomarkers and airborne markers. *Environ Res*. 2014;133:111–116. doi:10.1016/j.envres.2014.05.013.
23. Kuschner WG, Reddy S, Mehrotra N, Paintal HS. Electronic cigarettes and thirdhand tobacco smoke: two emerging health care challenges for the primary care provider. *Int J Gen Med*. 2011;4:115–20. doi:10.2147/IJGM.S16908.
24. Matt GE, Quintana PJE, Zakarian JM, et al. When smokers move out and non-smokers move in: residential thirdhand smoke pollution and exposure. *Tob Control*. 2011;20(1):e1. doi:10.1136/tc.2010.037382.
25. Sleiman M, Gundel L a, Pankow JF, Jacob P, Singer BC, Destailhats H. Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards. *Proc Natl Acad Sci U S A*. 2010;107(15):6576–81. doi:10.1073/pnas.0912820107.
26. Hang B, Sarker AH, Havel C, et al. Thirdhand smoke causes DNA damage in human cells. *Mutagenesis*. 2013;28(4):381–91. doi:10.1093/mutage/get013.
27. U.S. Fire Administration. U.S. fire statistics. 2015. Available at: [www.usfa.fema.gov/data/statistics/](http://www.usfa.fema.gov/data/statistics/). Accessed February 11, 2015.
28. Hall JRJ. *The Smoke-Material Fire Problem*. National Fire Protection Association Fire Analysis and Research Division. Quincy, MA; 2013. Available at: [www.nfpa.org/~media/Files/Research/NFPA reports/Major Causes/ossmoking.pdf](http://www.nfpa.org/~media/Files/Research/NFPA_reports/Major_Causes/ossmoking.pdf).
29. U.S. Fire Administration. U.S. fire deaths, fire death rates and risk of dying in a fire. 2014. Available at: [www.usfa.fema.gov/data/statistics/fire\\_death\\_rates.html](http://www.usfa.fema.gov/data/statistics/fire_death_rates.html). Accessed February 11, 2015.
30. U.S. Fire Administration. *Behavioral Mitigation of Smoking Fires.*; 2006. Available at: [www.usfa.dhs.gov/downloads/pdf/publications/fa-302-508.pdf](http://www.usfa.dhs.gov/downloads/pdf/publications/fa-302-508.pdf).
31. King B a, Babb SD, Tynan M a, Gerzoff RB. National and state estimates of secondhand smoke infiltration among U.S. multiunit housing residents. *Nicotine Tob Res*. 2013;15(7):1316–21. doi:10.1093/ntr/nts254.
32. Chambers C, Sung H, Max W. Home Exposure to Secondhand Smoke among People Living in Multiunit Housing and Single Family Housing: A Study of California Adults, 2003 – 2012. *J Urban Heal*. 2014. doi:10.1007/s11524-014-9919-y.
33. Wilson KM, Klein JD, Blumkin AK, Gottlieb M, Winickoff JP. Tobacco-smoke exposure in children who live in multiunit housing. *Pediatrics*. 2011;127(1):85–92. doi:10.1542/peds.2010-2046.
34. Ong MK, Diamant AL, Zhou Q, Park HY, Kaplan RM. Estimates of smoking-related property costs in California multiunit housing. *Am J Public Health*. 2012;102(3):490–493. doi:10.2105/AJPH.2011.300170.
35. King BA, Peck RM, Babb SD. National and State Cost Savings Associated With Prohibiting Smoking in Subsidized and Public Housing in the United States. 2014;1–11.
36. American Lung Association in California the Center for Tobacco Policy and Organizing. *Secondhand Smoke Survey: California Voters' Attitudes about Secondhand Smoke Exposure*. 2008. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2013/06/Summary-of-Key-Findings-SHS-Poll-Overall-Results-November-2008.pdf>. Accessed February 11, 2015.
37. Ops. Cal. Leg. Counsel, No. 21547 (Sept. 23, 1999) (Smoking Bans: Residential Rental Property) (on

- file with ChangeLab Solutions).
38. ChangLab Solutions. *There is No Constitutional Right to Smoke (CA Version)*. Oakland, CA; 2005. Available at: <http://changelabsolutions.org/publications/no-right-to-smoke-CA>.
  39. Cal. Civil Code § 3479 (West 2009).
  40. In Re Jones, 56 Cal.App.2d 658 (1943).
  41. Cal. Const., Art. XI, § 7.
  42. Cal. Gov. Code § 38771 (West 2009).
  43. American Lung Association in California Center for Tobacco Policy and Organizing. *Local California Smokefree-Housing Policies Detailed Analysis December 2013*. 2013. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2013/12/Local-California-Smokefree-Housing-Policies-Detailed-Analysis-December-2013.pdf>.
  44. American Lung Association in California Center for Tobacco Policy and Organizing. *Matrix of Strong Local Smokefree Multi-Unit Housing Ordinances December 2013*. Sacramento, CA; 2013. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2013/12/Matrix-of-Strong-Local-Smokefree-Multi-Unit-Housing-Ordinances-December-2013.pdf>.